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City of Las Cruces[®]

PEOPLE HELPING PEOPLE

Council Action and Executive Summary

Item # 14

Ordinance/Resolution# 12-139

For Meeting of _____
(Ordinance First Reading Date)

For Meeting of February 6, 2012
(Adoption Date)

TITLE: A RESOLUTION APPROVING A ONE YEAR LEASE AGREEMENT BETWEEN JOSE R. CORONADO AND RUBEN CORONADO AND THE CITY OF LAS CRUCES FOR USE OF THE BUILDING LOCATED AT 211 NORTH WATER STREET FOR OPERATION OF THE CITY CONVENTION AND VISITOR BUREAU.

PURPOSE(S) OF ACTION:

To approve a one (1) year lease agreement.

COUNCIL DISTRICT: All		
<u>Drafter/Staff Contact:</u> Catherine Duarte	<u>Department/Section:</u> Public Works/Facilities Management	<u>Phone:</u> (575) 528-3121
<u>City Manager Signature:</u>		

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

On August 20, 2007, City Council approved Ordinance No: 2396, which authorized a land exchange between the City of Las Cruces and Jose R. and Ruben Coronado to allow for acquisition of land at 411 North Main Street (known as "the former Bank of the Rio Grande Building") to be utilized as a City Museum and Office Complex in exchange for City property located at 211 North Water Street and the 0.3 acre parking lot at Griggs Avenue and Water Street and approving a two year lease agreement between the parties to allow the Convention and Visitors Bureau to operate at 211 North Water Street.

The Convention and Visitors Bureau has been operating in the building located at 211 North Water Street under the Lease Agreement for the initial two years and had exercised their option to renew the lease for second two year term. However, the agreement was never fully completed in that neither party signed it for the year 2011. Given this oversight, a renewal letter was sent to the City by Jose R. and Ruben Coronado to extend the agreement through the year 2011, with the anticipation of entering into a new agreement for the year 2012 with a 3% cost of living adjustment increase.

The Convention and Visitors Bureau is contemplating a permanent location in the future and is currently in the planning stage of considering possible sites prior to the expiration of this lease agreement.

Under the new terms and conditions the City will be responsible for a one (1) year lease with a (1) one year option to renew the term. The minimum rent of \$4,668.00 per month payable on the first day of the month. If the renewal is exercised, the rent for the option period will be increased by three (3%) to \$4,808.04 per month. Should the Convention and Visitors Bureau find a permanent location and the City needs to terminate the lease before the lease term has expired the City has the option to terminate the lease at any time providing the landlord with sixty (60) days prior written notice of termination.

The City shall maintain and deliver the premises in good order and condition up until the end or expiration of the lease, normal wear and tear excepted. Any damages to the premises shall be repaired by the City at its expense. City shall pay all utilities which are or may be assessed or imposed upon the premises. The City shall provide janitorial service.

Therefore, this lease will allow the Convention and Visitors Bureau to operate in the current location with no disruption to the community until they are ready to relocate to their permanent site.

SUPPORT INFORMATION:

1. Resolution.
2. Exhibit "A", Lease Agreement.
3. Attachment "A", Survey.

SOURCE OF FUNDING:

Is this action already budgeted?	Yes	<input checked="" type="checkbox"/>	See fund summary below
	No	<input type="checkbox"/>	If No, then check one below:
	<i>Budget Adjustment Attached</i>	<input type="checkbox"/>	Expense reallocated from: _____
		<input type="checkbox"/>	Proposed funding is from a new revenue source (i.e. grant; see details below)
		<input type="checkbox"/>	Proposed funding is from fund balance in the _____ Fund.
Does this action create any revenue?	Yes	<input type="checkbox"/>	Funds will be deposited into this fund: _____) in the amount of \$ _____ for FY _____
	No	<input checked="" type="checkbox"/>	There is no new revenue generated by this action.

BUDGET NARRATIVE

The available budget in the fund expenditure summary below is sufficient for the remainder for the current fiscal year at \$4,668.00 per month. For FY 2012-2103, staff will budget the remaining \$28,008.00 needed to complete the lease. All amounts shown above related to the rental contract are based on calendar year calculations.

FUND EXPENDITURE SUMMARY:

Fund Name(s)	Account Number(s)	Expenditure Proposed	Available Budgeted Funds in Current FY	Remaining Funds	Purpose for Remaining Funds
Building and Land Leases	2710-27205010-723100	\$56,016	\$33,356	\$5,348	Any remaining funds after all Lease obligations are met will be moved to another operating account

OPTIONS / ALTERNATIVES:

1. Vote "Yes"; this will approve the Resolution authorizing the lease agreement for the use of the building located at 211 North Water and authorizing the Mayor to execute the lease agreement for a term of one year with a mutual right of termination for either party to terminate the lease upon a sixty (60) day written notice.
2. Vote "No"; this will not approve the Resolution, and will not authorize the lease agreement. Consequences could include the requirement to vacate the property.
3. Vote to "Amend"; this would require re-negotiation of the lease terms and could result in commensurate adjustments to the costs associated with the lease.
4. Vote to "Table"; this would result in delay that might cause unfavorable changes to the terms of the lease.

REFERENCE INFORMATION:

The resolution(s) and/or ordinance(s) listed below are only for reference and are not included as attachments or exhibits.

1. Ordinance No: 2396.

RESOLUTION NO. 12-139**A RESOLUTION APPROVING A ONE YEAR LEASE AGREEMENT BETWEEN JOSE R. CORONADO AND RUBEN CORONADO AND THE CITY OF LAS CRUCES FOR USE OF THE BUILDING LOCATED AT 211 NORTH WATER STREET FOR OPERATION OF THE CITY CONVENTION AND VISITOR BUREAU.**

The City Council of the City of Las Cruces is informed that:

WHEREAS, Ordinance No: 2396 authorized a land exchange between Jose R. and Ruben Coronado and the City of Las Cruces and to allow for acquisition of land at 411 North Main in exchange for City property located at 211 North Water and the 0.3 acre parking lot at Griggs Avenue and Water Street and approval of a lease agreement between the parties to allow the Convention and Visitors Bureau to operate at 211 North Water Street; and

WHEREAS, the Convention and Visitors Bureau is planning to relocate to their new site upon making a final decision on the sites being evaluated. The anticipated move-in date for the relocation of the Convention and Visitor Bureau is on or before December 31, 2013; and

WHEREAS, the City will be responsible for a one (1) year lease with one (1) year option to renew the term; and

WHEREAS, the City has the option to terminate the lease at any time during the lease term by providing the landlord with sixty (60) days prior written notice of termination.

NOW, THEREFORE, Be it resolved by the governing body of the City of Las Cruces:

(I)

THAT the lease agreement for the use of 211 N. Water Street, between the City and Jose R. Coronado and Ruben Coronado is hereby approved.

(II)

THAT Jose R. and Ruben Coronado and the City of Las Cruces have a one (1) year option to renew the lease agreement.

(III)

THAT the lease agreement is for a term of one (1) year with a mutual right-of-termination for either party to terminate the lease upon a sixty (60) day written notice.

(IV)

THAT the Mayor is hereby authorized to execute the lease agreement, designated as Exhibit "A", attached hereto and made a part hereof.

(V)

THAT City staff is hereby authorized to do all deeds necessary in the accomplishment of the herein above.

DONE AND APPROVED this ____ day of _____, 2012.

APPROVED:

Mayor

ATTEST:

City Clerk

(SEAL)

VOTE:

Mayor Miyagishima: _____
Councillor Silva: _____
Councillor Smith: _____
Councillor Pedroza: _____
Councillor Small: _____
Councillor Sorg: _____
Councillor Thomas: _____

Moved by: _____

Seconded by: _____

APPROVED AS TO FORM:



City Attorney

RENEWAL OF COMMERCIAL LEASE AGREEMENT BETWEEN
JOSE R. CORONADO AND RUBEN CORONADO AND
THE CITY OF LAS CRUCES

This Lease Agreement ("Lease") is entered into on this ____ day of _____, 2011, between CITY OF LAS CRUCES ("City"), whose address I P.O. Box 20000, Las Cruces, New Mexico 88004 and JOSE R. CORONADO, a married man, as his sole and separate property, whose address is 705 N. Alameda Blvd., Las Cruces, New Mexico 88005, and RUBEN CORONADO, a single man, (collectively "Coronado"), as follows:

PREMISES

1. Coronado, for valuable consideration, leases to the City the premises shown on Exhibit "A" attached hereto and incorporated herein by reference, which premises are located at 211 N. Water Street, Las Cruces, New Mexico ("Premises"), The Premises include the building and improved parking lot.

TERM

2. The term of the Lease dated February 1, 2008 and running through January 31, 2010 was never fully completed in that neither party signed it for the year 2011. A Renewal Letter was agreed upon by both parties through December of 2011. The renewal of this term of the Lease shall be for one (1) year beginning on the 1st day of January, 2012, and running through and including the 31st day of January, 2013. This Lease shall be binding on the assigns and successors in interest of the parties.

USE

3. The City will continue to use the Premises as the City's Convention and Visitors Bureau. The City shall not use, occupy or permit the use of the Premises for any purpose which i) is not authorized by this Lease, or ii) is directly forbidden by law, ordinance or governmental or municipal regulation, rule or order, or iii) permit anything to be done which would materially increase the fire and extended coverage insurance rate on the building or contents.

PAYMENT OF RENT

4. Subject to the adjustment of the rent, if appropriate, the City shall pay to Coronado, their successors and assignees, the rent scheduled as follows: \$4,668.00 per month, payable at the first day of the month. Upon renewal option rent for the option period shall be increased by three percent (3%) to \$4,808.04 per month.

OPTION TO RENEW

5. Provided that the Lease is in good standing without default or delinquency, the City may renew the Lease for one (1) additional period under the same terms and conditions of this Lease.

TERMINATION

6. The City shall be allowed to terminate the Lease for any reason at any given time by providing Coronado sixty (60) days prior written notice of termination.

LATE CHARGE

7. If the City fails to pay monthly rent or other lawful charges when due, the non-payment shall be a material breach of this Lease. The City agrees to pay a late charge of \$10.00 for each day after the tenth day after the due date for which the rental or other lawful charges remains unpaid in full. Coronado has the right to apply the payment of rent, first toward the payment of late charges as specified above.

METHOD OF PAYMENT

8. City shall pay the rent to Coronado at 705 N. Alameda Blvd., Las Cruces, New Mexico 88005, or to such other payee or address as Coronado may designate in writing to the City. The City bears the risk of late payment.

CONDITION OF LEASED PREMISES

9. The City, at its expense shall, prior to the City's occupancy of the Premises, ensure that all major components (heating, cooling, electrical and plumbing) are in good working order and the building is clean (including carpeting, walls, plate glass, doors and restroom facilities), and environmentally sound and in compliance with environmental laws. The City will give Coronado notice of any items that need repair/ replacement and Coronado has thirty (30) days to correct noted items and/or opt out of the Lease, or re-negotiate the Lease. Example of items in this paragraph include, but are not limited to repainting any walls where cleaning does not suffice, replacing stained ceiling tiles and insuring all lighting fixtures are operational (including bulbs and covers). The City shall be deemed to have unconditionally accepted the Premises by taking occupancy.

MAINTENANCE

10. The City shall maintain the Premises in good condition, and at the end or other expiration of the term of this Lease, shall deliver up the Premises in good order and condition, normal wear and tear excepted. Any damage to the Premises shall be repaired by the City at its expense.

MAINTENANCE AND REPAIRS

11. Coronado will keep the foundation, sub-floor, exterior walls, roof, and under the slab utilities of the Premises in good condition and repair, unless such repairs are made necessary by negligence or intentional acts of the City. Coronado will also be responsible for all major repairs or replacements to the heating, electrical, plumbing systems and air conditioning equipment, unless such repairs are made

necessary by negligence or intentional acts of the City. Coronado will also be responsible for keeping the Premises ADA accessible.

ACCESS TO LEASED PREMISES

12. After twenty-four (24) hours advance written notice and approval by the City, which may not be unreasonable withheld, Coronado has the right to enter and inspect the Premises. In case of emergency to prevent injury to life or damage to property, Coronado has the right to enter and inspect the Premises with prior reasonable notice to the City.

ALTERATIONS

13. The City shall not cause any major alterations, improvements, or additions to the Premises to be made unless it obtains prior written approval of Coronado. All such alterations or improvements permanently affixed shall become a part of the Premises and the lawful property of Coronado.

UTILITIES

14. The City is to pay all utilities which are or may be assessed or imposed upon the Premises. The City shall provide janitorial service, including replenishment of bathroom supplies as necessary.

LIABILITY INSURANCE

15. The City is self insured for all tort risks for which immunity has been waived under the New Mexico Tort Claim Act. The City's self insurance fund is maintained by the City at a level deemed to be adequate for the reasonable foreseeable future for tort liabilities of the City.

CASUALTY INSURANCE

16. Coronado, during the term hereof, will provide with or without deductibles, insurance coverage against loss or damage by fire, flood, windstorm, hail, explosion, damage from aircraft and vehicles, smoke damage, and other risks as are from time to time included in an extended coverage endorsement insuring the Premises and insuring the improvements to the Premises (exclusive of the City's merchandise, trade fixtures, furnishings, equipment, plate glass, signs and all other items of personal property of the City) in an amount equal to the Premises' taxable value.

The City shall maintain any insurance desired by it on the City's own contents, equipment and its right of occupancy of the Premises.

TAXES

17. Coronado shall pay all real property taxes that occur during the term of the Lease.

ASSIGNMENT

18. The City shall not assign, mortgage, or sublet or sublease the Premises or any part thereof without the express written consent of Coronado, which consent shall not be unreasonably withheld.

MORTGAGE PRIORITY

19. This Lease shall not be a lien against the Premises in respect to any mortgage that may hereafter be placed upon the Premises. The recording of such mortgage or mortgages shall have preference and precedence and be a superior and prior lien to this Lease, irrespective of the date of recording. The City will execute any instruments, without cost, which may be deemed necessary or desirable by Coronado, to further affect the subordination of this Lease to any such mortgage or mortgages. A refusal by the City to execute such instruments shall entitle Coronado to terminate this Lease and the term hereof is hereby expressly limited accordingly.

SIGNS

20. Any sign to be placed by the City at any location on the Premises shall comply with all City regulations and ordinances. The City further agrees to maintain any such sign, awning, canopy, decoration, lettering, advertising matter or other thing in good condition and repair at all times.

ENVIRONMENTAL CONCERNS

21. The City shall not use the Premises in any manner which creates an environmental hazard or nuisance or violates any federal, state or local law, ordinance, rule or regulation. In addition, Coronado will pay all costs and expenses or compliance with the federal, state or local environmental law, ordinances, rules or regulation, including the cost of the cleanup or correction of any violation caused directly by Coronado. Coronado shall be entitled to enforce this paragraph by emergency injunction or restraining order.

RESTRICTIONS

22. All smoking is strictly prohibited in or upon the Premises.

DEFAULT

23. If either party defaults in the performance of this Lease by failure to complete the Lease, the other party may seek specific performance of this Lease or any other remedy for such breach.

HOLDING OVER

24. If the City should remain in possession of the Premises after the expiration or termination of this Lease without the execution by Coronado and the City of a new Lease, the City shall be deemed to be occupying the Premises as a tenant-at-sufferance subject to all the covenants and obligations of this Lease, and shall pay as rent an amount equal to the last monthly rent as established by this Lease.

SEVERABILITY

25. This Lease shall be constructed in accordance with the laws of the State of New Mexico. If any clause or provision of this Lease is illegal, invalid or unenforceable under present or future laws effective during the term hereof, then it is the intention of the parties hereto that the remainder of this Lease shall not be affected thereby. It is also the intention of the parties hereto that the remainder of this Lease shall not be affected thereby. It is also the intention of both parties that in lieu of each clause or provision that is illegal, invalid or unenforceable, there be added as a part of this Lease a clause or provision as similar in terms to such illegal, invalid or unenforceable clause or provision as may be possible and be legal, valid and enforceable.

NOTICE

26. Notices sent certified mail, return receipt requested, shall be deemed received ten (10) days after mailing. The parties agree that their addresses for the purposes of receiving notices are set forth in the introductory paragraph or as may be changed from time to time by either party serving notice as above provided.

ENFORCEMENT OF LEASE

27. In the event either part breaches this Lease, the breaching party shall be liable to the other for all costs, expenses and attorney's fees reasonably expended by the other party to enforce this Lease. In addition, all sums due and not paid shall bear interest at one percent (1%) per annum.

MERGER

28. This Lease contains the entire agreement between the parties. No representative, agent or employee of Coronado has been authorized to make any representations or promises with reference to the subject of this Lease, or to vary, alter or modify the terms hereof. No additions, changes or modifications, renewals or extensions hereof, shall be binding unless reduced to writing and signed by Coronado and the City. Any prior discussion, agreements, offers, acceptances, whether oral or written, are deemed merged herein.

NON-WAIVER

29. Neither acceptance of rent by Coronado nor failure by Coronado to pursue a remedy of any action, non-action or default of the City, whether singular or repetitive shall constitute a waiver of any of Coronado's rights hereunder. No or thing done by Coronado or its agent shall be deemed to be an acceptance of surrender of the Premises and no agreement to accept a surrender of the Premises shall be valid unless it is in writing and signed by a duly authorized officer or agent of Coronado.

PLAT OF SURVEY SHOWING THE LOCATION OF IMPROVEMENTS ON A 0.2854 ACRE TRACT
 PART OF BLOCK 125, ORIGINAL TOWNSHIP OF LAS CRUCES
 TRACTS 1 AND 2, BLOCK 13, DOWNTOWN URBAN RENEWAL PROJECT NMR-4
 AS FILED NOVEMBER 27, 1973 IN PLAT RECORD 11, PAGES 74-82, DONA ANA COUNTY RECORDS
 CITY OF LAS CRUCES, DONA ANA COUNTY, NEW MEXICO
 OCTOBER 17, 1994

SCALE: 1" = 30'

IF 30' DIMENSION CORNER
 EITHER PUBLIC HIGH-
 PRESS LOW PRESS OR 2" TO
 DIMENSION CORNER OF
 U.S. BLOCK 7.

LAS CRUCES AVENUE

211 N. WATER STREET

S152644E 73.93'

639' N77.3334E S.P. BALK 64.94'

PART OF O.T.S.
 BLOCK 125
 0.2854 ACRES
 12,430 SQ. FT.

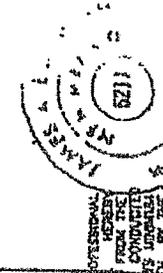
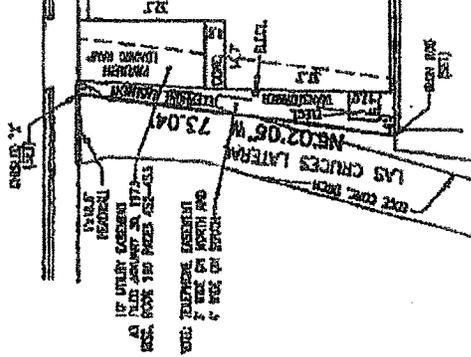
BUILDING

57759'59"W BLOCK WALL DISTANCE 174.39'

D. PAGO ELECTRIC CO.



SUBJECT PROPERTY IS WITHIN FLOOD ZONE *K* . FLOOD



IF UTILITY EASEMENT
 IS NOT SHOWN IN 1977
 CALL FOR THE PAGES 74-82

VOID: TELEPHONE EASEMENT
 2' WIDE ON NORTH AND
 4' WIDE ON SOUTH