

Exhibit A
INTERGOVERNMENTAL AGREEMENT:
Prosper Portland Funding to Citywide Obligation Reserve Fund

CITY OF PORTLAND INTERGOVERNMENTAL AGREEMENT NO: _____

This Intergovernmental Agreement (Agreement) is entered into by the City of Portland, Oregon, through its Bureau of Environmental Services and Office of Management and Finance (City) and Prosper Portland, the assumed business name of the Portland Development Commission, collectively the Parties.

RECITALS

- A. Prosper Portland is the economic and urban development agency for the City of Portland and focuses on building an equitable economy; the Bureau of Environmental Services (BES) is the City of Portland Bureau designated for managing the Portland Harbor Superfund related activities on behalf of the City of Portland, and the Bureau of Revenue and Financial Services (BRFS) within the Office of Management and Finance (OMF) is the City of Portland Bureau designated for managing City funds and obligations.
- B. The Portland Harbor Superfund Site in Portland, Oregon is located in the lower Willamette River, between the Columbia Slough (river mile 1.9) and the Broadway Bridge (River Mile 11.8)(Portland Harbor). In 2001 the U.S Environmental Protection Agency (EPA) listed the Portland Harbor on the National Priority List due to its long history of shipping, industrial, and commercial activity on the Willamette River. This area of the river is critical location for economic development and also has historical, natural and cultural resource significance.
- C. The City owns or has owned properties on or related to the Portland Harbor Superfund site, including several properties owned or acquired by Prosper Portland.
- D. The City and Prosper Portland have worked cooperatively to provide information to EPA as required and in mutual defense of Prosper and City interests in proceedings regarding liabilities pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act U.S. 42 U.S.C. §§ 9601-9675.
- E. In 2017, EPA issued the Record of Decision that selected a remedy for Portland Harbor. In December 2018 EPA notified many parties that it expected parties to begin remedial design within a year of face enforcement. In response the City has entered into agreements with EPA to perform or fund remedial activities in Portland Harbor
- F. To be consistent with EPA’s implementation timeline, the Office of Management and Finance established the Citywide Obligations Reserve Fund a central reserve in January 2020 to collect funds for long-term funds City-wide including certain Portland Harbor obligations. The City General Fund, Water Bureau, BES, Bureau of Transportation and Prosper Portland each have agreed to provide funding to the Citywide Obligations Reserve Fund for this purpose, based on claims associated with properties owned or operated by each bureau or agency.

- G. The Agreement allows Prosper Portland to provide funding for the estimated amount provided by BES and OMF that is consistent with the amount included in the annual adopted budget.

THE PARTIES AGREE AS FOLLOWS:

1. Payment of Funds to the Citywide Obligations Reserve Fund

- A. Prosper Portland will provide funds to the BRFS to be placed in the Portland Harbor subfund of the Citywide Obligations Reserve Fund and to be used to fund projects that are necessary to address the City's obligations at Portland Harbor.
- B. Prosper Portland has agreed to provide funding of 8% of the total estimated budget for the City's remedial design forecasted budget, based on claimed remedial obligations for properties owned or operated by Prosper Portland in the Portland Harbor area.
- C. The City and Prosper Portland will meet by January 15th of each year to review and discuss project status, projected budgets and any necessary changes in the funding contributions between bureau partners and Prosper Portland (the "Annual Funding Meeting.") The date and amounts for the annual transfer of funds will be established at the Annual Funding Meeting. The Annual Funding Meeting for FY 2020-21 has already taken place.

2. Term

This Agreement is effective October 20, 2020 through completion of City funding obligations for remedial design at the Portland Harbor which is expected to be no earlier than June 30, 2023. The term of this Agreement may be extended or modified by mutual writing agreement of the Authorized Representatives to conform to EPA's timeline.

3. Fund Transfer Process

- A. Funding is available in FY 2020-21 in the amount of \$729,200. This amount is included in the City's FY 2020-21 budget. Funding for FY 2020-2021 will be disbursed only upon Prosper Portland Board's approval via resolution authorizing this Agreement.
- B. The authorized amounts for FY 2021-22 and subsequent Fiscal Years will be established at the Annual Funding Meeting and appropriated in the adopted budget before disbursement to BRFS.

- C. Prosper Portland authorizes the City to deduct the authorized amount from Prosper Portland's cash holdings fund in accordance with the following process:
- (1) On a mutually agreed-upon date, the City will deduct funds from the Prosper Portland's cash holdings fund and transfer these funds to the Portland Harbor subfund within the Citywide Obligation Reserve Fund. The City will provide documentation to Prosper Portland of the deduction and transfer of funds, and
 - (2) Prosper Portland shall ensure that the resources deducted from the cash holdings account are appropriately recorded with Prosper Portland.
- D. Prosper Portland and the City shall fully cooperate with any audits of the record.

4. Notices; Authorized Representatives

The following individuals are the authorized individuals for decision-making under this Agreement.

Prosper Portland:

Tony Barnes
Finance Manager

City:

Annie Von Burg
Portland Harbor Project Manager
Bureau of Environmental Services

5. Access to Records

Both parties and their duly authorized representatives shall have access to the books, documents, and records which are directly pertinent to the specific Agreement for the purpose of making audit, examination, excerpts and transcript. Prosper Portland and the City shall fully cooperate with any audits of the record.

6. Disputes

The signatories to this Agreement shall expend their best efforts to amicably resolve any dispute that may arise under this Agreement. Any dispute that the signatories are unable to resolve shall be submitted to the Director of the Prosper Portland or his/her designee and the City of Portland's approving authority or their designated representative for resolution.

7. Oregon Laws and Forum

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

8. Severability

If any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.

9. Force Majeure

Neither Party shall be held responsible for delay or default caused by fire, riot, acts of God and war which are beyond its reasonable control. The affected party shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall, upon cessation of the cause, diligently pursue performance of its obligation under the Agreement.

10. No Third-Party Beneficiary

The City and Prosper Portland are the only parties to this Agreement, and such are the only parties entitled to enforce its terms. Nothing contained in this Agreement gives or shall be construed to give or provide any benefit, direct, indirect, or otherwise to third parties unless third persons are expressly described as intended to be beneficiaries of its terms.

11. Merger Clause

This Agreement constitutes the entire Agreement between the parties. No waiver, consent, modification or change of terms of this Agreement shall bind either party unless in writing and signed by both parties. Such waiver, consent modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. There are no understandings, agreements, or representations, oral or written not specified herein regarding this Agreement.

12. Amendments

The City and Prosper Portland may amend this Agreement at any time by written amendment executed by the City and Prosper Portland. Prosper Portland and the Director of BES or the Director's designee are authorized for the City to approve amendments to this Agreement that increase the total Agreement amount provided the amounts are appropriated in an adopted budget before disbursement to the City. Any amendment to the Agreement requires the mutual written agreement of the Parties.

13. Counterparts

This Agreement may be signed in two or more counterparts, which when taken together, constitute one and the same Agreement.

The parties agree the City and Prosper Portland may conduct this transaction, including any amendments to the Agreement, by electronic means, including the use of electronic signatures.

APPROVING AUTHORITIES:

CITY OF PORTLAND

PROSPER PORTLAND

Michael Jordan
Director Bureau of Environmental Services

Kimberly Branam
Executive Director

Date: _____

Date: _____

Michelle Kirby
Chief Financial Officer

Date: _____

APPROVED AS TO FORM:

APPROVED AS TO FORM:

Office of the City Attorney

Prosper Portland Legal Counsel