

COMPROMISE SETTLEMENT AND RELEASE AGREEMENT

This Agreement is made this 11th day of January, 2011 by and between NORTHERN CALIFORNIA RIVER WATCH, a California non profit corporation ("River Watch") and BROOKTRAILS TOWNSHIP COMMUNITY SERVICES DISTRICT, a community services district ("Brooktrails") and is a compromise settlement whereby the above-mentioned parties hereby extinguish their mutual rights and claims arising from their disputes and differences as outlined herein below.

A. WHEREAS, River Watch is a California non profit corporation which consists of a citizens group concerned with the protection and enhancement of the waters of the State of California in the Northern California area.

B. WHEREAS, Brooktrails is a community services district in Northern California which maintains approximately 54 miles of a satellite sanitary sewage system;

C. WHEREAS, on or about October 1, 2010 River Watch issued to Brooktrails a Notice of Violations and intent to File Suit Under the Clean Water Act, alleging several violations of the Clean Water Act and other statutory and regulatory violations, a true and correct copy of which is attached hereto as Exhibit "A" and incorporated herein by this reference (the "Alleged Violations");

D. WHEREAS, the parties desire to settle this matter without litigation in the interests of providing the best possible program for controlling conditions which may contribute to the degradation of the environment, including the waters of the United States and of the State of California;

NOW THEREFORE, in consideration of the mutual covenants herein contained, the parties hereto agree as follows:

1. Consideration. In consideration for the following Releases, the parties agree to the following:
 - a. Brooktrails shall introduce on January 11, 2011 the ordinance attached hereto as Exhibit "B" and incorporated by this reference and pursue its adoption in due course no later than February 22, 2011;
 - b. Brooktrails shall install at least two smart manholes per year at a total cost not exceeding Ten Thousand Dollars (\$10,000) at the most critical locations as determined by the Superintendent of Utilities after consultation with the Consultant referenced in subparagraph

(e) below;

- c. Brooktrails shall pay River Watch the sum of Nine Thousand, Five Hundred Dollars (\$9,500) within thirty (30) days of the effective date of this Agreement, and an additional Nine Thousand, Five Hundred Dollars (\$9,500) within thirteen (13) months of the effective date of this agreement;
- d. Brooktrails shall annually sample surface water upstream and downstream where a sewer line underlies surface water or seasonal wetlands, and test for fecal coliform. Also where television monitoring of the sewer collection system discloses a substantial crack or breack as opposed to a root intrusion in the collection system at a location within 150 feet of surface water, Brooktrails shall promptly sample surface water upstream and downstream and test for fecal coliform. All test sample results shall be available for inspection by River Watch, the Sub-Consultant named herein, or any member of the public and shall be summarized on Brooktrails' web page. Such test sample results shall be taken into account when determining the location for installation of smart manholes.
- e. Brooktrails shall enter into the Sub-Consultant Agreement attached hereto as Exhibit "C," as of the effective date of this Agreement.

2. River Watch, individually and on behalf of its employees, officers, directors, shareholders, descendants, dependents, heirs, executors, administrators, assigns, agents, and representatives and successors hereby fully release and discharge Brooktrails, and its shareholders, directors, officers, employees, descendants, dependents, heirs, executors, administrators, assigns, agents, representatives, servants, and successors, from any and all claims, demands, controversies, actions, causes of action, debts, liabilities, rights, contracts, damages, costs (including attorneys' fees and court and litigation costs and expenses), expenses, indemnities, obligations and losses of every kind or nature whatsoever, whether at this time known or unknown, anticipated or unanticipated, direct or indirect, fixed or contingent, which may currently exist or may hereafter become known, for or by reason of any act, omission, event, transaction, matter or cause whatsoever from the beginning of time to the date of this Agreement directly or indirectly related to, arising from, or which could be inferred or implied by or included in connection with the Alleged Violations and all underlying events and circumstances.

3. Brooktrails, individually and on behalf of its employees, officers, directors, shareholders, descendants, dependents, heirs, executors, administrators, assigns,

agents, and representatives and successors hereby fully release and discharge River Watch, and its shareholders, directors, officers, employees, descendants, dependents, heirs, executors, administrators, assigns, agents, representatives, servants, and successors, from any and all claims, demands, controversies, actions, causes of action, debts, liabilities, rights, contracts, damages, costs (including attorneys' fees and court and litigation costs and expenses), expenses, indemnities, obligations and losses of every kind or nature whatsoever, whether at this time known or unknown, anticipated or unanticipated, direct or indirect, fixed or contingent, which may currently exist or may hereafter become known, for or by reason of any act, omission, event, transaction, matter or cause whatsoever from the beginning of time to the date of this Agreement directly or indirectly related to, arising from, or which could be inferred or implied by or included in connection with River Watch's Notice of Violations and all underlying events and circumstances.

4. This compromise settlement, notwithstanding § 1542 of the California Civil Code which provides:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release which if known by him must have materially affected his settlement with the debtor"

shall be a full settlement of said dispute, claim or cause of action. Such compromise settlement shall act as a release of future claims that may arise from the above-mentioned dispute whether such claims are currently known, unknown, foreseen, unforeseen, latent, or patent.

5. Upon execution of this Agreement, River Watch shall refrain from bringing an action against Brooktrails pursuant to the Clean Water Act or any other law, statute or regulation contained in the Alleged Violations.

6. If any party hereto fails to perform any of its obligations under this Agreement or if any dispute arises between the parties hereto concerning the meaning or interpretation of any provision of this Agreement, then the defaulting party or the party not prevailing in such dispute, as the case may be, shall pay any and all costs and expenses incurred by the other party on account of such default and/or in enforcing or establishing its rights hereunder, including, without limitation, court costs and reasonable attorney fees and disbursements.

7. This Agreement shall be binding upon and inure to the benefit of the respective successors, assigns, and personal representatives of the parties, except to the extent of any contrary provision in this Agreement.

8. This Agreement is executed in and intended to be performed in the State

of California and the laws of the State of California shall govern its interpretation and effect.

9. This Agreement represents and contains the entire understanding of the parties. There are no representations, covenants or undertakings other than those expressly set forth in this Agreement. The parties acknowledge that no party, nor any agent or attorney of any party has made any promise, representation or warranty whatsoever, express or implied, not contained in this Agreement to induce any other party to execute this Agreement. The parties acknowledge that they have not executed this Agreement in reliance on any promise, representation, or warranty not specifically contained in this Agreement. The parties and each of them further represent and declare that they have carefully read this Agreement and know its contents and that they sign this Agreement freely and voluntarily.

10. If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the rest of the Agreement shall remain in fully force and effect and shall be in no way affected or invalidated.

11. The parties have entered into and executed this Agreement freely and voluntarily based on their own independent judgment, after opportunity for consultation with their respective counsel, without duress, coercion or undue influence of any kind.

12. The parties may execute this Agreement in two or more counterparts which shall, in the aggregate, be signed by all the parties, each counterpart shall be deemed an original of this Agreement as against any party who has signed it. The parties agree to execute such documents as are necessary to consummate this Agreement.

13. Except as otherwise provided in this Agreement, each party to this Agreement agrees to bear its own costs of suit, consultants' fees, experts' fees, attorneys' fees and other costs and expenses of any kind or character, arising out of or relating in any way to, the Action, or disputes set forth in the Recitals to this Agreement.

14. The Court shall retain jurisdiction to enforce the terms of this Agreement, pursuant to Code of Civil Procedure § 664.6.

EACH OF THE UNDERSIGNED PARTIES, AND NON-PARTY ATTORNEYS, HAS CAREFULLY READ THE FOREGOING AGREEMENT, KNOWS THE CONTENTS OF IT, AND SIGNS THE AGREEMENT OF HIS, HER OR ITS OWN FREE ACT.

CAUTION: THIS AGREEMENT CONTAINS RELEASES - READ BEFORE SIGNING.

NORTHERN CALIFORNIA RIVER
WATCH, a California non profit corporation

DATED: 2-8-11

Margaret Briggly
By:
Its: Board President

BROOKTRAILS TOWNSHIP COMMUNITY
SERVICES DISTRICT, a public agency

DATED: 2-15-11

Alon Sklar
By:
Its: Board President

Approved as to form:

LAW OFFICE OF JACK SILVER

Jack Silver
JACK SILVER
Attorney for NORTHERN CALIFORNIA
RIVER WATCH

Approved as to form:

Christopher J. Neary
CHRISTOPHER J. NEARY
Attorney for BROOKTRAILS TOWNSHIP
COMMUNITY SERVICES DISTRICT

Law Office of Jack Silver

P.O. Box 5469 Santa Rosa, California 95402
Phone 707-528-8175 Fax 707-528-8675
lhm28843@sbcglobal.net



Brooktrails TCSL

OCT - 4 2010

RECEIVED

**VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

October 1, 2010

Mike Chapman, General Manager
Brooktrails Township Community Services District
24860 Birch Street
Willits, CA 95490

Re: Notice of Violations and Intent to File Suit Under the Clean Water Act

Dear Mr. Chapman:

NOTICE

The Clean Water Act ("CWA" or the "Act") Section 505(b) requires that sixty (60) days prior to the initiation of a civil action under CWA § 505(a), 33 U.S.C. § 1365(a), a citizen must give notice of the intent to sue to the alleged violator, the Environmental Protection Agency ("EPA") and the State in which the violations occur.

Northern California River Watch ("River Watch") hereby gives notice to the Brooktrails Township Community Services District ("Brooktrails"), that following the expiration of sixty (60) days from the date of this Notice, River Watch will be entitled to bring suit in the United States District Court against Brooktrails for continuing violations of an effluent standard or limitation, permit condition or requirement, a Federal or State Order or Plan issued under the CWA in particular, but not limited to CWA § 505(a)(1), 33 U.S.C. § 1365(a)(1), the Code of Federal Regulations, and the Regional Water Quality Control Board's Basin Plan, as exemplified by the incidents of non-compliance identified and outlined below.

The CWA requires that any Notice regarding an alleged violation of an effluent standard or limitation or of an order with respect thereto, shall include sufficient information to permit the recipient to identify the following:

1. *The specific standard, limitation, or order alleged to have been violated.*

To comply with this requirement River Watch has identified discharges of raw sewage from Brooktrails' collection system to surface waters in violation CWA's prohibition with regard to discharging a pollutant from a point source to waters of the United States without a NPDES permit - CWA § 301(a), 33 U.S.C. § 1311(a) and 33 U.S.C. § 1365(f).

2. *The activity alleged to constitute a violation.*

River Watch has set forth narratives below describing the discharges of raw sewage to surface waters as the activities leading to violations, and describing with particularity specific incidents referenced in the California State Water Resources Control Board's ("SWRCB") California Integrated Water Quality System ("CIWQS 4.5") SSO Public Reports and other public documents in Brooktrails' possession or otherwise available to Brooktrails. River Watch incorporates by reference the records cited below from which descriptions of specific incidents were obtained.

3. *The person or persons responsible for the alleged violation.*

The person or persons responsible for the alleged violations is Brooktrails Township Community Services District, identified in this Notice as "Brooktrails", and those of its employees responsible for compliance with the CWA and with any applicable state and federal regulations and permits.

4. *The location of the alleged violation.*

The location or locations of the various violations are identified in records either created or maintained by or for Brooktrails, including the records cited below in this Notice and the description of specific incidents referenced below.

5. *The date or dates of violation or a reasonable range of dates during which the alleged activity occurred.*

River Watch has examined SWRCB and Regional Water Quality Control Board records for the period from October 1, 2005 to October 1, 2010. The range of dates covered by this Notice is from October 1, 2005 to October 1, 2010. River Watch will from time to

time update this Notice to include all violations which occur after the range of dates currently covered by this Notice. Some of the violations are continuous and therefore each day constitutes a violation.

6. *The full name, address, and telephone number of the person giving notice.*

The entity giving notice is Northern California River Watch, 500 North Main Street, Suite 110, Sebastopol, CA 95472, Telephone/Facsimile 707-824-4372, referred to throughout this Notice as "River Watch". River Watch is a non-profit corporation organized under the laws of the State of California, dedicated to the protection and enhancement of the waters of the State of California including all rivers, creeks, streams and groundwater in Northern California.

River Watch has retained legal counsel with respect to the issues set forth in this Notice. All communications should be addressed to:

Jack Silver, Esquire
Law Offices of Jack Silver
P.O. Box 5469
Santa Rosa, CA 95402-5469
Tel. 707-528-8175
Fax. 707-528-8675
Email: lhm28843@sbcglobal.net

BACKGROUND

The CWA regulates the discharge of pollutants into navigable waters. The statute is structured in such a way that any discharge of pollutants is prohibited with the exception of enumerated statutory exceptions. One such exception authorizes a polluter, which has been issued a permit pursuant to CWA § 402, to discharge designated pollutants at certain levels subject to certain conditions.

The effluent discharge standards or limitations specified in a NPDES permit define the scope of the authorized exception to the 33 U.S.C. § 1311(a) prohibition, such that violation of a NPDES permit limitation places a polluter in violation of 33 U.S.C. § 1311(a) and thus in violation of the CWA. Private parties may bring citizens' suits pursuant to 33 U.S.C. § 1365 to enforce violations of effluent standards or limitations, which are defined as including violations of 33 U.S.C. § 1311(a) and 33 U.S.C. § 1365(f)(1). Currently, Brooktrails has no NPDES permit allowing it to discharge pollutants to waters of the United States.

The CWA provides that authority to administer the NPDES permitting system in any given state or region can be delegated by the EPA to a state or to a regional regulatory agency, provided that the applicable state or regional regulatory scheme under which the local agency operates satisfies certain criteria. (See 33 U.S.C. § 1342(b)). In California, the EPA has granted authorization to a state regulatory apparatus comprised of the State Water Resources Control Board and several subsidiary regional water quality control boards to issue NPDES permits. The entity responsible for issuing NPDES permits and otherwise regulating discharges in the region at issue in this Notice is the Regional Water Quality Control Board, North Coast Region ("RWQCB").

Brooktrails is a general law, multi-purpose community services special district formed in 1975. The district office is located at the District Complex, 24860 Birch Street in Willits, California. Brooktrails is governed by a five-member Board of Directors elected at large, and managed by General Manager, Mike Chapman, who supervises approximately 12 employees. Brooktrails provides water, sewer, fire protection, and recreation services and facilities to its Community Services District.

Among its other activities, Brooktrails collects primarily residential and some commercial sewage by way of its sewage collection system which has 3 lift stations at various elevations and 54 miles of sewer lines. Sewage is transported via the trunk line to the City of Willits sewer plant for processing.

Brooktrails' collection system has a history of chronic surface overflows of untreated sewage. Structural defects in the collection system, which allow inflow and infiltration ("I/I") of rainwater and groundwater into the sewer lines, result in a buildup of pressure which causes sewage system surface overflows. Overflows caused by blockages and I/I result in the discharge of raw sewage into gutters, canals and storm drains which are connected to adjacent surface waters such as Upp Creek and Willits Creek, both waters of the United States. Some surface overflows discharge directly over land into surface waters.

Underground leakages caused by pipeline cracks and other defects result in discharges to these adjacent surface waters via underground hydrological connections. Surface waters and groundwater become contaminated with fecal coliform, exposing people to human pathogens. These chronic collection system failures thereby pose a substantial threat to public health.

The CWA prohibits any discharge of pollutants from a point source to waters of the United States except as authorized under a NPDES permit. Pursuant to the CWA and the Basin Plan for the North Coast Region any point source discharge of sewage effluent to waters of the United States must comply with technology-based, tertiary treatment standards at a minimum, as well as any additional stringent requirements necessary to meet applicable

water quality standards. Hence, the unpermitted discharge of wastewater from a sanitary sewer system to waters of the United States is illegal under the CWA. In addition, the Basin Plan adopted by the RWQCB contains discharge prohibitions which apply to the discharge of untreated or partially treated wastewater.

Discharges by Brooktrails as described herein constitute a nuisance. They are injurious to health, indecent or offensive to the senses, and/or an obstruction to the free use of property. Discharges occur during, or as a result of, the transportation, disposal or treatment of wastes. The operations of Brooktrails' collection system are not regulated under a NPDES permit, but are currently regulated under the Statewide General Waste Discharge Requirements For Sanitary Sewer Systems, Order No. 2006-003-DWQ (hereafter "Statewide WDR"), adopted on May 2, 2006.

Brooktrails' ongoing violations - discharging pollutants to waters of the United States without a NPDES Permit - pose an immediate threat to public health and the environment both from surface water impacts of surface overflows and underground leakage of untreated sewage which impacts both surface and groundwater.

REMEDIAL MEASURES REQUESTED

River Watch believes the following listed remedial measures are necessary to bring Brooktrails into compliance with the CWA, and that the implementation of these measures will reduce the biological impacts of Brooktrails' non-compliance:

1. A reduction of collection system I/I through an aggressive collection system management, operation and maintenance ("CMOM") program, including clear time lines for prioritized repairs based on an industry-recognized system for rating the severity of sewer pipeline defects.
2. A mandatory, private sewer lateral inspection and repair program, funded cooperatively by Brooktrails and triggered by sale of property or based on geographical, age and/or composition factors – preferably coordinated with repair of the sewer mains to which the laterals are connected. In the alternative, a voluntary program whereby Brooktrails negotiates discounted group rates for private lateral inspection and repair in conjunction with repair of the sewer mains to which the laterals are connected, supported by a grant and/or low cost loan program funded and administered by Brooktrails. The attached Tamalpais Community Services District program provides a successful model.

3. Creation of website capacity to receive private party reports of sewage overflows. Provision of notification to all customers and other members of the public as to the existence of the web-based program, including a commitment to respond to private parties submitting overflow reports. The website would include regularly updated information regarding known overflows for the prior 3 years, and tracking of repeated overflows at the same or proximate locations in order to highlight hot spots for priority rehabilitation status. Also to be included would be information regarding the time an overflow was reported, the estimated time it began, its estimated flow rate, cleanup activities and proximity to storm drains or other water channels so the public has access to the basis for a report that an overflow did not reach a surface water.
4. Performance of human marker testing on surface waters adjacent to sewer lines which have more serious structural defects as determined by the defect rating system referenced above, to test for sewage contamination from underground exfiltration. Said testing to be funded and administered by Brooktrails. Test results to be considered in prioritizing sewer line rehabilitation.

VIOLATIONS

Between October 1, 2005 to October 1, 2010, Brooktrails has violated the CWA, the Basin Plan and the Code of Federal Regulations for discharging pollutants to waters of the United States from its collection systems without a NPDES permit. The below-listed violations are reported by SWRCB staff, and evidenced by the CIWQS 4.5 SSO Reporting Program Database Records. Furthermore, these violations are continuing.

<u>Violations</u>	<u>Description</u>
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1825	Collection system overflows caused by underground exfiltration which reaches surface water via migration through underground tributaries.
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This is an event in which untreated sewage is discharged from the collection system prior to reaching the treatment plant. Underground discharges are alleged to have been continuous throughout the period from October 1, 2005 to October 1, 2010. Evidence to support the allegation of underground discharge of raw sewage exists in Brooktrails' own mass balance data regarding the number of connections in the service area, estimates of average daily volume of wastewater per connection, influent flow volumes to the subregional treatment plant reported in Brooktrails' records, video inspection

of the collection system, and testing of waterways adjacent to sewer lines, creeks and wetlands, for nutrients, pathogens and other constituents indicating sewage contamination, such as caffeine.

115 Sewage system surface overflows.

As documented by the CIWQS Database Public Reports and estimations from citizens, between October 1, 2005 to October 1, 2010 Brooktrails had approximately 115 surface overflows from the sewage collection system. From 2008 to the present, Brooktrails has reported 37 such overflows. None appear to be reported for any time prior to 2008. Therefore, the number of surface overflows alleged herein is based upon extrapolation from current data and eye witness reports from citizens.

345 Failure to report sewage system overflows.

It is estimated by the EPA and private studies that for every sewage system overflow reported, there are at least 3 that go unreported. In some cases the overflows occur during storm events or due to stoppages and there is no incident report made due to lack of any observation of the event. In other cases sewage system overflow events are reported, but by the time personnel arrive at the site the overflow has ceased and no follow-up is done. In some cases the incident is reported and observed by staff, but a formal report is not made to the State in violation of the Statewide WDR.

CONCLUSION

The violations as set forth in this Notice effect the health and enjoyment of members of River Watch who reside and recreate in the affected community. The members of River Watch use the affected watersheds for domestic water supply, agricultural water supply, recreation, sports, fishing, swimming, hiking, photography, nature walks and the like. Their health, use and enjoyment of this natural resource is specifically impaired by Brooktrails' violations of the CWA as set forth in this Notice.

River Watch believes this Notice sufficiently states grounds for filing suit. At the close of the 60-day notice period or shortly thereafter River Watch will be entitled to file a citizen's suit under CWA § 505(a) against Brooktrails for the violations of the CWA identified and described in this Notice.

During the 60-day notice period, River Watch is willing to discuss effective remedies for the violations noted in this Notice. However, if Brooktrails wishes to pursue such discussions in the absence of litigation, it is suggested that those discussions be initiated soon so that they may be completed before the end of the 60-day notice period. River Watch does not intend to delay the filing of a lawsuit if discussions are continuing when the notice period ends.

Very truly yours,


Jack Silver

JS:lmh

cc:

Administrator
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N. W.
Washington, D.C. 20460

Regional Administrator
U.S. Environmental Protection Agency, Region 9
75 Hawthorne Street
San Francisco, CA 94105

Executive Director
State Water Resources Control Board
P.O. Box 100
Sacramento, California 95812

ARTICLE ____ - SEWER LATERAL TESTING

Section ____ . **Purpose, Policy and Administration.**

- (a) **Purpose.** The purpose of this Article is to codify requirements for the inspection, testing, repair and replacement of sewer laterals within the District. It is the policy of the District to reasonably prevent infiltration, exfiltration, and better protect the environment by requiring a reasonable program of inspection, testing, and if necessary, the repair and replacement of private sewer laterals. It is also the policy of the District to require sewer cleanouts as required by Bode and for backflow inspection.

- (b) **Policy.** Within ninety (90) days of the adoption of the Ordinance enacting this Article, the Superintendent of Utilities shall prepare and promulgate public administrative guidelines which shall, among other things, establish the following:
 - (1) A certification program for licensed plumbers, contractors and other qualified inspectors will be placed on the pre-authorized list and the basis for obtaining and maintaining such a certification or decertification;
 - (2) Standard inspection report forms and guidelines for completing and using Sewer Lateral Inspection Reports;
 - (3) A standard Notice to Repair and enforcement procedures for repair and replacement;
 - (4) A standard for documentation of a property by a Certificate of Sewer Lateral Compliance.

- (c) **Superintendent's Jurisdiction.** The Superintendent of Utilities shall administer these requirements and has the authority to alter or waive the requirements prescribed in this article if such requirements are impractical because of the nature of physical location of the sewer lateral. Owners of sewer laterals shall have the right to seek relief from the application of this Ordinance first from the Superintendent of Utilities, the General Manager, and ultimately, the Board of Directors pursuant to Section 1-102 of the District Utility Code.

Section ____ . **Applicability.**

- (a) **Application of Article.** This Article shall apply to property located in the District and to property which is located outside the boundaries of the District but which is served by the District's sewer mains.

- (b) Any sewer lateral which has been repaired or replaced, including gravity and

pressure laterals, shall be tested in accordance with the applicable procedures of this Article. No person constructing, repairing or replacing a sewer lateral shall use such lateral to introduce sewage to the District's sewer main until such time as such person has complied with Section ____ through Section ____ of this Article, as appropriate.

(c) **When Certificate Required.** All sewer laterals connected to the District sewer system, including sewer laterals servicing residential, multi-family residential, commercial or industrial uses, shall be cleaned and tested in accordance with the appropriate provisions of Section ____ through Section ____ of this Article, upon the occurrence of any of the following, unless a valid Certificate of Sewer Lateral Compliance is on file with the District, or the Superintendent of Utilities has waived compliance as provided herein:

- (1) Upon the occurrence of a sanitary sewer overflow from the private lateral;
- (2) Upon the discovery of either an illegal connection or as described herein or an illegal discharge as described herein to the District sewer system;
- (3) Upon application for a building permit for work on an existing structure with the sewer service where the value of the work, as set forth in the permit, exceeds \$100,000, provided, however, that the value of the work required by the Americans With Disabilities Act ("ADA") or to add fire sprinklers as required by the California Fire Code shall not be included when determining whether a sewer lateral subject to inspection and testing; provided, further, that beginning on the annual anniversary of the adoption of this ordinance, the amount of \$100,000 shall be adjusted annually by the percentage increase in the consumer price index over the same month in the previous year. "CPI" means the Consumer Price Index for All Urban Consumers, all items (base year 1982-1984 = 100) published by the United States Department of Labor, Bureau of Labor Statistics. In the event the CPI is discontinued or otherwise not available, "CPI" shall mean comparable statistics on the purchasing power of the consumer dollar as determined by the General Manager;
- (4) The addition of a plumbing fixture having assigned to it two or more fixture units as are assigned by the California Plumbing Code, including but not necessarily limited to the addition of a toilet;
- (5) Upon a change of use of the property served from a residential to a commercial use, or from a commercial use to a restaurant;
- (6) In conjunction with the replacement or rehabilitation of the District sewer main to which the lateral is connected;
- (7) Upon the occurrence of a Qualifying Sewer Lateral Service Call;

- (8) Sewer laterals serving parcels which are located within 150 feet of any creek or stream which is declared by the Superintendent of Utilities to be impacted or potentially impacted by the sewer system; and
 - (9) Upon a change of ownership of the property as defined by _____, except that transfer exempt from reassessment shall not be deemed to be a “change of ownership”
- (d) **Sewer Cleanouts.** Upon the occurrence of any of the events set forth in subparagraph (c) above the Superintendent of Utilities shall cause the subject property to be inspected to determine if the property has a sewer cleanout within _____ feet of the property line as required by applicable law. The Superintendent shall not thereafter issue a Certificate of Sewer Lateral and Property Compliance, until such time as the Superintendent is satisfied that the property has a compliant sewer clean-out.
- (e) **Backflow Inspection.** Upon the occurrence of any of the events set forth in subparagraph (c) above the Superintendent of Utilities shall cause the subject property to determine if the property has a backflow device as required by law, and further to inspect the backflow device as to its operability. The Superintendent shall not thereafter issue a Certificate of Sewer Lateral and Property Compliance until such time as the Superintendent is satisfied that the property has a functioning and compliance backflow device.

Section ____ . Approved Testing Methods.

The sewer lateral shall be inspected and tested, using the following methods as allowed by and in accordance with standards adopted by the Superintendent of Utilities:

- (a) T.V. inspection;
- (b) exfiltration testing;
- (c) other similar inspection or testing methods as approved by the Superintendent of Utilities.

Section ____ . Requirements for Testing Sewer Laterals.

- (a) **Testing procedure:**
 - (1) Testing shall be completed within the time period specified in the fourth column of the five column chart set forth in Section ____ .
 - (2) Testing shall be performed by a licensed plumber, contractor, or other person who possesses any license required by law, if any, to perform the

test, and who is determined by the Superintendent of Utilities to be qualified to perform the test based on training and experience.

- (3) Testing shall not commence without a valid permit issued by the Superintendent of Utilities and testing may be witnessed by the Superintendent of Utilities or designee.
 - (4) Access to the sewer lines to be tested and conditions necessary to conduct the test shall be made ready prior to scheduling a sewer lateral test
- (b) **Repair.** It shall be the responsibility of the property owner to repair any sewer lateral which has been found through testing or inspection to exhibit conditions which will permit infiltration to enter the sewer system and, if necessary, to replace any sewer lateral to prevent such infiltration. Upon completion of the repair or replacement of the sewer lateral, reinspection shall be conducted until the sewer lateral passes the required test.
- (c) **Retest.** The property owner must complete the repair or replacement of sewer lateral and the sewer lateral must pass a retest within the time specified in the fifth column of the table set forth at Section _____. This deadline may be extended by the Superintendent of Utilities for good cause, not to exceed ninety (90) days. If repair is not completed within the required time period, the District may complete the required repairs and add a surcharge onto the property's utility account until the costs are recovered in not more than three (3) years.
- (d) **Certificate of Sewer Lateral and Property Compliance.** Once the sewer lateral has successfully passed the testing procedure, the Superintendent of the Utilities or his designee shall execute a Certificate of Sewer Lateral and Property Compliance ("Certificate of Compliance") which shall be filed with the Superintendent of Utilities, and to the extent authorized by law, the Mendocino County Recorder.
- (e) **Notice to Repair.** The Superintendent of Utilities for good cause may from time-to-time issue a notice to repair to the owner of any property whereupon the property owner would be required to obtain a Certificate of Compliance within the time specified in the _____ column of the table set forth at Section _____ below. This deadline may be extended by the Superintendent of Utilities for good cause, not to exceed ninety (90) days. If repair is not completed within the required time period, the District may complete the required repairs and add a surcharge to the property's utility account until the costs are recovered in not more than three (3) years.

Section _____. Testing.

- (a) **Testing Procedure.** Testing may be performed in accordance with the requirements of Section ___ above or if authorized by the resolution of the Board of Directors, testing may be performed by the District in connection with any

rehabilitation or replacement work. Upon completion of the testing the Superintendent of Utilities shall issue either a Certificate of Compliance or a notice of repair.

- (b) **Failure of Test and Requirement for Repair.** It shall be the responsibility of the property owner to repair and or replace any sewer lateral which has been found through testing and/or inspection to exhibit conditions which would permit infiltration to enter the sewer system and further to install or repair any deficient sewer cleanout and to test any required backflow device. The inspection shall be continued until such time as the property qualifies for issuance of a Certificate of Compliance.
- (c) **Repair or Replacement Work.** All repair or replacement work shall be completed by a person properly licensed to perform the work, including the licensed plumbers and/or contractors and shall be completed under any appropriate permits from the County, as appropriate, including building and encroachment permits.
- (d) **Time for Repairs.** All repairs must be completed within the time specified in the fifth column of the table set forth in Section ___ below unless for good cause shown an extension is granted by the Superintendent of Utilities, not to exceed ninety (90) days.
- (e) **Failure to Repair.** If repair is not completed within the required time period, the District may complete the required repairs and may add a surcharge onto the property's utility account until the costs are recovered in not more than three (3) years.
- (f) **Alternative procedure.** The Board of Directors may by resolution prescribe alternative procedures, by which the repair or replacement work shall be performed, including but not limited to, the degree to which the District shall offer to perform all or a portion of the work or contribute toward the cost of the work, using loans or grants.

Section ___ . Certificate of Compliance Without Inspection. A property owner may apply to the Superintendent of Utilities for a Certificate of Compliance without inspection under the following circumstances:

- (a) The property owner provides evidence satisfactory to the Superintendent of Utilities that the building on the property is ten (10) years old or less and contains a compliant sewer cleanout; or
- (b) The property owner provides evidence satisfactory to the Superintendent of Utilities that the sewer lateral was repaired or replaced in passed inspection within the previous ten (10) years and contains a compliant sewer cleanout; or

- (c) The property owner provides evidence satisfactory to the Superintendent of Utilities that the lateral has passed an inspection within the past five (5) years.

In such cases, the Superintendent of Utilities shall execute a Certificate of Compliance.

Section ____. **Fees.** The Board of Directors may establish fees pursuant to its annual fee resolution for administration of this Article.

Section ____. **Timeframes to Complete Work.**

TIME FRAMES TO PERFORM WORK ON SEWER LATERAL

EVENT	Clean & Video Inspect	WATER When	TEST Complete	Repair or Replace
Qualifying Sewer Lateral Service Call	At time of service	Inspection indicates damage, displacement or deflection of lateral	Within 7 days of Service Call or Notice	Within 30 days of Failed Water Test with Max of 90 day Extension for Cause
Sanitary Sewer Overflow	Within 7 days of Notice or At Time of Service	Inspection indicates damage, displacement, or deflection of lateral	Within 7 days of Service Call or Notice	Within 30 days of Failed Water Test with Max of 90 day Extension for Cause
Remodels to Structure Being Served of \$100K or Greater	Prior to Permit Final	Prior to Permit Final	Prior to Permit Final	Prior to Permit Final
Addition to Building or Site Plumbing	Prior to Permit Final	Prior to Permit Final	Prior to Permit Final	Prior to Permit Final
Change of Property Use: Residential to Commercial and non-Restaurant Commercial to Restaurant Commercial	Prior to Opening Under New Permitted Use	Prior to Opening Under New Permitted Use	Prior to Opening Under New Permitted Use	Prior to Opening Under New Permitted Use
Illegal Connection	Within 7 days of Notice	Within 7 days of Notice	Within 7 days of Notice	Within 30 days of Failed Water Test with Max of 90 day Extension for Cause
Prohibited Discharge	Within 7 days of Notice	Within 7 days of Notice	Within 7 days of Notice	Within 30 days of Failed Water Test with Max of 90 day Extension for Cause

Parcel Served is within 100 feet of Creek which is Declared Impacted by Sewer System	Within 1 Year of Adoption of Resolution (or Notice)	Within 1 Year of Adoption of Resolution (or Notice)	Within 1 Year of Adoption of Resolution (or Notice)	Within 2 years of Failed Water Test
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Section ____. **Severance.** If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this Ordinance. The Board of Directors hereby declares that it would have adopted the Ordinance and each section, subsection, sentence, clause or phrase thereof, irrespective of the fact that any one or more of the sections, subsections, sentences, clauses or phrases be declared unconstitutional or in violation of law.

Section ____. **CEQA.** This Ordinance is exempt from the California Environmental Quality Act under Public Resources Code §§ 21065 and 21080(b)(a).

Section ____. **Effective Date.** This Ordinance shall be in full force and effect thirty (30) days after the adoption and shall be published and posted as required by law.

Section ____. This Ordinance shall be codified as Article ____ of the District Utility Ordinance.

SUB-CONSULTANT AGREEMENT

This Agreement is made on January 11, 2011 by and between BROOKTRAILS TOWNSHIP COMMUNITY SERVICES DISTRICT, a local agency (hereinafter "BROOKTRAILS") and ROBERT RAWSON (hereinafter "Consultant").

R E C I T A L S

- A. WHEREAS, BROOKTRAILS owns and manages a satellite sewer collection system and desires to maintain its compliance with all environmental obligations related thereto in full compliance with environmental laws so as to further the desire of BROOKTRAILS and its residents to maintain an exemplary environmental record;
- B. WHEREAS, Consultant is qualified and agrees to perform services for BROOKTRAILS under the terms and conditions set forth in this Agreement;

NOW THEREFORE, in consideration of the mutual promises set forth in this Agreement, It is agreed by and between BROOKTRAILS and Consultant as follows:

1. Nature of Work. Consultant will perform consulting and advisory services on behalf of BROOKTRAILS as follows:

Conduct an annual environmental compliance audit of the BROOKTRAILS' satellite collection including a review of the compliance audit with BROOKTRAILS' utility staff and a training session for all BROOKTRAILS utility staff relating to public health and safety, worker health and safety, new technology enabling maintenance of the environment, changes in regulations, and other relevant topics designed to keep the BROOKTRAILS utility staff and operations informed as to the best possible provision of service to the public. In addition, Consultant shall assist in the strategic location of Smart Manholes for the forthcoming year.

2. Place of Work. It is understood that Consultant's services will be rendered at the BROOKTRAILS Township premises.

3. Time Devoted to Work. In performance of Consultant's services, the services and the hours Consultant is to work on any given day will be entirely within Consultant's control and BROOKTRAILS will rely on Consultant to expend such sufficient time as is reasonably necessary to fulfill the spirit and purpose of this Agreement.

4. Consideration. BROOKTRAILS shall pay Consultant at Consultant's standard hourly billing rates for all time expended by Consultant in performance of the services under this Agreement, however, the cost of each review and training shall not exceed Two Thousand, Five Hundred Dollars (\$2,500) per year. Consultant shall issue an invoice to BROOKTRAILS upon the completion of the review and training each year, which invoice shall be paid within thirty (30) days. The payment limitation is inclusive of traveling expenses.

5. Time of Annual Audit. The annual audit shall be conducted between June 15 and July 15 of each year commencing in 2011.

6. Term. This Agreement shall extend for four (4) years resulting in Review and Training in the years 2011, 2012, 2013 and 2014.

7. Status of Consultant. This Agreement calls for the performance of services of the Consultant as an independent contractor and Consultant shall not be considered an employee of BROOKTRAILS for any purpose.

8. Non Assignability. No party may assign any of its rights under this Agreement, voluntarily or involuntarily, whether by operation of law, or any other manner. No party may delegate any performance under this Agreement. Any purported assignment of rights or delegation of performance in violation of this section is void.

9. California Law. This Agreement is executed in and intended to be performed in the State of California and the laws of the State of California shall govern its interpretation and effect.

10. Entire Agreement. This Agreement represents and contains the entire understanding of the parties. There are no representations, covenants or undertakings other than those expressly set forth in this Agreement. The parties acknowledge that no party, nor any agent or attorney of any party has made any promise, representation or warranty whatsoever, express or implied, not contained in this Agreement to induce any other party to execute this Agreement. The parties acknowledge that they have not executed this Agreement in reliance on any promise, representation, or warranty not specifically contained in this Agreement. The parties and each of them further represent and declare that they have carefully read this Agreement and know its contents and that they sign this Agreement freely and voluntarily.

11. Severability. If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the rest of the Agreement shall remain in fully force and effect and shall be in no way affected or invalidated.

12. Counterparts. The parties may execute this Agreement in two or more counterparts which shall, in the aggregate, be signed by all the parties, each counterpart shall be deemed an original of this Agreement as against any party who has signed it. The parties agree to execute such documents as are necessary to consummate this Agreement.

IN WITNESS WHEREOF, this Agreement is entered into as of the date first herein above written.

BROOKTRAILS TOWNSHIP COMMUNITY
SERVICES DISTRICT

CONSULTANT:

MICHAEL CHAPMAN, General Manager

ROBERT RAWSON