

Order 38-16/17

Postponed to 9/19/2016: 9-0 on 9/7/2016

Passage: 8-1 (Strimling) on 9/19/2016

Effective 9/29/2016

ETHAN K. STRIMLING (MAYOR)  
BELINDA S. RAY (1)  
SPENCER R. THIBODEAU (2)  
EDWARD J. SUSLOVIC (3)  
JUSTIN COSTA (4)

**CITY OF PORTLAND  
IN THE CITY COUNCIL**

DAVID H. BRENERMAN (5)  
JILL C. DUSON (A/L)  
JON HINCK (A/L)  
NICHOLAS M. MAVODONES, JR (A/L)

**ORDER APPROVING CREDIT ENHANCEMENT AGREEMENT  
WITH IMMUCELL CORPORATION**

**ORDERED**, that the Credit Enhancement Agreement between the City of Portland and ImmuCell Corporation is hereby approved in substantially the form attached hereto; and

**BE IT FURTHER ORDERED**, that the City Council hereby authorizes the City Manager or his or her designee to execute said documents and any other related documents necessary or convenient to carry out the intent of said documents.

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**CREDIT ENHANCEMENT AGREEMENT**

**between**

**CITY OF PORTLAND, MAINE**

**and**

**IMMUCELL CORPORATION**

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**Dated as of \_\_\_\_\_, 2016**

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**EXHIBITS:**

- Exhibit A. ImmuCell Corporation Municipal Development and Tax Increment Financing District Program
- Exhibit B. Company Tax Increment Revenue Allocation
- Exhibit C. Certification of Costs Form

**THIS CREDIT ENHANCEMENT AGREEMENT** (the “Agreement”) dated as of \_\_\_\_\_, 2016, between the City of Portland, Maine, a municipal body corporate and politic and a political subdivision of the State of Maine, a corporation duly organized and existing under the laws of the State of Maine (the “City”), with a place of business in Portland, Maine, and ImmuCell Corporation, a Delaware corporation (the “Company”), having a place of business at 56 Evergreen Drive, Portland, Maine 04103

**WITNESSETH**

**WHEREAS**, the City designated the ImmuCell Corporation Municipal Development and Tax Increment Financing District (the “District”) and adopted a development program therefor (the “Development Program”) pursuant to Chapter 206 of Title 30-A of the Maine Revised Statutes, as amended, by action of the Portland City Council on \_\_\_\_\_, 2016; and

**WHEREAS**, upon submission of an application to the State Department of Economic and Community Development (“DECD”), the City expects DECD to review and approve the ImmuCell Corporation Municipal Development and Tax Increment Financing District and Development Program; and

**WHEREAS**, the City designated the ImmuCell Corporation Municipal Development and Tax Increment Financing District, adopted the Development Program and entered into this Agreement in order to induce the Company to move forward with ImmuCell’s expansion from its existing facility at 56 Evergreen Drive to a new two-story, 12,625 square foot (approx.) production facility on Caddie Lane in the District (the “Project”); and

**WHEREAS**, in connection with the Development Program, and as contemplated thereby, the City and the Company have agreed to execute and deliver this Agreement; and

**WHEREAS**, the City and the Company desire and intend that this Agreement be and constitute the credit enhancement agreement contemplated by and described in the Development Program;

**NOW, THEREFORE**, in consideration of the foregoing and in consideration of the mutual promises and covenants set forth herein, the parties hereby agree as follows:

**ARTICLE I  
DEFINITIONS**

**Section 1.1. Definitions.**

The terms defined in this Article I shall, for all purposes of this Agreement, have the meanings herein specified, unless the context clearly requires otherwise. All other capitalized terms not otherwise defined herein shall have the meaning given such terms in the Development Program.

“Act” means Chapter 206 of Title 30-A of the Maine Revised Statutes, as amended.

“Agreement” shall mean this Credit Enhancement Agreement dated as of the date set forth above between the City and the Company, as such may be amended by the parties from time to time.

“Captured Assessed Value” means the percentage of Increased Assessed Value retained in the ImmuCell Corporation Municipal Development and Tax Increment Financing District in each year during the term of the ImmuCell Corporation Municipal Development and Tax Increment Financing District as specified in Section 3.1 below.

“City” shall have the meaning given such term in the recitals hereto.

“Current Assessed Value” means the then current assessed value of the Property located within the ImmuCell Corporation Municipal Development and Tax Increment Financing District to be determined by the City’s Assessor as of April 1 of each year that this Agreement remains in effect.

“Company” shall have the meaning given such term in the first paragraph hereto, and shall also mean and include any assignee or successor thereof, including but not limited to any future limited partnership formed by Company.

“Company Tax Increment Revenues” means in each year this Agreement is in effect an amount of money equal to the Retained Tax Increment Revenues allocated to the Company pursuant to Section 3.1 hereof.

“Company TIF Account” means the account described in the Financial Plan section of the Development Program and established and maintained pursuant to the Development Program and Article II hereof.

“DECD” shall have the meaning given such term in the recitals hereto.

“Development Program” means the development program and financial plan for the District and attached hereto as Exhibit A.

“Development Program Fund” shall have the meaning given such term in Section 2.1 hereto.

“District” shall have the meaning given such term in the recitals hereto, which District is depicted on the maps contained in Exhibits A and B to the Development Program.

“Effective Date” shall have the meaning given such term in Section 6.1 hereto.

“Financial Plan” means the financial plan described in the “Financial Plan” section of the Development Program.

“Increased Assessed Value” means the valuation amount by which the Current Assessed Value exceeds the Original Assessed Value. If the Current Assessed Value is less than or equal to the Original Assessed Value in any year, there is no Increased Assessed Value in that year.

“Original Assessed Value” means \$52,600, the assessed value of the Property as of April 1, 2015.

“Project” shall have the meaning given such term in the recitals hereto.

“Project Cost Account” means the account in the Development Program Fund described in Section IV(B) of the Development Program and established and maintained pursuant to the Development Program and Article II hereof.

“Project Costs” means all costs incurred by the Company on the Project within the meaning set forth in 30-A M.R.S.A. §5222(14), as amended.

“Property” means the land and all real property improvements located in the District and taxable by the City.

“Property Taxes” means any and all ad valorem property taxes levied, charged or assessed against the Property by the City or on its behalf and actually paid to the City, but excluding any county, state or special district taxes that are separately levied, charged or assessed against the Property.

“Qualified Investments” shall mean any and all securities, obligations or accounts in which municipalities may invest their funds under applicable Maine law, and which are of the same type and tenor as the investments in which the City invests its own funds.

“Retained Tax Increment Revenues” means that portion of Property Taxes paid with respect to the Captured Assessed Value.

“Tax Payment Date” means the later of the date(s) on which Property Taxes assessed by the City with respect to the Property are due or are paid, or if any such day is not a business day, the next succeeding business day.

“Tax Year” shall have the meaning given such term in 30-A M.R.S.A. §5222(18), as amended, to wit: April 1 to March 31.

## **Section 1.2. Interpretation and Construction.**

In this Agreement, unless the context otherwise requires:

a. The terms “hereby,” “hereof,” “hereto,” “herein,” “hereunder” and any similar terms, as used in this Agreement, refer to this Agreement, and the term “hereafter” means after, and the term “heretofore” means before, the date of delivery of this Agreement.

b. Words importing a particular gender mean and include correlative words of every other gender.

c. Words importing persons mean and include firms, associations, partnerships (including limited partnerships), trusts, corporations and other legal entities, including public or governmental bodies, as well as any natural persons.

d. Any headings preceding the texts of the several Articles and Sections of this Agreement, and any table of contents or marginal notes appended to copies hereof, shall be solely for convenience of reference and shall not constitute a part of this Agreement, nor shall they affect its meaning, construction or effect.

e. All notices to be given hereunder shall be given in writing and, unless a certain number of days is specified, within a reasonable time.

**ARTICLE II  
DEVELOPMENT PROGRAM FUND AND FUNDING REQUIREMENTS**

**Section 2.1. Creation of Development Program Fund.**

Within sixty (60) days after the Effective Date, the City shall create and establish a segregated fund designated as the “ImmuCell Corporation TIF Development Program Fund” (hereinafter the “Development Program Fund”) pursuant to, and in accordance with the terms and conditions of, the Development Program and 30-A M.R.S.A. § 5227(3). The Development Program Fund shall consist of a Project Cost Account that is pledged to and charged with the payment of project costs as outlined in the Financial Plan of the Development Program and as provided in 30-A M.R.S.A. § 5227(3)(A)(1). The Project Cost Account shall also contain a single subaccount designated as the “Company TIF Account”.

**Section 2.2. Deposits into Company TIF Account.**

Each year during the term of this Agreement, commencing with the City’s 2016-2017 fiscal year and continuing thereafter for the remaining term of this Agreement, through and including the City’s 2027-2028 fiscal year, there shall be deposited into the Company TIF Account contemporaneously with each payment of Property Taxes an amount equal to that portion of the Property Taxes constituting Company Tax Increment Revenues for the period to which the payment relates. Any and all revenues, if any, resulting from investment of monies on deposit shall be retained by the City and withdrawn from the Company TIF Account contemporaneously with payment to the Company.

**Section 2.3. Use of Monies in Company TIF Account.**

Monies deposited in the Company TIF Account shall be used and applied exclusively to fund the City’s payment obligation to the Company described in Article III hereof.

**Section 2.4. Monies Held in Trust.**

All monies required to be paid into the Company TIF Account under the provisions hereof and the provisions of the Development Program, other than investment earnings thereon, shall be held by the City, in trust, for the benefit of the Company.

**Section 2.5. Investments.**

Any monies in the Company TIF Account shall be invested and reinvested in Qualified Investments as determined by the City. The City shall have discretion regarding the investment of such monies, provided such monies are at all times invested in Qualified Investments. As and when any amounts thus invested may be needed for disbursements, the City shall cause a sufficient amount of such investments to be sold or otherwise converted into cash to the credit of such account. The City shall have the sole and exclusive right to designate the investments to be sold and to otherwise direct the sale or conversion to cash of investments made with monies in the Company TIF Account. If the City experiences any losses in association with these

investments related to the Company TIF Account, the City shall still pay to the Company the amounts required under Section 3.1 hereof.

**Section 2.6. Tax Payments.**

The Company shall pay or cause to be paid when due all Property Taxes assessed by the City unless contested by the Company by appropriate proceedings pursuant to Maine law. No payments shall be made by the City under this Agreement at any time any such taxes or amounts are due and unpaid.

**ARTICLE III  
PAYMENT OBLIGATIONS**

**Section 3.1. Captured Assessed Value; Retained Tax Increment Revenues.**

During the term of the Development Program, the City shall annually retain the percentage of Increased Assessed Value and Increased Assessed Value indicated on Exhibit B attached hereto as Captured Assessed Value.

The Property Taxes paid with respect to the Captured Assessed Value shall be retained as Retained Tax Increment Revenues. The City agrees that all one hundred percent (100%) of the Retained Tax Increment Revenues shall constitute Company Tax Increment Revenues. Each year during the term of this Agreement, the City shall deposit into the Company TIF Account contemporaneously with each payment of Property Taxes an amount equal to one hundred percent (100%) of that portion of the property tax payment constituting Company Tax Increment Revenues, in accordance with the provisions of Section 2.2 of this Agreement and the priorities established by 30-A M.R.S.A. § 5227(3)(B), starting with taxes assessed for the 2013-2014 Tax Year and continuing thereafter for the remaining term of this Agreement, ending with taxes assessed for the City's 2027-2028 fiscal year, based on the April 1, 2027 Current Assessed Value.

**Section 3.2. Credit Enhancement Payments.**

The City shall pay to the Company all Company Tax Increment Revenues due and owing pursuant to Section 3.1 and then on deposit in the Company TIF Account within thirty (30) days following the last Tax Payment Date in each fiscal year during the term of this Agreement, or within thirty (30) days of receipt of the Company's request for annual payment submitted in accordance with Section 3.4(b) hereof, whichever shall occur last.

**Section 3.3. Failure to Make Payment.**

In the event the City should fail to, or be unable to, make any of the payments required under the foregoing provisions of this Article III, the item or installment so unpaid shall continue as a limited obligation of the City, under the terms and conditions hereinafter set forth, until the amount unpaid shall have been fully paid. The Company shall have the right to initiate and maintain an action to specifically enforce the City's obligations hereunder, including without limitation, the City's obligation to establish and maintain the Account and to deposit Company Tax Increment Revenues to the Account and its obligation to make required payment to the Company.

**Section 3.4. Manner of Payments.**

a. The payments provided for in this Article III shall be paid in immediately available funds in the manner provided hereinabove for its own use and benefit. Notwithstanding the above, no payments shall be made unless used to satisfy debt service on indebtedness incurred to finance qualified "Project Costs" as that term is defined under Chapter

206 of Title 30-A of the Maine Revised Statutes and as described as part of the Project in the Development Program or used to pay directly, or to reimburse the Company for payment of such Project Costs.

b. The City shall make required payments in response to requests for annual payment submitted by the Company setting forth the amount of the payment and containing a certification in the form attached hereto as Exhibit C.

**Section 3.5. Obligations Unconditional.**

Except as otherwise expressly provided in this Agreement, the obligations of the City to make the payments described in this Agreement in accordance with the terms hereof shall be absolute and unconditional irrespective of any defense or any rights of setoff, recoupment or counterclaim it might otherwise have against the Company. Notwithstanding the above, the City reserves the right to terminate this Agreement upon a final judgment by a court of competent jurisdiction to the effect that the Agreement or Development Program adopted in connection herewith or any payment made thereunder is or would be illegal or invalid. In such event, the termination shall relate back to the original date of the Agreement which shall be deemed void ab initio, and neither party shall have any obligations or liability hereunder, under the Development Program or in respect of any of the transactions contemplated thereby, and shall be left in whatever positions, financial or otherwise, they may be in as of the date of termination.

**Section 3.6. Limited Obligation.**

Except as otherwise expressly provided in this Agreement, the City's obligations of payment hereunder shall be limited obligations of the City payable solely from Retained Tax Increment Revenues and any earnings thereon, pledged therefor under this Agreement. The City's obligations hereunder shall not constitute a general debt or a general obligation on the part of the City or a charge against or pledge of the faith and credit or taxing power of the City, but shall be payable solely from the Retained Tax Increment Revenues received by the City, and any earnings thereon. This Agreement shall not directly or indirectly or contingently obligate the City to levy or to pledge any form of taxation whatever therefor or to make any appropriation for their payment, excepting the City's obligation to assess property taxes upon the Project and the pledge of the Retained Tax Increment Revenues established under this Agreement.

**ARTICLE IV  
PLEDGE AND SECURITY INTEREST**

**Section 4.1. Pledge of Company TIF Account.**

In consideration of this Agreement and other valuable consideration and for the purpose of securing the City's payment of the amounts provided for hereunder, according to the terms and conditions contained herein, and in order to secure the performance and observance of all of the City's covenants and agreements contained herein, the City does hereby grant a security interest in and pledge to the Company the Company TIF Account and all sums of money and other securities and investments therein.

**Section 4.2. Perfection of Interest.**

To the extent deemed necessary or desirable by the Company, the City shall cooperate with the Company in executing certain control or three party agreements, and also consent to appropriate financing statements and continuation statements being duly filed and recorded in the appropriate state offices, as required by and permitted under the provisions of the Maine Uniform Commercial Code or other similar law as adopted in the State of Maine and any other applicable jurisdiction, as from time to time amended, in order to perfect and maintain the security interests in the funds in the Company TIF Account.

**Section 4.3. Further Instruments.**

The parties hereto shall, from time to time execute and deliver such further instruments and take such further action as may be reasonable and as may be required to carry out the provisions of this Agreement, provided, however that no such instruments or agreements shall pledge the credit of the City.

**Section 4.4. Liens.**

Except as permitted hereunder, the City shall not sell, lease, pledge, assign or otherwise dispose, encumber or hypothecate any interest in the Account and will promptly pay or cause to be discharged or make adequate provision to discharge any lien, charge or encumbrance on any part thereof not permitted hereby.

**Section 4.5. Access to Books and Records.**

All books, records, notes and documents in the possession of the City relating to the District, the Development Program, this Agreement and the monies, revenues and receipts on deposit or required to be deposited into the Account shall at all reasonable times be open to inspection by the Company, its agents and employees.

**ARTICLE V  
DEFAULTS AND REMEDIES**

**Section 5.1. Events of Default.**

Each of the following events shall constitute and be referred to in this Agreement as an “Event of Default”:

a. Any failure by the City to pay any amounts due under Section 3 above when the same shall become due and payable;

b. Any failure by the City to make deposits into the Company TIF Account as and when due;

c. Other than as provided in paragraph (a) and (b) above, any failure by the City or the Company to observe and perform in all material respects any respective covenant, condition, agreement or provision contained herein on the part of the City or the Company respectively to be observed or performed, including any failure of the Company to use payments made under this Agreement as required in Section 3.6 of this Agreement, which failure is not cured within thirty (30) days following written notice thereof; provided, however, that this subsection (c) shall not be construed to include the Company’s failure to pay Property Taxes on the Property in the District for any reason as an Event of Default hereunder; and

d. If a decree or order of a court or agency or supervisory authority having jurisdiction in the premises shall appoint a conservator or receiver or liquidator for the City, or if any insolvency, readjustment of debt, marshaling of assets and liabilities or similar proceedings for the winding up or liquidation of the City's affairs shall have been entered against the City or if the City shall have consented to the appointment of a conservator or receiver or liquidator in any such proceedings of or relating to the City or of or relating to all or substantially all of its property, including without limitation the filing of a voluntary petition in bankruptcy by the City or the failure by the City to have a petition in bankruptcy dismissed within a period of 90 consecutive days following its filing or in the event an order for release has been entered under the Bankruptcy Code with respect to the City.

**Section 5.2. Remedies on Default.**

Whenever any Event of Default referred to in Section 5.1 hereof shall have occurred and be continuing, the non-defaulting party may take any one or more of the following remedial steps: (a) the non-defaulting party may take whatever action at law or at equity as may appear necessary or desirable to collect any amount then due and thereafter to become due, to specifically enforce the performance or observance of any obligations, agreements or covenants of the non-defaulting party under this Agreement and any documents, instruments and agreements contemplated hereby or to enforce any rights or remedies available hereunder; and (b) the Company shall also have the right to exercise any rights and remedies available to a secured party under the laws of the State of Maine. No party has the right to terminate this Agreement.

**Section 5.3. Remedies Cumulative.**

No remedy herein conferred upon or reserved by any party is intended to be exclusive of any other available remedy or remedies but each and every such remedy shall be cumulative and shall be in addition to the remedy given under this Agreement or now or hereafter existing at law, in equity or by statute. Delay or omission to exercise any right or power accruing upon any Events of Default or to insist upon the strict performance of any of the covenants and agreements herein set forth or to exercise any rights or remedies upon the occurrence of an Event of Default shall not impair any such right or power or be considered or taken as a waiver or relinquishment for the future of the rights to insist upon and to enforce, from time to time and as often as may be deemed expedient, by injunction or other appropriate legal or equitable remedy, strict compliance by the parties hereto with all of the covenants and conditions hereof, or of the rights to exercise any such rights or remedies, if such Events of Default be continued or repeated.

**Section 5.4. Enforcement Rights.**

The City and the Company agree that each party hereto shall have the right to initiate a legal proceeding to enforce the specific performance of this Agreement, it being understood and agreed that this Agreement is a material inducement to the Company continuing its pursuit of the Project. The parties agree that in the event of any dispute or disagreement hereunder the Company and the City shall continue to make payment of all amounts due hereunder in the manner and at the times specified herein until final resolution of such dispute, whether by mutual agreement or final decision of a court, arbitrator or other dispute resolution mechanism.

**ARTICLE VI**  
**EFFECTIVE DATE, TERM AND TERMINATION**

**Section 6.1. Effective Date and Term.**

This Agreement shall become effective upon its execution and delivery by the parties hereto (the “Effective Date”) and shall remain in full force from the date hereof and shall expire on the later of the completion of deposits and payments required pursuant to Articles II and III hereof with respect to the City’s 2027-2028 fiscal year relating to Current Assessed Value as of April 1, 2027, or upon the performance of all obligations on the part of the City and the Company hereunder, including without limitation payment of all amounts to be paid to Company.

**Section 6.2. Cancellation and Expiration of Term.**

At the termination or other expiration of this Agreement in accordance with the provisions of this Agreement, the City and the Company shall each execute and deliver such documents and take or cause to be taken such actions as may be necessary to evidence the termination of this Agreement.

## **ARTICLE VII ASSIGNMENT**

### **Section 7.1. Consent to Pledge and/or Assignment.**

The City hereby acknowledges that the Company may from time to time pledge and assign its right, title and interest in, to and under this Agreement as collateral for financing for the Project, although no obligation is hereby imposed on the Company to make such assignment or pledge. Recognizing this possibility, the City does hereby consent and agree to the pledge and assignment of all the Company's right, title and interest in, to and under this Agreement and in, and to the payments to be made to Company hereunder, to third parties as collateral or security for financing the Development Program, on one or more occasions during the term hereof. The City agrees to execute and deliver any assignments, pledge agreements, consents or other confirmations required by such prospective pledgee or assignee, including without limitation recognition of the pledgee or assignee as the holder of all right, title and interest herein and as the payee of amounts due and payable hereunder. The City agrees to execute and deliver any other documentation including, without limitation, any reasonable three-party control agreement, as shall confirm to such pledgee or assignee the position of such assignee or pledgee and the irrevocable and binding nature of this Agreement and provide to such pledgee or assignee such rights and/or remedies as the Company or such pledgee or assignee may reasonably deem necessary for the establishment, perfection and protection of its interest herein.

### **Section 7.2. Assignment.**

Except as provided in Section 7.1, and except for the purpose of securing financing for the Project or for an assignment to a successor entity or an affiliate entity, the Company shall not transfer or assign any portion of its rights in, to and under this Agreement without the consent of the City, which consent shall not be unreasonably withheld, conditioned or delayed.

**ARTICLE VIII  
MISCELLANEOUS**

**Section 8.1. Successors.**

In the event the City or the Company are dissolved, merged into or consolidated with another entity, or undergo any form of corporate reorganization, the covenants, stipulations, promises and agreements set forth herein, by or on behalf of or for the benefit of such party shall bind or inure to the benefit of the successors and assigns thereof from time to time and any entity, officer, board, commission, agency or instrumentality to whom or to which any power or duty of such party shall be transferred.

**Section 8.2. Parties in Interest.**

Except as herein otherwise specifically provided, nothing in this Agreement expressed or implied is intended or shall be construed to confer upon any person, firm or corporation other than the City and the Company any right, remedy or claim under or by reason of this Agreement, it being intended that this Agreement shall be for the sole and exclusive benefit of the City and the Company; provided, however, that if the payment obligations of the City hereunder are held by a final and binding proceeding to be illegal or invalid, this Agreement shall terminate. In such event all obligations of the parties shall terminate, and no party shall have any further liability to the other hereunder.

**Section 8.3. Severability.**

Except as otherwise provided herein, in case any one or more of the provisions of this Agreement shall, for any reason, be held to be illegal or invalid, such illegality or invalidity shall not affect any other provision of this Agreement and this Agreement shall be construed and enforced as if such illegal or invalid provision had not been contained herein.

**Section 8.4. No Personal Liability.**

(a) No covenant, stipulation, obligation or agreement of the City contained herein shall be deemed to be a covenant, stipulation or obligation of any present or future elected or appointed official, officer, agent, servant or employee of the City in his or her individual capacity and neither the members of the City Council of the City, or any official, officer, agent, servant or employee of the City shall be liable personally with respect to this Agreement or be subject to any personal liability or accountability by reason hereof.

(b) No covenant, stipulation, obligation or agreement of the Company contained herein shall be deemed to be a covenant, stipulation or obligation of any present or future director, member, officer, agent, servant or employee of the Company in his or her individual capacity and neither the directors, members, officers, agents, servants or employees of the Company shall be liable personally with respect to this Agreement or be subject to any personal liability or accountability by reason hereof.

**Section 8.5. Counterparts.**

This Agreement may be executed in any number of counterparts, each of which, when so executed and delivered, shall be an original, but such counterparts shall together constitute but one and the same Agreement.

**Section 8.6. Governing Law.**

The laws of the State of Maine shall govern the construction and enforcement of this Agreement in all respects.

**Section 8.7. Notices.**

All notices, certificates, requests, requisitions or other communications by the City or the Company pursuant to this Agreement shall be in writing and shall be sufficiently given and shall be deemed given when mailed by first class mail, postage prepaid, or, for any notice of an Event of Default, by registered or certified mail, return receipt requested, addressed as follows:

If to the City:

Corporation Counsel's Office  
City of Portland  
389 Congress Street  
Portland, ME 04101

If to the Company:

ImmuCell Corporation  
56 Evergreen Drive  
Portland, ME 04103  
Attn: Michael F. Brigham, President

With a copy to:  
Pierce Atwood LLP  
254 Commercial Street  
Portland, ME 0410  
Attn: James M. Saffian, Esq.

Either of the parties may, by notice given to the other, designate any further or different addresses to which subsequent notices, certificates, requests or other communications shall be sent hereunder.

**Section 8.8. Amendments.**

Neither this Agreement nor the Development Program may be amended without the express written consent of all of the parties hereto, which consent shall not be unreasonably

withheld, conditioned or delayed. Provided, however, the parties agree to amend this Agreement in order to fulfill such reasonable requirement that a lender may require in connection with financing of the Project. This Agreement may only be amended in compliance with the provisions of 30-A M.R.S.A. §5211 et seq., as amended.

**Section 8.9. Net Agreement.**

This Agreement shall be deemed and construed to be a “net agreement,” and the City shall pay absolutely net during the term hereof all payments required hereunder, free of any deductions, and without abatement, or setoffs; provided, it is understood that the City's payment obligations are to be satisfied solely from Retained Tax Increment Revenues and actually paid in by the Company and received by the City.

**Section 8.10. Integration.**

This Agreement completely and fully supersedes all other prior or contemporaneous understandings or agreements, both written and oral, between the City and the Company relating to the specific subject matter of this Agreement and the transactions contemplated hereby.

**Section 8.11. Project Responsibility.**

The parties hereto agree, and the City hereby acknowledges that the Company shall have no obligation to go forward with the Project referred to herein or in the Development Program. Such Project is subject to final approval by the Company.

**Section 8.12. Benefit of Assignees or Pledges.**

The City agrees that this Agreement is executed in part to induce assignees or pledges to provide financing for the Project and accordingly all covenants and agreements on the part of the City as to the amounts payable hereunder are hereby declared to be for the benefit of any such assignee or pledgee from time to time of the Company's right, title and interest herein.

**Section 8.13. No Third Party Benefits.**

Except as otherwise expressly authorized herein, this Agreement is entered into solely between, and may be enforced only by the City and the Company and its assignees or pledges, and this Agreement will not be deemed to create any rights in other third parties, or to create any obligations of a party to this Agreement to any such third parties. In clarification of the foregoing, no tenant at the Property obligated under its lease or rental agreement with the Company to pay all or any portion of the property taxes associated with the Property shall be entitled to any of the funds in the Company TIF Account or to the benefit thereof without a formal assignment or pledge from the Company of the rights and duties to this Agreement.

**Section 8.14. Indemnification.**

a. The Company agrees to defend, indemnify and hold harmless the City, its officers, agents and employees from any and all claims and expenses, including its attorney fees, arising out of or associated with the City's approval of the District and its preparation of and participation in this Agreement, including expenses arising from any default hereunder by the Company but excluding any such claims or expenses as may relate to actions or proceedings resulting from a default hereunder by the City. This indemnification obligation shall survive termination of this Agreement or a finding that this Agreement is void or invalid.

b. The City agrees to defend, indemnify and hold harmless the Company, its officers, agents and employees from any and all claims and expenses, including its attorney fees, arising out of or associated with any default hereunder by the City. This indemnification obligation shall survive termination of this Agreement or a finding that this Agreement is void or invalid.

**Section 8.15. Waiver of Recapture.**

In order to induce Company to construct the Project, in the event this Credit Enhancement Agreement, the Development Program or designation of the District is found or held void or invalid or if for any reason the payments made by the City hereunder are held contrary to law or improper by a Court of law with final jurisdiction over this Agreement, the City irrevocably waives its rights to reclaim, recapture or otherwise recover any Company Tax Increment Revenues paid to the Company or any assignee pursuant to this Agreement.

**(Signature page break.)**

**IN WITNESS WHEREOF**, the City and the Company have caused this Agreement to be executed in their respective corporate names and their respective corporate seals to be hereunto affixed and attested by the duly authorized officers or members, as the case may be, all as of the date first above written.

**WITNESS**

**CITY OF PORTLAND, MAINE**

\_\_\_\_\_

By: \_\_\_\_\_

Jon P. Jennings  
Its City Manager

**IMMUCELL CORPORATION**

\_\_\_\_\_

By: \_\_\_\_\_

Michael F. Brigham  
Its President

**Exhibit A to Credit Enhancement Agreement – ImmuCell Corporation Municipal  
Development and Tax Increment Financing District Development Program**

**EXHIBIT B to Credit Enhancement Agreement: Company Tax Increment Revenues**

<b>CEA Years:</b>	<b>Increased Assessed Value to be captured as Captured Assessed Value (and Reimbursed to Company):</b>
<b>Years 1-11 (FY2016-2017 to FY2026-2027)</b>	<b>65%</b>
<b>Years 12 (FY2027-2028)</b>	<b>30%</b>

**EXHIBIT C to Credit Enhancement Agreement – Certification of Costs Form (ImmuCell Corporation TIF District)**

The undersigned does hereby certify the following project costs were incurred in the Tax Year starting April 1, 20\_\_ and ending March 31, 20\_\_ as follows:

<b><u>Improvements</u></b>	<b><u>Actual Costs</u></b>
_____	_____
_____	_____
_____	_____

**Total:** \_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_