City of Las Cruces®
PEOPLE HELPING PEOPLE

Council Action and Executive Summary

Item # 3 **Ordinance/Resolution#:** 2576 **Council District:** 1

For Meeting of May 24, 2010
(Adoption Date)

TITLE: AN ORDINANCE AUTHORIZING THE EXECUTION AND DELIVERY OF A CONTRACT FOR LOAN GUARANTEE ASSISTANCE UNDER SECTION 108 OF THE HOUSING AND COMMUNITY DEVELOPMENT ACT OF 1974, AS AMENDED, AND A SECTION 108 LOAN GUARANTEE PROGRAM NOTE BY AND BETWEEN THE CITY OF LAS CRUCES, NEW MEXICO (THE "CITY") AND THE SECRETARY OF HOUSING AND URBAN DEVELOPMENT IN THE AGGREGATE AMOUNT OF TWO MILLION DOLLARS ($2,000,000); EVIDENCING A SPECIAL LIMITED OBLIGATION OF THE CITY TO PAY A PRINCIPAL AMOUNT OF TWO MILLION DOLLARS ($2,000,000), TOGETHER WITH INTEREST THEREON, FOR THE PURPOSE OF DEFRAYING THE COST OF CONSTRUCTING, REHABILITATING, AND IMPROVING THE MUSEUM OF NATURE AND SCIENCE IN THE CITY; PROVIDING FOR THE PAYMENT OF THE PRINCIPAL OF AND INTEREST ON THE NOTE SOLELY FROM THE PLEDGED SECURITY; APPROVING THE FORM AND TERMS OF AND OTHER DETAILS CONCERNING THE CONTRACT AND THE NOTE; RATIFYING ACTIONS HERETOFORE TAKEN; REPEALING ALL ACTION INCONSISTENT WITH THIS ORDINANCE; AND AUTHORIZING THE TAKING OF OTHER ACTIONS IN CONNECTION WITH THE EXECUTION AND DELIVERY OF THE CONTRACT AND THE NOTE.

PURPOSE(S) OF ACTION: Adopt an ordinance accepting the corresponding contract, note and other documents and authorizing their execution of a $2,000,000 Section 108 Loan with the U.S. Department of Housing and Urban Development for the creation of Museum of Nature and Science.

Name of Drafter: David Dollahon		**Department:** Community Development		**Phone:** 528-3060	
Department	**Signature**	**Phone**	**Department**	**Signature**	**Phone**
Community Development		528-3066	Budget		541-2107
Finance		541-2050	Assistant City Manager		541-2271
Legal		541-2128	City Manager		541-2076

BACKGROUND /KEY ISSUES /CONTRIBUTING FACTORS: The City Council, under Resolution 09-237, approved on April 20, 2009, authorized the submission of a Brownfield Economic Development Initiative (BEDI) grant and corresponding CDBG-based Section 108 Loan Guarantee program application for the creation of the Museum of Nature and Science, through eligible construction, rehabilitation and other improvement efforts. A condition of the BEDI grant is that a corresponding Section 108 of equal amount must be applied for and awarded by HUD for the same project, if the BEDI grant is awarded. The City proposed to

(Continued on Page 2)

use the BEDI and Section 108 Loan to rehabilitate the former Bank of the Rio Grande building at 411 N. Main Street to create the new Museum of Nature and Science (the former Museum of Natural History that will be relocated from the Mesilla Valley Mall once the building is rehabilitated). Once completed, the new Museum of Nature and Science will more than triple the current museum space and complete the placement of all the City's museums within Downtown Las Cruces.

The BEDI and Section 108 Loans are awarded by the U.S. Department of Housing and Urban Development (HUD), with the BEDI awarded on a competitive basis. The City of Las Cruces received preliminary notice in August 2009 of the award of a BEDI Grant for $2,000,000 for the project. The Section 108 Loan proceeds will be $2,000,000 less a 1% administrative fee of up to 1% or approximately $20,000. The loan proceeds will be received in FY2010, with expenditures related to the project occurring in FY2011. Additionally, $800,000 in U.S. Department of Energy American Recovery and Reinvestment Act (ARRA – Stimulus) funds will provide energy efficient improvements to the completed project.

The Section 108 Loan Guarantee submitted by the City has been preliminary approved by HUD and the preliminary loan award notice was provided by HUD on February 18, 2010. Staff from the Community Development, Financial Services, and Legal Departments has developed the necessary documents to complete the loan execution documents, including the attached, proposed Ordinance. As a condition of the Section 108 Loan, the City's future Community Development Block Grant (CDBG) funds are pledged as repayment of the loan over the next 20 years. While the CDBG funds are pledged, it is proposed that the loan will be repaid through general fund sources due to savings received by no longer renting a commercial space for the current Museum of Natural History and rent-savings for the Convention and Visitors Bureau building that was part of the trade to acquire the former bank building. As another condition required by both HUD and the Loan regulations, a first position mortgage (i.e. lien) will be filed against the Museum property until such time as the loan repayment is satisfied.

Staff has proposed that the Ordinance have a first-reading at the City Council meeting of May 17, 2010 and a final adoption at the land use meeting of May 24, 2010. The City Clerk's Office has made arrangement to publish the appropriate legal notice of the Ordinance's adoption. This schedule is proposed in order to meet HUD's public offering of all Section 108 Loans from other communities across the country. If this action is not completed and the loan documentation is not received by HUD on or before June 1, 2010, then the City will receive an interim, variable rate loan until HUD's next public offering (most likely the summer of 2011).

SUPPORT INFORMATION:

Fund Name / Account Number	Amt. of Expenditure	Budget Amount
For FY 2011-Information Only FUND 4010 (HUD Facilities Projects Fund) 4010-4010-900200 (Loan Proceeds) * * $2,000,000 less the 1% administrative fee	$1,980,000.00	$1,980,000.00

1. Ordinance
2. Exhibit "A" – Section 108 Loan Contract and Promissory Note from the City of Las Cruces to the Secretary of the U.S. Department of Housing and Urban Development
3. Attachment "B" – Legal Opinion provided by the City of Las Cruces Attorney's Offices, as required as a condition of the loan
4. Attachment "C" – Preliminary Funding Award Notice from Yolanda Chavez, Deputy Assistant Secretary for Grant Programs to Mayor Miyagishima dated February 18, 2010 and conditional loan approval documentation
5. Attachment "D" – Resolution 09-237

OPTIONS / ALTERNATIVES:

1. Vote YES and approve the Ordinance to complete the necessary loan transactions for the City of Las Cruces to receive a $2,000,000 loan as part of HUD's CDBG-based Section 108 Guaranteed Loan Program for the completion of the Museum of Nature of Science as part of the revitalization of Downtown Las Cruces. The Ordinance authorizes the execution of the necessary documents related to the loan and repeals any previous action inconsistent with the actions called for within the Ordinance and related to the loan documents.

2. Vote NO and deny the Ordinance, thus not completing the necessary loan documents for the City of Las Cruces to receive a $2,000,000 loan as part of HUD's CDBG-based Section 108 Guaranteed Loan Program for the completion of the Museum of Nature of Science as part of the revitalization of Downtown Las Cruces. This action will violate a one-for-one dollar amount requirement of the BEDI grant and prevent the completion of the Museum of Nature and Science.

3. Modify the Ordinance based on Council's direction. This could include modification of the documents associated with the loan's execution. Please note that the loan contract and promissory note are forms approved by HUD and changes could delay or negatively impact the loan's final approval.

4. Table/Postpone the Ordinance and direct staff accordingly. Please note that the Ordinance's adoption on May 24, 2010 is intended to meet HUD's Section 108 Loan public offering and avoid an interim, variable rate loan for approximately one year until the next public offering by HUD.

COUNCIL BILL NO. 10-047
ORDINANCE NO. 2576

AN ORDINANCE AUTHORIZING THE EXECUTION AND DELIVERY OF A CONTRACT FOR LOAN GUARANTEE ASSISTANCE UNDER SECTION 108 OF THE HOUSING AND COMMUNITY DEVELOPMENT ACT OF 1974, AS AMENDED, AND A SECTION 108 LOAN GUARANTEE PROGRAM NOTE BY AND BETWEEN THE CITY OF LAS CRUCES, NEW MEXICO (THE "CITY") AND THE SECRETARY OF HOUSING AND URBAN DEVELOPMENT IN THE AGGREGATE AMOUNT OF TWO MILLION DOLLARS ($2,000,000); EVIDENCING A SPECIAL LIMITED OBLIGATION OF THE CITY TO PAY A PRINCIPAL AMOUNT OF TWO MILLION DOLLARS ($2,000,000), TOGETHER WITH INTEREST THEREON, FOR THE PURPOSE OF DEFRAYING THE COST OF CONSTRUCTING, REHABILITATING AND IMPROVING THE MUSEUM OF NATURE AND SCIENCE IN THE CITY; PROVIDING FOR THE PAYMENT OF THE PRINCIPAL OF AND INTEREST ON THE NOTE SOLELY FROM THE PLEDGED SECURITY; APPROVING THE FORM AND TERMS OF AND OTHER DETAILS CONCERNING THE CONTRACT AND THE NOTE; RATIFYING ACTIONS HERETOFORE TAKEN; REPEALING ALL ACTION INCONSISTENT WITH THIS ORDINANCE; AND AUTHORIZING THE TAKING OF OTHER ACTIONS IN CONNECTION WITH THE EXECUTION AND DELIVERY OF THE CONTRACT AND THE NOTE.

The City Council is hereby informed:

WHEREAS, the City is a legally and regularly created, established, organized and existing municipality under the general laws of the State of New Mexico (the "State"); and

WHEREAS, the City is an entitlement community with the U.S. Department of Housing and Urban Development ("HUD") for the Community Development Block Grant ("CDBG") Program; and

WHEREAS, the CDBG Program was established under the Housing and Community Development Act of 1974 and includes provisions for loans to entitlement communities secured by future CDBG Entitlement Funds in a program known as the Section 108 Loan Guarantee Program; and

WHEREAS, the City staff has identified the construction, rehabilitation and improvement of the former Bank of the Rio Grande building for purposes of creating the Museum of Nature and Science (the "Project"), which qualifies for the Section 108 Loan Guarantee Program; and

WHEREAS, the City has applied, and has received approval from HUD, to participate in a Section 108 Loan Guarantee Program; and

WHEREAS, in conjunction with the financing provided under the Section 108 Loan Guarantee Program, the City has also received a Brownfield Economic Development Initiatives (BEDI) Grant in the amount of two million dollars ($2,000,000) to be used for the Project; and

WHEREAS, the City Council hereby determines that the Project may be financed with amounts borrowed under the Contract and the Note and that it is in the best interest of the City and its residents that the Contract and the Note be executed and delivered for the purpose of financing the Project; and

WHEREAS, the pledge of the Pledged Security to HUD constitutes a pledge to a federal government creditor pursuant to a federal loan program thereby not constituting a debt under certain New Mexico constitutional provisions; and

WHEREAS, the City Council has determined that it may lawfully pledge the Pledged Security for the payment of amounts due under the Contract and the Note; and

WHEREAS, the Pledged Security has not heretofore been pledged to secure the payment of any other obligations of the City; and

WHEREAS, the Contract and the Note shall constitute a special, limited obligation of the City, payable solely from the Pledged Security and shall not constitute a general obligation of the City, or a debt or pledge of the faith and credit of the City or the State; and

WHEREAS, there have been presented to the City Council and there presently are on file with the Clerk this Ordinance, the form of the Contract and the form of the Note, which are incorporated by reference and considered to be a part hereof; and

WHEREAS, the City Council intends by this Ordinance to authorize the execution and delivery of the Contract and the Note in the amount and for the purposes set forth herein; and

WHEREAS, all required authorizations, consents and approvals in connection with (i) the use and pledge of the Pledged Security for the payment of the amounts due under the Contract and the Note, (ii) the use of the proceeds of the Note to finance the Project, and (iii) the authorization, execution and delivery of the Contract and the Note which are required to have been obtained by the date of this Ordinance, have been obtained or are reasonably expected to be obtained.

NOW, THEREFORE, Be it ordained by the governing body of the City of Las Cruces, New Mexico:

Capitalized terms in the foregoing recitals to this Ordinance shall have the same meaning when used herein. In addition, capitalized terms used in the following preambles have the same meaning as defined in Section 1 of this Ordinance when used herein.

Section 1. Definitions. As used in the Ordinance, the following terms shall, for all purposes, have the meanings herein specified or as defined in the preambles, unless the context clearly requires otherwise (such meanings to be equally applicable to both the singular and the plural forms of the terms defined):

"Application" means the City's Application for Loan Guarantee Assistance under Section 108 of the Housing and Community Development Act of 1974, as amended.

"Authorized Officers" means, the Mayor, Finance Director, Manager, Attorney and Clerk of the City.

"Contract" means the Contract for Loan Guarantee Assistance under Section 108 of the Housing and Community Development Act of 1974, as amended, entered into between the City and the Secretary of HUD.

"City Council" means the duly organized City Council of the City, or any future successor City Council of the City.

"City" means the City of Las Cruces, New Mexico.

"HUD" means the U.S. Department of Housing and Urban Development.

"Note" means the HUD Section 108 Loan Guarantee Program promissory note executed contemporaneously with the Contract in the maximum amount of $2,000,000.

"Ordinance" means this Ordinance No. 2576, adopted by the City Council on May 24, 2010 approving the Contract and the Note, as amended from time to time.

"Pledged Security" means (a) all allocations or grants which have been made or for which the City may become eligible under Section 106 of the Housing and Community Development Act of 1974, as amended, as well as any grants which are or may become available to the City pursuant to Section 108(q) of the Housing and Community Development Act of 1974, as amended; (b) program income, as defined in CFR 570.500(a) (or any successor regulation), directly generated from the use of the guaranteed loan funds borrowed by the City pursuant to the Note; (c) a sole first priority lien in the name of the Secretary of HUD on the real property described in Attachment 3 of the Contract, established through an appropriate and properly recorded mortgage; (d) all proceeds (including insurance and condemnation proceeds) from any of the foregoing; and (e) all funds or investments in the accounts established pursuant to paragraphs 1 and 6 of the Contract.

"Project" means constructing, rehabilitating and improving the Museum of Nature and Science in the City.

Section 2. Ratification. All action heretofore taken (not inconsistent with the provisions of the Ordinance) by the City Council and officers of the City directed toward the Project, the submission of the Application and the execution and delivery of the Contract and the Note be, and the same hereby are, ratified, approved and confirmed.

Section 3. Authorization of the Project, the Contract and the Note. The construction and completion of the Project and the method of financing the Project through execution and delivery of the Contract and the Note are hereby authorized and ordered.

Section 4. Findings. The City hereby declares that it has considered all relevant information and data and hereby makes the following findings:

A. The Project is needed to meet the needs of the City and its residents.

B. Moneys available and on hand for the Project from all sources other than the Contract and the Note are not sufficient to defray the cost of the Project.

C. The Pledged Security may lawfully be pledged to secure the payment of amounts due under the Contract and the Note.

D. It is economically feasible to defray, in whole or in part, the costs of the Project by the execution and delivery of the Contract and the Note.

E. The City will complete the Project, in whole or in part, with the proceeds of the Note.

F. The City does not have any outstanding obligations payable from the Pledged Security that it has incurred or will incur prior to the initial execution and delivery of the Contract and the Note.

G. The net effective interest rate on the Note does not exceed 12.0% per annum, which is the maximum rate permitted by State law.

Section 5. Contract and Note - Authorization and Detail.

A. Authorization. This Ordinance has been adopted by the affirmative vote of at least a three-fourths (3/4) majority of all of the members of the City Council. For the purpose of protecting the public health, conserving the property, protecting the general welfare and prosperity of the residents of the City and completing the Project, it is hereby declared necessary that the City execute and deliver the Contract and the Note evidencing a special, limited obligation of the City to pay a principal amount of $2,000,000. The execution and delivery of the Contract and the Note are hereby authorized. The City shall use the proceeds of the Note to finance the Project. The City will own the Project.

B. Detail. The Contract and the Note shall be in substantially the form of the Contract and the Note presented at the meeting of the City Council at which this Ordinance was adopted. The Note shall be in the aggregate principal amount of $2,000,000, shall be payable in installments of principal due on August 1 of the years designated in "Schedule P&I" of the Note and bear interest payable on August 1 and February 1 of each year, commencing on August 1, 2010, at the rates designated in "Schedule P&I" of the Note.

Section 6. Approval of Contract and Note. The forms of the Contract and the Note as presented at the meeting of the City Council at which this Ordinance was adopted are hereby approved. Authorized Officers are hereby individually authorized to execute, acknowledge and deliver the Contract and the Note with such changes, insertions and omissions as may be approved by such individual Authorized Officers. The execution of the Contract and the Note by an Authorized Officer shall be conclusive evidence of the approval of the provisions thereof.

Section 7. Special Limited Obligation. The Note shall be secured by the pledge of the Pledged Security and shall be payable solely from the Pledged Security. The Note, together with interest thereon, shall be a special, limited obligation of the City, payable solely from the Pledged Security as provided in this Ordinance, the Contract and the Note and shall not constitute a general obligation of the City or the State, and the holders of the Note may not look to any general or other fund of the City for payment of the obligations thereunder. Nothing contained in this Ordinance, the Contract or the Note, nor any other instruments, shall be construed as obligating the City (except with respect to the application of the Pledged Security), as incurring a pecuniary liability or a charge upon the general credit of the City or against its taxing power, nor shall a breach of any agreement contained in this Ordinance, the Contract or the Note or any other instrument impose any pecuniary liability upon the City or any charge upon its general credit or against its taxing power. The Note shall never constitute an indebtedness of the City within the meaning of any State constitutional provision or statutory limitation and shall never constitute or give rise to a pecuniary liability of the City or a charge against its general credit or taxing power. Nothing herein shall prevent the City from applying other funds of the City legally available therefore to payments required by the Contract and the Note, in its sole and absolute discretion.

Section 8. Lien on Pledged Security. Pursuant to this Ordinance, the Contract and the Note, the Pledged Security is hereby authorized to be pledged to the payment of Note, and is hereby pledged for that purpose, and the City grants a security interest therein for the payment of Note, subject to the uses of the Pledged Security permitted by and to the priorities set forth in this Ordinance, the Contract and the Note. The Note constitutes an irrevocable and first lien, but not necessarily an exclusive first lien, on the Pledged Security as set forth herein.

Section 9. Authorized Officers. Authorized Officers are hereby individually authorized and directed to execute and deliver any and all papers, instruments, opinions, affidavits and other documents and to do and cause to be done any and all acts and things necessary or proper for carrying out this Ordinance, the Contract and the Note and all other transactions contemplated hereby and thereby. Authorized Officers are hereby individually authorized to do all acts and things required of them by this Ordinance, the Contract and the Note for the full, punctual and complete performance of all the terms, covenants and agreements

contained in this Ordinance, the Contract and the Note, including but not limited to, the execution and delivery of closing documents in connection with the execution and delivery of the Contract and the Note, and the publication of the summary of this Ordinance set out in Section 15 below (with such changes, additions and deletions as they may determine).

Section 10. Amendment of Ordinance. This Ordinance may be amended by ordinance of the City Council without receipt by the City of any additional consideration, but only with the prior written consent of the Secretary of HUD.

Section 11. Ordinance Irrepealable. After the Contract and the Note have been executed and delivered, this Ordinance shall be and remain irrepealable until all obligations due under the Contract and the Note shall be fully paid, canceled and discharged, as provided herein and therein.

Section 12. Severability Clause. If any section, paragraph, clause or provision of this Ordinance shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Ordinance, the Contract or the Note.

Section 13. Repealer Clause. All applications, bylaws, orders, resolutions and ordinances or parts thereof, inconsistent herewith are hereby repealed to the extent only of such inconsistency. This repealer shall not be construed to revive any bylaw, order, resolution or ordinance, or part thereof, heretofore repealed.

Section 14. Effective Date. Upon due adoption of this Ordinance, it shall be recorded in the book of the City kept for that purpose, authenticated by the signatures of the Mayor and City Clerk of the City, and the title and general summary of the subject matter contained in this Ordinance (set out in Section 15 below) shall be published in a newspaper which maintains an office and is of general circulation in the City, or posted in accordance with law, and said Ordinance shall be in full force and effect thereafter, in accordance with law.

Section 15. General Summary for Publication. Pursuant to the general laws of the State, the title and a general summary of the subject matter contained in this Ordinance shall be published in substantially the following form:

(Form of Summary of Ordinance for Publication)

City of Las Cruces, New Mexico
Notice of Adoption of Ordinance

Notice is hereby given of the title and of a general summary of the subject matter contained in Ordinance No. 2576 duly adopted and approved by the City Council of the City of Las Cruces, New Mexico (the "City"), on May 24, 2010. Complete copies of the Ordinance are available for public inspection during the normal and regular business hours of the City Clerk, 700 North Church Street, Las Cruces, New Mexico.

The title of the Ordinance is:

COUNCIL BILL NO. 10-047
ORDINANCE NO. 2576

AN ORDINANCE AUTHORIZING THE EXECUTION AND DELIVERY OF A CONTRACT FOR LOAN GUARANTEE ASSISTANCE UNDER SECTION 108 OF THE HOUSING AND COMMUNITY DEVELOPMENT ACT OF 1974, AS AMENDED, AND A SECTION 108 LOAN GUARANTEE PROGRAM NOTE BY AND BETWEEN THE CITY OF LAS CRUCES, NEW MEXICO (THE "CITY") AND THE SECRETARY OF HOUSING AND URBAN DEVELOPMENT IN THE AGGREGATE AMOUNT OF TWO MILLION DOLLARS ($2,000,000); EVIDENCING A SPECIAL LIMITED OBLIGATION OF THE CITY TO PAY A PRINCIPAL AMOUNT OF TWO MILLION DOLLARS ($2,000,000), TOGETHER WITH INTEREST THEREON, FOR THE PURPOSE OF DEFRAYING THE COST OF CONSTRUCTING, REHABILITATING AND IMPROVING THE MUSEUM OF NATURE AND SCIENCE IN THE CITY; PROVIDING FOR THE PAYMENT OF THE PRINCIPAL OF AND INTEREST ON THE NOTE SOLELY FROM THE PLEDGED SECURITY; APPROVING THE FORM AND TERMS OF AND OTHER DETAILS CONCERNING THE CONTRACT AND THE NOTE; RATIFYING ACTIONS HERETOFORE TAKEN; REPEALING ALL ACTION INCONSISTENT WITH THIS ORDINANCE; AND AUTHORIZING THE TAKING OF OTHER ACTIONS IN CONNECTION WITH THE EXECUTION AND DELIVERY OF THE CONTRACT AND THE NOTE.

A general summary of the subject matter of the Ordinance is contained in its title.

This Notice constitutes compliance with Section 6-14-6, NMSA 1978.

(End of Form of Summary for Publication)

DONE AND APPROVED this _____ day of May, 2010.

APPROVED:

By: _____
Ken Miyagishima, Mayor

ATTEST:

By: _____
Esther Martinez, City Clerk

Moved by: _____

Seconded by: _____

VOTE:

Mayor Miyagishima	____
Councillor Silva	____
Councillor Connor	____
Councillor Pedroza	____
Councillor Small	____
Councillor Sorg	____
Councillor Thomas	____

APPROVED AS TO FORM:

_____
City Attorney

EXHIBIT "A"

Meeting Agenda
May 24, 2010
City Council Meeting

(See attached)

STATE OF NEW MEXICO)
COUNTY OF DOÑA ANA) ss.
CITY OF LAS CRUCES)

I, Esther Martinez, the duly elected, qualified, and acting City Clerk of the City of Las Cruces, New Mexico (the "City"), do hereby certify:

1. The foregoing pages are a true, perfect, and complete copy of the record of the proceedings of the City Council of the City of Las Cruces, New Mexico (the "City Council"), constituting the City Council of the City had and taken at a duly called regular meeting held at the Municipal Offices, 700 North Main Street, Las Cruces, New Mexico, on May 24, 2010, at the hour of 1:00 p.m., insofar as the same relate to the execution and delivery of the proposed Contract and the Note, a copy of each of which is set forth in the official records of the proceedings of the City Council kept in my office. None of the action taken has been rescinded, repealed, or modified.

2. Said proceedings were duly had and taken as therein shown, the meeting therein was duly held, and the persons therein named were present at said meeting, as therein shown.

3. Notice of said meeting was given in compliance with the permitted methods of giving notice of regular meetings of the City Council as required by the City's open meetings resolution presently in effect.

IN WITNESS WHEREOF, I have hereunto set my hand this _____ day of May, 2010.

_____
Esther Martinez, City Clerk

[SEAL]

STATE OF NEW MEXICO)
COUNTY OF DOÑA ANA) ss.
CITY OF LAS CRUCES)

The City Council (the "City Council") of the City of Las Cruces, New Mexico, met in regular session in full conformity with the law and the rules and regulations of the City Council at the Municipal Offices, 700 North Main Street, Las Cruces, New Mexico, being the meeting place of the City Council for the meeting held on the 24th day of May, 2010, at the hour of 1:00 p.m. Upon roll call, the following members were found to be present:

Present: _____

_____

_____

_____

_____

_____

_____

_____

Absent: _____

_____

Also Present: _____

_____

Thereupon, there was officially filed with the Clerk a copy of a proposed ordinance in final form.

EXHIBIT "A"

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

CONTRACT FOR LOAN GUARANTEE ASSISTANCE UNDER SECTION 108 OF THE HOUSING AND COMMUNITY DEVELOPMENT ACT OF 1974, AS AMENDED, 42 U.S.C. §5308

For Series HUD 2010-A Certificates

This Contract for Loan Guarantee Assistance ("Contract") is entered into by the **City of Las Cruces, New Mexico**, as Borrower (the "Borrower"), and the Secretary of Housing and Urban Development ("Secretary"), as guarantor for the Guarantee made pursuant to section 108 ("Section 108") of title I of the Housing and Community Development Act of 1974, as amended (the "Act") and 24 CFR Part 570, Subpart M, of the promissory note executed contemporaneously herewith and numbered B-08-MC-35-0002 **(Museum of Nature and Science Project)**, in the Aggregate Principal Amount of **$2,000,000**, and any amended note or note issued in substitution for such note and having the same note number (the "Note"). This is the first Contract under the Funding Approval ("Commitment") of the same number, which was approved by the Secretary on **February 18, 2010**. Such Aggregate Principal Amount will be paid or credited to the account of the Borrower pursuant hereto (including any funds used to pay off prior interim notes refinanced by the Note), and all such amounts are collectively referred to herein as the "Guaranteed Loan Funds." The Note (including the Fiscal Agency Agreement and the Trust Agreement as defined in the Note and incorporated therein) is hereby incorporated into the Contract. Terms used in the Contract with initial capital letters and not otherwise defined in the text hereof shall have the respective meanings given thereto in the Note. The Fiscal Agency Agreement and the Trust Agreement are sometimes collectively referred to herein as the "Fiscal Agency/Trust Agreements," and the Fiscal Agent and the Trustee are sometimes collectively referred to as the "Fiscal Agent/Trustee."

PART I

A. **The Note.** The Note is payable to the Trustee as Registered Holder. On the Public Offering Date, it is expected that trust certificates backed by the Note and similar notes issued by other Section 108 borrowers, denominated "Section 108 Government Guaranteed Participation Certificates Series HUD 2010-A," will be purchased for a purchase price of the full Aggregate Principal Amounts thereof by underwriters selected by the Secretary (the "Underwriters") pursuant to an Underwriting Agreement between the Underwriters and the Secretary, at a closing on such Public Offering Date as determined by the Secretary and the Underwriters. The Borrower agrees that the interest rate at which the trust certificate of a specified maturity is sold to the

Underwriters shall be the interest rate inserted on the Public Offering Date in Schedule P&I of the Note for the Principal Amount of corresponding maturity. The Note shall be effective as an obligation of the Borrower only upon its delivery by the Secretary to the Fiscal Agent/Trustee and sale to the Underwriters at the closing on the Public Offering Date. The Borrower authorizes the Secretary to deliver the Note, together with the Secretary's Guarantee thereof, to the Fiscal Agent/Trustee as of such closing on the Public Offering Date, in accordance with the Fiscal Agency/Trust Agreements. After the Public Offering Date, the Borrower agrees that the Trustee pursuant to the Trust Agreement will maintain the books and records of all payments on the Note and all Principal Amounts and interest rates on such Principal Amounts.

B. **Consents.** By execution of this Contract, the Borrower ratifies and consents to the Secretary's selection of the Underwriters and authorizes the Secretary to negotiate with the Underwriters the terms of the Underwriting Agreement and of the public offering of interests in the trust certificates to investors (including the applicable interest rates). In addition, by execution hereof the Borrower ratifies and consents to the Secretary's selection of the Fiscal Agent/Trustee and agrees to the respective terms of the Fiscal Agency/Trust Agreements.

PART II

1. **Receipt, Deposit and Use of Guaranteed Loan Funds.**

(a) Except for fees and charges deducted on the Public Offering Date pursuant to paragraph 4(a) by the Fiscal Agent/Trustee, or funds used to pay off any interim note refinanced by the Note, the Guaranteed Loan Funds shall be electronically transferred in accordance with the Borrower's instructions for deposit in a separate, identifiable custodial account (the "Guaranteed Loan Funds Account") with a financial institution whose deposits or accounts are Federally insured. The Guaranteed Loan Funds Account shall be established and designated as prescribed in the attached form document entitled "Letter Agreement for Section 108 Loan Guarantee Program Custodial Account" **(Attachment 1)** and shall be continuously maintained for the Guaranteed Loan Funds. Such Letter Agreement must be executed when the Guaranteed Loan Funds Account is established. (A fully executed copy of such Letter Agreement shall be submitted to the Secretary within thirty days of its execution.)

The Borrower shall make withdrawals from said account only for payment of the costs of Section 108 activities approved

by HUD, for transfer to the Loan Repayment Account or for the temporary investment of funds pursuant to this paragraph 1(a). Such temporary investment of funds into the Guaranteed Loan Funds Investment Account shall be required within three Business Days after the balance of deposited funds exceeds the amount of the Federal deposit insurance on the Guaranteed Loan Funds Account. At that time, any balance of funds in the Guaranteed Loan Funds Account exceeding such insurance coverage shall be fully (100%) and continuously invested in Government Obligations, as defined in paragraph 10 hereof, held in the Guaranteed Loan Funds Investment Account.

All temporary investments, whether or not required as above, shall be limited to Government Obligations having maturities that are consistent with the cash requirements of the approved activities. In no event shall the investments mature on or after December 31, 2013, or have maturities which exceed one year. All such investments shall be held in trust for the benefit of the Secretary by the above financial institution in an account (the "Guaranteed Loan Funds Investment Account") established and designated as prescribed in the attached form document entitled "Letter Agreement for Section 108 Loan Guarantee Program Custodial Investment Account" **(Attachment 2)**, which account shall be maintained for all Government Obligations purchased with funds from the Guaranteed Loan Funds Account. The Guaranteed Loan Funds Investment Account need only be established if and when the Borrower is required to invest, or otherwise invests, the Guaranteed Loan Funds in Government Obligations. Such Letter Agreement must be executed when the Guaranteed Loan Funds Investment Account is established. (A fully executed copy of such Letter Agreement shall be submitted to the Secretary within thirty days of its execution.) All proceeds and income derived from such investments shall be returned to the Guaranteed Loan Funds Account.

All funds in the Guaranteed Loan Funds Account or the Guaranteed Loan Funds Investment Account must be withdrawn and disbursed by the Borrower for approved activities by December 31, 2013. Any funds remaining in either Account after this date shall be immediately transferred to the Loan Repayment Account established pursuant to paragraph 6 of this Contract.

(b) The Borrower shall by the fifteenth day of each month provide the Secretary with a written statement showing the balance of funds in the Guaranteed Loan Funds Account and the withdrawals from such account during the preceding calendar month, and a statement identifying the obligations and their assignments in the Guaranteed Loan Funds Investment Account, until such Accounts are fully disbursed.

(c) Upon the Secretary giving notice that the Borrower is in Default under this Contract or the Note, all right, title, and interest of the Borrower in and to the Guaranteed Loan Funds and Guaranteed Loan Funds Investment Accounts shall immediately vest in the Secretary for use in making payment on the Note, purchase of Government Obligations in accordance with paragraph 10, or payment of any other obligations of the Borrower under this Contract or the Fiscal Agency/Trust Agreements, in each case as elected by the Secretary in his sole discretion.

2. **Payments Due on Note.** The Borrower shall pay to the Fiscal Agent/Trustee, as collection agent for the Note, all amounts due pursuant to the terms of the Note. In accordance with the Note and the Fiscal Agency/Trust Agreements, payment shall be made by 3:00 P.M. (New York City time) on the seventh Business Day (the "Note Payment Date") preceding the relevant Interest Due Date or Principal Due Date (each as defined in the Note). If any Note Payment Date falls on a day that is not a Business Day, then the required payment shall be made on the next Business Day. Payment may be made by check or wire transfer.

Upon final payment of all amounts due to Holders under the Note, including any payment made by the Secretary pursuant to the Guarantee, the Fiscal Agent/Trustee is required by the Fiscal Agency/Trust Agreements to return the Note to the Secretary. Upon final payment to the Secretary of any amounts due as a result of Guarantee Payments or otherwise due under this Contract, the Secretary will cancel and return the Note to the Borrower in discharge of the Borrower's obligations under the Note.

3. **Selection of New Fiscal Agent or Trustee.** The Secretary shall select a new Fiscal Agent or Trustee if the Fiscal Agent or Trustee resigns or is removed by the Secretary. The Borrower hereby consents in advance to any such selection and to any changes in the Fiscal Agency/Trust Agreements agreed to by any Fiscal Agent or Trustee and the Secretary, subject to paragraph 4(d) of this Contract.

4. **Payments Due Fiscal Agent or Trustee; Documents to the Secretary.**

(a) The Borrower agrees to pay the Borrower's share, as determined by the Secretary, of the customary and usual issuance, underwriting, and other costs related to the public offering and future administration of the Note and the trust certificates, as approved by the Secretary, including the cost of reimbursement and/or compensation of the Trustee pursuant to the Trust Agreement, including Sections 3.11 and 7.01 thereof. In connection with the public offering, such payment shall either be made by wire transfer to the Trustee

on the day prior to the Public Offering Date or shall be deducted from the Guaranteed Loan Funds on the Public Offering Date.

(b) The Borrower shall submit to the Secretary not later than twelve (12) Business Days prior to the Public Offering Date applicable to the Note, this executed Contract, the executed Note, and an opinion acceptable to the Secretary from the Borrower's counsel to the effect that: (i) the governing body of the Borrower has authorized by resolution or ordinance, in accordance with applicable State and local law, the issuance of the Note and the execution of this Contract; (ii) the Note and this Contract are valid, binding, and enforceable obligations of the Borrower; (iii) the pledge of funds pursuant to 24 CFR §570.705(b)(2) and paragraph 5(a) of this Contract is valid and binding; and (iv) there is no outstanding litigation that will affect the validity of the Note or this Contract. In addition, the Borrower shall submit any other additional documents or opinions specifically required by this Contract (e.g., paragraph 5(c), or paragraph 15, *et seq.*), at the time required thereby.

(c) The Borrower agrees to reimburse the Underwriters upon demand by the Secretary for the Borrower's share, as determined by the Secretary, of all reasonable out-of-pocket expenses (including reasonable fees and disbursements of counsel) incurred in connection with a proposed public offering, if the Underwriters incur such additional costs for the public offering because the Borrower withdraws from the offering within ten Business Days of the Public Offering Date, or if the Borrower fails for any reason timely to submit in acceptable form any document required by this Contract (including paragraph 4(b)) to be submitted before the Public Offering Date. By execution and delivery of this Contract to the Secretary, the Borrower hereby expressly authorizes the Secretary to pay amounts due under this paragraph from funds pledged under paragraph 5(a) of this Contract.

(d) The undertakings in paragraphs 3 and 4 of this Contract are expressly subject to the requirement that the Fiscal Agency/Trust Agreements shall in no event require payment of fees or charges, reimbursement of expenses, or any indemnification by the Borrower from any source other than funds or other security pledged pursuant to paragraphs D (if applicable), 5, or 15, *et seq.*, of this Contract.

5. **Security.** The Borrower hereby pledges as security for repayment of the Note, and such other charges as may be authorized in this Contract, the following:

(a) All allocations or grants which have been made or for which the Borrower may become eligible under Section 106 of

the Act, as well as any grants which are or may become available to the Borrower pursuant to Section 108(q).

(b) Program income, as defined at 24 CFR 570.500(a)(or any successor regulation), directly generated from the use of the Guaranteed Loan Funds.

(c) Other security as described in paragraph 15, *et seq.*, or incorporated herein by paragraph D hereof, as applicable.

(d) All proceeds (including insurance and condemnation proceeds) from any of the foregoing.

(e) All funds or investments in the accounts established pursuant to paragraphs 1 and 6 of this Contract.

6. **Loan Repayment Account.**

(a) All amounts pledged pursuant to paragraphs 5(b), 5(c), and 5(d) of this Contract shall be deposited immediately on receipt in a separate identifiable custodial account (the "Loan Repayment Account") with a financial institution whose deposits or accounts are Federally insured. The Loan Repayment Account shall be established and designated as prescribed in the attached form document entitled "Letter Agreement for Section 108 Loan Guarantee Program Custodial Account" **(Attachment 1)** and shall be maintained for such pledged funds. The Loan Repayment Account need only be established if and when the Borrower receives amounts pledged pursuant to paragraph 5(b), 5(c) or 5(d). Such Letter Agreement must be executed when the Loan Repayment Account is established. (A fully executed copy of such Letter Agreement shall be submitted to the Secretary within thirty days of its execution.) Borrower shall make withdrawals from said account only for the purpose of paying interest and principal due on the Note (including the purchase of Government Obligations in accordance with paragraph 10 hereof), for payment of any other obligation of the Borrower under this Contract or the Fiscal Agency/Trust Agreements, or for the temporary investment of funds pursuant to this paragraph, until final payment and discharge of the indebtedness evidenced by the Note, unless otherwise expressly authorized by the Secretary in writing. Such temporary investment of funds shall be required within three Business Days after the balance of deposited funds exceeds the amount of the Federal deposit insurance on the Loan Repayment Account. At that time, any balance of funds in the Loan Repayment Account exceeding such insurance coverage shall be fully (100%) and continuously invested in Government Obligations, as defined in paragraph 10 hereof.

All temporary investments, whether or not required as above, shall be limited to Government Obligations having maturities

that are consistent with cash requirements for payment of principal and interest as required under the Note. In no event shall the maturities of such investments exceed one year. All such investments shall be held in trust for the benefit of the Secretary by the above financial institution in an account (the "Loan Repayment Investment Account") established and designated as prescribed in the attached form document entitled "Letter Agreement for Section 108 Loan Guarantee Program Custodial Investment Account" **(Attachment 2)**, which account shall be maintained for all Government Obligations purchased with funds from the Loan Repayment Account. Such Letter Agreement must be executed when the Loan Repayment Investment Account is established. (A fully executed copy of such Letter Agreement shall be submitted to the Secretary within thirty days of its execution.) All proceeds and income derived from such investments shall be returned to the Loan Repayment Account.

(b) Borrower shall by the fifteenth day of each month, provide the Secretary with a written statement showing the balance of funds in the Loan Repayment Account and the deposits and withdrawals of all funds in such account during the preceding calendar month and a statement identifying the obligations and their assignments in the Loan Repayment Investment Account, for any month in which there are funds in such Accounts.

(c) Upon the Secretary giving notice that the Borrower is in Default under this Contract or the Note, all right, title, and interest of the Borrower in and to the Loan Repayment and Loan Repayment Investment Accounts shall immediately vest in the Secretary for use in making payment on the Note, purchase of Government Obligations in accordance with paragraph 10, or payment of any other obligation of the Borrower under this Contract or the Fiscal Agency/Trust Agreements, in each case as elected by the Secretary in his sole discretion.

7. **Use of CDBG, EDI or BEDI Funds for Repayment.** Any funds available to the Borrower under Section 106 of the Act (including program income derived therefrom) are authorized to be used by the Borrower for payments due on the Note, Optional Redemption (as defined in the Note), payment of any other obligation of the Borrower under this Contract or the Fiscal Agency/Trust Agreements, or the purchase of Government Obligations in accordance with paragraph 10. Any funds specifically available to the Borrower for such payments or as a debt service reserve under an EDI Grant Agreement pursuant to Section 108(q) of the Act which supports the eligible project(s) and activities financed by the Note may also be used therefor; any other use of Section 108(q) funds for such purposes shall require the prior written approval of the Secretary. Unless otherwise specifically provided herein or unless otherwise expressly authorized by the Secretary in writing, the Borrower

shall substantially disburse funds available in the Loan Repayment or the Loan Repayment Investment Accounts before funds from grants under Section 106 of the Act are withdrawn from the U.S. Treasury for such purposes.

8. **Secretary's Right to Restrict Use of CDBG Funds to Repayment.** Upon a determination by the Secretary that payments required by paragraph 2 and/or paragraph 4 of this Contract are unlikely to be made as specified, the Secretary may give the Borrower notice that the availability to the Borrower of funds pledged under paragraph 5(a) of this Contract for purposes other than satisfaction of the pledge is being restricted. This restriction shall be in an amount estimated by the Secretary to be sufficient to ensure that the payments referred to in paragraph 2 and/or paragraph 4 hereof are made when due. This restriction may be given effect by conditioning the restricted amounts to prohibit disbursement for purposes other than satisfaction of the pledge at the time such restricted funds are approved as grants, by limiting the Borrower's ability to draw down or expend the restricted funds for other purposes, and by disapproving payment requests submitted with respect to such grants for purposes other than satisfaction of the pledge.

9. **Secretary's Right to Use Pledged Funds for Repayment.** The Secretary may use funds pledged under paragraph 5(a) of this Contract or funds restricted under grants pursuant to paragraph 8 of this Contract to make any payment required of the Borrower under paragraph 2 and/or paragraph 4, if such payment has not been timely made by the Borrower.

10. **Defeasance.** For purposes of this Contract, the Note shall be deemed to have been paid (defeased) if there shall have been deposited with the Trustee either moneys or Government Obligations (defined below), which in the sole determination of the Secretary, mature and bear interest at times and in amounts sufficient, together with any other moneys on deposit with the Trustee for such purpose, to pay when due the principal and interest to become due on the Note. The Aggregate Principal Amount of the Note or any unpaid Principal Amount may be so defeased, in whole or in part, as of any Interest Due Date, or any other Business Day acceptable to both HUD and the Borrower. In accordance with the Note and the Trust Agreement, the Borrower shall give timely notice and written instructions to the Secretary and the Trustee concerning any principal amounts proposed to be defeased, including any Optional Redemptions proposed, which instructions shall be approved by the Secretary. If the unpaid Aggregate Principal Amount of the Note guaranteed pursuant to this Contract shall be defeased and deemed to have been paid in full, then the Borrower shall be released from all agreements, covenants, and further obligations under the Note.

"Government Obligation" means a direct obligation of, or any obligation for which the full and timely payment of principal

and interest is guaranteed by, the United States of America, including but not limited to, United States Treasury Certificates of Indebtedness, Notes and Bonds - State and Local Government Series or certificates of ownership of the principal of or interest on direct obligations of, or obligations unconditionally guaranteed by, the United States of America, which obligations are held in trust by a commercial bank which is a member of the Federal Reserve System and has capital and surplus (exclusive of undivided profits) in excess of $100,000,000.

11. **Default.**

(a) A Default under the Note and this Contract shall occur upon failure by the Borrower to:

(i) pay when due an installment of principal or interest on the Note; or (ii) punctually and properly perform, observe, and comply with any covenant, agreement, or condition contained in: (A) this Contract, (B) any security agreement, deed of trust, mortgage, assignment, guarantee, or other contract securing payment of indebtedness evidenced by the Note, or (C) any future amendments, modifications, restatements, renewals, or extensions of any such documents.

(b) The Borrower waives notice of Default and opportunity for hearing with respect to a Default under paragraph 11(a).

(c) In addition to Defaults under paragraph 11(a), the Secretary may declare the Note in Default if the Secretary makes a final decision in accordance with the provisions of section 111 of the Act and 24 CFR 570.913 (or any successor provisions), including requirements for reasonable notice and opportunity for hearing, that the Borrower has failed to comply substantially with title I of the Act. Notwithstanding any other provision, following the giving of such reasonable notice, the Secretary may, in the Secretary's sole discretion pending the Secretary's final decision, withhold the guarantee of any or all obligations not yet guaranteed on behalf of the Borrower under outstanding commitments, and/or direct the Borrower's financial institution to: refuse to honor any instruments drawn upon, or withdrawals from, the Guaranteed Loan Funds Account or the Loan Repayment Account initiated by the Borrower, and/or refuse to release obligations and assignments by the Borrower from the Guaranteed Loan Funds Investment Account or the Loan Repayment Investment Account.

12. **Remedial Actions.** Upon a Default or declaration of Default under this Contract, the Secretary may, in the Secretary's sole discretion, take any or all of the following remedial actions:

(a) With any funds or security pledged under this Contract, the Secretary may (i) continue to make payments due on the Note, (ii) make an acceleration payment with respect to the principal amount of the Note subject to Optional Redemption as provided in Section B of the Note, (iii) purchase Government Obligations in accordance with paragraph 10 of this Contract, (iv) pay any interest due for late payment as provided in the Note, this Contract, or the Fiscal Agency/Trust Agreements, (v) pay any other obligation of the Borrower under this Contract or the Fiscal Agency/Trust Agreements, and/or (vi) pay any reasonable expenses incurred by the Secretary or the Fiscal Agent/Trustee as result of the Borrower's Default.

(b) The Secretary may withhold the guarantee of any or all obligations not yet guaranteed or the disbursement of any or all grants not yet disbursed in full under outstanding guarantee commitments or grant approvals for the Borrower under Sections 108 and/or 106 of the Act.

(c) The Secretary may direct the Borrower's financial institution to: refuse to honor any instruments drawn upon, or withdrawals from, the Guaranteed Loan Funds Account or the Loan Repayment Account by the Borrower, and/or refuse to release obligations and assignments by the Borrower from the Guaranteed Loan Funds Investment Account or the Loan Repayment Investment Account; and/or direct the Borrower and/or the Borrower's financial institution to transfer remaining balances from the Guaranteed Loan Funds Account to the Loan Repayment Account.

(d) With respect to amounts subject to Optional Redemption, the Secretary may accelerate the Note.

(e) The Secretary may exercise any other appropriate remedies or sanctions available by law or regulation applicable to the assistance provided under this Contract, or may institute any other action available under law, to recover Guaranteed Loan Funds or to reimburse the Secretary for any payment under the Secretary's Guarantee or any reasonable expenses incurred by the Secretary as a result of the Default.

(f) All notices and submissions provided for hereunder shall be in writing (including by telex, telecopier or any other form of facsimile communication) and mailed or sent or delivered, as to each party hereto, at its address set forth below or at such other address as shall be designated by such party in a written notice to the other party hereto. All such notices and other communications shall be effective when received as follows: (i) if sent by hand delivery, upon delivery; (ii) if sent by mail, upon the earlier of the date of receipt or five Business Days after deposit in the mail, postage prepaid; (iii) if sent by telex, upon receipt by the sender of an answer back; and (iv) if sent by telecopier, upon confirmed receipt.

The Secretary:

U.S. Dept. of Housing and Urban Development
Attention: Paul Webster, Director
Financial Management Division
451 7th Street SW, Room 7180
Washington, DC 20410

Borrower:

City of Las Cruces, New Mexico
Attention: Mr. David Dollahon
Neighborhood Services Administrator
700 N. Main Street
Las Cruces, NM 88001

13. **Limited Liability.** Notwithstanding any other provision of this Contract, the Fiscal Agency/Trust Agreements or the Note, any recovery against the Borrower for any liability for amounts due pursuant to the Note, the Fiscal Agency/Trust Agreements and this Contract shall be limited to the sources of security pledged in paragraphs D, 5, or any Special Conditions of this Contract, as applicable. Neither the general credit nor the taxing power of the Borrower, or of the State in which the Borrower is located, is pledged for any payment due under the Note, the Contract, or the Fiscal Agency/Trust Agreements.

14. **Incorporated Grant Agreement.** The Contract and the Note are hereby incorporated in and made a part of the Grant Agreement authorized by the Secretary on August 6, 2008 under the Funding Approval for grant number B-08-MC-35-0002 to the Borrower. In carrying out activities with the Guaranteed Loan Funds hereunder, the Borrower agrees to comply with the Act and 24 CFR Part 570, as provided in Subpart M thereof.

15. Special Conditions and Modifications:

(a) Paragraph 5(c) of the Contract is amended by deleting the paragraph as written in its entirety and substituting therefor the following:

"(c) A sole first priority lien in the name of the Secretary on the real property described in **Attachment 3** hereof (the 'Property'), established through an appropriate and properly recorded mortgage (the 'Mortgage'). The Mortgage shall contain such provisions as the Secretary deems necessary."

(b) Guaranteed Loan Funds shall be used by the Borrower to carry out the following activities in connection with the Museum of Nature and Science project (the "Project"):

(i) rehabilitation of real property, pursuant to 24 CFR 570.703(b) and

(ii) site improvements, pursuant to 24 CFR 570.703(f)(1).

(c) Unless otherwise agreed to by the Secretary in writing, the Borrower shall select a financial institution acceptable to the Secretary (the "Custodian") to act as custodian for the documents specified in (d) below (hereinafter referred to as the "Security Documents"). The Borrower and the Custodian shall enter into a written agreement containing such provisions as the Secretary deems necessary. A fully executed copy of such agreement, with original signatures, shall be forwarded to the Secretary contemporaneously with the delivery of documents pursuant to (d) below.

(d) Not later than five business days after receipt by the Borrower of the Guaranteed Loan Funds, the Borrower shall deliver to the Custodian, or as otherwise agreed to by the Secretary, the following:

(i) The original recorded Mortgage signed by the mortgagor securing repayment of the indebtedness evidenced by the Note.

(ii) A mortgagee title policy, issued by a company and in a form acceptable to the Secretary, naming the Secretary as the insured party.

(iii) A certified survey with a legal description conforming to the title policy and the Mortgage.

(iv) An appraisal of the fee simple ownership interest in the Property specifying an estimate of fair market value of not less than $3,050,000. The appraisal shall be completed by an appraiser who is certified by the state and has a professional designation (such as "SRA" or "MAI"), and shall conform to the standards of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 ("FIRREA").

(v) An opinion of Borrower's counsel on its letterhead, addressed and satisfactory to the Secretary, that the Mortgage is a valid and legally binding obligation, enforceable in accordance with its terms.

(e) Paragraph 12 is amended by adding at the end thereof the following language:

"(g) The Secretary may exercise any appropriate remedies to enforce the lien on the Property referred to in paragraph 15(a), amending paragraph 5(c)."

(f) If any one or more of the covenants, agreements, provisions, or terms of this Contract shall be for any reason whatsoever held invalid, then such covenants, agreements, provisions or terms shall be deemed severable from the remaining covenants, agreements, provisions or terms of this Contract and shall in no way affect the validity or enforceability of the other provisions of this Contract or of the Note or the rights of the Holder thereof.

(g) Additional Grounds for Default. Notice of Default. Restriction of Pledged Grants. Availability of Other Remedial Actions.

(i) The Borrower acknowledges and agrees that the Secretary's guarantee of the Note is made in reliance upon the availability of grants pledged pursuant to paragraph 5(a) (individually, a "Pledged Grant" and, collectively, the "Pledged Grants") in any Federal fiscal year subsequent to the Federal fiscal year ending September 30,2010 to: (A) pay when due the payments to become due on the Note, or (B) defease (or, if permitted, prepay) the full amount outstanding on the Note. The Borrower further acknowledges and agrees that if the Secretary (in the Secretary's sole discretion) determines that Pledged Grants are unlikely to be available for either of such purposes, such determination shall be a permissible basis for any of the actions specified in paragraphs (ii) and (iii) below (without notice or hearing, which the Borrower expressly waives).

(ii) Upon written notice from the Secretary to the Borrower at the address specified in paragraph 12(f) above that the Secretary (in the Secretary's sole discretion) has determined that Pledged Grants are unlikely to be available for either of the purposes specified in (A) and (B) of paragraph (i) above (such notice being hereinafter referred to as the "Notice of Impaired Security"), the Secretary may limit the availability of Pledged Grants by withholding amounts at the time a Pledged Grant is approved or by disapproving payment requests (drawdowns) submitted with respect to Pledged Grants.

(iii) If after 60 days from the Notice of Impaired

Security the Secretary (in the Secretary's sole discretion) determines that Pledged Grants are still unlikely to be available for either of the purposes specified in (A) and (B) of paragraph (i) above, the Secretary may declare the Note in Default and exercise any and all remedies available under paragraph 12. This paragraph (iii) shall not affect the right of the Secretary to declare the Note and/or this Contract in Default pursuant to paragraph 11 and to exercise in connection therewith any and all remedies available under paragraph 12.

(iv) All notices and submissions provided for hereunder shall be submitted as directed in paragraph 12(f) above.

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THE UNDERSIGNED, as authorized officials on behalf of the Borrower or the Secretary, have executed this Contract for Loan Guarantee Assistance, which shall be effective upon delivery of the Note and Guarantee as of the Public Offering Date (except that paragraph 4 hereof shall be effective when this Contract is executed on behalf of the Borrower and delivered to the Secretary).

ATTEST:

Esther Martinez, CMC
City Clerk

APPROVED AS TO FORM

City Attorney

CITY OF LAS CRUCES, NEW MEXICO
BORROWER

BY: _____
(Signature)

Ken Miyagishima
(Name)

Mayor
(Title)

_____
(Date)

SECRETARY OF HOUSING AND URBAN DEVELOPMENT

BY: _____
(Signature)

Yolanda Chávez
(Name)

Deputy Assistant Secretary
For Grant Programs
(Title)

_____
(Date)

ATTACHMENT 3

Legal Description of Real Property

[to be provided by Borrower]

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Fixed Rate Note for Series 2010-A Certificates

BORROWER: CITY OF LAS CRUCES, NEW MEXICO

NOTE NO. B-08-MC-35-0002

REGISTERED HOLDER: THE BANK OF NEW YORK MELLON

DATE:

AGGREGATE PRINCIPAL AMOUNT: $2,000,000

For value received, the undersigned, the City of Las Cruces (the "Borrower," which term includes any successors or assigns), a public entity or agency organized and existing under the laws of the State (or Commonwealth, if applicable) of New Mexico, promises to pay to the order of THE BANK OF NEW YORK MELLON, as Registered Holder (the "Holder," which term includes any successors or assigns), the Principal Amounts set forth on the attached Schedule P&I as of each applicable Principal Due Date set forth therein, together with interest on such unpaid Principal Amounts at the rates applicable thereto as specified on such attached Schedule P&I. Interest shall be calculated and payments shall be made in the manner set forth below. The Holder is acting hereunder on behalf of a trust (the "Trust") created pursuant to a Trust Agreement by and between the Secretary of Housing and Urban Development (the "Secretary") and Chemical Bank (now known as The Bank of New York Mellon), as trustee (the "Trustee"), dated as of January 1, 1995, as amended (the "Trust Agreement"), as supplemented by the applicable Supplement to the Trust Agreement, by and between the Secretary and the Trustee.

A. Principal and Interest

Interest on a Principal Amount of this Note that is due as of a given date specified on the Schedule P&I attached hereto (such date, the "Principal Due Date" for such Principal Amount) shall accrue at the per annum rate specified on such Schedule P&I from (and including) the date hereof to (but excluding) such Principal Due Date or, if applicable, to the applicable Interest Due Date on which an Optional Redemption (as defined below) occurs. The aggregate of the interest amounts accrued on the entire unpaid Principal Amount of this Note shall be due semiannually as of February 1 and August 1 of each year (each, an "Interest Due Date"), commencing on February 1, 2011, until the Aggregate Principal Amount listed on the Schedule P&I attached to this Note is paid in full. Interest shall be calculated on the basis of a 360-day year consisting of twelve 30-day months.

B. Optional Redemption

Certain Principal Amounts indicated as being eligible for Optional Redemption on the Schedule P&I hereto may be paid, in whole or in part, at the option of the Borrower as of any Interest Due Date on or after the date specified in such Schedule (an "Optional Redemption"). In order to elect an Optional Redemption of a redeemable Principal Amount, the Borrower shall give notice of its intention to redeem a Principal Amount to the Trustee and the Secretary not less than 60 days nor more than 90 days prior to the Interest Due Date as of which the Borrower intends to redeem the Principal Amount. The Trustee shall apply any payments received in respect of Optional Redemptions in accordance with written instructions of the Borrower, as approved by the Secretary. Principal Amounts that are not indicated as being eligible for Optional Redemption on such Schedule may not be prepaid.

C. Additional Definitions

For purposes of this Note, the following terms shall be defined as follows:

"Business Day" shall mean a day on which banking institutions in New York, New York, are not required or authorized to remain closed and on which the Federal Reserve Bank and the New York Stock Exchange are not closed. If any payment (including a payment by the Secretary) is required to be made on a day that is not a Business Day, then payment shall be made on the next Business Day.

"Contract" shall mean the Contract for Loan Guarantee Assistance, and any amendments thereto, between the Secretary and the Borrower, the designated public entity named therein (if applicable), or the State named therein (if applicable), which refers to and incorporates this Note by the number hereof.

D. Borrower's Timely Payment to Trustee

Notwithstanding anything contained in this Note, the Borrower, in accordance with the Contract, shall be required to make all payments of interest and principal, including any Optional Redemption payments, directly to the Trustee on the seventh Business Day prior to the appropriate Interest Due Date, Principal Due Date or date of Optional Redemption, as applicable.

E. Interest on Late Payments

If a payment of principal or interest herein provided for has not been duly received by the Holder from either the Borrower or the Secretary by the close of business on the applicable Interest Due Date or Principal Due Date, interest shall accrue on the amount of such payment at the applicable interest rate or rates payable on this Note, from the relevant due date until the date such payment is made. Nothing in the immediately preceding sentence shall be construed as permitting or implying that the Borrower may, without the written consent of the Holder and the Secretary, modify, extend, alter or affect in any manner whatsoever the right of the Holder timely to receive any and all payments of principal and interest specified in this Note.

F. Applicability of Fiscal Agency Agreement and Trust Agreement

This Note and payments made hereunder shall be administered pursuant to the terms of the Trust Agreement and are subject to such agreement. The terms and provisions of the Trust Agreement, insofar as they affect the rights, duties and obligations of the Holder and/or the Borrower, are hereby incorporated herein and form a part of this Note. Capitalized terms not defined in this Note shall have the meanings ascribed to them in Trust Agreement. The Amended and Restated Master Fiscal Agency Agreement dated as of May 17, 2000, between the Secretary and The Chase Manhattan Bank (now known as The Bank of New York Mellon), as Fiscal Agent (the "Fiscal Agency Agreement") provides for JPMorgan Chase Bank, acting as Fiscal Agent to perform certain duties, including the duties of registrar for this Note until this Note is canceled or a new registrar appointed in accordance with the Fiscal Agency Agreement. The Trust Agreement provides for the Trustee to perform certain duties, including the duties of paying agent and collection agent for this Note until a new Trustee is appointed in accordance with the Trust Agreement. This Note may be surrendered to the Fiscal Agent for registration of transfer or exchange, as provided in the Fiscal Agency Agreement. The Fiscal Agent and the Trustee shall permit reasonable inspection to be made of a copy of the Fiscal Agency Agreement or Trust Agreement kept on file at its corporate trust office. Neither the Fiscal Agency Agreement nor the Trust Agreement shall change the Borrower's payment obligations under this Note.

G. Applicability of Contract and Secretary's Guarantee

This Note evidences indebtedness incurred pursuant to and in accordance with the Contract and pursuant to Section 108 of Title I of the Housing and Community Development Act of 1974, as amended (42 U.S.C. § 5308) (the "HCD Act"). This Note is subject to the terms and provisions of the Contract, to which Contract reference is hereby made for a statement of said terms and provisions and for a description of the collateral security for this Note. The payment of principal on the applicable Principal Due Dates and of interest on the applicable Interest Due Dates under this Note is unconditionally guaranteed by the Secretary to the Holder through a guarantee (the "Guarantee"). Execution of the Secretary's Guarantee is required before this Note is effective, and such Guarantee shall be issued pursuant to and in accordance with the terms of the Contract and Section 108 of the HCD Act.

H. Default

A default under this Note shall occur upon failure by the Borrower to pay principal or interest on this Note when due to the Trustee hereunder. On any Interest Due Date on or after the first permissible Optional Redemption Date, if either (i) a Borrower defaults on the payment of any interest or Principal Amount when due or (ii) the Secretary gives notice of a final decision to declare the Borrower in default pursuant to the following paragraph, then the Secretary may, but is not obligated to, make an acceleration payment to the Trustee equal to the Aggregate Principal Amount of the Note, together with accrued and unpaid interest thereon to such Interest Due Date. The Secretary shall give notice of such payment on the fourteenth Business Day preceding such Interest Due Date and shall make such payment on the seventh Business Day preceding such Interest Due Date. In the event that any such acceleration payment is made from sources other

than funds pledged by the Borrower as security under the Contract (or other Borrower funds), the amounts paid on behalf of the Borrower shall be deemed to be immediately due and payable to the Secretary. Nothing in this paragraph shall be construed as permitting or implying that the Borrower may, without the written consent of the Holder and the Secretary, modify, extend, alter or affect in any manner whatsoever the right of the Holder timely to receive any and all payments of principal and interest specified in this Note.

In addition, the Secretary may declare the Borrower in default under this Note if the Secretary makes a final decision in accordance with the provisions of 24 CFR § 570.913 (or any successor regulation thereof), including requirements for reasonable notice and opportunity for hearing, that the Borrower has failed to comply substantially with Title I of the HCD Act. Following the giving of such reasonable notice, the Secretary may take the remedial actions specified as available in the relevant provisions of the Contract pending the Secretary's final decision.

I. Holder's Reliance on Guarantee

Following a default by the Borrower under the terms of this Note, the Holder agrees to rely wholly and exclusively for repayment of this Note upon the Guarantee. The enforcement of any instruments or agreements securing or otherwise related to this Note shall be the sole responsibility of the Secretary, and the Holder shall not be responsible for the preparation, contents or administration of such instruments and agreements, or for any actions taken in connection with such instruments and agreement. The Holder, to the extent it is legally able to do so, shall bind or cause to be bound its successors and assigns to all limitations imposed upon the Holder by this Note.

J. Amendment

This Note may only be amended with the prior written consent of the Secretary and the Borrower. No such amendment shall reduce, without the prior written consent of the Holder of this Note, in any manner the amount of, or delay the timing of, payments required to be received on this Note by the Holder or Trustee, including Guarantee Payments.

K. Waivers

The Borrower hereby waives any requirement for presentment, protest or other demand or notice with respect to this Note. The Borrower hereby waives notice of default and opportunity for hearing for any failure to make a payment when due.

L. Delivery and Effective Date

This Note is deemed issued, executed, and delivered on behalf of the Borrower by its authorized official as an obligation guaranteed by the Secretary pursuant to Section 108 of the HCD Act, effective as of the date of the Secretary's Guarantee.

M. Borrower Specific Provisions

[This space intentionally left blank]

THE UNDERSIGNED, as an authorized official of the Borrower, has executed and delivered this Note.

ATTEST:

CITY OF LAS CRUCES, NEW MEXICO
BORROWER

BY: _____
(Signature)

Esther Martinez, CMC
City Clerk

APPROVED AS TO FORM

Ken Miyagishima
(Name)

City Attorney

Mayor
(Title)

SCHEDULE P&I

Note No. _____

Principal Amount	Principal Due Date	Interest Rate	Optional Redemption Available	
			YES	NO
$ 61,000	August 1, 2011			X
63,000	August 1, 2012			X
67,000	August 1, 2013			X
71,000	August 1, 2014			X
75,000	August 1, 2015			X
77,000	August 1, 2016			X
83,000	August 1, 2017			X
87,000	August 1, 2018			X
91,000	August 1, 2019			X
95,000	August 1, 2020			X
101,000	August 1, 2021		X	
106,000	August 1, 2022		X	
112,000	August 1, 2023		X	
118,000	August 1, 2024		X	
124,000	August 1, 2025		X	
130,000	August 1, 2026		X	
137,000	August 1, 2027		X	
144,000	August 1, 2028		X	
152,000	August 1, 2029		X	
106,000	August 1, 2030		X	

$_____ = Aggregate Principal Amount

Principal Amounts due on or after August 1, 2021, for which Optional Redemption is available may be redeemed, subject to the terms contained herein and in the Trust Agreement, on any Interest Due Date on or after August 1, 2020.

City of Las Cruces®

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
SECTION 108-GUARANTEED LOANS

May 13, 2010

Secretary of Housing and Urban Development
451 7th Street, SW
Washington, DC 20410

Dear Sir or Madam:

The undersigned, being duly licensed and in good standing to practice law in the State New Mexico, is legal counsel to the City of Las Cruces, New Mexico (the "Borrower"). As such, I have represented the Borrower regarding that certain Variable/Fixed Rate Note, referred to as Note No. B-08-MC-35-0002 (the "Note"), to be executed by the Borrower payable to the order of the Registered Holder thereof, and to be guaranteed by the Secretary of Housing and Urban Development ("HUD") under Section 108 of the Housing and Community Development Act of 1974, as amended, 42 U.S.C. 5308 ("Section 108"). The Note will be included in a trust created by HUD (together with other Section 108 Notes issued by other borrowers), and trust certificates based on the trust will be sold in the Series 2010-A public offering by underwriters selected by HUD. HUD's guarantee of the Note will be governed by the Contract for Loan Guarantee Assistance under Section 108 between the Borrower and HUD (the "Contract"), in which the Borrower pledges Community Development Block Grants pursuant to 24 CFR 570.705(b)(2), as well as any other security specified therein, as security for HUD's guarantee. It is anticipated that the Note, as authorized by the Contract, will be included in a future trust created by HUD (together with other Section 108 Notes issued by other borrowers), and participation certificates based on the trust will ultimately be sold in a future public offering by the underwriters selected by HUD.

In my capacity as legal counsel, I have made an examination and investigation of all such matters of fact and questions of law as I consider necessary or advisable to enable me to render the opinion hereafter set forth. Specifically, and without limiting the generality of the foregoing, I have examined:

1. The applicable law and such certified proceedings of the Borrower and other documents as I deem necessary to render this opinion under the Constitution of the State of New Mexico and the applicable Statutes of the State.

2. The Home Rule Charter of the Borrower; Resolution No. 09-237 adopted by the City Council on April 20, 2009; and Ordinance No. 2576, adopted by the City Council on May 24, 2010 authorizing the Borrower to enter into this transaction, and authorizing the Mayor of the Borrower to execute the Note and the Contract on behalf of the Borrower, and all documents necessary or desirable to accomplish the transaction.

3. The Contract.

4. The Note.

5. The Amended and Restated Master Fiscal Agency Agreement dated as of May 17, 2000, the Trust Agreement dated as of January 1, 1995, and the form of Supplement to the Trust Agreement.

Based on the foregoing investigation and authorities, I am of the opinion that:

1. The Borrower has authorized in accordance with applicable State and local law, the transaction, including issuance of the Note, the pledge of grant funds, and the execution of all documents necessary or desirable to accomplish the transaction.

2. Borrower has authorized Kenneth D. Miyagishima, in his capacity as Mayor of the Borrower to execute the Contract, the Note and all other documents necessary or desirable to accomplish the transaction.

3. The Note and the Contract have been duly executed by the aforementioned authorized representative of the Borrower, and upon delivery thereof, due execution of the Contract and the Guarantee on behalf of HUD, and receipt of the loan proceeds on behalf of the Borrower, the Note and the Contract, including the provisions for compensation of the Fiscal Agent/Trustee from funds pledged under the Contract (as incorporated therein), shall be valid, binding and enforceable obligations of the Borrower.

4. The pledge of present and future Community Development Block Grants by the Borrower pursuant to 24 CFR 570.705(b)(2) and the Contract is valid.

5. The additional security provided by the Borrower pursuant to Section 15(a) of the Contract is a valid and legally binding obligation, enforceable in accordance with its terms.

6. There is no outstanding, or to my knowledge threatened, action, suit, proceeding, investigation or litigation by or against the Borrower which will affect the validity of the Note or the security therefor.

Sincerely,

Harry S. (Pete) Connelly
Interim City Attorney

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-7000

OFFICE OF COMMUNITY PLANNING
AND DEVELOPMENT

ATTACHMENT "C"

FEB 18 2010

The Honorable Kenneth Miyagishima
Mayor of Las Cruces
200 N. Church Street
Las Cruces, NM 88001

Dear Mayor Miyagishima:

Please be informed that the City of Las Cruces' (hereafter, the "City") request for loan guarantee assistance under Section 108 of the Housing and Community Development Act of 1974, as amended, has been approved. Such assistance is to consist of the guarantee of notes or other obligations in the principal amount of $2,000,000, plus interest thereon, which shall be issued to finance activities described in application B-08-MC-35-0002 for Museum Nature and Science project.

This offer of commitment ("Commitment") is subject, however, to the conditions specified in Item 8 of the Funding Approval (Form HUD-7082).

The first condition provides that in the event the City fails to submit notes or other obligations for inspection and guarantee by the Secretary of Housing and Urban Development (HUD) before March 31, 2011, the Commitment will expire as of such date.

The second condition provides that the repayment schedule for the indebtedness evidenced by the notes or other obligations (the "Guaranteed Loan") must be acceptable to HUD.

The third condition provides that the City shall provide additional security for the Guaranteed Loan and such additional security must be acceptable to HUD. The additional security shall be identified in the Contract for Loan Guarantee Assistance ("Contract"), specified by 24 CFR §570.705(b)(1), which will be executed at the time the guaranteed obligations are issued. The City's application and other supporting material identify the following additional security for this Loan Guarantee: a first priority lien on real property. Note that any real property offered as security shall be subject to loan to value ratios to be identified in the Contract and its value shall be supported by an appraisal acceptable to HUD.

In addition, the Contract shall provide that HUD may use existing pledged grants to prepay (or defease) the Guaranteed Loan if HUD determines that the standard pledge of future Community Development Block Grant funds is insufficient to assure payment of amounts due thereunder. HUD reserves the right to require further security upon evaluation of the foregoing security arrangements and the City may substitute other collateral security for such arrangements, subject to HUD's approval of such substitution.

The fourth condition provides that prior to submitting notes or other obligations for inspection and guarantee by HUD, the City shall submit information required under Section 102(b) of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3531). This information shall be submitted on form HUD-2880 to HUD's Albuquerque Field Office. A copy of Form HUD-2880 is enclosed for this purpose.

Please be aware that any amount of this commitment that is not received by the City as an Advance under the Guaranteed Loan by **September 30, 2015**, will be canceled in compliance with 31 USC 1552(a).

Please furnish us, at the address specified below, your timetable for execution of the activities described in your application. These activities will be financed through a public offering of Section 108 obligations. If you need funds prior to the next public offering, please notify HUD at the address below and instructions for obtaining interim financing will be provided.

In addition to the special conditions cited above, the release of funds for the project to be carried out with loan guarantee assistance is conditioned upon compliance by the City with all applicable provisions of the HUD Environmental Review Procedures (24 CFR Part 58). The City is reminded that these Procedures include limitations on the commitment of HUD and non-HUD funds on an activity or project prior to HUD's approval of the request for release of funds and related certification of compliance with environmental requirements. Please refer to §58.22 for a description of the limitations and the entities to whom they apply.

Please execute the three enclosed copies of the Funding Approval (Form HUD-7082) and return two copies to the Department of Housing and Urban Development, Financial Management Division, Room 7180, 451 Seventh Street, S.W., Washington, D.C. 20410. One copy should be retained for your files. The Funding Approval amends the Grant Agreement authorized by HUD on August 6, 2008, under the Funding Approval for grant number B-08-MC-35-0002 to

include loan guarantee assistance. The Grant Agreement thereby incorporates this Funding Approval, the loan guarantee application, and Subpart M of the block grant regulations governing loan guarantees, as well as such agreements, schedules, and other documentation required for submission or execution in connection therewith.

If you have any questions with respect to this letter, please contact Paul D. Webster, Director, Financial Management Division at (202) 708-1871.

Sincerely,

Yolanda Chávez
Deputy Assistant Secretary
for Grant Programs

Enclosures

RESOLUTION NO. 09-237

A RESOLUTION APPROVING A SUBSTANTIAL AMENDMENT TO THE CITY OF LAS CRUCES' 2006-2010 CONSOLIDATED PLAN RELATED TO THE USE OF COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) SECTION 108 LOAN GUARANTEE PROGRAM FROM THE U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT (HUD). THE RESOLUTION FURTHER AUTHORIZES CITY STAFF TO PROCEED WITH A BROWNFIELD ECONOMIC DEVELOPMENT INITIATIVES GRANT AND SECTION 108 LOAN GUARANTEE APPLICATIONS WITH HUD FOR THE MUSEUM OF NATURE AND SCIENCE ACQUISITION AND REHABILITATION PROJECT ON MAIN STREET IN DOWNTOWN LAS CRUCES.

The City Council is informed that:

WHEREAS, the City of Las Cruces is an entitlement community with the U.S. Department of Housing and Urban Development (HUD) for the Community Development Block Grant (CDBG) Program; and

WHEREAS, the CDBG Program was established under the Housing and Community Development Act of 1974 and included the provision for loans by entitlement communities whereby they pledge their future CDBG entitlement as a guarantee to the loan in a program known as the Section 108 Loan Guarantee Program; and

WHEREAS, the City of Las Cruces has never utilized the Section 108 Loan Guarantee Program and until recently has not contemplated using this loan program; and

WHEREAS, in order to utilize the Section 108 Loan Guarantee Program, the City must complete a substantial amendment to its current 2006-2010 Consolidated Plan; and

WHEREAS, the Community Development staff have identified potential projects that are eligible under and worth considering for the Section 108 Loan Guarantee Program; and

WHEREAS, the first potential project that the City staff has identified for the Section 108 Loan Guarantee Program are acquisition and rehabilitation of the former Bank of the Rio Grande building to create the Museum of Nature and Science as part of redevelopment of Downtown Las Cruces and the completion of a museum cultural complex in Downtown Las Cruces; and

WHEREAS, the second potential project that the City staff has identified for the Section 108 Loan Guarantee Program are the extension of sewer to qualified mobile home

parks to remove them from on-site septic systems that present potential ground water contamination hazards; and

WHEREAS, both the potential projects that the City staff has identified are excellent projects for consideration of Brownfield Economic Development Initiatives (BEDI) grants, which are competitive grants issued by HUD, which, if awarded, must be partnered with Section 108 Loans; and

WHEREAS, City staff is seeking authorization to submit a BEDI grant application to HUD for the Museum of Nature and Science project, and when the grant availability is made and should the City be successful in receiving a BEDI grant award, will be required to complete the necessary paperwork to partner with Section 108 Loan funds.

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

(I)

THAT the substantial amendment to the City's 2006-2010 Consolidated Plan related to the City's use of the CDBG Section 108 Loan Guarantee Program, as shown in Exhibit "A," attached hereto and made part of this Resolution, is hereby approved.

(II)

THAT the application for the Section 108 Loan Guarantee Program for the City of Las Cruces Museum of Nature and Science Project, as shown in Exhibit "B," attached hereto and made part of this Resolution, is hereby approved and City staff are authorized to proceed with official submission to HUD.

(III)

THAT the City staff is hereby authorized to develop a Brownfield Economic Development Initiatives grant for the Museum of Nature and Science Project consistent with the Grant Overview Worksheet, as shown in Exhibit "C," attached hereto and made part of this Resolution, and in accordance with the HUD application requirements and once notice of funding availability is provided and by or before the HUD established application submission deadline is hereby authorized.

(IV)

THAT the Mayor is hereby identified as the official representative of the City for submission of the above reference application(s) under items **(II)** and **(III)** of this

Resolution, amendments thereto as authorized by this Resolution or other Resolutions approved by the City Council in the future related to these application(s), all understandings and assurances contained therein, and directing and authorizing the Mayor as the official representative of the City of Las Cruces to act in connection with these application(s) to provide such additional information as may be required by HUD.

(V)

THAT the Mayor, as the official representative of the City of Las Cruces, is hereby authorized to execute such documents, including any and all certifications contained within the application(s), as may be required in order to implement the application(s) and issue debt obligations pursuant thereto, provided that the authorization required by this section may be given by the local governing body after submission of the application but prior to execution of the contract required by 24 Code of Federal Regulations Sect 570.705(b).

(VI)

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

DONE AND APPROVED this 20th day of April 2009.

APPROVED:

(SEAL)

Mayor

ATTEST:

City Clerk

Moved by: Connor

Seconded by: Jones

VOTE:

Mayor Miyagishima:	Aye
Councillor Silva:	Aye
Councillor Connor:	Aye
Councillor Archuleta	Aye
Councillor Small:	Aye
Councillor Jones:	Aye
Councillor Thomas:	Aye

APPROVED AS TO FORM:

Deputy City Attorney