

**REPORT/RECOMMENDATION TO THE BOARD OF SUPERVISORS
OF SAN BERNARDINO COUNTY
AND RECORD OF ACTION**

March 28, 2023

FROM

TERRY W. THOMPSON, Director, Real Estate Services Department

BEAHTA DAVIS, Director, Regional Parks Department

SUBJECT

Amendment of Existing Revenue Lease Agreement with Dennis J. Bukowski and SJS Enterprises Inc. and New Revenue Lease Agreement with SJS Enterprises, Inc. dba SC Village for Land in Chino

RECOMMENDATION(S)

1. Find that the approval of amendment to Lease No. 14-775 with Dennis J. Bukowski and SJS Enterprises Inc., and a new revenue lease with SJS Enterprises, Inc. dba SC Village, is exempt under the California Environmental Quality Act Guidelines, Section 15301 - Existing Facilities (Class 1).
2. Approve **Amendment No. 1 to Lease No. 14-775** with Dennis J. Bukowski and SJS Enterprises Inc. to terminate the lease for approximately 50 acres of San Bernardino County-owned land [Assessor's Parcel Numbers 1057-221-18 (portion), 1057-221-19 (portion), and 1057-221-21 (portion)], located along Hellman Avenue between Chino Rincon Road and McCarty Road, by mutual agreement of the parties prior to its scheduled expiration date of January 31, 2025, with an effective termination date of the day immediately prior to the commencement date of the new revenue lease in Recommendation No. 3.
3. Approve a new revenue lease **Agreement No. 23-254** with SJS Enterprises, Inc. dba SC Village, for 10 years, commencing on the first day of the calendar month following full execution, for a total of approximately 54 acres of San Bernardino County-owned land, comprising of approximately 50 acres for use as a recreational paintball/airsoft facility [Assessor's Parcel Numbers 1057-221-18 (portion), 1057-221-19 (portion), and 1057-221-21 (portion)], and approximately four acres for use as an unimproved parking area [Assessor's Parcel Number 1057-221-19 (portion)], located along Hellman Avenue between Chino Rincon Road and McCarty Road in Chino, for the Regional Parks Department, for a total revenue in the minimum amount of \$965,430 (Four votes required).
4. Direct the Clerk of the Board of Supervisors to file and post the Notice of Exemption for the project pursuant to the California Environmental Quality Act.
(Presenter: Terry W. Thompson, Director, 387-5000)

COUNTY AND CHIEF EXECUTIVE OFFICER GOALS & OBJECTIVES

Operate in a Fiscally-Responsible and Business-Like Manner.

FINANCIAL IMPACT

Approval of this item will not result in the use of Discretionary General Funding (Net County Cost). There is no cost to terminate Lease No. 14-775 (Existing Lease) with Dennis J.

**Amendment of Existing Revenue Lease Agreement with Dennis J. Bukowski and SJS Enterprises Inc. and New Revenue Lease Agreement with SJS Enterprises, Inc. dba SC Village for Land in Chino
March 28, 2023**

Bukowski and SJS Enterprises Inc. (SJS Enterprises). The total revenue to be received during the new 10-year lease agreement with SJS Enterprises, Inc. dba SC Village (New Lease) is a minimum of \$965,430. Revenue received from the New Lease will be deposited in the Chino Agricultural Preserve Special Revenue Fund (7801142734) for properties acquired under the provisions of the California Wildlife, Coastal and Parkland Conservation Act of 1988 (Proposition 70). The initial monthly rent under the New Lease during years one through four of the term shall be \$7,382. For each and every month thereafter, commencing in year 5 and continuing for the remainder of the term of the New Lease, SJS Enterprises shall pay San Bernardino County (County) the monthly rent in the amount that is the greater of the monthly rent for the prior year escalated by 4% per year; or 6% of SJS Enterprises' monthly gross revenues (excluding taxes) for said month. The minimum annual revenue during the initial term of the New Lease (based on an April 1, 2023, commencement date and the minimum monthly rent due) is as follows:

<u>Year</u>	<u>Minimum Annual Revenue</u>
April 1, 2023 – March 31, 2024	\$ 88,585
April 1, 2024 – March 31, 2025	\$ 88,585
April 1, 2025 – March 31, 2026	\$ 88,585
April 1, 2026 – March 31, 2027	\$ 88,585
April 1, 2027 – March 31, 2028	\$ 92,129
April 1, 2028 – March 31, 2029	\$ 95,814
April 1, 2029 – March 31, 2030	\$ 99,647
April 1, 2030 – March 31, 2031	\$ 103,633
April 1, 2031 – March 31, 2032	\$ 107,778
April 1, 2032 – March 31, 2033	<u>\$ 112,089</u>
Total Minimum Revenue	\$ 965,430

BACKGROUND INFORMATION

Approval of this item will provide for the New Lease with SJS Enterprises for a term of 10 years, commencing on the first day of the calendar month following full execution (which is expected to commence on April 1, 2023), for approximately 54 acres of County-owned land, comprising approximately 50 acres, for use as a recreational paintball/airsoft facility [(Assessor's Parcel Numbers (APN) 1057-221-18 (portion), 1057-221-19 (portion), and 1057-221-21 (portion))] and approximately four acres for use as an unimproved parking area [APN 1057-221-19 (portion)], located along Hellman Avenue between Chino Rincon Road and McCarty Road in Chino (Property).

Proposition 70, which was approved by California voters in June 1988, provided \$776 million of general obligation bonds to fund the "acquisition, development, rehabilitation, protection, or restoration of park, wildlife, coastal and natural lands in California including lands supporting unique or endangered plants or animals." The County received nearly \$20 million of the Proposition 70 grant funds for acquisition of land in the cities of Chino and Ontario, within the boundaries of the Chino Agricultural Preserve (Ag Preserve). Senate Bill 1124, an uncoded act of the State Legislature in 2010, authorized the County to sell or exchange some property it acquired with the Proposition 70 funds for the acquisition of the Property. As a result, the Property is subject to Proposition 70, Senate Bill 1124, and a Land Plan approved by the Board of Supervisors (Board) on November 6, 2012 (Item No. 95).

**Amendment of Existing Revenue Lease Agreement with Dennis J. Bukowski and SJS Enterprises Inc. and New Revenue Lease Agreement with SJS Enterprises, Inc. dba SC Village for Land in Chino
March 28, 2023**

On December 17, 2013 (Item No. 64), the Board approved an Agreement of Exchange and Joint Escrow Instructions with Watson Land Company for the acquisition of certain real property by exchange, which included the Property with the Existing Lease. In 2014, pursuant to delegated authority from the Board-approved property exchange, the Real Estates Services Department (RES D) Director entered into an Assignment of Lease (Contract No. 14-775), wherein the Existing Lease (originally executed between Case Van Der Eyk, Sr, as landlord, and Dennis J Bukowski and SJS Enterprises, as tenants) was assigned to the County as the successor landlord.

The original term of the Existing Lease was from February 1, 2000 to January 31, 2025. While the Existing Lease identified the leased premises as portions of APNs 1057-221-03 and 1057-221-06 located west of 17650 Hellman Avenue in Corona, RESD has determined that the premises were mistakenly identified and that the premises in the Existing Lease is the same 50 acres to be used for a recreational paintball/airsoft facility in the New Lease. The parties will affirm the corrected premises description in the proposed amendment to the Existing Lease. The tenants approached the County to renegotiate the Existing Lease to provide for a longer term to accommodate its financing needs. County staff has since been negotiating the terms of the New Lease, which includes a new tenant entity under common control as the prior tenant, an expansion for an unimproved parking area, subject to compliance with the Surplus Land Act (SLA).

The New Lease was submitted to the State of California Department of Housing and Community Development Division (HCD) for review for SLA compliance. On January 25, 2023, via a letter, HCD concluded that the New Lease is not subject to the SLA. HCD determined that, even though the term of the New Lease exceeds five years, the improvements, alterations, and preventative maintenance permitted thereunder does not amount to demolition or development as contemplated under Section 102(h)(1) of the SLA Guidelines.

RESD proposes that the Property be disposed by a lease to provide revenue for the Chino Agricultural Preserve Special Revenue Fund. Accordingly, RESD negotiated the New Lease with SJS Enterprises for the period of 10 years, commencing upon the first day of the calendar month following full execution of the New Lease documents. Per the New Lease, the RESD Director, will be permitted to resolve disputes resulting from audit discrepancies of monthly rents paid based on gross revenues with any unresolved disputes to be finally determined by the Chief Executive Officer.

The New Lease contains a termination right that can be exercised by the County with not less than one year notice, if at any time after the first two years of the term, the California Office of Grants and Local Services (OGALS) notifies the County that SJS Enterprises' use of the Property violates Proposition 70. If OGALS were to notify the County of any violation during the first two years of the term of the New Lease, the County could be subject to Proposition 70 penalties. RESD and Parks believe that the risk is low given the use has existed on the Property since 2000 and recommend approval of the New Lease despite the risk. RESD, in administering the New Lease, will be permitted to provide any early termination notices in accordance with the New Lease.

As stipulated in the New Lease, the tenant shall be permitted to assign the new lease to an entity that is at least 51% owned by the tenant, without the County's permission with 30 days' written notice to the County.

**Amendment of Existing Revenue Lease Agreement with Dennis J. Bukowski and SJS Enterprises Inc. and New Revenue Lease Agreement with SJS Enterprises, Inc. dba SC Village for Land in Chino
March 28, 2023**

The project to approve an amendment to the Existing Lease and the New Lease was reviewed pursuant to the California Environmental Quality Act (CEQA) and determined to be categorically exempt under Section 15301 Existing Facilities (Class 1) of the CEQA Guidelines because there is no possibility that the leasing of the Property will have a significant effect on the environment.

Summary of Lease Terms for New Lease

Lessee:	SJS Enterprises, Inc. dba SC Village (Dennis J. Bukowski, President)
Location:	County-owned land, comprising of approximately 50 acres for use as a recreational paintball/airsoft facility [APNs1057-221-18 (portion), 1057-221-19 (portion), and 1057-221-21 (portion)] and approximately four acres for use as an unimproved parking area [APN 1057-221-19 (portion)] located along Hellman Avenue between Chino Rincon Road and McCarty Road in Chino.
Size:	A total of approximately 54 acres, comprising approximately 50 acres of land for use as a recreational paintball/airsoft facility and approximately four acres of land for use as an unimproved parking area.
Term:	10 years, commencing upon the first day of the calendar month following full execution
Holdover:	With County's express written consent, the Lessee may remain on the Property with the lease continuing on a month-to-month basis on the same terms and conditions, except that the minimum monthly rent will increase by 4% of the rent during the month prior to expiration. Either party will have the right to terminate the lease during a permitted holdover period with not less than 30 days prior notice.
Options:	None
Rent:	Revenue per month: \$7,382* Annual Revenue: \$88,584 *Low-range for comparable land in the Chino area
Annual Increases:	None during the first 4 years; thereafter the greater of 4% per year or 6% of lessee's monthly gross revenue
Improvement Costs:	None; Lessee shall not make any alterations at the Property without prior written consent of the County, OGALS, the California Department of Housing and Community Development, and the United States Corp of Engineers; at the end of the term, Lessee has the right, in its sole discretion, to surrender any fixtures, improvements, or alterations to the County without an obligation to remove and restore.

**Amendment of Existing Revenue Lease Agreement with Dennis J. Bukowski and SJS Enterprises Inc. and New Revenue Lease Agreement with SJS Enterprises, Inc. dba SC Village for Land in Chino
March 28, 2023**

Maintenance:	Provided by Lessee
Utilities:	Provided by Lessee
Security Deposit:	\$10,000
Insurance:	The Certificate of Liability Insurance, as required by the lease, is on file with RESD.
Right to Terminate:	After the initial two years of the term, County will have the right to terminate in the event OGALS notifies the County of an unapproved use. County will notify Lessee with one year's prior written notice.

PROCUREMENT

Government Code Section 25536(a) permits the Board to directly enter into a lease of all or any part of County-owned, leased, or managed property devoted to or held for ultimate use for park, amusement, or recreation purposes without complying with the provisions of Government Code Section 25520 et seq. with a four-fifths vote. RESD performed a fair market analysis of the regional area that was negotiated and approved by County and SJS Enterprises, which was determined to be below current market conditions. This is due to the restrictive nature of the permitted use as the Property, which is subject to Proposition 70, Senate Bill 1124.

REVIEW BY OTHERS

This item has been reviewed by County Counsel (Suzanne Bryant, Deputy County Counsel, Agnes Cheng, Deputy County Counsel, and Scott Runyan, Principal Assistant County Counsel, 387-5455) on March 23, 2023; Regional Parks (Beahta Davis, Director, 387-2886) on March 14, 2023; Purchasing (Bruce Cole, Supervising Buyer, 387-2148) on March 15, 2023; Finance (Elias Duenas, Administrative Analyst, and Garrett Baker, Administrative Analyst, 387-5423) on March 17, 2023; and County Finance and Administration (Valerie Clay, Deputy Executive Officer, 387-5423) on March 17, 2023.

(AR: 893-0002)

**Amendment of Existing Revenue Lease Agreement with Dennis J. Bukowski and SJS Enterprises Inc. and New Revenue Lease Agreement with SJS Enterprises, Inc. dba SC Village for Land in Chino
March 28, 2023**

Record of Action of the Board of Supervisors
San Bernardino County

APPROVED (CONSENT CALENDAR)

Moved: Joe Baca, Jr. Seconded: Curt Hagman
Ayes: Col. Paul Cook (Ret.), Jesse Armendarez, Dawn Rowe, Curt Hagman, Joe Baca, Jr.

Lynna Monell, CLERK OF THE BOARD

BY 
DATED: March 28, 2023



cc: RESD - Thompson w/agrees w/CEQA & receipt
Contractor - C/O RESD w/agree
File - w/agree w/CEQA & receipt
CCM 04/10/2023