

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

January 11, 2022

FROM

TERRY W. THOMPSON, Director, Real Estate Services Department

SUBJECT

Entitlement and Option Agreement with Majestic Realty Co. for Entitlement Period and Option to Enter into Revenue Development Ground Lease for 46.2 Acres of Vacant Land in Chino

RECOMMENDATION(S)

1. Rescind approval of a 65-year revenue lease with Majestic Realty Co. for approximately 46.2 acres of vacant County-owned land located on the southeast corner of Remington Avenue and Flight Avenue in Chino (Assessor Parcel Numbers 1055-061-01, 1055-061-02, 1055-071-01, 1055-071-02, and portions of 1055-051-01 and 1055-051-02) and authorization for the Director of Real Estate Services to execute the revenue lease on the terms granted by the Board of Supervisors on March 9, 2021 (Item No. 31).
 2. Approve the Entitlement and Option Agreement with Majestic Realty Co. to provide for an entitlement period of 24 months, commencing upon mutual execution, for \$10 and an initial deposit of \$1,000,000, an option to extend the entitlement period for 180 days for an additional deposit of \$250,000, and an option to enter into a revenue Development Ground Lease with an initial term of 65 years with two 17-year options to extend the term of the lease (for an aggregate term of 99 years if both options are exercised) with net revenue to be equally split between Majestic Realty Co. and San Bernardino County from the development of approximately 46.2 acres of vacant County-owned land located on the southeast corner of Remington Avenue and Flight Avenue in Chino (Assessor Parcel Numbers 1055-061-01, 1055-061-02, 1055-071-01, 1055-071-02, and portions of 1055-051-01 and 1055-051-02).
 3. Authorize the Director of the Real Estate Services Department to execute the Development Ground Lease with Majestic Realty Co. or its affiliate in substantially the form attached as Exhibit C to the Entitlement and Option Agreement if Majestic Realty Co. exercises its option to lease approximately 46.2 acres of County-owned land in Chino, subject to County Counsel review.
 4. Direct the Director of the Real Estate Services Department to transmit the Development Ground Lease to the Clerk of the Board of Supervisors within 30 days of execution.
 5. Delegate the Chief Executive Officer or the Director of the Real Estate Services Department as officials to provide County consent, approve administrative matters, and execute required documents for the Entitlement and Option Agreement and the Development Ground Lease with the delegation in the Lease irrevocable except as provided by law.
 6. Confirm a finding of exemption and direct the Clerk of the Board of Supervisors to post a Notice of Exemption as required under the California Environmental Quality Act.
- (Presenter: Terry W. Thompson, Director, 387-5000)

COUNTY AND CHIEF EXECUTIVE OFFICER GOALS & OBJECTIVES

Create, Maintain and Grow Jobs and Economic Value in the County.

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

Ensure Development of a Well-Planned, Balanced, and Sustainable County.

FINANCIAL IMPACT

Approval of this item will not result in the use of Discretionary General Funding (Net County Cost).

The County will receive a payment of \$10 and an initial deposit of \$1,000,000 from Majestic Realty Co. (Majestic) for the Entitlement and Option Agreement (EOA) to provide Majestic with a 24-month entitlement period and an option to enter into a Development Ground Lease (Lease) for an initial term of 65 years with two 17-year options to extend the term for approximately 46.2 acres of vacant County-owned land located on the southeast corner of Remington Avenue and Flight Avenue in Chino [Assessor Parcel Numbers (APNs) 1055-061-01, 1055-061-02, 1055-071-01, 1055-071-02, and portions of 1055-051-01 and 1055-051-02] (Property). The County will receive an additional deposit of \$250,000 if Majestic exercises an option to extend the term of the EOA for 180 days. The initial deposit is fully refundable to Majestic if it terminates the EOA for any reason within the first 90 days and, thereafter, all deposits are refundable if Majestic terminates for a Full Refund Matter (as described in the background section below). If the EOA is terminated for any other reason, the County will retain \$250,000 of the deposit with the remainder to be refunded to Majestic.

If Majestic exercises its option to enter into the Lease, the County will hold \$750,000 of the initial deposit (or \$1,000,000 if the extension deposit has been paid) as a rent credit and \$250,000 as a security deposit. The County will receive rent in the amount of 50% of the net revenue from Majestic's contemplated development at the Property. Subject to ideal market conditions, it is estimated that the County could receive approximately \$158.4 million (in inflation adjusted dollars) in rent, which would be reduced if Majestic incurs a Williamson Act cancellation fee of 12.5% of the unrestricted fair market value of the property as defined by Government Code Section 51283 as a project cost.

BACKGROUND INFORMATION

On June 14, 2017, the County acquired approximately 57.2 acres of land through an inverse condemnation claim due to the Chino Airport expansion project. Approximately 11 acres of the acquired land is designated as the Chino Airport Runway Protection Zone (RPZ). The Property comprises the remainder of the land, approximately 46.2 acres, which is being made available for lease ~~given that the County could not identify a public use for it.~~

On August 20, 2019 (Item No. 48), the Board of Supervisors (Board) approved an appraisal of the Property, adopted a resolution declaring the intent to lease the Property and authorizing a lease by public auction, and approved re-enrollment of the Property in the Williamson Act. Real Estate Services Department (RES D) held the auction on October 24, 2019, but no bids were received. RES D subsequently issued a Request for Proposals (RFP) on September 1, 2020. As a result of the RFP process, on March 9, 2021 (Item No. 31), the Board approved Majestic's participating revenue lease concept, with the County and Majestic equally sharing net revenue from the Property and authorized the RES D Director to execute such lease on certain minimum terms (Approved Minimum Terms). Following Board approval, in negotiating the terms of the lease, the parties have determined that an EOA is better suited for the needed entitlement period. The EOA grants Majestic the option, but not obligation, to enter the Lease after obtaining entitlements. Therefore, the Board's previous approval of the lease will be rescinded and the RES D Director will be authorized to execute the form of Lease attached to the EOA.

The Property was previously enrolled in the Williamson Act Program under the California Land Conservation Act of 1965, Contract No. 72-387, which restricted use to agricultural or related open space. The restriction was canceled when the Property was acquired by the County for public use through an inverse condemnation claim. On August 20, 2019 (Item No. 48), the Board approved re-enrollment in the Williamson Act Program pursuant to Government Code Section 51295 ~~given the intent to return the Property to private use~~. The re-enrollment, which has not been finalized, is currently pending and the State will determine whether or not reenrollment will be required. Following re-enrollment, aShould the State require reenrollment and cancellation,

~~the State may impose a~~ cancellation fee of 12.5% of the unrestricted fair market value of the Property ~~must be paid to the State of California to remove the restriction~~. Any cancellation fee paid by Majestic will be pre-development costs under the EOA but reimbursed by the County if the EOA is terminated due to County default. If the Lease is executed, any cancellation fee incurred will become a project cost that will be deducted from gross revenue, reducing the net revenue to be split between the parties.

The EOA and the Lease are summarized below:

Summary of EOA Terms

Term:	<p>Twenty-four months, commencing upon mutual execution, for \$10 and an initial deposit of \$1,000,000. The initial deposit will be fully refundable if Majestic terminates the EOA for any reason during the first 90 days or for Full Refund Matters (as described below) at any time thereafter. County will retain \$250,000 if the EOA is terminated for any other reason. If Majestic exercises its option to enter into the Lease, the County will hold \$750,000 of the initial deposit as rent credit and \$250,000 as a security deposit.</p> <p>The Approved Minimum Terms were for a term of 18 months with an initial deposit of \$1,000,000, of which \$250,000 would be non-refundable. The EOA increases the term by six months to 24 months and the deposit will be fully refundable under the EOA or fully applied to the Lease unless Majestic terminates the EOA for reasons other than Full Refund Matters after the initial 90 days. In the event of entitlement litigation, the term of the EOA will be indefinitely tolled. The County does not have the right to terminate the EOA during pending litigation.</p>
Option to Extend Term:	<p>One period of 180 days for no fee and an additional deposit of \$250,000 that, like the initial deposit, is fully refundable under the EOA or fully applied as rent credit for the Lease. The County standard practice is to require payment of a fee for exercise of an extension right, however, the standard practice is not being utilized here.</p> <p>The Approved Minimum Terms included one option to extend for 180 days with the payment of an additional non-refundable deposit of \$250,000 that would not be applicable to the Lease. While the term of the extension option is the same under the EOA, the additional deposit will be fully refundable under the EOA or fully applied to the Lease unless Majestic terminates the EOA for reasons other than Full Refund Matters after the initial 90 days.</p>
Option to Lease:	<p>Exercisable by Majestic with notice to County after it receives required or desired entitlements, including written concurrence in the absence of formal consent for approvals for contemplated off-site improvements within the RPZ, provided that the RPZ approval does not have a material adverse impact to Chino Airport nor require the County to make material modifications to the Chino Airport. Lease execution will occur within 30 days thereafter, however, in the event the lease execution cannot be effectuated within that time frame, unless the parties mutually agree to terminate, Majestic will retain the ability to execute the lease for an undefined period of time. If Majestic receives RPZ approval, the County shall grant an easement in the RPZ for the off-site improvements.</p>

Full Refund Matters:	Deposits are fully refunded to Majestic for the following reasons, including those beyond the control of the County: (i) any County default, (ii) any material adverse condition or circumstance with respect to the Property or the ability to develop the Property, including Majestic's failure to receive RPZ approvals, and (iii) Majestic's determination that it will incur costs due to the contemplated project being subject to the Public Contracts Code regarding bidding procedures, the Labor Code regarding prevailing wage, and the Williamson Act.
Pre-Development Costs:	At Majestic's expense, which comprises costs incurred at any time before the EOA is executed and during the EOA, including any Williamson Act cancellation fee. Pre-development costs shall be fully reimbursed by County for any material County breach that diminishes or deprives Majestic of the right to develop all or any part of the Property. Majestic also has the right to pursue all other remedies. If the Lease is executed, all pre-development costs will become project costs and deducted from gross revenue causing a corresponding decrease in net revenue.
Right to Terminate:	County may terminate for Majestic default or if Majestic requests that County remediate hazardous materials during the term of the EOA. Majestic may terminate for any reason during the first 90 days with the initial deposit fully refunded, for Full Refund Matters thereafter with all deposits fully refunded, or for any other reason other than Full Refund Matters after the first 90 days with \$250,000 of all deposits retained by County and the remainder refunded to Majestic. Majestic is the only party with the right to terminate if a court invalidates the EOA or re-writes any material economic terms to resolve entitlement litigation. The parties may mutually agree to terminate the EOA if the Lease is not executed within 30 days after Majestic exercises its option to lease.
Non-Standard Terms:	<p>The County's standard terms do not include the County granting an indemnity to the other party. However, the EOA requires that the County indemnify Majestic, which could contractually waive the protection of sovereign immunity. The potential risk for agreeing to such a term is that claims that may otherwise be barred could be brought by Majestic, and the County would be responsible for defending and reimbursing Majestic for costs, expenses, and damages that could exceed the anticipated amounts to be received by County under the EOA.</p> <p>Dispute resolution is through binding arbitration, which is considered a non-standard term under County Policy 11-05. By agreeing to this term, the County is waiving its right to resolve disputes through the courts.</p>

Summary of Lease Terms (subject to Majestic's exercise its option to lease)

Term:	<p>Sixty-five years, commencing upon mutual execution.</p> <p>The Approved Minimum Terms were for a term of at least 50 years but not more than 99 years (inclusive of any extension options), which is consistent with the initial 65-year term plus the two 17-year extension options. In the event of entitlement litigation, the term of the EOA will be indefinitely tolled. The County does not have the right to terminate the EOA during pending litigation.</p>
Options:	Two 17-year options to extend the term of the Lease.

Rent:	Fifty percent of the net revenue from the contemplated development project at the Property after deducting all project costs (as described below), commencing on substantial completion of the contemplated project.
Fixed Ground Rent (FGR):	Five percent of the appraised unimproved and unentitled land value with 10% escalations every five years, which County may elect to receive as a remedy for delayed rent if project construction has not commenced or is not substantially completed for reasons within Majestic's control within 15 months after the deadlines in the project schedule as reasonably agreed by the parties from time to time. FGR will continue until substantial completion occurs. Majestic has the option to terminate the Lease at any time after County's election to receive FGR.
Asset Management Fee:	\$10,000 per year paid to County and included in project costs, commencing on January 15 of the calendar year after the City of Chino issues a building permit for the contemplated project; fee increases by 2% per year.
Rent Credit:	\$750,000 or \$1,000,000 (if extension deposit made) transferred from the EOA to be applied to rents payable by Majestic under the Lease.
Deposit:	\$250,000 transferred from the EOA; if there are no monetary defaults by Majestic, 50% of the deposit will be refunded to Majestic at the end of the fifth year and the remainder will be refunded at the end of the tenth year.
Project Costs:	At Majestic's expense, project costs are comprised of pre-development costs from the EOA and costs for the contemplated project incurred during the Lease, including any Williamson Act cancellation fee, RPZ approval expenses, environmental review, Public Contracts Code costs, prevailing wage compliance costs, and expenses due to contractual indemnification of County. The costs are potentially substantial. The gross revenue will be reduced by the project costs resulting in a corresponding reduction in the net revenue split between the County and Majestic.
Equity Contributions:	Entitlement costs, project costs, leasing commissions, tenant improvements and other out of pocket expenses made at Majestic's expense prior to, during, and after the term of the Lease when there are revenue shortfalls, including interest thereon, which shall be deducted from gross revenue. If the Lease is terminated due to County default, County shall reimburse Majestic for all unpaid equity contributions. If the Lease is terminated due to Majestic default, the County shall reimburse Majestic for all unpaid equity contributions other than for entitlements, off-site improvements, on-site infrastructure costs, and Majestic's surrender obligations (Specific Equity Contributions). If the Lease is terminated without default of either party, the County shall reimburse Majestic for 50% of the Specific Equity Contributions and 100% of all other unpaid equity contributions.
Management Fee:	Two percent of the total revenue received as a fee to Majestic, which shall be a project cost to be deducted from gross revenue.
Maintenance:	Provided by Majestic as a project cost. County shall approve alterations exceeding \$150,000 and material exterior alterations, which excludes repainting in substantially the same color or color palate widely used in the vicinity, any landscaping or hardscape, any subtenant improvements or signage (other than content), alterations required by Code, or alterations not visible from the immediately adjacent public right of way.
Surrender Obligations:	Any developed facility will be razed if elected by County at least five years prior to the end of the term or if the facility is damaged or destroyed; otherwise, Majestic will surrender the Property in good condition.

Right to Terminate:	County may terminate for Majestic default, upon 90 days' notice and are subject to lender rights. Majestic may terminate for County default, at any time after County elects to receive FGR, and during the last 10 years of the term if insurance proceeds are insufficient to cover restoration after a damage and destruction event. If project construction is not substantially completed within five years after the deadline in the project schedule as reasonably agreed by the parties from time to time, either party may terminate the Lease.
Non-Standard Terms:	<p>In the event environmental remediation is necessary, including to the extent caused by Majestic or its subtenants, but excluding to the extent caused by Majestic's gross negligence, such costs are included as project costs. Any incurrence of these costs would be deducted from the gross revenues and correspondingly reduce the net revenue shared by the County and Majestic. Any ability to recover such costs from potentially responsible parties may be retained by Majestic. All remediation caused by County or any party other than Majestic and those acting within County's express authority, as defined in the Lease, will be at the County's sole cost and will not be included as a project cost. This is considered a non-standard term because the County is typically not responsible for third parties.</p> <p>The County's standard terms do not include the County granting an indemnity to the other party. However, the Lease requires that the County indemnify Majestic, which could contractually waive the protection of sovereign immunity. The potential risk for agreeing to such a term is that claims that may otherwise be barred could be brought by Majestic and the County would be responsible for defending and reimbursing Majestic for costs, expenses, and damages that could exceed any anticipated revenue to be received by County under the Lease.</p>

Delegation to the Chief Executive Officer or the Director of the Real Estate Services Department to provide County consent, approve administrative matters, and execute required documents under the Lease, is irrevocable except as provided by law.

The approval of the EOA, which includes an option to lease the Property on the terms and conditions in the Lease, was reviewed pursuant to the California Environmental Quality Act (CEQA) and determined to be exempt from further environmental review in accordance with Section 15061(b)(3) of the CEQA guidelines. Majestic will comply with additional CEQA review for any contemplated development project for the Property.

PROCUREMENT

The EOA, which includes an option to lease the Property on the terms and conditions in the Lease, was procured in accordance with Government Code Section 25526 following the Board's declaration of its intention to lease the Property with the adoption of Resolution 2019-132 on August 20, 2019 (Item No. 48). The County may also enter into the EOA with an option to lease the Property pursuant to County Code of Ordinances, Title 1, Division 10, commencing with Section 110.0101.

REVIEW BY OTHERS

This This item has been reviewed by County Counsel (Kristina M. Robb, Principal Assistant County Counsel and Agnes Cheng, Deputy County Counsel, 387-5455) on January 4, 2022; Finance (Wen Mai, Principal Administrative Analyst, 387-4020) on December 28, 2021; and

County Finance and Administration (Matthew Erickson, County Chief Financial Officer, 387-5423)
on December 28, 2022.