

FOR CONSIDERATION

June 28, 2011

TO: The Directors

FROM: Kenneth Adams

SUBJECT: Rochester (Monroe County) – Upstate Niagara Cooperative MAP 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; Determination of No Significant Effect on the Environment

General Project Plan

I. Project Summary

Grantee: Upstate Niagara Cooperative, Inc. (“UNC” or the “Company”)

ESD* Investment: A grant of up to \$125,000 to be used for a portion of the cost of the Company’s cooler expansion.

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

Project Location: 45 Fulton Avenue, Rochester, Monroe County

Proposed Project: Building cooler expansion and purchase of machinery and equipment associated with increased milk production

ESD Incentive Offer Accepted: April 15, 2009

Project Completion: December 2009

Number of Employees at Project Location:

Initial employment at time of ESD Incentive Offer:	165
Current employment level:	165
Minimum employment through January 1, 2015:	165

Grantee Contact: John J. Wilhelm, Director of Purchasing
 25 Anderson Road
 Buffalo, NY 14225
 Phone: (716) 892-3156 x2252
 Fax: (716) 896-8752

Anticipated
 Appropriation
 Source: Empire State Economic Development Fund

ESD Project No.: W589

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

II. Project Cost and Financing Sources

<u>Financing Uses</u>	<u>Amount</u>
Building Construction	\$145,000
Cooler Expansion	650,000
Electrical Infrastructure & Refrigeration System	410,000
Machinery & Equipment	820,000
Soft Costs	<u>225,000</u>
Total Project Costs	<u>\$2,250,000</u>

<u>Financing Sources</u>	<u>Amount</u>	<u>Percent</u>
ESD-Grant	\$125,000	0.6%
Company Equity	<u>2,125,000</u>	<u>99.4%</u>
Total Project Financing	<u>\$2,250,000</u>	<u>100.0%</u>

III. Project Description

A. Background

Upstate Niagara Cooperative, Inc., is a dairy cooperative representing about 400 farms in Western and Central New York. UNC operates milk processing and distribution centers in Buffalo, Niagara Falls and Rochester; a cottage cheese, sour cream and yogurt plant in Buffalo; and distribution centers in Syracuse and Watertown. Its products are sold under the Bison, Upstate Farms, Wendt's, and Intense brands. The Company's products reach consumers in all parts of New York State as well as in major east coast cities such as Boston, Baltimore and Washington, DC. Major customers include grocery retailers, such as Wegmans and Tops Markets, and convenience/foodservice stores, such as Wilson Farms, Dairy Queen and Abbott's Custard. Competitors include Friendship Dairies, H.P. Hood/Crowley Foods, and Dean Foods.

Organic milk, a \$900 billion annual business, represents the milk industry's leading growth segment. UNC's 51,000-square-foot Rochester plant is the Company's exclusive production facility for organic milk.

Manufacturing is the most significant wealth-creating and value-adding sector of the NYS economy outside of the New York City metropolitan area. The purpose of the ESD's Manufacturing Assistance Program ("MAP") is to encourage New York State manufacturers to invest in projects that substantially improve the competitiveness and productivity of their operations, thus increasing their long-term viability and ensuring the health of the state's manufacturing economy.

In order to accommodate the growing needs of a major producer of organic milk, the Company needed to expand its cooler. Without the expansion, UNC would have to outsource the production, storage and distribution to a "co-packer" in Baltimore, MD. The Company approached ESD for assistance, and ESD responded with an offer of a \$125,000 MAP capital grant, which the Company accepted in April 2009. As a result, the Company made a significant investment in its Rochester plant.

B. The Project

The Company added 7,400 square feet to an existing 16,500-square-foot cooler inside its facility. UNC also purchased new equipment, including pallet racking, a palletizer and pallet trucks to support this expansion. The Company will retain 165 full-time jobs through January 1, 2015, and document its productivity milestones prior to full disbursement of the grant. The 45% expansion of its cooler space has strengthened the Company's position and New York State's dairy industry.

C. MAP Project Findings and Outcomes

This project qualifies as a Manufacturing Assistance Program project because the Company i) is a resident New York State manufacturer with between 50 and 1,000 employees; ii) exports at least

30% of its production beyond its region or provides at least 30% of its production to a manufacturer that exports beyond the Company's region; and iii) is making a substantial investment of at least \$1,000,000 in order to improve its competitiveness and productivity and thereby enhance its long-term viability in the State of New York.

The project is expected to produce the following measurable outcomes for the Company:

Primary Outcome: Production of 770,000 gallons (or gallon equivalents) of commercially acceptable organic milk from January 2010 to June 2010, representing an estimated \$34,000 in new revenue per month.

Total estimated value of competitiveness and project outcomes: \$100,000 annually

D. Financial Terms and Conditions

1. Upon execution of the grant disbursement agreement, the Company shall pay a commitment fee of 1% of the \$125,000 capital grant (\$1,250) and reimburse ESD for all out-of-pocket expenses incurred in connection with the project.
2. The Company will be obligated to advise ESD of any material or adverse changes in its financial condition prior to disbursement.
3. 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.
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 the Grantee in two installments as follows:
 - a) an Initial Disbursement of an amount equal to 50% of the grant (\$62,500) will be disbursed upon documentation of construction, cooler expansion, infrastructure and machinery and equipment project costs totaling \$2,000,000, and documentation of

the employment of at least 165 Full-time Permanent Employees at the Project Location, assuming that all project approvals have been completed and funds are available;

- b) a Second Disbursement of an amount equal to the grant (\$62,500) will be disbursed upon documentation of the achievement of 100% of production of 770,000 gallon equivalents of commercially acceptable organic milk from July 2009 to December 2009, as certified by the plant manager and confirmed by an independent Certified Public Accountant, provided Grantee is otherwise in compliance with program requirements;

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 15, 2009 to be considered eligible project costs. All disbursements must be requested no later than 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 eighty-five percent (85%) 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	165
---------------------	-----

A	B
Date	Employment Goals
February 1, 2012	165
February 1, 2013	165
February 1, 2014	165
February 1, 2015	165

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 165.

2. The proposed project would be unlikely to take place in New York State without the requested assistance.
Without ESD assistance, the Company would have had to outsource its organic milk storage capacity to a company in another state.

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 \$7,891,030;
 - Fiscal cost to NYS government is estimated at \$184,740;
 - Project cost to NYS government per direct job is \$1,723;
 - Project cost to NYS government per job (direct plus indirect) is estimated at \$796;
 - Ratio of project fiscal benefits to costs to NYS government is 42.71:1;
 - Fiscal benefits to all governments (state and local) are estimated at \$13,333,572;
 - Fiscal cost to all governments is \$287,808;
 - All government cost per direct job is \$2,684;
 - All government cost per total job is \$1,240;
 - The fiscal benefit to cost ratio for all governments is 46.33:1;

- Economic benefits (fiscal plus total net resident disposable income from project employment) are estimated at \$79,135,347, or \$340,840 per job (direct and indirect);
- The economic benefit to cost ratio is 274.96:1;
- Project construction cost is \$1,430,000, which is expected to generate 13 direct job years and nine 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 one 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, although the funding of this project by ESD may constitute an "action" as defined by the State Environmental Quality Review Act ("SEQRA"), the project itself has been previously completed. ESD's action in the funding decision will not alter the adverse environmental impacts, if any, of the project as completed. ESD staff accordingly believes that funding the completed project will not have any significant adverse impacts on the environment.

VI. Affirmative Action

ESD's Non-Discrimination and Affirmative Action policy will apply. Upstate Niagara Cooperative, Inc. 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
 Cost-Benefit Analysis

Rochester (Monroe County) – Upstate Niagara Cooperative MAP 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 Upstate Niagara Cooperative MAP 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 President 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 President 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 President and Chief Executive Officer of the Corporation or his designee(s) be, and each of them hereby is, authorized to make to Upstate Niagara Cooperative, 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 President 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 President 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 President and Chief Executive Officer 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.

* * *

June 28, 2011

Rochester (Monroe County) – Upstate Niagara Cooperative MAP Capital – Empire State Economic Development Fund – General Development Financing (Capital Grant) – Determination of No Significant Effect on the Environment

RESOLVED, that based on the material submitted to the Directors with respect to the Upstate Niagara Cooperative MAP Capital – Empire State Economic Development Fund – General Development Financing (Capital Grant) Project, the Corporation hereby determines that the proposed action will not have a significant effect on the environment.

* * *

