

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

July 26, 2022

FROM

**TERRY W. THOMPSON, Director, Real Estate Services Department
GEORGINA YOSHIOKA, Interim Director, Department of Behavioral Health**

SUBJECT

Amendment to Lease Agreement with CommStar5, L.P., a California Limited Partnership for Office Space for the Department of Behavioral Health in Apple Valley

RECOMMENDATION(S)

1. Approve **Amendment No. 4** to Lease **Agreement No. 19-187** with CommStar5, L.P., a California Limited Partnership, to modify the specifications for improvements to be completed by the landlord pursuant to this lease and increase San Bernardino County's change order limit from \$45,000 to \$80,000, and change the date by which San Bernardino County may elect to terminate the lease due to landlord's delayed completion of tenant improvements from May 1, 2022 to January 1, 2023.
2. Authorize the Purchasing Agent to issue Purchase Orders, as necessary, for a total amount not to exceed \$80,000, for any contingencies and/or change orders that may arise in order to complete the turnkey tenant improvements in Amendment No. 4 to Lease Agreement No. 19-187 to be constructed by the landlord (Four votes required).
3. Direct the Purchasing Agent to transmit all change order documents to the Clerk of the Board of Supervisors within 30 days of execution.

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

COUNTY AND CHIEF EXECUTIVE OFFICER GOALS & OBJECTIVES

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

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

FINANCIAL IMPACT

Approval of this item will not result in the use of Discretionary General Funding (Net County Cost). The amendment increases the change order amount from \$45,000, as previously approved by the Board of Supervisors (Board) for the original lease, to a total amount not to exceed \$80,000. Lease payments will be made from the Real Estate Services Department (RESD) Rents budget (7810001000) and reimbursed from the Department of Behavioral Health (DBH) budget (9200001000). DBH lease costs are funded with 49% State Mental Health Realignment funds, 45% Mental Health Services Act funds and 6% Federal funds. Sufficient appropriation is included in the 2022-23 budget and will be included in future recommended budgets.

BACKGROUND INFORMATION

The recommended action will authorize the Purchasing Agent to issue Purchase Orders, as necessary, for a total amount not to exceed \$80,000, for any contingencies and/or change

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orders. The amendment updates the lease agreement language specific to tenant improvements for an upgrade of soundproofing to meet the minimum Health Insurance Portability and Accountability Act (HIPAA) regulations, and updates the standard lease agreement language for the 27,019 square feet of office space located at 18818 Hwy 18, in Apple Valley.

DBH identified change orders that significantly impacted the project schedule and budget. DBH learned the department's soundproof specifications included a Sound Transmission Class (STC) rating of 45; STC is a rating of sound isolation of a building wall assembly. The STC 45 rating is considered inadequate due to privacy concerns related to HIPAA regulations where patient privacy protections are required. Adding a layer of an acoustic gypsum board product called QuietRock would achieve an STC rating of 54 and would allow DBH to comply with HIPAA safeguard standards.

The change order exceeds the previously Board approved amount of \$45,000 for contingencies and/or change orders. Therefore, DBH is requesting the Board authorize the Purchasing Agent to increase the change order amount from \$45,000 to \$80,000 to cover the necessary project changes.

On March 19, 2019 (Item No. 33), the Board approved Lease Agreement No. 19-187, with Schneider Real Estate Associates, Inc. (Schneider), for a term of 10 years with two five-year options to extend the term of the lease, for 27,019 square feet of office space for a DBH facility at the northeast corner of Nancotta Road and Outer Highway US 18, in Apple Valley, subject to Schnieder's completion of turnkey tenant improvements. The projected term of the original lease was for the period of May 1, 2020 through April 30, 2030, based on the projected improvement completion date of May 1, 2020.

In the two years since the Board approved the lease, three amendments have been approved. Amendment No. 1 changed the projected improvement completion date from May 1, 2020 to November 1, 2021, the projected lease commencement date from May 1, 2020 to November 1, 2021, and the projected lease ending date from April 30, 2030 to October 31, 2031; added additional tenant improvements; and adjusted the rental rate schedule. Amendment No. 2 reflected a change of property ownership to CommStar5, L.P. (CommStar). Amendment No. 3 changed the date by which San Bernardino County (County) may elect to terminate the Lease due to landlord's delayed completion of tenant improvements from November 1, 2021 to May 1, 2022; changed the date by which the County may collect liquidated damages due to landlord's delayed completion of tenant improvements from November 1, 2021 to November 16, 2021; and changed the amount of liquidated damages payable by the landlord due to the landlord's delayed completion of tenant improvements from \$500.00 per day to \$1,000 per day.

<u>Amendment No.</u>	<u>Approval Date</u>	<u>Item No.</u>
1	October 27, 2020	78
2	January 22, 2021	N/A
3	August 10, 2021	30

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

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Summary of Lease Terms

Lessor:	CommStar5, L.P., a California Limited Partnership (Stanley Huang, General Partner)
Location:	Northeast corner of Nancotta Road and Outer Highway US 18, (Assessor Parcel Numbers 0473-081-07 and 20) in Apple Valley
Size:	27,019 square feet of office space
Term:	10 years with projected commencement date of November 1, 2021
Options:	Two five-year options to extend the term of the lease
Rent:	Cost per sq. ft. per month: \$2.94* modified gross (includes \$0.55 per square foot for turnkey tenant improvements) Monthly: \$ 79,436 High-range for comparable facilities in the Apple Valley area per the competitive set analysis on file with RESD (Base Rent \$2.40 + \$0.55 tenant improvements)
Annual Increases:	2%
Improvement Costs:	To be provided by Lessor at total cost of \$1,783,320 (\$0.55 per square foot per month) for turnkey tenant improvements amortized in the monthly rent, and an allocation up to \$200,000 for any contingencies and change order work to the turnkey tenant improvements set forth in the lease to be authorized and paid by purchase orders as needed
Custodial:	Provided by Lessor
Maintenance:	Provided by Lessor, except County reimbursement of certain maintenance and repairs expenses incurred by the landlord resulting from the intentional misconduct of County or its invitees
Utilities:	Provided by Lessor; County to pay electrical costs in excess of \$71,330 per year or approximately \$0.22 per square foot per month (electric utility expense cap), which cap is increased 2% annually
Insurance:	The Certificate of Liability Insurance, as required by the lease, is on file with RESD
Right to Terminate:	No right to terminate for convenience during the initial 10-year term; County can terminate with 90-days' notice during any extended term
Parking:	124 parking spaces

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PROCUREMENT

On March 19, 2019 (Item No. 33), the Board approved a 10-year Lease Agreement No. 19-187, which was procured in accordance with County Policy 12-02 – Procuring Privately Owned Real Property for County Use (Policy) using an alternative procedure. The procurement process required by the Policy does not apply to amendments of existing leases, provided the amendment does not exceed the maximum term (including options) of the lease.

REVIEW BY OTHERS

This item has been reviewed by County Counsel (Kristina M. Robb, Principal Assistant County Counsel, and Dawn Martin, Deputy County Counsel, 387-5455) on July 21, 2022; Department of Behavioral Health (Erica Ochoa, Chief Compliance Officer/Privacy Officer, 388-0882, and Emily Petrus, Administrative Supervisor, 388-0949) on June 13, 2022; Purchasing (Bruce Cole, Supervising Buyer, 387-2148) on July 21, 2022; Finance (Carl Lofton, Administrative Analyst, 387-5404, and Paul Garcia, Administrative Analyst, 386-8392) on July 7, 2022; and County Finance and Administration (Diana Atkeson, Deputy Executive Officer, 387-4376) on July 7, 2022.

(JAG: 677-8210)

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Record of Action of the Board of Supervisors
San Bernardino County

APPROVED (CONSENT CALENDAR)

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

Lynna Monell, CLERK OF THE BOARD

BY 
DATED: July 26, 2022



cc: RESD- Thompson w/agree
Contractor- C/O RESD w/agree
File- w/agree
LA 08/5/2022