

COUNCIL ON DEVELOPMENT FINANCE

February 23, 2009
PUBLIC HEARING 350

THOSE PRESENT:

Mr. Andy Lubin, Chairperson
Honorable Nancy Cook
Mr. Tom Gilligan
Mr. James Hutchison
Honorable Gregory Lavelle
Mr. Fred Sears
Mrs. Richelle Vible

Mr. Alan Levin
Mr. Gary Smith
Mrs. Sanskriti Inamdar
Mrs. Lee Porter
Mrs. Shannon Carter
Mr. Steven Bach
Mrs. Dina Reider
Mrs. Bernice Whaley
Mrs. Karen Smith
Mrs. Nikki Boone

ALSO PRESENT: Representing: **Nanticoke Memorial Hospital** – Darr Hall and Steve Rose; **Greenhill Car Wash, LLC** – David Shepherd and Gregg Crystall; **Fraunhofer Center for Molecular Biotechnology** – Vidadi Yusibov and Dale Ervin; and S. Manizavinos from Christiana Care

LOCATION: Delaware Economic Development Office, 99 Kings Highway, Dover, Delaware 19901

TIME: 9:00 A.M.

CALL TO ORDER

The meeting was called to order at 9:05 A.M. by Mr. Lubin, Chairperson, on Monday, February 23, 2009.

OLD BUSINESS:

Mr. Sears made a motion that the minutes of the January 26, 2009 Council on Development Finance meeting be approved as presented. Representative Lavelle seconded the motion, which was then adopted by unanimous vote.

NEW BUSINESS:

Nanticoke Memorial Hospital, Inc. (“NMH” or the “Applicant”) – The Applicant is requesting a loan in the amount of \$4,489,729.32 through the Delaware Strategic Fund.

The proceeds will be used for working capital for its current facility located in Seaford, Delaware (the "Project").

Mr. Smith presented this request to the Council. He stated that NMH is seeking relief from two soft defaults. The first one is the Unrestricted Cash Days on Hand requirement for 60 days by February 28, 2009. The second soft default is the debt service coverage ratio of 1.20 which NMH needs to meet annually on June 30th. Mr. Smith stated that NMH will not be able to meet either of these deadlines.

Mr. Smith stated that NMH is requesting a loan in the amount of \$4,489,729.32 which would be structured as principal only payments with no interest and a ten-year amortization with payments beginning July 2009 with a balloon payment in August 2010. There would be 14 payments.

Mr. Smith stated that management has had a high turnover in the last four years; there have been five CEOs. It should be noted that Mr. Hancock, the first CEO was employed for 27 years and after he left, NMH went through four other ones. The current management team has been in place since November of 2008. He stated that NMH has proposed several additions to what has been done in the past. NMH will be adding/improving an oncology unit, orthopedics unit, gastroenterology unit, OB-GYN unit, emergency department, vascular surgery area and pediatric area. This will include the hiring of several physicians. NMH lost its Level 3 trauma status which was a significant loss. It hopes to regain that status.

Mr. Smith stated that NMH's project differs from the St. Francis project which was basically in the City of Wilmington. In that market area, St. Francis was serving a high number of Medicare and Medicaid and its reimbursements were not on par. He stated that NMH does not have this situation. As far as competition, the closest hospitals are in Dover, Lewes, Milford or Salisbury. NMH's territory is basically western Sussex County. It is felt that NMH should be able to grow.

Mr. Smith stated another good point with NMH is that it has its basic infrastructure in place and has the space to grow. It will have equipment expenditures and the costs of hiring the doctors.

Mrs. Inamdar reviewed the financial condition of NMH. She stated NMH has had losses. Actually the trend has been that the losses have increased over the years. She stated that even though the expenses are increasing, there are two floors that are vacant where NMH could fill and bring in more services and more people. She stated that the bottom line is basically that NMH is not able to generate enough revenues. However, with the proposed changes, she believes it should be able to turn around its revenues and its bottom line in the next two years.

Mr. Sears stated that the trend is not new and asked why it was now, all of a sudden, the decision was made to add new services and new doctors. Mr. Rose stated that the return

on investments in the market has been very low and has really hurt NMH's cash flow. He stated the turnaround in the CEOs has also hurt. He joined the hospital in the summer and then became the CEO. He stated everyone feels the market is there, but they need to keep the work in the community.

Mrs. Vible asked how the two floors became vacant. Mr. Rose stated that in July 07, a decision was made to eliminate the trauma center which really has had a significant impact on NMH. He stated NMH lost its orthopedic doctors which is a big part of a trauma center. He stated that NMH has an orthopedic group coming on board on July 1, 2009. He stated the "light has been on" for awhile but it was a long process recruiting physicians. He stated that efforts that started a year ago have just started bearing fruit. The oncology unit opened February 1st; the vascular center on March 1st, and the others will open on July 1st. Mr. Rose stated that NMH's expenses have actually dropped \$7 – 8 million over the last year.

Mr. Rose stated that once you begin having problems, the community starts losing faith. So NMH has been trying to get out to anyone who will listen to regain that faith.

In response to Mr. Rose saying that the loss of the orthopedic unit was basically to blame for most of trouble, Mrs. Vible asked what management's plan was to replace other people who may leave. Mr. Rose stated that NMH has already hired a Pediatric nurse and a Pediatrician to vamp up NMH's pediatric sections. He stated they would be recapturing that unit. He stated that they have about 7,000 visits a year in that unit.

Mr. Rose also emphasized that there were not only the new professional employees such as the doctors but there will also be maintenance employees, nurses, housekeepers, etc.

Mr. Gilligan feels that this loan would just be taking Mellon out of the line of credit which was issued in 2008. He asked what would be accomplished by trading one debt for another. Mr. Hall stated that the challenge was to get over the sixty day threshold. He stated that within the last two weeks, one of the closed floors has reopened, but they need to get over the hump. Mr. Rose stated that he wants the emphasis to be on what NMH is offering the community.

Mr. Gilligan asked about the equipment that was purchased. Mr. Hall stated that it was actually one piece of equipment which was a lease obligation and the rest was financed internally.

Mr. Lubin asked if NMH thought it was reasonable that it could repay this debt in 2010. Mr. Hall stated that the balloon could be a problem but that NMH should be in a position to renegotiate that debt at that time. Mr. Rose stated that these are not efforts that they think are going to happen- NMH has made definite moves and they are going to happen.

Mr. Smith stated that when the Council reviewed the St. Francis project, they were informed that most likely Nanticoke would be submitting an application also. Mr. Rose stated that however, NMH's scenario is very different from St. Francis.

Mr. Sears stated that if the projections are accurate, this would be the best project that DEDO has ever done.

Mr. Rose stated that NMH is adding nine to ten doctors. He stated that the gastroenterologist will soon be on board and NMH already has the necessary equipment. He stated there is a good possibility that there may be betting a fourth gastroenterologist.

Mr. Sears asked what incentives are being offered by NMH to get these doctors to come to Seaford. Mr. Rose stated that they are seeing some population growth and they know the volume of patients that are going to Maryland and NMH wants to bring them back to Seaford. NMH has a company, Delphi, who will recruit physicians. Mr. Rose has been visiting doctors previously associated with NMH to recruit them back.

Mr. Levin stated that when DEDO was approached by Senator Adams, they met with Mr. Rose and Mr. Hall. He stated he doesn't think he could have come away more impressed with the management and the vision. He believes there is not a more critical facility than Nanticoke based on the area that it serves. Mr. Levin told Mr. Rose and Mr. Hall that he believes that they are on the right direction.

Mr. Smith stated that NMH is the largest employer in western Sussex County and in Seaford, so there would be employment consequences if NMH fails.

Mr. Gilligan asked what other routes NMH could take if they did not receive this funding. Mr. Hall stated that they had done a lot of brainstorming and he believes the consequences of going into soft default would put additional operating restraints on the facility.

Mr. Sears believes that DEDO needs to be prepared if this funding is done. He feels other hospitals will request funding also. He stated that it is different than St. Francis; for this project there is a light at the end of the tunnel.

Mr. Gilligan asked what NMH thinks the next financial statements will look like. Mr. Rose stated that they will continue to have losses. He stated that last month NMH lost \$600,000 instead of the \$1,000,000 they lost the month before. He stated the February volume losses are even looking better.

Mr. Gilligan asked that since Mellon already has money in the game, is it any better to be sitting here now and letting Mellon deal with it and come back to the CDF in six months. Mr. Lubin stated he thinks lending the money is less risky now. He feels there is more chance for them to recover now. He stated if we do nothing, they will clearly fall into soft defaults.

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

Mrs. Vible asked if NMH has had any talks with Mellon. Mr. Hall stated that the bond insurer would tell them what to do and that would probably be to liquidate. Mr. Levin stated that not having the forbearance makes it easier.

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. Representative Lavelle made a motion that the Council recommend to Mr. Alan B. Levin, Chairperson, The Delaware Economic Development Authority, approval of a loan in an amount not to exceed Four Million Four Hundred Eighty-Nine Thousand Seven Hundred Twenty-Nine Dollars and Thirty-Two Cents (\$4,489,729.32) to be disbursed from the Delaware Strategic Fund, for the Project, contingent upon the approval remaining in effect through and including February 23, 2010. Mr. Hutchison seconded the motion, which was then adopted by unanimous vote.

The Council requested quarterly updates on the progress of NMH.

Greenhill Car Wash, LLC (“Greenhill” or the “Applicant”) – The Applicant is requesting a matching grant in the amount of \$100,000 from the Delaware Strategic Fund under the Brownfields Assistance program. The Applicant proposes to use the proceeds for the redevelopment of an approximately .75 acre located at 300 Greenhill Avenue in Wilmington, Delaware (the “Project”).

Mrs. Clark presented this request to the Council. Mr. Crystal distributed handouts showing and describing the remediation work that had been done on this Brownfield site. Mr. Shepherd stated the site was acquired one year ago. The property had significantly deteriorated and tested environmentally unsafe. Greenhill has put in considerable recycling water systems. Arsenic was the biggest problem.

Mr. Lubin asked if Greenhill had taken advantage of HISCA funds. Mr. Shepherd stated that Greenhill had utilized that program and had been reimbursed \$158,000 for the

cleanup process. He stated that the funds from DEDO would be additional funds. The cost of removing the tanks was paid by the seller and are not a part of this application. Mr. Shepherd stated that during the initial investigation, Greenhill put in a monitoring well and found large quantities of arsenic. It was decided to dig up the area and do away with the arsenic sludge. He stated that along Third Street, there was about a two foot white paste which was an arsenic substance which has been disposed of; there was 400 tons of this material.

Mr. Shepherd stated that DNREC came out with a proposed plan of remediation which basically called for a hard cover over the project then two feet of landscaping material over that. They have to make sure the payment stays whole. He stated that DNREC is extremely pleased with the work that has been done. Mr. Shepherd stated that this has been turned into something that looks fantastic.

Mr. Sears stated it was a great project - a success in every way. He asked about other areas as the tannery was not just on this land alone. Mr. Shepherd stated that there are other areas and they did find ground water contamination and it is his understanding that DNREC will continue to investigate.

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

After duly considering, inter alia, the nature of the business, that Greenhill Car Wash, LLC is a "certified Brownfield" within the meaning of 29 Del. C. §5028, the Council made the following findings: (i) the Project will contribute to the creation or retention of 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 grant proceeds, will be available or expended on the date on which The Delaware Economic Development Authority disburses the requested grant funds; (iv) the Grant 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. Mr. Sears 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 One Hundred Thousand Dollars (\$100,000) to be disbursed from the Delaware Strategic Fund, for the Project, contingent upon the Applicant submitting a detailed list of expenditures prior to the release of the funds and upon the approval remaining in effect through and including February 23, 2010. Mr. Gilligan seconded the motion, which was then unanimously approved.

Fraunhofer Center for Molecular Biotechnology ("Fraunhofer" or the "Applicant")
In September 2007, Fraunhofer received approval for a grant in the amount of \$5,000,000

from the Delaware Strategic Fund. The proceeds were to be used for costs associated with the company's plans to expand its vaccine development efforts from a laboratory level to a pilot plant scale by acquiring the entire building that the Center is currently leasing in the Delaware Technology Park in Newark, Delaware (the "Project"). Today, the company is requesting an amendment to that Agreement.

Mr. Smith presented this request to the Council. He stated that specifically, Fraunhofer is requesting the rolling fixed dollar royalty payment be changed from what is in the Grant Agreement, to a fixed percentage of royalties received by Fraunhofer USA CMB. He stated that Fraunhofer has agreed to increase the royalties from 5% to 10%.

Mr. Smith discussed both the August 17, 2006 Grant Agreement and the January 30, 2008 Strategic Fund Grant, each in the amount of \$5,000,000. However the 2006 Grant Agreement is a \$1,000,000 a year for a term of five years. He stated that it was DEDO's desire to combine both agreements into one.

Mr. Smith stated that Fraunhofer has been very successful in attracting funds such as with the Gates Foundation. It has been very successful in getting research dollars and its technology is proving to be successful.

Senator Cook stated that there is no guarantee for the yearly appropriation of \$1,000,000. We are looking at the next two years (not forward of the five year approval).

Mr. Yusibov stated that Fraunhofer appreciates all the support it has received from the State. He stated the company started in 2001 and has increased tremendously and has developed critical technology. He stated there are a number of things going from Phase I to Phase II that is really significant in technology. Mr. Yusibov distributed handouts to the CDF members and the staff explaining growth in the areas of revenue, R&D and jobs.

Mr. Yusibov stated that Fraunhofer will be spinning out another company by the end of the year. He stated the employment has been growing steadily. He stated that the Fraunhofer project has also created employment for construction companies, etc. in regards to the indirect labor that was created. He stated that they had projected employment of 120 employees but he feels that they will be exceeding that number. He stated they have already put three products into clinical trials.

Mr. Yusibov stated that he believes by amending the Grant Agreement from a rolling fixed dollar royalty payment to a fixed percentage of royalties received by USA CMB, would be more beneficial to the State also. He stated the royalties are actually much higher. Mr. Yusibov stated this conversion will really help Fraunhofer. It is now ten percent of royalties over a twenty year period. He stated it would also make sense to combine all the agreements into one agreement. He stated that at this point, they just want to amend.

Mr. Gilligan asked about the spin off companies that Mr. Yusibov had referred to. Mr. Yusibov stated that in the Grant Agreement, Fraunhofer agreed to do its best to spin off companies. He stated they have already spun off Athena Bio.

Mrs. Vible asked about the royalties due to the State of Delaware – what is it tied to. Specifically, if Fraunhofer should merge or sell to another company – would that commitment survive? Mr. Yusibov stated that any company that bought Fraunhofer would have to respect the terms of the Grant Agreement.

Representative Lavelle asked if DEDA was giving up a fixed royalty stream, what was Fraunhofer getting. Representative Lavelle feels DEDA is taking additional risk. Mr. Yusibov stated that from a business perspective, Fraunhofer is a not for profit company and it can't afford to have this money as a liability. He states it is a liability issue – unless Fraunhofer pays back all the funds, it cannot use other financings.

Mr. Sears reiterated that if the funding is considered debt – it goes into a collateral account and cannot be spent because it has to back Fraunhofer's debt.

Mr. Lubin asked Mr. Yusibov if when Fraunhofer goes from clinical to product, is it going to keep the business in Delaware. Mr. Yusibov stated that Fraunhofer is trying to establish most of its activity here in Delaware. He stated this pilot facility is unique and is only one existing globally. Fraunhofer, at this Newark location, is trying to become the hub for technology internationally.

Representative Lavelle asked if Fraunhofer's other grants had these similar terms. Mr. Yusibov stated that they have a stake in it also – have the right to utilize products in the field of application.

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

After duly considering Fraunhofer's request, Representative Lavelle made a motion that the Council recommend to Mr. Alan B. Levin, Chairperson, The Delaware Economic Development Authority, approval of an amendment to the current Grant Agreement dated January 30, 2008, between The Delaware Economic Development Authority and Fraunhofer USA, Inc., whereby the rolling fixed dollar royalty payment will be changed to a fixed percentage of royalties received by Fraunhofer USA CMB, contingent upon the amendment being reviewed and found satisfactory by the Authority's legal counsel. Mrs. Vible seconded the motion, which was then unanimously approved, except for Mr. Sears who abstained from voting.

University of Delaware's Delaware Small Business Development Center (the "SBDC" or the "Applicant") - The Applicant is requesting a grant from the Delaware Strategic Fund of the State of Delaware in the amount of \$400,000. The Applicant proposes to use the funds to provide a cash match against federal funds to continue the

operations of the Delaware Small Business Development Center Network in Delaware (the "Project").

Mr. Smith presented this request to the Council. DEDO, through The Delaware Economic Development Authority, has supported funding for the SBDC as far back as 1996. Funding the center is an effective way for our office to reach out to small businesses and start-ups. Prior to 1998, the SBDC was funded annually with a grant from the Strategic Fund. For the last several years the SBDC has received an appropriation of \$350,000 from interest earnings on the Strategic Fund. The first \$320,900 of interest earnings continues to be appropriated to DEDO for general operating expenses, the second "bucket" is for the operation of a trade development office in Taiwan and the third bucket is to the SBDC. Pursuant to Budget Bill 2008-2009, The Delaware Economic Development Authority is mandated to provide the SBDC with \$400,000 in financial assistance.

Based on a combination of lower forecasted balances for the fund this year and dramatically lower interest rates, the interest earnings may not provide enough funds for the appropriation to the SBDC this year. This application is being presented to the Council today to secure annual operating funds directly from the Strategic Fund in the event that interest earnings do not amount to \$400,000. At this time, the first disbursement of \$320,900 for DEDO's general operating expenses has been disbursed leaving a balance of \$368,762.00. After the second disbursement of \$125,000 for the Taiwan project, there will be a balance of \$243,762.00 leaving a shortfall of \$156,238 for the SBDC commitment. Therefore, today's request is for an amount up to \$156,238. However, please note that before any funds are distributed from the Delaware Strategic Fund to the SBDC, the interest earnings from the Strategic Fund will be applied. Therefore, the exact amount that will be needed cannot be determined until the end of DEDO's fiscal year which is June 30, 2009.

Mr. Smith stated that it is hoped that by June 30th all of the funds can be paid out of the DSF interest income. Senator Cook asked if this number could go up and Mr. Smith stated it could not. Even though this project is mandated by law to provide these funds to the SBDC, it has to go before the CDF as they are required to review and provide a recommendation on projects utilizing Delaware Strategic funds.

Mr. 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 B. Levin, Chairperson, The Delaware Economic Development Authority, approval of a grant in an amount not to exceed One Hundred Fifty-Six Thousand, Two Hundred Thirty-Eight Dollars (\$156,238) to be disbursed from the Delaware Strategic Fund, for the Project, contingent upon the stipulation that before any funds are distributed from the Delaware Strategic Fund to the SBDC, the interest earnings from the Strategic Fund will be applied and upon the approval for the grant remaining in effect through and including February 23, 2010. Mr. Hutchison seconded the motion, which was then adopted by unanimous vote.

Collections Marketing Services, LLC (“CMS” or the “Applicant”) - The Applicant has requested \$500,000 from the Emerging Technologies Pre-Venture Fund. The Applicant, a software company offering a solution to help lenders increase their collection yield by utilizing more efficient modes of communication that increase the overall efficiency of the collections operation, proposes to use the proceeds to support marketing and sales efforts at its facility located in Newark, Delaware (the “Project”).

Mr. Smith presented this request to the Council. He stated the Pre-Venture Board was impressed with this company. It is making money and the Board feels the State will reap the rewards in future employment and from an investment standpoint.

Mrs. Inamdar stated that CMC’s product is to help lenders improve their collections. She stated that the reason this venture project is good for the State is that CMC already has 14-high salary, full-time positions in Newark, Delaware. The funding requested today is for their Series B round of financing. They have already had two Series A financing rounds and the previous investors have contributed in the Series A-2 round. CMC’s investors showed a vote of confidence by re-investing in the project and are actually interested in the Series B financing round as well. She stated that because of the current economy with so many defaults, the timing is actually great. Mrs. Inamdar stated the management team was also impressive. She stated that Milestone Venture Partners is the lead investor.

Mrs. Inamdar stated that CMC will be a single collection agency for a bunch of banks. Mr. Sears stated that it is difficult to see how CMC will have the rights to set up payment plans for customers, such as Discover. He asked if the employees were phone bank kind of people. Mrs. Inamdar stated no, they will be tech people. She stated they have a CEO, a person in charge of sales and a person under him. Mr. Sears stated he would like to have seen some type of pro forma for the employees. The staff will update the CDF on the employment numbers.

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

After duly considering, the nature of the business and finding that the Project will (i) serve a public purpose by being a knowledge-based, fast-growing small business in a technology field such as biotechnology, (ii) that the Grant will effectuate the purposes of 76 *Del. Laws*, c. 79, §46(d) (July 1, 2007) and (iii) 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, Mr. Sears made a motion that the Council recommend to Mr. Alan B. Levin, Chairperson, The Delaware Economic Development Authority, approval of an equity investment in the amount not to exceed Five Hundred Thousand Dollars (\$500,000) to be disbursed from the Emerging Technologies Pre-Venture Fund, for the Project, contingent upon the conditions of the investment be *pari passu* with the investment terms of Originate, upon approval of a term sheet by the Board and upon the approval remaining in effect through and including February 23, 2010. Representative Lavelle seconded the motion, which was then unanimously approved.

The meeting adjourned at 10:45 a.m.

Respectfully submitted,

Lee Porter, Secretary

LKP

cc: Members of the Council on Development Finance
Director Alan Levin
Elio Battista, Jr., Esquire

The next CDF meeting is scheduled for ***Monday, March 23, 2009*** at 9:00 A.M. at Buena Vista in New Castle, County, Delaware.