

FOR CONSIDERATION

July 13, 2011

TO: The Directors

FROM: Kenneth Adams

SUBJECT: Lancaster (Erie County) – Buffalo Filter 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 ; Determination of No Significant Effect on the Environment

General Project Plan

I. Project Summary

Grantee: Medtek Devices, Inc. d/b/a Buffalo Filter (“Buffalo Filter” or the “Company”)

ESD* Investment: A grant of up to \$250,000 to be used for a portion of the cost of construction of a new building.

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

Project Location: 5900 Genesee Street, Lancaster, Erie County

Proposed Project: Acquire property, construct a new facility, and purchase and install new machinery and equipment.

ESD Incentive Offer Accepted: February 19, 2008

Project Completion: June 2011

Number of Employees at Project Location:

Initial employment at time of Application to ESD:	60
Current employment level:	66
Minimum employment on January 1, 2013:	110

Grantee Contact: Ms. Nicole Piciulo, Director of Finance
5900 Genesee Street
Lancaster, NY 14086
Phone: (716) 835-7000, ext. 223
Fax: (716) 835-3414

Anticipated
Appropriation

Source: Empire State Economic Development Fund

ESD Project No.: V956

Project Team:	Origination	Ray Witzleben
	Project Management	Jean Bly
	Affirmative Action	Helen Daniels
	Finance	Amit Nihalani
	Environmental	Soo Kang

II. Project Cost and Financing Sources

<u>Financing Uses</u>	<u>Amount</u>
Land	\$ 250,000
Building Construction	3,900,000
Machinery & Equipment	750,000
Soft Costs	<u>450,000</u>

Total Project Costs \$5,350,000

<u>Financing Sources</u>	<u>Amount</u>	<u>Percent</u>	<u>Rate/Term/Lien</u>
ESD-Grant	\$ 250,000	5%	
Bank of America-Loan	3,400,000	63%	5.73%/20 yrs/1 st lien on RE
Bank of America-Loan	750,000	14%	4.5%/7 yrs/1 st on M&E
Company Equity	<u>950,000</u>	<u>18%</u>	
Total Project Financing	<u>\$5,350,000</u>	<u>100%</u>	

III. Project Description

A. Background

Buffalo Filter was originally established in 1991 as a small, privately-owned company manufacturing its own brand of filters and smoke evacuation systems. Since being acquired by Medtek Devices in 1995, it has become an industry leader in the manufacturer of hundreds of OEM, private label, and co-labeled products used for the evacuation and filtration of hazardous smoke plume and/or aerosols generated during electrosurgical and laser procedures. Buffalo Filter continues to offer its own brand of technologically advanced smoke evacuation equipment, filters and accessories, as well as provides educational information concerning the dangers of surgical smoke plume to healthcare workers, promoting safer work and patient environments. Buffalo Filter currently owns eight patents and has over twenty product lines registered with the Federal Drug Administration involving over 150 products used for filtering infectious microorganisms, organic and inorganic gases and particulate matter, which it markets around the world in over 52 countries through direct sales, independent sales representatives/agents and distributors.

Buffalo Filter's products are sold to plastic surgeons, dermatologists and ophthalmologists, and to hospital and healthcare groups including Novation, Premier, Magnet, and Broadlane. Major customers include Covidien (Boulder, CO); Berchtold (Charleston, SC); and Bovie Medical (Clearwater, FL). Major competitors include IC Medical (Phoenix, AZ); Surgimedics (Lake City, PA); and Stackhouse (Santa Ana, CA).

Reports indicate that growth of the surgical smoke plume evacuation market ranges from 7 to 8.5% annually driven by mandates from organizations such as Occupational Safety & Health Administration, The Joint Commission, and American National Standards Institute. The U.S. Government estimates that surgeries in the United States alone are increasing at a rate of approximately 3% annually. Additionally, international growth represents approximately 40% to 50% of the U.S. market in terms of demand. Denmark, Australia, and Canada have recently added strong mandates for implementing surgical smoke plume evacuation in all surgical procedures.

In late 2007, Buffalo Filter notified ESD that it had outgrown its current leased facility and needed to expand operations to accommodate expected growth due to increased market demands. The Company was considering constructing a new facility in Erie County or relocating operations to Virginia or Florida, in close proximity to the Company owner's residence. On February 1, 2008, ESD provided Buffalo Filter with an incentive proposal consisting of a \$250,000 capital grant, which the Company accepted, resulting in its decision to construct a facility in the Town of Clarence. Subsequent to the acceptance of the incentive proposal, the Company could not move forward with its original plan to develop a facility in the Town of Clarence due to issues with the developer agreeing to construct an access road. In early 2010, Buffalo Filter identified a different site in the Town of Lancaster, which it subsequently purchased in August 2010 and started construction in

September 2010. As a result, 60 jobs will be retained and 50 new jobs will be created by January 1, 2013.

Previously, ESD Directors approved a \$27,888 STRAP grant in January 2003 to assist with the implementation of a lean manufacturing program and a \$25,000 Global Export Marketing grant in February 2006 to assist with the re-engineering of a new smoke evacuation product, marketing, literature translation, and trade show exhibits. The Company is in compliance with the terms of the previous grants, which have been fully disbursed.

B. The Project

The \$5.35 million project involves the acquisition of a 9.47-acre parcel, the construction of a 50,000-square-foot facility, and the acquisition and installation of new machinery and equipment. The construction of the new facility in Lancaster is complete and the acquisition and installation of machinery and equipment was completed in June 2011 and fully-operational in July 2011. Palmerton Holdings, Inc., a real estate holding company with common ownership, constructed the new facility. In May 2011, Buffalo Filter relocated its operations from its leased facility in Amherst. The Company has already created 6 new jobs.

C. Financial Terms and Conditions

1. Upon execution of the grant disbursement agreement, the Company shall pay a commitment fee of 1% of the \$250,000 capital grant (\$2,500) and reimburse ESD for all out-of-pocket expenses incurred in connection with the project.
2. The Company will demonstrate no material or adverse changes 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 after the Company's acceptance of ESD's offer. 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 \$250,000 will be disbursed to the Grantee in three installments as follows:
 - a) an Initial Disbursement of an amount equal to 50% of the grant (\$125,000) upon completion of the project as described in these materials as evidenced by a certificate of occupancy; submission of documentation verifying real estate, construction and machinery and equipment project costs totaling \$3.2 million incurred by Buffalo Filter and/or Palmerton Holdings, Inc.; and documentation of the employment of at least 60 Full-time Permanent Employees at the Project Location, assuming that all project approvals have been completed and funds are available;
 - b) a Second Disbursement of an amount equal to 25% of the grant (\$62,500) will be disbursed upon documentation of the employment of at least 85 Full-time Permanent Employees at the Project Location (Employment Increment of 25), provided Grantee is otherwise in compliance with program requirements;
 - c) a Third Disbursement of an amount equal to 25% of the grant (\$62,500) will be disbursed upon documentation of the employment of at least 110 Full-time Permanent Employees at the Project Location (Employment Increment of 25), 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 February 19, 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 \$250,000, 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	60
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A	B
Reporting Date	Employment Goals
February 1, 2012	60+X+Y
February 1, 2013	60+X+Y
February 1, 2014	60+X+Y
February 1, 2015	60+X+Y

X = 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. X=25, and Employment Goals shall equal [60 + X = 85] 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 X=0.

Y = Grantee's Employment Increment that will be the basis of the Third Disbursement of the Grant as described in section C.5 above (i.e. Y=25, and Employment Goals shall equal [60 + X + Y = 110] 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

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 60 full time permanent employees and create 50 new jobs by January 1, 2013.

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

The Company considered relocating its operations to Florida or Virginia. ESD's assistance helped to reduce costs and make the project feasible in New York.

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 \$3,603,360;
- Fiscal cost to NYS government is estimated at \$279,429;
- Project cost to NYS government per direct job is \$3,481;
- Project cost to NYS government per job (direct plus indirect) is estimated at \$1,685;
- Ratio of project fiscal benefits to costs to NYS government is 12.90:1;
- Fiscal benefits to all governments (state and local) are estimated at \$6,838,813;
- Fiscal cost to all governments is \$579,645;
- All government cost per direct job is \$7,222;
- All government cost per total job is \$3,495;
- The fiscal benefit to cost ratio for all governments is 11.80:1;
- Economic benefits (fiscal plus total net resident disposable income from project employment) are estimated at \$29,431,448, or \$177,438 per job (direct and indirect);
- The economic benefit to cost ratio is 50.77:1;
- Project construction cost is \$4,350,000 which is expected to generate 44 direct job years and 30 indirect job years of employment;
- For every permanent direct job generated by this project, an additional 1.07 indirect jobs are anticipated in the state's economy;
- The payback period for NYS costs is one year.

(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

The Town of Lancaster, as lead agency, has completed an environmental review of the proposed project, pursuant to the requirements of the State Environmental Quality Review Act ("SEQRA") and the implementing regulations of the New York State Department of Environmental Conservation. This review found the project to be a Type I Action, which would not have a significant effect on the environment. The lead agency issued a Negative Declaration on June 7, 2010. ESD staff reviewed the Negative Declaration and supporting materials and concurs. It is

recommended that the Directors make a Determination of No Significant Effect on the Environment.

VI. Affirmative Action

ESD's Non-Discrimination and Affirmative Action policy will apply. Buffalo Filter 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 13, 2011

Lancaster (Erie County) – Buffalo Filter 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

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 Buffalo Filter 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 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 President 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 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 Designate of the Corporation or his designee(s) be, and each of them hereby is, authorized to make to Medtek Devices, Inc. d/b/a Buffalo Filter a grant for a total amount not to exceed Two Hundred Fifty Thousand Dollars (\$250,000) 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 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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July 13, 2011

Lancaster (Erie County) – Buffalo Filter Capital – Empire State Economic Development Fund – General Development Financing (Capital Grant) – Determination of No Significant Effect on the Environment

RESOLVED, that based on the material submitted to the Directors with respect to the Buffalo Filter Capital – Empire State Economic Development Fund – General Development Financing (Capital Grant) Project, the Corporation hereby determines that the proposed action will not have a significant effect on the environment.

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