

FOR CONSIDERATION

February 19, 2010

TO: The Directors

FROM: Dennis M. Mullen

SUBJECT: Avon (Livingston County) – Kraft Foods Global 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: Kraft Foods Global, Inc.

ESD* Investment: A grant of up to \$125,000 to be used for a portion of the cost of the purchase and installation of machinery and equipment.

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

Project Location: 140 Spring Street, Avon, Livingston County

NYS Empire Zone
(or equivalent): N/A

Proposed Project: Installation of a new Lunchables line to increase production capacity

ESD Incentive Offer Accepted: April 20, 2009

Project Completion: July 2009

Number of Employees at Project Location:

Initial employment at time of ESD Incentive Offer: 353

Current employment level: 410

Minimum employment on January 1, 2013: 403

Grantee Contact: Gregg Manning, Plant Manager

140 Spring Street

Avon, New York 14414

Phone: (585) 226-4330

Fax: (585) 226-4354

Anticipated
Appropriation

Source: Empire State Economic Development Fund

ESD Project No.: W587

Project Team:	Origination	Kevin Hurley
	Project Management	Edward Muszynski
	Affirmative Action	Helen Daniels
	Finance	Yang Song
	Environmental	Soo Kang

II. Project Cost and Financing Sources

<u>Financing Uses</u>	<u>Amount</u>
Building Renovations	\$320,000
Machinery and Equipment	775,000
Relocation Expenses	1,050,000
Soft Costs	115,000
Employee Training	<u>125,000</u>

Total Project Costs \$2,385,000

<u>Financing Sources</u>	<u>Amount</u>	<u>Percent</u>
ESD-Grant	\$125,000	5.2%
Office of Community Renewal-Grant	125,000	5.2%
Company Equity	<u>2,135,000</u>	<u>89.6%</u>

Total Project Financing \$2,385,000 100.0%

III. Project Description

A. Background

Headquartered in the Chicago area, Kraft Foods Global manufactures and markets packaged foods and grocery products. Its history goes back to J.L. Kraft's wholesale cheese business in Chicago in the early 1900s. Since then, Kraft has evolved through mergers and acquisitions. In 2001, Kraft went public, and it spun off its Post cereals division in 2008. Most recently, the Company has reached an agreement to acquire the British confectioner Cadbury. Kraft has operations in over 70 countries and has more than 50 brands, with total 2008 revenues exceeding \$42 billion. Well-known brands include Jell-O, Cool Whip and Lunchables, among others. Kraft's products are sold to supermarket chains, wholesalers, club stores, distributors, convenience stores, and retail food outlets. The Company's North American business units encompass snacks, beverages, cheese, grocery, and convenient meals, allowing it to respond to market and competitive changes. Kraft's Avon facility, originally built in 1962 for Birds-Eye Frozen Foods, became the world's sole plant for the production of Cool Whip in 1995 and several years later added production of the Lunchables line of food products.

In 2009, Kraft Foods Global Inc. was capacity constrained on the production of the Lunchables product and approached ESD regarding installation of two Lunchables lines, which would give Kraft more production capacity. On March 24, 2009, ESD offered a capital grant of \$125,000 to be matched by \$125,000 from New York State's Office of Community Renewal ("OCR"), which the Company accepted on April 20, 2009. Without these incentives, the project could have gone to a Kraft facility in Allentown, PA. A second Lunchables line may also need to be installed, but Kraft has not yet made a decision on a site. A second \$125,000 ESD capital grant for installation of the second Lunchables line, also matched by \$125,000 from OCR, was also offered and accepted as part of ESD's incentive proposal. Should this second line be installed in Avon, ESD would act on that grant in the future.

Previously, employment at the Avon facility grew from 166 jobs in 1994 to over 500 in 2000. In 1995, ESD's \$99,750 training grant helped to bring 100% of the Cool Whip line to Avon from a site in Minnesota. When Lunchables, a new product, was added to the plant in 1997, ESD assisted with a \$100,000 training grant, followed by an \$89,500 training grant in 2000. With an economic slowdown in 2002, job growth at the Avon plant began to decline and Kraft could not attain its ESD job target of 677 jobs. Kraft repaid ESD \$12,227 in grant funds, and the targeted job level was reduced to 522. Since then, the plant has replaced two Lunchables lines with one high-speed line and automated its Cool Whip production, making the plant less labor-intensive. Subsequently, jobs declined, mainly through attrition, to the 353 at the time of the current offer.

B. The Project

Kraft has purchased, relocated and installed equipment for a new Lunchables line at the Avon facility, increasing its production capacity by 50%. Kraft has also renovated 58,000 square feet (in its 121,000-square-foot production area), installed new water systems and HVAC and reconfigured the two existing Lunchables lines to make room for the new one. The Company has already exceeded its target of 50 new jobs.

C. Financial Terms and Conditions

1. The Company shall pay a commitment fee of 1% of the \$125,000 (\$1,250) upon execution of the grant disbursement agreement. In addition, at the time of disbursement, the Company will reimburse ESD for all out-of-pocket expenses incurred in connection with the project.
2. The Company will demonstrate no material adverse change in its financial condition prior to disbursement.
3. The Company or the Company's shareholders will contribute at least 10% in equity to the project. Equity is defined as any non-debt source of capital, and should be auditable through Company financial statements or Company accounts, if so requested by ESD.
4. Prior to disbursement, the Company must employ at least the number of Full-time Permanent Employees set forth as the Baseline Employment in the table below. A Full-time Permanent Employee shall mean (a) a full-time, permanent, private-sector employee on the Grantee's payroll, who has worked at the Project Location for a minimum of thirty-five hours per week for not less than four consecutive weeks and who is entitled to receive the usual and customary fringe benefits extended by Grantee to other employees with comparable rank and duties; or (b) two part-time, permanent, private-sector employees on Grantee's payroll, who have worked at the Project Location for a combined minimum of thirty-five hours per week for not less than four consecutive weeks and who are entitled to receive the usual and customary fringe benefits extended by Grantee to other employees with comparable rank and duties.
5. Up to \$125,000 will be disbursed to Grantee upon documentation of renovation and machinery and equipment project costs totaling approximately \$2,385,000, and documentation of the employment of at least 403 Full-time Permanent Employees at the Project Location, assuming that all project approvals have been completed and funds are available. Payment will be made upon presentation to ESD of an invoice and such other documentation as ESD may reasonably require. Expenses must be incurred on or after April 20, 2009, to be considered eligible project costs. All disbursements must be requested by April 1, 2013.
6. ESD may reallocate the project funds to another form of assistance, at an amount no greater than \$125,000, 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.
7. In consideration for the making of the Grant, Grantee will achieve the Employment Goals set forth in Column B of the table below. If the Full-time Permanent Employee Count for the year prior to the reporting date set forth in Column A of the table below is less than one

hundred percent (100%) of the Employment Goal set forth in Column B (an “Employment Shortfall”), then upon demand by ESD, Grantee shall be obligated to repay to ESD a portion of each disbursement of the Grant, as follows:

The Recapture Amount is based on the time that has lapsed between when the Grant funds were disbursed and when the Employment Shortfall occurred. The Recapture Amount shall be calculated by aggregating the Recapture Amount for each disbursement of the Grant, which in each instance shall be equal to:

- (i) 100% of the disbursed amount if the Employment Shortfall occurred in the calendar year that the disbursement was made, or in the first full calendar year after the disbursement was made;
- (ii) 80% of the disbursed amount if the Employment Shortfall occurred in the second full calendar year after the disbursement was made;
- (iii) 60% of the disbursed amount if the Employment Shortfall occurred in the third full calendar year after the disbursement was made;
- (iv) 40% of the disbursed amount if the Employment Shortfall occurred in the fourth full calendar year after the disbursement was made;
- (v) 20% of the disbursed amount if the Employment Shortfall occurred in the fifth full calendar year after the disbursement was made.

The Grantee’s number of Full-time Permanent Employees shall be deemed to be the greater of the number as of the last payroll date in the month of December for such year or the average employment for the 12 month period computed by quarter.

Baseline Employment	353
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A	B
Reporting Date	Employment Goals
February 1, 2011	353
February 1, 2012	353
February 1, 2013	403
February 1, 2014	403
February 1, 2015	403

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 353 jobs and create 50 new jobs.

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

Without ESD's assistance to make this project financially feasible in New York State, the project would likely have taken place at a Kraft facility in Pennsylvania.

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 \$1,231,571;
- Fiscal cost to NYS government is estimated at \$125,000;
- Project cost to NYS government per direct job is \$3,876;
- Project cost to NYS government per job (direct plus indirect) is estimated at \$1,790;
- Ratio of project fiscal benefits to costs to NYS government is 9.85:1;
- Fiscal benefits to all governments (state and local) are estimated at \$2,061,304;
- Fiscal cost to all governments is \$125,000;
- All government cost per direct job is \$3,876;
- All government cost per total job is \$1,790;
- The fiscal benefit to cost ratio for all governments is 16.49:1;
- Economic benefits (fiscal plus total net resident disposable income from project employment) are estimated at \$8,014,602, or \$114,792 per job (direct and indirect);
- The economic benefit to cost ratio is 64.12:1;
- Project construction cost is \$1,485,000 which is expected to generate 14 direct job years and 10 indirect job years of employment;
- For every permanent direct job generated by this project, an additional 1.17 indirect jobs are anticipated in the state's economy;
- The payback period for NYS costs is 1 year.

(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. Kraft 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

February 19, 2010

Avon (Livingston County) – Kraft Foods Global 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 Kraft Global Foods 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-Designate 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-Designate 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, Chairman and Chief Executive Officer-Designate of the Corporation or his designee(s) be, and each of them hereby is, authorized to make to Kraft Foods Global, Inc. a grant for a total amount not to exceed One Hundred Twenty-Five Thousand Dollars (\$125,000) 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-Designate of the Corporation or his designee(s) may deem appropriate, subject to the availability of funds and the approval of the State Division of the Budget; and be it further

RESOLVED, that the Chairman and Chief Executive Officer-Designate of the Corporation or his designee(s) be, subsequent to the making of the grant, and each of them hereby is, authorized to take

such actions and make such modifications to the terms of the grant as he or she may deem necessary or appropriate in the administration of the grant; and be it further

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

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

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