Terms of Lyfted Farms Development Agreement Renewal Template(s)

Zach Drivon <zach@drivonconsulting.com>

Wed 1/10/2024 5:15 PM

To:Erica Inacio <inacioe@stancounty.com>;Jesus Marquez Mendoza <mendozaje@stancounty.com>;Thomas Boze <BOZET@stancounty.com>
Cc:James Blink <bob@lyftedfarms.com>;Henry Miller <henry@peloruscg.com>;Smith, Robert M. <Robert.Smith@klgates.com>

Good Afternoon Erica, Jesus and Tom-

First, thank you for meeting with us on Friday to discuss the terms of Development Agreement renewal for our 5266 and 5271 Jerusalem Court facilties.

Below you will find our comments on the Development Agreement Template provided during our meeting. Our team can make ourselves available to discuss this evening after 5pm or tomorrow from 8am -9am, or any time after 12pm.

1. The Form provided has a number of typos throughout, but we assume this is the result of copying the agreement from a scanned PDF and that these will be cleaned prior to distribution in the staff report.

2. Section 2.3: **(Initial Project Approvals)** This section should be amended to reflect the prior initial approval of each of the Development Agreements, and Use Permits in 2019, as well as the more recent approval and issuance of our CCA's.

3. Section 7.2: **(Term)** We understand the County's rationale in extending the term for a limited period to cover operations and approval through the anticipated effective date of a prospective cannabis tax to replace the Agreements. However, we feel that it would be short sighted and irresponsible to enter into the new Development Agreement for such a short term as that proposed, with the possibility that the cannabis tax does not pass. There has been, and continues to be, a significant commitment of financial and human resources to advance our business, and the County has an interest in continuing to receive revenue from a successful operation. Our financing partners, as well as any future partners and investors, will want to know that there is long-term stability and assurances that the project will continue to operate consistent with County regulations. We appreciate the County's willingness to consider our perspective as it relates to market pressures and reasonable assurances concerning our ongoing viability, as well as that of many other jurisdictions in adopting long-term, sustainable frameworks under which cannabis businesses may operate. Notably, Development Agreements in San Joaquin County as well as in nearby Riverbank, include 20-year terms. As you know, we initially proposed a ten-year term. We hope to continue working with the County in establishing such long-term, sustaianable framework, and hope that by our good faith efforts in doing so, we will be in a position to support the forthcoming Cannabis Tax initiative. However, for these reasons we feel strongly that the length of term for renewal should be no less than five years.

4. Section 8.1.1 **(Development of the Property/Vested Rights)**. We have serious concerns regarding this section given how broadly the language reads. It effectively would allow the County to issue building permits, allow us to complete development accordingly, but would also allow the County to require our retroactive compliance with future changes to County regulations which could require additional construction as an example. This is extremely problematic and contrary to State vested rights law. Although this is very speculative and, again, very broad, we are not comfortable waiving vested rights as Developers moving forward, given our substantial financial commitments in developing these sites thus far, as well as in consideration of our interest in recovering our investment to make these businesses profitable, not only for our ownership, but for our employees as well as the County's interest in future revenue. This Section should be stricken from the draft.

5. Section 10.5 **(Vote on Future Fees)** This provision is likely illegal as it effectively rewrites how the County runs elections and considers the validity of ballots. Accordingly, this section should also be stricken

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7. Section 25 **(Notice)** This section should be updated to be to Lyfted PMG, LLC.

8. Attachment D: **(Community Benefit Rates)**: Erica, per our brief discussion Monday evening, you acknowledged receipt of our materials in support of lowering the Community Benefit Rates, specifically for the 5271 Jerusalem Court Project, and further stated that our proposal was still "under consideration", but that "due to time constraints", the rate as proposed in the draft for the purposes of the Planning Commission Staff Report would remain the same as what is being paid currently at $70,000.00 per year, which "could be subject to change" pending County Staff's pending consideration. In response to this qualification on our proposal being under consideration with Staff's recommendation potentially subject to change we would like to make clear:

- We have no issue and agree with the $1.00/square foot cultivation rate for Nursery Activities at 5266 Jerusalem Court. We do strongly encourage the 'third party' Distribution Rate to be lowered to 1% to allow for third party business which is currently cost prohibitive at a 3% community benefit rate due to very slim margins in the wholesale market;
- As to 5271 Jerusalem Court, we accept the County's assessment of Fees based on our maximum State license allowance, but reiterate our proposal that the Community Benefit Rate should be lowered to $5/square foot, which is a modest reduction in light of other jurisdictions lowering rates from 60%-100% to support their operators who continue to endure unfavorable market conditions, as well as the nearby 360,000+ square foot cultivation facility in Riverbank currently in development under a 20-Year DA with rates starting at $2.75/sf and Maxing out at $4/sf.

In any case, we expect the County will memorialize in the Staff Reports for both hearings its pending consideration and potential willingness to adjust rates downward in light of the materials provided in support of this proposition.

Sincerely,

Zach Drivon, General Counsel
Lyfted Farms, Inc./PMG Lyfted, LLC

December 14, 2023
County of Stanislaus -
Chief Executive Office
1010 10th Street Suite 6800
Modesto, CA 95354

Renewed Development Agreement Term Proposal:
5266 Jerusalem Court (Distribution & Manufacturing)

Dear CEO Office,

This writing along with the enclosed Development Agreement Application for the continued operation of our Commercial Cannabis Business located at 5266 Jerusalem Court in Modesto shall indicate our intent to enter negotiations, in earnest, for the renewal of our current Development Agreement on revised terms.

It should be noted, that following our initial approval in 2019, the County Planning Department approved SAA PLN 2022-0019 which removed Suite 4 from the project, and relocating a portion of Nursery Cultivation space to Suite 3.

All other changes to Business Operations are addressed in the enclosed 'Business Operations Update Memo'.

Additionally, we would propose renewal on the following base terms:

Length of Term:	**Extend 10 years from March 28, 2024 (current date for natural expiration);**
Distribution Community Benefit Fee:	**1% assessed against Gross Revenues from 3rd Party Transactions; 0% fee for Self-Distribution**
Nursery Community Benefit Fee:	**$1/sf based on actual cultivation space utilized for Nursery Operations $1,975/year;**
Community Benefit Contribution:	**Pending Discussions as to Stanislaus County's forthcoming proposal for revised Community Benefit Program**
Entity Ownership Change:	**Lyfted Farms, Inc. is now owned by Pelorus REIT, LLC; Request for assignment of Development Agreement to PMG Lyfted, LLC**

Thank you for your consideration.

James 'Bob' Blink, CEO
Lyfted Farms, Inc.

December 14, 2023
County of Stanislaus -
Chief Executive Office
1010 10th Street Suite 6800
Modesto, CA 95354

Renewed Development Agreement Term Proposal:
5271 Jerusalem Court (Indoor Cultivation)

Dear CEO Office,

This writing along with the enclosed Development Agreement Application for the continued operation of our Commercial Cannabis Business located at 5271 Jerusalem Court in Modesto shall indicate our intent to enter negotiations, in earnest, for the renewal of our current Development Agreement on revised terms.

It should be noted, that following our initial approval in 2019, the County Planning Department approved SAA PLN 2023-0081 which removed Suites A1-A2 and Suite G from the project.

All other changes to Business Operations are addressed in the enclosed 'Business Operations Update Memo'.

Additionally, we would propose renewal on the following base terms:

Length of Term:	**Extend 10 years from March 28, 2024 (current date for natural expiration);**
Indoor Cultivation Community Benefit Fee:	**$4/sf based on actual canopy (4,200sf): $16,800/yr. to be paid in quarterly installments of $4,200.00**
Community Benefit Contribution:	**Pending Discussions as to Stanislaus County's forthcoming proposal for revised Community Benefit Program**
Entity Ownership Change:	**Lyfted Farms, Inc. is now owned by Pelorus REIT, LLC; Request for assignment of Development Agreement to PMG Lyfted, LLC.**

Thank you for your consideration.

James 'Bob' Blink, CEO
Lyfted Farms, Inc.

December 29, 2023

Jody Hayes
County of Stanislaus -
Chief Executive Office
1010 10th Street Suite 6800
Modesto, CA 95354

Brief in Favor of Reducing Community Benefit Rates Fee Structure:
Lyfted Farms Development Agreement Renewal

Dear Mr. Hayes,

We provide this brief in response to the County's December 20, 2023 email requesting materials that would support our proposal to reduce the current Community Benefit Fee Rates incorporated into renewed development agreements. As indicated in our previous correspondence regarding a proposed structure Stanislaus County's Cannabis Business Tax, we have emphasized the local industry's need for financial relief to preserve the viability of both the local legal cannabis industry and the County's overall cannabis program. This pressing need is due to the drastic reduction in wholesale pricing for cannabis, consistent loss of consumer market share due to statewide oversupply, and the enduring presence of California's black market. In response to this existential problem, the State of California as well as several other counties have enacted measures to ease the financial burden on cannabis companies by significantly reducing or eliminating taxes specifically imposed on cannabis operations.

These jurisdictions adopted these tax relief measures to better serve the public interest. They realize that the failure of legal local cannabis companies would result in the expansion of the black market; increased enforcement costs; and an elimination of a long-term revenue stream and corresponding overall reduction in taxes received. At a time where cannabis companies are failing at historic rates, the determinative factor between counties where companies are continuing to thrive and those where the industry is closing up business is the tax rate imposed. Should Stanislaus County continue to insist on a tax rate significantly higher than other jurisdictions *with an established legal cannabis industry*[1], it will make it difficult if not impossible for local cannabis companies to compete. Additionally, some nearby jurisdictions have executed long-term development agreements for large-scale cannabis cultivation facilities that would directly compete with us in the local and regional market. As noted below, the City of Riverbank has executed a development agreement with a competitor with significantly more favorable financial terms for the cannabis company. Without action by our County staff and

[1] We understand that there are several counties and municipalities nearby that have a similar tax rate to that proposed by the County; however, as noted in previous correspondence, those jurisdictions have little or no established cannabis industry (primarily due to high tax rates), and therefore are not a significant determining factor in maintaining competitiveness in a regional or statewide market.

Board of Supervisors to reduce our financial burden, we will be at a significant financial disadvantage, risking our long-term competitiveness and continued ability to provide employment and tax revenue for Stanislaus County.

We respectfully request that the County consider the below precedent when establishing rates for renewed development agreements. As noted previously, we are hopeful that we can continue to work with the County to establish a tax rate adopted through a ballot measure that provides a long-term framework to both generate significant revenue for Stanislaus County and ensure the long-term viability of the local legal cannabis industry.

1. City of Riverbank Development Agreement Rates

On September 22, 2020, Riverbank City Council approved a 20-year development agreement with DT California, LLC (dba Aeriz) for development a 360,000+ SF cannabis cultivation facility. The development agreement imposed an escalating cultivation rate ranging from $2.50/sf, imposed during years 1 to 4 of the development agreement (starting after commencement of cannabis cultivation activities), to $4/sf, imposed in years 17 to 20 of the development agreement. The staff report and attached development agreement are attached to this memorandum as Attachment 1. Note that this facility is now undergoing construction and would represent direct competition in the local and regional cannabis market to Lyfted's existing operations.

2. Calaveras County Reduction in Cannabis Cultivation Taxes

On December 12, 2023, the Calaveras County Board of Supervisors extended a 60% reduction in the cannabis cultivation tax rate for a third consecutive year, through 2024. Notably, prior to Calaveras County's recent continuation of the tax rate reduction, data collected by the Division of Cannabis Control showed the price per pound of cannabis sold from the County had dropped from $1,000/lb. in 2020 to around $300/lb. in 2022-2023. As noted in the staff report, the County's tax reduction efforts have paid off - rather than an anticipated loss of 10% of cultivation permits without the tax reduction, the County has seen a 9% increase in cultivation permits, at a time where the market is shrinking statewide. The County concluded:

> The information provided . . . paints a picture of a market that is beginning to stabilize. Until there is data to suggest a stabilized market, the Building Department believes that the industry will continue to need assistance in the form of tax reductions from local governments in order to support the industry's economic benefit to local jurisdictions over the long term.

The same reasoning applies in Stanislaus County. Notably, tax revenue in Calaveras County from cannabis cultivation taxes has remained stable since the tax reduction was adopted and *increased* since FY 2020-21. The staff report and Board of Supervisors resolution are attached to this memorandum as Attachment 2.

3. Humboldt County Temporary Elimination of Cultivation Taxes

On November 29, 2022, the Humboldt County Board of Supervisors approved elimination of the Measure S cannabis excise tax ($1/$3/sf) for fiscal years 2023 and 2024, noting "the Board of Supervisors is aware that the cannabis industry is experiencing unsustainably low market pricing and an inability to sell existing cannabis inventory." The resolution adopted by the Humboldt County Board of Supervisors is attached as Attachment 3.

4. Monterey County Reduction in Cannabis Cultivation Taxes

On February 14, 2023, the Monterey County Board of Supervisors reduced cannabis cultivation tax rates from $15/sf to between $0.71 to $2.13/sf (*see* https://www.co.monterey.ca.us/government/departments-i-z/treasurer-tax-collector/commercial-cannabis-business-tax). This was motivated by a significant decline in the County's cannabis businesses, where 32 cannabis businesses had gone out of business during the 2022-23 fiscal year alone.[2]

5. State of California Elimination of Cannabis Cultivation Tax

The California State Legislature adopted AB 195, effective on July 1, 2022, which eliminated the state cannabis cultivation tax, which was previously imposed at a rate of $161/lb. of dry weight cannabis.[3] In support of this decision, the State Legislature made the following findings, incorporated into AB 195:

- It is imperative that the cannabis supply chain be taxed and regulated in a way that drives out the illicit market, as intended by the voters in enacting the Control, Regulate and Tax Adult Use of Marijuana Act. The current cannabis tax structure, contrary to the voters' intent, has pushed producers and consumers into the unlicensed market and prevented the expansion of the licensed market, allowing the illicit market to persist. Changes to the existing cannabis tax structure are therefore necessary to further the purposes and intent of the Control, Regulate and Tax Adult Use of Marijuana Act by reducing barriers to entry into the legal, regulated cannabis market and combating the illicit market.
- By combating the illicit market and encouraging consumers and businesses to enter into the legal, regulated cannabis market, these changes may increase the state's cannabis tax revenue while reducing unnecessary burdens imposed on the state's legal cannabis businesses.

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[2] *See* https://www.montereycountyweekly.com/news/cover/monterey-county-s-cannabis-industry-is-struggling-to-survive----and-claims-overtaxing/article_d78ecd54-20df-11ee-915c f78e9848979d.html#:~:text=While%20the%20Board%20of%20Supervisors%20has%20moved%20to%20alleviate%20the,of%20costly%20licensing%20fees%20and.

[3] The text of AB 195 can be found here: https://legiscan.com/CA/text/AB195/id/2600122#:~:text=The%20bill%2C%20beginning%20on%20January,sale%20by%20a%20cannabis%20retailer.

We appreciate County staff's efforts to continue to work with us and the rest of the local cannabis industry to continue to refine the County's cannabis program as the industry and County continue to face dynamic and significant changes to the cannabis market and associated regulatory environment. As noted above, we hope that we can establish rates in the development agreement that provide a reasonable and stable stream of revenue for the County that can act as a bridge to a similar reasonable and predictable tax rate adopted through a ballot measure approved by County voters. We look forward to continuing to discuss these issues with County staff and the Board of Supervisors.

James 'Bob' Blink, CEO
Lyfted Farms, Inc.

Cc: Erica Inacio, Deputy Executive Officer, Stanislaus County
Zach Drivon, Drivon Consulting
Robert Smith, K&L Gates LLP

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