City of Las Cruces®
PEOPLE HELPING PEOPLE

Council Action and Executive Summary

Item # 3 **Ordinance/Resolution#** 15-223

For Meeting of _____ (Ordinance First Reading Date)

For Meeting of June 1, 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 – CERTOPLAST NORTH AMERICA, INC., 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.

COUNCIL DISTRICT: ALL		
Drafter/Staff Contact: Michelle Belone	**Department/Section:** Finance/Grants	**Phone:** 575-541-2716
City Manager Signature:		

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: Certoplast North America, Inc. (CPNA) project. The City has received direct purchase order #41900-0000006680 in the amount of $75,000.00, from the New Mexico Economic Development Department (NMEDD), to be distributed to the Certoplast North America, Inc. (CPNA) project.

This funding will be used to support the CPNA Project with its commitment to create jobs in the City over a period of five (5) years. CPNA 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 CPNA 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 9030 Advancement Avenue facility including: electrical and lighting, Foreign Trade Zone infrastructure requirements (security cameras/CCTV, fencing), storage and warehousing facilities, two overhead cranes, sprinkler yard lines and riser; landscaping; concrete work required for the dumpster; ADA/vehicle ramps, curbs, sidewalk, and loading docks.

SUPPORT INFORMATION:

1. Resolution.
2. Exhibit "A", Project Participation Agreement.
3. Exhibit "B", NMEDD Purchase Order # 41900-0000006680.
4. Exhibit "C", Budget Adjustment Request.

SOURCE OF FUNDING:

Is this action already budgeted?			
	Yes	☐	See fund summary below
	No	☒	If No, then check one below:
	Budget Adjustment Attached	☐	Expense reallocated from: _____
		☒	Proposed funding is from a new revenue source (i.e. grant; see details below)
		☐	Proposed funding is from fund balance in the _____ Fund.
Does this action create any revenue?			
	Yes	☒	Funds will be deposited into this fund: 1000 in the amount of $75,000.00 for FY 2015.
	No	☐	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 10948. 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 10948. A total amount of $150,000.00 will be used by the LCEDO in support of the CPNA Project.

(Continue on additional sheets as required)

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	10100040-722310-10948	$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 CPNA 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.
2. Resolution 15-221.

(Continue on additional sheets as required)

RESOLUTION NO. 15-223

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 – CERTOPLAST NORTH AMERICA, INC., 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: Certoplast North America, Inc. (CPNA); 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 CPNA 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 9030 Advancement Avenue, Las Cruces, NM 88007 facility, including but not limited to: electrical and lighting, Foreign Trade Zone infrastructure requirements (security cameras/CCTV, fencing) storage and warehousing facilities, two overhead cranes, sprinkler yard lines and riser; landscaping; concrete work required for the dumpster; ADA/vehicle ramps, curbs, sidewalk, and loading docks.

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 CPNA, Inc. 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 CPNA, 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)

Moved by: _____

Seconded by: _____

VOTE:
Mayor Miyagishima: _____
Councillor Silva: _____
Councillor Smith: _____
Councillor Pedroza: _____
Councillor Small: _____
Councillor Sorg: _____
Councillor Levatino: _____

APPROVED AS TO FORM:

City Attorney

PROJECT PARTICIPATION AGREEMENT

This Project Participation Agreement (this "**Agreement**") entered into on 4 May, 2015 by and between the City of Las Cruces, a New Mexico Municipal Corporation (the "**COMMUNITY**"), and CertoPlast North America, Inc., 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. 2572 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 9030 Advancement Ave., Las Cruces, New Mexico (the "**Site**") and committed to develop a specialty adhesives 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 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 3rd full year of operations (i.e., by the 3rd 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 <u>or shorter period</u>, 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. <u>Security Provided to the EDD</u>: 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 commending on the 2nd 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 COMMUNMITY.

5. <u>Review:</u> 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

PROJECT PARTY is confirmed to have satisfied the Jobs Requirement in full.

6. Compliance with Statutes: COMMUNITY states that it has complied with the requirements of New Mexico Statutes and the Las Cruces Municipal Code and has authorization to enter into this AGREEMENT.

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.

11. 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 (6th) anniversary of this Agreement.

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

COMMUNITY:
City of Las Cruces

By _____
Robert Garza
City Manager

APPROVED AS TO FORM:

_____
City Attorney

PROJECT PARTY:
CertoPlast North America, Inc.

By _____
Tomas Rey
President

State of New Mexico
Purchase Order

PO Number to be on all Invoices and Correspondence

Dispatch via Print

Purchase Order	Date	Revision	Page
41900-0000006680	10/24/2014		1

Payment Terms	Freight Terms	Ship Via
Pay Now	FOB Destination	Best Way

Buyer	Phone
CHRIS ROMERO	

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

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 Excl\Excl #: 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 - Certo Plast		1.00 EA	75,000.00	75,000.00	10/24/2014
	41900-18900-Z40533-535300- - - - -91424-40533					

Schedule Total	75,000.00
Item Total	75,000.00
Total PO Amount	75,000.00

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

BUDGET ADJUSTMENT REQUEST (BAR)

43

Department and Section	Permanent or Temporary	EXHIBIT "C"
AMDMINISTRATION / ECONOMIC DEVELOPMENT	PERMANENT	Council/Board Resolution No.

Justification for Request

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 - CERTOPLAST NORTH AMERICA, INC., WITH A $75,000 LOCAL MATCH.

MUNIS Comment: LEDA - CERTOPLAST NORTH AMEI

Gary Camarano	541-2286	2014-15	1-Jun-15
Prepared by	**Phone No.**	**FY to be Adjusted**	**Date**

Fund	Org	Object	Project	Object Name	Increase $	Decrease $
1000	10100010	592001	10948	OTHER REVENUE	75,000	
1000	10100040	722310	10948	CITY MANAGER CONTINGENCY	75,000	
				Totals	$150,000	$0

By signing I verify balances and accounts are available in MUNIS.

Gary Cam — 5/15/15

Administrator / Manager — Date

Director — Date

For use by Office of Mgmt & Budget

Revised 5/05/2015

Budget Adjustment Number	Posted By	Date
Period: JE#		

For use by Administration and Office of Mgmt & Budget

Mark A. Winson, ACM / CAO — Date

Brian S. Denmark, ACM / COO — Date

Robert L. Garza, City Manager — Date

Budget and Grant Manager — Date