

FOR CONSIDERATION

June 28, 2011

TO: The Directors

FROM: Kenneth Adams

SUBJECT: New York (New York County) – ImClone 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

General Project Plan

I. Project Summary

Grantee: ImClone Systems Corporation (“ImClone” or the “Company”)

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

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

Project Location: 450 East 29th Street, New York, New York County

Proposed Project: Fit out of a biotech research and development facility and the purchase and installation of new machinery and equipment.

ESD Incentive Offer Accepted: April 1, 2008 (initial offer); July 22, 2009 (revised offer)

Project Completion: August 2010

Number of Employees at Project Location:

Initial employment at time of ESD Incentive Offer:	135
Current employment level:	142
Minimum employment on January 1, 2015:	170*

*Up to 10% of Full-Time Permanent Employees may be Full-time Contract Employees.

Grantee Contact: Howard Smulewitz, Assistant Vice President, Taxes
33 ImClone Drive
Branchburg, NJ 08876
Phone: (908) 252-3828
Fax: (908) 218-7764

Anticipated
Appropriation
Source: Empire State Economic Development Fund

ESD Project No.: W163

Project Team:	Origination	Jeff Janiszewski
	Project Management	Brendan Healey
	Affirmative Action	Helen Daniels
	Finance	Amit Nihalani
	Environmental	Soo Kang

II. Project Cost and Financing Sources

<u>Financing Uses</u>	<u>Amount</u>
Machinery & Equipment	<u>7,000,000</u>

Total Project Costs	<u>\$7,000,000</u>
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<u>Financing Sources</u>	<u>Amount</u>	<u>Percent</u>
ESD-Grant	\$1,000,000	14%
Company Equity	<u>6,000,000</u>	<u>86%</u>
Total Project Financing	<u>\$7,000,000</u>	<u>100%</u>

III. Project Description

A. Background

ImClone Systems Corporation is a wholly-owned subsidiary of the publicly traded Eli Lilly and Company. ImClone is a fully integrated global biopharmaceutical company committed to advancing oncology care by developing and commercializing a portfolio of targeted biologic treatments designed to address the medical needs of patients with a variety of cancers. The Company focuses on what they believe are two promising strategies for treating cancer: growth factor blockers and angiogenesis inhibitors. ImClone's clients are mostly wholesalers that serve pharmacies, physicians, other healthcare professionals and hospitals. Its competitors include Amgen, Genentech (subsidiary of Roche Pharmaceuticals) and OSI Pharmaceuticals.

ImClone's commercially available product, ERBITUX[®], is a first-of-its-kind antibody that was first approved by the U.S. Food and Drug Administration in February 2004 for use in the treatment of patients with metastatic colorectal cancer who are intolerant to chemotherapy. This drug has since been approved for broader application. In addition, the Company has advanced a number of investigational fully-human monoclonal antibodies to various stages of clinical development, including those targeting angiogenesis and growth signaling mechanisms, which can be used to treat various kinds of cancer and nonmalignant diseases.

ImClone determined in 2008 that it would not be renewing its lease in Lower Manhattan, which was due to expire in 2011. This operation housed 135 research and development workers. In 2008, ImClone considered relocating this research and development operation to Branchburg, New Jersey, which was already home to its operations and manufacturing facility and would have produced certain economies of scale. In addition, the State of New Jersey offered substantial incentives to move to Branchburg. ImClone's management approached ESD for financial assistance to relocate to East River Science Park, New York City's first major bioscience office park, which is strategically located along Manhattan's East Side medical corridor. Once completed, the East River Science Park will contain over 1 million square feet of first-class office and laboratory space.

In order to induce ImClone to proceed with the project in New York State, ESD offered a \$1,000,000 capital grant to assist with the project in Manhattan. ImClone accepted the offer in July 2009. As a result of the project, ImClone will retain 135 jobs through January 1, 2015, and create 35 new jobs. Without ESD's assistance, it is likely that this office would have been relocated to New Jersey. In addition, ImClone's presence in East River Science Park has made the remainder of East River Science Park more marketable.

B. The Project

The project entailed the relocation of ImClone's research and development operations from lower Manhattan to a newly constructed 90,000-square-foot facility in the East River Science Park. ImClone became the anchor tenant of East River Science Park. Alexandria Real Estate Equities,

Inc. ("Alexandria"), the landlord, spent over \$30 million on construction of ImClone's facility. The Company signed a 15 year lease with Alexandria for the space and has purchased new machinery and equipment. This new facility enhances ImClone's research and development capabilities.

Construction on ImClone's new facility began in July 2009 and was completed in August 2010. The Company currently employs 142 people, which includes the creation of 7 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 \$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. Eli Lilly and Company will guarantee the grant repayment obligation of its subsidiary, ImClone Systems Corporation, in the event of an Employment Shortfall or other default, as defined in these materials or the Grant Disbursement Agreement.
4. 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.
5. 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.

Up to 10% of Full-Time Permanent Employees may be Full-time Contract Employees. A Full-time Contract Employee shall mean (a) a full-time private sector employee (or self-employed person) who is not on the Grantee's payroll but who works exclusively for the Grantee at the Project Location for a minimum of thirty-five hours per week for not less than four consecutive weeks, providing services that would otherwise be provided by a Full-time Permanent Employee. The position held by a Full-time Contract Employee must

be a year-round position; or (b) two part-time, private-sector employees (or self employed individuals) that are not on the Grantee's payroll but who have worked for the Grantee at the Project Location for a combined minimum of thirty-five hours per week for not less than four consecutive weeks providing services that are similar to services that would otherwise be performed by a Full-time Permanent Employee.

6. 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 documentation of machinery and equipment project costs totaling \$2,200,000, upon completion of the project substantially as described in these materials, and upon documentation of the employment of at least 135 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 50% of the grant (\$500,000) will be disbursed no sooner than 24 months after the Initial Disbursement was made, upon documentation of the employment of at least 170 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 ESD of an invoice and such other documentation as ESD may reasonably require. Expenses must be incurred on or after July 22, 2009, to be considered eligible project costs. All disbursements must be requested by April 1, 2014.

7. ESD may reallocate the project funds to another form of assistance, at an amount no greater than \$1,000,000, 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.
8. 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	135
A	B
Reporting Date	Employment Goals
February 1, 2012	135+X
February 1, 2013	135+X
February 1, 2014	135+X
February 1, 2015	135+X

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=35, and Employment Goals shall equal [135 + X = 170] 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.

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 135 and create 35 new jobs.
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 an existing facility in New Jersey. 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 \$9,190,883;
- Fiscal cost to NYS government is estimated at \$1,079,568;
- Project cost to NYS government per direct job is \$9,223;
- Project cost to NYS government per job (direct plus indirect) is estimated at \$5,280;
- Ratio of project fiscal benefits to costs to NYS government is 8.51:1;
- Fiscal benefits to all governments (state and local) are estimated at \$17,105,277;
- Fiscal cost to all governments is \$1,891,156;
- All government cost per direct job is \$16,157;
- All government cost per total job is \$9,250;
- The fiscal benefit to cost ratio for all governments is 9.04:1;
- Economic benefits (fiscal plus total net resident disposable income from project employment) are estimated at \$100,282,936, or \$490,501 per job (direct and indirect);
- The economic benefit to cost ratio is 53.03:1;
- Project construction cost is \$30,001,000 which is expected to generate 163 direct job years and 88 indirect job years of employment;
- For every permanent direct job generated by this project, an additional 0.74 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

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. ImClone Systems Corporation 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

June 28, 2011

New York (New York County) – ImClone 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 ImClone 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 of the Corporation or his designee(s) be, and each of them hereby is, authorized to make to ImClone Systems Corporation 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 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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