

## Exhibit A

### **DRAFT INTERGOVERNMENTAL AGREEMENT**

#### Between

**Prosper Portland, the Portland Water Bureau, and  
the Portland Bureau of Environmental Services**

#### For the Broadway Corridor

#### **Off-site Water and Sewer System 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, by and through the BUREAU OF ENVIRONMENTAL SERVICES (“**BES**”) and the PORTLAND WATER BUREAU (“**PWB**”), and PROSPER PORTLAND, the economic development and urban renewal agency of the City of Portland (“**Prosper Portland**”).

#### RECITALS

- A. This Agreement is authorized by ORS 190.010 and Portland City Charter section 15-103.
- B. Prosper Portland, the urban renewal agency of the City of Portland (the “**City**”), is granted broad powers under ORS 457.170 *et seq.* for the planning and implementation of urban renewal projects.
- C. BES constructs and manages the City’s wastewater and stormwater infrastructure to protect public health and the environment, and PWB constructs and manages the City’s drinking water infrastructure to provide essential drinking water and fire-fighting needs.
- D. Prosper Portland is responsible for implementing the River District Urban Renewal Plan, which includes the 14-acre former US Post Office Property (the “**Property**”), owned by Prosper Portland and located within the broader 32-acre site known as the “**Broadway Corridor**.” The Property is generally bounded by NW Hoyt Street, NW Lovejoy Street, NW 9th Avenue, and NW Broadway, and depicted on **Exhibit A** attached to this Agreement (the “**Site Map**”).
- E. On August 20, 2020, pursuant to LU 19-246279, the Portland Design Commission approved the Central City Master Plan for the Property (the “**Master Plan**”). The Master Plan sets forth the preferred concept design for the Property and the required public infrastructure associated with the Property, including the wastewater, stormwater, and drinking water system improvements.
- F. On September 23, 2020, the Portland City Council (“**City Council**”), through Ordinance No. 190146, directed BES and PWB, among other City bureaus, “to participate in the negotiation and drafting of intergovernmental agreements with Prosper Portland substantially consistent with the DDA Term Sheet, including the Funding and Finance Plan attached thereto, and the CBA Term Sheet . . . .” The ordinance’s funding and finance plan (the “**Funding and Finance Plan**”) and the schedule for such improvements (“**Phase 1 Infrastructure Schedule**”) are intended to ensure the successful and timely development of the Broadway Corridor. Although the DDA Term Sheet was not signed, the parties to this Agreement wish to adhere to those terms of the DDA Term Sheet that remain relevant to the parties’ obligations under this Agreement.
- G. For purposes of this Agreement, off-site means areas outside of the Property (“**Off-Site**”).

H. The parties desire to enter into this Agreement to establish the terms and conditions by which BES and PWB will perform work for the Off-Site water and sewer system projects to serve the Property as described in this Agreement.

I. This Agreement was authorized by the Prosper Portland Board of Commissioners by Resolution No. 7390 adopted August 12, 2020, and by the City Council by Ordinance No. [REDACTED], adopted June 1, 2022.

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

## AGREEMENT

### OFF-SITE SYSTEM IMPROVEMENTS

**SECTION 1. Statement of Work.** With the exception of the PWB-specific tasks described in Sections 1.1.1 and 1.1.2 below, BES will lead the design and construction of the Off-Site system improvements described below, as required for the redevelopment of the Property (collectively, the “**Work**”):

1.1.1 Sewer and water infrastructure, generally as follows: (a) new water main at NW Irving, NW 9th Avenue; (b) the rehabilitation or replacement of a sanitary sewer main from the intersection of NW 9th Avenue and NW Kearney Street to the Northwest Interceptor located in the intersection of NW 11th Avenue and NW Hoyt Street; and (c) the rehabilitation or replacement of a storm sewer main in NW 9th Avenue from NW Johnson Street to NW Lovejoy Street.

1.1.2 Connecting the new water main to the existing public drinking water system.

1.1.3 Environmental Matters:

A. Site Environmental Conditions. The soil and groundwater at the Property have been impacted by historical releases of hazardous substances. The 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 Property, and work at the 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 Property. The obligations for redevelopment of the Property are in the scope of work and Master Remedial Action Workplan and other planning documents, which are incorporated into the Consent Judgment.

B. 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.

- C. Allocation of Responsibility for Environmental Matters. Prosper Portland and Portland Bureau of Transportation have described and allocated responsibilities regarding Environmental Matters in *Intergovernmental Agreement between Prosper Portland and the Portland Bureau of Transportation for the Broadway Corridor Right-of-Way Projects*, dated [REDACTED], and *Intergovernmental Agreement between Prosper, Portland Parks & Recreation and the Portland Bureau of Transportation for the Broadway Corridor Park and Green Loop Projects*, dated [REDACTED]. Environmental Matters encountered under this Agreement shall be governed by the terms in those intergovernmental agreements.
- D. BES and PWB will coordinate project planning and work with Prosper Portland's Environmental Coordinator. BES and PWB will comply with all relevant contaminated media management plans and worker health and safety plans.

1.1.4 Permanent and temporary street improvements, as needed in the areas indicated as "Pipe Work" in Exhibit B, in consultation with Portland Bureau of Transportation.

**SECTION 2. Coordination.** BES and PWB will coordinate with PBOT and Prosper Portland to ensure delivery of adequate utilities. Each project manager identified in SECTION 7, below, will invite the others to attend all regular or significant meetings regarding the Work and to participate in steering, management, or technical advisory committees organized for the Work.

**SECTION 3. Schedule.**

3.1.1 Design. BES and PWB initiated design of the Work in April 2020, prior to the Effective Date of this Agreement, and BES and PWB estimate that the design and engineering will be complete in January 2023.

3.1.2 Construction. BES and PWB will commence construction of the Work promptly following completion of design. BES and PWB anticipate that construction will start in March 2023, with completion of construction of the Work by March 2024. Prosper Portland acknowledges and agrees that these are estimated dates only on which Prosper Portland cannot rely.

**SECTION 4. Timing Considerations.**

4.1.1 BES and PWB acknowledge that the ability to loop the new water main in NW 9th Avenue to the water lines on the Property is necessary to preserve the safety and functionality of those improvements. Accordingly, BES and PWB will ensure that the Work is coordinated with PBOT's work on the Property to ensure that connections can be made no later than six (6) months after the water main in 9th Avenue is installed.

4.1.2 If those connections cannot be made within 6 months due to Prosper Portland's acts or omissions, Prosper Portland will participate with PWB in the development of a plan and funding for additional infrastructure or maintenance activities, such as flushing, to maintain water quality in the new main.

**SECTION 5. Community Benefit Agreement(s).**

5.1.1 The parties acknowledge and agree that, pursuant to Ordinance No. 190146, BES and PWB will (a) consider the aggregate cost of the 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 the same may be

amended or updated from time to time, the “CBA”) to the Work, (b) negotiate and enter into one or more CBAs for the Work substantially consistent with the template CBA adopted by the City, 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 CBA term sheet approved by the City pursuant to Ordinance No. 190146.

5.1.2 Prosper Portland will be responsible for the formation of the Broadway Corridor Public Infrastructure 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.

## **FINANCIAL CONTRIBUTIONS**

### **SECTION 6. Funding for the Work.**

6.1.1 BES and PWB will complete the Work at their respective cost except that Prosper Portland will pay any increased cost of the Work that arises from delays caused by Prosper Portland’s acts or omissions. For the sake of clarity, the acts or omissions of third parties, such as PBOT, will not be attributed to Prosper Portland for purposes of this Subsection 6.1.1.

6.1.2 Without limiting the foregoing, the parties acknowledge that the Funding and Finance Plan included \$7,800,000 for the Work, with BES contributing Seven Million Dollars (\$7,000,000) and PWB contributing Eight Hundred Thousand Dollars (\$800,000).

## **NOTICES; PROJECT MANAGERS**

**SECTION 7.** Unless otherwise stated in this Agreement, the designees named below will be the contact persons for all activities relating to the Work to be performed under this Agreement:

### **Prosper Portland:**

Name: Sarah Harpole  
Project Manager  
Address: 220 NW Second Ave., Suite 200  
Portland, OR 97209  
Phone: (503) 823-3337  
Email: HarpoleS@ProsperPortland.us

### **PWB:**

Name: Kevin Larson  
Project Manager  
Address: 1120 SW 5th Avenue, Room 400  
Portland, OR 97204  
Phone: (503) 865-6207  
Email: kevin.larson@portlandoregon.gov

### **BES:**

Name: Ronda Fast  
Project Manager  
Address: 1120 SW 5th Avenue, Room 613  
Portland, OR 97204  
Phone: (503) 865-6108  
Email: ronda.fast@portlandoregon.gov

The Prosper Portland Project Manager, the PWB Project Manager, and the BES Project Manager are the individuals identified in the notice information above or such other personnel as may be designated in writing by a party to the other parties from time to time.

## **TERMINATION**

**SECTION 8.** The Termination Date of this Agreement is December 31, 2024 or such later date by which the parties have all acknowledged in writing that they have fully performed their obligations hereunder. This Agreement may be terminated at any time by mutual written consent of all the parties.

## **NON-DISCRIMINATION**

**SECTION 9.** In carrying out activities under this Agreement, no party will discriminate against any employee or applicant for employment because of race, color, religion, sex, age handicap, familial status or national origin. All parties shall take affirmative actions to ensure that applicants for employment are employed and that employees are treated during employment, without regard to their race, color religion, sex, age, handicap, familial status or national origin. Such action shall include but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff of termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

## **ACCESS TO RECORDS**

**SECTION 10.** All 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.

**SECTION 11.** PWB reserves the right to retain drawings and documents, including from BES and PBOT, that are deemed to be confidential to maintain the security of the public drinking water system.

## **INDEMNIFICATION**

**SECTION 12.** Subject to the conditions and limitations of the Oregon Constitution, Article XI, Section 7, and Oregon Tort Claims Act, ORS 30.260 through 30.300, each party will indemnify, defend and hold harmless the other parties from and against all liability, loss and costs arising out of or resulting from the negligent or intentionally wrongful acts of the indemnifying party, its officers, employees and agents in the performance of this Agreement.

## **DISPUTES**

**SECTION 13.** The signatories to this Agreement will expend their best efforts to amicably resolve any dispute that may arise under this Agreement. Any dispute that the signatories are unable to resolve will be submitted to the Director of Prosper Portland, the Chief Engineer of BES, and the Chief Engineer of PWB or their designated representatives for resolution.

## **SEVERABILITY**

**SECTION 14.** 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 will not be affected, and the rights and obligations of the parties will be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.

## **COMPLIANCE WITH APPLICABLE LAW**

**SECTION 15.** The parties shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to the Work under this Agreement. Without limiting the generality of the foregoing, parties expressly agrees to comply with (i) Title VI of Civil Rights Act of 1964; (ii) Section V of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 and ORS 659.425; (iv) all regulations and administrative rules established pursuant to the foregoing laws; (v) Any applicable sections of ORS Chapter 279, and (vi) all other applicable requirements of Federal and State civil rights and rehabilitation statutes, rules and regulations.

## **FORCE MAJEURE**

**SECTION 16.** Neither Party will 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.

## **NO THIRD-PARTY BENEFICIARY**

**SECTION 17.** BES, PWB, and Prosper Portland are the only parties to this Agreement and, as 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.

## **MERGER CLAUSE**

**SECTION 18.** This Agreement constitutes the entire Agreement among the parties. No waiver, consent, modification or change of terms of this Agreement will bind either party unless in writing and signed by both parties. Such waiver, consent modification or change, if made, will 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.

## **AMENDMENTS**

**SECTION 19.** BES, PWB, and Prosper Portland may amend this Agreement at any time only by written amendment executed by BES, PWB, and Prosper Portland.

## **OWNERSHIP OF DOCUMENTS**

**SECTION 20.** BES and PWB will jointly own any and all data, documents, plans copyrights, specifications, working papers, and any other materials produced in connection with this Agreement.

**SECTION 21.** Prosper Portland, upon request by BES or PWB, must provide to the requesting Bureau copies of the materials referred to above, including any electronic files containing the materials.

## **CONFLICTS OF INTEREST**

**SECTION 22.** No BES or PWB officer or employee, during their tenure and for one year thereafter, may have any interest, direct or indirect, in this Agreement or the proceeds thereof. No board of director member or employee of Prosper Portland, during their tenure or for one year thereafter, may have any direct financial

interest in this Agreement or the proceeds thereof. No BES or PWB employees who participated in the award of this Agreement may be employed by Prosper Portland during the term of this Agreement.

**TIME OF THE ESSENCE.**

**SECTION 23.** Time is of the essence for this Agreement.

**COUNTERPARTS**

**SECTION 24.** This Agreement may be signed in three (3) or more counterparts, each of which will be deemed an original, and which, when taken together, shall constitute one and the same Agreement.

**SECTION 25.** The parties agree that they may conduct this transaction, including any amendments to this Agreement, by electronic means, including the use of electronic signatures.

*The remainder of this page is intentionally blank.*

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

**CITY OF PORTLAND**

Approval as to form:

For the PORTLAND WATER BUREAU:

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_  
CITY ATTORNEY

For the BUREAU OF ENVIRONMENTAL SERVICES:

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**PROSPER PORTLAND**

Approval as to form:

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

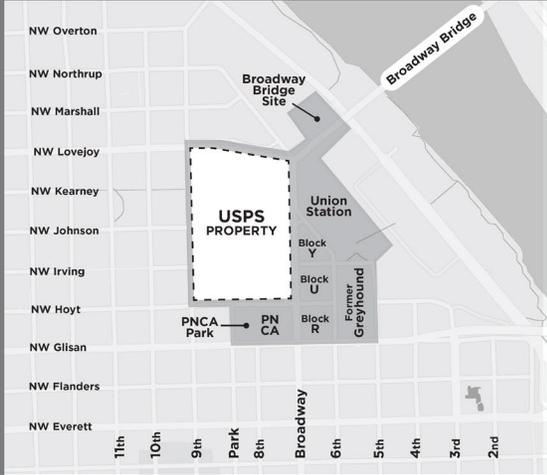
\_\_\_\_\_  
GENERAL COUNSEL

Exhibit A: Site Map

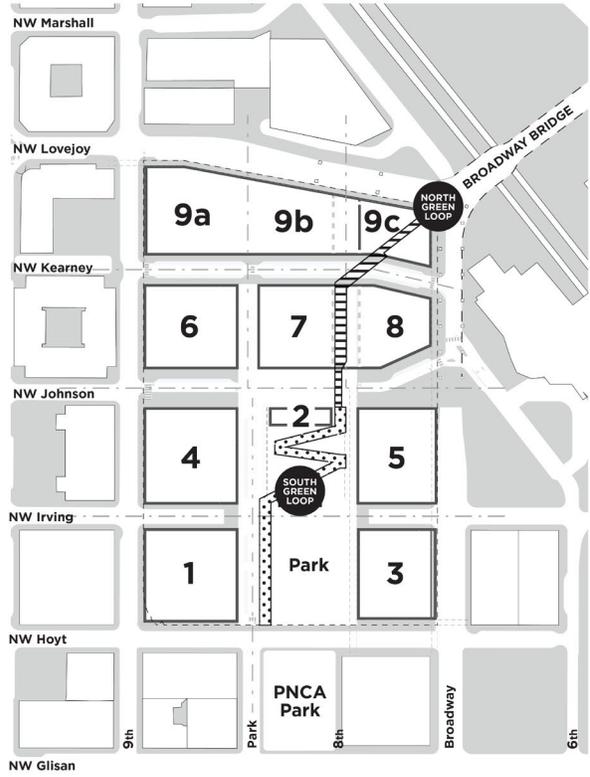
Exhibit B: Street Improvements Showing Pipe Work

Exhibit A – Site Map

### Broadway Corridor



### USPS Property Detail



DR

Exhibit B – Street Improvements Showing Pipe Work

