

FOR CONSIDERATION

December 16, 2010

TO: The Directors

FROM: Dennis M. Mullen

SUBJECT: Buffalo (Erie County) – Sorrento Lactalis Capital – Empire State Economic Development Fund – General Development Financing (Capital Grant)

REQUEST FOR: Findings and Determinations Pursuant to Sections 16-m and 10 (g) of the Act; Authorization to Adopt the Proposed General Project Plan; Authorization to Make a Grant and to Take Related Actions

General Project Plan

I. Project Summary

Grantee: Sorrento Lactalis, Inc. (“Sorrento” or the “Company”)

ESD* Investment: A grant of up to \$1,500,000 to be used for a portion of the cost of new machinery and equipment.

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

Project Location: 2375 South Park Avenue, Buffalo, Erie County**
2376 South Park Avenue, Buffalo, Erie County

** Project activity site; other is job-retention site.

Proposed Project: Building renovations and the acquisition and installation of machinery and equipment associated with the relocation of a manufacturing process line.

ESD Incentive Offer Accepted: April 10, 2008 (initial offer); May 26, 2010 (revised offer)

Project Completion: August 31, 2011

Number of Employees at Project Location***:

Initial employment at time of ESD Incentive Offer: 510
Current employment level: 510
Minimum employment on January 1, 2014: 525

***Includes up to nine Contract Employees and 11 company executives employed by Lactalis American Group, Inc.

Grantee Contact: Mr. Jean-Paul Quiblier, Vice President Manufacturing
2376 South Park Avenue
Buffalo, NY 14220
Phone: 716-823-6262
Fax: 716-823-0448

Anticipated
Appropriation
Source:

Empire State Economic Development Fund

ESD Project No.: W159

Project Team: Origination Will Welisevich
Project Management Jean Bly
Affirmative Action Helen Daniels
Finance Ross Freeman
Environmental Soo Kang

II. Project Cost and Financing Sources

<u>Financing Uses</u>	<u>Amount</u>
Building Renovations	\$3,020,000
Machinery & Equipment	4,700,000
Training	20,000
Soft Costs	<u>60,000</u>

Total Project Costs \$7,800,000

<u>Financing Sources</u>	<u>Amount</u>	<u>Percent</u>
ESD-Grant	\$1,500,000	19%
Company Equity	<u>6,300,000</u>	<u>81%</u>
Total Project Financing	<u>\$7,800,000</u>	<u>100%</u>

III. Project Description

A. Background

In 1947, Louis Russo joined with two partners to form the Sorrento Cheese Company in Blasdell, New York; together, they made soft Italian cheese in the family tradition that Louis had brought with him from his birthplace of Sorrento, Italy. In 1960, the business moved to its present location in Buffalo and continued to expand, including the establishment of cheese-making facilities in Goshen, NY and San Jose, CA; a distribution center in Little Ferry, NJ; and a sales office in Placentia, CA. In 1992, Sorrento was sold to Groupe Lactalis of France (the “French Parent”), the second largest dairy company in the world with annual sales of \$10.4 billion and over 150 plants globally. Groupe Lactalis annually produces 1.7 billion pounds of cheese, 3.4 billion pounds of milk, 660 million pounds of fresh products and 610 million pounds of butterfat and cream.

Lactalis American Group, Inc., the United States parent company (the “Parent”), owns Sorrento, Lactalis USA, and Mozzarella Fresca, with manufacturing plants in Buffalo, NY; Nampa, ID; Belmont, WI; Merrill, WI; and Tipton, CA. The Parent, with over 1,650 American employees, is ranked the fifth largest cheese manufacturer in the United States and collectively produces over \$900 million of popular cheese brands annually including Président (6.4%); Sorrento (60.3%); Precious (12.4%); rondelé, and Galbani (2.1%), for the retail, food service and industrial markets.

The Italian cheese segment continues to show one of the strongest growth trends in the dairy industry. Major customers include food retail and wholesale businesses including Costco, Sysco, US Foodservice, Walmart and C&S. Major competitors include BelGioiosos Cheese, Inc. (Green Bay, WI); Polly-O (Campbell, NY); and Sargento Foods Inc. (Plymouth, WI), as well as international companies including Bongrain, Kraft, Saputo, and Dean Foods.

The French Parent has a history of closing older marginal plants and either purchases newer plants or makes capital investments in its existing newer facilities. In 2005, it closed its cheese-making facility in Goshen, NY, resulting in the loss of 120 jobs. Since 2001, Groupe Lactalis provided \$29 million in cash subsidies to its subsidiaries. However, in early 2008, Sorrento notified ESD that the annual subsidy ended, but a \$100 million capital investment would be made available to a select few of the French Parent’s American facilities. The aged Buffalo facility had to reduce and stabilize costs in order to capture a percentage of this \$100 million, or the facility would be closed. Therefore, the Company sought ESD assistance and on July 11, 2008, accepted ESD’s offer of a \$1,500,000 grant to induce a \$7.8 million investment in building renovations, infrastructure improvements, and new machinery and equipment necessary to improve efficiencies and secure a new mozzarella stick-cheese operation from a sister facility in Nampa, ID. As a result, 510 jobs will be retained, including 11 company executives employed by the Parent, and 15 new jobs will be created by 2014. The incentive proposal was revised on May 26, 2010, to include nine contract employees in the existing job number and a revision from two to three disbursements. Without this grant, the Buffalo facility was a risk of being closed, eliminating 510 jobs.

On January 18, 2001, ESD Directors approved a \$450,000 Capital Grant to be used towards machinery and equipment to expand production capabilities at the Buffalo facility. The Company defaulted on the capital grant in 2005 when it failed to meet its job goal of 575. As the Grantee achieved at least eight-five percent of its employment goal, ESD waived repayment.

B. The Project

The project involves building renovations including electrical, HVAC, and plumbing upgrades; the acquisition of new, efficient machinery and equipment including packaging equipment; installation of relocated cheese-stick production equipment from Nampa, ID; employee training; and soft costs. The project began in January 2009 and is scheduled for completion in August 2011. The relocated mozzarella stick-cheese line, valued at \$2.239 million, will increase production by approximately 4,025,000 pounds of cheese per year, significantly increasing sales and long-term viability of the Buffalo facility.

C. Financial Terms and Conditions

1. Upon execution of the grant disbursement agreement, the Company shall pay a commitment fee of 1% of the \$1,500,000 capital grant (\$15,000) and reimburse ESD for all out-of-pocket expenses incurred in connection with the project.
2. The Company will demonstrate no material adverse change in its financial condition prior to disbursement.
3. Lactalis American Group, Inc. will guarantee the grant repayment obligation of its subsidiary, Sorrento Lactalis, Inc., in the event of an Employment Shortfall or other default, as defined in these materials or the Grant Disbursement Agreement.
4. The Company will be required to contribute a minimum of 10% of the total project cost in the form of equity contributed after the Company's acceptance of ESD's offer. Equity is defined as cash injected into the project by the Company or by investors, and should be auditable through Company financial statements or Company accounts, if so requested by ESD. Equity cannot be borrowed money secured by the assets in the project.
5. Prior to disbursement, the Company must employ at least the number of Permanent and Contract Full-time 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. A **Full-time Contract Employee** is a full-time private sector employee (or self-employed person) who is not on the grantee's payroll but who works exclusively for the grantee at the project location for a minimum of 35 hours per week for not less than 4 consecutive weeks, providing services that would otherwise be provided by a Full-time Permanent Employee. The position held by a Full-time Contract Employee must be a year-round position.

6. Up to \$1,500,000 will be disbursed to the Grantee in three installments as follows:
- a) an Initial Disbursement of an amount equal to 33% of the grant (\$500,000) upon documentation of building renovations and machinery and equipment project costs totaling \$3,699,000 and documentation of the employment of at least 510 Full-time Permanent Employees (including up to 9 Full-time Contract Employees) at the Project Locations, assuming that all project approvals have been completed and funds are available;
 - b) a Second Disbursement of an amount equal to 33% of the grant (\$500,000) will be disbursed upon documentation of additional \$4,101,000 in building renovations and machinery and equipment project costs (aggregate total \$7,800,000); documentation of asset transfer of approximately \$2,239,000; and documentation of the employment of at least 525 Full-time Permanent Employees (including up to 9 Full-time Contract Employees) at the Project Locations (Employment Increment of 15), provided Grantee is otherwise in compliance with program requirements;
 - c) a Third Disbursement of an amount equal to 33% of the grant (\$500,000) will be disbursed upon completion of the project substantially as described in these materials, including the relocation of the stick-cheese line, and the employment of at least 525 Full-time Permanent Employees (including up to 9 Full-time Contract Employees) Project Locations, 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. Expenditures must be incurred on or after July 11, 2008, to be considered eligible project costs. All disbursements must be requested by April 1, 2014.

7. ESD may reallocate the project funds to another form of assistance, at an amount no greater than \$1,500,000, 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 and Full-time Contract 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, the entire Grant will be subject to recapture ESD.

The Grantee's number of Full-time Permanent and Full-time Contract 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	510***
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A	B
Reporting Date	Employment Goals
February 1, 2012	#+X
February 1, 2013	#+X
February 1, 2014	#+X
February 1, 2015	#+X
February 1, 2016	#+X

***Includes at least 501 Permanent Full-Time Employees, including 11 company executives employed by Lactalis American Group, Inc., and up to 9 Full-Time Contract Employees.

X = Grantee's Employment Increment that will be the basis of the Second Disbursement of the Grant as described in section C.5 above (i.e. X=15, and Employment Goals shall equal [510 + X = 525] if the Second Disbursement is made, in the year such disbursement is made and for each year thereafter). If the Second Disbursement has not yet been made then X=0.

IV. Statutory Basis

1. The proposed project would promote the economic health of New York State by facilitating the creation or retention of jobs or would increase activity within a municipality or region of the state or would enhance or help to maintain the economic viability of family farms.

As a result of this project, the Company will maintain its employment level of 510 jobs and create 15 new jobs by January 1, 2014.

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

Without ESD assistance, this project would not have taken place and the Buffalo facility was at risk of being closed, eliminating all 510 jobs.

3. The project is reasonably likely to accomplish its stated objectives and the likely benefits of the project exceed costs.

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 \$18,798,864;
- Fiscal cost to NYS government is estimated at \$1,500,000;
- Project cost to NYS government per direct job is \$5,104;
- Project cost to NYS government per job (direct plus indirect) is estimated at \$1,933;
- Ratio of project fiscal benefits to costs to NYS government is 12.53:1;
- Fiscal benefits to all governments (state and local) are estimated at \$32,098,172;
- Fiscal cost to all governments is \$1,500,000;
- All government cost per direct job is \$5,104;
- All government cost per total job is \$1,933;

- The fiscal benefit to cost ratio for all governments is 21.40:1;
- Economic benefits (fiscal plus total net resident disposable income from project employment) are estimated at \$172,379,998 or \$229,067 per job (direct and indirect);
- The economic benefit to cost ratio is 114.92:1;
- Project construction cost is \$3,080,000 which is expected to generate 31 direct job years and 22 indirect job years of employment;
- For every permanent direct job generated by this project, an additional 1.56 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.)

4. The requirements of Section 10(g) of the Act are satisfied.

No residential relocation is required because 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. Sorrento agrees to use its best efforts 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

December 16, 2010

Buffalo (Erie County) – Sorrento Lactalis Capital – Empire State Economic Development Fund – General Development Financing (Capital Grant) – Findings and Determinations Pursuant to Sections 16-m and 10 (g) of the Act; Authorization to Adopt the Proposed General Project Plan; Authorization to Make a Grant and to Take Related Actions

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 Sorrento Lactalis Capital – Empire State Economic Development Fund – General Development Financing (Capital Grant) Project (the “Project”), the Corporation hereby determines pursuant to Sections 16-m and 10 (g) of the New York State Urban Development Corporation Act of 1968, as amended (the “Act”), that

1. The proposed project would promote the economic health of New York State by facilitating the creation or retention of jobs or would increase activity within a municipality or region of the state or would enhance or help to maintain the economic viability of family farms;
2. The project would be unlikely to take place in New York State without the requested assistance;
3. The project is reasonably likely to accomplish its stated objectives and that the likely benefits of the project exceed costs;
4. There are no families or individuals to be displaced from the project area; and be it further

RESOLVED, that the Corporation does hereby adopt, subject to the requirements of Section 16(2) of the Act, the proposed General Project Plan (the “Plan”) for the Project submitted to this meeting, together with such changes therein as the Chairman and Chief Executive Officer of the Corporation or his designee(s) may deem appropriate, a copy of which Plan, together with such changes, is hereby ordered filed with the records of the Corporation; and be it further

RESOLVED, that upon written finding of the Chairman and Chief Executive Officer of the Corporation or his designee(s) that no substantive negative testimony or comment has been received at the public hearing held on the Plan, such Plan shall be effective at the conclusion of such hearing, and that upon such written finding being made, the Chairman and Chief Executive Officer of the Corporation or his designee(s) be, and each of them hereby is, authorized to make to Sorrento Lactalis, Inc. a grant for a total amount not to exceed One Million Five Hundred Thousand Dollars (\$1,500,000) from the Empire State Economic Development Fund for the purposes, and substantially on the terms and conditions, set forth in the materials presented to this meeting, with such changes as the Chairman and Chief Executive Officer of the Corporation or his designee(s) may deem appropriate, subject to the availability of funds and the approval of the State Division of the Budget; and be it further

RESOLVED, that the Chairman and Chief Executive Officer of the Corporation or his designee(s) be, subsequent to the making of the grant, and each of them hereby is, authorized to take such actions and make such modifications to the terms of the grant as he or she may deem necessary or appropriate in the administration of the grant; and be it further

RESOLVED, that the provision of ESD financial assistance is expressly contingent upon: (1) the approval of the Public Authorities Control Board, if applicable, and (2) receipt of all other necessary approvals; and be it further

RESOLVED, that the Chairman and Chief Executive Officer of the Corporation or his designee(s) be, and each of them hereby is, authorized in the name and on behalf of the Corporation to execute and deliver any and all documents and to take all actions as he or she may in his or her sole discretion consider to be necessary or proper to effectuate the foregoing resolutions.

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**Project Summary
Benefit-Cost Evaluation¹**

Sorrento Lactalis, Inc.

Initial Jobs: 510
New Jobs: 15

Construction Job Years (Direct): 31
Construction Job Years (Indirect): 22

Evaluation Statistics	Project Result NYS Govt.	NYS Govt. Benchmarks for ESD Projects²	Project Results State & Local Governments	State & Local Government Benchmarks for ESD Projects
Fiscal Costs³	\$1,500,000	\$ 794,250	\$1,500,000	\$ 1,020,500
Fiscal Benefits⁴	\$18,798,864	\$ 2,085,600	\$32,098,172	\$ 4,271,980
Fiscal Cost /Direct Job	\$5,104	\$ 3,000	\$5,104	\$ 4,110
Fiscal Cost/Total Jobs	\$1,933	\$ 1,424	\$1,933	\$ 1,964
Fiscal B/C Ratio	12.53	7.00	21.40	10.60
	Project Results	Benchmarks for ESD Projects		
Economic Benefits⁵	\$172,379,998	\$ 119,468,000		
Econ. Benefits/Total Jobs	\$229,067	\$ 147,600		
Economic B/C Ratio	114.92	50.00		

¹ Dollar values are present value calculated over a 7-year period. Separate evaluations are made and reported for New York State government assistance alone and for State and Local government.

² The current project evaluation results (both fiscal and economic) are compared to performance measure benchmarks based on results of a sample of ESD non-retail projects.

³ Fiscal cost includes the value of grants, loans and associated default risks, and discretionary subsidies (such as tax exemptions or abatements on sales, property, and interest income).

⁴ Fiscal benefits are the loan repayments and tax revenues to New York State and Local governments generated by project activity. This includes estimated taxes on personal incomes from project direct and indirect employment, corporate and business incomes, excise and user taxes, property taxes, negative transfers, and other taxes.

⁵ Economic benefits are estimated project benefits measuring fiscal flows to government plus net resident disposable income from project direct and indirect employment net of transfers, without adjusting for individual income earners' opportunity cost of employment.