

December 3, 2014

**MEMORANDUM TO THE WESTERN NEW YORK POWER PROCEEDS
ALLOCATION BOARD**

**FROM THE WESTERN NEW YORK REGIONAL DIRECTOR, EMPIRE STATE
DEVELOPMENT CORPORATION**

**SUBJECT: Applications for Fund Benefits from the Western New York
Economic Development Fund**

SUMMARY

The Western New York Power Proceeds Allocation Board (“Allocation Board” or “Board”) is requested to recommend to the Board of Trustees of the Power Authority of the State of New York (“NYPA” or “Authority”) that awards of Fund Benefits be made to the applicant identified in Exhibit “A” (43North LLC) in the amount indicated.

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 (“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 NYPA’s 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 are payable to successful eligible applicants for eligible projects in the form of grants. Most often, Fund Benefits are disbursed by NYPA as reimbursement for expenses incurred by the Eligible Applicant. Exceptions have been made where, for example, advance funding is necessary for the project to commence.

At least 15% percent of the Fund is dedicated to eligible projects which are “energy-related projects, programs and services,” which is defined as “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 funds that have not been deposited in the Fund.

2. Western New York Power Proceeds Allocation Board

Under the Act, the Allocation Board is charged with soliciting applications for Fund Benefits, reviewing applications, making eligibility determinations, evaluating the merits of applications for Fund Benefits, and making recommendations to NYPA on Fund Benefit awards. The Allocation Board uses the criteria applicable to EP, RP and PP allocations, and for revitalization of industry, provided for in Public Authorities Law § 1005. Additionally, the Board 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.

At its meeting on March 4, 2013, the Board, in accordance with the Act, adopted by-laws, operating procedures, guidelines related to the application, and a form of application. A copy of the relevant criteria (collectively, “Program Criteria”), adapted from this Board’s “Procedures for the Review of Applications for Fund Benefits,” is attached as Exhibit “C” to this memorandum.

The Board also 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”.

Finally, the Board designated the Western New York Regional Director for Empire State Development (“ESD”) to act on its behalf for administrative matters and along with NYPA, to provide staff services (“Staff”). Among other things, Staff was authorized to perform analyses of applications seeking Fund Benefits and to make recommendations to the Board on the applications.

3. Application Process

Initially, the Allocation Board established a series of application due dates coupled with a schedule of dates through the end of 2014 on which dates the Board expected to meet to consider applications. 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, ESD and 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.

In this Ninth round, the Allocation Board has before it one application seeking \$6 million in Fund Benefits. Staff analyzed the applications and is now making recommendations to the Board on this application.

DISCUSSION AND RECOMMENDATIONS TO THE BOARD

Staff has reviewed the application received during the ninth solicitation round, and is making the following recommendations to the Board.

1. Recommendations for Awards of Fund Benefits

The application discussed in Exhibit “A” (43North LLC) is being submitted under the Innovation/Entrepreneur funding track. The total amount to be expended on the project proposed by this application is approximately \$7 million.

Based on a review of this application and consideration of relevant Program Criteria, Staff recommends that the Allocation Board recommend to the NYPA Trustees that the application receive an award of Fund Benefits in the amount indicated on Exhibit “A”.

2. Applications for Future Consideration

The Board is also requested to defer the applications listed on Exhibit “B” for future consideration to allow staff more time to evaluate them, and consider whether other funding sources exist.

PROJECT STATUS

Under the Act, a recommendation for Fund Benefits by the Allocation Board is a prerequisite to an award of Fund Benefits by NYPA. Upon a showing of good cause, NYPA has discretion to adopt the Allocation Board’s recommendation or to award Fund Benefits in a different amount or on different terms than recommended by the Board. In addition, the Authority is authorized to include in any contract providing for the implementation of an award (“Award Contract”) any terms and conditions that NYPA deems appropriate.

Given the preliminary stage of the project identified on Exhibit “A”, Staff is not in a position to recommend definitive terms and conditions that should be included in the Board’s recommendations for an award, but Exhibit “A” does list some potential terms and conditions for NYPA’s consideration. It is anticipated that NYPA staff, in consultation with Staff, will negotiate final terms and conditions with successful applicants after the receipt of more detailed information concerning the projects.

RECOMMENDATION

Based on the foregoing discussion and information, Staff recommends that the Allocation Board:

1. Recommend to the NYPA Board of Trustees that the applicant listed in Exhibit “A” receive an award of Fund Benefits in the amount recommended in the Exhibit; and
 2. Defer consideration of the applications listed in Exhibit “B” for a later time.
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For the reasons stated, Staff recommends the adoption of the above-requested action by adoption of a resolution in the form of the attached draft resolution.

Christina Orsi
Western New York Regional Director,
Empire State Development Corporation

RESOLUTION

NOW THEREFORE BE IT RESOLVED, That the Western New York Power Proceeds Allocation Board (“Allocation Board”) hereby recommends that the Power Authority of the State of New York (“NYPA”) grant an award of Fund Benefits to the applicant listed in Exhibit “A” in the amount recommended therein, for the reasons set forth in the attached memorandum and the attachment thereto; and be it further

RESOLVED, That the Allocation Board hereby finds and determines that the applications listed on Exhibit “B” will be deferred for consideration at a later time; and be it further

RESOLVED, That Staff is authorized on behalf of the Allocation Board to transmit the Board’s decision and recommendations to NYPA, and to do any and all things and take any and all actions to effectuate the Board’s decision and the foregoing resolution.

EXHIBIT A

To: Chairman Anthony J. Colucci III, Henry Wojtaszek, Deanna Alterio Brennen, Brenda Williams McDuffie, Dennis W. Elsenbeck
 From: Christina Orsi, Regional Director of Empire State Development
 CC: Michael Huvane, Angela Rossi, Richard Smith
 Date: December 1, 2014

Applicant Name:	43North LLC	REDC Region:	Western New York
Project Type:	Innovation/Entrepreneur Development	County:	Erie and Niagara
Industry:	Several – Health/Life Sciences, High Tech Industries, Manufacturing, Etc.	Locality:	Buffalo
Amount Requested:	\$6,000,000	Start Date:	January 1, 2015
		Finish Date:	December 31, 2016 (including incubator support)

RECOMMENDED OFFER

Recommended Total Award:	Up to \$6,000,000 (for 2015 competition)
Total Project Cost:	Approximately \$7,000,000 (for 2015 competition)
% of Project Cost Recommended:	Up to 86%

PROJECT BUDGET

Use of funds	Total Amount	Source of Funds	Total Amount
Marketing, events, website	\$1,790,000	Proceeds/Fund Benefits	Up to \$6,000,000 (for 2015 competition)
General and admin	\$1,700,000		
Incubator space and mentoring	\$ 510,000	Private funding/other funding sources/sponsors	Approx. \$1,000,000 (for 2015 competition)
Awards to winners	Up to \$10,000,000 (for 2015 and 2016 competitions)		
Total:	\$14,000,000		

REGIONAL IMPACT MEASUREMENTS

Number of Jobs Retained:	Approximately 5 positions.
Number of Jobs Created:	TBD, based on business development by competition winners.
Average Salary of Jobs:	TBD.
Indirect Jobs Created	TBD based on semi-finalists locating in Buffalo-Niagara region.
Other Impact	Enhanced venture capital investment in the region.

EXHIBIT A

PROJECT DESCRIPTION (Adapted from application)			
<p>43North, the successor to Launch NY, would continue to operate the world’s richest business idea competition through two separate competitions, one in 2015 and a second in 2016. The applicant is seeking funding in this application to support the 2015 competition. In 2015, the applicant would offer up to \$5M in awards to multiple business winners.</p> <p>The program would include global outreach through social media, in-person roadshows, and use of traditional media to promote 43North and business investment in the Buffalo-Niagara region. In addition, 43 North will begin incubating the winners from the 2014 competition and future competition winners in the new incubator space in Buffalo and in collaboration with other local entrepreneur support services from organizations like Buffalo Niagara Partnership. UB STOR, CEL, Insyte and Launch NY, 43North would host entrepreneur and innovation focused education and mentoring programs. 43North would also host a global audience during “43North Week” which would be held each year when the winners of the business idea competition would be selected. 43North would be a catalyst for entrepreneurship and business investment in Western New York, attracting entrepreneurs and venture capital investment to Buffalo from around the world as well as enhancing Buffalo’s image as an attractive place for start-up businesses to be located.</p> <p>The applicant intends to seek funding to support the 2016 competition at a later time. The applicant could seek another award of Fund Benefits and/or seek funding from other available State resources to support the 2016 competition.</p>			
OTHER ECONOMIC DEVELOPMENT BENEFITS RECEIVED			
ESD:	\$	NYPA:	\$
IDA:	\$	Other:	\$
PREVIOUS STATE ASSISTANCE OFFERED OR PROVIDED			
TYPE	AMOUNT	STATUS	
WNY Fund Proceeds	\$5,418,000 to predecessor of 43North (Launch NY)	Awarded and partially disbursed	
BASIS FOR RECOMMENDATION			

EXHIBIT A

Continuing the competition aligns with the entrepreneurial strategy and will of the Western New York Regional Economic Development Council and Governor Cuomo’s Buffalo Billion Investment Development Plan.

The first year of the Launch NY/43North business competition succeeded in achieving significant positive media impact for Buffalo locally and nationally, with over 301 articles written, including in Forbes, Business Insider, and Fortune Magazine. In addition, 43North attracted over 2,600 qualified applicants to the competition from every U.S. state and 96 countries, demonstrating that Buffalo can be an attractive location for start-up businesses. The competition successfully held a “43North Week” event to showcase the finalists and awarded 11 winners. Over 30 start ups also participated in the Bright Buffalo start up forum. The continuation of this program has the potential to result in over 30 direct new starts ups in Buffalo, plus other “trailing” semi-finalists who choose to start their business in Buffalo and venture capitalists choosing to invest in Buffalo because of the pool of growing start-ups. This in turn can catalyze direct and indirect job growth and aligns with the WNYREDC to support entrepreneur development.

The Buffalo Niagara community has demonstrated tremendous support for this program by providing in-kind marketing and event support services from the Buffalo Niagara Enterprise. In addition many area business and economic development partners (including Insyte, UB STOR and CEI and Launch NY) provided and offered on-going mentoring support services to semi-finalists and competition winners. Other area organizations including the Buffalo Niagara Partnership and Leadership Buffalo have come together to develop programs to provide personal and business support to the competition winners. Going forward, 43 North will continue to seek collaborative support from area mentors, economic development partners and funders to provide optimal support to competition winners helping enhance their growth in Buffalo.

DISBURSEMENT TERMS

Use of Fund Benefits:

Fund Benefits would be used for (1) working capital including, but not limited to, personnel, marketing, incubator services and overhead (approx. \$1,000,000), and (2) prizes for winners of the 2015 competition (up to \$5,000,000).

The competition will be held in 2015 with a total of up to \$5,000,000 in prizes awarded. All winners would be offered incubator space and support services and be required to locate their business in Western New York for at least one year following completion of the competition.

Possible Disbursement Terms:

Staff recommends that the Allocation Board recommend that NYPA consider the following terms and conditions relating to disbursement of Fund benefits, in addition to such other terms and condition NYPA may require, in any contract with 43North:

EXHIBIT A

1. Operating Expenses Funding

Initial advance of up to \$1,000,000 for operating expenses, disbursed upon execution of grant contract between NYPA and 43North and subject to such conditions and milestones to be determined by NYPA.

2. Award Funding

- a. Up to \$5,000,000 may be disbursed upon awarding of prizes pursuant to business plan idea winners in 2015 competition, provided that the total amount of Fund Benefits for operating expenses and award funding may not exceed \$6,000,000.
- b. A portion of the total award shall be subject to recapture if 43North fails to meet certain reporting and other requirements set by NYPA.

3. Miscellaneous

- a) Pre-approval by NYPA of: 43North's marketing plan and budgets.
- b) Pre-approval by NYPA of the process for selecting finalists and winners, the final number of awards and the final amount of individual awards.
- c) Pre-approval by NYPA of competition criteria.
- d) Annual written reports to NYPA which address the following information at a minimum:
 - i) Number, name and amount of prizes awarded to each of company.
 - ii) Marketing impact – positive media hits about 43 North and WNY
 - iii) Status of all prior 43 North winners, including location, number of jobs and other funds raised each year following award by 43 North.
 - iv) Other funds (including sources and amounts) raised to support 43 North.
- e) Additional reports to address specific issues as NYPA may require.
- f) 43North shall require winners to agree to certain conditions to be determined by NYPA.
- g) 43North shall provide updates and solicit input from NYPA, and its designees, on no less than a quarterly basis.
- h) Pre-approval by NYPA of certain of 43North's expenditures.

Applications Deferred for Further Analysis

Line	Business	Classification
1	Center for Employment Opportunities "CEO"	Deferred for further analysis
2	Buffalo and Erie County Development Corporation	Deferred for further analysis
3	Explore and More...A Children's Museum	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.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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