STATEMENT OF CONSIDERATIONS

REQUEST BY A123 SYSTEMS, INC. FOR AN ADVANCE WAIVER OF DOMESTIC AND FOREIGN INVENTION RIGHTS UNDER DOE COOPERATIVE AGREEMENT NO. DE-EE0001187, W(A)-2011-038, CH-1616

The Petitioner, A123 Systems, Inc (A123) was awarded this cooperative agreement for the performance of work entitled, "High Throughput Fabrication of 10-Year PHEV Battery Electrodes". The purpose of the agreement is to develop advanced manufacturing technology for high-energy lithium ion batteries suitable for PHEV applications. This effort focuses specifically on several unit operations used in electrode fabrication. By increasing the solids loading and stability of electrode slurry of the fabrication process, the electrode cost will be reduced through the decrease of drying time and the elimination of solvent emissions. Controlling the moisture content will primarily benefit electrode cycle life. Increasing the throughput of the coating/drying operation, this objective will leverage the capital equipment costs for the entire electrode manufacturing plant. Improving the yield will reduce cost, but tighter tolerance will also benefit cell cycle life. This waiver is only for inventions of A123 made under this cooperative agreement.

The total estimated cost of the cooperative agreement is $2,178,750 with A123 and DOE each providing 50% cost-sharing or $1,089,375. The period of performance is from October 1, 2009 through January 1, 2012.

In its response to question 9 of the attached waiver petition, A123 has described its technical competence in the field of lithium-ion battery technologies. A123 states that through its patented Nanophosphate™ technology, it is able to deliver a new combination of high power with fast and consistent charges; safety, including an excellent abuse tolerance; and, very long and environmentally-friendly life. A123 states its breakthrough technology support applications in the transportation, electric grid services and portable power sectors. A123 further states its staff includes technology industry veterans and preeminent scientists from some of the world's leading battery companies and research institutes. For larger projects, that require volume manufacturing, A123 operates and is constructing state-of-the-art manufacturing facilities with the capacity to scale millions of battery packs per year. A123 states it has a substantial U.S. patent portfolio. A123's response demonstrates its technical competency in the field of lithium-ion battery technologies.

In its response to question 14 of the attached waiver petition, A123 states that grant of the waiver will help it maintain its commercial competitiveness, but will not provide a dominant position. A123 states it is currently one of a number of global enterprises engaged in this sector, and that acquisition of patent rights would not likely supplant foreign competitors, many of which benefit from substantial foreign government funding. A123 indicates that its competitors currently command greater revenues and market shares than A123. Therefore grant of the waiver will have a positive effect on competition and market concentration.

The subject contract will be modified to add the Patent Rights--Waiver clause in conformance with 10 CFR 784.12, wherein A123 has agreed to the provisions of 35 U.S.C §§ 202, 203, and 204. This waiver clause will also include a paragraph entitled U.S. Competitiveness, in which A123 agrees to substantial U.S. manufacture of subject inventions (attached hereto). Additionally, A123 agrees not to transfer subject inventions to any other entity unless that other entity agrees to these same requirements.

Considering the foregoing, it is believed that granting the waiver will provide the Petitioner with the necessary incentive to invest resources in the commercialization of the results of the

agreement in a fashion which will make the agreement's benefits available to the public in the shortest practicable time. In addition, it would appear that grant of the above requested waiver would not result in an adverse effect on competition nor result in excessive market concentration. Therefore, in view of the objectives and considerations set forth in 10 CFR 784, all of which have been considered, it is recommended that the requested waiver, as set forth above, be granted.

[redacted]

Mark P. Dvorscak
Assistant Chief Counsel
Office of Intellectual Property Law

Date: *May 12, 2011*

Based on the foregoing Statement of Considerations and the representations in the attached waiver petition, it is determined that the United States and the general public will best be served by a waiver of rights of the scope described above, and therefore the waiver is granted. This waiver shall not apply to any modification or extension of this agreement, where through such modification or extension, the purpose, scope, or cost of the agreement is substantially altered.

CONCURRENCE:

[redacted]

Pa[redacted]
Acting Program Manager
Office of Vehicle Technologies

Date: [redacted]

APPROVAL:

[redacted]

John T. Lucas
Assistant General Counsel
for Technology Transfer and
Intellectual Property

Date: [redacted]

(t) U. S. COMPETITIVENESS The Contractor agrees that any products embodying any waived invention or produced through the use of any waived invention will be manufactured substantially in the United States unless the Contractor can show to the satisfaction of the DOE that it is not commercially feasible to do so. In the event the DOE agrees to foreign manufacture, there will be a requirement that the Government's support of the technology be recognized in some appropriate manner, e.g., recoupment of the Government's investment, etc. The Contractor agrees that it will not license, assign or otherwise transfer any waived invention to any entity unless that entity agrees to these same requirements. Should the Contractor or other such entity receiving rights in the invention undergo a change in ownership amounting to a controlling interest, then the waiver, assignment, license, or other transfer of rights in the waived invention is suspended until approved in writing by the DOE.