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**City of Las Cruces**  
 PEOPLE HELPING PEOPLE

**Council Action and Executive Summary**

Item # 6      Ordinance/Resolution# 15-221

For Meeting of \_\_\_\_\_  
 (Ordinance First Reading Date)

For Meeting of May 18, 2015  
 (Adoption Date)

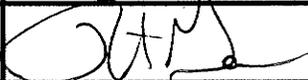
Please check box that applies to this item:

QUASI JUDICIAL       LEGISLATIVE       ADMINISTRATIVE

**TITLE:** A RESOLUTION AUTHORIZING THE CITY OF LAS CRUCES, TO ACCEPT A DIRECT PURCHASING AGREEMENT IN THE AMOUNT OF \$75,000.00, FROM THE NEW MEXICO ECONOMIC DEVELOPMENT DEPARTMENT FOR LOCAL ECONOMIC DEVELOPMENT ACT (LEDA) CAPITAL OUTLAY PROJECT – FRANCO WHOLE FOODS, WITH A \$75,000.00 LOCAL MATCH, AND TO ADJUST THE CITY’S FY 2015 BUDGET.

**PURPOSE(S) OF ACTION:**

To accept award and adjust the City budget.

<b>COUNCIL DISTRICT: ALL</b>		
<b><u>Drafter/Staff Contact:</u></b> Robin L. Rice	<b><u>Department/Section:</u></b> Finance/Grants	<b><u>Phone:</u></b> 575-541-2281
<b><u>City Manager Signature:</u></b>		

**BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:**

As indicated in Ordinance 2747, the City Council has authorized the City of Las Cruces (City), on behalf of its Economic Development Office (LCEDO), to act as the fiscal agent for Local Economic Development Act (LEDA) project: Franco-Whole Foods – Southwest LLC (FWFSW) Project. The City has received direct purchase order #41900-0000006679 in the amount of \$75,000.00, from the New Mexico Economic Development Department (NMEDD), to be distributed to the Franco-Whole Foods – Southwest LLC (FWFSW) Project.

This funding will be used to support the FWFSW Project with its commitment to create jobs in the City over a period of five (5) years. FWFSW entered into an Project Participation Agreement on March 2, 2015 with the City and agrees to the following: a total of 50 jobs to be created at the City facility by the company's third consecutive full year of operations; maintain 50 full-time jobs for two full consecutive years at this facility; a security bond to safeguard the public resources; upon satisfactorily meeting both conditions for completing the job requirements during or by the end of this five (5) year period, then the clawback provision obligation is terminated or reduced and the bond will be removed. If by July 1, 2019, should FWFSW not achieve the job creation

(Continue on additional sheets as required)

goals as indicated, the company shall revert any percentage of LEDA investment to the State of New Mexico for the percentage of jobs that were not created.

In addition the City will provide a local match in the amount of \$75,000.00 from the City's contingency fund for a total allocation of \$150,000.00 toward this project.

The funding will be used to complete the City required infrastructure improvements at the 2.1 acre 845 W. Amador Avenue facility, including but not limited to: fire sprinkler yard lines and riser; underground ponding; landscaping; concrete work required for the dumpster; ADA/vehicle ramps, curbs, sidewalk, loading docks, and asphalt paving of the parking lot.

**SUPPORT INFORMATION:**

1. Resolution.
2. Exhibit "A", Project Participation Agreement.
3. Exhibit "B", NMEDD Purchase Order 41900-0000006679.
4. Exhibit "C", Budget Adjustment.

**SOURCE OF FUNDING:**

<b>Is this action already budgeted?</b>	Yes	<input type="checkbox"/>	See fund summary below
	No	<input checked="" type="checkbox"/>	If No, then check one below:
	<i>Budget Adjustment</i>	<input type="checkbox"/>	Expense reallocated from:
	<i>Attached</i>	<input checked="" 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.
<b>Does this action create any revenue?</b>	Yes	<input checked="" type="checkbox"/>	Funds will be deposited into this fund: 1000 in the amount of \$75,000.00 for FY 2015.
	No	<input type="checkbox"/>	There is no new revenue generated by this action.

**BUDGET NARRATIVE**

Grant funds in the amount of \$75,000.00, will be deposited into Fund 1000, General Fund Other Revenue under project number 10947. Local match funds in the amount of \$75,000.00 will be allocated from Fund 1000, General Fund City Manager's Contingency under project number 10947. A total amount of \$150,000.00 will be used by the LCEDO in support of the FWFSW Project.

**FUND EXPENDITURE SUMMARY:**

Fund Name(s)	Account Number(s)	Expenditure Proposed	Available Budgeted at Funds in Current FY	Remaining Funds	Purpose for Remaining Funds
General	10100010- 592001- 10947	\$75,000.00*	\$75,000.00*	\$0.00	None
General	10100040- 722310- 10947	\$75,000.00	\$75,000.00	\$0.00	None

\* Pending approved budget adjustment.

**OPTIONS / ALTERNATIVES:**

1. Vote "Yes"; this will accept the purchase agreement funds and adjust the FY 2015 budget.
2. Vote "No"; this will impact the LCEDO's ability to act as escrow fiscal agent for the FWFSW Project and the funds will revert to the NMEDD.
3. Vote to "Amend"; this will delay the process of spending the grant funds within the predetermined grant schedule.
4. Vote to "Table"; this will impact the LCEDO's ability to utilize the funds and the grant funds will be returned to NMEDD, to be used for other communities.

**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 2747.

(Continue on additional sheets as required)

RESOLUTION NO. 15-221

**A RESOLUTION AUTHORIZING THE CITY OF LAS CRUCES, TO ACCEPT A DIRECT PURCHASING AGREEMENT IN THE AMOUNT OF \$75,000.00, FROM THE NEW MEXICO ECONOMIC DEVELOPMENT DEPARTMENT FOR LOCAL ECONOMIC DEVELOPMENT ACT (LEDA) CAPITAL OUTLAY PROJECT – FRANCO WHOLE FOODS, WITH A \$75,000.00 LOCAL MATCH, AND TO ADJUST THE CITY'S FY 2015 BUDGET.**

The City Council is informed that:

**WHEREAS**, as indicated in Ordinance 2747, the City Council has authorized the City of Las Cruces (City) on behalf of its Economic Development Office, to act as fiscal agent for Local Economic Development Act (LEDA) project: Franco-Whole Foods – Southwest LLC (FWFSW); and

**WHEREAS**, the New Mexico Economic Development Department (NMEDD)-LEDA provided through a purchase order, \$75,000.00 in funding to the City of Las Cruces to be used in support of the FWFSW Project; and

**WHEREAS**, the City will match the funding from the City's Manager's Contingency Fund in the amount of \$75,000.00 for total allocation of \$150,000.00; and

**WHEREAS**, the funding will be used to complete the City of Las Cruces required infrastructure improvements at the 2.1 acre 845 W. Amador Avenue facility, including but not limited to: fire sprinkler yard lines and riser; underground ponding; landscaping; concrete work required for the dumpster; ADA/vehicle ramps, curbs, sidewalk, loading docks, and asphalt paving of the parking lot.

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

(I)

**THAT** the City of Las Cruces has been authorized on behalf of its Economic

Development Office to act as fiscal agent for Franco-Whole Foods – Southwest LLC as shown in Exhibit “A”, Project Participation Agreement, attached hereto and made part of this Resolution.

**(II)**

**THAT** the City of Las Cruces acting as fiscal agent on behalf of Franco Whole Foods – Southwest LLC is authorized to accept the NMEDD-LEDA funding for FY 2015 in the amount of \$75,000.00, as shown in Exhibit “B”, attached hereto and made part of this Resolution.

**(III)**

**THAT** the local match of \$75,000.00 is hereby obligated in support of the project, and the City’s FY2015 budget is adjusted, as shown in Exhibit “C”, attached hereto and made part of this Resolution.

**(IV)**

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

**DONE AND APPROVED** this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

APPROVED:

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

(SEAL)

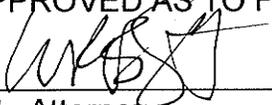
VOTE:

Mayor Miyagishima: \_\_\_\_\_  
Councillor Silva: \_\_\_\_\_  
Councillor Smith: \_\_\_\_\_  
Councillor Pedroza: \_\_\_\_\_  
Councillor Small: \_\_\_\_\_  
Councillor Sorg: \_\_\_\_\_  
Councillor Levatino: \_\_\_\_\_

Moved by \_\_\_\_\_

Seconded by \_\_\_\_\_

APPROVED AS TO FORM:

  
\_\_\_\_\_  
City Attorney

## PROJECT PARTICIPATION AGREEMENT

This Project Participation Agreement (this "**Agreement**") entered into on 2 March ~~February~~, 2015 by and between the City of Las Cruces, a New Mexico Municipal Corporation (the "**COMMUNITY**"), and Franco Whole Foods – Southwest, LLC, a New Mexico limited liability company (the "**PROJECT PARTY**").

### 1. Recitals:

A. Pursuant to the Local Economic Development Act, NMSA 1978, §§ 5-10-1 through 5-10-13, (**LEDA**); the COMMUNITY adopted the Ordinance No. 2697, authorizing the COMMUNITY to consider applications for economic development assistance; and Ordinance No. 2747 approving an Economic Development Project with the PROJECT PARTY (collectively, the "**LEDA Ordinance**").

B. The PROJECT PARTY has submitted an application to the COMMUNITY for assistance under the LEDA Ordinance (the "**Application**"). In the Application, the PROJECT PARTY has represented that PROJECT PARTY has acquired a leasehold interest in the real property, building and improvements located at 875 W. Amador, Las Cruces, New Mexico (the "**Site**") and committed to develop a food production factory facility (the "**Facility**") in accordance with the Application for Development Incentives Plan (the "**Plan**"). The application also proposes that the COMMUNITY act as Fiscal Agent for approximately three to five years, five years being the maximum period granted by the State of New Mexico through the Economic Development Department ("**EDD**") to achieve maintaining 50 full time jobs for two full consecutive years at the Facility. The PROJECT PARTY will then develop the Site using the grant monies ("**Grant Funds**") to build the Facility as described in the Plan.

C. The COMMUNITY finds that the PROJECT PARTY is a qualifying entity as defined in Section 5-10-3 (G) NMSA 1978 and that this Agreement meets the requirements of LEDA.

2. Substantive Contribution from the COMMUNITY: In order to implement the Plan Project, the COMMUNITY will act as Fiscal Agent for EDD Grant Funds provided for the Project. In addition, the COMMUNITY will provide \$75,000 in local Grant Funds and act as Project Management to the Plan Project after certification.

3. Substantive Contribution from the PROJECT PARTY: The PROJECT PARTY will materially participate by acting as developer and taking responsibility for economic development. The terms and obligations of the parties under the LEDA Ordinance and Application are incorporated into this Agreement by reference, and identified in the listing attached hereto as Exhibit "A". The economic development substantive contribution requirement obligation of the PROJECT PARTY is as follows:

A. The applicable five year job creation period shall commence on the earliest first day of the calendar month that occurs 90 days or more after the date that the certificate of occupancy is issued for the Facility ("**Period Commencement Date**");

B. A total of 50 full time jobs to be created at the Facility by the completion of the Company's 2nd full year of operations (i.e., by the 2<sup>nd</sup> anniversary of the Period Commencement Date);

C. Maintaining 50 full time jobs for two full consecutive years at the Facility (a year for this purpose is a twelve calendar month period that commences with the Period Commencement Date month or anniversary month) (the "**Jobs Requirement**");

D. Upon satisfaction of the requirement set forth in C. immediately preceding this subparagraph D., within the five year job creation period or shorter period, the Clawback Provision (as hereinafter defined) will cease to be applicable;

F. If by the fifth anniversary of the Period Commencement Date, PROJECT PARTY has not achieved Jobs Requirement, PROJECT PARTY shall reimburse any percentage of the Grant Funds for the percentage of jobs that were not created and maintained (i.e., if only 90% of the requisite jobs were created and maintained, then 10% of the Grant Funds will be reimbursed; similarly if only 80% of the requisite jobs were created and maintained, then 20% of the Grant Funds will be reimbursed) (the "**Clawback Provision**").

4. Security Provided to the EDD: In order to safeguard the public resources dedicated to success of this project, COMMUNITY will require a security from PROJECT PARTY in the amount of the Grant Funds [\$150,000, \$75,000 for the State's security, and \$75,000 for the City's security] to guarantee the Clawback Provision obligation of the PROJECT PARTY. If the PROJECT PARTY has fully satisfied all or a percentage of the Jobs Requirement such that the Clawback Provision obligation is terminated or reduced, the Bond requirement will cease or the bond amount will be correspondingly reduced commencing on the 2<sup>nd</sup> anniversary of the Period Commencement Date, as the case may be. Any funds recovered by the COMMUNITY pursuant to the bond shall be shared equally with EDD, with EDDs share returned to EDD within thirty (30) days after they are received by the COMMUNITY.

5. Review: COMMUNITY will review project timeline, progress and job creation bi-annually in May and November of each year until the earlier of the 6th anniversary of this Agreement, or until the PROJECT PARTY is confirmed to have fully satisfied the Jobs Requirement in full. Job creation reports shall include a copy of FORM ES-903 provided by the PROJECT PARTY to the COMMUNITY, on file with the New Mexico Department of Workforce Solutions to demonstrate compliance with this Agreement at each review cycle, and another at thirty (30) days prior to the anniversary date of this Agreement, for a period of ending on the earlier of the 6th anniversary of this Agreement, or until the

7. Governing Laws: This Agreement is be subject to the laws of the State of New Mexico.

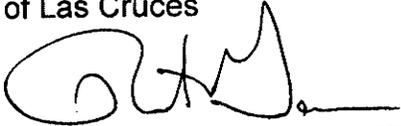
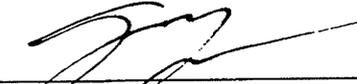
8. Permits and Licenses: PROJECT PARTY agrees that COMMUNITY has no direct responsibility for PROJECT PARTY to make application and obtain required permits and/or licenses related to use of the site and facility and is not guaranteeing any particular outcome with respect to such application, other than that the COMMUNITY agrees to cooperate with PROJECT PARTY to expeditiously process the entitlements and other approvals required by the COMMUNITY to approve the Project.

9. Ratification: COMMUNITY and PROJECT PARTY hereby ratify all actions consistent with this Agreement that COMMUNITY or PROJECT PARTY or their respective agents may have taken in furtherance of the Plan project.

10. Miscellaneous: The language of the Recitals shall have the same force and effect as the agreement provisions this Agreement. This Agreement binds and insures to the benefit of the COMMUNITY the PROJECT PARTY and their respective successors and assigns. This Agreement may be amended or modified, and the performance by any party of its obligations hereunder may be waived, only in a written instrument duly executed by the parties. This Agreement may be executed in any number of counterparts, each of which is an original and all of which taken together constitute one instrument. This Agreement is governed by and is to be construed in accordance with the laws of the State of New Mexico, without giving effect to its choice-of-law principles.

8. Term of this Agreement: The termination date of this Agreement will be agreed upon by COMMUNITY and PROJECT PARTY within ninety (90) days after PROJECT PARTY has satisfied the Jobs Requirement in full, or, in any event, shall terminate on the sixth (6<sup>th</sup>) anniversary of this Agreement.

In witness whereof, the parties hereto set their hands as of the date first appearing above.

COMMUNITY:	PROJECT PARTY:
City of Las Cruces	Franco Whole Foods – Southwest, LLC
By 	By 
Robert Garza City Manager	Mike Franco President

**APPROVED AS TO FORM:**  
  
City Attorney



**State of New Mexico  
Purchase Order**

PO Number to be on all Invoices and Correspondence  
**Dispatch via Print**

**Economic Development Dept.**

1100 St. Francis Drive  
Warehouse  
Santa Fe NM 87504  
United States

**Vendor:** 0000054342  
LAS CRUCES, CITY OF  
ATTN: ACCOUNTING  
P O BOX 20000  
LAS CRUCES NM 88004

<b>Purchase Order</b> 41900-0900006679	<b>Date</b> 10/24/2014	<b>Revision</b>	<b>Page</b> 1
<b>Payment Terms</b>	<b>Freight Terms</b>	<b>Ship Via</b>	
<b>Pay Now</b>	<b>FOB Destination</b>	<b>Best Way</b>	
<b>Buyer</b> CHRIS ROMERO	<b>Phone</b>		

**Ship To:** 1100 St. Francis Drive  
Warehouse  
Santa Fe NM 87504  
United States

**Bill To:** 1100 St. Francis Drive  
Joseph Montoya Bldg  
Santa Fe NM 87505-4147  
United States

Origin: EXE ExclExcl #: 13-1-98 A

Line-Sch	Item/Description	Mfg ID	Quantity	UOM	PO Price	Extended Amt	Due Date
1- 1	EDD LEDA Capital Outlay Project - Franco Wholefoods		1.00	EA	75,000.00	75,000.00	10/24/2014
	41900-18900-Z40533-535300- - - -91424-40533						
<b>Schedule Total</b>						<u>75,000.00</u>	
<b>Item Total</b>						<u>75,000.00</u>	
<b>Total PO Amount</b>						<u>75,000.00</u>	

Agency Approval - I certify that the proposed purchase represented by this document is authorized by and is made in accordance with all State (and if applicable Federal) legislation rules and regulation. I further certify that adequate unencumbered cash and budget expenditure authority exists for this proposed purchase and all other outstanding purchase commitments and accounts payable.

Authorized Signature

CITY OF LAS CRUCES  
2014-15 Fiscal Year Budget

FUND	DIVISION		FUND TYPE	
General Fund Fund 1000	Government		General Funds	
	2013-14 Un-Audited	2014-15 Budget      Adjustment		2014-15 Adjusted
<b>RESOURCES</b>				
Beginning Balance	\$ 18,112,065	22,493,489	36,815	22,530,304
<b>Revenues</b>				
Gross Receipts Tax	61,710,001	62,777,000	0	62,777,000
Hold Harmless Replacement Gross Receipts Tax	0	7,402,280	0	7,402,280
Public Safety Gross Receipts Tax	521,614	3,339,000	0	3,339,000
Property Taxes	10,091,643	10,150,630	0	10,150,630
Payment In Lieu of Property Tax	787,140	808,771	0	808,771
Franchise Fees	2,700,727	2,892,619	0	2,892,619
Payment In Lieu of Franchise Fees	1,205,265	1,253,304	0	1,253,304
Licenses, Fees & Permits	1,566,787	1,614,107	0	1,614,107
Fines & Forfeitures	659,718	778,083	0	778,083
Charges For Services	1,958,868	2,673,978	0	2,673,978
Administrative Transfers	3,004,484	3,237,545	0	3,237,545
All Other Revenues	1,776,034	821,114	75,000	896,114
Debt Service	1,600,000	104,500	0	104,500
Operating Transfers In	2,746,138	73,519	0	73,519
<b>Total Revenues</b>	<u>90,328,419</u>	<u>97,926,450</u>	<u>75,000</u>	<u>98,001,450</u>
<b>TOTAL RESOURCES</b>	<u>\$ 108,440,484</u>	<u>120,419,939</u>	<u>111,815</u>	<u>120,531,754</u>
<b>Expenditures</b>				
Legislative	725,237	809,837	0	809,837
Judicial	1,156,625	1,176,520	0	1,176,520
Administration	2,595,822	3,503,899	0	3,503,899
Legal	1,338,935	1,366,892	0	1,366,892
Human Resources	1,037,819	1,024,244	0	1,024,244
Financial Services	2,703,441	3,098,418	0	3,098,418
Information Technology	3,409,760	4,205,823	0	4,205,823
Transportation	4,987,868	5,191,551	0	5,191,551
Parks & Recreation	8,658,358	10,184,363	0	10,184,363
Community Development	3,139,757	3,433,203	0	3,433,203
Community & Cultural Services	5,271,412	5,589,156	0	5,589,156
Public Works	6,476,037	5,760,307	0	5,760,307
Las Cruces Police Department	21,066,134	24,819,929	0	24,819,929
Las Cruces Fire Department	9,888,066	12,337,900	0	12,337,900
Legislative Reserve	1,507,007	2,918,570	0	2,918,570
Operating Transfers Out	12,466,353	19,318,470	0	19,318,470
<b>Total Expenditures</b>	<u>\$ 86,428,631</u>	<u>104,739,082</u>	<u>0</u>	<u>104,739,082</u>
Accrual Adjustments	481,636	0	0	0
<b>ENDING BALANCE</b>	<u>\$ 22,493,489</u>	<u>15,680,857</u>	<u>111,815</u>	<u>15,792,672</u>
<b>Required Reserve:</b>				
State Required 1/12th	7,202,386	6,875,170	0	6,875,170
Local CLC 1/12th	7,202,386	6,875,170	0	6,875,170
<b>UN-RESERVED BALANCE</b>	<u>\$ 8,088,717</u>	<u>1,930,517</u>	<u>111,815</u>	<u>2,042,332</u>