

## INTERGOVERNMENTAL AGREEMENT<sup>1</sup>

### Between Prosper Portland and the Portland Bureau of Transportation For the NE Oregon Street, NE 100<sup>th</sup> Avenue, and NE Pacific Street Right-of-Way Improvement Projects

This Intergovernmental Agreement (“**IGA**”), 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 rights-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. The Gateway Master Street Plan was approved by the City Council on October 22, 2009, by Ordinance No. 183270 (as amended, the “**Master Plan**”).

D. The City Council accepted the Gateway Action Plan by Resolution No. 37228 on August 10, 2016 (as amended, the “**Action Plan**”). The Action Plan identified the Master Plan as a barrier to redevelopment and prioritized leveraging SDC investment and LID financing to implement transportation infrastructure improvements.

E. On June 7, 2022, the Prosper Portland Board of Commissioners approved Resolution No. 7455, extending the permissible duration of the Gateway TIF District and offsetting potential impacts thereby to the David Douglas School District (“**DDSD**”) by committing \$3,000,000.00 in funding toward public improvements to infrastructure around DDSD’s property at NE 99<sup>th</sup> Avenue and NE Pacific Street.

F. On April 13, 2023, the PBOT Capital Investment Committee approved a Decision Memo allocating \$1,892,000 in Transportation System Development Charge (“**TSDC**”) revenue and credits under TSDC project #18-0082, Gateway Local Street Improvements Phase 2, for eligible expenses on the design and construction of NE 100<sup>th</sup> Avenue between NE Oregon Street and NE Pacific Street, and eligible credits on the private construction of NE Oregon Street between NE 100<sup>th</sup> Avenue and NE 102<sup>nd</sup> Avenue.

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<sup>1</sup> Matters and items highlighted in yellow will be appended or resolved to the parties’ mutual satisfaction, and included, specified, or otherwise made certain prior to execution.

G. DDSD purchased the property at NE 99<sup>th</sup> Avenue and NE Pacific Street with the intent to construct a new elementary school (the “**New School**”). Currently, the property remains vacant and undeveloped.

H. Modomi Gateway Development, LLC, an Oregon limited liability company (“**Developer**”), the owner of approximately 5.18 acres of certain vacant real property located at NE 102<sup>nd</sup> Avenue and Pacific Street (the “**Development Property**”), has proposed a new development featuring modular construction methods and consisting of: (a) approximately 200 housing units within 6 mixed-use, three-story buildings along NE 102<sup>nd</sup> Avenue and NE Pacific Street, with approximately 10,549 square feet of commercial space and 11,280 square feet of residential amenity space on the ground floors; (b) 12 interior, multi-dwelling, three-story, residential structures with one, two, and three-bedroom units; and (c) 145 surface parking spaces located in the interior of the site, taking access from a proposed extension of NE Oregon St. to the south of the site and a proposed NE 100<sup>th</sup> Ave. to the west of the site (collectively, to the extent of work actually performed on the Development Property, the “**Development**”).

I. PBOT has determined that the New School and the Development each would require street network improvements to accommodate the additional transportation demand created thereby and to be consistent with the Master Plan. These requirements were identified in the course of PBOT Development Review Pre-Application Conference processes for DDSD and Developer and are described in PBOT response letters dated July 16, 2018 (regarding the New School) and May 10, 2022 (regarding the Development). Collectively, the New School and the Development would require, among other things, the construction of: (a) sufficient dedication and construction of half-street improvements on the NE Oregon Street alignment between NE 100<sup>th</sup> and 102<sup>nd</sup> Avenues (the “**Oregon Street Improvements**”); (b) sufficient dedication for a new street on the NE 100<sup>th</sup> Avenue alignment between NE Oregon and Pacific Streets (the “**NE 100<sup>th</sup> Avenue Improvements**”); (c) a 12-foot-wide pedestrian corridor on the south side of NE Pacific Street (the “**Pacific Street Improvements**”); and (d) a 15-foot-wide pedestrian corridor on the west side of NE 102<sup>nd</sup> Avenue, which PBOT may allow to remain as is, subject to the conditions of the Developer’s public works permit. (The Oregon Street Improvements, the NE 100<sup>th</sup> Avenue Improvements, and the Pacific Street Improvements are collectively referred to as the “**Street Improvements**.”) The Street Improvements are subject to other City bureau requirements as well, including but not limited to provision of stormwater management and street trees.

J. Concurrently with this IGA, Prosper Portland, Developer, and DDSD will enter into a development agreement governing the mutual obligations of those parties with respect to the Development and its effects on and interaction with adjacent properties (the “**Development Agreement**”). The Development Agreement will obligate Prosper Portland to enter into this IGA. PBOT and Prosper Portland anticipate that the Developer will perform the work of designing, engineering, and constructing the Oregon Street Improvements and the Pacific Street Improvements, pursuant to the Development Agreement and as required by permits and applicable law.

K. PBOT and Prosper Portland desire to enter into this IGA to establish the terms and conditions under which PBOT will perform work on the NE 100<sup>th</sup> Avenue Improvements and the financial obligations of each party for this work.

L. This IGA was authorized by the Prosper Portland Board of Commissioners by Resolution No. 7520 adopted on January 24, 2024, and by the City Council by Ordinance No. [REDACTED], adopted on [REDACTED].

NOW THEREFORE, in consideration of the foregoing, and of the mutual promises set forth in this IGA, PBOT and Prosper Portland (the “*Parties*”) agree as follows:

## **AGREEMENT**

### **1. NE 100th AVENUE IMPROVEMENTS**

**1.1. Description.** NE 100<sup>th</sup> Avenue is a proposed 56-to-64-foot-wide right-of-way between NE Oregon Street and NE Pacific Street that will be designed as a Local Service Street, as that term is defined by the Portland City Code, with two vehicle travel lanes, on-street parking on one or both sides of the street, curbs, street trees, stormwater facilities, sidewalks, and street lights (the “*Project*”). With required traffic mitigation measures in place, the Project and the other Street Improvements will be capable of safely supporting the creation of the Development in addition to the surrounding uses in the area. The mitigation measures will also further enhance pedestrian, bicycle, and transit connections, improve intersection traffic capacity and safety, and be consistent with the Master Plan. Exact dimensions of the proposed Project features may be altered with the written approval of the City Engineer, City Traffic Engineer, and BES Chief Engineer, and in consultation with Prosper Portland.

**1.2. PBOT Work.** Promptly following the Effective Date, PBOT will commence and with all due diligence complete the design and construction of the Project (the “*PBOT Work*”), which will include the following elements:

**1.2.1. Project Management.** PBOT will provide a capital project manager to oversee the delivery of design, right-of-way, and construction of the Project, and to serve as a liaison with Prosper Portland and the Developer on any and all issues related to coordination of the Street Improvements with the Development.

**1.2.2. Topographic and Construction Survey.** PBOT will provide or retain surveyors to perform topographic survey and base mapping, construction staking, right-of-way legal descriptions and exhibits, and right-of-way monumentation.

**1.2.3. Street Design.** PBOT will provide and/or retain civil engineers, traffic engineers, and street lighting engineers to produce concept layout; 30% plans, specifications and estimate (“*PS&E*”); 60% PS&E; 95% PS&E; final PS&E; bid review; and construction consultation. Street Design will include any ancillary specialties needed to complete a successful design, such as geotechnical engineering and environmental services. PBOT will provide Prosper Portland the right to review and approve the design for the Project if

there are any material changes to the preliminary engineering plans for the Project or if PBOT identifies the potential for material Cost-Overruns (as defined below) associated with an aspect of the PBOT Work.

- 1.2.4. Right-of-Way Acquisition.** PBOT will provide a right-of-way agent to draft right-of-way dedication documents and work with real estate professionals at Prosper Portland, the Developer, and surrounding property owners on the dedication of right-of-way for the Project and any additional temporary or permanent easements needed to construct and maintain the Project.
- 1.2.5. Utility Coordination and Design.** PBOT will coordinate with City utility bureaus, franchise utilities, and private utilities to identify and resolve utility conflicts, determine locations for proposed utilities, and design stormwater management facilities for the Project.
- 1.2.6. Procurement.** PBOT will work with City Procurement Services to advertise, review bids, and award a contract for construction of the Project, including necessary City Council approvals.
- 1.2.7. Construction Management.** PBOT will provide a Construction Manager, Construction Technician, Public Works Inspector, and Quality Control Specialist to manage and oversee the construction contract on a daily basis during construction. PBOT will confer with Prosper Portland on change orders that materially affect the Project scope, schedule, and/or budget.

### **1.3. PBOT Work Schedule.**

**1.3.1 Design.** As of the Effective Date, PBOT has only a preliminary engineer's estimate and no City-approved design plans or specifications for the NE 100th Avenue Improvements. Based on past projects of similar scope and complexity, PBOT will complete design by February 2026. 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 or change the design of the PBOT Work.

**1.3.2 Construction.** PBOT will commence construction of the PBOT Work promptly following completion of design and procurement for the PBOT Work. PBOT will start construction of the PBOT Work no later than June 2026 and complete construction by June 2027, for a total construction period estimated at 12 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.

## **2. FINANCIAL CONTRIBUTIONS**

### **2.1. Project Costs.**

**2.1.1. Costs.** As used in this IGA, “**Costs**” 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. Costs include both direct and indirect costs as set forth below. Notwithstanding any other term of this IGA, expenses, including personal services, incurred for out-of-town travel, training, educational expenses, and equipment purchases are not reimbursable Costs under this IGA unless mutually agreed to in advance by the Parties.

**2.1.2. Direct Costs.** Direct costs are costs of the following:

- (1) Personnel Services. Covers reimbursement for direct wages paid to personnel engaged in performance of the PBOT Work.
- (2) 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.
- (3) Materials and 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.
- (4) Contracted Services. Covers reimbursement for contracted professional or construction services in carrying out the PBOT Work and within the authorized budget.

**2.1.3. Indirect Costs.** Indirect costs are generally those 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 Cost Estimate 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 (defined below) will provide written notification to the other of the new fiscal year rate.

**2.2. Project Cost Estimate.** PBOT estimates that the total fees, costs, and expenses of the PBOT Work, rounded up to the nearest thousand, will be \$1,925,000 (the “**Cost Estimate**”), as shown in the engineer’s estimate attached to this IGA as Exhibit A. This estimate has the following exclusions: (a) the market value of land to be dedicated as right-of-way for the Project, (b) water mains, (c) sanitary sewers, (d) underground or overhead electrical and telecommunications lines, and (e) contaminated media removal and disposal. PBOT will not pay for the cost of underground utilities except for street light conduit and stormwater collection and conveyance. PBOT will not pay for the cost of removal and disposal of any contaminated media found on or beneath the Development Property.

**2.3. Funding by PBOT.** PBOT will use TSDC revenue to fund the payment of Project Costs in an amount equal to the difference between \$1,892,000 and the value of TSDC credits granted to the Developer for eligible street improvements at the Development, the latter estimated by the

Developer at \$570,000, resulting in a potential PBOT TSDC cash contribution to the PBOT Work estimated at \$1,322,000, as further shown on the Funding and Finance Plan attached to this IGA as Exhibit B. PBOT may use other discretionary funding as needed to fulfill its commitment to the Cost Share.

**2.4. Cost-Overruns.** “Cost-Overruns” means any amount by which the actual Costs exceed the Cost Estimate. PBOT and Prosper Portland will share the Cost-Overruns based on a ratio of the total funds that each agency is contributing to the Project: \$1,322,000 PBOT / \$603,000 Prosper Portland, rounded to the nearest percentage point, resulting in a ratio of 69% PBOT / 31% Prosper Portland. Prosper Portland will pay for, or find other funding for, the cost of any contaminated media removal and disposal needed on the Project.

**2.5. Notice of Cost Variance.** PBOT will notify Prosper Portland immediately of any actual or anticipated variance between the Cost Estimate and its actual Costs. The Parties will then make a good faith effort to resolve the issue.

**2.6. Funding by Prosper Portland.** Subject to budget authorization and appropriation and to the terms of this IGA, Prosper Portland will reimburse PBOT up to the Limit for Qualified Costs (defined below) incurred by PBOT in performing the PBOT Work.

**2.6.1. Funding Limit.** Prosper Portland’s maximum aggregate funding commitment under this IGA (the “*Limit*”) is equal to the lesser of: (a) \$603,000 or (b) 31% of the Qualified Costs incurred.

**2.6.2. Qualified Costs.** Prosper Portland funds may only be expended to reimburse tax increment financing eligible Costs (“*Qualified Costs*”) (for example, planning for improvements, design and engineering for improvements, right-of-way acquisition and tenant relocation, and construction of improvements).

**2.6.3. Reimbursement.** PBOT shall submit to Prosper Portland an itemized billing for the PBOT Work for review and approval on a periodic basis. Final billings upon termination or early termination of this IGA must be received within sixty (60) days of the date of termination. Each billing shall include a description of the nature and cost of work accomplished; the names, rates, and hours worked of personnel; disbursements to consultants, contractors, and outside vendors for materials and services; and any other specific detail or documentation as desired by the Prosper Portland Contract Manager that can be reasonably provided by PBOT. If billings are received with incomplete information or disputed items, Prosper Portland will advise PBOT in writing what specific information is missing or disputed. Prosper Portland will proceed to process payment for items not in dispute.

### 3. CONTRACT MANAGEMENT

#### 3.1. Prosper Portland.

**3.1.1. 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 IGA.

- 3.1.2. Contract Manager.** Prosper Portland’s Contract Manager will be Joel Devalcourt, 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 IGA as provided herein and serves as the first level of conflict resolution.

### **3.2. PBOT.**

- 3.2.1. Contract Signatory.** PBOT’s Contract Signatory will be the *Commissioner-in-Charge of Transportation, Mingus Mapps*, or such other person as he 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 IGA.

- 3.2.2. Contract Manager.** PBOT’s Contract Manager will be *Liz Rickles, Capital Project Manager*, or such other person as she may designate in writing (the “*PBOT Contract Manager*”). The PBOT Contract Manager is responsible for the day-to-day management of this IGA as provided herein and serves as the first level of conflict resolution.

- 3.3. Management Staffing.** If PBOT or Prosper Portland staff are not performing or are unable to continue performing the responsibilities designated in this IGA, then the respective Contract Manager (or higher-level personnel at PBOT or Prosper Portland, if necessary) will designate replacement staff members. The Contract Managers 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 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.

- 3.4. Project Staffing – PBOT.** The following PBOT personnel will be the key staff that perform the PBOT Work: Project Manager, Civil Engineer, Traffic Engineer, Signals and Street Lighting Engineer, Surveyor, Construction Manager, Engineering Technician, Public Works Inspector, and Right-of-Way Agent. In addition, PBOT may retain one or more consultants to perform design engineering, drafting, and other tasks as needed to complete the PBOT Work. PBOT may assign billable work to staff at the Bureau of Environmental Services, Water Bureau, and Parks and Recreation (Urban Forestry) in order to complete design and construction of the PBOT Work.

- 3.5. Project Staffing – Prosper Portland.** The following Prosper Portland personnel will be the key staff assigned to work with PBOT and coordinate with regard to the PBOT Work and

Prosper Portland's obligations under this IGA: Joel Devalcourt, Project Manager, and Brian Moore, Development Manager.

**3.6. Status Reports.** PBOT will submit Project Status Reports to Prosper Portland beginning within 60 days after the Effective Date of this IGA 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 IGA: 30% design plans, 60% design plans , 95% design plans, Final plans and procurement, construction.

**3.7. Public Involvement.** Where the Project requires public involvement, PBOT and Prosper Portland will collaborate on design of the public involvement plan that is endorsed by both Parties' project managers. PBOT and Prosper Portland will keep each other informed of written material (e.g., news releases, brochures, newsletters, reports) produced in connection with the Project that are intended for public distribution and will provide adequate time for review and discussion prior to distribution. Each Party's project manager will inform the other Party's project manager of any inquiries from a media or press representative and make reasonable efforts to consult with the other Party's project manager prior to any verbal or written information on the Project being provided to such a representative. If unable to make a prior consultation, notice will be provided afterwards.

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

**3.9. Regional Arts & Culture Council (RACC) – Percent for Art Program.** City Code Chapter 5.74 requires City bureaus to dedicate the lesser of two percent of the total Eligible Costs or two percent of the total Eligible Funds of all Improvement Projects (as those terms are defined by Code) to the selection, acquisition, fabrication, installation, maintenance, management, de-accessioning, community education, documentation, and registration of Public Art. The Project will include Eligible Costs for the Percent for Art Program because of the use of Urban Renewal funding. However, Project costs paid for by TSDCs are not eligible to contribute to the Percent for Art Program due to limitations on eligible expenditures of system development charges established in Oregon Revised Statute 223.307.

**3.10. Business and Workforce Equity Policies.** Prosper Portland's Business and Workforce Equity Policies (the "***Policies***") may apply to the PBOT Work. If the Policies apply, Prosper Portland's utilization goal for Certified Firms (as defined in the Construction Business and Workforce Equity Policy attached as Exhibit C is described in the Business Equity Program Specifications attached as Exhibit D. If Prosper Portland determines that PBOT or City Procurement Services have a business equity program and Certified Firms utilization goal that are substantially equal to or more stringent than Prosper Portland's, then PBOT's or Procurement Services' program and goals will apply to the PBOT Work. Nothing in this IGA shall require PBOT to discriminate in the award of contracts on the basis of race, sex, or other impermissible criteria or otherwise to violate the law.

#### **4. BILLING AND PAYMENT PROCEDURE**



- 4.1. Generally.** PBOT must regularly submit to Prosper Portland itemized bills for reimbursable Qualified Costs. Each bill must include: (a) a description of the nature and cost of work accomplished; (b) the names, rates, and hours worked of personnel; (c) disbursements to consultants, contractors and outside vendors for materials and services; (d) information regarding Policy compliance and utilization of Certified Firms; and (e) any other specific detail or documentation as desired by Prosper Portland’s Contract Manager that can be reasonably provided by PBOT.
- 4.2. Missing or Disputed Bill.** If any bill is received by Prosper Portland with incomplete information or disputed items, Prosper Portland will advise PBOT in writing what specific information is missing or disputed. Prosper Portland will proceed to process payment for items not in dispute.
- 4.3. Records.** 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 three years after completion or termination of this IGA.

## **5. GENERAL PROVISIONS**

**5.1. Termination.** The Termination Date of this IGA is 3/31/2034 or such later date by which the Parties have fully performed their obligations hereunder. Notwithstanding the foregoing, this IGA may be terminated at any time by mutual written consent or upon 30 days’ written notice by either party where, in the determination of the terminating party, the public interest requires work to cease.

### **5.2. Significant Impacts.**

- 5.2.1. Significant Impacts.** Although every reasonable effort has been made to accurately identify the scope, schedule, and budget for the Project, 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 Project for more than 90 calendar days.
- 5.2.2. Process.** If either Party identifies or foresees such a circumstance, that Party will, as soon as practicable, notify the other Party’s project manager and Contract Manager in writing of the circumstance, its origin, and anticipated or confirmed impacts. Both Parties’ project managers will make reasonable efforts to meet within ten (10) days to identify anticipated or confirmed impacts to the Project’s scope, schedule, or budget. The Parties

will seek to reach agreement on any necessary revisions to this IGA in the manner described in Section 5.3 below.

### **5.3. Dispute Resolution.**

**5.3.1. Informal Dispute Resolution.** If a dispute arises regarding performance, cost, schedule, scope, quality, or other terms or conditions of this IGA, the Parties agree to exercise good faith in expeditiously resolving said conflict in the following manner:

- (1) All conflicts should first be discussed and resolved, if possible, by the project managers identified in this IGA.
- (2) 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 for discussion and resolution.
- (3) Any conflicts not resolved by the Contract Managers will be elevated to the Contract Signatories for discussion and resolution.

**5.4. 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 IGA.

**5.5. Indemnification by PBOT.** 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 attorneys' fees, resulting from or arising out of the activities of PBOT, the City, or their officers, employees, or agents, under this IGA, 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.

**5.6. Indemnification by Prosper Portland.** Subject to the limits of the Oregon Tort Claims Act and Oregon Constitution, Prosper Portland agrees to indemnify, hold harmless and defend, PBOT, the City, their 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 Prosper Portland or its directors, employees, or agents under this IGA, except to the extent that such claims, suits, actions, damages, losses, expenses, or costs result from or arise out of the activities of PBOT or the City or their officers, employees, or agents.

## **5.7. Work Product.**

**5.7.1. Deliveries.** The PBOT project manager will, upon request, timely provide to the Prosper project manager copies of the Work Product, as defined below.

## **5.7.2. Work Product Ownership.**

- (1) 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 IGA (the “***Work Product***”) will be handled as described in this Section 5.7.2. Ownership of the Work Product includes all rights, title, and interest therein, including but not limited to copyright rights of specified Work Product. Notwithstanding anything to the contrary contained in this IGA, 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 Project.
- (2) Except as described in Subsection (3) below, PBOT will own all Work Product. Regardless of ownership of the Work Product, both Parties will have reasonable access to the Work Product.
- (3) If the Parties determine that PBOT is unable or unwilling to complete the Project and Prosper Portland determines that a transfer of ownership of the Work Product is necessary in order to effect completion of the Project, upon Prosper Portland’s written request PBOT will assign ownership of the Work Product to Prosper Portland.

**5.8. Amendments Generally.** Except as otherwise provided for in this IGA, PBOT and Prosper Portland may amend this IGA only in writing signed by the Contract Signatories.

**5.9. Certain Changes to the Scope of Work and Budget.** Changes to the PBOT Work and the Cost Estimate, including changes to scope, schedule, and budget, that do not increase the total Cost Estimate may be made upon written agreement by the Parties’ project managers identified in this IGA. No changes will take effect or be binding on a Party until agreed to by that Party in writing.

**5.10. Integration; Counterparts.** This IGA contains the entire agreement between Prosper Portland and PBOT regarding its subject matter and the Project. This IGA supersedes all prior written or oral discussions or agreements concerning such subject matter and the Project. This IGA may be executed in one or more counterparts, including by electronic means, which, when taken together, will form one and the same agreement.

**5.11. Time of the Essence.** Time is of the essence of this IGA.

**5.12. Assignment; Successors.** Neither Party may assign or transfer any obligation under this IGA without the prior written consent of the other Party.

**5.13. No Third-Party Beneficiaries.** This IGA has been made solely for the benefit of the Parties hereto and their respective successors and permitted assigns, and nothing in this IGA

is intended to, or will, confer upon any other person, including but not limited to the Developer and DDS, any benefits, rights, or remedies under or by reason of this IGA.

IN WITNESS WHEREOF, the Parties have executed this IGA 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

Version: September 2023

<b>Agency</b>	City of Portland Bureau of Transportation	<b>Improvement of NE 100th Ave from Oregon St to Pacific St Only</b> No signals, striping, streetlight trenching included Assume no lot subdivision, UF approval req'd Water main not included, storm sewer not req'd due to UICs, sanitary sewer not req'd due to connection to 102nd, Clearing and Grubbing % increased to include tree removal
<b>Title</b>	Engineer's Estimate for 2020 Standard Construction Specifications	
<b>Stage</b>	Preliminary	
<b>Project Name</b>	Mosaic Pre-App - NE 102nd and NE Pacific	
<b>Project No.</b>	9TR000000257	
<b>Date</b>	November 22, 2023	
<b>Engineer</b>	R. Bennett	

##### BID ITEMS #####						
BID ITEM NO.	ITEMS OF WORK AND MATERIALS	SPEC REFERENCE	UNIT	TOTAL QUANTITY	UNIT PRICE	TOTAL AMOUNT
1	MOBILIZATION	0210	LS	1	\$ 71,532.48	\$ 71,532.48
2	TEMPORARY PROTECTION AND DIRECTION OF TRAFFIC	0221	LS	1	\$ 7,153.25	\$ 7,153.25
3	TEMPORARY WORK ZONE TRAFFIC CONTROL, COMPLETE	0221	LS	1	\$ -	\$ -
4	SEQUENTIAL ARROW SIGNS	0222	EACH	0	\$ 3,710.81	\$ -
5	PORTABLE CHANGEABLE MESSAGE SIGNS	0222	EACH	0	\$ 9,541.65	\$ -
6	TEMPORARY SIGNS	0222	SQFT	0.0	\$ 20.99	\$ -
7	FLAGGERS	0223	HOUR	30.0	\$ 65.53	\$ 1,965.90
8	TRAFFIC CONTROL SUPERVISOR	0223	LS	0	\$ -	\$ -
9	FLAGGER STATION LIGHTING	0223	EACH	0	\$ 1,258.95	\$ -
10	SURFACE MOUNTED TUBULAR MARKERS	0224	EACH	0	\$ 178.64	\$ -
11	TEMPORARY PLASTIC DRUMS	0224	EACH	8	\$ 51.77	\$ 414.16
12	TEMPORARY BARRICADES, TYPE II	0224	EACH	8	\$ 83.49	\$ 667.92
13	TEMPORARY BARRICADES, TYPE III	0224	EACH	1	\$ 163.80	\$ 163.80
14	TEMPORARY FLEXIBLE PAVEMENT MARKERS	0225	EACH	0	\$ 12.87	\$ -
15	TEMPORARY REMOVABLE TAPE	0225	FOOT	0.0	\$ 1.85	\$ -
16	TEMPORARY STRIPING	0225	FOOT	0.0	\$ 0.86	\$ -
17	TEMPORARY PAVEMENT LEGENDS	0225	EACH	0	\$ 82.95	\$ -
18	TEMPORARY PAVEMENT BARS	0225	SQFT	0.0	\$ 7.06	\$ -
19	STRIPE REMOVAL	0225	FOOT	0.0	\$ 1.50	\$ -
20	LEGEND REMOVAL	0225	SQFT	0.0	\$ 21.44	\$ -
21	BAR REMOVAL	0225	SQFT	0.0	\$ 7.50	\$ -
22	TEMPORARY BARRIER	0226	FOOT	0.0	\$ 24.51	\$ -
23	TEMPORARY IMPACT ATTENUATOR, NARROW SITE SYSTEM	0226	EACH	0	\$ 3,569.67	\$ -
24	REFLECTIVE BARRIER PANELS	0226	EACH	0	\$ 21.64	\$ -
25	TEMPORARY ILLUMINATION	0227	LS	0	\$ -	\$ -
26	TEMPORARY TRAFFIC SIGNAL	0227	LS	0	\$ -	\$ -
27	CHANNELIZING DEVICES	0228	FOOT	0.0	\$ 24.90	\$ -
28	TEMPORARY CURB RAMP, CONSTRUCTED	0228	EACH	0	\$ 778.96	\$ -
29	TEMPORARY WALKS	0228	SQFT	0.0	\$ 15.75	\$ -
30	TEMPORARY TYPE ORANGE PLASTIC MESH FENCE	0270	FOOT	200.0	\$ 5.63	\$ 1,126.00
31	TEMPORARY TYPE CL-6R CHAIN LINK FENCE	0270	FOOT	0.0	\$ 21.00	\$ -
32	EROSION CONTROL	0280	LS	1	\$ 3,576.62	\$ 3,576.62
33	CONSTRUCTION ENTRANCE, TYPE 3	0280	EACH	0	\$ 3,410.21	\$ -
34	SEDIMENT FENCE	0280	FOOT	0.0	\$ 3.70	\$ -
35	SEDIMENT BARRIER, TYPE 3	0280	FOOT	0.0	\$ 7.25	\$ -
36	INLET PROTECTION, TYPE 3	0280	EACH	4	\$ 96.88	\$ 387.52
37	POLLUTION CONTROL PLAN	0290	LS	1	\$ 1,414.32	\$ 1,414.32
38	NON-HAZARDOUS CONTAMINATED SOIL/SEDIMENT DISPOSAL	0291	CUYD	0.0	\$ 98.97	\$ -
39	NON-HAZARDOUS CONTAMINATED SOIL/SEDIMENT HAULING	0291	CUYD	0.0	\$ 33.60	\$ -
40	HAZARDOUS SOIL/SEDIMENT DISPOSAL	0291	CUYD	0.0	\$ 160.00	\$ -
41	CMDP WORK PLANS	0291	LS	0	\$ 2,676.85	\$ -
42	CONSTRUCTION SURVEY WORK	0305	LS	0	\$ 11,445.20	\$ -
43	REMOVAL OF PIPES	0310	FOOT	0.0	\$ 53.46	\$ -

# EXHIBIT A

44	REMOVAL OF CURBS	0310	FOOT	0.0	\$	17.76	\$	-
45	REMOVAL OF WALKS AND DRIVEWAYS	0310	SQYD	0.0	\$	86.01	\$	-
46	REMOVAL OF SURFACINGS TO SUBGRADE	0310	SQYD	0.0	\$	63.12	\$	-
47	REMOVAL OF INLETS	0310	EACH	0	\$	1,227.54	\$	-
48	REMOVAL OF MAINTENANCE HOLES	0310	EACH	0	\$	1,640.65	\$	-
49	REMOVAL OF RAILROAD TRACK AND TIES	0310	FOOT	0.0	\$	77.20	\$	-
50	REMOVE AND REINSTALL HORSE RINGS	0310	EACH	0	\$	185.25	\$	-
51	REMOVAL OF STRUCTURES AND OBSTRUCTIONS	0310	LS	1	\$	14,306.50	\$	14,306.50
52	CLEARING AND GRUBBING	0320	LS	1	\$	71,532.48	\$	71,532.48
53	TREE PRESERVATION AND PRUNING	0325	LS	0	\$	-	\$	-
54	GENERAL EXCAVATION	0330	CUYD	792.0	\$	56.98	\$	45,128.16
55	EMBANKMENT IN PLACE	0330	CUYD	0.0	\$	52.33	\$	-
56	12 INCH SUBGRADE STABILIZATION	0331	SQYD	266.0	\$	49.62	\$	13,198.92
57	SUBGRADE GEOTEXTILE	0350	SQYD	1,770.0	\$	2.11	\$	3,734.70
58	LOOSE RIPRAP, CLASS 50	0390	CUYD	0.0	\$	164.16	\$	-
59	POTHOLE EXCAVATION	0405	EACH	0	\$	559.31	\$	-
60	STORMWATER FACILITY	0415	SQFT	0.0	\$	72.32	\$	-
61	12 INCH PIPE, PVC ASTM D3034 SDR 35 BEDDING TYPE: D, COMPLETE	0445	FOOT	120.0	\$	266.58	\$	31,989.60
62	12 INCH PIPE, PVC AWWA C-900 PC 165, BEDDING TYPE: D, COMPLETE	0445	FOOT	0.0	\$	266.58	\$	-
63	12 INCH PIPE, DIP AWWA C-150 CLASS 52, BEDDING TYPE: D, COMPLETE	0445	FOOT	0.0	\$	266.58	\$	-
64	CONCRETE MAINTENANCE HOLES, 48 INCH, 0-8 FT DEPTH	0470	EACH	0	\$	8,591.60	\$	-
65	CONCRETE MAINTENANCE HOLES, 48 INCH, DEEPER THAN 8 FT	0470	FOOT	0.0	\$	666.89	\$	-
66	CONCRETE MAINTENANCE HOLES, SEDIMENTATION	0470	EACH	2	\$	14,554.51	\$	29,109.02
67	SUMP MAINTENANCE HOLE, 30 FT DEPTH	0470	EACH	2	\$	16,123.25	\$	32,246.50
68	SUMP CAPACITY TEST	0470	EACH	2	\$	3,313.46	\$	6,626.92
69	CONCRETE INLETS, TYPE CG-1	0470	EACH	0	\$	4,424.75	\$	-
70	CONCRETE INLETS, TYPE CG-2	0470	EACH	4	\$	4,424.75	\$	17,699.00
71	CONCRETE INLETS, TYPE CG-3	0470	EACH	0	\$	4,424.75	\$	-
72	CONCRETE INLETS, TYPE G-1	0470	EACH	0	\$	4,424.75	\$	-
73	CONCRETE INLETS, TYPE G-2	0470	EACH	0	\$	4,424.75	\$	-
74	CONCRETE INLETS, TYPE G-2 DEEPER THAN 4 FT	0470	FOOT	0	\$	979.37	\$	-
75	CONCRETE INLETS, TYPE METAL	0470	EACH	0	\$	1,825.22	\$	-
76	CONCRETE INLETS, TYPE METAL WITH G-2 GRATE	0470	EACH	0	\$	-	\$	-
77	CONCRETE INLETS, TYPE BEEHIVE	0470	EACH	0	\$	2,148.30	\$	-
78	DRAINAGE CURBS	0480	FOOT	0	\$	14.47	\$	-
79	ADJUSTING BOXES	0490	EACH	0	\$	378.30	\$	-
80	ADJUSTING INLETS	0490	EACH	0	\$	1,073.33	\$	-
81	FILLING ABANDONED STRUCTURES	0490	EACH	0	\$	6,300.00	\$	-
82	MINOR ADJUSTMENT OF MAINTENANCE HOLES	0490	EACH	0	\$	1,083.87	\$	-
83	MAJOR ADJUSTMENT OF MAINTENANCE HOLES	0490	EACH	0	\$	2,995.79	\$	-
84	TRENCH RESURFACING	0495	SQYD	0.0	\$	42.37	\$	-
85	SHORING, CRIBBING AND COFFERDAMS	0510	LS	0	\$	-	\$	-
86	STRUCTURE EXCAVATION	0510	CUYD	0.0	\$	154.90	\$	-
87	GRANULAR STRUCTURE BACKFILL	0510	CUYD	0.0	\$	241.93	\$	-
88	REINFORCEMENT	0530	LB	0	\$	2.24	\$	-
89	ASPHALTIC PLUG JOINT SEALS	0585	LS	0	\$	-	\$	-
90	ASPHALTIC PLUG JOINT SEAL MATERIAL	0585	CUYD	0.0	\$	7,740.00	\$	-
91	RETAINING WALL, CAST-IN-PLACE CONCRETE RIGID GRAVITY	0596C	LS	0	\$	-	\$	-
92	RETAINING WALL, CAST-IN-PLACE CONCRETE SEMI-GRAVITY CANTILEVER	0596C	LS	0	\$	-	\$	-
93	RETAINING WALL, PREFABRICATED MODULAR GRAVITY	0596B	LS	0	\$	-	\$	-
94	RETAINING WALL, MSE	0596A	LS	0	\$	-	\$	-
95	CONCRETE SLOPE PAVING	0599	SQFT	0.0	\$	21.60	\$	-

## EXHIBIT A

96	COLD PLANE PAVEMENT REMOVAL, 2 INCHES DEEP	0620	SQYD	0.0	\$ 8.07	\$ -
97	COLD PLANE PAVEMENT REMOVAL, 3 INCHES DEEP	0620	SQYD	0.0	\$ 12.66	\$ -
98	COLD PLANE PAVEMENT REMOVAL, 4 INCHES DEEP	0620	SQYD	0.0	\$ 14.12	\$ -
99	AGGREGATE BASE, 6 INCHES THICK	0640	SQYD	0.0	\$ 18.74	\$ -
100	AGGREGATE BASE, 8 INCHES THICK	0640	SQYD	1,770.0	\$ 24.51	\$ 43,382.70
101	LEVEL 2, 1/2 INCH ACP MIXTURE WITH PG 64-22 ASPHALT	0744	TON	516.00	\$ 146.85	\$ 75,774.60
102	LEVEL 3, 1/2 INCH ACP MIXTURE WITH PG 70-22 ASPHALT	0744	TON	0.00	\$ 142.05	\$ -
103	LEVEL 4, 1/2 INCH ACP MIXTURE WITH PG 70-22 ASPHALT	0745	TON	0.00	\$ 136.10	\$ -
104	LEVEL 3, 3/8 INCH ACP MIXTURE, IN LEVELING WITH PG 64-22 ASPHALT	0744	TON	0.00	\$ 145.25	\$ -
105	11 INCH ASPHALT CONCRETE PAVEMENT REPAIR	0748	SQYD	0.0	\$ 126.92	\$ -
106	13 INCH ASPHALT CONCRETE PAVEMENT REPAIR	0748	SQYD	0.0	\$ 127.82	\$ -
107	17 INCH ASPHALT CONCRETE PAVEMENT REPAIR	0748	SQYD	0.0	\$ 157.01	\$ -
108	11 INCH ASPHALT CONCRETE PAVEMENT REPAIR, COMPLETE	0748	SQYD	0.0	\$ 131.92	\$ -
109	13 INCH ASPHALT CONCRETE PAVEMENT REPAIR, COMPLETE	0748	SQYD	0.0	\$ 132.82	\$ -
110	17 INCH ASPHALT CONCRETE PAVEMENT REPAIR, COMPLETE	0748	SQYD	0.0	\$ 172.01	\$ -
111	ASPHALT APPROACHES	0749	SQFT	0.0	\$ 6.39	\$ -
112	22 FOOT ASPHALT SPEED BUMPS	0749	EACH	0	\$ 3,351.26	\$ -
113	PLAIN CONCRETE PAVEMENT, UNDOWELLED, 6 INCHES THICK	0756	SQYD	0.0	\$ -	\$ -
114	PLAIN CONCRETE PAVEMENT, UNDOWELLED, 8 INCHES THICK	0756	SQYD	0.0	\$ -	\$ -
115	PLAIN CONCRETE PAVEMENT, DOWELED, 10 INCHES THICK	0756	SQYD	0.0	\$ 165.00	\$ -
116	PLAIN CONCRETE PAVEMENT, UNDOWELLED, 12 INCHES THICK	0756	SQYD	0.0	\$ -	\$ -
117	CONCRETE CURBS, CURB AND GUTTER	0759	FOOT	0.0	\$ 81.86	\$ -
118	CONCRETE CURBS, STANDARD CURB	0759	FOOT	890.0	\$ 41.73	\$ 37,139.70
119	CONCRETE CURBS, MOUNTABLE CURB	0759	FOOT	0.0	\$ 40.57	\$ -
120	CONCRETE CURBS, THICKENED CURB AND GUTTER	0759	FOOT	0.0	\$ 123.51	\$ -
121	CONCRETE ISLANDS	0759	SQFT	0.0	\$ 18.59	\$ -
122	CONCRETE DRIVEWAYS	0759	SQFT	504.0	\$ 18.67	\$ 9,409.68
123	CONCRETE WALKS	0759	SQFT	6,850.0	\$ 10.92	\$ 74,802.00
124	MONOLITHIC CURB AND SIDEWALKS	0759	SQFT	0.0	\$ 24.50	\$ -
125	6 INCH CONCRETE SURFACING	0759	SQFT	0.0	\$ 34.07	\$ -
126	CONCRETE STAIRS	0759	CUYD	0.0	\$ 2,824.50	\$ -
127	CONCRETE DRIVEWAY CONNECTIONS	0759	SQFT	0.0	\$ 16.78	\$ -
128	METAL HANDRAIL, 3 RAILS	0759	FOOT	0.0	\$ 398.72	\$ -
129	EXTRA FOR NEW CURB RAMPS	0759	EACH	6	\$ 1,932.80	\$ 11,596.80
130	TRUNCATED DOMES ON NEW SURFACES	0759	SQFT	60.0	\$ 68.94	\$ 4,136.40
131	GUARDRAIL, TYPE 2A	0810	FOOT	0.0	\$ 39.73	\$ -
132	GUARDRAIL, TYPE 3	0810	FOOT	0.0	\$ 84.83	\$ -
133	GUARDRAIL ANCHORS, TYPE 1	0810	EACH	0	\$ 1,875.00	\$ -
134	GUARDRAIL END PIECES, TYPE C	0810	EACH	0	\$ 216.61	\$ -
135	GUARDRAIL TRANSITION	0810	EACH	0	\$ 4,094.88	\$ -
136	GUARDRAIL CONNECTIONS	0810	EACH	0	\$ 575.62	\$ -
137	GUARDRAIL TERMINALS, [TYPE]	0810	EACH	0	\$ 4,300.00	\$ -
138	REMOVABLE BOLLARDS	0815	EACH	0	\$ 801.03	\$ -
139	CONCRETE BARRIER	0820	FOOT	0.0	\$ 156.82	\$ -
140	IMPACT ATTENUATOR, TYPE E	0830	EACH	0	\$ -	\$ -
141	BI-DIRECTIONAL YELLOW TYPE I MARKERS	0855	EACH	0	\$ 5.39	\$ -
142	MONO-DIRECTIONAL WHITE TYPE I MARKERS	0855	EACH	0	\$ 18.17	\$ -
143	PERMANENT SURFACE MOUNTED TUBULAR MARKERS	0856	EACH	0	\$ 255.78	\$ -
144	SURFACE MOUNTED PLASTIC CURB WITH TUBULAR MARKER	0858	EACH	0	\$ 335.52	\$ -
145	LONGITUDINAL PAVEMENT MARKINGS - PAINT	0860	FOOT	0.0	\$ 1.98	\$ -
146	CURB MARKINGS - PAINT	0861	FOOT	0.0	\$ 4.45	\$ -
147	THERMOPLASTIC, EXTRUDED, SURFACE, NON-PROFILED	0865	FOOT	0.0	\$ 1.10	\$ -

# EXHIBIT A

148	PROFIED TACTILE GUIDANCE (EXTRUDED MMA)	0865	FOOT	0.0	\$	7.62	\$	-
149	PAVEMENT LEGEND, TYPE B-HS: [TYPE]	0867	EACH	0	\$	323.37	\$	-
150	PAVEMENT BAR, TYPE B-HS	0867	SQFT	0.0	\$	10.67	\$	-
151	GREEN BICYCLE LANE, PREFORMED THERMOPLASTIC FILM	0868	SQFT	0.0	\$	13.65	\$	-
152	GREEN BICYCLE LANE, METHYL METHACRYLATE	0868	SQFT	0.0	\$	9.01	\$	-
153	REMOVE EXISTING SIGNS	0905	LS*	0	\$	100.70	\$	-
154	REMOVE AND REINSTALL EXISTING SIGNS	0905	LS*	0	\$	169.68	\$	-
155	SIGN SUPPORT FOOTINGS, BREAKAWAY	0920	EACH	0	\$	473.11	\$	-
156	PIPE SIGN SUPPORTS	0930	EACH	0	\$	272.90	\$	-
157	BIKE RACK SIGN SUPPORTS	0930	EACH	0	\$	913.50	\$	-
158	FLEXIBLE POST SIGN SUPPORTS	0932	EACH	0	\$	256.20	\$	-
159	SIGNS, STANDARD SHEETING, SHEET ALUMINUM	0940	SQFT	0.0	\$	32.94	\$	-
160	SIGNS, WIDE ANGLE SHEETING, SHEET ALUMINUM	0940	SQFT	0.0	\$	37.91	\$	-
161	POLE FOUNDATIONS	0970	LS	0	\$	7,500.00	\$	-
162	LIGHTING POLES	0970	LS	0	\$	15,000.00	\$	-
163	LIGHTING POLE ARMS	0970	LS	0	\$	1,000.00	\$	-
164	STREETLIGHTS (EXCLUDING TRENCHING) PER MOSAIC + 15% INCREASE IN 1 YR	0970	LS	1	\$	69,000.00	\$	69,000.00
165	SWITCHING, CONDUIT AND WIRING	0970	LS	0	\$	50,000.00	\$	-
166	TRAFFIC SIGNAL INSTALLATION, [INTERSECTION NAME]	0990	LS	0	\$	500,000.00	\$	-
167	TRAFFIC SIGNAL MODIFICATION, [INTERSECTION NAME]	0990	LS	0	\$	200,000.00	\$	-
168	FLASHING BEACON INSTALLATION, [INTERSECTION NAME]	0990	LS	0	\$	200,000.00	\$	-
169	LOOP DETECTOR INSTALLATION, [INTERSECTION NAME]	0990	LS	0	\$	100,000.00	\$	-
170	INTERCONNECT SYSTEM	0990	LS	0	\$	50,000.00	\$	-
171	TRAFFIC CAMERA INSTALLATION	0989	LS	0	\$	10,000.00	\$	-
172	PERMANENT SEEDING, SLOPE	1030	ACRE	0.0	\$	4,472.60	\$	-
173	LAWN SEEDING	1030	SQYD	396.0	\$	4.36	\$	1,726.56
174	TOPSOIL	1040	CUYD	66.0	\$	74.03	\$	4,885.98
175	CONIFER TREES, 9 FT HEIGHT	1040	EACH	0	\$	373.00	\$	-
176	DECIDUOUS TREES, 2-1/2 INCH CALIPER	1040	EACH	28	\$	753.45	\$	21,096.60
177	DECIDUOUS TREES, 3 INCH CALIPER	1040	EACH	0	\$	1,431.73	\$	-
178	SHRUBS, NO. 1 CONTAINER	1040	EACH	0	\$	11.46	\$	-
179	GROUNDCOVERS, 4 INCH POTS	1040	EACH	0	\$	7.99	\$	-
180	BARK MULCH	1040	CUYD	0.0	\$	85.30	\$	-
181	ROOT BARRIER	1040	FOOT	0.0	\$	13.94	\$	-
182	PLANT ESTABLISHMENT YEAR TWO	1040	LS	28.0	\$	300.00	\$	8,400.00
183	TYPE CL-6R CHAIN LINK FENCE	1050	FOOT	0.0	\$	46.94	\$	-
184	REMOVING AND REBUILDING FENCE	1050	FOOT	0.0	\$	64.05	\$	-
185	SINGLE MAILBOX SUPPORTS	1070	EACH	0	\$	624.90	\$	-
186	MULTIPLE MAILBOX SUPPORTS	1070	EACH	0	\$	945.91	\$	-
187	MAILBOX CONCRETE COLLARS	1070	EACH	0	\$	501.89	\$	-
188	REMOVE AND REINSTALL MAILBOX SUPPORTS	1070	EACH	0	\$	564.94	\$	-
TOTAL BID ITEMS							\$	715,324.79

##### ANTICIPATED ITEMS #####						
ANTICIPATED ITEM NO.	ITEMS OF WORK AND MATERIALS		UNIT	TOTAL QUANTITY	UNIT PRICE	TOTAL AMOUNT
1	RIGHT OF WAY MONUMENTATION		LS	0	\$ -	\$ -
2	RELOCATE WATER FACILITIES - FIRE HYDRANT		EACH	0	\$ 25,745.00	\$ -
3	RELOCATE WATER FACILITIES - METER		EACH	0	\$ 7,160.00	\$ -
4	STREET LIGHTING - UPGRADE LUMINAIRES		EACH	0	\$ 600.00	\$ -
5	STREET LIGHTING - INSTALL ARMS AND LUMINAIRES		EACH	0	\$ 5,000.00	\$ -
6	CONNECT CONTRACTOR INSTALLED TRAFFIC SIGNAL LOOPS TO CONTROLLER BY MO		EACH	0	\$ 1,000.00	\$ -
7	SELF-PERFORMED WORK BY PBOT SSL		LS	0	\$ -	\$ -



## EXHIBIT A

8	POWER CONNECTIONS		LS	0	\$ -	\$ -
9	TREE MITIGATION FEE		TREE-INCH	0	\$ 450.00	\$ -
10	STORMWATER PLANTINGS AND PLANT ESTABLISHMENT		SQFT	0.0	\$ 20.00	\$ -
11	OFFSITE STORMWATER MANAGEMENT FEE		SQFT	0.0	\$ 4.90	\$ -
12	ROCK EXCAVATION		CUYD	0.0	\$ 106.00	\$ -
13	RAILROAD PROTECTION SERVICES (ONE YEAR)		LS	0	\$ 100,000.00	\$ -
14	ASPHALT CEMENT ESCALATION		LS	1	\$ -	\$ -
15	FUEL ESCALATION		LS	1	\$ -	\$ -
16	STEEL ESCALATION		LS	1	\$ -	\$ -
17	TESTING CONTAMINATED MEDIA		LS	0	\$ 5,000.00	\$ -
18	CONTAMINATED MEDIA TIPPING FEES		TON	0.00	\$ 33.50	\$ -
19	BOLI FEE PAYMENT		LS	1	\$ 715.32	\$ 715.32
20	CONTRACT CONTINGENCY		LS	1	\$ 71,532.48	\$ 71,532.48
TOTAL ANTICIPATED ITEMS						\$ 72,247.80

## ##### CONSTRUCTION ESTIMATE SUMMARY #####

TOTAL BID ITEMS		\$ 715,325
CONSTRUCTION CONTINGENCY	5% of Bid Items	\$ 35,766
SUBTOTAL		\$ 751,091

ANTICIPATED ITEMS	\$ 72,248
<b>TOTAL CONSTRUCTION</b>	<b>\$ 823,339</b>

For 60%, 95%, and Final estimates stop here. The PM will add soft costs. Hide rows in grey.

PROJECT DEVELOPMENT	3%	of Bid Items	\$ 21,460
PROJECT MANAGEMENT	5%	of Bid Items	\$ 35,766
DESIGN ENGINEERING	25%	of Bid Items	\$ 178,831
CONSTRUCTION MANAGEMENT	15%	of Bid Items	\$ 107,299
PROJECT DEVELOPMENT OVERHEAD	83.32%	of PD	\$ 17,880
PROJECT MANAGEMENT OVERHEAD	83.32%	of PE	\$ 29,800
DESIGN ENGINEERING OVERHEAD	83.32%	of DE	\$ 149,002
CONSTRUCTION MANAGEMENT OVERHEAD	83.32%	of CM	\$ 89,402
<b>TOTAL PROJECT ENGINEERING &amp; MANAGEMENT</b>			<b>\$ 629,440</b>
RIGHT-OF-WAY LAND, IMPROVEMENTS, AND DAMAGES			\$ -
RIGHT-OF-WAY APPRAISAL, TITLE INSURANCE, AND NEGOTIATION			\$ -
RIGHT-OF-WAY CONTINGENCY	30%	of L&I&D	\$ -
<b>TOTAL PROJECT RIGHT-OF-WAY</b>			<b>\$ -</b>
	<i>Years</i>	<i>Inflation</i>	
INFLATION RATE ON CONSTRUCTION CONTRACT	2	5.1% of Construction	\$ 86,122
INFLATION RATE ON PERSONNEL COSTS	2	5.0% of Eng. & Mgmt.	\$ 64,518
ALLOWANCE FOR DESIGN REFINEMENT		20% of Const, Eng. & Mgmt., and Inflation	\$ 320,684
<b>TOTAL INFLATION AND ALLOWANCE FOR DESIGN REFINEMENT</b>			<b>\$ 471,324</b>
<b>TOTAL 2% FOR ART</b>			<b>\$ -</b>
<b>TOTAL PROJECT ESTIMATE</b>			<b>\$ 1,924,103</b>

## Schedule 1.1.2: Funding and Finance Plan

	Infrastructure	Total
Costs (1)	Pacific	\$ 2,662,000
	100th	\$ 1,925,000
	Oregon	\$ 1,515,000
	Total	\$ 6,102,000

	FUNDING SOURCE	Total	PERFORMING PARTY		
			Pacific (Project^)	100th (PBOT)	Oregon (Project^)
FUNDING PARTY	Project^	\$ 1,327,899			\$ 1,327,899
	Project^ (SDC Credit)	\$ (570,000)			\$ (570,000)
	TIF (2)	\$ 3,452,101	\$ 2,662,000	\$ 603,000	\$ 187,101
	PBOT SDC Credit	\$ 570,000			\$ 570,000
	PBOT SDC Cash	\$ 1,322,000		\$ 1,322,000	
		Total			
Net Costs	To Prosper	\$ 3,452,101			
	To Project^ (3)	\$ 757,899			
	To PBOT	\$ 1,892,000			
	To DDS	\$ -			

(1) per Lease Crutcher estimates from 7/1/22; costs for 100th are based on updated PBOT estimates from January 2024.

(2) per agreement between Prosper and DDS related to 2022 TIF District Resolution No. 7455 (June 7, 2022)

(3) Project^ contributed an estimated additional \$400,000 (approximately 10% of construction costs) in pre-development soft costs that directly provide value to DDS's property improvements and land value, including but not limited to: Public Works Permit Fees, Survey scope for re-plat, Legal fees for re-plat, Recording fees for re-plat, Title fees for re-plat, Geotech report for pavement design in ROW, Geotech testing during construction, Civil Engineering including complete street design and public utilities for NE 100th St. NE Oregon, and NE Pacific, Traffic engineering design and reporting, Street lighting design, Street frontage planting design.

**PROSPER PORTLAND**

Portland, Oregon

**RESOLUTION NO. 7411**

**ADOPTING THE CONSTRUCTION BUSINESS AND WORKFORCE EQUITY  
POLICY**

**WHEREAS**, Prosper Portland is committed to advancing racial and social equity and to building an equitable economy;

**WHEREAS**, this commitment is reflected in Prosper Portland's Equity Policy, which was initially adopted by the Prosper Portland Board of Commissioners ("Board") on January 9, 2013 through Resolution No. 6988, and which was comprehensively updated and renewed on November 8, 2017 through Resolution No. 7256, and again on August 14, 2019 through Resolution No. 7335 ("Equity Policy");

**WHEREAS**, pursuant to Administrative Procedures authorized by the Executive Director on May 1, 2015 ("Construction Equity Procedures"), Prosper Portland requires developers and contractors to take certain steps and engage in certain practices to advance equity in the construction context, including establishing goals for utilization of firms certified by the Oregon Certification Office for Business Inclusion and Diversity ("Certified Firms") and participation by minority and women workers;

**WHEREAS**, the Prosper Portland Board wishes to reinforce values articulated in the Equity Policy in the context of construction, and intends to achieve this objective by:

1. Leveraging investments to increase access to contracting opportunities for businesses owned by members of historically underrepresented communities;
2. Advancing racial and economic equity through programs and investments that assist in providing career opportunities for women and Black, Indigenous, and People of Color ("BIPOC") in the construction industry;
3. Engaging with the City of Portland, public agencies, construction industry stakeholders, and other partners to collaborate on additional opportunities to advance the participation of women and BIPOC individuals in the construction industry; and
4. Maintaining Prosper Portland's Construction Wage Policy, as set forth in Resolution No. 6666, adopted January 29, 2009 ("Construction Wage Policy").

**WHEREAS**, the Prosper Portland Board believes that, to maximize transparency and consistency, the key obligations of Prosper Portland staff, developers, and contractors in advancing construction equity should be outlined in a formal, Board-adopted policy of the agency;

**WHEREAS**, the Prosper Portland Board intends to adopt the Construction Business and Workforce Equity Policy attached to this Resolution as Exhibit A ("CBWE Policy");

**WHEREAS**, the CBWE Policy makes certain substantive changes to the key terms and conditions of the Construction Equity Procedures, including, without limitation, the following:

1. Increasing the Certified Firm participation goal to 22 percent (from 20 percent), and implementing a sub-goal of 14% Minority Business Enterprise (“MBE”) and Disadvantaged Business Enterprise (“DBE”) participation;
2. Establishing a Construction Equity Fund to provide additional resources for business technical assistance and workforce development; and
3. Requiring that 0.25 percent of Hard Construction Costs (as defined in the CBWE Policy) for qualifying projects be set aside to the Construction Equity Fund, in addition to other sources; and

**WHEREAS**, the CBWE Policy calls for further study and outreach regarding the implementation of a project labor agreement or community workforce agreement policy.

**NOW, THEREFORE, BE IT RESOLVED**, that the CBWE Policy attached hereto as Exhibit A is adopted as the policy of Prosper Portland;

**BE IT FURTHER RESOLVED**, that consistent with Part Five of the CBWE Policy, Prosper Portland staff is directed to convene a working group to study and discuss adoption of a project labor agreement or community workforce agreement policy, and to return to the Prosper Portland Board within three months of the effective date of this resolution with a report or proposal;

**BE IT FURTHER RESOLVED**, that the CBWE Policy supersedes all prior administrative procedures and policies of Prosper Portland relating to construction equity on Prosper Portland projects or projects supported by Prosper Portland, except that the Construction Wage Policy remains in full force and effect;

**BE IT FURTHER RESOLVED**, that the Executive Director is authorized to amend the CBWE Policy from time to time in the Executive Director’s reasonable discretion, so long as such amendments are non-material in nature as determined in consultation with the General Counsel, certain examples of which are provided in the CBWE Policy;

**BE IT FURTHER RESOLVED**, that the CBWE Policy shall be effective prospectively, and does not apply to projects or investments previously approved by the Prosper Portland Board; and

**BE IT FURTHER RESOLVED**, that this resolution shall become effective immediately upon its adoption.



## **Construction Business and Workforce Equity Policy**

**Subject:** Construction Business and Workforce Equity

**Effective Date:** April 14, 2021

**Approved By:** Kimberly Branam, Executive Director

**Sponsor:** Executive Director

**Owner:** Lisa Abuaf, Director of Development

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The Construction Business and Workforce Equity Policy (this “Policy”) generally applies to Prosper Portland investments resulting in the design and implementation of construction, as more specifically described below. This Policy should be reviewed and used when planning new projects or programs and contracting for goods and services related to construction projects. Questions regarding this Policy can be directed to the Business and Workforce Equity Staff within the Development and Investment Department (“CBWE Staff”).

This Policy was approved by the Prosper Portland Board of Commissioners (the “Board”) through Resolution No. 7411, adopted April 14, 2021 (the “Authorizing Resolution”).

This Policy is organized as follows:

- PART ONE:** Policy Objectives and Authority
- PART TWO:** Business Equity Guidelines
- PART THREE:** Workforce Training and Hiring Guidelines
- PART FOUR:** Construction Equity Fund
- PART FIVE:** Community Workforce Agreements
- PART SIX:** General Provisions; Definitions
- PART SEVEN:** Modifications
- PART EIGHT:** Administrative Procedures and Specifications

### **PART ONE: POLICY OBJECTIVES AND AUTHORITY**

**1.1 Definitions.** The capitalized terms found in this Policy are defined in Part Five.

**1.2 Policy Objectives.** The objective of Prosper Portland’s Construction Business and Workforce Equity Policy is to ensure Prosper Portland delivers on its strategic priorities of increasing access to quality employment; supporting equitable wealth creation; and fostering partnerships. Prosper Portland aims to achieve these objectives by:

- Reinforcing values articulated in Prosper Portland’s Equity Policy as approved by Resolution No. 7335, adopted August 14, 2019;
- Leveraging investments to increase access to contracting opportunities for businesses owned by historically underrepresented communities in Portland;
- Advancing racial and economic equity through programs and investments that assist in providing career opportunities for women and BIPOC in the construction trades; and,
- Complementing Prosper Portland’s Construction Wages Policy, adopted by Resolution No. 6666 on January 29, 2009, and Oregon’s prevailing wage law (ORS 279C.800 et seq), which provide rules and requirements regarding wages paid to workers on covered construction projects.

## **PART TWO: BUSINESS EQUITY GUIDELINES**

**Part Two** of this Policy describes the Business Equity Guidelines (“BEG”) and other activities in support of equitable construction contracting opportunities. Questions on this section should be directed to CBWE Staff.

**The Goal** of Part Two is to ensure that Prosper Portland’s projects and programs provide professional, supplier, and construction contracting opportunities to businesses certified by the Certification Office for Business Inclusion and Diversity (or its successor) as: Disadvantaged (D), Minority (M), Women (W), Emerging Small Business (ESB), or Service Disabled Veteran-Owned Business Enterprises (SDVBE).

**2.1 Applicability.** The BEG apply to all of the following types of transactions:

- A Prosper Portland Personal Services Contract in the construction context for any amount
- A Prosper Portland Flexible Services Contract in the construction context for any amount.
- A Prosper Portland-Owned Construction Contract with Hard Construction Costs greater than \$200,000
- A Prosper Portland Sponsored Project receiving more than \$300,000 of Prosper Portland Resources to support a project with Hard Construction Costs greater than \$200,000
- A sale of Prosper Portland real property to a private party with a purchase price greater than \$300,000 that is expected to involve Hard Construction Costs greater than \$200,000
- An Intergovernmental Agreement with Hard Construction Costs greater than \$200,000, whether project is contracted by Prosper Portland or another agency.\*

\*Prosper Portland may defer to another agency's business equity program either in whole or on a component-by-component basis if the program (or the applicable component being deferred to) is substantially equal to or more stringent than Prosper Portland’s program. CBWE Staff is responsible for evaluating and recommending such deferrals. If Prosper Portland defers to another agency's program, Prosper Portland staff should communicate to partner agencies the requirement for utilization reports. Deferrals will be set forth in

the applicable transaction documents and approved by the authorized signatory for such transaction documents.

**2.2 Utilization Goals for Certified Firms.** The following Utilization Goals will be periodically assessed by the construction equity staff and leadership; adjustments may be recommended to the Board from time to time, taking into consideration, among other appropriate factors, current regional availability and disparity studies:

- 22% of an applicable project's total Hard Construction Costs allocated to Certified Firms, and 14% of Hard Construction Costs (which counts towards the overall 22% goal) allocated to any combination of DBE and/or MBE firms.
- 20% of an applicable project's Professional Services Costs allocated to Certified Firms.

**2.3 Utilization Goals for Projects Already Underway.** In an instance where a party receives notification of Prosper Portland's approval of the availability of Prosper Portland Resources after it has expended funds on a project, started construction, or taken other action that would impair its ability to comply with the BEG, Prosper Portland (through the Prosper Portland's project manager, with assistance from the CBWE Staff) may negotiate a Certified Firm participation goal that is reasonable and may provide technical assistance to achieve that negotiated Utilization Goal.

**2.4 Prompt Payment.** For construction projects subject to the BEG, Prosper Portland will require that the contracting entity comply with applicable laws relating to prompt payment of contractors and subcontractors, including, without limitation, ORS 279C.570 if applicable.

**2.5 Self-Performed Work.** For construction contracts not subject to ORS 279C.305 (e.g., Sponsored Projects and Prosper Portland -Owned alternative contracts), Prosper Portland encourages opportunities for smaller contractors and Certified Firms. Prime Contractors who intend to self-perform more than 10% of the trade work to complete a project or an entire Construction Specifications Institute (CSI) Master Format trade division (e.g., excluding superintendence, supervision, mobilization, etc.) will be required to have the written authorization of CBWE Staff or their designee, who may approve a higher percentage based on the type, size, available subcontractors, and other relevant project criteria.

**2.6 Joint Ventures.** For large-scale and alternative contracting projects not subject to low bid requirements, Prosper Portland may provide incentives for joint ventures and mentor-protege partnerships that enhance BEG goals (e.g., additional points in the RFP evaluation process).

**2.7 Alternatives to Low Bid.** Alternatives to low bid (e.g., Design/Build, Construction Manager/General Contractor) that may enhance BEG goals should be pursued when feasible, legally permissible and appropriate in the circumstances on projects subject to the BEG.

**2.8 Ineligibility.** Contractors or subcontractors that are on the BOLI list of ineligible contractors cannot participate in Prosper Portland Owned or Prosper Portland-intergovernmental agreement ("IGA") construction projects.

**2.9 Insurance and Bonding.** For Prosper Portland Sponsored Projects subject to BEG, Prosper Portland may provide incentives for the owner/developer/prime contractor to reduce insurance and bonding barriers for Certified Firms.

### **PART THREE: WORKFORCE TRAINING AND HIRING GUIDELINES**

**Part Three** of this Policy describes the Workforce Training and Hiring Guidelines (“WTHG”) and other activities that support equitable construction workforce development. Questions on this section should be directed to CBWE Staff.

**The Goal** of the WTHG is to maximize apprenticeship opportunities in the construction trades and ensure employment opportunities for People of Color and Women. Prosper Portland also encourages the employment of veterans and people with disabilities on Direct Contracting, Land Transactions, and on work utilizing Prosper Portland resources.

**3.1 Applicability.** The WTHG apply to all of the following types of transactions:

- A Prosper Portland-Owned Construction Contract consisting of construction work greater than \$300,000.
- A Prosper Portland-Sponsored Project consisting of construction, the WTHG will apply if the project receives \$300,000 or more of Prosper Portland Resources to support a project with a Hard Construction Cost greater than \$1,000,000.
- A sale of Prosper Portland real property to a private party with a purchase price greater than \$300,000 that is expected to involve Hard Construction Costs greater than \$300,000.
- A Prosper Portland-Intergovernmental Agreement consisting of construction work greater than \$300,000.

If the WTHG apply, they apply to the prime contractor and all subcontracts with values of \$100,000 or greater, but not to subcontracts with values of less than \$100,000. **The WTHG also do not apply to Personal Services Contracts, Flexible Services Contracts, and services contracts or agreements not involving construction work.**

Prosper Portland may defer to another agency's workforce training and hiring program either in whole or on a component-by-component basis if the program (or the applicable component being deferred to) is substantially equal to or more stringent than Prosper Portland's program. CBWE Staff is responsible for evaluating and recommending such deferrals. If Prosper Portland defers to another agency's program, Prosper Portland staff should communicate to partner agencies the requirement for utilization reports. Deferrals will be set forth in the applicable transaction documents and approved by the authorized signatory for such transaction documents.

**3.2 General Program Requirements.** Projects subject to the WTHG shall:

- Ensure that a minimum requirement of twenty percent (20%) of labor hours in each apprenticeable trade performed by the prime contractor/subcontractor, are worked by State Registered apprentices if working an excess of 300 hours or more on any trade;



- Prime Contractors/subcontractors to whom the WTHG apply will be a registered training agent to a State of Oregon Bureau of Labor and Industries (“BOLI”) approved apprenticeship training program before commencing work.
- Work to achieve the following goals: (i) thirty percent (30%) of hours worked by minorities; and (ii) fifteen percent (15%) of hours worked by women. This goal will be measured in aggregate by combining both apprentice hours and journey hours. Although goals are measured in aggregate, Prosper Portland staff may nonetheless collect this data in a disaggregated manner (e.g., percentages for journey level specifically and for apprentice level specifically) to help inform policy development going forward.
- Encourage the employment of veterans and people with disabilities.
- Seek to employ a workforce that reflects the diversity of the City of Portland, including recruitment of a diverse workforce through the unions, community-based organizations, apprenticeship programs, and other community resources, both union-affiliated and non-union-affiliated.

**3.3 Applying Requirements for Projects Already Underway.** In an instance where a party receives notification of Prosper Portland’s approval of the availability of Prosper Portland Resources after it has bid a project, expended funds on a project, started construction, or taken other action that would impair its ability to comply with the WTHG, the Prosper Portland Project Manager, with assistance from the Prosper Portland Construction Equity Staff may negotiate a level of compliance that is reasonable and may provide technical assistance to achieve that negotiated Workforce Goal.

**3.4 Equal Employment Opportunity Certification.** Contractors and subcontractors subject to the WTHG must be certified by the City of Portland as an Equal Employment Opportunity employer.

**3.5 Worksite Anti-Harassment and Culture Change.** Prosper Portland staff will develop (or identify standards for) a comprehensive workplace harassment prevention strategy to ensure all employees, regardless of race, gender, or creed, are guaranteed a safe and respectful working environment. The strategy will include in-person (or otherwise interactive) training for supervisors and employees (permanent and temporary), as well as meaningful policies and procedures for employees in need of recourse. Once so developed or identified, Prosper Portland staff will require the Developer / Prime Contractor to implement the strategy on construction projects that otherwise trigger the BEG or WTHP.

#### **PART FOUR: CONSTRUCTION EQUITY FUND**

The Prosper Portland Construction Equity Fund (the “Fund”) is hereby established. The Fund shall be the repository for all monies contributed pursuant to this Part Four, and shall be used to fund programs consistent with the goals of this Part Four. CBWE Staff will develop and manage programs to effectuate these goals.

**The Goal** of this fund is to provide resources for the provision of technical assistance to minority and women owned construction businesses and Workforce Development to increase the number women and BIPOC in all stages of the construction trades, as well as funding business and workforce navigation / consulting services in the construction industry to assist with meeting the goals described in this Policy.

**4.1 Sources of the Fund.** There are three anticipated sources of funding for the Fund: (i) payments from companies participating in the E-Zone program; (ii) amounts received as liquidated damages due to violations of the BEG or WTHG, or corresponding provisions in contracts; and (iii) amounts received as part of the 0.25% set-aside.

**4.2 Enterprise Zone.** All E-Zone companies will make a payment of 3% of actual tax savings derived from participation in the Enterprise Zone program towards the Fund.<sup>1</sup>

**4.3 Prosper Portland Construction Set-Aside.** Prosper Portland will contractually require developers or general contractors (as applicable) to contribute a percentage of Hard Construction Costs of all projects that trigger either or both of the BEG or the WTHG (pursuant to Sections 2.1 or 3.1 of this Policy). The percentage shall be established by the Executive Director subsequent to the effective date of the Authorizing Resolution, but the percentage shall not exceed 0.25% of Hard Construction Costs. The specific manner and timing of payment to the Fund shall be developed by CBWE Staff and the Legal Department. The Executive Director may further establish written limitations (e.g., minimum dollar thresholds for Hard Construction Costs) on the applicability of this Section 4.3 if, in the Executive Director's judgment, it would be appropriate to do so.

**4.4 Business and Workforce Equity Liquidated Damages.** When Prosper assesses liquidated damages based on noncompliance with the Business and Workforce Equity Policy, those funds shall be appropriated to the Fund.

#### **PART FIVE: COMMUNITY WORKFORCE AGREEMENTS**

Prosper Portland will convene a working group including relevant staff, legal counsel, community stakeholders and others as appropriate, to study and discuss adoption of a project labor agreement or community workforce agreement policy for Prosper Portland-contracted construction and/or Prosper Portland-supported construction.

This working group should consider, among other things: (1) relevant local, regional, and national efforts to implement such policies, including the City of Portland's Community Benefits Agreement policy set forth in City Council Resolution No. 37329; (2) Prosper Portland's unique role in promoting public-private partnerships; (3) appropriate applicability thresholds for such a policy, if implemented; and (4) key elements of such agreements that should be identified in a policy, if implemented. Prosper Portland staff will report, or bring a proposal, to the Board on this subject within 3 months of the Effective Date of this Policy.

#### **PART SIX: GENERAL PROVISIONS; DEFINITIONS**

**6.1 Incorporation into Contracts.** Prosper Portland legal counsel shall take appropriate steps to incorporate the applicable terms of this Policy into contracts.

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<sup>1</sup> Payment shall occur simultaneously with the 15% Workforce Business Development Fund payment, with the total payment equal to 18% of actual tax savings for all Enterprise Zone projects approved after April 1, 2020.

**6.2 Damages.** Contracts subject to the BEG and/or WTHG shall include appropriate remedies for violations. Without limiting any remedies that may be specifically negotiated as part of an applicable contract, in the event of a breach of this Policy, Prosper Portland may take any or all of the following actions:

- Withholding progress payments
- Liquidated damages (anticipated to be \$150,000 per program violated, but CBWE staff and legal counsel may utilize another measure, e.g., an amount based on pay for apprentice hours not achieved that would have been achieved had compliance occurred, if deemed appropriate)
- Notification of possible debarment

**6.3 Accountability.** Prosper Portland currently contracts with the City of Portland, Bureau of Revenue and Financial Services, pursuant to an IGA approved by the Board through Resolution No. 7340, adopted September 11, 2019 (the “Monitoring IGA”). Pursuant to the Monitoring IGA, the City’s Compliance Officer provides services and software access to Prosper Portland. Prosper Portland will require the Prime Contractor/Subcontractor to report monthly using the City’s compliance reporting software, currently LCP Tracker (for the WTHG) and B2Gnow (for the BEG), or other appropriate software from time to time. Prosper Portland, through CBWE Staff and the City’s Compliance Officer, or other appropriate compliance personnel from time to time, shall monitor projects monthly and report out to appropriate external stakeholders, internal staff, and on the Prosper Portland website. CBWE Staff will ensure that this monitoring approach, or another reasonably comparable monitoring approach, is diligently and continuously implemented.

#### **6.4 Definitions**

Capitalized terms in this Policy have the following meanings:

**“Board”** means the Prosper Portland Board of Commissioners.

**“Business Equity Guidelines”** means the program described in Part 2 of this Policy.

**“Certified Firms”** include Minority/Women/Emerging Small Business/Service-Disabled Veteran (M/W/ESB/SD-V) firms as certified by the State of Oregon Certification Office for Business Inclusion and Diversity; or a Disadvantaged Business Enterprise (DBE) as certified by the U.S. Department of Transportation.

**“BIPOC”** Black, Indigenous, and all People of Color. It is a term to make visible the unique and specific experiences of racism and resilience that the Black/African Diaspora and Indigenous communities have faced in the structure of race within the United States. BIPOC is a term that honors all people of color as well as creates an opportunity to lift up the voices particularly of those communities

**“Direct Contracting”** includes all professional, supplier, and construction services purchased directly by Prosper Portland (i.e., not through a developer, Intergovernmental Agreement, or any other third party).

**“Enterprise Zone”** is a five-year, 100% tax abatement program designed to encourage existing and new industrial firms to make new capital investments in certain designated areas. Participating firms are required to create or retain quality jobs while maximizing the economic benefits for residents of Portland who are currently earning at or below 80% Median Family Income.

**“Equity”** means everyone has access to opportunities necessary to satisfy their essential needs, advance their well-being, and achieve their full potential (see the Portland Plan).

**“Flexible Service Contract”** is a contract for services that has repetitive requirements on an as-needed basis and may include Personal Services Contracts.

**“Hard Construction Cost(s)”** are the costs to build improvements on a property, including all related construction labor and materials and fixed and built-in equipment costs. They are all costs except Soft Construction Costs.

**“Intergovernmental Agreement”** or **“IGA”** is an agreement between Prosper Portland and another government entity, including the City of Portland.

**“Land Transaction”** is the sale of real property by Prosper Portland at any price for the purpose of a private or public project.

**“Project”** means a discrete construction, reconstruction, renovation, demolition, or remediation undertaking. Prosper Portland staff, in consultation with the Legal Department, have authority to consider the totality of the circumstances in determining whether one “project” or multiple “projects” exist for purposes of analyzing whether applicability thresholds are met if there is ambiguity. Factors that could be considered by Prosper Portland staff in making this determination may include, but are not limited to, the timing of such undertakings, whether there are or may be different contractors, and whether the undertakings are conceptually and/or physically distinct.

**“Prosper Portland-Owned Construction Contract”** are those in which Prosper Portland has a direct contractual relationship with the prime contractor and where Prosper Portland is the owner of the project.

**“Prosper Portland Resource(s)”** include: (i) Prosper Portland funds in the form of grants, loans, or payments (for purposes of calculating Prosper Portland Resources, any Prosper Portland funds used by a single entity for a single project in the form of grants, loans, or payments will be combined to determine the total amount of Prosper Portland Resources); and (ii) the value of a Land Transaction (for purposes of calculating the value of a Land Transaction, the value will be the difference between the appraised value of the property and its sale price).

**“Prosper Portland-Sponsored Project(s)”** include all projects that are privately owned and constructed involving Prosper Portland Resources, or a property conveyance that includes Prosper Portland Resources.

**“Personal Services Contract”** is a contract for specialized skills, knowledge or unique resources that involve the application of highly technical or scientific expertise or the exercise of professional, artistic, or management discretion or judgment. Such services include, but are not limited to, those performed by architects, engineers, surveyors, attorneys, auditors, other licensed professionals, artists, designers, computer programmers, consultants, and property managers.

**“Soft Construction Cost(s)”** are the costs associated with designing and permitting a building or improvement including all professional services such as architectural or engineering. These costs also include those not

directly related to the construction of a building or improvement, such as overhead, administration, developer fees, or taxes. For the avoidance of doubt, real property acquisition costs are not Soft Construction Costs.

**"Utilization Goal(s)"** are percentage goals set for Certified Firms and workforce utilization on contracts and projects subject to the Policy.

**"Workforce Equity Guidelines"** means the program described in Part 3 of this Policy.

**"Workforce Goal(s)"** means the goals related to construction trades that utilize People of Color and Women as a percentage of total construction hours worked on a Prosper Portland -Sponsored Project.

#### **PART SEVEN: MODIFICATIONS**

As provided in the Authorizing Resolution, this Policy may be amended by the Executive Director from time to time in her reasonable discretion so long as such amendments are non-material in nature as determined in consultation with the General Counsel. Material amendments require prior Board approval.

Non-material amendments include, but are not limited to, the following: (i) adjustments to reporting requirements; (ii) adjusting dollar applicability thresholds for inflation, based upon change in CPI-U, West Region, or another comparable index selected by the Executive Director; (iii) changing titles of departments or roles to reflect current organizational structure; and (iv) clarification or resolution of ambiguities as needed.

#### **PART EIGHT: ADMINISTRATIVE PROCEDURES AND SPECIFICATIONS**

The Executive Director (or their designee) may develop administrative procedures and/or specifications to provide guidance to staff in implementing this Policy.