



Contract Number

19-187 A-5

SAP Number

Real Estate Services Department

Department Contract Representative	Terry W. Thompson, Director
Telephone Number	(909) 387-5000
Contractor	CommStar5, LP. , a California Limited Partnership
Contractor Representative	Stanley Huang
Telephone Number	626-374-4727
Contract Term	February 8, 2023 - February 7, 2038
Original Contract Amount	\$10,265,100.00
Amendment Amount	\$ 8,334,127.14
Total Contract Amount	\$18,599,227.14
Cost Center	9200001000
GRC/PROJ/JOB No.	62003700

IT IS HEREBY AGREED AS FOLLOWS:

WHEREAS, San Bernardino County, as tenant ("COUNTY") and CommStar5, L.P., a California Limited Partnership, as landlord ("LANDLORD") entered into a Lease Agreement, Contract No. 19-187 dated March 19, 2019; as amended by the First Amendment dated October 27, 2020, as amended by the Second Amendment dated January 22, 2021, as amended by the Third Amendment dated August 10, 2021, and the Fourth Amendment dated July 26, 2022 (collectively, the "Lease"), wherein the LANDLORD leases certain premises, comprising approximately 27,019 square feet located at 18818 Hwy 18 Apple Valley, California, as the premises is more specifically set forth in the Lease, to the COUNTY for a term that was projected to commence on November 1, 2021, subject to LANDLORD's delivery of the Premises with the Improvements, as more specifically set forth in the Lease, Substantially Completed and COUNTY's acceptance of the delivered Premises, and;

WHEREAS, LANDLORD's completion of the improvements was delayed beyond the anticipated Improvements Substantially Completed and the Premises accepted by COUNTY projected date of January 1, 2023 due to labor shortages and supply chain issues caused by the COVID-19 pandemic, which were outside of LANDLORD's control, and created liquidated damages which is calculated by the total number of delay days of 450 days at \$1,000 a day for a total of \$450,000 owed by LANDLORD to COUNTY; and

WHEREAS, notwithstanding anything to the contrary in the Lease or any exhibits thereto and in lieu of any claims by the parties under the Lease regarding any additional costs for the Improvements due from the COUNTY to LANDLORD for any reason, including but not limited to any costs otherwise incurred by LANDLORD,

and any liquidated damages due from the LANDLORD to the COUNTY related to the delayed completion of the Improvements, the parties desire to enter into this Fifth Amendment and provide for: (i) an agreed change to the Commencement Date to be retroactive to February 8, 2023 in the total amount of \$15,224 due in arrears with the next scheduled rent; (ii) extend the initial term of the lease to fifteen (15) years with an agreed Expiration Date of February 7, 2038; (iii) add a Utility Expense Cap for COUNTY to pay LANDLORD not to exceed \$5,944.18 subject to 2% annual increases, in the total amount of \$22,327 due in arrears with the next scheduled rent; and (iv) change the rent schedule and amounts as more specifically provided in Paragraph 3. TERM below; and.

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated herein by reference, and the mutual covenants and conditions set forth in this Fifth Amendment, the parties hereto agree the Lease is amended as follows:

1. The parties hereby acknowledge and agree that, notwithstanding anything to the contrary in this Lease or any exhibits thereto, and in lieu of any claims by the parties under the Lease regarding any additional costs for the Improvements due from the COUNTY to LANDLORD for any reason, including but not limited to, any and all Change Orders, or any costs otherwise incurred by LANDLORD, and any liquidated damages due from the LANDLORD to the COUNTY related to the delayed completion of the Improvements: (i) the agreed retroactive Commencement Date of the Lease Term is February 8, 2023 and the agreed Expiration Date of the Lease Term is February 7, 2038 (as the Lease Term may be extended pursuant to Paragraph 6, OPTION TO EXTEND LEASE TERM of the Lease); (ii) the agreed total cost of the Improvements, including but not limited to any and all Change Orders, or any costs otherwise incurred by LANDLORD, is \$1,783,320, which shall be amortized over the first 10 years of the Lease Term and payable by COUNTY in monthly installments of \$14,861, and any costs for the Improvements that exceed \$1,783,320 shall be at LANDLORD's sole cost and expense; (iii) due to labor shortages and supply chain issues caused by the COVID-19 pandemic, which were outside of LANDLORD's control, liquidated damages for approximately \$450,000, for the delayed completion of the Improvements are not due from LANDLORD to COUNTY. In consideration of the foregoing and the mutual execution of this Fifth Amendment, LANDLORD hereby expressly waives any and all claims against COUNTY for any and all Improvement costs that exceed \$1,783,320, and in exchange, COUNTY waives any and all claims against LANDLORD for liquidated damages due to delayed completion of the Improvements, in accordance with this Fifth Amendment.

Notwithstanding the application of Section 1542 of the California Civil Code, which provides:

"A general release does not extend to claims which the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party."

LANDLORD and COUNTY expressly waives and relinquishes, for itself respectively, all rights and benefits afforded them by said Section 1542, and any and all similar laws of any State or territory of the United States. This Fifth Amendment shall act as a release of future claims that may arise from the above-mentioned damages, claims or actions, whether such claims are currently known, unknown, foreseen, or unforeseen. The LANDLORD and COUNTY respectively understands and acknowledges the significance and consequences of such specific waiver of Section 1542 and hereby assumes full responsibility for any injuries, damages, losses, or liability that they or their personnel may respectively hereafter incur.

2. Effective retroactively as of February 8, 2023, DELETE in its entirety the existing **Paragraph 3, TERM**, and SUBSTITUTE therefore the following as a new **Paragraph 3, TERM**:

3. **TERM**:

A. Initial Term. The Lease's initial term shall be fifteen (15) years ("Initial Term") which shall commence on the retroactive date of February 8, 2023, ("Commencement Date") and shall expire fifteen (15) years thereafter on February 7, 2038 ("Ending Date").

3. DELETE in its entirety the existing **Paragraph 4, RENT, subparagraph "A"** and SUBSTITUTE therefore the following as a new **Paragraph 4, RENT, subparagraph "A"**:

4. RENT:

A. COUNTY shall pay to LANDLORD the following monthly rental payments for the Premises and the amortized improvement payments for the Improvements, in arrears not later than the last day of each month of each lease year during the Initial Term, based on approximately 27,019 square feet of leased space, the amounts specifically set forth below:

Lease Year	Monthly Rent	Monthly Amortized Improvements Payment	Utility Expense (2% Annual Increase)	Total Monthly Rent
*February 8, 2023 – **May 23, 2023	\$ 68,628.00	\$ 14,861.00	\$5,944.18	\$89,433.18
**May 24, 2023 - February 7, 2024	\$ 68,628.00	\$ 14,861.00	\$5,944.18	\$89,433.18
February 8, 2024 - February 7, 2025	\$ 72,745.68	\$ 14,861.00	\$6,063.06	\$93,669.74
February 8, 2025 - February 7, 2026	\$ 77,110.42	\$ 14,861.00	\$6,184.32	\$98,155.75
February 8, 2026 - February 7, 2027	\$ 81,737.05	\$ 14,861.00	\$6,308.01	\$102,906.06
February 8, 2027 - February 7, 2028	\$ 86,641.27	\$ 14,861.00	\$6,434.17	\$107,936.44
February 8, 2028 - February 7, 2029	\$ 91,839.74	\$ 14,861.00	\$6,562.86	\$113,263.60
February 8, 2029 - February 7, 2030	\$ 97,350.13	\$ 14,861.00	\$6,694.11	\$118,905.24
February 8, 2030 - February 7, 2031	\$103,191.14	\$ 14,861.00	\$6,827.99	\$124,880.13
February 8, 2031 - February 7, 2032	\$109,382.61	\$ 14,861.00	\$6,964.55	\$131,208.16
February 8, 2032 - February 7, 2033	\$115,945.56	\$ 14,861.00	\$7,103.85	\$137,910.41
February 8, 2033 - February 7, 2034	\$ 78,544.08	\$0	\$7,245.92	\$85,790.00
February 8, 2034 - February 7, 2035	\$ 78,544.08	\$0	\$7,390.84	\$85,934.92
February 8, 2035 - February 7, 2036	\$ 78,544.08	\$0	\$7,538.66	\$86,082.74
February 8, 2036 - February 7, 2037	\$ 78,544.08	\$0	\$7,689.43	\$86,233.51
February 8, 2037 - February 7, 2038	\$ 78,544.08	\$0	\$7,843.22	\$86,387.30

The parties agree that all parking spaces at the parking lot on the Property provided under this Lease are at no additional cost to the COUNTY during the Initial Term and any extended term.

*Monthly Rent, Amortized Improvement Payment, and Utility Expense includes retroactive costs

**Monthly Rent, Amortized Improvement Payment, and Utility Expense includes proration costs

4. DELETE in its entirety the existing **Paragraph 6, OPTION TO EXTEND TERM** and SUBSTITUTE therefore the following as a new **Paragraph 6, OPTION TO EXTEND TERM:**

6. OPTION TO EXTEND TERM:

A. LANDLORD gives COUNTY the option to extend the term of the Lease on the same provisions and conditions, except for the monthly rent, for one (1) five-year option period (extended term) following expiration of the Initial Term, by COUNTY giving notice of its intention to exercise the option to LANDLORD prior to the expiration of the preceding term or during any holding over pursuant to Paragraph 8, HOLDING OVER.

B. The Monthly Rent for the Premises during each Option Term shall be adjusted by good faith negotiation of the Parties to the fair market monthly rental rate then prevailing based on the monthly rental rent ("FMV Rent") of comparable leased premises in the County of San Bernardino. If the Parties have been unable to agree on the FMV Rent for the Premises within five (5) months of COUNTY's exercise of its option, said FMV Rent shall be determined through

arbitration conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association. During the period between the expiration of the then current Lease Term and the determination of the Monthly Rent for the Premises by arbitration, COUNTY shall continue to pay the Monthly Rent for the Premises in the amount due for the month immediately preceding expiration of the then current Lease Term. If the FMV Rent for the Premises is determined by arbitration and COUNTY does not, for any reason, agree with such determination, COUNTY shall have the right to terminate the Lease by providing LANDLORD with written notice not later than thirty (30) days after COUNTY's receipt of the arbitration-determined FMV Rent. In the event COUNTY does not so terminate the Lease, COUNTY shall commence paying the arbitration-determined FMV Rent for the month immediately following COUNTY's receipt of said rate determination and for the duration of the subject Option Term. The cost of arbitration shall be split evenly between the parties.

5. DELETE in its entirety the existing **Paragraph 16, UTILITIES** and SUBSTITUTE therefor the following as a new **Paragraph 16, UTILITIES**:

16. UTILITIES:

A. COUNTY to pay LANDLORD for Electric Utility Expenses not to exceed \$5,944.18 subject to 2% annual increases as more specifically provided in Paragraph 4. RENT. LANDLORD will be responsible to pay for any Excess Electric Utility Expenses (as later defined), LANDLORD shall, at its sole cost and expense, furnish and pay for, prior to delinquency, the use charges, and related taxes for any and all utilities, including, but not limited to, electric, gas, water, sewer, and trash for the Premises, the Building, and the Property.

B. Excess Electric Utility Expenses.

(1) Electric Utility Expense. LANDLORD shall pay for all direct charges and related taxes due to COUNTY's electric usage at the Premises ("Electric Utility Expenses"), which are invoiced to LANDLORD by the electric utility company on a monthly basis for each twelve month period during the Lease Term, commencing from the Commencement Date ("Lease Year"). LANDLORD shall deduct from the Electric Utility Expenses any and all credits, rebates, or other offsets given by the electric utility company to LANDLORD but LANDLORD shall not increase the Electric Utility Expense due to any late fees, penalties, or interest payable by LANDLORD to the electric utility company. On or before the Commencement Date, the parties shall jointly read the electric meter for the Premises to establish the point at which Electric Utility Expenses for the Premises start to accrue.

(2) Electric Utility Expense Cap. LANDLORD shall pay the Electric Utility Expenses for the Premises but in no event shall COUNTY pay any Electric Utility Expenses that exceed the Electric Utility Expenses as described in this Paragraph 16. UTILITIES; subparagraph A. The term "Electric Utility Expense Cap," as used in this paragraph, shall mean the maximum amount payable by COUNTY for the Electric Utility Expenses for a Lease Month. The Electric Utility Expense Cap for the initial Lease Year, paid monthly and commencing as of the Commencement Date, shall be five thousand nine hundred forty-four dollars and 18/100 cents (\$5,944.18), which cap shall increase annually by two percent (2%) at each anniversary of the Commencement Date.

(3) Excess Electric Utility Expenses. For each Lease Month where the Electric Utility Expenses for the subject Lease Month exceeds the Electric Utility Expense Cap for the subject Lease Month, shall be the responsibility of the LANDLORD for such excess costs ("Excess Electric Utility Expenses").

C. Interruptions. In the event of any interruption of any utilities provided to the Premises, the Building, or the Property and COUNTY determines, in its sole discretion, that

COUNTY is unable access the Premises or the Allocated Parking or unable to conduct its operations at the Premises as a result of such interruption, LANDLORD shall immediately restore the affected utility service(s) and Monthly Rent shall be abated for the duration of the interruption in proportion to the Premises or portion thereof that is inaccessible or unusable by COUNTY to conduct its operation and COUNTY shall have the right to deduct the abated amount from the Monthly Rent and other sums next due for the period from the date the interruption commenced until such time that the affected utility is fully restored.

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6. This Fifth Amendment may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts shall together constitute one and the same Fifth Amendment. The parties shall be entitled to sign and transmit an electronic signature of this Fifth Amendment (whether by facsimile, PDF or other mail transmission), which signature shall be binding on the party whose name is contained therein. Each party providing an electronic signature agrees to promptly execute and deliver to the other party an original signed Fifth Amendment upon request.

7. All other provisions and terms of the Lease shall remain the same and are hereby incorporated by reference. In the event of conflict between the Lease and this Fifth Amendment, the provisions and terms of this Fifth Amendment shall control.

END OF THE FIFTH AMENDMENT

COUNTY: SAN BERNARDINO COUNTY

►

Dawn Rowe, Chair, Board of Supervisors

Dated: _____
SIGNED AND CERTIFIED THAT A COPY OF THIS
DOCUMENT HAS BEEN DELIVERED TO THE
CHAIRMAN OF THE BOARD

Lynna Monell
Clerk of the Board of Supervisors
San Bernardino County

By _____
Deputy

LANDLORD: COMMSTAR5, L.P.

By ► _____
(Authorized signature - sign in blue ink)

Name Stanley Huang
(Print or type name of person signing contract)

Title General Partner
(Print or Type)

Dated: _____

Address _____

FOR COUNTY USE ONLY

Approved as to Legal Form
►
John Tubbs II, Deputy County Counsel
Date _____

Reviewed for Contract Compliance
►
Date _____

Reviewed/Approved by Department
►
Lyle Ballard, Real Property Manager, RESD
Date _____