

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

August 10, 2021

FROM

**TERRY W. THOMPSON, Director, Real Estate Services Department
DR. VERONICA KELLEY, Director, Department of Behavioral Health**

SUBJECT

Amendment No. 3 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)

Approve **Amendment No. 3** to Lease **Agreement No.19-187** with CommStar5, L.P., a California Limited Partnership, to change the date by which the County may elect to terminate the lease due to landlord's delayed completion of tenant improvements from November 1, 2021 to May 1, 2022; change 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; change the amount of liquidated damages payable by landlord due to landlord's delayed completion of tenant improvements from \$500 per day to \$1,000 per day, and update standard lease agreement language for 27,019 square feet of office space located at the northeast corner of Nancotta Road and Outer Highway US 18 [Assessor Parcel Numbers (APNs) 0473-081-07 and 20], in Apple Valley for the Department of Behavioral Health at no cost.
(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). There are no additional costs associated with this amendment. The total contract cost as previously approved by the Board of Supervisors (Board) for the lease is \$10,265,100. 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 36% Federal, 29% State, 30% State Mental Health Realignment funds and 5% Inland Empire Health Plan. Sufficient appropriation is included in the 2021-22 Rents and DBH budgets and will be included in future recommended budgets.

BACKGROUND INFORMATION

The recommended action will amend an existing lease agreement to change the date by which the County may elect to terminate the lease due to landlord's delayed completion of tenant improvements from November 1, 2021 to May 1, 2022; change the date by which County may collect liquidated damages due to landlord's delayed completion of tenant improvements from November 1, 2021 to November 16, 2021; change the amount of liquidated damages payable

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by landlord due to landlord's delayed completion of tenant improvements from \$500 per day to \$1,000 per day, and updates standard lease agreement language for 27,019 square feet of office space located at the northeast corner of Nancotta Road and Outer Highway US 18, in Apple Valley at no cost.

On March 19, 2019 (Item No. 33), the Board approved a 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 turn-key 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, the Board has approved two amendments to change 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; add additional tenant improvements; adjust the rental rate schedule; and reflect a change of property ownership to CommStar5, L.P. a California Limited Partnership (CommStar).

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

CommStar encountered difficulties with its construction financing during the underwriting process, and its lender expressed concerns regarding the County's right to terminate the lease due to construction delays. In exchange for the County's extension of its right to terminate for construction delays from November 1, 2021 to May 1, 2022, landlord proposes that the amount of liquidated damages payable due to construction delays increase from \$500 per day to \$1,000 per day for each days delay.

Amendment No. 3 to Lease Agreement No. 19-187 changes the date by which County may elect to terminate the lease due to landlord's delayed completion of tenant improvements from November 1, 2021 to May 1, 2022; changes the date by which County may collect liquidated damages due to landlord's delayed completion of tenant improvements from November 1, 2021 to November 16, 2021; changes the amount of liquidated damages payable by landlord due to landlord's delayed completion of tenant improvements from \$500 per day to \$1,000 per day, and updates standard lease agreement language.

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.

Summary of Lease Terms

Lessor: CommStar5, L.P., a California Limited Partnership
(Allen Steward, CEO)

Location: Northeast corner of Nancotta Road and Outer Highway US 18,

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(APNs 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

Rent: Cost per sq. ft. per month: \$2.95* modified gross
Monthly: \$79,436
Annual: \$953,232
*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 turn-key tenant improvements amortized in the monthly rent, including \$1,621,200 for the initial improvements in the original lease and \$162,120 for additional improvements set forth in the amendment, and an allocation up to \$45,000 for any contingencies and/or minor change order work to the turn-key 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 repair 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: County has 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 12-02) using an alternative procedure. 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.

REVIEW BY OTHERS

This item has been reviewed by County Counsel (Agnes Cheng, Deputy County Counsel, and Dawn Martin, Deputy County Counsel, 387-5455) on July 16, 2021; DBH (Michael Knight, Assistant Director, 388-0808 and Emily Petrus, Administrative Supervisor, 388-0949) on July 16, 2021; Purchasing Department (Bruce Cole, Supervising Buyer, 387-2148) on July 13, 2021; Finance (Carl Lofton, Administrative Analyst, 387-5404 and Chris Lange, Administrative Analyst, 386-8393) on July 26, 2021; and County Finance and Administration (Matthew Erickson, County Chief Financial Officer, 387-5423) on July 26, 2021.

(JAG: 677-8210)

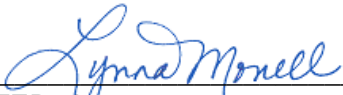
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Record of Action of the Board of Supervisors
San Bernardino County

APPROVED (CONSENT CALENDAR)

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

Lynna Monell, CLERK OF THE BOARD

BY 
DATED: August 10, 2021



cc: RESD- Thompson w/agree
Contractor- C/O RESD w/agree
File- w/agree
LA 08/12/2021