

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

DEPT: Environmental Resources

BOARD AGENDA # \*B-4

Urgent

Routine

AGENDA DATE December 11, 2012

CEO Concurs with Recommendation YES  NO   
(Information Attached)

4/5 Vote Required YES  NO

SUBJECT:

Approval of a Three-Year Agricultural Lease with JKB Development, Inc., for County Owned Property Adjacent to the Fink Road Landfill

STAFF RECOMMENDATIONS:

1. Authorize the Director of Environmental Resources, or designee, to sign and execute the three-year Agricultural Lease Agreement with JKB Development, Inc.
2. Authorize the Director of Environmental Resources, or designee, to sign future amendments and extensions to the Agricultural Lease Agreement.

FISCAL IMPACT:

Under the proposed three-year farming lease, the County would receive a guaranteed annual base rent of \$106,000 from JKB Development for the first three years of the contract beginning on February 1, 2014 (for the 2013 calendar year), plus the revenue from any dry land farm leases. The rent would escalate by 2% each year thereafter if the County extends the lease for a fourth and possibly a fifth year, with the revenue from any dry land farm leases also continuing. In addition, JKB Development agrees to annually pay the County 20% of any almond harvest revenue over the agreed upon base amount of \$1,055,700.

(Continued on Next Page)

BOARD ACTION AS FOLLOWS:

No. 2012-599

On motion of Supervisor Withdraw, Seconded by Supervisor Monteith  
and approved by the following vote,

Ayes: Supervisors: Chiesa, Withdraw, Monteith, De Martini and Chairman O'Brien

Noes: Supervisors: None

Excused or Absent: Supervisors: None

Abstaining: Supervisor: None

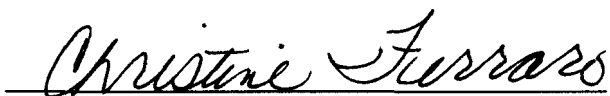
1)  Approved as recommended

2)  Denied

3)  Approved as amended

4)  Other:

MOTION: This Item was removed from the consent calendar for discussion and consideration.



ATTEST: CHRISTINE FERRARO TALLMAN, Clerk

File No.

## Approval of a Three-Year Agricultural Lease with JKB Development, Inc., for County Owned Property Adjacent to the Fink Road Landfill

### **FISCAL IMPACT (Continued):**

The County's 20% share of almond harvest revenue would increase to 22%, if the lease is extended to a fourth year, and to 24% if the lease is extended to a fifth year. The County will assume liability for up to \$40,000 in agricultural pump repairs per year, should they become necessary, and if deemed appropriate by the Director of Environmental Resources. The County will advance the payment for electricity and water costs associated with the farming operation, the costs of which will be the first call on the reimbursement from the almond harvest annually during the contract term.

As of September 30, 2012, utility (electric and water) costs associated with the farming operation were at approximately \$180,000 for the current calendar year. Such costs will be reimbursed to the County per the agricultural lease in addition to the guaranteed base rent. The Department has incurred approximately \$4,200 in costs to date in 2012 for irrigation repairs covered using existing budgeted appropriations. Payment from JKB Development from the previous year's rent is not due until January 31, 2013.

### **DISCUSSION:**

On September 29, 2009, the Board of Supervisors authorized staff to issue a Request for Qualifications (RFQ) to select the most qualified candidate interested in entering into a long-term ground lease for 1,678 acres of County owned property adjacent to the Fink Road Landfill. On December 8, 2009, the County entered into a 12-month Exclusive Right to Negotiate Agreement with JKB Development, Inc. (JKB Development), formally JKB Energy, for a long-term farming and potential solar farm lease for this location. At that time, the Board also authorized the Director of Environmental Resources to negotiate and enter into a contract with M.A. Garcia Agrilabor, Inc., for farm management services for the almond orchard during the negotiation period. On December 21, 2010, the Board of Supervisors approved a one-year extension to the Twelve Month Exclusive Right to Negotiate Agreement with JKB Development. At that time, JKB Development also took over the Agricultural Lease Agreement. On December 20, 2011, the Board approved a second one-year extension to both the Exclusive Right to Negotiate Agreement and the Agricultural Lease Agreement.

The Exclusive Right to Negotiate Agreement and the Agriculture Lease Agreement with JKB Development are both set to expire on December 28, 2012. At this time, staff is recommending separating the Exclusive Right to Negotiate Agreement from the Agricultural Lease Agreement (Agreement) in order to provide more continuity for the farming operation. The Agreement would be effective December 29, 2012, through December 28, 2015, with two possible one-year extensions. Correspondingly, if the County separately enters into a longer term Exclusive Right to Negotiate Agreement, JKB Development would likely be in a more favorable position to secure a Power Purchase Agreement for a long-term solar project. Staff is currently working with JKB to finalize the Exclusive Right to Negotiate Agreement as well as a Land Option and Lease Agreement.

## Approval of a Three-Year Agricultural Lease with JKB Development, Inc., for County Owned Property Adjacent to the Fink Road Landfill

As proposed, the Agreement requires at the end of year two, that JKB Development confirm in writing their continued interest in the Agreement in order to exercise two possible additional one-year extensions to the Agreement. If such interest is not confirmed in writing, the County would then have sufficient time to put the agricultural lease back out to a competitive Request for Proposals process before the lease expires at the end of year three. The farm consists of approximately 1,678 acres including roughly 333 acres of almond orchard, 979 acres of dry land farm area, 354 acres of grazing land, and 12 acres formerly planted in almond trees. The proposed farming lease was originally negotiated using appraisal research provided by an independent professional real estate appraiser, Cogdill and Giomi, to ensure the County receives the appropriate property rental rate. The proposed Agreement is included as Attachment A.

### **POLICY ISSUES:**

Approval of this agenda item to enter into a three-year Agricultural Lease Agreement with JKB Development, Inc., is consistent with the Board's priorities of A Well Planned Infrastructure System, A Strong Agricultural Economy/Heritage, and the Efficient Delivery of Public Services. Continuing the farming activities is the best use of this County property in the near term.

### **STAFFING IMPACTS:**

Staff from the Department of Environmental Resources will continue to oversee the Agricultural Lease Agreement.

### **CONTACT PERSON:**

Jami Aggers, Interim Director of Environmental Resources. Telephone: (209) 525-6770

**FARM LEASE  
(Fink Road)**

This lease is entered into on December 11, 2012 by and between the County of Stanislaus, a political subdivision of the State of California, referred to in this lease as "County," and JKB Development, Inc. a California corporation referred to in this lease as "Tenant."

**Recitals**

A. County is the owner of certain real property in the County of Stanislaus, State of California, described on Exhibit "A" which is attached and made a part of this lease (referred to in this lease as "the Premises").

B. Tenant desires to lease the Premises (together with certain appurtenant rights and easements) for the purpose and maintaining farming operations ("Farming") on the Premises in accordance with the agreement of the parties as set forth in this lease.

**ARTICLE 1 LEASE OF PREMISES AND TERM OF LEASE**

**Agreement to Lease**

Section 1.01. For and in consideration of the rents to be paid and covenants to be performed by Tenant under this lease, County agrees to lease the Premises to Tenant, and Tenant agrees to lease the Premises from County, on the terms and conditions set forth in this lease. Except as expressly otherwise provided in this lease, "the Premises" includes the real property plus any appurtenances and easements.

**Term of Lease**

Section 1.02. Term. The term shall commence at 12:01 a.m., on December 29, 2012, ("Commencement Date") and shall continue thereafter to 11:59 p.m., on December 28, 2015, (the "Termination Date"), unless sooner terminated as hereinafter provided in this Agreement, or as renewed as herein provided (the "Term"). Except as otherwise specifically stated in this Agreement or in any subsequent amendments hereof, the terms and conditions of this Agreement shall remain in effect following any extension, renewal or holdover of the original Term.

Section 1.03. Option to Renew. The Tenant has the option to renew this Agreement for two one-year periods after the expiration of the original term, for a total of five years. The Tenant shall exercise these options in writing at least 12 months prior to the termination of the then existing term.

Section 1.04. Hold Over. If Tenant holds over in occupancy of the Premises or any portion thereof after the expiration of the Term, during such hold over period, Tenant shall be subject to the terms and conditions specified in this Agreement, so far as applicable. County consents to one holdover period for such a period of time as may be required by Tenant to remove its equipment and fixtures from the Premises, not to exceed 60 days.

Section 1.05. Exercise of Solar Lease Option. Together, Golden Hills Solar, LLC, a California limited liability company ("Optionee") acting cooperatively with the Tenant, are engaged in an effort to procure a Solar Generating Facility Land Option and Lease Agreement (the "Option and Lease Agreement") from the County in connection with Optionee's intended development, construction and operation of a solar energy generating facility with a nameplate capacity of approximately seventy (70) MW AC (the "Generating Facility") on the Premises. County and Lessee agree that this Farming Lease shall terminate

upon the effective date of Optionee's exercise of the Option and Lease Agreement. County shall exercise all reasonable efforts to deliver to the Tenant within 5 days of County's receipt, Optionee's notice of intent to exercise the Option and Lease Agreement. Notwithstanding section 1.04, upon receipt of the Optionee's notice, Lessee shall commence preparations for the vacation of the Premises no later than the effective date of the Optionee's exercise of the Option and Lease Agreement. Tenant hereby waives any claim for compensation or damages arising out of the early termination of this Lease by reason of Optionee's exercise of the Option and Lease Agreement, including but not limited to the value of improvements, bonus value, lost goodwill, lost profits, right to harvest crops, the value of crops, or relocation costs.

## ARTICLE 2 RENT

### **Minimum Rent**

Section 2.01. The Rent for one year shall be comprised of \$106,000.00, ("Base Rent") payable not later than February 1, of each year and all proceeds from any sub-lease relating to dry-farming. Base Rent shall increase by 2% per year for each option period, so that in year 4 Tenant shall pay \$108,120 and in year 5, Tenant shall pay \$110,282.00. Tenant shall exercise good faith and make all commercially reasonable efforts to timely enter into a sub-lease for the dry-farming area each year.

Section 2.02. Tenant shall also pay to County as additional rent the sum of 20% of all gross revenue received by Tenant in excess of \$1,055,700.00 (the "Threshold Amount") from the sale of the almond crop. Additional rent shall increase by 2% per year for each option period, so that in year 4 Tenant shall pay 22%, and in year 5 Tenant shall pay 24% of the excess gross revenue over the Threshold Amount.

### **No Partnership or Joint Venture**

Section 2.02. Nothing in this lease shall be construed to render County in any way or for any purpose a partner, joint venturer, or associate in any relationship with Tenant other than that of County and Tenant, nor shall this lease be construed to authorize either to act as agent for the other.

## ARTICLE 3 USE OF PREMISES

### **Permitted Use**

Section 3.01. Tenant shall use the Premises solely for farming consistent with the farming uses of the preceding year. Tenant shall use its best efforts to use and permit use of the Premises for purposes permitted by this Section 3.01, which in Tenant's reasonable opinion will maximize gross income, provided that County and Tenant understand that cultural practices relating to pruning and winter sanitation shall be performed as needed in Tenant's sole discretion.

### **Compliance with Laws**

Section 3.02. Tenant shall, at Tenant's own cost and expense, comply with all statutes, ordinances, regulations, and requirements of all governmental entities, both federal and state and county or municipal, including those requiring capital improvements to the Premises or Improvements, relating to any use and occupancy of the Premises (and specifically not limited to any particular use or occupancy by Tenant), whether those statutes, ordinances, regulations, and requirements are now in force or are subsequently enacted. If any license, permit, or other governmental authorization is required for the lawful use or occupancy of the Premises or any portion of the Premises, Tenant shall procure and maintain it throughout the term of this lease. The judgment of any court of competent jurisdiction, or the admission

by Tenant in a proceeding brought against Tenant by any government entity, that Tenant has violated any such statute, ordinance, regulation, or requirement shall be conclusive as between County and Tenant and shall constitute grounds for termination of this lease by County.

### **Prohibited Uses**

Section 3.03. Tenant shall not use or permit the Premises or any portion of the Premises to be improved, developed, used, or occupied in any manner or for any purpose that is in any way in violation of any valid law, ordinance, or regulation of any federal, state, county, or local governmental agency, body, or entity. Furthermore, Tenant shall not maintain, commit, or permit the maintenance or commission of any nuisance as now or hereafter defined by any statutory or decisional law applicable to the Premises or any part of the Premises. Finally, Tenant shall maintain its operations (i.e. continued farming operations) and refrain from any other activity that place in jeopardy the land use designation of the Premises as agricultural reserve.

### **Agricultural Practices**

Section 3.04. Tenant shall follow the agricultural practices that are generally recommended for and that are best adapted to this type of farm and appropriate for the locality. Throughout the lease term, Tenant shall keep and maintain the Premises in approximately the same condition as it is at the commencement of the lease term, normal aging of the trees and wear and tear excepted. The Tenant shall perform weed abatement and erosion control on any un-farmed areas.

### **Costs of Operations**

Section 3.05. Tenant shall pay for the all costs associated with the Premises, including but not limited to labor, utilities, water, power, machinery, equipment, fertilizer, insecticides necessary and appropriate to operate and manage the Property. Notwithstanding the foregoing, County shall be responsible to either pay or reimburse Tenant for any costs associated with the repair or replacement of irrigation pumps and ancillary equipment in an amount no to exceed \$40,000.00 per year. Tenant shall obtain County's approval for all non-emergency pump repairs.

### **Insecticides; Pesticides:**

Section 3.06. Tenant shall store and use pesticides, fertilizers and other chemicals, and dispose of containers in accordance with state and federal laws and regulations. Tenant shall maintain and furnish to County at County's request a field by field record of the amount, kinds and dates of applications of fertilizers and pesticides.

### **Grazing Lease**

Section 3.07. Tenant acknowledges that the County leases adjacent to the Property being farmed by Tenant and Tenant agrees to cooperate with the grazing and/or farming lease tenant so that neither farming operations nor grazing operations interfere with the other. Tenant further agrees that the County is not responsible for any damage to or interference with the farming operations under this Lease.

## ARTICLE 4 TAXES AND UTILITIES

### **Possessor Interest And Personal Property Taxes**

#### Section 4.01.

A. Tenant understands and acknowledges that its leasehold interest hereunder may be subject to a possessory interest tax or property tax that may be levied on Tenant by County of Stanislaus pursuant to Section 107 of the Revenue and Taxation Code, or other provision of state or local law. The Tenant is required to pay any such tax directly to County.

B. Tenant shall pay prior to delinquency all taxes assessed against and levied upon trade fixtures, furnishings, equipment and all other personal property of Tenant contained in the Premises or elsewhere. Tenant shall cause said trade fixtures, furnishings, equipment and all other personal property to be assessed and billed separately from the real property of County.

### **Utilities**

Section 4.02. Tenant shall pay or cause to be paid, and hold County and County's property including the Premises free and harmless from, all charges for the furnishing of gas, telephone service, and other public utilities to the Premises during the lease's term and for the removal of garbage and rubbish from the Premises during the term of this lease, except that County shall advance all costs associated with the purchase of irrigation water and electricity. County and Tenant acknowledge that there are substantial costs associated with the purchase of irrigation water and electricity required for the irrigation of the almond orchards located on the Premises. Tenant covenants that it shall reimburse to County a sum equal to the advances paid by County for irrigation water and electricity. Further, Tenant covenants that it shall pay such reimbursement from the first payment(s) received from any third party as payment for the almond crop harvested from the Premises but in no event no later than January 31, 2012. County shall promptly forward all bills for water and electricity to Tenant.

## ARTICLE 5 REPAIRS AND RESTORATION

### **Maintenance by Tenant**

Section 5.01. At all times during the term of this lease Tenant shall, at Tenant's own cost and expense, keep and maintain the Premises, all Improvements, and all appurtenances (including landscaped and parking areas) now or hereafter on the Premises in a first-class condition, in good order and repair, and in a safe and clean condition.

### **Condition of the Property**

Section 5.02. Tenant hereby accepts the property "as is" and in the condition existing as of the Commencement Date of the date that Tenant takes possession of the Property, whichever is earlier, and subject to all applicable zoning, municipal, county and state laws, ordinances and regulations governing and regulating the use of the Property, and any covenants or restrictions of record. Tenant has determined that the Property is acceptable for Tenant's use and Tenant acknowledges that neither County nor any agent of County has made any representation or warranty with respect to the Property; the condition of the Property; the soil or the crops; the productivity of the crops; the cost of the production; the number of acres in production; its suitability or fitness for the conduct of Tenant's business or for any other purpose.

## ARTICLE 6 INDEMNITY AND INSURANCE

### **Indemnity Agreement**

Section 6.01. Tenant shall indemnify and hold County and County's property, including the Premises and Improvements now or hereafter on the Premises, free and harmless from any and all liability, claims, loss, damages, or expenses resulting from Tenant's occupation and use of the Premises, specifically including, without limitation, any liability, claim, loss, damage, or expense arising by reason of the following:

(a) The death or injury of any person, including Tenant or any person who is an employee or agent of Tenant, or by reason of the damage to or destruction of any property, including property owned by Tenant or by any person who is an employee or agent of Tenant, from any cause whatever while that person or property is in or on the Premises or in any way connected with the Premises or with any of the Improvements or personal property on the Premises;

(b) The death or injury of any person, including Tenant or any person who is an employee or agent of Tenant, or by reason of the damage to or destruction of any property, including property owned by Tenant or any person who is an employee or agent of Tenant, caused or allegedly caused by either (1) the condition of the Premises or some building or improvement on the Premises, or (2) some act or omission on the Premises of Tenant or any person in, on, or about the Premises with the permission and consent of Tenant;

(c) Any work performed on the Premises or materials furnished to the Premises at the instance or request of Tenant or any person or entity acting for or on behalf of Tenant; or

(d) Tenant's failure to perform any provision of this lease or to comply with any requirement of law or any requirement imposed on Tenant or the Premises by any duly authorized governmental agency or political subdivision.

**Insurance.** Tenant shall obtain the following insurance:

### **General Liability**

Section 6.02. \$1,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project, or the general aggregate limit shall be twice the required occurrence limit.

### **Liability Insurance**

Section 6.03. Tenant shall, at Tenant's own cost and expense, procure and maintain during the entire term of this lease a broad form comprehensive coverage policy of public liability insurance and workers compensation insurance that complies with the Stanislaus County requirements.



### **Auto Liability**

Section 6.04. Owned/Non-owned automobile liability insurance providing combined single limits covering bodily injury liability with limits or no less than \$100,000 per accident, and providing property damage liability of no less than \$100,000 per accident.

### **Workers Compensation**

Section 6.05. Workers' Compensation insurance as required by the Labor Code of the State of California.

### **Deductibles**

Section 6.06. Any deductibles, self-insured retentions or named insureds must be declared in writing and approved by County. At the option of the County, either: the insurer shall reduce or eliminate such deductibles, self-insured retentions or named insureds; or the Tenant shall provide a bond, cash or letter of credit guaranteeing payment of the self-insured retentions deductible or payment of any and all costs, losses, related investigations, claims administration and defense expenses.

### **Endorsements**

Section 6.07. The insurance policies are to contain, or be endorsed to contain the following provisions:

(a) General Liability: Tenant shall provide a separate endorsement naming County and County's officers, officials, employees, and volunteers as additional insureds. The coverage shall contain no special limitations on the scope of protection afforded to the County or County's officers, officials, employees or volunteers.

(b) Primary Coverage: the Tenant's insurance shall be primary insurance over and above any other insurance held by the County and County's officers, officials, employees and agents. Any insurance or self-insurance maintained by the County or County's officers, officials, employees or agents shall be excess of the Tenant's insurance and shall not contribute with Tenant's insurance.

(c) Workers Compensation – Subrogation: The Tenant's insurer shall agree to waive all rights of subrogation against the County and County's officers, officials, employees and volunteers for losses arising from the performance of or the omission to perform any term or condition of this Agreement by the Tenant.

### **All Insurance**

Section 6.08. Each insurance policy required by this section shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in

limits except after thirty (30) day's prior written notice by certified mail, return receipt requested, has been given to County.

Insurance shall be placed with a California admitted insurers (licensed to do business in California) or other insurer as approved by the County. All insurance shall have a Best's rating of no less than B+:VII or as approved by the County.

Prior to the effective date of the Lease, Tenant shall furnish to County with certificates of insurance and with original endorsements effecting coverage required by this section. The certificates and endorsements for each insurance policy are to be signed by a person authorized by the insurer to bind coverage on its behalf. All certificates and endorsements shall be received and in County's sole and absolute discretion, approved by County before any other term or condition of this Agreement is performed by Tenant. County has the right to require complete copies of all required insurance policies and endorsements, at any time.

#### ARTICLE 7 ASSIGNMENTS AND SUBLEASING

##### **No Assignment Without County's Consent**

Section 7.01. Tenant may assign this lease or any interest in this lease, subject to the prior written consent of County.

#### ARTICLE 8 DEFAULT AND REMEDIES

##### **Continuation of Lease in Effect**

Section 8.01. Should Tenant breach this lease and abandon the Premises before the natural expiration of the lease's term, County may continue this lease in effect by not terminating Tenant's right to possession of the Premises, in which event County shall be entitled to enforce all County's rights and remedies under this lease, including the right to recover the rent specified in this lease as it becomes due under this lease.

##### **Termination and Unlawful Detainer**

Section 8.02. In the event of a tenant default under this lease, County may terminate this lease by written notice to Tenant and may also do the following:

(a) Bring an action to recover the following from Tenant:

(1) The worth at the time of award of the unpaid rent that had been earned at the time of termination of the lease;

(2) The worth at the time of award of the amount by which the unpaid rent that would have been earned after termination of the lease until the time of award exceeds the amount of rental loss that Tenant proves could have been reasonably avoided;

(3) The worth at the time of award of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of rental loss that Tenant proves could be reasonably avoided; and

(4) Any other amount necessary to compensate County for all detriment proximately caused by Tenant's failure to perform Tenant's obligations under this lease; and

(b) Bring an action, in addition to or in lieu of the action described in subsection (a) of this section, to reenter and regain possession of the Premises in the manner provided by the laws of unlawful detainer of the State of California then in effect.

### **Breach and Default by Tenant**

Section 8.03. All covenants and agreements contained in this lease are declared to be conditions to this lease and to the term hereby leased to Tenant. Should Tenant fail to perform any covenant, condition, or agreement contained in this lease and the default is not be cured within 30 days after written notice of the default is served on Tenant by County, then Tenant shall be in default under this lease. In addition to Tenant's failure to perform any covenant, condition, or agreement contained in this lease within the cure period permitted by this section, the following shall constitute a default by Tenant under this lease:

(a) The appointment of a receiver to take possession of the Premises or Improvements, or of Tenant's interest in, to, and under this lease, the leasehold estate or of Tenant's operations on the Premises for any reason, including, without limitation, assignment for benefit of creditors or voluntary or involuntary bankruptcy proceedings, when not released within 60 days;

(b) An assignment by Tenant for the benefit of creditors; or the voluntary filing by Tenant or the involuntary filing against Tenant of a petition, other court action, or suit under any law for the purpose of (1) adjudicating Tenant a bankrupt, (2) extending time for payment, (3) satisfaction of Tenant's liabilities, or (4) reorganization, dissolution, or arrangement on account of, or to prevent, bankruptcy or insolvency; provided, however, that in the case of an involuntary proceeding, if all consequent orders, adjudications, custodies, and supervisions are dismissed, vacated, or otherwise permanently stayed or terminated within 90 days after the filing or other initial event, then Tenant shall not be in default under this Section; and

(c) The subjection of any right or interest of Tenant to or under this lease to attachment, execution, or other levy, or to seizure under legal process when the claim against Tenant is not released within 90 days.

### **Cumulative Remedies**

Section 8.04. The remedies given to County in this Article shall not be exclusive but shall be cumulative with and in addition to all remedies now or hereafter allowed by law and elsewhere provided in this lease.

### **Waiver of Breach**

Section 8.05. The waiver by County of any breach by Tenant of any of the provisions of this lease shall not constitute a continuing waiver or a waiver of any subsequent breach by Tenant of either the same or a different provision of this lease.

### **Surrender of Premises**

Section 8.06. On expiration or earlier termination of this lease, Tenant shall surrender the Premises and all Improvements in or on the Premises to County in as good, safe, and clean condition as practicable, reasonable wear and tear excepted.

## ARTICLE 9 OTHER PROVISIONS

### **Force Majeure**

Section 9.01. Except as otherwise expressly provided in this lease, if the performance of any act required by this lease to be performed by either County or Tenant is prevented or delayed by reason of any act of God, strike, lockout, labor trouble, inability to secure materials, restrictive governmental laws or regulations, or any other cause (except financial inability) not the fault of the party required to perform the act, the time for performance of the act will be extended for a period equivalent to the period of delay and performance of the act during the period of delay will be excused. However, nothing contained in this section shall excuse the prompt payment of rent by Tenant as required by this lease or the performance of any act rendered difficult or impossible solely because of the financial condition of the party required to perform the act.

### **Attorneys' Fees**

Section 9.02. Should any litigation be commenced between the parties to this lease concerning the Premises, this lease, or the rights and duties of either in relation thereto, the party prevailing in that litigation shall be entitled, in addition to any other relief that may be granted in the litigation, to a reasonable sum as and for that party's attorneys' fees in that litigation that shall be determined by the court in that litigation or in a separate action brought for that purpose.

### **Notices to County**

Section 9.03. Except as otherwise expressly provided by law, any and all notices or other communications required or permitted by this lease or by law to be served on or given to County by Tenant or any Lender described in Article 6 of this lease shall be in writing and shall be deemed duly served and given when personally delivered to County, to any managing employee of County, or, in lieu of personal service, when deposited in the United States mail, first-class postage prepaid, and sent by express mail that allows for tracking, addressed to County:

Stanislaus County  
Department of Environmental Resources  
3800 Cornucopia Way  
Modesto, CA 95358  
Attn: Jami Aggers

County may change County's address for the purpose of this Section by giving written notice of that change to Tenant in the manner provided in Section 9.04; Tenant shall then transmit a copy of that notice to any Lender described in Article 6 of this lease.

### **Notices to Tenant**

Section 9.04. Except as otherwise expressly provided by law, any and all notices or other communications required or permitted by this lease or by law to be served on or given to Tenant by County shall be in writing and shall be deemed duly served and given when personally delivered to Tenant, any managing employee of Tenant, or, in lieu of personal service, when deposited in the United States mail, first-class postage prepaid, and sent by express mail that allows for tracking, addressed to Tenant:

JKB Development, Inc.  
941 E. Monte Vista

Turlock, CA 95382  
Attn: James Brenda

Tenant may change its address for the purpose of this section by giving written notice of that change to County in the manner provided in Section 12.03 of this lease.

**Governing Law**

Section 9.05. This lease, and all matters relating to this lease, shall be governed by the laws of the State of California in force at the time any need for interpretation of this lease or any decision or holding concerning this lease arises.

**Binding on Heirs and Successors**

Section 9.06. This lease shall be binding on and shall inure to the benefit of the heirs, executors, administrators, successors, and assigns of the parties hereto, but nothing in this section shall be construed as a consent by County to any assignment of this lease or any interest in the lease by Tenant except as provided in Article 10 of this lease.

**Partial Invalidity**

Section 9.07. If any provision of this lease is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions of this lease shall remain in full force and effect unimpaired by the holding.

**Sole and Only Agreement**

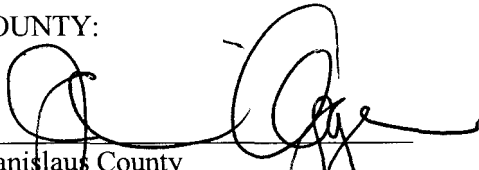
Section 9.08. This instrument constitutes the sole and only agreement between County and Tenant relating to the one year lease for farming of the Premises. The County and Tenant may have other agreements relating to the leasing of the Premises to Tenant, the construction of the Solar Farm described in this lease on the Premises.

**Time of Essence**

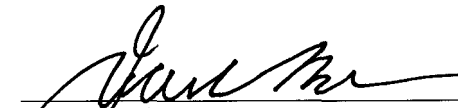
Section 9.09. Time is expressly declared to be of the essence of this lease.

EXECUTED on December 11, 2012, at Modesto, California.

COUNTY:

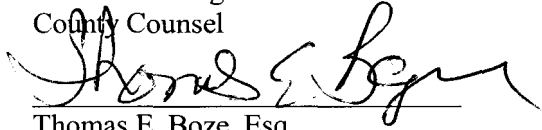
  
Stanislaus County  
Jami Aggers, Interim Director  
Department of Environmental Resources

TENANT:

  
JKB Development, Inc.  
James Brenda, President

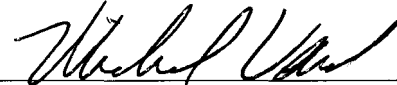
APPROVED AS TO FORM:

John P. Doering  
County Counsel



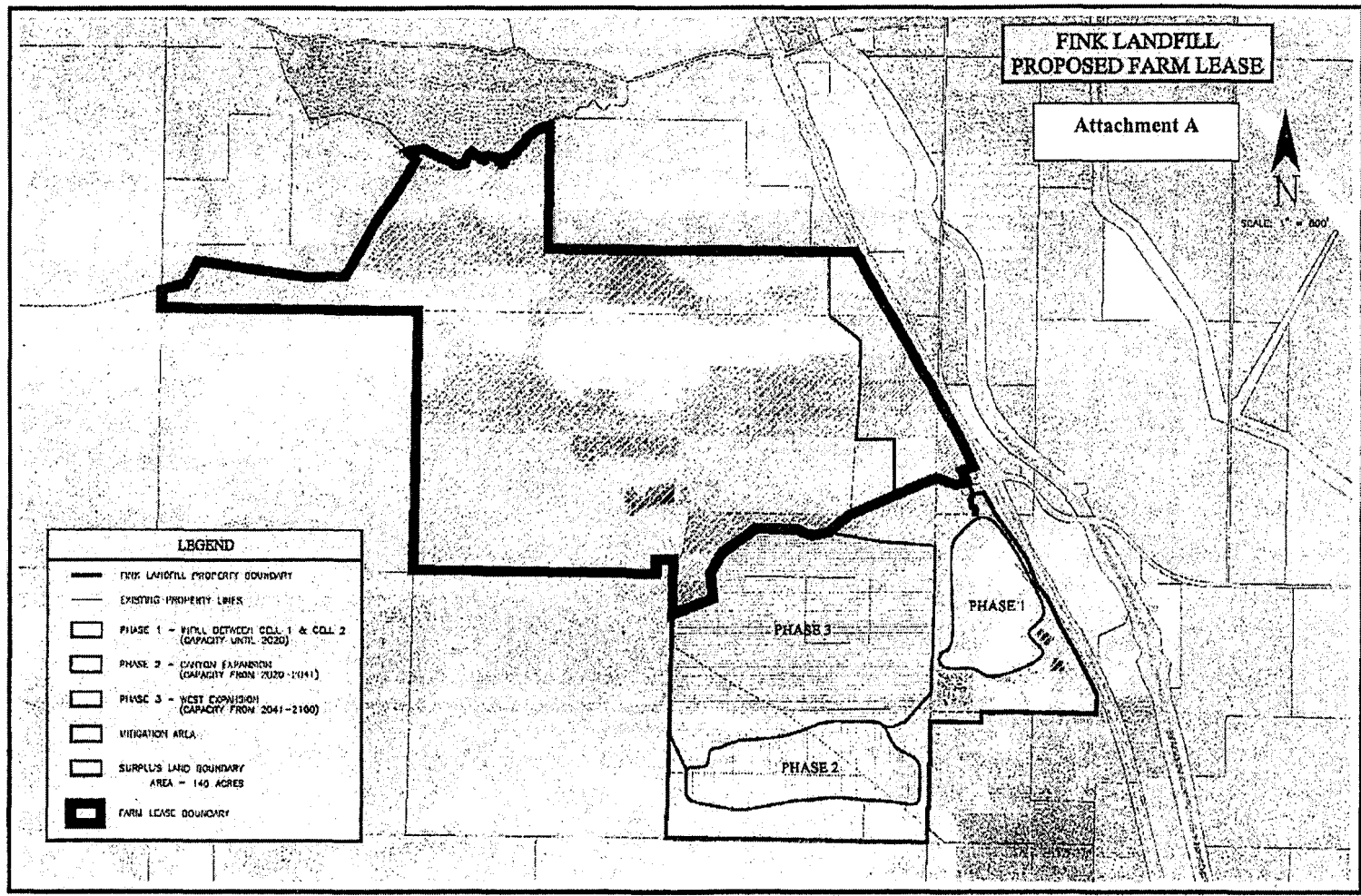
Thomas E. Boze, Esq.  
Deputy County Counsel

APPROVED AS TO FORM:



Michael S. Warda, Esq.

|



**Attachment "A" Land Use Map**

Note: In early 2012, 12.6 acres of almond trees were removed by PG&E to meet Federal and State transmission line clearance requirements. This reduced the producing almond tree acreage from approximately 345 to 332.4 acres.



**Department of Environmental Resources**  
3800 Cornucopia Way, Suite C,  
Modesto, Ca 95358-9492  
Phone: (209) 525-6700  
Fax: (209) 525-6774

**AMENDMENT NO. 1  
TO  
FARM LEASE AGREEMENT**

**(Fink Road)**

This Amendment No. 1 to Farm Lease Agreement ("Amendment No. 1") by and between the County of Stanislaus ("Landlord") and JKB Development, Inc., a California corporation ("Tenant") is made and entered into on May 19, 2015.

Whereas, the Landlord and JKB Development, Inc. entered into a Farm Lease Agreement dated December 11, 2012, (the "Short-Term Lease"); and

Whereas, the Landlord and Tenant mutually agree to extend the term of the Lease for an additional year commencing on December 29, 2015, and terminating on December 29, 2016; and

Whereas, Section 1.03 of the Lease provides that the Lease may be renewed for two one-year periods after the expiration of the original term for a total of five years; and

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

Now, therefore, the Landlord and Tenant agree as follows:

1. Section 1.02 of the Lease is amended to read as follows:

"The initial term of this lease shall be for the period of three (3) years, commencing at 12:01 a.m., on December 29, 2012, ("Commencement Date") and shall continue thereafter to 11:59 p.m., on December 28, 2015, (the "Termination Date"), unless sooner terminated as hereinafter provided in this Agreement, or as renewed as herein provided (the "Term").

An extended term of the Lease shall be for a period commencing at 12:01 a.m. on December 29, 2015, and shall continue thereafter to 11:59 p.m., on December 28, 2016, unless sooner terminated as hereinafter provided in this Agreement, or as renewed as herein provided (the "Term"). Except as otherwise specifically stated in this Agreement or in any subsequent amendments hereof, the terms and conditions of this Agreement shall remain in effect following any extension, renewal or holdover of the original Term."

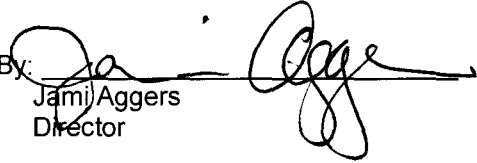
2. Except as provided in this Amendment, all other terms and conditions of the Lease remain unchanged.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives, on the date and year first written above.

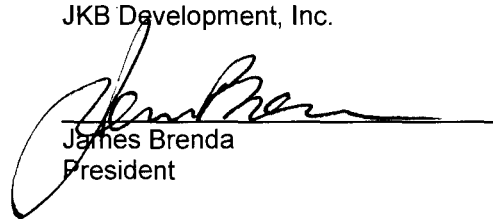
[Signatures appear on next page]



COUNTY OF STANISLAUS  
Department of Environmental Resources


By:   
Jami Aggers  
Director

TENANT  
JKB Development, Inc.

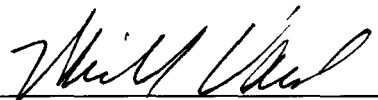
  
James Brenda  
President

APPROVED AS TO FORM:

John P. Doering  
County Counsel

By:   
Thomas E. Boze  
Deputy County Counsel

APPROVED AS TO FORM:

  
Michael S. Warda, Esq.



**Department of Environmental Resources**  
3800 Cornucopia Way, Suite C,  
Modesto, Ca 95358-9492  
Phone: (209) 525-6700  
Fax: (209) 525-6774

**AMENDMENT NO. 2  
TO  
FARM LEASE AGREEMENT**

**(Fink Road)**

This Amendment No. 2 to Farm Lease Agreement ("Amendment No. 2") by and between the County of Stanislaus ("Landlord") and JKB Development, Inc., a California corporation ("Tenant") is made and entered into on MARCH 25, 2016.

Whereas, the Landlord and JKB Development, Inc. entered into a Farm Lease Agreement dated December 11, 2012, (the "Short-Term Lease"); and

Whereas, Section 1.03 of the Lease provides that the Lease may be renewed for two one-year periods after the expiration of the original term for a total of five years; and

Whereas, Amendment No. 1 extended the term of the Lease for an additional year commencing on December 29, 2015, and terminating on December 28, 2016; and

Whereas, the Landlord and Tenant mutually agree to extend the term of the lease for an additional year commencing on December 29, 2016, and terminating on December 28, 2017; and

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

Now, therefore, the Landlord and Tenant agree as follows:

1. Section 1.02 of the Lease is amended to read as follows:

"The initial term of this lease shall be for the period of three (3) years, commencing at 12:01 a.m., on December 29, 2012, ("Commencement Date") and shall continue thereafter to 11:59 p.m., on December 28, 2015, (the "Termination Date"), unless sooner terminated as hereinafter provided in this Agreement, or as renewed as herein provided (the "Term").

The first extended term of the Lease shall be for a period commencing at 12:01 a.m. on December 29, 2015, and shall continue thereafter to 11:59 p.m., on December 28, 2016, unless sooner terminated as hereinafter provided in this Agreement, or as renewed as herein provided (the "Term").

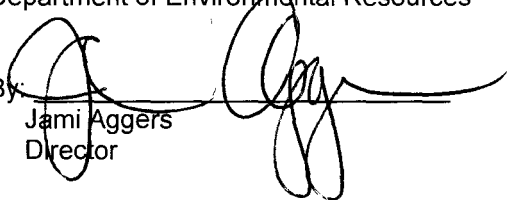
The second extended term of the Lease shall be for a period commencing at 12:01 a.m. on December 29, 2016, and shall continue thereafter to 11:59 p.m., on December 28, 2017, unless sooner terminated as hereinafter provided in this Agreement, or as renewed as herein provided (the "Term"). Except as otherwise specifically stated in this Agreement or in any subsequent amendments hereof, the terms and conditions of this Agreement shall remain in effect following any extension, renewal or holdover of the original Term."

2. Except as provided in this Amendment, all other terms and conditions of the Lease remain unchanged.

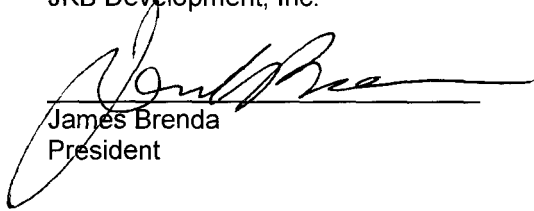
IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives, on the date and year first written above.

[Signatures appear on next page]

COUNTY OF STANISLAUS  
Department of Environmental Resources


By:   
Jami Aggers  
Director

TENANT  
JKB Development, Inc.

  
James Brenda  
President

APPROVED AS TO FORM:

John P. Doering  
County Counsel

By:   
Amanda DeHart  
Deputy County Counsel

APPROVED AS TO FORM:

  
Michael S. Warda, Esq.



**Department of Environmental Resources**  
3800 Cornucopia Way, Suite C,  
Modesto, Ca 95358-9492  
Phone: (209) 525-6700  
Fax: (209) 525-6774

**AMENDMENT NO. 3  
TO  
FARM LEASE AGREEMENT**

**(Fink Road)**

This Amendment No. 3 to Farm Lease Agreement ("Amendment No. 3") by and between the County of Stanislaus ("Landlord") and JKB Development, Inc., a California corporation ("Tenant") is made and entered into on January 3<sup>rd</sup>, 2018.

Whereas, the Landlord and JKB Development, Inc. entered into a Farm Lease Agreement dated December 11, 2012, (the "Short-Term Lease"); and

Whereas, Section 1.03 of the Lease provides that the Lease may be renewed for two one-year periods after the expiration of the original term for a total of five years; and

Whereas, Amendment No. 1 and Amendment No. 2 extended the term of the Lease for an additional two years commencing on December 29, 2015, and terminating on December 28, 2017; and

Whereas, Landlord and Tenant mutually agree to extend the term of the lease through March 15, 2018, to allow parties additional time to complete the accounting for the final lease payment, which is due mid-February 2018, and to potentially discuss an extension to the Lease; and

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

Now, therefore, the Landlord and Tenant agree as follows:

1. Section 1.02 of the Lease is amended to read as follows:

"The initial term of this lease shall be for the period of three (3) years, commencing at 12:01 a.m., on December 29, 2012, ("Commencement Date") and shall continue thereafter to 11:59 p.m., on December 28, 2015, (the "Termination Date"), unless sooner terminated as hereinafter provided in this Agreement, or as renewed as herein provided (the "Term").

The first extended term of the Lease shall be for a period commencing at 12:01 a.m. on December 29, 2015, and shall continue thereafter to 11:59 p.m., on December 28, 2016, unless sooner terminated as hereinafter provided in this Agreement, or as renewed as herein provided (the "Term").

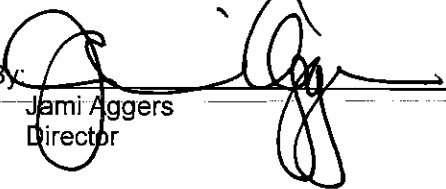
The second extended term of the Lease shall be for a period commencing at 12:01 a.m. on December 29, 2016, and shall continue thereafter to 11:59 p.m., on December 28, 2017, unless sooner terminated as hereinafter provided in this Agreement, or as renewed as herein provided (the "Term").

The third extended term of the Lease shall be for a period commencing at 12:01 a.m. on December 29, 2017, and shall continue thereafter to 11:59 p.m. on March 15, 2018, unless sooner terminated as hereinafter provided in this Agreement, or as renewed as herein provided (the "Term"). Except as otherwise specifically stated in this Agreement or in any subsequent amendments hereof, the terms and conditions of this Agreement shall remain in effect following any extension, renewal or holdover of the original Term."


2. Except as provided in this Amendment, all other terms and conditions of the Lease remain unchanged.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives, on the date and year first written above.

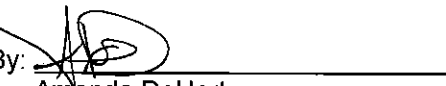
COUNTY OF STANISLAUS  
Department of Environmental Resources

By:   
Jami Aggers  
Director

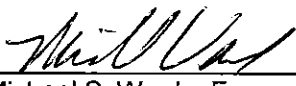
TENANT  
JKB Development, Inc.

By:   
James Brenda  
President

APPROVED AS TO FORM:  
John P. Doering  
County Counsel

By:   
Amanda DeHart  
Deputy County Counsel

APPROVED AS TO FORM:

By:   
Michael S. Warda, Esq.



Department of Environmental Resources  
3800 Cornucopia Way, Suite C,  
Modesto, Ca 95358-9492  
Phone: (209) 525-6700  
Fax: (209) 525-6774

**AMENDMENT NO. 4  
TO  
FARM LEASE AGREEMENT**

**(Fink Road)**

This Amendment No. 4 to Farm Lease Agreement ("Amendment No. 4") by and between the County of Stanislaus ("Landlord") and JKB Development, Inc., a California corporation ("Tenant") is made and entered into on March 7, 2018.

Whereas, the Landlord and JKB Development, Inc. entered into a Farm Lease Agreement dated December 11, 2012, (the "Short-Term Lease"); and

Whereas, Amendment No. 1, Amendment No. 2, and Amendment No. 3 extended the term of the Lease for an additional two years, terminating on March 15, 2018; and

Whereas, the Landlord and Tenant mutually agree to extend the term of the lease an additional year; and

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

Now, therefore, the Landlord and Tenant agree as follows:

1. Article 1 "Lease of Premises and Term of Lease" – Section 1.02 is amended to read as follows:

"Section 1.02. Term. The initial term of this lease shall be for the period of three (3) years, commencing at 12:01 a.m., on December 29, 2012, ("Commencement Date") and shall continue thereafter to 11:59 p.m., on December 28, 2015.

The first extended term of the Lease shall be for a period commencing at 12:01 a.m. on December 29, 2015, and shall continue thereafter to 11:59 p.m., on December 28, 2016.

The second extended term of the Lease shall be for a period commencing at 12:01 a.m. on December 29, 2016, and shall continue thereafter to 11:59 p.m., on December 28, 2017.

The third extended term of the Lease shall be for a period commencing at 12:01 a.m. on December 29, 2017, and shall continue thereafter to 11:59 p.m. on December 31, 2018, (the "Termination Date"), unless sooner terminated as hereinafter provided in this Agreement. Except as otherwise specifically stated in this Agreement or in any subsequent amendments hereof, the terms and conditions of this Agreement shall remain in effect following any extension, renewal or holdover of the original Term"

2. Article 2 "Rent – Minimum Rent" is amended to read as follows:

**"Minimum Rent**

Section 2.01. The Rent for one year shall be comprised of \$106,000.00, ("Base Rent") payable no later than February 1, of each year and all proceeds from any sub-lease relating to dry-farming. Base Rent shall increase by 2% per year for the first two extended periods of the lease,

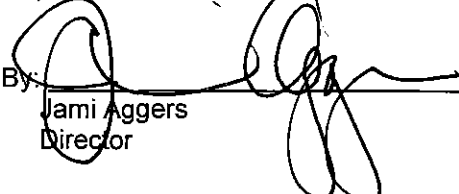
so that in year 4 Tenant shall pay \$108,120.00 and in year 5, Tenant shall pay \$110,282.00. Base Rent shall remain the same for the third extended period of the lease, so that in year 6 Tenant shall pay \$110,282.00. Tenant shall exercise good faith and make all commercially reasonable efforts to timely enter into a sub-lease for the dry-farming area each year.

Section 2.02. Tenant shall also pay to County as additional rent the sum of 20% of all gross revenue received by Tenant in excess of \$1,055,700.00 (the "Threshold Amount") from the sale of the almond crop. Additional rent shall increase by 2% per year for the first two extended periods of the lease, so that in year 4 Tenant shall pay 22% and in year 5, Tenant shall pay 24% of the excess gross revenue over the Threshold Amount. Additional rent shall remain the same for the third extended period of the lease, so that in year 6 Tenant shall pay 24% of the excess gross revenue over the Threshold Amount."

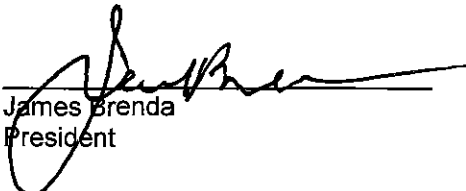
- 3. Except as provided in this Amendment, all other terms and conditions of the Lease remain unchanged.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives, on the date and year first written above.

COUNTY OF STANISLAUS  
Department of Environmental Resources

By:   
Jami Aggers  
Director

TENANT  
JKB Development, Inc.

  
James Brenda  
President

APPROVED AS TO FORM:

John P. Doering  
County Counsel

By:   
Thomas E. Boze  
Assistant County Counsel

APPROVED AS TO FORM:

  
Michael S. Warda, Esq.