

PORTLAND DEVELOPMENT COMMISSION

Portland, Oregon

RESOLUTION NO. 7012

AUTHORIZING A GRANT TO THE PORTLAND ECONOMIC INVESTMENT CORPORATION FOR INVESTMENT IN THE PORTLAND SEED FUND

WHEREAS, supporting entrepreneurs and startups is a stated goal of the Portland Development Commission's ("PDC") Economic Development Strategy;

WHEREAS, the lack of predictable seed capital has created an insurmountable hurdle for many entrepreneurs and early stage companies;

WHEREAS, the lack of seed funding diminishes the prospects that Portland will be home to frequent entrepreneurial success and significant job and wealth creation;

WHEREAS, by improving the conditions for survival for early stage businesses, Portland can grow the pool of viable startups that win later stage funding and commercial success;

WHEREAS, on behalf of the City of Portland ("City"), PDC seeks to encourage the capitalization of the Portland Seed Fund's Second Fund ("PSF II") to make investments of between \$25,000 and \$100,000 to startups at the earliest stage of development;

WHEREAS, the City and PDC desire to make \$500,000 available to PSF II for investment in businesses at the earliest stage of development, but cannot do so directly because of legal limitations; and

WHEREAS, PDC desires to fund the PSF II through the Portland Economic Investment Corporation ("PEIC") a new 501(c)(4) entity, and provide resources to assist PEIC in covering certain initial operating expenses.

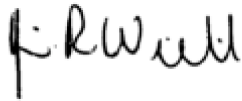
NOW, THEREFORE, BE IT RESOLVED, that the Executive Director is hereby authorized to enter into a Grant Agreement with PEIC, substantially in the form of Exhibit A (the "Grant Agreement"), attached hereto, to provide a grant to PEIC in an amount no greater than \$500,000 to be used as investment capital for PSF II and \$75,000 to be used to cover PEIC administrative costs;

BE IT FURTHER RESOLVED, that the Executive Director is authorized to increase the grant to PEIC by up to \$250,000 to provide additional funding of the PSF II in the event additional resources become available;

BE IT FURTHER RESOLVED, the Executive Director may approve changes to the Grant Agreement if such modifications do not materially change PDC's obligations or risks from those contained in the Grant Agreement attached hereto; and

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

Adopted by Portland Development Commission on June 26, 2013

A handwritten signature in black ink, appearing to read "Gina Wiedrick". The signature is written in a cursive style with a large initial "G".

Gina Wiedrick, Recording Secretary

PORTLAND DEVELOPMENT COMMISSION

Portland, Oregon

RESOLUTION NO. 7012

EXHIBIT A

**AUTHORIZING A GRANT TO THE PORTLAND ECONOMIC INVESTMENT
CORPORATION FOR INVESTMENT IN THE PORTLAND SEED FUND**

Exhibit A includes this cover page and contains 10 pages:

- Grant Agreement

GRANT AGREEMENT

This **GRANT AGREEMENT** (“**Grant Agreement**”) dated as of June ___, 2013, is entered into by and between the **PORTLAND ECONOMIC INVESTMENT CORPORATION**, an Oregon corporation (“**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, and to generally support economic development and prosperity in the City of Portland, Grantee desires to receive financial assistance from Grantor; i) to enable Grantee to make targeted investments related to economic development in Portland, Oregon, and ii) to cover certain initial organizational and administrative costs. Grantee will set up for this purpose a separate account known as _____ (the “_____”). Grantee intends to use the _____ 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.

NOW THEREFORE, the parties agree as follows:

ARTICLE 1 GRANT GENERALLY

Section 1.1 **Grant to Finance Emerging Businesses.** 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 _____ and used in accordance with the terms of this Grant Agreement (the “**Seed Fund Grant**”).

Section 1.2 **Grant for Initial Organizational and Administrative Costs.** Under the terms of this Grant Agreement, Grantor agrees to make a grant in an amount not to exceed \$ _____ to Grantee to assist in matters related to the organization and initial operation of Grantee (the “**Administrative Grant**”).

Section 1.3 **Disbursement of Seed Fund Grant Proceeds.** 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 proceeds will be invested, which approval shall not be unreasonably withheld, Grantor shall disburse the Grant proceeds to Grantee within fifteen (15) days after receipt by Grantor of an invoice therefor.

Section 1.4 **Disbursement of Administrative Grant Proceeds.** Provided that no Event of Default has occurred, Grantor shall disburse the Administrative Grant proceeds to Grantee in a single lump sum promptly after Grantor's receipt of an invoice therefor from Grantee. The Administrative Grant proceeds may only be used for the following reasonable expenses: accounting services, legal services, project management costs, bank and trust fees and charges, insurance, administrative services and supplies.

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 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 Event of Default.** Grantee is not in default under or in violation of any 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 _____ 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 _____ or 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 _____.

ARTICLE 3
AFFIRMATIVE COVENANTS

Grantee covenants and agrees as follows:

Section 3.1 Management and Use of Seed Fund Grant Proceeds

A. The Seed Fund Grant proceeds shall be used solely to invest in a limited partnership that 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 (the "Portland Seed Fund II"). Grantor's obligation to disburse funds is conditioned upon it receiving satisfactory evidence that the Portland Seed Fund II (1) has committed capital of at least \$5 million (inclusive of the Seed Fund Grant proceeds), and (2) closes its current round of financing involving an aggregate initial capital commitment of at least \$5 million no later than December 31, 2013 (the "**Portland Seed Fund II**").

B. Before finalizing its investment in the Portland Seed Fund II, Grantee shall require that the Portland Seed Fund II 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 proceeds in the Portland Seed Fund II ("**Program Income**") shall be used or reinvested to support the economic development of the City of Portland. Any in-kind property distributions received with respect to the investment of Grant proceeds in the Portland Seed Fund II, 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 II, the proceeds of the Grant must be deposited in short-term interest-bearing accounts of the _____ with a reasonable rate of return. Similarly, pending its reinvestment, all Program Income must be deposited in short-term interest-bearing accounts of _____ 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. The Seed Fund Grant proceeds may not 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 _____ 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 _____.

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 the actions or inactions of Grantee, or its employees, agents or contractors, related to the ____ 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 ____, 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 II 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 _____ calendar quarter of _____ and continuing each calendar quarter until the earlier of (1) the liquidation of Portland Seed Fund II or (2) Grantee's exit from Portland Seed Fund II (the "**Portland Seed Fund II 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 ____ and the use of the Grant proceeds during the quarter, including any capital calls received and funded. Within thirty (30) days after the Portland Seed Fund II Termination Date, but no later than _____, 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 proceeds invested, (3) the total ____ 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 II 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 II to report at least annually on the operation of the Portland Seed Fund II, including data on the metrics identified in (B) above, to the Portland Development Commission.

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 _____, 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 Proceeds.** Any Grant proceeds disbursed to Grantee, or any interest earned by Grantee on the Grant proceeds remaining in _____ 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 Proceeds.** 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 proceeds 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: Portland Economic Investment Corporation
Attn:

with a copy to: Portland Economic Investment Corporation
Attn:

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

Section 6.12 **Audits.** Grantor, either directly or through a designated representative, may conduct financial and performance audits of the use of Grant proceeds. If an audit finds that payments to Grantee were in excess of the amount to which Grantee was entitled, then Grantee shall repay that amount to Grantor. In the event of such audit, Grantee agrees to provide the designated auditor with reasonable access to Grantee's employees and make all such financial, performance and compliance records available to the auditor. This Section 6.12 shall survive any termination of this Grant 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:

PORTLAND ECONOMIC INVESTMENT CORPORATION, an Oregon corporation

By: _____

APPROVED AS TO FORM:

Portland Development Commission
Legal Counsel

RESOLUTION NO. 7012

RESOLUTION TITLE:

AUTHORIZING A GRANT TO THE PORTLAND ECONOMIC INVESTMENT CORPORATION FOR INVESTMENT IN THE PORTLAND SEED FUND


Adopted by the Portland Development Commission on June 26, 2013

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 type="checkbox"/>	Commissioner Steven Straus	<input 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 as duly recorded in the official minutes of the meeting.

	<p>Date:</p> <p>September 18, 2013</p>
<p>Gina Wiedrick, Recording Secretary</p>	