

**C. Town of Stillwater - Luther Forest Infrastructure Capital II –  
NYSEDP and Upstate City-by-City (X043, X044)**

November 18, 2010

Authorization to Adopt the First Amendment to the GPP, Grantee, Project Scope, and Budget

**Original Grantee:** Luther Forest Technology Campus Economic Development Corporation (“LFTCEDC” or the “Organization”)

**New Grantee:** Town of Stillwater (“Stillwater” or the “Town”)

**ESD Investment:** \$8,100,000 (New York State Economic Development Program) and \$3,736,000 (Upstate City-by-City); approved on March 26, 2010

**Project Location:** Towns of Malta and Stillwater, Saratoga County

**Project Completion:** February 2012

**Background/Project Status:**

These materials refer to and include, in their entirety, the attached materials (the “Materials”) presented to and approved by Directors on March 26, 2010. In addition, the subject materials further describe the need for ESD to reallocate the grant funds to ensure that there is no disruption in the critical infrastructure development necessary for GlobalFoundries’ chip fabrication facility to proceed as planned.

The Luther Forest Technology Campus (“the “Campus”) is a 1,414-acre site in the towns of Malta and Stillwater dedicated to semiconductor and nanotechnology manufacturing and other innovative technologies. In 2009, GlobalFoundries U.S., Inc. (“GUS”) acquired 222 acres of the site (the “GUS Project Site”) to construct and equip a 1.2 million-square-foot semiconductor wafer manufacturing facility (“Fab 8”). The construction of Fab 8 began on June 15, 2009. The project is expected to take approximately two years to complete and an additional twelve to eighteen months to ramp up to full operating mode, with volume production, which at this time, is anticipated in 2012.

In support of the establishment of a world-class microchip wafer fabrication facility in New York State (the “State”), from 2002 to 2010, the ESD Directors approved \$9,625,000 in loans to acquire the Campus and \$46,482,485 in grants for the development of infrastructure for a chip fabrication facility to LFTCEDC or the Saratoga Economic Development Corporation. The funds were used for: costs, both on the GUS Project Site and on the Campus, associated with the pre-development of the GUS Project Site, including consultant costs for environmental and engineering studies and other activities related to the completion of the Environmental Impact Statement; pre-permitting costs; acquisition of land; studies related to transportation and utility infrastructure, wetlands preservation, archaeological investigations, mapping, site planning, and environmental surveys and analyses; legal fees, initial project marketing, strategic planning, and project management associated with the Campus; and prerequisite infrastructure elements for GUS’ development of the new chip fabrication facility at the Campus. \$665 million has also been

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authorized by ESD for GUS for construction of the foundry and research and development. As of November 2010, \$13,653,962 in grants has been disbursed to LFTCEDC, and all loan funds have been disbursed. LFTCEDC currently owes approximately \$12 million, inclusive of interest, to ESD as repayment of the loans made for land acquisition. On October 22, 2010, ESD began proceedings by sending Notices of Default to the LFTCEDC seeking repayment of more than \$1.75 million in loans that went into default earlier this year.

Also as of November 2010, the following infrastructure elements **have** been completed:

*Water Line and Water Tank* - The county water line is complete; the anticipated service date for GUS was July 2010. The 5-million gallon water tank, which is being built by the Saratoga County Water Authority, was completed in September 2010.

*Sewer* - The sewer punch list and repair work are complete; LFTCEDC is awaiting acceptance by the Saratoga Sewer District #1. Line dedication and transfer of ownership to the Sewer District occurred in August 2010.

*Electric Transmission Line* - The 115KV electric transmission line was energized on September 10, 2010 from the Mulberry substation. The transmission line from the Malta substation is scheduled to be energized on December 24, 2010.

*Roads* - The internal campus roads are complete; Stonebreak Road is open to the public. Cold Springs Road, Contract #1 is complete; LFTCEDC is awaiting final acceptance from the Town of Stillwater.

As of November 2010, the following infrastructure elements **have not** been completed:

*Roads* - Cold Springs Road, Contract #2 (a fourteen-month project) was set to begin construction in August 2010.

*Gas Line Expansion* - A new 12" gas line will be installed to serve GUS capacity needs. National Grid has begun the preliminary design process and the Article 7 procedure to obtain New York State Public Service Commission ("PSC") approval. Line construction is anticipated to start Spring 2011.

*Second Water Source* - The process to identify a second water sources has begun. Viable alternatives will be studied along with approximate costs.

The design work for Fab 8 is 100% complete, including civil, structural and ancillary buildings, and the systems design is approximately 80% complete. Construction procurement is about 65% complete and the construction project is about 50% complete. The major Fab 8 project milestones reached to date include:

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Start Design Phase Work – April 7, 2009

Start Work on Site – June 15, 2009

Concrete Batch Plant Operational – August 30, 2009

First Concrete Placement – September 9, 2009

First Vertical Concrete – September 24, 2009

Design Completion Building – October 15, 2009

First Steel Truss in Place – December 5, 2009

Central Utility Building Last Steel – January 27, 2010

Fab 8 Phase 1 Last Steel – May 27, 2010

Fab 8 Phase 2 Announcement – June 1, 2010

Announcement of the new GlobalFoundries Research Center – October 27, 2010

**Proposal:**

GUS has advised ESD of challenges in completing the project, particularly with issues related to infrastructure. The State has already invested substantial sums in the project and has a strong interest in the project's success. In order to accommodate GUS' concerns and to protect the State's investment, ESD is proposing to offer solutions and related actions. Specifically, ESD is proposing to redirect the \$8.1 million NYSEDP grant and \$300,000 from the Upstate City-by-City grant, originally authorized to LFTCEDC, directly to the Town of Stillwater to complete the remaining road work. Additionally, ESD will reallocate \$75,000 from the Upstate City-by-City grant to OGS to facilitate the second water source study. The budget for Cold Spring Road Corridor in the March 26, 2010 General Project Plan (“GPP”), which included Contracts #1 and #2, was \$14.1 million. As of November 2010, Contract #1 is complete at an actual cost of \$3.3 million. Contract #2, reflected in the revised budget below, is projected to cost \$8.4 million. The budget for the second water source consultant remains approximately the same from the March 26, 2010 GPP. The Town and OGS have the requisite experience and expertise to undertake these infrastructure components. Additionally, LFTCEDC was simply the pass through entity for project funding rather than the actual project manager of the design and construction. As such, the proposed grantees have been involved with the project since its inception.

Cold Spring Road Corridor Construction - General:

Cold Spring Road North will be realigned as the main approach into the site and a “T” type intersection will be constructed with Cold Spring Road South. The unpaved portion of Cold Spring Road will be paved, and Farley and Fitch Roads will be improved to meet the minimum Town of Stillwater standards with the existing Right of Way (“ROW”). The Town has been providing general contracting services. The Town owns the ROW for Cold Spring Road and has been consulting with Chazen Engineering (based in Troy), who will manage the construction process.

Cold Spring Road Corridor Construction - Scope of Current Project:

ESD will reallocate \$8.4 million to the Town of Stillwater to release the Cold Spring Road Corridor construction Contract #2, which consists of a full-depth reconstruction including clearing, grubbing, grading, drainage, and paving of approximately 4.28 miles (22,580 linear

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feet) of roadway. The roadway is one eleven-foot lane in each direction with a four-foot shoulder. A “T” type intersection will be constructed at Cold Spring Road South. The unpaved portion of Cold Spring Road will be paved and Fitch, Farley and Elmer Robinson roads will be improved to meet the minimum Town standards.

**Second Water Source – General:**

The need for a second independent source of water has been identified by GUS to service Fab 8. An acceptable solution has not yet been identified. Engineering input is required to determine the ultimate solution and scope of this project. Input from GUS and ESD will be required for the final solution before this project can proceed.

**Second Water Source - Scope of Current Project:**

ESD will reallocate \$75,000 to OGS to engage a qualified engineer/consulting firm to evaluate all potential and acceptable solutions to provide a second water source. This study will also include preliminary costs for each identified solution.

**Involved Party:**

Town of Stillwater – The Town of Stillwater, in Saratoga County, is home to approximately twenty percent (20%) of the Campus. Approximately eighty percent (80%) is within the Town of Malta. The road improvements described in this project will satisfy local laws and will be consistent with SEQR Findings governing development of Fab 8, as well as future development on the Campus.

**Revised Project Scope and Budget:**

The revised budget for X043 and X044 is as follows:

Financing Uses	Amount	Financing Sources	Amount	Percent
Cold Spring Road Corridor	8,400,000	ESD Grant (X043; NYSEDP)	8,100,000	96%
Second Water Source - Consultant	75,000	ESD Grant (X044; Upstate City-by-City)	375,000	4%
Total Project Costs	\$8,475,000	Total Project Financing	\$8,475,000	100%

**Financial Terms and Conditions:**

1. The Grantee(s) will reimburse ESD for all out-of-pocket expenses incurred in connection with the project.
2. The Grantee(s) will be obligated to advise ESD of a material adverse change in its financial condition prior to disbursement.

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3. Up to \$8,475,000 will be disbursed to the Grantee(s) during the course of construction and for eligible related project costs, no more frequently than monthly, in compliance with the Design & Construction Requirements, assuming that all project approvals have been completed and funds are available. 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 April 1, 2008 to be considered eligible project costs.
  
4. ESD may reallocate the project funds to another form of assistance, at an amount no greater than \$8,475,000, for this project if ESD determines that the reallocation of the assistance would better serve the needs of the Grantee(s) 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.

**Design and Construction:**

The Design and Construction Department (“D&C”) will review plans and cost estimates for conformity to the scope of work. D&C will attend meetings and visit the site at its discretion, inspect work completed and approve and recommend payment of invoices.

**Environmental Review:**

Pursuant to the State Environmental Quality Review Act (“SEQRA”), Article 8 of the Environmental Conservation Law, and its implementing regulations (6 NYCRR Part 617), the ESD Directors adopted SEQRA Findings on May 19, 2004 based on the Final Generic Environmental Impact Statement (“FGEIS”) for the development of the Luther Forest Technology Campus, and Supplemental Findings on December 1, 2008 based on the Final Supplemental Environmental Impact Statement (“FSEIS”) for the AMD (now known as GUS) Development project at the Luther Forest Technology Campus. By adoption of SEQRA Findings and Supplemental Findings, the Directors certified that the requirements of 6 NYCRR Part 617 have been met. No further environmental review is required under SEQRA.

**Smart Growth Public Infrastructure Review:**

Because the Corporation’s actions in support of the GUS project were approved by the Directors on March 26, 2010, and the proposed present actions of the Corporation are in furtherance of the original project as so approved, these actions are not subject to the State Smart Growth Public Infrastructure Policy Act (the “SG Act”), which does “not apply to infrastructure projects undertaken or approved by [an infrastructure agency] prior to date upon which [the SGA] became a law” (October 2, 2010). Accordingly, no Smart Growth Public Infrastructure review is required.

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**Affirmative Action:**

ESD's Non-Discrimination and Affirmative Action policy will apply. The Grantee(s) are encouraged to use their best efforts to achieve a Minority Business Enterprise participation goal of 5% and a Women Business Enterprise participation goal of 5% of the total dollar value of work performed pursuant to contracts or purchase orders entered into in connection with the construction work related to the project, and to include minorities and women in any job opportunities created by the project.

**Disclosure and Accountability Certifications:**

The Grantee has provided ESD with the required Disclosure and Accountability Certifications. Grantee's certifications indicate that Grantee has no conflict of interest or good standing violations and, therefore, staff recommends that the Corporation authorize the grant to the Grantee as described in these materials.

**Attachments:** ESD Directors' Materials dated March 26, 2010