

**CITY OF LA VISTA**  
**MAYOR AND CITY COUNCIL REPORT**  
**DECEMBER 15, 2009 AGENDA**

<b>Subject:</b>	<b>Type:</b>	<b>Submitted By:</b>
APPLICATION FOR CDBG FUNDING — EASYWAY INTERNATIONAL, LLC	◆ RESOLUTIONS (2) ORDINANCE RECEIVE/FILE	ANN BIRCH COMMUNITY DEVELOPMENT DIRECTOR

**SYNOPSIS**

A public hearing has been scheduled and a resolutions prepared for Council to adopt policies and procedures regarding the CDBG funding and consider an application from Easyway International, LLC, for CDBG funds and to authorize the Mayor to execute the necessary project documents.

**FISCAL IMPACT**

The project involves a CDBG award of \$505,000 from the Nebraska Department of Economic Development to the City, \$5,000 of which is for the City's costs administering the grant, and \$500,000 of which is to be loaned to the applicant for working capital.

**RECOMMENDATION**

Approval.

**BACKGROUND**

The Nebraska Department of Economic Development (NDED) has been working with the Omaha Chamber of Commerce's International Business Division to assist in locating an office facility for Easyway International, LLC, a freight company based in China. The Company has identified the Southport Professional Building at 12120 Port Grace Blvd. in Southport East as its desired location and would like to lease that space for this purpose. In attracting this business to Nebraska, the Department has offered favorable consideration of an application for CDBG Economic Development funds to the company for working capital associated with the establishment of the La Vista office. It is important to note that the company is only proposing to locate its administrative offices at this location and will not have any trucking or warehousing operations at the site.

The application amount is for \$505,000, with \$500,000 to be provided to Easyway in the form of a performance-based loan and \$5,000 to be used by the City for general administration of the project. Conditions of funding for the company are to provide an additional \$500,000 in working capital from corporate proceeds and to create and maintain 19 new jobs at the facility for three years from the date of the award. At least 51% of all new jobs at the facility are to be taken by persons from low-to moderate income households. Presently, the company intends to transfer four executives from China and hire fifteen (15) new local employees.

CDBG Program regulations require that units of local government including cities or counties must serve as the applicants for CDBG funding. As this project will be located in the City of La Vista we are being asked to serve as the applicant and to pass through the funding from NDED to the business. Upon approval of the application by NDED, the City will obtain adequate security from NDED and the business to protect its financial interests while serving in this capacity. The project will need to be administered by a certified CDBG administrator, and it is likely that staff from Metropolitan Area Planning Agency (MAPA) will provide this service.

Program regulations require that a public hearing be conducted on the application prior to its approval by the City Council, and that public comments be included with the application materials. A copy of the application, a resolution authorizing the Mayor to sign the application, and a draft Memorandum of Understanding (MOU) for the project are included in the packet.

A resolution has been prepared adopting the policies and procedures necessary to receive the CDBG funding. This resolution will need to be acted on before further action on this agenda item.

A resolution has been prepared which approves the funding for the project and authorizes the Mayor to execute the necessary contract documents. Jake Hansen, Community Development Planner with MAPA, and Toby Churchill, Executive Director of SCEDC, will be present at the Council meeting to answer any questions.

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**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF LA VISTA, NEBRASKA TO  
ADOPT POLICIES AND PROCEDURES REGARDING COMMUNITY DEVELOPMENT BLOCK  
GRANT (CDBG) FUNDING AND TO EXECUTE THE NECESSARY DOCUMENTS**

WHEREAS, the City of La Vista, Nebraska is an eligible local government authorized to file an application under the Housing and Community Development Act of 1974 as Amended for Small Cities Community Development Block Grant Program, and,

WHEREAS, the City of La Vista, Nebraska must assure and certify to the Nebraska Department of Economic Development that it has adopted an Excessive Force Policy, a Code of Conduct, Procurement Procedures, a Residential Anti-displacement and Relocation Assistance Plan, Citizen Participation Plan, Fair Housing Practices, and a Financial Management Certification.

NOW THEREFORE, BE IT RESOLVED BY, that the Mayor and City Council of La Vista Nebraska, do hereby adopt policies and procedures regarding CDBG funding and authorize and direct the Mayor to proceed with the execution of these documents.

PASSED AND APPROVED THIS 15TH DAY OF DECEMBER, 2009

**CITY OF LA VISTA**

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Douglas Kindig, Mayor

ATTEST:

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Pamela A. Buethe, CMC  
City Clerk

## **POLICY ON THE PROHIBITION OF THE USE OF EXCESSIVE FORCE**

WHEREAS, the City of La Vista has received federal funding through the Community Development Block Grant (CDBG) program; and,

WHEREAS, Section 519 of the Department of Veteran Affairs and U.S. Department of Housing and Urban Development, and Independent Agencies Appropriations Act of 1990 requires that all CDBG recipients adopt and enforce a policy to prohibit the use of excessive force by law enforcement agencies within the recipient's jurisdiction against any individuals engage in non-violent civil rights demonstrations; and

WHEREAS, all recipients of CDBG funds are further required to follow a policy of enforcing applicable state and local laws against physically barring entrances or exits to a facility that is the subject of a nonviolent protest demonstration; and

WHEREAS, the City of La Vista endorses a policy prohibiting the use of excessive force and will inform all law enforcement agencies within its jurisdiction of this policy,

NOW, THEREFORE, BE IT RESOVED, the City of La Vista hereby prohibits any law enforcement agency operation within its jurisdiction from using excessive force against any individuals engaged in nonviolent civil rights demonstrations. In addition, the City of La Vista agrees to enforce any applicable state or local laws against physically barring entrances or exits from a facility or location that is the subject of a non-violent protest demonstration. The City of La Vista further pledges enforcement of this policy within its jurisdiction and encourages any individual or group who feels that the City of La Vista has not complied with this policy to file a complaint.

Information and assistance relative to excessive force complaints shall be provided by the City Clerk, (402) 331-4343.

ADOPTED BY THE CITY OF LA VISTA THIS 15TH DAY OF DECEMBER, 2009.

CITY OF LA VISTA

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Douglas Kindig, Mayor

ATTEST:

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Pamela A. Buethe, CMC  
City Clerk

# CITY OF LA VISTA NEBRASKA

## PROCUREMENT PROCEDURES AND CODE OF CONDUCT

The City of LaVista, Nebraska will in all cases of procurement for professional services construction services and materials needed for Community Development Block Grant (CDBG) Programs adhere to Code of Federal Regulation 24 C.F.R. Section 85.36 or current state statutes; in all cases the stricter shall apply. The following procedures summarize said laws and regulations.

A. Procurement shall be made by one of the following methods:

**Small Purchase Procedures [24 C.F.R. Section 85.36 (d)(1)]** – This method will generally be used to obtain small quantities of supplies. Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than the simplified acquisition threshold fixed at 41 U.S.C. 403(11) (currently set at \$100,000). If small purchase procedures are used, price or rate quotations shall be obtained from an adequate number of qualified sources.

**Competitive Sealed Bids [24 C.F.R. Section 85.36 (d)(2)]** - This method will generally be used to obtain contractors for construction projects and for large quantities of goods or materials. Bids are publicly solicited and a firm-fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price.

**Competitive Proposals [24 C.F.R. Section 85.36 (d)(3)]** - This method will generally be used to obtain professional services. This method has two sub-parts—the Request for Proposal and the Request for Qualifications.

Request for Proposals – The Request for Proposals (RFP) must clearly and accurately state the technical requirements for the goods and services required; The grantee must publicize the RFP, and to the maximum extent practicable, honor reasonable requests by parties to have an opportunity to compete; Proposals must be solicited from an adequate number of qualified sources, consistent with the nature and requirements of the procurement; The grantee must conduct a technical evaluation of the submitted proposals to identify the responsible offerors; As necessary, the grantee must conduct negotiations with those offerors who are deemed responsive and responsible and fall within a competitive price range, based on the grantee's evaluation of the bidders' pricing and technical proposals. After negotiations, these bidders may be given the opportunity to submit a "best and final" offer; and The grantee must award the contract to the most responsive and responsible offeror after price and other factors are considered through scoring the proposals or "best and final" offers according to predetermined evaluation criteria. The successful proposal/offeror must clearly be the most advantageous source of the goods and services.

Request for Qualifications - Grantees and subgrantees may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be

used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms are a potential source to perform the proposed effort.

**Non-Competitive Proposals/Sole Source [24 C.F.R. Section 85.36 (d)(4)]** – This method will only be used after approval from the Department of Economic Development. When requesting permission to use this method, the grantee will have to show that another method of procurement was not feasible because: the item or service was only available from a single source; a public emergency or condition requiring urgency existed which did not permit the use of competitive procurement; or competition was determined to be inadequate after solicitation of proposals from a number of sources.

- B. The cost plus a percentage of cost and percentage of construction cost method of contracting shall not be used.
- C. The City of La Vista shall maintain records sufficient to detail the significant history of a procurement. These records shall include at a minimum: rationale for the method of procurement; selection of contract type; contractor selection or rejection; and the basis for the cost or price.
- D. The following contract provisions or conditions shall be included in all procurement contracts and subcontracts:

#### **General Administrative Provisions**

- Effective date of the contract.
- Names and addresses of the firm and the grantee.
- Citation of the authority of the grantee under which the contract is entered into and the source of the funds.
- Conditions and terms under which the contract may be terminated by either party and remedies for violation/breach of contract.
- Procedures for amending or revising the contract

#### **Scope of Services**

Detailed description of the extent and character of the work to be performed. Time for performance and completion of contract services, including project milestones, if any. Specification of materials or other services to be provided (i.e. maps, reports, etc.)

#### **Method of Compensation**

Provisions for compensation for services including fee and or payment schedules and specification of maximum amount payable under the contract.

#### **Federal Standard Provisions**

Compliance with Executive Order 11246, as amended (Required for service contractors only if the contractor has 50 or more employees and the contract is for more than \$50,000)

Title VI of the Civil Rights Act of 1964 clause

Section 109 of the Housing and Community Development Act of 1974 clause

Section 3 compliance clause (Required only if the contract exceeds \$100,000)

Access to Records/Maintenance of Records clause

When required, all construction contracts exceeding \$2,000 shall include provisions for compliance with the Davis-Bacon Act (DBA), the Contract Work Hours and Safety Standards Act (CWHSSA), The Copeland Act (Anti-Kickback Act) clause, and the Fair

City of La Vista, Nebraska  
Procurement Procedures and Code of Conduct  
Page 3

This Code of Conduct shall govern the performance of the elected or appointed officials or member of any board or commission employees or agents of the City La Vista, Nebraska engaged in the award and administration of contracts supported by Federal funds under Community Development Block Grant.

- I. The provisions and requirements of the *Conflicts of Interest, at subpart (d)* of the Nebraska Political Accountability and Disclosure Act [such subpart (d) encompassing Sections 49-1493 through 49-14,104 of the Nebraska Revised Statutes], are incorporated in this Code of Conduct by this reference. The provisions and requirements of 24 C.F.R. Section 85.36(b)(3) are also incorporated in this Code of Conduct by this reference. The requirements of these Nebraska state statutes and federal regulations will be adhered to, and in the event of a conflict in the requirements of any of such state and federal requirements, the stricter of any conflicting provisions will be adhered to.
- II. No employee, officer or agent of the municipality shall participate in the selection, or in the award or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when an employee or agent; any member of his or her immediate family; his or her partner; or an organization, which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award.
- III. The municipal employees, officers or agents shall neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to subcontracts.
- IV. Violations of this Code of Conduct will invoke penalties and sanctions consistent with applicable Federal and State laws.

PASSED AND ADOPTED ON THIS 15TH DAY OF DECEMBER, 2009.

CITY OF LA VISTA

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Douglas Kindig, Mayor

ATTEST:

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Pamela A. Buethe, CMC  
City Clerk

## **RESIDENTIAL ANTI-DISPLACEMENT AND RELOCATION ASSISTANCE PLAN**

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The City of La Vista will replace all occupied and vacant occupiable low/moderate-income dwelling units demolished or converted to a use other than as low/moderate-income housing as a direct result of activities assisted with Community Development Block Grant (CDBG) funds provided under the Housing and Community Development Act of 1974, as amended.

All replacement housing will be provided within three years of the commencement of the demolition or rehabilitation relating to conversion. Before obligating or expending funds that will directly result in such demolition or conversion, the City of La Vista will make public and submit to DED the following information in writing:

1. A description of the proposed assisted activity;
2. The general location on a map and approximate number of dwelling units by size (number of bedrooms) that will be demolished or converted to a use other than as low/moderate-income dwelling units as a direct result of the assisted activity;
3. A time schedule for the commencement and completion of the demolition or conversion;
4. The general location on a map and approximate number of dwelling units by size (number of bedrooms) that will be provided as replacement dwelling units;
5. The source of funding and a time schedule for the provision of replacement dwelling units; and
6. The basis for concluding that each replacement dwelling unit will remain a low/moderate-income dwelling unit for at least 10 years from the date of initial occupancy.

The City of La Vista will provide relocation assistance, according to either the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (49 CFR Part 24) or 24 CFR 570.496a(c) to each low/moderate-income family displaced by the demolition of housing or by the conversion of a low/moderate-income dwelling to another use as a direct result of assisted activities.

Consistent with the goals and objectives of activities assisted under the CDBG program, the City of La Vista will take the following steps to minimize the displacement of persons from their homes:

1. Maintain current data on the occupancy of houses in areas targeted for CDBG assistance.
2. Review all activities prior to implementation to determine the effect, if any, on occupied residential properties.
3. Include consideration of alternate solutions when it appears an assisted project will cause displacement, if implemented.
4. Require private individuals and businesses to consider other alternatives to displacement causing activities, if they are requesting CDBG assistance.

Signed \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

Subscribed in my presence and sworn before me

\_\_\_\_\_  
Notary Public

## **CITIZEN PARTICIPATION PLAN LA VISTA, NEBRASKA**

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### **A. Participation by Citizens**

All citizens, including low- and moderate-income citizens, shall be requested and encouraged to participate in the assessment of community issues, problems, needs, the identification of potential solutions, and priority to such issues, problems, and needs, as follows:

1. All citizens shall be periodically requested to complete a community needs survey to identify community and neighborhood issues, problems and needs.
2. All citizens shall be notified by publication and posting of all meetings to discuss the identified needs, potential solutions and solution priorities.
3. All citizens, particularly low- and moderate-income citizens, shall be afforded the opportunity to serve on the various community improvement task forces established by the City Council.

### **B. Access to Meetings, Information, and Records**

Notice of public meetings conducted by the City Council and Planning Commission shall be published and posted not later than 4 days prior to such meetings.

Agendas of all such meetings shall be available at the City Clerk's Office for public inspection.

All meetings where Community Development Block Grant (CDBG) projects or applications are to be discussed shall be published and posted at least 4 days prior to such meetings and all information and records concerning such CDBG projects or applications shall be available for public inspection at the Office of the City Clerk.

All meetings will be held at a City Hall, which is accessible to the handicapped.

### **C. Specific CDBG Project Information**

All citizens shall be provided with information regarding specific CDBG projects through public meetings and publication of notices which provide all pertinent information regarding any CDBG project including, but not limited to, the following:

1. The amount of CDBG funds expected to be made available to the City for the current fiscal year, including CDBG funds and anticipated program income;
2. The specific range of activities that may be undertaken with CDBG funds;
3. The estimated amount of CDBG funds to be used for activities that will meet the national objective of benefit to low- to middle-income persons, and;
4. A description of any proposed CDBG funded activities which are likely to result in displacement of persons along with the City's anti-displacement and relocation plans.

### **D. Provisions for Technical Assistance to Citizens**

The City Clerk shall maintain current information of available resources for community improvement efforts and CDBG funds available and provide such information upon request by any citizen or group representing any citizen or group of citizens and the City Clerk shall provide assistance in developing proposals to address issues, problems and needs identified by such citizen or citizens.

### **E. Public Hearing on CDBG Activities**

The City shall cause a minimum of two (2) public hearings to be conducted with regard to any CDBG application. One such hearing shall be conducted at the initiation of any such application and a second public hearing shall be held near the completion of any CDBG funded activity to obtain citizen input, comments or opinions with regard to such application(s) and with regard to program or project performance.

The City Clerk shall act as the contact person for all questions, comments or concerns expressed by any citizen with regard to any CDBG projects and shall forward any such questions, comments or concerns to the City Council at the next regular meeting of the City Council immediately following expression of such questions, comments or concerns. The City Clerk shall also be responsible for transmitting the City Council's response to any such question, comment or concerns to the citizen or citizens expressing the same.

### **F. Needs of Non-English Speaking Citizens**

Although it is not anticipated that non-English speaking persons will participate in the citizen participation process, the City Clerk shall make arrangements for oral or written translation of information regarding any CDBG program, application or project upon request by such non-English speaking persons or representatives of such persons.

**G. Compliance/Grievance Procedures**

The City Clerk shall post a notice at the City Office which provides name, telephone number, address and office hours of the City Clerk for citizens who wish to file a complaint or grievance regarding any CDBG project or application.

Individuals wishing to submit a complaint or file a grievance concerning activities of or application for CDBG funds may submit a written complaint or grievance to the City Clerk.

The City Clerk shall present such complaint or grievance to the City Council at the next regular meeting of the City Council, where it shall be reviewed by the Council members. The individual submitting such complaint or grievance shall be notified of such meeting and shall be given the opportunity to make further comments at such meeting. The City Council shall issue a written response to any complaint or grievance within five (5) working days following the meeting at which a response is formulated. Such response shall be mailed to the individual citizen(s) submitting the complaint or grievance by the City Clerk to the last known address of said citizen(s).

In the event the nature of the complaint or grievance is determined to be a matter requiring immediate action, a special meeting of the City Council shall be called to review the matter within ten (10) working days of receipt of such complaint or grievance.

**H. Adoption**

This Citizen Participation Plan is hereby adopted by action of the City Council of the City of LaVista, Nebraska.

CITY OF LA VISTA

Signed \_\_\_\_\_

Subscribed in my presence and sworn before me

Title Mayor \_\_\_\_\_

Notary Public

Date \_\_\_\_\_

## **FAIR HOUSING POLICY**

WHEREAS, Executive Order 11603 addresses equal opportunity in housing and nondiscrimination in the sale or rental of housing; and

WHEREAS, Title VIII of the Civil Rights Act of 1968, as amended, prohibits discrimination in the provision of housing because of race, color, religion, sex, national origin, or handicap or familial status,

NOW THEREFORE, BE IT RESOLVED, that La Vista, Nebraska advises the public that it will adopt a fair housing policy with means of enforcement in a manner to affirmatively further fair housing in the sale or rental of housing, the financing of housing and the provision of brokerage services; and

BE IT FURTHER RESOLVED that the City of La Vista shall assist individuals who believe they have been subject to discrimination in housing through the resources of the Nebraska Civil Rights Commission or the U.S. Department of Housing and Urban Development;

Information and assistance relative to the fair housing policy shall be provided by the City Clerk who can be contacted at the La Vista City Hall, 8116 Park View Blvd. or (402) 331-4343.

ADOPTED BY THE CITY OF LAVISTA THIS 15TH DAY OF DECEMBER, 2009.

CITY OF LA VISTA

Signed \_\_\_\_\_

Title Mayor \_\_\_\_\_

Subscribed in my presence and sworn before me

Date \_\_\_\_\_

\_\_\_\_\_  
Notary Public

## Nebraska Department of Economic Development

City of La Vista #09-ED-007  
CDBG Grantee CDBG No.

8116 Park View Boulevard  
Address

La Vista NE 68128  
City Zip Code

Pamela Buethe (402) 331-4343  
Contact Person Telephone

### FINANCIAL MANAGEMENT CERTIFICATION

Check "Yes" or "No" in the column to the left to indicate if your financial management system complies with these statements:

**YES NO**

**1. Does the financial management system provide for:**

- (a) proper recording and accounting for all CDBG receipts?
- (b) control over and accountability for all funds, property, and other assets?
- (c) records that identify the source and use of funds?
- (d) the expenditure of CDBG funds within ten days of the receipt of funds?
- (e) the application of program income to the CDBG fund?
- (f) the disbursing of program income prior to making additional drawdowns?
- (g) accounting records that are supported by source documents
- (h) a comparison of actual expenditures with amounts budgeted for activities within the grant?
- (i) audits to be conducted in accordance with OMB Circular A-128
- (j) a method which assures timely and appropriate resolutions of audit findings and resolutions?
- (k) audits of non-profit subrecipients to be conducted in accordance with OMB Circular A-133?

**YES NO**

**2. Are the individuals who are responsible for the financial management of the CDBG:**

- (a) familiar with OMB Circular A-102 and A-87 and Treasury Circular 1075?

- (b) aware that failure to comply with these regulations will result in audit findings and the repayment of ineligible costs to the Department of Economic Development?

I certify that the above responses are an accurate indication of the status of the financial management system which will be used for the Community Development Block Grant Funds.

SIGNATURE OF MAYOR/CHAIRMAN

Douglas Kindig  
TYPED NAME

December 15, 2009  
DATE

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION AUTHORIZING THE MAYOR AND CITY COUNCIL OF LA VISTA, NEBRASKA TO APPLY FOR A COMMUNITY DEVELOPMENT BLOCK GRANT, AND TO EXECUTE ANY RELEVANT DOCUMENTS REFERENCING THE EASYWAY INTERNATIONAL, LLC. PROJECT.

WHEREAS, the City of La Vista, Nebraska is an eligible local government authorized to file an application under the Housing and Community Development Act of 1974 as Amended for Small Cities Community Development Block Grant Program, and,

WHEREAS, the City of La Vista, Nebraska has obtained its citizen's comments on community development and housing needs; and has conducted public hearing(s) upon the proposed application, and received favorable public comment respecting the application in the amount of \$505,000 for Working Capital Assistance to a For Profit Business, and Grant Administration Costs, and

NOW THEREFORE, BE IT RESOLVED BY, that the Mayor and City Council of La Vista Nebraska, do hereby authorize the application for a Community Development Block Grant and authorize and direct the Mayor to proceed with the formulation of any and all contracts, documents, or other memoranda between the City of La Vista, Nebraska and the Nebraska Department of Economic development so as to effect the acceptance of the grant application.

PASSED AND APPROVED THIS 15TH DAY OF DECEMBER, 2009

CITY OF LA VISTA

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Douglas Kindig, Mayor

ATTEST:

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Pamela A. Buethe, CMC  
City Clerk

# APPLICATION FOR ECONOMIC DEVELOPMENT

## CATEGORY

COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG)  
Nebraska Department of Economic Development (DED)

DED USE ONLY
Application Number
<b>09-ED-007</b>
Date Received

# 2009

## PART I. GENERAL INFORMATION

*TYPE OR PRINT ALL INFORMATION*

<b>1. APPLICANT IDENTIFICATION</b>			<b>2. PERSON PREPARING APPLICATION</b>		
Applicant Name City of LaVista			Name Jake Hansen		
Mailing Address 8116 Park View Blvd.			Address MAPA; 2222 Cuming		
LaVista	NE	68128	Omaha	NE	68102-4328
(City)	(State)	(ZIP)	(City)	(State)	(Zip)
Telephone Number	(402) 331-4343		Telephone Number	(402) 444-6866 x226	
Local Government Contact	Ann Birch		Federal Tax ID # / SS# 47-0522862		
Fax Number	(402) 331-4375		Email Address	jhansen@mapacog.org	
Federal Tax ID Number 47-6050031			Application Preparer (check one)		
DUNS Number (Local Government) 054561071			<input type="checkbox"/> Local Staff	<input type="checkbox"/> Out-of-State Consultant	
Email Address ABirch@cityoflavista.org			<input checked="" type="checkbox"/> Economic Development District	<input type="checkbox"/> Non-Profit Organization	
			<input type="checkbox"/> In-State Consultant	<input type="checkbox"/> DED Staff	
<b>3. DEVELOPMENT CATEGORY</b>					
<input checked="" type="checkbox"/> Direct Loan <input type="checkbox"/> Job Training <input type="checkbox"/> Spec Building/Park <input type="checkbox"/> Public Works <input type="checkbox"/> Entrepreneur Development					
<b>4. APPLICATION TYPE</b>					
<input checked="" type="checkbox"/> Individual <input type="checkbox"/> Joint (List other applicants in box #6)					
<b>5. FUNDING SOURCES</b>					
CDBG Funds Requested \$ 505,000					
Matching Funds \$500,000					
Other Funds \$ 0					
Total Project Funds \$ 1,005,000					
<i>(Round amounts to the nearest hundred dollars.)</i>					

**6. PROGRAM SUMMARY:** Brief narrative description of the project for which CDBG funds are requested.  
Easyway International, LLC is an international freight company which is seeking CDBG funding for working capital to establish its North American administrative headquarters in the City of LaVista. The company intends to use the funds to assist in startup costs associated with establishment of an office in a building which is located at 12120 Port Grace Boulevard in LaVista's Southport East business park. The company intends to transfer four employees to the location from China and will create fifteen new full-time jobs in LaVista and retain those jobs for a minimum of three years.

**7. CERTIFYING OFFICIAL:** Chief elected officer of local government requesting CDBG funds

To the best of my knowledge and belief, data and information in this application are true and correct, including any commitment of local or other resources. This application has been duly authorized by the governing body of the applicant following an official public hearing. This applicant will comply with all Federal and state requirements governing the use of CDBG funds.

Signature in ink \_\_\_\_\_ Typed Name and Title \_\_\_\_\_ Date Signed \_\_\_\_\_

Attest \_\_\_\_\_ Typed Name and Title \_\_\_\_\_ Date Signed \_\_\_\_\_

**SUBMIT THE ORIGINAL OF THE ENTIRE APPLICATION (no additional copies are required) TO:**

Nebraska Department of Economic Development  
 Division of Community and Rural Development  
 PO Box 94666 - 301 Centennial Mall South  
 Lincoln, NE 68509-4666  
 (402) 471-3119 (800)426-6505 Fax (402) 471-8405

*Individuals who are hearing and/or speech impaired and have a TDD, may contact the Department through the Statewide Relay system by calling (800) 833-7352 (TDD). The relay operator should be asked to call DED at (800) 426-6505 or 402-471-3119.*

**PART II. FUNDING SUMMARY**

(Round amounts to the nearest hundred dollars.)

Activity Code	CDBG Funds	Matching Funds	Other Funds	Total Funds	Sources of Matching or Other Funds
0010 Acquisition					
0020 Planning <sup>1</sup>					
0070 Public Fac. & Improvements					
0230 Streets					
0250 Storm Sewers					
0270 Sanitary Sewers					
0290 Sewage Treatment					
0310 Water Source/Well					
0330 Water Distribution					
0350 Water Storage					
0370 Flood & Drainage Facilities					
0600 ED Infrastructure Development					
0690 Fixed Assets / Land and Building					
0691 Speculative Building / Park					
0700 Direct Financial Assistance to For-Profit Biz					
0710 Job Training					
0730 Working Capital	\$500,000	\$500,000	\$0	\$1,000,000	Easyway LLC.
0750 Fixed Assets / Machinery & Equipment					
0770 Fixed Assets / Leaseholds Improvements					
0780 Entrepreneur Development					
0791 Microenterprise Lending					
0181 General Administration	\$5,000	\$0	\$0	\$5,000	N/A
1000 TOTAL PROGRAM COSTS	\$505,000	\$500,000	\$0	\$1,005,000	

<sup>1</sup> Only allowable as an Activity when associated with a Speculative Park project.



**8. Project Participation Identification: Identify All Entities Participating with the Financing of the Project.**

**A. Financial Institution(s)**

Name: Not applicable

Address: \_\_\_\_\_

(City) \_\_\_\_\_ (State) \_\_\_\_\_ (Zip) \_\_\_\_\_

Contact Person: \_\_\_\_\_

Title: \_\_\_\_\_

Telephone: ( ) \_\_\_\_\_

**B. Other Local, State or Federal Financing Sources**

Agency Name: NE Department of Revenue (NE Adv.)

Address: PO Box 94818

Lincoln \_\_\_\_\_ Nebraska \_\_\_\_\_ 68509-4818  
(City) \_\_\_\_\_ (State) \_\_\_\_\_ (Zip) \_\_\_\_\_

Contact Person: Mary Hugo

Title: Economic Incentive Coordinator

Telephone: (402) 471-5790

**C. Source(s) of Equity/Investment Capital**

Name: Shaanxi Easyway Int'l Freight

Address: B10th, Yuyuan Int'l. Blvd, No.65 Western  
Sector, 2nd South Ring Rd., China

Xi'an \_\_\_\_\_ Shaanxi \_\_\_\_\_ 710068  
(City) \_\_\_\_\_ (State) \_\_\_\_\_ (Zip) \_\_\_\_\_

Telephone: ( ) \_\_\_\_\_

**9. State the project's overall objective, including a brief history of operations to date:**

Shaanxi Easyway International Freight Co., Ltd ("Easyway-China") is a private company started in May of 2002 in China by two individuals working for a public entity involved in international transportation. These company founders took the risk to invest in establishing a private freight forwarding company that would continually strive to find better ways to make importing and exporting products as "easy" as possible for shippers and consignees. Currently, about 100 people are employed by Easyway-China. In terms of physical resources Easyway-China has a large container yard, modern mobile crane for container handling, warehouse, trucks and branch offices. The bottom line is Easyway-China now has revenue of about \$ 40 million (US) and has become one of China's premier freight forwarding companies not only offering traditional freight forwarding services but modern professional logistic services.

Easyway-China's majority owner and chief executive is Wen Laing Xu ("Mr. Xu"). Under the direction of Mr. Xu, Easyway-China has determined that its long term growth in the global logistic business will be severely limited if it doesn't establish significant operations in North America. After seriously considering establishing its North American headquarters in Vancouver, British Columbia, Mr Xu has decided to make La Vista, Nebraska, in the Omaha area, its North American home. Nebraska's central location, its positive business climate and focus on logistic education and proximity to the headquarters of well-known transportation companies like Werner Enterprises, Crete Contract Carriers (CCC) and the Union Pacific Railroad all factored into his decision. As a result, Mr. Xu incorporated Easyway International, LLC ("EASYWAY") in the State of Delaware with its principle place of business in Nebraska. It also appears that those already in the logistics business in Nebraska are supportive of EASYWAY setting-up in Nebraska. In fact, even though they may be competitors in some areas the overall conclusion is that having EASYWAY as a Nebraska company will be more synergic than competitive for global transportation business.

Conservative financial projections suggest that EASYWAY will be able to sustain itself in about three (3) years. Mr. Xu places very high strategic importance on the success of this Nebraska business. As such, he has agreed to inject equity funds from his substantial personal or corporate assets if and as needed to ensure the long term sustainable success of this new Nebraska enterprise.

**Exhibit B****PROJECT FINANCING AND USE OF LOAN PROCEEDS**

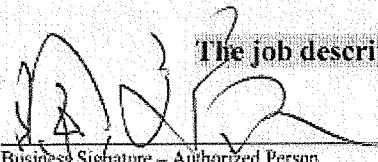
I. Project Financing	Amount	Percent Project Cost	Annual Debt Service	Maturity	Interest Rate	Lien Position
1. CDBG Share of Project Cost	\$500,000	50%	NA	3 years	0% (performance-based forgivable loan)	1st
2. Private Sector Financial Institution	\$		\$			
Other (Identify) Company Equity			\$			
Total Private Sector Financing	\$		\$			
3. Other Federal Sources	\$		\$			
4. Equity Injection	\$500,000	50%	\$ NA			
<b>5. TOTAL PROJECT FINANCING</b>	<b>\$1,000,000</b>	<b>100%</b>	<b>\$</b>			

## Exhibit C

### Job Creation / Retention Information

1. Total full time equivalent positions as of 12/1/2009 (Date) 0
2. Total new full time equivalent positions being created from the project which will be filled for one year or longer. 19
3. The total number of retained FTEs that will result from the project for which notification of lay-off or termination has occurred, or is apt to occur (provide explanation) if the project is not carried out. Classify retained FTEs as follows:
  - a. Total jobs known to be currently held by LMI people. For each employee, submit the Employee Certification Form or 0
  - b. Total number of jobs that can reasonably be expected to become available through turnover to LMI persons within a two year period from an award of CDBG funds. The number of jobs should be based upon the historical turnover rate for each of the past two years converted to FTE positions. 0
4. (For seasonal hiring only). Total new full time equivalent positions being created from the project which will be filled for 3 months or longer. 0
5. Provide a job description for each new position. Complete all information for each job title and identify the number of positions to be created. (Use the attached list for job titles) See table
6. Describe training and recruitment opportunities that would make the retained jobs available to LMI persons. All CDBG funded projects may use Nebraska Workforce Development for their recruiting of new employees to assist in the documentation of first consideration being given to low and moderate income persons. Nebraska Workforce Development will obtain and keep on file for verification the necessary information about the person to determine low and moderate income status. The distance from residence and availability of transportation to the employment site should also be considered in determining whether a particular low and moderate income person can seriously be considered an applicant for the job.
7. Complete the projected hiring schedule for positions expected to become available through turnover.

### Job Descriptions

 The job descriptions table is attached on the following pages.

Business Signature - Authorized Person

Date 19/11/2009

Wenliang Xu/ President of Easyway Int'l LLC

Typed Name and Title

**STATE OF NEBRASKA**  
**COMMUNITY DEVELOPMENT BLOCK GRANT**  
**EMPLOYEE CERTIFICATION FORM**

For use by Easyway International, LLC to meet the requirements of the Nebraska Department of Economic Development and U.S. Department of Housing and Urban Development (HUD).

Dear Employee or Applicant:

Please provide the information requested on this form by so that we can verify to the Nebraska Department of Economic Development that your employment here is achieving the goals of the Nebraska Community Development Block Grant Program. This information is voluntary. Your response should be based upon the earned family income in the county in which you reside. The information will be placed in your confidential personnel file and is available to only a limited number of company officials. The information is subject to verification by officials from the City of LaVista, Nebraska and representatives of the Nebraska Department of Economic Development.

**EMPLOYEE or APPLICANT: Please answer questions 1, 2 and 3:**

Find your family size and household income level. Count all family members including yourself living at home.

**HUD Income guidelines for SARPY COUNTY, NE (See accompanying sheet for additional guidelines)**

Family Size:

**1 PERSON    2 PERSONS    3 PERSONS    4 PERSONS    5 PERSONS    6 PERSONS    7 PERSONS    8 PERSONS**

Row A	\$14,650	\$16,750	\$18,850	\$20,950	\$22,650	\$24,300	\$26,000	\$27,650
Row B	\$24,450	\$27,950	\$31,450	\$34,950	\$37,750	\$40,550	\$43,550	\$46,150
Row C	\$39,150	\$44,700	\$50,300	\$55,900	\$60,350	\$64,850	\$69,300	\$73,800

1) **My household size is \_\_\_\_\_ persons.**

Please check the box below that represents your **TOTAL** household income **FOR LAST YEAR** in relation to the income levels in rows A, B, and C above. **LAST YEAR my total income was:**

**LESS THAN THE AMOUNT IN ROW A**  
 **BETWEEN THE AMOUNTS IN ROWS B AND C**

**BETWEEN THE AMOUNTS IN ROWS A AND B**  
 **MORE THAN THE AMOUNT IN ROW C**

2) **Please Check the Box(es) that identify your race:**

Single Race:

White  
 Black/African American  
 Asian  
 American Indian/Alaskan Native  
 Native Hawaiian/Other Pacific Islander  
 Other

Multi-Racial Identifiers:

American Indian/Alaskan Native **and** White  
 Asian **and** White  
 Black/African American **and** White  
 American Indian/Alaskan Native **and** African/American  
 Other Multi-Racial

3) **Please answer these questions:**

Do you consider yourself as being of Hispanic ethnicity?

Yes       No

What sex are you?

Female       Male

Do you have a disability that is a substantial handicap?

Yes       No

Are you a female head of household?

Yes       No

Your Name: \_\_\_\_\_  
 (Please print)

Your Signature: X \_\_\_\_\_

Date Signed: \_\_\_\_\_

**TO BE COMPLETED BY THE BUSINESS** Please indicate job category for which this employee or applicant is being considered: See sheet 38b for description of job categories)

<input type="checkbox"/> Officials or Managers	<input type="checkbox"/> Professional	<input type="checkbox"/> Technicians	<input type="checkbox"/> Sales	<input type="checkbox"/> Office/Clerical
<input type="checkbox"/> Craft Worker (skilled)	<input type="checkbox"/> Operatives (semi-skilled)	<input type="checkbox"/> Laborers (unskilled)	<input type="checkbox"/> Service Workers	

## HUD INCOME GUIDELINES

### DOUGLAS, WASHINGTON, CASS, SAUNDERS COUNTY, NE HARRISON, POTAWATTAMIE, MILLS COUNTY, IA

	1 PERSON	2 PERSONS	3 PERSONS	4 PERSONS	5 PERSONS	6 PERSONS	7 PERSONS	8 PERSONS
Row A	\$14,650	\$16,750	\$18,850	\$20,950	\$22,650	\$24,300	\$26,000	\$27,650
Row B	\$24,450	\$27,950	\$31,450	\$34,950	\$37,750	\$40,550	\$43,550	\$46,150
Row C	\$39,150	\$44,700	\$50,300	\$55,900	\$60,350	\$64,850	\$69,300	\$73,800

### LANCASTER COUNTY, NE

	1 PERSON	2 PERSONS	3 PERSONS	4 PERSONS	5 PERSONS	6 PERSONS	7 PERSONS	8 PERSONS
Row A	\$14,350	\$16,400	\$18,450	\$20,500	\$22,150	\$23,800	\$25,400	\$27,050
Row B	\$23,400	\$26,750	\$30,750	\$34,150	\$36,900	\$39,600	\$42,350	\$45,100
Row C	\$38,250	\$43,700	\$49,200	\$53,500	\$57,800	\$62,050	\$66,350	\$70,600

### SAUNDERS COUNTY, NE

	1 PERSON	2 PERSONS	3 PERSONS	4 PERSONS	5 PERSONS	6 PERSONS	7 PERSONS	8 PERSONS
Row A	\$13,700	\$15,700	\$17,650	\$19,600	\$21,150	\$22,750	\$24,300	\$25,850
Row B	\$22,900	\$26,150	\$29,450	\$32,700	\$35,300	\$37,950	\$40,550	\$43,150
Row C	\$36,600	\$41,850	\$47,050	\$52,300	\$56,500	\$60,650	\$64,850	\$69,050

### OTOE COUNTY, NE

	1 PERSON	2 PERSONS	3 PERSONS	4 PERSONS	5 PERSONS	6 PERSONS	7 PERSONS	8 PERSONS
Row A	\$12,300	\$14,050	\$15,800	\$17,550	\$18,950	\$20,350	\$21,750	\$23,150
Row B	\$20,500	\$23,400	\$26,350	\$29,250	\$31,600	\$33,950	\$36,200	\$38,600
Row C	\$32,750	\$37,450	\$42,100	\$46,800	\$50,550	\$54,300	\$58,050	\$61,800

Date signed: \_\_\_\_\_

# APPLICANT'S STATEMENT OF ASSURANCES AND CERTIFICATIONS

The City of La Vista Nebraska (Applicant) hereby assures and certifies to the Nebraska Department of Economic Development (the Department) regarding an application for Community Development Block Grant (CDBG) funds, the following:

## LOCAL GOVERNMENT CERTIFICATIONS

It has previously adopted, on December 15, 2009, an **Excessive Force Policy** which remains in effect.

1. It has previously adopted, on December 15, 2009, a **Code of Conduct** which remains in effect.
2. It has previously adopted, on December 15, 2009, **Procurement Procedures** which remains in effect.
3. It has previously adopted, on December 15, 2009, a **Residential Antidisplacement and Relocation Assistance Plan** which remains in effect.
4. It has previously adopted, on December 15, 2009, a **Citizen Participation Plan** which remains in effect. The adopted Citizen Participation Plan contains substantially similar language as the sample plan in these guidelines.
5. It has previously adopted, on December 15, 2009, and continues to pursue **Fair Housing Practices** which remains in effect.
6. It has previously furnished to the department a **Financial Management Certification** dated December 15, 2009, which remains accurate.
7. There are no significant unresolved audit findings relating to any prior grant award from the federal and/or state government which would adversely affect the administration of this grant.
8. No legal actions are underway or being contemplated that would significantly impact the Applicant's capacity to effectively administer the program, and to fulfill the CDBG program; and
9. No project costs have been incurred which have not been approved in writing by the Department.

## FEDERAL COMPLIANCE CERTIFICATIONS

11. It will adopt and follow a residential anti-displacement and relocation assistance plan which will minimize displacement as a result of activities assisted with CDBG funds.
12. It will conduct and administer its programs in conformance with:
  - a. Title VI of the Civil Rights Act of 1964 (Pub. L. 88-352), and the regulations issued pursuant thereto (24 CFR Part 1).
  - b. Title VIII of the Civil Rights Act of 1968 (Pub. L. 90-284), as amended, administering all programs and activities relating to housing and community development in a manner to affirmatively further fair housing, and will take action to affirmatively further fair housing in the sale or rental of housing, the financing of housing and the provision of brokerage services.
  - c. The Fair Housing Act of 1988 (42 USC 3601-20) and will affirmatively further fair housing.
13. It will not attempt to recover any capital costs of public improvements assisted in whole or part by assessing any amount against properties owned and occupied by persons of low- and moderate-income, including any fee charged or assessment made as a condition of obtaining access to such public improvements, unless (1) grant funds are used to pay the proportion of such fee or assessment that relates to the capital costs of such public improvements that are financed from revenue sources other than grant funds, or (2) for purposes of assessing any amount against properties owned and occupied by persons of LMI who are not persons of very-low income, the recipient certifies to the State that it lacks sufficient grant funds to comply with the requirements of clause (1).
14. It will comply with all provisions of Title I of the Housing and Community Development Act of 1974, as amended, which have not been cited previously as well as with other applicable laws.

## **SPECIAL REQUIREMENTS AND ASSURANCES.**

15. The Applicant will comply with the Administrative Requirements of the program, those applicable items in the current Consolidated Plan, Title I of the Housing and Community Development Act of 1974, Public Law 93-383, as amended, and 24 CFR Part 570 including parts not specifically cited below and the laws, regulations and requirements, both federal and state, as they pertain to the design, implementation and administration of the local project, including but not limited to the following:

## **CIVIL RIGHTS AND EQUAL OPPORTUNITY PROVISIONS.**

- Public Law 88-352, Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000(d), et. seq.) (24 CFR Part 1)
- Section 109 of the Housing and Community Development Act of 1974, As Amended
- Age-Discrimination Act of 1975, As Amended (42 U.S.C. 6101, et. seq.)
- Section 504 of the Rehabilitation Act of 1973, As Amended (29 U.S.C. 794) and the Americans with Disability Act
- Executive Order 11246, As Amended
- Executive Order 11063, As Amended by Executive Order 12259 (24 CFR Part 107)

## **ENVIRONMENTAL STANDARDS AND PROVISIONS.**

- Section 104(f) of the Housing and Community Development Act of 1974, As Amended
- Title IV of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4831) and the Implementing Regulations found at 24 CFR Part 35
- The National Environmental Policy Act of 1969 (42 U.S.C. Section 4321, et. seq., and 24 CFR Part 58)
- The Clean Air Act, As Amended (42 U.S.C. 7401, et. seq.)
- Farmland Protection Policy Act of 1981, (U.S.C. 4201, et. seq.)
- The Endangered Species Act of 1973, As Amended (16 U.S.C. 1531, et. seq.)
- The Reservoir Salvage Act of 1960 (16 U.S.C. 469, et. seq.), Section 3 (16 U.S.C. 469 a-1), As Amended by the Archaeological and Historic Preservation Act of 1974
- The Safe Drinking Water Act of 1974 [42 U.S.C. Section 201, 300(f), et. seq., and U.S.C. Section 349 as Amended, particularly Section 1424(e) (42 U.S.C. Section 300H-303(e))]
- The Federal Water Pollution Control Act of 1972, As Amended, including the Clean Water Act of 1977, Public Law 92-212 (33 U.S.C. Section 1251, et. seq.)
- The Solid Waste Disposal Act, As Amended by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901, et. seq.)
- The Fish and Wildlife Coordination Act of 1958, As Amended, (16 U.S.C. Section 661, et. seq.)
- EPA List of Violating Facilities
- HUD Environmental Standards (24 CFR, Part 51, Environmental Criteria and Standards and 44 F.R. 40860-40866, July 12, 1979)
- The Wild and Scenic Rivers Act of 1968, As Amended (16 U.S.C. 1271, et. seq.)
- Flood Insurance
- Executive Order 11988, May 24, 1978: Floodplain Management (42 F.R. 26951; et. seq.)
- Executive Order 11990, May 24, 1977: Protection of Wetlands (42 F.R. 26961, et. seq.)
- Environmental Protection Act, NEB. REV. STAT. 81-1501 to 81-1532 (R.R.S. 1943)
- Historic Preservation

## **LABOR STANDARDS AND PROVISIONS.**

- Section 110 of the Housing and Community Development Act of 1974, As Amended
- Fair Labor Standards Act of 1938, As Amended, (29 U.S.C. 102, et. seq.)
- Davis-Bacon Act, As Amended (40 U.S.C. 276-a - 276a-5); and Section 2; of the June 13, 1934 Act., As Amended (48 Stat. 948.40 U.S.C. 276(c), Popularly Known as The Copeland Act
- Contract Work Hours and Safety Standards Act (40 U.S.C. 327, et. seq.)
- Section 3 of the Housing and Urban Development Act of 1968 [12 U.S.C. 1701(u)]

## **FAIR HOUSING STANDARDS AND PROVISIONS.**

- Section 104(a)(2) of the Housing and Community Development Act of 1974, As Amended
- Public Law 90-284, Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601, et. seq.). As Amended by the Fair Housing Amendments Act of 1988
- Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, As Amended (42 U.S.C. 4630) and the Implementing Regulations Found at 49 CFR Part 24

- Relocation Assistance Act, NEB. REV. STAT. 76-1214 to 76-1242 (R.S. Supp. 1989)
- Nebraska Civil Rights Act of 1969 20-105 to 20-125, 48-1102 and 48-1116
- Uniform Procedures for Acquiring Private Property for Public Use, NEB. REV. STAT. 25-2501 to 25-2506 (R.R.S. 1943)

**ADMINISTRATIVE AND FINANCIAL PROVISIONS.**

- U.S. Office of Management and Budget Circular A-87 "Cost Principles for State and Local Governments"
- U.S. Office of Management and Budget Circular A-102 "Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments"
- 24 CFR 570.503 - Grant Administration Requirements for Use of Escrow Accounts for Property Rehabilitation Loans and Grants
- 24 CFR 570.488 to 570.499a - States Program: State Administration of CDBG Nonentitlement Funds
- Community Development Law, NEB. REV. STAT. 18-2101 to 18-2144 (R.S. Supp. 1982)
- Public Meetings Law, NEB. REV. STAT. 18-1401 to 18-1407 (R.R.S. 1943)

**MISCELLANEOUS.**

- Hatch Act of 1938, As Amended (5 U.S.C. 1501, et. seq.)

The Applicant hereby certifies that it will comply with the above stated assurances.

Signed \_\_\_\_\_

Title Mayor

Subscribed in my presence and sworn to before me.

Date \_\_\_\_\_

Notary Public (Not required if on letterhead)

## MEMORANDUM OF UNDERSTANDING

**(with respect to a special economic development activity involving  
the City of La Vista, Nebraska;  
with Easyway International LLC, as the benefited business)**

This Memorandum of Understanding ("MOU") is entered into among the State of Nebraska, Department of Economic Development ("Department" or "DED"); the City of La Vista, Nebraska ("City"); Easyway International LLC ("Business"); Wen Laing Xu, as an individual guarantor; upon the date of signature by all parties.

### **RECITALS**

### **PART I: IDENTIFICATION OF PARTIES.**

**Business:** The benefited businesses—Easyway International LLC  
1620 Dodge St, Suite 2100, Omaha, NE 68102

**City:** City of La Vista, Nebraska  
8116 Park View Blvd, La Vista, NE 68128

**Department or DED:** Nebraska Department of Economic Development, P.O. Box  
94666, Lincoln, Nebraska 68509-4666

**Guarantor:** Wen Laing Xu  
10 Floor, B, Yuyuan International Building No.65  
Western Sector 2 South Ring Rd, Xi'an, Shaanxi, China

### **PART II: PROJECT SUMMARY DESCRIPTION.**

The project involves a CDBG award of \$505,000 from the Department to the City, \$5,000 of which is for the City's costs of administration of the grant, and \$500,000 of which is to be loaned to the Business for working capital; associated with the Business' facility in La Vista, Nebraska. CDBG funding will require the Business to satisfy various job requirements as set forth in §5.01 below.

### **AGREEMENT:**

Premised on the *Recitals* above, and in consideration of the mutual promises and understandings of the parties set forth below, the parties agree as follows:

### **PART III: DEFINITIONS; FEDERAL FUNDING SOURCES and GOVERNING FEDERAL LAW CITED; AND INCORPORATION OF RECITALS.**

**§3.01 Full-Time Equivalent Position (FTE):** An FTE position represents a culmination of 2,080 work hours per annum per position by a person in a permanent position of employment with Business at its facility in La Vista, Nebraska.

**§3.02 Low-to-Moderate Income Person (LMI):** LMI persons are defined as members of a family (single-person or multi-person) where the family has an income equal to or less than the most recent HUD-established income limits for the family residence location. These income limits may be found generally via the HUD national website. The specific webpage address (subject to change by HUD) at the time of this writing is:

→<http://www.huduser.org/datasets/il.html>←

**§3.03** Specifics about how an employment position is considered to be "*held by*" or "*made available to*" an LMI person, and other related definitional matters, may be found in the HUD CDBG regulations in 24 C.F.R. Part 570.

**§3.04** The Department has been designated by the United States Department of Housing and Urban Development ("HUD") to administer; and HUD has awarded the Department funds for; the Community Development Block Grant ("CDBG") program. This is the source for funding by the Department for the project which is the subject matter of this MOU.

**§3.05** Based on the provisions of this MOU, the City has submitted, or will submit, and the Department will consider, the City's application for funding for the project which will undertake community development activities authorized under the Housing and Community Development Act of 1974, as amended, and as authorized under the federal regulations governing CDBG at 24 C.F.R. Part 570.

**§3.06** All provisions of the *RECITALS* above are incorporated as agreed provisions of the MOU.

#### **PART IV: ADDITIONAL TERMS AND CONDITIONS OF THE CDBG FUNDING.**

##### **§4.01 CDBG Amount and Program Income Use Requirement.**

The amount of CDBG funds to be granted from the Department to the City will not exceed \$505,000. \$5,000 of the \$505,000 is for the City's costs of administration of the grant, and \$500,000 of the \$505,000 is to be loaned to the Business.

Unless otherwise excepted from such requirement (or otherwise specified as to a limited amount requirement) elsewhere in this MOU, the City acknowledges and agrees that any CDBG program income (defined in the HUD CDBG regulations) available to the City at the time of any "drawdown" request by the City to the Department must be first utilized in the project, thus lessening the amount of new CDBG funding paid from the Department to the City for this project.

## §4.02 Sources and Uses of Funds.

SOURCES→	CDBG total from DED and City	[OTHER]	BUSINESS	TOTAL
<b>USES (Activities)↓</b>				
<b>0700 Direct financial assistance to for-profit business</b>	<b>\$500,000</b>	<b>\$0</b>	<b>\$500,000</b>	<b>\$1,000,000</b>
<b>0600 Economic Development Infrastructure improvement</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>0000 [description]</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>0181 General Administration</b>	<b>\$5,000</b>	<b>\$0</b>	<b>\$0</b>	<b>\$5,000</b>
<b>TOTAL</b>	<b>\$505,000</b>	<b>\$0</b>	<b>\$500,000</b>	<b>\$1,005,000</b>

The Sources and Uses of Funds table above reflects:

- The anticipated total costs of the CDBG-assisted project.
- The CDBG-assisted activities being funded.
- The sources and amounts of other matching funds required for each activity.
- The maximum authorized CDBG funds for each CDBG-assisted activity.
- The ratio (derived by computation, not expressly shown) of CDBG funds to other matching funds for each CDBG-assisted activity, which ratio is a further limitation upon the maximum authorized CDBG funds which may be paid for each activity. The ratio is invoked as a limitation if the actual total costs of the activity are less than anticipated.

[An example illustrates this point: If the anticipated cost of an activity such as the acquisition of equipment was \$100,000, with \$40,000 to be from CDBG funds as the source, and \$60,000 to be from the benefited business as the source—but the actual cost of the machinery turned out to be \$90,000—then the 40% ratio limits CDBG funding to \$36,000, rather than the \$40,000 originally anticipated.]

- The proportionality (derived by computation, not expressly shown) of funding from all funding sources, for each activity and for the project in total. Disbursement of CDBG funds will be made only on a pro rata basis with all other funding sources, for each activity and for the project in total. CDBG funds will not be the first funds invested in the project—but rather—CDBG funds will flow into the project in proportion to all other funding sources.
- The timing (of CDBG funds flowing into the project on a pro rata basis) is that CDBG funding is reimbursement funding. Reimbursement after-the-fact of the expense having been incurred is what will be done. This timing may well result in the benefited business having to temporarily carry the costs which are then later reimbursed through CDBG funding.

[An example illustrates this point: If the actual cost of an activity such as the acquisition of equipment was \$100,000, with \$40,000 to be from CDBG funds as the source, and \$60,000 to be from the benefited business as the source—then the benefited business would have to first pay the entire \$100,000 cost of acquisition, and then seek reimbursement of \$40,000 from CDBG funding.]

#### **§4.03 CDBG Loan Terms.**

The \$505,000 to be loaned to the Business is for the purpose(s) set forth in **PART II** above, and will be loaned by the City to the Business using CDBG funds under the following terms:

- (a) The promissory note evidencing the loan to the Business will be drawn in favor of the City.
- (b) Collateral requirements, if any, or loan guarantee requirements, if any, are specified in §4.04 below.
- (c) The loan bears no interest (0% interest) and is wholly forgivable upon the meeting of certain conditions by the Business with respect to job creation, job retention, job maintenance, and LMI benefit. If the requisite conditions for forgiveness are not met, the principal is repayable in full by the Business (bearing no interest) upon appropriate notice from the City, and under factual circumstances supporting such conclusion by the City.

These favorable CDBG loan terms are conditioned upon the Business' agreements concerning job creation, job retention, job maintenance, and jobs benefiting LMI persons, all as specified in other portions of this MOU.

#### **§4.04 Collateral/Guarantees.**

The CDBG loan is to be secured by a senior security interest granted to the City by the Business in all furniture and fixtures as well as vehicles and inventory.

Wen Laing Xu is fully and unconditionally guaranteeing the entire amount of the CDBG loan, namely \$500,000. A guarantee instrument evidencing such obligation will be executed by such guarantor as part of the loan closing requirements.

#### **§4.05 Reporting Requirements.**

- (a) Employment Reporting. The Business will have each employee for which LMI status is relevant (normally this includes employees for created jobs, and employees for retained jobs, but not employees forming the measuring baseline of present employment by the Business), complete the Department's Employee Certification Form (such form to be provided to the Business by the City). Such form requests information from the employee concerning the employee's income

status, race, gender, and handicap status. The information from such forms, and other pertinent employment data reasonably required by the City, will be provided by the Business, at least semi-annually. Such information is for use by the City and the Department in assembling and reporting LMI and other employment data to meet HUD requirements for the CDBG program.

(b) Financial Reporting. The Business will provide to the City or to the Department, in a timely manner, the Business' financial statements, including balance sheets and income statements, in such form as may be reasonably required by the City or by the Department, following the close of the Business' fiscal year. This obligation will continue so long as there remains outstanding any balance of the CDBG loan, unless waived by the Department.

#### **§4.06 Due on Sale.**

Repayment of the entire amount of any outstanding balance of the CDBG funded obligation of the Business may be declared (by the City) immediately due and payable upon any material change in the ownership control of the principal assets of the Business, or of the Business itself, including mergers and/or consolidations with other persons or entities. This provision exists to protect the interests of the City and the Department in seeing to it that the obligations of the Business as set forth in this MOU are completely fulfilled, as they must be to comply with HUD CDBG statutes and regulations permitting CDBG funds to be used for financial assistance to the Business in the first place.

#### **§4.07 Maintain Location of Project.**

Until all the requirements of this MOU are satisfied, the Business agrees to keep its facility in La Vista, Nebraska, located in La Vista. Repayment of the entire amount of any outstanding balance of the CDBG funded obligation of the Business may be declared (by the City) immediately due and payable upon a failure to adhere to this requirement.

#### **§4.08 Prohibition on Use of CDBG Assistance for "Job-Pirating" Activities.**

The parties to this MOU recognize and acknowledge that a portion of the federal statutes dealing with CDBG funding, particularly as codified at 42. U.S.C. §5305(h), and implementing regulations issued by HUD at 24 C.F.R. §570.482(h), prohibit the Department from using CDBG funds for activities likely to result in significant job loss in a Labor Market Area (LMA) from which the Business is relocating. The HUD regulations prohibit CDBG funding if the funding will assist in the relocation of a plant, facility, or operation (terms defined in the regulations)—and—if the relocation is likely to result in a significant loss of jobs in the LMA from which the relocation occurs. A "significant job loss" is defined in HUD regulations using the following measurements:

- **500** jobs lost in a LMA is definitionally a significant loss; and thus CDBG funds cannot be used in such cases.
- **25** or fewer jobs lost in a LMA is definitionally not a significant loss; and thus not a job-pirating problem, so CDBG funds can be used in such cases.
- **26-499** jobs lost may be a significant job loss if the lost jobs are equal to or greater than one-tenth of one percent (0.1%) of the total number of persons in the labor force of the LMA from which the proposed business relocation would occur.

The HUD regulations require the Department to obtain from the business assisted with CDBG funds:

- A statement from the assisted business as to whether the CDBG-assisted activity will result in the relocation of any industrial or commercial plant, facility, or operation from one LMA to another, and if so, the number of jobs that will be relocated from the LMA. An "operation" is defined in the regulations as including (but not being limited to) any equipment, employment opportunity, production capacity, or product line of the business.
- If the assistance will not result in a relocation, then the business must certify that neither it, nor any of its subsidiaries, has plans to relocate jobs (at the time the agreement is signed) that would result in a significant job loss.
- An agreement requiring the business to reimburse CDBG funds if a relocation prohibited by the regulations should occur within three years from the date the CDBG assistance is provided to the business. Under the regulations, jobs will be considered to have been relocated if positions are eliminated at an existing operation within three (3) years of the time when CDBG funding assistance was provided to the expansion site operation of the business.

Pursuant to the requirements outlined in this section, the Business hereby states for purposes of this MOU that (check mark and initial one or the other alternative, but not both):

\_\_\_\_\_ (initials of official executing MOU for the Business). The CDBG-assisted activity will result in the relocation of a plant, facility, or operation from one LMA to another LMA, with the number of jobs that will be relocated from the LMA being as follows: \_\_\_\_\_ (insert number of jobs).

OR

\_\_\_\_\_ (initials of official executing MOU for the Business). The CDBG-assisted activity will not result in the relocation of a plant, facility, or operation from one LMA to another LMA. The Business hereby certifies that neither it, nor any of its subsidiaries, has plans to relocate jobs at the time this agreement is signed, that would result in a significant job loss as defined in the regulations.

In a circumstance where neither of the alternatives above is marked and initialed, the second alternative (indicating the activity will not result in relocation) will be deemed to have been selected and agreed to by the Business.

Pursuant to the requirements outlined in this section, the Business further agrees if a relocation prohibited by the regulations should occur within three years from the date the CDBG assistance is provided to the Business, the Business agrees to reimburse the City for all amounts of CDBG assistance provided to the Business, or expended on behalf of the Business, pursuant to this MOU.

## **PART V: JOB CREATION AND JOB MAINTENANCE REQUIREMENTS.**

### **§5.01 Job Creation and Job Maintenance Requirements.**

The Business must:

- (a) create at least 15, new, permanent jobs (on an FTE basis), in the Business' facility in La Vista, Nebraska over and above the agreed baseline of employment at the La Vista facility which agreed baseline is 0 FTEs for purposes of this MOU:
  - (1) within 12 months of the date on the Notice of Approval letter from the Department.
  - (2) meeting the requirement that 51% or more of all jobs (on an FTE basis) created as a result of the CDBG-assisted project must be held by (or if not actually "held by", then the Business must meet the required regulatory standards so as to be considered to have made the jobs "available to") low-to-moderate income (LMI) persons.
- (b) maintain the minimum required created 15 FTE jobs, [and maintain all additional jobs created as a result of the CDBG-assisted project,] for 36 months measured from the date of hire for each respective job.
- (c) pay all employees of the Business a minimum hourly rate of \$10.28 per hour, and provide all employees with an appropriate package of employee benefits.

Only permanent employees (not temporary employees); and only employee positions at the Business' facility in La Vista, Nebraska; will be credited in assessing whether the job creation, job retention, and job maintenance requirements have been satisfied.

### **§5.02 Proration of Any Repayment Obligation Arising from Failure by the Business to Meet the Job Requirements of §5.01.**

If the Business fails to meet the job requirements set forth in §5.01, the default remedy specified at §6.02 and the repayment obligation of the Business specified in §4.03(c), will be mitigated by allowing, in some instances, proration of the principal amount of any repayment obligation which is triggered by such failure to meet such job requirements, as follows:

(a) CDBG statutes and regulations require CDBG-assisted projects to meet the national objective of principally benefiting low-to-moderate income (LMI) persons. These statutes and regulations require that at least 51% of the created/retained jobs benefit LMI persons. If Business fails to meet the national objective by not having at least 51% of the created/retained jobs benefiting LMI persons, then full repayment of the CDBG funding is required, and no proration is allowed.

(b) If the national objective (51% LMI benefit) is met, but the job creation/retention requirement (15 jobs in this instance) is not achieved, then a pro rata portion of the CDBG funds will be required to be repaid, equivalent to the ratio of jobs not created, divided by the number of jobs required to be created.

(c) If the national objective (51% LMI benefit) is met, but the jobs are not maintained for the required job maintenance period (36 months in this instance), then a pro rata portion of the CDBG funds will be required to be repaid, equivalent to the ratio of the required maintenance period in months, less the number of months the jobs were maintained, divided by the required maintenance period in months.

(d) If the national objective (51% LMI benefit) is met, but there is a failure as to both the job creation/retention requirement and the job maintenance period, then a pro rata portion of the CDBG funds will be required to be repaid, equivalent to—using the number of jobs required to be created, multiplied by the number of months the jobs were to be maintained, resulting in a computational factor of "required job-months"—then using the number of jobs actually created multiplied by the number of months the jobs were actually maintained, resulting in a computational factor of "achieved job-months"—and then subtracting the "achieved job-months" factor from the "required job-months" factor to calculate a "failed job-months" factor—and then establishing the ratio of:

"failed job-months"  
"required job-months"

with such ratio (with "failed job-months" as the numerator, and "required job-months" as the denominator), being the required pro rata portion of CDBG funds to be repaid.

An example to illustrate application of this requirement is:

CDBG assistance total	= \$250,000
# of jobs to be created	= 20
# of months the jobs were to be maintained	= 24
# of jobs actually created	= 15
# of months the jobs were actually maintained	= 16

20 x 24 = 480 "required job-months"  
15 x 16 = 240 "achieved job-months"  
480 – 240 = 240 "failed job-months"

240 "failed job-months"  
----- = .50  
480 "required job-months"

\$250,000 x .50 = \$125,000 to be repaid.

## **PART VI: OTHER TERMS AND CONDITIONS OF THIS MOU.**

### **§6.01 Events of Default.**

In addition to other events or fact settings where debt acceleration or other remedies may be specified elsewhere in this MOU, the following are (but are not exclusively the only) events of default, each of which triggers the general default remedy set forth in §6.03 (or the remedies specified elsewhere in this MOU associated with such event or fact setting):

- (a) Failure by Business to fully satisfy the Job Creation, Job Retention, and Job Maintenance Requirements set forth in §5.01.
- (b) A breach of the Maintain Location of Project provisions in §4.07.
- (c) Bankruptcy or insolvency of the Business.
- (d) Failure by Business to provide, in a timely manner, reports and other administrative documentation identified in this MOU.
- (e) Any other failure by the Business to substantially comply with the terms and conditions of this MOU.
- (f) If the Business, or its officers or employees, engage in:
  - 1) material misrepresentation concerning CDBG funds; or,
  - 2) unauthorized use or theft of CDBG funds.

### **§6.02 General Default Remedy (applicable to events of default where remedies for specific events or fact settings are not specified elsewhere in this MOU).**

If an event of default occurs, then CDBG funding will be disallowed, and immediate repayment to DED of the entire amount of any outstanding balance of the CDBG funded obligation of the Business will be required, together with interest computed at 5% per annum (simple interest), from the date(s) CDBG funds were advanced to the Business by the City.

### **§6.03 Loan Documentation Responsibility.**

The Business shall have the duty to prepare any necessary loan documentation instruments (e.g., a promissory note reflecting the CDBG loan obligation of the Business in favor of the City), including (if applicable) any necessary security instruments or guarantees, associated with the CDBG loan. If others, such as an attorney representing the City, prepare such documentation at the request of the Business, then payment for such attorney's services shall be borne by the Business. None of the costs of loan documentation for the CDBG portion of this project, including any attorney's fees for loan documentation preparation or review, will be the responsibility of DED, nor of the City unless voluntarily undertaken by the City.

#### **§6.04 Severability, Binding Effect, Counterparts, and Governing Law.**

If any provision of this MOU or its application to any person or circumstance is held invalid by any court of competent jurisdiction, such invalidity will not affect other provisions of this MOU.

This MOU will be binding upon, and will inure to the benefit of, the successors, assigns, and legal representatives of the parties.

This MOU may be signed in any number of counterparts, each of which will be an original, but all of which taken together will constitute one agreement.

This MOU will be governed by; construed according to the laws and regulations of; and subject to the jurisdiction of; the State of Nebraska.

#### **§6.05 No Legal Actions.**

The Business warrants there are no legal actions, suits, or other proceedings, pending or threatened, before any court or administrative agency, which, if determined adversely to the Business, would have a material adverse effect on the financial condition of the Business nor on the ability of the Business to complete the project which is the subject of this MOU.

#### **§6.06 Authorization of Representative Signing for the Benefited Business.**

The Business, by and through the officer or other representative accepting this MOU by signing below on behalf of the Business, has entered into this MOU with the full knowledge and authorization of the Business, under proper procedures prescribed by the articles of incorporation, bylaws, and other organizing documents applicable to the governance of Business.

#### **§6.07 This MOU is NOT a Notice of Approval of the Project.**

Project funding approval by DED is neither expressed nor implied by DED's execution of this MOU, and project costs should not be incurred based solely upon this MOU. Additional approval steps beyond the MOU are required before a project receives a

Notice of Approval, including satisfying other steps of the application and approval process at DED, and obtaining the approval of the Governor of the State of Nebraska.

#### **§6.08 Conditions Precedent to Drawdown of CDBG Funds.**

Certain conditions must be satisfied before any requests for funds (so-called "drawdowns") by the City would be paid by DED, in the event a Notice of Approval for this project is ultimately issued by DED. The conditions are emphasized here so that all parties to this MOU will be aware of, and can appropriately plan for, the requirements for drawdowns, should the project be approved.

- (a) The requirements set forth in §4.02, *Sources and Uses of Funds*, must be strictly observed. These requirements include CDBG-activity maximum payments; the injection of matching funds; and CDBG funds payments being limited and governed by the ratio, proportionality, and reimbursement timing requirements detailed in §4.02.
- (b) Documentation, in such form as DED may prescribe, showing disbursement by other project funding sources for qualified expenditures, will be required by the DED.
- (c) Compliance with the environmental review process pertaining to the project, established by the National Environmental Policy Act of 1969 (NEPA), and other provisions of federal law as specified in 24 C.F.R. Part 58 which further the purposes of NEPA, is required.
- (d) Proper execution, by the Business, of this MOU and any other required documents (e.g., loan documents), is required.
- (e) Compliance with the Davis-Bacon Act (and related acts) is required.

## ACCEPTANCE PROVISIONS.

The parties acknowledge they have read and understand this MOU and agree to its provisions, and that it will be effective on the date when all parties have signed.

<b>DED—NEBRASKA DEPARTMENT OF ECONOMIC DEVELOPMENT</b>  By: _____ (Signature of Director or Designee)  (Typed or Printed Name/Title)  (Date)	<b>City—City of La Vista</b>  By: _____ (Signature of Chief Elected Official)  (Typed or Printed Name/Title)  (Date)  (Federal Identification Number)
<b>Business—Easyway International LLC</b>  By: _____ (Signature of Authorized Officer)  (Typed or Printed Name/Title)  (Date)	Guarantor—Wen Laing Xu, individually  (Signature of [name] as an individual guarantor)  (Date)