

## **A. BioBAT – New York Biotechnology Center at BAT (V719)**

August 18, 2011

### Authorization to Amend the Project Scope and Budget

<b>Grantee:</b>	BioBAT, Inc. (“BioBAT”)
<b>ESD Investment:</b>	\$6 million approved on November 15, 2007; Capital Projects Fund – University Development
<b>Project Location:</b>	Brooklyn Army Terminal, southern portion of Building A, 140 58 <sup>th</sup> Street and 2 <sup>nd</sup> Avenue, Brooklyn, Kings County
<b>Project Completion:</b>	October 2012
<b>Regional Council:</b>	The New York City Regional Council has been made aware of this item.

#### **Background/Project Status:**

These materials refer to and include, in their entirety, the attached materials presented to and approved by the ESD Directors on November 15, 2007 (the “Materials”). Any substantive changes to the project or terms and conditions are noted below.

The grant was intended for the renovation and development of 100,000 square feet in Building A at the Brooklyn Army Terminal (“BAT”). BioBAT was working to place the International AIDS Vaccine Initiative (“IAVI”) in 38,000 square feet of space on the 8<sup>th</sup> floor in the northern end of Building A. On the redevelopment of the southern third of Building A. BioBAT was also working to place the Northeast Center for Disaster Preparedness, Training, Education, and Research (the “Northeast Center”) in 10,000 square feet and was planning a 15,000-square-foot vivarium, both prospects being part of the aforementioned 100,000 square feet of tenant space. BioBAT’s committed funds of \$12.5 million from New York City were dedicated specifically toward the build out of IAVI’s space.

The \$99 million budget for the redevelopment of the southern portion of Building A consisted of a \$36 million grant from the State University Construction Fund, a \$6 million Capital Projects Fund grant administered by ESD (the subject grant), and \$57 million from the developer of the project - Phase 3 Properties (“Phase 3”) of San Diego, California. The \$57 million was to consist of a combination of developer equity, traditional commercial bank debt and New Markets Tax Credits and Historic Tax Credits. Due to various deadlines, Phase 3 agreed to commence work on the project even as the transaction was being negotiated by the parties. But on April 23, 2009, BioBAT and Phase 3 terminated its relationship after negotiations failed to reach a mutually satisfactory agreement.

## **BioBAT – New York Biotechnology Center at BAT (V719)**

August 18, 2011

In 2010, BioBAT announced a Request for Proposal (“RFP”) process for the contractor/vendor selection process. On March 31, 2010, BioBAT hired the architectural firm of Hellmuth, Obata + Kassabaum (“HOK”), whom subcontracted the engineering firm of Kallen & Lemelson Consulting Engineers, both located in New York City. For general contractor, six companies responded to the RFP and three firms were interviewed. Structure Tone, Inc., located in New York City, was selected. Negotiations on the contract are underway.

### **Revised Project Scope and Budget:**

BioBAT made the decision to fully proceed with the development of the project on its own. The Grantee is requesting that the project scope and budget be modified to downsize the redevelopment of the southern portion of Building A from 100,000 to 85,000 square feet in order to fit within the available funding. An executive director experienced in the development and leasing of commercial biotech research and laboratory space was hired to oversee the development of BioBAT.

As planned, the IAVI moved into the northern end of Building A in November 2008 and is fully operational. At the same time, the availability of federal funding for disaster preparedness centers nationwide diminished, resulting in the withdrawal of the Northeast Center from moving forward with BioBAT. In addition, the prospective tenant for the vivarium was unable to secure its board’s approval to make the commitment to pay operating costs at BioBAT. The project has since been reconfigured – downsized to 85,000 square feet. The redevelopment will occur in phases. The current phase consists of approximately 25,000 square feet of base building/common areas, 60,000 square feet of “warm light shell” space for biotech tenants and funds for tenant fit-out. Total estimated costs for this initial phase are \$56.5 million. Subsequent to the award of the ESD grant in 2007, BioBAT was awarded a \$2.5 million grant from the United States Economic Development Administration (“USEDA”), which will also go toward funding the development of this initial phase.

BioBAT continues to receive inquiries and is currently in discussion with two prospective tenants: Trudeau Institute and IRX therapeutics. Trudeau Institute, a 150-year-old not-for-profit research organization founded and headquartered in Saranac Lake, NY, is contemplating the opening of a 20,000-square-foot satellite location in order to form new collaborations with research institutions and hospitals in New York City. IRX Therapeutics recently moved its Process Development and Quality Control facilities into Downstate’s Biotech Incubator, with plans to expand into 10,000 square feet at BioBAT. Discussions with such tenants supports BioBAT’s vision and validates its business premise that it provides a viable solution to the market’s need for biotech space in New York City at prices competitive within the region, including New Jersey, Pennsylvania and Delaware.

## BioBAT – New York Biotechnology Center at BAT (V719)

August 18, 2011

The revised project budget is as follows:

Financing Uses	Amount	Financing Sources	Amount	Percent
Pre-development	\$ 3,000,000	ESDC Grant	\$ 6,000,000	10.6%
Base Building	32,500,000	SUNY Grant	36,000,000	63.8%
Commercial Space	21,000,000	USEDA Grant	2,500,000	4.4%
		Tenant TI Contribution	12,000,000	21.2%
Total Project Costs	\$ 56,500,000	Total Project Financing	\$ 56,500,000	100.0%

### Financial Terms and Conditions:

1. At the time of disbursement, Grantee will reimburse ESD for all out-of-pocket expenses incurred in connection with the project.
2. The Grantee will be obligated to advise ESD of material or adverse change in its financial condition prior to disbursement.
3. Up to \$6,000,000 will be disbursed to the Grantee as reimbursement for eligible costs during the course of construction, no more frequently than monthly, in compliance with the Design and Construction ("D&C") requirements set forth in Exhibit B, assuming all project approvals have been completed and funds are available. The final 10% (\$600,000) of the Grant will be disbursed to the Grantee upon completion of the project as evidenced by a Certificate of Occupancy. Payment will be made upon presentation to ESDC of an invoice and other such documentation as ESDC may reasonably require in the form attached to this Agreement as Exhibit F and its attachments. Expenditures must be incurred on or after January 1, 2005 to be considered eligible project costs.
4. ESD may reallocate the project funds to another form of assistance, at an amount no greater than \$6,000,000 for this project if ESD determines that the reallocation of the assistance would better serve the needs of the Grantee and the State of New York. In no event shall the total amount of any assistance to be so reallocated exceed the total amount of assistance approved by the Directors.

### Design and Construction:

The project consists of a grant of up to \$6 million for a portion of the design and construction costs for the renovation and adaptive re-use of the Brooklyn Army Terminal into a laboratory complex. ESD funds will be used toward the development of a redesigned/downsized 85,000 square feet of core and shell for the commercial biotechnology tenants. A team has been assembled with Hellmuth, Obata + Kassabaum as architect, Kallen & Lemelson as MEP Engineers, Robert Silman Associates as Structural Engineers, and Langan Engineering as Civil Engineers. Structure Tone has been chosen as the Construction Manger ("CM").

## **BioBAT – New York Biotechnology Center at BAT (V719)**

August 18, 2011

ESD's Design and Construction department ("D&C") is familiar with all the design consultants and the CM, and finds them qualified to perform the work.

The aforementioned project will be reviewed in conjunction with D&C requirements and forms. D&C staff will review final construction documents, review invoices and approve payment when its requirements have been met. D&C staff will visit the site at its option to monitor implementation of the design documents.

### **Environmental Review:**

Pursuant to the State Environmental Quality Review Act, Article 8 of the Environmental Conservation Law and its implementing regulations (6 NYCRR Part 617), and in connection with the approval of funding for the proposed project, the Directors made a Determination of No Significant Effect on the Environment at their meeting of November 15, 2007. This determination addressed all aspects of the proposed project. Therefore, no further environmental review is required in connection with this action.

### **Affirmative Action:**

ESD's Non-discrimination and Affirmative Action policy will apply. The Grantee is encouraged to use its best efforts to achieve a Minority Business Enterprise participation goal of 15% and a Women Business Enterprise participation goal of 5% of the total dollar value of work performed pursuant to contracts or purchase orders entered into in connection with the design and construction work related to the project and to include minorities and women in any job opportunities created by the project.

### **Disclosure and Accountability Certifications:**

The Grantee has provided ESD with the required Disclosure and Accountability Certifications, which disclosed the following under Good Standing:

- As a result of an administrative oversight, BioBAT, Inc. failed to file IRS Form 990 and NYS Form CHAR500 for FY's 2008, 2009 and 2010 in a timely fashion. All referenced filings have since been made and BioBAT is currently in full compliance with the required IRS and NYS Charities Bureau filings.
- As a result of an administrative oversight, BioBAT, Inc. failed to secure IRS determination of its tax-exempt status within the time period required by statute. BioBAT submitted its Form 1024 application in February 2010 and the IRS has subsequently, by letter dated July 19, 2011, determined BioBAT is exempt from federal income taxes under section 501 (c) (25) of the Internal Revenue Code.

**BioBAT – New York Biotechnology Center at BAT (V719)**

August 18, 2011

The Disclosure and Accountability Certifications, while disclosing the above, do not indicate that the Grantee has any current conflict of interest or good standing violations, and therefore, staff recommends that the Corporation authorize the grant to the Grantee as described in these materials.

**Attachments:** ESD Directors' Materials dated November 15, 2007