

Date: July 30, 2015

To: THE TRUSTEES

From: THE PRESIDENT and CHIEF EXECUTIVE OFFICER

Subject: **Award 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 recommendation of the Western New York Power Proceeds Allocation Board (“WNYPPAB”) and make an award of Fund Benefits from the Western New York Economic Development Fund to the eligible applicant listed in Exhibit “A” as discussed in more detail below, and authorize the other actions described herein with respect to such applicant and recommended award.

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. Generally, Fund Benefits are disbursed as reimbursement for expenses incurred by an Eligible Applicant for an Eligible Project. Occasionally, Fund Benefits are disbursed in advance for proposed eligible expenditures to be incurred by the Eligible Applicant for an Eligible Project when NYPA determines this approach is appropriate for a project, NYPA has authorized the approach in advance, and proposed expenses can be appropriately documented.

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 “B”.

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 2015 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 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

At its July 8, 2015 meeting, the WNYPPAB considered an application from Borderworx Logistics, LLC (“Borderworx”) seeking \$300,000 in Fund Benefits. WNYPPAB’s staff analyzed the application and made recommendations to the WNYPPAB based on eligibility requirements and Program Criteria. A copy of the recommendation memorandum provided to WNYPPAB for Borderworx is attached as Exhibit “C”. The associated application has also been made available to the Trustees for review. WNYPPAB recommended that this applicant receive an award in the amount indicated on Exhibit “A”.

Based on information provided in the application before the Trustees, the proposed project would directly create or retain approximately 11 jobs in Western New York. The total to be expended on the proposed project is expected to be approximately \$3 million.

Given the nascent stage of the proposed project, it was not possible at this time to identify all of the terms and conditions that would be applicable to the 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 the successful applicant after receipt of more detailed information concerning the project and proposed schedules. The Award Contract may include scheduled payments keyed to commitment milestones, such as employment creation and retention. In addition, staff anticipates that an Award Contract will contain provisions for periodic audits of the successful applicants 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 an applicant fails to maintain agreed-upon commitments, relating to, among other things, employment levels and/or project element due dates.

RECOMMENDATION

The Vice President, Marketing recommends that:

- (1) the Trustees accept the recommendation of the WNYPPAB and make an award of Fund Benefits to the applicant and in the amount identified in Exhibit “A,” conditioned upon an agreement to be negotiated with the applicant on the final terms and conditions that would be applicable to the 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 applicant concerning such final terms and conditions that will be applicable to the award;
- (3) the Senior Vice President – Economic Development and Energy Efficiency, or his designee, be authorized to execute on behalf of the Authority an Award Contract for the award listed on Exhibit “A” subject to the forgoing conditions; and

For the reasons stated, I recommend the approval of the above-requested actions by adoption 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 an award of Fund Benefits from the Western New York Economic Development Fund (“Fund”) to the eligible applicant listed in Exhibit “A” in the amount indicated;

NOW THEREFORE BE IT RESOLVED, That the Authority hereby accepts the recommendation of the WNYPPAB and authorizes the award of Fund Benefits to the applicant and in the amount listed in Exhibit “A”, conditioned upon an agreement between the Authority and the applicant on the final terms and conditions that would be applicable to the award and set forth in a written award contract (“Award Contract”) between the Authority and the 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 the applicant concerning such final terms and conditions that will be applicable to the award; 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 an Award Contract for the award listed on Exhibit “A” subject to the forgoing conditions; and be it further

RESOLVED, That the Chairman, the Vice Chairman, 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.

Western NY Power Proceeds Allocation Board

Exhibit "A"
July 30, 2015

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	Borderworx Logistics, LLC	Sanborn	Niagara	Western NY	Building Construction	Business Investment	\$285,000	\$2,960,980	10	1
Total:							\$285,000	\$2,960,980	10	1

Total Jobs Created & Retained: 11

**Western NY Power Proceeds Allocation Board
Exhibit “B”**

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.¹ 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

¹ 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.

operational relationships; promote the attractiveness of WNY as a hub for global trade.

- 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.² 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.

² 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.

9. The extent to which an award of Fund Benefits may result in a competitive disadvantage for other business in the State.
 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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Western NY Power Proceeds Allocation Board

Western New York Economic Development Fund Recommendation Memorandum

Exhibit "C"

Applicant Name:	Borderworx Logistics, LLC	REDC Region:	WNY
Project Type:	Business Investment	County:	Niagara
Industry:	Process, Physical Distribution, and Logistics Consulting Services	Locality:	Town of Sanborn
Amount Requested:	\$300,000	Start Date:	July 2015
		Finish Date:	January 2016
RECOMMENDED OFFER			
Recommended Total Award:	\$285,000		
Total Project Cost:	\$2,960,980		
% of Project Cost Recommended:	Approx. 10%		
PROJECT BUDGET- 50,000 sq. ft., pre-engineered building			
Use of funds	Amount	Source of Funds	Amount
Construction	\$2,691,800	Committed: First Niagara Bank	\$1,425,000
10% Contingency	\$269,180	Committed: Equity Investment	\$560,980
		Potential: NYBDC	\$675,000
		WNYPPAB	\$300,000
Total:	\$2,960,980	Total:	\$2,960,980
REGIONAL IMPACT MEASUREMENTS			
Number of Jobs Retained:	10		
Number of Jobs Created:	1		
Average Salary of Jobs:	\$36,000		
Indirect Jobs Created:			
Other Impact:	Operation of a designated Foreign Trade Zone for Niagara County. Phases II and III of the project are expected to create a total of 75 additional jobs (source: ESD job commitments for Phase II and III).		



Western NY Power Proceeds Allocation Board

Western New York Economic Development Fund Recommendation Memorandum

PROJECT DESCRIPTION (Adapted from Application)

Borderworx, Inc. is a third party logistics company headquartered in Halton Hills, Ontario. In 2008, it established Borderworx Logistics, LLC (“Borderworx”) a NY corporation in Grand Island, NY, where the company currently leases space. Borderworx has outgrown its Grand Island location and has been actively reviewing alternative locations in both the US and Southern Ontario. To respond to its growth needs the company plans to purchase 31 acres in the Vantage Center Industrial Park in Niagara County, which is located in an inactive Foreign Trade Zone (FTZ) and in close proximity to the Niagara Falls International Airport.

The company has established a three-phased initiative to develop the property. The first phase is the subject of this project and entails the construction of a 50,000 square foot distribution center (the “Distribution Center”). The majority of the constructed building (approximately 40,000 sq. ft.) will be used to receive, inventory and distribute finished goods for various client industries. These clients are non-resident companies from Canada and overseas who will use this location as their business presence in the US market. The services Borderworx provides on behalf of these companies include, but are not limited to: (1) inventory storage, (2) order processing and distribution, (3) returns management, (4) accounting and finance, and (5) meeting space and work areas. This facility will also be used to support some light manufacturing and assembly work for distribution clients and house administration and IT departments.

Borderworx will use the facility built in Phase I to attract more Canadian businesses as clients. In Phases II and III Borderworx will construct other buildings suitable for light manufacturing on the remaining acres purchased.

OTHER ECONOMIC DEVELOPMENT BENEFITS RECEIVED

ESD: Excelsior Tax Credits- Job Growth Track for Phase I, II, & III	Up to \$590,000	NYPA: NA	\$
IDA: PILOT, Sales Tax & Mortgage Recording	\$ 582,000	Other: N/A	\$

PREVIOUS STATE ASSISTANCE OFFERED OR PROVIDED

TYPE	AMOUNT	STATUS
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Western NY Power Proceeds Allocation Board

Western New York Economic Development Fund Recommendation Memorandum

ESD: NA	\$	
BASIS FOR RECOMMENDATION		
<p>This company provides distribution of finished goods to retailers located throughout the U.S. and primarily in the Midwest. Borderworx is planning on moving the majority of its Canadian presence into the U.S. and is considering multiple border locations throughout the northern U.S. and southern Ontario. If the company relocates to any of these alternative locations, WNY will lose 10 jobs and Niagara County will lose the opportunity for a company to operate Niagara County's FTZ and create an additional 75 jobs. A Fund Benefits award would keep this company in NYS and gain a FTZ operator in Niagara County.</p>		
DISBURSEMENT TERMS		
<p>Subject to final determination by the New York Power Authority, staff anticipates that Fund Benefits would be used to reimburse the applicant for a portion of costs related to the construction of the Distribution Center, and disbursed in arrears in two installments:</p> <ol style="list-style-type: none">1. 90% of the award (\$256,500) upon completion of the project, including documentation of the following:<ul style="list-style-type: none">▪ employment of at least 10 Full-time Permanent Employees at the Project Location;▪ total project expenditures of approximately \$2,960,980; and▪ receipt of a Certificate of Occupancy or other documentation verifying project completion and operation.2. 10% of the award grant (\$28,500) upon documentation of employment of at least 11 Full-time Permanent Employees at the Project Location.		