

MEMO

To: Senator Fischmann,  
Chairman of the Science, Technology and  
Telecommunications Committee

From: Secretary Mondragón,  
Cabinet Secretary, Economic Development Department

Re: Angel Investment Tax Credit (AITC)

Date: October 19, 2010

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Senator Fischmann:

This memo provides the additional detail on the Angel Investment Tax Credit that you requested, including:

- Information on the companies that have received investments under this program
- Recommendations related to clawbacks, sunset provisions, etc.
- Facts on the use of the AITC
- A summary of the AITC program structure

***Successful companies that have received investments through the AITC***

The companies below are all first tier companies who would not have been able to create jobs and economic development for the state were it not for the AITC. The AITC was essential in the investments they received.

“The Tax credit is an important part of our arsenal, particularly now since the state has been unable to invest in local Venture Capital funds for a couple of years... That leaves just the Angels and a few funds with reserves to help startup and early stage companies in New Mexico. This is why the tax credit is more important than ever.”

- *New Mexico serial entrepreneur David Durgin*

**Vibrant Technologies Corporation**

5550 Midway Park PL, NE  
Albuquerque, NM 87109

Vibrant was formed for the sole purpose of commercializing Process Compensated Resonance Testing (PCRT) for the aerospace and power generation industries. PCRT is a revolutionary non-destructive testing technology that can determine if a component is structurally sound and fit for service.

### **APJet, Inc.**

APJeT, Inc.

3900 Paseo del Sol

Santa Fe, NM 87507

The licensed APPJ technology is a broad-based, platform technology consisting of several different patented apparatus and methods using plasma sources for materials processing applications. It is based on pioneering work performed at Los Alamos National Laboratory between 1995 and 2002. Continued development of the technology is ongoing in APJeT's corporate R&D labs and at the corporate R&D lab of its strategic partner, Air Products and Chemicals, Inc. and at Morrison Textile Machinery, Inc.

### **Advent Solar - acquired by Applied Materials**

Applied Materials purchased all of the assets of Advent Solar, a photovoltaic maker with patented module assembly processes said to be more streamlined and efficient. The deal is yet another example of Applied Materials' sprint to define itself as a formidable force in the solar industry. The world's largest manufacturer of equipment to make solar photovoltaic panels, Applied Materials is focused on delivering equipment that helps its customers dramatically reduce the cost of solar module manufacturing. Its primary goal is to bring scale to the solar manufacturing industry, helping to make solar electric power increasingly affordable for everyone, everywhere.

### **Incitor**

524 McKnight Avenue NW

Albuquerque, NM 87102

Incitor, LLC ("Incitor") is a small business based in Albuquerque, New Mexico. Founded in early 2007, the company designs and produces synthetic catalysts that mimic the functionality of enzymes. These synthetic enzymes are built on nanoscale platforms called "bio-nanolattices" that provide control over the placement of diverse molecules in three-dimensional space - with accuracy measured in billionths of a meter. While this ability offers multiple industry solutions, including pharmaceuticals, semiconductors, and vaccines, Incitor is currently focused on generating catalysts for renewable fuels.

### **Noribachi, LLC**

3825 Osuna Road, NE, Suite 4

Albuquerque, NM 87109

Noribachi, LLC began operation in New Mexico as company focused on research, development and manufacturing of solar technology and renewable energy. Noribachi has evolved and grown to become The Noribachi Group. Noribachi, LLC starts and builds clean technology companies.

Several Noribachi CleanTech startups are underway today, including Visible Light Solar Technologies, an energy technology company providing LED and

point of use solar lighting applications; Qnuru a solar/LED lighting company that provides beautifully designed exterior lighting applications; Regen, a consumer product design and development company that is marrying compelling design with patented solar technology to create a new breed of consumer electronics powered by light; Green By Design, a website for environmentally aware consumers; and Solar Distinction, a photovoltaic R&D center and manufacturer of standard and custom solar panels.

### **CoMet Solutions**

11811 Menaul Blvd, NE

Suite 1

Albuquerque, NM 87112

Comet Solutions, Inc. enables manufacturers to achieve a simulation-driven product development process guided by engineering intent--improving R&D productivity and reducing total costs. Comet software is an integrated conceptual modeling and collaborative process automation workspace in which engineering project teams evaluate design concepts vs. engineering requirements starting in the early stages of product definition and feasibility trade studies. Performing analyses rapidly through reusable, tool-neutral simulation templates powered by Comet's unique abstract modeling capabilities, engineers and designers gain insight into product performance much earlier in the product design process and make better informed decisions. With Comet software, companies exploit the full potential of their existing CAD/CAE/PLM tools and explore more design alternatives, enabling the rapid development and delivery of more innovative, higher quality, and cost-effective products.

### **Vista Therapeutics**

3900 Paseo del Sol

Santa Fe, NM 87507

Vista Therapeutics is commercializing state-of-the-art nanotechnology developed at Harvard University to produce lab-on-a-chip biosensors and integrated electronic signal detection systems for the simultaneous, real-time detection of multiple biomarkers in blood, urine, and wherever biologically relevant. Vista's proprietary platform can facilitate measurement of transcripts and proteins from the same sample. The technology is based on nanowires, which can be assembled into nanowire chips, which can serve as biosensors for the label-free, multiplex detection of biomarkers.

### **Azano Pharmaceuticals**

801 university blvd. SE,

Albuquerque, NM 87106

Our mission is to develop C-reactive protein (CRP) (Az121) and an anti-inflammatory derivative of CRP (Az175) for the prevention and reversal of nephritis (severe inflammation of the kidney) in patients with systemic lupus erythematosus (SLE). SLE is a chronic, usually life-long, potentially fatal

autoimmune disease. The anti-inflammatory mutant of CRP has a receptor specificity that predicts more selective anti-inflammatory activity than that of natural sequence CRP. Azano has an exclusive, worldwide license to two issued patents and five patent applications from a long term investigational program led by Terry Du Clos, MD, PhD and Carolyn Mold, PhD at the University of New Mexico Health Sciences Center and the Department of Veterans Affairs Medical Center, Albuquerque.

### **Acoustic Cytometry (first successful exit - 80% return on investment)**

3500 Trinity Drive Suite A-6

Los Alamos, NM 87644

Acoustic Cytometry Systems Inc. was acquired for an undisclosed price by Invitrogen Corp., a California giant in the global life-sciences market. Los Alamos-based Acoustic Cytometry was formed in 2006 with technology licensed from Los Alamos National Laboratory. The company developed a method to use sound waves to guide cells through cytometers, or cell meters, to allow researchers to closely examine tissue samples for medical diagnostics.

Unlike typical flow-through cytometers – that use fluids to rapidly push thousands, if not millions, of compounds through cytometers for drug discovery – Acoustic Cytometry uses sound waves to slow the whole process down and allow researchers to look at individual cells up close. It allows researchers to completely stop the flow of tissue samples at will, to focus in on specific cells.

At the time, Acoustic executives said the company could immediately sell its cytometer to scientists as an “unregulated instrument” for life-sciences research. Once the company received U.S. Food and Drug Administration certification, it planned to target the \$6 billion-plus clinical diagnostics market.

The startup never received venture capital, but it raised \$250,000 from New Mexico Angels. All told, the company invested slightly more than \$1 million, which included money from company founders and individuals outside New Mexico, said former CEO John W. Elling.

For the NM Angels, the acquisition marks the first successful exit of a client company. Angels President John Chavez said eight Angels invested in it and all will earn an 80 percent return.

### **Exagen Diagnostics**

801 University, SE

Albuquerque, NM 87106

Exagen Diagnostics is the emerging leader in laboratory-discovered and developed genomic tests specifically designed to provide objective information to physicians and patients for more accurate, efficient diagnosis and better disease management. Using Coperna®, the company’s proprietary,

algorithm-driven computational tool and search engine that runs on high-performance computational clusters, it combines the ability to process massive amounts of data contained in genomic datasets with intelligent, rapid search methods. Coperna's targeted and precise discovery model has no conventional equivalent in the molecular diagnostics industry as it can identify relevant marker sets with superior sensitivity and specificity relative to markers identified via traditional analytical methods. On October 12, 2010 Exagen Diagnostics, announced the purchase of Cypress Bioscience, Inc.'s diagnostic business, located in San Diego, Calif. Under the terms of the agreement, Exagen will purchase the diagnostic business in its entirety, including all testing services, intellectual property rights and equipment. Exagen has offered employment to all Cypress laboratory employees.

#### **Theranostech, Inc.**

5741 Midway Park Blvd. NE  
Albuquerque, NM 87109

Theranostech is a development stage biotech company developing a test kit for the HIV virus. Theranostech intends to manufacture and distribute a protein kit under a licensing agreement with LANL. See Sandia BioTech below for additional information.

#### **Sandia BioTech**

5741 Midway Park Blvd. NE  
Albuquerque, NM 87109

Sandia BioTech, formerly Theranostech, is a biotech product development and contract manufacturing company. We develop and manufacture test kits effective in monitoring protein expression and configuration. Soon, Sandia BioTech will be introducing an HIV-1 surface-protein detection kit. The upcoming ViraGlow, HIV-1 surface-protein detection kit has the ability to differentiate normal cells from diseased cells, in culture, by flow cytometry. The kit is a cell-based, monoclonal antibody test that can be used with existing instrumentation.

#### **Bluenergy Solar Wind**

3900 Paseo del Sol  
Santa Fe, NM 87507

Bluenergy Solarwind will manufacture both a wind-only turbine and the Solarwind™ turbine - a unique hybrid combining solar and wind into one unit generating electricity on-site. Bluenergy Solarwind will create 30 new manufacturing jobs and hundreds of indirect jobs for installation and operations, and each turbine installed will generate clean electricity for the owners on-site use.

#### **Cerelink Digital Media**

Management office:  
4417 Corrales Rd. NW

Corrales, NM  
Rendering servers:  
Intel's Fab7  
4100 Sara Rd.  
Rio Rancho, New Mexico  
Oso Grande  
725 6<sup>th</sup> St., NW  
Albuquerque, New Mexico  
Cerelink is a hybrid cloud computing company that provides remote rendering services to the motion picture industry.

### **Vertical Power**

317 Commercial St. NE, Ste G102,  
Albuquerque, NM 87102

Vertical Power offers one of the most comprehensive support programs for experimental aircraft builders and pilots designing a patent-pending system that automatically detects each of 11 modes of flight (taxi, takeoff, cruise, landing, etc.). When you think about it, flying is a repetitive task. Vertical Power developed a system that handles many of the repetitive and routine tasks for pilots (like turning on and off lights, fuel pumps, etc.) so the pilot can focus on flying the airplane rather than managing systems. That spurred the development of an innovative new way to handle in-flight emergencies whereby the pilot could press a single button and numerous tasks were performed automatically

### ***Failed companies that received investments through the AITC***

The two companies below are the only two companies that have received the AITC and subsequently failed or gone bankrupt. Company names have been withheld as requested by the companies and their investors.

### **Gourmet Pet Supply Company**

This company made popular pre-made meals for parrots that were easy to serve and came in a variety of flavors. They were a nutritious way to offer variety to bird's diets when the consumer did not have time to cook for them. The company had a pre-financing valuation of over \$1 million and raised \$203,197.00 through thirteen angel investors who were eligible to participate in the NM Angel Investment Tax Credit (AITC) program. Angel investors were the lead investors and a NM early stage venture capital fund was the secondary investor. Gourmet Pet Supply, according to their website, shut down due to economic pressures. Over ninety percent of the Gourmet Pet Supply's qualified investors continue to invest and participate the NM AITC program (one investor moved from New Mexico).

### **Online Research Process Company**

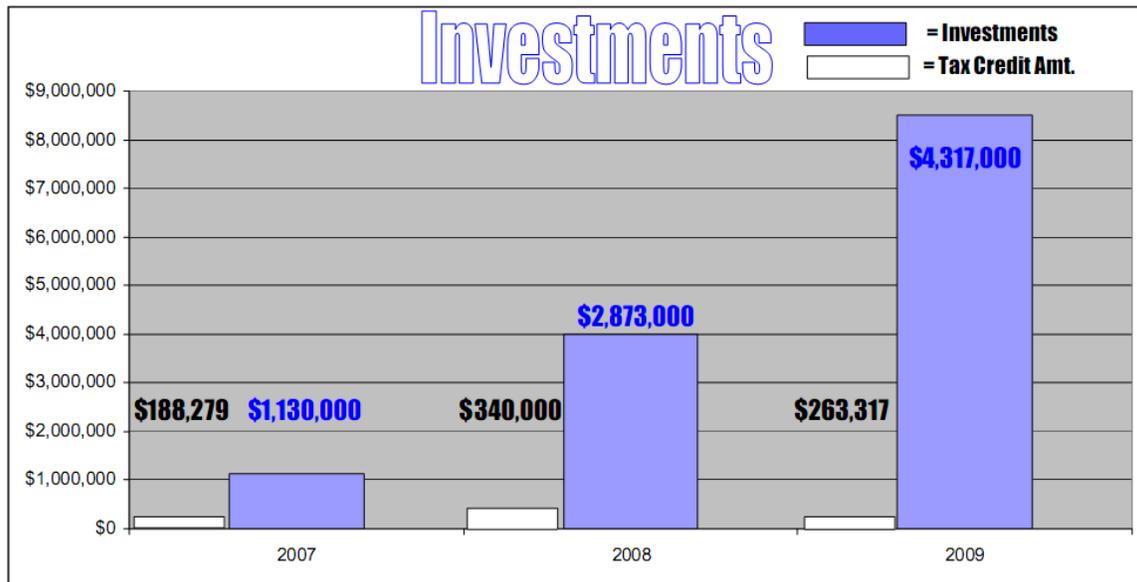
A LANL spin-off based in Santa Fe, this company developed an online service that accelerates and enhances the scientific research process. The system replaced the, trial-and-error information discovery process with a real-time solution that delivers superior recommendations mined from a large-scale database of scholarly resources to create a database of resource metadata (data about data). The serial entrepreneur who ran this company recently started his third NM start-up R&D computational company and hopes to hire a full-time engineer third quarter 2010.

### *Recommendations for AITC Policies*

Several issues were raised by legislators at the first hearing regarding the AITC. Below are recommendations on these issues from the Economic Development Department.

- **Sunsets should be removed:** This credit is working well and the sunset should be removed, in alignment with recommendations from LFC consultant Jim O'Neill.
- **Clawbacks are not appropriate:** While clawbacks are generally a good idea, they are not appropriate for the AITC. The AITC affects investors, not companies. If a company fails, investors will already have lost their full investment and so a clawback would appear punitive and may discourage future investments, undermining the value of the credit. Angel investors also have little say over whether a company stays in New Mexico or leaves the state. It usually later venture capital investors who would require the company to move, so it is nearly impossible to align the clawback with the decision maker in this case. In addition, even when a company leaves the state, the lead entrepreneur usually remains to start new businesses here. This was the case with Acoustic Cytometry, for example.
- **Continue to allow the credit to be passed through a fund to investors:** Angel investments are risky and so it is beneficial for investors to diversify their risk. This is usually accomplished by investing in a portfolio fund of several companies. In order to facilitate this risk and improve the accessibility of the credit, EDD recommends that the credit continue to be allowed to pass through such a portfolio fund to individual investors. This will align the credit with good investment practices.

*Facts: Use of the AITC*



- Over \$8.5M in private investments into New Mexico companies have been stimulated by this credit since 2007 (through August 2010).
- \$790,000 in tax credits have been issued, meaning the state's investment has been leveraged over 10 times.
- 96 separate investments have been made from 71 different investors
- Over 28 companies have been established, creating 150 jobs.
- So far, only two companies started as Angel Investments have failed.

### *New Mexico Angel Investment Tax Credit Summary*

A taxpayer who files a New Mexico income tax return and who is an “accredited investor” may take a tax credit of up to \$25,000 (25% of a qualified investment of not more than \$100,000) for an investment made in a New Mexico company that is engaging in high-technology research or manufacturing. Two qualified investments may be made in a taxable year and the credit may be carried forward for three consecutive years.

- Provides a personal income tax credit known as the “Angel Investment Tax Credit”
- Tax credit of not more than \$25,000 per qualified investment to an accredited investor who makes an investment in high technology research and development or a manufacturing business in New Mexico
- The taxpayer may claim the credit for not more than two different, qualified investments for each taxable year in which the investment is made
- An “accredited investor” is a person, usually high net worth, who is an accredited investor under Rule 501 of the Securities and Exchange Commission
- The credit sunsets December 31, 2011
- The credit may only be deducted from the taxpayer’s personal income tax liability
- The credit may be carried forward three taxable years by the taxpayer
- The Economic Development Department, Office of Science and Technology issues certificates of eligibility for no more than \$750,000 annually
- Over 100 angel investments have been made through the AITC program, totaling \$9M over the past three years

Contact Ellen Veseth, AITC administrator, at [Ellen.Veseth@state.nm.us](mailto:Ellen.Veseth@state.nm.us) or 505.827.0281 for more information or assistance.

Complete instructions are available online at:  
<http://www.edd.state.nm.us/businessAssistance/incentives/industrySpecific/AngelInstructions0608.doc>