

Exhibit A

INTERGOVERNMENTAL AGREEMENT

**Between
Prosper Portland
And
Portland Bureau of Transportation
For the
NE Couch / Davis LID Project:
Design and Construction**

This Intergovernmental Agreement (this “**Agreement**”), dated this ____ day of _____, 2019, (“**Effective Date**”) is made and entered into by and between the **City of Portland, Bureau of Transportation (“PBOT”)** and **Prosper Portland**, the economic development authority of the City of Portland (“**Prosper Portland**”).

RECITALS

1. Prosper Portland, as the duly-designated Urban Renewal agency of the City of Portland, is granted broad powers under ORS 457.170 for the planning and implementation of urban renewal projects.
2. PBOT is responsible for transportation operations and improvements within the City public rights-of-way.
3. A cooperative partnership between Prosper Portland and PBOT is beneficial to the implementation of urban renewal plans and the development of other public policies, plans and capital projects.
4. Both parties desire to enter into an agreement that will establish terms and conditions by which one party will engage and compensate the other party for performing specific services.
5. The Portland City Council (“**Council**”), through Ordinance 181631, which was duly adopted by Council on February 27, 2008, and amended by Ordinance No. 183429, passed by Council on January 6, 2010, delegated to the Director of PBOT and the City Auditor the authority to enter into intergovernmental agreements with Prosper Portland. The form of agreement used for this Agreement is substantially similar to the template that was approved by City Council through the last above referenced Ordinance.
6. This form of Agreement is intended for funding project phases, including, but not limited to: Project Development, Project Design, Right-of-Way Acquisition, and Construction Management and Engineering.

AGREEMENT

I. THE PROJECT

A. Background. As the City of Portland’s sole Metro-designated Regional Center, the Gateway Urban Renewal Area (“**Gateway**”) is projected to bear a large share of employment and residential growth in East Portland. Gateway is slated to become a high-density, mixed-use, pedestrian-friendly district served by MAX light rail with quality redevelopment and supporting infrastructure.

As identified in the 2007 Prosper Portland-approved Central Gateway Redevelopment Strategy, a significant hurdle facing redevelopment of Central Gateway is the insufficient local street network. Currently, the local street network in Gateway is largely undeveloped and, in most cases, the City does not own the necessary rights-of-way for future street development. To begin implementing the Redevelopment Strategy, Prosper Portland funded the Central Gateway Street Plan and Infrastructure Study to revise the Gateway Master Street Plan and identify streets for improvement that promote connectivity, change the character of the district, and provide for redevelopment opportunities. The Gateway Master Street Plan was approved by City Council on October 22, 2009 with the passage of Ordinance #183270 as amended.

In 2014 Prosper Portland and PBOT successfully completed the NE 97th Avenue Green Street LID, which enabled construction of the Rose Apartments. Property owners participating in this previous LID have since begun assembling land in the “superblock” bounded by NE Glisan St., E. Burnside St., NE 97th Avenue and NE 99th Avenue.

Portland City Council Portland accepted the Gateway Action Plan through Resolution No. 37228 on August 10, 2016. The Action Plan identified the Master Street Plan as a barrier to redevelopment and prioritized leveraging SDC investment and LID financing to implement transportation infrastructure improvements. City Council approved Resolution #37417 on March 13, 2019, initiating LID formation proceedings to create the NE 97th Avenue Phase II LID in the “superblock” area as depicted within Attachment 1 (Depiction of Superblock), and final approval of NE 97th Avenue Phase II LID was completed by the City Council on April 24, 2019 with the passage of Ordinance No. 189472.

B. NE Couch / Davis Network Improvements and LID

Three (3) developers have assembled the Superblock, between I-205 and NE 100th Avenue, east and south of The Rose housing development to E Burnside Street. Each are proposing separate housing projects that could add 1,000 to 2,000 new units to Gateway. PBOT has determined that the increase in housing density requires additional street network improvements to accommodate the transportation demand created by new residents. These requirements were identified in PBOT Development Review Early Assistance Appointments within the framework of the Gateway Master Street Plan and include the construction of:

1. Two (2) blocks of a new NE Davis Street will be built connecting NE 97th Avenue and NE 100th Avenue; and
2. One (1) block of a new NE Couch Street will be built connecting NE 97th Avenue and NE 99th Avenue.

The three (3) developers have agreed to partner with PBOT and Prosper Portland to form the NE Couch / Davis Local Improvement District (the “**NE Couch / Davis LID**”) over the Superblock to create a financing mechanism to fund the construction of the improvements. The financing of the Project will also include sources from TIF from Prosper Portland and TSDC from PBOT. Prosper Portland will support these improvements to the extent they create the intended housing density within the Superblock and will contribute to these improvements in the manner outlined below.

C. Project Funding by Prosper Portland.

Prosper Portland will provide funding for the Project which will be calculated based on permitted housing units within the Superblock as follows:

Prosper Portland’s funding commitment under this Agreement is equal to: (i) \$10,000, multiplied by (ii) the number of housing units within the Superblock which are permitted by the Bureau of Development Services for construction (and for which the applicable permits have been paid for and picked up) by June 30, 2022; provided that in no circumstances will Prosper Portland’s total funding under this Agreement exceed the lesser of (a) **Two Million and 00/100 Dollars (\$2,000,000.00)** and (b) PBOT’s actual project development, design, right-of-way acquisition, tenant relocation, building demolition, and construction management and engineering costs with respect to the Project (collectively, “**Project Costs**”). Any such funding shall only be used by PBOT to obtain reimbursement for Project Costs. PBOT efforts, as further outlined below in this Section I.C, below, are the “**Project**”.

Prosper Portland shall pay the required amount of funds pursuant to the paragraph above as a single lump sum upon the later to occur of: (i) June 30, 2022, or (ii) PBOT’s substantial completion of the Project in compliance with any requirements of this Agreement (such later date being the “**Payment Eligibility Date**”).

Prosper Portland funding is fixed and is limited in scope will not be expanded or increased to fund additional scope elements of the Project, such as construction of water mains and utility undergrounding, or for any cost overruns which may occur.

The following is an estimated overall scope and associated schedule of the Project:

FY 2018-19: NE 97th Phase II LID formation (completed)

FY 2019-20: Petition Couch / Davis LID (pending)

- FY 2019-20: Complete Phase II LID formation and begin design
- FY 2020-21: Complete design and right-of-way acquisition
- July 2022: PBOT submits documentation from Developers confirming the number of housing units that have been permitted by BDS and constructed
- FY 21-22: Construct road and transportation improvements consistent with this Agreement

The Project Budget and sources of funds are detailed below:

	NE Couch / Davis LID
Construction:	\$ 1,564,666
Engineering:	\$ 526,929
Right-of-Way:	\$ 3,610,510
Overhead:	\$ 454,059
PM & Financing:	\$ 251,504
Contingency:	\$ 1,418,001

Total Costs: \$ 7,825,669*

*Excluding water main and utility undergrounding costs, and costs of widening street beyond 32' street width to accommodate maximum density allowed by zoning

TIF: Up to \$ 2,000,000**

** This is a “not to exceed” number, and the actual number may be lower as provided in Section I.C of this Agreement.

PBOT: \$ 5,825,669***

Total Funding: \$ 7,825,669

***Plus all costs for previously-formed NE 97th Avenue Phase II LID estimated at \$5,676,965 at LID formation; plus water main and utility undergrounding costs, and costs of widening street beyond 32' street width to accommodate maximum density allowed by zoning.

These costs include designing and constructing new streets with a minimum 32' width, new curbs and new sidewalks. These costs do not include new or upsized water mains and utility undergrounding, both of which are expected to be added to both LIDs after LID formation.

II. CONTRACT MANAGEMENT

A. The party who will be compensating the other party for performing Project activities shall be referred to in this Agreement as the “**Funding Agency**”. Prosper Portland is the Funding Agency.

B. The party performing Project Activities shall be referred to in this Agreement as the “**Performing Agency**”. PBOT is the Performing Agency.

C. Funding Agency.

1. Contract Signatory. The Funding Agency Contract Signatory shall be *Kimberly Branam*, or such other person as designated in writing by the Funding Agency Director (the “**Funding Agency Contract Signatory**”). The Funding Agency Contract Signatory is authorized to give notices and to carry out other actions referred to herein, including termination of this Agreement as provided in Section V.
2. Contract Manager. The Funding Agency Contract Manager shall be *Thea Munchel* (the “**Funding Agency Contract Manager**”). The Funding Agency Contract Manager is responsible for the day-to-day management of this Agreement as provided herein and serves as the first level of conflict resolution.

D. Performing Agency.

1. Contract Signatory. The Performing Agency Contract Signatory shall be *Chris Warner*, or such other person as designated in writing by the Director (the “**Performing Agency Contract Signatory**”). The Performing Agency Contract Signatory is authorized to give notices and to carry out other actions referred to herein, including termination of this Agreement as provided in Section V.
2. Contract Manager. The Performing Agency Contract Manager shall be *Andrew Aebi* (the “**Performing Agency Contract Manager**”). The Performing Agency Contract Manager is responsible for the day-to-day management of this Agreement as provided herein and serves as the first level of conflict resolution.

E. Management Staffing.

1. If either applicable Funding Agency or Performing Agency staff are not performing or are not able to continue performing the responsibilities

designated in this Agreement, then the respective contract manager (or higher-level personnel at Funding Agency or Performing Agency, if necessary) shall designate replacement staff members for this Agreement.

2. The Funding Agency Contract Manager and the Performing Agency Contract Manager will confer quarterly to review project management and staffing needs and performance, and identify desired changes, if any. If either Prosper Portland or PBOT desires to replace a contract manager, or other key staff identified in section II of this Agreement, the party's contract manager (or higher level personnel at Funding Agency or Performing Agency, if necessary) shall notify the other contract manager in writing, and if required, they will meet to discuss and agree on any necessary adjustments to provide adequate time to make such change.

F. Project Staffing – Performing Agency: The following Performing Agency personnel are being assigned to perform the Work:

1. Andrew Aebi, Project Manager & LID Administrator;
2. Millicent Williams, Capital Delivery Division Manager;
3. Civil Design Section (CDS) Engineer of Record Kim Roske will review Harper Houf Petersen Righellis design;
4. Civil Design Section (CDS) Designer None; and,
5. Survey Crew and Staff (if additional survey needed).

G. Project Staffing – Funding Agency: The following Funding Agency personnel are being assigned to the Project.

1. Thea Munchel, Project Coordinator.

H. Approvals.

1. No work shall be performed related hereto, and no funds shall be obligated hereunder, until this Agreement is executed.
2. The Performing Agency is not obligated to perform, and the Funding Agency is not authorized to pay for, any work not identified in this Agreement.

I. Project Management.

1. Andrew Aebi will be responsible for all analysis, petitions, documents and City Council preparation. He will also be responsible for outreach to property owners related to the project and the LID process. Once the LID is approved by City Council, he will manage the design process including ongoing communications and outreach with property owners on design issues.
2. Thea Munchel will be responsible for any necessary outreach related to Prosper Portland's redevelopment efforts.
3. This IGA does not include any work to amend the Gateway Master Street Plan. PBOT will construct the NE Couch Street and NE Davis Street connections set forth in the plan, and will update the Transportation System Plan and the Gateway Master Street Plan to reflect completion of the NE Couch Street and NE Davis Street work funded by this IGA; i.e., building a second new east-west street connection to NE Couch Street between NE 97th Avenue and NE 99th Avenue following the previous completion of parallel NE Everett Court improvements, and a third new street connection to NE Davis Street between NE 99th Avenue and NE 100th Avenue.
4. A fourth east-west street connection between NE 99th Avenue and NE 100th Avenue resulting in the easterly extension of NE Everett Court may be built concurrently with or after construction of NE Couch and Davis Streets, but is not within the scope of this IGA nor will be funded by Prosper Portland.
5. Project Status Reports are required to be submitted beginning within 60 days after the Effective Date of this Agreement and thereafter quarterly. Reports may be submitted by email or memo format and are intended to be brief (two to three paragraphs) updates. The reports will focus on the status of achieving these key milestones in following execution of this IGA: a) Council approval of the NE Couch / Davis LID; b) Survey; c) 30% design; d) 60% design; e) Right-of-way acquisition; f) 95% design; g) Construction; h) Building permit issuance up to 200 units; and i) Final assessment of the LID.

J. Public Involvement.

1. Where projects require public involvement, PBOT and Prosper Portland will collaborate on design of the public involvement plan that is endorsed by both project managers.
2. PBOT and Prosper Portland will keep each other informed of written material (e.g., news releases, brochures, news letters, reports) produced for the Project that are intended for public distribution and will provide adequate time for review and discussion prior to distribution.
3. Each project manager will inform the other project manager of inquiry from a media or press representative and make reasonable efforts to consult with the other project manager prior to any verbal or written information on the Project

being provided to such a representative; if unable to make a prior consultation, notice will be provided afterwards.

- K. **Meeting Participation.** Each project manager will invite the other to attend all regular or significant Project meetings and to participate in steering, management, or technical advisory committees organized for the Project.
- L. **Work Product.** The Funding Agency Project Manager will, upon his or her request, receive timely copies of all work products, including drawings, specifications, designs, draft and final copies of technical and consultant analysis and reports, construction progress reports, and key correspondence prepared or received during the course of the Project.
- M. **Subcontractors.** A subcontractor is any other entity that the Performing Agency uses to carry out all or part of the Work. The Performing Agency will have the sole authority to direct the work of any authorized and approved subcontractors. Subcontractors will be approved by the Funding Agency Project Manager. There are no identified subcontractors for this project, other than as set forth in Section II.Q, below.
- N. **Scope Limits.** The Performing Agency and/or any approved contractors are not obligated to perform, and the Funding Agency is not authorized to pay for, any work not identified in this Agreement.
- O. **Regional Arts & Culture Council (RACC) – Percent for Art Program.** City Code Section 5.74 sets the policy of the City of Portland to dedicate two percent of the total Eligible Costs, as defined by Code, or two percent of the total Eligible Funds, as defined by Code, of all Improvement Projects, as defined by Code, (whichever is less) to the selection, acquisition, fabrication, installation, maintenance, management, de-accessioning, community education, documentation and registration of Public Art. This Agreement does not have Eligible Costs for the Percent for Art Program, as described in City Code Section 5.74.020 and/or this Agreement does not have Eligible Funds for the Percent for Art Program as described in City Code Section 5.74.020.C.
- P. **Business and Workforce Equity.** Prosper Portland’s Business and Workforce Equity Policies (the “**Policies**”) shall apply if the Project is anticipated to have hard construction costs greater than \$200,000. If the Policies apply, Prosper Portland’s utilization goal for Emerging Small Businesses and Women and Minority owned-businesses (each an “**MWESB**”) is twenty percent (20%) of the hard construction costs of the Project. In the event that the Performing Agency has a MWESB utilization goal that is greater than Prosper Portland’s Goal, such greater goal shall apply to the Project. The goals described in the Policy are aspirational only. There will be no legal consequence, including but not limited to termination, damages or liquidated damages, on account of the Performing Agency’s failure to realize the goals described in the Policy. Nothing in this Agreement shall require the Performing

Agency to discriminate in the award of contracts on the basis of race, sex or other impermissible criterion, or otherwise to violate the law.

- Q. **Phase II LID Design Subcontract.** PBOT is contracting with Harper Houf Petersen Righellis Inc. (“HHPR”) for Phase II LID design. PBOT anticipates that HHPR will subcontract a minimum of 30% of this PBOT contract to MWESBs consistent with PBOT’s equity contracting policy.

III. FUNDING / COMPENSATION / ALLOWABLE COSTS

- A. As set forth above, the Funding Agency shall pay the Performing Agency a sum not to exceed the amount stated as the Funding Agency’s maximum commitment in Section I.C, subject to budget authorization by the Funding Agency.
- B. The funding is from the Gateway Regional Center TIF funds.
- C. The full amount of funds is not authorized in the current fiscal year’s budget. If the Project funding spans multiple fiscal years, then Prosper Portland will encumber the funds as the funds are approved through budget appropriation. All funding is subject to budget appropriation. If the full amount of funds is not authorized in the current fiscal year’s budget, it is acknowledged that contract amounts identified for expenditure in future fiscal years have not been appropriated in the current year budget. If funding has been identified in the Prosper Portland Five-Year Budget Forecast, Prosper Portland staff agree to recommend to the Prosper Portland Budget Workgroup that the funds identified in the Five-Year Budget Forecast be appropriated in subsequent budgets.
- D. There are other non-Prosper Portland funds contributing to the Phase II LID formation, project design and ROW work, in particular PBOT TSDC funding (\$2 million).
- E. Prosper Portland funds shall only be expended to reimburse Tax Increment Financing eligible Project Costs, for example, planning for improvements, design and engineering for improvements, right-of-way acquisition and tenant relocation, and construction of improvements. Costs for operations, maintenance, and moving transit stock are not typically eligible for Tax Increment Financing.
- F. The Performing Agency may seek reimbursement from the Funding Agency for the following to the extent they are Project Costs, subject to the expenditure of these funds for performance of the Project and within the authorized budget.
 - 1. Direct Costs.
 - a) Personal Services. Covers reimbursement for direct wages paid to personnel engaged in performance of the Work.
 - b) Benefit Costs. Covers reimbursement for the fully loaded benefit costs associated with direct wages, which represents the actual benefit load attributable to the respective employees.

- c) Materials & Services. Covers actual costs for the purchase of materials, and services, or reimbursement of incidental expenses and PBOT or Prosper Portland support staff personal services where the expenditure is for performance of the Work and within the authorized budget.
 - d) Contracted Services. Covers reimbursement for contracted professional or construction services in carrying out the Work and within the authorized budget.
 - 2. Indirect Costs. Covers reimbursement for overhead costs at the rate established annually, for PBOT in accordance with City Code Section 5.48 and for Prosper Portland in accordance with Cost Recovery Policy through Resolution 6560.
 - a) This Agreement is operative for Fiscal Year 2019-20. For that Fiscal Year, PBOT's rate is 80.85% (Eighty and Eighty-Fifths Percent) of Personal Services and Benefit Costs. PBOT Indirect costs pay for generally fixed costs related to the administration and operation, as well as program management costs including Council charges, executive management staff, rent, telephone, power, insurance, office supplies and equipment.
 - b) If this Agreement extends to a new Fiscal Year, the Performing Agency Contract Manager shall provide written notification to the Funding Agency Contract Manager of the new Fiscal Year rate.
 - 3. The Funding Agency Project Manager shall be immediately notified of any actual or anticipated variance between the authorized budget and the estimated cost or expenditures described in the Scope of Work and Budget. The parties shall then make a good faith effort to negotiate for a successful modification to this Agreement. Unless this Agreement is modified, the Funding Agency shall not be obligated to make payments for costs that exceed the authorized budget.
- G.** Expense Costs. Expenses, including personal services, incurred for out of town travel, training, educational expenses and equipment purchase are not reimbursable under this Agreement unless mutually agreed to in advance.
- H.** Change Management Controlled by Performing Agency. "Change management" is the process by which the impact of Project changes is controlled or mitigated by which and alterations are evaluated, approved and incorporated into the Project for which a hearing may be required by Code Subsection 17.08.080. It is required that funds for change management be identified by the Performing Agency to the Funding Agency prior beginning work on the Project to be reimbursed under this Agreement. These funds are intended to be used to accommodate such changes within the specific task or fiscal year. The funds shall be managed by the Performing Agency, which

shall notify the project manager and contract manager of the Funding Agency in writing of their use.

IV. BILLING AND PAYMENT PROCEDURE

- A.** Without limiting the Performing Agency's obligation to meet and provide updates and reports to the Funding agency described elsewhere in this Agreement, the Performing Agency shall submit to the Funding Agency Project Manager a separate itemized billing for Project Costs within sixty (60) days following the Payment Eligibility Date. If no bill is received within this time period, the Funding Agency will have no obligation to honor late billings.
- B.** The billing shall include a Billing Detail Report in a format created and/or approved by the Funding Agency. At a minimum, the billing shall include:
 - 1. a description of the nature and cost of work accomplished;
 - 2. the names, rates and hours worked of personnel;
 - 3. disbursements to consultants, contractors and outside vendors for materials and services;
 - 4. information regarding workforce and business equity compliance and D/M/W/ESB utilization;
 - 5. information regarding number of housing units permitted in the Superblock that meet the requirements of Section I.C of this Agreement; and
 - 6. any other specific detail or documentation as desired by the Funding Agency Contract Manager, which can be reasonably provided by the Performing Agency.
- C.** If billings are received with incomplete information or disputed items, the Funding Agency will advise the Performing Agency in writing what specific information is missing or disputed. The Funding Agency will proceed to process payment for items not in dispute.

V. GENERAL

A. Termination.

- 1. The Termination Date of this Agreement is June 30, 2022; or such later date as the parties fully perform their obligations hereunder.
- 2. Early Termination of Agreement. Notwithstanding clause (1) above:
 - a) This Agreement may be terminated at any time by mutual written consent.

- b) Upon thirty (30) days written notice, either party may terminate this Agreement where the public interest requires work to cease.
- c) In the event of early termination of this Agreement, the work shall cease promptly, and a final billing request submitted within sixty (60) days of the effective date of termination. In the event of early termination, eligible Project Costs incurred through the date of the Agreement's termination will be reimbursed, but only up to the eligible funding amount determined pursuant to the formula provided in Section I.C (i.e., based on permitted housing units).

B. Change and Conflict Resolution.

1. Every effort has been made to accurately identify the scope, schedule and budget for the Project. The Performing Agency and the Funding Agency recognize that events and conditions may arise that significantly impact the Project. A "significant" impact is one that may require expenditure of the Funding Agency controlled contingency, or delay completion of the Project more than one year. Should either party identify or foresee such a circumstance, both parties agree to the following:

- a) As soon as practicable, notify both the project manager and contract manager of the other party in writing of the circumstance, its origin and anticipated or confirmed impact.
- b) Both project managers shall make reasonable efforts to meet within 14 days to identify anticipated or confirmed affects to the Project's scope, schedule and budget.
- c) Both parties shall seek to reach agreement on any necessary revisions to this IGA as described below in Section V. B. 2.

2. If a dispute arises regarding performance, cost, schedule, scope, quality or other terms and conditions of this Agreement, all parties agree to exercise good faith in expeditiously resolving said conflict in the following manner.

- a) All conflicts should first be discussed and resolved if possible by the project managers specified in Section II.
- b) If the conflict cannot be resolved by the project managers, or involves one of the project managers, then the conflict should be elevated to the contract managers specified in Section II for discussion and resolution.
- c) Any conflicts not resolved by the contract managers shall be elevated to the contract signatories for discussion and resolution.

C. Compliance with Laws. In connection with its activities under this Agreement, the parties shall comply with all applicable federal, state and local laws and regulations.

D. Indemnification.

Subject to the limits of the Oregon Tort Claims Act and Oregon Constitution, PBOT agrees to indemnify, hold harmless and defend, Prosper Portland, its directors, officers, employees and agents from and against all claims, suits, actions of whatsoever nature, damages or losses, and all expenses and costs incidental to the investigation and defense thereof including reasonable attorneys fees, resulting from or arising out of the activities of City, its officers, employees or agents under this Agreement.

Subject to the limits of the Oregon Tort Claims Act and Oregon Constitution, Prosper Portland agrees to indemnify, hold harmless and defend, City, its officers, employees and agents from and against all claims, suits, actions of whatsoever nature, damages or losses, and all expenses and costs incidental to the investigation and defense thereof including reasonable attorneys fees, resulting from or arising out of the activities of Prosper Portland, its directors, employees or agents under this Agreement.

E. Subcontracting. Work under this Agreement shall not be subcontracted in whole or in part to other than City agencies, without the prior written approval of the Funding Agency Contract Manager. The Funding Agency will not unreasonably delay or withhold subsequent authorization for contractors identified by the Performing Agency to perform the Work under the Agreement, and its failure to notify the Performing Agency in writing of denial of authorization within 10 business days after the Funding Agency Contract Manager's receipt of a written request for authorization from the Performing Agency shall be deemed as authorizing those identified contractors to undertake the Project. The Performing Agency shall require any approved subcontractor to agree, as to the portion subcontracted, to fulfill all obligations of the Performing Agency as specified in this Agreement. Notwithstanding approval by the Funding Agency Contract Manager of a subcontractor, the Performing Agency shall remain obligated for full performance hereunder, and the Funding Agency shall incur no obligation to the subcontractor hereunder. The Performing Agency shall have the sole authority to direct the work of any authorized and approved subcontractors.

F. Ownership of Work Product.

Ownership of any and all plan sets, technical data, documents, plans, designs, drawings, technical data reports, specifications, working papers and other materials produced in connection with this Agreement (the “**Work Product**”) will be handled as described below. Ownership of the Work Product includes all rights, title and interest, including but not limited to copyright rights of specified Work Products. Notwithstanding anything to the contrary contained herein, the parties acknowledge that section 17.24.085 of the City Code may require that all or part of the Work

Product will become the property of the City and be transferred to the City Engineer upon completion of the Project.

1. Except as described in paragraph 2 below, the Performing Agency shall own all Work Product.
2. If the parties determine that the Performing Agency is unable or unwilling to complete the Project, and the Funding Agency determines that a transfer of ownership of the Work Product is necessary in order to effect completion of the Project, upon the Funding Agency's written request the Performing Agency shall assign ownership of the Work Product to the Funding Agency.
3. Regardless of ownership of the Work Product, both parties shall have reasonable access to the Work Product.

G. Delivery / Maintenance of Records. The Performing Agency shall maintain records on a current basis to support its billings to the Funding Agency. The Funding Agency or its authorized representative shall have the authority to inspect, audit and copy, on reasonable notice and from time to time, any records of the Performing Agency regarding its billings or its work hereunder, for a period of 3 years after completion or termination of this Agreement.

H. Funding Acknowledgement / Signage.

1. Any oral reports made to neighborhood, business, or other civic organizations, as well as to any members of the press shall acknowledge work being done is based on a partnership between PBOT and the Prosper Portland and, if appropriate and determined by Prosper Portland to be legally eligible, included within reimbursable Project Costs (if PBOT's costs) or payable with TIF funds (if Prosper Portland's costs).
2. For projects involving construction activities funded by Prosper Portland, PBOT shall display a sign near the construction site and readily visible to the public, specifying that the Project is being "*funded by Prosper Portland's Gateway Regional Center Urban Renewal Project.*" The sign shall remain in place until construction is complete.

VI. Amendments

1. Except as otherwise provided for in this Agreement, PBOT or Prosper Portland may amend this Agreement only in writing signed by the contract signatories.
2. Changes to the Scope of Work and Budget:
 - a) Changes to the Scope of Work and Budget, including changes to scope, schedule, and budget identified in Section I, which do not increase the total compensation under this Agreement, may be made upon written

agreement by the project managers identified in Section II of this Agreement.

- b) Changes will not take effect or be binding on either party until agreed to in writing.

VII. Merger Clause

This Agreement contains the entire agreement between Prosper Portland and PBOT. It supersedes all prior written or oral discussions or agreements concerning work to be performed by either party.

[Signature page to follow]

IN WITNESS WHEREOF, PBOT and Prosper Portland have executed this Agreement as of the Effective Date.

CITY OF PORTLAND

PROSPER PORTLAND

Chris Warner, Director, Portland Bureau
of Transportation

(Executed under authority delegated by
Ordinance No. 181631, passed by
Council February 27, 2008, and
amended by Ordinance No.183429,
passed by Council January 6, 2010.)

Kimberly Branam, Executive Director

Date

Date

APPROVED AS TO FORM:

APPROVED AS TO FORM:

City Attorney

Prosper Portland Legal Counsel

City Auditor

Date

Attachment 1

Depiction of Superblock

Nine Areas of Gateway, Lots, and Future ROW

