

Intergovernmental Agreement

**City of Portland Office of Management and Finance
Office of Equity and Human Rights
Prosper Portland
Phase 1 Administration of the**

Community Opportunities & Enhancements Program

This Intergovernmental Agreement (this “Agreement”), dated this ___ day of _____, 2020 (the “Effective Date”), is made and entered into by and among the City of Portland, through the Office of Management and Finance (“OMF”), Office of Equity and Human Rights (“OEHR”), and Prosper Portland (“Prosper”). The term “City,” as used in this Agreement, collectively refers to OMF, OEHR, and the City Attorney’s Office.

Authority:

The City of Portland, through Council Resolution 37331 (the “Initial Resolution”), directed OMF and OEHR to develop the Community Opportunities and Enhancements Program (the “COEP”). The COEP is intended to provide funding to support low-income, disadvantaged, minority and women workers in the construction trades and disadvantaged, minority-owned, women-owned, emerging small business enterprises (“D/M/W/ESB”). The State Certification Office for Business Inclusion and Diversity (COBID) added a new certification for Service-Disabled Veteran Business Enterprise (SDVBE) since Council passed Resolution 37331. Pursuant to the Authorizing Ordinance (as defined below), the City has been granted the authority to extend the COEP to include SDVBE firms. The Authorizing Ordinance also permits the City to enter into this Agreement with Prosper for “Phase 1” of the administration of the COEP.

Parties:

OMF on behalf of City of Portland, 1120 SW 5th Ave. Portland, OR 97204

Main Contact: Cathy Sherick cathy.sherick@portlandoregon.gov (“COEP Manager”)

Prosper, 222 NW 5th Ave. Portland, OR 97209

Main Contact: Morgan Masterman mastermanm@prosperportland.us

OEHR, 421 SW 6th Ave. Portland, OR 97204

Main Contact: Judith Mowry judith.mowry@portlandoregon.gov

Terms and Termination:

This Agreement runs from the Effective Date to June 30, 2021.

The parties anticipate seeking City Council and Prosper Portland Board approval of a renewal of this Agreement upon successful completion of the terms for up to five years or not later than July 1, 2026.

Scope

The intent of this Agreement is to (a) set forth the activities to be performed by each party in connection with the COEP, (b) specify the services to be performed by Prosper for the COEP, and (c) delineate the services and decisions that will remain under the authority of OMF.

Recitals:

- 1.** The City and Prosper are both committed to increasing diversity and equity in public contracting for minorities, women low-income, and disadvantaged people in the workforce as well as for disadvantaged, minority-owned, women-owned, emerging small, and service-disabled veteran businesses (“D/M/W/ESB/SDVBE”).
- 2.** All City public improvement contracts, regardless of size, contracting method, or applicable equity plan, benefit from having a highly-skilled and well-trained diverse workforce, as well as from having competitive, well-prepared D/M/W/ESB/SDVBE contractors and subcontractors.
- 3.** The City has established the COEP pursuant to the Initial Resolution, as modified by the Authorizing Ordinance. The COEP provides a funding mechanism for the goals stated above, wherein the City will set aside and dedicate one-percent (1%) of the total Eligible Costs of the Eligible Funds of all the City of Portland's public improvement construction contracts (all as to be defined in the administrative rules for the COEP promulgated by OMF) for the support of low-income, disadvantaged, minority and women workers in the construction trades and the development and growth of D/M/W/ESB/SDVBE firms.
- 4.** By creating the COEP and partnering with Prosper to distribute these funds, the City can learn through the establishment of consistent, efficient, and accountable processes to determine funding priorities, make grants available to meet these priorities through open competitive processes, develop workable reporting requirements, and ensure accountability.
- 5.** The City, led by OMF and in partnership with OEHR, has established and will staff and implement the Community Equity and Inclusion Committee (the “CEIC”), with technical assistance provided by OEHR. The CEIC will (a) provide oversight regarding Community Equity and Inclusion Plans, (b) advise on how to allocate COEP funds to diversify and increase the workforce and provide technical business assistance to increase construction business capacity and (c) address City and community needs by using economic forecast data, city project planning schedules, contract needs and program outcome data.

6. The Initial Resolution, together with the Authorizing Ordinance, directed OMF and OEHR to develop the COEP which would provide grant funding to support low-income, disadvantaged, minority and women workers in the construction trades and the development and growth of D/M/W/ESB/SDVBE firms.
7. This Agreement includes funds from three projects that were initially set aside to be used for community benefits and which are now being used as part of the first phase of the administration of the COEP (collectively, the “Pilot Projects”): (a) the Portland Building Reconstruction Project; (b) the Washington Park Reservoirs Improvements Project; and (c) the 10th & Yamhill SmartPark Renovation Project.
8. The Pilot Project funds (collectively, the “Funds”) are to be initially allocated, after administrative and other permitted operating costs, at twenty five percent (25%) towards grants to assist D/M/W/ESB/SDVBE firms (“Business Assistance”) and seventy-five percent (75%) to assist diverse workers as described herein (“Workforce Assistance”). If this Agreement is renewed to encompass the COEP beyond “Phase 1,” as is the intent of the Parties, CEIC may make recommendations to the City regarding allocation of future COEP funds, and disbursement of grants will be made according to needs in public contracting.
9. The parties intend that Prosper will directly administer the Business Assistance and Workforce Assistance components of COEP. The City has allowed that Prosper may subcontract some or all the Workforce Assistance efforts of COEP to Worksystems, Inc. (“WSI”), with Prosper being responsible for directing, monitoring and oversight of WSI.
10. This Agreement is authorized by City Council Ordinance [_____], adopted [_____], 2020 (the “Authorizing Ordinance”). Prosper’s execution of this Agreement is authorized by Prosper Portland Board of Commissioners Resolution No. 7348, adopted November 13, 2019.

Now therefore, the parties agree as follows:

ARTICLE 1 CITY RESPONSIBILITIES

I. Budgeting and Forecasting; Performance Goals

I.A Annual Budget: OMF through Procurement Services will develop an annual budget with performance goals for Prosper consistent with the obligations and services to be performed by Prosper under this Agreement.

I.B Needs Forecast: OMF will work with City bureaus to forecast construction projects as far in advance as possible to determine focus areas for deployment of the COEP funds. That

information will be provided to the CEIC and Prosper for review . OMF will work with Prosper to ensure that grant funds are deployed in a manner that is consistent with the needs projected for the forecasted construction projects to ensure the eligibility of the expenditures.

I.C Budget Forecast: OMF will calculate and provide the budget to Prosper. The budget will include but not be limited to:

- I.C.1 Allocation for flexible funding to be used for piloting innovative ideas or funding activities in response to industry needs and/or CEIC recommendations that aren't addressed through grants from the competitive solicitation process ("Flexible Funding") based upon availability of Pilot Project funds.
- I.C.2 The amount established to cover Prosper administrative costs.
- I.C.3 Grant funds and percentages that will be awarded for Workforce Assistance and Business Assistance monitored and tracked by Prosper.
- I.C.4 Funding for the Portland Prime Contractor Development Program (PCDP).
- I.C.5 Funding to cover costs for marketing, outreach, advertising and public affairs for the COEP.
- I.C.6 All City administrative costs in connection with the COEP and the CEIC.

I.D INTENTIONALLY OMITTED.

I.E Ratepayer Funds; Determination of Legal Eligibility: OMF and Prosper acknowledge that certain Funds are ratepayer (water, sewer) funds ("Ratepayer Funds") and that expenditure of Ratepayer Funds is subject to legal restrictions and limitations. Prosper is not responsible for independently determining legal eligibility or ineligibility of any of the Funds, including Ratepayer Funds. It is the sole responsibility of the City and OMF and the City Attorney's Office to determine legal eligibility of all proposed uses of the COEP Funds, including Ratepayer Funds.

- I.E.1 The City will provide Prosper with the appropriate accounting of which Funds are Ratepayer Funds, as well as any other Funds that are restricted or limited in nature.
- I.E.2 When needed, the COEP Manager will verify with appropriate bureaus and/or the City Attorney's Office whether a proposed use of Ratepayer Funds is permissible and provide that information to Prosper.
- I.E.3 The COEP Manager will monitor Prosper's grant activities involving all Funds, including Ratepayer Funds, prior to distribution to ensure compliance. Prosper's

grants manager will cooperate in all respects and comply with all directions of the COEP Manager relating to expenditure eligibility or ineligibility. The COEP Manager will utilize a “Ratepayer Funded Eligible Grant Activities Rubric,” to be developed and approved at a later time by the City, as the rubric to determine grant project eligibility (the “Ratepayer Rubric”), but in the event of any question or concern will consult the City Attorney’s Office and applicable bureaus.

- I.E.4 The Ratepayer Rubric will provide guidance to Prosper with respect to activities may be included in grant proposals and scopes of work in grant agreements that are funded in whole or in part by Ratepayer Funds. Activities may be periodically reviewed by City Attorney's Office and based on that review OMF may provide updated guidance, including examples of Ratepayer Fund-eligible grant activities.
- I.E.5 To the extent all available Ratepayer Funds are not used, the balance will be carried forward to future fiscal year.
- I.E.6 The City will provide Prosper with an estimated amount of Funds recommended to be used for Flexible Funding.

II. Oversight of Community Equity and Inclusion Committee (CEIC). OMF, working with OEHR, will be responsible for the following activities:

II.A. Staffing CEIC: OMF will be responsible for staffing CEIC and scheduling meetings, taking notes, distributing communications, training, scheduling any required periodic presentations to the CEIC from Prosper, grantee organizations or program participants.

II.B. Identification of funding priorities in consultation with the CEIC: As described in the Authorizing Ordinance, the CEIC can make recommendations to the City about the Workforce Assistance and Business Assistance needs for every cycle of grant funding. This may include a recommendation on the percentage of Funds to be used for Workforce Assistance and Business Assistance activities. It is acknowledged, however, that CEIC is not responsible for recommending or selecting specific grant recipients.

II.C CEIC Volunteer Compliance: OMF will be responsible for ensuring that CEIC volunteers are trained and understand how to comply with all City of Portland policies regarding roles, responsibilities and conflicts of interest.

II.D Technical Assistance to CEIC: OEHR will provide technical assistance to the members of the CEIC, which may include:

- II.D.1. Information on racial and disability equity, human rights, diversity, and inclusion and strategies for implementation within public systems.
- II.D.2 Providing professional development to the CEIC on racial and disability equity, human rights, diversity, and inclusion.

- II.D.3 Information on the Citywide shared racial equity goals and strategies as well as racial equity plans and strategies within bureaus to achieve greater connectivity and stronger outcomes.
- II.D.4 Information about equity strategies and plans in other jurisdictions (County, Metro, etc.).
- II.D.5 Engaging with the CEIC and supporting the CEIC meeting space to ensure inclusiveness and participation from all voices, supporting individuals in the group with their involvement, their inter-personal communications, providing mediation assistance if needed.
- II.D.6 Sharing the strategies for interrupting the dynamics of systemic oppression, racism, microaggressions and/or explicit/implicit bias to ensure it is not perpetuated.
- II.D.7 Collaborating with the staff engaged in the COEP; sharing CEIC group observations, offering productive feedback to the CEIC, and maintaining clear lines of communication.

III. Monitoring and Managing Prosper's Performance: OMF will be responsible for monitoring the performance of Prosper, and for ensuring that Prosper is following its obligations under this Agreement and appropriately administering the COEP funds.

IV. Review and Participation: OMF will work with Prosper to undertake outreach to the community for grant proposals and in the selection of grant recipients. OMF and OEHR's roles in the grant selection process is described in Article 2, Section I.C below.

V. Marketing and Communications. OMF will develop and implement a marketing and communications strategy in collaboration with Prosper for the COEP including:

V.A. Develop marketing materials and communications needs list with Prosper. Materials may include: logo, print materials, web materials, and other marketing or advertising content.

V.B. Materials will clearly identify Prosper, the contributing Bureaus, OMF, and OEHR as collaborating partners with respect to the COEP.

V.C. Include Prosper in such materials development as necessary to identify appropriate communication channels.

V.D. Provide reasonable time and opportunity for Prosper to review materials and provide feedback.

VI. Collaborate, cooperate and work with Prosper. OMF and Procurement Services will work in good faith, transparently and cooperatively with Prosper in furtherance of the services and obligations to be performed by Prosper under this Agreement.

VII. Presentations: OMF and OEHR personnel will lead presentations to City Council in partnership with Prosper.

ARTICLE 2 PROSPER RESPONSIBILITIES

I. Prosper Portland Responsibilities: Prosper shall be responsible for the following general services and activities with respect to Business Assistance and Workforce Assistance:

I.A Program Development: Conduct stakeholder outreach to support the development of the program (services, goals and metrics) and scopes of work for the Requests for Proposals (“RFP”). This may include focus groups, community feedback sessions and a needs assessment.

I.B. Grants Program Administration: Utilize Prosper's RFP process for grant funding, and perform the selection, implementation and monitoring of grant projects, as well as associated accounting, record keeping and reporting functions.

I.C. Administration of RFP and Selection Process: Administer and implement COEP Business Assistance and Workforce Assistance grant application and selection processes, including:

- I.C.1 Develop the RFP process in consultation with OMF and OEHR;
- I.C.2 Receive and review grant proposals for completeness.
- I.C.3 Communicate with grant proposers on the administrative process and work to obtain any additional information needed in connection with the evaluation of grant proposals.
- I.C.4 Recruit for and convene selection committees for each grant cycle, namely; a Business Assistance selection committee and a Workforce Assistance selection committee (the “Selection Committees”). The Selection Committees will make recommendations regarding grant proposals to Prosper staff. Prosper will recruit racially diverse, gender-diverse, and industry-specific stakeholders to serve on the Selection Committees. Individual members of the CEIC may, if selected by Prosper, serve on the Selection Committees in their individual capacity; provided that Prosper is not obligated to select any member(s) of the CEIC to serve on Selection Committees.
- I.C.5 OMF and OEHR will have the ability to designate an employee from each department as additional voting members of the Selection Committees. As described later in this Section, OMF’s Chief Administrative Officer and OEHR’s Director will also have the ability to review the recommendations of the Selection Committees with Prosper’s Executive Director.

- I.C.6 Prosper will be responsible for staffing and hosting Selection Committee meetings to ensure timely selection of grant recipients.
- I.C.7 Prosper will provide a Conflict of Interest form to be signed and submitted by each Business Assistance and Workforce Assistance Selection Committee member.
- I.C.8 Prosper will review grant recommendations from the Selection Committees with the COEP Manager.
- I.C.9 The Executive Director of Prosper will ultimately be responsible for determining which grant proposers receive grant awards. This determination will be made after the Executive Director's review of the recommendations of the Selection Committees, and after providing an opportunity for the OMF Chief Administrative Officer and OEHR Director to review and provide recommendations as well. The Executive Director of Prosper is not bound by a Selection Committee's recommendation.
- I.C.10 Prosper staff will notify grant proposers of grant proposal awards and grant proposal rejections.

I.D Grant Agreements Implementation and Monitoring: Prosper will draft, execute, monitor and oversee contracts with selected grant recipients, and will do the following in connection with such contracts:

- I.D.1 Utilize an accounting system for monitoring of grant funds and expenditures sufficient to enable the City to determine how Funds are being expended and to perform its obligations set forth in Article 1, Section 1.E. above. Such accounting system may involve separate accounting and tracking for funds contributed by the Bureau of Environmental Services, the Water Bureau, and, where applicable, bond Funds.
- I.D.2 Maintain records according to City Code and City Auditor's requirements, as provided by OMF.
- I.D.3 Confer in good faith with OMF and OEHR to determine how to utilize additional non-budgeted resources that might become available during a grant cycle (due to the addition of unexpected new capital construction projects, termination of grant agreements, or lower than anticipated expenditures under existing grant agreements), and if so, establish a reasonably acceptable process for the award of additional resources.
- I.D.4 Establish reasonable terms and conditions in grant agreements for payment of grants, including capping grant recipient administrative and indirect costs at fifteen-percent (15%) of grant amounts.

- I.D.5 Perform periodic expenditure reviews of grant recipients based upon a mutually agreed upon schedule of review, throughout the term of the grant.
- I.D.6 Review and evaluate achievement of performance criteria for each grant recipient.
- I.D.7 Perform auditing and reporting on performance and outcomes of grant recipients.
- I.D.8 Proactively work with grant recipients to ensure compliance with grant agreements, and work to resolve non-compliance as Prosper and OMF deem reasonable.
- I.D.9 Terminate grant agreements and seek other remedies if deemed appropriate by Prosper in consultation with OMF.

I.E Flexible Funding: If Prosper receives funds for Flexible Funding from the City, Prosper may provide Flexible Funding to organizations outside of the RFP process in order to respond to recommendations by CEIC or other needs as agreed upon by the City and Prosper.

- I.E.1 Prosper’s Board has adopted guidelines for the provision of “A la Carte” funding to service providers pursuant to Resolution No. 7286, adopted September 12, 2018, and will provide Flexible Funding in a manner consistent with these guidelines for both workforce and business assistance grants. Prosper and OMF will finalize the total amount for Flexible Funding based upon the estimated amount of funds recommended by the City.
- I.E.2 Prosper will utilize its existing “A la Carte” system for disbursement of Flexible Funds and will follow the process described in Article 2, Section I. D. (Grant Agreements Implementation and Monitoring) in doing so.

II. Reporting on Grant Program Administration. Prosper will provide to the City a performance evaluation report on funding expenditures, grant process, grant assessment and achievement of measurable outcomes for Workforce Assistance and Business Assistance as identified in the grant contracts. The report to the City will include relevant data such as, for example, numbers of clients served, to whom the grant payments were made, and assessments of outcomes for the individual business(es) or organization(s) that received Flexible Funding or other funding and how those outcomes further the goals of the COEP. The report shall also include lessons learned from the work performed under this Agreement and recommendations on implementation and administration of the COEP. Prosper shall meet with the City to discuss the findings in its report.

III. Prosper Subcontracting of Workforce Assistance Obligations. Prosper may subcontract with WSI or, with OMF's prior written consent, another qualified subcontractor, with respect to some or all of its Workforce Assistance-related obligations as described more particularly in this Section III.

III.A Worksystems, Inc.; Subcontracting: Prosper may enter in to a subcontract with WSI or, with OMF’s prior written consent, another qualified subcontractor (whether one or more than one, the “Workforce Subcontractor”).The Workforce Subcontractor will not be a direct service provider, but rather will be responsible for some or all the management and administration of Workforce Assistance grants. The Workforce Subcontract will not permit any of the Funds administered by the Workforce Subcontractor to cover its administrative costs. In no event shall the City pay any additional amounts for work performed under this Agreement, beyond those set forth in Article 2, Section V, regardless of whether a Workforce Subcontractor is utilized by Prosper.

III.B Subcontract Requirements: Any subcontract must include obligations on the Workforce Subcontractor’s part that are reasonably equivalent to those this Agreement imposes on Prosper in Article 2, Section I.D. above (e.g., retention of records; audit provisions; etc.), except with respect to the grant selection process as described below.

III.C Workforce Assistance Grant Selection Process: Prosper may ask the Workforce Subcontractor to administer the grant selection process for Workforce Assistance grants with Prosper’s collaboration. However, as with Business Assistance grants, the Executive Director of Prosper will remain responsible for making grant award decisions.

III.D Monitoring of Subcontractor: Prosper will be responsible for monitoring and oversight of the Workforce Subcontractor and will be required to use diligent efforts to ensure the Workforce Subcontractor’s compliance with the terms and conditions of the applicable subcontract in all respects. To the extent there is noncompliance or Prosper has reason to believe there is noncompliance, Prosper will promptly notify the COEP Manager in writing and discuss how to proceed.

III.E Termination of Subcontract: Any subcontract will enable Prosper to terminate the Workforce Subcontractor’s role with respect to Workforce Assistance grants at any time with no penalty. If Prosper elects to do so, Prosper shall obtain the prior written consent of OMF and OEHR before selecting any Workforce Subcontractor’s replacement.

III.F Compliance with all Laws: In subcontracting, Prosper agrees to comply with applicable laws and code requirements, including but not limited to ORS 279A-C if applicable.

IV. Additional City Bureau Resources. OMF and OEHR acknowledge that certain other City bureaus or other public and private sources may wish to contribute funds to Prosper to support “Phase 1” of administration of the COEP or to otherwise support Prosper programs and activities that are complementary to the COEP. To the extent a City bureau contributes funds directly to Prosper on a discretionary basis, but the City bureau specifically indicates to Prosper that the contribution is for Phase 1 of administration of the COEP, Prosper will notify OMF of the same

and copy the COEP Manager on any reporting required by the other City bureau in connection with the contributed funds. Prosper is not obligated to notify/copy OMF if the contribution of funds is not specifically identified as being for the COEP (or Phase 1 of the COEP) but rather is merely for services or activities that are complementary to the COEP.

V. Administrative Compensation and Cost Reimbursement. Administrative compensation for Prosper's work is as follows:

V.A Prosper will receive a fixed amount of \$150,000 for its services during the term of this Agreement. This amount will be paid in equal quarterly installments during the initial term of this Agreement. To the extent the parties mutually agree to extend this Agreement beyond the initial term, the parties will discuss in good faith whether this amount should be revised, and will evaluate the actual administrative staff time and costs of Prosper Portland in connection with Phase 1 (including time and costs prior to the Effective Date of this Agreement) in engaging in this discussion.

V.B Prosper's disbursements to grant recipients will be reimbursed by OMF out of available Pilot Project Funds.

V.C Funds for Prosper's administrative compensation (described in paragraph V.A above) will come from the base amount of Pilot Project Funds. Prosper will provide an invoice for these amounts quarterly. OMF will process and pay Prosper's invoice within 15 business days of approval.

V.D Funds for grants, available for distribution, will be billed on a reimbursement basis, monthly, with the total budget amount determined by the City's budget process. Billings will follow the format described in Exhibit A, OMF will process and pay Prosper's invoice within 15 business days of approval.

V.E Prosper will provide final billing for grants, based either on estimated or actual grant disbursements for that fiscal year to meet the City's fiscal year end deadlines. If estimates are used for these amounts, Prosper will provide a revised year-end invoice of actuals no later than the first of August following fiscal year-end.

ARTICLE 3

Oregon Law and Forum

I. Oregon Law and Forum. This Agreement shall be construed according to the laws of the State of Oregon. Any litigation between the City and Prosper arising under this Agreement or out of work performed under this Agreement shall occur, if in the state courts, in the Multnomah County Court having jurisdiction thereof, and if in the federal courts, in the United States District Court for the District of Oregon.

II. Indemnification. Prosper shall indemnify, defend, and hold harmless the City/ OMF/OEHR, their officers, agents, and employees, from all claims, losses, damages, and costs (including reasonable attorney fees) for any liability, including but not limited to personal injury, property damage, and rights violations (collectively, "Claims"), arising out of the intentional or negligent acts or omissions of Prosper, its subconsultants, employees, agents, or assigns in the performance of its obligations under or related to this Agreement. Nothing in this paragraph requires Prosper or its insurer to indemnify OMF/OEHR for Claims caused by the negligence of the OMF/OEHR. This duty shall survive the expiration or termination of this Agreement.

Notwithstanding the immediately preceding paragraph:

II.A The City acknowledges that Prosper is administering the COEP as a service to the City. Prosper is subject to OMF's management and control, on behalf of the City, and is not independently making any determination regarding legal eligibility or ineligibility of uses of Funds.

II.B Prosper will not be responsible for any Claims resulting from a determination that: (a) Ratepayer Funds or other Funds may not be used for Business Assistance and Workforce Assistance activities as envisioned by this Agreement; or (b) a specific use of Ratepayer Funds or other Funds was impermissible despite being consistent with this Agreement. The City agrees to fully indemnify, defend and hold harmless Prosper from any such Claims.

III. Insurance Requirements. Prosper shall obtain and maintain in full force at Prosper's expense, throughout the duration of the Agreement and any extension periods, the required insurance identified below. OMF/OEHR reserves the right to require additional insurance coverage as required by statutory or legal changes to the maximum liability that may be imposed on Oregon cities during the term of the Agreement.

III.A Workers' Compensation: Workers' compensation insurance as required by ORS Chapter 656 (as may be amended). Unless exempt under ORS Chapter 656, Prosper and all subconsultants shall maintain coverage for all subject workers.

III.B CGL: General commercial liability (CGL) insurance covering bodily injury, personal injury, property damage, premises/operations, contractual liability, products and completed operations, in per occurrence limit of not less than \$2,000,000, and aggregate limit of not less than \$4,000,000.

III.C Automobile: Automobile liability insurance with coverage of not less than \$2,000,000 each accident, and an umbrella or excess liability coverage of \$4,000,000. The insurance shall include coverage for any auto or all scheduled, hired, and non-owned auto. This coverage may be addressed through the commercial general liability insurance policy.

III.D Continuous Coverage; Notice of Cancellation. Prosper agrees to maintain continuous, uninterrupted coverage for the duration of the Agreement. There shall be no termination, cancellation, material change, potential exhaustion of aggregate limits or non-renewal of

coverage without thirty (30) calendar days written notice from Prosper to City/OMF. If the insurance is canceled or terminated prior to completion of the Agreement, Prosper shall immediately notify City/ OMF and provide a new policy with the same terms. Any failure to comply with this clause shall constitute a material breach of the Agreement and shall be grounds for immediate termination of this Agreement.

III.E Additional Insured. The liability insurance coverages, except Workers' Compensation, shall be without prejudice to coverage otherwise existing, and shall name the City of Portland and its bureaus/divisions, officers, agents and employees as Additional Insureds, with respect to Prosper's activities to be performed, or products or services to be provided. Coverage shall be primary and non-contributory with any other insurance and self-insurance. Notwithstanding the naming of additional insureds, the insurance shall protect each additional insured in the same manner as though a separate policy had been issued to each, but nothing herein shall operate to increase the insurer's liability as set forth elsewhere in the policy beyond the amount or amounts for which the insurer would have been liable if only one person or interest had been named as insured.

III.E Certificate(s) of Insurance. If requested, Prosper shall provide proof of insurance through acceptable certificate(s) of insurance, including additional insured endorsement form(s) and all other relevant endorsements, to OMF prior to any commencement of work or delivery of goods or services under the Agreement. The Certificate(s) will specify all the parties who are endorsed on the policy as Additional Insureds (or Loss Payees). Insurance coverages required under this Contract shall be obtained from insurance companies acceptable to the City of Portland. Prosper shall pay for all deductibles and premiums. OMF/OEHR reserves the right to require, at any time, complete, certified copies of required insurance policies, including endorsements evidencing the coverage the required.

III.F Subconsultant(s). Prosper shall provide evidence that any subconsultant, if any, performing work or providing goods or service under the Agreement has the same types and amounts of coverages as required herein or that the subconsultant is included under Prosper's policy.

IV. Independent Contractor Status. Prosper is engaged as an independent contractor and shall be responsible for any federal, state and local taxes and fees applicable to payments hereunder.

V. Personnel. OMF and OEHR shall designate the individual(s) responsible for carrying out their respective obligations under this Agreement and who are responsible for communicating with Prosper as required for Prosper to perform its obligations under this Agreement. Likewise, Prosper shall designate the individual(s) to serve as its project manager and to communicate with OMF and OEHR as required for each party to perform its respective obligations under this Agreement.

VI. Notices. Any notice provided for under this Agreement shall be sufficient if in writing and delivered personally to the following addressee or deposited in the United States Mail, postage prepaid, certified mail, return receipt requested, addressed as follows, if by email to the email address listed on the first page of this Agreement, or to such other address as the receiving party hereafter shall specify in writing:

- If to OMF: 1120 SW 5th Ave. Portland, OR 97204, Attn: Cathy Sherick
- If to OEHR: 421 SW 6th Ave., Portland, OR 97204, Attn: Judith Mowry
- If to Prosper: 222 NW 5th Ave. Portland, OR 97209, Attn: Morgan Masterman

VII. Integration. This Agreement between OMF and Prosper contains the entire agreement between OMF, OEHR and Prosper regarding the subject matter hereof and supersedes all prior written or oral discussions or agreements.

VIII. Maintenance of Records; Audits. Prosper shall maintain records on a current basis to support its billings to the City and to document the performance of services in accordance with this Agreement. The City or its authorized representative shall have the authority to inspect, audit and copy on reasonable notice and from time to time, any records of Prosper regarding its billings and performance of services. Prosper shall retain these records for inspection, audit and copying for three (3) years from the date of completion or termination of this or any future Agreements.

IX. Breach of Agreement.

IX.A Before terminating this Agreement for breach, the non-breaching party shall give to the other party written notice of the breach and of the party's intent to terminate. If the party has not entirely cured the breach within fifteen (15) days of the notice, then the party giving the notice may terminate the Agreement at any time thereafter by giving a written notice of termination.

IX.B Prosper shall not have breached this Agreement by reason of any failure to perform a substantial obligation under the Agreement if the failure arises out of causes beyond its control and without its fault or negligence. Such causes may include, without limitation, acts of God or the public enemy, acts of the federal, state or local governments, fires, floods, epidemics, volcanic eruptions, quarantine restrictions, strikes, freight embargoes and unusually severe weather. Should Prosper fail to perform because of a cause described in this subsection, the City/OMF and Prosper shall make a mutually acceptable revision of this Agreement.

IX.C Cause for Termination; Cure. It shall be a material breach and cause for termination of this Agreement if Prosper uses Funds in a manner not permitted by this Agreement, or if Prosper fails to comply with any other term or condition or to perform any obligations under this Agreement within thirty (30) days after written notice from City. If the breach is of such nature that it cannot be completely remedied within the thirty (30) day cure period, Prosper shall commence cure within the thirty (30) days, notify City of Prosper's steps for cure and estimated time table for full correction and compliance, proceed with diligence and good

faith to correct any failure or noncompliance, and obtain written consent from City for a reasonable extension of the cure period.

IX.D No Payment or Further Services Authorized During Cure Period / Pre-Termination Period. During the cure period (or during the period between delivery of a notice of no-cause termination and the stated termination date, as described in Section X.F below), the City is under no obligation to continue providing additional Funds notwithstanding any payment schedule indicated in this Agreement except to the extent Prosper has already (prior to the delivery of the notice of default or notice of no-cause termination, as applicable) duly disbursed Funds to a grant recipient and is entitled to reimbursement under this Agreement. Prosper shall not perform services or take actions that would require City to pay additional Funds to Prosper. Prosper shall not spend unused grant Funds (to the extent any are in the possession of Prosper) and such unused funds shall be deemed held in trust for City. Prosper shall be solely responsible for any expenses associated with cure of its noncompliance or failure to perform. In the event of termination of this Agreement, Prosper shall be entitled to a prorated portion of its administrative compensation through the termination date but not the entirety of the administrative compensation. In such event, OMF and Prosper will work together in good faith to determine amounts owed to, or owed by, OMF and Prosper (respectively) with respect to administrative compensation through the termination date.

IX.E Termination for Cause. Termination for cause based a misuse of Funds by Prosper shall be effective upon notice of termination. Termination for cause based on failure to comply or perform other obligations shall be effective at the end of the 30-day period unless a written extension of cure period is granted by City. Prosper shall return all grant Funds that have not been expended as of the date of the termination notice. All finished or unfinished documents, data, studies, and reports prepared by Prosper under this Agreement shall, at the option of City, become the property of City.

IX.F Termination Without Cause. This Agreement may be terminated without cause at any time by either: (a) a joint notice from OMF and OEHR signed by the OMF Chief Administrative Officer and OEHR Director and delivered to Prosper at least 30 days prior to the stated termination date; or (b) a notice from Prosper signed by the Prosper Executive Director and delivered to OMF and OEHR at least 30 days prior to the stated termination date.

IX.G Amendments. The City or Prosper may amend this Agreement at any time, but the Agreement may be amended only by written amendment executed by OMF, OEHR and Prosper. Unless otherwise provided, any amendment that increases the amount of compensation payable to Prosper must be approved by ordinance of the City Council if the amount exceeds 25% of the project total. The Project Manager may agree to and execute any other amendment on behalf of the City.

IX.H Non-Waiver. The City/OMF and Prosper shall not be deemed to have waived any breach of the Agreement by the other party except by an express waiver in writing. An express

written waiver as to one breach shall not be deemed a waiver of any other breach not expressly identified, even though the other breach be of the same nature as that waived.

X. Prohibited Interest and Conflicts.

X.A The parties agree to take reasonable steps to ensure that any City official or employee or Prosper officer or Employee during his or her tenure or thereafter complies with the restrictions set forth in Portland City Code 2.12.

X.B Prosper agrees that at all times during the term of this Agreement, it will maintain a written conflicts of interest policy and will require all Selection Committee members to sign a conflict of interest form consistent with such policy. The parties acknowledge that Prosper currently has a written conflicts of interest policy.

[Signature Page Follows]

Executed by the parties on the dates indicated below, to be effective as of the Effective Date.

**City of Portland,
Office of Management & Finance**

By _____

Tom Rinehart, Chief Administrative Officer

Date: _____, 2020

Prosper Portland

By _____

Kimberly Branam, Executive Director

Date: _____, 2020

**City of Portland,
Office of Equity and Human Rights**

By _____

Markisha Smith, Director

Date: _____, 2020

Approved as to Form:

City Attorney

Approved as to Form:

Prosper Portland Legal Counsel

EXHIBIT A

Prosper Invoice Format

SAMPLE INVOICE FORM

Date: _____

To: City of Portland/OMF
 Attn: Cathy Sherick
 1001 SW 5th Avenue, Suite 400
 Portland, OR 97204

Invoice No: _____

Remit to:
 Prosper Portland
 222 NW 5th Ave
 Portland OR 97209

Contract #: _____

Billing Period: _____

Budget Category	Contracted Budget	Amount this Bill	Amount Billed to Date	Balance
Business Development:				
Service Provider A				
Service Provider B				
Service Provider C				
Workforce Development:				
Service Provider A				
Service Provider B				
Service Provider C				
Total COEP				

Prepared by: _____

Print Name and Sign

Date

Phone Number: 503.823.0137

Email: cohnc@prosperportland.us

Approved by: _____

Print Name and Sign

Date

By signing this report, I certify to the best of my knowledge and belief that the report is true, complete, and accurate, and the expenditures, disbursements and cash receipts are for the purposes and objectives set forth in the terms and conditions of the Federal award. I am aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil or administrative penalties for fraud, false statements, false claims or otherwise. (U.S. Code Title 18, Section 1001 and Title 31, Sections 3729-3730 and 3801-3812).

NOTE: Please reproduce this form on agency letterhead or submit cover letter to this invoice that includes total requested and authorizing signature.