

ITEM 4.21

CITY MANAGER'S REPORT FEBRUARY 12, 2024 CITY COUNCIL REGULAR MEETING

ITEM: **APPROVE A DESIGN AND CONSTRUCTION FUNDING AGREEMENT WITH RIVER ISLANDS DEVELOPMENT, LLC FOR PHASE 3 EXPANSION OF THE LATHROP CONSOLIDATED TREATMENT FACILITY, CIP WW 22-38 AND APPROVE BUDGET AMENDMENT**

RECOMMENDATION: **Adopt a Resolution to Approve a Design and Construction Funding Agreement with River Islands Development, LLC for the Phase 3 Expansion Lathrop Consolidated Treatment Facility, CIP WW 22-38 and Approve Budget Amendment**

SUMMARY:

The Lathrop Consolidated Treatment Facility Phase 3 Expansion, CIP WW 22-38 (Phase 3 Expansion) will provide an additional 2.5 Million Gallons per Day (MGD) of sewer treatment capacity to the existing 2.5 MGD capacity for a total treatment capacity of 5 MGD. This expansion is necessary to accommodate future development within the River Islands Development area and throughout the City.

River Islands Development, LLC (River Islands) has agreed to fund 80% or \$22,000,000 of the Phase 3 Expansion and enter into a Design and Construction Funding Agreement (Agreement) to document the conditions and expectations of the project. As part of this Agreement, the City will allocate 2 MGD of treatment capacity to River Islands upon completion of the expansion project.

The City will reserve the remaining 500,000 Gallons per Day (GPD) for future development outside of the River Islands development, which will be sold and assigned to various projects during the entitlement and building permit phases. The proceeds from the sale of City treatment capacity will reimburse the City's contribution of approximately \$5,500,000 to the Phase 3 Expansion. The City has funded the design and headworks replacement for the Phase 3 Expansion totaling \$3,250,000 and therefore has a remaining share of \$2,250,000.

Staff is requesting City Council approve the Agreement with River Islands for the Phase 3 Expansion of the Lathrop Consolidated Treatment Facility (Attachment B).

Staff is also requesting City Council approve a budget amendment to transfer the City's remaining share of \$2,250,000 from the Sewer Connection Fee Fund to the CIP WW 22-38 Fund.

**FEBRUARY 12, 2024 CITY COUNCIL REGULAR MEETING
APPROVE A DESIGN AND CONSTRUCTION FUNDING AGREEMENT WITH
RIVER ISLANDS FOR THE PHASE 3 EXPANSION OF THE CTF, CIP WW 22-38
AND APPROVE BUDGET AMENDMENT****BACKGROUND:**

On November 21, 2016, City Council approved the agreements related to Lathrop Consolidated Treatment Facility Phase 2 Expansion (WW 14-14), the Crossroads Decommissioning (WW 15-20), and the Sewer Plant Upgrades (WW 12-07) to replace the City's existing 1 MGD treatment plant with a 2.5 MGD treatment plant, with associated developer funding agreements (Phase 2 Expansion). On May 13, 2019, City Council accepted the Phase 2 Expansion improvements.

Since the completion of the Phase 2 Expansion in 2019, the City has experienced tremendous growth. The City's population in 2019 was 24,968, which increased to 35,080 in 2023, adding 10,112 new residents. In addition, millions of square feet of warehouse and thousands of square feet of commercial have been constructed and occupied between 2019 and 2023. The Phase 2 Expansion sewer capacity is being utilized by recent residential, industrial and commercial developments and more sewer capacity will be required to support future growth.

On November 8, 2021, City Council approved the creation of CIP WW 22-38 Lathrop Consolidated Treatment Facility Phase 3 Expansion and a Professional Services Agreement with Pacific Advanced Civil Engineering, Inc. (PACE). The Phase 3 Expansion will provide an additional 2.5 Million Gallons per Day (MGD) of sewer treatment capacity to the existing 2.5 MGD capacity for a total treatment capacity of 5 MGD. On April 10, 2023, City Council approved purchasing headworks equipment from Zima Corporation, facilitating the Phase 3 Expansion.

River Islands Development, LLC (River Islands) has agreed to fund 80% or \$22,000,000 of the Phase 3 Expansion and enter into an Agreement to memorialize the conditions and expectations of the project. As part of this Agreement, the City will allocate 2 MGD of treatment capacity to River Islands, upon completion of the expansion project.

The City will reserve the remaining 500,000 Gallons per Day (GPD) for future development outside of the River Islands project, which will be sold and assigned to various projects during the entitlement and building permit phases. The proceeds from the sale of City treatment capacity will reimburse the City's contribution of approximately \$5.5M to the Phase 3 Expansion. The City has already funded the design and headworks replacement for the Phase 3 Expansion totaling \$3,250,000 and therefore has a remaining share of \$2,250,000.

REASON FOR RECOMMENDATION:

Staff is requesting City Council approve the Agreement with River Islands Development, LLC for the Phase 3 Expansion of the Consolidated Treatment Facility.

**FEBRUARY 12, 2024 CITY COUNCIL REGULAR MEETING
APPROVE A DESIGN AND CONSTRUCTION FUNDING AGREEMENT WITH
RIVER ISLANDS FOR THE PHASE 3 EXPANSION OF THE CTF, CIP WW 22-38
AND APPROVE BUDGET AMENDMENT**

Staff is also requesting City Council approve a budget amendment to transfer the City’s remaining share of \$2,250,000 from the Sewer Connection Fee Fund to the CIP WW 22-38 Fund. The Phase 3 Expansion is needed to accommodate growth in River Islands and throughout the City.

FISCAL IMPACT:

The City has funded \$3,250,000 for Phase 3 Expansion design and replacement of the head works from the Sewer Connection Fee Fund. Pursuant to the Agreement, the City will need to transfer the remaining share of \$2,250,000 from the Sewer Connection Fee Fund to CIP WW 22-38. Staff is requesting the approval of a budget amendment to transfer the funds as follows:


<u>Increase Transfer Out</u>		
6030-9900-990-9010		\$2,250,000
 <u>Increase Transfer In</u>		
6090-9900-393-0000	WW 22-38	\$2,250,000
 <u>Increase Appropriation</u>		
6090-8000-420-1200	WW 22-38	\$2,250,000

ATTACHMENTS:

- A. Resolution to Approve a Design and Construction Funding Agreement with River Islands Development, LLC for the Phase 3 Expansion of the Consolidated Treatment Facility, CIP WW 22-38
- B. Design and Construction Funding Agreement By and Between the City of Lathrop and River Islands Development, LLC Related to the Phase 3 Expansion of the Lathrop Consolidated Treatment Facility

CITY MANAGER'S REPORT
FEBRUARY 12, 2024 CITY COUNCIL REGULAR MEETING
APPROVE A DESIGN AND CONSTRUCTION FUNDING AGREEMENT WITH
RIVER ISLANDS FOR THE PHASE 3 EXPANSION OF THE CTF, CIP WW 22-38
AND APPROVE BUDGET AMENDMENT

APPROVALS:



Brad Taylor
City Engineer

2/1/2024
Date




Cari James
Finance Director

2/1/2024
Date



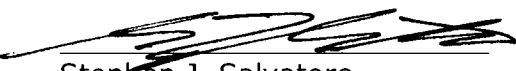
Michael King
Assistant City Manager

2-1-2024
Date



Salvador Navarrete
City Attorney

2-1-2024
Date



Stephen J. Salvatore
City Manager

2/6/24
Date

RESOLUTION NO. 24 -

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LATHROP TO APPROVE A DESIGN AND CONSTRUCTION FUNDING AGREEMENT WITH RIVER ISLANDS DEVELOPMENT, LLC FOR THE PHASE 3 EXPANSION OF THE LATHROP CONSOLIDATED TREATMENT FACILITY, CIP WW 22-38 AND APPROVE BUDGET AMENDMENT

WHEREAS, on November 21, 2016, City Council approved the agreements related to Lathrop Consolidated Treatment Facility Phase 2 Expansion (WW 14-14), the Crossroads Decommissioning (WW 15-20), and the Sewer Plant Upgrades (WW 12-07) to replace the City's existing 1 MGD treatment plant with a 2.5 MGD treatment plant, with associated developer funding agreements (Phase 2 Expansion). City Council accepted the Phase 2 Expansion improvements on May 13, 2019; and

WHEREAS, since the completion of the Phase 2 Expansion in 2019, the City has experienced tremendous growth. The City's population in 2019 was 24,968, which increased to 35,080 in 2023, adding 10,112 new residents to the City. In addition, millions of square feet of warehouse and thousands of square feet of commercial have been constructed and occupied between 2019 and 2023.

WHEREAS, the recent residential, industrial and commercial developments are currently using the Phase 2 Expansion sewer capacity and more capacity will be needed to facilitate future growth; and

WHEREAS, on November 8, 2021, City Council approved the creation of CIP WW 22-38 Lathrop Consolidated Treatment Facility Phase 3 Expansion (Phase 3 Expansion), and a Professional Services Agreement with Pacific Advanced Civil Engineering, Inc. (PACE); and

WHEREAS, the Phase 3 Expansion will provide an additional 2.5 Million Gallons per Day (MGD) of sewer treatment capacity to the existing 2.5 MGD capacity for a total treatment capacity of 5 MGD; and

WHEREAS, on April 10, 2023, City Council approved the purchase of headworks equipment from Zima Corporation, which will facilitate the Phase 3 Expansion; and

WHEREAS, River Islands Development, LLC (River Islands) has agreed to fund 80% of the Phase 3 Expansion cost in exchange for 2 MGD of treatment capacity; and

WHEREAS, the City will reserve the remaining 500,000 Gallons per Day (GPD) for future development outside of the River Islands project, which will be sold and assigned to various projects during the entitlement and building permit phases. The proceeds from the sale of City treatment capacity will reimburse the City's contribution of approximately \$5,500,000 to the Phase 3 Expansion; and

WHEREAS, staff is requesting City Council approve the Design and Construction Funding Agreement Related to the Phase 3 Expansion of the Lathrop Consolidated Treatment Facility with River Islands Development, LLC (Attachment B to the City Manager’s Report); and

WHEREAS, the City has funded \$3,250,000 for Phase 3 Expansion design and replacement of the head works from the Sewer Connection Fee Fund. Pursuant to the Agreement, the City will need to transfer the remaining share of \$2,250,000 from the Sewer Connection Fee Fund to CIP WW 22-38. Staff is requesting the approval of a budget amendment to transfer the funds as follows:

<u>Increase Transfer Out</u>		
6030-9900-990-9010		\$2,250,000
 <u>Increase Transfer In</u>		
6090-9900-393-0000	WW 22-38	\$2,250,000
 <u>Increase Appropriation</u>		
6090-8000-420-1200	WW 22-38	\$2,250,000

NOW THEREFORE, BE IT RESOLVED, that the City Council of the City of Lathrop does hereby approve the Design and Construction Funding Agreement Related to the Phase 3 Expansion of the Lathrop Consolidated Treatment Facility with River Islands Development, LLC; and

BE IT FURTHER RESOLVED, that the City Council of the City of Lathrop does hereby approve the budget amendment as detailed above.

The foregoing resolution was passed and adopted this 12th day of February 2024, by the following vote of the City Council, to wit:

AYES:

NOES:

ABSENT:


ABSTAIN:

Sonny Dhaliwal, Mayor

ATTEST:

APPROVED AS TO FORM:

Teresa Vargas, City Clerk



Salvador Navarrete, City Attorney

**DESIGN AND CONSTRUCTION FUNDING AGREEMENT
BY AND BETWEEN THE CITY OF LATHROP
AND RIVER ISLANDS DEVELOPMENT, LLC
RELATED TO THE PHASE 3 EXPANSION OF THE EXISTING
LATHROP CONSOLIDATED TREATMENT FACILITY**

This Design and Construction Funding Agreement ("Agreement") is made and entered into as of February 12, 2024, by and between the **CITY OF LATHROP**, a municipal corporation ("CITY") and **RIVER ISLANDS DEVELOPMENT, LLC**, a Delaware limited liability company ("DEVELOPER"). DEVELOPER and CITY are referred to herein individually as "party" and collectively as "parties."

RECITALS

A. CITY operates the existing Lathrop Consolidated Treatment Facility ("LCTF") with a permitted flow capacity of 2.5 million gallons per day ("MGD") in accordance with NPDES CA00853559 Order R5-2022-0044 ("NPDES Order"). CITY also operates its recycled water system under the State Water Resources Control Board Recycled Water General Order WQO 2016-0068-DDW ("General Order").

B. At this time, the parties desire to expand the existing LCTF treatment capacity to 5.0 MGD by adding a total of 2.5 MGD capacity to the existing LCTF ("Phase 3 Expansion") as depicted in the 85% Progress Print plans developed by PACE Engineering dated titled City of Lathrop Consolidated Treatment Facility Phase 3 Expansion, WW 22-38.

C. CITY and DEVELOPER are parties to a series of prior funding agreements that are identified in Schedule 1 ("Prior Funding Agreements") attached hereto. This Agreement shall apply to the Phase 3 Expansion only. To the extent of any conflicts between the Prior Funding Agreements (whether or not specifically included in Schedule 1) and this Agreement, this Agreement shall control and supersede as to any specific items pertaining to the Phase 3 Expansion only. All terms of the Prior Funding Agreements not specifically addressing the Phase 3 Expansion shall remain in full force and effect.

D. The parties desire to execute this Agreement to set forth their definitive understanding with respect to the funding of pre-design, design, permitting, programming, construction costs and standby charges, including all outside consultant costs and City staff costs relating to the Phase 3 Expansion as more particularly set forth herein.

NOW THEREFORE, in consideration of the promises and covenants contained herein, the above recitals and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

AGREEMENT

1. Incorporation of Recitals.

The parties agree that the foregoing Recitals are true and correct and are incorporated as a part of this Agreement as if set forth in full herein.

2. Overall Cost; Phase 3 Expansion.

a. The parties acknowledge that the current opinion of anticipated cost of expanding the existing LCTF to 5.0 MGD for the Phase 3 Expansion (e.g., adding a total of 2.5 MGD to the existing LCTF) is \$27,500,000 as set forth in Exhibit A ("Opinion of Probable Costs").

Of this amount, \$3,250,000 has been previously funded by CITY for design costs and for the purchase and installation of the headworks facility.

b. Upon execution of this Agreement, CITY shall use commercially reasonable efforts to complete the Phase 3 Expansion in a timely manner, subject to force majeure delays, including without limitation obtaining all applicable permits and approvals necessary to proceed with the Phase 3 Expansion. By executing this Agreement, CITY agrees to fund its 20% portion of the costs identified in Exhibit A as detailed in Section 3b.

3. Expansion; Payment of Costs; Sewer Allocation and Overpayment.

a. Sewer Capacity. Subject to DEVELOPER's compliance with the terms of this Agreement, CITY will provide DEVELOPER with the capacity allocations and percentage share in the Phase 3 Expansion as set forth in Exhibit B ("Sewer Capacity Allocations"). The available sewer capacity flow allocation may be limited subject to the design wastewater strength loading for Biological Oxygen Demand (BOD), Total Nitrogen (TN) and Total Suspended Solids (TSS) allocations (lbs/day) set forth in Exhibit B.

b. Payments and Credits. DEVELOPER and CITY shall pay their pro-rata share of the costs (\$22,000,000 and \$5,500,000 respectively) as illustrated in Exhibit C ("Share of Project Costs") as follows:

i. DEVELOPER shall pay \$7,500,000 ("Initial Payment") to CITY not later than ten (10) business days after DEVELOPER receives actual notification from CITY that CITY has selected the Contractor to build the construction contract for the Phase 3 Expansion.

ii. DEVELOPER shall then pay \$2,500,000 every three months after the Initial Payment until the remaining total of \$14,500,000 has been paid.

iii. CITY shall receive credit for the \$3,250,000 in funding it has already paid. CITY shall transfer the remaining \$2,250,000 from the Sewer Connection Fee fund into the CIP WW 22-38 Project no later than ten (10) business days after CITY provides notification of selection of Contractor to DEVELOPER.

c. Payment Bond. Concurrent with the timing of the Initial Payment, DEVELOPER shall provide CITY with a payment bond for the total value of \$14,500,000 to be used by CITY for the construction of the Phase 3 Expansion in the event that DEVELOPER does not make a payment as required above subject to a notice and cure period. In the event a DEVELOPER payment is not made by the appropriate date, CITY shall provide written notice to DEVELOPER of its lack of payment and DEVELOPER will have a ten (10) business day cure period to make the payment. CITY agrees that the payment bond may be reduced as each subsequent payment is received if DEVELOPER chooses to do so. CITY shall release the payment bond upon receipt of the final payment.

d. Use of Contingency; Cost Overruns.

i. Exhibit A identifies a Contingency of \$2,500,000. Subject to the terms below, the parties agree that CITY may use the Contingency for any cost overruns for the Phase 3 Expansion without obtaining the prior approval of DEVELOPER, provided that CITY shall (A) promptly notify DEVELOPER of the use of Contingency funds, (B) such cost overruns requiring Contingency funds do not include any changes or increases in scope and (C) CITY shall meet and confer with DEVELOPER regarding the use of Contingency funds upon DEVELOPER's request and prior to such use of Contingency funds.

ii. If CITY exhausts the Contingency and CITY reasonably believes that it must incur costs in excess of the Contingency to complete the Phase 3 Expansion ("Excess Costs"), CITY shall (A) promptly notify DEVELOPER of such Excess Costs ("Notice of Excess Costs"), (B) CITY shall meet and confer with DEVELOPER regarding the Excess Costs so that CITY may proceed with the work and (C) after mutual agreement, DEVELOPER shall pay their respective share of Excess Costs within ten (10) business days after receipt of the approved Notice of Excess Costs. If the Parties do not reach a mutual agreement on the Excess Cost within ten (10) business days after receipt of Notice of Excess Cost, CITY will pay the Excess Cost to the Contractor to allow the project to proceed and include the disputed sum as amounts to be resolved during the Final Accounting as detailed in Section 3(e)(i) of this Agreement.

e. Final Accounting.

i. Upon completion of construction and prior to CITY acceptance of the Phase 3 Expansion, CITY shall provide a draft final accounting of all construction costs incurred by CITY including Excess Cost ("Final Accounting") to DEVELOPER. DEVELOPER shall have the right to review the Final Accounting. Thereafter, the Parties shall meet and confer on the Final Accounting. Should the Parties agree upon the Final Accounting, CITY shall (A) provide the approved Final Accounting to DEVELOPER, (B) proceed with CITY COUNCIL acceptance of the Phase 3 Expansion and (C) pursue final signoff by the Regional Water Quality Control Board ("Regional Board"); and DEVELOPER shall (A) provide written notice of approval of the Final Accounting ("Notice of Approval of Final Accounting") to CITY within ten (10) business days of receiving the Approved Final Accounting and (B) pay their respective remaining share of any Excess Costs as set forth in the Final Accounting concurrently with the Notice of Approval of Final Accounting. Should the Parties not agree upon the Final Accounting, the Parties shall meet and confer to reach agreement within 30 days of completion of construction. If the Parties do not agree within the 30 days, any amount disputed will be presented to City Council to be paid by CITY to the Contractor within ten (10) business days thereafter, and the final resolution of the disputed amount shall be determined by binding arbitration pursuant to the requirements set forth in Section 6 herein.

ii. To the extent that the approved Final Accounting illustrates cost savings (e.g. the Phase 3 Expansion was constructed for less than the Expansion Costs contributed by DEVELOPER, including any savings of Contingency amounts contributed by DEVELOPER), CITY shall reimburse to DEVELOPER its pro-rata share of such cost savings within thirty (30) days after CITY'S issuance of the Notice of Approval of Final Accounting.

4. Restrictions on Reliance or Use of Sewer Allocation by DEVELOPER; Other Restrictions. Notwithstanding anything to the contrary contained herein, the following shall apply to restrict DEVELOPER'S reliance upon or use of its Sewer Allocation in the Phase 3 Expansion ("Sewer Allocation").

a. DEVELOPER acknowledges and understands that DEVELOPER cannot rely upon or use their Sewer Allocation until (i) final completion and CITY acceptance of the Phase 3 Expansion and (ii) final signoff of the completed Phase 3 Expansion by the Regional Board. As used herein, "rely" shall mean the ability to rely upon the availability of such capacity for CITY approval of final maps, and "use" shall mean CITY approval of building permits.

b. Use of Float Capacity. CITY recognizes that there is an approximate one-year delay between allocation of sewer capacity to residential lots within a subdivision during final map approval and the actual sewer flow being received at the treatment facility ("Float Capacity"). Completion of the Phase 3 Expansion and final signoff by the Regional Board is expected within two years of the execution of this Agreement. If completion is delayed beyond the approximated two year expectation and (i) DEVELOPER has exhausted all of their existing sewer capacity, as shown in Exhibit D and (ii) DEVELOPER has fully funded their share of this expansion as detailed

in Section 2(a) of this Agreement, DEVELOPER shall be permitted to allocate float capacity to residential lots within a subdivision during final map approval to not exceed 119,024 gallons per day (10% of DEVELOPER's total existing sewer capacity). DEVELOPER shall not be permitted to allocate Float Capacity to uses other than residential lots within a subdivision as the use of Float Capacity is based on data from existing residential lot allocations and this basis may not be representative of non-residential uses.

c. No transfer of Sewer Allocations to DEVELOPER or third parties under this Agreement shall be effective unless and until such DEVELOPER or third party has provided to CITY the information required in Schedule 2 attached hereto ("Transfer Information") for City approval which shall not be unreasonably withheld, conditioned or delayed. Item 5 of Schedule 2 requires the purchaser of Sewer Allocations to commit to obtaining a building permit, parcel map or final map within one year of City approval of a transfer or sell the units back to CITY, unless Council approves an alternative time limit. DEVELOPER may be exempt from this time limit on a case-by-case basis and if Council approves the exemption at the time of the transfer for unique situations such as a sale of capacity that exceeds DEVELOPER's project build out sewer demand. DEVELOPER is exempt from the conditions of Schedule 2 if the Sewer Allocation is part of a large lot or final map.

5. Previous Oversizing; Oversizing Reimbursements. Nothing in this Agreement changes or alters DEVELOPER's right to oversizing reimbursement detailed in previous agreements.

6. Default.

a. If any party materially breaches or fails to comply with any of its obligations under this Agreement, such breaching party shall have thirty (30) days after receipt of written notice of breach from a non-defaulting party ("Breach Notice") to cure such breach or noncompliance (as such period may be extended as set forth below "Cure Period"). If such breaching party does not cure such breach or noncompliance within the Cure Period, it shall be deemed in default ("Default") under this Agreement, provided that if the nature of the breach or noncompliance reasonably requires more than thirty (30) days to cure, the breaching party shall not be in Default under this Agreement so long as the breaching party commences such cure within the Cure Period and diligently pursues such cure and the Breach Notice sets forth in reasonable detail the nature of the breach, noncompliance or default, as the case may be. The party sending the Breach Notice shall provide a copy to all parties hereunder.

b. Subject to the provisions of Section 6(c) below, upon a Default pursuant to Section 6.a., the parties shall first mediate the dispute in good faith using a mutually acceptable mediator, which mediation shall be scheduled and concluded not later than sixty (60) days after the expiration of the Cure Period. The mediation shall be conducted in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect. Claims, controversies or disputes not resolved by mediation shall be resolved by binding arbitration unless the parties mutually agree otherwise. Arbitration shall be conducted in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association currently in effect. The demand for arbitration shall be filed in writing with the other party to this Agreement and the American Arbitration Association. Notwithstanding the foregoing, any party may seek injunctive or other immediate equitable relief, if applicable, in a court of law, pending resolution of the dispute through mediation or arbitration.

c. Subject to the foregoing, in the event of a payment default hereunder that is not cured within ten (10) business days after DEVELOPER's receipt of a Breach Notice from CITY, (i) CITY may immediately suspend DEVELOPER's ability to use its Sewer Allocation and (ii) City may sell DEVELOPER's Capacity Allocation on a pro-rata basis to other developers.

7. Counterparts. This Agreement may be executed in counterparts, each of which shall be considered an original.

8. Advice of Counsel. Each of the parties has received the advice of legal counsel prior to signing this Agreement. Each party acknowledges no other party, agent or attorney has made a promise, representation or warranty whatsoever, express or implied, not contained herein concerning the subject matter herein to induce the other party to execute this Agreement. The parties agree no provision or provisions may be subject to any rules of construction based upon any party being considered the party drafting this Agreement.

9. Governing Law. The validity, interpretation and effect of this Agreement are governed by and shall be construed in accordance with the laws of the State of California.

10. Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable but the remainder of the Agreement can be enforced without failure of material consideration to any party, then this Agreement shall not be affected and shall remain in full force and effect. However, if the invalidity or unenforceability of any provision of this Agreement results in a material failure of consideration, all parties shall meet and negotiate in good faith not less frequently than every ten (10) days and formulate new terms that substitute the stricken clause with other provisions that provide substantially similar terms as the stricken clause. If the parties are unable to agree, then the parties shall resolve the issues through mediation as set forth in Section 6.

11. Authorization. The person(s) executing this Agreement on behalf of the parties hereto warrant that (i) such party is duly organized and existing, (ii) the person(s) executing this Agreement are dully authorized to execute and deliver it on behalf of such party, (iii) by such Person(s) so executing this Agreement, such party is formally bound to the provisions of this Agreement and (iv) entering into this Agreement does not violate any provision of any other agreement to which such party is bound. CITY has obtained any necessary approvals from the Consortium (as defined in the Consortium Agreement described in Schedule 1) and other property owners and developers to execute this Agreement and be bound by the terms hereof.

12. Other Agreements Not Affected. This Agreement constitutes the entire agreement between the Parties hereto with respect to the Phase 3 Expansion and supersedes all prior understandings or agreements with respect to the subject matter hereof, provided that this Agreement does not supersede, amend nor replace any prior written agreement relating to any matter not expressly set forth in this Agreement relating to this specific Phase 3 Expansion Project including without limitation the parties' separate Consortium Agreement (as defined in Schedule 1), as amended from time to time. This Agreement may be modified only by specific reference describing a mutual intent and agreement to amend this Agreement in written documents signed by both parties hereto.

13. Greenlighting Future Expansions. Nothing herein supersedes, amends or replaces any prior written agreement with respect to DEVELOPER's ability to "greenlight" future expansions in accordance with the parties' other written agreements regarding "greenlighting."

14. Incorporation of Recitals. The parties agree that the foregoing Recitals are true and correct and are incorporated as a part of this Agreement as if set forth in full herein.

15. Notices. All notices which are allowed or required to be given hereunder shall be in writing and (i) shall be deemed given and received when personally delivered or (ii) shall be deemed given when the same are deposited in the United States Mail, with sufficient postage prepaid, to be sent by registered or certified mail or overnight mail service, addressed to the designated person by one party to another in writing, and shall be deemed received on the fifth business day after such mailing. Any notice shall be given to all of the following:

CITY

City of Lathrop
390 Towne Centre Drive
Lathrop, CA 95330
Attn: City Clerk

With a copy to:

City of Lathrop
390 Towne Centre Drive
Lathrop, CA 95330
Attn: City Attorney

DEVELOPER

River Islands Development, LLC
73 W. Stewart Road
Lathrop, CA 95330
Attn: Susan Dell'Osso, President

16. Further Assurances. The parties agree to perform such further acts and to execute and deliver such further instruments as are reasonably necessary to accomplish the intent and purpose of this Agreement.

17. Assignment and Transfer. This Agreement shall inure to the benefit of and bind the successors and permitted assigns of the parties. Except for an assignment to an Affiliate (defined below) of DEVELOPER, DEVELOPER may not assign this Agreement without the prior written consent of CITY, which shall not be unreasonably withheld, conditioned or delayed. Without limiting the foregoing, prior to DEVELOPER assignment, (i) DEVELOPER shall notify CITY of the proposed assignment and provide reasonable information to CITY regarding the proposed assignee and (ii) any potential assignee must reasonably demonstrate to CITY's satisfaction that the proposed assignee has the financial ability and experience to fulfill DEVELOPER's obligations under this Agreement. DEVELOPER may assign this Agreement to an Affiliate with notice to CITY. As used herein, the term "Affiliate" means any person, entity or organization as to which DEVELOPER has a controlling interest. As used herein, "controlling interest" means the right to control the management decisions of such person or entity, whether by contract or otherwise.

18. Time is of the Essence. Time is of the essence of this Agreement.

19. Construction. All parties have been represented by counsel in the preparation of this Agreement and no presumption or rule that ambiguity shall be construed against a drafting party shall apply to interpretation or enforcement hereof. Captions on sections and subsections are provided for convenience only and shall not be deemed to limit, amend or affect the meaning of the provisions(s) to which they pertain.

20. No Joint Venture or Partnership. Nothing in this Agreement or in any document executed in connection with this Agreement shall be construed as creating a joint venture, partnership or any agency relationship between CITY and DEVELOPER. CITY shall have no responsibility for any public improvements unless and until accepted by CITY.

21. Waiver. No waiver of any provision of this Agreement shall be effective unless such waiver is in writing and signed by a duly authorized representative of the party against whom enforcement is sought.

22. Table of Exhibits. The following exhibits are attached hereto and made a part hereof:

<u>Exhibit A:</u>	Opinion of Probable Costs
<u>Exhibit B:</u>	Sewer Capacity Allocations
<u>Exhibit C:</u>	Share of Project Costs
<u>Exhibit D:</u>	Accounting of Existing Sewer Capacity
<u>Schedule 1:</u>	Prior Funding Agreements
<u>Schedule 2:</u>	Transfer Information

[SIGNATURES ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties have executed this Amendment as of the date or dates set forth below.

CITY OF LATHROP, a municipal Corporation of the State of California

BY: _____
Stephen J. Salvatore
City Manager

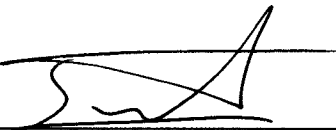
Dated: _____

ATTEST:

BY: _____
Teresa Vargas
City Clerk

Dated: _____

APPROVED AS TO FORM BY THE CITY OF LATHROP CITY ATTORNEY:

BY:  _____
Salvador V. Navarrete
City Attorney

DEVELOPER:
RIVER ISLANDS DEVELOPMENT, LLC,
a Delaware limited liability company

BY: Susan Dell'Osso
Its: President

IN WITNESS WHEREOF, the parties have executed this Amendment as of the date or dates set forth below.

CITY OF LATHROP, a municipal Corporation of the State of California

BY: _____
Stephen J. Salvatore
City Manager

Dated: _____

ATTEST:

BY: _____
Teresa Vargas
City Clerk

Dated: _____

APPROVED AS TO FORM BY THE CITY OF LATHROP CITY ATTORNEY:

BY: _____
Salvador V. Navarrete
City Attorney

DEVELOPER:
RIVER ISLANDS DEVELOPMENT, LLC,
a Delaware limited liability company

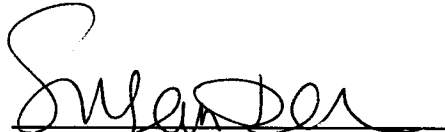

BY: Susan Dell'Osso
Its: President

EXHIBIT A

Opinion of Probable Costs

CTF Phase 3 Expansion, Lathrop, CA

Description	Estimated Cost
Design	1,500,000
Permitting	500,000
Pre-Construction/Construction Management	1,000,000
Headworks	1,750,000
Construction	20,250,000
Contingency (10%)	2,500,000
TOTAL	\$27,500,000

EXHIBIT B

Sewer Capacity Allocations

CTF Phase 3 Expansion, City of Lathrop, CA

Name of Party	Flow Capacity (gpd)	% of Expansion
City of Lathrop	500,000	20%
River Islands	2,000,000	80%
Total	2,500,000	100%

	Biological Oxygen Demand (mg/L)	Total Nitrogen (mg/L)	Total Suspended Solids (mg/L)
City of Lathrop	500	70	340

EXHIBIT C

Share of Project Costs

CTF Phase 3 Expansion, Lathrop, CA

Name of Party	% of Expansion	Cost Share
City of Lathrop	20%	5,500,000
River Islands	80%	22,000,000
Total	100%	\$27,500,000

EXHIBIT D

Accounting of Existing Sewer Capacity

Accounting of Existing Sewer Capacity	
	<i>Capacity (gpd)</i>
Phase 0	100,000
Phase 1	200,000
Phase 2	652,840
Reserve	237,396
Total Capacity	1,190,236
Allocated (as of 1/16/2024)	(850,692)
Remaining Capacity	339,544

SCHEDULE 1

Prior Funding Agreements

WRP-1 MBR 0.75 MGD Expansion (CIP# WW 01-21)

1. Agreement for Financing Design, Construction, Maintenance and Operation of Additional Sanitary Sewer Facilities and Acquisition of Lands Necessary for Such Project, dated April 29, 2003 (as amended)(“Consortium Agreement”)
2. Agreement among the City of Lathrop, Crossroads CREA Investors, LLC, and Califia, LLC for Design, Construction, Maintenance and Operation of Additional Sanitary Sewer Facilities and Acquisition of Lands Necessary for Such Projects, dated April 29, 2003 (as amended)
3. First Amendment to the Agreement for Financing, Construction, Maintenance and Operation of Additional Sanitary Sewer Facilities in the City of Lathrop, dated August 1, 2003
4. First Amendment to Agreement among the City of Lathrop Crossroads CREA Investors LLC and Califia LLC for Design Construction Maintenance and Operation of Additional Sanitary Sewer Facilities and Acquisition of Lands Necessary for Such Projects, dated August 1, 2003
5. Second Amendment to the Agreement for Financing, Construction, Maintenance and Operation of Additional Sanitary Sewer Facilities in the City of Lathrop, dated September 1, 2003

LCTF Phase 1 Expansion (CIP# WW 10-15)

6. Integrated Greenlighting and Funding Agreement, dated August 19, 2013

LCTF Phase 2 Expansion (CIP# WW 14-14)

7. Funding Agreements for The City's Pre-Construction Costs Related to the Phase 2 Expansion of the Lathrop Consolidated Treatment Facility, (six funding agreements were issued to participating Developer between March 17, 2015, and March 10, 2016)
8. Design and Construction Funding Agreement Related to the Phase 2 Expansion of the Existing Lathrop Consolidated Treatment Facility, dated November 21, 2016

SCHEDULE 2

Transfer Information

WASTEWATER CAPACITY TRANSFER CRITERIA

Any developer or third party who has acquired wastewater capacity under this Agreement and who wishes to transfer some or all of its wastewater capacity shall apply for the transfer through the City's Public Works Director. The application shall include the following information and be submitted with the requisite fee(s):

1. Name of transferor and proposed transferee.
2. Address and/or APN of the parcel(s) to benefit from the transfer.
3. The number of Equivalent Capacity Units (ECUs) or Interceptor System Units (ISUs) needed.
4. A description of the proposed development in sufficient detail to identify the potential impacts and benefits of the proposed development.
5. A letter from the purchaser committing to obtain a building permit, parcel map or final map with one year from City approval of the transfer, or to sell the units back to the City at the end of one year unless Council approves an alternative time limit. The repurchase price shall be the same as the cost paid by the transferee at the time the transfer took place, less the City's administrative fee.
6. An application fee to cover the cost of staff efforts, including the preparation of staff reports for Council action and ten percent (10%) deposit toward the cost of the units.
7. An acknowledgement that it is the purchaser's responsibility to provide any sewer line extensions and related facilities necessary to utilize the ECUs or ISUs.

The City's Public Works Director shall consider the following factors in approving or denying a transfer request:

1. Is the request consistent with the City's General Plan?
2. Is the request consistent with the City's Sewer Master Plan?
3. Is the request consistent with the City's Zoning Ordinance?
4. Is the request consistent with any other applicable local, state or federal laws, regulations or ordinances?

Upon receipt of a written request and payment of the appropriate fee(s), the City Engineer will prepare a report for City Council consideration and action. The City Council may approve the request and authorize the City Manager to execute an agreement approved by the City Attorney with the applicant, or deny the request based on the foregoing factors. If the City Council approves a transfer of ECUs or ISUs from one parcel(s) to a different parcel(s), the applicant shall pay all costs to prepare and record an agreement(s) for the transfer. The agreement(s) will be recorded and advise future property owners of the transfer and limitations on future development.