

**MEGA TAX CREDIT AGREEMENT**

**Energy Conversion Devices, Inc.**

This Agreement is between the Michigan Economic Growth Authority (hereafter "the MEGA"), whose address is Post Office Box 10000, East Lansing, Michigan 48909 and Energy Conversion Devices, Inc. ("ECI"), a Delaware Corporation, whose address is 3000 Kalamazoo Avenue, Troy, MI 48084, Employer Identification Number is [REDACTED]

**RECITALS**

WHEREAS, the MEGA has been created by the Michigan Economic Growth Authority Act, Act No. 24 of Public Acts of 1997, which grants the MEGA with the power to provide tax credits to businesses engaged in manufacturing, mining, research, development, wholesale, trade or service enterprise.

WHEREAS, the Legislature has determined that it is in the public interest to promote economic growth and to encourage private investment and job upgrading for the residents of the State of Michigan.

WHEREAS, the MEGA has determined that it is in the public interest to

WHEREAS, the MEGA and the Company desire the conditions of the MEGA Tax Credit that the MEGA Company.

NOW, THEREFORE, the parties hereto agree as

**1.0 DEFINITIONS**

(a) "Agreement" means this written agreement.

(b) "Application" means any information submitted in support of the Company's request for a Tax Credit.

(c) "Anniversary Date" means December 31, 20

(d) "Authority" or "MEGA" means the Michigan Authority created by the Act 24.

(e) "Average Weekly Wage" means the total wages paid during the applicable tax year to employees performing the Project, divided by 52, divided by the number of employees on the Project.

(f) "Base Employment Level" means the minimum number of Jobs to be maintained at the Company in Michigan, as set forth in the Schedule attached to this Agreement.

(g) "Beginning of Operations" means January

a tax year, and the Company's federal employer Michigan Treasury number.

(i) "Certificate Application" or "Application for Certificate" means the written information submitted with the Company's request for a Tax Credit Certificate.

(j) "Facility" means the "Project" or the site with which the Company has committed to creating Qualified New Jobs.

(k) "Full-time Job" means a job performed full-time by the Company for consideration for 35 hours per week for which the Company withholds income and social security taxes.

(l) "MEGA Business Activity Credit" or "Business Activity Credit" means the credit against the Single Business Tax authorized by Section 23 of 1995.

(m) "MEGA Employment Credit" or "Employment Credit" means the credit against the Single Business Tax authorized by Section 23 of 1995.

(n) "MEGA Tax Credit" or "Tax Credit" means the credit against the Single Business Tax authorized by Section 23 of 1995 and/or a MEGA Employment Credit.

(o) "Person" means an individual, partnership, corporation, trust, or other legal entity.

(q) "Project" means the facility at which the Company is creating New Jobs as described under Project Description.

(r) "Qualified New Job" means a Full-time Job created by a Michigan resident that is:

(1) created by the Company after the date of the Agreement;

(2) in excess of the Base Employment Level.

(s) "Salaries and Wages" means wages, tips, and other compensation reported in Box 1 of the employees' W-2 forms.

(t) "Statement of Eligibility" or "Statement" means the Statement required by Section 4.2 of this Agreement.

## 2.0 REPRESENTATIONS

2.1 Representations by the MEGA. With respect to the MEGA set forth into hereunder, the MEGA makes the following representations as of the time such Agreement is executed:

(a) The MEGA is a public body established under the Michigan Public Act.

(b) The MEGA has the necessary power under Michigan law to execute Tax Credits and has duly taken all action on its part to execute and deliver this Agreement. This Agreement

**2.2** Representations by the Company. With respect to the matters set forth herein and set forth hereunder, the Company makes the following representations and warranties as of the date of execution of this Agreement:

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

(b) Corporate Authority. The execution, delivery and performance of this Agreement by the Company have been duly authorized by the Company in accordance with corporate action and will not violate any provision of the Company's certificate of incorporation or its bylaws.

(c) Full Disclosure. Neither this Agreement, nor any written statements furnished by the Company in connection with the authorization of a MEGA Tax Credit, nor any statement of a material fact or omit a material fact.

(d) Eligibility. (i) The Company's Primary "qualified technology activity" as that term is defined in Section 179(e) of the Internal Revenue Code. The Company will use not less than 25 percent of its total research and development, as determined under general accounting principles in the tax year ending June 30, 2001.

Anniversary Date and 25 Qualified New Jobs no later than the Anniversary Date. The Qualified New Jobs created will have an average Wage of at least \$1169 and at no time will the average Wage of the Qualified New Jobs be less than 400 percent of the federal minimum wage shall, from time to time, then be in effect.

The Company believes that the Project is economically viable and that the investment capital and/or financing needed for the Project is now committed or will soon be available to the Company. As of the date of this Agreement, construction of the Project has not yet begun.

(f) Need for MEGA Tax Credits. The Tax Credits provided in this Agreement address the competitive disadvantage of the Project compared to a site outside this State.

(g) Site Reuse. The Company has determined that the Project is a redevelopment of property previously used for a similar purpose and the Company has determined the use of the site is the best for locating the Project.

(h) Certification. The Company has made the certifications required by Section 8(3)(f) of the Act, which are attached to this Agreement, and that it:

discriminate against any contractor on the non-affiliation with any collective bargaining

(2) Will make a good faith effort to employ Michigan residents at the facility.

(3) Will make a good faith effort to employ Michigan residents and firms to construct and renovate the facility.

(h) Binding Agreement. When executed, this agreement will be a valid and binding obligation of the Company against the Company in accordance with its terms.

### 3.0 MEGA TAX CREDIT

Based upon the Company's Application and the Warranties made in this Agreement, the Authority shall award tax credits subject to the conditions specified in Section 3.1.

#### 3.1 Business Activity Credit

(a) A Business Activity Credit of 100 percent of the Company's Single Business Tax liability that is attributable to the Project, less the portion of the tax liability attributable to the Project that is attributable to authorized business activity as calculated in the

calculating the ratios as provided in Section 37d.(4) of P

### **3.2 Employment Credit.**

(a) An Employment Credit equal to 100 percent of the Company's personal income tax rate, as it exists at the beginning of the tax year for which the credit is being sought, multiplied by the total number of employees before deducting any personal or dependency exemptions for employees performing Qualified New Jobs. The Employment Credit shall be available for consecutive tax years beginning with the Company's first tax year ending in 2002.

(b) No more than 82 Qualified New Jobs may be counted in calculating the Employment Credit as provided in Section 3.2 of the Act of 1995.

### **4.0 CONDITIONS OF THE MEGA TAX CREDITS**

**4.1 Eligibility.** The Company shall not be eligible for the MEGA Tax Credits under Section 3.0 of this Agreement unless:

(a) The statutory minimum of 5 Qualified New Jobs are created at the Project, no later than the Anniversary Date.

(b) The statutory minimum of 25 Qualified New Jobs are created at the Project no later than four years after the Anniversary Date.



(e) The Company's Primary Business Activity is a "high technology activity" as that term is defined in Section 3(g)

(f) The Company uses not less than 25 percent of its operating expenses for research and development, as determined in accordance with generally accepted accounting principles, for a period of three fiscal years commencing on the date of execution of this Agreement.

**4.2 Statement of Eligibility.** Any time after 5 Qualified New Jobs are created at the Project, but in no case later than 30 days after the Effective Date, and in all cases prior to or concurrent with the issuance of a Credit Certificate, the Company shall file a Certified Statement of Eligibility form as specified by the Authority from time to time. The Company shall provide the following information:

(a) The aggregate number of Full-time Jobs created by the Company, excluding Qualified New Jobs at the Project.

(b) The number of Qualified New Jobs.

(c) The Average Weekly Wage paid to employees of the Company for Qualified New Jobs.

(d) A certification by an officer of the Company that its Primary Business Activity is a "high technology activity"

the tax year ending June 30, 2001 and in any fiscal year thereafter.

(f) A certification by an authorized officer that the information provided in the Statement of Eligibility is true and correct.

**4.3 Tax Credit Certificate.** To obtain a connection with the tax credits authorized in this Agreement, the Company shall:

(a) Maintain the minimum number of Qualified New Jobs by Schedule A of this Agreement, for the applicable tax year. If the number of Qualified New Jobs in any tax year exceeds the number of Qualified New Jobs in any other tax year of the credit, the Company shall determine the number of Qualified New Jobs as of the last day of each of the four quarters of the tax year. The Company shall add the total the results for the four quarters, and divide the total by four.

In computing the number of Qualified New Jobs for the credit, the Company shall determine the number of Qualified New Jobs as of the last day of each quarter of the applicable tax year. If the number of Qualified New Jobs in any quarter in which there are at least 5 Qualified New Jobs is less than the number of Qualified New Jobs over the remaining quarters of the tax year, the number of Qualified New Jobs for the credit shall be the number of Qualified New Jobs in that quarter.

In computing the number of Qualified New Jobs for the credit, the Company shall determine the number of Qualified New Jobs as of the last day of each quarter of the applicable tax year. If the number of Qualified New Jobs in any quarter in which there are at least 5 Qualified New Jobs is less than the number of Qualified New Jobs over the remaining quarters of the tax year, the number of Qualified New Jobs for the credit shall be the number of Qualified New Jobs in that quarter.

(b) Pay an Average Weekly Wage in connection with Full-time Jobs of at least the amount required by Schedule A of the applicable tax year.

(c) Pay an average hourly wage in connection with Full-time Jobs that equals or exceeds 400 percent of the highest hourly wage in effect for the applicable tax year.

(d) Maintain its Base Employment Level as defined in the Agreement by computing the Base Employment Level in any tax year by dividing the aggregate number of Full-time Jobs at the Company, excluding the Qualified New Jobs at the Company, by the number of a Tax Credit, as of the last day of each of the four quarters of the applicable tax year. The sum of the results for the four quarters, divided by four, shall be the Base Employment Level for that year.

(e) Certify that the Primary Business Activity of the Company is "high technology activity" as that term is defined in the Agreement throughout the applicable tax year.

(f) If any portion of the applicable tax year falls within the term of the Agreement, on the date of execution of this Agreement, certify that the Company's research and development expenses are more than 25 percent of its total operating expenses for the applicable tax year.

(h) Provided that the Company has initially satisfied the requirements of Section 4.1, failure of the Company to satisfy the requirements in any given year does not preclude the Company from obtaining a Tax Credit in any other year authorized by the terms of this Agreement.

**4.4 Audit and Verification.** The information provided in the Application for a MEGA Tax Credit Certificate, and the information is subject to audit and verification, by the Authority, upon reasonable advance notice to the Company by the Authority, shall permit the Authority or its designee, during normal business hours, to inspect the files of the Company solely for the purpose of verifying the Tax Credits authorized under, and compliance with, this Agreement. The records to inspection include, but are not limited to, those records, including financial records, job classification, job assignments and employment records.

The Authority or its designee shall use all information obtained from the inspection of the Company's files solely for the purpose of verifying the Tax Credits authorized under, and compliance with, this Agreement. The Company may request confidentiality pursuant to the terms of this Agreement for financial or proprietary information retained by the Authority.

in current dollars, in the cost/benefit analysis of the Pro  
MEGA at the time the Tax Credit was authorized, except  
Administrative Fee shall exceed \$100,000.

**5.0 ANNUAL APPLICATION FOR TAX CREDIT CE**

**5.1** For each year that it seeks a Tax Credit un  
Company shall complete an Application for a MEGA Ta

**5.2** The Certificate Application shall be filed with the  
prior to the day the Company's Single Business Ta  
Company receives an extension of the deadline to  
Business Tax return for the applicable tax year, the  
MEGA of the extension and the Certificate Applicati  
Authority at least 45 days prior to the extended deadlin

**5.3** The form of the Certificate Application shall  
Authority from time to time. The Certificate Application  
information:

- (a) The Base Employment Level.
- (b) The number of Qualified New Jobs at th  
each of the four quarters in the applicable tax year.
- (c) The number of Full-time Jobs, in Michi

(d) The total Salaries and Wages, before dependency exemptions, paid to employees who perform services at the Project during the applicable tax year.

(e) The total Salaries and Wages, before dependency exemptions, paid to employees who perform services in Michigan, for the Company, other than Qualified New Hires, for which the Company is seeking a Tax Credit, during the applicable tax year.

(f) The value of the property added at the time of the expansion described in the Project Description, as of the end of the applicable tax year.

(g) The value of all property owned in the state at the end of the applicable tax year. For the purposes of this section, the value of properties shall be determined in a manner that shall be consistent with the method by which property is valued for the Michigan Single Business Tax.

(h) The certifications required by 4.3(e) and 4.3(f) shall be provided by an authorized officer of the Company that the other information provided in the Certificate Application is true.

(i) Any other information which is reasonably necessary to determine the

**5.5** Within 45 days of receiving a complete Certificate, the Authority will review that application to determine whether the conditions of the Agreement have been satisfied and, if so, will calculate the amount of Tax Credits under this Agreement and issue a Tax Credit Certificate.

**6.0 ADJUSTMENT, REDUCTION, OR TERMINATION**

**6.1** If the Company does not comply with the conditions of Section 4.1, this Agreement is null and void, the Company is not an authorized business, and no Tax Credits are, or will be, authorized.

**6.2** Failure of the Company to comply with any provision of this Agreement other than as a result of a clerical or technical error which is discovered to be an error, may result in revocation of the Company's status as an authorized business or the reduction or loss of Tax Credits if a Tax Credit Certificate has not yet been issued.

**6.3** A Tax Credit authorized by the Authority is subject to audit in the tax year following the tax year for which a Tax Credit Certificate was issued. Information on which the tax credit certification was based is subject to audit or cannot be verified.

**6.4** If the Authority determines that the Company is not an authorized business in order to qualify for, or increase the amount of a Tax Credit,

6.5 Prior to taking any adverse action against the Company under sections 6.1, 6.2, 6.3, or 6.4, the Authority shall provide the Company with notice of its intent to take such action and of the basis for that action and shall give the Company with a reasonable opportunity to respond.

## 7.0 REPORTING

The Company shall provide the MEGA with such information as may be necessary for the MEGA's participation in the Tax Credit Program as the MEGA may require, so long as this Agreement is effective.

## 8.0 MISCELLANEOUS

8.1 Assignment of Credits. The Tax Credits authorized by this Agreement shall not be transferred or assigned to any other Person without the prior written consent of the Authority. In the event a Person acquires all or substantially all of the assets of the Company in Michigan, after the date of this Agreement, the Authority shall authorize the transfer of the Company's rights under this Agreement to that Person if:

(a) The Person agrees in writing to assume all the obligations and responsibilities of the Company under this Agreement.

(b) The Authority determines that such a transfer is in the best interests of the State with and serve the purposes of the Act and this Agreement.



hereof and this Agreement shall be construed and enforced as if any invalid clause, provision, or section had not been contained here.

**8.3 Notices.** All notices, certificates, requests or demands hereunder shall be sufficiently given when delivered, if delivered by certified mail, postage prepaid, return receipt requested, or by professional courier service, addressed as follows:

**If to the MEGA by mail:** Michigan Economic Development  
Michigan Economic Development  
Post Office Box 30234  
Lansing, Michigan 48906  
Attention: Jim Paquet

**If to the MEGA by messenger or professional courier:**

Michigan Economic Development  
Michigan Economic Development  
201 North Washington  
Victor Office Center, 5<sup>th</sup> Floor  
Lansing, Michigan 48906  
Attention: Jim Paquet

**If to the Company:** Energy Conversion Development  
1675 W. Maple Road  
Troy, MI 48084  
Attention: President

**8.4 Project Sign.** The Company agrees to erect a Project within thirty (30) days after execution of this Agreement. The s

providing the city name, project name, and shipping address to  
Mr. Scott Hildebrant, ImageLine Productions, (517), 729-  
located at 811 West Main, Owosso, Michigan 48867.

**8.5** Entire Agreement and Amendment. Subject to the terms of  
this Agreement and the Schedules attached to it, this Agreement  
between the Company and the MEGA, with respect to the project  
herein and supersede any and all previous Agreements. This Agreement  
be amended except with the written consent of the Authority.

**8.6** Captions. The captions in this Agreement are for convenience only and  
no way define, limit or describe the scope of intent of any provision  
of this Agreement.

**8.7** Interpretation. This Agreement shall be governed by the laws of  
accordance with the laws of the State of Michigan.

**8.8** Acceptance. The terms of this Agreement are hereby accepted on this  
day of November, 2000.

**Michigan Economic Growth Authority**

By: 

Jim Paquet

Secretary to the MEGA Board

**Energy Conversion Devices, I**

**Schedule A: Minimum Employment and**

**to Qualify for the MEGA Tax Credit**

<u>Year of Credit</u>	<u>Tax Year Ending June 30th</u>	<u>Minimum # of Qualified New Jobs</u>	<u>Minimum Average Weekly Wage</u>	<u>M</u> <u>E</u>
1	2002	5	\$1169	
2	2003	5	\$1169	
3	2004	5	\$1169	
4	2005	5	\$1169	
5	2006	25	\$1169	
6	2007	25	\$1169	

**Energy Conversion Devices, Inc.**

**Schedule B**

Energy Conversion Devices, Inc. certifies that:

1. It will follow a competitive bid process for the selection of contractors, subcontractors, vendors, suppliers, residents and firms, for the construction, rehabilitation, and renovation of the facility, and that it will not discriminate on the basis of its affiliation or non-affiliation with any organization.

2. It will make a good faith effort to employ local residents at the facility.

3. It will make a good faith effort to employ local residents and firms to construct, rehabilitate, develop, or

Certified this 15th day of November, 2000.

By: 

Certificate Number

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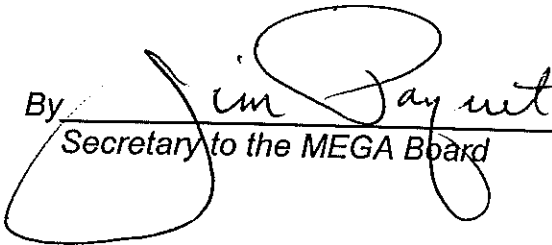
**Initial Tax Credit Certificate**

Issued this 15<sup>th</sup> day of November, 2000, by the

**Michigan Economic Growth Authority**

to Energy Conversion Devices, Inc., Employer Identification Number 1749884, which is an Authorized Business pursuant to Public Act 1995-107, as amended.

The MEGA authorizes to Energy Conversion Devices, Inc. a Business Activity Credit of 100 percent for six consecutive tax years beginning with the Company's tax year ending June 30, 2002, under Section 37d. of Public Act 23 of 1995. The MEGA authorizes a Business Activity Credit of 100 percent for six consecutive tax years, beginning with the Company's tax year ending June 30, 2002, under Section 37d. of Public Act 23 of 1995.

By  Secretary to the MEGA Board