CITY OF MARSHALL
AGENDA MEMO

PROJECT: Discussion and guidance regarding the upcoming expiration of the CVB lease at 301 N. Washington

MEETING DATE: March 24th, 2015

DESCRIPTION:

The lease at 301 N. Washington expires May 31, 2016. Currently the CVB pays $2600 per month in rent. The importance of a downtown Visitor's Center is crucial to the continued re-development of downtown and work to make Marshall a tourist destination. Staff has several options for the Commission to consider.

The Bradbury Trust is willing to renew the lease on a sliding price scale. If a 5 year lease is signed monthly rent will be $1350, if a four year lease is signed monthly rent will be $1450, and so on for a one year lease at $1750.

The CVB paid a higher rent at 301 N. Washington over the last 5 years because renovations were funded by the CVB to put the building into productive use. Those obligations are complete therefore the reduction in rent.

Staff would also like the Commission to consider rehabilitating the downtown Perkins building owned by the Downtown Development Corporation. Estimates are roughly at $235,000 to renovate the building for a downtown visitor's center. A 6 month construction timeline is estimated.

Staff is seeking guidance from the Commission on how to proceed since there are several options.

- Sign a 5 year lease at 301 N. Washington and forgo renovation of the Perkins Building.
- Explore the possibilities of renovating the Perkins Building and instruct staff to bring plans on financing and construction back before the Commission post haste.
    - Instruct staff to negotiate a one year or shorter lease.

- Move CVB offices temporarily to City Hall until Construction is complete

COST:	Varies
FUNDING:	HOT
RECOMMENDED ACTION:	Provide staff guidance
CITY CONTACT:	Sarah E. O'Brien, Tourism & Promotions Director Obrien.sarah@marshalltexas.net 903-702-9500
ATTACHMENTS:	

LEASE AGREEMENT

This Lease is made and entered into by and between Henry Bradbury, 3918 Bobbin Lane, Addison, Texas 75001, referred to in this lease as Lessor, and the Marshall Convention & Visitors Bureau, a Texas Non-Profit Corporation, 301 North Washington Avenue, Marshall, Texas 75672, referred to in this lease as Lessee.

In consideration of the mutual covenants and agreements set forth in this lease, and other good and valuable consideration, Lessor demises and leases to Lessee, and Lessee leases from Lessor 2,082 sq. ft. of the first floor of the building located at the southwest corner of West Rusk and North Washington in the City of Marshall and being the property at 301 N. Washington, Marshall, Harrison County, Texas 75670. These premises are referred to in this lease as "the premises" or the "leased premises."

ARTICLE 1. IMPROVEMENTS

Finish Out Allowance

1.01 Lessor agrees to provide a finish-out allowance of Seventy-Five Thousand and no/100 Dollars ($75,000) for design, demolition, construction and finish out of the premises according to a mutually agreed upon space plan dated March 6, 2011 (attached hereto as Exhibit A) and subsequent plans and specifications as directed by Lessee, and approved by Lessor. Work will be completed in a good and workmanlike manner. Payment of this allowance will be made by Lessor directly to the contractors. Any finish out costs above the $75,000 finish out allowance will be the responsibility of the Lessee. This lease shall not commence until full completion of the aforementioned work and a satisfactory inspection by Lessee, whose approval shall not be unreasonably withheld.

Repair Of Building Exterior

1.02 Lessor agrees to repair and paint building's exterior facade, specifically the south and east facing portions of the structure, at no cost to Lessee, within sixty days of completion of work as outlined in Section 1.01. If Lessor fails to complete these repairs within the specified time, Lessor is in default in accordance with Section 13.03 of this Agreement.

ARTICLE 2. TERM

Term of Lease

2.01 The term of this lease shall commence on June 1, 2011, or upon satisfactory completion of the Improvements noted in Section One

above, and end on May 31, 2016, or five years from the actual Lease commencement, unless sooner terminated as provided in this lease.

Holdover

2.02 If Lessee holds over and continues in possession of the leased premises after expiration of the term of this lease or any extension of that term, Lessee will be deemed to be occupying the premises on the basis of a month-to-month tenancy, subject to all of the terms and conditions of this lease.

ARTICLE 3. RENT

3.01 Lessee agrees to pay to Lessor total agreed rental of $150,000 payable in sixty installments of Two Thousand, Five Hundred and no/100 Dollars ($2,500) per month as a fixed rent for the succeeding month. Rent for any fractional month at the beginning or end of the lease term shall be prorated on a per diem basis. Any rent not paid within five (5) days of the date due shall bear interest until paid at a rate of twelve percent (12%) per annum. This fixed rent shall increase to one hundred twenty percent (120%) of the last monthly fixed rent payable during any period Lessor occupies the premises as a holder over pursuant to Section 2.02 above. Lessee agrees to pay this fixed rent to Lessor at 3918 Bobbin Lane, Addison, Texas 75001 or at such other location or locations as Lessor shall from time to time designate by written notice to Lessee.

Lessee to be responsible for ad valorem tax on personal property and future alterations proved by Lessee.

ARTICLE 4. USE OF PREMISES

Permitted Use

4.01 Lessee shall have the right to use the leased premises for any lawful purposes in the carryout of its responsibilities as the Marshall Convention & Visitors Bureau. In this connection, and without detracting from the foregoing, it is understood that the primary purpose for which the leased premises have been leased is for operating a business known as the "Marshall Convention & Visitors Bureau."

Waste or Illegal Uses

4.02 Lessee shall not use, or permit the use of, the premises in any manner that results in waste of the premises or violates any statute, ordinance, rule, or regulation applicable to the premises or for any illegal purpose.

ARTICLE 5. REPAIRS AND MAINTENANCE

Repairs and Maintenance by Lessee

5.01 Lessee shall, throughout the term of this lease and any extensions of that term, at its own expense and risk, maintain the leased premises and all improvements on the leased premises except as provided in paragraph 5.03 in good order and condition, including but not limited to making all repairs and replacements necessary to keep the premises and improvements in such condition except as provided in 5.03. All maintenance, repairs and replacements required by this section must be performed promptly when required and in a manner that will not cause depreciation in the value of the premises. Lessee to provide Lessor written notice of any needed repair to the leased premise in excess of one thousand dollars ($1,000.00), the proposed repair and repair person who will complete such work.

Lessee's Failure to Repair or Maintain

5.02 In the event Lessee fails to perform its obligation to repair, replace, or maintain, as set forth in Section 5.01 above, after written notice from Lessor of the need for such repair, replacement, or maintenance and the passage of a reasonable amount of time for performance after such notice, Lessor may enter the premises and make such repairs or replacements, or perform such maintenance or cause such repairs or replacements to be made or maintenance to be performed, at its own expense. Upon Lessor's notice to Lessee of the performance and costs of any maintenance, repairs, or replacements pursuant to this section, Lessee must immediately reimburse Lessor for any reasonable costs incurred by Lessor pursuant to this section, together with interest on any such sum at the highest legal rate from the date of the notice until the date paid by Lessee to Lessor.

Repair and Maintenance of Lessor

5.03 Lessor shall throughout the term of the lease and any extension of such term at their sole cost and expense maintain the roof and exterior walls except doors and exterior glass and windows that are part of the leased premises.. Additionally, if the heating and air conditioning systems, stove, refrigerator, or hot water heater require replacement, it shall be the responsibility of Lessor, unless the cause of failure is due to Lessee's failure and /or refusal to properly maintain the operating integrity of the equipment. However, routine maintenance and repair of the heating and air conditioning systems, stove, refrigerator, alarm system and hot water heater shall be the responsibility of Lessee except any repair or maintenance whose costs are in excess of $1,000.00 shall be the responsibility of Lessor.

ARTICLE 6. UTILITIES AND GARBAGE REMOVAL

Utility Charges

6.01 Lessee shall pay all utility charges for water, electricity, heat, gas, satellite TV, internet and telephone service used in and about the leased premises during the term of the lease, all such charges to be paid by Lessee directly to the utility company or municipality furnishing the same, before the same shall become delinquent. Lessee shall allow his phone line to be used by the fire alarm system in the event Lessor is required by law or determines to provide monitoring services to the fire alarm system. In the event the fire alarm monitoring system is through Lessee's telephone system, Lessor acknowledges Lessee shall have the right to remove said telephone system at expiration of the Lease.

Garbage Removal

6.02 Lessee shall pay for the removal of all garbage and rubbish from the leased premises during the term of the Lease.

ARTICLE 7. ALTERATIONS, ADDITIONS, AND IMPROVEMENTS

Consent of Lessor

7.01 Lessee shall not make any alterations, additions, or improvements to the leased premises without the prior written consent of Lessor. Consent for nonstructural alterations, additions, or improvements shall not be unreasonably withheld by Lessor.

7.02 All alterations, additions, or improvements made by Lessee shall become the property of Lessor at the termination of this lease. Lessor may, however, require that Lessee remove any or all alterations, additions, and improvements installed or made by Lessee, and any other property placed on the premises by Lessee, upon termination of the lease. In the event that Lessor requires Lessee to remove such alterations, additions, or improvements, Lessee shall repair any damage to the premises caused by such removal.

ARTICLE 8. TRADE FIXTURES AND SIGNS

Trade Fixtures

8.01 Lessee has the right at all times to erect or install shelves, bins, machinery, equipment, or other trade fixtures, in, on, or about the leased premises, provided that Lessee complies with all applicable governmental laws, ordinances, and regulations regarding such fixtures. Lessee has the right to remove all trade fixtures at the termination of this lease, provided Lessee is not in default under the lease and that all fixtures can be removed without structural damage

to the building. Lessee must repair any damage to the leased premises caused by removal of trade fixtures, and all such repairs much be completed prior to the termination of the lease. Any trade fixtures that have not been removed by Lessee at the termination of this lease shall be deemed abandoned by the Lessee and shall automatically become the property of Lessor. In the event any trade fixture installed by Lessee is abandoned at the termination of the lease, Lessee must pay Lessor any reasonable expense actually incurred by Lessor to remove the fixture from the premises, less the fair market value of the fixture once removed, provided the fixture is removed within thirty (30) days after Lessee has surrendered possession of the premises or prior to the entrance of any subsequent tenant onto the premises or use of the trade fixtures by Lessor.

8.02 Lessee shall have the right to erect signs on any portion of the leased premises, including, but not limited to, the exterior walls of the premises, subject to applicable laws, ordinances and regulations. Lessee must remove all signs at the termination of this lease and repair any damage resulting from the erection or removal of the signs. All signs on the exterior of the building must be approved by Lessor.

ARTICLE 9. MECHANIC'S LIEN

Lessee will not permit any mechanic's lien or liens to be placed upon the leased premises or improvements on the premises. If a mechanic's lien is filed on the leased premises, Lessee will promptly pay the lien. If default in payment of the lien continues for twenty (20) days after written notice from Lessor to Lessee, Lessor may, at its option, pay the lien or any portion of it without inquiry as to its validity. Any amounts paid by the Lessor to remove a mechanic's lien caused to be filed against the premises or improvements on the premises by Lessee, including expenses and interest, shall be due from Lessee to Lessor and shall be repaid to Lessor immediately on rendition of notice, together with interest at twelve (12%) per annum until repaid.

ARTICLE 10. INSURANCE AND INDEMNITY

Lessor Property Insurance

10.01 Lessor shall, at its own expense, during the term of this lease, keep all building and improvements on the leased premises of Lessor insured against loss or damage by fire or theft, with extended coverage to include direct loss by windstorm, hail, explosion, riot, civil commotion, aircraft, vehicles, and smoke, in the aggregate amounts of not less than the full fair insurable value of the buildings and improvements. Lessor shall have no obligation to insure Lessee's contents or any improvements by Lessee. The insurance is to be carried by one or more insurance companies licensed to do business

in Texas. Such policy or policies of insurance shall name Lessor as named insured.

Lessee Property Insurance

10.02 Lessee shall at its sole expense insure all contents owned by Lessee and located within the leased premises. Lessor shall have no responsibility to insure any contents placed on the property and owned by Lessee.

ARTICLE 11. DAMAGE OR DESTRUCTION OF PREMISES

Notice to Lessor

11.01 If the leased premises, or any structures or improvements on the leased premises, should be damaged or destroyed by fire, tornado, or other casualty, Lessee shall give immediate written notice of the damage or destruction to Lessor, including a description of the damage and, as far as known to Lessee, the cause of the damage.

11.02 If the building on the leased premises should be totally destroyed by fire, tornado, or other casualty not the fault of Lessee or any person in or about the leased premises with the express or implied consent of Lessee, or if it should be so damaged by such a cause that rebuilding or repairs cannot reasonably be completed within 120 working days and at a cost not to exceed $50,000.00, this lease shall terminate, and rent shall be abated for the unexpired portion of this lease, effective as of the date of written notification as provided in Section 11.01.

Partial Destruction

11.03 If the building or other improvements on the leased premises should be damaged by fire, tornado, or other casualty not the fault of Lessee or any person in or about the leased premises with the express or implied consent of Lessee, but not to such an extent that rebuilding or repairs cannot reasonably be completed within 120 working days and at a cost not to exceed $50,000.00, this lease shall not terminate except as provided in subsections (a) and (b) of this section.

a. If the partial destruction of the leased premises occurs prior to the final three (3) months of the lease term, or any extension of the lease term as described above, Lessor shall, at its sole cost and risk, proceed immediately to rebuild or repair the damaged buildings and improvements to substantially the condition in which they existed prior to such damage. If the leased premises are untenantable in whole or in part following such damage, the rent payable during the period in which they are untenantable shall be adjusted equitably. In the event that Lessor should fail to complete such rebuilding or repairs

within 120 working days from the date of written notification by Lessee to Lessor of the occurrence of the damage, Lessee may terminate this lease by written notification to Lessor. Upon such notification, all rights and obligations under this lease shall cease.

b. If partial destruction of the leased premises occurs in the final three (3) months of the lease term, Lessor need not rebuild or repair the premises. If Lessor elects not to rebuild or repair the premises and the leased premises are untenantable in whole or in part following such damage, Lessee may elect to terminate the lease or to continue the lease with the rent for the remainder of the lease period adjusted equitably.

ARTICLE 12. CONDEMNATION

Total Condemnation

12.01 If during the term of this lease or any extension or renewal of it, all of the leased premises should be taken for any public or quasi-public use under any governmental law, ordinance, or regulation, or by right of eminent domain, or should be sold to the condemning authority under threat of condemnation, this lease shall terminate, and the rent shall be abated during the unexpired portion of this lease, effective as of the date of the taking of the premises by the condemning authority.

Partial Condemnation

12.02 If less than all, but more than 25 percent (25%) , of the leased premises is taken for any public or quasi-public use under any governmental law, ordinance, or regulation, or by right of eminent domain, or should be sold to the condemning authority under threat of condemnation, Lessee may terminate the lease by giving written notice to Lessor within thirty (30) days after possession of the condemned portion as taken by the entity exercising the power of condemnation.

If the leased premises are partially condemned and Lessee fails to exercise the option to terminate the lease under this section, or if less than 25 percent (25%) of the leased premises are condemned, this lease shall not terminate, but Lessee may, at its sole expense, restore and reconstruct the building and other improvements situated on the leased premises to make them reasonably tenantable and suitable for the uses for which the premises are leased. The fixed rent payable under 3.01 of this lease shall be adjusted equitably during the unexpired portion of this lease.

Condemnation Award

12.03 Lessor is exclusively entitled to receive and retain such awards, and portions of lump sum awards, as may be related to any condemnation proceedings.

ARTICLE 13. DEFAULT

Default by Lessee

13.01 If Lessee shall allow the rent to be in arrears more than ten (10) days after written notice of such delinquency, or shall remain in default under any other condition of this lease for a period of thirty (30) days after written notice to the Lessee, Lessor may at its option, without notice to Lessee, terminate this lease or, in the alternative, Lessor may reenter and take possession of the premises and remove all persons and property without being deemed guilty of any manner of trespass and relet the premises, or any part of the premises, for all or any part of the remainder of the lease term, to a party satisfactory to Lessor and at such monthly rental as Lessor may with reasonable diligence be able to secure. Should Lessor be unable to relet after reasonable efforts to do so, or should such monthly rental be less than the Lessee was obligated to pay under this lease, or any renewal of this lease, plus the expense of reletting, then Lessee shall pay the amount of such deficiency to Lessor.

Lessor's Lien

13.02 It is expressly agreed that, in the event of default by Lessee in the payment of rent or any other sum due from Lessee to Lessor under the terms of this Lease, Lessor shall have a lien upon all fixtures, chattels, or other property of any description belonging to Lessee that are placed in, or become a part of, the leased premises as security for rent due and to become due for the remainder of the current lease term and any other sum due from Lessee to Lessor. This lien shall not be in lieu of, or in any way affect, the statutory lien given by law but shall be in addition to that lien, and Lessee grants to Lessor a security interest in all of Lessee's property placed in or on the leased premises for purposes of this contractual lien. This shall not prevent the sale by Lessee of any merchandise in the ordinary course of business free in such lien. In the event Lessor exercises the option to terminate the leasehold, reenter, and relet the premises as provided in the preceding paragraph, then Lessor, after giving thirty (30) days notice to Lessee of the intent to take possession of all of Lessee's property on the premises and sell it at public or private sale after giving Lessee thirty (30) days notice of the time and place of any public sale or of the time after that any private sale is to be made, for cash or on credit, for such prices and terms as Lessor deems best, with or without having the property present at the sale. The proceeds of the sale shall

be applied first to the necessary and proper expense of removing, storing, and selling such property, then to the payment of any rent due or to become due under this lease, with the balance, if any, to be paid to Lessee.

Default by Lessor

13.03 If Lessor defaults in the performance of any term, covenant, or condition required to be performed by it under this agreement, Lessee may elect to do either one of the following:

a. After not less than twenty (20) days written notice to Lessor, Lessee may remedy such default by any necessary action and, in connection with such remedy, may pay expenses and employ counsel. All sums expended, or obligation incurred, by Lessee in connection with remedying Lessor's default shall be paid by Lessor to Lessee on demand and, failure of such reimbursement, Lessee may, in addition to any other right or remedy that Lessee may have, deduct these costs and expenses from rent subsequently becoming due under this lease.

b. Lessee may terminate this lease on giving thirty (30) days written notice to Lessor of such intention. In the event Lessee elects this option, the lease will be terminated on the date designated in Lessee's notice, unless Lessor has cured the default prior to expiration of the thirty (30) day period.

Cumulative Remedies

13.04 All rights and remedies of Lessor and Lessee under this Article shall be cumulative, and none shall exclude any other or remedy provided by law or by any other provision of this lease. All such rights and remedies may be exercised and enforced concurrently and whenever, and as often, as occasion for their exercise arises.

Waiver of Breach

13.05 A waiver by either Lessor or Lessee of a breach of this lease by the other party does not constitute a continuing waiver or a waiver of any subsequent breach of the lease.

ARTICLE 14. INSPECTION BY LESSOR

Lessee shall permit Lessor and Lessor's agents to enter into and on the leased premises at all reasonable times for the purpose of inspection or any other purpose necessary to protect Lessor's interest in the leased premises or to perform Lessor's duties under this lease.

ARTICLE 15. ASSIGNMENT AND SUBLEASE

Assignment and Subletting by Lessee

15.01 Lessee may not sublet, assign, encumber, or otherwise transfer this lease or any right or interest in this lease or in the leased premises or the improvements on the leased premises, without the written consent of Lessor. If Lessee sublets, assigns, encumbers, or otherwise transfers its rights or interests in this lease or in the leased premises or the improvements on the leased premises without the written consent of Lessor, Lessor may, at its option, declare this lease terminated. In the event Lessor consents in writing to an assignment, sublease, or other transfer of all or any of Lessee's rights under this lease, the assignee or sub-lessee must assume all of Lessee's obligations under this lease, and Lessee shall remain liable for every obligation under the lease. Lessor's consent under this section will not be arbitrarily or unreasonably withheld.

Assignment by Lessor and Preferential Right to Purchase

15.02 Lessor may assign or transfer any or all of its interest under the terms of this lease.

ARTICLE 16. WARRANTY OF TITLE

16.01 Lessor warrants that they own the full, fee simple title to the leased premises. Lessor warrants that they have not placed any mortgages, deeds of trust, mechanic's and materialman's liens, federal or state tax liens, abstracts of judgment or other encumbrances on the leased premises.

ARTICLE 17. OPTION TO EXTEND TERM

Deleted

ARTICLE 18. MISCELLANEOUS

Notices and Addresses

18.01 All notices required under this lease must be given by certified mail or registered mail, addressed to the proper part, at the following addresses:

LESSOR	LESSEE
Henry Bradbury 3918 Bobbin Lane Addison, TX 75001	Marshall CVB 301 North Washington Avenue Marshall, TX 75670

Either party may change the address to which notices are to be sent it by giving the other party notice of the new address in the manner provided in this section.

Parties Bound

18.02 This agreement shall be binding upon, and inure to the benefit of the parties to the lease and their respective heirs, executors, administrators, legal representatives, successors, and assigns when permitted by this agreement.

Texas Law to Apply

18.03 This agreement shall be construed under, and in accordance with, the law of the State of Texas, and all obligation of the parties created by this lease are performable in Harrison County, Texas.

Legal Construction

18.04 In case any one or more of the provisions contained in this agreement shall for any reason be held by a court of competent jurisdiction to be invalid, illegal, or unenforceable it shall not affect any other provision of the agreement, and this agreement shall be construed as if the invalid, illegal, or unenforceable provision had never been included in the agreement.

Prior Agreements Superseded

18.05 This agreement constitutes the sole and only agreement of the parties to the agreement and supersedes any prior understanding or written or oral agreements between the parties respecting the subject matter of this agreement.

Amendment

18.06 No amendment, modification, or alteration of the terms of this agreement shall be binding unless it is in writing, dated subsequent to the date of this agreement, and duly executed by the parties of this agreement.

Rights and Remedies Cumulative

18.07 The rights and remedies provided by this lease agreement are cumulative, and the use of any one right or remedy by either party shall not preclude or waive that party's right to use any or all other remedies. The rights and remedies provided in this lease are in addition to any other rights and parties may have by law, statute, ordinance, or otherwise.

Attorney's Fees and Costs

18.08 If, as a result of a breach of this agreement by either party, the other party employs an attorney or attorneys to enforce its rights under this lease, then the breaching or defaulting party agrees to pay the other party the reasonable attorney's fees and costs incurred to enforce the lease.

Force Majeure

18.09 Neither Lessor nor Lessee shall be required to perform any term, condition, or covenant in this lease so long as such performance is delayed or prevented by force majeure, which shall mean acts of God, strikes, lockouts, material or labor restrictions by any governmental authority, civil riot, floods, and any other cause not reasonably within the control of Lessor or Lessee and which by the exercise of due diligence Lessor or Lessee is unable, wholly or in part, to prevent or overcome.

Time of Essence

18.10 Time is of essence of this agreement.

Memorandum of Lease

18.11 Lessor and Lessee agree that a Memorandum of this Lease may be recorded in the Deed Records of Harrison County, Texas. Upon termination of this Lease, Lessor and Lessee agree to timely record a Release in said Deed Records, which states that this Lease has terminated.

Duplicate Originals

18.12 This document is executed in duplicate originals either of which shall be considered an original.

EXECUTED this ___ day of _____, 2011, but effective as of June 1, 2011.

LESSOR

Henry Bradbury

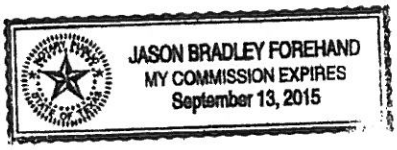
LESSEE

Steve Carlile, Chairman
Marshall Convention & Visitors Bureau

THE STATE OF TEXAS

COUNTY OF HARRISON

This instrument was acknowledged before me on the 7 day of 12, 2011, by Henry Bradbury.



NOTARY PUBLIC, STATE OF TEXAS

THE STATE OF TEXAS

COUNTY OF HARRISON

This instrument was acknowledged before me on the 7 day of 12, 2011, by Steve Carlile, Chairman, Marshall Convention & Visitors Bureau.

NOTARY PUBLIC, STATE OF TEXAS