

**CALIFORNIA ALTERNATIVE ENERGY AND
ADVANCED TRANSPORTATION FINANCING AUTHORITY**

*Request to Approve a Time Extension for the
Initial Term of the Regulatory Agreement¹*

**Cepheid
Application No. 21-SM026**

Tuesday, February 20, 2024

Prepared By: *Stefani Wilde, Program Analyst*

SUMMARY

Applicant – Cepheid

Location – Lodi, San Joaquin County; Sunnyvale, Santa Clara County; and Newark, Alameda County

Industry – Medical Device Manufacturing

Project – Update and Expansion of Existing Medical Device Manufacturing Facilities
(Advanced Manufacturing)

Total Amount Qualified Property Approved – \$209,750,000

Estimated Sales and Use Tax Exclusion Amount at Approval – \$17,828,750

Amount of Time Requested –

- One (1) year and six (6) months, until September 16, 2025, for the Initial Term of the Regulatory Agreement (a total of four (4) years and six (6) months from the date of initial CAEATFA Board approval of March 16, 2021)

Staff Recommendation – Approval

¹ All capitalized terms not defined in this document are defined in the Sales and Use Tax Exclusion Program’s statutes and regulations.

REQUEST

On March 16, 2021, the CAEATFA Board approved a sales and use tax exclusion (“STE”) for Cepheid (the “Applicant”) for the purchase of up to \$209,750,000 in Qualified Property to upgrade and expand its existing medical device manufacturing facilities located in Lodi, Sunnyvale, and Newark (the “Project”). The Regulatory Agreement (“Agreement”) initial term provided the Applicant with three (3) years from the date of CAEATFA Board approval to utilize its STE award.²

As of August 2023, the Applicant has used the STE to purchase \$79,949,069 of Qualified Property (38% of the total Qualified Property approved). The Applicant is requesting to extend the Agreement initial term by one (1) year and (6) six months to accommodate delays related to the COVID-19 pandemic, which set the Project back unexpectedly.

According to the Applicant, when its award was approved in March 2021, at the height of the pandemic, there was an unexpected spike in demand for the products it manufactures. Additionally, the Applicant states although demand increased significantly, the economic environment was unstable which required plans to be adjusted and modified. It also states it needed to reallocate funding which caused additional delays to the Project.

The CAEATFA Board can extend the initial term of the Agreement upon a finding that an extension is in the public interest and advances the purposes of the STE Program.³

THE APPLICANT

Cepheid (the “Applicant”) is a California corporation that formed in 1996 and is a wholly-owned subsidiary of Danaher Corporation. The Applicant is a medical device manufacturing company headquartered in Sunnyvale, with additional facilities in Lodi and Newark, specializing in medical testing systems.

The Applicant received an income tax credit under the California Competes Tax Credit Program⁴ administered by the Governor’s Office of Business and Economic Development on November 5, 2020.

The Applicant has also received a number of grants from the state’s Employment Training Panel, with the most recent grant approved on October 23, 2020, for a training proposal contract in the amount of \$200,000.

² California Code of Regulations Title 4, Division 13, Section 10035(b)(1)

³ California Code of Regulations Title 4, Division 13, Section 10035(b)(1)(B)

⁴ California Code of Regulations, Title 10, Chapter 13, Article 1 (commencing with Section 8000).

The corporate officers of Danaher Corporation are:

Rainer M. Blair - President and CEO

Matt McGrew - EVP & CFO

Brian Ellis – SVP & General Counsel

THE PROJECT

Cepheid requested an STE award to upgrade and expand its existing medical device manufacturing facilities located in Lodi, Sunnyvale, and Newark. The Applicant plans to build out an approximately 350,000 square-foot facility and upgrade existing equipment to meet continued demand and enhance future products.

According to the Applicant, its SmartCycler System simplified a complex, multi-stage process of nucleic acid testing into a single instrument for detecting and analyzing DNA in blood, urine, food, and industrial water. The Applicant explains it has since developed and launched the fully automated and integrated GeneXpert® System, which has received FDA clearance on 20 tests, including Ebola, HIV, MSRA, Group B Streptococcus, the flu, and SARS-CoV-2 (COVID-19). The Applicant states its GeneXpert® System is produced primarily for clinical use, including healthcare-associated infections, sexual health, infectious disease, virology, and oncology, but has been used for non-clinical purposes, such as mail testing for anthrax by the United States Postal Service.

The Applicant states its medical devices comprise of vertically integrated testing systems and reagent test cartridges that can be modified to meet customer requirements, and that its scientists and engineers have designed the majority of its production line in-house, incorporating robotic machinery capable of performing highly precise actions. For example, the Applicant describes a proprietary system capable of injecting either liquid or dry reagents into test cartridges and equipment that can organize and individually dispense tiny, lyophilized reagent beads into test cartridges. For further efficiency, the Applicant explains it often uses polymer-based 3D printing, a form of additive manufacturing, rather than traditional computer numerical control (subtractive) machining to expedite and reduce waste related to its prototyping efforts, and has automated its packaging, labeling, and shipping processes.

The Applicant also has an environmental sustainability plan that it states will help reduce energy consumption, greenhouse gases, and non-hazardous/non-regulated waste over a five-year period. The Applicant anticipates the Project will reduce energy consumption by replacing existing lighting with light-emitting diode (“LED”) lighting and will reduce the solid waste it generates by improving the recycling and diversion of its packaging materials and other non-hazardous waste.

AGREEMENT INITIAL TERM EXTENSION REQUEST

The Applicant has requested that the initial term of the Agreement be extended from March 16, 2024, to September 16, 2025, in order to accommodate delays related to the COVID-19 pandemic, which set the Project back unexpectedly.

Staff Evaluation

The Applicant states that due an increase in demand for its products during the height of the COVID pandemic, it became necessary to deviate from its original plan to purchase the qualified property within the three (3)-year initial term. Additionally, it became essential for the Applicant to reallocate purchases for its advanced production systems to include newer technology, which created additional delays. According to the Applicant, it continues to see significant growth and increased demand for its products and anticipates being able to exhaust its award by the fall of 2025.

Based on this information, Staff believes extending the initial term of the Agreement will allow for the Project to be completed, and is, therefore, in the public interest and advances the purposes of the STE Program.

LEGAL QUESTIONNAIRE

Staff has reviewed the Applicant’s responses to the questions contained in the Legal Status portion of the Application. The Executive Director, in consultation with legal counsel, has determined that the legal issues disclosed do not affect the financial viability or legal integrity of the Applicant.

CAEATFA FEES

In accordance with STE Program regulations,⁵ the Applicant has paid an additional fee of \$2,000 because extending the initial term qualifies as a modification to the Applicant’s Agreement.

RECOMMENDATION

Staff recommends that the Board approve the Applicant’s request to extend the initial term of the Agreement by one (1) year and six (6) months to September 16, 2025, as it is in the public interest and advances the purposes of the STE Program.

Attachments

- Attachment A: Cepheid’s letter requesting waiver (November 3, 2023)
- Attachment B: Cepheid’s staff summary at the time of approval

⁵ California Code of Regulations Title 4, Division 13, Section 10036(c)(1)(B)

**RESOLUTION APPROVING A TIME EXTENSION FOR
CEPHEID’S INITIAL TERM FOR
THE REGULATORY AGREEMENT**

February 20, 2024

WHEREAS, on March 16, 2021, the California Alternative Energy and Advanced Transportation Financing Authority (the “Authority”), a public instrumentality of the State of California, approved a Sales Tax Exclusion (“STE”) in the amount of \$209,750,000 of Qualified Property for **Cepheid** (the “Applicant”); and

WHEREAS, within three (3) years of approval by the Authority, the Applicant must make all Qualified Property purchases (STE Program regulations Section 10035(b)(1)); and

WHEREAS, upon a finding that it is in the public interest and advances the purposes of the Program, the Authority may waive the requirement that all purchases of Qualified Property be made within three (3) years of Application approval (STE Program regulations Section 10035(b)(1)(B)); and

WHEREAS, the Applicant has requested a waiver of the requirement to purchase all of the Qualified Property by September 16, 2025, due to unexpected delays in the Project timeline, extending the term by one (1) year and six (6) months to September 16, 2025; and

WHEREAS, granting the waiver will allow the Project to proceed and the state to receive the anticipated environmental and economic benefits that justified the initial approval of the Project in accordance with the law, thereby advancing both the public interest and the purposes of the Program.

NOW, THEREFORE, BE IT RESOLVED by the California Alternative Energy and Advanced Transportation Financing Authority, as follows:

Section 1. The Authority finds that it is in the public interest and advances the purposes of the Program to extend the Applicant’s initial term of the Regulatory Agreement to September 16, 2025.

Section 2. This resolution shall take effect immediately upon its passage.

Attachment A: Cepheid’s Letter Requesting Waiver (November 3, 2023)



November 3, 2023

CAEATFA
Attn: Xee Moua, Program Analyst
915 Capitol Mall Room 587
Sacramento, CA 95814

RE: CAEATFA STE Master Regulatory Agreement (“MRA”) Extension Request – Cepheid (21-SM026)

Dear CAEATFA Board Members & Staff,

Cepheid respectfully requests an eighteen (18) month extension on its CAEATFA STE MRA award, until September 19, 2025, in order to procure its remaining CAEATFA STE Qualified Property.

Cepheid’s CAEATFA STE award was executed March 19, 2021, which unfortunately occurred around the same time as the COVID-19 pandemic hit hard causing massive economic shutdowns across the globe. Due to the nature of Cepheid’s business, the pandemic caused an unexpected spike in demand for its products while enduring an unprecedented and rocky economic environment. Cepheid’s plans to expand and upgrade its manufacturing and research and development facilities have been slightly modified and quite delayed as business environments have smoothed, and technology has advanced over the last couple years. As a result, Cepheid has experienced the following delays:

- Delays with implementation and utilization of the CAEATFA exclusion certificate in a timely manner—reducing the actual Qualified Property purchases as compared to its plan.
- Spending delays due to reallocation of purchases to Cepheid’s highly advanced JIDOKA production systems which include the development of new Biochip modules that will have the capability to perform multiple tests at one time.

Despite the obstacles presented over recent years, the Company continues to see growth and high demand for its’ products. As of June of 2023, the company has purchased approximately \$89M or ~42.5% of Qualified Property. With healthy revenue projections, Cepheid anticipates the expansion and upgrade of its California facilities to continue with several projects in the works including its Biochip development and a Facility Fit-out in Lodi. As such Cepheid fully expects to acquire the qualified property in efforts to exhaust the CAEATFA award by fall of 2025.

Please reach out to us with any questions. Thank you in advance for your time and careful consideration.
Sincerely,

A handwritten signature in black ink, appearing to read "Alex Tran".

Alex Tran
Consultant Representative

cc: CAEATFA@sto.ca.gov
xee.moua@treasurer.ca.gov
alex.tran@CALincentives.com
sarah.hoyt@CALincentives.com

Attachment B: Cepheid’s Staff Summary at the Time of Approval

**Agenda Item – 4.G.26
Resolution No. 21-SM026
Application No. 21-SM026**

**CALIFORNIA ALTERNATIVE ENERGY AND
ADVANCED TRANSPORTATION FINANCING AUTHORITY**

Request to Approve Project for a Sales and Use Tax Exclusion¹

**Cepheid
Application No. 21-SM026**

Tuesday, March 16, 2021

Prepared By: *Xee Moua, Program Analyst*

SUMMARY

Applicant – Cepheid

Location – Lodi, San Joaquin County; Sunnyvale, Santa Clara County; and Newark, Alameda County

Industry – Medical Device Manufacturing

Project – Update and Expansion of Existing Medical Device Manufacturing Facilities
(Advanced Manufacturing)

Value of Qualified Property	Estimated Sales and Use Tax Exclusion (“STE”) Amount ²
\$209,750,000	\$17,828,750 ³

Estimated Net Benefit ⁴	Dollar Value	Points Earned ⁵
Estimated Fiscal Benefits	\$20,528,309	1,151
Estimated Environmental Benefits	N/A	45
Additional Benefits	N/A	125
Total	\$20,528,309	1,322
Estimated Quantifiable Net Benefit	\$2,699,559	

Competitive Criteria Score – 90

Staff Recommendation – Approval

¹ All capitalized terms not defined in this document are defined in the STE Program’s statutes and regulations.
² This amount is calculated based on the average statewide sales tax rate of 8.5%.
³ At the first Board meeting of the calendar year, \$15 million in STE is available for Applicants wishing to exceed the \$10 million in STE cap (California Code of Regulations Title 4, Division 13, Section 10032(a)(5)(B)).
⁴ Applications that earn a Total Score of at least 1,000 points and an Environmental Benefits Score of over 20 points may be recommended for approval. (California Code of Regulations Title 4, Division 13, Section 10033(c)(6)).
⁵ Dollar values and point values in the staff summary may not add up correctly due to rounding in the Application worksheet.

**Agenda Item – 4.A.7
Resolution No. 21-SM026-01**

**Agenda Item – 4.G.26
Resolution No. 21-SM026
Application No. 21-SM026**

THE APPLICANT

Cepheid (the “Applicant”) is a California corporation that formed in 1996, and is a wholly-owned subsidiary of Danaher Corporation. The Applicant is a medical device manufacturing company headquartered in Sunnyvale, with additional facilities in Lodi and Newark, specializing in medical testing systems.

The Applicant received an income tax credit under the California Competes Tax Credit Program⁶ administered by the Governor’s Office of Business and Economic Development on November 5, 2020.

The Applicant has also received a number of grants from the state’s Employment Training Panel, with the most recent grant approved on October 23, 2020, for a training proposal contract in the amount of \$200,000.

The corporate officers of Danaher Corporation are:

- Rainer M. Blair, President and Chief Executive Officer
- Matt McGrew, Executive Vice President and Chief Financial Officer
- Brian Ellis, Senior Vice President and General Counsel
- Robert S. Lutz, Senior Vice President and Chief Accounting Officer

THE PROJECT

Cepheid is requesting an STE award to upgrade and expand its existing medical device manufacturing facilities located in Lodi, Sunnyvale, and Newark (the “Project”). The Applicant plans to build out approximately 350,000 square-foot of facility and upgrade existing equipment to meet continued demand and enhance future products.

According to the Applicant, its SmartCycler System simplified a complex, multi-stage process of nucleic acid testing into a single instrument for detecting and analyzing DNA in blood, urine, food, and industrial water. The Applicant explains it has since developed and launched the fully automated and integrated GeneXpert® System, which has received FDA clearance on 20 tests, including Ebola, HIV, MSRA, Group B Streptococcus, the flu, and SARS-CoV-2 (COVID-19). The Applicant states its GeneXpert® System is produced primarily for clinical use, including healthcare-associated infections, sexual health, infectious disease, virology, and oncology, but has been used for non-clinical purposes, such as mail testing for anthrax by the United States Postal Service.

The Applicant states its medical devices comprise of vertically integrated testing systems and reagent test cartridges that can be modified to meet customer requirements, and that its scientists and engineers have designed the majority of its production line in-house, incorporating robotic machinery capable of performing highly precise actions. For example, the Applicant describes a

⁶ California Code of Regulations, Title 10, Chapter 13, Article 1 (commencing with Section 8000).

**Agenda Item – 4.A.7
Resolution No. 21-SM026-01**

**Agenda Item – 4.G.26
Resolution No. 21-SM026
Application No. 21-SM026**

proprietary system capable of injecting either liquid or dry reagents into test cartridges and equipment that can organize and individually dispense tiny lyophilized reagent beads into test cartridges. For further efficiency, the Applicant explains it often uses polymer-based 3D printing, a form of additive manufacturing, rather than traditional computer numerical control (subtractive) machining to expedite and reduce waste related to its prototyping efforts, and has automated its packaging, labeling, and shipping processes.

The Applicant also has an environmental sustainability plan that it states will help reduce energy consumption, greenhouse gases, and non-hazardous/non-regulated waste over a five-year period. The Applicant anticipates the Project will reduce energy consumption by replacing existing lighting with light-emitting diode (“LED”) lighting and will reduce the solid waste it generates by improving the recycling and diversion of its packaging materials and other non-hazardous waste.

ANTICIPATED COSTS OF QUALIFIED PROPERTY

The anticipated Qualified Property purchases are listed below:

Manufacturing and Production Equipment	\$95,600,000
Laboratory Devices and Instruments	\$19,150,000
Logistics and Storage	\$8,250,000
Quality Control and Testing Equipment	\$7,250,000
Computers and IT Property	\$6,250,000
Design, Engineering, and Research and Development Property	\$29,750,000
Facility Buildout, Upgrades, and Improvements	\$43,500,000
Total	\$209,750,000

Note: The Qualified Property purchases reported in the Application and shown here in staff’s report are estimated costs. At the termination of the Regulatory Agreement, a finalized Project equipment list will be prepared detailing the value of the Project equipment actually acquired, and the estimated tax benefit realized pursuant to Revenue and Tax Code Section 6010.8. Variance from the costs shown in the Application and in this report may occur prior to the closing due to increased costs of certain components of the Project over original estimates, and other reasons. In addition, those costs may vary after closing due to increased costs, as well as common design and equipment modifications during construction, differences in equipment due to future changes in statute or regulation, or for other reasons.

TIMELINE

The Applicant plans to upgrade existing equipment beginning Quarter 1 of 2021, and anticipates the buildout of the Project space will be completed by Quarter 4 of 2021.

STATUS OF PERMITS/OTHER REQUIRED APPROVALS

According to the Applicant, all permits for the Project have been obtained and the facilities are in good standing with the applicable localities or will be timely secured as Qualified Property purchases are made during the term of the award.

COMPETITIVE CRITERIA SCORE

For Applicants wishing to exceed the \$10 million in STE cap, \$15 million in STE will be available to award to Applicants in addition to the \$10 million in STE cap at the first Board meeting of the calendar year. The Applications will be reviewed and presented to the CAEATFA Board for approval in the order in which they are ranked based on Competitive Criteria.

The Applicant received 90 Competitive Criteria points as follows:

1. **Environmental Benefits (0 of 100 points)**. The Applicant’s Project did not earn any environmental benefits points, as calculated pursuant to the method for calculating points for environmental benefits for Advanced Transportation, Alternative Source, and Recycled Resource Extraction Applications in Section 10033(c)(4). Therefore, no points are awarded.
2. **Unemployment (15 of 50 points)**. The Applicant’s primary Facility is located in San Joaquin County, which has an average annual unemployment rate of 10.5%.⁷ When compared to the statewide average annual unemployment rate of 9.1%, the Project location earned the Applicant 15 points.
3. **Job Creation (60 of 75 points)**. The Applicant anticipates the Project will support a total of 3,402 production-related jobs at its Facility. CAEATFA estimates that approximately 180.06 of these jobs will be attributable to a marginal increase in jobs created due to the STE. Based on the amount of STE per estimated number of jobs created, the Applicant earned 60 points.
4. **California Headquarters (15 of 15 points)**. The Applicant has a California Corporate Headquarters, and, therefore, 15 points are awarded.
5. **Natural Disaster Relief (0 of 50 points)**. The Project is not to rebuild or relocate the Applicant’s Facility/Facilities due to a fire, flood, storm, or earthquake identified in a state of emergency proclaimed by the Governor within two years of the time of application, and, therefore, zero points are awarded.

⁷ Unemployment rates are based on data available in October 2020.

6. **Eligibility for Manufacturing and Research and Development Equipment Exemption (0 of 50 points)**. The Applicant is eligible to use one or more of the exemptions established pursuant to Section 6377.1 of the Revenue and Taxation Code, and, therefore, zero points are awarded.

PROJECT EVALUATION

PROJECT BENEFITS

The Project received a Total Score of 1,322 points, which exceeds the required 1,000-point threshold, and a total Environmental Benefits Score of 45 points, which exceeds the 20-point threshold.

- A. **Fiscal Benefits (1,151 points)**. The net present value of the total fiscal benefits over the lifetime of the Qualified Property is derived from the Applicant’s sales and use taxes, personal income taxes paid by the firm’s employees, firm taxes on profits, property taxes, and other indirect fiscal benefits of the Applicant. The total fiscal benefits amount to \$20,528,309, resulting in a Fiscal Benefits score of 1,151.
- B. **Environmental Benefits (45 points)**. The Applicant received points in the following categories:
1. **Environmental Sustainability Plan (20 of 20 points)**. The Applicant will implement an environmental sustainability plan for the Project that it states will help reduce energy consumption, greenhouse gases, and non-hazardous/non-regulated waste over a five-year period.
 2. **Energy Consumption (15 of 30 points)**. The Applicant anticipates the Project will result in a 15% reduction in energy consumption compared to the Applicant’s previous manufacturing process by installing and converting to LED lighting.
 3. **Solid Waste (10 of 30 points)**. The Applicant anticipates the Project will result in a 10% reduction in the solid waste produced relative to the Applicant’s previous manufacturing process by improving the recycling and diversion of its packaging materials and other non-hazardous waste.
- C. **Additional Benefits (125 points)**. Applicants may earn additional points for their Total Score. The Applicant received 125 additional points.
1. **Production Jobs (60 of 75 points)**. The Applicant anticipates the Project will support a total of 3,402 production-related jobs at its Facility. CAEATFA estimates that approximately 180.06 of these jobs will be attributable to a

**Agenda Item – 4.A.7
Resolution No. 21-SM026-01**

**Agenda Item – 4.G.26
Resolution No. 21-SM026
Application No. 21-SM026**

marginal increase in jobs created due to the STE. Based on the amount of STE per estimated number of jobs created, the Applicant earned 60 points.

2. **Construction Jobs (0 of 75 points)**. The Applicant anticipates the Project will support a total of 33 construction jobs at its Facility. CAEATFA estimates that approximately 1.72 of these jobs will be attributable to a marginal increase in jobs created due to the STE. Based on the amount of STE per estimated number of jobs created, the Applicant earned zero points.
3. **Unemployment (15 of 50 points)**. The Applicant’s primary Facility is located in San Joaquin County, which has an average annual unemployment rate of 10.5%.⁸ When compared to the statewide average annual unemployment rate of 9.1%, the Project location earned the Applicant 15 points.
4. **Research and Development Facilities (25 of 25 points)**. The Applicant has verified that it has a facility located in California that performs research and development functions related to medical device manufacturing.
5. **Benefits and Fringe Benefits (25 of 25 Points)**. The Applicant states it provides medical, health, dental, vision, bonuses, retirement contributions, dependent care and assistance reimbursements, education reimbursements, employee discounts, and paid leave to its employees, earning the Applicant 25 points.

LEGAL QUESTIONNAIRE

Staff has reviewed the Applicant’s responses to the questions contained in the Legal Status portion of the Application. The Executive Director, in consultation with legal counsel, has determined that the legal issues disclosed do not affect the financial viability or legal integrity of the Applicant.

CAEATFA FEES

In accordance with CAEATFA Regulations,⁹ the Applicant has paid CAEATFA an Application Fee of \$10,000, and will pay CAEATFA an Administrative Fee of up to \$350,000.

⁸ Unemployment rates are based on data available in October 2020.

⁹ California Code of Regulations Title 4, Division 13, Section 10036

**Agenda Item – 4.A.7
Resolution No. 21-SM026-01**

**Agenda Item – 4.G.26
Resolution No. 21-SM026
Application No. 21-SM026**

RECOMMENDATION

Staff recommends the approval of Resolution No. 21-SM026 for Cepheid's purchase of qualifying tangible personal property in an amount not to exceed \$209,750,000, anticipated to result in an approximate STE value of \$17,828,750.

**RESOLUTION APPROVING AND AUTHORIZING EXECUTION OF A
REGULATORY AGREEMENT WITH CEPHEID**

March 16, 2021

WHEREAS, the California Alternative Energy and Advanced Transportation Financing Authority (the “Authority”) has received the Application of **Cepheid** (the “Applicant”) for financial assistance under the Sales and Use Tax Exclusion Program, as established in Public Resources Code Section 26011.8; and

WHEREAS, the Applicant qualifies as a Participating Party under Public Resources Code Section 26011.8 and Revenue and Taxation Code Section 6010.8; and

WHEREAS, the Applicant’s qualifying tangible personal property meets the requirements of a Project under Public Resources Code Section 26011.8 and Revenue and Taxation Code Section 6010.8 (the “Project”); and

WHEREAS, after the Authority approves an Application, the Authority enters into a Regulatory Agreement, as described in Authority Regulations Section 10030(a), with the Applicant for the Project; and

WHEREAS, the Applicant has estimated the Project has an estimated cost not to exceed \$209,750,000 over a period of three years; and

WHEREAS, the Applicant asserts that this form of financial assistance will enable it to avail itself of the benefits of an exclusion from sales and use taxes relative to the Project pursuant to Revenue and Taxation Code Section 6010.8; and

WHEREAS, the approval of the terms of the Regulatory Agreement and authority for the Executive Director or Chair of the Authority to execute the necessary documents to effectuate the Regulatory Agreement is now sought;

NOW, THEREFORE, BE IT RESOLVED by the California Alternative Energy and Advanced Transportation Financing Authority, as follows:

Section 1. The Regulatory Agreement includes a Project within the meaning of Public Resources Code Section 26003(a)(8)(B).

Section 2. The Regulatory Agreement constitutes financial assistance within the meaning of Public Resources Code Section 26003(a)(6).

Section 3. The Applicant is a participating party within the meaning of Public Resources Code Section 26003(a)(7).

Section 4. The Executive Director or Chair of the Authority (the “Authorized Signatories”) are hereby authorized for and on behalf of the Authority to approve any changes to

Agenda Item – 4.A.7
Resolution No. 21-SM026-01

Agenda Item – 4.G.26
Resolution No. 21-SM026
Application No. 21-SM026

the Project as the Authorized Signatories deem appropriate, provided that the amount of the qualifying tangible personal property to be purchased for the Project may not be increased above the amount approved by the Authority.

Section 5. The proposed form of the Regulatory Agreement between the Applicant and the Authority, as filed with the Authority prior to this public meeting, is hereby approved. For, on behalf and in the name of the Authority, the Authorized Signatories are hereby authorized and directed to execute, acknowledge, and deliver to the Applicant the Regulatory Agreement in substantially the form filed with or approved by the Authority.

The Regulatory Agreement may contain insertions, deletions or changes as the Authorized Signatories executing the Regulatory Agreement may require or approve, including particular information inserted in substantial conformance with the staff summary and in the Application to the Authority. The approval of the Regulatory Agreement will be conclusively evidenced by the execution and delivery of the final Regulatory Agreement.

The Authority understands and agrees that, pursuant to the terms of the Regulatory Agreement, the obligations of the Applicant, under some circumstances, may be carried out or assumed by a successor or assignee entity, or by an affiliate of the Applicant.

Section 6. Each of the Authorized Signatories, acting alone, is hereby authorized and directed to do any and all ministerial acts, including, without limitation, the execution and delivery of any and all documents and certificates they may deem necessary or advisable to consummate the Regulatory Agreement and otherwise effectuate the purposes of this Resolution.

Section 7. The Applicant shall ensure that all of the qualifying tangible personal property acquired as part of the Project that is listed in the semi-annual reports provided to the Authority pursuant to the Regulatory Agreement will be installed, maintained and operated in compliance with all applicable local, state and federal laws.

Section 8. The Regulatory Agreement shall only apply to qualifying tangible personal property acquired as part of the Project that the Applicant certifies will be installed, maintained and operated at facilities physically located within the State of California.

Section 9. Neither the adoption by the Authority of this Resolution for the Applicant nor the Regulatory Agreement may be referred to in any application before any governmental agency as evidence of the feasibility, practicality or suitability of the Project and may not be referred to in any application for any required permission or authority to acquire, construct or operate the Project.

Section 10. This Resolution is effective immediately and will remain in full force and effect unless the Regulatory Agreement is not executed within thirty (30) days of the date of this Resolution. The Executive Director may extend the thirty (30) days if necessary.