

INTERGOVERNMENTAL AGREEMENT

Between Prosper Portland and the Portland Housing Bureau

For the Broadway Corridor

This Intergovernmental Agreement (“**Agreement**”), dated as of the last date of signature below (the “**Effective Date**”), is made and entered into by and among the CITY OF PORTLAND, by and through its Portland Housing Bureau (“**PHB**”), and PROSPER PORTLAND, the economic development and urban renewal agency for the City of Portland (“**Prosper Portland**”).

RECITALS

A. PHB is charged with developing housing policy for the City of Portland (the “**City**”) and delivering affordable housing program.

B. Prosper Portland is the urban renewal agency of the City and is granted broad powers under ORS Chapter 457 to plan and implement urban redevelopment projects.

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

D. 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, filed in Multnomah County Circuit Court, *State of Oregon v. Portland Development Commission*, re-recorded on July 14, 2022 as Document No. 2022-068613 (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.

E. Prior to Prosper Portland’s acquisition of the USPS Property, by Resolution No. 37165, , the City Council adopted the Broadway Corridor Framework Plan (the “**Framework Plan**”) on November 5, 2015, that set a goal of thirty percent (30%) of any residential units built on the Broadway Corridor Site would be affordable at 60% AMI or below.

F. Prosper Portland acquired the USPS property on September 1, 2016, and PHB contributed sixteen percent (16%) of its purchase price. This contribution was based on the development rights equating to the value of floor area ratio (“**FAR**”) that would be needed to construct 30% of the residential units as affordable housing; such sixteen percent (16%) contribution entitled PHB to 650,277 sq. ft. of FAR, which is sixteen percent (16%) of the total FAR deemed available on the USPS Property under the USPS Master Plan, defined below.

G. In December 2016, after Prosper Portland’s acquisition of the USPS Property, the City adopted City Code Chapters 30.01.120, 30.01.140, 30.01.160, and 33.120.211 regarding Inclusionary

Housing and FAR bonus requirements, including related administrative rules (collectively, the “**Inclusionary Housing Laws**”).

H. In July 2018, the City adopted Central City 2035, which included the requirement for a master plan for the USPS Property, and on August 20, 2020, by LU 19-246279, the Portland Design Commission approved the required Central City Master Plan, prepared over the course of two years with extensive stakeholder engagement by Prosper Portland, at Prosper Portland’s sole cost, for the USPS Property (“**USPS Master Plan**”);

I. The USPS Master Plan caps development density on the USPS Property, thereby limiting the ability of developers of the USPS Property to obtain bonus FAR when complying with the City’s Inclusionary Housing Laws.

J. The parties are committed to working together on the goal of delivering the lesser of 30% of all residential development, or 720 affordable housing units averaging 875 square feet to produce each unit, within the combination of the USPS Property and the One Waterfront parcel (depicted on the Site Map) (“**1WF**”), and to deliver on this goal through direct investment by PHB as well as through private developer(s) compliance with the Inclusionary Housing Laws. The parties intend to participate in negotiations for community benefits associated with the development of the Broadway Corridor Site, including affordable housing as permitted.

K. Pursuant to Intergovernmental Agreement No. 30008134, Fiscal Year 2022-23 for Housing and Finance Services between Prosper Portland and PHB, dated August 9, 2022 (the “**Housing Services IGA**”), the parties agreed that in exchange for PHB’s \$14.5 million contribution toward Prosper Portland’s acquisition of the USPS Property (which was 16 percent of the purchase price), Prosper Portland would convey fee simple to PHB of Block 4A and Block 4B, with the potential for future additional affordable housing development rights for PHB at 1W, depending on the number of affordable units provided by the private sector.

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

M. The parties desire to enter into this Agreement to establish the terms and conditions by which Prosper Portland and PHB will work together to achieve their mutual goals for the Broadway Corridor Site.

N. 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. DEVELOPMENT RIGHTS; FAR TRACKING

1.1 PHB Controlled FAR. PHB’s contribution to Prosper Portland of sixteen percent (16%) of the USPS Property’s purchase price entitles PHB to 650,277 sq. ft. of FAR (such 650,277 sq. ft. portion referred to in this Agreement as the “**PHB FAR**”), which is sixteen percent (16%) of the total FAR that is available on the USPS Property under the USPS Master Plan.

1.2 Block 4A and Block 4B

1.2.1 Subject to Section 1.3 and Section 1.4, the parties agree that Prosper Portland will satisfy its obligation to PHB to provide 390,200 sq. ft. of the total 650,277 sq. ft. of PHB FAR to PHB by conveying Block 4A and Block 4B to PHB (which Block 4A and Block 4B are depicted on the Site Map), for the purpose of PHB developing an estimated 430 affordable housing units, assuming an average square footage of 875 per unit. In addition to conveying Block 4A and Block 4B to PHB, and subject to and in accordance with Section 1.5.2, below (regarding the parties' agreement to provide FAR to private developers), Prosper Portland will be obligated to provide another 260,077 sq. ft. of PHB FAR to PHB. The form of spreadsheet that the parties will use to track Prosper Portland's obligation to provide this additional 260,077 sq. ft. of PHB FAR is attached to this Agreement as **Exhibit B** (the "FAR Spreadsheet").

1.2.2 The conveyance of Block 4A and Block 4B will occur in accordance with the terms, conditions, and procedures set forth in SECTION 2, below. PHB acknowledges and agrees that Prosper Portland will be obligated to convey Block 4B to PHB only after Prosper Portland has relocated the USPS from its interim location on the USPS Property to a permanent retail facility, and demolished the existing parking garage (the "**Parking Garage**"), at Prosper Portland's cost. PHB acknowledges that the timing of the clearance of Block 4B is subject to agreements with third parties and is not anticipated to take place before 2030.

1.3 Possible Alternative Property to be Conveyed to PHB for Affordable Housing

1.3.1 Prior to Prosper Portland's demolition of the Parking Garage, estimated to occur after 2030, if PHB believes it has sufficient resources to complete affordable housing development in addition to the units to be developed on Block 4A, then the parties will meet to evaluate the feasibility of PHB acquiring an alternative comparable parcel and/or half-block on the USPS Property in lieu of Block 4B. If Prosper Portland determines that conveying this alternative parcel to PHB would not adversely impact the feasibility of private development on the remaining parcels, then PHB will acquire such alternative parcel on the terms and conditions of SECTION 2. The alternative parcel acquired in lieu of Block 4B would represent 164,500 sq. ft. of the PHB FAR. The alternative parcel deemed comparable to Block 4B would be made available at no additional monetary payment from PHB.

1.3.2 Following demolition of the Parking Garage, Prosper Portland and PHB may, at either parties' election, evaluate the feasibility of PHB acquiring a comparable portion of Block 1, in lieu of Block 4B, if Block 1 would be preferable to PHB and if Prosper Portland determines it would not adversely impact the feasibility of private development on Block 4B and the remaining portion of Block 1. The portion of Block 1 acquired in lieu of Block 4B would represent 164,500 sq. ft. of the PHB FAR. The portion of Block 1 deemed comparable to Block 4B would be made available at no additional monetary payment from PHB.

1.4 One Waterfront Property. It is anticipated that private developer(s) will acquire portions of the USPS Property in multiple phases. Promptly following the earlier of (a) sale of 75% of Prosper Portland's development rights or individual parcels under the USPS Master Plan; or (b) submitted permits to construct 720 affordable units (by PHB and through Inclusionary Housing by private development), Prosper Portland and PHB will meet to assess any progress that private development of the USPS Property has made or will make toward providing affordable housing units on the USPS Property by earning an FAR bonus under the Inclusionary Housing Laws.

1.4.1 If the parties agree that there has been adequate progress, then PHB will provide this progress determination in writing, and Prosper Portland will be free to develop the 1WF parcel for any program of uses Prosper Portland desires, in its discretion.

1.4.2 If the parties agree that there has been inadequate progress, then Prosper Portland will refrain from developing 1WF until the parties have agreed upon a plan for PHB to acquire and utilize 1WF

to construct additional affordable housing units. The parties agree that in this event PHB will not be required to pay for the land at 1WF, which Prosper Portland will provide at no cost.

1.5 Private Development

1.5.1 Affordability of Private Development. Prosper Portland will require private development to comply with the Inclusionary Housing Laws for development of 10% of the units affordable at 60% AMI, with the affordable units to be provided on-site. The parties agree to revisit this commitment if there are material changes to the Inclusionary Housing Laws.

1.5.2 FAR Bonus. If any developer of the USPS Property would have triggered an FAR bonus under the Inclusionary Housing Laws, the parties agree to provide an equivalent “bonus” amount of FAR to the developer as follows (recognizing that the USPS Master Plan caps development density so additional FAR provided to a private developer in this case, must be deducted from elsewhere on the USPS Property): The amount of such “bonus” will be deducted first from the 260,077 sq. ft. of PHB FAR that remains (of the total 650,277 sq. ft. of PHB FAR) after deducting 390,200 sq. ft. of PHB FAR associated with Block 4A and Block 4B. The parties will have the authority and will be required to amend the IGA by updating the FAR Spreadsheet when any private developer would have earned an FAR bonus in the Broadway Corridor Site under the Inclusionary Housing Laws, by deducting the amount of such FAR bonus from the 260,077 sq. ft. of PHB FAR remaining to be provided to PHB. Once the 260,077 sq. ft. of PHB FAR is reaches zero, Prosper Portland will be solely responsible at Prosper Portland’s sole expense for providing the additional FAR required to fulfill a developer’s FAR bonus that such developer would have earned under the Inclusionary Housing Laws.

SECTION 2. CONVEYANCE OF PROPERTY TO PHB

2.1 Parcel Configuration. Prosper Portland will coordinate with PHB and complete, at Prosper Portland’s sole cost, the property line adjustments necessary for PHB to acquire Block 4A and Block 4B (or a portion of Block 1, as applicable), as individual legal lots of record. The legal descriptions will be subject to PHB’s and Prosper Portland’s approval, each in their reasonable discretion.

2.2 Conditions. Prosper Portland will convey to PHB, or its assignee(s), the property determined by the parties in accordance with SECTION 1, above, that will be acquired by PHB (as applicable, each a “**PHB Parcel**”). Each conveyance (“**closing**”) will be subject to the following conditions:

2.2.1 Due Diligence/AS IS. Acquisition of a PHB Parcel is subject to PHB’s satisfactory due diligence inspections. PHB will acquire each parcel “AS IS,” and Prosper Portland will provide PHB all site analyses and reports in its possession regarding the PHB Parcel, at no cost to PHB. Prosper Portland will notify PHB in writing when the improvements on Block 4B or Block 1, as applicable, have been demolished and the site is ready for PHB’s due diligence inspections.

2.2.2 Environmental Matters. With respect to Block 4A and Block 4B, satisfaction of those Environmental Matters set forth in Exhibit C to take place prior to closing.

2.2.3 Title. Following the lot line adjustments described above, Prosper Portland will provide PHB with a preliminary title report for each PHB Parcel (each, a “**Title Report**”) from Chicago Title Company (the “**Title Company**”). Within thirty (30) days after PHB’s receipt of a Title Report, PHB may disapprove of any exception listed in such Title Report by delivering written notice to Prosper Portland (“**PHB’s Title Notice**”) specifying each title defect or matter for which PHB is requesting a cure by Prosper Portland (“**Title Defect**”). PHB’s failure to deliver PHB’s Title Notice to Prosper Portland within the time period specified above will be a conclusive presumption that PHB has approved such Title Report; provided, however, Prosper Portland will be obligated to release the liens of any deeds of trusts or mortgages encumbering the PHB Parcel by the closing. Within fifteen (15) days after receiving PHB’s Title

Notice, Prosper Portland will deliver to PHB written notice (“**Prosper Portland’s Title Notice**”) of those Title Defects which Prosper Portland covenants and agrees to either eliminate or cure by the closing. Prosper Portland’s failure to deliver Prosper Portland’s Title Notice to PHB within this time period will be deemed to constitute Prosper Portland’s election not to eliminate or cure any such Title Defect. If Prosper Portland elects (or is deemed to have elected) not to eliminate or cure any Title Defects, PHB will have the right, by written notice delivered to Prosper Portland within fifteen (15) days after delivery of Prosper Portland’s Title Notice or within fifteen (15) days after the expiration of the time period during which Prosper Portland is entitled to deliver Prosper Portland’s Title Notice, whichever occurs first, to either: (a) waive in writing its prior notice as to the Title Defects which Prosper Portland has elected not to cure, or (b) terminate its obligation to acquire such PHB Parcel. PHB’s failure to deliver any written notice within such fifteen (15) day period will be a conclusive presumption that PHB has approved the Title Defects that Prosper Portland has elected (or deemed to have elected) not to cure. All title and survey matters approved or deemed approved by PHB are referred to in this Agreement as the “**Permitted Exceptions.**”

2.2.4 Irving Driveway. Prosper Portland will convey the attributable portion of the Irving Driveway to PHB at the closing of the conveyance of Block 4B or Block 1, as applicable. At the closing of Block 4B or Block 1, as applicable, each party will grant the other a reciprocal easement for ingress, egress, and utilities over the Irving Driveway. The easement will provide that those costs to install, maintain, and repair the Irving Driveway and of any shared utilities will be split evenly by the parties.

2.3 Closing Procedures

2.3.1 Closing for a PHB Parcel will take place upon sixty (60) days prior written notice from PHB to Prosper Portland, following satisfaction of the conditions in Section 2.2, above.

2.3.2 Prosper Portland will convey each PHB Parcel by statutory special warranty deed, with standard coverage title insurance paid for by Prosper Portland; closing costs and escrow fees will otherwise be split evenly by the parties.

SECTION 3. ADDITIONAL TERMS

3.1 PHB, or its designee, will be responsible for payments under the Broadway Corridor LID, as they become due and payable, and for all back of curb, final frontage finishes for development of any PHB Parcel that is located on the USPS Property.

3.2 Either party may pursue, at such party’s sole cost, amendments to the USPS Master Plan that could affect a PHB Parcel on the USPS Property, only with the prior written consent of the other party (the consenting party), which will not be unreasonably withheld, conditioned or delayed, if the amendment: (a) is consistent with the terms and conditions of this IGA; and (b) does not materially or adversely impact the remainder of the USPS Property or the consenting party’s rights or obligations under this IGA.

3.3 This Agreement controls over the Housing Services IGA to the extent of any conflicts.

SECTION 4. ENVIRONMENTAL MATTERS

4.1 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.

4.2 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.

For example, any PHB Parcel on the USPS Property will be considered a sub-parcel under the Consent Judgment.

4.2.1 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.

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

4.2.3 Prosper Portland will remain bound by the terms of the Consent Judgment that apply to sub-parcels not transferred to PHB. Prosper Portland will require that all non-City transferees abide by the Consent Judgment and implement remedial actions, as required by DEQ and 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 PHB.

4.2.4 After a sub-parcel is transferred to PHB, 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.

4.2.5 The parties agree to further allocate responsibilities for addressing Environmental Matters as provided in the attached Exhibit C.

SECTION 5. CONTRACT MANAGEMENT

5.1 By Prosper Portland.

5.1.1 Prosper Contract Signatory. Prosper Portland's Contract Signatory will be *Kimberly Branam*, or such other person as they 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 6.1.2.

5.1.2 Prosper Contract Manager. Prosper Portland's Contract Manager will be *Lisa Abuaf* or such other person as they 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.

5.2 By PHB.

5.2.1 PHB Contract Signatory. PHB's Contract Signatory will be *Molly C. Rogers* or such other person as they may designate in writing (the "**PHB Contract Signatory**"). The PHB 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 6.1.2.

5.2.2 PHB Contract Manager. PHB's Contract Manager will be *Tanya Wolfersperger* or such other person as they may designate in writing (the "**PHB Contract Manager**"). The PHB 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.

SECTION 6. GENERAL

6.1 Termination.

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

6.1.2 Notwithstanding Section 6.1.1 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.

6.2 Change and Conflict Resolution.

6.2.1 If a dispute arises regarding performance, schedule, 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 5.

(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 5 for discussion and resolution.

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

6.3 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, including the Consent Judgment.

6.4 Indemnification. Subject to the limits of the Oregon Tort Claims Act and Oregon Constitution, each party agrees to indemnify, hold harmless and defend, the other parties, their directors, officers, employees and agents from and against all claims, suits, actions of whatsoever nature, damages or losses, and all expenses and costs incidental to the investigation and defense thereof including reasonable attorneys fees, resulting from or arising out of the activities of the indemnifying party, 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 the indemnified parties, their directors, officers, employees, or agents.

6.5 Amendments. Except as otherwise provided for in this Agreement, the parties may amend this Agreement only in writing signed by the contract signatories.

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

6.7 Merger Clause. This Agreement contains the entire agreement between the parties on the subject matter hereof. It supersedes all prior written or oral discussions or agreements concerning work to be performed by either party.

6.8 Time of the Essence. Time is of the essence of this Agreement.

6.9 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.

Signatures follow on next page; remainder of page is blank.

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

PORTLAND HOUSING BUREAU

Title: _____
Date: _____

Approved as to form:

PROSPER PORTLAND

Title: _____
Date: _____

Approved as to form:

- Exhibit A: Site Map
- Exhibit B: FAR Spreadsheet
- Exhibit C: Environmental Matters

Exhibit A
Site Map

Exhibit B

FAR Spreadsheet

Exhibit C - Environmental Matters

Prosper Portland is obligated to complete environmental cleanup to DEQ's satisfaction, pursuant to the Consent Judgment. This obligation includes addressing known and any unknown contamination on and off the USPS Property. Prosper Portland and PHB 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 PHB are the PHB Parcels, defined in the Agreement.

2. Conditions of Sub-Parcels at Transfer

A. General Conditions

- i. Prosper Portland will transfer Sub-Parcels to PHB 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 the Sub-Parcel that is Block 4B or the Irving Driveway being transferred to PHB.
- iii. In any portion of the PHB Parcels where Prosper Portland excavates to complete demolition, Prosper Portland will ensure such excavated portions comply with the Consent Judgment regarding any "Pre-Construction" activities that affect the temporary cap on the USPS Property.
- iv. For any portion of the Sub-Parcels where Prosper Portland excavates to complete demolition, Prosper Portland will perform waste characterization and obtain DEQ's approval for all soil and crushed concrete that is disposed offsite 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 PHB 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 PHB.
- 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 with respect to which Prosper Portland has not dedicated right-of-way).
- viii. Prosper Portland, in coordination with the Bureau of Environmental Services, will provide all prior environmental records regarding the site that have been collected to date to PHB.
- ix. Prosper Portland will provide PHB 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 PHB with documentation of any remediation activities it conducts on Sub-Parcels to be transferred to PHB with sufficient specificity to document compliance with the Consent Judgment to DEQ's satisfaction. If PHB 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

PHB, 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

PHB 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. The 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

PHB is responsible for ensuring that its respective contractor prepares and submit their HASP 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. PHB is responsible for preparing and submitting its respective Sub-Parcel Specific EES to DEQ for review and approval.
- ii. Its EES will include a provision expressly stating that PHB agrees to be bound by the terms of the Consent Judgment pertaining to the Sub-Parcel upon acquiring ownership of the Sub-Parcel.
- iii. Prosper Portland and PHB will provide DEQ a written notice of intent to transfer title at least 30 days before transferring the title.
- iv. Prosper Portland will transfer the Sub-Parcel to PHG through a deed or other mutually agreed upon conveyance instrument after it meets all of the conditions under Section 2, PHB 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. PHB 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

PHB 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 the City. PHB 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, PHB 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 PHB 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 PHB entering into a Cost Recovery Agreement with DEQ for its respective 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. PHB

- i. PHB will implement the final remedy in accordance with its respective Sub-Parcel Specific Final Remedy Plans.
- ii. PHB agrees that, to the extent they engage in subsurface work on the USPS Property, it will comply with worker protection and soil handling requirements in its respective Final Remedy Plans.
- iii. PHB 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: (1) requirements for environmental remediation associated with the identification of underground storage tanks, underground injection wells, prevention of vapor intrusion, groundwater contamination, offsite migration of contaminants, and any other conditions that require remedial work beyond reasonably anticipated contaminated soil excavation and placement of

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.

an engineered cap; and (2) 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 PHB, Prosper Portland and PHB, as appropriate, 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

PHB 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

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