

FOR CONSIDERATION

February 19, 2010

TO: The Directors

FROM: Dennis M. Mullen

SUBJECT: Greenburgh (Westchester County) – OSI Pharmaceuticals Capital – JOBS
Now Program – Working Capital Grant

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

I. Project Summary

Grantee: OSI Pharmaceuticals, Inc. (“OSI” or the “Company”)

ESD* Investment: A grant of up to \$15,000,000 to be disbursed over a nine-year period to be
used for a portion of the cost of lease expenses for the Farmingdale
location.

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

Project Locations: 420 Sawmill River Road, Greenburgh, Westchester County*
One Bioscience Park Drive, Farmingdale, Nassau County
41 Pinelawn Road, Melville, Suffolk County

*Project activity site; others are job-retention sites.

NYS Empire Zone
(or equivalent): N/A

Proposed Project: Acquisition of a 400,000-square-foot complex and renovation of over
250,000 square feet of this facility in connection with the consolidation of
operations.

ESD Incentive Offer Accepted: July 1, 2009

Project Completion: December 2011

Number of Employees at Project Location:

Initial employment at time of ESD Incentive Offer:	0
Current employment level:	0*
Minimum employment on January 1, 2014:	600

* 203 OSI employees presently located in New York State will be relocated to the project location.

Grantee Contact: Joseph Talamo, Vice President and Corporate Controller
41 Pinelawn Road
Melville, NY 11747
Phone: 631-962-2000
Fax: 631-752-3880

Anticipated
Appropriation

Source: JOBS Now Program

ESD Project No.: W718

Project Team:	Origination	Jeff Janiszewski
	Project Management	Noel Blackwell
	Affirmative Action	Denise Ross
	Finance	Ross Freeman
	Environmental	Soo Kang

II. Project Cost and Financing Sources

<u>Financing Uses</u>	<u>Amount</u>
Land and Building Acquisition	\$27,000,000
Real Estate Improvements	49,500,000
Central Utility Plant	13,200,000
Data Center	3,200,000
Architectural/Engineering	1,600,000
Training	550,000
SUNY-Farmingdale Lease Payments*	<u>15,000,000</u>

Total Project Costs	<u>\$110,050,000</u>
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<u>Financing Sources</u>	<u>Amount</u>	<u>Percent</u>
ESD-Grant	\$15,000,000	13.6%
Company Equity	<u>95,050,000</u>	<u>86.4%</u>
Total Project Financing	<u>\$110,050,000</u>	<u>100.0%</u>

*Assumes lease payments through 2018. See attached chart.

III. Project Description

A. Background

OSI is a publicly-traded biotechnology company incorporated in Delaware in March 1983. Until August 1995, the Company was engaged in the development, manufacture and marketing of products for the basic and clinical research markets as well as drug discovery. In August 1995, OSI sold certain of its assets and all of its research products business in order to focus solely on drug discovery and development. OSI then pursued its drug discovery and development objectives through collaborations with several pharmaceutical companies, including Pfizer Inc. (New York, New York), Novartis Pharma AG (Basel, Switzerland) and several of the predecessor companies to Sanofi-Aventis (Paris, France).

Today, OSI is committed to building a scientifically strong and financially successful top tier biopharmaceutical organization that discovers, develops and commercializes innovative molecular targeted therapies (“MTTs”) addressing major unmet medical needs in oncology, diabetes and obesity. OSI’s largest area of focus is oncology where the flagship product is Tarceva, an inhibitor of the epidermal growth factor receptor.

OSI also has research and development programs in diabetes and obesity that are conducted through its wholly-owned U.K. subsidiary, Prosidion Limited.

OSI’s business is anchored by Tarceva, which provides the majority of the Company’s revenues. OSI also has an emerging pipeline of MTTs in clinical and late-stage pre-clinical development that it intends to develop and commercialize independently. In addition, OSI has two anti-angiogenesis agents for which it is seeking development partners. In October 2009, OSI entered into an agreement granting rights to Sincere Pharmaceutical Co., Ltd., a Chinese pharmaceutical company, to develop, manufacture and market an anti-angiogenesis agent in China.

OSI’s largest customers for Tarceva are the U.S. and foreign governments (through government-run health programs). OSI faces significant competition from industry participants that are pursuing products and technologies that are similar to those that OSI is pursuing and that are developing pharmaceutical products that are competitive with OSI’s products and potential products, including Eli Lilly and Company (Indianapolis, Indiana), Genetech Inc. (San Francisco, California) and AstraZeneca plc (London, U.K.).

The Company presently operates from four U.S. facilities that are located in Melville, New York; Farmingdale, New York; Boulder, Colorado; and Cedar Knolls, New Jersey. In addition, the Company maintains an office and labs in Oxford, U.K.

OSI decided to consolidate its four U.S. facilities into a single location after determining that its business would flourish if its domestic locations were unified, creating an energy and

synergy among scientists. As an incentive for remaining in New York State, ESD will make a working capital grant of up to \$15,000,000 to defray OSI's lease payments to SUNY for its Farmingdale location, until the property is subleased, or OSI is otherwise released from its lease. These payments are \$1.8 million per year, jumping to \$2.2 million in 2017. The payments are capped at \$15 million, but that amount would only be reached if no other company occupies the space for 8 years. This grant will allow OSI to pursue its plan to consolidate operations to a new facility in Westchester. The Company accepted the offer on July 1, 2009, and will retain 203 employees in New York State and relocate 150 out-of-state jobs to the project site. In addition, the Company will create 247 new jobs as a result of this project.

On October 17, 2006, ESD's Directors approved a capital grant of \$600,000 to OSI in connection with the acquisition of a facility in Melville, New York, to serve as the corporate headquarters of the Company (Project # T257). This grant was to be funded in three installments, with the initial disbursement of \$300,000 funded upon occupancy of the facility and the retention of 160 jobs and the second and third disbursements upon the creation of 250 additional jobs. The Company did not create the required number of new jobs, and the second and third installments were never disbursed. As a condition for disbursement of the \$15 million grant, the Company must return the \$300,000 received from Project #T257.

B. The Project

The Company has acquired a 400,000-square-foot complex in Ardsley Park, Westchester County. The building was previously home to Ciba-Geigy Corp. and Purdue Pharma. OSI will renovate over 250,000 square feet of this space to create a central location for management, administration, R&D, and its pilot plant operations in the United States. As part of this renovation, OSI will reconfigure and upgrade the existing office space, update and reconfigure the current lab facilities to meet OSI's requirements, upgrade the current IT infrastructure, upgrade the existing power plant, replace oil storage tanks, repair and resurface parking lots, upgrade the existing cafeteria, replace the existing cafeteria roof, and repair existing stairways and walkways. The renovations will take approximately 24 months, and initial occupancy is expected in the first quarter of 2010.

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 \$33,393,082;
- Fiscal cost to NYS government is estimated at \$14,978,415;
- Project cost to NYS government per direct job is \$59,127;
- Project cost to NYS government per job (direct plus indirect) is estimated at \$23,182;
- Ratio of project fiscal benefits to costs to NYS government is 2.23:1;
- Fiscal benefits to all governments (state and local) are estimated at \$58,716,678;
- Fiscal cost to all governments is \$16,395,642;
- All government cost per direct job is \$64,721;
- All government cost per total job is \$25,376;
- The fiscal benefit to cost ratio for all governments is 3.58:1;
- Economic benefits (fiscal plus total net resident disposable income from project employment) are estimated at \$385,996,375, or \$597,410 per job (direct and indirect);

- The economic benefit to cost ratio is 22.80:1;
 - Project construction cost is \$67,500,000 which is expected to generate 597 direct job years and 300 indirect job years of employment;
 - For every permanent direct job generated by this project, an additional 1.51 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.)

C. Financial Terms and Conditions

1. At the time of disbursement, 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 any disbursement of funds, the Company will return the \$300,000 grant that ESD previously disbursed for OSI's Melville project (Project #T257).
5. All remaining annual grant payments will be terminated if OSI is relieved of its lease obligations to the State of New York for the property leased in Farmingdale, or if the property is subleased.

If OSI is relieved of its lease obligation or if the Farmingdale property is subleased after an annual payment occurs, ESD will be entitled to recoup a proportionate amount of that year's annual payment.

OSI may not unreasonably refuse a sublease offer. If only a portion of the property is subleased, payments from ESD will be reduced proportionally.

6. 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 \$15,000,000 will be disbursed to the Grantee on or about April 15th each year starting in 2010 in up to nine annual installments as follows:

- a) an Initial Disbursement of an amount equal to 12% of the grant (\$1,800,000) upon documentation of real estate acquisition project costs totaling approximately \$27,000,000, evidence of payments for lease of the Farmingdale facility and documentation of the employment of at least 203 Full-time Permanent Employees, which shall be located in New York State, assuming that all project approvals have been completed and funds are available;
- b) a Second Disbursement of an amount equal to 12% of the grant (\$1,800,000) will be disbursed upon documentation of additional eligible project costs totaling approximately \$10,000,000 (a total investment of \$37,000,000), evidence of payments for lease of the Farmingdale facility and documentation of the employment of at least 203 Full-time Permanent Employees, which shall be located in New York State, provided Grantee is otherwise in compliance with program requirements;
- c) a Third Disbursement of an amount equal to 12% of the grant (\$1,800,000) will be disbursed upon documentation of additional eligible project costs totaling approximately \$34,275,000 (a total investment of \$71,275,000), evidence of lease payments for the Farmingdale facility and documentation of the employment of at least 353 Full-time Permanent Employees, which shall be located in New York State (Employment Increment of 150), provided Grantee is otherwise in compliance with program requirements.
- d) a Fourth Disbursement of an amount equal to 12% of the grant (\$1,800,000) will be disbursed upon documentation of additional eligible project costs totaling approximately \$23,775,000 (a total investment of \$95,050,000), evidence of lease payment for the Farmingdale facility and documentation of the employment of at least 353 Full-time Permanent Employees at the Project Location, provided Grantee is otherwise in compliance with program requirements.
- e) a Fifth Disbursement of an amount equal to 12% of the grant (\$1,800,000) will be disbursed upon evidence of lease payments for the Farmingdale facility and documentation of the employment of at least 600 Full-time Permanent Employees at the Project Location (Employment Increment of 247), provided Grantee is otherwise in compliance with program requirements
- f) a Sixth Disbursement of an amount equal to 12% of the grant (\$1,800,000) will be disbursed upon evidence of lease payments for the Farmingdale facility and documentation of employment of at least 600 Full-time Permanent Employees at the Project Location, provided Grantee is otherwise in compliance with program requirements
- g) a Seventh Disbursement of an amount equal to 12% of the grant (\$1,800,000) will be disbursed upon evidence of lease payments for the Farmingdale facility and documentation of the employment of at least 600 Full-time Permanent Employees at the Project Location, provided Grantee is otherwise in compliance with program requirements
- h) an Eighth Disbursement of an amount equal to 14.67% of the grant (\$2,200,000) will be disbursed upon evidence of lease payments for the Farmingdale facility and documentation of the employment of at least 600 Full-time Permanent Employees at the Project Location, provided Grantee is otherwise in compliance with program

requirements

- i) a Ninth Disbursement of an amount equal to 1.33% of the grant (\$200,000) will be disbursed upon evidence of lease payments for the Farmingdale facility and documentation of the employment of at least 600 Full-time Permanent Employees at the Project Location, 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 July 1, 2009, to be considered eligible project costs. All disbursements must be requested by April 1, 2018.

If the Company does not reach 600 employees by 2014, no additional payment will be made for up to two years. If OSI reaches 600 employees by 2016, payments will resume (the unpaid years will be lost and will not be added to the balance). If OSI does not reach 600 employees by 2016, no further payments will be made.

7. ESD may reallocate the project funds to another form of assistance, at an amount no greater than \$15,000,000, 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 one hundred percent (100%) 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 stated on the attached Recapture Schedule.

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	0
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A	B
Reporting Date	Employment Goals
February 1, 2011	203
February 1, 2012	203
February 1, 2013	353
February 1, 2014	353
February 1, 2015	600
February 1, 2016	600
February 1, 2017	600
February 1, 2018	600
February 1, 2019	600
February 1, 2020	600
February 1, 2021	600

IV. Statutory Basis

The project meets the statutory requirement of a JOBS Now Project because the Company will create at least 300 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 use its best efforts to achieve Minority and/or Women-owned Business Enterprise participation of not less than 10% of the total dollar value of work performed pursuant to contracts or purchase orders entered into in connection with the renovation/construction work related to the project; and meaningful Minority and Female Workforce participation created by 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

February 19, 2010

Greenburgh (Westchester County) – OSI Pharmaceuticals Capital – JOBS Now Program –
Working Capital Grant – Findings and Determinations Pursuant to Section 10 (g) of the
Act; 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 OSI Pharmaceutical Capital – JOBS Now Program Working 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 Chairman and Chief Executive Officer-Designate of the Corporation or his designee(s) be, and each of them hereby is, authorized to make to OSI Pharmaceuticals, Inc. a grant for a total amount not to exceed Fifteen Million Dollars (\$15,000,000) 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-Designate 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-Designate 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-Designate 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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OSI Payment, Job Goal and Recapture Schedule

Project Year	Job Goal	ESD Incentive Payments*	Total paid* (cumulative)	Recapture Provisions					
				The following amounts will be repaid to ESD if OSI falls BELOW the job numbers indicated in each column based on reports filed early the following year					
				If below 203 jobs		If below 353 jobs but above 203 jobs		If below 600 jobs but above 353 jobs	
				OSI repays:	OSI keeps:	OSI repays:	OSI keeps:	OSI repays:	OSI keeps:
2011	203	\$1.8M	\$1.8M	\$1.8M	0	0	\$1.8M	0	\$1.8M
2012	203	\$1.8M	\$3.6M	\$3.6M	0	0	\$3.6M	0	\$3.6M
2013	353	\$1.8M	\$5.4M	\$5.4M	0	\$1.8M	\$3.6M	0	\$5.4M
2014	353	\$1.8M	\$7.2M	\$5.4M	\$1.8M	\$3.6M	\$3.6M	0	\$5.4M
2015	600	\$1.8M	\$9.0M	Deal ends	\$3.6M	\$3.6M	\$3.6M	\$1.8M*	\$7.2M
2016	600	\$1.8M	\$10.8M	No more pmts.	\$5.4M	\$3.6M	\$3.6M	\$3.6M*	\$7.2M
2017	600	\$1.8M	\$12.6M					\$5.4M*	\$7.2M
2018	600	\$2.2M	\$14.8M						
2019	600	\$200,000	\$15M						
		Total: \$15M							
				Deal ends. No more pmts. except as per note below*. If pmts are made and job levels later drop below 600, OSI shall repay the previous 3 years of pmts up to \$5.4M.					

This chart assumes that the company meets the stated Job Goal in each year and that the ESD incentive payment is made. Recapture Provisions will apply if the Annual Employment Report submitted at the end of that year (actually submitted early the following year) shows non-compliance with employment goals, therefore triggering a recapture in the following year.

* A two-year extension is provided to reach the 600-job goal. If the company does not reach 600 jobs by 2014, ESD shall not make any additional payments but will "freeze" the agreement for up to two years. If OSI reaches 600 jobs by 2016, payments will resume (the unpaid years will be lost and will not be added to the balance). If OSI does not reach 600 jobs by 2016, the deal will end and no further payments will be made.