

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In re:

ENERGY CONVERSION DEVICES, INC.,
et al.,¹

Debtors.

Chapter 11

Case No. 12-43166
(Jointly Administered)

Judge Thomas J. Tucker

ENERGY CONVERSION DEVICES, INC.,

Plaintiff,

v.

ENERGY TECHNOLOGIES, INC.,

Defendant.

Adv. Proc. No. _____

**Complaint for Breach of Contract, Account Stated,
Unjust Enrichment, and Quantum Meruit**

Plaintiff, Energy Conversion Devices, Inc. (“ECD” or “Debtor”), by its undersigned counsel, Honigman Miller Schwartz and Cohn LLP, for its Complaint for Breach of Contract, Account Stated, Unjust Enrichment, and Quantum Meruit states:

Introduction

1. Defendant Energy Technologies, Inc. (“ETI”) has refused to pay outstanding invoices totaling \$158,494 relating to the completion of six, special-order fuel stacks by ECD at ETI’s direction. A “fuel stack” is a proprietary hydrogen storage device—in essence, a hydrogen

¹ The Debtors in these jointly-administered cases are Energy Conversion Devices, Inc. (Case No. 12-43166) and United Solar Ovonic LLC (Case No. 12-43167).



fuel cell. ETI refuses to arrange for delivery of the fuel stacks, causing ECD to incur storage costs, including for the storage of one of the stacks for more than 16 months. Because the fuel stacks are special-order items, if ETI were to fail to take possession of them, ECD would be required to dispose of them. Disposing of the fuel stacks involves destroying them under water to avoid an explosion—a very hazardous process. Thus, if ETI were to fail to take possession of the fuel stacks, the damages caused to ECD—while difficult to calculate with a degree of certainty—would be substantial. ECD has received estimates that the cost of disposal alone could cost as much as \$1 million, which cost does not account for related costs and possible liabilities, although ECD is not certain that anyone will agree to assist with the disposal.

Parties, Jurisdiction, and Venue

2. There are presently pending in the United States Bankruptcy Court, Eastern District of Michigan, Southern Division (the “**Bankruptcy Court**”) the jointly administered Chapter 11 Bankruptcy cases of Energy Conversion Devices, Inc. and United Solar Ovonic LLC, Case No. 12-43166 (the “**ECD Bankruptcy Case**”). This adversary proceeding relates to the ECD Bankruptcy Case.

3. This Court has jurisdiction over this case under 28 U.S.C. §§ 157 and 1334.

4. This proceeding is related to a case under title 11 and ECD consents to entry of final orders or judgments by the Bankruptcy Court.

5. Venue is proper in this Court under 28 U.S.C. §§ 1408 and 1409.

6. ECD is a Delaware corporation with a principal place of business in Michigan.

7. Upon information and belief, ETI is an Ohio corporation with a principal place of business in Ohio.

8. This Court has jurisdiction over this adversary proceeding.

General Allegations

ETI issued the February 26, 2009 Purchase Order re Tech 09-059 to ECD.

9. ETI issued purchase order number 2008110002 dated February 26, 2009 in the amount of \$300,000 (the “**February 26, 2009 Purchase Order**”) to ECD.

10. The February 26, 2009 Purchase Order states that it “incorporates by reference the ‘Collaborator Summary Sheet’ dated March 09, 2009” (the “**March 9, 2009 Collaborator Summary Sheet**”).

11. The March 9, 2009 Collaborator Summary Sheet states that it summarizes the agreement between ETI and ECD “pursuant to the State of Ohio Third Frontier cost-sharing Grant Agreement Tech 09-059 . . . awarded to ETI on February 19th, 2009.”

12. Copies of the February 26, 2009 Purchase Order, the March 9, 2009 Collaborator Summary Sheet, the related Grant Agreement, and the First Amendment to Grant Agreement are attached as collective **Exhibit 1**.

ETI issued the December 3, 2010 Purchase Order re Tech 08-056 to ECD.

13. ETI issued purchase order number 2010112175 dated December 3, 2010 in the amount of \$60,000 (the “**December 3, 2010 Purchase Order**”) to ECD.

14. The December 3, 2010 Purchase Order states that it “is for additional services regarding Tech 08-056 per the email agreement on 11/11/10 & 12/06/10 between Rob Privette and Tim Lowe.”

15. Copies of the December 3, 2010 Purchase Order, the November 11, 2010 Robert Privette email, and the December 6, 2010 Robert Privette email are attached as collective **Exhibit 2**.

ETI issued the August 25, 2010 Purchase Order re Tech 10-060 to ECD.

16. ETI issued purchase order number 2010111754 dated August 25, 2010 in the amount of \$300,000 (the “**August 25, 2010 Purchase Order**”) to ECD.

17. The August 25, 2010 Purchase Order states that it “incorporates by reference the ‘Collaborator Summary Sheet’ dated August 25, 2010” (the “**August 25, 2010 Collaborator Summary Sheet**”).

18. The August 25, 2010 Collaborator Summary Sheet states that it summarizes the agreement between ETI and ECD “pursuant to the State of Ohio Third Frontier cost-sharing Grant Agreement Tech 10-060 . . . awarded to ETI on March 1st, 2010.”

19. Copies of the August 25, 2010 Purchase Order and August 25, 2010 Collaborator Summary Sheet are attached as collective **Exhibit 3**.

ECD fully performed its obligations to ETI.

20. ECD fully performed its obligations to ETI.

21. ECD fully performed its obligations under the February 26, 2009 Purchase Order, the December 3, 2010 Purchase Order, and the August 25, 2010 Purchase Order (collectively, the “**Purchase Orders**”).

22. At ETI’s direction, and in accordance with the Purchase Orders, ECD completed six fuel stacks of which ETI has refused to take delivery and for which ETI has refused to pay ECD (the “**Fuel Stacks**”).

23. ECD has tendered possession of the Fuel Stacks to ETI.

24. ECD has made several requests that ETI take possession of the Fuel Stacks including, but not limited to, making such requests in letters dated January 26, 2012 and April 13, 2012.

25. ETI refuses to make arrangements to take delivery and possession of the Fuel Stacks.

26. ETI has not rejected the Fuel Stacks.

27. ETI has not taken the position that the Fuel Stacks are nonconforming.

ETI has failed to pay six ECD invoices totaling \$158,494.

28. ECD issued invoice number JC10056 dated July 8, 2011 in the amount of \$79,850 (the “**Invoice JC10056**”) to ETI.

29. Invoice JC10056 relates to ETI’s February 26, 2009 Purchase Order.

30. ETI failed to timely pay, and has not paid, the amounts due under Invoice JC10056.

31. ECD issued invoice number JC10057 dated July 8, 2011 in the amount of \$79,850 (the “**Invoice JC10057**”) to ETI.

32. Invoice JC10057 relates to ETI’s February 26, 2009 Purchase Order.

33. ETI failed to timely pay, and has not paid, the amounts due under Invoice JC10057.

34. ECD issued invoice number JC10058 dated July 8, 2011 in the amount of \$5,657 (the “**Invoice JC10058**”) to ETI.

35. Invoice JC10058 relates to ETI’s December 3, 2010 Purchase Order.

36. ETI failed to timely pay, and has not paid, the amounts due under Invoice JC10058.

37. ECD issued invoice number JC10059 dated August 24, 2011 in the amount of \$21,673 (the “**Invoice JC10059**”) to ETI.

38. Invoice JC10059 relates to ETI’s February 26, 2009 Purchase Order.

39. ETI failed to timely pay, and has not paid, the amounts due under Invoice JC10059.

40. ECD issued invoice number JC10063 dated October 10, 2011 in the amount of \$15,486 (the “**Invoice JC10063**”) to ETI.

41. Invoice JC10063 relates to ETI’s August 25, 2010 Purchase Order.

42. ETI failed to timely pay, and has not paid, the amounts due under Invoice JC10063.

43. ECD issued invoice number JC10064 dated October 10, 2011 in the amount of \$3,136 (the “**Invoice JC10064**”) to ETI.

44. Invoice JC10064 relates to ETI’s December 3, 2010 Purchase Order.

45. ETI failed to timely pay, and has not paid, the amounts due under Invoice JC10064.

46. ECD issued invoice number JC10073 dated January 20, 2012 in the amount of \$31,746 (the “**Invoice JC10073**”) to ETI.

47. Invoice JC10073 relates to ETI’s August 25, 2010 Purchase Order.

48. ETI failed to timely pay, and has not paid, the amounts due under Invoice JC10073.

ECD has demanded that ETI pay for and take possession of the Fuel Stacks.

49. ECD has made several demands that ETI pay ECD the \$158,494 that it owes to ECD relating to the Fuel Stacks.

50. ECD has made several demands that ETI take delivery and possession of the Fuel Stacks.

51. On January 26, 2012, ECD sent ETI a letter (the “**January 26, 2012 Letter**”), to which it attached Invoice JC10056, Invoice JC10057, Invoice JC10058, Invoice JC10059, Invoice JC10063, Invoice JC10064, and Invoice JC10073 (the “**Invoices**”), demanding that ETI pay the amounts due under the Invoices and pick up the Fuel Stacks. A copy of the January 26, 2012 Letter, including the Invoices, is attached as **Exhibit A** to the Declaration of Account Stated of Greg Coppola (the “**Coppola Declaration**”), which is attached as **Exhibit 4**.

52. ETI did not respond to the January 26, 2012 Letter.

53. On April 13, 2012, ECD sent ETI a letter (the “**April 13, 2012 Letter**”), to which it attached the January 26, 2012 Letter, including the Invoices, demanding that ETI pay the \$158,494 due under the Invoices and make arrangements to pick up the Fuel Stacks. A copy of the April 13, 2012 Letter, without attachments, is attached as **Exhibit B** to the Coppola Declaration.

54. ETI did not respond to the April 13, 2012 Letter.

55. As of the date of this Complaint, ETI has not paid any of the amounts due to ECD as stated in the Invoices.

56. ETI is obligated to pay ECD \$158,494 relating to the Fuel Stacks, as stated in the Invoices.

57. As of the date of this Complaint, ETI has not picked up the Fuel Stacks.

58. ETI is obligated to take possession of the Fuel Stacks.

59. ETI has not raised any defenses to payment in full for the Fuel Stacks.

60. ETI has not objected to the Invoices.

61. ETI has not objected to ECD’s demands for \$158,494.

62. ETI has not objected to ECD’s demands that it take possession of the Fuel Stacks.

Count I – Specific Performance

63. ECD incorporates paragraphs 1 through 62.
64. The Purchase Orders constitute valid and enforceable contracts between ECD and ETI.
65. The Purchase Orders are mutually binding on ECD and ETI.
66. ECD fully performed its obligations under the Purchase Orders.
67. ECD completed the Fuel Stacks for ETI in accordance with the Purchase Orders.
68. ECD performed all obligations and conditions with respect to ETI's obligation to remit payment for the Fuel Stacks.
69. ECD performed all obligations and conditions with respect to ETI's obligation to take possession of the Fuel Stacks.
70. ECD tendered possession of the Fuel Stacks to ETI.
71. If ETI does not take possession of the Fuel Stacks, the damages ECD would incur disposing of the Fuel Stacks, while difficult to calculate with a degree of certainty, would be substantial.
72. ECD is without knowledge regarding whether ETI would be able to satisfy a judgment for ECD's damages, thus leaving the possibility that any such remedy would be ineffective.
73. It would be inequitable to expose ECD's bankruptcy estate to the possibility of incurring costs to dispose of the Fuel Stacks.
74. It would be inequitable to expose ECD's bankruptcy estate to the possibility of liability with respect to the disposal of the Fuel Stacks.

75. ETI's duties under the Purchase Orders are clearly ascertainable and explicit enough to warrant enforcement.

76. The Fuel Stacks are unique goods specially manufactured for ETI.

77. Under the circumstances, it is not reasonable for ECD to attempt to sell the Fuel Stacks to a buyer other than ETI.

78. If ETI does not perform its obligations under the Purchase Orders, ECD will incur substantial (yet uncertain) damages disposing of the Fuel Stacks, including, but not limited to, the burden and cost of administering the disposal of the Fuel Stacks, the substantial cost of disposing of the Fuel Stacks, and possible liabilities relating to the same.

Accordingly, ECD requests that the Court (a) order ETI to specifically perform its obligations under the Purchase Orders including, but not limited to, by immediately paying all amounts due under the Invoices and immediately thereafter taking possession of the Fuel Stacks; (b) enter a judgment in favor of ECD and against ETI in the amount of ECD's damages (including, but not limited to, direct, incidental, and consequential damages and all costs incurred) plus pre- and post-judgment interest; and (c) award such other relief as it deems proper and just.

Count II – Breach of Contract

79. ECD incorporates paragraphs 1 through 78.

80. ETI has materially breached its agreements with ECD by failing to remit payment in full for the Fuel Stacks.

81. ETI has materially breached its agreements with ECD by failing to remit full payment in accordance with the Invoices.

82. ETI has materially breached its agreements with ECD by failing to take possession of the Fuel Stacks.

83. As a direct and proximate cause of ETI's material breach of its agreements with ECD, ECD has been damaged, and will suffer substantial additional (yet uncertain) damages if required to dispose of the Fuel Stacks.

Accordingly, ECD requests that the Court (a) enter a judgment in favor of ECD and against ETI in the amount of ECD's damages arising from ETI's breaches (including, but not limited to, direct, incidental, and consequential damages and all costs incurred) plus pre- and post-judgment interest; and (b) grant ECD such other relief as the Court deems proper.

Count III – Account Stated

84. ECD incorporates paragraphs 1 through 83 above.

85. ECD has provided ETI with Invoices, communications, and documents showing the amounts due and owing by ETI to ECD.

86. ETI has failed and continues to fail to pay the amounts due and owing for the Fuel Stacks and under the Invoices, despite having no valid defense, set-off, or counterclaim against or with respect to such amounts.

87. As set forth in the Coppola Declaration, there is presently due and owing from ETI to ECD the sum of \$158,494.

Accordingly, ECD requests that the Court (a) enter a judgment in favor of ECD and against ETI in the amount of \$158,494, plus pre- and post-judgment interest; and (b) grant ECD such other relief as the Court deems proper.

Count IV – Unjust Enrichment

88. ECD incorporates paragraphs 1 through 87.

89. ETI received the benefit of ECD completing the Fuel Stacks without paying for the Fuel Stacks.

90. ETI received the benefit of ECD's labor and services without paying for the same.

91. By refusing to take possession of the Fuel Stacks, ETI stands to receive the benefit of ECD having to dispose of the Fuel Stacks.

92. ETI has been unjustly enriched in the amount of the value of the Fuel Stacks.

93. ETI stands to be unjustly enriched in the amount of the substantial (yet uncertain) damages relating to the disposal of the Fuel Stacks, including, but not limited to, the burden and cost of administering the disposal of the Fuel Stacks, the substantial cost of disposing of the Fuel Stacks, and possible liabilities relating to the same.

94. ECD has been damaged by ETI's retention of the benefits relating to ECD's completion of the Fuel Stacks and ETI's failure to take delivery and possession of the Fuel Stacks.

95. ETI has been unjustly enriched, has no right to keep the benefits relating to the Fuel Stacks, and should not, in fairness and equity, be permitted to keep those benefits without making payment to ECD for the Fuel Stacks and all related costs, including, but not limited to, the burden and cost of administering the disposal of the Fuel Stacks, the substantial cost of disposing of the Fuel Stacks, and possible liabilities relating to the same.

Accordingly, ECD requests that the Court (a) enter a judgment in favor of ECD and against ETI in the amount of the value of the Fuel Stacks, ECD's labor and services relating to the same, and all related costs, including, but not limited to, all costs relating to the burden and cost of administering the disposal of the Fuel Stacks, the substantial cost of disposing of the Fuel Stacks, and possible liabilities relating to the same; and (b) grant ECD such other relief as the Court deems proper.

Count V – Quantum Meruit

96. ECD incorporates paragraphs 1 through 95.

97. ETI has received the benefit of the Fuel Stacks and ECD's labor and services relating to the same.

98. ETI has no right to keep the benefits relating to the Fuel Stacks, and should not, in fairness and equity, be permitted to keep those benefits without making payment to ECD for the Fuel Stacks and all related costs, including, but not limited to, all costs relating to the burden and cost of administering the disposal of the Fuel Stacks, the substantial cost of disposing of the Fuel Stacks, and possible liabilities relating to the same.

Accordingly, ECD requests that the Court (a) enter a judgment in favor of ECD and against ETI in the amount of the value of the Fuel Stacks, ECD's labor and services relating to the same, and all related costs, including, but not limited to, all costs relating to the burden and cost of administering the disposal of the Fuel Stacks, the substantial cost of disposing of the Fuel Stacks, and possible liabilities relating to the same; and (b) grant ECD such other relief as the

Court deems proper.

Respectfully submitted,

HONIGMAN MILLER SCHWARTZ AND COHN LLP
Counsel for the Debtors

Dated: June 14, 2012

By: /s/ Daniel W. Linna Jr.
Robert B. Weiss (P28249)
Aaron M. Silver (P65481)
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ACTIVE.10900242.3

EXHIBIT 1

0002

PURCHASE ORDER B

Energy Technologies, Inc.
219 Park Avenue East
Mansfield, OH 44902-1845

Phone : (419) 522-4444 Fax : (419) 522-4466

02/26/09 PO NO.:2008110002
1

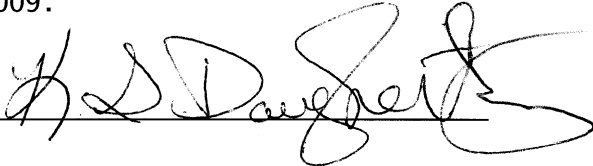
OVONICS
Energy Conversion Devices, Inc.
Rob Privette
2983 Waterview Dr.
Rochester Hills MI 48309

Ship To/Remarks

FUEL CELL

This purchase order is for \$300,000.00
which incorporates by reference the
"Collaborator Summary Sheet" dated
March 09, 2009.

Signature:



0.00
0.00
0.00

□

**STATE OF OHIO GRANT AGREEMENT TECH 09-059
COLLABORATOR SUMMARY SHEET
MARCH 9, 2009**

Lead Applicant

Energy Technologies, Inc.
219 Park Avenue East
Mansfield, Ohio 44902-1845

Project Director: Tim D. Lowe, PhD

Phone #: (419)522-4444
Fax #: (419)522-4466
E-Mail: tdlowe@ruggedsystems.com

Collaborator

Energy Conversion Devices, Inc.
2983 Waterview Drive
Rochester Hills, MI 48309

Technical Contact: Robert M. Privette PE

Phone #: (248)293-7015
Fax #: (248)299-4228
E-Mail: rprivette@ovonic.com

This is a summary of the agreement between **Energy Technologies, Inc. (“ETI”)** and **Energy Conversion Devices, Inc. (“ECD”)** pursuant to the State of Ohio Third Frontier cost-sharing Grant Agreement Tech 09-059 (“Grant Agreement”) awarded to ETI on Feb. 19th, 2009

Background

ECD is participating as a collaborator with ETI to support the fuel cell stack activities defined in the work plan for this project. ECD’s not –to-exceed funding is \$300,000.00 for this work and is listed in the Third Frontier Fuel Cell Program proposal dated 9/11/2008 as summarized below:

Budget by Cost Element

Description	Grant Agreement \$	ECD Cost Share \$	Total Project Cost
Personnel/Fringe	\$229,000	\$114,500	\$343,500
Indirect	\$31,737	\$15,869	\$47,606
Labor Subtotal	\$260,737	\$130,369	\$391,106
Supplies	\$26,132	\$13,066	\$39,198
Purchased Services	\$10,696	\$5,348	\$16,044
Travel	\$2,435	\$1,217	\$3,652
Other Direct Costs	\$0	\$0	\$0
Total Project	\$300,000	\$150,000	\$450,000

ECD may submit requests for payment on a quarterly basis as permitted by the State of Ohio Grant Exhibit I requirements. Monthly requests for payment may be submitted for any approved invoices (Approval is defined as: Approval for submission by the Award Prime Contracts (ECD Prime Contact – Robert Privette and the ETI Prime Contact- Tim Lowe PhD)) where accumulated unbilled amounts will exceed \$50,000 by the following month. Approved invoices shall be paid subject to ECD’s standard Net 30 Terms. ECD will submit a Cost Management Report (sample attached) as support for all payment of grant funds.

GRANT AGREEMENT

This Grant Agreement (the “**Agreement**”) is made and entered into by and between the **State of Ohio, Department of Development (“Grantor”)** and **Energy Technologies, Inc. (“Grantee”)**. This Agreement shall have the ODOD Agreement Number of **TECH 09-059**.

In consideration of the mutual promises and covenants hereinafter set forth, each of Grantee and Grantor (collectively, the “**Parties**”) agree as follows:

Article 1 - Authority to Award

- 1.1 **Authority.** Pursuant to Ohio Revised Code Chapter 184, Grantor is authorized to make grant awards on a competitive basis for the expansion of the State of Ohio’s high technology research and development capabilities and product and process innovation and commercialization. Funds in the amount of **One Million and No/100 Dollars (\$1,000,000.00)** have been made available to Grantor by Controlling Board Action No. **DEV0100519** dated **January 12, 2009** in support of the Third Frontier Fuel Cell Program.

Article 2 – Incorporation of Ancillary Documents

- 2.1 **Exhibits.** The following Exhibits are attached to the Agreement and are incorporated into it by reference.
- (a) Exhibit I – Statement of Conditions
 - (b) Exhibit III – Cost Share Guidelines, if applicable
 - (c) Exhibit IV – Provisions for Disbursements of Capital Funds, if applicable

The following Exhibits are not attached to the Agreement but are incorporated into it by reference.

- (d) Exhibit II – Request for Proposals, if applicable
 - (e) Exhibit V – Proposal, As Amended
- 2.2 **Order of Preference.** If any of the provisions of the documents comprising the Agreement conflict, the order of preference for authority of the documents shall be first, the text of the Agreement itself, followed by the Exhibits as set forth in the alphabetical order, (a) through (e), of Section 2.1 above regardless of whether or not an Exhibit is attached to the Agreement. Furthermore, any reference to an Exhibit is deemed to include any documents and materials incorporated by reference into such Exhibit.

Article 3 - Grant of Funds

- 3.1 **Grant Amount and Cost Share Amount.** Grantor hereby grants to Grantee Third Frontier Action Funds in the amount of **One Million and No/100 Dollars (\$1,000,000.00)**, for the purposes of undertaking the project as described in Exhibit V (the “**Project**”). The funds identified in the preceding sentence and any and all interest

contributors to the Project. Grantee acknowledges that it is the objective of the Grantor in awarding the Grant Funds to create jobs and business opportunities in Ohio and otherwise to benefit the economy of Ohio. Accordingly, Grantee shall undertake in good faith to carry out the Project and to develop and commercialize any resulting technology in such a manner as to create jobs and business opportunities in Ohio and otherwise to benefit the economy of Ohio, including, without limitation, making such objectives a significant factor in the evaluation and selection of potential licensees, distributors, joint venturers and business partners and in the terms of any license, option to license, distribution agreement or other agreement to exploit commercially any such technology.

- 3.7 **Cost Share Commitments and Expenditures.** Acceptance of this Agreement by Grantee certifies that the Cost Share Amount will be available to Grantee for use in support of the Project as described in Exhibit V. The Cost Share Amount shall be made available and used in accordance with the guidelines set forth in Exhibit I and Exhibit III, and Grantee shall be required to account for the expenditure of the Cost Share Amount from time to time during the Project Period (as defined in Section 4.1) in accordance with the cost share ratio set forth in Exhibit V. The Cost Share Amount must be used directly in support of the Project and not for coincidental or related/similar allocations. The Cost Share Amount must be necessary and directly allocable to activities that support the Project objectives. The entire Cost Share Amount shall be expended no later than the Project Completion Date (as defined in Section 4.1). Resources designated for cost share cannot be used and counted against the Cost Share Amount if such resources have also been, or will be, counted toward satisfying a cost share requirement of another award of grant funds. If Grantee determines or has reason to believe that its cost share commitment under this Agreement will not be satisfied, Grantee shall notify Grantor immediately in writing. If Grantee is able to substitute resources of its own or from other sources in an amount equal to or greater than the Cost Share Amount (or of comparable or better value and quality in the case of in-kind resources contemplated by Exhibit V), Grantor shall accept the substitution of resources and Grantee shall be deemed to be in compliance with its cost share commitment. In the event Grantee is not able to provide the Cost Share Amount as required by this Agreement, Grantee shall be in default and Grantor may, in its discretion, either terminate this Agreement and the award of Grant Funds or reduce the award of Grant Funds to be received by Grantee.
- 3.8 **Subcontractors/Subgrantees.** With Grantor's prior approval, Grantee may subcontract and/or subgrant portions of the work or activities constituting the Project as described in Exhibit V. All subcontracts and subgrants shall be made subject in all respects to the terms and conditions of this Agreement. Notwithstanding any subcontract or subgrant, Grantee shall be solely responsible for the performance of work and activities constituting the Project in accordance with the terms and conditions of this Agreement. The work and activities to be performed by subcontractors or subgrantees shall not exceed or vary from the work or activities described in Exhibit V without the prior written consent of Grantor.
- 3.9 **Travel Expenses.** The Travel Policy of the State of Ohio in effect as of the date of this Agreement. Any reimbursement of travel expenses made by Grantee in connection with

the Project shall be subject to the travel reimbursement rates, limitations, restrictions, and exclusions imposed by Ohio Administrative Code 126-1-02 and any other rules imposed by the Ohio Office of Budget and Management, as such rules may be amended from time to time.

- 3.10 **Statement of Conditions.** The award of Grant Funds is made subject to those provisions of Exhibit I identified as being applicable to this Agreement. Grantee acknowledges and agrees that Exhibit I, Exhibit II, and the description of the Project as set forth in Exhibit V shall be used to determine eligibility for payment under this Agreement. In the event Grantee fails to perform in accordance with the terms and conditions set forth in such Exhibits, Grantee shall be in default of its obligations in this Agreement and Grantee may be required to repay to Grantor an amount of Grant Funds determined by Grantor.

Article 4 – Term and Termination

- 4.1 **Effective Date, Completion Date and Grant Expiration Date.** This Agreement shall be effective on **January 12, 2009** (the “**Effective Date**”). Grantee shall complete the Project and incur all eligible expenses within **2** years after the Effective Date (the “**Project Completion Date**”). This Agreement shall expire **3** years after that Project Completion Date (the “**Grant Expiration Date**”). The period of time from the Effective Date until the Project Completion Date shall be referred to as the “**Project Period.**” The period of time from the Effective Date until the Grant Expiration Date shall be referred to the “**Term of the Agreement.**”
- 4.2 **Termination.** This Agreement may be terminated prior to the Grant Expiration Date as set forth in this Section 4.2.
- 4.2.1 **Default.** Grantor may terminate this Agreement following any default of Grantee as further described in Article 15 of this Agreement.
- 4.2.2 **Impracticability.** Either Grantor or Grantee may terminate this Agreement if completion of the Project becomes impracticable. Completion of the Project shall be considered impracticable if:
- (a) A component of the Project proves to be an experimental failure through no fault of Grantee and such component is necessary for the Project to be completed;
 - (b) An experimental development by any entity (including Grantee) makes furtherance of the Project impracticable; or
 - (c) The failure, by no fault of Grantee, of an experimental protocol that is proposed in the Project and is a major component of the Project that will make completion of the Project impracticable.
- 4.2.3 **Mutual Agreement.** Grantor and Grantee may agree in writing to terminate this Agreement. Grantor may require as a condition for any such termination recapture by Grantor of any or all of the Grant Funds.

4.3 **Effect of Termination.**

- 4.3.1 **No Further Disbursements.** Upon the termination of this Agreement for any reason, Grantor shall have no further obligation to disburse Grant Funds to Grantee in respect of the Project *except that* if the Agreement is terminated for impracticability, Grantor shall reimburse Grantee from the remaining balance of Grant Funds (if any) for eligible expenses, including non-cancelable commitments, incurred on or before the termination date as described by Exhibit V.
- 4.3.2 **Closeout Report.** Within sixty (60) days after the termination of this Agreement pursuant to Section 4.2, Grantee shall submit to Grantor a Closeout Report setting forth a final accounting for the Project including, without limitation, the total expenditure of Grant Funds by Grantee, and a reasonably detailed description of the status of the Project at the time of termination.
- 4.3.3 **Recapture.** In the event the Agreement is terminated by Grantor as a result of a Grantee default, Grantor may require Grantee to repay to Grantor any or all of the Grant Funds disbursed to Grantee through the termination date, plus interest on such amount from the date of the first disbursement of Grant Funds through the date of repayment (the “**Recapture Amount**”). Exercise of the recapture remedy and the determination of the Recapture Amount shall be within the sole discretion of Grantor, on behalf of the State, and shall be based upon review, evaluation, and audit of the Project by Grantor and/or its agent. The interest rate to be used in calculating the Recapture Amount shall be an annual rate equal to the rate of interest on 30-day US Treasury Bills as of the date which is ten (10) business days prior to Grantor’s written demand for payment of the Recapture Amount. Grantee shall pay the Recapture Amount within thirty (30) days after written demand by Grantor.
- 4.3.4 **Performance of Termination Agreement.** In the event this Agreement is terminated by mutual agreement, Grantee shall perform all obligations of Grantee as set forth in such agreement.

Article 5 – Reporting Requirements and Periodic Review

- 5.1 **Reports.** Grantee shall submit to Grantor all fiscal and programmatic reports as and when specified in Exhibit I and/or Exhibit V.
- 5.2 **Maintenance of Records.** Grantee shall establish and maintain for at least three (3) years after the Grant Expiration Date or other termination of this Agreement such records regarding this Agreement, the Grant Funds, the Cost Share Amount and the Project as Grantor may require from time to time, including, without limitation, financial reports, and intake and participant information.
- 5.3 **Inspection of Books and Records.** At any time during normal business hours and upon not less than twenty-four (24) hours prior written notice, Grantee shall make available to

Grantor or its agents all books and records regarding this Agreement and/or the Project which are in the possession or control of Grantee. Grantor and its agents may review, audit and make copies of such books and records. Grantee shall include in its agreements with any subcontractor or subgrantee receiving Grant Funds a provision authorizing Grantor and its agents access to and the right to review, audit and copy the books and records of such subcontractor or subgrantee related to its work on the Project and/or its receipt of Grant Funds. Grantor will undertake any inspection of books and records in such a manner as not to interfere unreasonably with the normal business operations of Grantee, its subcontractor or subgrantee, as the context requires.

- 5.4 **Site Visits.** At any time during normal business hours and upon not less than seventy-two (72) hours prior written notice, Grantee shall provide Grantor access to any location or facility at which work or activities related to the Project are performed. During such site visits, Grantor shall have the right to review and inspect the Project facilities and to meet with Key Personnel (as identified in Exhibit I and Exhibit V) to review the status of the Project and compliance with conditions on the award of Grant Funds.
- 5.5 **Periodic Meetings.** From time to time during the Term of the Agreement, Grantee shall meet with Grantor on a schedule mutually agreed by the Parties or upon the reasonable request of either Party to discuss the Project and to explore opportunities to access State-supported programs that provide funding, infrastructure, and services that may be critical to advancing the goals of the Project. Third parties including, for example, representatives of other State agencies, State grantees and private entities, may participate in such meetings at the invitation of Grantor.

Article 6 - Intellectual Property

- 6.1 **Intellectual Property.** “**Intellectual Property**” includes patents and inventions, designs, formulas, processes, materials and other patentable matter, whether or not a patent has been issued with respect to such matter; trademarks and service marks, whether or not registered; copyrights and any work of authorship in which a copyright may subsist; technical data, know-how and other information that may be protected as a “trade secret” under the Uniform Trade Secrets Act as adopted in Ohio (Ohio Rev. Code § 1333.61); and applications and registrations for, and claims with respect to, any of the foregoing.
- 6.2 **Rights and Title.** As between Grantor and Grantee, any right, title and interest in and to any Intellectual Property arising from or attributed to any of the work or activities undertaken as part of the Project shall belong to Grantee. Grantor asserts no claim of ownership or license in any of the Intellectual Property.
- 6.3 **Notification.** Grantee will promptly notify Grantor of any Intellectual Property arising from or attributed to any of the work or activities undertaken as part of the Project. Such notification shall be made in a manner so as not to jeopardize the patentability of an invention or compromise the right of Grantee to obtain or maintain legal rights in and protection of its ownership interests in the Intellectual Property. Grantee shall keep

Grantor apprised of all material developments with respect to Grantee's efforts to obtain patents or other protection of its ownership interests in the Intellectual Property.

Article 7 - Publicity

- 7.1 **Use of Name.** Neither Party may use the name of the other in any form of advertising or promotion or otherwise without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed.
- 7.2 **Acknowledgements.** Grantee shall acknowledge support provided by the State for the Project in the circumstances listed in Exhibit I. Any such acknowledgment shall be in the form set forth in Exhibit I or as otherwise expressly approved by Grantor in writing.

Article 8 - Publication

- 8.1 **Permission to Publish.** Grantor recognizes that the results of the Project may be publishable and agrees that Grantee's researchers engaged in the Project may be permitted to present their work at symposia and national or regional professional meetings and to publish in journals, theses or dissertations, or other publications, the methods and results of the Project; *provided that* the researcher publishing or presenting any work associated with the Project includes an acknowledgment of the contribution made by the State as described in Article 7 of this Agreement.
- 8.2 **Disclaimer.** Any publication, study or report prepared by Grantee or any of its agents, including, without limitation, subcontractors and subgrantees, in connection with the grant made pursuant to this Agreement or using information created or obtained through work or activities using or supported by any Grant Funds shall include the following credit and disclaimer statement: "This publication [study or report] was prepared with financial support from the State of Ohio. The content reflects the views of **Energy Technologies, Inc.** and does not purport to reflect the views of the State of Ohio."

Article 9 - Amendments and Modifications

- 9.1 **Amendments and Modifications.** Either Party may at any time during the Term of this Agreement request amendments or modifications to this Agreement. Requests for amendment or modification shall be made in writing and shall specify the requested changes and the justification for such changes. The Parties shall review the request for modification taking into account regulations applicable to the grant program and the status and goals of the Project. If the Parties determine that the Agreement should be so amended, an amendment shall be written, approved, and executed in the same manner as the Agreement.
- 9.2 **Project Changes.** Without limiting the generality of the foregoing, a written amendment shall be required to effect any of the following changes with respect to the Project:
- (a) Any change in Project scope or objectives;

- (b) Any change in Key Personnel identified in Exhibit V or in Exhibit I;
- (c) Any absence of Key Personnel from work or activities constituting a part of the Project for more than ninety (90) days within any 12-month period or a 25% or greater reduction in time of the Key Personnel from work or activities constituting a part of the Project, regardless of the reason for the absence or reduction in time;
- (d) One or more alterations to budget line items appearing in Exhibit V that are funded in whole or in part by the Grant Funds if the change or series of changes exceeds ten percent (10%) of the total amount of Grant Funds on a cumulative basis or if the alteration conflicts with any other terms or conditions of this Agreement;
- (e) Transfer of any portion of the Grant Funds into a line item not previously funded in whole or part with Grant Funds or creating a new line item to be funded in whole or in part with Grant Funds;
- (f) Additional time/no cost extensions or other significant delays in completion of the Project;
- (g) Conducting, displacing, transferring, or subcontracting any of the work under Exhibit V outside the State; and
- (h) Substituting or adding any subcontractor, collaborator or subgrantee not identified or budgeted in Exhibit V or removing any subcontractor, collaborator or subgrantee identified or budgeted in Exhibit V; *provided, however*, that Grantee may restrict the access of any subcontractor, collaborator or subgrantee (including any of its respective agents and employees) to the work or other activities constituting the Project pending Grantor's consent to removal if Grantee has reason to believe continuing access by such individual or entity will be detrimental to the Project.

Grantor reserves the right to reject any request for Project change. Grantee agrees that it will pay or reimburse Grantor for any and all costs associated with any technical review required by Grantor in connection with any requested Project change whether or not the revision is approved.

Article 10 - Compliance with Law

- 10.1 **Compliance with Federal, State and Local Laws.** Grantee shall comply with all applicable federal, state and local laws in the conduct of the work supported by Grant Funds. Neither Grantee nor any of its employees are or shall be deemed to be employees of Grantor for any purpose including, without limitation, application of the Fair Labor Standards Act minimum wage and overtime payment provisions, the Federal Insurance Contribution Act, the Social Security Act, the Federal Unemployment Tax Act, the provisions of the Internal Revenue Code, any state or local revenue or tax laws, state workers' compensation laws and state unemployment insurance laws. Grantee accepts full responsibility for payment of all taxes including, without limitation, unemployment compensation insurance premiums, all income tax deductions, Social Security deductions, and any and all other taxes or payroll deductions required for all employees engaged by Grantee in the performance of the work supported by Grant Funds.

- 10.2 **Prevailing Wage.** In accordance with Chapter 4115 of the Ohio Revised Code, construction projects involving moneys allocated under this Agreement may require the recipient of the funds to pay prevailing wage rates for workers involved in any construction activity on the Project. It shall be the responsibility of Grantee to comply with all applicable prevailing wage requirements, if any. The Ohio Department of Commerce, Division of Labor and Worker Safety, Bureau of Wage and Hour, will make all determinations regarding the requirements of paying prevailing wages. If the Bureau of Wage and Hour determines that prevailing wage rates are to be paid, then pursuant to Ohio Revised Code § 4115.032, the Grantee shall designate a Prevailing Wage Coordinator who shall be vested with all the powers, duties, and responsibilities required by law of a Wage Coordinator.
- 10.3 **Ethics Laws.** In accordance with Executive Order 2007-01S, Grantee, by its signature on this document, certifies: (1) it has reviewed and understands Executive Order 2007-01S, (2) has reviewed and understands the Ohio ethics and conflict of interest laws including, without limitation, Ohio Revised Code §§ 102.01 *et seq.*, §§ 2921.01, 2921.42, 2921.421 and 2921.43, and §§ 3517.13(I) and (J), and (3) will take no action inconsistent with those laws and the order, as any of them may be amended or supplemented from time to time. Grantee understands that failure to comply with Executive Order 2007-01S is, in itself, grounds for termination of this Agreement and the grant of funds made pursuant to this Agreement and may result in the loss of other contracts or grants with the State.
- 10.4 **Workplace Environment.** Grantee shall comply with all applicable federal, state, and local laws regarding smoke-free and drug-free workplaces and shall make a good faith effort to ensure that any of its employees or permitted subcontractors engaged in the work being performed in connection with the Project do not purchase, transfer, use or possess illegal drugs or alcohol or abuse prescription drugs in any way.
- 10.5 **Governing Law.** The validity and interpretation of this Agreement and the legal relationship of Grantee and Grantor shall be governed by the laws of the State of Ohio. All actions regarding this Agreement shall be brought in a court of competent subject matter jurisdiction in Franklin County, Ohio, and Grantee agrees that venue in such court is proper.
- 10.6 **Declaration Regarding Material Assistance/Non-assistance to a Terrorist Organization.** If applicable, Grantee must certify compliance with Ohio Revised Code § 2909.33.
- 10.7 **Human Subjects.** In all cases in which activities involving human subjects are planned in connection with the Project, Grantee must abide by all applicable federal and state rules and regulations governing studies of human subjects at the participating organizations. If the Project contemplates activities involving human subjects, Grantee certifies that Institutional Review Board (IRB) approval for this Project is current (within one (1) year of the Effective Date of this Agreement). IRB approval shall be renewed each year the Project is active. Any modifications in the Program Plan section of the

Proposal must be approved by the IRB. Grantee certifies that its human subject policies and procedures comply with the Code of Federal Regulations, Title 45, Part 46.

- 10.8 **Animal Subjects.** In all cases in which activities involving animal subjects are planned, Grantee must abide by all applicable federal and state rules and regulations governing studies of animal subjects at the participating organizations. If the Project contemplates activities involving animal subjects, Grantee certifies that Institutional Animal Care and Use Committee (IACUC) approval for this Project is current (within three (3) years of the Effective Date of this Agreement). IACUC approval shall be renewed every three (3) years the Project is active. Any modifications in the Program Plan section of the Proposal must be approved by the IACUC. Grantee certifies that its animal subject policies and procedures comply with the US Code Title 7, §§ 2131-2156, inclusive.
- 10.9 **Outstanding Liabilities.** Grantee represents and warrants to Grantor that Grantee does not owe: (1) any delinquent taxes to the State or any political subdivision of the State; (2) any moneys to the State or a State agency for the administration or enforcement of any environmental laws of the State; or (3) any other moneys to the State, a State agency or a political subdivision of the State that are past due, whether or not the amounts owed are being contested in a court of law.
- 10.10 **Falsification of Information.** Grantee represents and warrants to Grantor that Grantee has made no false statements to Grantor or any of its agents in the process of obtaining the award of Grant Funds. If Grantee has knowingly made a false statement to Grantor or any agent of Grantor to obtain the award of Grant Funds, Grantee shall be required to return all Grant Funds immediately pursuant to Ohio Revised Code § 9.66(C)(2) and shall be ineligible for any future economic development assistance from the State, any State agency or a political subdivision pursuant to Ohio Revised Code § 9.66(C)(1). Any person who provides a false statement to secure economic development assistance may be guilty of falsification pursuant to Ohio Revised Code § 2921.13(F)(1), a misdemeanor of the first degree which is punishable by a fine of not more than \$1,000.00 and/or a term of imprisonment of not more than one hundred eighty (180) days.
- 10.11 **Aborted Fetuses.** In accordance with Ohio Revised Code § 2919.14, Grant Funds shall not be used for research involving tissue obtained from aborted fetuses.

Article 11 - Conflicts of Interest

- 11.1 **Policy and Notification Requirements.** Grantee certifies that there is in effect an administrative process to identify and resolve financial or other conflicts of interest that may affect or create the appearance of affecting the objectivity of any research to be conducted with the support of Grant Funds provided under this Agreement. Grantee will inform Grantor in writing of all conflicting financial or other interests that have been identified and provide for each such conflict a description of how the conflict has been resolved to protect the Project from bias or the appearance of bias. Grantee certifies that its conflict of interest policies and procedures comply with Code of Federal Regulations Title 45, Part 94 and Ohio Revised Code §§ 102.03, 2921.42, 2921.43, and 3345.14.

Article 12 – Indemnification and Liability

- 12.1 **Private Enterprise Indemnification.** If Grantee is a private enterprise, Grantee shall hold harmless Grantor, its agents and their respective employees from any and all liabilities or claims caused by or resulting from Grantee's performance of the obligations or activities in furtherance of the Project or any omissions of Grantee in its performance of obligations or activities in furtherance of the Project. Grantee shall reimburse Grantor, its agents and/or their respective employees for any judgments arising from Grantee's actions or inactions, which may be obtained against Grantor, such agents or employees, as the case may be, including, without limitation, judgments for infringement of any patents or copyrights. Grantee agrees to reimburse Grantor, its agents and/or their respective employees for all costs incurred by Grantor, such agents or employees in defending any such claims or legal actions if called upon to do so by Grantor or the affected agent or employee.
- 12.2 **Public Entities Liability.** If Grantee is a public entity, Grantee shall maintain liability and property insurance to cover actionable legal claims for liability or loss which are the result of injury to or death of any person, damage to property (including property of Grantor) caused by the negligent acts or omissions, or negligent conduct of Grantee, to the extent permitted by law, in connection with any activities supported by Grant Funds provided pursuant to this Agreement. Furthermore, each party to this Agreement agrees to be liable for the negligent acts or negligent omissions by or through itself, its employees, agents, subcontractors and subgrantees. Each party further agrees to defend itself and themselves and pay any judgments and costs arising out of such negligent acts or omissions, and nothing in this Agreement shall impute or transfer any such liability from one to the other.

Article 13 – Confidentiality

- 13.1 **Trade Secrets.** Ohio has adopted the Uniform Trade Secrets Act, which prohibits the disclosure of information determined to be a "trade secret" as defined in Ohio Revised Code § 1333.61(D). Any information submitted to Grantor shall be considered public information and shall be released if requested unless such information is determined to be a "trade secret." Any information submitted to Grantor which is considered by Grantee to be a "trade secret" must be clearly marked as such. Every report, deliverable or other submission containing "trade secret" information must contain a page that lists each page in the submission where trade secret information appears and the number of occurrences of trade secret information on that page, identify each and every occurrence of the information within the submission with an asterisk before and after each line containing the trade secret information and underline the trade secret information itself.

Article 14 - Notices

- 14.1 **Procedures for Delivering.** Any notice or report required or permitted to be given under this Agreement shall be deemed to have been sufficiently given for all purposes if mailed

by first class certified or registered mail or sent by commercial delivery to the following addresses of the Parties:

Grantor:

Technology Division
ATTN: Grant Administration
Ohio Department of Development
77 South High Street, 25th Floor
Columbus, Ohio 43215-6130
Fax No.: (614) 644-5758

And

Grantee:

Energy Technologies, Inc.
ATTN: P.D. Madden, PE, General Manager
219 Park Avenue East
Mansfield, Ohio 44902-1845
Fax No.: (419) 522-4466

or to such other addresses as shall hereafter have been furnished by written notice to the other party.

Article 15 – Events of Default and Remedies

- 15.1 **Absence of Key Personnel.** Grantee acknowledges that the availability of the Key Personnel identified in Exhibit I and Exhibit V to perform activities in connection with the Project is a material condition for the award of Grant Funds. Accordingly, Grantee shall notify Grantor not later than seven (7) days after any Key Personnel becomes unavailable to perform the tasks contemplated by Exhibit V to be performed by such individual. For purposes of this Agreement, an individual will be “unavailable” to the Project if (a) the individual’s employment or agreement to provide services to Grantee is terminated for any reason, (b) the individual’s duties are changed so as to remove him/her from Project work or activities, (c) during any calendar month, the individual’s hours spent on or available to be spent on work or activities related to the Project are reduced for any reason by more than twenty-five percent (25%) of the time contemplated in Exhibit V, or (d) a position for any Key Personnel is vacant on the Effective Date and remains vacant for more than ninety (90) days after the Effective Date (or such later date as set forth in Exhibit V). Grantee shall have ninety (90) days to replace any Key Personnel who becomes unavailable to the Project for any reason with an individual acceptable to Grantor in its reasonable judgment. In the event any Key Personnel are not replaced within ninety (90) days after he/she first becomes unavailable to the Project or if any vacancy is not filled as described above, Grantee shall be in default of this Agreement.

statute. No remedy is intended to be exclusive of any other available remedy, but each and every such remedy shall be cumulative.

Article 16 - Miscellaneous

- 16.1 **Entire Agreement.** This Agreement constitutes the entire agreement and understanding of the Parties with respect to its subject matter. No prior verbal agreement, conversation, understanding or representation between any officers, agents, or employees of the Parties either before or after the execution of this Agreement shall affect or modify any of the terms or conditions of this Agreement.
- 16.2 **Severability.** Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Agreement is held to be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provisions of this Agreement.
- 16.3 **Assignment.** This Agreement shall not be assigned by Grantee without the prior written consent of Grantor. Any assignment not made in accordance with this Section shall be void.
- 16.4 **Certification of Funds Available.** None of the rights, duties and obligations described in this Agreement shall be binding on either Party until all statutory provisions of the Ohio Revised Code, including, without limitation, § 126.07, have been complied with, and until such time as all funds have been made available and are forthcoming from the appropriate State agencies.
- 16.5 **Equal Employment Opportunity.** In performing this Agreement, Grantee shall not discriminate against any employee, applicant for employment or other person because of race, religion, color, sex, national origin, disability, age or ancestry. Grantee will take affirmative action to ensure that applicants are employed and that employees are treated during their employment without regard to race, religion, color, sex, national origin, disability, age, or ancestry. Grantee shall incorporate the requirements of this paragraph in all of its contracts for any of the work or activities undertaken as part of the Project (other than subcontracts for standard commercial supplies or raw materials), and will require all of its subcontractors and subgrantees for any part of such work to incorporate such requirements in all of its subcontracts.
- 16.6 **Headings.** The article and section headings are provided for convenience of reference only and are not to be used in construing this Agreement.
- 16.7 **Forbearance Not a Waiver.** No act of forbearance or failure to insist on the prompt performance by Grantee of its obligations under this Agreement, either express or implied, shall be construed as a waiver by Grantor of any of its rights hereunder.

EXHIBIT I
STATEMENT OF CONDITIONS

Exhibit I – Statement of Conditions

**OHIO DEPARTMENT OF DEVELOPMENT
STATEMENT OF CONDITIONS TO GRANT AGREEMENT**

All capitalized terms used but not otherwise defined in the Statement of Conditions shall have the meanings given them in the Grant Agreement to which this Exhibit is attached. References to the "Technology Division" mean the Technology Division of the Ohio Department of Development.

A. DELIVERABLES, METRICS AND MILESTONES:

1. Within thirty (30) days after execution of the Agreement, Grantee will submit to the Technology Division for approval Level A and B metrics and expected dates of achievement for each such metric. Level A metrics must identify in reasonable detail the nature and value of the resource or resources to be sought. Level B metrics must describe the objective factors that will be used to measure the commitment of the prospective resource provider(s). When the Level A and B metrics are submitted to the Technology Division, Grantee shall also submit in a separate document a list of major milestones and deliverables, which would be defined as Level C Metrics, with expected delivery dates for each. Milestones and delivery dates must be included for all undertakings and commitments included in Grantee's proposal, particularly those undertakings and commitments made to comply with specific requirements of the RFP.

Applies Does Not Apply

2. Grantee will submit to the Technology Division a Start-up Tactical Plan covering first 90 days of operation. The Start-Up Tactical Plan shall be due within [0] days after the execution of the Agreement.

Applies Does Not Apply

3. Within [0] days after execution of the Agreement, Grantee will submit a First-Year Program Plan, including the project mission and objectives, detailed milestones, timelines, and success goals.

Applies Does Not Apply

4. Grantee is receiving Grant Funds under the Entrepreneurial Signature Program. Grantee must maintain an involvement with the named State-funded technology incubator(s) and pre-seed fund(s) as stated in Exhibit V, the Proposal, As Amended.

Applies Does Not Apply

Exhibit I – Statement of Conditions

5. Grantee is receiving Grant Funds under the Asset-Based Company Attraction Program. Grantee must track all activities in its sales process using a customer relationship management (CRM) system and such information must be maintained in a format that is compatible with the CRM used by the Ohio Business Development Coalition (OBDC). As of the date of the Agreement, OBDC's CRM system is "Market First." Grantee will be required to transfer or otherwise input Grantee's CRM data into OBDC's CRM system.

Applies Does Not Apply

6. Grantee is receiving Grant Funds under the Third Frontier program. Grantee must identify its requirements for high performance computing facilities and services, including hardware, software, and infrastructure services. If Grantee's requirements exceed \$100,000 for the Project, the Ohio Supercomputer Center will convene a panel of experts to determine whether Grantee's needs for such computing facilities and services can be met through Ohio Supercomputer Center facilities or through other means and report such information to the Third Frontier Commission.

Applies Does Not Apply

B. COST LIMITATIONS:

1. Grantee shall not pledge all or any part of the Grant Funds as security for any loan or debt of any kind except as expressly authorized by Grantor in writing.

Applies Does Not Apply

2. No more than 20 percent of the total Operating Grant Funds may be used for capital equipment, construction, or renovation costs.

Applies Does Not Apply

3. Indirect costs of the Project may not exceed 20 percent of the total non-capital direct costs of the Project. "Indirect costs" and "direct costs" are further described in Exhibit II.

Applies Does Not Apply

4. Grantee is receiving a Wright Center Innovation award. Grantee shall use at least \$10 million of the Grant Funds to acquire, renovate, or construct facilities and purchase equipment that will be part of the property or facilities owned by an Ohio state-supported or state-assisted institution of higher education or by a non-profit that provides access and use of the facilities or equipment to a collaborating Ohio state-supported or state-assisted institution of higher education.

Applies Does Not Apply

Exhibit I – Statement of Conditions

5. No Grant Funds provided to support the operating portion of the Project budget may be used for equipment, renovation, construction, or property acquisition costs.

Applies Does Not Apply

6. Grantee is receiving Grant Funds under the Third Frontier program, and Grantee is using Grant Funds to create a Pre-Seed Fund. Grantee shall use the Grant Funds as proceeds of its Pre-Seed Fund to invest in various companies (the “Investments”) that meet the requirements of Grantee's Pre-Seed Fund. Grantee shall use the Grant Funds in accordance with Article VIII, Section 13 of the Ohio Constitution.

Applies Does Not Apply

7. Grantee is receiving Grant Funds under the Third Frontier program, and Grantee is using Grant Funds to create a Pre-Seed Fund. Grant Funds will be released by Grantor upon approval of the executed escrow agreement among Grantee, the escrow agent and Grantor.

Applies Does Not Apply

8. Grantee is receiving Grant Funds under the Third Frontier program, and Grantee is using Grant Funds to create a Pre-Seed Fund. Grantee will make investments in Ohio companies that have technologies that are in the imagining, incubating, and, to a lesser extent, demonstrating phases of the commercialization framework, *i.e.*, pre-seed companies that are not yet sufficiently mature to attract venture financing.

Applies Does Not Apply

9. At least [0] business days before any meeting in which it is likely that a formal decision will be made to proceed with a post due-diligence pre-investment candidate(s), Grantee shall provide the Grantor with the date, time, and location of the meeting and supply background information on the candidate(s) for investment in order that the Grantor may decide whether to attend the meeting and comment on any of the investments.

Applies Does Not Apply

10. Grantee is a [for-profit, not-for-profit] entity creating a for-profit Pre-Seed Fund using Third Frontier Grant Funds. Grantee shall distribute to an Ohio not-for-profit technology intermediary organization(s) selected by Grantee in consultation with the Ohio Department of Development an amount equal to the Grant Profit Allocation. To calculate the **Grant Profit Allocation**, the Grant Funds shall be treated in the same manner as a private investment in Grantee's for-profit Pre-Seed Fund made on terms comparable to the investments of private investors in the for-profit Pre-Seed Fund. Upon any distribution of profits by the for-profit Pre-Seed Fund to investors in such fund, the for-profit Pre-Seed Fund will pay to the designated Ohio not-for-profit technology intermediary organization the applicable Grant Profit Allocation. So long as no default occurs and is continuing under the Agreement and the for-profit Pre-Seed Fund continues to operate, Grantee shall have no

Exhibit I – Statement of Conditions

obligation to return the Grant Funds to Grantor or to pay any of the Grant Funds to any third party. Upon liquidation of the for-profit Pre-Seed Fund, Grantee shall pay to the designated Ohio not-for-profit technology intermediary organization(s) an amount equal to the distribution that otherwise would have been made to a private investor with an investment made in the same amount as the Grant Funds.

Applies Does Not Apply

11. Grantee is a **[for-profit, not-for-profit]** entity creating a not-for profit Pre-Seed Fund using Third Frontier Grant Funds. Grantee is not required to make distributions of profits from the not-for-profit Pre-Seed Fund as described in the foregoing paragraph B.10.

Applies Does Not Apply

12. Grantee is receiving Grant Funds under the Third Frontier program, and Grantee is using Grant Funds to create a Pre-Seed Fund. Grantee may use up to twenty percent (20%) of the Grant Funds actually received (subject to Cost Share requirements) to fund activities to provide Enhanced Management Services (as that term is defined in Exhibit II, the Request for Proposals). Grantee may use up to ten percent (10%) of the Grant Funds actually received (subject to Cost Share requirements) to fund Due Diligence expenses on prospective Pre-Seed Fund investments only. Notwithstanding the foregoing, the total amount of Due Diligence expenses and Enhanced Management Services expenses paid with Grant Funds and/or Cost Share Amount shall not exceed twenty percent (20%) of the amount of Grant Funds.

Applies Does Not Apply

13. Grantee is receiving Grant Funds under the Third Frontier Entrepreneurial Signature Program Initiative. Grantee may pay for Management Fees out of the Grant Funds derived from the proceeds of non-taxable bonds in an amount not to exceed twenty percent (20%) of the Grant Funds derived from the proceeds of taxable bonds.

Applies Does Not Apply

14. Grantee is receiving Grant Funds under the Third Frontier Entrepreneurial Signature Program Initiative. Grantee may not use any of the Grant Funds or Cost Share Amount to pay for physical infrastructure improvements, such as facilities or capital equipment.

Applies Does Not Apply

C. PAYMENTS:

1. Up to 20 percent of the total Grant Funds may be issued as a one time advance. Expenditures must be accrued against the entire advance before any further disbursement of Grant Funds will be made.

Applies Does Not Apply

Exhibit I – Statement of Conditions

2. Grant Funds may be released to Grantee in a lump sum.

Applies Does Not Apply

3. Payment of Grant Funds shall be made by Grantor following receipt of Grantee's written request in form and substance required by Grantor from time to time. Payments of Grant Funds shall be subject to receipt and approval by Grantor of Grantee's invoices, quarterly reports, and other documentation in accordance with the Agreement, including the Exhibits. Grantee may submit requests for payment as costs are incurred but not more frequently than monthly, unless expressly agreed by Grantor in writing. Grantor reserves the right to withhold payment if Grantee's has not made satisfactory progress in accordance with the Agreement.

Applies Does Not Apply

4. The following special payment conditions apply:

a. Payment of Grant Funds shall be made if the actual expenditure of the Cost Share Amount equals at least 75% of the projected Cost Share Amount for the corresponding period as set forth in Exhibit V.

Applies Does Not Apply

b. Grantee is located outside Ohio. As a condition of the award of Grant Funds, Grantee must move to Ohio or create a Principal Place of Business (as that term is defined in Exhibit II) in Ohio within six (6) months after the date of notification of the award, and Grant Funds will not be disbursed until such conditions are satisfied.

Applies Does Not Apply

c. Grantee is receiving Grant Funds under the Third Frontier program, and Grantee is using Grant Funds to create a Pre-Seed Fund. Grantee may request disbursement of Grant Funds into the Pre-Seed Fund account only in proportion to the Cost Share Amount then being paid into the Pre-Seed Fund.

Applies Does Not Apply

5. Up to 10 percent of the total amount of Grant Funds awarded will be withheld until Grantor's receipt and approval of Grantee's final reports and completion of the Project.

Applies Does Not Apply

Exhibit I – Statement of Conditions

D. COST SHARE:

1. Subject to paragraph 1(f) of this Section D, the actual cost share ratio for the Project shall not be less than the required cost share ratio set forth in Exhibit II.

a. Cost share is required.

Applies Does Not Apply

b. The Cost Share Amount must be satisfied with cash only.

Applies Does Not Apply

c. The Cost Share Amount may be satisfied with cash and non-cash (in-kind) contributions to eligible expenses.

Minimum Cash Cost Share **\$500,000.00**

In-Kind Cost Share **\$0.00**

Applies Does Not Apply

d. General Revenue Funds (GRF) of the State of Ohio may not be used to fund, and shall not qualify as part of, the Cost Share Amount.

Applies Does Not Apply

e. Funds provided through any Third Frontier program may not be used to fund, and shall not qualify as part of, the Cost Share Amount.

Applies Does Not Apply

f. The cost share ratio set forth by Grantee in Exhibit V exceeds the minimum cost share ratio required by Exhibit II. The cost share ratio set forth in Exhibit V applies, and Grantee may not lower its cost share ratio at any time to the lower cost share ratio set forth in Exhibit II.

Applies Does Not Apply

Exhibit I – Statement of Conditions

g. Grantee has a published indirect cost rate. The difference, if any, between the percentage of indirect costs allowed by this Agreement and Grantee's published indirect cost rate is referred to as "unrecovered indirect costs." Grantee may count its unrecovered indirect costs as part of the Cost Share Amount. Notwithstanding the foregoing, in no event may the total of indirect costs counted as Project costs and unrecovered indirect costs counted against the Cost Share Amount exceed Grantee's actual indirect costs associated with the Project.

Applies Does Not Apply

h. Grantee does not have a published indirect cost rate. Grantee's indirect cost rate is deemed to be ten percent (10%) of direct Project costs. In addition to the indirect costs Grantee is permitted to account for as Project costs payable with Grant Funds (see Section B, paragraph (3) above), Grantee may count its deemed indirect cost as part of the Cost Share Amount. Notwithstanding the foregoing, in no event may the total of indirect costs counted as Project costs and indirect costs allowed to be counted against the Cost Share Amount exceed Grantee's actual indirect costs associated with the Project.

Applies Does Not Apply

i. Amounts claimed as part of Grantee's Cost Share Amount may be incurred by Grantee no earlier than January 12, 2009 and no later than the Project Completion Date.

Applies Does Not Apply

2. Expenditures to be counted against the Cost Share Amount shall be reported to Grantor as follows:

a. Grantee shall report cost share expenditures with each request for payment submitted to Grantor.

Applies Does Not Apply

b. Grantee shall report cost share expenditures to Grantor at least quarterly.

Applies Does Not Apply

c. Grantee shall report cost share expenditures in Grantee's Project Completion Report.

Applies Does Not Apply

E. REPORTING REQUIREMENTS:

Grantor reserves the right to determine the content and design the format of all reports required by the Agreement to be submitted by Grantee and to modify form and required content of

Exhibit I – Statement of Conditions

reports from time to time during the Term of the Agreement. Grantee acknowledges that the ultimate outcomes of State of Ohio funding are the creation of jobs, company formation, expansion and attraction of companies, and other positive impacts on the economy of the State of Ohio. Accordingly, Grantee agrees that it shall report timely and accurately the information requested by Grantor, including, without limitation, outcomes to the extent outcomes can be identified and attributed to Project activities.

1. Quarterly Progress Report: Grantee shall deliver to Grantor within thirty (30) days after the end of each calendar quarter of the Project Period a progress report covering the Grantee's activities on the Project during such calendar quarter.

Applies Does Not Apply

2. Quarterly Financial Report: Grantee shall deliver to Grantor quarterly financial report be delivered within thirty (30) days after the end of each calendar quarter of the Project Period. The report shall be a financial statement reflecting the sources and uses of funds according to generally accepted accounting principles. Expenditures will be detailed by separate line items. There will be separate columns for Grant Funds and Cost Share Amount for expenditures during the quarter covered by the report and for total expenditures-to-date. Any Project-related income must also be accounted for and reported separately. Grantee requests for disbursement of Grant Fund that coincide with the end of any given quarter in the Project Period and incorporate the financial information otherwise required to be presented in the Quarterly Financial Report may constitute the Quarterly Financial Report for such quarter provided such reporting mechanism is approved by Grantor in writing.

Applies Does Not Apply

3. Project Completion Report: Grantee shall submit to Grantor a final Project report within forty-five (45) days after the Project Completion Date. The final Project report shall be a comprehensive report of the Project for the entire Project Period and including, among other things, a complete technical report of the Project and outcomes. The progress report due for the final calendar quarter during the Project Period may constitute the final Project report. A final financial report shall be submitted within ninety (90) days after the Project Completion Date. This final financial report shall be a comprehensive report of the covering the entire Project Period.

Applies Does Not Apply

4. Metric Reports: Grantee shall deliver to Grantor metric follow-up reports for the Project at least twice each year during the Term of the Agreement. The form and timing of metric reports will be determined by Grantor.

Applies Does Not Apply

Exhibit I – Statement of Conditions

5. Annual Progress Report: Grantee shall deliver the Grantor an annual progress report within thirty (30) days of the anniversary of the Project Completion Date for a period of three (3) years after the Project Period. The report shall cover Grantee's activities on the Project during the previous twelve (12) month period.

Applies Does Not Apply

6. Site Visits and Review Meetings: Grantee's reporting requirements are in addition to site visits and review meetings that may be conducted from time to time as provided in the Agreement.

Applies Does Not Apply

7. Additional Information: Grantor reserves the right to require Grantee to provide from time to time any other documentation that may supplement or clarify the explanation or tracking of Project data. Grantee shall respond promptly to any Grantor request for additional information related to Grantee's activities in connection with the Project. The reasonable cost incurred by Grantee to prepare and deliver such additional data and information shall constitute eligible expenses of the Project.

Applies Does Not Apply

F. OTHER CONDITIONS:

1. Board Meetings: A representative of Grantor may attend meetings of [Grantee's or Project's] Grantee's board of directors, advisory board, or other governing body. Grantee shall inform Grantor in advance of Grantee board meetings with sufficient notice to enable Grantor to send a representative to the meeting.

Applies Does Not Apply

2. Collaboration: Grantee shall make a good faith effort to collaborate with other State of Ohio programs and State of Ohio program grantees that are not in direct competition with Grantee to provide technical assistance to similar and related activities.

Applies Does Not Apply

3. Place of Business: Grantee shall maintain a Principal Place of Business (as that term is defined in Exhibit II) in the State of Ohio during the Term of this Agreement. Grantee's Principal Place of Business shall be as set forth in Exhibit V or as otherwise identified in writing to Grantor.

Applies Does Not Apply

4. Pre-Seed Tax Credit: In all cases where Grantee is both a recipient of grants from the Third Frontier Pre-Seed Fund initiative and participates as an investor seeking a technology

Exhibit I – Statement of Conditions

investment tax credit under Ohio Revised Code § 122.15, Grantee shall limit the amount of the tax credit claimed to the percentage of Grantee's investment comprised of Grantee's Cost Share Amount. Grantee shall not claim or receive a tax credit for any part of its investment made with Grant Funds.

Applies Does Not Apply

5. Key Personnel: Key Personnel are identified in Exhibit V, and Grantor and Grantee agree that those individuals are essential to the satisfactory performance of the Project.

a. Principal Investigator: The one individual designated by Grantee and approved by Grantor who will be responsible for the scientific or technical direction of the Project.

Applies Does Not Apply

b. Executive (Center) Director (President): The authorized organizational grant official designated by Grantee and approved by Grantor responsible for administration of the Project and use of Grant Funds and Grantee's performance of the Agreement.

Applies Does Not Apply

c. Co-Investigators/Project Directors/Project Managers: The individual(s) designated by Grantee and approved by Grantor to manage the scientific or technical directions of the major areas of focus or sub-projects (program areas) of the Project.

Applies Does Not Apply

d. Within [0] years of the Effective Date, Grantee shall recruit and hire [0] individuals with prominence in disciplines that will contribute to the technical and commercialization excellence of the Wright Mega-Center of Innovation.

Applies Does Not Apply

6. Acknowledgments: In addition to acknowledging the State of Ohio, in general, for financial support of the Project, Grantee shall acknowledge the following as applicable.

The form of the acknowledgment shall be as follows unless a different form is expressly approved in writing by Grantor: **“Energy Technologies Inc., acknowledges the contribution of the State of Ohio, Department of Development and entity(ies)/program(s) identified below, which provided funding in support of the Development of a High-Volume Manufacturing Production Process for Metal Hydride Fuel Cell Stack and Systems project.”**

a.) Third Frontier Commission

Applies Does Not Apply

Exhibit I – Statement of Conditions

b.) Thomas Edison Program

Applies Does Not Apply

c.) Any federal agency that is the source of any of the Grant Funds awarded to Grantee under the Agreement.

Applies Does Not Apply

7. Encouraging Diversity, Growth and Equity (EDGE) Program: Grantee must actively pursue the objectives and goals of the EDGE Program as set forth in Ohio Revised Code 123.152.

Applies Does Not Apply

8. Conferences and Events: From time to time during the Term of the Agreement, Grantee may organize conferences or other events open to industry representatives or the general public related to the Project, the subject matter of the Project or associated work of Grantee or its Collaborators. In consideration of the Grant, up to two (2) representatives of Grantor may attend such conferences and events for the purposes of sharing information between Grantee, its Collaborators and other constituents, and Grantor. Grantee shall provide Grantor reasonable advance notice of any such conferences and events. Grantor will not be charged registration fees to attend such events.

Applies Does Not Apply

EXHIBIT III
COST SHARE GUIDELINES

Exhibit III – Cost Share Guidelines

**OHIO DEPARTMENT OF DEVELOPMENT
COST SHARE GUIDELINES FOR GRANT AGREEMENT**

All capitalized terms used but not otherwise defined in these Cost Share Guidelines shall have the meanings given them in the Grant Agreement to which this Exhibit is attached.

Grantee will adhere to the cost share requirements set forth in this Exhibit governing the identification and use of resources other than Grant Funds for eligible expenses of the Project.

The Cost Share Amount may be provided in cash or in kind as designated in Exhibit I to the Agreement. Cash and in-kind contributions to the Cost Share Amount may be as follows:

- A. Cash counted against the Cost Share Amount includes eligible expenses of the Project (1) incurred to perform activities in direct support of the Project during the Project Period; (2) charged to resources of Grantee or of a subgrantee or subcontractor engaged by Grantee on the Project, and (3) documented in Grant Accounts or in the Grant-related financial books and records of the subgrantee or subcontractor, as the context requires. Cash contributions to the Cost Share Amount include resources other than Grant Funds provided by a third party to Grantee, a subgrantee or subcontractor, or to a parent organization specifically for the use or support of Grantee, a subgrantee or a subcontractor, which are actually used to perform Project activities.
- B. In-kind contributions to the Cost Share Amount include the value of goods and/or services which are an eligible expense of the Project (1) supplied by Grantee, a subgrantee, subcontractor or other third party during the Project Period, (2) received by Grantee, a subgrantee or subcontractor during the specific period to which the cost sharing or matching requirement applies and used by Grantee, a subgrantee or subcontractor to perform activities in direct support of the Project, but (3) which are not separately accounted for by Grantee in the Grant Accounts or by a subgrantee or subcontractor in its respective Grant-related financial books and records.

General Conditions and Restrictions:

- A. Contributions to the Cost Share Amount must be for eligible expenses consistent with the then-current version of Federal Office of Management and Budget Circular A-21 and must be accessible to verification and audit.
- B. Contributions to the Cost Share Amount must provide direct support for the Project. Expenditures that provide coincidental benefits to or support for the Project may not be counted against the Cost Share Amount. All resources counted against the Cost Share Amount must be necessary and reasonable considering the Project objectives and the activities to be performed as part of the Project.
- C. Contributions, whether cash or in-kind, may not be counted against the Cost Share Amount if the same resources are used to satisfy the cost share requirement of any other funding program.

Exhibit III – Cost Share Guidelines

- D. Contributions of financial support, both cash and in-kind, included as part of the Project's Cost Share Amount must be made between the start date as set forth in Exhibit I and the Project Completion Date.
- F. Grantee may request Grantor approval of financial support for the Project that does not meet the cost share requirements set forth above. Any such request shall be made by Grantee in writing, and such financial support may be counted against the Cost Share Amount only if and to the extent approved by Grantor in writing prior to the contribution of such financial support. Grantor may give or withhold approval within its discretion.
- G. Value of Contributed Goods and Services.
- 1.) Services are contributed to a Project (*i.e.*, donated services) when an individual employed by the contributor of the donated services works to perform Project activities without charge to Grantee, a subgrantee or subcontractor. The value of donated services will be an amount equal to the individual's regular rate of pay from the contributor of the individual's services, including fringe benefits up to 30% of base pay, for the period of time during which the individual performs Project activities *provided that* the individual whose services are contributed perform functions for Grantee, a subgrantee or subcontractor equivalent to the services for which the individual is compensated by the contributor.
 - 2.) The value of supplies and materials contributed to the Project will be an amount equal to the fair market value of such supplies and materials at the time they are contributed to Grantee, a subgrantee or subcontractor. Grantee shall provide documentation supporting its determination of the fair market value of such supplies and materials.
 - 3.) In-kind contributions may include use of equipment and/or space (facilities) which are necessary and reasonable for the Project. The value of the use of equipment and/or space (facilities) will be an amount equal to their fair rental value of the equipment and/or space at the time it is contributed to Grantee, a subgrantee or subcontractor. Grantee shall provide documentation supporting its determination of the fair rental value of such equipment and/or space (facilities).
 - 4.) In-kind contributions may include transfer of ownership to equipment, buildings, and/or land which are necessary and reasonable for the Project. The value of any such equipment, buildings, and/or land will be an amount equal to its respective fair market value at the time the equipment, buildings, and/or land is contributed to Grantee, a subgrantee or subcontractor. Grantee shall provide documentation supporting its determination of the fair market value of such equipment, buildings and/or land.
- H. Documentation of all contributions to the Cost Share Amount must identify the source of the contribution and its address, state the value of the contribution (whether made in cash or in-kind), and provide as to any in-kind contribution a reasonably detailed description of the method of valuation of such contribution.

Exhibit III – Cost Share Guidelines

- I. Grantee shall maintain in its records related to the Project documentation sufficient to verify all Project costs and contributions claimed as part of the Cost Share Amount, including the supporting documentation for valuation of in-kind contributions. Cost share documentation will be subject to inspection and audit as provided in the Agreement.

- J. Certification of Cost Share:
 - 1.) The method and frequency of reporting contributions to the Cost Share Amount, whether made in cash or in-kind is the same as financial reporting for the Grant Funds.
 - 2.) Grantee must identify cash and in-kind contributions to the Cost Share Amount in separate columns in its financial reports to Grantor.
 - 3.) Grantee shall maintain during the Project Period an itemized list of in-kind contributions to the Cost Share Amount. Grantee shall make such list available to Grantor for review upon request.

- K. Modification of Cost Share Guidelines: Grantor may revise the Cost Share Guidelines from time to time. Any changes to the Cost Share Guidelines shall be effective upon delivery of written notice to Grantee and shall apply prospectively.

FIRST AMENDMENT TO GRANT AGREEMENT

THIS FIRSTAMENDMENT TO GRANT AGREEMENT (the "First Amendment") is made and entered by and between the **State of Ohio, Department of Development** (the "Grantor"), and **Energy Technologies, Inc.** (the "Grantee"). This First Amendment shall have Control Number **TECH 09-059A**.

BACKGROUND INFORMATION

- A. The Grantor and Grantee entered into a Grant Agreement dated February 19, 2009 with Control Number TECH 09-059 (the "Agreement").
- B. The Grantor and the Grantee desire to modify certain provisions of the Agreement as provided herein.

STATEMENT OF THE AGREEMENT


NOW, THEREFORE, in consideration of the mutual covenants contained herein, Grantor and Grantee agree as follows:

- 1. Article 4.1 is hereby deleted and replaced with the following:
 - 4.1 Effective Date, Completion Date and Grant Expiration Date.** This Agreement shall be effective on January 12, 2009 (the "Effective Date"). Grantee shall complete the Project and incur all eligible expenses not later than July 31, 2011 (the "Project Completion Date"). This Agreement shall expire 3 years after that Project Completion Date (the "Grant Expiration Date"). The period of time from the Effective Date until the Project Completion Date shall be referred to as the "Project Period." The period of time from the Effective Date until the Grant Expiration Date shall be referred to the "Term of the Agreement."
- 2. Except as modified herein, all terms, covenants and conditions contained in the Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have duly executed this First Amendment to Grant Agreement as of the last date set forth below:

GRANTEE:

Energy Technologies, Inc.

By: 
 Print Name: Timothy J Lowe
 Title: VP
 Date: 12/20/10

GRANTOR:

**State of Ohio
Department of Development**

Lisa Patt-McDaniel
Director
Ohio Department of Development

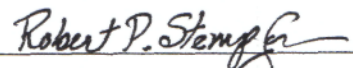
By: 
 Print Name: Robert P. Stempfer
 Title: Deputy Chief Legal Counsel
 Date: DECEMBER 22, 2010

EXHIBIT 2

Energy Technologies, Inc.


Rugged Power <> Global Solutions
 219 Park Avenue East
 Mansfield, OH 44902-1845
 Tel (419)522-4444 Fax (419)522-4466
 email: sales@ruggedsystems.com
 CAGE CODE# OXBF7 DUNS# 78-6815787

PURCHASE ORDER

Date: 12/03/10 P.O. No.: 2010112175
 Page No.: 1

Ovonic Fuel Cells Energy Conversion Devices, Inc. Rob Privette 2983 Waterview Dr. Rochester Hills MI 48309	Ship To/Remarks
--	-----------------

SHIP VIA	FOB		YOUR REFERENCE FUEL CELL	OUR REFERENCE
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DESCRIPTION PART NUMBERS	ORDERED UNIT MEASURE	UNIT PRICE ITEM DISCOUNT	EXTENDED AMOUNT
<p>This purchase order is not to exceed \$60,000. This is for additional service regarding Tech08-056 per the email agreement on 11/11/10 & 12/06/10 between Rob Privette and Tim Lowe. Internal P/N: Signature  Internal P/N:</p> <p style="text-align: center;"><i>OK M/G 12-9-10</i></p>			60000.00

SUB-TOTAL	60000.00
TAX	0.00
NET TO PAY	60000.00

Privette, Robert

From: Privette, Robert
Sent: Monday, December 06, 2010 10:41 AM
To: 'Tim D Lowe PhD - ETI'
Cc: Sam Kehl (sekehl@ruggedsystems.com); Wong, Diana; Roberts, Steve; Zallen, Avi; Zelinsky, Mike
Subject: RE: TECH 08-056

Tim,
Based on your direction during our telecom last week, we understand that ETI will perform the assembly of the Tactical Power Plant. Your PO for \$60K reflects this change from the originally proposed work for \$68,640.

Also as we discussed, the proposal below is a best estimate of the hours and cost necessary to complete the TPP system demonstration. We will charge the work performed to accomplish this task up to, but not exceeding the value of the PO (\$60K). The Cost Management Report will be used to communicate these costs as you have requested.

Best regards,
Rob

From: Privette, Robert
Sent: Thursday, November 11, 2010 10:35 AM
To: Tim D Lowe PhD - ETI
Subject: FW: TECH 08-056

Tim,
As requested, below is a proposal for ECD participation in completing the tactical power plant (TPP) system demonstration at ETI's Rochester Hills facility.

Rob

Assumptions

Assume ETI and ECD collaborate to complete the overall system design building on all work and components acquired and/or developed to date

Assume ETI is responsible for

- a) design, fabrication, interface dwgs and delivery of all power electronics including battery, inverter, power conditioner modules,
- b) all TPP material and component purchases (ECD will spec components and provide info to ETI for purchase)
- c) procurement and fabrication of air scrubber incl. leak test, fill with soda lime
- d) supply of tactical case and internal rack

Assume ECD is responsible for:

- a) completion of system mechanical design including layout drawings and bill of materials
- b) hazop review and approval
- c) design, specification, drawings, assembly, configuration, debug/ validation of:
 - a. balance of plant controls (incl hydrogen sense and emergency shutdown)
 - b. data acquisition
- d) system assembly and checkout incl power electronics, balance of plant, stack, controls, instrumentation
- e) system operating documents
- f) hydrogen test facilities
- g) system operating demonstration on hydrogen with metal hydride fuel cell stack

Assume ETI resources (Sam Kehl) support on project is continuous throughout duration until system demonstration is complete including frequent communication (teleconference, e-mail, etc), action follow-up and in-person meetings at ECD supporting the collaboration

Assume hydrogen source for TPP demonstration is ECD house hydrogen, air is ambient, load is ETI light bulb bank or equivalent

Work Breakdown and estimated labor time

- 1) Complete the system design – **8 man weeks**
 - a. Mechanical (incl CAD models and/or drawings)
 - b. Electrical (incl FC stack connections, power electronic wiring connections, balance of plant control, instrumentation drawings)
 - c. Data Acquisition (incl specification, algorithm dev, coding, debug & documentation)
 - d. Specify mechanical and electrical components, document system Bill of materials
 - e. Hazop analysis
- 2) Assemble system (mechanical & electrical) – **8 man weeks**
 - a. Perform leak testing of all system fluid loops
 - b. Perform electrical check of all electrical components
- 3) Perform system functional check (batt, inverter/ pwr conditioner, balance of plant, instrumentation, DAS, control circuits) – **8 man weeks**
 - a. debug balance of plant control & monitoring & data acquisition hardware and software modules
 - b. update mechanical & electrical drawings and bill of materials
 - c. document operating instructions
 - d. calibrate system flow loops and specific associated control module parameters
 - e. complete Hazop approval for operation
 - f. prepare hydrogen test hood for TPP hydrogen operation
- 4) Install fuel cell stack and perform operational testing – **2 man weeks**
 - a. 40-cell “Debug” fuel cell stack
 - b. 124-cell “Deliverable” fuel cell stack

Est. 26 man weeks / 4 = 6.5 man months ~ 2.2 people for 3 months

Cost

ECD will bill ETI for actual Time

Labor category: Engineer

Labor billing rate: \$66

No. labor hours: 1,040 hours

Total Not to Exceed Cost: **\$68,640**

EXHIBIT 3

Energy Technologies, Inc.

Rugged Power <> Global Solutions
 219 Park Avenue East
 Mansfield, OH 44902-1845
 Tel (419)522-4444 Fax (419)522-4466
 email: sales@ruggedsystems.com
 CAGE CODE# 0XBF7 DUNS# 78-6815787

PURCHASE ORDER

Date: 08/25/10 P.O. No.: 2010111754
 Page No.: 1

OVONICS
 Energy Conversion Devices, Inc.
 Rob Privette
 2983 Waterview Dr.
 Rochester Hills MI 48309

Ship To/Remarks

SHIP VIA	FOB	YOUR REFERENCE	OUR REFERENCE
		FUEL CELL	

DESCRIPTION	ORDERED	UNIT PRICE	EXTENDED
PART NUMBERS	UNIT MEASURE	ITEM DISCOUNT	AMOUNT
This purchase order is for \$300,000.00 which incorporates by reference the "Collaborator Summary Sheet" dated August 25, 2010. Signature: <u><i>K.S. Dougherty</i></u>			300000.00

SUB-TOTAL	300000.00
TAX	0.00
NET TO PAY	300000.00

**STATE OF OHIO GRANT AGREEMENT TECH 10-060
COLLABORATOR SUMMARY SHEET**

August 25, 2010

Lead Applicant

Energy Technologies, Inc.
219 Park Ave East
Mansfield, OH 44902-1845

Project Director: Tim D. Lowe, PhD

Phone #: (419)522-4444
Fax #: (419)522-4466
E-Mail: tdlowe@ruggedsystems.com

Collaborator

Energy Conversion Devices, Inc.
2983 Waterview Drive
Rochester Hills, MI 48309

Technical Contact: Robert M. Privette PE

Phone #: (248)293-7015
Fax #: (248)299-4228
E-Mail: rprivette@ovonic.com

This is a summary of the agreement between **Energy Technologies, Inc. ("ETI")** and **Energy Conversion Devices, Inc. ("ECD")** pursuant to the State of Ohio Third Frontier cost-sharing Grant Agreement Tech 10-060 ("Grant Agreement") awarded to ETI on March 1st, 2010.

Background

ECD is participating as a collaborator with ETI to support the fuel Cell stack activities defined in the work plan for this project. ECD's not-to-exceed funding is \$300,000.00 for this work and is listed in the Third Frontier Fuel Cell Program proposal dated 9/15/2009 as summarized below:

Budget by Cost Element

Description	Grant Agreement \$	ECD Cost Share \$	Total Project Cost
Personnel/Fringe	\$229,813	\$229,813	\$459,626
Indirect	\$50,000	\$50,000	\$100,000
Labor Subtotal	\$279,813	\$279,813	\$559,626
Supplies	\$19,437	\$19,437	\$38,874
Purchased Services	\$0	\$0	\$0
Travel	\$750	\$750	\$1,500
Other Direct Costs	\$0	\$0	\$0
Total Project	\$300,000	\$300,000	\$600,000

ECD may submit requests for payment on a quarterly basis as permitted by the State of Ohio Grant Exhibit I requirements. Monthly request for payment may be submitted for any approved invoices (Approval is defined as: Approval for submission by the Award Prime Contracts (ECD Prime Contact – Robert Privette and the ETI Prime Contact – Tim Lowe PhD)) where accumulated unbilled amounts will exceed \$50,000 by the following month.

Approved invoices shall be paid subject to ECD's standard Net 30 Terms. ECD will submit a Cost Management Report as support for all payment of grant funds.

EXHIBIT 4

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

In re:

**ENERGY CONVERSION DEVICES, INC.,
et al.,¹**

Debtors.

Chapter 11

Case No. 12-43166
(Jointly Administered)

Judge Thomas J. Tucker

ENERGY CONVERSION DEVICES, INC.,

Plaintiff,

v.

ENERGY TECHNOLOGIES, INC.,

Defendant.

Adv. Proc. No. _____

Declaration of Account Stated

Gregory G. Coppola declares as follows:

1. I am employed as the Senior VP Finance and Treasurer for Energy Conversion Devices, Inc. (“ECD” or “Debtor”).

2. I have personal knowledge of the facts below and/or have examined records relating to the same. If called as a witness I would be competent to testify with respect to the facts below.

¹ The Debtors in these jointly-administered cases are Energy Conversion Devices, Inc. (Case No. 12-43166) and United Solar Ovonic LLC (Case No. 12-43167).

3. I supervise the maintenance of and entries into ECD's accounting and billing records. Entries are posted contemporaneously with the charges or payments they represent.

4. I have reviewed, or caused to be reviewed, the pertinent accounting records and entries related to the account of Energy Technologies, Inc. ("**ETI**") with ECD. The charges made and the payments credited to ETI's account were made in accordance with ECD's regularly conducted business activities and the terms of the applicable purchase orders and/or invoices between ETI and ECD.

5. ECD has sent invoices to ETI for the amounts ETI owes to ECD.

6. Attached as **Exhibit A** is ECD's January 26, 2012, letter to ETI (the "**January 26, 2012 Letter**"), including copies of Invoice JC10056, Invoice JC10057, Invoice JC10058, Invoice JC10059, Invoice JC10063, Invoice JC10064, and Invoice JC10073 (the "**Invoices**"), which were attached to the January 26, 2012 Letter, demanding that ETI pay the amounts due under the Invoices and pick up the fuel stacks.

7. On April 13, 2012, I sent ETI a letter (the "**April 13, 2012 Letter**"), to which I attached the January 26, 2012 Letter, including the Invoices, demanding that ETI pay the \$158,494 due under the invoices and make arrangements to pick up the fuel stacks. A copy of my April 13, 2012 Letter, without attachments, is attached as **Exhibit B**.

8. The Invoices attached to the January 26, 2012 Letter, which were also attached to my April 13, 2012 Letter, are the most recent invoices sent to ETI.

9. ECD has not received any objections from ETI as to the amount of its debt to ECD.

10. The amount of \$158,494 owed by ETI has not been paid as of the date of this affidavit.

11. I have read ECD's complaint in this action and all factual allegations contained therein are true and accurate to the best of my knowledge, information, and belief.

I make this Declaration under penalty of perjury.



Gregory G. Coppola

Auburn Hills, Michigan

Dated: June 14, 2012

ACTIVE.10920699.2

EXHIBIT A



2983 Waterview Drive, Rochester Hills, MI 48309

Telephone 248.293.0440 Fax 248.299.4228

Dan Madden
Chief Executive Officer
Energy Technologies, Inc.
219 Park Avenue East
Mansfield, OH 44902-1845

January 26, 2012

Dear Dan,

This is a follow-up to a January 5, 2011 teleconference between Tim Lowe and Nathan English in which ETI professed a lack of knowledge the fuel cell operations of Energy Conversion Devices (ECD) and Ovonic Fuel Cell Co. (OFC) were being wound down.

Over 1 year ago, ETI was informed that ECD, with the assistance of Quarton Partners LLC (a local investment group), was seeking to divest itself of OFC. Although ETI was, on multiple occasions, provided information regarding the sale, ETI has not previously voiced either a statement of interest or concerns regarding future product availability. While a large number of companies were also contacted regarding the sale of OFC, no offer was made and ECD remains the owner. Last June, Mr. Lowe was informed ECD was likely to discontinue fuel cell operations. That prediction has now come true. Since final fuel cell stack deliverables have been completed, thereby fulfilling its contractual obligations to ETI, OFC's fuel cell activities will be mothballed.

Further, ECD is now completing a transaction for the sale of Ovonic Battery Company (OBC). This is significant because OFC personnel are now working on OBC projects and ECD has neither the desire nor technical bandwidth necessary to conduct further fuel cell development work.

OFC and ETI have been cooperating for over five years and during this time ETI has received three state of Ohio contracts on which OFC has collaborated as a sub-contractor. For the first contract, TECH08-056, OFC implemented a total stack redesign in order to better suit ETI's needs. OFC also made considerable improvements to the stack design by developing over-molding and laser welding techniques for stack sealing. In October of 2010, ETI confirmed by email that OFC had completed all the contractual obligations of the program and asked OFC to store the 2 kW stack built for ETI. After 15 months of storage, no request for delivery has been made. Similarly, OFC completed contract TECH09-059 this past year and built another 2 kW stack. ETI has not as yet taken delivery of this second stack.

AVONIC@MINDK

Energy Conversion Devices, Inc.



In view of ECD's decision to have OBC focus its resources on battery work, over the past year, OFC's sole fuel cell activity was to fabricate stacks for the TECH10-060 contract. To date, OFC has fabricated five 1 kW stacks for this contract and they, in addition to the two 2 kW stacks from the earlier contracts, are ready for delivery to ETI. At the present time we have 7 fuel cell stacks prepared, tested and awaiting ETI's delivery instructions. It is inconceivable that ETI can voice any complaint about OFC activities in support of the contract or the mothballing of further fuel cell work when ETI has not as yet accepted delivery of stacks made as much as 15 months ago. In addition, it has also come to my attention that ETI is greatly delinquent in paying OFC for work performed over the past four months.

At the present time, OFC has sufficient components to make one additional 1 kW stack. As a gesture of good will, OFC is willing to either (i) transfer these components to ETI, or (ii) train ETI or Innoventure personnel on stack assembly and testing. In view of the pending completion of the sale of OBC, if ETI is interested in availing itself of this training opportunity, we strongly urge you to notify us of your intentions so such activities can be conducted prior to sale completion.

While OFC is prepared to deliver to ETI stacks and components amounting to 8 fuel cell stacks, OFC must first be reimbursed for completed work under the contract. To date, ETI has not reimbursed OFC for invoices amounting to \$158k, of which \$108k is more than 90 past due. Please let us know when the finances will be brought up to date.

Sincerely,



Michael Fetcenko
President
OBC and OFC

Cc: M. Siskind
N. English
T. Lowe

Energy Conversion Devices, Inc.

Energy Conversion Devices, Inc.





Energy Conversion Devices
 2983 Waterview Drive
 Rochester Hills, MI 48309

Invoice

INVOICE NUMBER
 JC10056

REMIT TO: Energy Conversion Devices
 Dept 771435
 P.O. Box 77000
 Detroit, MI 48277-1435

Billed To: Cust# 11005			
Energy Technologies, Inc. Attn: Accounts Payable 219 Park Avenue East Mansfield, OH 44902-1845			
Invoice Date	Period Covered	Purchase Order Number	Terms
8-Jul-2011	For Period of 4/1/11 to 6/30/11	2008110002	Net 30 days
Item	Description	Current Period	Cumulative Phase
Quarterly invoice per	Fuel Cell stack activities in support of State of Ohio Third Frontier grant agreement TECH 09-059 attached Cost Management Report	79,850.00	277,932.00
	Subtotal	79,850.00	277,932.00
	INVOICE TOTAL	\$ 79,850.00	

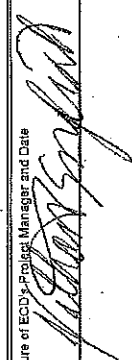
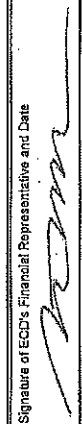
I certify that this invoice is correct and proper for payment, and reimbursement for these costs has not and will not be received under any other Government or Subcontractor or other source of Government funds.

Steven W. Roberts, Contract Cost Accountant

8-Jul-2011

Date

CUSTOMER ORIGINAL

1. Grant Identification		State of Ohio and Energy Technologies, Inc. - 1710 Third Frontier Fuel Cell Program		2. Reporting Period		1-Apr-2011 through 30-Jun-2011		3. Grant Number		ETIPO# 2008110002		
4. Collaborator		ENERGY CONVERSION DEVICES, INC. 2983 WATERVIEW DRIVE ROCHESTER HILLS, MI 48309		12. Number of Invoices Paid		8		6. Grant Start Date		2/19/2009		
8. Government Funding		\$150,000		11. Frequency		Quarterly		13. Total Invoices Amounts Billed		\$277,932		
15. Identification Number	16. Reporting Category (e.g., Grant line item or work breakdown structure element)	17. Accrued Costs During Reporting Period		Cumulative to Date		18. Estimated Accrued Costs		C. Total Grant	19. Total Grant Value	20. Variance	21. Unfiled Orders Outstanding	
		a. Actual	b. Planned	c. Actual	d. Planned	Year 1	Year 2					
	DIRECT LABOR	69,848	0	233,202	0	118,758	119,273	238,031				
40.00%	LABOR FRINGE	27,939	0	93,281	0	52,621	52,848	105,469				
	DIRECT MATERIAL & SUPPLIES	7,930	0	40,697	0	19,599	19,599	39,198				
		0	0	0	0	0	0	0				
	OUTSIDE SERVICES	0	0	0	0	8,026	8,018	16,044				
	SUBCONTRACT (ODC)	0	0	0	0	0	0	0				
	TRAVEL	88	0	3,075	0	1,315	2,337	3,652				
	SUB TOTAL	105,805	0	370,255	0	200,319	202,075	402,394				
20.00%	GENERAL AND ADMINISTRATIVE	13,970	0	46,641	0	23,751	23,355	47,606				
		0	0	0	0	0	0	0				
	TOTAL COST	119,775	0	416,896	0	224,070	225,930	450,000				
	ETI/OHIO SHARE (66.86%)	79,850	0	277,932	0	149,380	150,620	300,000				
	ECD SHARE (33.34%)	39,925	0	138,964	0	74,690	75,310	150,000				
22.	Total											
23. Remarks:												
										24. Dollars Expressed In:		DOLLARS
										1 Remaining Months		\$ 22,068 Remaining Funds
25. Signature of ECD's Project Manager and Date										26. Signature of ECD's Financial Representative and Date		27. Signature of ETI's Representative and Date
												7-Jul-2011



Energy Conversion Devices
 2983 Waterview Drive
 Rochester Hills, MI 48309

Invoice

INVOICE NUMBER
 JC10057

REMIT TO: Energy Conversion Devices
 Dept 771435
 P.O. Box 77000
 Detroit, MI 48277-1435

Billed To: Cash # 1005			
Energy Technologies, Inc. Attn: Accounts Payable 219 Park Avenue East Mansfield, OH 44902-1845			
Invoice Date	Period Covered	Purchase Order Number	Terms
8-Jul-2011	For Period of 4/1/11 to 6/30/11	2010111754	Net 30 days
Item	Description	Current Period	Cumulative Phase
Quarterly invoice per	Development of a High-Volume Manufacturing Process for Metal Hydride Fuel Cell Stacks and Systems in support of State of Ohio Third Frontier grant agreement TECH 10-060 attached Cost Management Report	946.00	7,843.00
	Subtotal	946.00	7,843.00
	INVOICE TOTAL	\$ 946.00	

I certify that this invoice is correct and proper for payment, and reimbursement for these costs has not and will not be received under any other Government or Subcontractor or other source of Government funds.


 Steven W. Roberts, Contract Cost Accountant

8-Jul-2011
 Date

CUSTOMER ORIGINAL

1. Grant Identification		State of Ohio and Energy Technologies, Inc. - 1716 Third Frontier Fuel Cell Program - FY10		2. Reporting Period 1-Apr-2011 through Report 0003		3. Grant Number ETI PO# 2010111754 PRIME # TECH 10-060	
4. Collaborator		ENERGY CONVERSION DEVICES, INC. 2956 WATERVIEW DRIVE ROCHESTER HILLS, MI 48309		6. Grant Start Date 8/25/2010		7. Grant Completion Date 2/28/2012	
5. Government Funding		8. Collaborator Funding \$300,000		11. Frequency Quarterly		13. Total Invoice Amounts Billed \$7,843	
15. Reporting Category (e.g., Grant line item or work breakdown structure element)		16. Reporting Category (e.g., Grant line item or work breakdown structure element)		17. Accrued Costs During Reporting Period		18. Estimated Accrued Costs	
15. Identification Number	16. Reporting Category	17. Accrued Costs	18. Estimated Accrued Costs	19. Total Grant Value	20. Variance	21. Unfilled Orders	22. Outstanding
		a. Actual	b. Planned	c. Total Grant			
		Cumulative to Date					
		c. Actual					
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Energy Conversion Devices
 2983 Waterview Drive
 Rochester Hills, MI 48309

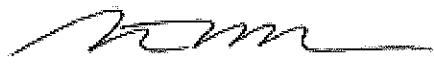
Invoice

INVOICE NUMBER
 JC10058

REMIT TO: Energy Conversion Devices
 Dept 771435
 P.O. Box 77000
 Detroit, MI 48277-1435

Billed To: Cost# 11005			
Energy Technologies, Inc. Attn: Accounts Payable 219 Park Avenue East Mansfield, OH 44902-1845			
Invoice Date	Period Covered	Purchase Order Number	Terms
8-Jul-2011	For Period of 3/1/11 to 6/30/11	2010112175	Net 30 days
Item	Description	Current Period	Cumulative Phase
Monthly invoice per	Additional service NTE \$60,000 regarding State of Ohio Third Frontier grant agreement TECH 08-056 attached Cost Management Report	5,657.00	60,921.00
	Subtotal	5,657.00	60,921.00
	INVOICE TOTAL	\$ 5,657.00	

I certify that this invoice is correct and proper for payment, and reimbursement for these costs has not and will not be received under any other Government or Subcontractor or other source of Government funds.


 Steven W. Roberts, Contract Cost Accountant

8-Jul-2011
 Date

CUSTOMER ORIGINAL



Energy Conversion Devices
 2983 Waterview Drive
 Rochester Hills, MI 48309

Invoice

INVOICE NUMBER
 JC10059

REMIT TO: Energy Conversion Devices
 Dept 771435
 P.O. Box 77000
 Detroit, MI 48277-1435

Billed To: Cost# 11005			
Energy Technologies, Inc. Attn: Accounts Payable 219 Park Avenue East Mansfield, OH 44902-1845			
Invoice Date	Period Covered	Purchase Order Number	Terms
24-Aug-2011	For Period of 7/1/11 to 7/31/11	2008110002	Net 30 days
Item	Description	Current Period	Cumulative Phase
	Fuel Cell stack activities in support of State of Ohio Third Frontier grant agreement TECH 09-059		
FINAL invoice per	attached Cost Management Report	21,673.00	299,605.00
	Subtotal	21,673.00	299,605.00
	INVOICE TOTAL	\$ 21,673.00	

I certify that this invoice is correct and proper for payment, and reimbursement for these costs has not and will not be received under any other Government or Subcontractor or other source of Government funds.


 Steven W. Roberts, Contract Cost Accountant

24-Aug-2011
 Date

CUSTOMER ORIGINAL



Energy Conversion Devices
 2983 Waterview Drive
 Rochester Hills, MI 48309

Invoice

INVOICE NUMBER
 JC10063

REMIT TO: Energy Conversion Devices
 Dept 771435
 P.O. Box 77000
 Detroit, MI 48277-1435

Billed To: Cnst# 11005			
Energy Technologies, Inc. Attn: Accounts Payable 219 Park Avenue East Mansfield, OH 44902-1845			
Invoice Date	Period Covered	Purchase Order Number	Terms
10-Oct-2011	For Period of 7/1/11 to 9/30/11	2010111754	Net 30 days
Item	Description	Current Period	Cumulative Phase
Quarterly invoice per	Development of a High-Volume Manufacturing Process for Metal Hydride Fuel Cell Stacks and Systems in support of State of Ohio Third Frontier grant agreement TECH 10-060 attached Cost Management Report	15,486.00	23,329.00
	Subtotal	15,486.00	23,329.00
	INVOICE TOTAL	\$ 15,486.00	

I certify that this invoice is correct and proper for payment, and reimbursement for these costs has not and will not be received under any other Government or Subcontractor or other source of Government funds.

Steven W. Roberts, Contract Cost Accountant

10-Oct-2011
 Date

CUSTOMER ORIGINAL

1. Grant Identification		State of Ohio and Energy Technologies, Inc. - 1716		3. Grant Number		ETI PO# 201011754	
4. Collaborator		ENERGY CONVERSION DEVICES, INC. 2966 WATERVIEW DRIVE ROCHESTER HILLS, MI 48309		PRIME # TECH 10-060			
8. Government Funding		9. Collaborator Funding		12. Reporting Period		13. Total Invoice Amounts Billed	
\$300,000		\$300,000		1-Jul-2011 through 30-Sep-2011		\$23,329	
16. Reporting Category (e.g. Grant line item or work breakdown structure element)		10. Number of Invoices Billed		11. Frequency		14. Total Payment Received	
		1		Quarterly		\$6,897.00	
15. Identification Number	17. Accrued Costs During Reporting Period	18. Estimated Accrued Costs		19. Total Grant Value		21. Unfilled Orders Outstanding	
		a. Actual	b. Planned	c. Actual	d. Planned	Year 1	Year 2
	DIRECT LABOR	15,086	0	24,372	0	244,157	84,147
40.00%	LABOR FRINGE	6,034	0	9,948	0	97,663	33,659
	DIRECT MATERIAL & SUPPLIES	6,836	0	6,558	0	29,154	9,720
						0	0
	OUTSIDE SERVICES	0	0	0	0	0	0
	SUBCONTRACT (ODC)	0	0	0	0	0	0
	TRAVEL	0	0	7	0	1,250	250
	SUB TOTAL	27,956	0	41,885	0	372,224	127,776
20.00%	GENERAL AND ADMINISTRATIVE	3,017	0	4,975	0	74,445	25,555
		0	0	0	0	0	0
	TOTAL COST	30,972	0	46,860	0	446,669	153,331
	ETI/OHIO SHARE (50.0%)	15,486	0	23,329	0	223,335	76,666
	ECD SHARE (50.0%)	15,486	0	23,331	0	223,334	76,665
22.	Total						
23. Remarks				5 Remaining Months		24. Dollars Expressed In:	
				\$ 276,671 Remaining Funds		DOLLARS	
25. Signature of ECD's Project Manager and Date		26. Signature of ECD's Financial Representative and Date		27. Signature of ETI's Representative and Date			
<i>Nathan Spindler</i>		<i>[Signature]</i>		<i>[Signature]</i>		October 10, 2011	



Energy Conversion Devices
 2983 Waterview Drive
 Rochester Hills, MI 48309

Invoice

INVOICE NUMBER
 JC10064

REMIT TO: Energy Conversion Devices
 Dept 771435
 P.O. Box 77000
 Detroit, MI 48277-1435

Billed To: CUST# 11005			
Energy Technologies, Inc. Attn: Accounts Payable 219 Park Avenue East Mansfield, OH 44902-1845			
Invoice Date	Period Covered	Purchase Order Number	Terms
10-Oct-2011	For Period of 7/1/11 to 9/30/11	2010112175	Net 30 days
Item	Description	Current Period	Cumulative Phase
Invoice per	Additional service NTE \$60,000 regarding State of Ohio Third Frontier grant agreement TECH 08-056 attached Cost Management Report	3,136.00	64,057.00
	Subtotal	3,136.00	64,057.00
	INVOICE TOTAL	\$ 3,136.00	

I certify that this invoice is correct and proper for payment, and reimbursement for these costs has not and will not be received under any other Government or Subcontractor or other source of Government funds.


 Steven W. Roberts, Contract Cost Accountant

10-Oct-2011
 Date

CUSTOMER ORIGINAL

1. Project Identification		2. Reporting Period		3. Project Number		4. Project Start Date		5. Project Completion Date	
Energy Technologies, Inc. Tactical Power Plant		1-Jul-2011 through 30-Sep-2011		RH0301718 PRIME # ETI PO 2010112175		12/6/2010			
9. Collaborator Funding		10. Number of Invoices Billed		11. Frequency		12. Number of Invoices Paid		13. Total Invoice Amounts Billed	
ENERGY CONVERSION DEVICES, INC. 2956 WATERVIEW DRIVE ROCHESTER HILLS, MI 48309		5		Monthly		3		\$64,057	
16. Reporting Category (e.g., Project line item or work breakdown structure element)		17. Accrued Costs		18. Estimated Accrued Costs		19. Total Project Value		20. Variance	
		During Reporting Period		Cumulative to Date		C. Total Project		21. Unfilled Orders Outstanding	
		a. Actual	b. Planned	c. Actual	d. Planned	Year 1 Budget	Year 2		
126.80%	DIRECT LABOR	-	0	24,684	0	40,519	0	40,519	
	LABOR FRINGE & OVERHEAD	-	0	31,300	0	51,378	0	51,378	
	DIRECT MATERIAL & SUPPLIES	3,136	0	3,136	0	0	0	0	
	OUTSIDE SERVICES	-	0	0	0	0	0	0	
	SUBCONTRACT (ODC)	-	0	0	0	0	0	0	
	TRAVEL	-	0	0	0	0	0	0	
	SUB TOTAL	3,136	0	59,121	0	91,896	0	91,896	
20.00%	GENERAL AND ADMINISTRATIVE	-	0	4,936	0	8,104	0	8,104	
	TOTAL COST	3,136	0	64,057	0	100,000	0	100,000	
	ETI SHARE (100%)	3,136	0	64,057	0	100,000	0	100,000	
	ECD SHARE (0%)	0	0	(0)	0	0	0	0	
	Total								
24. Dollars Expressed In:		DOLLARS							
26. Signature of ECD's Project Manager and Date		27. Signature of ECD's Financial Representative and Date		28. Dollars Expressed In:		29. Signature of ETI's Representative and Date			
				\$ 35,943 Remaining Funds		October 10, 2011			



Energy Conversion Devices
 2983 Waterview Drive
 Rochester Hills, MI 48309

Invoice

INVOICE NUMBER
 JC10073

REMIT TO: Energy Conversion Devices
 Dept 771435
 P.O. Box 77000
 Detroit, MI 48277-1435

Billed To: <small>Cust# 11005</small>			
Energy Technologies, Inc. Attn: Accounts Payable 219 Park Avenue East Mansfield, OH 44902-1845			
Invoice Date	Period Covered	Purchase Order Number	Terms
20-Jan-2012	For Period of 10/1/11 to 12/31/11	2010111754	Net 30 days
Item	Description	Current Period	Cumulative Phase
Quarterly invoice per	Development of a High-Volume Manufacturing Process for Metal Hydride Fuel Cell Stacks and Systems in support of State of Ohio Third Frontier grant agreement TECH 10-060 attached Cost Management Report	31,746.00	55,075.00
	Subtotal	31,746.00	55,075.00
	INVOICE TOTAL	\$ 31,746.00	

I certify that this invoice is correct and proper for payment, and reimbursement for these costs has not and will not be received under any other Government or Subcontractor or other source of Government funds.


 Steven W. Roberts, Contract Cost Accountant

20-Jan-2012
 Date

CUSTOMER ORIGINAL

EXHIBIT B



April 13, 2012

Mr. Dan Madden
Chief Executive Officer
Energy Technologies, Inc.
219 Park Avenue East
Mansfield, OH 44902-1845

Dear Mr. Madden.

I am writing in follow up to Michael Fetcenko's letter to you dated January 26, 2012. A copy of the letter is attached for your convenience. It has come to my attention that Energy Technologies, Inc. (ETI) has not satisfied its outstanding invoices from Energy Conversion Devices, Inc. (ECD) totaling \$158,494 and arranged for delivery of six fuel cell stacks completed by ECD at ETI's direction.

The invoices are significantly past due with the oldest invoices over 250 days beyond the agreed upon payment terms. Copies of the unsatisfied invoices are also attached. Furthermore, the completed fuel cell stacks have been stored by ECD, at its cost, for some time with one stack stored by ECD for longer than 15 months.

In light of the above, I ask that ETI make payment on all open invoices and make arrangements for the pickup of the six fuel cell stacks, both by April 23, 2012. Should payment and arrangements not be made by this time, I will regretrfully be forced to take legal action to ensure ECD receives the agreed upon value for work performed at ETI's direction and the removal of the six fuel cell stacks.

Please note that ECD is currently under the protection of the bankruptcy court and, as such, has the ability to petition the court for swift adjudication of these issues.

Regards,

Gregory G. Coppola
Senior Vice President, Finance & Treasurer

cc: M. Fetcenko (via e-mail)
J. Yaker (via e-mail)
T. Lowe (via e-mail)

Enclosures