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BROOKTRAILS TOWNSHIP COMMUNITY SERVICES DISTRICT

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**COUNTY OF SONOMA**

BROOKTRAILS TOWNSHIP COMMUNITY SERVICES DISTRICT, a Public Agency,  
Plaintiff,

Case No. SCV 253175

vs.

CITY OF WILLITS, a General Law City;  
and DOES 1 through 100, inclusive,  
Defendants. /

BROOKTRAILS TOWNSHIP CROSS-COMPLAINT TO THE CITY OF WILLITS' FIRST AMENDED CROSS COMPLAINT

CITY OF WILLITS, a General Law City  
Cross-Complainant.

Vs.

BROOKTRAILS TOWNSHIP COMMUNITY SERVICES DISTRICT, a Public Agency  
Cross-Defendant.

BROOKTRAILS TOWNSHIP COMMUNITY SERVICES DISTRICT, a Public Agency  
Cross-Complainant,

Vs.

CITY OF WILLITS, a General Law City,  
and ROES 1 through 100, inclusive  
Cross-Defendants. /

Comes now BROOKTRAILS TOWNSHIP COMMUNITY SERVICES DISTRICT who cross-complains against the cross-complaint City of Willits' as denominated in the First Amended Cross-Complaint and for cause of action states as follows:

**GENERAL ALLEGATIONS**

1. Cross-Complainant Brooktrails Township Community Services District, hereinafter referred to as "Brooktrails," acting by and through its Board of Directors is currently and was at all material times stated herein a local governmental agency organized under the Community Services District Law located in the County of Mendocino, State of California and is the successor in interest to Brooktrails Community Services District and the Brooktrails Resort Improvement District.

2. Cross-Defendant City of Willits, hereinafter referred to as the "City of Willits," is currently and was at all material times stated herein a general law city organized under the laws of the State of California located in the County of Mendocino, State of California and all references to actions by the City of Willits herein are to its elected councilmembers, its officers, employees, agents and independent contractors all acting within the scope of the authority delegated to them by the City Council of the City of Willits.

3. The true names or capacities, whether individual, corporate, associate or otherwise of the Cross-Defendants named herein as Roes 1 through 100, inclusive, are unknown to Brooktrails who therefore sue said defendants by such fictitious names. Brooktrails will seek leave to amend this Cross-Complaint to show their true names and capacities when the same have been ascertained. The fictitiously named defendants and each of them were the agents, servants, and employees of the City of Willits in doing the things herein alleged, were acting

within the scope of their authority as such agents, servants and employees and with permission, consent and ratification of the City of Willits.

4. Venue is appropriate in that the current action has been transferred to the Superior Court in and for the County of Sonoma by order of the Superior Court in and for the County of Mendocino.

#### **FACTS COMMON TO ALL CAUSES OF ACTION**

5. Brooktrails and the City of Willits made on September 11, 1967 a written agreement entitled "Agreement by City of Willits for Disposal of Sewage from Brooktrails Resort improvement District, hereinafter referred to as the "Original Agreement;" which agreement was amended on April 17, 1970 as hereinafter referred to as the "First Amendment;" amended again on November 21, 1975, on the occasion of the construction of a new wastewater treatment plant , hereinafter referred to as the "Second Amendment;" and amended again on September 8, 1982 on the occasion of there being made certain improvements to the wastewater treatment plant, hereinafter referred to as the "Third Amendment," all collectively referred to herein as "the Contract." True copies of the Contract were attached to the First Amended Cross-Complaint filed herein by the City of Willits on or about May 6, 2013 incorporated herein by this reference as though fully set forth at length.

6. Prior to June 26, 2007 the City of Willits made certain representations to Brooktrails related to a project referred to by the City of Willits as the Headworks Project and hereinafter referred to as the "Headworks Project," a first independent stage of a project conceived and then under design by the City of Willits related to its wastewater treatment plant project, all of which phases are hereinafter referred to as the "Project," (and hereinafter

collectively and/or alternatively referred to as the Headworks Project and/or the Project,")which representations induced Brooktrails to execute a purported amendment to the Contract entitled, "Fourth Amendment to Agreement by City of Willits for Disposal of Sewage From Brooktrails Township," prepared and presented by the City of Willits to Brooktrails, hereinafter referred to as the "**First USDA Loan Agreement,**" to distinguish it from a Fifth Amendment relating to two additional USDA loans which was negotiated by and between the parties in June and July 2010, but which Fifth Amendment relating to additional USDA loans was never consummated by a meeting of the minds, or execution of a final agreement. The copy of the First USDA Loan Agreement attached to the City of Willits Cross-Complaint filed herein on or about May 6, 2013 did not include the attached order of the North Coast Regional Water Quality Control Board referenced therein as an attachment, which attachment is relevant to the issues raised by this Cross-Complaint. A complete and true copy of the First USDA Loan Agreement is attached hereto marked "Exhibit A" and incorporated herein by this reference as though fully set forth at length.

7. Prior to the City of Willits' preparation and submission to Brooktrails of the First USDA Loan Agreement the City Manager of the City of Willits on several occasions in June 2007 represented to the General Manager of Brooktrails that in order for the City to obtain loan/grant financing referred to hereinafter as the "USDA Loan" for the construction of the Headworks Project the U.S. Department of Agriculture ("USDA") urgently required Brooktrails to recognize its obligation to pay its then applicable dry water treatment capacity of 37.69% for the project. This representation is hereinafter referred to as the "**Financing Representation.**"

8. Prior to and contemporaneously to the preparation by the City of Willits of the First USDA Loan Agreement and its submission to Brooktrails the City of Willits represented to Brooktrails that the North Coast Regional Water Quality Control Board in its role of enforcing state and federal requirements of the Clean Water Act imposed a requirement upon the City of Willits to construct a new wastewater treatment plant, which representation is hereinafter referred to as the **“Plant Construction Requirement Representation.”** The Plant Construction Requirement Representation was made by the City of Willits in the context of paragraphs 6, 8a and 17 of the Second Amendment to the Contract requiring Brooktrails to contribute at the rate of its then Average Dry Weather Flow Capacity ownership to the costs of improving the wastewater treatment plan, but which otherwise Brooktrails had no contractual requirement for contribution. Specifically the City Manager of the City of Willits in furtherance of the Plant Construction Requirement Representation at various times to be shown according to proof, including on at least one occasion in the month of June 2007, represented that the wastewater plant was being improved to meet more stringent effluent quality improvements within the meaning of Section 8a of the Second Amendment to the Contract which representation was repeated, ratified, adopted and admitted by the City of Willits in paragraph 8 of the First Amended Cross-Complaint filed herein by the City of Willits on or about May 6, 2013 as being the single purpose for the construction of the wastewater plant the representation that a new wastewater plant was being ordered to be constructed was asserted by attachment of the North Coast Regional Water Quality Control Board order as an attachment to the First USDA Loan Agreement. Previously, and in addition to asserting that the Project Purpose was to comply with more stringent effluent quality improvements and that the improvements to the wastewater plant contractually required contribution by Brooktrails the City Council on April 23, 2003 the City

Council of the City of Willits directly represented to Brooktrails, its general manager that the key equipment of the plant was obsolete causing operation and maintenance costs to exceed unacceptable levels of \$500,000 and that portions of the improvements constituted the replacement of obsolete equipment. Previously and in addition the City Council of the City of Willits on April 23, 2003 and on September 13, 2005 the Project Manager of the City of Willits had represented to the Brooktrails board of directors that the Project would increase Average Dry Weather Capacity.

9. Prior to the City of Willits' preparation and submission to Brooktrails of the First USDA Loan Agreement the City of Willits represented to Brooktrails that the capacity of all stages of the contemplated Wastewater Plant would increase the wastewater plant capacity to accommodate growth in Brooktrails during the design life of the facility, which representation is hereinafter referred to as the "**Capacity Representation.**" The Capacity Representation was made on numerous occasions to be shown according to proof including but not limited to having been made directly to the Brooktrails Board of Directors on September 13, 2005 by Thomas Herman, serving in the capacity as Project Director of the Project as an independent contractor of the City of Willits and the Capacity Representation also having been previously made on April 23, 2003 by the City Council of the City of Willits directly to the Board of Directors of Brooktrails.

10. The Financing Representation, the Plant Construction Requirement Representation, and the Capacity Representations were and are untrue and are hereinafter collectively referred to as the "**Representations Inducing Approval of the First USDA Loan Agreement.**" Each of these representations were made by and through elected representative,

officers, employees, agents and independent contractors acting within the scope of their capacities on behalf of the City of Willits and were made to the General Manager and the Board of Directors of Brooktrails.

11. At all times prior to the execution by Brooktrails of the First USDA Loan Agreement the City of Willits concealed from Brooktrails the material fact that the City of Willits had removed the Niesen Property the cost for the acquisition of that certain 125 acre parcel of property referred to as Mendocino County Assessor's Parcel Number 108-040-03, hereinafter referred to as the "Niesen Property," from the USDA Loan which fact was contrary to express representations by the Finance Officer of the City of Willits to Brooktrails starting on or about a date in October 2005 and repeated in 2006 that the cost of the Niesen Property would be financed over forty years at the USDA Loan financing rate. This concealed material fact that the property had been removed from the USDA Loan is hereinafter referred to as the "**Niesen Property Concealment.**"

12. At all times prior to the execution by Brooktrails of the First USDA Loan Agreement the City of Willits concealed from Brooktrails the material fact that the City of Willits had excessive inflow and infiltration to the City's collection system, which fact was contrary to express representations by the City of Willits to Brooktrails prior to the execution of the First USDA Loan Agreement that the City of Willits had an active and effective program to control and reduce such inflow and infiltration. This concealed material fact is hereinafter referred to as the "**Inflow and Infiltration Concealment.**"

13. At all times prior to the execution by Brooktrails of the First USDA Loan Agreement the City of Willits concealed from Brooktrails the material fact that the Regional Water Quality Control Board had required the City of Willits to develop a plan for addressing

high winter flows into the wastewater plant which high winter flows were caused by excessive inflow and infiltration which fact was contrary to express representations by the City of Willits to Brooktrails prior to the execution of the First USDA Loan Agreement that the North Coast Regional Water Quality Control Board required the City of Willits to construct a new wastewater treatment plant to meet more stringent effluent quality requirements by state and/or federal agencies than were in effect in 1975. This concealed material fact is hereinafter referred to as the **“Project Purpose Concealment.”**

14. At all times prior to the execution by Brooktrails of the First USDA Loan Agreement the City of Willits concealed from Brooktrails the material fact that the Project was designed so as to reduce the ability of Brooktrails to provide for growth and also designed to increase the ability of the City of Willits to meet its need to address high winter flows to its collection system caused by its excessive inflow and infiltration. This concealed material fact is hereinafter referred to as the **“Dry Weather Flow Reduction Concealment.”**

15. At all times prior to the execution by Brooktrails of the First USDA Loan Agreement the City of Willits concealed from Brooktrails the material fact that the City of Willits sewage flows exceeded the City’s percentage contractual capacity both of average dry weather flow and wet weather flow and that the City’s flows encroached and trespassed upon the exclusive contractual right held by Brooktrails to dispose a percentage of flow into the City of Willits wastewater treatment plant. This concealed material fact is hereinafter referred to as the **“Flow Violation Concealment.”**

16. The Niesen Property Concealment; the Inflow and Infiltration Concealment; the Project Purpose Concealment; the Dry Weather Flow Reduction Concealment; and the Flow



Violation Concealment are hereinafter collectively referred to as the **Concealments Inducing Approval of the First USDA Loan Agreement.**”

17. At all times prior to the execution by Brooktrails of the First USDA Loan Agreement the City of Willits and prior to the time of the Representations Inducing Approval of the First USDA Loan Agreement and the Concealments Inducing Approval of the First USDA Loan Agreement the City of Willits was in control of all information relating to its communications with the USDA and the North Coast Regional Water Quality Control Board, all information relating to the conceptualization , design and proposed construction of a new wastewater treatment plant, all information related to the acquisition of the Niesen Property, and all information related to the administration of the Project by reason of Section 9 of the Second Amendment to the Contract and Brooktrails was dependent upon transmission of accurate information concerning the Project and matters alleged by Brooktrails in this Cross-Complaint.

18. Brooktrails brings this cross-complaint after having immediately challenged the Niesen Property purchase upon the City pressing Brooktrails for contribution for such property, and in response to the City of Willits having sought by complaint contribution for the Project. Brooktrails upon being pressed for contribution in 2007 for the 2003 acquisition of the Niesen Property sought information from the City of Willits concerning the wastewater treatment plant through informal requests for information, formally through public records requests, and formally through discovery in this action and also through protracted negotiations such that any delay in raising the issues in this cross-complaint did not prejudice the City of Willits in any way because it knowingly and willfully determined to proceed with the construction of the independent second and third phases of the project without the contractual consent of

Brooktrails and with knowledge that no such consent had been obtained by the City of Willits from Brooktrails.

**First Cause of Action- Negligent Misrepresentation- Representations Inducing Approval of the First USDA Loan Agreement**

19. Brooktrails realleges and incorporates by this reference paragraphs 1 through 18, inclusive as though fully set forth herein.

20. The City of Willits excluded representatives from Brooktrails from all meetings and communications with the North Coast Regional Water Quality Control Board, although Brooktrails had at the initiation of the Project requested the ability to participate in the Project conceptualization, design and construction.

21. The Financing Representation was at all times mentioned herein untrue, the USDA having notified the City only that it required Brooktrails to recognize payment obligations in accord with the Contract.

22. The Plant Construction Requirement Representation was at all times mentioned herein untrue the Regional Water Quality Control Board not having required the City of Willits to design and construct an approved wastewater treatment plant and the improvements to the wastewater treatment plant were not within the definition of Section 6, Section 8a or Section 17 of the Second Amendment to the Contract such as would contractually require Brooktrails to make any contribution for the cost of the Project in accord with its then Average Dry Weather Capacity.

23. The Capacity Representation was at all times mentioned herein untrue the City of Willits having conceptualized, designed and constructed a project which only accommodated expected growth for the City of Willits; which project reduced the average dry weather capacity

allocated to Brooktrails; and which project as conceptualized, designed and constructed accommodated only increased capacity for wet weather flows the issue which the North Coast Regional Water Quality Control Board required the City to address.

24. In independently making each of the Representations Inducing Approval of the First USDA Loan Agreement: the Financing Representation; the Plant Construction Requirement Representation; and the Capacity Representation, each of these representations were of material fact the City of Willits may have honestly believed to be true, but nevertheless had no reasonable basis to believe that the Representations Inducing Approval of the First USDA Loan Agreement, or any of such representations individually, or cumulatively, to be true.

25. At all times mentioned herein the City of Willits possessing a contractual right and a contractual obligation to provide and control improvements to the city wastewater treatment plant both as to capacity and quality had a duty to Brooktrails to exercise reasonable care to disclose facts material to the Project to Brooktrails because by the nature of the contractual relationship the City of Willits controlled all information relative to its project, which duty was violated by the City of Willits in making the Representations Inducing Approval of the First USDA Loan Agreement individually and cumulatively because such representations were individually and cumulatively untrue, and for which representations, and each of them the City of Willits had no reasonable basis to believe that any of one of the representations individually or cumulatively, were true.

26. The City of Willits intended that Brooktrails rely upon The Representations Inducing Approval of the First USDA Loan Agreement, and each of them.

27. Brooktrails reasonably relied upon The Representations Inducing Approval of the First USDA Loan Agreement, and each of them. Brooktrails was harmed by such reasonable reliance upon the Representations Inducing Approval of the First USDA Loan Agreement, and each of them, because it executed the Fourth Amendment to the Contract and assumed for its ratepayers an obligation to pay for the First USDA Loan when in fact there was no contractual requirement for Brooktrails to pay anything toward the First USDA Loan but for the Representations Inducing Approval of the First USDA Loan Agreement having been made to Brooktrails.

28. The reliance by Brooktrails upon The Representations Inducing Approval of the First USDA Loan Agreement, and each of them, was a substantial factor in causing the harm to it because *inter alia* payments for the Headworks Project/and or the Project without contractual authority would constitute a gift of public funds.

29. Brooktrails intends that this Cross-Complaint serve as notice of rescission of the Fourth Amendment and prays that the First USDA Loan Agreement be deemed to be rescinded and treated as though it never existed.

30. Brooktrails demands that the City restore by way of restitution to Brooktrails the consideration furnished by Brooktrails furnished to the City under a full reservation of rights, and specifically: the payment of \$47,850.48 on or about December 10, 2008 the payment of \$25,612.31 on or about June 24, 2009; the payment of \$71,444.12 on or about December 28, 2009; the payment of \$38,759 on or about June 10, 2010; the payment of \$75,353.47 on or about December 22, 2010; the payment of \$56,793.12 on or about June 29, 2011; the payment of \$107,952.49 on or about December 28, 2011; the payment of \$69,046.67 on or about June 27,

2012; the payment of \$51,592.37 on or about December 27,2012; the payment of \$68,201.70, on July 1, 2013; totaling approximately \$612, 605.25 all paid under a full reservation of rights while efforts made to settle the controversies between Brooktrails and the City; together with such further sums as might be paid by Brooktrails to the City of Willits toward the USDA loans while this action is pending.

### **Second Cause of Action-Intentional Misrepresentation**

31. Brooktrails realleges and incorporates by this reference paragraphs 1 through 30, inclusive as though fully set forth herein.

32. The Representations Inducing Approval of the Fourth Amendment were made by the City to Brooktrails.

33. At all times mentioned in this Cross- Complaint the Representations Inducing Approval of the Fourth Amendment were and are untrue.

34. The Financing Representation was and is untrue because the USDA did not require that Brooktrails agree to pay 37.69% of the cost of the either the Headworks Project, or the loan referred to as the “USDA Loan,” but merely required Brooktrails to recognize any obligation to reimburse to the City of Willits those amounts reimbursable pursuant to the Contract, reserving to itself the right to review and concur in any such agreement.

35. The Plant Construction Requirement was and is untrue because the North Coast Regional Water Quality Control Board did not require the City of Willits to construct a new wastewater treatment plant, but instead to develop and implement a plan to address the issue high winter flows resulting in unpermitted discharges, and to develop a plan to maintain compliance with Basin Plan requirements which have been in effect at all times after November

21, 1975 none of which reasons would contractually require Brooktrails to contribute to the cost of the improvements.

36. The Capacity Representation was and is untrue because the conceptualization, design and construction of the Headworks Project and/or the Project provided no accommodation for any Brooktrails growth, but instead the conceptualization, design and construction of the reduced the amount of flow to which Brooktrails was entitled, purported to accommodate expected growth solely by the City of Willits through either the year 2020 or 2025, and in fact accommodated the capacity of the plant to process high winter flows in an attempt to avoid the unpermitted discharges of high winter flows, an expanded capacity required only by the City of Willits, and not required by Brooktrails.

37. The Representations Inducing Approval of the First USDA Loan Agreement made by the City of Willits, and each of them, were in fact false and were known by the City of Willits to be false at the time they were made and to be false at all times herein mentioned, the City having sole access to information: as to the requirements of the USDA; the requirements of the North Coast Regional Water Quality Control Board; and the conceptualization, design and construction documentation of the Project

38. The Representations Inducing Approval of the First USDA Loan Agreement were made recklessly and without regard for the truth.

39. The City of Willits intended that Brooktrails would rely upon the Representations Inducing Approval of the First USDA Loan Agreement in consideration by Brooktrails of the approval and the execution of the First USDA Loan Agreement.

40. Brooktrails reasonably relied upon the Representations Inducing Approval of the First USDA Loan made by the City of Willits

41. Brooktrails was harmed by the Representations Inducing Approval of the First USDA Loan made by the City of Willits in that such representations, and each of them, induced the Brooktrails to approve the execution of the First USDA Loan Agreement resulting in a commitment to pay substantial sums to the City of Willits and subsequent payments of substantial sums to the City of Willits on the basis of the Contract when in fact nothing was owed to the City of Willits by reason of the Contract because the project was not for the purpose as represented by the City of Willits, The Plant Construction Requirement Representation bringing the cost within the provisions of the Contract and particularly paragraph 8a of the Second Amendment, when such representation was untrue and there being no obligation under the Contract for Brooktrails to pay for increasing capacity to accommodate the City's high winter flows.

42. The reliance by Brooktrails upon the Representations Inducing Approval of the First USDA Loan was a substantial factor in causing the harm suffered by Brooktrails because *inter alia* payments for the Headwaters Project/and or the Project without contractual authority would constitute a gift of public funds.

43. Brooktrails intends that this Cross-Complaint serve as notice of rescission of the First USDA Loan Agreement and prays that it be deemed to be rescinded and treated as though it never existed.

44. Brooktrails demands that the City restore by way of restitution to Brooktrails the consideration furnished by Brooktrails furnished to the City under a full reservation of rights, and specifically: the payment of \$47,850.48 on or about December 10, 2008 the payment of

\$25,612.31 on or about June 24, 2009; the payment of \$71,444.12 on or about December 28, 2009; the payment of \$38,759 on or about June 10, 2010; the payment of \$75,353.47 on or about December 22, 2010; the payment of \$56,793.12 on or about June 29, 2011; the payment of \$107,952.49 on or about December 28, 2011; the payment of \$69,046.67 on or about June 27, 2012; the payment of \$51,592.37 on or about December 27, 2012; the payment of \$68,201.70, on July 1, 2013; totaling approximately \$612, 605.25 all paid under a full reservation of rights while efforts made to settle the controversies between Brooktrails and the City; together with such further sums as might be paid by Brooktrails to the City of Willits toward the USDA loans while this action is pending.

### **Third Cause of Action –Concealment- Niesen Property Concealment**

45. Brooktrails realleges and incorporates by this reference paragraphs 1 through 44, inclusive as though fully set forth herein.

46. Prior to the execution by Brooktrails of the First USDA Loan Agreement the City of Willis intentionally failed to disclose the material fact that it either had removed the cost of acquiring the Niesen Property from the USDA Loan, or that it then intended to do so, rendering the express representation that the City intended to finance the approximate \$750,000 cost of the project acquisition over the forty year life of the USDA Loan deceptive. The concealment of the City's intention as to the financing of the Niesen Property, standing alone and also as coupled with the City having given Brooktrails other facts, namely that it did intend to finance the property through the USDA Loan, deceived Brooktrails.

47. Brooktrails was deceived by the Niesen Property Concealment.



48. The City of Willits intended to deceive Brooktrails by the Niesen Property Concealment.

49. Brooktrails reasonably relied upon the deception by the City of Willits, the City of Willits alone having knowledge of the material fact related to the Niesen Property financing which was not assessable to Brooktrails.

50. Brooktrails was harmed by the Niesen Property Concealment because approximately four weeks after the execution by Brooktrails of the First USDA Loan Agreement by which the City of Willits asserts that Brooktrails is contractually obligated to pay 37.69 % for the \$750,000 Niesen Property purchase price, the City of Willits notified Brooktrails that the City's new position was that the Niesen Property purchase was not appropriately included in the USDA financing for the City's cost in acquiring the Niesen Property in an undisclosed, but substantial amount in cash, in an undisclosed short term substantially less than forty years, together with interest from 2003 when the City purchased the property without any prior notice to Brooktrails.

51. The Niesen Property Concealment was a substantial factor in the harm suffered by Brooktrails because the manner in which the City of Willits handled the demand by it for reimbursement for the Niesen Property acquisition left Brooktrails without effective ability to review the cost estimates driving the City's decisions and deprived Brooktrails with ability to recover the amounts demanded by the City of Willits toward the Niesen Purchase by customer rate recovery.

52. Brooktrails intends that this Cross-Complaint serve as notice of rescission of the First USDA Loan Agreement and prays that such agreement be deemed to be rescinded and treated as though it never existed.

53. Brooktrails demands that the City restore by way of restitution to Brooktrails the consideration furnished by Brooktrails furnished to the City under a full reservation of rights, and specifically: the payment of \$47,850.48 on or about December 10, 2008 the payment of \$25,612.31 on or about June 24, 2009; the payment of \$71,444.12 on or about December 28, 2009; the payment of \$38,759 on or about June 10, 2010; the payment of \$75,353.47 on or about December 22, 2010; the payment of \$56,793.12 on or about June 29, 2011; the payment of \$107,952.49 on or about December 28, 2011; the payment of \$69,046.67 on or about June 27, 2012; the payment of \$51,592.37 on or about December 27, 2012; the payment of \$68,201.70, on July 1, 2013; totaling approximately \$612, 605.25 all paid under a full reservation of rights while efforts made to settle the controversies between Brooktrails and the City; together with such further sums as might be paid by Brooktrails to the City of Willits toward the USDA loans while this action is pending.

**Fourth Cause of Action-Concealment- Inflow and Infiltration Concealment**

54. Brooktrails realleges and incorporates by this reference paragraphs 1 through 53, inclusive as though fully set forth herein.

55. At all times prior to the execution of the First USDA Loan Agreement the City of Willits knew that it had excessive inflow and infiltration of water to its sewer collection system and at all times prior to the execution of the First USDA Loan Agreement the City of Willits failed to disclose this material fact to Brooktrails.

56. At all times relevant herein Brooktrails had no way to learn of the extent of inflow and infiltration to the collection system of the City of Willits as Brooktrails relied entirely upon information provided to it by the City of Willits, information as to inflow and

infiltration and the nature of any programs the City might have to address it being known only to the City of Willits.

57. At all times relevant herein Brooktrails did not know that the City of Willits had excessive inflow and infiltration.

58. At all times relevant herein Brooktrails did not know that the City of Willits had during the 1990's and prior to the commencement of the conceptualization and design of the Project, essentially abandoned any systematic effort to control its excessive inflow and infiltration leaving it to expanded capacity of the Project to accommodate high winter flows caused by excessive inflow and infiltration experienced by and worsening for the City of Willits during the conceptualization and design process.

59. It was reasonable for Brooktrails to rely upon the deception by the City of Willits as to the nature of its inflow and infiltration because the City of Willits controlled all information related to the operation of the wastewater treatment plant and the operation of the City of Willits' wastewater collection system and concealed such information from Brooktrails; because the City of Willits on September 14, 2001 urged Brooktrails to comply with the goals of the Clean Water Act and the Eel River Basin Plan by minimizing wastewater flows through control of inflow and infiltration and with the City of Willits implying that the City of Willits was in compliance with such goals; and further that the City of Willits in publicly commenting upon the topic of the factors related to the Project repeatedly referred to the City having a program to control inflow and infiltration.

60. Brooktrails was harmed by the Inflow and Infiltration Concealment because Brooktrails spent hundreds of thousands of dollars after September 14, 2001 to minimize its wastewater flows through control of inflow and infiltration in the Brooktrails wastewater

collection system believing that it was engaged in a common program with the City of Willits to control and minimize inflow and infiltration when the City was in fact engaged in no such systematic program and continued to voluntarily suffer s excessive inflow and infiltration causing high winter flows. By June of 2007 when Brooktrails approved the First USDA Loan Agreement it had reduced its inflow and infiltration by a substantial factor which if similarly achieved by the City of Willits would have rendered construction of the Project unnecessary. If Brooktrails knew prior to the execution of the First USDA Loan Agreement that the City of Willits had as a matter of policy decided to ignore its excessive inflow and infiltration, but instead to address its high winter flows through construction of a new wastewater treatment plant, Brooktrails would not have approved contribution to any part of the Project and would not have executed such document so as to prevent a gift of public funds to the City of Willits, a gift Brooktrails was and is legally obligated to avoid making.

61. The approval of the First USDA Loan Agreement by Brooktrails resulted in a gift of public funds by Brooktrails to the City of Willits. The Inflow and Infiltration Concealment was a substantial factor in causing any payments of the First USDA Loan Agreement the scope of which as construed either by Brooktrails or as construed by the City of Willits to constitute a gift of public funds.

62. Brooktrails intends that this Cross-Complaint serve as notice of rescission of the First USDA Loan Agreement and prays that such agreement be deemed to be rescinded and treated as though it never existed.

63. Brooktrails demands that the City restore by way of restitution to Brooktrails the consideration furnished by Brooktrails furnished to the City under a full reservation of rights,

and specifically: the payment of \$47,850.48 on or about December 10, 2008 the payment of \$25,612.31 on or about June 24, 2009; the payment of \$71,444.12 on or about December 28, 2009; the payment of \$38,759 on or about June 10, 2010; the payment of \$75,353.47 on or about December 22, 2010; the payment of \$56,793.12 on or about June 29, 2011; the payment of \$107,952.49 on or about December 28, 2011; the payment of \$69,046.67 on or about June 27, 2012; the payment of \$51,592.37 on or about December 27, 2012; the payment of \$68,201.70, on July 1, 2013; totaling approximately \$612, 605.25 all paid under a full reservation of rights while efforts made to settle the controversies between Brooktrails and the City; together with such further sums as might be paid by Brooktrails to the City of Willits toward the USDA loans while this action is pending.

**Fifth Cause of Action-Concealment- Project Purpose Concealment**

64. Brooktrails realleges and incorporates by this reference paragraphs 1 through 63, inclusive as though fully set forth herein.

65. All facts constituting the Project Purpose Concealment were material to the relationship by and between the City of Willits and Brooktrails.

66. The City of Willits prevented Brooktrails from discovering the true facts as to the purpose of the construction of the Plant.

67. Prior to approval of the First USDA Loan Agreement the governing board of Brooktrails did not know that the true purpose of the Project was to provide capacity of the wastewater treatment plant to handle high winter flows suffered by the City of Willits caused by excessive inflow and infiltration.

68. The City of Willits intended for Brooktrails to be deceived by the Project Purpose Concealment in order to obtain contribution from Brooktrails for construction of the Headworks Project and/or the Project, which contribution would otherwise have no contractual basis.

69. Brooktrails reasonably relied upon the deception of the Project Purpose Concealment

70. Brooktrails was harmed by the Project Purpose Concealment because its governing board would never have approved the First USDA Loan Agreement had the Headworks Project and/or the Project purpose been known to be for the purpose of addressing the excessive inflow and infiltration of the City of Willits rather than a valid contract purpose because payments thereunder would constitute a gift of public funds because Brooktrails was not contractually required to contribute to the costs of the Project, but believed otherwise by the reasons collectively stated herein.

71. The Project Purpose Concealment was a substantial factor in the harm suffered by Brooktrails

72. Brooktrails intends that this Cross-Complaint serve as notice of rescission of the First USDA Loan Agreement and prays that such agreement be deemed to be rescinded and treated as though it never existed.

73. Brooktrails demands that the City restore by way of restitution to Brooktrails the consideration furnished by Brooktrails furnished to the City under a full reservation of rights, and specifically: the payment of \$47,850.48 on or about December 10, 2008 the payment of \$25,612.31 on or about June 24, 2009; the payment of \$71,444.12 on or about December 28, 2009; the payment of \$38,759 on or about June 10, 2010; the payment of \$75,353.47 on or about

December 22, 2010; the payment of \$56,793.12 on or about June 29, 2011; the payment of \$107,952.49 on or about December 28, 2011; the payment of \$69,046.67 on or about June 27, 2012; the payment of \$51,592.37 on or about December 27, 2012; the payment of \$68,201.70, on July 1, 2013; totaling approximately \$612, 605.25 all paid under a full reservation of rights while efforts made to settle the controversies between Brooktrails and the City; together with such further sums as might be paid by Brooktrails to the City of Willits toward the USDA loans while this action is pending.

**Sixth Cause of Action- Concealment- Dry Weather Flow Reduction Concealment**

74. Brooktrails realleges and incorporates by this reference paragraphs 1 through 73, inclusive as though fully set forth herein.

75. All facts constituting the Dry Weather Flow Reduction Concealment were material to the relationship by and between the City of Willits and Brooktrails.

76. The City of Willits prevented Brooktrails from discovering that the City of Willits flows exceeded its contractual right to contribute flows to the wastewater facility and intruded upon the exclusive flows assigned to Brooktrails by the Contract

77. Prior to approval of the First USDA Loan Agreement the governing board of Brooktrails did not know that the City of Willits had encroached and trespassed upon the exclusive flows then contractually held by Brooktrails in four of the twelve dry weather periods between 1990 and 2001 and prior to the time that the capacity of the Headwaters Project and/or the Project was conceptualized and designed, and further Brooktrails did not know that the Headworks Project and/or the Project did not have sufficient capacity to provide Brooktrails with 37.69% of the capacity of the wastewater treatment plant conceptualized and designed for the Headworks and/or the Project.

78. The City of Willits intended for Brooktrails to be deceived by the Flow Violation Concealment in order to obtain contribution from Brooktrails for construction of the Headworks Project and/or the Project, which contribution would otherwise have no contractual basis.

79. Brooktrails reasonably relied upon the deception of the Dry Weather Flow Reduction Concealment.

80. Brooktrails was harmed by the Dry Weather Flow Reduction Concealment because its governing board being under a statutory and policy duty to provide for the development of Brooktrails would never have approved the First USDA Loan Agreement had the Headwaters Project and/or the Project purpose been known to have been conceptualized and designed to reduce Average Dry Weather Flow Capacity, rather than a valid contract purpose because payments thereunder would in such instance constitute a gift of public funds.

81. The Project Purpose Concealment was a substantial factor in the harm suffered by Brooktrails.

82. Brooktrails intends that this Cross-Complaint serve as notice of rescission of the First USDA Loan Agreement and prays that such agreement be deemed to be rescinded and treated as though it never existed.

83. Brooktrails demands that the City restore by way of restitution to Brooktrails the consideration furnished by Brooktrails furnished to the City under a full reservation of rights, and specifically: the payment of \$47,850.48 on or about December 10, 2008 the payment of \$25,612.31 on or about June 24, 2009; the payment of \$71,444.12 on or about December 28, 2009; the payment of \$38,759 on or about June 10, 2010; the payment of \$75,353.47 on or about December 22, 2010; the payment of \$56,793.12 on or about June 29, 2011; the payment of



\$107,952.49 on or about December 28, 2011; the payment of \$69,046.67 on or about June 27, 2012; the payment of \$51,592.37 on or about December 27, 2012; the payment of \$68,201.70, on July 1, 2013; totaling approximately \$612, 605.25 all paid under a full reservation of rights while efforts made to settle the controversies between Brooktrails and the City; together with such further sums as might be paid by Brooktrails to the City of Willits toward the USDA loans while this action is pending.

**Seventh Cause of Action-Concealment- Flow Violation Concealment**

84. Brooktrails realleges and incorporates by this reference paragraphs 1 through 83, inclusive as though fully set forth herein.

85. All facts constituting the Flow Violation Concealment were material to the relationship by and between the City of Willits and Brooktrails.

86. The City of Willits prevented Brooktrails from discovering the true facts as to the violation of the contractual flow violation.

87. Prior to approval of the First USDA Loan Agreement the governing board of Brooktrails did not know that the City of Willits was in violation of the flow provisions of the Contract when viewed in the context of the then assigned 37.69% capacity assigned to and then owned by the City of Willits. The City of Willits intended for Brooktrails to be deceived by the Flow Reduction Concealment in order to obtain contribution from Brooktrails for construction of the Headworks Project and /or the Project, which contribution would otherwise have no contractual basis.

88. Brooktrails reasonably relied upon the deception of the Flow Violation Concealment.

89. Brooktrails was harmed by the Flow Violation because its governing board would never have approved the First USDA Loan Agreement had the City of Willits disclosed the Flow Violation because the ratepayers of Brooktrails have no contractual obligation to pay either for flows of average dry weather flow capacity in excess of the City's right to discharge flows to the wastewater treatment plant , or to pay for the City of Willits to provide expanded capacity to provide for high winter flows originating in the City of Willits to the wastewater treatment plant. Payments by Brooktrails on behalf of its ratepayers for those purposes would and do constitute a gift of public funds.

90. The Flow Violation Concealment was a substantial factor in the harm suffered by Brooktrails

91. Brooktrails intends that this Cross-Complaint serve as notice of rescission of the First USDA Loan Agreement and prays that such agreement be deemed to be rescinded and treated as though it never existed.

92. Brooktrails demands that the City restore by way of restitution to Brooktrails the consideration furnished by Brooktrails furnished to the City under a full reservation of rights, and specifically: the payment of \$47,850.48 on or about December 10, 2008 the payment of \$25,612.31 on or about June 24, 2009; the payment of \$71,444.12 on or about December 28, 2009; the payment of \$38,759 on or about June 10, 2010; the payment of \$75,353.47 on or about December 22, 2010; the payment of \$56,793.12 on or about June 29, 2011; the payment of \$107,952.49 on or about December 28, 2011; the payment of \$69,046.67 on or about June 27, 2012; the payment of \$51,592.37 on or about December 27,2012; the payment of \$68,201.70, on July 1, 2013; totaling approximately \$612, 605.25 all paid under a full reservation of rights

while efforts made to settle the controversies between Brooktrails and the City; together with such further sums as might be paid by Brooktrails to the City of Willits toward the USDA loans while this action is pending.

**Eighth Cause of Action -Unilateral Mistake of Fact**

93. Brooktrails realleges and incorporates by this reference paragraphs 1 through 92, inclusive as though fully set forth herein.

94. At the time that Brooktrails approved the First USDA Loan Agreement it was mistaken as to the following matters each of which individually was material to the First USDA Loan Agreement as follows:

(a) That the first USDA Loan described in the First USDA Loan Agreement included costs anticipated by the City of Willits for construction of phases other than the construction of the Headworks Project;

(b) That the USDA required Brooktrails to recognize its then current contractual percentage flow capacity of the City of Willits wastewater treatment plant as its obligation for the Headworks Project and/or the Project in any manner different than the Contract in order for the City of Willits to obtain financing;

(c) That the purpose of the Headworks Project and/or the Project was to meet more stringent effluent quality requirements of state and/or federal agencies than were in effect in 1975 and/or such other provisions of the Second Amendment of the Contract requiring contribution by Brooktrails toward the cost of the improvements of the Project;

(d) That the Headworks Project and/or the Project was conceptualized, designed, and intended to be constructed to accommodate anticipated growth in Brooktrails through the design life of the Headworks Project and/or the Project.

(e) That the City of Willits had actively addressed its inflow and infiltration;

(f) That the City of Willits was in then able to maintain its flows within the flows allocated to it under the Contract. Each of the foregoing mistakes are hereinafter collectively as the **“Factual Mistakes.”**

95. The City of Willits knew Brooktrails was mistaken as to the Factual Mistakes, collectively and as to each individual mistake, and used these mistakes to take advantage of Brooktrails and the public its serves.

96. The Factual Mistakes, collectively and as to each individual mistake was not caused by excessive carelessness by Brooktrails in light of all of the circumstances surrounding the execution of the First USDA Loan Agreement.

97. The Governing Board of Brooktrails would not have entered into the First USDA Loan Agreement had it known that it was mistaken as to the Factual Mistakes collectively or as to each individual mistake.

98. As a result of the mistake by Brooktrails no contractual relationship between Brooktrails and the City of Willits was created by the First USDA Loan Agreement.

99. Brooktrails demands that the City restore by way of restitution to Brooktrails the consideration furnished by Brooktrails furnished to the City under a full reservation of rights, and specifically: the payment of \$47,850.48 on or about December 10, 2008 the payment of \$25,612.31 on or about June 24, 2009; the payment of \$71,444.12 on or about December 28, 2009; the payment of \$38,759 on or about June 10, 2010; the payment of \$75,353.47 on or about December 22, 2010; the payment of \$56,793.12 on or about June 29, 2011; the payment of \$107,952.49 on or about December 28, 2011; the payment of \$69,046.67 on or about June 27,

2012; the payment of \$51,592.37 on or about December 27,2012; the payment of \$68,201.70, on July 1, 2013; totaling approximately \$612, 605.25 all paid under a full reservation of rights while efforts made to settle the controversies between Brooktrails and the City; together with such further sums as might be paid by Brooktrails to the City of Willits toward the USDA loans while this action is pending.

**Seventh Cause of Action- Bilateral Mistake of Fact**

100. Brooktrails realleges and incorporates by this reference paragraphs 1 through 99, inclusive as though fully set forth herein.

101. At the time that the governing board of Brooktrails approved the First USDA Loan Agreement Brooktrails and the City of Willits were mutually mistaken as to the Factual Mistakes collectively and individually, each of which individually standing on its own was material to the First USDA Loan Agreement.

102. The Governing Boards of Brooktrails and the City of Willits would not have entered into the First USDA Loan Agreement had they known that it was mistaken as to the Factual Mistakes collectively or as to each individual mistake.

103. As a result of the bilateral mistakes of the parties, and each of them, no contractual relationship between Brooktrails and the City of Willits was created by the First USDA Loan Agreement.

104. Brooktrails demands that the City restore by way of restitution to Brooktrails the consideration furnished by Brooktrails furnished to the City under a full reservation of rights, and specifically: the payment of \$47,850.48 on or about December 10, 2008 the payment of \$5,612.31 on or about June 24, 2009; the payment of \$71,444.12 on or about December 28, 2009; the payment of \$38,759 on or about June 10, 2010; the payment of \$75,353.47 on or about

December 22, 2010; the payment of \$56,793.12 on or about June 29, 2011; the payment of \$107,952.49 on or about December 28, 2011; the payment of \$69,046.67 on or about June 27, 2012; the payment of \$51,592.37 on or about December 27, 2012; the payment of \$68,201.70, on July 1, 2013; totaling approximately \$612, 605.25 all paid under a full reservation of rights while efforts made to settle the controversies between Brooktrails and the City; together with such further sums as might be paid by Brooktrails to the City of Willits toward the USDA loans while this action is pending.

#### **Eighth Cause of Action- Unilateral Mistake of Law**

105. Brooktrails realleges and incorporates by this reference paragraphs 1 through 104, inclusive as though fully set forth herein.

106. At the time that the governing board of Brooktrails approved the First USDA Loan Agreement it was mistaken as a matter of law as to the effect of the Headworks Project and/or the Project as falling within the definition of paragraph 8a of the Second Amendment requiring Brooktrails to contribute at its then 37.69% percentage capacity in the average dry weather flow of the wastewater Plant addressing improvements to the City of Willits wastewater treatment plant, and/or paragraphs 6 and 17 of the Second Amendment of the Contract as previously asserted by the City of Willits to require such contribution.

107. As a result of the mistake by Brooktrails no contractual relationship between Brooktrails and the City of Willits was created by the First USDA Loan Agreement.

108. Brooktrails demands that the City restore by way of restitution to Brooktrails the consideration furnished by Brooktrails furnished to the City under a full reservation of rights, and specifically: the payment of \$47,850.48 on or about December 10, 2008 the payment of

\$25,612.31 on or about June 24, 2009; the payment of \$71,444.12 on or about December 28, 2009; the payment of \$38,759 on or about June 10, 2010; the payment of \$75,353.47 on or about December 22, 2010; the payment of \$56,793.12 on or about June 29, 2011; the payment of \$107,952.49 on or about December 28, 2011; the payment of \$69,046.67 on or about June 27, 2012; the payment of \$51,592.37 on or about December 27, 2012; the payment of \$68,201.70, on July 1, 2013; totaling approximately \$612, 605.25 all paid under a full reservation of rights while efforts made to settle the controversies between Brooktrails and the City; together with such further sums as might be paid by Brooktrails to the City of Willits toward the USDA loans while this action is pending.

#### **Ninth Cause of Action-Mutual Mistake of Law**

109. Brooktrails realleges and incorporates by this reference paragraphs 1 through 108, inclusive as though fully set forth herein.

110. At the time that the governing board of the respective parties approved the First USDA Loan Agreement they were bilaterally and mutually mistaken as a matter of law as to the effect of the Headworks Project and/or the Project as falling within the definition of paragraph 8a and/or paragraph 6 and/or paragraph 17 of the Second Amendment of the Contract, contractually requiring Brooktrails to contribute to the costs of the improvements to the Project at its then 37.69% percentage capacity of the wastewater plant constructed in 1976 as improved as of 1990.

111. As a result of this bilateral and mutual mistake of the parties no contractual relationship between Brooktrails and the City of Willits was created by the First USDA Loan Agreement.

112. Brooktrails demands that the City restore by way of restitution to Brooktrails the consideration furnished by Brooktrails furnished to the City under a full reservation of rights, and specifically: the payment of \$47,850.48 on or about December 10, 2008 the payment of \$25,612.31 on or about June 24, 2009; the payment of \$71,444.12 on or about December 28, 2009; the payment of \$38,759 on or about June 10, 2010; the payment of \$75,353.47 on or about December 22, 2010; the payment of \$56,793.12 on or about June 29, 2011; the payment of \$107,952.49 on or about December 28, 2011; the payment of \$69,046.67 on or about June 27, 2012; the payment of \$51,592.37 on or about December 27, 2012; the payment of \$68,201.70, on July 1, 2013; totaling approximately \$612, 605.25 all paid under a full reservation of rights while efforts made to settle the controversies between Brooktrails and the City; together with such further sums as might be paid by Brooktrails to the City of Willits toward the USDA loans while this action is pending.

**Tenth Cause of Action- Declaratory Relief- Rescission of First USDA Loan Agreement**

113. Brooktrails realleges and incorporates paragraphs numbered 1 through 112, inclusive as though fully set forth herein at length.

114. Brooktrails has by this pleading tendered notice of rescission of the First USDA Loan Agreement.

115. Brooktrails is informed and believes that the City of Willits disputes whether or not it is appropriate for Brooktrails to rescind the First USDA Loan Agreement.

116. An actual controversy has arisen and now exists between Brooktrails and the City of Willits as to whether the First USDA Loan Agreement is rescinded.



117. Brooktrails desires a judicial determination as to the status of the First USDA Loan Agreement.

118. A judicial determination is necessary and appropriate at this time so the parties may ascertain their rights and duties as to future payments falling due under the First USDA Loan.

**Eleventh Cause of Action- Declaratory Relief- Capacity Election**

119. Brooktrails realleges and incorporates paragraphs numbered 1 through 118, inclusive as though fully set forth herein at length.

120. On or about December 28, 2012 Brooktrails by written notice to the City of Willits notified the City of Willits pursuant to Section 23 of the Second Amendment to the Contract that Brooktrails elected to have an average dry weather flow capacity in the new wastewater treatment plant for its useful life expiring in 2025 of 0.342 million gallons per day based upon an assumption that the new wastewater treatment plant has an average dry weather flow capacity of 1.220 million gallons per day.

121. The Brooktrails election was based upon uncertainty as to the status of the new wastewater treatment plant capacity completion; and uncertainty as to the average dry weather capacity of the new wastewater plant, but with the understanding that the new wastewater plant was conceptualized, designed and either constructed, or then under construction to have a capacity to accommodate growth only in the City of Willits. The Brooktrails election was also based upon its analysis and conclusion that the City of Willits did not have 37.69% exclusive capacity in the new wastewater plant to extend to Brooktrails during the expected useful life of the wastewater treatment plant.

122. The City of Willits subsequently on or about April 25, 2013 transmitted to Brooktrails a letter dated February 22, 2013 by which the City of Willits confirmed that there would be no incremental capacity available to either party, referring to an attached technical memorandum which was not attached, but believed by Brooktrails to be referring to a memorandum dated February 21, 2013 from the Project Manager to the City of Willits asserting technical information confirming that the Project did not result in an increase in incremental capacity. Brooktrails is informed and believes on the basis of information included in the Project Manager's memorandum that the average dry weather capacity of the new wastewater plant had been reduced as a result of the Project from that of the pre-Project wastewater treatment plant.

123. The City of Willits disputes the contractual authority of Brooktrails to elect its capacity share of the new wastewater treatment plant.

124. An actual controversy has arisen and now exists between the City of Willits and Brooktrails as to whether the capacity election of December 28, 2012 has force and effect.

125. Brooktrails desires a judicial determination of the respective rights and obligations of the parties with respect to the capacity held by it in the new Wastewater Treatment Plant because such capacity determines the basis of its proper share of future capital expenses appropriately incurred in connection with the improvement for compliance with newly mandated effluent quality requirements, expansion of existing capacity, and replacement of obsolete equipment.

126. A judicial determination is necessary and appropriate at this time so that the parties may ascertain their rights and duties as to the capacity of the new wastewater treatment plant.

**Twelfth Cause of Action- Declaratory Relief- Interpretation of  
First USDA Loan Agreement**

127. Brooktrails realleges and incorporates paragraphs numbered 1 through 126, inclusive as though fully set forth herein at length.

128. In June 2010 the City of Willits presented to Brooktrails a proposed Fifth Amendment by which Brooktrails would commit to payment of its average dry weather flow capacity in the wastewater treatment plant for the additional USDA loans referred to by the City of Willits as “Loan 5” and “Loan 7” to distinguish such loans from the First USDA Loan referred to by the City of Willits as “Loan 4 and governed by the First USDA Loan Agreement.

129. As had been done with regard to the First USDA Loan Agreement the City of Willits represented to Brooktrails that approval of the proposed Fifth Amendment was required by the USDA in order for the Project to proceed.

130. The parties negotiated the terms of the Proposed Fifth Amendment during the months of June and July 2010 but were not able to reach a meeting of the minds as to such proposed Fifth Amendment or to form a contract amendment by which Brooktrails would be committed to contribution for the second and third USDA loans commonly referred to as “Loan 5” and “Loan 7,” and hereinafter collectively referred to as the “Second and Third USDA Loans.”

131. After the USDA became aware that Brooktrails would enter into contract on the basis of the proposed Fifth Amendment submitted by the City of Willits to Brooktrails the

USDA finalized its commitment to provide financing for the Second and Third USDA Loans and authorized the City of Willits to proceed with the Project.

132. After Brooktrails notified the City of Willits on or about July 7, 2010 that Brooktrails would not enter into contract on the basis of the proposed Fifth Amendment submitted by the City of Willits to Brooktrails the City of Willits on or about July 22, 2010 entered into a construction contract to construct the new wastewater treatment plant and immediately thereafter commenced construction of the new wastewater treatment plant.

133. Although the parties continued negotiations over the proposed Fifth Amendment after July 2010 the negotiations subsequently came to an end after Brooktrails discovered that the Plant Construction Requirement Representation was untrue.

134. After Brooktrails discovered that the Plant Construction Requirement Representation was untrue and notified the City of Willits of such discovery the City of Willits notified Brooktrails that the City of Willits interprets the First USDA Loan Agreement to cover not only the First USDA Loan, but also for the Second and Third USDA Loans.

135. An actual controversy has arisen and now exists as to whether the First USDA Loan Agreement applies only to the First USDA Loan as interpreted by Brooktrails, or whether the First USDA Loan Agreement applies to the Second and Third USDA Loans as interpreted by the City of Willits.

136. Brooktrails desires a judicial determination of the respective rights of the parties as to the interpretation of the First USDA Loan Agreement.

137. A judicial determination is necessary and appropriate at this time under the circumstances to interpret the scope of the First USDA Loan Agreement so as to govern the parties' relationship.

#### **Fourteenth Cause of Action- Failure of Consideration**

138. Brooktrails realleges and incorporates paragraphs numbered 1 through 137, inclusive as though fully set forth herein at length

139. The City of Willits failed to provide any valuable consideration for the First USDA Loan Agreement

140. As no value within the legal meaning of "consideration" was contributed by the City of Willits at the formation of the First USDA Loan Agreement, such agreement is invalid and should be recognized as such by this Court.

141. Brooktrails demands that the City restore by way of restitution to Brooktrails the consideration furnished by Brooktrails furnished to the City under a full reservation of rights, and specifically: the payment of \$47,850.48 on or about December 10, 2008 the payment of \$25,612.31 on or about June 24, 2009; the payment of \$71,444.12 on or about December 28, 2009; the payment of \$38,759 on or about June 10, 2010; the payment of \$75,353.47 on or about December 22, 2010; the payment of \$56,793.12 on or about June 29, 2011; the payment of \$107,952.49 on or about December 28, 2011; the payment of \$69,046.67 on or about June 27, 2012; the payment of \$51,592.37 on or about December 27, 2012; the payment of \$68,201.70, on July 1, 2013; totaling approximately \$612, 605.25 all paid under a full reservation of rights while efforts made to settle the controversies between Brooktrails and the City; together with such further sums as might be paid by Brooktrails to the City of Willits toward the USDA loans while this action is pending.

WHEREFORE BROOKTRAILS PRAYS as follows:

1. For Rescission of the First USDA Loan Agreement as of the date of July 27, 2007;
2. For Restitution to Brooktrails by the City of Willits of the sum of \$612,625.25;
3. For a Decree of this Court that the First USDA Loan Agreement is rescinded and of no further force and effect;
4. For a Decree of this Court that the Average Dry Weather Flow Capacity in the new wastewater treatment plant is the ratio of 0.342 million gallons per day to 1.220 million gallons per day;
5. For a Decree of this Court that the First USDA Loan Agreement does not bind Brooktrails to contribution of any amount to the Second and Third USDA Loans.
6. For interest at the appropriate interest rate for all sums owing by the City of Willits to Brooktrails, including restitution.
7. For such reasonable attorneys' fees as may be shown to be appropriate;
8. For costs of this action in an amount to be recognized by the Court ;
9. For such other and further relief as this Court may consider appropriate under the circumstances.

Dated: August 19, 2013

**NEARY and O'BRIEN**

By: \_\_\_\_\_  
CHRISTOPHER J. NEARY  
Attorneys for Plaintiff, Cross-Defendant  
and Cross-Complainant BROOKTRAILS  
TOWNSHIP COMMUNITY SERVICES  
DISTRICT

PROOF OF SERVICE BY MAIL AND EMAIL

I am employed in the County of Mendocino, State of California. I am over the age of 18 years and not a party to the within action. My business address is Neary & O'Brien, 110 S. Main Street, Suite C, Willits, CA 95490.

On August 19, 2013, I served the attached Brooktrails Township Community Services District's Cross-Complaint To City Of Willits' First Amended Cross Complaint on the parties to this action emailing a copy to the address below and by placing a true copy thereof in a sealed envelope addressed as follows:

H. James Lance, Esq.  
3000 Robinson Creek Road  
Ukiah, CA 95482  
lancelaw@pacific.net

Steven C. Mitchell, Esq.  
Geary, Shea, O'Donnell, Grattan & Mitchell PC  
37 Old Courthouse Square, Fourth Floor  
Santa Rosa, CA 95404  
smitchell@gsoglaw.com

I placed a copy of the above-described document in a sealed envelope, with postage thereof fully prepaid for First-Class Mail, addressed to the parties as set forth above, for collection and mailing at Willits, California, following ordinary business practices. I am readily familiar with the practice of Neary & O'Brien for processing of mail, said practice being the ordinary course of business, mail is deposited in the United States Postal Service the same day as it is placed for processing.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct. Executed at Willits, California on August 19, 2013.

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Leslie Snyder

# EXHIBIT A



**FOURTH AMENDMENT TO  
AGREEMENT BY CITY OF WILLITS FOR  
DISPOSAL OF SEWAGE FROM  
BROOKTRAILS TOWNSHIP COMMUNITY  
SERVICES DISTRICT**

This Agreement is made this 24<sup>th</sup> day of July, 2007, by and between the CITY OF WILLITS, a California general law city (the "City"); and Brooktrails Township Community Services District, successor in interest both to Brooktrails Community Services District and Brooktrails Resort Improvement District (the "District").

WHEREAS, the parties make this agreement with reference to the following facts and understandings:

RECITALS

- A. On September 11, 1967, City and District entered into a written agreement entitled Agreement by City of Willits for Disposal of Sewage from Brooktrails Resort Improvement District (the "Original Agreement").
- B. City and District have now amended the Original Agreement on three separate occasions, by written agreements entered into on April 17, 1970 ("First Amendment"); November 21, 1975 ("Second Amendment"), and September 8, 1982 ("Third Amendment"). By the terms of the Second Amendment, the First Amendment was repealed and rescinded and no longer has any force or effect. The Second Amendment also made substantial revisions to the Original Agreement, and those revisions remain in effect and continue to bind the City and District, except to the extent modified by the Third Agreement.
- C. After City and District entered into the Second Amendment, a new wastewater treatment plant was constructed which now serves the City and District. The plant has design flows of 1.3 million gallons per day ("mgd") average dry weather and 3.0 mgd peak flows for the plant results in discharge in violation of the Water Quality Control Plan for the North Coast Basin as adopted by the North Coast Regional Water Quality Control Board ("NCRWQCB") under Order No. R1-2001-71. Consequently, NCRWQCB has subsequently issued Cease and Desist Order No. R1-2001-77 requiring City to cease and desist from discharge and threatening to discharge in violation of WDR Order No. R1-2001-71. The NCRWQCB has subsequently issued additional Cease and Desist orders to City, including its Order No. R1-2006-0108 dated November 29, 2006 amending and supplementing Cease and Desist Order No. R1-2004-0095. Order No. R1-2006-0108, among other things, implements a revised schedule which requires City's completion of designated tasks commencing in January 2007 and concluding on October 1, 2009 concerning City's design and construction of an approved sewer treatment project. A copy of Order No. R1-2006-0108 is attached hereto.
- D. In response to the Cease and Desist Order, City has prepared an engineering design report entitled "Preliminary Engineering Report, Wastewater Facilities Upgrade, May 2004" ("PER") and therein has recommended two alternatives to bring the wastewater treatment facility substantially into compliance with the discharge requirements enforced by NCRWQCB. The preferred alternative identified in the PER, adopted by City after extensive environmental review, cannot be permitted by NCRWQCB because of policy conflicts. City is now compelled to construct an alternative which is comprised of three stages:

Stage One: headworks, pretreatment, influent pumping and new electrical system, etc.; Stage Two: new aeration treatment systems, ultraviolet disinfection and control building renovation, etc.; Stage Three: storage lagoon/enhancement wetland, outfall structure and off site mitigation. The estimate of probable cost to construct the three stages is \$17,255,538.00 as calculated in March, 2007.

E. City has obtained a commitment from Rural Utilities Services, U.S. Department of Agriculture (the "USDA"), for a grant in the sum of One Million Dollars (\$1,000,000.00) and a loan amount of Ten Million, Two Hundred Eighty-Five Thousand Dollars (\$10,285,000.00) payable over forty (40) years to construct the new plant (the "USDA loan").

F. City and District wish to share in the cost of the new plant and apportion between them the loan payment responsibility and incremental plant capacity resulting from these improvements. This amendment is intended to address the limited issues of apportionment and payment of costs between the District and the City with respect to the USDA loan described herein. The parties acknowledge that the anticipated total cost of the new plant, as described within Recital D, substantially exceeds the subject loan amount. In accordance with the terms of the Original Agreement and amendments thereto, the parties acknowledge that 37.69% of the total cost of the new plant shall be apportioned to the District and 62.31% shall be apportioned to the City, notwithstanding the fact that this amendment only addresses payment of the subject USDA loan amount.

NOW, THEREFORE, City and District agree as follows:

1. **Effective Agreement.** Except as modified by the express terms of this Agreement, the Original Agreement, as amended by the Second Amendment and the Third Amendment, shall remain in full force and effect.
2. **Apportionment of Costs.** The District shall pay 37.69% of the USDA Loan, being the sum of Three Million, Eight Hundred Seventy-Six Thousand, Four Hundred Sixteen and 50/100ths Dollars (\$3,876,461.50) as such loan costs are incurred by the City.
3. **Time and Manner of Payments.** The District's contribution toward the repayment obligation to the USDA shall be paid semi-annually in equal installments on the first day of July and the first day of January each year, commencing on January 1, 2008. The District will have in effect at all times that the loan obligation to the USDA is outstanding an ordinance of the District establishing fees, tolls, rates and other charges for and rules and regulations relating to sewer service, which shall raise gross income and revenues earned thereon (except all refundable deposits made to establish credit), which shall hereinafter be referred to as "Revenues," that, beyond all reasonable doubt, yield a sufficient amount equal to the amounts necessary to make the semi-annual payments required of the District herein.
4. **Separate Sewer Revenue Account.** The Treasurer of the District shall establish a Revenue Fund as a separate fund, into which the Treasurer shall deposit all Revenues as they are collected and received by the District (the "Fund").
5. **Right to Audit.** The City shall have the right to audit, at its expense, District's books, records and accounts to insure that the District is raising sufficient funds and segregating such funds for payment to the City sufficient to pay the District's cost share of the USDA Loan repayment.
6. **Security Interest.** The District shall grant a security interest in the Fund to the City.

7. **Default.** In the event the District is delinquent in any payment to the City as required hereunder, District shall pay a late charge of five percent (5%) of the amount of the delinquent payment.

8. **No Warranties.** City has made no representations or warranties regarding the amount of additional plant capacity that may result from the completion of the improvements contemplated hereunder. However, City shall certify to District in writing within thirty (30) days after improvements are complete the total amount of incremental capacity available and the portion of incremental capacity to which the District shall be entitled, consistent with the District's financial contribution hereunder.

CITY OF WILLITS

BROOKTRAILS TOWNSHIP  
COMMUNITY SERVICES DISTRICT

By: Ross Walker  
Ross Walker, City Manager

By: George Skezas  
George Skezas, President

Attest:

Attest:

Marilyn Harden  
Marilyn Harden  
City Clerk

Michael Chapman  
Michael Chapman  
Secretary of the Board of Directors

Approved as to form:

Approved as to form:

H. James Lance  
H. James Lance  
General Counsel

Christopher J. Neary  
Christopher J. Neary  
General Counsel

California Regional Water Quality Control Board  
North Coast Region

CEASE AND DESIST ORDER NO. R1-2006-0108

(AMENDING AND SUPPLEMENTING EXISTING  
CEASE AND DESIST ORDER NO. R1-2004-0095)

REQUIRING THE CITY OF WILLITS  
TO CEASE AND DESIST FROM DISCHARGING AND THREATENING  
TO DISCHARGE WASTE IN VIOLATION OF  
WASTE DISCHARGE REQUIREMENTS ORDER NO. R1-2001-0071  
NPDES PERMIT NO. CA0023060  
WDID NO. 1B80078OMEN

Mendocino County

The California Regional Water Quality Control Board, North Coast Region (hereinafter Regional Water Board) finds that:

1. The City of Willits (hereinafter permittee) owns and operates a municipal wastewater treatment facility (WWTF) located northeast of Willits adjacent to Broaddus and Baechtel Creeks, tributaries to Outlet Creek and the Eel River. The WWTF serves the City of Willits and the Brooktrails Community Services District. The WWTF consists of extended aeration, settling, disinfection, and dechlorination. Design flows are 1.3 million gallons per day (mgd) average dry weather and 3.0 mgd peak wet weather. Current dry weather flows average 0.70 mgd and peak wet weather flows exceed 3.0 mgd.
2. Waste Discharge Requirements Order No. R1-2001-0071 NPDES Permit No. CA0023060 (Order R1-2001-0071), adopted by the Regional Water Board on June 28, 2001 regulates activities at the WWTF.
3. Pursuant to provisions of the Water Quality Control Plan for the North Coast Basin (Basin Plan), Order No. R1-2001-0071 restricts treated effluent discharges to the Eel River and its tributaries to no greater than 1 percent of the receiving water flow during the allowable discharge season occurring from October 1 to May 14 each year.
4. The City of Willits is located in the Little Lake Valley in the upper portion of the Eel River watershed. Stream flows in Little Lake Valley fluctuate rapidly increasing in response to storm events and diminishing rapidly after each storm. Treated effluent flow from the WWTF frequently exceeds 1% of the receiving water flow.
5. Portions of Order No. R1-2001-71 being violated or threatening to be violated by continued discharges include:

#### **A. "DISCHARGE PROHIBITIONS**

2. The discharge of any waste to property not under control of the permittee is prohibited, except as authorized under D. SOLIDS DISPOSAL.
  3. Creation of a pollution, contamination, or nuisance, as defined by Section 13050 of the California Water Code (CWC) is prohibited. [Health and Safety Code, Section 54111]
  7. During the period of October 1 through May 14, discharges of wastewater shall not exceed one percent of the flow of the receiving waters."
6. Cease and Desist Order No. R1-2001-0071 was issued to the permittee on June 28, 2001. Order No. R1-2001-0077 contained a time schedule with 6 tasks requiring submittal of a draft, final, and certified environmental impact report (EIR) between June 1, 2002, and April 1, 2003. Order No. R1-2001-0071 further required design and complete construction between April 1, 2004, and June 1, 2006. The EIR tasks were completed, however the permittee required additional time to complete design and construction.
  7. On November 29, 2004, the Regional Water Board adopted Cease and Desist Order No. R1-2004-0095, establishing a new time schedule to complete key phases of design and construction. Preliminary design documents for a series of oxidation ponds and treatment wetlands were completed in compliance with Order R1-2004-0095 requirements.
  8. Initial permitting activities pursued by the Permittee indicate that the initial preferred alternative utilizing oxidation ponds and wetlands treatment would not be feasible. As a result, it is appropriate to provide a new time schedule for the Permittee to reassess design requirements and complete construction.
  9. Pursuant to Water Code section 13389 and title 14, California Code of Regulations, section 15321, this is an enforcement action for violations and threatened violations of waste discharge requirements and for the protection of the environment, and as such, is exempt from the requirements of the California Environmental Quality Act (Public Resources Code, section 21000 et seq.).
  10. On November 29, 2006, after due notice to the Permittee and all other affected persons, the Regional Water Board conducted a public hearing and received evidence regarding this Cease and Desist Order.

IT IS HEREBY ORDERED PURSUANT TO WATER CODE SECTIONS 13243, 13300 AND 13301 THAT Cease and Desist Order No. R1-2004-0095 is amended to read:

1. The Permittee shall cease and desist from discharging and threatening to discharge waste in violation of the terms of Order No. R1-2001-71 (NPDES Permit No. CA0023060) described in Finding No.5 above, by implementing the following time schedule:
  - Task A. By **January 1, 2007**, submit 50 percent design plans for a new WWTF headworks.
  - Task B. By **March 1, 2007**, submit for Executive Officer's review, a variance request to address surface water discharge dilution rates. The variance request shall conform to all requirements identified in accordance with the Implementation Plan, North Coastal Basin contained in the Basin Plan and at a minimum shall include evaluation of the following factors:
    - Identification of each constituent of concern (COC) known or reasonably thought to be present in WWTF effluent;
    - Documentation of existing water quality for each COC in the receiving water upstream of WWTF influence;
    - Comparison of most sensitive beneficial uses identified for the receiving water in the Basin Plan for each COC and their cumulative impacts; and
    - Evaluation of water quality and flows required in the WWTF effluent to protect the beneficial uses.
  - Task C. By **April 1, 2007**, submit final design plans for a new WWTF headworks.
  - Task D. By **June 1, 2007**, commence construction of the approved headworks design.
  - Task E. By **June 1, 2007**, submit conceptual design plans describing proposed project. The conceptual design plans shall be accompanied by federal 401/404 permit and water quality certification applications, as necessary.
  - Task F. By **November 1, 2007**, submit 50 percent design plans for the proposed project.
  - Task G. By **December 1, 2007**, complete construction of the headworks portion of the proposed project. Major earth-work shall be completed no later than October 1, 2007.

- Task H. By **April 1, 2008**, submit final design plans for the proposed project. The final design shall be accompanied by an application for waste discharge requirements permit renewal.
- Task I. By **June 1, 2008**, commence construction of the proposed project.
- Task J. By **August 1, 2009**, complete construction of the proposed project.
- Task K. By **October 1, 2009**, attain full compliance with Waste Discharge Requirements by completing the implementation of long-term plans for treated effluent disposal during the wintertime season.
2. During the time period described above, the permittee shall operate and maintain, as efficiently as possible, all facilities and systems necessary to comply with **A. DISCHARGE PROHIBITIONS 2, 3, and 7** to the maximum extent practicable.

Certification

I, Catherine E. Kuhlman, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of an Order adopted by the California Regional Water Quality Control Board, North Coast Region, on November 29, 2006.

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Catherine E. Kuhlman  
Executive Officer