

Exhibit A

DRAFT INTERGOVERNMENTAL AGREEMENT

Between Prosper Portland and the Portland Bureau of Transportation

For the Broadway Corridor Right-of-Way Projects

This Intergovernmental Agreement (“**Agreement**”), dated as of the last date of signature below (the “**Effective Date**”), is made and entered into by and between the CITY OF PORTLAND, BUREAU OF TRANSPORTATION (“**PBOT**”) and PROSPER PORTLAND, the redevelopment and urban renewal agency of the City of Portland (“**Prosper Portland**”).

RECITALS

A. Prosper Portland is the urban renewal agency of the City of Portland (the “**City**”) and is granted broad powers under ORS 457.170 *et seq.* for the planning and implementation of urban renewal projects.

B. PBOT oversees transportation operations and improvements in the City’s public right-of-way, and cooperation between Prosper Portland and PBOT is beneficial to the implementation of urban renewal plans and other public policies, plans, and capital projects.

C. Prosper Portland is responsible for implementing the River District Urban Renewal Plan, which includes the 14-acre site that Prosper Portland purchased from the US Post Office (the “**USPS Property**”). The USPS Property is located within the broader 32-acre site known as the “**Broadway Corridor**,” and is generally bounded by NW Hoyt Street, NW Lovejoy Street, NW 9th Avenue, and NW Broadway, all as depicted on **Exhibit A** attached to this Agreement (the “**Site Map**”).

D. On August 20, 2020, pursuant to LU 19-246279, the Portland Design Commission approved the Central City Master Plan for the USPS Property (the “**Master Plan**”), which Master Plan sets forth the preferred concept design for the USPS Property and the required public infrastructure that will bring the street grid and utility service through the site in order to create development-ready parcels.

E. These future development parcels are depicted and identified as lots 1-8, 9a, 9b, and 9c on the Site Map (the “**Acquisition Lots**”). Prosper Portland intends to conduct a series of property line adjustments so that the Acquisition Lots are created as legal lots out of the property lines comprising the USPS Property existing as of the Effective Date.

F. The Master Plan also sets forth the open space required for development of the USPS Property, which includes a multi-use, off-street bicycle and pedestrian trail known as the “**Green Loop**,” shown on the Site Map, as well as a new park bounded by NW Park Avenue, NW 8th Avenue, NW Hoyt and NW Johnson (the “**Park**,” which is the northernmost block of the new “**North Park Blocks**”).

G. Pursuant to an intergovernmental agreement among Prosper Portland, PBOT, and Portland Parks & Recreation (“**PPR**”), dated [REDACTED] (the “**Park and Green Loop Projects IGA**”), PPR and PBOT will develop design principles for the Green Loop and the Park (the “**Design Principles**”), and PPR will lead construction of the Park and the portions of the Green Loop south of NW Johnson, all on the terms and conditions set forth in the Park and Green Loop Projects IGA.

H. On September 23, 2020, the Portland City Council (the “**City Council**”) through Ordinance No. 190146, approved a funding and finance plan that sets forth the financial contributions of the City and

Prosper Portland to the construction of the public infrastructure and open space that is required pursuant to the Master Plan for the successful and timely development of the Broadway Corridor (the “**Funding and Finance Plan**”).

I. On October 28, 2020, the City Council approved Ordinance No. 190180, creating a local improvement district to fund construction of street, sidewalk, stormwater, sanitary sewer, water main, and off-site signal and intersection improvements in the Broadway Corridor (the “**Broadway Corridor LID**”).

J. For purposes of this Agreement, off-site means areas outside of the USPS Property (“**Off-Site**”).

K. The parties desire to enter into this Agreement to establish the terms and conditions by which PBOT will perform work in the Broadway Corridor as described in this Agreement to further the development of the USPS Property, and the financial obligations of each party for this work.

L. This Agreement was authorized by the Prosper Portland Board of Commissioners by Resolution No. 7390 adopted on August 12, 2020, and by the City Council by Ordinance No. _____, adopted _____.

NOW THEREFORE, in consideration of the foregoing, and of the mutual promises set forth in this Agreement, the parties agree as follows:

AGREEMENT

SECTION 1. NW JOHNSON & NW KEARNEY; OFF-SITE TRAFFIC MITIGATION

1.1 **Johnson/Kearney/Off-Site Project Overview.** This SECTION 1 describes the scope, schedule, and coordination necessary to accomplish the timely design and construction of an extension of NW Johnson and NW Kearney Streets and certain off-site traffic mitigation improvements (“**Johnson/Kearney/Off-Site Project**”).

1.1.1 The Master Plan envisions a series of mixed-use buildings with supportive infrastructure that provides convenient and comprehensive access to surrounding transit uses and neighborhoods. New public street extensions of NW Johnson Avenue and NW Kearney Street will enhance east-west connectivity for pedestrians walking from Old Town Chinatown, Union Station, and the public transit stations east of the USPS Property, with the Streetcar stations and Pearl District neighborhood to the west.

1.1.2 NW Johnson Street is a proposed 80-foot- right-of-way and will be designed with a high level of pedestrian and bicycle accommodation through the site, in part due its designation as a “neighborhood greenway” to the west. Protected bike lanes, most likely in the form of a separated bi-directional bike lane on the south side of the street, will be provided along with a wider than typical pedestrian space on the north side. Where NW Johnson meets NW Park Avenue and the new North Park Blocks (north of the Park), street design features will reinforce the pedestrian/plaza condition of the Park, with treatments such as raising vehicular travel lanes to sidewalk level. The surface treatments will extend seamlessly from the building faces south of NW Johnson to those north of NW Johnson, while providing subtle cues to define spaces for the various modes.

1.1.3 NW Kearney Street is a proposed 60-foot right-of-way, which will be designed as a River District Street according to River District Right-of-Way Standards, or as determined by the City Engineer and City Traffic Engineer. It is anticipated to serve as the primary business access with driveways into parking garages and main ground floor entrances to multi-unit buildings. The mixed-use character and

expected high foot-traffic will still encourage a slow-speed environment similar to other standard River District Streets. It is not anticipated to have the same level of mixed-use character that will be provided for on NW Johnson Street and NW Park Ave.

1.1.4 With required traffic mitigation measures in place, the transportation system will be capable of safely supporting development of the USPS Property in addition to the surrounding uses in the area. The mitigation measures will also further enhance pedestrian, bicycle, and transit connections, and improve intersection traffic capacity and safety.

1.2 **JKO Work.** Promptly following the Effective Date, PBOT will commence and with all due diligence complete the design and construction of the Johnson/Kearney/Off-Site Project, which will include the following elements, as well as the elements applicable to all PBOT-led work described in this Agreement, as set forth in SECTION 3, below (collectively, the “**JKO Work**”):

1.2.1 Street Extensions. Design and construction of an extension of NW Johnson and NW Kearney Streets from NW 9th Avenue to NW Station Way, including public utility infrastructure (water, storm sewer, and sanitary sewer), generally consistent with the preliminary engineering plans for these streets included in the Master Plan. Permanent street improvements will extend from inside edge of sidewalk (which is adjacent to the street gutter) to inside edge of sidewalk, and will include all improvements therewithin, including but not limited to the NW Johnson Street protected bike lanes.

(a) The street extensions will include allocated space for franchise utilities. In addition, with respect to electric service from Portland General Electric (“**PGE**”), PBOT will work with PGE to obtain specifications and requirements regarding electrical vaults and duct banks, and incorporate this information into PBOT’s designs for the street extensions. The parties acknowledge and agree that as of the Effective Date, it is unknown whether PGE will be able to secure funding to construct these improvements by the time PBOT constructs the street extensions. If PGE is unable to fund these improvements, then PBOT and Prosper Portland will meet and confer to attempt to identify an alternative source of funding for this work. If PGE funds the work, or the parties identify funds for this work, then PBOT will coordinate with PGE to ensure that the electric vaults and duct banks are constructed as part of the street extensions, either (a) by a contractor hired by PGE, in which case PBOT will coordinate with the PGE-contractor during construction; or (b) by PBOT. If no funds are identified for this work, then PBOT will leave space for these improvements to be installed at a later date.

1.2.2 Sidewalks. Design and construction of temporary asphalt sidewalks along both sides of the new extensions of NW Johnson and NW Kearney Streets from NW 9th Avenue to NW Station Way, and from the NW Johnson and NW Park Avenue intersection, extending one half block south on the western side of NW Park Avenue. The parties acknowledge that final, back-of-sidewalk improvements will be funded, designed and constructed by future private developers in connection with construction of improvements on the Acquisition Lots. PBOT may elect to construct permanent sidewalks and curb ramps in limited locations as appropriate to aid constructability and public access. PBOT also may elect to utilize existing site pavement for interim sidewalks and/or bikeways, provided it complies with engineering standards, meets Americans with Disabilities Act guidelines, and is in good repair.

1.2.3 Off-Site Improvements. The City Traffic Engineer has reviewed the Master Plan Transportation Impact Study as well as a subsequent signal warrant analysis performed as part of the design phase for the JKO work and determined that the following Off-Site improvements are sufficient to accommodate the added travel demand associated with the Broadway Corridor development through 2032:

- (a) NW Lovejoy and 9th: Northbound right turn lane, bike lane, and signal modification;
- (b) NW Kearney and 9th: Partial intersection reconstruction to accommodate pedestrian crossings and truck movements; and
- (c) NW Johnson and 9th: Partial intersection reconstruction to accommodate two-way bikeway.

1.2.4 Master Plan Compliance. Promptly following execution of this Agreement, PBOT will obtain confirmation from BDS that the Off-Site improvements set forth in Section 1.2.3, above, are sufficient to comply with the Master Plan, and if not, then PBOT will work diligently to promptly obtain any approval that is necessary to modify the Master Plan requirements, without delay to the construction schedule set forth in Section 1.3.2, below. Any such confirmation or approval will include confirmation that the improvements set forth in Section 2.2.3, below, may be included in the NW Park Work (defined below) and will not be triggered before commencement of the NW Park Work.

1.2.5 Design Approval. PBOT will provide Prosper Portland the right to review and approve the design for the JKO Work in the following circumstances: (a) if there are any material changes to the preliminary engineering plans for the JKO Work that were included in the Master Plan; (b) if PBOT identifies the potential for material Cost-Overruns (as defined in Section 5.3, below) associated with an aspect of the JKO Work; (c) if the width of the right turn lane at NW Lovejoy and 9th requires more than a three-foot dedication, and (d) if any of the anticipated Off-Site Improvements is downgraded from a full traffic signal. PBOT will be responsible for coordinating with the Bureau of Development Services (“BDS”) if any of PBOT’s design concepts for the JKO Work, including, e.g., bike lane and signaling, and any related determinations from the City Traffic Engineer, deviate from the Master Plan. If BDS determines that an amendment to the Master Plan or other approval is required, PBOT will either amend the scope of the JKO Work to be consistent with the Master Plan, or work diligently to obtain such amendment or approval, without delay to the schedule for construction set forth in Section 1.3.2, below.

1.3 **Schedule for the JKO Work.**

1.3.1 Design. As of the Effective Date, PBOT has commenced design work for the Johnson/Kearney/Off-Site Project. PBOT will complete design by April 30, 2023. PBOT and Prosper Portland will negotiate in good faith to extend the design schedule if unforeseen site conditions (including subsurface features), building demolition delays, or other events beyond PBOT’s control delay and/or change the design of the JKO Work.

1.3.2 Construction. PBOT will commence construction of the JKO Work promptly following completion of design for the JKO Work. PBOT will start construction of the JKO Work by no later than September 1, 2023, and complete construction by December 31, 2024, for a total construction period of no more than sixteen (16) months. PBOT and Prosper Portland will negotiate in good faith to extend the construction schedule if site access restrictions, unforeseen site conditions (including subsurface features), requirements of newly sought grants, or other events beyond PBOT’s and its contractors’ control delay construction.

1.3.3 Off-Site Utilities. Prosper Portland has entered into an Intergovernmental Agreement with the City’s Bureau of Environmental Services (“BES”) and the Portland Water Bureau (“PWB”), for the installation of infrastructure to serve the USPS Property, which agreement is dated [REDACTED] (the “Off-Site Utilities IGA”). The Off-Site Utilities IGA requires BES to lead the design and construction of Off-Site system improvements, including Off-Site water, sanitary sewer, and storm sewer, to facilitate the timely development of the USPS Property. PBOT acknowledges and agrees that the ability to loop the new water main to be installed within NW 9th Avenue, pursuant to the Off-Site Utilities IGA, is necessary to

preserve the safety and functionality of those improvements. Accordingly, PBOT will closely coordinate with BES and PWB and strictly adhere to a schedule for the JKO Work that ensures that the water line that is part of the JKO Work will be installed and connected to the new water main in NW 9th Avenue no later than six (6) months after installation of the water main in NW 9th Avenue or otherwise on a schedule that is to the satisfaction of the Chief Engineer of the Portland Water Bureau.

SECTION 2. NW PARK AVENUE PROJECT

2.1 NW Park Project Overview. This SECTION 2 describes the scope, schedule, and coordination necessary to accomplish the design and construction of an extension of NW Park Avenue in the Broadway Corridor (the “**NW Park Project**”). NW Park Avenue will extend north to NW Johnson Street from where it currently terminates at NW Hoyt. The extension of the North Park Blocks will provide an edge to the Park and the Green Loop, with building frontage, sidewalk, street parking, and vehicle travel lanes in each direction. NW Park Avenue is anticipated to be designed as an extension of the Park, with level-surface treatments that signal pedestrian priority extending from the building faces east of the Park, to those west of the Park.

2.2 NW Park Work. PBOT will design and construct the NW Park Project, which will include the following elements, as well as the elements applicable to all PBOT-led work described in this Agreement, as set forth in SECTION 3, below (collectively, the “**NW Park Work**”):

2.2.1 Street Extension. Extension of NW Park Avenue from NW Hoyt Street to NW Johnson Street, including public utility infrastructure (storm sewer) and casings for franchise utilities, consistent with the preliminary engineering plans included in the Master Plan. The work will be limited to the right-of-way terminating at the back of sidewalk on the west and east sides of NW Park Avenue, unless otherwise determined by PBOT, in consultation with PPR, Prosper Portland, and BES during the design process. The delineation of the NW Park Work (by PBOT) adjacent to the future Park (by PPR) is depicted on the attached **Exhibit B**.

2.2.2 Sidewalks. Construction of permanent finishes on the eastern edge of NW Park Avenue, and construction of temporary asphalt concrete sidewalks along the western edge of NW Park Avenue. The parties acknowledge that on this western edge, final, back-of-sidewalk improvements will be funded and constructed by future private developers in connection with construction of improvements on the Acquisition Lots.

2.2.3 Off-Site Improvements. If, at a later date, the City Traffic Engineer determines that development at the USPS Property substantially meets traffic signal warrants at intersections that previously had been identified for signalization but were later removed from consideration in 2022, those signals can be added back to the work to be paid for by the Broadway Corridor LID upon mutual written agreement of the parties and combined with the NW Park Work. Those signals include:

- (a) NW Kearney Street and 9th Avenue: New traffic signal
- (b) NW Johnson Street and 9th Avenue: New traffic signal
- (c) NW Glisan Street and 9th Avenue: New traffic signal
- (d) NW Everett Street and 9th Avenue: New traffic signal

2.2.4 Design Approval. PBOT will provide Prosper Portland the right to review and approve the design for the NW Park Work in the following circumstances: (a) if there are any material changes to the preliminary engineering plans for the NW Park Work that were included in the Master Plan; or (b) if PBOT identifies the potential for material Cost-Overruns (as defined in Section 5.3, below) associated with any aspect of the NW Park Work. PBOT will be responsible for coordinating with BDS if any of PBOT’s design

concepts for the NW Park Work are inconsistent with the Master Plan. If BDS determines that an amendment to the Master Plan or other approval is required, PBOT will work diligently to obtain such amendment or approval.

2.3 Schedule for the NW Park Work.

2.3.1 PBOT and Prosper Portland will, in collaboration with other City bureaus, determine a start date and a completion date for the NW Park Work. As of the Effective Date, the parties do not anticipate that the NW Park Work will be commenced prior to 2030, unless Prosper Portland elects, in its reasonable discretion and by written notice to PBOT, to move forward sooner, after consultation with PBOT and PPR. The schedule will ensure that Prosper Portland has adequate time to demolish the improvements within the NW Park Avenue right-of-way, prior to PBOT's commencement of construction of the NW Park Work. PBOT, in coordination with PPR and Prosper Portland, may develop an earlier conceptual alignment of the NW Park Work to inform the design of the interim NW Park Avenue walkway as part of the JKO Work.

2.3.2 PBOT acknowledges that the NW Park Work must be complete prior to the City issuing a certificate of occupancy for either Parcel 1 or 4B, and in determining the start date and schedule for the NW Park Work, the parties will ensure that the schedule permits completion of the NW Park Work as necessary to allow for occupancy of Parcel 1 or 4B, as applicable, depending upon which parcel is developed first.

2.3.3 The schedule for the NW Park Work will also ensure that the NW Park Work will be completed by the time PPR completes construction of the Park, pursuant to the Park and Green Loop Projects IGA.

SECTION 3. GENERAL ELEMENTS OF ALL PROJECTS AND THE PBOT WORK

3.1.1 **PBOT Work.** The Johnson/Kearney/Off-Site Project and the NW Park Project are referred to collectively in this Agreement as the "**Projects**," and individually, as a "**Project**." The JKO Work and the NW Park Work are referred to collectively as the "**PBOT Work**."

3.1.2 **City Utilities.** PBOT will enter into separate agreements with the BES and PWB, as necessary, in PBOT's discretion, to ensure proper and timely installation of the public utility infrastructure that is part of the PBOT Work.

3.1.3 **Broadway Bridge.** PBOT will be responsible for performance of the obligations of Prosper Portland that are applicable to or affect the PBOT Work and which are described in the Memorandum of Understanding between the Multnomah County Transportation Division (the "**County**") and Prosper Portland (the "**Bridge MOU**"), dated August 21, 2020. The Bridge MOU is attached as **Exhibit C** to this Agreement.

3.1.4 **Non-City Utility Design.** The PBOT Work includes preliminary design of the infrastructure and engineering the locations necessary to accommodate non-City utilities, including, but not limited to, underground electric, gas, and communications.

3.1.5 **Non-City Utility Construction.** The parties acknowledge that except for casings for non-City utilities, and except as set forth in Section 1.2.1(a), above (which requires the construction of electrical service infrastructure in the NW Johnson and NW Kearney street extensions under certain circumstances), the PBOT Work will not include further installation of non-City utilities. If the design for the PBOT Work shows that such utilities should be contained in the new right-of-way, then PBOT will coordinate with Prosper Portland and the non-City utility providers so that the non-City utility providers may, at their cost, install such utilities in connection with the PBOT Work. Utility connections to the Acquisition Lots and

any non-City utilities contained in the sidewalks will be the responsibility of the non-City utility providers and private owners of the improvements on those lots.

3.1.6 Topographic and Property Survey; Finished Grades. Prosper Portland will provide PBOT access to all topographic and property surveys that it has directed to be performed on the Broadway Corridor site, including survey point files, CADD layers, and finished products. The PBOT Work must comply with the finished grade elevations set forth in the Master Plan.

3.1.7 Scope Limits and Changes. The PBOT Work will include no work or additional scope than is set forth in this Agreement, without the prior written approval of Prosper Portland, which may be withheld in Prosper Portland's reasonable discretion after consultation with PBOT. Prosper Portland funding is fixed and is limited in scope and will not be expanded or increased to fund additional scope elements of the PBOT Work. PBOT is not obligated to perform, and Prosper Portland is not authorized to pay for, any work not identified in this Agreement.

3.1.8 Community Benefit Agreement(s). The parties acknowledge and agree that pursuant to Ordinance No. 190146, PBOT will (a) consider the aggregate cost of the PBOT Work and all other work by the City in the Broadway Corridor for purposes of determining applicability of the City's community benefits agreement (as adopted by the City, and as the same may be updated or amended, from time to time) to the PBOT Work, (b) negotiate and enter into one or more community benefits agreements ("**CBA(s)**") for the PBOT Work substantially consistent with the City's community benefits agreement, and (c) ensure that such agreements exempt MBE and WBE firms, in addition to DBE firms, from the core employee provisions therein, consistent with the community benefits agreement term sheet approved by the City pursuant to Ordinance No. 190146. Prosper Portland will be responsible for the formation of the Broadway Corridor Labor-Management-Community Oversight Committee (the "**Committee**") and will facilitate and organize the meetings required by the CBA(s) (once executed). In addition, Prosper Portland will provide stipends to Committee members as necessary.

SECTION 4. ENVIRONMENTAL MATTERS

4.1 Site Environmental Conditions. The soil and groundwater at the USPS Property have been impacted by historical releases of hazardous substances. The USPS Property is listed in the Oregon Department of Environmental Quality ("**DEQ**") Environmental Cleanup Site Information ("**ECSI**") database, as ECSI Site ID 2183, US Postal Service Processing & Distribution Center. DEQ has selected a cleanup remedy for the USPS Property, and work at the USPS Property is subject to the terms of the consent judgment dated May 25, 2016, and filed in Multnomah County Circuit Court, *State of Oregon v. Portland Development Commission* (the "**Consent Judgment**"), *Selected Remedial Action Record of Decision for the USPS-P&DC Site, Portland, Oregon*, dated July 14, 2010, *Easement and Equitable Servitudes*, dated October 8, 2011, and filed in Multnomah County as Document #2011-111086, and future easements and equitable servitudes that limit or condition activities at the USPS Property. The obligations for redevelopment of the USPS Property are in the Scope of Work ("**SOW**") and Master Remedial Action Workplan and other planning documents, which are incorporated into the Consent Judgment.

4.2 Environmental Matters Defined. As used in this Agreement, "**Environmental Matters**" means environmental remediation, worker protection, and any other measures, such as long-term planning, monitoring, inspection, and repair, required by the Consent Judgment, DEQ or any other regulatory agency charged with protection of human health and the environment.

4.3 Allocation of Responsibility for Environmental Matters. The Consent Judgment acknowledges that the USPS Property will be redeveloped over time in units referred to as sub-parcels and that future sub-

parcel owners and operators will receive the benefits of the Consent Judgment for their specific sub-parcel.

4.3.1 The parties will take all actions reasonably necessary to ensure that the benefits and protections of the Consent Judgment are maintained in full force and effect for the parties.

4.3.2 PBOT agrees to be bound by the terms of the Consent Judgment that apply to the sub-parcels acquired by PBOT.

4.3.3 Prosper Portland will remain bound by the terms of the Consent Judgment that apply to sub-parcels not transferred (or dedicated as right-of-way) to the City. Prosper Portland will require that all non-City transferees abide by the Consent Judgment, and implement remedial actions as required by DEQ, in a manner that will not impair existing remedial work at other sub-parcels, and Prosper Portland will provide copies of the transfer agreements to the City.

4.3.4 After a sub-parcel is transferred to the City, Prosper Portland will remain responsible for hazardous substances or hazardous substance releases caused by or resulting from any failure of Prosper Portland to comply with the requirements of this Agreement or any negligent act or omission of Prosper Portland.

4.3.5 The parties agree to further allocate responsibilities for addressing Environmental Matters as provided in the attached **Exhibit D**.

SECTION 5. FINANCIAL CONTRIBUTIONS

5.1 Funding for the JKO Work and the NW Park Work.

5.1.1 PBOT estimates that the total fees, costs and expenses of the JKO Work and the NW Park Work will be \$27,600,000 (the “**Project Cost**”). PBOT will use \$23,000,000 from the Broadway Corridor LID to pay the Project Cost, and PBOT will use transportation system development charge (“**TSDC**”) revenue to fund that portion of the Project Cost between \$23,000,000 and \$27,600,000, all as shown on the Funding and Finance Plan.

5.1.2 Prior to issuing a Notice to Proceed for construction of the JKO Work, or prior to issuing debt for construction of the JKO Work, the parties will amend the financing plan associated with the Broadway Corridor LID, as needed to reflect then-current construction cost estimates and any new funding sources or uses. If required, a public hearing will be held pursuant to PCC 17.08.080. Prosper Portland will be prepared to pay the semi-annual interest costs on the credit facility used to finance the Broadway Corridor LID costs if, after preparation of such amended financing plan, Prosper Portland and PBOT agree, in consultation with the directors of the City’s Budget Office and the Bureau of Revenue and Finance, that this will have the best financial outcome for the Broadway Corridor project.

5.2 **Definition of Project Cost.** “**Project Cost**,” as used in this Agreement, means PBOT’s actual project development, design, right-of-way acquisition, tenant relocation, building demolition, and construction management and engineering costs with respect to any of the PBOT Work. Project Cost includes both direct and indirect costs as set forth below.

5.2.1 Direct costs are costs of the following:

(a) *Personal Services.* Covers reimbursement for direct wages paid to personnel engaged in performance of the PBOT 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 PBOT Work and within the authorized budget.

(d) *Contracted Services.* Covers reimbursement for contracted professional or construction services in carrying out the PBOT Work and within the authorized budget.

5.2.2 Indirect costs pay for generally fixed costs related to administration and operation, as well as program management costs including Council charges, executive management staff, rent, telephone, power, insurance, office supplies and equipment. These costs may be included in the Project Cost at the rate established annually for PBOT, in accordance with City Code Chapter 5.48, and for Prosper Portland, in accordance with Cost Recovery Policy through Resolution 6560. At the beginning of each fiscal year, each Contract Manager (identified in SECTION 7, below) will provide written notification to the other of the new fiscal year rate.

5.2.3 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.

5.3 **Cost-Overruns.** “**Cost-Overruns**” means any amount by which the actual Project Cost exceeds \$27,600,000.

5.3.1 Notice of Cost-Overruns. PBOT will notify Prosper Portland immediately of any actual or anticipated variance between any estimated Project Cost and its actual cost. The parties will then make a good faith effort to resolve the issue.

5.3.2 Responsibility for Cost-Overruns.

(a) As provided by Ordinance No. 190180, PBOT will be responsible only for the percentage of Cost-Overruns equal to the percentage that the Project Cost is paid for with TSDC revenue, which percentage is estimated as of the Effective Date to be approximately seventeen percent (17%).

(b) Notwithstanding the foregoing, as provided by Ordinance No. 190180, PBOT will not be responsible for any Cost-Overruns attributable to contaminated media removal costs that exceed \$4,507,714, which is the sum of the costs for the work labeled as “Contaminated Groundwater Disposal,” “Contaminated Media Disposal,” “HASP/CMDP Work Plans,” “Hazardous Waste Contingency,” and “Preferential Pathway Mitigation” on Exhibit E to Ordinance No. 190180.

(c) To the extent that PBOT is responsible for Cost-Overruns, such costs will not be assessed against the Broadway Corridor LID, without Prosper Portland’s prior written approval, which may be withheld in Prosper Portland’s sole discretion, as the intent of the parties is to keep the LID payments as low as possible. PBOT acknowledges and agrees that the parties have anticipated that PBOT would pay any Cost-Overruns for which PBOT is responsible from other non-LID funding sources.

(d) Prosper Portland will be responsible for the Cost-Overruns that are not the responsibility of PBOT, as set forth above.

5.4 Prosper Portland Options to Pay Cost-Overruns; Broadway Corridor LID.

5.4.1 Prosper Portland may elect, in its sole discretion, to seek City Council’s approval to amend the Broadway Corridor LID to include any Cost-Overruns for which Prosper Portland is responsible, as provided by City Code Section 17.08.080 and in a manner consistent with standard procedure, including a public hearing unless such hearing is waived in accordance with Ordinance No. 190180.

5.4.2 When the Broadway Corridor LID payments are due, estimated to be in 2032, Prosper Portland may by written notice to PBOT require PBOT to pay all or a portion of Prosper Portland’s Broadway Corridor LID payments, up to a maximum amount of \$9,700,000. PBOT will make that payment with the TSDCs that would otherwise have been spent on construction of the Park and the Green Loop, as allocated in the Funding and Finance Plan. Prosper Portland acknowledges and understands that such payment will result in a commensurate decrease in PBOT’s ability to contribute TSDC funds to the construction of the Park and the Green Loop.

SECTION 6. PROSPER PORTLAND PROJECT OBLIGATIONS

6.1 **Demolition.** Prosper Portland will be responsible for demolishing the improvements on the USPS Property so PBOT can accomplish the JKO Work and the NW Park Work. Prosper Portland will provide PBOT the opportunity to review and comment on Prosper Portland’s demolition plans in order to allow PBOT the opportunity to suggest scope or schedule changes that could permit its work to proceed more quickly, efficiently, or in a more cost-effective manner, as well as to allow both parties to coordinate and minimize interference with the other party.

6.2 **Right-of-Way Dedication.** Upon request by PBOT, Prosper Portland will dedicate public right-of-way for NW Kearney and NW Johnson Streets, NW Park Avenue, and the right turn lane at NW Lovejoy and 9th Avenue; provided that the parties acknowledge that the design of such right turn lane will be determined in accordance with Section 1.2.5, above, and unless the parties agree otherwise, the dedication will be no more than three (3) feet in width. PBOT acknowledges that Prosper Portland, in the dedication of public right-of-way, is obligated to comply with (a) that certain Purchase Agreement, dated May 5, 2016, governing Prosper Portland’s acquisition of the USPS Property from USPS (as amended, the “USPS PSA”) which requires any transfer to contain a covenant not to sue USPS; and (b) the Consent Judgment, which requires that any transfer document expressly state that it is subject to the Consent Judgment.

6.3 **Construction Right of Entry.** Subject to Prosper Portland’s approval of the size and location, which approval will not be unreasonably withheld, conditioned, or delayed, Prosper Portland will grant PBOT temporary licenses, at no cost, for PBOT’s staging and construction of the PBOT Work.

6.4 **Environmental Matters.** By May 1, 2023, Prosper Portland will complete the demolition and clean up activities described on and pursuant to the attached **Exhibit D**.

SECTION 7. CONTRACT MANAGEMENT

7.1 By Prosper Portland.

7.1.1 **Prosper Contract Signatory.** Prosper Portland’s Contract Signatory will be *Kimberly Branam, Executive Director*, or such other person as she may designate in writing (the “Prosper Contract

Signatory”). The Prosper 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 8.1.2.

7.1.2 Prosper Contract Manager. Prosper Portland’s Contract Manager will be *Lisa Abuaf*, or such other person as he may designate in writing (the “**Prosper Contract Manager**”). The Prosper 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.

7.2 **By PBOT.**

7.2.1 PBOT Contract Signatory. PBOT’s Contract Signatory will be *Chris Warner*, or such other person as they may designate in writing (the “**PBOT Contract Signatory**”). The PBOT 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 8.1.2.

7.2.2 PBOT Contract Manager. PBOT’s Contract Manager will be *Steve Szigethy* (the “**PBOT Contract Manager**”). The PBOT 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.

7.3 **Management Staffing.**

7.3.1 If PBOT or Prosper Portland staff are not performing or are unable to continue performing the responsibilities designated in this Agreement, then the respective contract manager (or higher-level personnel at PBOT or Prosper Portland, if necessary) will designate replacement staff members for this Agreement.

7.3.2 The Prosper Contract Manager and the PBOT 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 below, the party’s contract manager (or higher level personnel at Prosper Portland or PBOT, if necessary) will 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.

7.4 **Project Staffing – PBOT:** The following PBOT personnel are being assigned to perform the PBOT Work:

- (a) Dan Layden, Project Manager;
- (b) Andrew Aebi, LID Administrator;
- (c) Nicholas Morell, Civil Engineer. In addition, PBOT has retained David Evans Associates as the design engineering consultant for the JKO work.

7.5 **Project Staffing – Prosper Portland:** The following Prosper Portland personnel are being assigned to work with PBOT and coordinate with regard to the PBOT Work and Prosper Portland’s obligations under this Agreement:

- (a) Sarah Harpole, Project Manager.

7.6 **Project Management.**

7.6.1 Dan Layden will manage the design and construction of the PBOT Work.

7.6.2 Sarah Harpole will be responsible for any necessary outreach related to Prosper Portland's redevelopment efforts; coordination between the PBOT Work and Prosper Portland's other activities on the USPS Property; and coordination of right-of-way dedications as necessary pursuant to Section 6.2, above.

7.6.3 PBOT will submit Project Status Reports to Prosper Portland 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 Agreement: a) Survey; b) 30% design; c) 60% design; d) negotiation of Guaranteed Maximum Price contract for construction; e) Right-of-way dedications; f) 95% design; g) Construction; h) compliance with CBA requirements; and i) Final assessment of the Broadway Corridor LID.

7.7 **Public Involvement.**

7.7.1 Where the Projects require public involvement, PBOT and Prosper Portland will collaborate on design of the public involvement plan that is endorsed by both project managers.

7.7.2 PBOT and Prosper Portland will keep each other informed of written material (e.g., news releases, brochures, newsletters, reports) produced for the Projects that are intended for public distribution and will provide adequate time for review and discussion prior to distribution.

7.7.3 Each project manager will inform the other project manager of any inquiries 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 Projects being provided to such a representative; if unable to make a prior consultation, notice will be provided afterwards.

7.8 **Meeting Participation.** Each project manager will invite the other to attend all regular or significant meetings regarding the Projects and to participate in steering, management, or technical advisory committees organized for the Projects.

7.9 **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.

SECTION 8. GENERAL

8.1 **Termination.**

8.1.1 The Termination Date of this Agreement is December 31, 2033, or such later date as the parties fully perform their obligations hereunder.

8.1.2 Notwithstanding Section 8.1.1 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.

8.2 **Change and Conflict Resolution.**

8.2.1 Every effort has been made to accurately identify the scope, schedule and budget for the Projects. PBOT and Prosper Portland recognize that events and conditions may arise that significantly impact the PBOT Work. A "significant" impact is one that may cause Cost-Overruns, or delay completion of the any aspect of the Projects for more than six months. 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 will make reasonable efforts to meet within ten (10) days to identify anticipated or confirmed affects to the Projects' scope, schedule and budget.

(c) Both parties shall seek to reach agreement on any necessary revisions to this Agreement as described below in Section 8.2.2.

8.2.2 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 identified in SECTION 7.

(b) If the conflict cannot be resolved by the project managers, or involves one of the project managers, then the conflict will be elevated to the contract managers identified in SECTION 7 for discussion and resolution.

(c) Any conflicts not resolved by the contract managers will be elevated to the contract signatories for discussion and resolution.

8.3 **Compliance with Laws.** Each party will comply with all applicable laws, rules, regulations, orders, consents and permits in the performance of all of their obligations under this Agreement.

8.4 **Indemnification.**

8.4.1 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 attorney's fees, resulting from or arising out of the activities of City or its officers, employees, or agents under this Agreement, except to the extent that such claims, suits, actions, damages, losses, expenses, or costs result from or arise out of the activities of Prosper Portland or its officers, employees, or agents.

8.4.2 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 attorney's fees, resulting from or arising out of the activities of Prosper Portland or its directors, employees, or agents under this Agreement, except to the extent that such claims, suits, actions, damages, losses, expenses, or costs result from or arise out of the activities of City or its officers, employees, or agents.

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

8.6 **Work Product.**

8.6.1 The PBOT Project Manager will, upon request, provide 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 PBOT Work to the Prosper Project Manager.

8.6.2 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 Projects.

(a) Except as described in paragraph (b) below, PBOT will own all Work Product.

(b) If the parties determine that PBOT is unable or unwilling to complete the Projects, and Prosper Portland determines that a transfer of ownership of the Work Product is necessary in order to effect completion of the Projects, upon Prosper Portland's written request PBOT will assign ownership of the Work Product to Prosper Portland.

(c) Regardless of ownership of the Work Product, both parties will have reasonable access to the Work Product.

8.6.3 PBOT will maintain records to support its billings to Prosper Portland. Prosper Portland or its authorized representative will have the authority to inspect, audit and copy, on reasonable notice and from time to time, any records of PBOT regarding its billings or the PBOT Work, for a period of 3 years after completion or termination of this Agreement.

8.7 **Amendments**

8.7.1 Except as otherwise provided for in this Agreement, PBOT or Prosper Portland may amend this Agreement only in writing signed by the contract signatories.

8.7.2 Changes to the Scope of Work and Budget:

(a) Changes to the PBOT Work and the Project Costs, including changes to scope, schedule, and budget, which do not increase the total compensation under this Agreement, may be made upon written agreement by the project managers identified in SECTION 7 of this Agreement.

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

8.8 **Merger Clause; Counterparts.** 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. This Agreement may be executed in one or more counterparts, including by electronic means, which, when taken together, will form one and the same agreement.

8.9 **Time of the Essence.** Time is of the essence of this Agreement.

8.10 **Assignment; Successors.** Neither party may assign or transfer any obligation under this Agreement without the prior written consent of the other parties.

8.11 **Third Party Beneficiaries.** This Agreement has been made solely for the benefit of the parties hereto and their respective successors and permitted assigns, and nothing in this Agreement is intended to, or will, confer upon any other person any benefits, rights or remedies under or by reason of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

CITY OF PORTLAND, by and through its
BUREAU OF TRANSPORTATION

Title: _____
Date: _____

Approved as to form:

PROSPER PORTLAND

Title: _____
Date: _____

Approved as to form:

Exhibit A: Site Map

Exhibit B: Delineation between PBOT Work in Park Avenue and the Park

Exhibit C: Bridge MOU

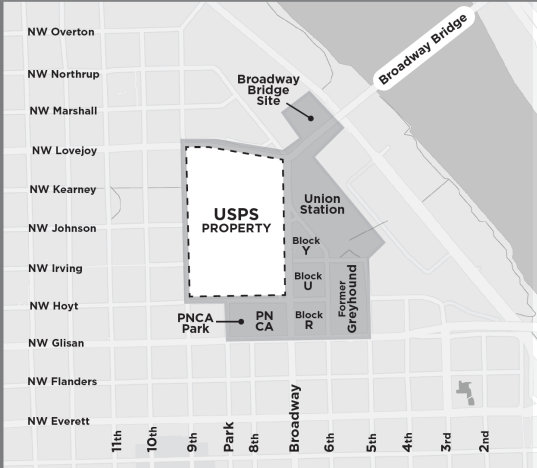
Exhibit D: Environmental Matters

Attachment 1 – Diagram of PBOT Sub-Parcels

Attachment 2 – Condition of PBOT Sub-Parcels at Transfer or Dedication

Exhibit A – Site Map

Broadway Corridor

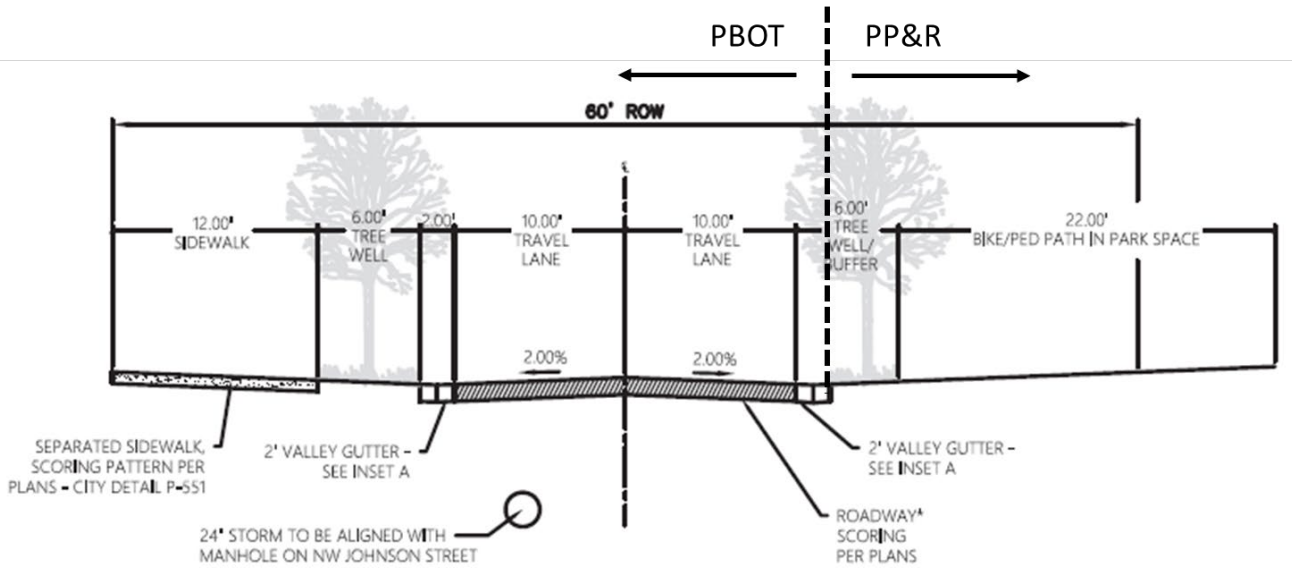


USPS Property Detail



Exhibit B – Delineation of Park Avenue Scope of Work

The Park Avenue and Park scopes of work will be delineated at the eastern edge of the valley gutter to be placed within the Park Avenue Right of Way:



LEVEL SURFACE ROADWAY WITH EXTENDED SIDEWALK AND SIDE PATH

Exhibit C – Bridge MOU

[See Attached]

EXECUTED

MEMORANDUM OF UNDERSTANDING

DATED: July 21, 2020

SUBJECT: Broadway Corridor Development Impacts
to the Multnomah County Broadway Bridge

BETWEEN: Prosper Portland (“Prosper”)
and
Multnomah County Transportation Division (“County”)

Hereinafter referred to individually or collectively as “Party” and “Parties”, respectively.

RECITALS

Prosper Portland is managing development of the 34-acre site entitled the Broadway Corridor and has property ownership over a majority of the area. Prosper is currently working with City of Portland (“City”) bureaus to establish new public right of way (ROW) frontages and will eventually work with developers who will build out the new property lots.

Pursuant to ORS 382.305- 310, County is charged with operating and maintaining the Broadway Bridge Complex (“Broadway Bridge”) in the City of Portland. The Broadway Bridge consists of:

- the Broadway Bridge over the Willamette River (Structure ID 06757),
- the Broadway Bridge West Approach (Structure ID 06757A),
- the Broadway Bridge East Approach (Structure ID 06757C),
- the approach roadways on fill extending to NW Hoyt St and N Larrabee Ave, and
- their associated supporting walls, easements, and access.

This Memorandum of Understanding (“MOU”) is intended to clarify communication needs between the Parties as planning, design, and decision-making is advanced prior to demolition of the former Processing and Distribution Facility (“P&DC”) and any construction efforts for the Broadway Corridor Development (“Project”). Communication is specifically regarding impacts to the Broadway Bridge West Approach (Structure ID 06757A) and the Broadway Bridge over the Willamette River (Structure ID 06757), identified in Exhibit A.

UNDERSTANDINGS AND AGREEMENTS

Prosper and County understand and agree that:

1. **Project Effects:** The Project is anticipated to demolish existing buildings; create new roads, paths, and accesses from the Broadway Bridge; increase vehicular and bicycle/pedestrian traffic

Broadway Corridor Development Impacts to the Multnomah County Broadway Bridge

from and under the Broadway Bridge; and enable the development of properties adjacent to the Broadway Bridge. The Parties understand that County is responsible for operating and maintaining the Broadway Bridge pursuant to ORS 382.305-310 and as such, must ensure that other uses of land adjacent to the Broadway Bridge do not interfere with County's ability to operate and maintain the Broadway Bridge.

2. **Structural and Site Integrity:** It is necessary that the Parties, in accordance with this MOU, coordinate on the Project to protect the Broadway Bridge from any physical harm while achieving the Project goals, and to provide adequate protection to maintain the integrity of both the County's right-of-way and Prosper's Project. Protective activities and approaches include, but are not limited to, the following, which are to inform development discussions and planning:
 - a. Any new, adjacent structures shall be freestanding without direct connection to the existing Broadway Bridge.
 - b. Any new, adjacent structure is advised to avoid the existing structure joints, especially the large expansion joints where the Lovejoy and Broadway structures (Structure IDs 18856 and 06757A, respectively) attach at the interchange area.
 - c. The existing structure columns for the Broadway West Approach (Structure ID 06757A) at the new through-alignments for NW Kearney St and NW Johnson St shall be protected from the increased risk of vehicular collisions as the streets are made into thoroughfares and area population rises.
 - d. The Broadway Bridge shall have baseline and regular survey monitoring for settlement, lateral movement, or other disruption of the structures' foundations before, during, and after any activities that would create vibrations, soil movement, soil loss, or other potential harm to the structures. Monitoring shall be planned for and performed by entity causing the disturbances that would impact the structure as described. Measurements to be reported to County on a regular basis, depending on activity level.
 - e. Any new items added to areas within and under County bridge easements, or within 10' of bridge structures or approaches, shall be removable within 24 hours. This includes any new, adjacent structures which shall have removable panels.
 - f. County's access to the structures and equipment shall be preserved for maintenance, inspection, repair, capital improvement projects, and emergencies.
 - g. The west side of the NW Broadway St approach roadway may be infilled similarly to the infill on the east side of the roadway between NW Hoyt and NW Irving Streets. Planning and design of Project shall account for the existing tunnel under the roadway (which may have structural adequacy issues but must be preserved for existing power and emergency equipment), and avoid creating new confined space restrictions. Monitoring of the tunnel shall be planned for and performed by the entity causing potential impacts to the tunnel as described in item d. above. Negative impacts shall be mitigated by the entity causing the issues that prevent safe, continued use of the tunnel.
 - h. The existing west side access (staircase, handrail, associated supports, connection to Structure ID 06757A) near NW Johnson St may be reconstructed. County expects the developer shall reconstruct any new west side access structure, which shall be freestanding without direct connection to the existing Broadway Bridge, and which shall

Broadway Corridor Development Impacts to the Multnomah County Broadway Bridge

remain property of the County with continued maintenance responsibility. Any other new access in a different location shall be the responsibility of the developer Proposer for design, construction, installation, and maintenance and requires any and all necessary County permitting and easement requirements.

- i. County tentatively acknowledges that the existing easement triangle at the NW corner of the intersection of NW Hoyt St and NW Broadway St (see Exhibit B) may be vacated, and development planning may continue with County coordination before the actual vacation is established in recognition of potentially lengthy vacation processes. However, vacation is based on County Board of Commissioners' approval which may not ultimately be granted, in which case any development within the existing easement becomes a permit item with all County permitting and easement requirements.
 - j. Any new bike/pedestrian path connection to the Broadway Bridge shall consider the safety challenges of changing layout and patterns on the Broadway Bridge. Design shall coordinate review with County, and changes to access and traffic patterns on the Broadway Bridge shall be subject to approval by County and City.
 - k. No construction activities physically affecting the Broadway Bridge shall be allowed unless the County has reviewed and approved design plans, and provided written notice to proceed.
 - l. Changes to the areas within and under County bridge easements, or within 10' of structures or approaches, shall be via express written permission provided under a separate permit document.
 - m. Construction activities physically affecting the Broadway Bridge shall be inspected by County staff or County-appointed consultant. This shall occur under separate intergovernmental agreements or County Construction Permits that shall be drafted and signed separately from this MOU. Project and construction schedules shall account for the review and approvals of these documents which shall be completed, approved, and signed before any construction affecting the Broadway Bridge may begin.
3. **Project Management:** The Prosper Project Manager is Sarah Harpole (harpoles@prosperportland.us, 503-823-3337). The County Project Manager is Megan Neill (megan.neill@multco.us, 503-988-0437 office, 503-360-6222 cell).
4. **Notices and Communications:** Communications between Parties regarding this agreement shall be directed to the Parties' respective contact person as indicated below:
- Prosper: Sarah Harpole (harpoles@prosperportland.us, 503-823-3337 office)
County: Megan Neill (megan.neill@multco.us, 503-988-0437 office, 503-360-6222 cell)
5. **Coordination of Efforts:** Prosper will coordinate Project activities relevant to the Broadway Bridge with County as necessary to obtain County input. Prosper will share information from the County (such as the "Structural and Site Integrity" items from Section 2 of this agreement) with staff, partners, agencies, developers, and contractors as related to the Project and relevant to the Broadway Bridge. County will provide information, review, and participation in a timely manner.

Broadway Corridor Development Impacts to the Multnomah County Broadway Bridge

6. **Project Documents:** The Project will generate reports, plans, exhibits, figures, special provisions, and other materials over time. Prosper will forward documents relevant to the Broadway Bridge to County.
7. **Compensation:** No monetary compensation will be exchanged under this MOU.
8. **Duration of Project:** Development activities are expected to continue for approximately 20 years from the last date of signature below. This MOU will continue in effect as development progresses for this Project, unless superseded for specific locations within the Project area by later agreements, permits, or contracts.
9. **Liability for Damage:** Prosper shall be liable for any damage or loss to the Broadway Bridge, County ROW, or County access arising from the Project and resulting from Prosper negligence. County shall be liable for any damage to the Project arising from County negligence.

Prosper agrees to indemnify, defend, save and hold harmless the County and its officers, employees and agents from and against any and all claims, actions, liabilities, damages, losses, or expenses, including attorneys' fees, arising from a tort, as now or hereafter defined in ORS 30.260, caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Prosper or Prosper's contractor or any of the officers, agents, employees or subcontractors of the contractor ("Claims"). It is the specific intention of the Parties that County shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the County, be indemnified by any contractor and subcontractor from and against any and all Claims.

10. **Termination:** This MOU shall terminate upon completion of the Project, or if agreed to in writing at an earlier date by both Parties.
11. **Non-Binding:** This MOU is intended to serve as a framework to enable cooperation and coordination between the Parties and document shared understandings, but it is not itself intended to be a binding legal document and is preliminary to one or more future binding legal documents (e.g., easements) that may be needed to facilitate development.

SIGNATURE PAGE

The signatory party hereby agrees to join with the other signatories to this Memorandum of Understanding.

Signature: Adam Lane w/ delegated authority Digitally signed by Adam Lane w/ delegated authority
DN: cn=Adam Lane w/ delegated authority, o=Prosper Portland, ou,
email=lanea@prosperportland.us, c=US
Date: 2020.08.13 07:52:21 -0700'


Date: _____

John B. Wasserman Digitally signed by John B. Wasserman
DN: cn=John B. Wasserman, o=Prosper Portland, ou=Legal Department,
email=wasserman@prosperportland.us, c=US
Date: 2020.08.11 10:43:38 -0700'

Name: Kimberly Branam
Title: Executive Director

SIGNATURE PAGE

The signatory party hereby agrees to join with the other signatories to this Memorandum of Understanding.

Signature: **Ian B. Cannon**  Digitally signed by Ian B. Cannon
Date: 2020.08.21 09:09:04 -07'00'

Date: _____

Name: Ian B. Cannon, P.E.
Title: Transportation Director/Multnomah County Engineer

Exhibit A

Figure showing areas of concern related to Multnomah County Broadway Bridge (green highlighting), existing Bridge Approach Easement not shown.



Exhibit B

Figure showing existing easement area for potential vacation. Cyan highlighting is existing easement. Green triangle is proposed vacation.

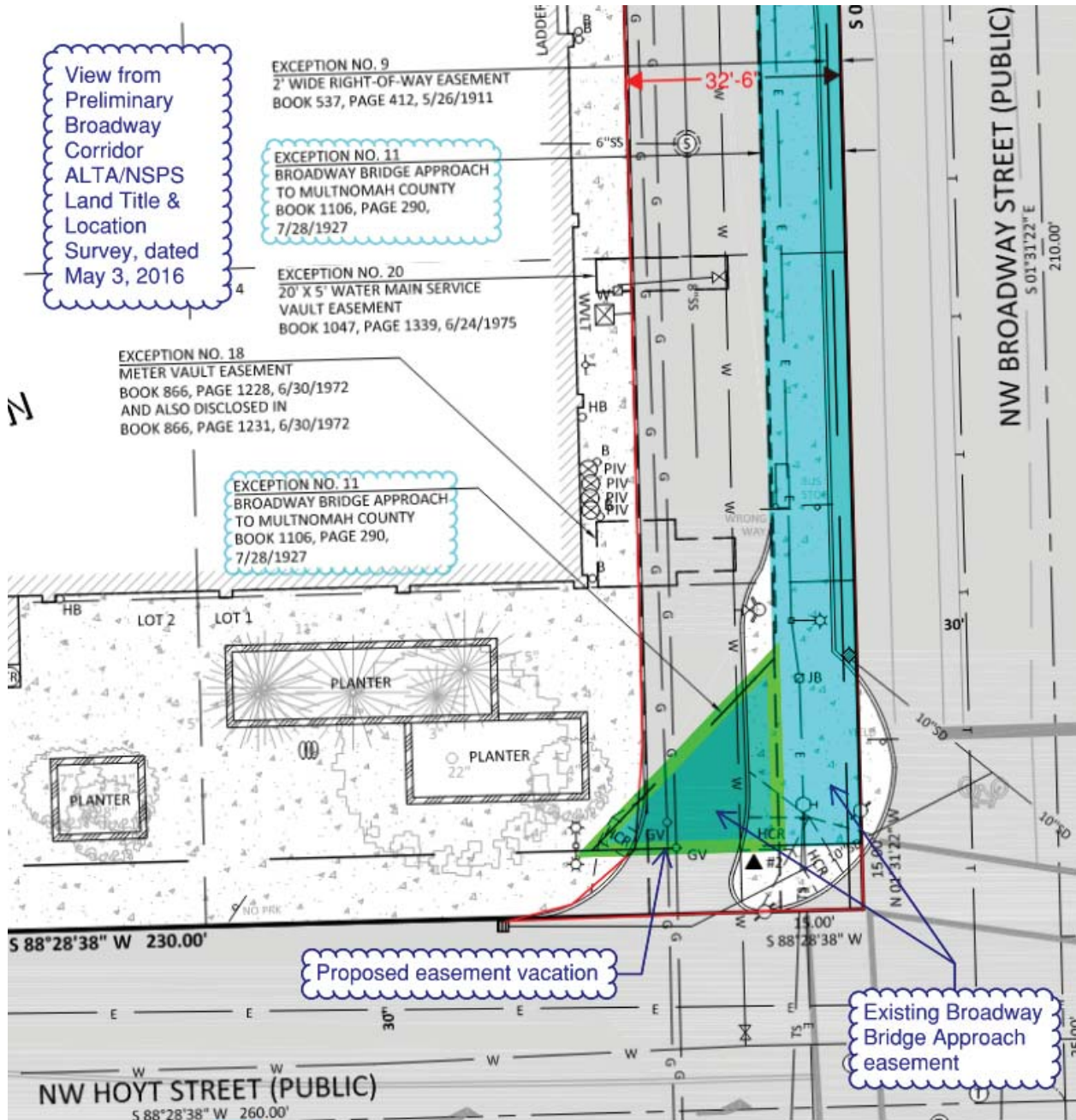


Exhibit D – Environmental Matters Allocation of Responsibilities

Prosper Portland is obligated to complete environmental cleanup to the Oregon Department of Environmental Quality’s (“DEQ”) satisfaction, pursuant to the consent judgment dated May 25, 2016, and filed in Multnomah County Circuit Court, *State of Oregon v. Portland Development Commission* (the “Consent Judgment”). This obligation includes addressing known and any unknown contamination on and off “the **USPS Property**,” which is defined in Recital C of this Agreement. Prosper Portland and the City of Portland Bureau of Transportation (“PBOT”) agree to allocate responsibilities for Environmental Matters as provided in the sections below.

1. Sub-Parcel Area Boundaries

- A. The Consent Judgment provides for division of obligations through the creation and recognition by DEQ of Sub-Parcels. The term “**Sub-Parcel**” as used in the Consent Judgment and this Agreement means a portion of the USPS Property identified for purposes of segregating the benefits and burdens of the Consent Judgment from the rest of the USPS Property regardless of specific tax lot.
- B. The areas to be recognized as Sub-Parcels under the Consent Judgment and transferred to PPR and PBOT are shown on Attachment 1.
 - i. For PPR, the Sub-Parcel will be the areas depicted on Attachment 1.
 - ii. For PBOT, the Sub-Parcel will be the areas depicted on Attachment 1 and includes areas that are currently part of the USPS Property that will be dedicated right-of-way for NW Kearney and NW Johnson Streets and for NW Park Avenue.

2. Conditions of Sub-Parcels at Transfer

A. General Conditions

- i. Prosper Portland will transfer Sub-Parcels to City in a condition that meets the Consent Judgment requirements for hot spot removal (including contaminated media identification, removal, and disposal), confirmation sampling, and additional hot spot removal if warranted by confirmation sampling or otherwise required by DEQ.
- ii. Prosper Portland agrees to complete demolition of the P&DC building, parking garage, and temporary post office prior to Sub-Parcels being transferred to the City, except that the Sub-Parcel containing the right-of-way for NW Kearney and NW Johnson Streets will be transferred prior to demolition of the parking garage and the temporary post office.
- iii. In any portion of the PBOT Sub-Parcels where Prosper Portland excavates to complete demolition, Prosper Portland will ensure such excavated portions are in the condition described in the attached Attachment 2.
- iv. For any portion of the Sub-Parcels where Prosper Portland excavates to complete demolition, and unless stated otherwise in Attachment 2, Prosper Portland will perform waste characterization and obtain DEQ’s approval for all soil that is disposed Off-Site or reused on-site, as “Pre-Construction” activity under the Consent Judgment.
- v. Prosper Portland will communicate and coordinate with DEQ and pay DEQ oversight costs regarding a Sub-Parcel until PBOT enters into a Cost Recovery Agreement with DEQ in accordance with Section 5, below.
- vi. Prosper Portland will fund, maintain, and monitor all aspects of interim remedial action remedies until the Sub-Parcels are transferred to PBOT.

- vii. Prosper Portland will continue to fund, maintain, and monitor all aspects of environmental remedies for the portions of the USPS Property that it continues to own or has not dedicated as right-of-way.
- viii. Prosper Portland, in coordination with the Bureau of Environmental Services, will provide PBOT all prior environmental records regarding the site that have been collected to date.
- ix. Prosper Portland will provide PBOT documentation and details of work performed to meet the conditions of transfer for each sub-parcel including as-builts, and quantitative information on the location and depth of placement of materials, excavation, or other site modifications.
- x. Prosper Portland will provide PBOT with documentation of any remediation activities it conducts on Sub-Parcels to be transferred to PBOT with sufficient specificity to document compliance with the Consent Judgment to DEQ's satisfaction. If PBOT relies on this information in submittals to DEQ and DEQ requests additional information regarding Prosper Portland's remedial activities, Prosper Portland will promptly provide that information.

3. Final Remedy Plans

PBOT, in coordination with Prosper Portland, will work with DEQ to obtain approval of any required final remedy plans, such as a Sub-Parcel Specific Remedial Action Plan (“**RAP**”), Contaminated Media Management Plan (“**CMMP**”), Health and Safety Plan (“**HASP**”), and easements and equitable servitudes (“**EES**”) (collectively referred to “**Final Remedy Plans**”). These documents will govern what is required for final remedy implementation.

A. Sub-Parcel Specific Remedial Action Plan and Contaminated Media Management Plan

PBOT is responsible for preparing and submitting its Sub-Parcel Specific RAP, including its Sub-Parcel Specific CMMP, to DEQ for review and approval if required by DEQ. Each Sub-Parcel Specific RAP must be consistent with the Master Remedial Action Workplan and include at a minimum, a description of Sub-Parcel Remedial Action design and a Sub-Parcel Specific CMMP. The Sub-Parcel-Specific RAP will outline remedial action objectives, soil removal, and other remedial actions for the future site use. The Sub-Parcel-Specific CMMP will outline soil handling, management, and disposal.

B. Health and Safety Plan

PBOT is responsible for ensuring that its contractors prepares and submit their HASPs to DEQ for review and approval if required by DEQ. The HASP will outline the work and worker notification and protection.

C. Easements and Equitable Servitudes and Conveyance

- i. PBOT is responsible for preparing and submitting its Sub-Parcel Specific EES to DEQ for review and approval.
- ii. Each EES will include a provision expressly stating that PBOT agrees to be bound by the terms of the Consent Judgment pertaining to the Sub-Parcel upon acquiring ownership or dedicated right-of-way of the Sub-Parcel.
- iii. Prosper Portland and PBOT will provide DEQ a written notice of intent to transfer title at least 30 days before transferring the title or dedication of right-of-way.
- iv. Prosper Portland will transfer a Sub-Parcel to PBOT through a deed or other mutually agreed upon conveyance instrument after it meets all of the conditions under Section 2, above, PBOT has received DEQ's approval of the Final Remedy Plans, and DEQ

has provided written confirmation that Prosper Portland is released from the obligations of the Consent Judgment with respect to such Sub-Parcel.

- v. PBOT, as appropriate, is responsible for recording the deed or other conveyance instrument, along with the approved Sub-Parcel Specific EES, with Multnomah County.
- vi. It is the parties' understanding that each Sub-Parcel area will automatically be removed from the 2011 EES¹ upon recording of the Sub-Parcel Specific EES by operation of the Consent Judgment and without requiring amendment of the 2011 EES. Prosper Portland will amend the 2011 EES, if necessary.

4. Supervising General Contractor

PBOT will designate and obtain approval from DEQ for Supervising General Contractor(s), as defined in the Record of Decision,² for those Sub-Parcels transferred to PBOT. PBOT agrees that all aspects of its work will be performed under the direction and supervision of a qualified employee or contractor with experience in hazardous substance remediation and knowledge of applicable state and federal laws, regulations, and guidance approved by DEQ.

5. Cost Recovery Agreement

- A. At the commencement of negotiations with DEQ regarding the Final Remedy Plans with respect to a Sub-Parcel, PBOT will enter into a Cost Recovery Agreement with DEQ and will be responsible for obtaining DEQ's approval of the Final Remedy Plans. Each Cost Recovery Agreement will include a description of the Sub-Parcel and an agreement by PBOT to pay DEQ for its time reviewing and approving the Final Remedy Plans and for oversight costs for necessary environmental work through Certification of Completion or Conditional No Further Action letter. Additionally, each Cost Recovery Agreement will be limited to performance of remedial actions and continuing obligations required by the Consent Judgment for the Sub-Parcel.
- B. It is the parties' understanding that upon entering into a Cost Recovery Agreement, DEQ will establish a new and unique Environmental Cleanup Site Information ("ECSI") file for the Sub-Parcel, an ECSI number specific to the Sub-Parcel, and a separate oversight cost account for the Sub-Parcel.
- C. Following PBOT entering into a Cost Recovery Agreement with DEQ for a Sub-Parcel, Prosper Portland will remain responsible for paying DEQ oversight costs for the portions of the USPS Property not anticipated to be included in such Sub-Parcels.

6. Final Remedy Implementation

A. Infrastructure Bureaus

- i. PBOT will implement the final remedy in accordance with its Sub-Parcel Specific Final Remedy Plans.
- ii. PBOT agrees that to the extent it engages in subsurface work on the USPS Property, it will comply with worker protection and soil handling requirements in its respective Final Remedy Plans.

¹ *Easement and Equitable Servitudes*, dated October 8, 2011 and filed in Multnomah County as Document #2011-111086.

² *Selected Remedial Action Record of Decision for the USPS-P&DC Site, Portland, Oregon*, dated July 14, 2010.

- iii. PBOT will coordinate project planning and work for this Agreement with Prosper Portland's Environmental Coordinator.

B. Unanticipated Environmental Requirements After Sub-Parcels Transfer

Unanticipated Environmental Requirements include: (i) requirements for environmental remediation associated with the identification of underground storage tanks, underground injection wells, prevention of vapor intrusion, groundwater contamination, Off-Site migration of contaminants, and any other conditions that require remedial work beyond reasonably anticipated contaminated soil excavation and placement of an engineered cap; and (i) third-party claims regarding Environmental Matters that arise after the effective date of this Agreement. If significant unanticipated environmental costs are required for Sub-Parcels transferred or dedicated to PBOT, Prosper Portland and PBOT will meet as soon as practicable and make a good faith effort to resolve the issue.

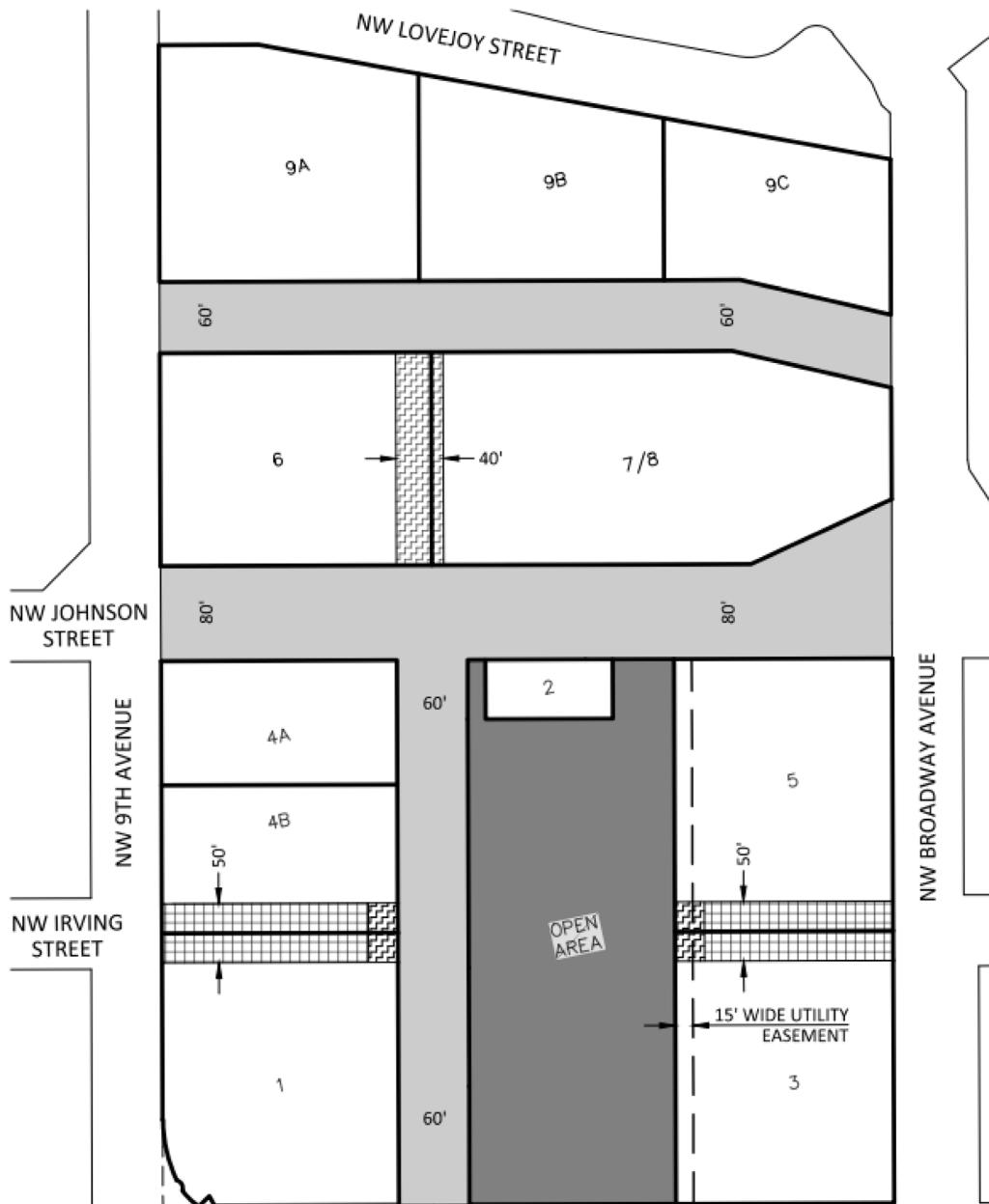
7. Closure Report, Certificate of Completion, and Conditional No Further Action

PBOT will prepare and submit a Sub-Parcel Specific Closure Report to DEQ for review and approval following the completion of the final remedy implementation in accordance with the Final Remedy Plans. It is the parties' understanding that upon approval of the EES by DEQ and public notice and recording (including any necessary updating) thereof, DEQ will issue a Certificate of Completion and Conditional No Further Action letter indicating that all the Consent Judgment requirements have been met and that remedial actions implemented are protective of human health and the environment for the applicable Sub-Parcel.

8. Long-Term Monitoring, Maintenance, and Reporting

PBOT will fund, maintain, and conduct any long-term monitoring, maintenance, and reporting required by DEQ for its Sub-Parcel(s).

Attachment 1 to Exhibit D – Diagram of PBOT Sub-Parcels



Future ROW Dedications / PBOT sub-parcels



Future Open Space / PPR sub-parcel; Dimensions and location of Parcel 2 located at the northern edge of the open space will be determined in accordance with parameters set forth in the USPS Master Plan and this agreement, and will be excluded from the PPR sub-parcel

* 15' wide utility easement privately owned and developed within Parcels 3 & 5

Attachment 2 to Exhibit D – Condition of PBOT Sub-Parcels at Transfer or Dedication

Overview of “post demo” site conditions within portion of ROW that overlaps with building demolition (i.e. eastern portion of NW Johnson generally outlined in yellow). Portions of ROW outlined in blue will be left in current asphalt paved state for future PBOT excavation and fill. Remainder shown in purple is landscaping and driveways on future private property.

Three distinct conditions (shown to right) are necessary due to the presence of tunnels running north-south under the buildings; and the need for deep removal of piles to avoid conflicts with future utilities.

Plans have been shared between Prosper and PBOT to ensure appropriate depths and alignments.

