

61
City of Las Cruces[®]
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Council Action and Executive Summary

Item # 3 Ordinance/Resolution# 11-002 Council District: N/A

For Meeting of July 6, 2010
 (Adoption Date)

TITLE: A RESOLUTION APPROVING AND ACCEPTING THE BROWNFIELD ECONOMIC DEVELOPMENT INITIATIVES (BEDI) GRANT AGREEMENT BETWEEN THE CITY OF LAS CRUCES AND THE U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT (HUD) FOR THE MUSEUM OF NATURE AND SCIENCE PROJECT. THE RESOLUTION AUTHORIZES THE MAYOR TO SIGN THE AGREEMENT ON THE CITY'S BEHALF.

PURPOSE(S) OF ACTION: To approve a grant agreement between the City and HUD for the competitively awarded Brownfield Economic Development Initiative's grant for the Museum of Nature and Science project, and authorizes the Mayor to sign the grant agreement on the City's behalf.

Name of Drafter: David Dollahon <i>DD</i>		Department: Community Development		Phone: 528-3060	
Department	Signature	Phone	Department	Signature	Phone
Community Development	<i>DD</i>	528-3067	Budget	<i>Michael Y. [Signature]</i>	541-2300
GAO		541-2281	Assistant City Manager	<i>[Signature]</i>	541-2271
Legal	<i>[Signature]</i>	541-2128	City Manager	<i>[Signature]</i>	541-2076

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS: The City Council approved Resolution 09-237 on April 20, 2009, authorizing the submission of a Brownfield Economic Development Initiatives (BEDI) grant through the U.S. Department of Housing and Urban Development. The BEDI grant was submitted for the necessary contaminant (lead-based paint and asbestos) removal and other rehabilitation expenses for the creation of the Museum of Nature and Science in Downtown Las Cruces. The BEDI grant is awarded on a competitive basis and the City was one of seven (7) national awards out of 33 applications submitted to HUD. The City was notified on August 24, 2009 by HUD of the \$2,000,000 grant for the project. The BEDI grant regulations require that the City apply for and receive a corresponding CDBG-based Section 108 Loan from HUD on a dollar-for-dollar basis, thus providing a total of \$4,000,000 for the completion of the Museum project.

The City has taken the necessary steps to secure the Section 108 Loan proceeds; therefore, we are requesting action by the City Council to accept the BEDI Grant and authorize the Mayor's signature on the grant agreement.

SUPPORT INFORMATION:

Fund Name / Account Number	Amount of Expenditure	Budget Amount
Fund 4011 – Facilities Federal Grants – 40803190-852100-63405	\$1,000,000.00	\$1,000,000.00
Fund 2010 – HUD Special Projects – 20184310-722190-12008	\$1,000,000.00	\$1,000,000.00

1. Resolution
2. Exhibit “A” – copy of the BEDI Grant Agreement for the Museum of Nature and Science project
3. Attachment “B” – Ordinance 2576
4. Attachment “C” - Resolution 09-237
5. Attachment “D” – Grant Award Notice Letter of August 24, 2009 from HUD Assistant Secretary Mercedes Marquez

OPTIONS / ALTERNATIVES:

1. Vote YES and approve the BEDI Grant Agreement between the City and HUD for the Museum of Nature and Science project at 411 N. Main St. (formerly 411 N. Downtown Mall). This action will allow the City of Las Cruces to continue with the project’s implementation to relocate the Museum of Natural History to the downtown area, as well as authorize the necessary signatures.
2. Vote NO and deny acceptance of the BEDI Grant Agreement between the City and HUD for the Museum of Nature and Science project at 411 N. Main St. (formerly 411 N. Downtown Mall). This action will not allow the City of Las Cruces to continue with the project’s implementation to relocate the Museum of Natural History to the downtown area, as well as authorize the necessary signatures for the project. This could cause the City to default on the previously approved Section 108 loan or not have enough funds to complete the Museum project.
3. Modify the Resolution and vote YES to approve the modified Resolution.
4. Table/Postpone the Resolution and direct staff accordingly.

RESOLUTION NO. 11-002

A RESOLUTION APPROVING AND ACCEPTING THE BROWNFIELD ECONOMIC DEVELOPMENT INITIATIVES (BEDI) GRANT AGREEMENT BETWEEN THE CITY OF LAS CRUCES AND THE U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT (HUD) FOR THE MUSEUM OF NATURE AND SCIENCE PROJECT. THE RESOLUTION AUTHORIZES THE MAYOR TO SIGN THE AGREEMENT ON THE CITY'S BEHALF.

The City Council is informed that:

WHEREAS, the City of Las Cruces approved Resolution 09-237 authorizing the submission of a Brownfield Economic Development Initiatives (BEDI) Grant to the U.S. Department of Housing and Urban Development (HUD); and

WHEREAS, the BEDI grant application was for the creation of the Museum of Nature and Science in the former Bank of the Rio Grande building at 411 N. Main St. (formerly 411 N. Downtown Mall) that is now owned by the City of Las Cruces; and

WHEREAS, BEDI grants are awarded by HUD on a competitive basis and the City is fortunate to be one of seven (7) awards out of 33 nationwide applications submitted; and

WHEREAS, the City's success in the BEDI grant application results in \$2,000,000 in grant funds for the rehabilitation and remediation of known contaminants from the building in order to create the Museum; and

WHEREAS, a condition of the BEDI grant is that the City must apply for and receive a CDBG-based Section 108 Loan Guarantee from HUD on a dollar-for-dollar basis, equal to the amount of the BEDI grant award (\$2,000,000); and

WHEREAS, the City Council approved Ordinance #2576 on May 24, 2010 to complete and accept the Section 108 Loan from HUD for the Museum project; and

WHEREAS, this Resolution is necessary to accept the BEDI Grant Agreement from HUD and authorizes the Mayor's signature on the City's behalf.

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

(I)

THAT the BEDI Grant Agreement between the City of Las Cruces and the U.S. Department of Housing and Urban Development, as shown in Exhibit "A," attached hereto and made part of this Resolution, is hereby approved and accepted.

(II)

THAT the Mayor is hereby authorized to sign the BEDI Grant Agreement on the City's behalf.

(III)

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

DONE AND APPROVED this _____ day of _____ 2010.

(SEAL)

ATTEST:

City Clerk

Moved by: _____

Seconded by: _____

APPROVED AS TO FORM:

APPROVED:

Mayor

VOTE:

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

Antony
W. J. Kelly

City Attorney 08/2010

Grant No. B-09-BD-35-0006

BROWNFIELDS ECONOMIC DEVELOPMENT (BEDI) GRANT AGREEMENT
U. S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Date of Grant Agreement: _____

This Agreement is made and entered into by and between THE SECRETARY OF HOUSING AND URBAN DEVELOPMENT, acting by and through the Assistant Secretary for Community Planning and Development, ("HUD"), and the City of Las Cruces, New Mexico (the "Recipient").

1. Background; Purpose. This Agreement is authorized by section 108(q) of the Housing and Community Development Act of 1974, as amended by section 232(a) of the Multifamily Housing Property Disposition Reform Act of 1994, codified at 42 U.S.C. 5308(q) (collectively, "the Act"). Pursuant to the Act, on May 4, 2009 at 74 FR 20494, HUD published a Notice of Funding Availability and Program Guidelines for the Brownfields Economic Development Initiative (the "NOFA") [or in the case of 2009 Grants, notice that the NOFA was available on HUD's website], which set forth the terms and conditions under which units of general local government could apply for and receive grants under section 108(q) of the Act ("BEDI Grants") and related section 108 loan guarantees from HUD for Brownfields Economic Development Projects ("BEDI Projects"), as defined in the NOFA. Pursuant to the NOFA, the Recipient has applied for, and HUD has approved, a BEDI Grant for the Recipient. The purpose of this Agreement is to set forth the terms and conditions under which HUD will provide BEDI Grant funds to the Recipient in connection with the Approved BEDI Projects described in the Recipient's Approved Application, as further defined herein. The terms and conditions of the related Section 108 Guarantee (as defined in paragraph 3 hereof) are set forth in the Recipient's separate Section 108 loan guarantee application, Funding Approval, and Contract for Loan Guarantee Assistance.

2. Approved Grant Amount, Projects, and Uses of Funds.

a. By execution of this Agreement on behalf of the Secretary in the space provided below, HUD agrees, subject to the terms of this Agreement, to provide BEDI Grant funds in the amount of \$2,000,000 ("BEDI Grant").

b. This grant is approved for the following Approved BEDI Project described in the Approved Application: Museum of Nature and Science ("Approved Project").

c. The grant funds shall be used in connection with the Approved Project for the following specifically Approved Uses ("Approved Uses"):

d.

- (1) **Rehabilitation of real property**, pursuant to 24 CFR 570.703(b) and
- (2) **Environmental remediation**, pursuant to 24 CFR 570.703(f) (1).

3. Relationship to Section 108 Loan Guarantee Application. This approved BEDI Grant is conditioned upon the Recipient's receipt of Section 108 guaranteed loan proceeds for the Approved Project in an amount not less than \$2,000,000 (the "Section 108 Guarantee").

Section 108 Guarantee proceeds shall be advanced and disbursed to carry out eligible activities pursuant to the Contract for Loan Guarantee Assistance Under Section 108, executed concurrently herewith, in a ratio not less than \$1.00 of such proceeds for each \$1.00 of BEDI Grant funds disbursed for Approved Uses (the "Ratio").

4. Regulations; Approved Application. This Agreement will be governed and controlled by the following in effect as of the date of notification to the Recipient of award of this grant: the Act, the NOFA, and HUD regulations codified at 24 CFR Part 570 or incorporated therein (provisions for use of CDBG funds, to the extent applicable) (hereafter collectively referred to as the "Regulations"). The Recipient's application submissions, including the certifications and assurances and any documentation required to meet any grant award conditions, and including any amendments made in accordance with this Agreement, are hereby incorporated in this Agreement as finally approved by HUD (herein referred to as the "Approved Application"). Unless the context otherwise requires, a reference to "this Agreement" herein shall be deemed to include the Act, the Regulations, and the Approved Application.

5. Performance Agreement of Recipient; Reporting.

a. By execution of this Agreement on its behalf in the space provided below, the Recipient agrees to carry out the Approved Project on a timely basis and otherwise in compliance with this Agreement (including the Act, the NOFA, the Regulations, and the Approved Application, except as otherwise specifically provided in this Agreement). The Recipient agrees to assure, and to accept responsibility for, such compliance by any other entities to which it makes grant funds available for, or which it otherwise allows to participate in, the Approved Project covered by this Agreement.

b. The Recipient shall comply with the performance reporting requirements set forth in 24 CFR 570, the NOFA, and this Agreement. With respect to reporting requirements established under the NOFA, Recipients (including Small Cities recipients) of BEDI grants from Fiscal Year 2005 and later agree to submit annual logic model performance reports indicating BEDI program outputs and outcomes achieved against those proposed in the Recipient's approved application. The first completed form HUD-96010, Logic Model, shall be submitted one year from the effective date of this Agreement to the address set forth in paragraph 11.

6. Release, Deposit, and Timing of Expenditure of Grant Funds and Program Income.

a. The Recipient agrees to comply with environmental review procedures under 24 CFR 570.200(a)(4) and 24 CFR Part 58 in order to obtain releases of grant funds under this Agreement. In particular, the Recipient must not commit local or Federal funds for the approved activities prior to obtaining HUD approval of its request for release of funds, except as provided in 24 CFR 58.22(c), 58.34 or 58.35(b).

b. Notwithstanding any other provision of the Regulations or this Agreement, the Recipient may not withdraw grant funds from the U.S. Treasury on account of the BEDI Grant under this Agreement until after execution on behalf of HUD of the Guarantee and Contract for Loan Guarantee Assistance for the applicable Approved Project described in paragraph 2 of this Agreement.

c. This BEDI Grant must be entirely withdrawn and expended for Approved Uses for the applicable Approved Project on or before December 31, 2013.

d. All program income from this BEDI Grant is deemed to be program income of the Approved Project, which is jointly financed by the Section 108 Guarantee. The Recipient agrees that all such program income constitutes security for the repayment of the Section 108 Guarantee, shall be initially deposited in the Loan Repayment Account established by the Recipient or its designated public agency under paragraph 6 of the Contract for Loan Guarantee Assistance under Section 108 Guarantee, and shall be disbursed for the purposes and within the time period specified in said paragraph 6 of such Contract. Upon full and complete repayment of the Section 108 guaranteed loan, all such program income shall be used in accordance with 24 CFR 570.504.

7. Pre-Award Costs. Notwithstanding any other provision of this Agreement or the Regulations, "the effective date of the grant agreement" for this BEDI Grant for purposes of 24 CFR 570.200(h) is the date of award of this BEDI Grant by HUD, which was August 24, 2009. "Pre-award costs" may be incurred by the Recipient prior to such date and reimbursed with BEDI Grant funds

hereunder, to the extent such costs comply with 24 CFR 570.200(h) and this Agreement. The BEDI Grant funds provided hereunder may be used to pay for costs incurred on or after such date, provided such costs otherwise comply with this Agreement. However, the timing of use and the availability of the BEDI Grant funds to actually pay for such costs are subject to paragraph 6 of this Agreement.

8. Amendment; Record-Keeping.

a. This Agreement or the Approved Application may be amended only with the prior written approval of HUD. To request approval of an amendment, the Recipient shall attach the proposed revisions to the applicable pages of this Agreement or the Approved Application to a cover letter addressed as required below (see paragraph 11) for notices to HUD and signed by the Recipient's official representative for this grant. In considering proposed amendments to this Agreement or the Approved Application, HUD shall review, among other things, whether the amendment would have affected the ranking of the application in the year it was approved sufficiently to have resulted in the application not ranking high enough for funding, and whether the amendment is otherwise consistent with the Act, the Regulations, and the NOFA. Any increase in the amount of the approved BEDI Grant represents a new grant obligation by HUD and must be documented by a formal amendment to this Agreement, or a new BEDI Grant Agreement, executed on behalf of the parties by officials with the authority to execute the original Agreement.

b. The Recipient shall at all times maintain an up-to-date copy of its Approved Application, including all amendments approved in writing by HUD, and all drawdowns, deposits, and expenditures of grant funds and program income under this Agreement and any other records required by 24 CFR 570.506, in its files and available for audit or inspection by duly authorized representatives of HUD or the Comptroller General of the United States.

9. Default; Remedies. A default under this Agreement shall consist of any use of grant funds other than as authorized by this Agreement, any other noncompliance with this Agreement deemed material by HUD, or any misrepresentation or omission in the application submissions which, if known to HUD, would have resulted in this grant not being provided. If HUD determines that the Recipient is in default, HUD will give the Recipient written notice of this determination and the corrective or remedial actions proposed by HUD to cure the default or mitigate its effects, to the extent possible, and to prevent a continuation or recurrence of the default (the "initial notice of default"). Further description of the processes of audit, performance monitoring, and the corrective and remedial actions available to HUD which apply to grants under the Act, including this BEDI Grant, is provided in 24 CFR 570, particularly Subpart O. No delay or omission by HUD in exercising any right

or remedy under this Agreement shall impair HUD's ability to exercise such right or remedy or constitute a waiver of, or acquiescence in, any Recipient default.

10. Close-out. Except as may be otherwise specifically provided, close-out of this grant shall be subject to 24 CFR 570.509, or such close-out instructions as may hereafter be issued by HUD specifically for BEDI Grants.

11. General. HUD notifications to the Recipient under this Agreement may be addressed to the Recipient's address as stated in the Approved Application, unless the Recipient otherwise notifies HUD in writing. Recipient notifications to HUD shall be to the:

U.S. Department of Housing and Urban Development
Attention, Director, Financial Management Division,
451 Seventh Street, SW, Room 7180
Washington, DC 20410,

unless the Recipient is otherwise notified in writing by HUD.

The Recipient's rights under this Agreement may not be assigned without the prior written approval of HUD. This Agreement constitutes the entire Agreement between the Recipient and HUD, and it may not be amended except in writing and executed by authorized officials of both HUD and the Recipient, as provided in paragraph 8.

12. Binding Agreement. This Agreement is binding with respect to HUD in accordance with its terms upon execution by HUD in the space provided below, subject to execution on behalf of the Recipient.

13. Special Condition(s).

There are no special conditions. [or list special condition(s)]

[Rest of Page Intentionally Left Blank]

THE UNDERSIGNED, as authorized officials on behalf of the Recipient or the Secretary, have executed this BEDI Grant Agreement, which shall be effective as of the date of execution hereof on behalf of the Secretary.

ATTEST:

CITY OF LAS CRUCES, NEW MEXICO
RECIPIENT

Esther Martinez, CMC
City Clerk

APPROVED AS TO FORM

City Attorney

BY: _____
(Signature)

Ken Miyagishima
(Name)

Mayor
(Title)

(Date)

85-6000147
Employer Identification Number
(EIN) of Recipient

**SECRETARY OF HOUSING AND URBAN
DEVELOPMENT**

BY: _____
(Signature)

Yolanda Chávez
(Name)

Deputy Assistant Secretary
For Grant Programs
(Title)

(Date)

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.

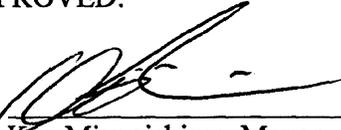
A general summary of the subject matter of the Ordinance is contained in its title.

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

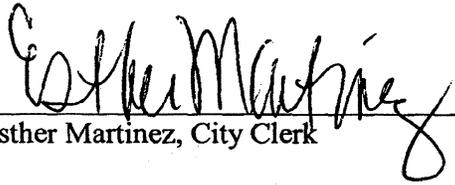
(End of Form of Summary for Publication)

DONE AND APPROVED this 24th day of May, 2010.

APPROVED:

By: 
Ken Miyagishima, Mayor

ATTEST:

By: 
Esther Martinez, City Clerk

VOTE:

Mayor Miyagishima	<u>Aye</u>
Councillor Silva	<u>Absent</u>
Councillor Connor	<u>Aye</u>
Councillor Pedroza	<u>Absent</u>
Councillor Small	<u>Aye</u>
Councillor Sorg	<u>Aye</u>
Councillor Thomas	<u>Absent</u>

Moved by: Small

Seconded by: Connor

APPROVED AS TO FORM:


John A. M. Blundell
City Attorney

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.

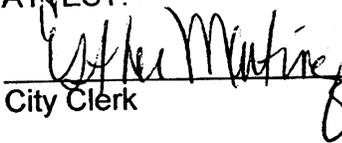
DONE AND APPROVED this 20th day of April 2009.

(SEAL)

APPROVED:


Mayor

ATTEST:


City Clerk

Moved by: Connor

Seconded by: Jones

VOTE:

Mayor Miyagishima:	<u>Aye</u>
Councillor Silva:	<u>Aye</u>
Councillor Connor:	<u>Aye</u>
Councillor Archuleta:	<u>Aye</u>
Councillor Small:	<u>Aye</u>
Councillor Jones:	<u>Aye</u>
Councillor Thomas:	<u>Aye</u>

APPROVED AS TO FORM:


Deputy City Attorney



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

AUG 24 2009

ASSISTANT SECRETARY FOR
COMMUNITY PLANNING AND DEVELOPMENT

Honorable Ken D. Miyagishima
Mayor
City of Las Cruces
200 N. Church Street
Las Cruces, NM 88001

Dear Mayor Miyagishima:

Congratulations! I am pleased to inform you that the City of Las Cruces has been awarded a Brownfields Economic Development Initiative (BEDI) grant in the amount of \$2,000,000 based on your application submitted pursuant to the FY 2009 BEDI Notification of Funding Availability (NOFA).

Today's brownfields were once vital sources of economic growth for communities, and when cleaned up and redeveloped, can again be thriving centers of economic activity. The U.S. Department of Housing and Urban Development (HUD) is pleased to assist Las Cruces in working to transform these abandoned sites into new developments that will create jobs, increase tax revenues and help revitalize communities.

This BEDI grant award is conditioned upon the submission and HUD approval of a complete Section 108 Loan Guarantee application for not less than \$2,000,000 followed by the execution and funding of a Section 108 Note and Contract for Loan Guarantee Assistance for the same project. The enclosed Instructions and Conditions for Award provide further details on the Section 108 application as well as about the Section 108 Note and Contract for Loan Guarantee Assistance.

If you accept the conditions of the BEDI grant award as stated herein, in the enclosed Instructions and Conditions for Award, and in the 2009 BEDI NOFA, please acknowledge your acceptance by signing in the space provided below on the page titled "2009 BEDI GRANT AWARD OBLIGATION". *Please return this letter and your original signature of acceptance only – the other enclosures are for your records--with your signature of acceptance on or before September 14, 2009 to:*

Robert Duncan
Associate Deputy Assistant Secretary for Economic Development
Department of Housing and Urban Development
451 7th Street S.W., Room 7136
Washington, DC 20410

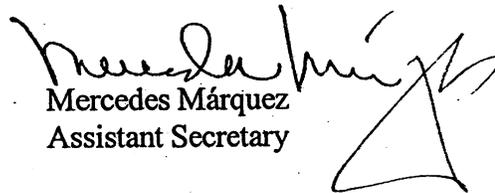
In order for HUD to obligate funds for the approved BEDI project, this office must receive

your executed acceptance below no later than September 14, 2009. **If HUD fails to receive the properly executed document by September 14, 2009, the funds are subject to cancellation.** The executed acceptance, when countersigned on behalf of the Department, shall constitute an agreement between the City of Las Cruces and HUD obligating BEDI funds for the project described in the approved 2009 BEDI application submitted by Las Cruces and assigned **Grant Number B-09-BD-35-8006**. A more detailed BEDI Grant Agreement will be sent to you for execution, along with a Section 108 Note and Contract for Loan Guarantee Assistance, after approval of the Section 108 Loan Guarantee application. A *draft* form of that subsequent Grant Agreement is also enclosed for your information.

If you or members of your staff have any questions concerning this matter, please contact Mr. Duncan at (202) 708-3773.

I look forward to working with you in the redevelopment of Brownfields and in the return of these sites to productive use for the community.

Sincerely,


Mercedes Márquez
Assistant Secretary

cc: Mr. David P. Dollahon
Enclosures

2009 BEDI GRANT AWARD OBLIGATION
B-09-BD-35-8006

Accepted and Agreed by the City of Las Cruces:

By: *[Signature]*
Signature

MAYOR
Title

8/25/09
Date

APPROVED AS TO FORM:
[Signature]
City Attorney

Accepted by U.S. Department of Housing and Urban Development:

By: _____
Signature

Title

Date