

FOR CONSIDERATION

July 15, 2010

TO: The Directors

FROM: Dennis M. Mullen

SUBJECT: Elmsford (Westchester County) – San-Mar Laboratories Capital – JOBS Now Program – Capital Grant

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

General Project Plan

I. Project Summary

Grantee: San-Mar Laboratories, Inc. (the “Company”)

ESD* Investment: A grant of up to \$750,000 for the purchase 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: 4 Warehouse Lane, Elmsford, Westchester County

NYS Empire Zone
(or equivalent): N/A

Proposed Project: Facility renovations, system improvements, training, and purchase and installation of new machinery and equipment associated with an expansion.

ESD Incentive Offer Accepted: September 3, 2009 (initial); May 14, 2010 (revised)

Project Completion: July 2011

Number of Employees at Project Location:
Initial employment at time of initial ESD Incentive Offer: 199

Current employment level: 244
 Minimum employment by January 1, 2013: 314

Grantee Contact: Mr. Carlo Micceri, Director, New Business Development
 4 Warehouse Lane
 Elmsford, NY 10523
 Phone: (914) 592-3130
 Fax: (914) 592-5373

Anticipated
 Appropriation
 Source: JOBS Now 100

ESD Project No.: W530

Project Team:	Origination	Paul Taxter
	Project Management	Javier Roman-Morales
	Affirmative Action	Denise Ross
	Finance	Ross Freeman
	Environmental	Soo Kang

II. Project Cost and Financing Sources

<u>Financing Uses</u>	<u>Amount</u>	
Construction	\$800,000	
Telecom Equipment	25,000	
Machinery and Equipment Acquisition	846,000	
Employee Training Cost	25,000	
Soft Costs, including Design and Engineering	<u>200,000</u>	
Total Project Costs	<u>\$1,896,000</u>	
<u>Financing Sources</u>	<u>Amount</u>	<u>Percent</u>
ESD-Grant	\$ 750,000	39.6%
Company Equity	<u>1,146,000</u>	<u>60.4%</u>
Total Project Financing	<u>\$1,896,000</u>	<u>100.0%</u>

III. Project Description

A. Background

San-Mar Laboratories is an FDA approved over-the-counter (“OTC”) drug and device contract manufacturer, primarily dealing in cosmetics and pharmaceutical products. It is privately held and structured as an S Corporation located in Westchester County. Founded in 1975, San-Mar Laboratories is the largest manufacturing employer in Elmsford, and one of the thirteen largest manufacturing employers in Westchester County. The Company’s products include liquids and semi-solids (creams, lotions, gels, ointments, etc.) which it produces for national brand marketers. Due to its specific type of product line the San-Mar’s manufacturing facility is under FDA jurisdiction and regulation. Major customers representing almost 60% of sales include: Beauty Avenues, NeoStrata Company, CVS Distribution Incorporated, 3M Company, and Stiefel Laboratories.

In 2009, San-Mar was facing increasing operating costs and decided it needed to upgrade its facilities in order to compete in its markets. The Company had also identified an opportunity to compete for large volume production for Johnson & Johnson as well as the possibility to enter into the high-alcohol manufacturing market. San-Mar did not have the capacity for such production and realized it would need to expand its facilities and invest in new machinery and equipment. The Company was considering several options: lay-offs to reduce operating costs; moving and expanding to less expensive locations in Texas, New Jersey and Mexico; or selling its business to a competitor when it approached ESD for assistance in the summer of 2009. In an effort to keep the Company in Westchester, ESD offered a \$750,000 JOBS Now 100 grant that was accepted on September 3, 2009 and revised on May 14, 2010. As a result of the project, San-Mar will not only retain the 199 existing full-time jobs but it will create an additional 115 full-time jobs over a three-year period. Without ESD funding, San-Mar would no longer be able to stay competitive within the industry and would be forced to move operations out of state.

B. The Project

The project includes a 3-year, 3-phase, \$1.9 million capital investment intended to improve San-Mar’s manufacturing facility. The project consists of:

- Phase I – installation of a new computer system and the new kettles,
- Phase II – installation of the new stainless steel water system, and
- Phase III – completion of any modifications/addition necessary in order to manufacture high-alcohol products.

As a result of the equipment purchase the Company will be able to improve labor efficiency and productivity which will make possible it for San-Mar to become cost competitive for larger volume contract production. As an FDA regulated enterprise, the new equipment must be validated to ensure that the efficacy of finished product is unchanged by the equipment and/or process change.

By April 2010, phase I of the project was complete and the Company has already created 45

new full-time permanent jobs as a result of this project.

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 \$10,655,843;
- Fiscal cost to NYS government is estimated at \$750,000;
- Project cost to NYS government per direct job is \$3,948;
- Project cost to NYS government per job (direct plus indirect) is estimated at \$1,488;
- Ratio of project fiscal benefits to costs to NYS government is 14.21:1;
- Fiscal benefits to all governments (state and local) are estimated at \$18,989,721;
- Fiscal cost to all governments is \$750,000;
- All government cost per direct job is \$3,948;
- All government cost per total job is \$1,488;
- The fiscal benefit to cost ratio for all governments is 25.32:1;
- Economic benefits (fiscal plus total net resident disposable income from project employment) are estimated at \$101,234,016, or \$200,879 per job (direct and indirect);
- The economic benefit to cost ratio is 134.98:1;
- Project construction cost is \$1,025,000 which is expected to generate 8 direct job years and 4 indirect job years of employment;
- For every permanent direct job generated by this project, an additional 1.71 indirect jobs are anticipated in the state's economy;
- The payback period for NYS costs is 1 year.

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

C. Financial Terms and Conditions

1. The Company will 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 or the Company's shareholders will contribute at least 10% in equity to the Project. Equity is defined as any non-debt source of capital, and should be auditable through Company financial statements or Company accounts, if so requested by ESD.
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 \$750,000 will be disbursed to the Grantee in three installments as follows:
 - a) an Initial Disbursement of an amount equal to 1/3 of the grant (\$250,000) will be disbursed upon documentation of machinery and equipment project costs totaling \$300,000, and documentation of the employment of at least 244 Full-time Permanent Employees at the Project Location (Employment Increment of 45), assuming that all project approvals have been completed and funds are available;
 - b) a Second Disbursement of an amount equal to 1/3 of the grant (\$250,000) will be disbursed upon documentation of machinery and equipment project costs totaling \$500,000 (\$800,000 cumulative machinery and equipment costs), and documentation of the employment of at least 279 Full-time Permanent Employees at the Project Location (Employment Increment of 35), provided Grantee is otherwise in compliance with program requirements;
 - c) a Third Disbursement of an amount equal to 1/3 of the grant (\$250,000) will be disbursed upon documentation verifying expenditure of an additional \$1,000,000 (aggregate project expenditures of \$1,896,000), and documentation of the of at least 314 Full-time Permanent Employees at the Project Location (Employment Increment of 35), 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. Expenses must be incurred on or after September 17, 2009 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 \$750,000, 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	199
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A	B
Reporting Date	Employment Goals
January 1, 2011	$199+X+Y+Z$
January 1, 2012	$199+X+Y+Z$
January 1, 2013	$199+X+Y+Z$
February 1, 2014	$199+X+Y+Z$
February 1, 2015	$199+X+Y+Z$

X = Grantee's Employment Increment that will be the basis of the Initial Disbursement of the Grant as described in section C.5 above (i.e. $X=45$, and Employment Goals shall equal $[199 + X = 244]$ if the Second Disbursement is made, in the year such disbursement is made and for each year thereafter). If the Initial 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. $Y=35$, and Employment Goals shall equal $[199 + X + Y =279]$ if the Third 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 $Y=0$.

Z = Grantee’s Employment Increment that will be the basis of the Third Disbursement of the Grant as described in section C.6 above (i.e. $Z=35$, and Employment Goals shall equal $[199 + X + Y + Z = 314]$ if the Third Disbursement is made, in the year such disbursement is made and for each year thereafter). If the Third Disbursement has not yet been made then $Y=0$.

IV. Statutory Basis

The project meets the statutory requirement of a JOBS Now 100 Project because the Company will create at least 100 new full-time permanent private sector jobs. No residential

relocation is required as 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. The Company 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

July 15, 2010

Elmsford (Westchester County) – San-Mar Laboratories Capital – JOBS Now Program – Capital Grant – Findings and Determinations Pursuant to Sections 10 (g) of the Act; Authorization to Adopt the Proposed General Project Plan; Authorization to Make a Grant and to Take Related Actions

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 San-Mar Laboratories Capital – JOBS Now Program – Capital Grant Project (the “Project”), the Corporation hereby determines pursuant to Section 10 (g) of the New York State Urban Development Corporation Act of 1968, as amended (the “Act”), that there are no families or individuals to be displaced from the project area; and be it further

RESOLVED, that the Corporation does hereby adopt, subject to the requirements of Section 16(2) of the Act, the proposed General Project Plan (the “Plan”) for the Project submitted to this meeting, together with such changes therein as the Chairman and Chief Executive Officer of the Corporation or his designee(s) may deem appropriate, a copy of which Plan, together with such changes, is hereby ordered filed with the records of the Corporation; and be it further

RESOLVED, that upon written finding of the Chairman 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 Chairman and Chief Executive Officer of the Corporation or his designee(s) be, and each of them hereby is, authorized to make to San-Mar Laboratories, Inc. a grant for a total amount not to exceed Seven Hundred and Fifty Thousand Dollars (\$750,000) from the JOBS Now Program, for the purposes, and substantially on the terms and conditions, set forth in the materials presented to this meeting, with such changes as the Chairman 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 Chairman 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 Chairman 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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