

FOR CONSIDERATION

June 15, 2010

TO: The Directors

FROM: Dennis M. Mullen

SUBJECT: Oneonta (Otsego County) – Ioxus Capital – JOBS Now Program – Capital Loan

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 Loan and to Take Related Actions; Determination of No Significant Effect on the Environment

General Project Plan

I. Project Summary

Borrower: Ioxus, Inc.

ESD* Investment: A loan of up to \$1,000,000 to be used for a portion of machinery and equipment purchase and installation costs.

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

Project Locations: 118 Winney Hill Road, Oneonta, Otsego County*
87 Browne Street, Oneonta, Otsego County

*Project activity site; other is job-retention site

NYS Empire Zone
(or equivalent): Otsego County Empire Zone

Proposed Project: Investment associated with the development of advanced electromechanical double layer capacitor products.

ESD Incentive Offer Accepted: June 27, 2008 (initial offer); February 12, 2009 (revised offer)

Project Completion: Phase I – December 2009
Phase II – August 2010

Number of Employees at Project Locations:

Initial employment at time of ESD Incentive Offer: 67
Current employment level: 88
Minimum employment on January 1, 2012: 192

Effect of Loan on

Project Financing: The loan will provide permanent financing for a five year term at an annual fixed interest rate of 3%. ESD reserves the right to raise the interest rate on the loan to prime plus 2% if the Borrower fails to meet job targets.

Security: Second lien position on newly acquired project related machinery and equipment

Borrower Contact: Michael Pentaris, CEO
118 Winney Hill Road
Oneonta, NY 13820
Phone: 607-432-3880 x 202
Fax: 607-431-9202

Anticipated
Appropriation
Source:

Jobs Now 100 Program

ESD Project No.: W292

Project Team:	Origination	Kevin McLaughlin
	Project Management	Robin Alpaugh
	Legal	Lawrence Gerson
	Finance	Ross Freeman
	Affirmative Action	Denise Ross
	Environmental	Soo Kang

II. Project Cost and Financing Sources

<u>Financing Uses</u>	<u>Amount</u>
Machinery & Equipment (Phase 1)	\$3,014,000
Research & Development (Phase 1)	2,000,000
Research & Development (Phase 2)	1,000,000
Working Capital (Phase 1)	600,000
Working Capital (Phase 2)	3,082,000
Facility Acquisition/Renovation (Phase 1)	<u>756,000</u>
Total Project Costs	<u>\$10,452,000</u>

<u>Financing Sources</u>	<u>Amount</u>	<u>Percent</u>	<u>Rate/Term/Lien</u>
ESD-Loan	\$1,000,000	9.6%	3%/ 5 yrs./2 nd lien on M&E
Community Development Block Grant	734,000	7.0%	
County of Otsego IDA	200,000	1.9%	4%/ 7 yrs./1 st lien on M&E, 2 nd lien on real property
County of Otsego	120,000	1.1%	4%/ 7 yrs./1 st lien on M&E
Broome County IDA	180,000	1.7%	3%/ 7 yrs./1 st lien on M&E
NYSERDA Grants	775,000	7.4%	
U.S. Department of Energy Grant	1,087,287	10.4%	
Venture Capital*	5,000,000	47.8%	
Company Equity	<u>1,355,713</u>	<u>13.1%</u>	
Total Project Financing	<u>\$10,452,000</u>	<u>100.0%</u>	

* Braemar Energy Ventures, preferred stock issued by Ioxus

III. Project Description

A. Background

Ioxus, Inc. (the “Company”) is a privately held company and was established in 2007 by its parent company, Custom Electronics, Inc., (“Custom Electronics” or the “Parent”). Custom Electronics has supplied commercial and military clients with high reliability capacitors and integrated electronic assemblies since 1964. It is headquartered at the Browne Street location in Oneonta where it employs 67.

Ioxus develops, manufactures and sells ultracapacitors and ultracapacitor-based energy storage systems in the United States. It provides cost-effective, green energy solutions for the military, transportation and alternative energy markets. The Company’s ultracapacitors are electrochemical double layer capacitors that are capable of storing large amounts of electrical charge, based on their size and weight. Ioxus ultracapacitors are used in hybrid energy vehicles to provide energy storage to improve efficiencies by recycling the energy captured during braking, thereby reducing peak power demands on hybrid-diesel, fuel cell or battery-based vehicles. When used in combination with batteries or other energy sources, Ioxus capacitors reduce power drain from the energy source and extend the source’s available life by up to 400%.

The U.S. and European ultracapacitor markets have expanded from \$1.2 billion in 2005 to \$2.4 billion in 2009, with a compounded annual growth rate of 25%. The automotive market is expected to have a compounded annual growth rate of 50% given the tremendous demand for all electric and hybrid electric vehicles.

The Parent contacted ESD in May 2008 regarding possible assistance to help solidify the Ioxus project, which in turn would also help both companies capture additional market share as well as embark on new product development. ESD responded with an offer consisting of a \$1,000,000 Jobs Now 100 capital loan, accepted in June 2008. The project, with the substantial financial backing from the Parent, is also necessary to ensure the continued success of Custom Electronics and the retention of its 67 employees. As a stand-alone operation, Ioxus is expected to create 125

new jobs over three years. ESD funds, in conjunction with other Federal, State and local sources are needed to close the financing gap, enabling the project to be implemented and maximize the probability of success. ESD's incentive offer of a \$1,000,000 loan to assist with machinery and equipment will bridge the existing shortfall of capital investment required to move this project forward.

Directors have been provided with a confidential finance memo for this project.

B. The Project

The \$10,452,000 project is being conducted in two phases and includes the purchase of machinery and equipment, continued research and development and utilization of working capital that will allow Ioxus to begin production of low voltage electric double layer capacitors ("EDLCs") and EDLC power modules at a new location in the Town of Oneonta. Also part of Phase I is the acquisition of an existing vacant facility by the Parent to be leased to the Company over the next three years. Phase I was completed in December 2009. Phase II, expected to be completed by August 2010, includes an additional working capital investment and additional investment in further product research and development. The company utilized a NYSERDA grant to complete a business plan, which indicated a strong market for both large and small format ultracapacitors, with demand increasing as the world recognizes the importance of green technologies. ESD funds will be used to acquire new project related machinery and equipment.

As a result of this project, 125 new Ioxus jobs will be created and 67 Custom Electronics jobs will be retained. The project is well underway and current employment at Ioxus is 21, and Custom Electronics is 67, respectively.

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 \$7,196,422;
- Fiscal cost to NYS government is estimated at \$1,030,000;
- Project cost to NYS government per direct job is \$10,002;
- Project cost to NYS government per job (direct plus indirect) is estimated at \$3,174;
- Ratio of project fiscal benefits to costs to NYS government is 6.99:1;
- Fiscal benefits to all governments (state and local) are estimated at \$11,008,024;
- Fiscal cost to all governments is \$1,030,000;
- All government cost per direct job is \$10,002;
- All government cost per total job is \$3,174;
- The fiscal benefit to cost ratio for all governments is 10.69:1;
- Economic benefits (fiscal plus total net resident disposable income from project employment) are estimated at \$52,832,668, or \$162,803 per job (direct and indirect);
- The economic benefit to cost ratio is 51.29:1;
- There is no construction cost associated with this project;
- For every permanent direct job generated by this project, an additional 2.15 indirect jobs are anticipated in the state's economy;
- The payback period for NYS costs is 2 year.

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

C. Financial Terms and Conditions

1. The Company shall pay a commitment fee of 2% of the \$1,000,000 loan (\$20,000 total fee), half of which shall be rebated at time of closing. In addition, at the time of closing, 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 closing.
3. Custom Electronics, Inc. will guarantee the loan repayment obligation of its subsidiary, Ioxus, Inc., in the event of an Employment Shortfall or other default, as defined in these materials or the Grant Disbursement Agreement.
4. Prior to disbursement, the Borrower 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 Borrower'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 the Borrower to other employees with comparable rank and duties; or (b) two part-time, permanent, private-sector employees on the Borrower'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 the Borrower to other employees with comparable rank and duties.
5. Corporate guarantee from Custom Electronics, Inc., and personal guarantees from Michael Pentaris and Peter Dokuchitz, and any other shareholder owning at least 20% of the company's outstanding stock will also be required.
6. 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.
7. Up to \$1,000,000 will be disbursed to the Company in two installments as follows:
 - a) an Initial Disbursement of an amount equal to 67% of the loan (\$666,667) will be disbursed upon documentation that Phase I of the project is complete, including an equity investment totaling \$4,060,000, assuming that all project approvals have been completed and funds are available, and provided Company is otherwise in compliance with program requirements;
 - b) a Second Disbursement of an amount equal to 33% of the loan (\$333,333) will be disbursed upon documentation that Phase II of the project is complete including an additional equity investment totaling \$2,000,000 (\$6,060,000 total equity investment), assuming that all project approvals have been completed and funds are available, and provided Company 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 February 12, 2009 to be considered eligible project costs.

8. Term of the loan is 5 years, fixed at 3%, with ESD reserving the right to raise the interest rate to prime plus 2% if the Borrower fails to meet the required creation of 125 new full-time jobs and retention of the Parent's 67 existing full-time jobs by January 1, 2012. The loan will be repaid interest only for first 3 years followed by full amortization (\$42,981.21/month) for the remaining 2 years.
9. 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.
10. In consideration for the making of the Loan, Borrower will achieve the Employment Goals set forth in column B of the table below. If the number (for the preceding calendar year) of Borrower's Full-time Permanent Employees, as defined above, as of each reporting date set forth in column B of the table below, is less than eighty-five percent (85%) of the Employment Goal set forth in column B, ESD reserves the right to raise the interest rate on the loan to prime plus 2% at its discretion. The Borrower'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	67
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A	B
Reporting Date	Employment Goals
February 1, 2011	67
February 1, 2012	192
February 1, 2013	192
February 1, 2014	192

IV. Statutory Basis

The project meets the statutory requirement of a JOBS Now 100 Project because the Company will create at least 100 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

The Town of Oneonta Planning Board, 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 an Unlisted Action, which would not have a significant effect on the environment. The lead agency issued a Negative Declaration on August 8, 2008. 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. The Company 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 15, 2010

Oneonta (Otsego County) – Ioxus Capital – JOBS Now Program – Capital Loan
– Findings and Determinations Pursuant to Section 10 (g) of the Act; Authorization to
Adopt the Proposed General Project Plan; Authorization to Make a Loan 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 – Ioxus Inc. Capital JOBS Now Program – Capital Loan 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 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 Ioxus, Inc. a capital loan for a total amount not to exceed One Million Dollars (\$1,000,000) 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 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 loan, and each of them hereby is, authorized to take such actions and make such modifications to the terms of the loan or collateral securing the loan as he or she may deem necessary or appropriate in the administration of the loan and 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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June 15, 2010

Oneonta (Otsego County) – Ioxus Capital – JOBS Now Program – Capital Loan –
Determination of No Significant Effect on the Environment

RESOLVED, that based on the material submitted to the Directors with respect to the Ioxus Capital Project, the Corporation hereby determines that the proposed action will not have a significant effect on the environment.

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