



# Board Agenda Item 58

DATE: June 21, 2022

TO: Board of Supervisors

SUBMITTED BY: Steven E. White, Director, Department of Public Works and Planning  
Robert W. Bash, Director, Internal Services/Chief Information Officer

SUBJECT: Amendment to Lease Agreement - Gill Farms

RECOMMENDED ACTION(S):

**Approve and authorize the Chairman to execute Second Amendment to Lease Agreement with Lajhbir S. Gill Farms for 238 acres of farmland at the American Avenue Disposal Site (\$1,384,723), to include:**

- a. **Three-year payment plan of all past-due rent, with payments to be made by December 31 of each year until paid in full, by December 31, 2024 (\$1,081,210);**
- b. **An acceleration clause of all past-due rent, and any then-currently due rent, immediately payable in the event of any default in any payment under the repayment plan;**
- c. **Contractual commitment that Lajhbir S. Gill Farms will not allow any lien by a third party against any of the crops grown on the county-owned farmland;**
- d. **Payment by June 30, 2022, of all delinquent possessory interest taxes owed (\$303,513);**
- e. **Required written verification of all payments of possessory interest taxes on the leased property; and,**
- f. **Authorization for the Director of the Internal Services Department/Chief Information Officer to determine that a material breach of the Lease has occurred, and to issue a notice of termination of the Lease to Lajhbir S. Gill Farms, in the event Lajhbir S. Gill Farms breaches the terms of the Lease in the future.**

Approval of the recommended action will allow Lajhbir S. Gill Farms (Gill Farms) to continue farming the 238 acres of county-owned farmland, but only if Gill Farms comes current on outstanding rents and taxes as provided in the recommended agreement. The recommended amendment provides a payment plan for Gill Farms to pay past due rents owed in three annual payments by December 31 of each year, until December 31, 2024. The recommended amendment also requires all possessory interest taxes owed to be brought current, incorporates a reporting requirement for future payments of possessory interest tax, contains an acceleration clause for all past due amounts upon breach of the term of the Lease, and requires Gill Farms to agree not to allow any third-party liens on its crops. Upon approval of the recommended amendment by your Board, the County's prior notice of material breach issued on April 6, 2022, would be rescinded. If Gill Farms breaches any payment obligation of the recommended amendment, the Director of the Internal Services Department (ISD) would give a 15-day notice of breach and termination, and all rents would come due immediately. This item pertains to a property located in District 1.

ALTERNATIVE ACTION(S):

Your Board may choose to deny the recommended action and allow the Lease with Gill Farms to terminate. If the recommended action is not approved, the Lease will terminate on June 30, 2022, in accordance with the Extension Notice issued on May 6, 2022, and any past due rent amounts owed will be immediately due.

In that case, ISD and Public Works and Planning (PWP) staff seek your Board's direction to retake possession of the county-owned farmland located on West American Avenue to the east of the American Avenue Landfill (Farmland). Your Board has already authorized County Counsel to sue Gill Farms for breach of contract, as announced at the May 17, 2022 Board of Supervisor's meeting.

FISCAL IMPACT:

There is no increase in Net County Cost associated with the recommended action. Approval of the recommended action will result in the delinquent rent being brought current. If the recommended action is not approved, the Lease will terminate on June 30, 2022, in accordance with the Extension Notice issued on May 6, 2022, due to material breach for non-payment, and a past-due amount (period of June 1, 2018 through June 30, 2022) totaling \$1,128,197 will be due immediately. If paid, the monies would be deposited in the PWP - American Avenue Disposal Site Org 9026, Subclass 15000, Account 3404.

In addition, approval of the recommended action will also obligate Gill Farms to pay, no later than June 30, 2022, all delinquent possessory interest taxes and penalties, in the current amount of \$303,513, for its leased interest in the property.

DISCUSSION:

On November 2, 2014, the Board approved Agreement No. 14-675 with Gill Farms for 238 acres of farmland. The Lease is for a 25-year term, commencing on November 4, 2014, and is being utilized for fruit and tree nut farming.

On March 15, 2016, the Board approved First Amendment to Agreement No. 14-675-1 with Gill Farms to change the rent payment frequency from quarterly to monthly.

On March 22, 2022, your Board authorized the Director of the ISD/Chief Information Officer to execute a written Notice of Material Breach (Notice of Breach), Demand for Payment of Rent Due, and Termination of the Lease.

Pursuant to Section 4 of the Lease, the County may immediately terminate the Lease for cause if the Lessee has committed a material breach of the terms and has not corrected such breach within 30 days of receiving a written notice of material breach of the agreement.

On April 6, 2022, County staff delivered the Notice of Breach to Gill Farms, notifying Gill Farms of their material breach of the terms of the Lease, and that the Lease would terminate on May 6, 2022, at 11:59 PM if the breach was not cured.

On May 2, 2022, Gill Farms met with County staff at the ISD and proposed a repayment plan to bring all past due rent amounts current. The repayment plan from Gill Farms proposes that the past due balance of \$1,081,209 be paid in three annual installments. The first annual installment of \$400,000 would be due by December 31, 2022, the second installment of \$400,000 would be due by December 31, 2023, and the third installment of \$281,209 would be due by December 31, 2024.

On May 6, 2022, County staff delivered to Gill Farms a further notice extending the automatic termination date under the Notice to June 30, 2022, to allow time for Gill Farms to engage in good faith negotiations with the County, in the hopes of reaching an acceptable resolution (Extension Notice).

On May 19, 2022, the County and Gill Farms entered into a Tolling Agreement to pause the statute of limitations for any action by the County against Gill Farms for breach of the Lease, including but not limited to any action for unpaid rent (Tolling Agreement). The purpose of the Tolling Agreement was to allow Gill Farms to negotiate in good faith for a payment plan, to satisfy its payment obligations under the Lease and have the ability to continue farming the property.

On May 25, 2022, ISD staff became aware that Gill Farms has failed to pay all possessory interest taxes due on its leasehold interest, as required by the terms of the Lease. The County Auditor-Controller/Treasurer-Tax Collector has advised that, through the end of June 2022, Gill Farms owes \$303,513 in delinquent possessory interest taxes and penalties from the inception of the Lease in 2014 (Delinquent Possessory Interest Tax). The statutory penalties on those delinquent taxes increase by \$2,613 every month.

On May 26, 2022, County staff delivered a notice to Gill Farms acknowledging that the parties have entered into good faith negotiations to amend the Lease to include Gill Farm's proposed payment plan for repayment of past due rents owed under the Lease (Acknowledgement Letter). Additionally, the Acknowledgement Letter requested that Gill Farms immediately pay rents for May and June. **As of June 6, 2022, the May rent installment and the June rent installment had not been paid.**

**Staff's recommendation of the recommended amendment is conditioned upon Gill Farms paying the May and June 2022 rent installments before the June 21 Board meeting. If those payments are not completed by the date of the Board meeting, staff will not recommend entering into the recommended amendment.**

The Acknowledgment Letter also notified Gill Farms that any payment plan with the County would require immediate payment of the Delinquent Possessory Interest Tax in the amount of \$303,513. **As of June 6, 2022, the Delinquent Possessory Interest Tax had not been paid.**

The recommended amendment includes Gill Farms' proposed terms of the repayment plan. To protect the County's interests, the recommended amendment also includes an acceleration clause providing that all past-due amounts and any then-currently due amounts shall be immediately payable in the event of any default in any payment under the repayment plan. The recommended amendment also requires all Delinquent Possessory Interest Tax to be paid in full with immediately available funds by the close of business on June 30, 2022, imposes an annual reporting requirement for verification of payment of possessory interest tax, as well as a contractual commitment that Gill Farms will not allow any lien by a third party against any of the crops grown on the farmland.

Approval of the recommended action will memorialize the negotiated terms of the repayment plan. It will allow Gill Farms to continue farming the 238 acres of county-owned farmland. And, if Gill Farms complies with the terms of the recommended amendment, it will provide payment of the rent owed to the County pursuant to the Lease, and possessory interest taxes owed by statute and pursuant to the Lease.

REFERENCE MATERIAL:

BAI #49, March 22, 2022  
BAI #49, March 15, 2016  
BAI #30, November 4, 2014

ATTACHMENTS INCLUDED AND/OR ON FILE:

On file with Clerk - Second Amendment  
On file with Clerk - Notice issued on April 6, 2022 - Notice of Material Breach  
On file with Clerk - Notice issued on May 6, 2022 - Extension Notice  
On file with Clerk - Agreement dated May 18, 2022 - Tolling agreement  
On file with Clerk - Notice issued on May 26, 2022 - Acknowledgement Letter

CAO ANALYST:

Sonia M. De La Rosa