

CITY OF LA VISTA
MAYOR AND CITY COUNCIL REPORT
FEBRUARY 15, 2011 AGENDA

| Subject: | Type: | Submitted By: |
|---|---|--|
| APPLICATION FOR CDBG FUNDING — ePOWER ENGINE SYSTEMS, LLC | ◆ RESOLUTION ORDINANCE RECEIVE/FILE | ANN BIRCH COMMUNITY DEVELOPMENT DIRECTOR |

SYNOPSIS

Following a public hearing held on December 21, 2010, a resolution has been prepared for Council to consider an application from ePower Engine Systems, LLC, for CDBG funds.

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

Approve.

BACKGROUND

The Sarpy County Economic Development Corporation has been working to assist in locating a facility for ePower Engine Systems, LLC. The Company has identified a building located at 7030 S. 110th Street as its desired location and would like to lease that space for this purpose. ePower Engine Systems has developed a diesel/electric drive system that will be used to provide significant diesel fuel savings to the large over-the-road trucking companies. The company has finished the first "test" truck and patented this unique design. It reduces diesel fuel consumption and carbon footprint by close to 65% on Class 8 trucks. The system is reaching approximately 15 mpg with current industry averages of around 5.5 mpg. This is a very significant number for the transportation industry. All of the components used in the ePower systems are already produced by well-known international companies. Because of that, the company does not have the issues associated with a new product development for each of these individual components. Each component is readily available as an off-the-shelf item and its cost is a known factor, up front. What is unique about the ePower design is its method in which these components are utilized.

The application amount is for \$505,000, with \$500,000 to be provided to ePower 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 \$822,000 in owner's equity and corporate financing and to create and maintain 20 new jobs at the facility for two 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.

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's jurisdiction 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 planned 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 draft application is included in the packet.

Following tonight's public hearing, remaining business information will be shared with the Department of Economic Development, and department staff will prepare a Memorandum of Understanding (MOU) for the application outlining potential terms of financing, along with City responsibilities under the project. Prior to consideration of a resolution authorizing action on this application by the Council, the MOU will be reviewed by the City Attorney and by MAPA with changes incorporated as necessary. Jake Hansen, Community Development Manager with MAPA, will be present at the Council meeting to answer any questions.

\Lvdclf01\users\Administration\BRENDA\COUNCIL\11 Memos\CDBG Funds ePower.DOC

RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF LA VISTA, NEBRASKA APPROVING THE APPLICATION FOR A COMMUNITY DEVELOPMENT BLOCK GRANT AND AUTHORIZING THE MAYOR TO EXECUTE ANY RELEVANT DOCUMENTS REFERENCING THE ePOWER ENGINE SYSTEMS, 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 in the amount of \$505,000 to assist with working capital expenses for a For Profit Business, and Grant Administration Costs,

NOW THEREFORE, BE IT RESOLVED, that the Mayor and City Council of La Vista, Nebraska to hereby approve the application for a Community Development Block Grant and authorize the Mayor to execute any relevant documents referencing the ePower Engine Systems, LLC, project 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 acceptance of the grant application.

PASSED AND APPROVED THIS 15th DAY OF FEBRUARY, 2011.

CITY OF LA VISTA

Douglas Kindig, Mayor

ATTEST:

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
10-ED-015
Date Received

2010

PART I. GENERAL INFORMATION

TYPE OR PRINT ALL INFORMATION

| | | | | | |
|---|----------------------|-----------------------|---|--|----------------------------|
| 1. APPLICANT IDENTIFICATION | | | 2. PERSON PREPARING APPLICATION | | |
| Applicant Name City of LaVista | | | Name Jake Hansen | | |
| Mailing Address 8116 Park View Blvd. | | | Address MAPA; 2222 Cuming | | |
| LaVista (City) | NE (State) | 68128 (ZIP) | Omaha (City) | NE (State) | 68102-4328 (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 | |
| 3. DEVELOPMENT CATEGORY | | | 5. FUNDING SOURCES | | |
| <input checked="" type="checkbox"/> Direct Loan <input type="checkbox"/> Job Training <input type="checkbox"/> Spec Building/Park | | | CDBG Funds Requested \$ 505,000 | | |
| <input type="checkbox"/> Public Works <input type="checkbox"/> Entrepreneur Development | | | Matching Funds \$822,000 | | |
| 4. APPLICATION TYPE | | | Other Funds \$ 0 | | |
| <input checked="" type="checkbox"/> Individual | | | Total Project Funds \$ 1,327,,000 | | |
| <input type="checkbox"/> Joint (List other applicants in box #6) | | | (Round amounts to the nearest hundred dollars.) | | |

6. PROGRAM SUMMARY: Brief narrative description of the project for which CDBG funds are requested.

The City of La Vista is requesting \$505,000 in CDBG funding to provide working capital assistance to ePower Engine Systems, who is proposing to lease a property located at 7030 South 110th Street for the purpose of assembling diesel/electric drive systems to be retrofitted on Class 8 trucks. Activities for which federal funds would be utilized include provision of working capital assistance to the applicant business. Within two years of project initiation, ePower will invest approximately \$822,000 in working capital and operating expenditures at the site, and will create 20 new FTE jobs.

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 **Douglas Kindig, Mayor**
Typed Name and Title

^t 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.

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

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

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 ¹ | | | | | |
| 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 | \$822,000 | \$0 | \$1,322,000 | ePower |
| 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 | \$822,000 | \$0 | \$1,327,000 | |

¹ Only allowable as an Activity when associated with a Speculative Park project.

Exhibit A**Participation Identification and Project Summary****1. Name of Business: ePower Engine Systems, LLC**Address: 7030 South 110th StreetOmaha, NE 68128
(City) NE (Zip)Telephone No. (402) 680-9547Fax No. (402) 289-2113Contact Person: Russell A. KnudsenDUNS Number (Business) 962282963**3. Business Type** Start-Up Existing Business Buy-Out Spec Building / Park**5. Project Location:** Within the City Limits of (Name of City) _____ Outside the City Limits, but within the Zoning Jurisdiction of (Name and City) LaVista, NE _____ Outside the Zoning Jurisdiction of (Name of City) _____ in (County) _____ Located in county (not in incorporated areas.) _____Zoning Action Required? Yes No Project in 100 yr. floodplain? Yes No If zoning action is required, please attach an explanation. Attach a legal description of the project's location. Attach a map of the applicant's jurisdiction, identifying the areas in which the project activity will occur.**6. Ownership Identification**

A. Name %

Please see attached

B. Percentage of Company Owned by:

Women 0 %Minorities 0 %Disabled Persons 0 %**7. Affiliated Businesses**A. Does the Company have a Parent or Subsidiary? Yes No

If Yes, Identify Name: _____

Address: _____

City: _____ State: _____ Zip: _____

B. Do the Owners of the Company have an Ownership interest in any Other Company? Yes No

If Yes to Either A or B Identify Below:

| Company Name | Relationship | % Owned |
|-------------------|---------------------------------|-------------|
| <u>Jay Bowman</u> | <u>Military Packaging, Inc.</u> | <u>100%</u> |

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: (_____) _____

C. Source(s) of Equity/Investment Capital

Name: ***PLEASE SEE ATTACHED***

Address: _____

(City) _____ (State) _____ (Zip) _____

Telephone: (_____) _____

B. Other Local, State or Federal Financing Sources

Name: Not applicable
Address: _____

(City) _____ (State) _____ (Zip) _____

Contact Person: _____

Title: _____

Telephone: (_____) _____

Name: _____

Address: _____

(City) _____ (State) _____ (Zip) _____

Telephone: _____

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

ePower engine systems, LLC has developed a diesel/electric drive system that will be used to provide significant diesel fuel savings to the large over-the-road trucking companies. ePower has finished the first "test" truck and patented this unique design. It reduces diesel fuel consumption and carbon footprint by close to 65% on Class 8 trucks. ePower is reaching approximately 15 mpg, with current industry averages around 5.5 mpg. This is a very significant number for the transportation companies and the economy of our country. All of the components used in the epower system are already produced by well-known, old-line, very large international companies. Therefore, ePower does not have the issues associated with a new product development for each of these individual components. Each component is readily available as an off-the-shelf item and its cost is a known factor upfront. What is unique about the ePower design is it's method in which these components are utilized.

The company has a total of five partners who have invested \$522,000 and two investors who have invested \$300,000 of subordinated debt for a total of \$822,000 invested into this project. The company is in the early testing stages of its product and is considering several assembly locations in addition to the one proposed in LaVista.

ePower engine systems, llc – PARTNERS

| <u>NAME</u> | <u>OWNERSHIP</u> |
|---|------------------|
| Jay Bowman 10 Thornhill Drive Florence, KY 41042 859-992-6837 | 20% |
| Gaylen Gordy 2439 County Road 111 Georgetown, TX 78626 512-762-6047 | 20% |
| Andrew Claypole 456 Leet Road Edgeworth, PA 15143 412-225-7969 | 20% |
| Bruce Ligo 539 Dorchester Drive Seven Fields, PA 15143 724-766-7031 | 20% |
| Andrews National Associates, LLC P. O. Box 540698 Omaha, NE 68154 402-660-6339 | 20% |

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Exhibit A

Item 7B - Other Ownerships Interests

| <u>NAME</u> | <u>Company Name</u> | <u>OWNERSHIP</u> |
|--|-------------------------|------------------|
| Jay Bowman 250 Aristocrat Drive Florence, KY 41042 859-992-6837 | Military Packaging, Inc | 100% |

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 | \$505,000 | 38% | \$ 62,500 (50% forgivable, 50% repayable) | 4 years | 0% | UCC/Deed of Trust on Equip. |
| 2. Private Sector Financial Institution | \$0 | 0% | \$ | | | |
| Other (ePower) | \$300,000 | 22% | \$0 | | | |
| Total Private Sector Financing | \$ | | \$ | | | |
| 3. Other Federal Sources | \$0 | | \$ | | | |
| 4. Equity Injection | \$522,000 | 40% | \$ | | | |
| 5. TOTAL PROJECT FINANCING | \$1,327,000 | 100% | \$62,500 | | | |

Exhibit C

Job Creation / Retention Information

| | |
|--|------------------|
| 1. Total full time equivalent positions as of July 2010: <small>(date)</small> | <u>2</u> |
| 2. Total new full time equivalent positions being created from the project which will be filled for one year or longer. | <u>20</u> |
| 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: | <u>0</u> |
| a. Total jobs known to be currently held by LMI people. For each employee, submit the Employee Certification Form or _____ | |
| 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. _____ | |
| 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. | <u>N/A</u> |
| 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) | <u>See below</u> |
| 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

| No. of FTE Positions to be Created / Retained | Job Title | Skills (describe) | Education (indicate HS education, specialized training, 4-yr degree, other) | Experience (No. of yrs) | Wage / Salary | Benefit Package |
|---|----------------------|----------------------|---|-------------------------|---------------|---|
| 1 | Manager | Plant Manager | HS Education | 3 | \$18-\$25/hr | For all employees Health Insurance and Vacation provided. |
| 2 | Office/ Clerical | Office Assistant | HS Education | 0 | \$9-\$11/hr | |
| 1 | Sales | Sales Assistant | HS Education | 2 | \$10-\$12/hr | |
| 1 | Office/ Clerical | Technical Support | HS Education | 3 | \$12-\$15/hr | |
| 1 | Manager | Line Mfg. Manager | HS Education | 2 | \$15-\$18/hr | |
| 2 | Crafts-skilled | Line Mfg. Supervisor | HS Education | 2 | \$12-\$15/hr | |
| 12 | Crafts- semi-skilled | Line Mfg. Assistant | HS Education | 0 | \$9-\$11/hr | |

Business Signature -- Authorized Person

Date

Russell A. Knudsen, Director of Corporate Finance
Typed Name and Title

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

For use by ePower Engine Systems 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 WASHINGTON, DOUGLAS, SARPY, CASS CO., NEBRASKA
(Please ask personnel staff for additional tables if you live in a county not listed above)**

Family

Size:

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

| | | | | | | | | |
|-------|----------|----------|----------|----------|----------|----------|----------|----------|
| Row A | \$14,800 | \$16,900 | \$19,000 | \$21,100 | \$22,800 | \$24,500 | \$26,200 | \$27,900 |
| Row B | \$24,650 | \$28,150 | \$31,650 | \$35,150 | \$38,000 | \$40,800 | \$43,600 | \$46,400 |
| Row C | \$39,400 | \$45,000 | \$50,650 | \$56,250 | \$60,750 | \$65,250 | \$69,750 | \$74,250 |

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 attached sheet 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 or 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

DODGE COUNTY, NE

Family

Size:

| | 1 PERSON | 2 PERSONS | 3 PERSONS | 4 PERSONS | 5 PERSONS | 6 PERSONS | 7 PERSONS | 8 PERSONS |
|-------|----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|
| Row A | \$11,950 | \$13,650 | \$15,350 | \$17,050 | \$18,450 | \$19,800 | \$21,150 | \$22,550 |
| Row B | \$19,900 | \$22,750 | \$25,600 | \$28,400 | \$30,700 | \$32,950 | \$35,250 | \$37,500 |
| Row C | \$31,850 | \$36,400 | \$40,950 | \$45,450 | \$49,100 | \$52,750 | \$56,400 | \$60,000 |

LANCASTER COUNTY, NE

Family

Size:

| | 1 PERSON | 2 PERSONS | 3 PERSONS | 4 PERSONS | 5 PERSONS | 6 PERSONS | 7 PERSONS | 8 PERSONS |
|-------|----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|
| Row A | \$14,400 | \$16,450 | \$18,500 | \$20,550 | \$22,200 | \$23,850 | \$25,500 | \$27,150 |
| Row B | \$24,000 | \$27,400 | \$30,850 | \$34,250 | \$37,000 | \$39,750 | \$42,500 | \$45,250 |
| Row C | \$38,400 | \$43,850 | \$49,350 | \$54,800 | \$59,200 | \$63,600 | \$68,000 | \$72,350 |

SAUNDERS CO, NE

Family

Size:

| | 1 PERSON | 2 PERSONS | 3 PERSONS | 4 PERSONS | 5 PERSONS | 6 PERSONS | 7 PERSONS | 8 PERSONS |
|-------|----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|
| Row A | \$13,650 | \$15,600 | \$17,550 | \$19,450 | \$21,050 | \$22,600 | \$24,150 | \$25,700 |
| Row B | \$22,700 | \$25,950 | \$29,200 | \$32,400 | \$35,000 | \$37,600 | \$40,200 | \$42,800 |
| Row C | \$36,300 | \$41,500 | \$46,700 | \$51,850 | \$56,000 | \$60,150 | \$64,300 | \$68,450 |

HARRISON, MILLS, POTTAWATTAMIE COUNTY, IA

Family

Size:

| | 1 PERSON | 2 PERSONS | 3 PERSONS | 4 PERSONS | 5 PERSONS | 6 PERSONS | 7 PERSONS | 8 PERSONS |
|-------|----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|
| Row A | \$14,800 | \$16,900 | \$19,000 | \$21,100 | \$22,800 | \$24,500 | \$26,200 | \$27,900 |
| Row B | \$24,650 | \$28,150 | \$31,650 | \$35,150 | \$38,000 | \$40,800 | \$43,600 | \$46,400 |
| Row C | \$39,400 | \$45,000 | \$50,650 | \$56,250 | \$60,750 | \$65,250 | \$69,750 | \$74,250 |

MEMORANDUM OF UNDERSTANDING

(with respect to a special economic development activity involving
the City of La Vista, Nebraska;
with ePower engine systems, LLC, as the benefited business;
with MAPA Foundation, as the nonprofit development organization carrying
out CDBG-assisted activity(ies) on behalf of the City of La Vista, Nebraska)

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"); ePower engine systems, LLC ("Business"); see attached Schedule A, as guarantors; and the MAPA Foundation ("NDO") upon the date of signature by all parties.

RECITALS

PART I: IDENTIFICATION OF PARTIES.

Business: ePower engine systems, LLC
7034 South 110th Street
LaVista, NE

City: City of La Vista, Nebraska
8116 Park View Blvd.
La Vista, NE 68128-2198

NDO: MAPA Foundation
2222 Cuming Street
Omaha, NE 68102-4328

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

Guarantors: Provided in attached Schedule A

Be advised this MOU is not functioning as a comprehensive agreement between the City and the NDO. The City and the NDO are advised and must be aware this MOU is not intended to, and does not, function as a comprehensive agreement between the City and the NDO regarding the NDO carrying out CDBG-funded activity(ies) on behalf of the City. A separate administrative agreement between the City and the NDO would need to be agreed upon, drafted, and executed by those parties (the City and the NDO) as those parties may require for their own purposes. As examples only, and not intended to be comprehensive of all areas of concern to be addressed by such a separate agreement, would be: addressing responsibility for adhering to all CDBG statutory and regulatory requirements which are the responsibility of the City (e.g., environmental review) even though the NDO is carrying out the activity(ies); and handling payment for CDBG administrative functions, since the portion of the grant from the Department to the City for

CDBG administrative expenses does not include the NDO as being a direct recipient of CDBG administrative expenses from the Department.

Be advised this MOU does function as a comprehensive agreement between the NDO and the Department regarding the disposition of funds received by the NDO from the Business as loan repayments by the Business on the CDBG-funded loan(s) made by the NDO to the Business which are the subject matter of this MOU. Refer to **PART VII**.

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 conditionally granted by the City to the NDO, with the NDO then utilizing such conditionally granted CDBG funds to loan \$500,000 to the Business for the purpose of working capital associated with the Business' facility in La Vista, Nebraska, (the "Project"). CDBG funding will require the Business to satisfy various job requirements as set forth in §5.01 below.

ePower has developed a highly fuel efficient engine system for Class 8 heavy trucks. The technology reduces fuel use under normal conditions by 65% therefore reducing vehicle operating costs by approximately \$35,000 per year (120,000 miles/\$2.50 per gallon). The technology is also expected to reduce CO₂ emissions and lower NOx emissions by 65%.

ePower engine systems, LLC has determined their technology would be highly beneficial in both used and new vehicles. The conversion process taking the vehicle from factory grade to the ePower system takes approximately 80 man hours and costs \$70,000 plus installation labor. Most customers will see their "pay-back" period in less than 24 months (120,000/\$2.50 per gallon).

ePower intends to manufacture battery packs and computer control system enclosures in LaVista. The battery packs will consist of a battery box, battery pack cooling system, the battery, battery power pack and battery monitoring description. The computer control systems will house the "brains" of the ePower drive system.

ePower will set up a manufacturing plant in La Vista, Nebraska to serve its existing and customers and expand their clients in North America.

ePower engine systems, LLC will lease a new facility building for the term of 5 years. Working capital expenditures are estimated at \$1,322,000 over the next year. Current and upcoming business is based on existing customer contracts and future growth of the business enabling the creation of a total of 20 fulltime jobs within 24 months of the date on the Notice of Approval letter from the Department.

ePower requests the CDBG loan to close a gap in financing in order to set-up manufacturing in the U.S. and create jobs.

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 is to be conditionally granted by the City to the NDO for the NDO to carry out CDBG activity(ies), with the NDO utilizing such conditionally granted CDBG funds to loan \$500,000 to the Business for the purpose specified in **PART II**; associated with the Business' facility in La Vista, Nebraska.

Refer to **PART VII** as to the NDO's role in completing some or all of the CDBG-assisted activities which comprise the Project.

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 | BUSINESS | TOTAL |
|---|---|-------------------------|--------------------|
| USES (Activities)↓ | | | |
| 0700 Direct financial assistance to for-profit business—to be carried out by NDO | <u>\$500,000</u> | <u>\$822,000</u> | \$1,322,000 |
| 0181 General Administration | <u>\$5,000</u> | <u>\$0</u> | \$5,000 |
| TOTAL | <u>\$505,000</u> | <u>\$822,000</u> | \$1,327,000 |

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 \$500,000 to be loaned to the Business is for the purpose(s) set forth in **PART II** above, and will be loaned by the NDO to the Business using CDBG funds under the following terms:

- (a) The promissory note(s) evidencing the loan(s) to the Business will be drawn in favor of the NDO, and the payments are to be made by the Business to the NDO.
- (b) Collateral requirements, if any, or loan guarantee requirements, if any, are specified in §4.04 below.
- (c) The loan will bear no interest (0% interest), unless a default event occurs triggering a default remedy which requires the payment of interest.
- (d) One component of the total loan is a \$250,000 portion which bears no interest (0% interest) and is forgivable upon the meeting of certain conditions by the Business with respect to job creation, 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 NDO, and under factual circumstances supporting such conclusion by the NDO.
- (e) The other component of the total loan is a \$250,000 portion which bears no interest, the principal of which is to be repaid in 47 equal monthly payments of \$5,208 and one final payment of \$5,224. Monthly payments are due on the 1st day of each month beginning twelve months after the DED issuance of the Notice of Release of Funds.

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

City's Obligation to Pursue Loan Collection. Notwithstanding anything in the MOU to the contrary: The City only shall be responsible for forwarding to the Department payments and other amounts actually received by the City from time to time under this MOU or any other agreement or instrument related to matters described in this MOU, and the City otherwise shall have no obligation to repay the CDBG award to the Department. The City, at its cost, shall take such action as the City determines necessary or advisable if the Business defaults on repayment required hereunder. This obligation may be contractually shifted to the NDO by the separate agreement between the parties (between the City and NDO) if they so agree. The Department will continue to look to the City as the party ultimately responsible for pursuing collection, as the City determines necessary or

advisable, although the Department will take cognizance of any agreement between the City and NDO concerning this responsibility.

§4.04 Collateral/Guarantees.

The CDBG loan is to be secured by a senior security interest granted to the NDO by the Business in equipment and machinery.

The five guarantors listed in *Attachment A* are fully and unconditionally guaranteeing the entire amount of the CDBG loan, namely \$500,000. A guarantee instrument evidencing such obligation will be executed by all guarantors 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 20, 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 24 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 20 FTE jobs, and maintain all additional jobs created as a result of the CDBG-assisted project, for 24 months measured from the date of hire for each respective job.
- (c) maintain the 0 FTE positions which represent the agreed baseline of employment for 24 months measured from the Notice of Approval letter from the Department.

(d) pay all employees of the Business a minimum hourly rate of \$9.00 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 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 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 (20 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 (24 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 or related documents or available under applicable law, the following are (but are not exclusively the only) events of default, each of which triggers the general default remedy set forth in §6.02 (or the remedies specified elsewhere in this MOU or related documents or under applicable law associated with such event or fact setting):

- (a) Failure by Business to fully satisfy the Job Creation 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 8% per annum (simple interest), from the date(s) CDBG funds were advanced to the Business by the NDO.

§6.03 Loan Documentation Responsibility.

The NDO 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 NDO), including (if applicable) any necessary security instruments or guarantees, associated with the CDBG loan. None of the costs of loan documentation for the CDBG loan 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.

PART VII: AGREEMENT PROVISIONS CONCERNING THE NDO's ROLE IN THE PROJECT.

§7.01 NDO's Status under this MOU, and References to the Enabling and Authorizing Federal Law.

Section 105(a)(15) of the Housing and Community Development Act of 1974 (such federal Act codified at 42 U.S.C. §5301 et seq.), authorizes CDBG grant recipients such as the City to provide funding to the NDO to carry out certain CDBG-funded activities.

The NDO has been previously designated by the Department (after an application and review process) as qualifying as a non-profit organization serving the development needs of communities (such as the City in this particular instance).

Such status for the NDO is an essential qualification to invoke the provisions of Section 105(a)(15) which authorizes CDBG grant recipients, such as the City, to provide funding to the NDO to carry out CDBG-funded activities. The NDO must be, in order to comply with Section 105(a)(15), and will be under the provisions of this MOU, directly carrying out some or all of the CDBG-funded activity(ies) comprising the Project (although the NDO may certainly use subcontractors), and the City must not involve itself in playing a major or controlling role in the carrying out of the activity(ies) which are to be carried out by the

NDO. A failure to observe this important separation of roles will jeopardize the "defederalization" of funds process described in §7.02 below.

§7.02 Overview of the Money Flow and Accompanying Responsibilities.

As an overview (not intended to be a comprehensive exposition), all parties to this MOU acknowledge and agree the essential nature of the money flow, and the accompanying responsibilities of the parties, are as follows:

- (a) HUD grants CDBG \$ to DED.
- (b) DED grants CDBG \$ to City which is the unit of general local government eligible to receive CDBG \$. The NDO is not eligible to directly receive CDBG \$. The City is and remains responsible for the use of the CDBG \$ granted in accordance with the Housing and Community Development Act of 1974 and HUD CDBG regulations, including the responsibility and obligation to utilize the \$ only in CDBG-eligible activities and in a manner which achieves the CDBG "national objective" (so-called) of benefiting low-to-moderate income (LMI) persons, in this instance by the Business creating and maintaining jobs for LMI employees of the Business.
- (c) City conditionally grants \$ to NDO. The grant is conditional because the NDO does not unconditionally control the \$. The NDO must carry out the CDBG-assisted activity on behalf of the City, with the City maintaining a modicum of financial and regulatory control over the Project (not, however, such as to be playing a major or controlling role in the carrying out of the activity(ies) which are to be carried out by the NDO) by use of a conditional grant administrative contract between the NDO and the City. Additionally, the NDO is and will remain subject to the contractual controls in this MOU running in favor of the Department, regarding disposition of the defederalized funds (see (f) below).
- (d) NDO carries out a CDBG-assisted activity on behalf of the City. The NDO carrying out the activity is authorized under Section 105(a)(15) [referenced earlier under §7.01]. The CDBG-assisted activity is to provide direct financial assistance to the Business by lending the CDBG \$ to the Business.
- (e) The Business essentially has to do the following (this is intended as summary language only, and does not modify the more specific requirements for the Business set forth elsewhere in this MOU):
 1. Complete the Project which is the essence of this MOU.
 2. Satisfy the job requirements, including the LMI benefit, set forth in this MOU.
 3. Repay to the NDO the CDBG-funded loan(s) made to the Business by the NDO.
- (f) If and when the Business satisfies the job requirements (including the LMI benefit) and repays the CDBG-funded loan(s), then loan repayments from the Business to the NDO will be so-called "defederalized" funds, and not be subject to CDBG Program Income requirements. See 24 C.F.R. §570.489(e)(2)(ii).
- (g) The funds are defederalized in the sense they are no longer subject to CDBG statutory and regulatory requirements when later reused by the NDO. Note particularly, however, that such later reuse by the NDO must be in accordance with

the provisions of the reuse plan earlier submitted to, and approved by, DED when DED officially designated the NDO as being authorized under Section 105(a)(15) to carry out a CDBG-assisted activity. Such funds in the hands of the NDO will remain subject to the control and limitations imposed by DED as set forth in this MOU agreement. The NDO does not have unfettered license to use the defederalized funds. The NDO is agreeing, via this MOU, to the control, conditions, and limitations set forth in this MOU.

- (h) The Department is requiring the NDO and the City to agree that such defederalized reuses of funds are, and will remain, subject to the contractual control of the Department via this MOU. The Department is authorized to override the provisions of 24 C.F.R. §570.489(e)(2)(ii), and is doing so hereby, and the Department is authorized to contractually control reuse of such funds by the NDO, and is doing so hereby.
- (i) The defederalized funds the NDO receives in the form of loan repayments from the Business are subject to this MOU's requirements that a portion of such funds be paid directly to entities so designated herein by the Department and that the remainder of such funds must be used in accordance with the NDO's Department-approved plan for reuse.

§7.03 Requirements for the NDO to Pay a Portion of Defederalized Funds to Entities Selected and Designated by the Department.

The NDO is required to pay 50% of the funds it receives as loan repayments from the Business (on the CDBG-funded loan which is contemplated in this MOU) to such public entity(ies) or non-profit organization(s) as the Department directs in this MOU, and as such direction to pay may be modified, from time to time, in a separate, written instruction (separate from this MOU) from the Department to the NDO. For present purposes of this MOU, the organization to pay shall be Invest Nebraska Corporation, 4701 Innovation Drive, Lincoln, Nebraska 68521, a non-profit corporation organized and existing under Nebraska state law. Invest Nebraska Corporation shall continue as the entity to be paid unless and until the NDO receives written instruction from the Department directing otherwise.

The NDO is required by this provision to pay, in a timely manner and in no event later than one calendar month following receipt by the NDO of such payments, 50% of all loan repayments the NDO receives from the Business (associated with CDBG-assisted loans) to the entity designated by the Department in the paragraph above.

§7.04 Requirements for the NDO to Reuse a Portion of Defederalized Funds in Accordance with Reuse Plan.

The NDO agrees to reuse all defederalized funds the NDO receives that are not paid out under the provisions of §7.03, in accordance with the terms of this MOU and with the provisions of the reuse plan earlier submitted to, and approved by, the Department when the Department officially designated the NDO as being authorized under Section 105(a)(15) to carry out a CDBG-assisted activity.

A failure to adhere to these terms by the NDO will constitute a breach of this contract, with the remedy for such breach hereby agreed by the NDO and the Department to be that the NDO will be required to immediately repay to the Department any and all such defederalized funds which are not reused in accordance with this MOU's requirements.

A failure by the NDO to so utilize defederalized reuse funds within a reasonable time (the parties hereby agreeing this means a time period no longer than two years from the receipt of payments), will trigger the Department's option to require the NDO to return such unused reuse funds to the Department. Any particular waiver by the Department of exercising this trigger will not constitute a waiver of any continuing, future right to exercise this option.

The NDO shall submit reports to the Department, at least annually, and as may be reasonably requested more frequently by the Department, accounting for all loan repayments received from the Business and the disposition of same as either paid pursuant to §7.03 above, or reused pursuant to §7.04 above. The accounting for those funds shall include receipts, reuse lending activity, and portfolio balances with loan details.

The NDO shall not assign or transfer any of the reuse funds (or its administrative obligations with respect thereto), without the prior written consent of the Department.

§7.05 Disposition of Funds In the Event of a Failure by the Business to Satisfy the CDBG National Objective.

If the Business fails to satisfy the CDBG National Objective for the Project, then the Project has failed, and the treatment and disposition of loan repayments received by the NDO from the Business is entirely different from circumstances where the CDBG National Objective is achieved and the NDO deals with the then defederalized funds under §7.03 and §7.04.

When the CDBG National Objective is not satisfied, any and all funds received by the NDO which were not paid out to the entity designated in §7.03 must be repaid to the Department by the NDO. Those funds which were paid out to the entity designated in §7.03 will be considered by the Department (when in this scenario of project failure) as having been repaid to the Department by the NDO (because the Department directed such funds to be paid out) and the NDO will be given full credit for having returned such funds to the Department (funds paid under §7.03).

§7.06 Terms and Conditions Survive.

The terms and conditions of this MOU shall remain in effect, and survive for so long as is legally necessary to continue to recognize, and to allow legal enforcement of, the agreements of the parties contained herein. This is particularly applicable to the NDO's obligations to the Department with respect to proper future reuse of the eventually defederalized funds which will flow to the NDO as a result of loan repayments by the Business to the NDO. There is no expiration of such Department control of the NDO's future reuse of such funds, unless expressly waived in writing by the Department. There is no expiration of the Department's control or ability to designate payee organizations as set forth in §7.03.

At such time in the future when only the NDO and the Department remain in privity of contract under this MOU—put another way, when the Project is completed and the City and the Business have completed their respective duties and obligations—the NDO and the Department may modify those portions of the MOU which touch upon and concern the relationship of the NDO and the Department, and may do so with legal effect without involvement of the City or the Business as parties to any such modification.

§7.07 NDO OBLIGATION OF VERIFICATION OF WORK ELIGIBILITY STATUS FOR NEW EMPLOYEES

The NDO hereby agrees to use a federal immigration verification system to determine the work eligibility status of new employees physically performing services within the State of Nebraska. In this context, "new employees" means employees hired on or after the effective date of this MOU. A "federal immigration verification system" means the electronic verification of the work authorization program authorized by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 8 U.S.C. 1324a, known as the E-Verify Program, or an equivalent federal program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work eligibility status of a newly hired employee.

This contractual obligation to verify work eligibility status for new employees physically performing services within the State of Nebraska also applies to any and all subcontractors utilized by the NDO in performing its obligations under this MOU. The NDO will be responsible to the Department for enforcing this requirement with NDO's subcontractors.

The NDO is a public contractor in its relationship established with the Department via this MOU, thus a failure by the NDO to adhere to these employment verification requirements is violative of the statutory requirements in Neb. Rev. Stat. §4-114 as well as being a breach of this MOU, and as such will be deemed a substantial breach of this MOU which may result in the Department declaring the NDO to be in default under the MOU. The remedy(ies) for such a breach and default would include forfeiture of the NDO's contractual entitlement to keep, and then reuse, the loan repayments the NDO receives under the terms of this MOU, including in such forfeiture remedy any repayments already received by the NDO from the Business prior to the time of any declaration (by the Department) of default (by the NDO) under the MOU.

These employment verification obligations of the NDO run in favor of the Department (and to no other party to this MOU), since the Department is required to adhere to the requirements of the Nebraska statute cited immediately above. The City will also be contractually required to verify the work eligibility status for its new employees, but that obligation of the City, running in favor of the Department, will be memorialized at a later time, in a different instrument (the administrative contract between the City and the Department) rather than in this MOU. The Business does not have any obligation under this Section 7.07 regarding verification of the work eligibility status of employees of the Business, nor will the Business have such obligation if and when the Project moves to stages and development beyond this MOU.

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.

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|---|---|------|
| DED—NEBRASKA DEPARTMENT OF ECONOMIC DEVELOPMENT By: _____ (Signature of Director or Designee) (Typed or Printed Name/Title) (Date) | City—City of La Vista, Nebraska By: _____ (Signature of Chief Elected Official) <i>Douglas Kindig, Mayor</i> (Typed or Printed Name/Title) (Date) 47-6050031 (Federal Identification Number) | |
| Business – ePower engine systems, LLC. By: _____ (Signature of Authorized Officer) <u>Russell A. Knudsen, Dir. Corp Finance</u> (Typed or Printed Name/Title) (Date) | NDO— MAPA Foundation By: _____ (Signature of Authorized Officer) <i>Clare Duda, Board Chairman</i> (Typed or Printed Name/Title) (Date) | |
| Guarantors— | | |
| Signature | <u>Jay Bowman</u> Typed or Printed Name | Date |
| Signature | <u>Gaylen Gordy</u> Typed or Printed Name | Date |
| Signature | <u>Andrew Claypole</u> Typed or Printed Name | Date |
| Signature | <u>Bruce Ligo</u> Typed or Printed Name | Date |
| Signature | <u>Andrews National Associates</u> Typed or Printed Name | Date |

SCHEDULE A

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