

FOR CONSIDERATION

April 26, 2011

TO: The Directors

FROM: Kenneth Adams

SUBJECT: Lakewood (Chautauqua County) – Cummins Capital – Empire State Economic Development Fund – General Development Financing (Capital Grant)

REQUEST FOR: Findings and Determinations Pursuant to Sections 16-m and 10 (g) of the Act; Authorization to Adopt the Proposed General Project Plan; Authorization to Make a Grant and to Take Related Actions

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General Project Plan

I. Project Summary

Grantee: Cummins Inc. (“Cummins” or the “Company”)

ESD\* Investment: A grant of up to \$1,000,000 to be used for a portion of the cost of new machinery and equipment.

\* The New York State Urban Development Corporation doing business as the Empire State Development Corporation (“ESD” or the “Corporation”)

Project Location: 4720 Baker Street Extension, Lakewood, Chautauqua County

Proposed Project: Acquisition and installation of new machinery and equipment and employee training associated with new product lines.

ESD Incentive Offer Accepted: November 21, 2008

Project Completion: December 2012

Number of Employees at Project Location:

Initial employment at time of ESD Incentive Offer:	1,254
Current employment level:	1,313
Minimum employment on January 1, 2013:	1,346

Grantee Contact: Mr. Nitin Abraham, Financial Controller  
4720 Baker Street Extension  
Lakewood, NY 14750  
Phone: (716) 456-2806  
Fax: (716) 456-2541

Anticipated  
Appropriation

Source: Empire State Economic Development Fund

ESD Project No.: W481

Project Team:	Origination	Michael Morse
	Project Management	Jean Bly
	Affirmative Action	Helen Daniels
	Finance	Jonevan Hornsby
	Environmental	Soo Kang

II. Project Cost and Financing Sources

<u>Financing Uses</u>	<u>Amount</u>
Machinery & Equipment	\$147,000,000
Employee Training	<u>2,100,000</u>
Total Project Costs	<u>\$149,100,000</u>

<u>Financing Sources</u>	<u>Amount</u>	<u>Percent</u>
ESD-Grant	\$ 1,000,000	1%
Company Equity	<u>148,100,000</u>	<u>99%</u>
Total Project Financing	<u>\$149,100,000</u>	<u>100%</u>

III. Project Description

A. Background

Cummins Inc., established in 1919, designs, manufactures, distributes and services diesel and natural gas engines, electric power generation systems and engine-related component products, including fuel systems, controls, air handling systems, and filtration. Company products are primarily sold to original equipment manufacturers and distributors through a network of more than 500 company-owned and independent distributor locations and approximately 5,200 dealer

locations. End products are used in vehicular, construction, agricultural, mining, marine, rail, and government equipment applications. The Company, headquartered in Columbus, Indiana, and publicly-traded on the New York State Exchange under “CMI”, is comprised of four distinct business segments including engine (“Engine Segment”), power generation, components and distribution. The four segments share technology, customers, strategic partners, brand recognition and distribution networks in order to remain competitive in their respective markets. Each of the segments competes worldwide on performance, fuel economy, delivery speed, quality, customer support and price.

Major customers include Paccar Inc. (Bellevue, WA), Navistar International Corporation (Warrenville, IL), Volvo Truck Corporation (Göteborg, Sweden) and Daimler Trucks North America LLC (Portland, OR). Cummins’ customers are also considered competitors as these customers also manufacture competing engines and related parts.

The Company’s Jamestown facility, part of the Engine Segment (“Jamestown Engine”), was established in 1975 and is currently the fifth largest employer in Chautauqua County. It manufactures and markets a broad range of diesel and natural gas powered engines under the Cummins brand name as well as various other brands primarily for the heavy and medium duty truck, light-duty automotive, bus, and recreational vehicle markets. It currently has eight machining lines that manufacture parts used in the engines manufactured on the premises as well as assembly test parts and components used in the service network and at other Cummins facilities.

In mid-2008, Jamestown Engine, in an effort to remain competitive, advised ESD of an opportunity to secure the machining of components for two industrial and automotive engine lines for the North American truck market, the new 11.9L ISX engine platform and supplemental capacity for the ISX 15L. The assembly of the engines would take place at Jamestown Engine; however, Jamestown Engine was competing against other Cummins facilities and outside suppliers for the machining of the major engine components. On November 21, 2008, Cummins accepted ESD’s offer of a \$1 million capital grant to reduce its costs and complete the \$149.1 million capital project at Jamestown Engine in the Jamestown Empire Zone. As a result, 1,254 jobs will be maintained and 92 new jobs will be created by January 1, 2013. Without ESD assistance, 147 jobs were immediately at risk, and all of the new jobs would have likely been created out of state.

## B. The Project

The project involves the acquisition and installation of new machinery and equipment necessary to produce the 11.9L ISX engine and supplemental 15L engine component machining, including employee training on new machinery and equipment. The 11.9L ISX engine line assembly and machining lines were completed and operational in 2010. The training is ongoing. The Company has not started the 15L machining line, which is projected to be complete to satisfy 2013 production requirements. The project will be financed by ESD’s grant and Company equity.

C. Financial Terms and Conditions

1. Upon execution of the grant disbursement agreement, the Company shall pay a commitment fee of 1% of the \$1,000,000 capital grant (\$10,000) and reimburse ESD for all out-of-pocket expenses incurred in connection with the project.
2. The Company will demonstrate no material adverse change in its financial condition prior to disbursement.
3. The Company will be required to contribute a minimum of 10% of the total project cost in the form of equity contributed. Equity is defined as cash injected into the project by the Company or by investors, and should be auditable through Company financial statements or Company accounts, if so requested by ESD. Equity cannot be borrowed money secured by the assets in the project.
4. Prior to disbursement, the Company must employ at least the number of Full-time Permanent Employees set forth as the Baseline Employment in the table below. A Full-time Permanent Employee shall mean (a) a full-time, permanent, private-sector employee on the Grantee's payroll, who has worked at the Project Location for a minimum of thirty-five hours per week for not less than four consecutive weeks and who is entitled to receive the usual and customary fringe benefits extended by Grantee to other employees with comparable rank and duties; or (b) two part-time, permanent, private-sector employees on Grantee's payroll, who have worked at the Project Location for a combined minimum of thirty-five hours per week for not less than four consecutive weeks and who are entitled to receive the usual and customary fringe benefits extended by Grantee to other employees with comparable rank and duties.
5. Up to \$1,000,000 will be disbursed to the Grantee in two installments as follows:
  - a) an Initial Disbursement of an amount equal to 50% of the grant (\$500,000) upon the documentation of \$57 million for the acquisition and installation of machinery and equipment and documentation of the employment of at least 1,270 Full-time Permanent Employees at the Project Location (Employment Increment of 16), and submission of documentation verifying project expenditures; and assuming that all project approvals have been completed and funds are available;
  - b) a Second Disbursement of an amount equal to 50% of the grant (\$500,000) will be disbursed upon completion the project as described in these materials, including the documentation of an additional \$90 million for the acquisition and installation of machinery and equipment (aggregate total of \$147 million), and documentation of the employment of at least 1,346 Full-time Permanent Employees at the Project Location (Employment Increment of 76), and submission of documentation verifying project expenditures, and provided Grantee is otherwise in compliance with program requirements.

Payment will be made upon presentation to ESDC of an invoice and such other documentation as ESDC may reasonably require. Expenditures must be incurred on or after November 21, 2008, to be considered eligible project costs. All disbursements must

be requested by April 1, 2013.

6. ESD may reallocate the project funds to another form of assistance, at an amount no greater than \$1 million, for this project if ESD determines that the reallocation of the assistance would better serve the needs of the Company and the State of New York. In no event shall the total amount of any assistance to be so reallocated exceed the total amount of assistance approved by the Directors.
7. In consideration for the making of the Grant, Grantee will achieve the Employment Goals set forth in Column B of the table below. If the Full-time Permanent Employee Count for the year prior to the reporting date set forth in Column A of the table below is less than eighty-five percent (85%) of the Employment Goal set forth in Column B (an "Employment Shortfall"), then upon demand by ESD, Grantee shall be obligated to repay to ESD a portion of each disbursement of the Grant, as follows:

The Recapture Amount is based on the time that has lapsed between when the Grant funds were disbursed and when the Employment Shortfall occurred. The Recapture Amount shall be calculated by aggregating the Recapture Amount for each disbursement of the Grant, which in each instance shall be equal to:

- (i) 100% of the disbursed amount if the Employment Shortfall occurred in the calendar year that the disbursement was made, or in the first full calendar year after the disbursement was made;
- (ii) 80% of the disbursed amount if the Employment Shortfall occurred in the second full calendar year after the disbursement was made;
- (iii) 60% of the disbursed amount if the Employment Shortfall occurred in the third full calendar year after the disbursement was made;
- (iv) 40% of the disbursed amount if the Employment Shortfall occurred in the fourth full calendar year after the disbursement was made;
- (v) 20% of the disbursed amount if the Employment Shortfall occurred in the fifth full calendar year after the disbursement was made.

The Grantee's number of Full-time Permanent Employees shall be deemed to be the greater of the number as of the last payroll date in the month of December for such year or the average employment for the 12 month period computed by quarter.

Baseline Employment	1,254
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A	B
Reporting Date	Employment Goals
February 1, 2012	1,254+X+Y
February 1, 2013	1,254+X+Y
February 1, 2014	1,254+X+Y
February 1, 2015	1,254+X+Y

X = Grantee's Employment Increment that will be the basis of the First Disbursement of the Grant as described in section C.5 above (i.e. X=16, and Employment Goals shall equal  $[1,254 + X = 1,270]$  if the First Disbursement is made, in the year such disbursement is made and for each year thereafter). If the First Disbursement has not yet been made then X=0.

Y = Grantee's Employment Increment that will be the basis of the Second Disbursement of the Grant as described in section C.5 above (i.e. Y=76 , and Employment Goals shall equal  $[1,254 + X + Y = 1,346]$  if the Second Disbursement is made, in the year such disbursement is made and for each year thereafter). If the Second Disbursement has not yet been made then Y=0.

#### IV. Statutory Basis

1. The proposed project would promote the economic health of New York State by facilitating the creation or retention of jobs or would increase activity within a municipality or region of the state or would enhance or help to maintain the economic viability of family farms.

As a result of this project, the Company will maintain its employment level of 1,254 and create 92 new jobs by January 1, 2013.

2. The proposed project would be unlikely to take place in New York State without the requested assistance.

Without ESD assistance, the manufacture of the 11.9L ISX and 15L product lines would have taken place at an existing Cummins facility or at a competitor facility, both out of state.

3. The project is reasonably likely to accomplish its stated objectives and the likely benefits of the project exceed costs.

Evaluated over a seven-year period, the following are anticipated project impacts (dollar values are present value):

- Fiscal benefits to NYS government from the project are estimated at \$4,474,247;
- Fiscal cost to NYS government is estimated at \$1,000,000;
- Project cost to NYS government per direct job is \$9,470;
- Project cost to NYS government per job (direct plus indirect ) is estimated at \$4,273;
- Ratio of project fiscal benefits to costs to NYS government is 4.47:1;
- Fiscal benefits to all governments (state and local) are estimated at \$7,583,814;
- Fiscal cost to all governments is \$1,000,000;

- All government cost per direct job is \$9,470;
- All government cost per total job is \$4,273;
- The fiscal benefit to cost ratio for all governments is 7.58:1;
- Economic benefits (fiscal plus total net resident disposable income from project employment) are estimated at \$34,608,729, or \$147,892 per job (direct and indirect);
- The economic benefit to cost ratio is 34.61:1;
- There is no construction activity related to this project;
- For every permanent direct job generated by this project, an additional 1.19 indirect jobs are anticipated in the state's economy;
- The payback period for NYS costs is 4 years.

(See Project Summary Benefit-Cost Evaluation attached for detail and definitions.)

4. The requirements of Section 10(g) of the Act are satisfied.

No residential relocation is required because there are no families or individuals residing on the site.

V. Environmental Review

ESD staff has determined that the project constitutes a Type II action as defined by the New York State Environmental Quality Review Act ("SEQRA") and the implementing regulations of the New York State Department of Environmental Conservation. No further environmental review is required in connection with the project.

VI. Affirmative Action

ESD's Non-Discrimination and Affirmative Action policy will apply. Cummins Inc. is encouraged to include minorities and women in any job opportunities created by the Project and to solicit and utilize Minority and Women-owned Business Enterprises for any contractual opportunities generated in connection with the Project.

VII. ESD Financial Assistance Subject to Availability of Funds and Additional Approval

The provision of ESD financial assistance is contingent upon the availability of funds and the approval of the State Division of the Budget.

VIII. Additional Submissions to Directors

Resolutions  
 New York State Map  
 Project Finance Memorandum  
 Cost-Benefit Analysis

April 26, 2011

Lakewood (Chautauqua County) – Cummins Capital – Empire State Economic Development Fund – General Development Financing (Capital Grant) – Findings and Determinations Pursuant to Sections 16-m and 10 (g) of the Act; Authorization to Adopt the Proposed General Project Plan; Authorization to Make a Grant and to Take Related Actions

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RESOLVED, that on the basis of the materials presented to this meeting, a copy of which is hereby ordered filed with the records of the Corporation, relating to the Cummins Capital – Empire State Economic Development Fund – General Development Financing (Capital Grant) Project (the “Project”), the Corporation hereby determines pursuant to Sections 16-m and 10 (g) of the New York State Urban Development Corporation Act of 1968, as amended (the “Act”), that

1. The proposed project would promote the economic health of New York State by facilitating the creation or retention of jobs or would increase activity within a municipality or region of the state or would enhance or help to maintain the economic viability of family farms;
2. The project would be unlikely to take place in New York State without the requested assistance;
3. The project is reasonably likely to accomplish its stated objectives and that the likely benefits of the project exceed costs;
4. There are no families or individuals to be displaced from the project area; and be it further

RESOLVED, that upon written finding of the President and Chief Executive Officer of the Corporation or his designee(s) that no substantive negative testimony or comment has been received at the public hearing held on the Plan, such Plan shall be effective at the conclusion of such hearing, and that upon such written finding being made, the President and Chief Executive Officer of the Corporation or his designee(s) be, and each of them hereby is, authorized to make to Cummins Inc. a grant for a total amount not to exceed One Million Dollars (\$1,000,000) from the Empire State Economic Development Fund, for the purposes, and substantially on the terms and conditions, set forth in the materials presented to this meeting, with such changes as the President and Chief Executive Officer of the Corporation or his designee(s) may deem appropriate, subject to the availability of funds and the approval of the State Division of the Budget; and be it further

RESOLVED, that the President and Chief Executive Officer of the Corporation or his designee(s) be, subsequent to the making of the grant, and each of them hereby is,

authorized to take such actions and make such modifications to the terms of the grant as he or she may deem necessary or appropriate in the administration of the grant; and be it further

RESOLVED, that the provision of ESD financial assistance is expressly contingent upon: (1) the approval of the Public Authorities Control Board, if applicable, and (2) receipt of all other necessary approvals; and be it further

RESOLVED, that the President and Chief Executive Officer of the Corporation or his designee(s) be, and each of them hereby is, authorized in the name and on behalf of the Corporation to execute and deliver any and all documents and to take all actions as he or she may in his or her sole discretion consider to be necessary or proper to effectuate the foregoing resolutions.

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