

FOR CONSIDERATION

October 21, 2010

TO: The Directors

FROM: Dennis M. Mullen

SUBJECT: Malta (Saratoga County) – NYSERDA STEP 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: New York State Energy Research and Development Authority (“NYSERDA”)

ESD\* Investment: A grant of up to \$600,000 to be used for a portion of the cost of fit-up and internal utilities.

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

Project Location: 107 Hermes Road, Malta, Saratoga County

NYS Empire Zone : Saratoga County

Proposed Project: Tenant fit-up, equipment and internal utilities at the new 105,000- square-foot building at the Saratoga Technology ± Energy Park (“STEP”) in Malta.

ESD Incentive Offer Accepted: January 27, 2009

Project Completion: August 2010

Number of Employees at Project Location:

Initial employment (at time of ESD Incentive Offer):	62
Current employment level:	167
Minimum employment by January 1, 2013:	200

Grantee Contact: Kevin Hunt, Project Manager  
 17 Columbia Circle  
 Albany, NY 12203  
 Phone: (518) 862-1090  
 Fax: (518) 862-1091

Anticipated  
 Appropriation  
 Source: Empire State Economic Development Fund

ESD Project No.: W517

Project Team:	Origination	Michael Morse
	Project Management	Noel Blackwell
	Affirmative Action	Laverne Poole
	Finance	Jonevan Hornsby
	Environmental	Soo Kang

II. Project Cost and Financing Sources

<u>Financing Uses</u>	<u>Amount</u>
Fit-up, equipment & internal utilities	\$1,961,785
Soft cost	<u>225,353</u>

Total Project Costs	<u>\$2,187,138</u>
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<u>Financing Sources</u>	<u>Amount</u>	<u>Percent</u>
ESD-Grant	\$600,000	27.4%
NYSERDA (Cash & Venture Capital)	<u>1,587,138</u>	<u>72.6%</u>
Total Project Financing	<u>\$2,187,138</u>	<u>100.0%</u>

### III. Project Description

#### A. Background

The New York State Energy Research and Development Authority is a public benefit corporation established by the New York Legislature in 1975 under the Public Authorities Law. NYSERDA has offices in Albany, Buffalo, New York City and West Valley.

NYSERDA plays an important role in helping the State address its energy, economic and environmental challenges by offering a variety of programs and services designed to lead the State toward increasing energy independence, economic security and environmental health.

NYSERDA's programs and services provide a vehicle for the State to work collaboratively with academia, businesses, industry, the federal government, public interest groups, the environmental community, and energy market participants. Through these collaborations, NYSERDA seeks to develop a diversified energy supply portfolio, improve market conditions, and facilitate the introduction and adoption of clean, sustainable and advanced technologies that will help New Yorkers plan for and respond to their energy future. NYSERDA is helping to position New York businesses and industries to become exporters of energy technologies to the nation and the world.

NYSERDA is comprised of three major program areas including R&D, Energy Efficiency Services and Residential Energy Affordability. Additionally, NYSERDA is the administrator of the State's Renewable Portfolio System, and the Regional Greenhouse Gas Initiative, and manages the West Valley Nuclear Waste Facility.

The Saratoga Technology ± Energy Park ("STEP") is also one of NYSERDA's programs. STEP is a 280-acre parcel being developed into a knowledge-based community for companies involved in clean energy and environmental technologies. STEP is approved for 1,250,000 square feet of R&D, light manufacturing, office, and educational space while maintaining 77% green space. It is being developed under a public-private partnership, with NYSERDA responsible for extending utilities into the park, and private entities undertaking the development. While, NYSERDA has various revenue streams to administer its core programs, the condition under which these funds may be drawn upon is strictly controlled. Accordingly, NYSERDA is not in a position to provide all of the funding for tenant fit-up that is required in the new building, and ESD assistance is needed to fill a financing gap. On January 16, 2009, ESD offered NYSERDA a \$600,000 capital grant to complete fit-up, equipment and internal utilities at the new building in order to retain 62 existing tenant employees and create 138 new jobs, of which 105 have already been added. Current tenants include Lockheed Martin; Building Performance Institute; The Lighting Cultivator; Global Foundries; Nfrastructure Technologies, Inc.; Clough Harbour & Associates; C9 Corp; and Electrovaya. NYSERDA has entered into an agreement with several tenants that best efforts shall be made to create and maintain full-time employment at the facility. If a tenant is deficient by a certain percentage of full-time employment, NYSERDA has the right to demand repayment of the grant amount awarded to that tenant. NYSERDA understands that it will be held responsible by ESD for the achievement and maintenance of this employment commitment.

## B. The Project

The project involves tenant fit-up, equipment and internal utilities at the new 105,000-square-foot building at the Saratoga Technology ± Energy Park in Malta. Project activities include carpentry, flooring, wall finishes, prefab storefront, fire suppression, HVAC, plumbing, electrical work, low voltage equipment, conference room displays and audio equipment, computer equipment, network switching, workstations, phone systems, furniture, office and A/V equipment and security.

## C. Financial Terms and Conditions

1. Upon execution of the grant disbursement agreement, the Company shall pay a commitment fee of 1% of the \$600,000 capital grant 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 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 \$600,000 will be disbursed to the Grantee in two installments as follows:
  - a) an Initial Disbursement of an amount equal to 50% of the grant (\$300,000) upon documentation of real estate / machinery and equipment and related project costs totaling approximately \$1.8 million, as evidenced by a certificate of occupancy, and documentation of the employment of at least 135 Full-time Permanent Employees at the Project Location (Employment Increment of 73), 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 (\$300,000) will be disbursed upon documentation of the employment of at least 200 Full-time Permanent

Employees at the Project Location (Employment Increment of 65), 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 January 27, 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 \$600,000, 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	62
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A	B
Reporting Date	Employment Goals
February 1, 2012	62+X+Y
February 1, 2013	62+X+Y
February 1, 2014	62+X+Y
February 1, 2015	62+X+Y
February 1, 2016	62+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=73, and Employment Goals shall equal  $[62 + X = 135]$  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=65, and Employment Goals shall equal  $[62 + X + Y = 200]$  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 maintain the economic viability of family farms.

As a result of this project, the Company will maintain its employment level of 62 jobs and create 138 new jobs.

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

Although NYSERDA has various revenue streams to administer its programs, the conditions upon which these funds may be drawn upon is strictly controlled. NYSERDA has no dedicated funding for building at STEP. As such, NYSERDA is not in a position to provide all of the funding that is required in the new building.

3. 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 \$5,328,145;

- Fiscal cost to NYS government is estimated at \$600,000;
- Project cost to NYS government per direct job is \$5,382;
- Project cost to NYS government per job (direct plus indirect ) is estimated at \$3,284;
- Ratio of project fiscal benefits to costs to NYS government is 8.88:1;
- Fiscal benefits to all governments (state and local) are estimated at \$8,944,418

- Fiscal cost to all governments is \$600,000;
- All government cost per direct job is \$5,382;
- All government cost per total job is \$3,284;
- The fiscal benefit to cost ratio for all governments is 14.91:1;
- Economic benefits (fiscal plus total net resident disposable income from project employment) are estimated at \$51,374,987, or \$281,204 per job (direct and indirect);
- The economic benefit to cost ratio is 85.62:1;
- Project construction cost is \$1,749,710 which is expected to generate 17 direct job years and 9 indirect job years of employment;
- For every permanent direct job generated by this project, an additional 0.65 indirect jobs are anticipated in the state's economy;
- The payback period for NYS costs is 2 years.

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

#### V. Environmental Review

ESD staff has determined that the funding of tenant fit-up, infrastructure and equipment at the new building at 107 Hermes Road in Malta 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.

Since the project involves a newly constructed building at STEP, ESD staff has confirmed that NYSERDA, as lead agency, has completed an environmental review pursuant to the requirements of SEQRA and the implementing regulations of the New York State Department of Environmental Conservation (6 NYCRR Part 617). For the overall STEP project, NYSERDA completed a Generic Environmental Assessment and issued a Negative Declaration on January 23, 2004. For the new building at 107 Hermes Road, additional environmental review was completed and a Negative Declaration was issued on September 25, 2006. This review found that the project is consistent with the Negative Declaration and findings issued for the STEP project and will not have a significant adverse impact on the environment. As stated above, the present request for ESD funding constitutes a Type II action and does not constitute an action beyond those actions already considered by NYSERDA in its environmental review. Therefore, no further environmental review is required in connection with this authorization.

#### VI. Affirmative Action

ESD's Non-discrimination and Affirmative Action policy will apply. The Grantee 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

Resolution

New York State Map

Project Finance Memorandum

Cost-Benefit Analysis

October 21, 2010

Malta (Saratoga County) – NYSEDA STEP 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 NYSEDA STEP 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 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 New York State Energy Research and Development Authority a grant for a total amount not to exceed Six Hundred Thousand Dollars (\$600,000) 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 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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## FINANCE MEMORANDUM

TO: Frances Walton  
CC: Sheila Robinson  
FROM: Jonevan Hornsby  
DATE: September 14, 2010  
RE: New York State Energy Research and Development Authority

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### Grantee

- Name: New York State Energy Research and Development Authority (“NYSERDA”)
- Corporate Location: Albany, NY
- Corporate Form: Public Benefit Corporation
- Nature of Business: NYSERDA plays an important role in helping New York State (the “State”) address its energy, economic, and environmental challenges by offering a variety of programs and services designed to lead the State toward increasing energy independence, economic security, and environmental health.

### Financial Information

- Industry: Research and Development in the Physical, Engineering, and Life Sciences
- NAICS Code: 541710
- ESDC credit score: Very Good
  - Profitability:
    - Sales: Increasing over 3 year historical period
    - Profit Margin: Above the industry median in most recent year
    - EBITDA: Positive and increasing over 3 year historical period
    - Net Income: Increasing over 3 year historical period
  - Liquidity:
    - Current ratio: Above the industry median and above 1.0 in most recent full year of operations
  - Solvency:
    - Total debt/total assets: Below the industry median and less than 65%
    - EBITDA/Debt Service: Strong
  - Other:
    - Audit status: All financials are audited.

**New York State Energy Research and Development Authority**

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	<u>Industry Median</u>	<b>Years Ending March 31,</b>		
		<b><u>2007</u></b>	<b><u>2008</u></b>	<b><u>2009</u></b>
Net Sales		\$ 327,641,133	\$ 337,484,121	\$ 495,697,290
EBITDA		\$ 93,129,747	\$ 77,500,212	\$ 179,204,177
Pre-tax Profit		\$ 91,972,159	\$ 76,706,557	\$ 178,360,339
Pre-tax profit/net sales	4.50%	28.07%	22.73%	35.98%
Net Income		\$ 91,972,159	\$ 76,706,557	\$ 178,360,339
Current Assets		\$ 412,360,365	\$ 547,227,203	\$ 689,239,319
Current Liabilities		\$ 57,328,401	\$ 116,005,033	\$ 81,708,849
Current Ratio	1.50x	7.19x	4.72x	8.44x
Total Assets		\$ 422,372,053	\$ 558,494,532	\$ 705,809,203
Long-term Debt		\$ 2,966,960	\$ 2,470,383	\$ 1,949,552
Total Debt		\$ 3,463,537	\$ 2,991,215	\$ 2,495,477
Total Liabilities		\$ 65,511,088	\$ 125,022,313	\$ 92,763,038
Net Worth		\$ 356,860,965	\$ 433,472,219	\$ 613,046,165
Total debt/total assets	19.20%	0.82%	0.54%	0.35%
EBITDA/Debt Service		96.84x	114.61x	286.09x

\*Financials are audited.



