

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

March 1, 2022

FROM

TERRY W. THOMPSON, Director, Real Estate Services Department

JACQUELINE GREEN, Director, Preschool Services Department

SUBJECT

Amendment to Lease Agreement with Sweeten Hall, L.P. for Use of Unimproved Land and Parking Area for the Preschool Services Department in Rancho Cucamonga

RECOMMENDATION(S)

1. Approve **Amendment No. 1** to Lease **Agreement No. 17-775** with Sweeten Hall, L.P. to reflect a change of property ownership from Cucamonga Service Club, Inc. to Sweeten Hall, L.P., due to landlord's forbearance to exercise its existing termination right under the lease and the rescission of its subsequent exercised termination right, make a one-time market rent adjustment payment of \$58,468.54 for the existing premises of 30,500 square feet of unimproved land for the period retroactive as of July 1, 2020 to July 31, 2021, effective retroactive as of August 1, 2021 expand the premises by adding approximately 23,933 square feet of parking area, drive lanes, and unpaved land to the existing premises of 30,500 square feet of unimproved land for a total premises of approximately 54,433 square feet.
2. Approve to reduce the existing lease term by six years and two months, changing the end date from September 30, 2032 to July 31, 2026, delete the County's existing two five-year options to extend the term of the lease, delete the existing mutual right to terminate the lease for convenience, adjust the rental rate for the period August 1, 2021 through July 31, 2026 resulting in additional net rent of \$124,951, pay a one-time water utility reimbursement of \$3,019.22 for the period December 1, 2020 to November 30, 2021, and update standard lease agreement language for premises at 9324 San Bernardino Road in Rancho Cucamonga for the Preschool Services Department in the total net cost of \$186,438.32.

(Presenter: Terry W. Thompson, Director, 387-5000)

COUNTY AND CHIEF EXECUTIVE OFFICER GOALS & OBJECTIVES

Provide for the Safety, Health and Social Service Needs of County Residents.

Pursue County Goals and Objectives by Working with Other Agencies and Stakeholders.

FINANCIAL IMPACT

Approval of this item will not result in the use of additional Discretionary General Funding (Net County Cost). Preschool Services Department (PSD) lease costs are 90% federally funded and 10% state funded. The total net cost of this amendment is \$186,438.32. Lease payments will be made from the Real Estate Services Department (RESA) Rents budget (7810001000) and reimbursed from the PSD budget (5911452220). Other costs associated with this lease include utilities, maintenance for the premises, 50% of landlord's routine maintenance costs for the shared access lanes at the property, provided that the County's share shall not exceed \$2,500

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per lease year, and maintenance and custodial for the County's improvements at the premises, including modular units, playground equipment, and fencing, which will be paid from the PSD budget. Sufficient appropriation is included in the 2021-22 budget and will be included in future recommended budgets. Lease costs are as follows:

<u>Lease Period</u>	<u>Existing Rent for Original Premises per Original Lease</u>	<u>Adjusted Rent for Original Premises and Expansion Premises per Amendment</u>	<u>Net Change in Rent</u>	<u>Estimate of Other Costs Associated with this Lease</u>
7/1/20 – 7/31/21			\$58,468.54**	
8/1/21 – 2/28/22	\$19,062	\$58,313*	\$39,251	
3/1/22 – 7/31/22	\$13,730	\$41,652	\$27,922	\$10,359
8/1/22 – 7/31/23	\$33,782	\$104,963	\$71,181	\$10,773
8/1/23 – 7/31/24	\$34,788	\$110,212	\$75,424	\$11,204
8/1/24 – 7/31/25	\$35,836	\$115,722	\$79,886	\$11,652
8/1/25 – 7/31/26	\$36,912	\$121,508	\$84,596	\$17,938
8/1/26 – 9/30/32	\$253,310	N/A	(\$253,310)	N/A
Water Utilities			\$3,019***	
		Total	\$186,438	\$61,926

*The County has already made interim payments totaling \$40,222.00 for this period. Accordingly, within 10 business days after mutual execution of the amendment, a balance of \$18,091.01 for this period, along with the one-time payments of the above-referenced \$58,468.54 for market adjusted rent and \$3,019.22 for water reimbursement, will be due from the County.

**One-time market rent adjustment payment.

***One-time water reimbursement for December 1, 2020 to November 30, 2021.

BACKGROUND INFORMATION

The recommended action will approve an amendment to Lease Agreement No. 17-775 with Sweeten Hall, L.P., to: (i) reflect a change of property ownership from Cucamonga Service Club, Inc. (Original Landlord) to Sweeten Hall, L.P. (New Landlord), (ii) due to landlord's forbearance to exercise its existing termination right under the lease and the rescission of its subsequent exercised termination right, make a one-time market rent adjustment payment of \$58,468.54 for the existing premises of 30,500 square feet of unimproved land (Original Premises) for the period retroactive as of July 1, 2020 to July 31, 2021, effective retroactive as of August 1, 2021, expand the Original Premises, by adding approximately 23,933 square feet of parking area, drive lanes, and unpaved land (Expansion Premises) to the Original Premises for a total premises of approximately 54,433 square feet, reduce the existing lease term by six years and two months, changing the end date from September 30, 2032 to July 31, 2026, delete the County's existing two five-year options to extend the term of the lease, delete the existing mutual right to terminate the lease for convenience, adjust the rental rate for the period August 1, 2021 through July 31, 2026, resulting in additional net rent of \$124,951, and pay a one-time water utility reimbursement of \$3,019.22 for the period December 1, 2020 to November 30, 2021, and (iii) update standard lease agreement language in order to continue to provide preschool services for clients in the Rancho Cucamonga area.

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On August 30, 1994 (Item No. 49), the Board approved Lease Agreement, No. 94-961 (Original Lease) with the Original Landlord for a five-year term with three two-year options to extend the term of the Original Lease for the Original Premises upon which PSD installed County-owned modular classrooms and playground equipment. The original term of the Original Lease was for the period of August 1, 1993 through July 31, 1998. During the term of the Original Lease the Board approved eight amendments to extend the term of the Original Lease through the exercise of options, adjust the rental rate schedule, add additional options to extend the term of the lease, and update standard lease agreement language.

<u>Amendment No.</u>	<u>Approval Date</u>	<u>Item No.</u>
1	September 15, 1998	23
2	July 11, 2000	46
3	September 10, 2002	76
4	August 17, 2004	47
5	April 13, 2010	79
6	February 7, 2012	31
7	October 8, 2013	42
8	June 16, 2015	52

On September 26, 2017 (Item No. 29), the Board approved a new replacement lease, Lease Agreement No. 17-775 (Replacement Lease), with the Original Landlord for a 15-year term with two five-year options to extend the term of the lease for the Original Premises. The initial term of the Replacement Lease was for the period of October 1, 2017 through September 30, 2032.

On October 4, 2019, the Original Landlord sold the property and assigned the Replacement Lease to the New Landlord. The New Landlord expressed its interest in exercising its existing right to terminate the Replacement Lease for convenience on 60 days' notice as the New Landlord believed that the existing rent for the Original Premises was below market. The New Landlord agreed to hold off exercising its termination right while the parties negotiated an amendment to adjust the rent and amend other terms, retroactive to July 1, 2020. Despite ongoing negotiations, the New Landlord exercised its termination right and delivered a termination notice on December 31, 2020 (Termination Notice) with an effective termination date of March 1, 2021. The New Landlord subsequently agreed to suspend the effectiveness of the Termination Notice while the parties continued to negotiate an amendment. During negotiations, the Original Premises was expanded on August 1, 2021, to add the Expansion Premises. The County paid an interim monthly rent of \$5,746.00 for the period from August 1, 2021 to February 28, 2022, which included the monthly rent for the Original Premises pursuant to the Replacement Lease and an increased amount as pre-payment toward adjusted market rent for the Original Premises and the Expansion Premises. The water utility was switched to the County's name as of December 1, 2021, and the County will pay the New Landlord \$3,019.22 as a one-time reimbursement of water utilities for the period December 1, 2020 to November 30, 2021.

Pursuant to the terms of the negotiated amendment, in consideration of the New Landlord's forbearance to exercise its existing termination right and its rescission of the Termination Notice, the County will make a one-time market rent adjustment payment of \$58,468.54 for the Original Premises for the period retroactive as of July 1, 2020 to July 31, 2021, effective retroactive as of August 1, 2021 the Expansion Premises will be added to the Original Premises for a total premises leased of approximately 54,433 square feet, the term of the Replacement Lease will

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be reduced by six years and two months, changing the end date from September 30, 2032 to July 31, 2026, the County's existing two five-year options to extend the term of the Replacement Lease will be deleted, the existing mutual right to terminate the Replacement Lease for convenience will be deleted, the monthly rent for the Original Premises and the Expansion Premises will be adjusted for the period August 1, 2021 through July 31, 2026, resulting in additional net rent of \$124,951, and the County will pay a one-time water utility reimbursement of \$3,019.22 for the period December 1, 2020 to November 30, 2021.

Staff has reviewed the recommended action pursuant to the California Environmental Quality Act (CEQA) and has determined that it does not constitute a project under CEQA. Accordingly, no further action is required under CEQA.

Summary of Lease Terms

Lessor:	Sweeten Hall, L.P. (Alain Romero, President)
Location:	9324 San Bernardino Road, Rancho Cucamonga
Size:	Approximately 54,433 square feet of land, comprised of 30,500 square feet of unimproved land and 23,933 square feet of improved parking areas, improved drive lanes, and unimproved land
Term:	Existing term shortened to expire on July 31, 2026; four years and five months remaining in adjusted term as of March 1, 2022
Options:	None
Rent:	Cost per sq. ft. per month: \$0.15304* modified gross (as of 3/1/22) Monthly: \$8,330.43 Annual: \$41,652.15 (through 7/31/22) *Mid-range for comparable facilities in the Rancho Cucamonga area per the competitive set analysis on file with RESD
Annual Increases:	5%
Improvement Costs:	None
Custodial:	Provided by County for County-owned modulares and playground equipment
Maintenance:	Provided by County for premises; provided by landlord for shared access lanes at property with 50% of the routine maintenance costs to be reimbursed by County but not to exceed \$2,500 per lease year
Utilities:	Provided by County

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Insurance: The Certificate of Liability Insurance, as required by the lease is on file with RESD

Right to Terminate: None, except that County may terminate within 90 days after County receives notice that federal funding will not be received or will be reduced by 20% or more by providing landlord with 30 days' notice

Parking: Approximately 23,933 square feet of parking area

The amendment includes the following terms that differ from the standard County contract.

1. County Standard: The County's standard contract language does not indemnify nor defend a contractor.
 - Modification: While the existing Replacement Lease contains the County standard indemnity language, the amendment replaces it with a mutual indemnity that requires the County to indemnify the New Landlord for any negligence arising from the County's breach of its obligations, including but not limited to any negligence that causes hazardous substances and any attorney's fees from any third-party actions.
 - Potential Impact: By agreeing to indemnify the New Landlord, the County could be contractually waiving the protection of sovereign immunity. Claims that may otherwise be barred against the County, time limited, or expense limited could be brought by the New Landlord without such limitations and the County would be responsible to reimburse the New Landlord for costs, expenses, and damages, which could exceed the total contract amount.
2. Non-Standard Risk: Insurance Requirements and Specifications.
 - Commercial/General Liability Insurance Modification:
 - Premises operations and mobile equipment removed.
 - Products and completed operations removed.
 - Explosion, Collapse, and underground hazards removed.
 - Commercial Property Insurance removed.
 - Landlord Construction coverage removed.
 - Landlord requirement for all parties or subcontractors to provide insurance removed.
 - Potential Impact: Risk Management has reviewed all changes and have determined no impact as a result of these modifications since Landlord would not be operating or providing service on the Premises Leased.

PROCUREMENT

On September 26, 2017 (Item No. 29) the Board approved the Replacement Lease, which was procured in accordance with County Policy 12-02 – Leasing Privately Owned Real Property for County Use (Policy 12-02), using Capital Improvement Program (CIP) Request No. 17-301, submitted by PSD. The procurement process required by Policy 12-02 does not apply to amendments of existing leases, provided the amendment does not exceed the maximum term (including options) of the lease.

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REVIEW BY OTHERS

This item has been reviewed by County Counsel (Agnes Cheng, Deputy County Counsel, and Adam Ebright, Deputy County Counsel, 387-5455) on February 3, 2022; Preschool Services Department (Madeline Tsang, Administrative Manager 383-2044) on February 2, 2022; Purchasing Department (Bruce Cole, Supervising Buyer, 387-2148) on January 31, 2022; Finance (Paul Garcia, Administrative Analyst, 386-8392 and Carl Lofton, Administrative Analyst, 387-5404) on February 11, 2022; and County Finance and Administration (Diana Atkeson, Deputy Executive Officer, 387-4376) on February 11, 2022.

(LB: 453-5227)

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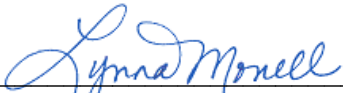
Record of Action of the Board of Supervisors
San Bernardino County

APPROVED (CONSENT CALENDAR)

Moved: Joe Baca, Jr. Seconded: Dawn Rowe

Ayes: Col. Paul Cook (Ret.), Janice Rutherford, Dawn Rowe, Curt Hagman, Joe Baca, Jr.

Lynna Monell, CLERK OF THE BOARD

BY 
DATED: March 1, 2022



cc: RESD- Thompson w/agree
Contractor- C/O RESD w/agree
File- w/agree

LA 03/8/2022