

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

May 23, 2023

FROM

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

SUBJECT

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

RECOMMENDATION(S)

1. Find that approval of Amendment No. 5 with CommStar5, L.P., a California Limited Partnership, for office space in Apple Valley is an exempt project under the California Environmental Quality Act Section 15301 - Existing Facilities (Class 1).
2. Approve **Amendment No. 5 to Lease Agreement No. 19-187** with Commstar5, L.P., a California Limited Partnership, to change the commencement date from the projected date of November 1, 2021 to February 8, 2023, change the expiration date from the projected date of October 31, 2031 to February 7, 2038, adjust the rental rate schedule, and update standard lease agreement language, for 27,019 square feet of office space located at 18818 Highway 18 in Apple Valley, for the Department of Behavioral Health, in the total amendment amount of \$8,334,127.
3. Direct the Clerk of the Board of Supervisors to file and post the Notice of Exemption for the project as required under the California Environmental Quality Act.
(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 total cost of this lease agreement is \$18,599,227, which consists of the original lease cost of \$10,265,100, and the total amendment amount of \$8,334,127 that includes increased rents, retroactive rents, tenant improvement costs, utility costs, and five additional years on the lease. Lease payments and other costs 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 49% from State Mental Health Realignment funds, 45% Mental Health Services Act and 6% Federal funds. Adequate appropriation and funding have been included in the RESD 2022-23 budget and will be included in future recommended budgets. Annual lease costs are as follows:

<u>Year</u>	<u>Annual Lease Costs Including Tenant</u>	<u>Utility Costs</u>
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**Amendment to Lease Agreement with CommStar5, L.P., a California
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	<u>Improvement Costs</u>	
*February 8, 2023 - May 23, 2023	\$ 326,743	\$22,327
**May 24, 2023 - February 7, 2024	\$ 689,871	\$49,117
February 8, 2024 - February 7, 2025	\$1,051,280	\$72,757
February 8, 2025 - February 7, 2026	\$1,103,657	\$74,212
February 8, 2026 - February 7, 2027	\$1,159,177	\$75,696
February 8, 2027 - February 7, 2028	\$1,218,027	\$77,210
February 8, 2028 - February 7, 2029	\$1,280,409	\$78,754
February 8, 2029 - February 7, 2030	\$1,346,534	\$80,329
February 8, 2030 - February 7, 2031	\$1,416,626	\$81,936
February 8, 2031 - February 7, 2032	\$1,490,923	\$83,575
February 8, 2032 - February 7, 2033	\$1,569,679	\$85,246
February 8, 2033 - February 7, 2034	\$942,529	\$86,951
February 8, 2034 - February 7, 2035	\$942,529	\$88,690
February 8, 2035 - February 7, 2036	\$942,529	\$90,464
February 8, 2036 - February 7, 2037	\$942,529	\$92,273
<u>February 8, 2037 - February 7, 2038</u>	<u>\$942,529</u>	<u>\$94,119</u>
Total Cost	\$17,365,571	\$1,233,656

*Reflects the agreed upon retroactive rents of \$15,224 and rent that has already been paid of \$311,519, which includes amortized tenant improvement costs, for a total of \$326,743, as well as utility costs of \$22,327 for this period. **Costs for the period of May 24, 2023 through February 7, 2024, include additional prorated retroactive rent costs in the total amount of \$14,746, and utility costs in the amount of \$114, as negotiated with CommStar5, L.P. (CommStar).

BACKGROUND INFORMATION

On March 19, 2019 (Item No. 33), the Board of Supervisors (Board) approved a lease agreement No. 19-187 for 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 the previous Landlord's acquisition of the property and completion of turnkey tenant improvements. The original projected term of the lease was for the period of May 1, 2020 through April 30, 2030, based on the projected improvement completion date of May 1, 2020. The property was acquired by the landlord on January 18, 2019.

In the three years since the Board approved the lease, four 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 CommStar, per provisions within the lease agreement. Amendment No. 3 changed 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. Amendment No. 4 increased the approved change order limit from \$45,000 to \$80,000 for contingencies and changed the date by which the County could terminate the lease for delayed completion of tenant improvements from May 1, 2022 to January 1, 2023.

<u>Amendment No.</u>	<u>Approval Date</u>	<u>Item No.</u>
1	October 27, 2020	78

**Amendment to Lease Agreement with CommStar5, L.P., a California Limited Partnership, for Office Space in Apple Valley
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<u>Amendment No.</u>	<u>Approval Date</u>	<u>Item No.</u>
2	January 22, 2021	-
3	August 10, 2021	30
4	July 26, 2022	45

As a result of a number of unforeseen circumstances causing unavoidable delays and construction complications, such as the prolonged impacts of the COVID-19 pandemic, economic disruptions, supply chain impacts, labor shortages, and previously undisclosed major planning requirements from the Town of Apple Valley, the Landlord and County entered into negotiations to extend the lease and retroactively provide resolution to the extensive costs of the project.

On April 17, 2023, CommStar requested that the County amend the lease to extend the term by five years and increase the base rent to \$68,628 per month, subject to 6% annual increases for the first 10 years, plus an amortized monthly payment for tenant improvements of \$14,861 during the first 10 years, for a total of \$83,489 per month beginning retroactively on February 8, 2023. In addition, the County would be responsible for retroactively paying the difference in rent in the amount of \$15,224 based on a pre-negotiated rate with CommStar, and retroactively paying utility expenses in the amount of \$22,327 for the period of February 8, 2023 through May 23, 2023. Prorated rent costs including retroactive payments for the period of February 8, 2023 through February 7, 2024, total \$1,016,614, plus \$71,444 in utility costs. Years 11 through 15 would be at a base monthly rent of \$78,544.08 with no amortized payments and no annual increase.

Amendment No. 5 to Lease Agreement No. 19-187 changes the commencement date from the projected date of November 1, 2021 to February 8, 2023, changes the expiration date from the projected date of October 31, 2031 to February 7, 2038, mutually waives claims related to total construction costs and liquidated damages for the turnkey tenant improvements, adjusts the rental rate schedule, amends the lease to one five-year option, and updates standard lease agreement language. All other terms and conditions of the lease remain unchanged.

The mutual release of claims relates to any future costs for improvements owed by the County to CommStar that exceed the stated total amount in the amendment in exchange for the liquidated damages of approximately \$450,000 due from landlord to County for delays in completion of the improvements.

The project to approve the lease agreement was reviewed pursuant to the California Environmental Quality Act (CEQA) and determined to be categorically exempt under Section 15301 – Existing Facilities (Class 1) as there is no possibility that leasing the subject property will have a significant effect on the environment.

Summary of Lease Terms

Lessor: CommStar5, L.P., a California Limited Partnership
(Stanley Huang, General Partner)

Location: 18818 Highway 18, Apple Valley, CA 92307
(Assessor’s Parcel Numbers 0473-081-07 and 0473-081-20)

Size: 27,019 square feet of office space

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Term: 15 Years

Options: One five-year option to extend the term of the lease

Rent: Cost per square foot per month: \$3.09*
Monthly: \$83,489.00
Annual: \$1,001,868.00
*High-range for comparable facilities in the Apple Valley area per the competitive set analysis on file with RESD (Base Rent \$2.54 + \$0.55 tenant improvements)

Annual Increases: 6% increases for years 1-10, no increases for years 11-15

Improvement Costs: Amortized monthly payments of \$14,861 over years 1-10 are included in annual lease costs

Custodial: Provided by Landlord

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 County, County to pay electrical costs up to \$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 the Real Estate Services Department

Holdover: In the event the County shall holdover and continue to occupy the premises with the consent of the landlord, expressed or implied, the tenancy shall be deemed to be a tenancy from month-to-month upon the same terms and conditions, including rent, as existed, and prevailed at the time of the expiration of the term of this lease

Right to Terminate: No right to terminate for convenience during the initial 15-year term; County can terminate with 90-days' notice during any extended term

Parking: Exclusive use of 124 parking spaces

*High-range rent approved through business points negotiated with RESD and the County Administrative Office.

PROCUREMENT

On March 19, 2019 (Item No. 33), the Board approved Lease Agreement No. 19-187 for 10 years, which was procured in accordance with County Policy 12-02 – Procuring Privately

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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 (John Tubbs II, Deputy County Counsel, and Dawn Martin, Deputy County Counsel, 387-5455) on May 16, 2023; Behavioral Health (Julie Hale, Deputy Director, 388-0804, and Lydia Bell, Administrative Manager, 388-0949) on May 17, 2023; Purchasing (Bruce Cole, Supervising Buyer, 387-2148) on May 16, 2023; Finance (Chris Lange, Administrative Analyst, and Garrett Baker, Administrative Analyst, 387-3077) on May 17, 2023; and County Finance and Administration (Valerie Clay, Deputy Executive Officer, 387-5423) on May 17, 2023.

(BR: 531-2674)

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Record of Action of the Board of Supervisors
San Bernardino County

APPROVED (CONSENT CALENDAR)

Moved: Joe Baca, Jr. Seconded: Curt Hagman
Ayes: Jesse Armendarez, Dawn Rowe, Curt Hagman, Joe Baca, Jr.
Absent: Col. Paul Cook (Ret.)

Lynna Monell, CLERK OF THE BOARD

BY 
DATED: May 23, 2023



cc: RESD - Thompson w/agree w/CEQA & receipt
Contractor - c/o RESD w/agree
File - w/agree w/CEQA & receipt
CCM 05/31/2023