

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

***Request to Approve a Financial Assistance Agreement with AE Advanced Fuels Keyes, Inc.
Under the California Ethanol Producers Incentive Program (CEPIP)***

Tuesday, February 22, 2011

Prepared By: *Cheryl Ide*

Participant: AE Advanced Fuels Keyes, Inc. Amount Requested: Not to Exceed \$2,000,000 Project Site: Keyes Stanislaus County

SUMMARY. The California Energy Commission (“Energy Commission”) requests that the California Alternative Energy and Advanced Transportation Financing Authority (“CAEATFA”) enter into a Financial Assistance Agreement with AE Advanced Fuels Keyes, Inc. (“AE” or the “Participant”) for an amount not to exceed \$2,000,000, pursuant to CAEATFA’s Interagency Agreement (“IA”) with the Energy Commission to assist in administering the California Ethanol Producers Incentive Program (“CEPIP”)¹ (See Attachment A for background on CEPIP).

THE PARTICIPATING PARTY. AE, a Delaware corporation founded in 2009, is a vertically integrated biofuels company based in Cupertino, California, developing sustainable solutions to address renewable energy needs. The Participant will produce fuel grade ethanol and is also commercializing its patent-pending next-generation cellulosic ethanol technology that enables the production of biofuels from both non-food and traditional feedstocks.

AE is 100% owned by AE Biofuels Inc. (“Parent Company”).

The major owners (10.0% or greater) of the Parent Company are:

Eric A. McAfee
Laird M. Cagan

The corporate officers of the Parent Company are:

Eric A. McAfee, Chairman & Chief Executive Officer
Andrew B. Foster, Executive Vice President
Todd M. Waltz, Chief Financial Officer

THE PROJECT. On December 15, 2010, the Energy Commission approved a zero-cost CEPIP Participant Agreement with AE to establish the program requirements for participation in the CEPIP (ARV-10-031). AE anticipates beginning ethanol production in the first quarter of 2011. The Energy Commission has determined that AE has the capacity to produce up to 60 million gallons of ethanol per year while providing both short- and long-term jobs and economic benefit critical to this area of the state.

¹ The term of the IA is from January 5, 2011 until December 31, 2015.

LEGAL STATUS QUESTIONNAIRE. Staff 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.

STAFF RECOMMENDATION. Staff recommends approval of a Financial Assistance Agreement in an amount not to exceed \$2,000,000 for AE Advanced Fuels Keyes, Inc.

A RESOLUTION OF THE CALIFORNIA ALTERNATIVE ENERGY AND ADVANCED TRANSPORTATION FINANCING AUTHORITY AUTHORIZING STAFF TO ENTER INTO A FINANCIAL ASSISTANCE AGREEMENT WITH AE ADVANCED FUELS KEYES, INC.

February 22, 2011

WHEREAS, the California Alternative Energy and Advanced Transportation Financing Authority (“Authority”) was created under the provisions of Division 16 (commencing with Section 26000) of the Public Resources Code; and

WHEREAS, Section 26040(a) of the Public Resources Code provides that the Authority is authorized to “receive and utilize grants or loans from the federal government, a public agency, or any other source for carrying out the purposes of Division 16;” and

WHEREAS, the Authority entered into an interagency agreement with the California Energy Commission (“Energy Commission”) to provide financial assistance to participants of the Energy Commission’s California Ethanol Producers Incentive Program (“CEPIP”); and

WHEREAS, AE Advanced Fuels Keyes, Inc. (“AE” or “Participant”) applied to the Energy Commission for financial assistance for its ethanol production facility (“Project”) in the form of participation in the CEPIP pursuant to the Energy Commission’s Program Opportunity Notice 09-607, and was approved for participation in the CEPIP on December 15, 2010; and

WHEREAS, consistent with the interagency agreement, the Energy Commission has notified the Authority of the Participant’s approval and requested that the Authority enter into a Financial Assistance Agreement (“Agreement”) not to exceed \$2,000,000 with AE; and

WHEREAS, consistent with the interagency agreement the Authority will provide financial assistance at the times and in such amounts as directed by the Energy Commission.

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

Section 1. The Project constitutes a “project” within the meaning of Public Resources Code Section 26003(g)(1).

Section 2. The services provided by the Authority pursuant to the Agreement with the Participant constitute “financial assistance” within the meaning of Public Resources Codes Section 26003(e)(2).

Section 3. The Participant is a “participating party” within the meaning of Public Resources Code Section 26003(f).

Section 4. The proposed form of the Agreement in an amount not to exceed \$2,000,000 between the Participant and the Authority, as filed with the Authority prior to this meeting, is hereby approved.

Section 5. The Executive Director, Deputy Executive Director, or Chair of the Authority (the “Authorized Signatories”) are hereby authorized and directed, for and on behalf and in the name of the Authority, to execute, acknowledge and deliver to the Participant the Agreement in substantially the form filed with or approved by the Authority, with such insertions, deletions or changes therein as the Authorized Signatory executing the same, may require or approve, and with particular information inserted therein in substantial conformance with the staff summary and in the Participant’s Application to the Energy Commission and the Authority, such approval to be conclusively evidenced by the execution and delivery thereof.

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 in order to consummate the Agreement and otherwise effectuate the purposes of this Resolution.

Section 7. This resolution shall take effect immediately upon its passage and remain in full force and effect thereafter.

Attachment A

BACKGROUND ON CEPIP. Assembly Bill 118² created the Alternative and Renewable Fuel and Vehicle Technology Program. The statute, amended by Assembly Bill 109,³ authorizes the Energy Commission to develop and deploy alternative renewable fuels and advanced transportation technologies to help enact the State’s energy and climate change policies and energy security diversification. The Energy Commission has an annual program budget of approximately \$100 million and provides financial support for numerous programs including CEPIP. CEPIP is funded with an initial \$6 million, and funding may increase to \$15 million at the discretion of the Energy Commission.

CEPIP provides operators of existing corn ethanol production plants in California with temporary financial assistance, as funding is available, during periods of difficult economic operating conditions that are repayable under specifically identified favorable market conditions. The program is also designed to stimulate operation improvements at existing ethanol facilities and the use of advanced process technology to convert cellulose and other low carbon feed stocks.

The objectives of CEPIP are to increase statewide biofuel production; retain and create California jobs; and reduce greenhouse gas emissions.

The Energy Commission and CAEATFA have entered into an IA to establish program, administrative, and financial structures for the implementation of a successful CEPIP. Pursuant to this IA, the Energy Commission and CAEATFA will each enter into separate but complementary legal agreements with eligible CEPIP Participants approved by the Energy Commission.

On a quarterly basis, and upon timely submittal of an invoice, the Energy Commission will compensate CAEATFA for its costs associated with its tasks and deliverables specified in the IA.

Energy Commission’s Role Under CEPIP. Under the IA, it is the sole responsibility of the Energy Commission to establish and manage the CEPIP Participant Agreement eligibility and terms and conditions for the incentive payments to, and reimbursements from, CEPIP Participants. The Energy Commission will monitor the Ethanol Crush Spread (“ECS”)⁴ and evaluate CEPIP Participant certification, verification, and reporting, and will be the ultimate custodian for all records concerning CEPIP Participant compliance activities and transactions.

CAEATFA’s Role Under CEPIP. Upon the request from the Energy Commission and subsequent to CAEATFA Board approval, CAEATFA will execute a Financial Assistance

² Nuñez, Chapter 750, Statutes of 2007

³ Nuñez, Chapter 313, Statutes of 2008

⁴ Ethanol Crush Spread (“ECS”): The Energy Commission elected to use an industry-standard formula that uses two variables, ethanol and corn prices. At this time, the ECS formula includes a Los Angeles ethanol price and a Chicago Board of Trade month-ahead futures corn price. No other factors have been included in this formula, such as transportation costs to deliver corn from the Midwest United States to California. Other factors such as the cost of purchased natural gas and revenue generated from the sale of wet distillers grains have also been excluded from the current ECS formula.

Agenda Item – 4.B.2

Agreement with the eligible CEPIP Participant to establish the terms and conditions of the payments and reimbursements under CEPIP. The Financial Assistance Agreement identifies the terms under which CAEATFA will make payments and request reimbursements from CEPIP Participants as calculated and determined by the Energy Commission.