



Travis County Commissioners Court Agenda Request

Meeting Date: August 27, 2013

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: County Judge Samuel T. Biscoe

Roger El Khoury
JB

AGENDA LANGUAGE:

Consider and take appropriate action regarding the Fifth Amendment to the lease with Mitchell & Colmenero, LLP at 700 Lavaca.

BACKGROUND/SUMMARY OF REQUEST:

Mitchell & Colmenero, LLP (Tenant) has indicated their interest in exercising the option to extend the lease for space on the sixth floor for a five year additional term. The Tenant is leasing 5,233 square feet of space at Suite 607. The proposed Fifth Amendment to the lease agreement between Travis County and Tenant is at Exhibit One. This Fifth Amendment has been signed by Mr. Rudy Colmenero for the Tenant.

STAFF RECOMMENDATIONS:

Facilities Management Department (FMD) recommends approval of the Fifth Amendment to the lease between Travis County and Mitchell & Colmenero L.L.P.

ISSUES AND OPPORTUNITIES:

Approval of this amendment will allow the Tenant to remain in Suite 607 for a final five year term which would start on December 1, 2013 and expire on November 30, 2018. Rent will increase by \$0.50 per rentable square foot for each 12 month period of the amendment after the initial year.

FISCAL IMPACT AND SOURCE OF FUNDING:

Annual rent for the first 12 month period would be \$94,194. Total for the 5 year period would be \$497,135.

ATTACHMENTS/EXHIBITS:

Fifth Amendment to Lease Agreement

REQUIRED AUTHORIZATIONS:

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

**FIFTH AMENDMENT TO LEASE AGREEMENT
BETWEEN
TRAVIS COUNTY
AND
MITCHELL & COLMENERO, LLP**

This Amendment (this "Fifth Amendment") made effective the _____ of _____, 2013, between TRAVIS COUNTY, a political subdivision of the State of Texas ("Landlord"), and Mitchell & Colmenero, LLP, a Texas limited liability partnership ("Tenant").

Preliminary Statement

- A. Landlord (as successor in interest to Travis Realty Corporation) and Tenant are bound under that certain lease agreement dated October 21, 2002 ("Original Lease"), and amended by the first amendment dated December 27, 2004 ("First Amendment"), second amendment dated March 29, 2006 ("Second Amendment"), third amendment dated April 12, 2007 ("Third Amendment"), and fourth amendment dated July 11, 2008 ("Fourth Amendment") pursuant to which Tenant leased approximately 5,233 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; and
- B. The Original Lease, First Amendment, Second Amendment, Third Amendment and Fourth Amendment collectively referred to herein as the "Lease."
- C. Whereas, Travis Realty Corporation sold the Building to Travis County; and
- D. Landlord and Tenant desire to enter into this Fifth 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 five (5) year term. Such extended term will commence December 1, 2013, and expire on November 30, 2018.
- 2. **Fixed Minimum Rent:** As part of the consideration for the execution of this Fifth Amendment, beginning on December 1, 2013, 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 Period</u>	<u>Per Month</u>
12/01/2013 – 11/30/2014	\$18.00	\$ 94,194.00	\$7,849.50
12/01/2014 – 11/30/2015	\$18.50	\$ 96,810.50	\$8,067.54

12/01/2015 – 11/30/2016	\$19.00	\$ 99,427.00	\$8,285.58
12/01/2016 – 11/30/2017	\$19.50	\$102,043.50	\$8,503.63
12/01/2017 – 11/30/2018	\$20.00	\$104,660.00	\$8,721.67

(a) Tenant promises to pay Landlord the Fixed Minimum Rent in advance, without demand, on the first day of each calendar month commencing on December 1, 2013 and continuing until the expiration of the term on or before November 30, 2018, 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 39 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 November 30, 2018.
4. **Broker:** Tenant will be responsible for its own costs in dealing with any broker or agent in connection with the consummation of this Fifth 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 Fifth 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 Fifth 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 Fifth Amendment may not be modified or terminated orally and along with the Lease 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 this Fifth Amendment 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 Fifth Amendment, Landlord and Tenant each acknowledges that, as of the effective date of this Fifth 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.

10. Leasehold Improvements: In connection with the Fifth Amendment to Lease, Tenant accepts Premises in "as is" condition.

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

TRAVIS COUNTY

By: _____
Samuel T. Biscoe
County Judge

MITCHELL & COLMENERO, LLP
a Texas limited liability partnership

By: Rudy R. Colmenero
Name: RUDY R. COLMENERO
Title: PRESIDENT OF
GENERAL PARTNER