

MEGA TAX CREDIT AGREEMENT: Cell Manufacturing Credit

fortu PowerCell, Inc.

This Agreement is between the Michigan Economic Growth Authority and fortu PowerCell, Inc., a Delaware Corporation. As used in this Agreement, the Michigan Economic Growth Authority and fortu PowerCell, Inc. are sometimes referred to individually as "Party" and collectively as "Parties."

The Michigan Economic Growth Authority Act, 1995 PA 24, as amended, created the MEGA with the power to provide tax credits to businesses involved in manufacturing, mining, research and development, wholesale and trade, office operations, qualified high-technology business, film and digital media production, or certain tourism attractions;

By Public Act 580 of 2008, an amendment to the Michigan Business Tax Act, 2007 PA 36, the Michigan Legislature determined that it is in the public interest to promote economic growth and to encourage private investment, job creation and job upgrading for Michigan residents by providing a credit against the Michigan Business Tax for a taxpayer that constructs an integrative cell manufacturing facility that includes anode and cathode manufacturing and cell assembly and will create 300 new jobs in Michigan; and

The MEGA and the Company desire to set forth the terms and conditions of the Cell Manufacturing Credit that the MEGA authorized for the Company by Resolution dated March 16, 2010.

The Parties, therefore, agree as follows:

1.0 DEFINITIONS

(a) "Act" means the Michigan Economic Growth Authority Act, 1995 PA 24, as amended as of the date this Cell Manufacturing Credit is awarded.

(b) "Agreement" means this written agreement.

(c) "Application" means any information submitted to the MEGA in support of the Company's request for the Cell Manufacturing Credit.

(d) "Business" means a proprietorship, joint venture, partnership, limited liability partnership, trust, business trust, syndicate, association, joint stock company, corporation, cooperative, limited liability company, or any other organization.

(e) "Capital Investment" means expenses incurred between January 1, 2009 and December 31, 2015, that are associated with facilities, equipment, tooling and engineering, and manufacturing, including salaries, contract services, taxes, utilities, raw materials and supplies.

(f) "Cell Manufacturing Credit" means a credit against the Michigan Business Tax authorized by Section 434(5) of the Michigan Business Tax Act, 2007 PA 36, as amended.

(g) "Certificate Application" means the written information submitted each year in support of the Company's request for a Tax Credit Certificate that complies with Section 7.0 of this Agreement.

(h) "Company" means fortu PowerCell, Inc., with the federal employer identification number [REDACTED]

(i) "Cumulative Capital Investment" for any tax year means all Capital Investment incurred by the Company for the Facility on or after January 1, 2009 and up to the end of the tax year.

(j) "Effective Date" means Nov 14, 2010.

(k) "Facility" means the Project identified in Section 2.0(b)(4).

(l) "MBT Act" means the Michigan Business Tax Act, 2007 PA 36, as amended.

(m) "MEGA" means the Michigan Economic Growth Authority created by the Act.

(n) "Person" means an individual or business.

(o) "Project" means the project described in Section 2.0(b)(4) of this Agreement.

(p) "Tax Credit Certificate" means the certificate required to be issued by 2007 PA 36, as amended, which states that the Company is located in this state and engaged in an activity that qualifies for the credit under Section 434 of the MBT Act, the amount of the Cell Manufacturing Credit authorized for the year, the Company's federal employer identification number or Michigan Treasury number, and such other information as may be required by the MEGA.

(q) "Term" means the time period beginning with the Effective Date and ending on the last day of the last year in which the Company is eligible to receive a Cell Manufacturing Credit under this Agreement.

2.0 REPRESENTATIONS

(a) Representation by the MEGA. The MEGA makes the following representations and warranties as of the Effective Date:

(1) *Existence and Power.* The MEGA is a public body established and acting pursuant to the Act.

(2) *Authority.* The MEGA had the necessary authority under the Act to grant Cell Manufacturing Credits and has taken all action necessary to authorize, execute and deliver this Agreement.

(b) Representations by the Company. The Company makes the following representations and warranties as of the Effective Date:

(1) *Existence and Power.* The Company validly exists and is in good standing under the laws of the State of Delaware and is qualified to transact business in Michigan.

(2) *Corporate Authority.* The Company's execution, delivery and performance of this Agreement is authorized by all necessary corporate action and will not violate any provision of law or of the Company's articles of incorporation or bylaws.

(3) *Full Disclosure.* Neither this Agreement nor the Application contain any untrue statement of or omit a material fact.

(4) *Project.* The Company will construct an integrative cell manufacturing facility that includes anode and cathode manufacturing and cell assembly in Muskegon Charter Township, Muskegon

County. The estimated total cost of the Project is above \$200 million. The Company will create and maintain at least 300 new jobs in connection with the Project by the end of the fourth full tax year in which the Cell Manufacturing Credit is claimed.

3.0 CELL MANUFACTURING CREDIT

For four consecutive tax years, with the first of the four years to begin on or after January 1, 2012 and no later than January 1, 2014, as designated by the Company, the MEGA Board authorizes a Cell Manufacturing Credit for the Company equal to 50 percent of the Cumulative Capital Investment for the tax year for the construction of the Facility, less the cumulative amount of the Cell Manufacturing Credit received by the Company in all prior tax years, provided that:

(a) Eligible Capital Investment for the construction of the Facility includes all Capital Investment made or incurred by the Company for all phases of the Facility both prior to the commencement of manufacturing in the initial phase of the Facility and continuing after the commencement of manufacturing in the initial phase of the Facility until the last day of the fourth consecutive year within the Term for which a Cell Manufacturing Credit is available to the Company under the terms of this Agreement.

(b) In any year in which the Company is eligible to receive a Cell Manufacturing Credit, the amount of the Cell Manufacturing Credit received by the Company cannot exceed \$25,000,000; and

(c) The total Cell Manufacturing Credit received by the Company shall not exceed \$100,000,000.

(d) The MEGA may, by amendment to this Agreement upon request by the Company, extend beyond January 1, 2014 the period during which the first of the four consecutive tax years may begin.

4.0 CONDITIONS OF THE CELL MANUFACTURING CREDIT

(a) *Eligibility.* The Company shall not be eligible for the Cell Manufacturing Credit described in Section 3.0 of this Agreement unless the Company obtains a Tax Credit Certificate, as provided in Section 5.0.

5.0 TAX CREDIT CERTIFICATE

To obtain a Tax Credit Certificate in connection with the Cell Manufacturing Credit described in this Agreement, the Company shall provide a Certificate Application to the MEGA that satisfies the requirements of Section 7.0 of this Agreement.

6.0 AUDIT AND VERIFICATION

The information provided by the Company in connection with the Cell Manufacturing Credit is subject to audit and verification by the MEGA or its designee. Upon reasonable advance written notice to the Company by the MEGA, the Company shall permit the MEGA or its designee, at the MEGA's sole expense and during normal business hours, to inspect the Company's files solely for the purpose of verifying eligibility for the Cell Manufacturing Credits authorized for the Company.

7.0 ANNUAL CERTIFICATE APPLICATION

(a) For each year in which the Company seeks a Cell Manufacturing Credit under this Agreement, the Company shall complete a Certificate Application.

(b) The Company shall file the Certificate Application with the MEGA at least 45 days prior to the day the Company's Michigan Business Tax return is due to the Michigan Department of Treasury. If the Michigan Department of Treasury grants the Company an extension of the deadline to file its Michigan Business Tax Return for the applicable year, the Company shall notify the MEGA of the extension and the Certificate Application must be filed with the MEGA at least 45 days prior to the extended deadline.

(c) The form of the Certificate Application shall be as specified by the MEGA. The Certificate Application must contain the following information:

(1) An affidavit by the Company certifying the amount of Cumulative Capital Investment for the tax year for which the Cell Manufacturing Credit is sought;

(2) A certification by an authorized office of the Company that the information provided in the Certificate Application is accurate; and

(3) Any other information reasonably related to determining the Cell Manufacturing Credit.

(d) Within 45 days of its receipt of the Certificate Application, the MEGA shall determine whether the requirements of this Agreement and the Act have been met and, if so, will calculate the amount of the MEGA Tax Credit and issue a Tax Credit Certificate to the Company.

(e) For each year for which a Cell Manufacturing Credit is available under this Agreement, the Company must submit a completed Certificate Application. If the Company does not satisfy the requirements of this Agreement for a particular year, the MEGA will not issue a Tax Credit Certificate for that year and one year of the MEGA Tax Credit is forfeited. The Company, however, will continue to be eligible for the Cell Manufacturing Credit in any remaining years for which the Cell Manufacturing Credit is available under this Agreement.

8.0 ADJUSTMENT, REDUCTION OR TERMINATION OF CREDITS

(a) In the event that the Company does not meet the condition described in the third sentence of Section 2.0(b)(4) of this Agreement, the Company shall repay to the State of Michigan an amount equal to 100 percent of the total Cell Manufacturing Credits received under this Agreement. In the event that the Company substantially fails to comply with the requirements of this Agreement in any other respect, as reasonably determined by the MEGA, and this Agreement does not provide a specific consequence for such noncompliance, the Company may have its Cell Manufacturing Credit reduced or terminated or have an amount previously claimed added back to the tax liability of the taxpayer in the year in which such noncompliance occurred, as determined by the MEGA.

(b) A Cell Manufacturing Credit is subject to adjustment in any year following the year in which a Tax Credit Certificate is issued if and to the extent the MEGA finds that the information in which the Tax Credit Certificate was based was incorrect or cannot be verified.

(c) If the MEGA determines that the Company misrepresented in writing any information in the Application, or the Company failed to correct a factually inaccurate statement in a written document

delivered to the Company by the MEGA and the effect of such failure by the Company to correct the factually inaccurate statement was a misrepresentation of information in the Application, in order to qualify for, or increase the amount of, a Cell Manufacturing Credit, the MEGA may terminate the Cell Manufacturing Credit for the Company and shall notify the Michigan Department of Treasury of the termination. The State of Michigan may require repayment of any Cell Manufacturing Credits received by the Company, plus a ten percent penalty, as a result of a misrepresentation.

(d) Prior to taking any adverse action against the Company under this Section, the MEGA shall provide the Company with reasonable advance written notice of its intended action and the basis of that action. The Company shall have a reasonable opportunity to respond, as identified in the notice, which shall include an opportunity for Company representatives to address the MEGA Board in person.

9.0 MISCELLANEOUS

(a) *Carry-Forward/Refundable.* The Cell Manufacturing Credit described in this Agreement shall be taken after all non-refundable tax credits under the MBT Act. If the amount of the Cell Manufacturing Credit exceeds the tax liability of the Company for the year for which the Cell Manufacturing Credit is sought, the Company may elect to have that portion that exceeds its tax liability refunded or have the excess carried forward to offset its tax liability in subsequent years until the sooner of ten years or until the entire credit is used. Amounts carried forward shall not impact the maximum amount of credit that may be claimed in subsequent years.

(b) *No Limitation on Other Incentives.* The Cell Manufacturing Credit described in this Agreement is in addition to any other incentive authorized for the Company by the MEGA for this project or other related or unrelated projects including, without limitation, the MEGA tax credit provided for under the terms of that certain MEGA Tax Credit Agreement: High-Tech Credit by and between the MEGA and the Company.

(c) *Reporting.* The Company shall provide the MEGA with information regarding its Cell Manufacturing Credit as the MEGA may reasonably require.

(d) *Assignment of Cell Manufacturing Credit.* The Cell Manufacturing Credit described in this Agreement shall not be transferred or assigned provided, however, that in the event of a merger or if a Person acquires all or substantially all of the assets or stock of the Company in Michigan after the Effective Date, the MEGA shall authorize the transfer of the Company's rights under this Agreement to that Person if:

(1) The Person agrees in writing to assume all of the duties and responsibilities of this Company under this Agreement; and

(2) The MEGA determines that the transfer is consistent with and will serve the purposes of the Act.

(e) *Severability.* If any clause, provision, or section of this Agreement is held invalid by any court, the invalidity of that clause, provision, or section shall not affect the remaining clauses, provisions, or sections of this Agreement and this Agreement shall be construed and enforced as if such invalid clause, provision, or section had not been contained in this Agreement.

(f) *Notices.* All notices or other communication provided in connection with this Agreement shall be deemed received when delivered, if delivered by registered or certified mail, postage prepaid, return receipt requested, or by messenger or professional courier services, addressed as follows:

TO MEGA: Michigan Economic Development Corporation
Michigan Economic Growth Authority
300 North Washington Square
Lansing, Michigan 48913
ATTN: MEGA Board Secretary
E-mail address: mega-admin@michigan.org

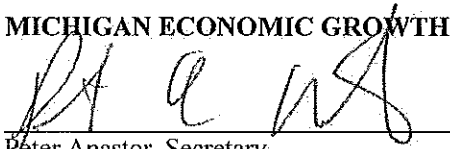
TO Company: fortu PowerCell, Inc.
1740 Whitehall Road, Suite A
North Muskegon, MI 49445-1354
ATTN: Alan Greenshields, CFO
E-mail address: a.greenshields@fortu.com

(g) Either Party may change its address for notice purposes by notice given pursuant to this subsection. Notices or other communications provided in connection with this Agreement sent by e-mail, must be confirmed by a confirming copy of the notice or other communication promptly delivered by one of the other methods provided above. *Entire Agreement and Amendment.* Subject to the Act, this Agreement is the entire agreement between the Parties with respect to the subject matter described herein and supersedes any previous agreements. This Agreement may not be amended without the written consent of the Parties.

(h) *Captions.* The captions in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Agreement.

(i) *Interpretation.* This Agreement shall be governed and interpreted in accordance with the laws of the State of Michigan.

MICHIGAN ECONOMIC GROWTH AUTHORITY


Peter Anastor, Secretary

fortu PowerCell, Inc.


Alan Greenshields, CFO, Treasurer and Secretary