

COUNCIL ON DEVELOPMENT FINANCE

December 17, 2012

PUBLIC HEARING 390

THOSE PRESENT:

Mr. Andy Lubin, Chairperson
Senator Brian Bushweller
Honorable Nancy Cook
Mr. Jack Riddle
Representative Darryl Scott

Director Alan Levin
Mrs. Rachael Mears
Mr. Stephen Bach
Ms. Cassie Robbins
Mrs. Lee Porter
Ms. Beverly Ennis
Ann Marie Johnson, DAG
Cynthia Collins, DAG
Mrs. Bernice Whaley
Mr. Tim McLaughlin
Ms. Patty Cannon
Mr. Peter Bothum
Mr. Ken Anderson
Mrs. Karen Smith

ALSO PRESENT: **Delaware Manufacturing Extension Partnership** – Mr. Paul Morris, Ms. Kelly McKegwn, Ms. Kim Rachiele; **Incyte Corporation** – Ms. Paula Swain, Mr. Dave Hastings and Mr. Brian Keefer; **Start It Up Delaware, Inc.** – Mr. Matthew Meyer, Mr. Wesley Garnett Jr., Mr. Steve Roettger, Mr. Tim McIntosh, Mr. Jon Brilliant, Mr. Lee Mikles and Mr. Dan Freeman; **Sparrow Holdings, LLC** – Mr. Mike Skipper with WSFS; Mr. Adam Damin, OMB; Ms. Courtney Stewart, CGO; Mr. Richard Matoni - Intern, Attorney General's Office and Mr. Jonathan Starkey, *News Journal*

LOCATION: Smyrna Rest Area, Route 13, Smyrna, Delaware 19977

TIME: 9:00 A.M.

CALL TO ORDER

The meeting was called to order at 9:10 A.M. by Chairman Lubin, on Monday, December 17, 2012.

OLD BUSINESS:

Senator Bushweller made a motion that the minutes of the November 26, 2012 Council on Development Finance meeting be approved as presented. Representative Scott seconded the motion which was then adopted by unanimous vote.

NEW BUSINESS:

Delaware Manufacturing Extension Partnership (“DEMPEP” or the “Applicant”) -

The Applicant is requesting a grant in the amount of \$335,650 from the Delaware Strategic Fund program. The Applicant proposes to use the funds to support the DEMPEP which provides technical and business assistance to Delaware firms throughout Delaware through on-site assistance, seminars and workshops from on-staff field agents and local technical experts. DEMPEP is located in Newark, Delaware (the “Project”).

Mr. Anderson presented this request to the Council. He stated that the request is for a \$335,650 Strategic Fund grant which represents \$302,400 to match the Federal appropriation and an additional \$33,250 performance based amount. He added that DEMPEP is requesting these funds in an effort to continue its efforts to serve Delaware manufacturers, state agencies and small business owners. Mr. Anderson stated that historically DEDA has entered into a Memorandum of Understanding with DEMPEP and that DEMPEP has consistently performed at a superior level. He indicated that DEMPEP’s performance is excellent in supporting small and medium sized businesses. In a NIST national survey of all MEPs across the country, DEMPEP had a success rate of approximately 92% for job creation, and that DEMPEP helped to create 496 jobs. Mr. Anderson stated that DEDO’s recommendation was to approve this request.

Mr. Paul Morris stated that DEMPEP has fulfilled and exceeded the obligations and metrics required by the last DSF grant. He stated that DEMPEP is looking to grow and help the State’s manufacturers grow. He added that the national focus is on raising the bar on the top line not just by exporting products.

Mr. Riddle asked if there was a claw back provision for each year for each DSF grant received by DEMPEP. Mrs. Mears stated that there was a rolling claw back.

Chairman Lubin asked if the 496 jobs were created or retained. Mr. Anderson stated that with all of DEMPEP’s services and with the results of all activities, they can’t distinguish between new or retained jobs.

Director Levin stated that DEMPEP is a very popular program. He added that Governor Markell and he are very supportive and proud of this success story. He stated that DEMPEP has encountered a loss with the retirement of its Executive Director who after ten years of service, retired a month ago. He indicated that there are plans to replace him with a person who has manufacturing experience. Senator Bushweller asked if Dr. Orlando George was on the hiring committee and Director Levin confirmed that he is on the committee.

Chairman Lubin asked about the personnel expense of \$545,000 indicated in the 2013 budget – asking how many employees were involved; the answer was 9 full time employees. Chairman Lubin also asked about the NIST consulting fees of \$490,487. Mr. Riddle asked if those fees were tied to revenue. Ms. Rachiele stated that those fees were driven by number and type of clients.

Chairman Lubin asked if there were any public comments; there were none.

After duly considering, inter alia, the nature of the business, its competitive situation in Delaware, its location, the employment and other requirements under applicable statutory and regulatory provisions, the Council made the following findings: (i) based solely on the information supplied by the Applicant and the representations that it has made, the Applicant is an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986 (the “Code”) and will use no portion of the Grant funds in an “unrelated trade or business,” as defined in Section 513 of the Code; accordingly, the Applicant is an “exempt person” within the meaning of 29 Del. C. § 5052(7); (ii) the Grant and the Project will effectuate the financing of facilities and activities of an exempt person in order to contribute to the prosperity, health or general welfare of the citizens of the State, Senator Cook made a motion that the Council recommend to Mr. Alan Levin, Chairperson, The Delaware Economic Development Authority, approval of a grant in an amount not to exceed Three Hundred Thirty-Five Thousand Six Hundred Fifty Dollars (\$335,650) to be disbursed from the Delaware Strategic Fund, for the DEMEP Project and that the approval for the grant remain in effect through and including December 16, 2013. Representative Scott seconded the motion, which was then adopted by unanimous vote.

Incyte Corporation (“Incyte” or the “Applicant”) – The Applicant, located at Experimental Station E-400, Route 141 and Henry Clay Road in Wilmington, Delaware, is requesting a \$10,070,505 performance grant and a \$1,050,000 capital expenditure matching grant from the Delaware Strategic Fund (the “Project”).

Director Levin presented this request to the Council. He stated that in 2003, Incyte made Delaware its home as a research company. He stated that Incyte is now producing a product which is a significant treatment for Myelofibrosis atrophy. He stated that Incyte is in clinical trials and is in round two for treatment using this drug for pancreatic cancer and other diseases.

Director Levin stated that the main objective for DEDO was to keep Incyte in Delaware. He added that this is a growth opportunity for Delaware and he believes the State needs to do more in this area. He also stated that Delaware is competing with other states for Incyte and he believes that this offer to Incyte is fair and that it not only retains jobs but it also grows jobs over the next five years. Director Levin stated that Incyte will be required to retain the current 294 jobs and create 266 new jobs by December 31, 2016. He stated that the claw back would be \$17,887 for each job not retained or created up to

an amount of \$10,070,505. He also stated that Incyte is also eligible for a \$1,050,000 capital expenditure grant for capital expenditure expenses up to \$35,000,000.

Director Levin stated that Incyte is a Class A company with a huge amount of creditability. He stated that Dr. Friedman and his associates have done an incredible job. He added that DEDO is excited they are in Delaware and is excited about this project.

Mr. Hastings distributed a handout describing Incyte's vision, the leadership team, how the company started and where it is today, current products and product pipeline. Mr. Hastings stated that Incyte was recognized as the 2012 company of the year by Delaware Bio. He stated that Incyte was originally located in California to conduct pharmaceutical research, and although the initial trail was unsuccessful, they gained valuable insight into the human genome. Subsequently, Incyte discontinued the California operation and relocated to Wilmington, Delaware. He stated that they were lucky enough to find a new biological target and have now launched the new drug, Jakafi.

Mr. Hastings stated that the company has very little employee turnover, less than one percent. He stated that it is a highly motivated workforce and that they have 294 employees as of January 1, 2012. He added that Incyte has its own sales force and that it needs more biologists, chemists and administrative support. He stated that Incyte is committed to the State of Delaware. He stated that 55% of the employees hold a Master's degree or higher and the payroll is approximately \$60 million.

Mr. Hastings stated that the site selection was complex to say the least. He stated that it was a very important decision and the company weighed different options regarding the financial component and the social aspect for the employees. He added that he believes this is a high value proposition on both sides - for the company and for the State.

Representative Scott asked how the funds would be used for the first draw of \$5,035,252.50. Mr. Hastings stated that those funds would be used for the new facility - combination of all improvements.

Mr. Riddle asked the process of drug discovery. Mr. Hastings stated that Phase I is to determine human targets through the research of pathways, genes and immune systems. He stated that once a biologist identifies that target, the chemists go to work to impact that discovery. He stated that Phase I is tested on healthy volunteers, then if that's successful, you go to Phase II which is testing a broader number of people and if that's successful, you go to Phase III which is the final test. He added that getting the FDA approval is usually a six month process but that it can take up to a year.

Director Levin stated that there is also a process where a company can go off shore to speed the process along especially regarding an illness like Myelofibrosis; it can be fast tracked.

Mrs. Johnson, DAG, asked if the 294 retained jobs noted as of January 1, 2012, were Delaware only jobs. It was clarified that they were Delaware jobs.

Mr. Lubin asked if Incyte had a production line planned for the Delaware facility. Mr. Hastings stated that the manufacture of pills is a relatively simple process. He stated that Incyte works with a company in California for the manufacturing function which is a minor part of the production process. He stressed the importance of investing in scientists. Ms. Swain stated, in response to a question from Mr. Lubin, that Incyte has outgrown the DuPont Experimental Station facility. Mr. Lubin asked if Incyte would do any third party drug discovery. Mr. Hastings stated that Incyte would like to maintain control and keep it proprietary. Mr. Lubin asked if Incyte found an adequate supply of scientists. Ms. Swain stated that the scientists are primarily coming from the University of Delaware.

Chairman Lubin asked if there were any public comments; there were none.

After duly considering, inter alia, the nature of the business, its competitive situation in Delaware, its location, the employment and other requirements under applicable statutory and regulatory provisions, the Council made the following findings: (i) the Project will contribute to maintaining or providing gainful employment of the citizens of the State, (ii) the Project will serve a public purpose by contributing to the prosperity, health or general welfare of the State; (iii) the Project will require a capital investment of at least \$10,000, which funds, including the loan proceeds, will be available or expended on the date on which The Delaware Economic Development Authority disburses the requested loan funds; (iv) the loan will effectuate the purposes of Chapter 50, Subchapter IV of Title 29 of the *Delaware Code*, and (v) the Applicant is a financially responsible person to the extent required by statute and has not been convicted of a major labor law violation or other illegal conduct involving moral turpitude by any agency or court of the federal government or agency or court of any state in the two-year period immediately prior to the approval of the Applicant's application for assistance, Senator Bushweller made a motion that the Council recommend to Mr. Alan B. Levin, Chairperson, The Delaware Economic Development Authority, approval of a grant in an amount not to exceed Ten Million Seventy Thousand Five Hundred Five Dollars (\$10,070,505) as a performance grant and One Million Fifty Thousand Dollars (\$1,050,000) as a capital expenditures grant, to be disbursed from the Delaware Strategic Fund for the Project, contingent upon the approval remaining in effect through and including December 16, 2013. Representative Scott seconded the motion, which was then adopted by unanimous vote.

Start it Up Delaware, Inc. ("SIUD" or the "Applicant" - The Applicant, located at 605 Market Street in Wilmington, Delaware, is requesting a \$250,000 grant from the Delaware Strategic Fund which will serve to seed SIUD to aggressively implement solutions to encourage new and existing entrepreneurial endeavors (the "Project").

Ms. Cannon presented this request to the Council. She stated that approximately six months ago, DEDO was approached by SIUD representatives requesting funds which

would serve as seed funding for the launch of a three-tiered solution of building an entrepreneurial ecosystem. She stated that this is Phase I of the coIN Loft, Inc. project.

Mr. Meyer stated that earlier this year, he was asked by Governor Markell and Director Levin to see if the State could do any better in helping grow small businesses; turn coIN Loft into "Dollar Loft". He added that research shows that nearly all of the net job growth in the country is among companies that are five years or younger. He stated that the real growth is among early stage firms. He stated that it is his belief that the State's monetary resources would be better spent if spent on those types of companies. Mr. Meyer stated that there are already serious elements here in Delaware to enhance the creation of small businesses such as technology. He stated that early stage ecosystems are not coming together as much as they should be. He stated that the real model of the country is in incubation and there is an opportunity here in Delaware to do something.

Mr. Meyer stated that coIN Loft started three years ago. It provided a shared environment for startup companies looking to get out of their homes. He stated that they did not realize it at first, but have found that people need more education. It is his belief that our communities have a deficit in that area. SIUD wants to make education and more resources available.

Mr. Mikels stated that they want to start up and expand on coIN and want to grow it statewide. It is his goal to have people come in and try their hand at entrepreneurial ventures. SIUD wants to accelerate the platform. Mr. Freeman stated that they have partnered with DTCC and Delaware State.

Mr. Brilliant stated that when he came to DEDO with his project, WellDoc, there was not an incubator located here. He stated that the financials presented show that SIUD can grow to become profitable and that they hope to create over 100 jobs over the next two years.

Mr. Lubin asked if SIUD had talked with Bio Tech. Mr. Brilliant stated that they found that no one is doing what SIUD is trying to do.

Director Levin asked Mr. Brilliant to expand on Mr. Meyer's outreach, the plan being developed, on incubators in the region and about space SIUD will be in which will include legal and accounting resources.

Mr. Brilliant stated that SIUD has made a huge effort with this Project. SIUD has been able to get someone to contribute space and SIUD has gone to service providers regarding building an incubator. He stated that to build a community, you have to have all of these elements in line. He stated that they have been working with the Archer Group. SIUD will be located on the second floor of 605 Market Street. Mr. Meyer stated that they will be bringing together approximately 100 people. They will have law firms doing educational classes. The previous location was restrictive space and they couldn't really do an "event". If they did, they would have to remove everything and put

everything back. He also added that another problem was that the people got to a point where there was no place to go. This new space is 4,500 square feet, three closed offices, two conference spaces and a formal classroom environment. Mr. Brilliant stated that SIUD has an option of 2,200 square feet on the third floor.

Chairman Lubin asked if there were any public comments; there were none.

After duly considering, inter alia, the nature of the business, its competitive situation in Delaware, its location, the employment and other requirements under applicable statutory and regulatory provisions, the Council made the following findings: (i) the Project will contribute to maintaining or providing gainful employment of the citizens of the State, (ii) the Project will serve a public purpose by contributing to the prosperity, health or general welfare of the State; (iii) the Project will require a capital investment of at least \$10,000, which funds, including the loan proceeds, will be available or expended on the date on which The Delaware Economic Development Authority disburses the requested loan funds; (iv) the loan will effectuate the purposes of Chapter 50, Subchapter IV of Title 29 of the *Delaware Code*, and (v) the Applicant is a financially responsible person to the extent required by statute and has not been convicted of a major labor law violation or other illegal conduct involving moral turpitude by any agency or court of the federal government or agency or court of any state in the two-year period immediately prior to the approval of the Applicant's application for assistance. Senator Cook made a motion that the Council recommend to Mr. Alan B. Levin, Chairperson, The Delaware Economic Development Authority, approval of a grant in an amount not to exceed Two Hundred Fifty Thousand Dollars (\$250,000), to be disbursed from the Delaware Strategic Fund for the Project, contingent upon the approval remaining in effect through and including December 16, 2013. Mr. Riddle seconded the motion, which was then adopted by unanimous vote.

Sparrow Holdings, LLC (“Sparrow” or the “Applicant”) – The Applicant, in conjunction with WSFS Bank, is requesting a modification to a previously awarded State Small Business Credit Initiative participation loan in the amount of \$387,000 which was recommended for approval at the February 27, 2012 CDF meeting (the “Request”).

Mr. Bach presented this request to the Council. Mr. Bach stated that Mr. Skipper with WSFS has been very instrumental in working with the Access and the SSBCI programs. Mr. Skipper stated that the SSBCI loan was to fund the construction piece of a construction loan. He stated that the original loan was expected to close by the end of December 2012. He added however, that Mid-Atlantic Business Finance Company, the CDC authorizing the sale, has experienced unusually high turnover which has unfortunately caused the delay in this deal. Therefore, Mr. Skipper is requesting an extension of the loan through March 2013. He stated, however, that he anticipates that the loan will be closed in January 2013. Mr. Skipper stated that the business has actually been in operation for three months.

Mr. Bach stated that once the SBA closes the loan, DEDA will have \$387,000 to put back into the SSBCI fund.

Chairman Lubin asked if there were any public comments; there were none.

Representative Scott made a motion that the Council recommend to Mr. Alan B. Levin, Chairperson, The Delaware Economic Development Authority, approval of the Request, contingent upon the approval remaining in effect through and including December 16, 2013. Mr. Riddle seconded the motion, which was then adopted by unanimous vote.

Mr. Lubin asked that the Council be updated on the status of this project at the next Council meeting.

Regulations #401 and #403 – Mrs. Mears stated that Executive Order 36, issued by Governor Markell, asked that all State agencies review, revise and update their Regulations to reflect current policies.

Regulation 401 – Industrial Revenue Bond Financing - Mrs. Mears stated that the revised version of the Procedures Regarding Non-State Guaranteed Conduit Bonds include updated formatting and reference to the Deputy Attorney General as the Authority's counsel. Additionally, the revised regulations reference Post Issuance Compliance and Record Retention policies which apply to the Industrial Revenue Bond recipients and were drafted in the 2012 Fiscal Year. The revised version includes updated fee regulations that reflect current practices.

Regulation 403 – Administration and Operation of the Council on Development Finance. Mrs. Mears stated that the revised version of the Administration and Operation of Council on Development Finance regulations includes references to the Freedom of Information Act regulations. In the previous version, the Council on Development Finance needed to review Strategic Fund loan or grants in which the applicant has not entered into a contract within two years of approval. This regulation has been changed to require review for Strategic Fund loan or grants in which the applicant has not entered into a contract within one year of approval. The revised version eliminates the requirement for the Council on Development Finance to organize an annual retreat, the reference to the obsolete Competiveness Fund, the requirement to brief the Chairman of all pending projects and the requirement for staff to share all commitment letters with the Council. Reporting requirements for updating the Council on Development Finance now include operating budget reports. Additionally, the definition of a substantive change made to any agreement, as it pertains to updating the Council, was broadened to also include payment modifications and employment benchmark modifications in addition to collateral, interest rate adjustments and principle award modifications.

Mrs. Mears stated that the revised regulations for Regulation 401 and Regulation 403 will be posted on the Registrar for public comment before formerly being adopted.

CDF Minutes

Page 9

December 17, 2012

Representative Scott made a motion that the Council recommend to Mr. Alan B. Levin, Chairperson, The Delaware Economic Development Authority, approval of the revised regulations for Regulation 401 and Regulation 403. Mr. Riddle seconded the motion, which was then adopted by unanimous vote.

ADJOURMENT

The meeting adjourned at 10:30 A.M.

Respectfully submitted,

Lee Porter, Secretary

LKP

Cc: Members of the Council on Development Finance
Director Alan Levin
Ann Marie Johnson, Esquire
Cynthia Collins, Esquire

The next CDF meeting is scheduled for Monday, January 23, 2013 at 9:00 A.M. at Buena Vista.