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City of Las Cruces[®]
 PEOPLE HELPING PEOPLE

Council Action and Executive Summary

Item # 6 Ordinance/Resolution# 13-007

For Meeting of _____
 (Ordinance First Reading Date)

For Meeting of July 16, 2012
 (Adoption Date)

Please check box that applies to this item:

QUASI JUDICIAL LEGISLATIVE ADMINISTRATIVE

TITLE: A RESOLUTION AUTHORIZING THE ASSIGNMENT OF LEASE FOR A PARCEL OF LAND AT THE LAS CRUCES INTERNATIONAL AIRPORT FROM ITT CORPORATION TO EXELIS, INC.

PURPOSE(S) OF ACTION:

To authorize an assignment of lease.

COUNCIL DISTRICT: 4		
Drafter/Staff Contact: Cheryl Rodriguez <i>CR</i>	Department/Section: Transportation/Airport	Phone: 541-2471
City Manager Signature: <i>[Signature]</i>		

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

ITT Corporation, Advanced Engineering and Sciences Division (ITT), currently holds a land lease for a 25 x 25 foot parcel of land at the Las Cruces International Airport, which was approved by City Council pursuant to Resolution 10-137 on November 16, 2009. The parcel contains a Surveillance and Broadcast Services (SBS) site, which includes a tower and associated support equipment. The SBS site is one of over 800 such sites across the country and is a crucial component of the upgrade of the national air traffic control system. The lease was established at no cost to ITT as the airport will receive the benefit of the Surveillance Broadcast information, including air-to-air surveillance capability and real time traffic and aeronautical information, services that will greatly enhance the safety of the flying public. The lease expires October 31, 2025.

ITT has plans to separate into three new stand-alone companies. As per a letter to the airport dated August 1, 2011, ITT has indicated that the SBS sites will now be a part of Exelis, Inc., (d.b.a. ITT Exelis) and thus requests that the existing airport lease be assigned to the new company. Airport leases do allow for assignment subject to City Council approval. The Assignee, Exelis, Inc., will be subject to all terms and conditions of the current lease.

The Airport Advisory Board reviewed this request at their September 15, 2011 meeting, and recommends approval of the assignment from ITT Corporation to Exelis, Inc.

(Continue on additional sheets as required)

SUPPORT INFORMATION:

1. Resolution.
2. Exhibit "A" – Assignment of lease.
3. Exhibit "A-1" – Parcel location map.
4. Exhibit "A-2" – Legal description.
5. Attachment "A" – August 1, 2011 Letter from ITT Corporation requesting assignment.
6. Attachment "B" – May 17, 2012 Letter from ITT Corporation requesting assignment.
7. Attachment "C" – Minutes from September 15, 2011 Airport Advisory Board meeting.

SOURCE OF FUNDING:

Is this action already budgeted? N/A	Yes	<input 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

N/A

FUND EXPENDITURE SUMMARY:

Fund Name(s)	Account Number(s)	Expenditure Proposed	Available Budgeted Funds in Current FY	Remaining Funds	Purpose for Remaining Funds
N/A	N/A	N/A	N/A	N/A	N/A

OPTIONS / ALTERNATIVES:

1. Vote "Yes"; this will approve the Resolution and allow ITT Corporation to assign the land lease to Exelis, Inc.
2. Vote "No"; this will not allow ITT Corporation to assign the land lease to Exelis, Inc.

(Continue on additional sheets as required)

3. Vote to "Amend"; this could include approving a different lease term than is requested.
4. Vote to "Table" and direct staff accordingly. This would delay the assignment of lease from ITT Corporation to Exelis, Inc.

REFERENCE INFORMATION:

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

1. Resolution No. 10-137

RESOLUTION NO. 13-007

A RESOLUTION AUTHORIZING THE ASSIGNMENT OF LEASE FOR A PARCEL OF LAND AT THE LAS CRUCES INTERNATIONAL AIRPORT FROM ITT CORPORATION TO EXELIS, INC.

The City Council is informed that:

WHEREAS, ITT Corporation executed a lease agreement with the City of Las Cruces on November 16, 2009 pursuant to Resolution 10-137; and

WHEREAS, Section 7a. of the lease provides that ITT Corporation may request an assignment of lease and that such approval will not be unreasonably withheld by the City; and

WHEREAS, ITT Corporation has asked that the City approve assignment of the lease to Exelis, Inc.

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

(I)

THAT the Mayor of the City of Las Cruces is hereby authorized to sign the assignment of lease currently held by ITT Corporation to Exelis, Inc., attached hereto as Exhibit "A" and made a part of this Resolution.

(II)

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)

Moved by: _____

Seconded by: _____

APPROVED AS TO FORM:

By A. M. B. Leavelle

City Attorney

VOTE:

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

ASSIGNMENT OF LEASE

ITT Corporation, Advanced Engineering & Sciences Division, assignor herein and lessee of premises described as follows:

A portion of the lease, that portion being all of Parcel as shown on the attached map marked Exhibit "A-1" and described in Exhibit "A-2" and made a part hereof,

which was demised by a lease designated to ITT Corporation, Advanced Engineering & Sciences Division, by the Las Cruces City Council Resolution 10-137 on November 16, 2009, for good and valuable consideration paid by Exelis, Inc., assignee of the lease, assigns the lease to assignee subject to all the terms and conditions thereof, and assignee accepts the assignment and shall perform all the terms and conditions required by the provisions of the lease. Assignee shall enjoy the same right and power to assign the lease as assignor enjoyed under the lease.

The CITY OF LAS CRUCES, NEW MEXICO, a municipal corporation, lessor under the lease, consents to the assignment of the lease to assignee, but does not waive any rights against assignor that lessor has under the lease.

In witness whereof, the parties have executed this assignment at Las Cruces, New Mexico the _____ day of _____, 2012.

GREGORY P. HUGHES, Sr. Contracts Manager
Assignor

ATTEST:

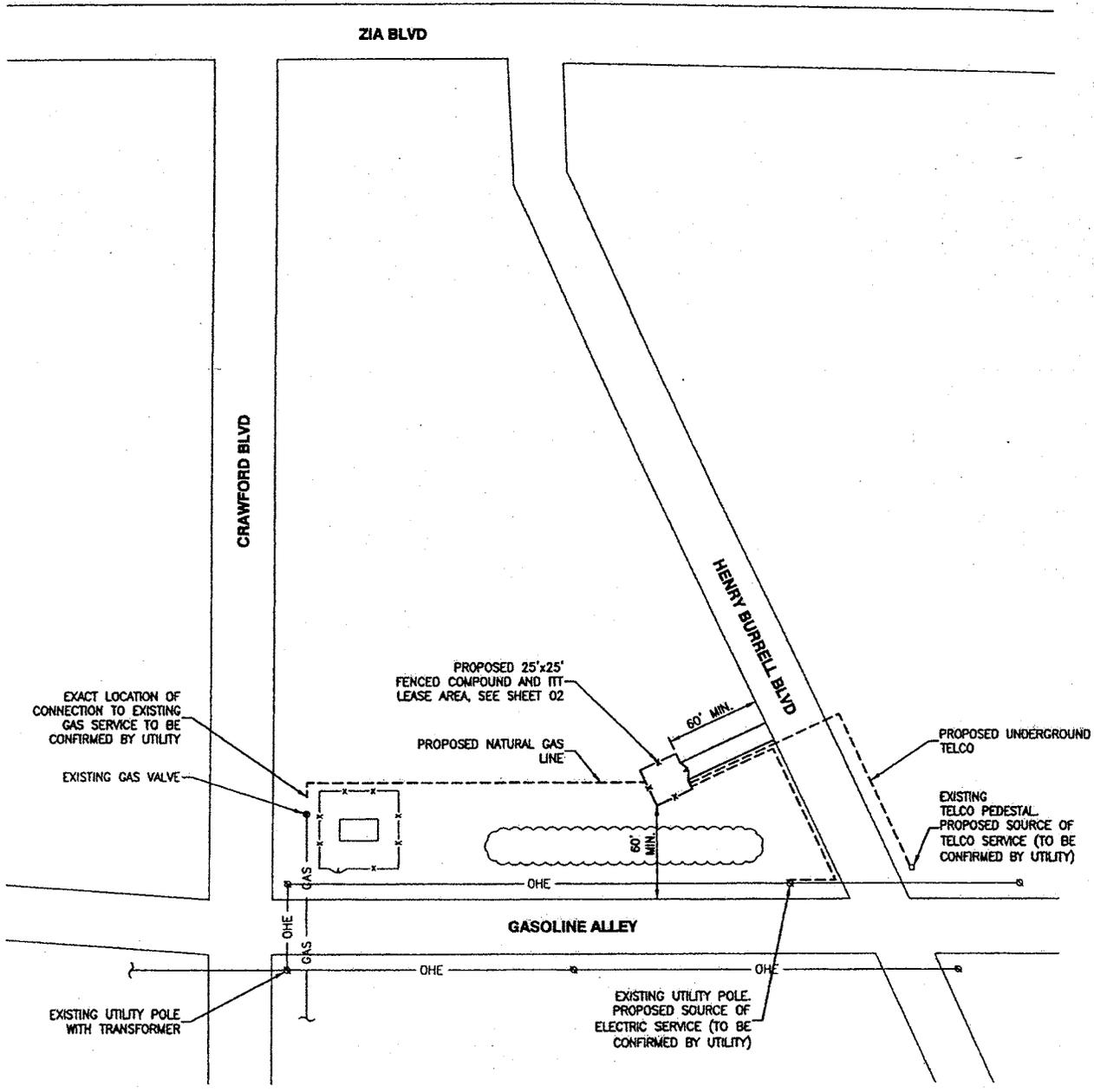
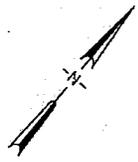
(Seal)

STATE OF NEW MEXICO)
) ss.
COUNTY OF DONA ANA)

The foregoing instrument was acknowledged before me this _____ day of _____, 2012, by Gregory P. Hughes, Sr. Contracts Manager, on behalf of ITT Corporation, Advanced Engineering & Sciences Division

Notary Public

My Commission Expires:



OVERALL PLAN
SCALE: 1"=100'-0"

Dec 04, 2009 4:08pm
 F:\Project\189 - ITT\189000\1005 - SBS Radio Station Sites for SV154\Cadd\SV154-24 - las Cruces\Lease\01.DWG



C&S Engineers, Inc.
 499 Col. Eileen Collins Blvd.
 Syracuse, New York 13212
 Phone: 315-455-2000
 Fax: 315-455-9667
 www.cscos.com

SITE NAME: LAS CRUCES
SITE NUMBER: ITT SV154-24
 8090 ZIA BLVD
 LAS CRUCES, NM 88007


ITT
 Advanced Engineering & Sciences
 12975 WOODGATE DRIVE
 MERNDON, VA 20170
 Engineered for life

OVERALL SITE PLAN		
DATE	DRAWING NUMBER	REV
12-4-09	01	0

ITT Corporation Parcel**Legal Description**

A lease premises situated in the City of Las Cruces, County of Dona Ana, State of New Mexico and known as being a 625 sq.ft. lease premises over and upon the lands described in deed to City of Las Cruces (known as Las Cruces International Airport) by Deed Book 166, Page 127 of the aforesaid County Records of Deeds and being more particularly described by metes and bounds as follows;

Commencing at a No. 5 rebar w/aluminum cap stamped City of Las Cruces 6832 found for an interior corner of the City of Las Cruces tract, same being the northwest corner of West Mason Industrial Park as recorded in Book 279, Page 889, Dona Ana County Records of Deeds, reference a No. 5 rebar w/aluminum cap stamped City of Las Cruces 6832 found South 89°37'48" East, a distance of 168.75 feet;

Thence, leaving West Mason Industrial Park and crossing the City of Las Cruces tract, North 20°56'31" West, a distance of 440.84 feet to the place of beginning.

Thence, South 63°40'35" West, a distance of 25.00 feet;

Thence, North 26°19'25" West, a distance of 25.00 feet;

Thence, North 63°40'35" East, a distance of 25.00 feet;

Thence, South 26°19'25" East, a distance of 25.00 feet to the place of beginning. Said lease premises encumbering 625 square feet, more or less.



ITT Corporation
Information Systems
12930 Worldgate Drive
Herndon, VA 20170

August 1, 2011

Airport Manager
Las Cruces International Airport
P.O. Box 20000
Las Cruces, NM 88004

Subject: ITT Exelis—Assignment of Lease Agreements:

Site Name: Lakeland Airport
Site ID: SV168-08

Dear Airport Manager,

ITT Corporation ("ITT") is currently leasing certain premises, including, but not limited to, real estate, facilities and/or tower space, under the above-listed Agreement ("Agreement"). On January 12, 2011, ITT announced its plan to separate the company's businesses into three distinct, publicly-traded companies (the "Transaction"). The Transaction is expected to occur before the end of the year. The three newly formed stand-alone companies will be:

1. Exelis Inc., doing business as "ITT Exelis" – (formerly ITT's Defense & Information Solutions business).
2. Xylem Inc. – (formerly ITT's Fluids and Motion Control businesses).
3. "ITT Corporation" - will continue to be a diversified global manufacturer of highly engineered industrial products and high-tech solutions.

We believe each of these future companies will be strategically well positioned for growth with global capabilities, outstanding operating track records and world-class leadership.

ITT entered into the referenced Agreements in support of its ITT Defense & Information Solutions business, and, accordingly, ITT intends to assign these agreements to Exelis Inc. (doing business as "ITT Exelis"), which will assume and continue to meet all obligations under the Agreements upon the effective date of the Transaction.

As part of our planning for the closing of the Transaction, we are identifying ITT agreements with third parties that may require assignment to the new stand-alone companies, including ITT Exelis, upon the effective date of the Transaction in order for each of the companies to continue to perform under such agreements. We accordingly request your consent to the assignment by

ITT Corporation ("Assignor") to Exelis Inc. of its rights and obligations under the referenced Agreements and the release of ITT Corporation from such obligations (such assignment and release, hereinafter referred to as the "Assignment"). It is expected that the Assignment will occur before the end of the year.

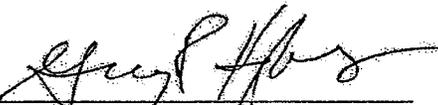
Please indicate, on behalf of your company that is a party to the referenced Agreements, your consent to the Assignment and your agreement that such Assignment would not constitute a basis for termination, give rise to any other rights or otherwise affect the terms of the Agreements, by signing this letter in the space indicated below. Please email the signed consent to Angie Moore at angela.moore@itt.com not later than August 30, 2011 and return your original signed consent at your earliest convenience.

In the event the referenced Agreement is guaranteed by ITT or subsidiaries thereof, your consent hereto will also serve as your consent to the assignment of such guarantees and any obligations in respect thereof to Exelis Inc. and to the release of ITT or such subsidiaries from any continuing obligations in respect of such guarantees.

Please contact me at 703-668-6270 or greg.hughes@itt.com if you have any questions concerning this letter or the Transaction. Also, you can obtain more information about "ITT Exelis and the Transaction on our website: <http://www.itt.com/transformation/>.

Very truly yours,

ITT Corporation

By: 

Gregory P. Hughes, Contracts Manager
ITT Information Systems

UNDERSTOOD AND AGREED:

Airport Manager
Las Cruces International Airport
P.O. Box 20000
Las Cruces, NM 88004

By: _____

Name:

Title:

Date:



Information Systems
12930 Worldgate Drive
Herndon, VA 20170

Suzan R. Wold
Contracts Administrator
Air Traffic Management
tel (703) 668-6049
fax (703) 668-6211
suzan.wold@itt.com

Letter No.: SV-154-24-01
May 17, 2012

City of Las Cruces
Attn: Airport Manager
P.O. Box 20000
Las Cruces, New Mexico 88004

Site Lease Agreement No. SV154-24

Subject: Request for Assignment

Reference: ITT Letter *ITT Exelis—Assignment of Lease Agreements*, dated 8/1/11

Enclosure: Assignment Agreement

Dear Airport Manager,

As we previously notified you via the referenced letter, ITT Corporation informed you of its plan to separate the company's businesses into three distinct, publicly-traded corporations (known as the "Transaction"). The Transaction was completed on October 30th, 2011. As indicated in the referenced letter, the former ITT Defense & Information Solutions business, to which the subject lease is currently controlled under, is now operating as new corporation, Exelis Inc. Exelis Inc. is a standalone \$6B company that has assumed all assets, revenues, and responsibilities of the former ITT Defense & Information Solutions business.

As a result of this change in corporate ownership, the subject tower site lease requires assignment from ITT Corporation to Exelis Inc. In accordance with the assignment clause of the subject lease, we hereby request assignment of the lease from ITT Corporation to Exelis Inc. In an effort to assist in the assignment of the lease from ITT to Exelis Inc. we have enclosed the draft Assignment Agreement for your review and execution. Under this Assignment Agreement Exelis Inc. assumes and will continue to meet all obligations under the Agreements upon the effective date of the Transaction, October 30, 2011.

Should you have questions or require additional information regarding the proposal, please contact the undersigned at your earliest convenience.

Sincerely,

A handwritten signature in cursive script that reads "Suzan R. Wold".

Suzan R. Wold
Contracts Administrator, Air Traffic Management
ITT Corporation – Information Systems

AIRPORT ADVISORY BOARD MEETING MINUTES – September 15, 2011**Page 3**

that the space travelers would fly in here, and while they are here, they would stay, eat, shop and play in Las Cruces. She mentioned that LRU could be advertised as 'the official airport of the Space Port'. She advised that the project would be completed in December 2011, and a proposal would be presented to the Board.

Letter to AOPA:

Ms. Murphy provided copies of a letter that she wrote to AOPA.

NEW BUSINESS:**A. Assignment of land lease from ITT Corporation to Exelis, Inc.:**

Ms. Murphy advised that in 2009, the FAA hired ITT to put up numerous towers at airports around the country, and one of these towers is located at LRU. She explained that it is for the next generation air traffic control system. At this point, she does not believe that there is any information being transmitted; however, when the transmission begins, LRU will have access to a part of the information gathered. Exelis, Inc. has taken over from ITT, and the LRU Advisory Board needs to assign the land lease for the tower area from ITT to Exelis, Inc. **Mr. Jim Noble made the motion that the LRU Advisory Board reassign the land lease from ITT Corporation to Exelis, Inc. Mr. Val Maltese seconded the motion. MOTION CARRIED.**

B. Review of changes to L.C. Municipal Code Chapter 7.5, Aviation:

Ms. Murphy advised that several years ago airport staff conducted a review of the Las Cruces Municipal Code, Chapter 7.5, Aviation, to clean up inconsistencies that had been created when the airport Minimum Standards were adopted on November 3, 2003. The Code review project went on the back burner for a while but was recently reopened by City Administration. Ms. Murphy stated that there is no deadline on this issue and suggested that the Board go over changes to ensure that areas were not missed or cause further problems. Dr. Anthony Levatino made the motion to table the review of changes to the L.C. Municipal Code, Chapter 7.5; Aviation, to provide each Board member the opportunity to read and study the changes. Mr. Jim Noble seconded the motion. **MOTION CARRIED.**

Airport Interior:

Mr. Val Maltese informed the Board that he had owned/operated an outdoor recreation business in Colorado. Through owning this business, he had redone a number of building interiors to get them ready for his business. He offered to redecorate (paint and rearranging) the terminal building area on his own time. Ms. Murphy advised that there is money for supplies. The Board thanked Mr. Maltese for his volunteering to do this. Mr. Maltese stated that this project would be on his own time and schedule.

Mr. Maltese asked Ms. Murphy what could be done about the pile of dirt in front of the terminal building. She advised that is the way that the architect designed the building—with it literally coming out of the ground, a modern concept. She stated that grass had been planted; however, the rabbits had eaten it. She stated that there is no landscape budget; however, that she would talk with Parks & Recreation about it. Mr. Maltese advised that he would be painting the front door area to make it more inviting.