

PORTLAND DEVELOPMENT COMMISSION
Portland, Oregon

RESOLUTION NO. 6916

**AUTHORIZING AN ADDITIONAL GRANT TO OREGON
ENTREPRENEURS NETWORK IN THE AMOUNT OF \$200,000 TO
SUPPORT THE PORTLAND SEED FUND**

WHEREAS, pursuant to a Grant Agreement between the Oregon Entrepreneurs Network (“OEN”) and the Portland Development Commission (“PDC”) dated May 20, 2011, a copy of which is attached hereto as Exhibit A (the “Grant Agreement”), PDC provided a initial grant in the amount of \$500,000 to OEN for OEN’s use in funding an investment in the Portland Seed Fund (the “Fund”);

WHEREAS, the Fund was established to provide equity investment capital in four funding rounds to approximately 5-10 small businesses per round, with each firm receiving between \$25,000 and \$100,000 as an initial investment as well as 90 days of mentoring and advising;

WHEREAS, the Fund reached capitalization of more than two million dollars through the PDC grant provided to OEN, as well as additional public and private investment, a portion of which was used to fund the first of four funding rounds;

WHEREAS, an additional PDC grant of \$200,000 to OEN, for OEN’s use in supporting the Fund, is anticipated to enable the Fund to leverage a total of more than three million dollars in investment and allow for three additional funding rounds to take place, as well as follow-on funding of select recipients;

WHEREAS, the goals and objectives of the Fund support the City of Portland’s Economic Development Strategy to encourage job growth and new business formation;

WHEREAS, \$200,000 has been included in the Fiscal Year 2011-2012 budget for this purpose;
and

WHEREAS, the City of Portland and PDC desire to make funds available to the Fund for investment in businesses at the earliest stage of development, but cannot do so directly because of legal limitations.

NOW, THEREFORE, BE IT RESOLVED that the Executive Director is authorized to provide an additional \$200,000 grant to OEN for OEN’s use in supporting the Portland Seed Fund, with such grant implemented either through an amendment to the existing Grant Agreement or through a new grant agreement, but in either case on substantially the same terms as those of the existing Grant Agreement; and

BE IT FURTHER RESOLVED that this resolution shall become effective immediately upon its adoption.

Adopted by the Portland Development Commission January 11, 2012.


Recording Secretary

GRANT AGREEMENT

This **GRANT AGREEMENT** ("Grant Agreement") dated as of May 20 2011, is entered into by and between the **OREGON ENTREPRENEURS FORUM**, an Oregon non-profit public benefit corporation d/b/a Oregon Entrepreneurs Network ("Grantee"), and the **CITY OF PORTLAND**, a municipal corporation of the State of Oregon, acting by and through the **PORTLAND DEVELOPMENT COMMISSION** ("Grantor").

RECITALS

- A. Grantor and Grantee desire to support and stimulate the growth and development of capital for emerging businesses in Portland, Oregon.
- B. In order to support and stimulate the growth and development of capital for emerging businesses in Portland, Oregon, Grantee desires to receive financial assistance from Grantor to enable Grantee to make targeted investments related to economic development in Portland, Oregon. Grantee has set up for this purpose a separate account known as the OEN Catalyst Fund (the "OCF"). Grantee intends to raise funds through grants and private donations for deposit in the OCF and use the OCF funds to invest in professionally managed investment funds that provide financing to emerging businesses that have a potential to grow and contribute to the economy of Oregon and Southwest Washington (the "Region").
- C. On the terms and conditions hereof, Grantor is willing to provide grant funding of up to \$500,000 to Grantee to be deposited in the OCF for the purpose described above provided that funds in an amount at least equal to the amount of grant funding provided hereunder are invested in emerging businesses located in Portland, Oregon.

NOW THEREFORE, the parties agree as follows:

ARTICLE 1 GRANT GENERALLY

Section 1.1 Grant Amount. On the terms and conditions of this Grant Agreement, Grantor agrees to make a grant to Grantee in an amount not to exceed FIVE HUNDRED THOUSAND DOLLARS (\$500,000) to be deposited in the OCF and used in accordance with the terms of this Grant Agreement (the "Grant").

Section 1.2 Disbursement of Grant Funds. Provided that (a) no Event of Default (as defined below) (or event that, with notice or lapse of time or both, would constitute an Event of Default) has occurred and (b) Grantor has approved the expense structure (including the compensation of managers) of the investment fund in which the Grant funds will be invested, which approval shall not be unreasonably withheld, Grantor shall disburse the Grant funds to Grantee within fifteen (15) days after receipt by Grantor of an invoice therefor.

ARTICLE 2
GRANTEE'S REPRESENTATIONS AND WARRANTIES

Grantee represents and warrants to Grantor as follows:

Section 2.1 Existence and Power; Authority. Grantee is a non-profit public benefit corporation duly organized, validly existing and in good standing under the laws of the State of Oregon. Grantee has full power, authority, and legal right to execute and deliver this Grant Agreement and any other related documents and to incur and perform its obligations hereunder and thereunder. The execution and performance by Grantee of this Grant Agreement and any other related documents have been duly authorized by all necessary action of Grantee. This Grant Agreement and any other related documents have been duly executed by Grantee and will constitute legal, valid and binding obligations of Grantee, enforceable in accordance with their terms subject to the laws of bankruptcy, insolvency, or other similar laws affecting the enforcement of creditors' rights generally.

Section 2.2 No Violations or Default. Grantee is not in default under or in violation of any indenture or agreement to which it is a party or by which it is bound, or any order, regulation, ruling, or requirement of a court or other public body or authority. No creditor has given Grantee notice or threatened to give it any notice of default under any material agreement.

Section 2.3 Litigation. No action, suit, or proceeding (and to Grantee's knowledge, no investigation) is pending against Grantee or with respect to the OCF before any court or administrative agency, (a) the outcome of which, by itself or taken together with other such litigation, would be reasonably expected to have a material adverse effect on the business, assets, operations, or financial condition of Grantee or the power of Grantee to carry out the purpose of the OCF of this Grant Agreement or (b) which purports to affect the legality, enforceability, or validity of this Grant Agreement or any other related document.

Section 2.4 Compliance with Laws. Grantee is in material compliance with all federal, state and local laws, rules, regulations, ordinances and orders applicable to it and to the OCF.

ARTICLE 3
AFFIRMATIVE COVENANTS

Grantee covenants and agrees as follows:

Section 3.1 Management and Use of Grant Proceeds

A. Other than as described in Section 3.1(E) below, the Grant proceeds shall be used solely to invest in a limited partnership that (1) is organized by and under the control of Jim Huston and Angela Jackson, or their respective duly appointed successors, for the purpose of investing in emerging businesses in the Region, (2) has committed capital of at least \$1 million (inclusive of the Grant proceeds), and (3) closes its initial round of financing involving an aggregate initial capital commitment of at least \$1 million no later than June 30, 2011 (the "Portland Seed Fund").

B. Before finalizing its investment in the Portland Seed Fund, Grantee shall require that the Portland Seed Fund agree in writing to (1) invest in emerging businesses located in Portland, Oregon an amount at least equal to the amount of investment capital provided by Grantee that is funded with the proceeds of the Grant and (2) furnish information to Grantee as necessary to enable Grantee to comply with its reporting

requirements under this Grant Agreement. Grantee shall use commercially reasonable efforts to enforce the foregoing obligations.

C. All income derived from the investment of Grant funds in the Portland Seed Fund ("**Program Income**") shall be reinvested in the Portland Seed Fund or other professionally managed seed, growth or accelerator funds, where such fund agrees in writing that it will invest in Portland, Oregon an amount at least equal to the amount of investment capital provided by Grantee which constitutes Program Income. Any income derived from such subsequent investments shall also be considered Program Income and shall be reinvested as provided in this section 3.1(C). Any in-kind property distributions received with respect to the investment of Grant funds in the Portland Seed Fund, or with respect to any investment of Program Income, shall be liquidated as soon as reasonably prudent and the proceeds thereof shall also be considered Program Income and shall be reinvested as provided in this Section 3.1(C).

D. Pending its use to meet capital calls from the Portland Seed Fund, the proceeds of the Grant must be deposited in short-term interest-bearing accounts of the OCF with a reasonable rate of return. Similarly, pending its reinvestment, all Program Income must be deposited in short-term interest-bearing accounts of OCF with a reasonable rate of return. All such interest shall be considered Program Income and be reinvested as provided in Section 3.1(C).

E. Grantee may use a reasonable portion of the Grant proceeds, but not more than five percent (5%) thereof, to cover third party charges and fees (such as legal fees and trustee fees) ("**Trust Fees**") necessary for the establishment and operation of the trust Grantee anticipates establishing to implement the investment of the Grant proceeds in the Portland Seed Fund. In addition, Grantee may use up to five percent (5%) of Program Income (but not more than \$50,000) first to cover any Trust Fees exceeding five percent (5%) of the Grant proceeds and then to cover the cost of operating Grantee's programs. Except as expressly set forth in this Section 3.1(E), neither Grant proceeds nor Program Income may be used to cover Grantee's administrative costs.

Section 3.2 Licenses; Maintenance of Business. Grantee will remain a non-profit corporation validly existing under the laws of Oregon and will keep in force all licenses and permits necessary to the proper conduct of its business, the performance of its obligations under this Grant Agreement, and the administration of the OCF consistent with the terms of this Grant Agreement .

Section 3.3 Compliance with Laws. Grantee will comply with all laws, ordinances, statutes, rules, regulations, orders, injunctions, or decrees of any government agency or instrumentality having jurisdiction over Grantee or the OCF.

Section 3.4 Other Obligations Grantee will pay and discharge before the same shall become delinquent all indebtedness, taxes, and other obligations for which it is liable or to which its income or property is subject and all claims for labor and materials or supplies except any thereof whose validity or amount is being contested in good faith by Grantee in appropriate proceedings with adequate provision having been made in accordance with generally accepted accounting principles for the payment thereof if the contest is determined adversely to Grantee.

Section 3.5 Indemnity. Grantee shall indemnify and hold Grantor, its officers, employees and agents harmless from and against any and all liabilities, claims, losses, damages, or expenses (including attorney fees and expenses) which any of them may suffer or incur in connection with (a) the inaccuracy of any of the representations and warranties made by Grantee or (b) the actions or inactions of Grantee, or its employees, agents or contractors, related to the OCF or the transactions contemplated by this Agreement, other than claims,

losses, damages, or expenses that arise solely from the gross negligence or willful misconduct of Grantor. For avoidance of doubt, managers of any fund in which Grantee invests Grant proceeds or Program Income shall not be considered employees, agents or contractors of Grantee. Grantee's obligations under this Section 3.5 shall survive termination of this Agreement.

Section 3.6 Records and Inspection. Grantee shall keep proper books of account and records on all activities associated with the Grant and the OCF, Grantee will maintain these books of account and records in accordance with generally accepted accounting principles and shall retain the books of account and records until the later of three years after the Portland Seed Fund Termination Date (as defined below) or the date that all disputes, if any, arising under this Grant Agreement have been resolved. Grantee will permit Grantor and/or its duly authorized representatives to inspect, review and make excerpts and transcripts of its books of account and records with respect to the receipt and disbursement of funds received from Grantor. Access to these records is not limited to the required retention period. The authorized representatives shall have access to records at any reasonable time for as long as the records are maintained. Grantee shall keep similar records on the receipt and use of any Program Income, shall maintain those records over a similar time-period, and shall make such records available to Grantor in a similar manner.

Section 3.7 Reporting Requirements.

A. Commencing with the second calendar quarter of 2011 and continuing each calendar quarter until the earlier of (1) the liquidation of the Portland Seed Fund or (2) Grantee's exit from the Portland Seed Fund (the "**Portland Seed Fund Termination Date**"), Grantee shall, within thirty (30) days after the end of each quarter, provide Grantor with a written report on the status of the OCF and the use of the Grant funds during the quarter, including any capital calls received and funded. Within thirty (30) days after the Portland Seed Fund Termination Date, but no later than December 31, 2018, Grantee shall provide Grantor with a final written report describing the activities funded with the Grant moneys including a final accounting of the use thereof.

B. The reports required by Subsection 3.7(A) above and 3.7(C) below shall be in a form acceptable to Grantor and shall include (1) the number of businesses assisted and their location and current status, (2) the portion of the Grant funds invested, (3) the total OCF capital invested, (3) investment returns and successful investment exits, and, to the extent reasonably available, (4) jobs created by businesses in which the Portland Seed fund invests, (5) other investment capital leveraged and venture capital attracted to the Region, (6) the number of experienced entrepreneurs attracted to and retained in the Region, and (7) other information reasonably requested by Grantor.

C. Grantee shall also require the manager of the Portland Seed Fund to report at least annually on the operation of the Portland Seed Fund, including data on the metrics identified in (B) above, to the Portland Development Commission and the Portland City Council.

D. Except as required by the Oregon Public Records Law or other applicable law, or pursuant to a subpoena, or court or other governmental order, Grantor shall not publicly disclose confidential or proprietary information provided to Grantor as part of the reports required under this Section 3.7, if such information is so identified in the reports.

E. In order to recognize the contributions of Grantor to the OCF, the parties agree to work cooperatively on a joint or coordinated announcement suitable for publication at an appropriate time based on implementation of this Grant Agreement.

F. Grantee shall provide reports to Grantor on the investment of Program Income as Grantor may reasonably request.

Section 3.8 Unexpended Grant Funds. Any Grant funds disbursed to Grantee, or any interest earned by Grantee on the Grant funds remaining in OCF after this Grant Agreement is terminated shall be immediately returned to Grantor, unless otherwise directed by Grantor.

ARTICLE 4 EVENTS OF DEFAULT

Any of the following shall constitute an Event of Default under this Grant Agreement:

Section 4.1 Failure to Pay General Debts When Due. Grantee (i) applies for or consents to the appointment of, or the taking of possession by, a receiver, custodian, trustee, or liquidator of itself or of all or a substantial part of its property, (ii) admits in writing its inability to pay, or generally is not paying, its debts as they become due, (iii) makes a general assignment for the benefit of creditors, (iv) commences a voluntary action under the United States Bankruptcy Code (as now or hereafter in effect), (v) is adjudicated a bankrupt or insolvent; (vi) files a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding up, or composition or adjustment of debts, (vii) fails to controvert in a timely or appropriate manner, or acquiesces or consents in writing to, any petition filed against it, in an involuntary action under the United States Bankruptcy Code (as now or hereafter in effect), or (viii) takes any action for the purpose of effecting any of the foregoing.

A proceeding or case is commenced against Grantee, without its consent, in any court of competent jurisdiction, seeking (i) the liquidation, reorganization, dissolution, windup, or composition or readjustment of the debts of Grantee, (ii) a receiver, trustee, custodian, liquidator, or the like is appointed for Grantee or for all or a substantial part of its assets, or (iii) relief is granted to Grantee under any law relating to bankruptcy, insolvency, reorganization, winding up, or composition or adjustment of debts, and such proceeding or case continues undismissed, or (iv) an order, judgment, or decree approving or ordering any of the foregoing is entered and continues unstayed and in effect for any period of 60 days, or an order for relief against Grantee is entered in an involuntary case under the United States Bankruptcy Code (as now or hereafter in effect).

Section 4.2 Failure to Disclose Material Facts. Grantee fails to disclose any fact material to the making of the Grant, or a disbursement, to Grantee, or upon discovery by Grantor of any misrepresentation by, on behalf of, or for the benefit of, Grantee.

Section 4.3 Failure to Comply with Other Obligations. Grantee fails to observe, perform, discharge or comply with any other covenant, agreement or obligation imposed on Grantee by this Grant Agreement and such failure remains uncured 30 days after written notice thereof to Grantee.

**ARTICLE 5
RIGHTS AND REMEDIES UPON EVENT OF DEFAULT**

Upon the occurrence of an Event of Default and at any time thereafter, Grantor may, at its option, exercise any one or more of the following rights and remedies:

Section 5.1 Repayment of Grant Funds. Grantor may demand the immediate repayment of the entire original Grant amount (or so much thereof as has been disbursed to Grantee) and other charges payable by Grantee pursuant to this Grant Agreement, and, upon such demand, Grantee shall pay to Grantor the amount demanded to be immediately repaid.

Section 5.2 Termination of Funding Obligation. Grantor may, by and effective upon written notice to Grantee, terminate Grantor's obligation to disburse additional Grant funds to Grantee.

Section 5.3 No Election Required. Grantor shall have any other right or remedy provided in this Grant Agreement or any other instrument delivered by Grantee in connection therewith, or available at law, in equity, or otherwise in such order and manner as it may select.

Section 5.4 Rights and Remedies Cumulative. All rights and remedies described in this Article 5 are cumulative and in addition to any other remedy Grantor may have by agreement, at law, or in equity. Partial exercise of any right or remedy shall not limit or restrict Grantor's subsequent exercise of such right or remedy nor shall it restrict Grantor's contemporaneous or subsequent exercise of any other right or remedy.

Section 5.5 No Waiver. No failure on the part of Grantor to exercise, and no delay in exercising, any right, power, or privilege under this Grant Agreement shall operate as a waiver of that right or any other right. No modification or waiver of any provision of this Grant Agreement shall be effective unless in writing, and then only in specific instance and for the purpose given. No notice or demand on Grantee shall entitle Grantee to any other notice or demand in other similar circumstances.

Section 5.6 Payment of Costs of Collection. In case of an Event of Default, or in case litigation is commenced to enforce or construe any term of this Grant Agreement, the losing party will pay to the prevailing party such amounts as shall be sufficient to cover the cost and expense of collection or enforcement, including, without limitation, reasonable attorney fees and costs prior to and at any arbitration proceeding or at trial, on appeal, or in any bankruptcy proceeding.

**ARTICLE 6
GENERAL TERMS AND CONDITIONS**

Section 6.1 Counterparts. This Grant Agreement may be executed in any number of counterparts, and any single counterpart or set of counterparts signed, in either case, by all the parties hereto shall constitute a full and original instrument, but all of which shall together constitute one and the same instrument.

Section 6.2 Survival. All agreements, representations, and warranties shall survive the execution and delivery of this Grant Agreement, any investigation at any time made by Grantor or on its behalf and the making of the Grant.

Section 6.3 Notice. Any notice required or permitted under this Grant Agreement shall be in writing and shall be deemed effective (1) when actually delivered in person, (2) one business day after deposit

with a commercial courier service for "next day" delivery, (3) two business days after having been deposited in the United States mail as certified or registered mail, or (4) when transmitted by facsimile (answer back or receipt confirmed), addressed to the parties as follows:

If to Grantee: Oregon Entrepreneurs Network
Attn: Linda Weston, Executive Director
309 SW 6th Avenue, Suite 212
Portland, Oregon 97204

with a copy to: Oregon Entrepreneurs Network
Attn: James C. Noonan, Chair, Investment Committee
309 SW 6th Avenue, Suite 212
Portland, OR 97204

If to Grantor: Portland Development Commission
Attn: Chris Harder
222 NW Fifth Avenue
Portland, OR 97209
Telephone: (503) 823-3355
Facsimile: (503) 823-3368

with a copy to: Portland Development Commission
Attn: General Counsel
222 NW Fifth Avenue
Portland, OR 97209
Telephone: (503) 823-3200
Facsimile: (503) 823-3368

Section 6.4 Successors and Assigns. Grantee may not assign this Grant Agreement, in whole or in part, without the prior written consent of Grantor. This Grant Agreement shall be binding upon and shall inure to the benefit of the parties and their respective permitted successors and assigns.

Section 6.5 Governing Law, Jurisdiction, Venue. This Grant Agreement shall be governed by and construed in accordance with the laws of the State of Oregon. Any legal action regarding this Grant Agreement must be brought and conducted in the federal or state court, as appropriate, serving Multnomah County, Oregon, and the parties hereby consent to the jurisdiction and venue of such courts.

Section 6.6 Modification; Prior Agreements; Headings. This Grant Agreement may not be modified or amended except by an instrument in writing signed by Grantee and Grantor. This Grant Agreement reflects and sets forth the entire agreement and understanding of the parties with respect to the subject matter hereof, and supersedes all prior agreements and understandings relating to such subject matter. The headings in this Grant Agreement are for the purpose of reference only and shall not limit or otherwise affect any of the terms hereof.

Section 6.7 Validity; Severability. If any provision of this Grant Agreement is held to be invalid, such event shall not affect, in any respect whatsoever, the validity of the remainder of this Grant Agreement, and the remainder shall be construed without the invalid provision so as to carry out the intent of the parties to the extent possible without the invalid provision.

Section 6.8 Time of Essence. Time is of the essence of this Grant Agreement.

Section 6.9 Relationship of the Parties. Nothing contained in this Grant Agreement or any acts of the parties hereto shall be deemed or construed to create the relationship of principal and agent, or of partnership, or of joint venture or of any other association other than that of independent contracting parties.

Section 6.10 No Third Party Beneficiary Rights. No person not a party to this Grant Agreement is an intended beneficiary of this Agreement, and no person not a party to this Grant Agreement shall have any right to enforce any term of this Grant Agreement.

Section 6.11 Termination. Grantor may, upon thirty (30) days written notice to Grantee, terminate this Agreement. Upon termination of this Agreement, Grantor shall have no further obligation to disburse Grant proceeds to Grantee except, in accordance with and subject to the limitations of Article I, to cover expenditures or commitments made prior to the termination that are a permissible use of the Grant funds hereunder. Sections 3.1, 3.5, 3.6, 3.7 and 3.8 and Grantor's rights and remedies arising from an Event of Default that occurs prior to termination, shall survive termination of this Agreement.

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IN WITNESS WHEREOF, the parties hereto have caused this Grant Agreement to be executed by their duly authorized representatives as of the date first above written.

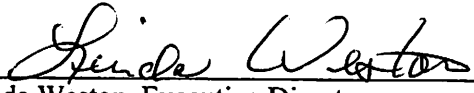
GRANTOR:

CITY OF PORTLAND, a municipal corporation of the State of Oregon, acting by and through the **PORTLAND DEVELOPMENT COMMISSION**

By: 
Patrick Quinton, Executive Director

GRANTEE:

OREGON ENTREPRENEURS FORUM, , an Oregon non-profit corporation d/b/a Oregon Entrepreneurs Network

By: 
Linda Weston, Executive Director

APPROVED AS TO FORM:


Portland Development Commission
Legal Counsel

Resolution Number 6916

Title: **AUTHORIZING AN ADDITIONAL GRANT TO OREGON ENTREPRENEURS NETWORK IN THE AMOUNT OF \$200,000 TO SUPPORT THE PORTLAND SEED FUND**

Adopted by the Portland Development Commission on January 11, 2012.

PRESENT FOR VOTE	COMMISSIONERS	VOTE		
		Yea	Nay	Abstain
<input checked="" type="checkbox"/>	Chair Scott Andrews	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	Commissioner Aneshka Dickson	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	Commissioner John Mohlis	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	Commissioner Steven Straus	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	Commissioner Charles Wilhoite	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> Consent Agenda		<input checked="" type="checkbox"/> Regular Agenda		

Certification

The undersigned hereby certifies that:

The attached resolution is a true and correct copy of the resolution as finally adopted at a Board Meeting of the Portland Development Commission and duly recorded in the official minutes of the meeting.



 Recording Secretary

Date: January 11, 2012.