

POST TERMINATION AND SETTLEMENT AGREEMENT BETWEEN THE CITY OF PEORIA AND BIOACCEL REGARDING THE INCUCELERATOR OPERATING GRANT AGREEMENT

This Post Termination and Settlement Agreement (this “Agreement”) is entered into and effective as of February 21, 2017 (“Effective Date”) by and between the City of Peoria, an Arizona municipal corporation (“Peoria”), and BioAccel, an Arizona non-profit corporation (“BioAccel”), individually referred to as “Party,” or collectively as “Parties.”

RECITALS

A. The Parties entered into an Operating Grant Agreement on or around November 17, 2011 (“Grant Agreement”), whereby BioAccel was identified as a qualified management, operations, and technology commercialization company that would provide Peoria with economic development services, including professional management, technology development assessment, pipeline new companies, and provide biodevice incubator support services (“Services”), all to be conducted in a building located in the City of Peoria (“BioInspire”).

B. Under the Grant Agreement, Peoria leased the BioInspire lab and office space; provided BioAccel operating and overhead funds; and provided funding to BioAccel (“Grants”), which BioAccel used to provide seed funding (“Seed Funding”) to Eligible Businesses defined in the Grant Agreement.

C. Under the Grant Agreement, utilizing the Grant Underwriting Guidelines, other post contract memorandums of understanding, and advice from the Council of Advisors, BioAccel operated an accelerated biodevice incubator facility on behalf of Peoria within BioInspire, which included, but was not limited to, using its existing development resources to attract and identify Eligible Businesses; provide seed funding; provide professional, technical, and development expertise; and help start-up biodevice companies grow toward full commercialization.

D. Upon providing Seed Funding to Eligible Businesses, BioAccel was authorized to take an equity interest in the funded businesses (individually, a “Company” and collectively, the “Companies”). BioAccel currently owns equity interest in some of the Companies listed on **Exhibit A**. References in this Agreement to a Company, or the Companies, are to the Companies list on **Exhibit A**. The Seed Funding provided to each Company is also set forth on **Exhibit A**.

E. The Grant Agreement also included, among other things, reimbursement to BioAccel for administrative services. Peoria was to be reimbursed for certain lease payments, the return of unspent Seed Funds, and the recovery of Seed Funds from an Eligible Business that breached the conditions of the Grant Agreement and executed contracts issued to Eligible Business including but not limited to convertible notes, lease agreements, etc. These reimbursements are collectively referred to as the “Services Reimbursements.”

F. Services Reimbursements remains due to both Parties. The Parties desire to provide for a net settlement amount to resolve all Services Reimbursements. (“Services Settlement Amount”)

G. The Grant Agreement expired, by its terms, on November 17, 2016. The Parties wish to identify and clarify all post termination activities, obligations, and commitments under the Grant Agreement, and desire to settle all potential claims between them with respect the obligations arising under the Grant Agreement (collectively, the “Grant Obligations”).

AGREEMENT

In consideration of the forgoing, the promises, representations, and warranties set forth in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Parties agree as follows:

1. Recitals. The Recitals above are true and correct and constitute a part of this Agreement.

2. Equity and Management. BioAccel will retain and manage its equity in the Companies. However, BioAccel will provide Peoria the Semi-Annual Reports set forth in Section 5 below.

3. Outstanding Amounts Due. The Services Settlement Amount is \$375,691.13, and is payable to Peoria. The Parties agree and acknowledge that the Services Settlement Amount settles all claims under the Grant Agreement that Peoria has against BioAccel or that BioAccel has against Peoria as of the date hereof, including but not limited to claims related to Seed Funding, unpaid rental reimbursements, reimbursable operating expenses, and other Services Reimbursements. BioAccel agrees and acknowledges that the Services Settlement Amount is not now, nor shall ever be made subordinate to, or collateral for, any other payment, mortgage, note, debt, liability, or obligation whatsoever. BioAccel agrees to make an initial payment of \$10,000 on or before December 1, 2017. Subsequent payments shall be made pursuant to Section 4.a. below, and is subject to interest at the applicable federal rate for obligations due within 7 years as of the Effective Date. The first payment made pursuant to Section 4.a. shall commence on Oct 26, 2018, and payment shall be made on or before Oct 26 of every year thereafter, and under no circumstance shall the payment be less than \$ 10,000. Payments shall continue until such time as the Services Settlement Amount, plus accrued interest at the applicable federal rate, is paid in full. The City will invoice BioAccel annually for this amount. The Parties agree and acknowledge that Peoria’s and BioAccel’s Grant Obligations are completely satisfied and replaced with the obligations set forth in this Agreement.

4. Distributions. Any distributions from equity in a Company held by BioAccel shall be distributed as follows:

- a. First Priority, equity distributions from all Companies will be aggregated and disbursed to Peoria and will be applied to the unpaid balance of the Services Settlement Amount, including any interest due, as established in Section 3

above. BioAccel and the City of Peoria agree that once the Services Settlement Amount is paid in full, there will be no further First Priority distributions, and all future distributions will be applied to the Second Priority distributions due under Section 4 b., until the Second Priority distributions are paid in full.

- b. Second Priority equity distributions begin after Peoria is paid the full Services Settlement Amount. Second Priority distributions will be made on a Company by Company basis. Second Priority distributions from each Company will be disbursed to Peoria until Peoria receives cumulative distributions from the relevant Company equal to the Seed Funding investment in the applicable Company. Once Peoria receives cumulative distributions from a Company equal to the Seed Funding investment in the applicable Company, any future distributions from that Company will be distributed in accordance with Sections 4.c. or 4.d., as applicable. Distributions under this Section 4.b. are intended to be accounted for on a Company by Company basis. For example, once the Seed Funding investment in one Company has been returned to Peoria, any future distributions from that Company will be disbursed per Sections 4.c. and 4.d., as applicable. It is understood by the Parties that distributions from some Companies will not be sufficient to reimburse Peoria or BioAccel for all amounts due them under Sections 4.b. and 4.c for the applicable Company. BioAccel and the City of Peoria agree that after distributions from a particular Company repay the Seed Funding for that Company in full, there will be no further Second Priority distributions from the relevant Company, and all future distributions from that Company will be applied to the Third Priority distributions due under Section 4.c., until the Third Priority distributions are paid in full.
- c. Third Priority equity distributions begin after the amounts required to be disbursed under Sections 4.a. and 4.b. have been paid in full. Third Priority distributions from each Company will be disbursed to BioAccel, and will be limited to reimburse BioAccel for BioAccel's legal and accounting costs associated with the Company making the distribution. In addition to the Annual Reports, at the time BioAccel is reimbursed for legal and accounting costs, Peoria shall be provided documentation evidencing the legal and accounting costs associated with the Company. Once BioAccel receives distributions from a Company equal to all BioAccel's legal and accounting cost applicable to that Company, the remaining distribution from that Company, if any, will be distributed in accordance with Section 4.d.
- d. Fourth Priority distributions occur after distributions from 4a, 4b, and 4c are completed. Fourth Priority distributions from a Company to BioAccel arising out of an equity distribution held by BioAccel will be shared equally (i.e., 50/50) between BioAccel and Peoria.

- e. RightBio|Metrics, Inc. Distributions. BioAccel has requested distribution of \$75,000 under the Grant Agreement. BioAccel identified RightBio|Metrics, Inc. (“RightBio”) as an Eligible Business under the Grant Agreement, and Peoria issued it Seed Funding in the amount of \$150,000. BioAccel executed a 2015 Convertible Promissory Note Purchase Agreement (“Note”) to loan RightBio \$150,000 in Seed Funding. The Effective Date of the Note was June 4, 2015, and made subordinate to a bank loan by the Subordination Agreement made June 8, 2015. BioAccel agreed to distribute \$75,000 of the Seed Funding upon execution of the Note and completion of an initial round of financing obtained by RightBio, and the second \$75,000 upon completion of a second round of financing obtained by RightBio. The Grant Agreement terminated by its terms after the first \$75,000 was issued to RightBio, but before the second \$75,000 was due with demonstration of a second round of financing required under the Note. RightBio demonstrated the second round of financing required under the Note and requested the second \$75,000 be distributed. Upon termination of the Grant Agreement, BioAccel returned some funds to Peoria. BioAccel now requests Peoria to distribute \$75,000 under the Grant Agreement in order to pay RightBio pursuant to the Note.

Sections 5.3 and 6.3 of the Grant Agreement provide, respectively, Peoria shall pay for “contracted commitments for Duties provided to the City which are due or accrued at the date of termination,” and “non-cancelable costs and Duties . . . during the wind down period and/or after notice, but before termination.” Therefore, pursuant to this language under the Grant Agreement, Peoria agrees to issue \$75,000 to BioAccel in order to pay RightBio under the Note, with the following conditions:

- i. Equity distributions from RightBio to BioAccel will be shared equally (i.e., 50/50) between BioAccel and Peoria.
- ii. Peoria will have no further obligation to provide any further funding to RightBio.

- f. In the event that BioAccel is given the opportunity to exercise a right that may cause the distribution of funds to BioAccel from one of the Companies, BioAccel will consult with the director of the Peoria Economic Development Department prior to exercising any such right, so long as such consultation does not violate any law or contract. If: (i) BioAccel engages in such consultation with Peoria, and (ii) BioAccel’s acts contrary to the recommendation of the director of the Peoria Economic Development Department, then the minimum annual payment due Peoria in accordance with Sections 3 and 4 a. (initially \$10,000) will be increased as follows:

- i. There will be a one time increase of \$5,000 per year for each time BioAccel exercises a right that is contrary to the Peoria’s recommendation. For example, if BioAccel votes against a proposed shareholder distribution that would result in a distribution to BioAccel

against Peoria's recommendation in year two, then the minimal annual payment in year two, and each year thereafter will be \$15,000. If BioAccel votes against a future distribution contrary to Peoria's recommendation in year four, then the annual amount due in year four, and each year thereafter, will be raised to \$20,000.

- ii. Notwithstanding the foregoing, if BioAccel's exercise of its right would not have influenced the outcome, then no payment increase will occur. For example, if (a) BioAccel is given the opportunity to vote on an action that, if approved, would cause a distribution and (b) after consultation with the Peoria Economic Development Department, BioAccel votes against such action contrary to the recommendation of the Peoria Economic Development Department, the annual payments due from BioAccel will not be increased by \$5,000 if the outcome of the vote would not have changed had BioAccel voted as recommended by the Peoria Economic Development Department.
- iii. Additionally, if BioAccel agrees to extend repayment of any obligation due it from a Company based upon BioAccel's reasonable determination that the Company does not have sufficient resources to pay the obligation, then BioAccel's extension of the obligation will not result in an increase in the annual payment due Peoria.

5. Semi-Annual Reports. BioAccel will provide Peoria, at a minimum, semi-annual reports ("Semi-Annual Report") for each calendar year, due in by April 1 and September 30 of each calendar year, until such time as BioAccel no longer holds any interest in a Company derived from the Seed Funding. Peoria and BioAccel acknowledge and agree that all the information, data, or instructions required to be reported under this section may not be known by BioAccel at an applicable reporting date. Accordingly, Peoria and BioAccel agree that a representative of BioAccel will meet with the Peoria Economic Development Department quarterly, at the Department's offices, to discuss the status of each Company. The City will be responsible for coordinating this meeting. Each Semi-Annual Report will contain the following, both confidential and non-confidential if available. All confidential business information will be noted and Peoria agrees to keep this information confidential:

- a. A summary of the distributions in the applicable quarter of the amounts distributed in accordance with Section 4 above.
- b. An accounting of any Additional Expenses incurred by BioAccel in the applicable quarter.
- c. A summary of BioAccel's assessment of the progress and prospects of each of the Companies based upon operations and developments in the applicable quarter.
- d. A summary of the financial and equitable position BioAccel has in each of the Companies, including stock valuation (if any), pending and/or completed corporate transactions, debt and liabilities of each Company.

- e. A summary of changes in the intellectual property portfolios of each Company.
- f. A Summary of notices or disclosures received by BioAccel regarding each Company.
- g. A summary of Corporate Transactions as defined in any related promissory note executed by a Company in favor of BioAccel.
- h. A summary of any offers, sales, reissuance, amalgamations or consolidations, or dilutions of shares for any Company.
- i. A summary of any of the following items related to a Company, if BioAccel has knowledge of such transactions: distributions or liquidations of shares by a Company; registration or deregistration of the security held by BioAccel; assignments or transfers of any promissory note or security held by BioAccel; or the merger or acquisition of a Company in which BioAccel holds an interest.
- j. A summary of the findings of any inspections or audits conducted by BioAccel or by other investor or by any regulatory agency, if BioAccel is privy to the results of such third party inspections or audits.
- k. A summary of any transaction or decision relating to an initial public offering (IPO); changes to a Company's existing intellectual property or the addition of new intellectual property; or any other transaction that may impact the value of the equity in the Company.
- l. A statement that no material adverse change has occurred in BioAccel or any Company listed in **Exhibit A**, or a summary of any material adverse change known by BioAccel. "Material adverse change" means any event, change, circumstance, effect or other matter that has, or could reasonably be expected to have, either individually or in the aggregate with all other events, changes, circumstances, effects or other matters, with or without notice, lapse of time or both, a material adverse effect on (i) the business, assets, liabilities, properties, condition (financial or otherwise), operating results, or operations, taken as a whole, or (ii) the ability of BioAccel to perform its obligations under this Agreement or to consummate timely the transactions contemplated by this Agreement.

In addition to the foregoing, (1) if a material adverse change occurs or (2) BioAccel is formally (e.g., via a writing, at a Board Meeting, etc.) advised that a Company is considering engaging in a transaction that will result in a distribution to BioAccel, BioAccel agrees to promptly notify, orally, the director of the Peoria Economic Development Department, and provide any materials it has in its possession related to the material adverse change. Any information related the material adverse change that comes into the possession of BioAccel shall be provided with the next Semi-Annual report or at the next quarterly meeting, whichever first occurs.

Notwithstanding anything in this Section 5 to the contrary, BioAccel will not be required to disclose or report any information to Peoria that would result in the violation of any law, including state and federal securities laws, or result in the breach of any contractual or confidentiality obligations. However, with regard to confidentiality obligations, the Parties agree to cooperate in managing disclosures in such a way that they are permissible under any confidentiality obligations, so long as the confidential information disclosed to Peoria will be retained by Peoria as confidential and will not be subject to any obligation that would require further disclosure by Peoria.

6. Independent Funding. BioAccel may, at its sole discretion, provide independent funding, from itself or other funding sources, to one or more of the Companies after the date of this Agreement (“Independent Funding”). The Independent Funding may be in the form of equity, debt, convertible debt, etc. Any interest, rights, payments, distributions, etc. received by BioAccel as a result of the Independent Funding will be the sole property of BioAccel. Peoria will not have rights to any additional securities, warrants, options, notes, rights, payments, proceeds, etc. received by BioAccel resulting from Independent Funding. BioAccel acknowledges it will be solely responsible for all fees and costs associated with Independent Funding. BioAccel shall defend, indemnify and hold harmless Peoria and its officials, employees, agents, successors, and assigns from and against any and all third party claims and liabilities (including, without limitation, reasonable attorneys' fees and costs), regardless of the form of action, arising out of, or in connection with wrongdoing on the part of BioAccel in connection with the Independent Funding. BioAccel is not obligated to indemnify the City of Peoria for any unrelated and separate negligence by the City of Peoria.

7. BioInspire Leases and Grant Obligations. BioAccel has managed certain commercial property located at 13660 N. 94th Drive, Building D, Peoria, AZ, 85381 (“BioInspire Building”), owned by Plaza Companies, leased to Peoria, and further subleased to the tenant-companies to conduct biodevice, incubator business operations. All of BioAccel’s rights, if any, related to tenant subleases for the BioInspire Building will be assigned to, and assumed by, Peoria. The BioInspire tenant subleases are listed on **Exhibit B** attached hereto (“BioInspire Tenant Leases”). BioAccel shall provide Peoria copies of all the BioInspire Tenant Leases, including amendments, schedules, and exhibits, as applicable. BioAccel shall also provide a summary of the rental payment status of each BioInspire Tenant Lease. Peoria and BioAccel agree to work diligently together to ensure the assignment of the BioInspire Tenant Leases to Peoria. BioAccel will execute any further documents reasonably requested by Peoria to evidence the assignment of the BioInspire Tenant Leases. Upon the execution of this Agreement and the fulfillment of BioAccel’s obligations in this Agreement related to BioInspire, the BioInspire Building and the BioInspire Tenant Leases, Peoria will be fully responsible for all obligations related to BioInspire, the BioInspire Building and under the BioInspire Tenant Leases and will have all the landlord’s rights thereunder, and BioAccel will not have any further obligations or responsibilities with regard to BioInspire, the BioInspire Building and the BioInspire Tenant Leases.

At the time of the execution of this Agreement, BioAccel has provided, and will continue to provide Peoria copies of all leases, contracts, licensing, permits, (including amendments,

schedules, and exhibits, as applicable) for all: office equipment (e.g., copiers, computers, printers, monitors, etc); office furniture; services (e.g., maintenance, housing keeping, deliveries, security, etc); lab equipment and lab furniture (e.g., containers, benches, hoods, utilities (e.g., gas, electrical, water, etc); property insurance policies; covenants, conditions & restrictions (CC&Rs) and/or building regulations (parking, common areas, etc); and applicable real property related permits and licenses in connection with the BioInspire Building or the BioInspire Tenant Leases (collectively, the “BioInspire Contract Obligations”). The BioInspire Contract Obligations are listed on **Exhibit C** attached hereto. The execution of this Agreement will constitute BioAccel’s assignment of the BioInspire Contract Obligations to Peoria and commitment to undertake all the actions and obligations set forth in this Agreement. BioAccel will execute any further documents reasonably requested by Peoria to evidence the assignment of the BioInspire Contract Obligations. Upon the execution of this Agreement and the complete assignment of all the BioInspire Contract Obligations, Peoria will be fully responsible for the BioInspire Contract Obligations and will have all BioAccel’s right’s thereunder, and BioAccel will not have any further obligations or responsibilities with regard to the BioInspire Contract Obligations.

Except as otherwise provided in this Agreement, each Party will bear its own costs and expenses to comply with this section. Once all the BioInspire Contract Obligations have been assigned to Peoria, all agreements between BioAccel and Peoria with regard to the BioInspire Building will be deemed terminated and satisfied.

BioAccel will use reasonable efforts to assist Peoria to accomplish a smooth transition of the BioInspire Building, the BioInspire Tenant Leases, and the BioInspire Contract Obligations.

8. Taxes and Expenses. Each Party will be responsible for all taxes applicable to that Party that may result from the consummation of this Agreement.

9. Further Acts; Transition; Reimbursements; Grant Obligations.

- a. Further Actions. Each Party will take such further acts and execute such further documents as may reasonably be requested by the other Party to confirm or more fully carry out the purpose of this Agreement. BioAccel agrees to perform any wind down activities, including transfer to Peoria of operation of the BioInspire Building, management of the BioInspire Leases, and transfer of the BioInspire Building related inventory, equipment, and records, within in 2 months following the Effective Date (“Close Out Period”).
- b. Close Out Budget. Each Party agrees there will be a set budget, paid by Peoria, for the Close Out Period (the “Close Out Budget”). The Close Out Budget is attached hereto as **Exhibit D**.
- c. Personal Property. All other personal property owned or acquired by BioAccel during the course of, or in connection with, the Grant Agreement will remain the property of BioAccel.

- d. Remaining Gant Obligations. All the remaining obligations of the Parties under the Grant Agreement are either set forth in this Agreement or listed on Exhibit D in conjunction with the Close Out Budget. In lieu of, but consistent with, Sections 5.3 and 6.3 of the Grant Agreement, Peoria will compensate BioAccel for (i) all fees and costs for all due and accrued commitments (i.e., Duties) of BioAccel and non-cancellable obligations of BioAccel to third parties pursuant to the Grant Agreement. Costs or fees for commitments made by BioAccel after termination of the Grant Agreement, and not pre-approved by Peoria or provided for in this Agreement, are not reimbursable. The unfunded Duties of Peoria are also set forth on the Close Out Budget (Exhibit D).
- e. Extension of Close Out Period. The Close Out Period may be extended upon mutual agreement of Peoria and BioAccel. Any extension shall be conducted under the terms and conditions of this Agreement, and the Close Out Budget will be increased to include the reasonable expenses incurred by BioAccel in connection with any extension of the Close Out Period. During the Close Out Period and any extension thereof, BioAccel staff are authorized to remain at the facility in their current office spaces.

10. Notices. All notices and communication in connection with this Agreement will be in writing and will be deemed duly given when delivered, or three (3) business days after being mailed by registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

If to Peoria:	The City of Peoria Attn: City Manager 8401 W. Monroe Street Peoria, AZ 85345
With a copy to:	City of Peoria Attn: City Attorney 8401 W. Monroe St. Peoria, AZ 85345
If to BioAccel:	BioAccel Attn: MaryAnn Guerra 445 North 5 th Street, Suite 120 Phoenix, AZ 85004

11. Severability. If any provision of this Agreement is declared void or unenforceable, such provisions will be deemed severed from this Agreement, which will otherwise remain in full force and effect.

12. Successors and Assigns. This Agreement will be binding upon and inure to the benefit of the Parties, and their respective successors in interest and assigns, but in no event will

any Party be relieved of its obligations hereunder without the express written consent of each other Party.

13. Electronic Signature; Counterparts. This Agreement may be executed by electronic signature in any number of counterparts, all such counterparts will be deemed to constitute one and the same instrument, and each of said counterparts will be deemed an original hereof.

14. Waiver. Failure of any Party to exercise any right or option arising out of breach of this Agreement will not be deemed a waiver of any right or option with respect to any subsequent or different breach, or the continuance of any existing breach.

15. Integration Clause, Oral Modification. This Agreement represents the entire agreement of the Parties with respect to the subject matter hereof, and all agreements entered into prior hereto with respect to termination and wind down of the Grant Agreement are revoked and superseded by this Agreement, and no representations, warranties, inducements or oral agreements have been made by any of the Parties except as expressly set forth herein, or in other contemporaneous written agreements. This Agreement may not be changed, modified or rescinded except in writing, signed by all the Parties hereto, and any attempt at oral modification of this Agreement will be void and of no effect.

16. Captions. Captions and section headings used herein are for convenience only and are not part of this Agreement and will not be deemed to limit or alter any provisions hereof and will not be deemed relevant in construing this Agreement.

17. Governing Law. This Agreement will be deemed to be made under, and will be construed in accordance with and will be governed by, the laws of the State of Arizona, and suit to enforce any provision of this Agreement or to obtain any remedy with respect hereto may be brought in any court of record in the County of Maricopa, State of Arizona.

18. Cancellation. This Agreement is subject to cancellation pursuant to the provisions in A.R.S. § 38-511.

19. Interpretations. To the extent permitted by the context in which used, (i) words in the singular number will include the plural, words in the masculine gender will include the feminine and neuter, and vice versa, and (ii) references to “persons” or “parties” in this Agreement will be deemed to refer to natural persons, corporations, general partnerships, limited partnerships, trusts and all other entities.

20. Schedules/Exhibits. Any Exhibit or Schedule attached to this Agreement will be deemed to have been incorporated herein by this reference, with the same force and effect as if fully set forth in the body of this Agreement.

21. Releases and Settlement. Each Party releases and forever discharges the other Party, as well as its officer, directors, owners, and agents, from any and all liabilities and claims, in law or in equity, whether known or unknown, foreseen or unforeseen, arising or prior to the date hereof out of or relating to the Grant Agreement and all actions and matters related thereto.

The forgoing release does not release any of the Parties' rights and obligations under this Agreement. No Party may make any claims arising out of the Grant Agreement or related to the Grant Obligations, except for the enforcement of the rights and obligations contained in this Agreement.

22. Mutual Indemnity.

- a. Indemnity. Except where stated to the contrary, each Party ("Indemnifying Party") shall indemnify, defend and hold the other Party ("Indemnified Party") and its officials, employees, agents, successors, and assigns from and against any and all damages, liabilities, losses, fines, penalties, settlement amounts, cost and expenses of any kind or nature whatsoever, including without limitation reasonable attorney's fees, expert witnesses fees and court costs, incurred in connection with any claim, demand, action, proceeding, investigation or hearing (collectively, a "Claim") directly or indirectly relating to or arising from the Indemnifying Party's breach of this Agreement; provided, however, that the Indemnifying Party shall have no obligation of indemnity hereunder with respect to any Claim to the extent determined by a court of competent jurisdiction to have arisen from negligence or intentional misconduct on the part of the Indemnified Party or its employees, agents, or representatives, or resulting from the Indemnified Party's breach of any of its obligations under this Agreement.
- b. Cooperation. Each Party shall reasonably cooperate in the investigation, defense and settlement of a Claim for which indemnification is sought hereunder and shall provide prompt notice of any Claim to the other Party. Each Party shall have the right to retain separate legal counsel at its own expense. Each Party shall not enter into any settlement regarding a Claim without the prior written consent of the other Party, such consent to not be unreasonably withheld or delayed.

23. Alternative Dispute Resolution. The parties shall attempt in good faith to resolve any dispute arising out of or relating to this Agreement promptly by negotiations between officials of each party who have authority to settle the controversy. If the matter has not been resolved by negotiation within thirty (30) days, the parties shall attempt in good faith to settle the dispute by mediation. If the matter has not been resolved by mediation within ninety (90) days of the initiation of such procedure, or if either party will not participate in mediation, then the parties may pursue all legal and equitable rights. Venue for any such proceeding shall be in the state or federal courts serving Maricopa County, Arizona.

24. Events of Default. The occurrence of any of the following shall constitute an "Event of Default" under this Agreement:

- a. Failure to Pay. If a Party fails to make any payment required under the terms of this Agreement within two (2) Business Days of the date such payment is due; or
- b. Voluntary Bankruptcy or Insolvency Proceedings. If either Party (i) applies for or consents to the appointment of a receiver, trustee, liquidator or custodian of itself or of all or a substantial part of its property, (ii) is unable, or admits in writing its inability, to pay its debts generally as they mature, (iii) makes a general assignment for the benefit of its or any of its creditors, (iv) is dissolved or

liquidated, (v) commences a voluntary case or other proceeding seeking liquidation, reorganization or other relief with respect to itself or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or consent to any such relief or to the appointment of or taking possession of its property by any official in an involuntary case or other proceeding commenced against it, or (vi) takes any action for the purpose of effecting any of the foregoing; or

- c. Involuntary Bankruptcy or Insolvency Proceedings. Proceedings against a Party for the appointment of a receiver, trustee, liquidator or custodian for all or a substantial part of the property thereof, or an involuntary case or other proceedings seeking liquidation, reorganization or other relief with respect to the Party or the debts thereof under any bankruptcy, insolvency or other similar law now or hereafter in effect shall be commenced and such proceeding shall not be dismissed or discharged within 30 days of commencement.
- d. A material adverse change, defined in this Agreement, that prevents a Party from timely performing its obligations under this Agreement was and has not been cured within 30 days of the event.

25. Acceleration of the Service Settlement Amount as a Right of Default. Upon the occurrence or existence of an Event of Default described in Section 24, and at any time thereafter during the continuance of such Event of Default, Peoria may, after 30 days prior written notice to BioAccel, declare all outstanding Service Settlement Amount immediately due and payable without further presentment, demand, protest or any other notice of any kind, all of which are hereby expressly waived. Upon the occurrence or existence of an Event of Default described in Sections 24(b) or 24(c), all outstanding amounts of the Service Settlement Amount shall automatically become immediately due and payable, without presentment, demand, protest or any other notice of any kind, all of which are hereby expressly waived, anything contained in the Agreement or any other agreement to the contrary notwithstanding.

[Signatures to follow on next page]

The parties have entered into this Agreement as of the effective date set forth in the first paragraph hereof.

PEORIA:

By: _____
Carl Swenson, City Manager

Date: _____

ATTEST:

Rhonda Geriminsky, City Clerk

Approved as to Form

Steve Burg, City Attorney

BIOACCEL:

By: _____
MaryAnn Guerra, CEO

EXHIBIT A
List of Companies
And Seed Funding

As of 2/13/2017	
Company	City of Peoria Seed Funding
Stimwave	\$300,000.00
Hildeez	\$110,000.00
Kulira Technologies	\$350,000.00
Nasseo *	\$300,000.00
Yolia Health	\$300,000.00
AMS	\$226,775.00
Verve Medical	\$450,000.00
MyFuelUp *	\$50,000.00
RightBio Metrics	\$75,000.00
Omni BioCeuticals (S.C.)	\$20,000.00
Apollo Resource Corp	\$10,000.00
Saguaro Medical	\$25,000.00
Life 365	\$300,000.00
Total	\$2,516,775.00

* Refers to Equity in BioAccelerator Fund 1 (BAF1)

EXHIBIT B

List of BioInspire Leases

Company	Lease Start	Lease Term	Lease Credit Requirement Term	Current Occupant
Apollo Resource Corp	3/1/2016	2 years	3 years	No
AMS	5/15/2013	18 Months	5 years	No
Hildeez	12/17/2012	2 years	5 years	Yes
Kulira Technologies	12/1/2012	2 years	5 years	No
Life 365	3/17/2016	2 years	5 years	Yes
Nasseo	12/1/2012 -Lease Update- 11/1/2014	1.5 years -Lease Update- 1 year Remaining	5 years -Lease Update- 3 years Remaining	Yes
Omni BioCeuticals	7/1/2015	1 year	5 years	No
RightBio Metrics	7/1/2015	1.5 years	5 years	In City of Peoria
Saguaro Medical	10/1/2015	9 months	Post-Incubator Habitation Clause not present	Yes
Stimwave	1/1/2013	2 years	5 years	No
Verve Medical	10/1/2013	2 years	Post-Incubator Habitation Clause - not present	No
Yolia Health	1/1/2013	2 years	5 years	Yes

EXHIBIT C**BIOINSPIRE CONTRACT OBLIGATIONS**

VENDOR	EQUIPMENT OR SERVICE	CONTRACT OR MONTH TO MONTH	NOTES
8 x 8	Phone service	Month to month	<ul style="list-style-type: none"> • Would need to transfer phone lines to Cox or transfer lines to BioInspire or City of Peoria
Accel Communications	Alarm Monitoring	Contract ends April 31, 2017	<ul style="list-style-type: none"> • Need to send cancellation letter 30 days in advance. • Need to change contact and billing information
Airflow Solutions	Hood Certifications	Yearly – August 2017	<ul style="list-style-type: none"> • Need to change contact and billing information
CB Insights	Data Subscription	May 2017	<ul style="list-style-type: none"> • BioInspire paid for 50% of subscription
Cox Communications	Internet Services	Month to month	<ul style="list-style-type: none"> • Need to change contact and billing information
Docusign	1 year e-signing software subscription	May 26, 2017	<ul style="list-style-type: none"> • Need to change contact and billing information
Great America Financial Services	Kyocera copier	Month to month	<ul style="list-style-type: none"> • Need to change contact and billing information
Grand Canyon Business Solutions	Service contract for Kyocera copier	Contract ends August 31, 2017	<ul style="list-style-type: none"> • Need to send cancellation letter 30 days in advance. • Need to change contact and billing information
Kalorama	Market Research software	March 31, 2017	<ul style="list-style-type: none"> • Need to change contact and billing information
Peoria Chamber of Commerce	Yearly Membership	8/15/2017	<ul style="list-style-type: none"> • Need to change contact and billing information
Peoria Police Department	Alarm Registration	4/21/17	<ul style="list-style-type: none"> • Need to change contact and billing information
Scottsdale Helpdesk	IT Support at BioInspire	Contract is with BioAccel	<ul style="list-style-type: none"> • Would need to obtain own relationship and billing if services are to continue
State Science and Technology Institute	Yearly Sustaining Member	June 2017	<ul style="list-style-type: none"> • Need to change contact and billing information

EXHIBIT D CLOSE OUT BUDGET

(Include all expenses to be funded by Peoria during the Close Out Period and all unfunded Duties of Peoria. Also, include any remaining Grant Obligations of BioAccel.)

BioInspire Closeout Budget

January - paid under regular budget

February							
	Name	Position	Available Hours	% of time	Actual Time (Hrs.)	Rate/Hr.	Total
	MaryAnn Guerra	CEO	160	5%	8	\$427.99	\$ 3,423.92
	Dr. Ron King	CSO/CBO	160	10%	16	\$301.49	\$ 4,823.84
	Nikki Corday	Operations Manager	160	75%	120	\$124.02	\$ 14,882.40
	Michael Robinson	Program Manager	160	50%	80	\$108.17	\$ 8,653.60
					Total hours for Feb	224	Subtotal \$ 31,783.76

March							
	Name	Position	Available Hours	% of time	Actual Time (Hrs.)	Rate/Hr.	Total
	MaryAnn Guerra	CEO	184	5%	9.2	\$427.99	\$ 3,937.51
	Dr. Ron King	CSO/CBO	184	10%	18.4	\$301.49	\$ 5,547.42
	Nikki Corday	Operations Manager	184	50%	92	\$124.02	\$ 11,409.84
	Michael Robinson	Program Manager	184	25%	46	\$108.17	\$ 4,975.82
					Total hours for March	165.6	Subtotal \$ 25,870.58

April							
	Name	Position	Available Hours	% of time	Actual Time (Hrs.)	Rate/Hr.	Total
	MaryAnn Guerra	CEO	80	3%	2.4	\$427.99	\$ 1,027.18
	Dr. Ron King	CSO/CBO	80	0%	0	\$301.49	\$ -
	Nikki Corday	Operations Manager	80	25%	20	\$124.02	\$ 2,480.40
	Michael Robinson	Program Manager	80	20%	16	\$108.17	\$ 1,730.72
					Total hours for April	40	Subtotal \$ 5,238.30

Total \$ 62,892.64

EXHIBIT D (continued)
CLOSE OUT BUDGET

(Include all expenses to be funded by Peoria during the Close Out Period and all unfunded Duties of Peoria. Also, include any remaining Grant Obligations of BioAccel.)

BIOINSPIRE BUDGET		Table 2
All expenses will be paid monthly via check from BioInspire operations account ending in 3050. Those accounts denoted with an asterik are on auto pay from account 3050 and will continue to be paid from the bank account until the account is transferred to the City. BioAccel will take over the payment of Etapestry effective March and this amount is not included in the budget below. BioAccel will also take over the Box contract and pay the renewal.		
BioAccel Staff		
Subtotal		\$62,893
Proposed Categories		
Legal	\$	12,550.00
Accounting/Audit Services	\$	3,125.00
IT Support	\$	1,000.00
Other		\$16,675
Due Diligence		
IP Analysis	\$	-
Technology Company Evaluations (Outside Contractors)	\$	-
Industry Reports/Database	\$	-
Interns	\$	-
		\$0
Facilities & Equipment		
Equipment	\$	8,500.00
Lease*	\$	870.00
General Maintenance *	\$	885.00
		\$10,255
Operations		
Desk Phones	\$	665.00
Internet	\$	1,100.00
Postage/Shipping	\$	50.00
Supplies	\$	600.00
Meetings & Events	\$	-
Professional Liability	\$	-
Dunn & Bradstreet	\$	-
Memberships	\$	-
Short Term Internships	\$	-
		\$2,415
Marketing		
		\$0
		\$0
Travel, Meetings, Training, Events		
Pipeline Development Meetings	\$	-
BioInspire and Portfolio Business Development Meetings	\$	-
Investment Networking	\$	500.00
Professional Development	\$	-
		\$500
BUDGET TOTAL		\$92,738