

Item 35



Travis County Commissioners Court Agenda Request

Meeting Date: June 4, 2013, Executive Session

Prepared By/Phone Number: John Carr, 854-4772

Dept. Head: Roger El Khoury, M.S., P.E., Director, FMD, 854-4579

County Executive: Leslie Browder, Planning and Budget, 854-9106

Sponsoring Court Members: Judge Biscoe

A handwritten signature in black ink, appearing to read "Roger El Khoury", with a stylized initial "R" and "E" below it.

AGENDA LANGUAGE:

Consider and take appropriate action regarding lease issues at 700 Lavaca with DuBois, Bryant and Campbell, L.L.P., (Exec Session Gov't Code Ann 551.071 & 551.072).

BACKGROUND/SUMMARY OF REQUEST:

DuBois, Bryant & Campbell's (Tenant) lease expires on April 30, 2014. The Tenant has indicated that they will be moving to another building following the termination of this current lease term. However, Mr. William Bryant has requested that Tenant be allowed to stay for nine additional months beyond their termination date on a month to month basis. The current lease is for 18,727 rentable square feet (RSF) at \$14.00 per RSF plus operating expenses and taxes on the 13th floor of 700 Lavaca. If the Commissioners Court approves the Fourth Amendment (Attachment One), the Tenant will be allowed to remain in the space on a month to month basis at a rate of \$19.50 per RSF plus operating expenses and taxes. The Facilities Management Department (FMD) consulted with the County Attorney's Office regarding this request and the County Attorney's Office drafted the Fourth Amendment to the Tenant's lease.

STAFF RECOMMENDATIONS:

FMD recommends the approval of DuBois, Bryant & Campbell's request to remain at the 13th floor of 700 Lavaca on a month to month basis as outlined in the Fourth Amendment to the lease agreement.

ISSUES AND OPPORTUNITIES:

DuBois, Bryant & Campbell's new office space is not anticipated to be ready for occupancy by the termination date of their lease with Travis County. The County Auditor's office has reviewed this request and indicates that this

month to month extension is not anticipated to be a problem with the Attorney General, due to the analysis of other tenants moving out of their spaces ahead of schedule (Attachment Two).

FISCAL IMPACT AND SOURCE OF FUNDING:

Additional projected revenue to 700 Lavaca account in FY14/15.

ATTACHMENTS/EXHIBITS:

1. Fourth Amendment to Lease Agreement between Travis County and DuBois, Bryant & Campbell, L.L.P.
2. County Attorney email, January 15, 2013

REQUIRED AUTHORIZATIONS:

Christopher Gilmore, County Attorney's Office, 854-9455.

**FOURTH AMENDMENT TO LEASE AGREEMENT
BETWEEN
TRAVIS COUNTY
AND
DUBOIS, BRYANT, & CAMPBELL, L.L.P.**

This Amendment (this "Fourth Amendment") made effective the _____ of _____, 2013, between TRAVIS COUNTY, a political subdivision of the State of Texas ("Landlord"), and DUBOIS, BRYANT, & CAMPBELL, L.L.P., formerly DUBOIS, BRYANT, CAMPBELL SCHWARTZ, L.L.P., a limited liability partnership ("Tenant").

Preliminary Statement

- A. Landlord and Tenant entered into that certain Lease dated March 14, 2002, and amended by the First Amendment dated November 12, 2002, the Second Agreement dated January 30, 2004, and the Third Amendment dated May 5, 2004, pursuant to which Tenant leased approximately 18,727 square feet of Rentable Area as defined by the Lease ("Premises") in that certain building (the "Building") locally known as 700 Lavaca, formerly The Chase Building, located at 700 Lavaca, Austin, Texas.
- B. Whereas, Travis Realty Corporation sold the Building to Travis County; and
- C. Landlord and Tenant desire to enter into this Fourth Amendment to amend the Lease.

AGREEMENT:

NOW, THEREFORE, in consideration of the Premises and the mutual undertakings of the parties, it is agreed as follows:

- 1. **Renewal Term:** Landlord and Tenant hereby extend the Lease for a one-month term. Such extended term will commence May 1, 2014, and expire on May 31, 2014. Tenant may renew for an eight (8) additional one month terms until January 31, 2015; and this option shall be exercised only by Lessee's delivery to Landlord in person or by United States Mail on or before the first (1st) day of each month, commencing June 1, 2012, notice of renewal if lessee intends to exercise his option and renew the Lease for an additional one (1) month term, and deliver such notice on the first (1st) day of each succeeding month if Lessor continues to exercise this option. This notice may be in the form of Lessee's check in payment for the rent for the renewal period.
- 2. **Fixed Minimum Rent:** As part of the consideration for the execution of this Fourth Amendment, beginning on May 1, 2014, and continuing for the duration of the Term, Tenant covenants, agrees and promises to pay Fixed Minimum Rent for the Premises as follows:

<u>Year</u>	<u>Per Rentable Sq. Ft</u>	<u>Per Month</u>
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5/1/14 – 1/31/15 \$19.50

\$30,431.38

(a) Tenant promises to pay Landlord the Fixed Minimum Rent in advance, without demand, on the first day of each calendar month commencing on May 1, 2014 and continuing until the expiration of the term on or before January 31, 2015, and in accordance with the terms of the Lease, as such are applicable to the payment of Fixed Minimum Rent thereunder.

(b) Tenant shall also pay to Landlord Tenant's Prorata Share of Operating Expenses ("Additional Rent"), as such is payable pursuant to the terms of the Lease.

3. Option to Renew: Landlord and Tenant acknowledge and agree that all rights of Tenant under Paragraph 35 of the Lease are now utilized, and Tenant will have no further options to renew under the Lease. Neither Landlord nor Tenant may unilaterally extend the term of the Lease after January 31, 2015. Paragraph 38 of the Lease, dealing with ROFO's, is deleted.
4. Broker: Tenant will be responsible for its own costs in dealing with any broker or agent in connection with the consummation of this Fourth Amendment. Tenant agrees to indemnify, defend and hold harmless Landlord from and against any loss, cost or liability, including without limitation attorney's fees, disbursements and court costs, for any compensation, commissions or fees claimed by any broker or agent with respect to this Fourth Amendment or the negotiation thereof, if such claim or claims by any such broker or agent are based in whole or in part on dealings with Tenant or its representatives.
5. Successors and Assigns: This Fourth Amendment shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.
6. Capitalized Terms: All capitalized terms not defined herein shall have the same meanings given to such terms in the Lease.
7. Lease Terms: Except as expressly amended hereby, the Lease and all of the terms, covenants and conditions of the Lease are hereby confirmed and shall remain and continue in full force and effect.
8. No Oral Modifications: This Fourth Amendment may not be modified or terminated orally and along with the Original Lease, the First Amendment, Second Amendment and Third Amendment constitute the entire agreement between the parties with respect to the subject matter hereof. It is acknowledged that no officer, agent, employee, or representative of Landlord has any authority to change the Lease unless expressly granted that authority by the Commissioners Court of Travis County.
9. Release: As a material inducement for Landlord and Tenant to enter into this Fourth Amendment, Landlord and Tenant each acknowledges that, as of the effective date of this Fourth Amendment, Landlord and Tenant have fully performed their

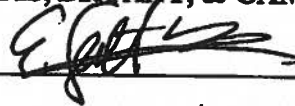
respective obligations under the Lease; and Landlord and Tenant have no claims against each other by virtue of any matter whatsoever arising out of the Lease.

IN WITNESS WHEREOF, Landlord and Tenant have executed this Fourth Amendment as of the day and year first above written,

TRAVIS COUNTY

By: _____
Samuel T. Biscoe
County Judge

DUBOIS, BRYANT, & CAMPBELL, L.L.P.

By:  _____
Name: E. SCOTT LINEBERRY
Title: MANAGING PARTNER

John Carr

To: ROGER EL-KHOURY
Subject: RE: DBC lease extension

From: John Hille
Sent: Tuesday, January 15, 2013 5:11 PM
To: Hannah York
Cc: Christopher Gilmore; Nicki Riley; ROGER EL-KHOURY
Subject: RE: DBC lease extension

Thanks. That should do it.

From: Hannah York
Sent: Tuesday, January 15, 2013 5:10 PM
To: John Hille
Cc: Christopher Gilmore; Nicki Riley
Subject: FW: DBC lease extension

John,

We are ok on the analysis due to some of the other tenants moving out ahead of schedule. I discussed this with Glenn to make sure there wouldn't be an issue with the AG. He thinks that as long as this is month-to-month and both sides are under the understanding that we are just allowing them time to facilitate their move to another location then we are ok.

Let me know if you need anything else from me,

Hannah York, CPA
Financial Analyst/Auditor IV
Travis County Auditor's Office
(512) 854-6674

From: John Hille
Sent: Monday, January 14, 2013 12:23 PM
To: Hannah York
Cc: Christopher Gilmore
Subject: FW: DBC lease extension

This tenant continues to ask for lease extensions. Where are we on your Master analysis of tenancies? Last time we talked we were way ahead on tenants leaving early, so this tenant staying a few extra months will not hurt your analysis.