

December 16, 2014

MEMORANDUM 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” in the amount indicated, 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. 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 “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

For this ninth round of WNYPPAB action, the WNYPPAB considered one application from 43North, LLC seeking \$6 million in Fund Benefits. WNYPPAB’s staff analyzed the application and made a recommendation to WNYPPAB concerning the application based on eligibility requirements and Program Criteria. A copy of the recommendation from staff to the WNYPPAB regarding the proposed award of Fund Benefits is attached as Exhibit “C.” The application itself has also been made available to the Board for review.

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

1. Recommendation for Award of Fund Benefits

The WNYPPAB is recommending to the Trustees that the application listed on Exhibit “A” receive an award of Fund Benefits in the amount indicated (up to \$6,000,000). The applicant has indicated that the proposed project would directly create or retain approximately 5 jobs in Western New York. The creation of additional jobs would depend on the outcome of the project, which is a business idea competition. The total to be expended on the proposed project is expected to be approximately \$7 million. This recommendation is presently before the Trustees for consideration.

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 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 Contract 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.

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 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 an award of Fund Benefits from the Western New York Economic Development Fund (“Fund”) to the eligible applicant listed in Exhibit “A”;

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” (i.e., up to \$6,000,000), 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 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.

Western NY Power Proceeds Allocation Board

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

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.

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- 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.
9. The extent to which an award of Fund Benefits may result in a competitive disadvantage for other business in the State.

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.

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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 New York Economic Development Fund
Recommendation Memo**

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.

PROJECT DESCRIPTION (Adapted from application)

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.

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.

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.

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

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:

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.