

(206) 220 7669
to Kris Skrinde

DRAFT FOR REVIEW**BY FAX AND REGULAR MAIL**

First American Title Company
6665 Owens Drive
Pleasanton, CA 94588
Attention: Diane Burton, Escrow Officer

Re: Escrow No. 0129-612066ALA ("Escrow"); Sale of
Approximately 3.437 Acres Located at Mariners
Square Loop, Alameda, CA (the "Property")

Dear Ms. Burton:

This letter constitutes the irrevocable joint escrow instructions to First American Title Company ("FATCO") by Advancing California's Emerging Technologies ("ACET") and U.S. Department of Commerce, Economic Development Administration ("EDA"), in connection with the purchase of the Property under that certain Disposition and Development Agreement dated as of November 19, 2003, between ACET and the Community Improvement Commission of the City of Alameda. As you know, ACET previously deposited with FATCO in Escrow \$_____ (the "Funds") for the purchase of the Property. FATCO is hereby instructed as follows:

(a) FATCO shall immediately place the Funds into a separate, interest-bearing escrow account. All interest in such an interest-bearing account must be submitted to the U.S. Treasury on a monthly basis. Payment must be made in the form of a check in which the "Payee" is the "Economic Development Administration." The check must include the following information:

EDA Award No. 07-01-05274
Interest Payment

The check is to be mailed to:

Economic Development Administration
P.O. Box 100202
Atlanta, Georgia 30384

First American Title Company
August 5, 2004
Page 2

(b) After the issuance of a final resolution of the Office of Inspector General's audit, ACET and EDA shall jointly execute and deliver to the FATCO a final disbursement order ("Disbursement Order") directing FATCO to disburse the amount set forth in the Disbursement Order to ACET and/or EDA. Upon receipt of such Disbursement Order, FATCO shall disburse to ACET and/or EDA from the Funds, the amount set forth in the Disbursement Order. Should ACET or EDA fail to execute and deliver a final disbursement order upon issuance of the final audit resolution, FATCO shall disburse the Funds in accordance with and as directed by the final audit resolution.

(c) ACET shall be responsible for the payment of any escrow fees in connection herewith.

Please acknowledge your acceptance and approval of these instructions by signing, dating and returning to the undersigned by facsimile (with the original sent by regular mail) the duplicate copy of this letter.

Advancing California's Emerging Technologies,
a California nonprofit public benefit corporation

By: _____
Name: _____
Title: _____

U.S. Department of Commerce,
Economic Development Administration

By: _____
Name: _____
Title: _____

cc: Dr. Sam Doctors

Accepted and approved by:

FIRST AMERICAN TITLE COMPANY

By _____
Name: _____
Title: _____
Duly Authorized

9730173

Skrinde, Kristine

From: Reinke, Donald C. [DReinke@ReedSmith.com]
Sent: Tuesday, August 17, 2004 6:17 PM
To: Bruzzone, Richard A.; Skrinde, Kristine
Cc: Sam Doctors (E-mail); Leonora Sea (E-mail)
Subject: RE: ACET; Escrow Instructions

Rick:
Sam says we need another set. I'll find his email. I just spoke to him as well.
Don

-----Original Message-----

From: Bruzzone, Richard A.
Sent: Tuesday, August 17, 2004 3:15 PM
To: Chris Skrinde (E-mail)
Cc: Sam Doctors (E-mail); Leonora Sea (E-mail); Reinke, Donald C.
Subject: ACET; Escrow Instructions

Just checking on the status of the escrow instructions we prepared and sent for your review. Please update me.

Rick Bruzzone
Reed Smith LLP
1999 Harrison Street, 25th Floor
Oakland, CA 94612
Tel: (510) 466-6796
Fax: (510) 273-8832
e-mail: rbruzzone@reedsmith.com

This e-mail is confidential and may well be legally privileged. If you have received it in error, you are on notice of its status. Please notify us immediately by reply e-mail and then delete this message from your system. Please do not copy it or use it for any purposes, or disclose its contents to any other person. To do so could violate state and Federal privacy laws. Thank you for your cooperation. Please contact Richard A. Bruzzone at 510-466-6796 or e-mail rbruzzone@reedsmith.com if you need assistance.

Skrinde, Kristine

From: Skrinde, Kristine
Sent: Wednesday, August 18, 2004 9:50 AM
To: 'Bruzzone, Richard A.'
Subject: RE: ACET; Escrow Instructions

Mr. Bruzzone:

I just faxed you EDA's response regarding the ACET instructions.

Kris Skrinde

-----Original Message-----

From: Bruzzone, Richard A. [mailto:RBruzzone@ReedSmith.com]
Sent: Tuesday, August 17, 2004 3:15 PM
To: Skrinde, Kristine
Cc: Sam Doctors (E-mail); Leonora Sea (E-mail); Reinke, Donald C.
Subject: ACET; Escrow Instructions

Just checking on the status of the escrow instructions we prepared and sent for your review. Please update me.

Rick Bruzzone
Reed Smith LLP
1999 Harrison Street, 25th Floor
Oakland, CA 94612
Tel: (510) 466-6796
Fax: (510) 273-8832
e-mail: rbruzzone@reedsmith.com

This e-mail is confidential and may well be legally privileged. If you have received it in error, you are on notice of its status. Please notify us immediately by reply e-mail and then delete this message from your system. Please do not copy it or use it for any purposes, or disclose its contents to any other person. To do so could violate state and Federal privacy laws. Thank you for your cooperation. Please contact Richard A. Bruzzone at 510-466-6796 or e-mail rbruzzone@reedsmith.com if you need assistance.



Advancing California's Emerging Technologies:
Bringing Technology to Market through Incubators and Clusters

August 11, 2004

Mr. William F. Bedwell, Jr.
Regional Inspector General for Audits
Office of Inspector General
U. S. Department of Commerce
401 West Peachtree St., N. W. – Suite 2742
Atlanta, Georgia 30308

Economic Development Admin.
Seattle Regional Office

AUG 13 2004

Office of Regional Director

Re; William F. Bedwell, Jr. letter of July 15, 2004.

Dear Mr. Bedwell:

With this letter, ACET is responding, as requested, to your letter of July 15, 2004, concerning the results of a "limited scope audit No. ATL 16838-4-0001" performed by your office of EDA grant #07-01-05274 and the operations of the ACET 501.c.3 non-profit California Corporation (the "EDA Report").

As permitted, we are also requesting a sixty day extension to continue working on answering more fully all of the questions raised in your EDA Report, as well as using this sixty day period to repay at least half of the \$307,332 deficit identified in the EDA Report. ACET also intends to repay the balance over the ensuing 12-month period (or earlier).

Our specific responses to the items in your letter and the EDA Report are as follows:

1. "In accordance with 15 CRF Part 14.14, Advancing California's Emerging Technologies (ACET) is now designated a high-risk organization due to apparent financial instability;"

ACET's financial management system has been fully vetted by Pohl, McNabola, Berg & Company, LLP, a very reputable firm of Certified Public Accountants with specific expertise in federally required audits. They have completed audits of ACET operations for calendar years 2002 and 2003 and have made recommendations which we are implementing to improve internal controls. ACET agrees that the EDA requirement that we open an escrow account for the construction funds is beneficial to the management of the project, and that it will allow EDA and ACET to ensure proper disbursement of the grant. We have appended copies of the 2002 and 2003 reports from the independent auditors, and would be pleased to have Mr. Tony Pohl or one of his partners discuss them with you and your staff.

2. "The subject EDA award is suspended. Consequently, no further action is to take place on this project until further notice from EDA;"

ACET has suspended all action on the project. See Attachment 1, copies of email sent to HOK and Facilities First. We have also informed the City of Alameda.

3. ALL EDA funds that have been disbursed to ACET by EDA and have not been spent on costs for the subject project MUST be placed into a separate, interest-bearing escrow account. The escrow account agreement must have ACET and the U.S. Department of Commerce, Economic Development Administration as parties. ACET will be responsible for the payment of the escrow fees. Furthermore, the agreement must include the following clause:

Disbursement Upon Performance of Obligation. After the issuance of the final resolution of the Office of Inspector General's audit, ACET and EDA shall jointly execute and deliver to the Escrow Agent a final disbursement order ("Disbursement Order") directing the Escrow Agent to disburse the amount set forth in the Disbursement Order to ACET and/or EDA. Upon receipt of such Disbursement Order, the Escrow Agent shall disburse to ACET and/or EDA from the Escrow Fund, the amount set forth in the Disbursement Order. Should ACET or EDA fail to execute and deliver a final disbursement order upon issuance of the final audit resolution, the Escrow Agent shall disburse in accordance with and as directed by the final audit resolution.

A copy of the escrow agreement must be submitted to EDA for review and execution.

The funds for the remainder of the land purchase and for the purchase of development rights were deposited in an escrow account with First American Title as of 14 July 2004. The escrow agreement for this account has been submitted to EDA, with the appropriate modifications requested by EDA. In addition, ACET has set up a separate escrow account for the remaining grant funds already paid to ACET at Bank of Alameda, account #01516319, also according to EDA instructions. Unfortunately, ACET's attorneys are on vacation and will not be back in their offices until August 16, 2004. EDA will receive a copy of the escrow agreements under separate cover when they return. We apologize for the delay.

4. "The audit reviewed ACET's cash transactions through April 30, 2004. ACET must reimburse the subject project account a minimum of \$307,332 of EDA funds as well as any additional EDA funds that may have been expended since April 30, 2004 for non-project purposes. ACET must complete the reimbursement of these funds to the aforementioned escrow account within 60 days of the date of this letter; "

ACET proposes to repay any deficit in this grant account in the following manner:

- 1) Obtain a \$200,000 loan from the Bank of Alameda;
- 2) Place all excess funds from rental income at the present facility into the escrow established with Bank of Alameda to partially repay the deficit; and,
- 3) As grant funds are received from at least the 4 mentioned sources below (see page 7 of this letter) the overhead from these grant funds will pay for a significant portion of the expenses of the present facility. This results in greater earnings from the rental operation that can be used to repay the deficit.

We believe that the resulting surplus income from rentals and incubator member fees will allow ACET to reimburse fully the new escrow account within twelve months while beginning the construction of the new building.

5. "Within 60 days of the date of this letter, ACET must demonstrate to EDA that it has the financial and administrative capability to complete the subject project."

ACET has put in place an operating plan for the balance of 2004 and for all of 2005 that achieves financial stability. The plan covers the expenses of ACET incubator operations by rental income from client companies at ACET's present incubator facility, and (for August-December 2004) from the remaining funds in an EDA Technical Assistance (TA) grant. Incubator rental income has increased since the audit was conducted in April as a result of a recovering high technology economy in the Bay Area. Local economists have projected that this recovery will continue in the coming year. Thus we project that ACET will return to its historic 90% occupancy rate in the present facility, increasing rental revenue to about \$19,000/month. In addition we will raise rental rates for client companies by 5% this year. Even after the funds in the EDA Technical Assistance (TA) grant are completely billed out at the end of 2004, the operating plan shows that ACET can continue incubator operations in a sustainable manner. *See Attachment 2, operating plan and financial management procedures.*

As of 1 August 2004, ACET has trimmed its expenses to fully conform to its present level of incubator rental income. No additional external funding is required to keep the present ACET incubator facility functional and to provide basic landlord-type services to all incubator client companies. In order to be financially viable without additional funding, ACET will not be able to provide all the high-value-added incubator services that have made it one of the most successful high technology incubators in the U.S. during the past five years. But with the cuts made in operational expenses now implemented, ACET can continue to operate and keep its present incubator facility in operation during the balance of 2004, throughout the calendar year 2005 and beyond with no further injection of outside funding.

Having only 6,900 ft² of rental space in the present incubator facility has presented a continuing problem for ACET since it began operations in mid-May of 1998. In order to provide incubator services at levels necessary to ACET clients, we have had to rely on several EDA Technical Assistance grants over that time. A major rationale for the construction of a new and much expanded incubator facility has always been the opportunity it provides for ACET to become fully economically self-sufficient while providing a full array of high technology incubator services, plus the significant economic benefits to the community of a much larger incubator.

Use of EDA Grant # 07-01-05274 Funds

ACET did expend construction grant fund improperly. We fully intend, as set forth in this letter, to repay these funds. ACET expended some of the construction grant funds for the following reasons:

- Negotiations with the attorney in the EDA Seattle Regional Office on the terms of the deal between EDA, the City of Alameda and ACET took much longer than expected due to EDA's lawyer's attempt to impose unnecessary conditions on the City of Alameda. As a result, ACET incurred extra legal and staff expenses amounting to at least \$40,000 over the period between November 2003 and January 2004.
- ACET has not been able to recover about \$45,000 of indirect costs on the administrative portion of the grant since EDA allows no overhead on construction grants.
- ACET spent about \$20,000 in required matching funds on the construction project before receiving the \$2.296M in January 2004, which was intended to cover both land purchase and local match. We believe that we should be allowed to recover these funds from the \$2.296M, as they were spent directly on the construction project.
- \$94,000 from ACET rental income that could have been applied to operating expenses for the ACET incubator facility expended to keep the MDCP foreign trade project operational. This is a program that the Department of Commerce International Trade Administration encouraged ACET to continue because of its great success in bringing new business to California companies. This removed \$94,000 of ACET funds available for incubator operating costs. While the benefits to the U.S. economy are significant – more than 1,000 times the \$94,000, ACET should have terminated the program once we were in the position of trying to meet a 2:1 matching requirement without our partners the California Trade Technology and Commerce Agency and the Bay Area World Trade Center. ACET has withdrawn from this program effective August 2004.
- Temporary draw down of the \$150,000 Bank of Alameda line-of-credit to meet the bank requirement that the line of credit be zeroed for at least one month each year. It was always ACET's intention that the funds would be repaid to the construction grant after meeting the one-month requirement.

Benefits Already Provided to the U. S. Economy by the Present Incubator Facility

The current ACET facility was always intended as a proof-of-concept, and the proof is very impressive. Just as a matter of record, the eleven (11) ACET graduate companies, as of August 2004, have achieved the following benefits to the U. S. economy during the past five years, even in the midst of a severe high technology recession in the Bay Area in 2001 - 2003:

- Created in excess of 2,100 new 'in-sourced' jobs.
- Received \$240 million in venture capital.
- Occupied more than 230,000 ft² of laboratory and office space in the Bay Area from a total of about 5,000 ft² for all 11 companies while they were resident in the ACET incubator facility.
- Estimated to have paid federal, state, and local taxes of more than \$5 million/year.

ACET has received about \$1.9 million in EDA TA grants to develop the present facility since 1997 and we have included the present deficit of a minimum of \$307,332 of EDA funds in computing the following return on investment, for a total figure of \$2.2 million in EDA grant funding. Thus the rate of return to the federal government for the funds thus far invested in ACET is:

- One new job for about \$1,100 of federal funds;
- Investment capital of \$100/\$1 of federal investment;
- Rental space occupancy of 9.6 ft²./\$1 of federal investment; and,
- New tax revenue of about \$2.25/year/\$1 of federal investment.

These eleven companies are creating and marketing exciting new products that may revolutionize the diagnosis and treatment of cancer, hepatitis, osteoporosis and other diseases, improve environmental quality, and reduce costs while increasing productivity in the health care, electronics, agriculture, and materials industries.

All of these 11 companies are growing rapidly, and several are scheduled to go public (IPO) in the next six months. This will increase very substantially over the next year the value of the EDA investment already made in the ACET incubator and our companies' contributions to the economic health of the U. S.

In addition, the present facility has helped the City of Alameda with its critically important work of military base conversion at the former Alameda Naval Air Station. The new incubator facility will provide an even larger boost to the City's conversion work and will, we believe, serve as a national model for base conversion.

Projected Benefits for the New Incubator Facility

Also worth considering is the projected economic benefit of the new incubator facility to be built with the \$6.44 EDA construction grant. Based on results already achieved in the present facility, the new facility within its first five operational years is projected to:

- Graduate about 40 companies;
- Create more than 8,000 in-sourced new jobs;
- Present U.S. venture capital companies and individual investors with many new deal opportunities, thereby attracting more than \$1 billion of new capital to the local economy.
- Occupy 500,000 ft² to 1,000,000 ft² of laboratory and office space; and,

- Generate new federal, state, and local tax revenue of about \$100 million per year.

Most important, these 40 companies will bring to market dozens of new products vital for public health and the environment, and all these economic benefits will continue to grow every year after the first five operational years in the new facility. As stated earlier, these projections are based on results already achieved in the 6900 ft² of rental space at the current building.

ACET's parallel foreign trade program took 44 California biotechnology companies to three partnering events in France and Germany in 2003. These companies reported in their written evaluations that they would obtain more than \$1.2 billion in new sales as a result of participating in these three European partnering events. Even if these 44 companies only realize 10% of their projected new sales the rate of return to the federal government would be as follows:

- One new job for each \$33 of federal investment.
- New sales of \$300/\$1 of federal investment.

A Department of Commerce MDCP grant of \$400,000 and a 2:1 match by ACET and its partner organizations have funded the foreign trade program. Unfortunately, due to the elimination of the California Technology, Trade, and Commerce Agency, and severe cutbacks at the Bay Area World Trade Center, for the past year ACET has been responsible for almost the entire match for this program. Therefore, in the new operating plan-, the remainder of the MDCP grant will not be drawn down due to the heavy financial burden of the 2:1 match, and there will be no more ACET overseas trade missions until ACET reaches sufficient financial viability to support them again. The projected loss for California biotechnologies companies will be more than \$100 million in lost sales opportunities for the three trade missions that have been cut for 2004 and 2005.

Also, ACET has signed four MOU's with large European bio-technology and high technology development programs in Chambéry and Evry in France, and Düsseldorf, and Leipzig in Germany to provide for continuing cooperative efforts between these four organizations and ACET. Three more MOU's were due to be signed with European bio development groups in Munich, Lyon, and London during the now-cancelled, BioPartnering trade mission to London in October 2004. Our relationships with these organizations and programs have already benefited our clients, graduates, and mission companies by providing greater opportunities for partnership deals, access to services such as patent attorneys in the EU, and a number of highly qualified French and German graduate business students to work with ACET, its clients, and graduates. Further work with these European economic development agencies will be likely to yield many millions of dollars in additional sales opportunities for California companies.

ACET FUNDRAISING

Although not needed to implement the appended operating plans, ACET has embarked on a number of fund raising activities that we believe will yield significant new private and public sector sources of funding that can be used to supplement ACET rental income. These include:

- State Department proposals to help implement their Biotechnology Initiative (BII) Program in three phases - estimated total funding at \$1.4 million with full overhead at about \$325,000 (at ACET's Commerce Department-approved audited indirect cost rate of 35.7%). The first phase contract of \$425,000 should be signed within the next ten days; all of the work on the contract proposal has been completed and it has received preliminary approval;
- Two federal earmarks in the SBA (Small Business Administration) and DoE (Department of Energy) appropriation bills for \$1.5M each with full overhead at about \$350,000 each are pending and should have an excellent chance of being funded; These two earmarks have strong Congressional support from Rep. Stark and Senator Feinstein as well as other members of the California Congressional Delegation;
- Three-million-dollar private sector capital campaign has been started with our first commitment from Brian Atwood, Managing Partner of Versant Partners. This campaign has an advisory group that consists of Brian Atwood, Dr. Barry Selick, Senior Partner at Sofinova and Fred Dorey, a senior biotechnology attorney at Cooley Godward and former Executive Director of Bay Bio. These funds will supplement the \$6.44 million EDA construction grant, allowing ACET to add some highly desirable amenities to the present design;
- An Eastern European trade project to assess the feasibility of commercializing a variety of health science technologies developed in former Eastern Bloc countries to be funded from European Union/German Marshall Foundation funds, about \$500,000 with full overhead of about \$150,000.

ACET's prospects for success with most of these four fundraising initiatives are excellent, based on Dr. Samuel Doctors' 30 year history of successful fundraising. The appended operating plan clearly shows that in any case, ACET can sustain itself with no additional outside funding until sustainable operations are reached in the new EDA/City of Alameda sponsored incubator facility.

ACET Board of Directors and management believe that the combination of our new much leaner operating plan, our new contract with the State Department, Dr. Doctors' exceptional fundraising ability, and the support of California Congressional legislators for earmarks in the 2005 DoE and SBA Appropriations Bills will enable ACET to reimburse the construction grant while moving ahead with construction of the new facility in a timely manner.

ACET is now fully prepared to move forward and keep the present incubator in operation without any additional funding aside from incubator rental income until the new facility is

completed. Any funds raised from the operational fund raising program discussed above will be used to supplement incubator rental income and to pay some of the overhead expenses allowing more rapid pay back of the present construction fund deficit.

Should you have any questions concerning this letter, please feel to contact Samuel I. Doctors, CEO, or me at any time.

Most sincerely,

Alan D. Mitchell, Jr.
Board Chair

Mr. Leonard Smith, Dr. David Sampson, David Bearden, Kent Lim, ACET Board of Directors & ACET Staff.

Subject: Please Stop All Work on The ACET Project

Date: Thu, 22 Jul 2004 16:08:45 -0700

From: Sam Doctors <doctors@greenstart.org>

To: Lois Steiner <lsteiner@facilitiesfirst.com>, Jerry Parks <jparks1@pacbell.net>

CC: Alan Mitchell <Alan@amllp.com>, "Reinke, Donald C." <DReinke@ReedSmith.com>

Please stop all work on the ACET Project immediately.

Thank you!

--

Samuel I. Doctors, CEO

ACET

851 Midway Avenue

Alameda, CA 94501

Tel. 510-749-3977

Fax.: 510-749-6862

Subject: Please stop all work on the ACET project

Date: Thu, 22 Jul 2004 22:14:23 -0700

From: Sam Doctors <doctors@greenstart.org>

To: [Lynn Filar <lynn.filar@hok.com>](mailto:lynn.filar@hok.com), [Sandy Mendler <sandy.mendler@hok.com>](mailto:sandy.mendler@hok.com)

CC: [Alan Mitchell <Alan@amllp.com>](mailto:Alan@amllp.com), ["Reinke, Donald C." <DReinke@ReedSmith.com>](mailto:DReinke@ReedSmith.com),
[Leonora Sea <sea@greenstart.org>](mailto:sea@greenstart.org)

Please stop all work on the ACET project immediately. I will notify you when we wish to start again.

--

Samuel I. Doctors, CEO

ACET

851 Midway Avenue

Alameda, CA 94501

Tel. 510-749-3977

Fax.: 510-749-6862

ACET Operating Plan 1 August through 31 December 2004

	TOTAL	T/A GRANT	Russian Project	RENTS
Rental income				99,402.00
Non-resident membership dues				500.00
Copy and FAX charges				125.00
EDA TA		63,060.00		
Russian Project ⁽¹⁾			151,420.00	
Total Income	314,507.00	63,060.00	151,420.00	100,027.00
Security	630.00			630.00
General insurance	4,900.00			4,900.00
Health insurance	3,400.00	1,190.00		2,210.00
Worker's compensation	3,925.00	2,935.00	990.00	-
Internet	1,075.00	1,075.00		-
Janitorial	525.00			525.00
Maintenance	10,500.00			10,500.00
Computer	3,400.00	1,360.00		2,040.00
Supplies	2,925.00	292.50		2,632.50
Postage	1,925.00	192.50		1,732.50
Copy charges	665.00	58.00		607.00
Utilities	22,000.00			22,000.00
Printing	1,670.00	1,336.00		334.00
Telephone	2,625.00			2,625.00
California travel	8,650.00	552.50	6,200.00	1,897.50
Out of State travel	375.00			375.00
Bookkeeping/Accounting	2,100.00	525.00		1,575.00
2003 Audit	6,000.00	1,500.00		4,500.00
Legal	1,000.00			1,000.00
Consulting	55,675.00	468.75	46,300.00	8,906.25
	133,965.00	11,485.25	53,490.00	68,989.75
Indirect			43,363.00	(43,363.00)
	133,965.00	11,485.25	96,853.00	25,626.75
Personnel				
CEO	10,665.00		10,665.00	-
HPV mgr.	22,300.00		22,300.00	-
HPV legal ad	3,094.00		3,094.00	-
HPV trade ad	4,375.00		4,375.00	-
Building mgr	14,500.00	10,780.00	3,720.00	-
Maintenance	12,135.00	12,135.00		-
Admin Ass't	13,960.00	13,960.00		-
COO	14,375.00	9,375.00	5,000.00	-
TOTAL	95,404.00	46,250.00	49,154.00	-
Payroll taxes	10,494.44	5,087.50	5,406.94	-
	105,898.44	51,337.50	54,560.94	-
Surplus(deficit)	74,643.56	237.25	6.06	74,400.25

Notes

(1) The Russian project is in three phases, all of about \$400-\$450K each. Contracts for phases 2 and 3 are still in negotiation, so exact dollar amounts are not set so cannot be included in the operating plan yet. ACET will receive an additional \$200-\$220K in overhead from these contracts which will cover payment on the Bank of Alameda line of credit.

Accounting Department Functions

CPA Firm (Currently Esther Ratteree of Armanino McKenna, LLP)

- Approves journal entries
- Reconciles program/grants receivable accounts
- Produces, reviews monthly profit/loss statement, balance sheet, and reconciles and reviews supporting schedules
- Advises and answers questions related to accounting and reporting issues/transactions
- Analyzes on a summary level financial transactions and related variances, including trend analysis

ACET Staff/Bookkeeping contractor

- Reconciles bank accounts
- Reconcile rent receivable accounts
- Responsible for account coding
- Responsible for allocations of expenses to various grants
- Input rent revenue and billing data
- Performs monthly close activities
- Inputs monthly journal entries, P/R transactions into accounting system (QuickBooks)

ACET management

- Review of allowable/non-allowable costs
- Budget variance comparison
- Reconciliation of grant reports to general ledger

Bills – A/P:

1. Administrative assistant opens bills, stamps them received and puts them in A/P clerk's mail box as they come in
2. Accounting staff/program managers code the bills, attach supporting receipts, and put them in Chief Operating Officer's mail box
3. Chief Operating Officer reviews the bills and receipts, signs them, and puts them back in Accounting staff mail box
4. Accounting staff prints a check for each approved (signed) bill and gives the checks to CEO for signature
5. Accounting staff files original documents in central file
6. CEO/Accounting staff gives the checks and corresponding bill to Administrative Assistant for mailing

Capital Equipment Expenditures

Capital equipment is defined to be any item with a unit cost of over \$500, or any set of items which function as a unit costing over \$500 in total.

Purchase of capital equipment

1. Fill out capital expenditure form.
2. Submit to program manager for signature.
3. Submit to CEO for authorization (and Board member with signature authority if over \$5000).
4. Submit order.
5. Follow procedure for processing receipts and bills after purchase.

Cash Disbursements

Invoice Processing

1. Invoices are received by the Administrative Assistant and given to the A/P Clerk.
2. A/P Clerk enters invoices into system and stamps "Received" with date.
3. A/P Clerk copies invoice and distributes originals to appropriate Program Director for signature approval.
 - i. Original signature required – no initials allowed.
4. Signatures maintained on file for all authorized Program Directors.
5. A/P Clerk reviews prepared invoices for appropriate signature.
6. A/P Clerk prints list of outstanding invoices for review by CEO.
7. Checks will be cut on an as needed basis on the system (QuickBooks).
8. A/P checks will be appropriately safeguarded and locked by the A/P clerk.
 - ii. A log will be kept to track checks ordered and processed and track the blank check inventory.
9. Signed checks will be returned to Administrative Assistant for mailing and check stubs and attached invoices returned to A/P Clerk for filing.
10. General Accountant will review the recording of disbursements each month.
11. Supervisor will take a physical inventory of the blank check stock inventory.

Travel and Personal Reimbursement

1. Travel reimbursement form required. Signature of employee and Program Director required.
2. Must have 100% original receipt, or ACET-approved receipt replacement form.
3. Approval by next higher level of management for all travel and personal reimbursement

Cash Receipts

1. Cash receipts come via mail and hand delivered to receptionist. Administrative Assistant opens mail and logs all cash receipts on Excel listing: payer, date, check number, amount, and check date.
2. Administrative Assistant stamps receipts with "For Deposit Only" and completes deposit slip.
3. If checks are kept overnight or until deposit, they are locked in a locked bank bag and placed in a locked drawer. Checks are deposited on the date received unless received after 2 p.m. Employees are not allowed to cash personal checks.
4. When Administrative Assistant is on vacation, the COO/General Manager performs this function.

Billing/Collection

1. Bookkeeper processes monthly rent bills and records receipts based on copy of deposit log from Administrative Assistant.
2. Bills are generated based on contracts annual schedule of bills delivered from each contract. Billing schedule is reviewed by Chief Operating Officer. Collection issues are referred to Chief Operating Officer for follow up.
3. Credits approved by CEO

General Procedures

- Accounting Records are kept neat, ordered and current
- Employees take vacation and other employees perform their work
- All journal entries are approved by an outside CPA firm (currently Armanino McKenna)
- A current organization chart is maintained
- The accounting department consults with and relies on an outside CPA firm routinely (currently Armanino McKenna)



*Advancing California's Emerging Technologies:
Bringing Technology to Market through Incubators and Clusters*

851 W. Midway Avenue
Alameda, CA 94501
510/749-3977 FAX 510/749-6862
www.greenstart.org/acet

ACET RECEIPT REPLACEMENT FORM

Date: _____

Name: _____

Department: _____

I am submitting this form in lieu of a receipt for the following expense:

Date incurred: _____

Vendor name and address: _____

Type of payment (cash, credit card): _____

Amount: _____

Reason for substitution: _____

I hereby certify that all the above information is true and correct to the best of my knowledge.

Signature of Employee _____

Date: _____

Supervisor's Signature _____

Date: _____

Each replaced receipt must be documented on a separate form.



*Advancing California's Emerging Technologies:
Bringing Technology to Market through Incubators and Clusters*

851 W. Midway Avenue
Alameda, CA 94501
510/749-3977 FAX 510/749-6862
www.greenstart.org/acet

ACET CAPITAL EXPENDITURE FORM

Date: _____

Name: _____

Department: _____

I am submitting this form to request authorization for a purchase in excess of \$500:

Date incurred: _____

Vendor name and address: _____

Type of payment (cash, credit card): _____

Amount: _____

Reason for purchase: _____

I hereby certify that all the above information is true and correct to the best of my knowledge.

Signature of Employee _____

Date: _____

Supervisor's Signature _____

Date: _____

Each item must be documented on a separate form.

Advancing California's Emerging Technologies

Financial Statements

December 31, 2003 and 2002

and

Report of Independent Auditors

POHL, McNABOLA, BERG & COMPANY LLP

CONSULTANTS & CERTIFIED PUBLIC ACCOUNTANTS

Advancing California's Emerging Technologies
INDEX

	Page
Report of Independent Auditors	1
Statements of Financial Position	2
Statements of Activities	3
Statements of Cash Flows	4
Statements of Functional Expenses	5
Notes to Financial Statements	6-10

REPORT OF INDEPENDENT AUDITORS

To the Board of Directors,
Advancing California's Emerging Technologies
Alameda, California

We have audited the accompanying statements of financial position of Advancing California's Emerging Technologies as of December 31, 2003 and 2002 the related statements of activities, cash flows and functional expenses for the years then ended. These financial statements are the responsibility of the organization's management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of Advancing California's Emerging Technologies as of December 31, 2003 and 2002 and the changes in its net assets and its cash flows for the years then ended in conformity with accounting principles generally accepted in the United States of America.

Tone, McHaber, Berg & Co. LLP

San Francisco, California
May 28, 2004

Advancing California's Emerging Technologies
Statements of Financial Position
December 31, 2003 and 2002

	<u>2003</u>	<u>2002</u>
ASSETS:		
Cash	\$ 20,509	2,177
Rents receivable	22,999	12,950
Grants receivable	38,815	59,275
Prepaid expenses	5,503	4,183
Property and equipment - net	62,923	13,841
Total assets	\$ 150,749	92,426
 LIABILITIES AND NET DEFICITS:		
Liabilities		
Accounts payable	\$ 149,486	39,144
Accrued payroll	58,109	-
Line of credit	149,089	105,850
Contract advance	-	22,090
Notes payable to officers	1,000	-
Security deposits	16,656	28,610
Total liabilities	374,340	195,694
Net deficit		
Unrestricted net deficit	(223,591)	(103,268)
Total net deficit	(223,591)	(103,268)
Total liabilities and net deficit	\$ 150,749	92,426

see accompanying notes to financial statements

**Advancing California's Emerging Technologies
Statements of Activities
for the years ended December 31, 2003 and 2002**

<u>Unrestricted</u>	<u>2003</u>	<u>2002</u>
Revenues and support:		
Grants	\$ 412,736	220,050
Donations	8,000	-
Rental income	178,100	199,273
Membership dues	1,170	2,400
Program fees	7,192	5,550
Other income	7,436	344
Donated goods and services	124,618	180,000
Total revenues and support	<u>739,252</u>	<u>607,617</u>
Expenses:		
Program services	537,716	504,002
Management and general	257,420	214,307
Fundraising	64,439	52,032
Total expenses	<u>859,575</u>	<u>770,341</u>
Change in net assets	(120,323)	(162,724)
Net deficit at beginning of year	<u>(103,268)</u>	<u>59,456</u>
Net deficit at end of year	<u>\$ (223,591)</u>	<u>(103,268)</u>

wonderful effort →

Donation from city for using base closure property (?)

see accompanying notes to financial statements

Advancing California's Emerging Technologies
Statements of Cash Flows
for the years ended December 31, 2003 and 2002

	<u>2003</u>	<u>2002</u>
Cash flows from operating activities:		
Change in net assets	\$ (120,323)	(162,724)
Adjustments to reconcile change in net assets to cash provided by operating activities:		
Depreciation and amortization	3,726	2,728
Changes in operating assets and liabilities:		
Rents receivable	10,387	(8,937)
Provision for doubtful accounts	(20,436)	-
Grants receivable	20,460	(43,303)
Prepaid expenses	(1,320)	(1,199)
Accounts payable	110,342	23,368
Accrued payroll	58,109	-
Contract advances	(22,090)	22,090
Security deposits	(11,954)	(964)
Net cash provided (used) by operating activities	<u>26,901</u>	<u>(168,941)</u>
Cash flows from investing activities:		
Purchase of equipment	(2,271)	(4,014)
Purchase of land	(50,537)	-
Additions to leasehold improvement	-	(3,588)
Net cash used by investing activities	<u>(52,808)</u>	<u>(7,602)</u>
Cash flows from financing activities:		
Net borrowings under line of credit	43,239	105,850
Net borrowings on note payable to officers	1,000	-
Net cash provided by financing activities	<u>44,239</u>	<u>105,850</u>
Net decrease in cash	18,332	(70,693)
Cash at beginning of year	2,177	72,870
Cash at end of year	<u>\$ 20,509</u>	<u>2,177</u>
Supplemental disclosure of cash flow information:		
Cash paid during the year for:		
Interest	<u>\$ 14,447</u>	<u>1,128</u>
Donated goods and services	<u>\$ 124,618</u>	<u>180,000</u>

see accompanying notes to financial statements

**Advancing California's Emerging Technologies
Statements of Functional Expenses
for the years ended December 31, 2003 and 2002**

2003.....		2002.....				
	Program Services	Management and General	Fund- raising	Total	Program Services	Management and General	Fund- raising	Total
Salaries	\$ 190,330	95,165	31,721	317,216	175,785	87,893	29,297	292,975
Employee benefits	3,413	1,707	569	5,689	5,540	2,770	923	9,233
Payroll taxes	13,558	6,779	2,260	22,597	13,726	6,863	2,288	22,877
Total Personnel costs	207,301	103,651	34,550	345,502	195,051	97,526	32,508	325,085
Provision for doubtful accounts	-	20,436	-	20,436	-	-	-	-
Bank service charges	146	340	-	486	666	1,553	-	2,219
Depreciation	-	3,726	-	3,726	-	2,728	-	2,728
Dues	320	1,279	-	1,599	1,015	4,060	-	5,075
Insurance	16,222	1,802	-	18,024	12,940	1,438	-	14,378
Interest expense	4,334	10,113	-	14,447	338	790	-	1,128
Marketing	4,129	1,651	2,477	8,257	4,229	1,692	2,537	8,458
Meetings and conferences	10,828	7,218	-	18,046	8,654	5,770	-	14,424
Mission Subsidy	23,100	-	-	23,100	-	-	-	-
Other expenses	1,057	704	-	1,761	3,892	30	-	3,922
Occupancy costs	183,641	20,404	-	204,045	232,230	25,803	-	258,033
Office supplies	2,092	18,824	-	20,916	3,006	27,050	-	30,056
Program fees	30,087	-	-	30,087	4,032	-	-	4,032
Printing	2,781	6,488	-	9,269	3,049	7,113	-	10,162
Professional fees	26,386	32,091	12,837	71,314	15,214	18,503	7,401	41,118
Research expense	-	-	-	-	2,982	-	-	2,982
Telephone	5,992	20,973	2,996	29,961	4,377	15,320	2,189	21,885
Travel	19,300	7,720	11,579	38,599	12,328	4,931	7,397	24,656
	<u>\$ 537,716</u>	<u>257,420</u>	<u>64,439</u>	<u>859,575</u>	<u>504,002</u>	<u>214,307</u>	<u>52,032</u>	<u>770,341</u>

see accompanying notes to financial statements

Advancing California's Emerging Technologies
Notes to Financial Statements
December 31, 2003 and 2002

1. Statement of Organization

Advancing California's Emerging Technologies (ACET) is a not-for-profit charitable corporation organized under the California not-for-profit corporation law. The organization is dedicated to nourishing the development, growth, and success of entrepreneurial businesses involved in biotechnology and environmentally related ventures. The organization's primary source of income consists of grants from federal and state agencies and sublease income to start-up companies.

2. Summary of Significant Accounting Policies

(a) Basis of Accounting

The financial statements of the company have been prepared on the accrual basis of accounting and accordingly reflect all significant receivables, payables, and other liabilities.

(b) Basis of Presentation

The financial statement presentation follows Statement of Financial Accounting Standards (SFAS) No. 117, *Financial Statements of Not-for-Profit Organizations*. Under SFAS No. 117, ACET is required to report information regarding its financial position and activities according to three classes of net assets: unrestricted net assets, temporarily restricted net assets and permanently restricted net assets. There are no temporarily or permanently restricted net assets at December 31, 2003 and 2002.

(c) Fixed Assets

Fixed assets in excess of \$500 and with an estimated useful life in excess of one year are capitalized at cost; donated assets are capitalized at estimated fair value at date of receipt. Depreciation is computed using the straight-line method with estimated useful lives ranging between five and seven years.

(d) Membership Dues

Dues are recognized as income in the period to which they relate.

Advancing California's Emerging Technologies
Notes to Financial Statements - continued

2. Summary of Significant Accounting Policies - continued

(e) Description of Programs and Supporting Services

Program expenses

ACET's primary programs consist of helping its members and tenants in obtaining venture capital financing and introductions to legal and other professional contacts, local universities and national laboratories. ACET also provides affordable wet lab, light manufacturing, conference facilities and office space under flexible lease arrangements.

Management and general expenses

General and administrative expenses include those expenses that are not directly identifiable with any other specific function but provide for the overall support and direction of the organization.

Fundraising expenses

Fund-raising expenses are costs of all activities that constitute an appeal for financial support, that is, costs incurred to induce others to contribute money, securities, time, materials, or facilities to the organization.

(f) Contributed Services

Contributions of services are recognized when received if such services (a) create or enhance non-financial assets, (b) require specialized skills, and (c) are provided by individuals possessing those skills, and would typically need to be purchased if not donated.

(g) Contributions

ACET has adopted SFAS No. 116, "*Accounting for Contributions Received and Contributions Made.*" Contributions received are recorded as unrestricted, temporarily restricted, or permanently restricted support depending on the existence or nature of any donor restrictions.

(h) Functional Allocation of Expenses

Expenses are charged to programs and supporting services on the basis of periodic time and expense studies as well as estimates made by ACET's management. Management and general expenses include those expenses that are not directly identifiable with any other specific function but provide for the overall support and direction of ACET.

Advancing California's Emerging Technologies
Notes to Financial Statements - continued

2. Summary of Significant Accounting Policies – continued

(i) Cash Equivalents

For the purposes of the statement of cash flows, ACET considers all highly liquid debt instruments purchased with an initial maturity of three months or less to be cash equivalents.

(j) Estimates

ACET uses estimates and assumptions in preparing financial statements. Those estimates and assumptions affect the reported amounts of assets and liabilities, the disclosure of contingent assets and liabilities, and the reported revenues, support, and expenses.

(k) Reclassifications

Certain amounts in the previously issued financial statements have been reclassified to conform to the current year presentation. Such reclassifications have no effect on changes in net assets as previously presented.

(l) Liquidity

The accompanying statements have been prepared on a going concern basis in conformity with accounting principles generally accepted in the United States of America. For the years ended December 31, 2003 and 2002 ACET experienced negative unrestricted net asset positions of \$223,591 and \$103,268 respectively. The organization has been awarded \$8,000,000 in federal grants for the purpose of constructing a building to house environment and bio-tech start up companies. The grant includes \$215,000 to offset future administrative expenses. As detailed in Note 9 to the financial statements, ACET received \$2,296,000 in January 2004 to begin the construction process. Management believes that once construction is complete and the building is occupied, ACET will be able to return to financial health.

3. Income Taxes

ACET is a not-for-profit organization that is exempt from federal income taxes under Section 501(c)(3) of the Internal Revenue Code and classified by the Internal Revenue Service as other than a private foundation. The organization is exempt from California Franchise taxes under Section 23701d of the Revenue and Taxation Code.

Advancing California's Emerging Technologies
Notes to Financial Statements - continued

4. Property and Equipment

Property and equipment at December 31, 2003 and 2002 consisted of the following:

	<u>2003</u>	<u>2002</u>
Computer and equipment	\$ 17,957	15,686
Land acquisition cost	50,537	-
Leasehold improvement	<u>3,588</u>	<u>3,588</u>
	72,082	19,274
Less accumulated depreciation	<u>(9,159)</u>	<u>(5,433)</u>
	\$ <u>62,923</u>	<u>13,841</u>

Depreciation and amortization expense amounted to \$3,726 and \$2,728 in 2003 and 2002, respectively.

5. Operating Leases

ACET subleases office space and labs in Alameda, California, a portion of which is subleased to start-up companies. All the subleases are either month-to-month or less than a year in duration. In 2003 and 2002, sublease income amounted to \$178,100 and \$199,273, respectively.

6. Advances under Lines of Credit

ACET has a \$150,000 unsecured line of credit with the Bank of Alameda. Interest on the line of credit is based upon the Bank's prime rate plus 2%. The amounts outstanding under the line of credit at December 31, 2003 and 2002 amounted to \$149,089 and \$105,850 respectively. The line of credit is guaranteed by an officer of the organization.

7. Donated Goods and Services

Donated goods and services for the years ended December 31, 2003 and 2002 consisted of the following:

	<u>2003</u>	<u>2002</u>
Salary	\$ 3,328	-
Rent	<u>121,290</u>	<u>180,000</u>
Total	\$ <u>124,618</u>	<u>180,000</u>

8. Notes Payable

ACET entered into several note payable arrangements with officers of ACET in order to provide short-term financing. Terms of the arrangement provided for an annualized interest rate up to 4.25%. The outstanding note payable balance was \$1,000 as of December 31, 2003.

Advancing California's Emerging Technologies
Notes to Financial Statements - continued

9. Subsequent Event

In January 2004, ACET received \$2,296,000 from the U.S. Department of Commerce, Economic Development Administration for building costs related to the purchase of land, structures and rights-of-way.

Skrinde, Kristine

From: Leonora Sea [sea@greenstart.org]
Sent: Tuesday, August 10, 2004 2:21 PM
To: Skrinde, Kristine
Cc: Sam Doctors; Alan Mitchell; Donald C. Reinke
Subject: Letter amending escrow agreement



ACET Joint Escrow
Instructions...

Kris

Attached is the letter constituting the irrevocable joint escrow instructions for the land purchase funds amended as required by EDA. Escrow agreement for remaining funds to follow.

Leonora

--

Leonora Sea
COO and General Manager
ACET
851 W. Midway
Alameda, CA 94501
(510) 749-6865

DRAFT FOR REVIEW

BY FAX AND REGULAR MAIL

First American Title Company
6665 Owens Drive
Pleasanton, CA 94588
Attention: Diane Burton, Escrow Officer

Re: Escrow No. 0129-612066ALA ("Escrow"); Sale of
Approximately 3.437 Acres Located at Mariners
Square Loop, Alameda, CA (the "Property")

Dear Ms. Burton:

This letter constitutes the irrevocable joint escrow instructions to First American Title Company ("FATCO") by Advancing California's Emerging Technologies ("ACET"), United States Economic Development Administration ("EDA") and the U.S. Department of Commerce ("DOC") (together, "Parties"), in connection with the purchase of the Property under that certain Disposition and Development Agreement dated as of November 19, 2003, between ACET and the Community Improvement Commission of the City of Alameda. As you know, ACET previously deposited with FATCO in Escrow \$ _____ (the "Funds") for the purchase of the Property. FATCO is hereby instructed as follows:

(a) FATCO shall immediately place the Funds into a separate, interest-bearing escrow account.

(b) After the issuance of a final resolution of the Office of Inspector General's audit, ACET and EDA shall jointly execute and deliver to the FATCO a final disbursement order ("Disbursement Order") directing FATCO to disburse the amount set forth in the Disbursement Order to ACET and/or EDA. Upon receipt of such Disbursement Order, FATCO shall disburse to ACET and/or EDA from the Funds, the amount set forth in the Disbursement Order. Should ACET or EDA fail to execute and deliver a final disbursement order upon issuance of the final audit resolution, FATCO shall disburse the Funds in accordance with and as directed by the final audit resolution.

(c) ACET shall be responsible for the payment of any escrow fees in connection herewith.

Please acknowledge your acceptance and approval of these instructions by signing, dating and returning to the undersigned by facsimile (with the original sent by regular mail) the duplicate copy of this letter.

Advancing California's Emerging Technologies,
a California nonprofit public benefit corporation

By: _____
Name: _____
Title: _____

United States Economic Development
Administration

By: _____
Name: _____
Title: _____

United States Department of Commerce

By: _____
Name: _____
Title: _____

cc: Dr. Sam Doctors

Accepted and approved by:

FIRST AMERICAN TITLE COMPANY

By _____
Name: _____
Title: _____
Duly Authorized



U.S. DEPARTMENT OF COMMERCE

Economic Development Administration
Jackson Federal Building, Room 1890
915 Second Avenue
Seattle, Washington 98174
Fax: (206) 220-7669

Tel: (206) 220-7700

August 9, 2004

FAXED
8/9/04

Samuel Doctors, CEO
Advancing California's Emerging Technologies
851 West Midway Avenue
Alameda, CA 94501

RE: EDA Award No. 07-01-05274
Bio-Technology Business Incubator

Dear Dr. Doctors:

Enclosed is my August 3, 2004 letter that I faxed to Leonora Sea regarding the escrow agreement for the funds to purchase the subject property. In addition, I had requested a copy of the escrow agreement that pertained to the remainder of the EDA funds that are not involved with the purchase of the project property. EDA has received a request from the U.S. Department of Commerce, Office of Inspector General that this second escrow agreement be immediately faxed to EDA. Therefore, we request your cooperation in complying with the immediate submittal of this documentation. Please fax the escrow agreement to (206) 220-7669 today.

Sincerely,

A handwritten signature in cursive script that reads "Kristine L. Skrinde".

Kristine L. Skrinde
Project Manager
Public Works Division

Enclosure

Copy to: Dianne Church, EDR



U.S. DEPARTMENT OF COMMERCE

Economic Development Administration
Jackson Federal Building, Room 1890
915 Second Avenue
Seattle, Washington 98174
Fax: (206) 220-7669

Tel: (206) 220-7700

August 3, 2004

Ms. Leonora Sea
Chief Operating Officer
ACET
851 W. Midway
Alameda, CA 94501

FAXED
8/3/04

RE: EDA Award No. 07-01-05274
Bio-Technology Business Incubator

Dear Ms. Sea:

We have reviewed the draft escrow instructions that were forwarded with your July 27, 2004 e-mail regarding the funds for the purchase of the subject project property. Our comments are as follows:

1. There should be only two parties to this agreement: ACET and the U.S. Department of Commerce, Economic Development Administration (one party). Currently, the instructions indicate that the agreement has three parties; and
2. All interest in this interest bearing account must be submitted to the U.S. Treasury on a monthly basis. Payment must be made in the form of a check in which the "Payee" is the "Economic Development Administration." The check must include the following information:

EDA Award No. 07-01-05274
Interest Payment

The check is to be mailed to:

Economic Development Administration
P. O. Box 100202
Atlanta, Georgia 30384

Please provide a copy of the escrow agreement for EDA's review as well as all of the escrow instructions. Please ensure that the revised instructions reflect the above comments. Finally, please note that EDA must review the escrow agreement that applies to the remainder of the EDA funds that are not involved with the purchase of the project property.

Leonora Sea
Page 2

EDA Award No. 07-01-05274
Bio-Technology Business Incubator

If you have any questions, please contact me.

Sincerely,

A handwritten signature in black ink that reads "Kristine L. Skrinde". The signature is written in a cursive style with a large initial 'K'.

Kristine L. Skrinde
Project Manager
Public Works Division

Copy to: Dianne Church, EDR

Skrinde, Kristine

From: Leonora Sea [sea@greenstart.org]
Sent: Tuesday, July 27, 2004 10:35 AM
To: Skrinde, Kristine
Subject: Escrow instructions



Unknown
Document (28 KB)

Dear Kris

Attached is the draft of the escrow instructions from Rick Bruzzone. If you need more info, please call.

Leonora

--
Leonora Sea
COO and General Manager
ACET
851 W. Midway
Alameda, CA 94501
(510) 749-6865

DRAFT FOR REVIEW

BY FAX AND REGULAR MAIL

First American Title Company
6665 Owens Drive
Pleasanton, CA 94588
Attention: Diane Burton, Escrow Officer

Re: Escrow No. 0129-612066ALA (“Escrow”); Sale of
Approximately 3.437 Acres Located at Mariners
Square Loop, Alameda, CA (the “Property”)

Dear Ms. Burton:

This letter constitutes the irrevocable joint escrow instructions to First American Title Company (“FATCO”) by Advancing California’s Emerging Technologies (“ACET”), United States Economic Development Administration (“EDA”) and the U.S. Department of Commerce (“DOC”) (together, “Parties”), in connection with the purchase of the Property under that certain Disposition and Development Agreement dated as of November 19, 2003, between ACET and the Community Improvement Commission of the City of Alameda. As you know, ACET previously deposited with FATCO in Escrow \$_____ (the “Funds”) for the purchase of the Property. FATCO is hereby instructed as follows:

(a) FATCO shall immediately place the Funds into a separate, interest-bearing escrow account.

(b) After the issuance of a final resolution of the Office of Inspector General’s audit, ACET and EDA shall jointly execute and deliver to the FATCO a final disbursement order (“Disbursement Order”) directing FATCO to disburse the amount set forth in the Disbursement Order to ACET and/or EDA. Upon receipt of such Disbursement Order, FATCO shall disburse to ACET and/or EDA from the Funds, the amount set forth in the Disbursement Order. Should ACET or EDA fail to execute and deliver a final disbursement order upon issuance of the final audit resolution, FATCO shall disburse the Funds in accordance with and as directed by the final audit resolution.

(c) ACET shall be responsible for the payment of any escrow fees in connection herewith.

First American Title Company
August 3, 2004
Page 2

Please acknowledge your acceptance and approval of these instructions by signing, dating and returning to the undersigned by facsimile (with the original sent by regular mail) the duplicate copy of this letter.

Advancing California's Emerging Technologies,
a California nonprofit public benefit corporation

By: _____
Name: _____
Title: _____

United States Economic Development
Administration

By: _____
Name: _____
Title: _____

United States Department of Commerce

By: _____
Name: _____
Title: _____

cc: Dr. Sam Doctors

Accepted and approved by:

FIRST AMERICAN TITLE COMPANY

By _____
Name: _____
Title: _____
Duly Authorized

9730173



FAX COVER SHEET
U.S. Department of Commerce
Economic Development Administration
Seattle Regional Office
Jackson Federal Building, Room 1890
915 Second Avenue
Seattle, Wa 98174
(206) 220-7669 (Fax)

TO: Samuel Doctors

FAX #: _____

DATE: 16 JUL 04

PAGES: 13 (Including Cover)

FROM: KRIS SKRINDE

TELEPHONE NO. 206 220 7700

MESSAGE: F.Y.I.

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

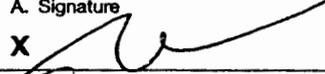
Samuel Doctors, CEO
 ACET
 851 W. Midway Ave
 Alameda, CA 94501

2. Article Number
 (Transfer from service label)

7001 1940 0007 8743 1091

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X 

- Agent
 Addressee

B. Received by (Printed Name)

Sam Doctors

C. Date of Delivery

JUL 30 2004

D. Is delivery address different from item 1? Yes

If YES, enter delivery address below: No

JUL 30 2004
 Public Works Division

3. Service Type

- Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee)

Yes



***** WELCOME TO *****
 FEDERAL FINANCE STATION
 SEATTLE WA 98104-9995
 07/16/04 12:25PM

Store USPS	Trans	25
Wkstn sys5002	Cashier	KW0D58
Cashier's Name	Donald	
Stock Unit Id	SIADON	
PO Phone Number	800-275-8777	
USPS #	5476210013	

1. First Class 8.38
 Destination: 94501
 Weight: 3.000z
 Postage Type: PVI
 Total Cost: 8.38
 Base Rate: 0.83

SERVICES
 Certified Mail 2.30
 70011940000787431091
 Restricted Delivery 3.50
 Return Receipt 1.75

Subtotal 8.38
 Total 8.38
 Cash 20.00
 Change Due 11.62
 Cash

Number of Items Sold: 1

Thank You
 Please come again!

PS Form 3800, January 2001 See Reverse for Instructions

7001 1940 0007 8743 1091

U.S. Postal Service
CERTIFIED MAIL RECEIPT
 (Domestic Mail Only: No Insurance Coverage Provided)

UNIT ID: 0013

Postage	\$ 0.83
Certified Fee	2.30
Return Receipt Fee (Endorsement Required)	1.75
Restricted Delivery Fee (Endorsement Required)	3.50
Total Postage & Fees	\$ 8.38

Sent To: Samuel Dobbs - ACCT
 Street, Apt. No. or PO Box No.: 851 W. Midway Ave
 City, State, ZIP+4: Alameda CA 94501

Postmark Here Clerk: KW0D58 07/16/04

ALAMEDA CA 94501



U.S. DEPARTMENT OF COMMERCE

Economic Development Administration
Jackson Federal Building, Room 1890
915 Second Avenue
Seattle, Washington 98174
Fax: (206) 220-7669

JUL 16 2004

FAXED
7/16/04

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Article Number: 7001 1940 0007 8743 1091

Samuel Doctors, CEO
Advancing California's Emerging Technologies
851 West Midway Avenue
Alameda, CA 94501

RE: EDA Award No. 07-01-05274
Bio-Technology Business Incubator

Dear Dr. Doctors:

Enclosed is a copy of the Final Audit Report No. ATL-16838-4-0001, prepared by the U.S. Department of Commerce, Office of Inspector General. Due to the financial and administrative issues and findings disclosed by this audit, **the following actions are effective as of the date of this letter:**

1. In accordance with 15 CFR Part 14.14, Advancing California's Emerging Technologies (ACET) is now designated as a high-risk organization due to apparent financial instability;
2. The subject EDA Award is suspended. Consequently, no further action is to take place on this project until further notice from EDA;
3. ALL EDA funds that have been disbursed to ACET by EDA and have not been spent on costs for the subject project **MUST** be placed into a separate, interest-bearing escrow account. The escrow account agreement must have ACET and the U.S. Department of Commerce, Economic Development Administration as parties. ACET will be responsible for the payment of the escrow fees. Furthermore, the agreement must include the following clause:

Disbursement Upon Performance of Obligations. After the issuance of the final resolution of the Office of Inspector General's audit, ACET and EDA shall jointly execute and deliver to the Escrow Agent a final disbursement order ("Disbursement Order") directing the Escrow Agent to disburse the amount set forth in the Disbursement

Order to ACET and/or EDA. Upon receipt of such Disbursement Order, the Escrow Agent shall disburse to ACET and/or EDA from the Escrow Fund the amount set forth in the Disbursement Order. Should ACET or EDA fail to execute and deliver a final disbursement order upon issuance of the final audit resolution, the Escrow Agent shall disburse in accordance with and as directed by the final audit resolution.

A copy of the escrow agreement must be submitted to EDA for review and execution;

4. The audit reviewed ACET's cash transactions through April 30, 2004. ACET must reimburse the subject project account a minimum of \$307,332 of EDA funds as well as any additional EDA funds that may have been expended since April 30, 2004 for non-project purposes. ACET must complete the reimbursement of these funds to the aforementioned escrow account within 60 days of the date of this letter; and
5. Within 60 days of the date of this letter, ACET must demonstrate to EDA that it has the financial and administrative capability to complete the subject project.

After reviewing your reply, EDA will inform you in writing as to its final decision with respect to the enclosed audit findings.

Sincerely,



A. Leonard Smith
Regional Director

Enclosure

Copy to: Dianne Church, EDR

Order to ACET and/or EDA. Upon receipt of such Disbursement Order, the Escrow Agent shall disburse to ACET and/or EDA from the Escrow Fund the amount set forth in the Disbursement Order. Should ACET or EDA fail to execute and deliver a final disbursement order upon issuance of the final audit resolution, the Escrow Agent shall disburse in accordance with and as directed by the final audit resolution.

A copy of the escrow agreement must be submitted to EDA for review and execution;

4. The audit reviewed ACET's cash transactions through April 30, 2004. ACET must reimburse the subject project account a minimum of \$307,332 of EDA funds as well as any additional EDA funds that may have been expended since April 30, 2004 for non-project purposes. ACET must complete the reimbursement of these funds to the aforementioned escrow account within 60 days of the date of this letter; and
5. Within 60 days of the date of this letter, ACET must demonstrate to EDA that it has the financial and administrative capability to complete the subject project.

After reviewing your reply, EDA will inform you in writing as to its final decision with respect to the enclosed audit findings.

Sincerely,

A. Leonard Smith
Regional Director

Enclosure

Copy to: Dianne Church, EDR

AC/Eng Tm

KSL 7/16/04

LEGAL

WLB 7/16/04



U.S. DEPARTMENT OF COMMERCE

Economic Development Administration
Jackson Federal Building, Room 1890
915 Second Avenue
Seattle, Washington 98174
Fax: (206) 220-7669

Tel: (206) 220-7700

July 15, 2004

Ms. Leonora Sea
Chief Operating Officer
ACET
851 W. Midway
Alameda, CA 94501

RE: EDA Award No. 07-01-05274
Bio-Technology Business Incubator

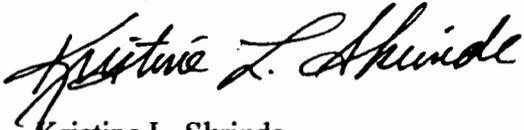
Dear Ms. Sea:

I have reviewed the construction management agreement that was executed June 15, 2005 between ACET and Facilities First for the subject project. My comments are as follows:

1. An Agreement executed between ACT and Hellmuth Obata & Kassabaum, Inc. for architectural/engineering services in the amount of \$450,000 for "Basic Services" includes under item 2.5.1 that the architect "... shall assist the Owner in obtaining bids or negotiated proposals and assist in awarding and preparing contracts for construction." Your construction management agreement states in "Scope of Services" item 7. that the construction manager will "...Assist in the selection of contractors for open bidding of a Federal project." EDA will not pay on a contract to two different parties to conduct the same service. Therefore, please clarify which party will be responsible to assist in the "bid phase", and prepare an amendment to the other party agreement for the deletion of those services. The amendment should contain some type of cost credit; and
2. A provision must be included in the agreement that states that there will be compliance with Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR Part 60).

Please provide me a copy of the addendum(s) that address the above comments. If you have any questions, please contact me.

Sincerely,

A handwritten signature in black ink that reads "Kristine L. Skrinde". The signature is written in a cursive style with a large initial 'K'.

Kristine L. Skrinde
Project Manager
Public Works Division

Copy to: Dianne Church, EDR



Advancing California's Emerging Technologies:
Bringing Technology to Market through Incubators and Clusters

17 June 2004

Kristine L. Skrinde
Project Manager, Public Works Division
U.S. Department of Commerce
Economic Development Administration
Jackson Federal Building, Room 1890
915 Second Avenue
Seattle, CA 98174

Dear Kris:

Enclosed is a copy of the construction management agreement ACET signed this week with Facilities First. The contract is for the first phase of construction management, taking the project through the contractor selection process to final bid selection.

I have a favor to ask: will you please send me another copy of the "Requirements for Approved Construction Projects" to give the CM. They have had plenty of previous Federal grant construction project experience, but not with EDA.

Very truly yours,

Leonora Sea
Chief Operating Officer

JUN 22 2004

Public works Division

Enc.



**FACILITIES
FIRST**

TERMS AND CONDITIONS

TERMS OF PAYMENT

FACILITIES FIRST will periodically submit invoices for fees and expenses. Invoices are due and payable on receipt for first time clients or within fifteen days of receipt for repeat clients. Any exceptions to all or any portion of the invoice should be brought to our attention within five calendar days of the date of the invoice. In the event the invoice remains unpaid for more than fifteen days from the date of the invoice, we will have the right to charge a late fee equal to up to 1.5% of the unpaid amount each month, or portion thereof, compounded at the end of each calendar month. We pass overtime rates (1.5x) through to our clients only when we are legally required to pay them to our employees. Time may be charged portal to portal from our office.

SUPPLEMENTAL/ADDITIONAL SERVICES

Supplemental/Additional services requested and agreed to will be invoiced on an hourly rate basis. When the scope of work can accurately be defined beforehand, estimated fees may be established.

PROFESSIONAL RESPONSIBILITY

Our services are performed within the limits of this agreement in a manner consistent with that level of care and skill ordinarily exercised by other professional consultants under similar circumstances. No other representation to you either expressed or implied, and no warranty or guarantee is included or intended in this agreement, or any other project document.

CONSULTANT COSTS

Fees for consultants retained by Facilities First for this project will be invoiced at our regular rates for similar services.

REIMBURSABLE EXPENSES

All expenses, including reproduction, out of town delivery, postage and long distance telephone communications incurred by us in the course of the project may be invoiced to you at direct cost plus 15%, mileage at \$.38/mile. Air travel and motels/subsistence will be invoiced at cost.

LIMITATIONS OF LIABILITY

For any damages caused by professional negligence, our liability including that of our employees, agents and consultants, in the aggregate under this Agreement shall not exceed our total fees for the project or \$25,000 whichever is less. For any damages caused by negligence other than professional negligence, our liability, including that of our employees, agents and consultants, in the aggregate under this Agreement shall not exceed the limits of our general comprehensive and automobile liability insurance coverage.

ARBITRATION

Any controversy or claim arising out of, or relating to the Agreement, or the breach thereof, which we cannot resolve ourselves, shall be settled by binding arbitration in accordance with the Construction Industry Arbitration Rule of the American Arbitration Association in San Francisco, California. Judgment upon award made by the arbitrator(s) may be entered into any court having jurisdiction. Each party shall bear its own cost of arbitration, including attorney's fees. Fees of the arbitrator(s) shall be divided equally between both parties.

AUTHORIZATION AND INSTRUCTIONS

The term "written instructions", "written directions" or similar terms shall also include verbal instructions or directions that are confirmed by letter, meeting notes, memoranda, e-mail or the like, with a copy sent to your representative and to which your representative makes no written exception within seven (7) working days from receipt of such a copy.

OWNERS OBLIGATIONS

It is understood that you will:

Designate a representative with the authority to provide day-to-day working decisions and liaison with our Project Manager or other personnel. Make prompt decisions regarding schedule, design, budgets and other issues that may affect our ability to perform. Give us access to facilities, information and personnel as required to enable us to perform our work. Client agrees that it will not contact employees or Technical Associates of Facilities First for any purpose relating to employment or contract work for a period of two (2) years from the initial date a Facilities First employee or Technical Associate completes work on the Client's behalf.

SUSPENSION/ TERMINATION

This Agreement may be terminated or suspended by either party for cause if the other party commits a material, unexcused breach of this Agreement. The party terminating shall send a written Notice of Termination to the other, containing the specific reason(s) for the termination. The termination shall not be effective if the breach has been remedied before the expiration of the period specified in the Notice of Termination, and this period shall be no less than ten (10) days from receipt of the Notice of Termination. No later than thirty (30) days after termination you will pay us, upon invoice for all services performed and all charges incurred prior to termination plus termination charges. Termination charges shall include, without limitation, charges for personnel and all other related costs and charges incurred that are directly attributable to termination. Provided such payments are made, copies of all work products shall be delivered to you.

OWNERSHIP AND USE OF DOCUMENTS

Manuals, drawings, specifications and other materials prepared by FACILITIES FIRST and our Consultants in connection with the Project are instruments of service and not "works made for hire" under the Copyright Revision Act of 1976. In the event of suspension or termination of this Agreement, these materials shall not be used by you before we have been fully compensated for all services performed and expenses incurred, or a mutually agreeable date for compensation has been set by both parties.

TIME

This Agreement commences with the date of commencement of services covered by this Agreement whether or not performed prior to the date of this Agreement, and shall conclude sixty (60) days after move-in or completion unless otherwise stipulated or agreed. We shall not be responsible for delays which result from circumstances beyond our control.

MISCELLANEOUS

This Agreement shall be binding upon and shall inure to the benefits of the parties and their respective successors and interests, agents, assigns and representatives. This Agreement shall not be modified except in writing, signed by both parties. This Agreement shall be interpreted and enforced under the laws of the State of California.

01/01/01



FACILITIES FIRST

service is not included in the scope of this proposal. A Request for Proposal (RFP) may be developed and recommendations made for their selection but their service will be at ACET's expense.

3. Expenses incurred (travel, meals, etc.) will be billed at cost, with invoices provided for reimbursement. Expenses in excess of one hundred dollars (\$100.00) will be approved prior to being incurred. Auto expense will be billed at rate of thirty-eight cents (\$0.37) per mile traveled.
4. Invoicing will occur on the first of each month that work occurs, and is due in 15 days.
5. This agreement is revocable by either party with a written notice. Payment would be due for services rendered through the date of termination.

Signed: Lois Steiner

Title: Principal

Date: May 26, 2004

Lois Steiner
Principal
Facilities First

Signed: Leonora Sea

Title: Chief Operating Officer

Date: 6/15/04

Leonora Sea
Chief Operating Officer
ACET



FACILITIES FIRST

We propose that Facilities First provide consulting services to assist you with the following items:

Scope of Services

1. Jerry Parks, Senior Project Manager, will be the project lead and will provide primary support to ACET for this bidding permitting phase (and any following phases should we be contracted to do that).
2. Provide review of the bidding package and assist with decisions regarding processing of the project permitting and bidding phase of the Project. Review the current estimate to ascertain if it is reasonable and where there might be opportunities for savings.
3. Make recommendations on whether or not to obtain another estimate.
4. Assist the architect and/or contractor with processing the project through the city permitting process – depending on which method of contracting is desired.
5. Develop a detailed Project Schedule for the building project or modify any existing project schedules to include all the considerations related to the completion of the bidding phase.
6. Clarify key issues that will impact the project and develop strategies for their resolution.
7. Assist in the selection of contractors for open bidding of a Federal project.

Fee:

All services will be provided per our attached Terms and Conditions unless otherwise specified below.

1. Provide project/construction management services functioning as owners' representative for a not-to-exceed fee of Twenty-Nine Thousand Dollars (\$29,000). Invoicing for time expended on a time and materials basis at the following rates:

Jerry Parks- Senior Project Manager	\$110.00 per hour
Lois Steiner-Principal	No charge during this phase unless substituting for PM
Project Assistant (if required)	\$ 60.00 per hour
2. ACET will retain all architects, engineers, consultants, vendors or contractors required for the completion of this project. Any cost incurred for their time or



COPY

Thursday, May 27, 2004

**FACILITIES
FIRST**

1400 Terra Bella
Mountain View, CA 94043

Telephone 650-691-7944
Fax 650-691-6866

www.facilitiesfirst.com



PRINCIPALS

Lois Steiner
Ralph Buchanan



*“Your Facilities...
Our First Priority!”*

Strategic Facilities Planning

Project Team Leadership

Site Selection/
Lease Negotiation

Programming/
Space Planning

Design Services/
Coordination

Bid/Construction
Management

Furniture/Equipment
Procurement

Move Management

Facilities Operational Support

Facilities Staffing



A Corporate Facilities
Resources / James V. Testa
& Associates Company

Leonora Sea
ACET
851 W. Midway Ave.
Alameda, CA 94501

Dear Leonora,

Jerry and I appreciated the discussion of the project with you and Sam this afternoon. We believe we understand the various and complicated issues that are before you and believe we can add significant value to your process to get through the bid stage with an affordable project before the September 30 deadline to break ground on constructing the building.

In order not to limit you or us to a set of services that we can only anticipate will change and need to be flexible, we are describing the scope with a general approach that will let us tailor our services to the specific needs we identify. The services identified would provide you with support to develop the detailed realistic schedule for completion, carefully review the estimates and perhaps get another confirming estimate, take the project through the final stages of the bid and permitting process for a bid that represents a reasonable assurance of being completed without major change orders.

It is assumed that the time duration would be approximately four (4) months (17 weeks) to ground breaking providing an average of about 16 hours of consulting assistance per week. We are also offering you our rates for non-profit entities. We would complete value engineering, constructability review and green project review as additional services at our standard hourly rate, if necessary. Likewise if we are able to convert some of this time for a project administrative person with appropriate skills we would do so to save you expense.

Jerry is available to discuss the proposal and would be happy to modify it as you may require. We look forward to working with you and the successful completion of your project.

Regards,

Lois Steiner
Principal

JUN 22 2004
Public Works Division

Skrinde, Kristine

From: Borell, Karen
Sent: Wednesday, May 19, 2004 6:03 PM
To: Smith, A. Leonard; Skrinde, Kristine
Subject: FW: ACET Project - Covenant

fyi

-----Original Message-----

From: Borell, Karen
Sent: Wednesday, May 19, 2004 6:02 PM
To: 'JoAnne L. Dunec'
Cc: Debbie Potter (E-mail); David Brandt (E-mail)
Subject: RE: ACET Project - Covenant

JoAnne,
The revised covenant is acceptable. I'm assuming that a California acknowledgment form will be attached. Also, I'm assuming that the covenant will be one of the documents deposited into escrow and executed at the closing. Thanks. --Karen

-----Original Message-----

From: JoAnne L. Dunec [mailto:JDunec@ellman-burke.com]
Sent: Wednesday, May 19, 2004 4:14 PM
To: Borell, Karen
Cc: Debbie Potter (E-mail); David Brandt (E-mail)
Subject: ACET Project - Covenant

Karen -

After discussions with Debbie Potter and David Brandt, we have now slightly revised the Covenant proposed by EDA as follows: to put the covenant into recordable form; to reflect that the CIC holds the right of reverter (not the City); to describe the DDA more definitively (similar to the grant descriptions); and organize the recitals chronologically. Please see the attached clean copy and the copy marked to show the slight revisions from the version you forwarded. The CIC is prepared to execute and record the attached Covenant.

<<w-EDA Covenant.doc>> <<B-ACET DDA.DOC>>

JoAnne L. Dunec
Ellman Burke Hoffman & Johnson
One Ecker, Suite 200
San Francisco, California 94105
Telephone: (415) 777-2727
Direct: (415) 536-1226
Facsimile: (415) 495-7587
e-mail: jdunec@ellman-burke.com

Confidential Communication

This electronic mail message and any attachments are intended only for the use of the addressee(s) named above and may contain information that is privileged, confidential and exempt from disclosure under applicable law. If you are not an intended recipient, or the employee or agent responsible for delivering this e-mail to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you received this e-mail message in error, please immediately notify the sender by replying to this message or by telephone. Thank you.

Borell, Karen

From: JoAnne L. Dunec [JDunec@ellman-burke.com]
Sent: Wednesday, May 19, 2004 6:06 PM
To: Borell, Karen
Cc: Debbie Potter (E-mail); David Brandt (E-mail)
Subject: RE: ACET Project - Covenant

Karen -

Thank you for your quick turnaround. You are correct, the Covenant is to be recorded at the closing.

- JoAnne

-----Original Message-----

From: Borell, Karen [mailto:KBorell@eda.doc.gov]
Sent: Wednesday, May 19, 2004 6:02 PM
To: JoAnne L. Dunec
Cc: Debbie Potter (E-mail); David Brandt (E-mail)
Subject: RE: ACET Project - Covenant

JoAnne,

The revised covenant is acceptable. I'm assuming that a California acknowledgment form will be attached. Also, I'm assuming that the covenant will be one of the documents deposited into escrow and executed at the closing. Thanks. --Karen

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From: JoAnne L. Dunec [mailto:JDunec@ellman-burke.com]
Sent: Wednesday, May 19, 2004 4:14 PM
To: Borell, Karen
Cc: Debbie Potter (E-mail); David Brandt (E-mail)
Subject: ACET Project - Covenant

Karen -

After discussions with Debbie Potter and David Brandt, we have now slightly revised the Covenant proposed by EDA as follows: to put the covenant into recordable form; to reflect that the CIC holds the right of reverter (not the City); to describe the DDA more definitively (similar to the grant descriptions); and organize the recitals chronologically. Please see the attached clean copy and the copy marked to show the slight revisions from the version you forwarded. The CIC is prepared to execute and record the attached Covenant.

<<w-EDA Covenant.doc>> <<B-ACET DDA.DOC>>

JoAnne L. Dunec
Ellman Burke Hoffman & Johnson
One Ecker, Suite 200
San Francisco, California 94105
Telephone: (415) 777-2727
Direct: (415) 536-1226
Facsimile: (415) 495-7587
e-mail: jdunec@ellman-burke.com

Confidential Communication

This electronic mail message and any attachments are intended only for the use of the addressee(s) named above and may contain information that is privileged, confidential and exempt from disclosure under applicable law. If you are not an intended recipient, or the employee or agent responsible for delivering this e-mail to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you received this e-mail message in error, please immediately notify the sender by replying to this message or by telephone. Thank you.

COVENANT OF PURPOSE, USE AND OWNERSHIP

This Covenant, dated _____, 200_ is by the City of Alameda through its Community Improvement Commission, located at Alameda, California, holder of a reversionary interest in certain real property, for the benefit of the Economic Development Administration, United States Department of Commerce, located at the Main Commerce Building, Washington, D.C. 20230 ("EDA"), with a Regional Office at Jackson Federal Building, Room 1856, 915 Second Ave., Seattle, WA 98174. The City of Alameda has transferred to Advancing California's Emerging Technologies, a California nonprofit public benefit Corporation, ("Grantee") a fee interest, subject to a reversion to the City of Alameda under certain conditions specified in its Disposition and Development Agreement dated November 19, 2003.

The City makes this Covenant based on the following.

Grantee submitted an application, designated as EDA Project No. 07-01-5274 for financial assistance under the Public Works and Economic Development Act of 1965, as amended (P.L. 89-136, 42 U.S.C. 3121, et seq.) ("PWEDA").

By Approval and Award of Grant, dated September 27, 2002, as amended, EDA offered a Grant of \$6,440,000 ("Grant Amount") to assist in financing the ACET biotechnology business incubator ("Project") with the total project estimated to cost \$8,400,000.

The Project is situated on the real property described in Exhibit "A" attached and incorporated herein by reference. Any reference in this Covenant to the Project includes this real property.

On September 30, 2002 the Grantee accepted the Grant subject to certain terms and conditions, including the requirements of Title 13 Code of Federal Regulations, Part 314, as amended.

The EDA Grant Agreement provides, inter alia, that Grantee, without EDA's prior written consent, will not sell, lease, mortgage, or otherwise alienate any right to, or interest in, the Project as prescribed in Title 13 CFR Part 314 and Title 15 CFR Part 24. The Grant Agreement and said regulations also prohibits Grantee, without EDA's prior written consent, from using the Project for purposes other than those specified in the Grant Agreement and in the Grantee's application ("Authorized Uses").

Use or nonuse of the real property by the Grantee, that would cause a default in the Disposition and Development Agreement and a reversion of the property to the City, would also constitute a breach of the Grant Agreement.

If the real property reverted to the City and the City desired to sell, lease, mortgage or

otherwise alienate any right to or interest in the Project, it may be required to compensate EDA for its fair share as set forth in 13 CFR Part 314, as amended.

If Grantee desires to sell, lease, mortgage or otherwise alienate any right to or interest in the Project, it may be required to compensate EDA for its fair share as set forth in 13 CFR Part 314.

In order to assure that the benefits of EDA's Grant will accrue to the public and be used as intended by EDA, the City, and the Grantee, the City agrees to the following.

1. The expected useful life of the Project is twenty (20) years.
2. During its expected useful life the Project shall be used only for the purposes specified in the Grant Agreement and in the application. The Project, including any interest therein, shall not be sold, leased, conveyed, encumbered, abandoned, or otherwise transferred without the prior written consent of the Assistant Secretary of Commerce for Economic Development.
3. If the City uses the Project for a non-authorized use or sells, leases, conveys, encumbers, abandons or otherwise transfers without the prior written consent of the Assistant Secretary, the City shall compensate EDA for its fair share. The fair share to be compensated to EDA shall be computed as set forth in Title 13 CFR Part 314, as same may be amended from time to time.
4. This Covenant shall run with the land for a period of twenty (20) years.
5. The City agrees that this Covenant is a reasonable restraint on alienation of use, control, possession of or title to the Project and its underlying real property interest.

Authorized representatives of the City have signed this Covenant on the date written above.

City of Alameda, California

Attest:

By: _____
(Name)

By: _____
(Name)

Its: _____
(Title)

Its: _____
(Title)

Approved: _____
Attorney for City

(State Acknowledgment)

COVENANT OF PURPOSE, USE AND OWNERSHIP

This Covenant of Purpose, Use and Ownership ("Covenant"), dated _____, 200_ is by the Community Improvement Commission, a public body, corporate and politic, exercising governmental functions and powers, and organized and existing, under the Community Redevelopment Law of the State of California (Health and Safety Code Section 33000 *et seq.*) ("CIC"), for the benefit of the Economic Development Administration, United States Department of Commerce, located at the Main Commerce Building, Washington, D.C. 20230 ("EDA"), with a Regional Office at Jackson Federal Building, Room 1856, 915 Second Ave., Seattle, WA 98174. Pursuant to a Disposition and Development Agreement dated as of November 19, 2003 ("ACET DDA"), the CIC holds a reversionary interest in the Property (defined below).

RECITALS

This Covenant is made on the basis of the following facts, understanding and intention of the CIC.

A. Advancing California's Emerging Technologies, a California nonprofit public benefit corporation ("Grantee") submitted an application, designated as EDA Project No. 07-01-5274 for financial assistance under the Public Works and Economic Development Act of 1965, as amended (P.L. 89-136, 42 U.S.C. 3121, *et seq.*) ("PWEDA").

B. By Approval and Award of Grant, dated September 27, 2002, as amended, EDA offered a Grant of \$6,440,000 ("Grant Amount") to assist in financing the ACET biotechnology business incubator ("Project") with the total project estimated to cost \$8,400,000.

C. The Project is situated on the real property described in Exhibit "A" attached and incorporated herein by reference ("Property"). Any reference in this Covenant to the Project includes the Property.

D. **[Following to be confirmed]** On September 30, 2002 the Grantee accepted the Grant Amount subject to certain terms and conditions, including the requirements of Title 13 Code of Federal Regulations ("CFR"), Part 314 (2004), as amended.

E. Pursuant to the ACET DDA, the CIC transferred to Grantee a fee interest, subject to the reversionary interest held by the CIC.

F. The parties to the ACET DDA entered into a Clarification Agreement, dated as of _____, 200_ ("Clarification Agreement"), pursuant to which EDA was recognized as the sole Mortgagee (as defined under the ACET DDA) for the Project. The Clarification

Agreement also provides EDA a reasonable period, not to exceed eighteen (18) months for EDA to designate a grantee as a substitute for Grantee for purposes of the EDA Grant for certain defaults under the ACET DDA, and the parties to the ACET DDA agreed to cooperate with EDA in transferring the Project to the substitute grantee.

G. If Grantee desires to sell, lease, mortgage or otherwise alienate any right to or interest in the Project, it may be required to compensate the federal government for its federal share (as defined in 13 CFR Part 314 (2004) or its successor provision) ("Federal Share").

In order to assure that the benefits of EDA's Grant will accrue to the public and be used as intended by EDA, the CIC, and the Grantee, the CIC agrees to the following.

1. The expected useful life of the Project is twenty (20) years.
2. During its expected useful life the Project shall be used only for the purposes permitted by 13 CFR Part 314 (2004). The Project, including any interest therein, shall not be sold, leased, conveyed, encumbered, abandoned, or otherwise transferred without the prior written consent of the Assistant Secretary of Commerce for Economic Development.
3. This Covenant shall run with the land for the earlier of: (a) twenty (20) years from the date first set forth above [**to confirm foregoing commencement date**], or (b) the date of compensation of the federal government of the Federal Share or other termination of the federal government's interest in the Project pursuant to 13 CFR Part 314 (2004), as amended.

Authorized representatives of the CIC have signed this Covenant on the date written above.

ATTESTATION:

By: _____
Secretary

APPROVED AS TO FORM:

By: _____
General Counsel

CIC:

COMMUNITY IMPROVEMENT
COMMISSION OF THE CITY OF
ALAMEDA

By: _____
Name: _____
Title: _____

STATE OF CALIFORNIA)

COUNTY OF ALAMEDA)

On _____ before me, _____,
Notary Public, personally appeared _____,
personally known to me (or proved to me on the basis of satisfactory evidence) to be the
person(s) whose name(s) is subscribed to the within instrument and acknowledged to me that
he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their
signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s)
acted, executed the instrument.

WITNESS my hand and official seal.

Signature of Notary

(SEAL)

Borell, Karen

From: Bruzzone, Richard A. [RBruzzone@ReedSmith.com]
Sent: Tuesday, May 18, 2004 9:33 AM
To: Sam Doctors
Cc: Borell, Karen; Joanne Dunec (E-mail)
Subject: RE: Please fill Me in

By copy of this to Karen and Joanne, I'm checking.

-----Original Message-----

From: Sam Doctors [mailto:doctors@greenstart.org]
Sent: Wednesday, May 19, 2004 9:15 AM
To: Bruzzone, Richard A.
Subject: Please fill Me in

What is the latest on the covenant that Karen Borell wants?

Please advise so I can speak with Leonard Smith if necessary as time for the ale of the land draws nigh.

--
Samuel I. Doctors, CEO
ACET
851 Midway Avenue
Alameda, CA 94501
Tel. 510-749-3977
Fax.: 510-749-6862

This message is sent in confidence for the addressee only. It may contain legally privileged information. The contents are not to be disclosed to anyone other than the addressee. Unauthorised recipients are requested to preserve this confidentiality and to advise us of any errors in transmission. Thank you.
