

March 25, 2014

**MEMORANDUM TO THE TRUSTEES**

**FROM THE PRESIDENT and CHIEF EXECUTIVE OFFICER**

**SUBJECT: Awards of Fund Benefits from the Western New York Economic Development Fund Recommended by the Western New York Power Proceeds Allocation Board**

**SUMMARY**

The Trustees are requested to accept the recommendations of the Western New York Power Proceeds Allocation Board (“WNYPPAB”) and approve the awards of Fund Benefits from the Western New York Economic Development Fund to Eden Valley Growers and Living Green Insulation Products and Services, LLC, the eligible applicants listed in Exhibit “A,” and authorize the other actions described herein with respect to such applicant and award.

For informational purposes, Exhibit “B” lists: (1) projects the WNYPPAB has determined are not being recommended for an award of Fund Benefits; (2) applications that have been withdrawn; and (3) applications that were deferred for future consideration.

**BACKGROUND**

1. Western New York Power Proceeds Allocation Act

On March 30, 2012, Governor Cuomo signed into law the Western New York Power Proceeds Allocation Act (the “Act”). The Act provides for the creation, by the Authority, of the Western New York Economic Development Fund. The Fund consists of the aggregate excess of revenues received by the Authority from the sale of Expansion Power (“EP”) and Replacement Power (“RP”) produced at the Niagara Power Project that was sold in the wholesale energy market over what revenues would have been received had such energy been sold on a firm basis to an eligible EP or RP customer under the applicable tariff or contract.

Under the Act, an “eligible applicant” is a private business, including a not-for-profit corporation. “Eligible projects” is defined to mean “economic development projects by eligible applicants that are physically located within the State of New York within a thirty-mile radius of the Niagara power project located in Lewiston, New York that will support the growth of business in the state and thereby lead to the creation or maintenance of jobs and tax revenues for the state and local governments.” Eligible projects include, for example, capital investments in buildings, equipment, and associated infrastructure owned by an eligible applicant for fund benefits; transportation projects under state or federally approved plans; the acquisition of land needed for infrastructure; research and development where the results of such research and development will directly benefit New York state; support for tourism and marketing and advertising efforts for western New York state tourism and business; and energy-related projects.

Eligible projects do not include public interest advertising or advocacy; lobbying; the support or opposition of any candidate for public office; the support or opposition to any public issue; legal fees related to litigation of any kind; expenses related to administrative proceedings before state or local agencies; or retail businesses as defined by the board, including without limitation, sports venues, gaming and gambling or entertainment-related establishments, residential properties, or places of overnight accommodation.

Fund Benefits have been provided to successful eligible applicants in the form of grants. It is anticipated that Fund Benefits will be disbursed as reimbursement for expenses incurred by an Eligible Applicant for an Eligible Project.

At least 15% percent of Fund Benefits must be dedicated to eligible projects which are “energy-related projects, programs and services,” which is “energy efficiency projects and services, clean energy technology projects and services, and high performance and sustainable building programs and services, and the construction, installation and/or operation of facilities or equipment done in connection with any such projects, programs or services.”

Allocations of Fund Benefits may only be made on the basis of moneys that have been deposited in the Fund. No award may encumber future funds that have been received but not deposited in the Fund.

## 2. Western New York Power Proceeds Allocation Board

Under the Act, the WNYPPAB is charged with soliciting applications for Fund Benefits, reviewing applications, making eligibility determinations, and evaluating the merits of applications for Fund Benefits. WNYPPAB uses the criteria applicable to EP, RP and PP, and for revitalization of industry as provided in Public Authorities Law §1005. Additionally, WNYPPAB is authorized to consider the extent to which an award of Fund Benefits is consistent with the strategies and priorities of the Regional Economic Development Council having responsibility for the region in which an eligible project is proposed. A copy of these criteria (collectively, “Program Criteria”), adapted from WNYPPAB’s “Procedures for the Review of Applications for Fund Benefits,” is attached as Exhibit “C”.

The WNYPPAB met on March 4, 2013 and, in accordance with the Act, adopted by-laws, operating procedures, guidelines related to the application, and a form of application. At that time, WNYPPAB defined “retail business” to mean a business that is primarily used in making retail sales of goods or services to customers who personally visit such facilities to obtain goods or services.

WNYPPAB also designated the Western New York Regional Director of Empire State Development Corporation (“ESD”) to be its designee (“Designee”) to act on its behalf on all administrative matters. Among other things, the Designee was authorized to preform analyses of the applications for Fund Benefits and make recommendations to WNYPPAB on the applications.

Under the Act, a recommendation for Fund Benefits by WNYPPAB is a prerequisite to an award of Fund Benefits by the Authority, and the Act authorizes the Authority to award Fund Benefits to an applicant upon a recommendation of the WNYPPAB. Upon a showing of good cause, the Authority has discretion as to whether to adopt the WNYPPAB's recommendation, or to award benefits in a different amount or on different terms and conditions than proposed by the WNYPPAB. In addition, the Authority is authorized to include within the contract covering an award ("Award Contract") such other terms and conditions the Authority deems appropriate.

### 3. Application Process

In an effort to provide for the efficient review of applications and disbursement of Fund Benefits, the WNYPPAB established a schedule of dates through the end of 2014 on which the WNYPPAB would meet to consider applications. At this time, applications are being accepted on a rolling basis. In addition, the application process was promoted through a media release and with assistance from state and local entities, including the Western New York and Finger Lakes Regional Economic Development Councils, the Empire State Development Corporation and other local and regional economic development organizations within the State. A webpage was created that is hosted on [WWW.NYPA.GOV/WNYPPAB](http://WWW.NYPA.GOV/WNYPPAB) with application instructions, a link to the approved application form and other program details including a contact phone number and email address staffed by the Western New York Empire State Development regional office.

## DISCUSSION

For this fifth round of WNYPPAB action, the WNYPPAB considered 18 applications seeking over \$12 million in Fund Benefits. WNYPPAB's staff analyzed the applications and made recommendations to WNYPPAB concerning each of the applications based on eligibility requirements and Program Criteria. Copies of the recommendations from staff to the WNYPPAB regarding recommended awards of Fund Benefits can be found in "Exhibit "D."

At its February 3, 2014 meeting, the WNYPPAB took the following actions on applications for Fund Benefits:

#### 1. Recommendations for Awards of Fund Benefits

The WNYPPAB is recommending to the Trustees that the applications listed on Exhibit "A" receive an award of Fund Benefits in the amounts indicated. The applicants have indicated that the proposed projects would directly create or retain approximately 58 jobs in Western New York. The total to be expended on the proposed projects is expected to exceed \$1.2 million. These two recommendations are presently before the Trustees for consideration.

Given the nascent stage of the proposed projects, it was not possible at this time to identify all of the terms and conditions that would be applicable to each award and memorialized in an Award Contract. With the Trustees' authorization, it is anticipated that the Authority, in consultation with ESD, will negotiate final terms and conditions with successful applicants after receipt of more detailed information concerning the projects and proposed schedules. In addition to appropriate business terms, staff anticipates that Award Contracts will contain provisions for

periodic audits of the successful applicant for the purpose of determining contract and program compliance, and where appropriate, terms providing for the partial or complete recapture of Fund Benefits disbursements if the applicant fails to maintain agreed-upon commitments, relating to, among other things, employment levels and/or project element due dates.

## 2. Other WNYPPAB Determinations

The following information is being provided to the Trustees for their information only. No action by the Trustees is required with respect to these matters.

Exhibit “B” lists: (1) projects the WNYPPAB has determined are not being recommended for an award of Fund Benefits; (2) applications that have been withdrawn; and (3) applications that were deferred for future consideration.

## RECOMMENDATION

The Vice President, Marketing recommends that:

- (1) the Trustees accept the recommendations of the WNYPPAB and make awards of Fund Benefits to the applicants and in the amounts identified in Exhibit “A,” conditioned upon an agreement to be negotiated with each applicant on the final terms and conditions that would be applicable to each award to be contained in an Award Contract approved by the President and Chief Executive Officer and approved by the Executive Vice President and General Counsel as to form;
- (2) the Senior Vice President – Economic Development and Energy Efficiency, or his designee(s), in consultation with ESD, be authorized to negotiate with the applicants concerning such final terms and conditions that will be applicable to the awards; and
- (3) the Senior Vice President – Economic Development and Energy Efficiency, or his designee, be authorized to execute on behalf of the Authority Award Contracts for the award listed on Exhibit “A” subject to the forgoing conditions.

For the reasons stated, I recommend the approval of the above requested action by adoption of the resolution below.

Gil C. Quiniones  
President and Chief Executive Officer

## RESOLUTION

WHEREAS, the Western New York Power Proceeds Allocation Board (“WNYPPAB”) has recommended that the Authority make awards of Fund Benefits from the Western New York Economic Development Fund (“Fund”) to the eligible applicants listed in Exhibit “A”;

NOW THEREFORE BE IT RESOLVED, That the Authority hereby accepts the recommendation of the WNYPPAB and authorizes the awards of Fund Benefits to the applicants and in the amounts listed in Exhibit “A,” conditioned upon an agreement between the Authority and each applicant on the final terms and conditions that would be applicable to each award and set forth in a written award contract (“Award Contract”) between the Authority and each applicant approved by the President and Chief Executive Officer and approved by the Executive Vice President and General Counsel as to form; and be it further

RESOLVED, That the Senior Vice President – Economic Development and Energy Efficiency, or his designee, in consultation with the Empire State Development Corporation, is authorized to negotiate with successful applicants concerning such final terms and conditions that will be applicable to the awards; and be it further

RESOLVED, That the Senior Vice President – Economic Development and Energy Efficiency, or his designee, is authorized to execute on behalf of the Authority Award Contracts for the awards listed on Exhibit “A” subject to the forgoing conditions; and be it further

RESOLVED, That the Chairman, the Vice Chair, the President and Chief Executive Officer, the Chief Operating Officer and all other officers of the Authority are, and each of them hereby is, authorized on behalf of the Authority to do any and all things, take any and all actions and execute and deliver any and all agreements, certificates and other documents to effectuate the foregoing resolution, subject to the approval of the form thereof by the Executive Vice President and General Counsel.

Applicants Recommended for an Award of Fund Benefits

Line	Business	City	County	Economic Development Region	Project Description	Project Type	Recommended Award Amount	Total Project Cost	Jobs Retained	Jobs Created
1	Eden Valley Growers	Eden	Erie	Western NY	Building a new staging/packing area to increase output on produce and value added products	Business Investment	\$ 80,000	\$ 400,000	20	6
2	Living Green Insulation Produ	Buffalo	Erie	Western NY	Will produce cellulose insulation and hydro seed mulch from recycled paper products that are diverted from landfills	Business Investment	\$ 165,570	\$ 891,765	3	29

**Total: \$ 245,570 \$ 1,291,765 23 35**

**Total Jobs Created & Retained: 58**

**Applicants Not Recommended for an Award**

Line	Business	City	County	Economic Development Region	Project Description	Project Type
1	Art Services Initiative	Buffalo	Erie	Western NY	Enhance marketing efforts for the region's Path Through History	Tourism/Marketing
2	Buffalo Maritime Center	Buffalo	Niagara	Western NY	Restoration/renovation/repairs to the historic 1913 Buffalo Bronze Foundry building.	Tourism/Marketing
3	Niagara County Historical Society/ DBA the History Center of Niagara	Lockport	Niagara	Western NY	Enhance the established heritage tourism destination by creating eight exhibits	Tourism/Marketing
4	Paradigm of New York, LLC	Lockport	Niagara	Western NY	Assist in the development and testing of the Paradigm System, which cleans exhaust gases of soot from diesel and gasoline engines.	Business Investment
5	Sterling Energy Group, Inc.	Niagara Falls	Niagara	Western NY	Retrofit and bring the power plant back online to produce ~50 MW of power.	Business Investment
6	SynchroPET	Buffalo	Erie	Western NY	SynchroPET proposed to modify their small animal PET systems to make them commercial products.	Business Investment

**Withdrawn Applications**

Line	Business	Classification
7	Onyx Administrative Services of Buffalo	Withdrawn by applicant

**Applications Deferred for Further Analysis**

Line	Business	Classification
8	Buffalo Niagara Enterprise	Deferred for further analysis
9	Greater Buffalo United Accountable Healthcare Network (GBUAHN), MSO, LLC	Deferred for further analysis
10	Buffalo Syngas, LLC	Deferred for further analysis
11	Entecco, LLC	Deferred for further analysis
12	City Labs, Inc., A Florida Corporation	Deferred for further analysis
13	Humble Pie (previously deferred)	Deferred for further analysis
14	Trek Industries	Deferred for further analysis
15	Triad Recycling	Deferred for further analysis
16	Riviera Theatre and Organ Preservation Society Inc.	Deferred for further analysis

**Western NY Power Proceeds Allocation Board**  
**Exhibit C**

Criteria adapted from the Western NY Power Proceeds Allocation Board's  
"Procedures for the Review of Applications for Fund Benefits"

1. The extent to which an award of Fund Benefits would be consistent with the strategies and priorities of the Regional Economic Development Council ("REDC") having responsibility for the region in which an Eligible Project is located.<sup>1</sup> The Western New York Regional Economic Development Council which is responsible for Eligible Projects in Erie and Niagara Counties Strategies & Priorities are:
  - Promote "Smart Growth" by investing in areas that infrastructure already exists and achieves certain goals, such as: preserving historic buildings; reviving downtowns; reviving main streets; investing in existing neighborhoods; and investing in former industrial sites. A project consistent with Smart Growth will also focus on: enhancing walkability; enhancing multiple modes of transportation; connecting disadvantaged communities to employment clusters; spurring mixed-use private investment in existing communities and preserving/enhancing natural lands and or resources.
  - Promote workforce development by increasing diversity in the labor force, developing and cultivating that includes workers with advancement potential, underemployed, unemployed and special population; align education and skills training to job market for current and future industry needs.
  - Foster entrepreneurship and new business formation and growth. Designing a plan that brings new technologies and/or products to the marketplace, increases new start ups in strategic industries and facilitates the commercialization of products that can lead to job growth in the Region.
  - Increase the industry profile of agriculture in WNY by: creating better access to markets; creating new products; creating new more efficient processes; creating strong regional brands; creating programs that promote careers in agriculture.
  - Utilize Western New York's proximity to Canadian and U.S. population centers to advance economic development in WNY. Bi-national projects will: utilize cross-border planning to create transportation and logistical infrastructure; improve operational relationships; promote the attractiveness of WNY as a hub for global trade.

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<sup>1</sup> As provided for in EDL § 189-c(4), criteria 2-15 are adapted from the criteria for eligibility for Expansion Power, Replacement Power and Preservation Power under Public Authorities Law § 1005. The specific criteria identified in PAL § 1005(13)(b)(4)-(5) are relevant to power allocations under these programs but do not have any logical application to allocations of Fund Benefits. Therefore, the Board does not expect to use these criteria to evaluate applications for Fund Benefits. Additionally, in accordance with PAL § 1005(13), criteria 13-15 listed herein will only be used in the case of Eligible Projects which are proposed by Applicants as, and determined by the Board to be, "revitalization" projects.

- Position the WNY region as a global energy hub through new sources of clean energy, energy efficiency and energy efficient transportation.
- Support growth of advanced manufacturing by making research more available to manufacturers to help them innovate.
- Spur growth in the health and life sciences industry through improved commercialization, recruit high profile research talent and reducing the cost burden of healthcare while improving health outcomes.
- Expand the scope of higher education by increasing accessibility to Higher Education for communities that currently have limited access to educational opportunities; better aligning education with the industry needs and creating support structures for start-ups which will assist start-ups with commercialization, business planning, workforce preparation, facilities, etc.
- Grow visitors and visitor spending by raising the profile of WNY as a national and international destination; connect multiple tourist destinations in WNY; improve the profile of the WNY Gateway to the United States.

For more information on the Western New York Regional Economic Development Council please go to <http://regionalcouncils.ny.gov/content/western-new-york>.

2. The extent to which an award of Fund Benefits would be consistent with the strategies and priorities of the Regional Economic Development Council (“REDC”) having responsibility for the region in which an Eligible Project is located.<sup>2</sup> The Finger Lakes Regional Economic Development Council which is responsible for Eligible Projects in Orleans and Genesee Counties Strategies & Priorities can be found at: <http://regionalcouncils.ny.gov/content/finger-lakes>.
3. The number of jobs that would be created as a result of an award of Fund Benefits.
4. The applicant’s long term commitment to the region as evidenced the current and/or planned capital investment in applicant’s facilities in the region.
5. The ratio of the number of jobs to be created to the amount of Fund Benefits requested.
6. The types of jobs that would be created, as measured by wage and benefit levels, security and stability of employment.
7. The amount of capital investment, including the type and cost of buildings, equipment and facilities, proposed to be constructed, enlarged or installed.
8. The extent to which an award of Fund Benefits would affect the overall productivity or competitiveness of the applicant and its existing employment.
9. The extent to which an award of Fund Benefits may result in a competitive disadvantage for other business in the State.

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<sup>2</sup> As provided for in EDL § 189-c(4), criteria 2-15 are adapted from the criteria for eligibility for Expansion Power, Replacement Power and Preservation Power under Public Authorities Law § 1005. The specific criteria identified in PAL § 1005(13)(b)(4)-(5) are relevant to power allocations under these programs but do not have any logical application to allocations of Fund Benefits. Therefore, the Board does not expect to use these criteria to evaluate applications for Fund Benefits. Additionally, in accordance with PAL § 1005(13), criteria 13-15 listed herein will only be used in the case of Eligible Projects which are proposed by Applicants as, and determined by the Board to be, “revitalization” projects.

10. The growth potential of the applicant's facilities and the contribution of economic strength to the area in which the applicant's facilities are or would be located.
  11. The extent of the applicant's willingness to satisfy affirmative action goals.
  12. The extent to which an award of Fund Benefits is consistent with state, regional and local economic development strategies and priorities and supported by local units of government in the area in which the business is located.
  13. The impact of an award of Fund Benefits on the operation of any other facilities of the applicant, and on other businesses within the region.
  14. That the business is likely to close, partially close or relocate resulting in the loss of a substantial number of jobs.
  15. That the applicant is an important employer in the community and efforts to revitalize the business are in long-term interests of both employers and the community.
  16. That a reasonable prospect exists that the proposed award of Fund Benefits will enable the applicant to remain competitive and become profitable and preserve jobs for a substantial period of time.
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**Recommended Award: Exhibit "D"**

Applicant Name:	Eden Valley Growers	REDC Region:	Western New York
Project Type:	Business Investment	County:	Erie
Industry:	Agriculture	Locality:	Eden
Amount Requested:	\$80,000	Start Date:	03/15/2014
		Finish Date:	05/15/2014

**RECOMMENDED OFFER**

Recommended Total Award:	\$80,000
Total Project Cost:	\$400,000
% of Project Cost Recommended:	20%

**REGIONAL IMPACT MEASUREMENTS**

Number of Jobs Retained:	20
Number of Jobs Created:	6
Average Salary of Jobs:	\$35,000
Indirect Jobs Created	
Other Impact	

**PROJECT DESCRIPTION**

Eden Valley Growers (EVG), a cooperative of ten farms on 1,000 acres in Eden, proposes to meet new market demand by building a new staging/packing area to increase output on produce and value added products. The expansion is needed to meet increasing demand for fresh, locally grown vegetables and fruits while at the same time maintaining food safety standards.

**BASIS FOR RECOMMENDATION**

The Eden Valley Growers Co-op in Eden New York has long had a notable and valuable presence in WNY agriculture. This co-op has recently been offered an opportunity by Regional and Statewide grocers to significantly increase the purchase of their products. To achieve the necessary production to fulfill this new demand, the co-op must build a new cooling/staging/packing area to handle increased capacity. Fostering the growth of the agricultural industry across WNY has been deemed a high priority part of achieving a balanced approach to regional Economic development.

The Eden Valley Growers Co-op has put together a budget of \$400,000 for this project. Eighty percent would be financed through its own investment and a loan/grant term from Farm Credit East. It is recommended that the Board recommend an award of \$80,000 to fill the funding gap for the project which would be payable upon verification of project completion.

**Recommended Award: Exhibit "D"**

Applicant Name:	Living Green Insulation Products and Services, LLC* *See note below under Project Description.	REDC Region:	Western New York
Project Type:	Business Investment	County:	Erie
Industry:	Advanced Manufacturing	Locality:	Buffalo
Amount Requested:	\$165,570	Start Date:	3/1/2014
		Finish Date:	3/1/2016
<b>RECOMMENDED OFFER</b>			
Recommended Total Award:	\$165,570		
Total Project Cost:	\$891,765		
% of Project Cost Recommended:	18.5%		
<b>REGIONAL IMPACT MEASUREMENTS</b>			
Number of Jobs Retained:	3		
Number of Jobs Created:	29		
Average Salary of Jobs:	\$20,800		
Indirect Jobs Created:			
Other Impact:			
<b>PROJECT DESCRIPTION</b>			
<p>Living Green Insulation Products and Services, LLC ("LGI") is a green manufacturing facility located on the eastside of Buffalo. The manufacturing plant will produce cellulose insulation and hydro seed mulch from recycled paper products that are diverted from landfills and sold locally by recycling companies. LGI is in the process of ramping up both its hydro-seeding business and its insulation business which will lead to the employment of 29 people over the next 5 years. In order to meet the current trajectory set for the hydro-seeding business, LGI must complete phase 2 of a 3 phase plan and install a freight elevator; install a sprinkler system; purchase a paneled delivery truck; purchase a hydro-seeding mulcher; and rebuild existing loading docks to handle the weight of the necessary machinery used in the distribution of LGI products.</p> <p>The award request by LGI relates to the second phase of its 3 phase "plan for success." To date LGI has successfully completed the first phase of their master plan which included a \$1,013,935 investment to: install the machinery that creates the 2 products; provide the necessary power upgrades to the building to run the machinery; make the necessary structural improvements to the building; purchase Borax inventory; purchase paper feedstock; replace exterior and emergency lighting; and begin hiring the workforce needed to get the project up and running. Phase 2 and 3 of the master plan for LGI will take an investment of \$891,765 to reach completion.</p> <p>LGI is seeking an award that will allow LGI to complete the second phase of its expansion plan in time for the spring, when the hydro-seeding business has great potential for creating revenue.</p>			

**Western New York Economic Development Fund  
 Recommendation Memo**

Phase 2 of the plan calls for an investment of \$165,570 which will allow the company to: purchase a hydro-seeding mulcher; purchase a panel delivery truck; purchase 2 fork-lifts; reconstruct loading docks; install a sprinkler system; and install a freight elevator.

Upon the completion of phase 2 of the master plan LGI indicates that it will be in a position to take the hydro-seeding portion of its business and create a revenue stream that can be utilized for reinvestment into the completion of the third and final phase. Phase 3 of LGI’s master plan consists of an investment of \$726,195 which will allow LGI to: replace the roof on their facility; make additional electrical upgrades to run the green insulation production; build inventory; upgrade security; and build out office space.

\*The application lists Jabril Shareef as the applicant, but indicates that LGI is the real party in interest and would be making the commitments. In correspondence, Shareef has agreed that LGI will be treated as the applicant.

**PREVIOUS STATE ASSISTANCE OFFERED OR PROVIDED**

TYPE	AMOUNT	STATUS
ESD – EIP Grant	\$226,000	Complete
PUSH Buffalo BNSC Grant	\$35,000	Complete

**BASIS FOR RECOMMENDATION**

LGI is a small business on the east side of Buffalo that has been building from the ground up based on an environmentally friendly product created through state of the art technology. Through a maximum personal investment and the assistance of State and local economic development programs, this company is now in a position to sell and distribute the environmentally friendly hydro-seeding currently being produced at its headquarters facility at 230 Pratt Street, Buffalo, NY.

An award of Fund Benefits would enable LGI to complete phase 2 of this project and begin the sale and distribution of their hydro-seeding product. In conversations with the Board’s staff, LGI indicates that this will create approximately 29 jobs over the next 5 years. The bulk of the jobs would target unemployed residents of the East Side of Buffalo who would be trained for long term careers with LGI.

It is recommended that the Board recommend an award to LGI in the amount of up to \$165,570 to be disbursed in multiple reimbursements based on documentation of LGI’s completion of each of the tasks listed below. This will be in addition to any other terms and conditions that the New York Power Authority deems to be appropriate in any award contract:

- Purchase of hydro-seeding mulcher – The lesser of \$21,120 or the actual purchase price
- Purchase of panel delivery truck – The lesser of \$23,000 or the actual purchase price
- Purchase of 2 fork-lifts – The lesser of \$36,000 or the actual purchase price.
- Reconstruction of loading docks – The lesser of \$16,450 or the actual cost.
- Installation of sprinkler system – The lesser of \$30,000 or the actual cost.
- Installation of freight elevator – The lesser of \$39,000 or the actual cost.