

**CITY MANAGER'S REPORT
FEBRUARY 11, 2019 CITY COUNCIL REGULAR MEETING**

ITEM: **PUBLIC HEARING (PUBLISHED NOTICE) TO CONSIDER THE FIFTH AMENDMENT TO THE DEVELOPMENT AGREEMENT BETWEEN THE CITY OF LATHROP, CALIFIA, LLC, AND RIVER ISLANDS DEVELOPMENT, LLC.**

RECOMMENDATION: **Council to Consider the Following:**

- 1. Hold a Public Hearing; and**
- 2. Introduce and Conduct the First Reading of an Ordinance to Adopt the Fifth Amendment to the Development Agreement Between the City of Lathrop, Califia, LLC, and River Islands Development, LLC. (The Fifth Amendment Will Address Wastewater and Potable Water Allocations for the Project, On-going Monitoring of Actual Wastewater and Potable Water Usage, and Restate Commitments of the Project to Water Conservation.)**

SUMMARY:

This item was continued from the January 14, 2019 City Council Regular meeting.

In 2003, Califia, LLC and the City entered into the 2003 Amended and Restated Development Agreement (the "2003 Agreement") to cover a master plan of development for the River Islands master planned community (the "Project"). The 2003 Agreement has been updated four times in the past, the most recent in March 2015 with the Fourth Amendment.

The City and the River Islands development entities (Califia, LLC, River Islands Development, LLC and the Cambay Group, collectively, "Developer") wish to amend the 2003 Agreement for a fifth time. The Fifth Amendment will address wastewater and potable water allocations for the Project, on-going monitoring of actual wastewater and potable water usage, and restate commitments of the Project to water conservation.

Staff recommends the City Council introduce and conduct the First Reading of an Ordinance to adopt the Fifth Amendment to the Development Agreement between the City of Lathrop, Califia, LLC, and River Islands Development, LLC.

BACKGROUND:

In 2005, the original 2003 Development Agreement was amended to add provisions relating to a sewer agreement between Califia, the City and certain Mossdale Landing developers. In 2012, the 2003 Agreement was amended a second time to update the land area subject to the agreement, clarify responsibilities for building and maintaining infrastructure, and extend the term of the Agreement.

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In 2013, the 2003 Development Agreement was amended a third time ("Third Amendment") to (1) confirm the current properties that are burdened and benefited by the 2003 Agreement; (2) establish a Fiscal Impact Model and an annual fiscal review process; (3) to further clarify financial responsibilities for the building and maintenance of infrastructure; (4) establish maintenance Community Facility Districts (CFD's) to guarantee maintenance of infrastructure; (5) establish a Lathrop Irrigation District (LID) right-of-way fee; and (6) confirm the Recycled Water Reimbursement payment from the 2005 Sprayfield Agreement, the Sierra Club Settlement Agreement payment and the required deposit to cover the cost of police services being disputed between River Islands and the City that would all be placed into escrow to allow approval of the initial Final Maps. In March 2015, the City Council approved a Fourth Amendment to the 2003 Agreement clarifying River Islands' police services funding obligation.

The City of Lathrop, Califia, LLC and River Islands Development, LLC, the successor in interest to the Cambay Group, Inc. desire to amend the 2003 Agreement a fifth time ("Fifth Amendment" included as Attachment A). The Fifth Amendment seeks to update the allocation method for wastewater and potable water for the River Islands project. The Fifth Amendment would also include a provision to monitor actual wastewater flows from River Islands specific sewer pump stations and recommit to future water conservation measures. The City has determined that wastewater flows have trended downward City wide, especially in River Islands. For residential uses, the City allocates wastewater treatment capacity in Equivalent Capacity Units or "ECU's", with each ECU being equivalent to the capacity of one single family residential dwelling. This number has trended downward since the initial construction of the Lathrop Consolidated Treatment Facility ("LCTF"), from 288 gallons per day (gpd), to 260 gpd to as of very recently, 200 gpd. Since the actual measurement of wastewater flows generated from the River Islands Project can be isolated from other parts of the City and measured at its pump stations, the allocation may be changed in the future as development in the area continues. Also, the Fifth Amendment would retroactively adjust all prior allocations of ECU's for River Islands to 200 gpd starting with the first dwelling constructed in the Project in 2014.

If approved, the Fifth Amendment would obligate both the City and River Islands to monitor and report on the actual measurement of wastewater flows into the City sewer system. If there are changes over time that are observed, either Party shall have the right to request an adjustment to the ECU allocation for the Project, subject to verification by the other Party, limited to only one such request within two calendar years. Any such review will take into account the concentration (Biological Oxygen Demand) of the current sewer effluent to confirm that the Lathrop collection system and the Combined Treatment Facility can handle the higher strength effluent without additional treatment or dilution before any future reductions can be approved.

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In regard to potable water, River Islands shall develop a Water Conservation Plan in accordance with adopted conditions of approval for the Vesting Tentative Map Tract No. 3694 ("VTM 3694"). Additionally, for residential uses, the City allocates potable water capacity in Equivalent Capacity Units or "ECU's", with each ECU being equivalent to the capacity of one single family residential dwelling. If the Fifth Amendment is approved, the City will allocate ECUs for the Project based upon the actual measurement of water flows (as measured from water meters) generated from the Project over time and adjust the number of gallons per day ("gpd") of each ECU accordingly. As of August 2018, the City has adjusted the water allocation per ECU to 430 gpd for all areas of the City, including River Islands. Further, the City shall retroactively adjust all prior allocations of ECU's for water to 430 gpd for the Project starting with the first dwelling constructed in the Project in 2014. The City shall base future ECU water allocations beyond the initial allocation upon the actual measurement of water flows. This will include the separate review of meters for residential uses. The intent of the Water Conservation Plan is to reduce the volume of water used per ECU. Implementation of that Conservation Plan should result in lowered water usage, and that lower usage will be reflected in the required potable water to be provided for each future ECU. At any time thereafter, either Party shall have the right to request an adjustment to the ECU allocation for the Project, subject to verification by the other Party, limited to only one such request in two calendar years. Any resulting adjustments are exclusive to this Project and shall not affect any other development area of the City.

On December 19, 2018, the Planning Commission adopted PC Resolution #18-32 finding that the proposed Development Agreement Amendment is consistent with the Lathrop General Plan and West Lathrop Specific Plan, and recommended the City Council approve the Fifth Amendment to the Development Agreement between the City of Lathrop, Califia, LLC, and River Islands Development, LLC.

CEQA REVIEW AND PUBLIC NOTICE:

The finding of consistency with the General Plan is not subject to the California Environmental Quality Act (CEQA) pursuant to Article 5 §15061 (b) (3) by the "General Rule" that CEQA applies only to projects that have a potential for causing a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment. The proposed action does not authorize any specific construction; it is only a finding of consistency to the General Plan.

In February 2003, the City Council certified the Final Subsequent Environmental Impact Report (SEIR) for the River Islands at Lathrop project (State Clearinghouse No. 1993112027), approved the Project, and filed a Notice of Determination with the San Joaquin County Clerk. The certified SEIR included environmental analysis of physical development of the entire 4,905-acre River Islands project area, including a range of residential, commercial, employment, recreational and open space uses, as well as potential environmental effects of the ongoing construction, operation and maintenance of development infrastructure, in accordance with CEQA.

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Since certification of the SEIR, the City has adopted six addendums updating and making minor revisions to the SEIR in conjunction with Project amendments in 2005, 2007, 2012, 2014, 2015 and 2018. The 2018 addendum indicated that there were no substantial changes to the Project, no other known substantial changes, or new information of substantial importance related to the Project that would suggest that the Project would create any new or more severe significant environmental effects than were addressed in the certified SEIR.

The City is considering a proposed Fifth Amendment to the 2003 Agreement to redefine the allocation of wastewater and water obligations and rights of the Developer and City with respect to the Project. The Fifth Amendment affirms the geographic area covered by the 2003 Agreement as amended but has no other physical relationship to the Project. The Fifth Amendment does not involve any direct physical effect on the environment and may therefore qualify for an exemption from CEQA review under the general rule. The provisions of the Fifth Amendment would not directly or indirectly alter the physical nature of the River Islands project and, thereby, alter its potential environmental impacts. The certified SEIR therefore continues to satisfy CEQA requirements for the River Islands at Lathrop project. As a result, the proposed Fifth Amendment does not require additional CEQA review.

A Notice of Public Hearing was advertised in the Manteca Bulletin on January 3, 2019. The City Council meeting agenda was posted at the Council Chamber bulletin board and various designated posting locations in the City accessible to the public 72 hours prior to the meeting as required by law. As of the writing of this report, no comments were received in favor or against the proposed project.

RECOMMENDATION:

The Planning Commission and staff recommend that the City Council consider all information provided and submitted, take and consider all public testimony and, if determined to be appropriate, take the following action:

Introduce and conduct the First Reading of an Ordinance to adopt the Fifth Amendment to the Development Agreement between the City of Lathrop, Califia, LLC, and River Islands Development, LLC. The Fifth Amendment will address wastewater and potable water allocations for the Project, on-going monitoring of actual wastewater and potable water usage, and restate commitments of the Project to water conservation.

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COUNCIL GOALS ADVANCED BY THIS AGENDA ITEM:

The proposed project promotes Economic Growth by supporting and encouraging development, and promotes Team Work between the public, Council and City staff by working together to share the same vision.

FISCAL IMPACT:


All application processing fees and costs are charged to the applicant. The request has no fiscal impact to the City.

ATTACHMENTS:

1. Ordinance Approving the 5th DA Amendment
2. Fifth Amendment to the River Islands Development Agreement
3. Planning Commission Resolution# 18-32

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RIVER ISLANDS 5TH DA AMENDMENT**

APPROVALS:



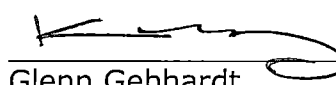
Rick Caguiat
Principal Planner

1/29/19
Date



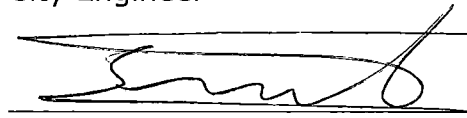
Mark Meissner
Community Development Director

1-29-19
Date

 FOR


Glenn Gebhardt
City Engineer

1-30-19
Date



Salvador Navarrete
City Attorney

1-30-19
Date



Stephen J. Salvatore
City Manager

2-5-19
Date

ORDINANCE NO. 19-

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LATHROP
APPROVING THE FIFTH AMENDMENT TO THE DEVELOPMENT AGREEMENT
BETWEEN THE CITY OF LATHROP, CALIFIA, LLC AND RIVER ISLANDS
DEVELOPMENT, LLC.**

WHEREAS, the City of Lathrop City Council held a duly noticed public hearing to consider the Fifth Amendment to the River Islands Development Agreement pursuant to the Lathrop Municipal Code; and

WHEREAS, the proposed site is located within the Stewart Tract area of the West Lathrop Specific Plan (River Islands at Lathrop Master Planned Community), more specifically situated northwest of Interstate 5 and bounded on the east by the San Joaquin River, to the north by Old River, to the south by the Union Pacific Railroad; and

WHEREAS, in February 2003, the City Council approved the 2003 Amended and Restated Development Agreement for the River Islands Project (as amended by the First Amendment to Amended and Restated Development Agreement dated July 12, 2005, the "Development Agreement"); and

WHEREAS, in November 2012, the City of Lathrop City Council approved the Second Amendment to the Development Agreement; and

WHEREAS, in September 2013, the City of Lathrop approved the Third Amendment to the Development Agreement; and

WHEREAS, in March 2015, the City of Lathrop approved the Fourth Amendment to the Development Agreement; and

WHEREAS, Califia, LLC, a California limited liability company ("Califia") and River Islands Development, LLC, a California limited liability company ("RID") together as developer of the River Islands at Lathrop project ("Project") have applied for approval of a Fifth Amendment to the Development Agreement ("Fifth Amendment"); and

WHEREAS, California Government Code Section 65864 et seq. authorizes any city, county, or city and county to enter into an agreement for the development of real property within its jurisdiction; and

WHEREAS, the proposed Fifth Amendment has been reviewed by City staff and City Attorney, and is recommended by the Planning Commission for approval; and

WHEREAS, a Notice of Public Hearing was advertised in the Manteca Bulletin on January 3, 2019 in accordance with the Government Code and Lathrop Municipal Code as required by law; and

WHEREAS, the City Council has reviewed all written evidence and oral testimony presented to date.

NOW, THEREFORE, BE IT RESOLVED that the City Council finds that the text of the Fifth Amendment is consistent with the 2003 West Lathrop Specific Plan and Lathrop General Plan as amended, since there is no resultant change in zoning, land use standards or other similar regulations, and that no additional review of the Fifth Amendment is required under the California Environmental Quality Act (CEQA) because:

- a. The proposed DA amendment involves organizational and financial matters that have no potential for a direct or indirect physical effect on the environment.
- b. The potential environmental effects of the River Islands at Lathrop project have been and continue to be addressed in the certified Final Subsequent Environmental Impact Report (SEIR) for the River Islands at Lathrop project (State Clearinghouse No. 1993112027).
- c. The proposed DA amendment would not alter the physical nature of the River Islands project or its potential environmental impacts.
- d. There is no known evidence of substantial changes or new information that would suggest that the River Islands project would have new or more severe environmental effects than were addressed in the certified SEIR.
- e. The economic concerns addressed by the DA amendment do not constitute significant environmental effects under CEQA (CEQA Guidelines 15131) and therefore are not proper subjects for CEQA review.
- f. The finding of general plan and specific plan conformity made by the Planning Commission is not subject to the California Environmental Quality Act (CEQA) pursuant to Article 5 §15061 (b) (3) by the "General Rule" that CEQA applies only to projects that have a potential for causing a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment. The proposed action does not authorize any specific construction; it is only a finding of consistency to the General Plan.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LATHROP
DOES ORDAIN AS FOLLOWS:**

Section 1.

The City Council finds that the proposed Fifth Amendment to the Development Agreement between the City of Lathrop, Califia, LLC, and River Islands Development, LLC, included as Attachment #2 of the Staff Report is consistent with the Lathrop General Plan and West Lathrop Specific Plan.

Section 2.

This ordinance is not intended to and shall not be construed or given effect in a manner that imposes upon the city or any officer or employee thereof a mandatory duty of care toward persons and property within or without the city so as to provide a basis of civil liability for damages, except as otherwise imposed by law.

Section 3.

If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, the remainder of the Ordinance, including the application of such part or provision to other persons or circumstances shall not be affected thereby and shall continue in full force and effect. To this end, provisions of this Ordinance are severable. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases be held unconstitutional, invalid, or unenforceable.

Section 4.

This Ordinance shall take legal effect 30 days from its adoption.

Section 5.

Within fifteen days of the adoption of this Ordinance, the city Clerk shall cause a copy of this Ordinance to be published in full accordance with Section 36933 of the Government Code.

Section 6.

The Mayor is hereby authorized to execute said Development Agreement Amendment for and on behalf of the City once this ordinance takes effect.

THIS ORDINANCE was regularly introduced at a meeting of the City Council of the City of Lathrop on the 11th day of February 2019, and was PASSED AND ADOPTED at a regular meeting of the City Council of the City of Lathrop on the 11th day of March 2019, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Sonny Dhaliwal, Mayor

ATTEST:

Teresa Vargas, City Clerk

APPROVED AS TO FORM:



Salvador Navarrete, City Attorney

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

Teresa Vargas
City Clerk
City of Lathrop
390 Towne Centre Drive
Lathrop, CA 95330

(Above Space for Recorder's Use Only)

FIFTH AMENDMENT
TO 2003 AMENDED AND RESTATED DEVELOPMENT AGREEMENT
BY AND BETWEEN
THE CITY OF LATHROP
AND
CALIFIA, LLC

THIS FIFTH AMENDMENT TO 2003 AMENDED AND RESTATED DEVELOPMENT AGREEMENT (the "Fifth Amendment") is entered into this 11th day of February, 2019 by and between the CITY OF LATHROP, a municipal corporation (the "City"), CALIFIA, LLC, a California limited liability company ("Califia") and RIVER ISLANDS DEVELOPMENT, LLC, a California limited liability company ("RID"), successor in interest to The Cambay Group, Inc., a California corporation ("Cambay"). Califia and RID are collectively referred to hereinafter as "Califia."

RECITALS

A. The City, Cambay and Califia entered into that certain 2003 Amended and Restated Development Agreement (the "Original Agreement") dated as of February 4, 2003 and recorded on March 31, 2003 in the Official Records of San Joaquin County (the "Official Records") as Document No. 2003-069319, as amended by that certain First Amendment to 2003 Amended and Restated Development Agreement By and Between the City of Lathrop and Califia, LLC dated as of July 12, 2005 and recorded on October 19, 2005 in the Official Records as Document No. 2005-260875 (the "First Amendment"), and as further amended by that certain Second Amendment to 2003 Amended and Restated Development Agreement By and Between the City of Lathrop and Califia, LLC (the "Second Amendment") dated as of November 5, 2012 and recorded on November 6, 2012 in the Official Records as Document No. 2012-145503, and as further amended by that certain Third Amendment to the 2003 Amended and Restated Development

Agreement By and Between the City of Lathrop and Califia, LLC, (the "Third Amendment") dated October 7, 2013 and recorded on December 20, 2013 in the Official Records as Document No. 2013-156622, and as further amendment by that Fourth Amendment to the 2003 Amended and Restated Development Agreement By and Between the City of Lathrop and Califia, LLC (the "Fourth Amendment") dated as of March 16, 2015 and recorded on April 15, 2015 in the Official Records as Document No. 2015-042142.

B. The Original Agreement, the First Amendment, the Second Amendment, the Third Amendment, the Fourth Amendment and this Fifth Amendment collectively constitute the "Development Agreement." The Development Agreement establishes the terms providing for the development of the Project at the Project Site.

C. The City and Califia desire to further amend the Development Agreement to make the changes as more particularly set forth herein.

NOW THEREFORE, FOR GOOD AND VALUABLE CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH IS ACKNOWLEDGED, THE CITY AND CALIFIA AGREE AS FOLLOWS:

AGREEMENT

1. INCORPORATION OF RECITALS. The foregoing recitals are correct and are incorporated into this Fifth Amendment by this reference.
2. DEFINED TERMS. All capitalized terms not defined herein shall have the meanings ascribed to them in the Development Agreement, the First Amendment, or the Second Amendment, as the case may be.
3. EFFECTIVE DATE AND OPERATIVE DATE. This Fifth Amendment shall be effective upon its recordation pursuant to California Government Code section 65868.5 (the recordation date is the "Effective Date" of this Fifth Amendment), which date in no event shall be earlier than the effective date of Ordinance No. 19-___ approving this Fifth Amendment. Section 65868.5 of the Government Code requires this Fifth Amendment be recorded in the Official Records no later than 10 days after the City enters into this Fifth Amendment, and that the burdens of this Fifth Amendment shall be binding upon, and the benefits of this Fifth Amendment shall inure to, all successors in interest to the parties to this Fifth Amendment and/or to the land depicted in Exhibit A.
4. OWNED LAND. Exhibit A to this Fifth Amendment depicts the properties which constitute the "Owned Land" and the "Optioned Land" which are benefitted and burdened by the Development Agreement.

5. WASTEWATER TREATMENT CAPACITY ALLOCATION. Section 6.05.03 is hereby added to the Development Agreement as follows:

Section 6.05.03. Wastewater Treatment Capacity Allocation. The City hereby acknowledges that the Project's development and infrastructure, including the City's sanitary sewer pump stations and sanitary sewer collection system that serves the Project Site are isolated from the balance of the City's planning areas and that the Project's sewer flows that enter into the City's sanitary sewer collection system and into the sanitary sewer pump station that serves the Project can be measured precisely and separately from the rest of the City before such flows reach the City's Lathrop Consolidated Treatment Facility ("LCTF"). As a result, actual sewer flows from the Project's sewer pump station facilities can be utilized to estimate residential and non-residential (e.g. commercial) wastewater treatment capacity allocations for the Project's development. As such, as described below, the City shall utilize the measurement of the actual flows as generated from the Project to allocate wastewater treatment capacity for the Project.

For residential uses, the City allocates wastewater treatment capacity in Equivalent Capacity Units or "ECU's", with each ECU being equivalent to the capacity of one single family residential dwelling. As of the Operative Date of this Agreement, the City shall allocate ECUs for the Project based upon the actual measurement of wastewater flows generated from occupied homes within the Project over time, plus a reasonable buffer at the discretion of the City, to account for variations in data, and adjust the number of gallons per day ("gpd") of each ECU accordingly. As of August 2018, the City has adjusted the allocation per ECU to 200 gpd for all areas utilizing the LCTF; this shall be the starting allocation for the Project as of the Operative Date. Further, the City shall retroactively adjust all prior allocations of ECU's to 200 gpd for the Project starting with the first dwelling constructed in the project in 2014. Within 30 days of the Operative Date, the City shall provide a summary of this reallocation in writing to RID.

Keeping sewage strength as a contributing factor as noted below, the City shall base future ECU allocations beyond the initial allocation upon the actual measurement of wastewater flows from occupied homes in the Project into the City sewer system, plus a reasonable buffer at the discretion of the City, to account for variations in data. As of the Operative Date, the Parties shall continue to monitor the amount of actual flows from the Project and review data for variations in flow over time. This will include the use of separate meters for non-residential uses unless an alternative methodology is agreed upon to

determine non-residential inflows versus residential. At any time thereafter, either Party shall have the right to request an adjustment to the ECU allocation for the Project, subject to verification by the other Party, limited to only one such request within two calendar years. Any resulting adjustments are exclusive to this Project and shall not affect any other development area of the City. Any resulting adjustments shall be made administratively by the City Manager under recommendation by the Director of Public Works. Any costs associated with the adjustment shall be borne by the requesting Party. Unless agreed to by the Parties, future adjustments will not be retroactively applied, but shall only be applied to new residential subdivisions that are approved after the adjustment has been made.

With respect to sewer strength, City staff reviewed the strength (BOD5 or 5 Day Biological Oxygen Demand) of the current sewer effluent versus the strength when the gallons per day per ECU was 260. The most recent City observed strength has increased 50%, due to the reduction in potable water in the waste stream due to the water conserving fixtures used in the newer buildings. These results indicate that the amount of waste needing treatment in the existing wastewater flow per day is effectively the same as there was when the volume of flow was substantially higher. The LCTF was recently reconstructed with a design that anticipated an increase in sewer strength as measured by BOD5. The LCTF may not be able to process a higher BOD5 concentration than currently anticipated, so any additional concentrations of sewage strength may trigger dilution, or changes to the treatment process to handle that stronger flow. For this reason, any future analysis of lower sewer flows per unit (ECU) will need to include a review of sewage concentration (BOD5) or other constituents that may create a problem for the treatment of sewage or the disposal of treated sewage due to increased concentration (eg. electro conductivity) to determine if it will result in issues in the effective treatment of influent at the LCTF, in the City's collection system/pumping systems, or in the City's ability to dispose of the treated effluent before any future reductions can be approved.

6. POTABLE WATER ALLOCATION. Section 6.05.04 is hereby added to the Development Agreement as follows:

Section 6.05.04. Potable Water Allocation. The Parties hereby acknowledge that the Project depends on a consistent and reliable potable water supply as required by Applicable Law. In accordance with adopted conditions of approval for the Vesting Tentative Map Tract No. 3694 ("VTM 3694") the City shall develop a River Islands Water Conservation Plan ("Conservation Plan") that shall include,

but not be limited to: recycled water restricted landscaping plant palettes, supplemental non-potable water sources (such as water from Project lakes), irrigation saving designs for residential and non-residential private development, water saving fixtures for both residential and non-residential uses, and use of energy efficient “smart” controllers utilized when potable water is the primary source of irrigation water. The Conservation Plan shall be required to be adopted by the City Council prior to the filing of the first final map outside the VTM 3694. Further, the Plan shall have determined the actual water usage within River Islands based on annual monitoring of water usage in the VTM 3694 area and voluntarily implemented conservation measures. After this determination is made and prior to the first final map outside VTM 3694, the City shall retroactively adjust all prior allocations of ECU’s to the actual usage for the Project starting with the first dwelling constructed in the project in 2014. Califia shall be responsible for its fair share contribution towards funding of the Conservation Plan. As a result of the Conservation Plan, the City shall re-allocate potable water for the Project and determine the estimated amount of potable water necessary for build out of the Project after Phase 1. The Parties may wish to update the Conservation Plan for Phase 2 development to ensure adequate supplies for the Project’s build out.

The intent of the Conservation Plan is to reduce the volume of water used per ECU. Implementation of that Conservation Plan should result in lowered water usage, and that lower usage will be reflected in the required potable water to be provided for each future ECU, as explained below.

For residential uses, the City allocates potable water capacity in Equivalent Capacity Units or “ECU’s”, with each ECU being equivalent to the capacity of one single family residential dwelling. As of the Operative Date of this Agreement, the City shall allocate ECUs for the Project based upon the actual measurement of water flows (as measured from water meters) generated from the Project over time and adjust the number of gallons per day (“gpd”) of each ECU accordingly. As of August 2018, the City has adjusted the water allocation per ECU to 430 gpd for all areas of the City; this shall be the starting allocation for the Project as of the Operative Date. Further, the City shall retroactively adjust all prior allocations of ECU’s to 430 gpd for the Project starting with the first dwelling constructed in the project in 2014. Within 30 days of the Operative Date, the City shall provide a summary of this reallocation in writing to RID.

The City shall base future ECU water allocations beyond the initial allocation upon the actual measurement of water flows. As of the Operative Date, the Parties shall continue to monitor the amount of actual flows from the Project and review data for variations in flow over time. This will include the separate review of meters for residential uses. At any time thereafter, either Party shall have the right to request an adjustment to the ECU allocation for the Project, subject to verification by the other Party, limited to only one such request in two calendar years. Any resulting adjustments are exclusive to this Project and shall not affect any other development area of the City. Any resulting adjustments shall be made administratively by the City Manager under recommendation by the Director of Public Works. Any costs associated with the adjustment shall be borne by the requesting Party. Future adjustments will not be retroactively applied, but shall only be applied to new residential subdivisions that are approved after the adjustment has been made.

7. EFFECT OF THIS FIFTH AMENDMENT. Except as expressly modified by this Fifth Amendment, the Development Agreement shall continue in full force and effect according to its terms as amended to date, and the City and Calafia ratify and affirm all of their respective rights and obligations under the Development Agreement. In the event of any conflict between this Fifth Amendment and the Development Agreement, the provisions of this Fifth Amendment shall govern.

8. COUNTERPARTS. This Fifth Amendment may be executed in counterparts, each of which shall constitute an original and all of which constitute the same document.

IN WITNESS WHEREOF, the City and Califia have signed this Fifth Amendment effective as of the Effective Date.

CITY OF LATHROP

CALIFIA, LLC

a California limited liability company

By: _____
Sonny Dhaliwal, Mayor

By: _____
Name: _____
Its: _____

ATTEST:

RIVER ISLANDS DEVELOPMENT,
LLC

a California limited liability company

By: _____
Teresa Vargas, City Clerk
(Municipal Seal)

By: _____
Name: _____
Its: _____

APPROVED AS TO FORM: _____

By: _____
Salvador V. Navarrete, City Attorney

[INSERT NOTARY ACKNOWLEDGMENTS]

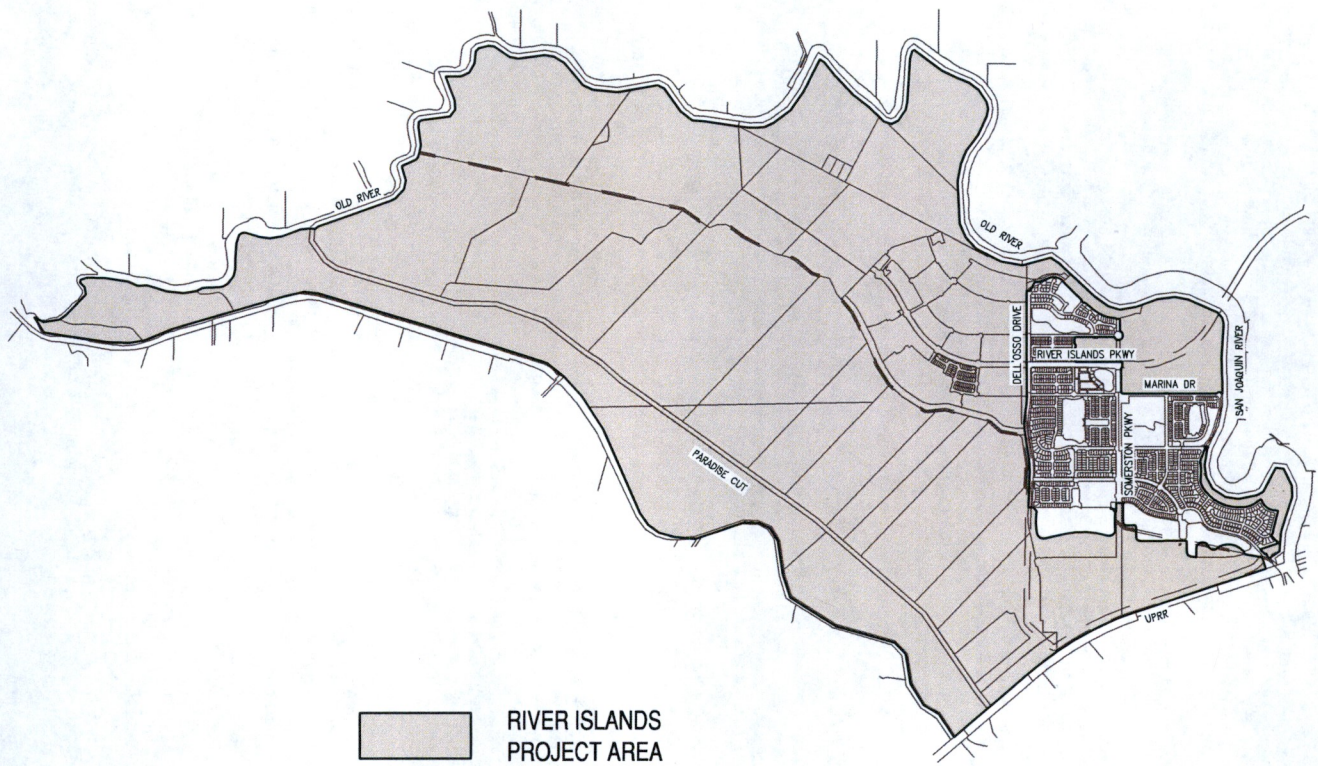
EXHIBIT A TO FIFTH AMENDMENT


Land Subject to Development Agreement

(See Attached)



0' 2250' 4500'
SCALE: 1" = 4500'



 RIVER ISLANDS
PROJECT AREA

DRAFT

O'DELL
ENGINEERING

6200 Stoneridge Mall Road, Suite 330
Pleasanton, CA 94588

Ph 925.223.8340 odellengineering.com

RIVER ISLANDS PROJECT AREA

CITY OF LATHROP SAN JOAQUIN COUNTY CALIFORNIA

DATE: DECEMBER 7, 2018

**CITY OF LATHROP
PLANNING COMMISSION RESOLUTION NO. 18-32**

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF LATHROP FINDING CONSISTENCY WITH THE LATHROP GENERAL PLAN AND WEST LATHROP SPECIFIC PLAN AND RECOMMENDING THE CITY COUNCIL APPROVE THE FIFTH AMENDMENT TO THE DEVELOPMENT AGREEMENT BETWEEN THE CITY OF LATHROP, CALIFIA, LLC AND RIVER ISLANDS DEVELOPMENT, LLC.

WHEREAS, the City of Lathrop Planning Commission held a duly noticed public hearing to consider the Fifth Amendment to the River Islands Development Agreement pursuant to the Lathrop Municipal Code; and

WHEREAS, the proposed site is located within the Stewart Tract area of the West Lathrop Specific Plan (River Islands at Lathrop Master Planned Community), more specifically situated northwest of Interstate 5 and bounded on the east by the San Joaquin River, to the north by Old River, to the south by the Union Pacific Railroad; and

WHEREAS, in February 2003, the City Council approved the 2003 Amended and Restated Development Agreement for the River Islands Project (as amended by the First Amendment to Amended and Restated Development Agreement dated July 12, 2005, the "Development Agreement"); and

WHEREAS in November 2012, the City of Lathrop City Council approved the Second Amendment to the Development Agreement; and

WHEREAS, in September 2013, the City of Lathrop approved the Third Amendment to the Development Agreement; and

WHEREAS, in March 2015, the City of Lathrop approved the Fourth Amendment to the Development Agreement; and

WHEREAS, Califia, LLC, a California limited liability company ("Califia") and River Islands Development, LLC, a California limited liability company ("RID") together as developer of the River Islands at Lathrop project ("Project") have applied for approval of a Fifth Amendment to the Development Agreement ("Fifth Amendment"); and

WHEREAS, California Government Code Section 65864 et seq. authorizes any city, county, or city and county to enter into an agreement for the development of real property within its jurisdiction; and

WHEREAS, the proposed Fifth Amendment has been reviewed by City staff and City Attorney, who have recommended that the Planning Commission review and recommend approval of the Fifth Amendment as attached and incorporated in the Staff Report as Attachment "2"; and

WHEREAS, a Notice of Public Hearing was advertised in the Manteca Bulletin on December 8, 2018 (10 days before the public hearing as required by the California Government Code) and posted at designated posting locations in the City; and

WHEREAS, the Planning Commission desires to provide its recommendation to the City Council regarding the Fifth Amendment as required by local ordinance and California law; and

WHEREAS, proper notice of this public meeting was given in all respects as required by law; and

WHEREAS, the Planning Commission has reviewed all written evidence and oral testimony presented to date.

NOW, THEREFORE, BE IT RESOLVED that the Planning Commission finds that the text of the Fifth Amendment is consistent with the 2003 West Lathrop Specific Plan and Lathrop General Plan as amended, since there is no resultant change in zoning, land use standards or other similar regulations, and that no additional review of the Fifth Amendment is required under the California Environmental Quality Act (CEQA) because:

- a. The proposed DA amendment involves organizational and financial matters that have no potential for a direct or indirect physical effect on the environment.
- b. The potential environmental effects of the River Islands at Lathrop project have been and continue to be addressed in the certified Final Subsequent Environmental Impact Report (SEIR) for the River Islands at Lathrop project (State Clearinghouse No. 1993112027), as amended by addendum in November 2012.
- c. The proposed DA amendment would not alter the physical nature of the River Islands project or its potential environmental impacts.
- d. There is no known evidence of substantial changes or new information that would suggest that the River Islands project would have new or more severe environmental effects than were addressed in the certified SEIR.
- e. The economic concerns addressed by the DA amendment do not constitute significant environmental effects under CEQA (CEQA Guidelines 15131) and therefore are not proper subjects for CEQA review.
- f. The finding of general plan and specific plan conformity being made by the Planning Commission is not subject to the California Environmental Quality Act (CEQA) pursuant to Article 5 §15061 (b) (3) by the “General Rule” that CEQA applies only to projects that have a potential for causing a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment. The proposed action does not authorize any specific construction; it is only a finding of consistency to the General Plan.

BE IT FURTHER RESOLVED that the Planning Commission of the City of Lathrop based on substantial evidence in the administrative record of proceedings and pursuant to its independent review and consideration, hereby adopts Resolution 18-32 finding consistency with the Lathrop General Plan and West Lathrop Specific Plan, and recommending the City Council approve the Fifth Amendment to the Development Agreement between the City of Lathrop, Califia, LLC, and River Islands Development, LLC.


PASSED AND ADOPTED by the Planning Commission of the City of Lathrop at a regular meeting on the 19th day of December, 2018 by the following vote:

AYES: Ishihara, Gatto, Ralmilay

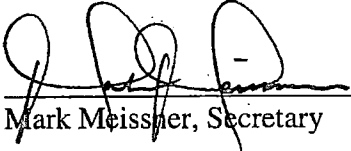
NOES: None

ABSTAIN: None

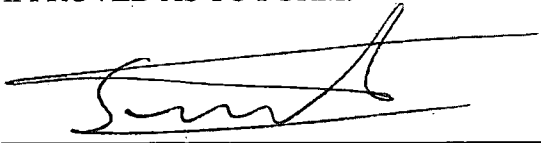
ABSENT: None


Tosh Ishihara, Chair

ATTEST:


Mark Meissner, Secretary

APPROVED AS TO FORM:


Salvador Navarrete, City Attorney