

THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS
ACTION AGENDA SUMMARY

DEPT: Environmental Resources



BOARD AGENDA # *B-9

Urgent

Routine

AGENDA DATE June 2, 2009

CEO Concurs with Recommendation YES NO

(Information Attached)

4/5 Vote Required YES NO

SUBJECT:

Approval to Authorize the Director of Environmental Resources to Execute an Amendment to the Fink Road Farm Lease Agreement with LBFI I-5 Lease, L.P.

STAFF RECOMMENDATIONS:

Authorize the Director of Environmental Resources to execute an amendment to the Fink Road Farm Lease Agreement with LBFI I-5 Lease, L.P

FISCAL IMPACT:

There is no fiscal impact to the County General Fund. This lease amendment possibly will result in a reduction of the annual lease revenue and the repayment of the March 2009 rent in the amount of \$11,500, in accordance with the prior lease terms. The Fink Road Landfill Enterprise Account has sufficient funding for this expense.

BOARD ACTION AS FOLLOWS:

No. 2009-360

On motion of Supervisor Chiesa, Seconded by Supervisor Grover

and approved by the following vote,

Ayes: Supervisors: O'Brien, Chiesa, Grover, Monteith, and Chairman DeMartini

Noes: Supervisors: None

Excused or Absent: Supervisors: None

Abstaining: Supervisor: None

1) X Approved as recommended

2) _____ Denied

3) _____ Approved as amended

4) _____ Other:

MOTION:



ATTEST: CHRISTINE FERRARO TALLMAN, Clerk

File No.

DISCUSSION:

Stanislaus County entered into a Farm Lease Agreement with Lent-Burden Farming, Inc. (LBFI), on November 4, 2003. On April 26, 2005, the Board of Supervisors authorized the Director of Public Works to execute an amendment to the Fink Road Farm Lease Agreement with LBFI for an additional two-year period, expiring on November 3, 2007. On October 11, 2005, the County approved an Assignment and Assumption of Lease dated August 15, 2005, from Lent-Burden Farming, Inc., to LBFI I-5 Lease L.P. On September 25, 2007, the Board of Supervisors authorized the Director of Environmental Resources to execute an amendment to the LBFI I-5 Lease for an additional two-year period, and changed some of the terms of the lease (acreage calculation and fire prevention). On November 18, 2008, the Board of Supervisors authorized an amendment to the lease agreement for the purchase of additional water supply from Del Puerto Water District. The current lease terminates on November 3, 2009.

Between February 5, 2009 and March 20, 2009, a succession of meetings and discussions were held between the parties (County and LBFI I-5 Lease, L.P.) concerning the projected water allocation for the 2008-2009 growing season, the uncertainty of a viable crop, and the possible abandonment of the crop. The parties were able to come to a mutual agreement that met the needs and concerns of both sides. The main points of agreement as reflected in the Amendment are as follows:

- Stanislaus County will retain the initial three months rent payments for the crop season. No further rent payments are due for the remainder of the crop season.
- LBFI I-5 Lease, L.P. will continue farming operations with implementation of cost-savings procedures.
- LBFI I-5 Lease, L.P. has the sole discretion to determine whether it will harvest the 2008-2009 almond crop.
- In the event the crop is harvested, after costs of harvest are paid, LBFI I-5 Lease, L.P. will apply the excess proceeds, if any, equally to 1) LBFI I-5 Lease, L.P. for management fees/debt service and 2) Stanislaus County for reimbursement of costs expended in farming operations during the above-stated negotiations.
- If any excess proceeds remain after payment of the above, LBFI I-5 Lease, L.P. will retain those proceeds as profits from the 2008-2009 crop season.

The proposed amendment is Attachment A.

Approval to Authorize the Director of Environmental Resources to Execute an Amendment to the Fink Road Farm Lease Agreement with LBFI I-5 Lease, L.P.
Page 3

POLICY ISSUE:

The Board of Supervisors should determine if this item is consistent with the priority of striving for a strong agricultural economy/heritage.

STAFFING IMPACTS:

There are no staffing impacts associated with this request.



DEPARTMENT OF ENVIRONMENTAL RESOURCES
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Modesto, Ca 95358-9492
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**AMENDMENT NO. 4
TO
FARM LEASE AGREEMENT**

(Fink Road Landfill Agricultural Properties)

This Amendment No. 4 to Farm Lease Agreement ("Amendment No. 4") by and between the County of Stanislaus ("Landlord") and LBFI I-5 Lease, L.P., a California limited partnership ("Tenant") is made and entered into on March 30, 2009.

Whereas, all previous Amendments to the Farm Lease Agreement are incorporated by reference herein and made a part hereof; and

Whereas, by Amendment No. 3 to Farm Lease dated November 18, 2008, Landlord agreed to purchase an additional 400 acre feet of water and Tenant agreed to purchase an additional 249 acre feet of water, and which added a provision to the Farm Lease which provided that Tenant and Landlord shall meet and confer to determine the appropriate farm management practices if water allocations are reduced to a level that affects farm production; and

Whereas, Landlord expended approximately \$48,000 for bee pollenization and pest spraying of the Property in February, 2009; and

Whereas, Tenant paid rent for the three months of November and December, 2008 and January, 2009; and

Whereas, water for the farm property is now expected to be available to allow the trees to survive for future production and, possibly for almond production during the 2008-2009 season; and

Whereas, this amendment is for the mutual benefit of Landlord and Tenant.

Now, therefore, the Landlord and Tenant have met and conferred and hereby agree as follows:

Landlord's rights and obligations:

1. Landlord will retain the three (3) months rent payment paid by Tenant for November and December, 2008 and January, 2009. The rent for the month of February, 2009 was paid to Landlord and Landlord shall reimburse the February, 2009 rental payment in the amount of \$11,500.00 to Tenant. No rental payment is due to Landlord for the remaining nine (9) months of the 2008-2009 almond season.

2. Landlord will pay the delivery charge for the portion of water purchased by Landlord as received (400 acre feet x \$56.23 = \$22,492). If additional expenses arise related to purchase and application of the portion of water purchased by Landlord (400 acre feet), Tenant agrees to pay those additional expenses.

3. Landlord has incurred costs of approximately \$48,000 for bee pollenization and orchard spraying during the time period of February 5, 2009 to March 20, 2009. Landlord will pay for any additional costs of operation incurred during the time period of February 5, 2009 to March 20, 2009, including the utility district standby charges incurred during this time period.

Tenant's rights and obligations:

4. Tenant will apply all allocated water and supplemental water purchased to the Property as it becomes available. Tenant is not required to save available irrigation water for a post-harvest irrigation, notwithstanding risk to the trees.

5. Tenant will resume farming the entire 345 acres of the Property as of March 20, 2009, and will pay for all costs of operation associated with the Property incurred from March 20, 2009 through October 31, 2009. The costs of operation shall be reduced to a minimal level including reduced levels of fertilizers, sprays, and other cost saving procedures. Tenant will make a good faith determination in applying appropriate farm management practices, including whether mite spraying will be necessary to preserve the trees.

6. Tenant will retain all income from the Soares sublease in the approximate amount of \$51,955.

7. Tenant retains in its sole discretion the right to determine whether or not to harvest the almond crop for the 2008-2009 season. If Tenant should determine it will not pursue harvest of the crop, no additional reimbursement to Landlord is due.

8. Should Tenant decide to harvest the 2008-2009 almond crop, Tenant shall pay first from the crop proceeds expenses incurred in the harvest and processing up to and including hulling of the crop. After payment of harvest expenses, if excess proceeds remain, Tenant shall thereafter pay from the excess proceeds three equal one-third shares towards each the following expenses: (1) Tenant's debt service, (2) Tenant's management fees (\$115 per acre of orchard per crop year), and (3) reimbursement of Landlord's \$48,000 expenses for bee pollenization and pest spraying incurred in February and March, 2009. If Tenant's debt service and management fees are satisfied and amounts in excess of their allotted one-third share remain, those remaining allocations shall then be applied toward Landlord's \$48,000 expenses until satisfied. Once Landlord's costs of \$48,000 are satisfied, Landlord then forfeits its right to further reimbursement from Tenant. If excess proceeds remain after satisfaction of Landlord's \$48,000 expenses, Tenant shall retain any remaining proceeds as profit from the almond 2008-2009 crop.

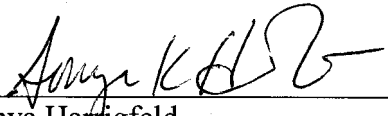
9. Except as provided in this Amendment, all other terms and conditions of the Farm Lease and amendments to the Farm Lease remain unchanged.

IN WITNESS WHEREOF, the parties have caused this Amendment No. 4 to be executed by their duly authorized representatives, on the date and year first above written.


COUNTY OF STANISLAUS

LBFI I-5 LEASE, L.P.

By: Lent Burden Farming, Inc.
Its: General Partner

By: 

Sonya Hargfeld
Director of Environmental Resources

By: 

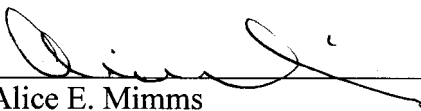
Dennis Wittchow
President *Vico Pres*

"Landlord"

"Tenant"

APPROVED AS TO FORM:

John P. Doering
County Counsel

By: 

Alice E. Mimms
Deputy County Counsel