

EXHIBIT A

**INTERGOVERNMENTAL AGREEMENT
BETWEEN THE
CITY OF PORTLAND BUREAU OF PARKS AND RECREATION
AND
PROSPER PORTLAND
REGARDING
THE CONVEYANCE OF THE HOLMAN DOCK**

This Intergovernmental Agreement (“**IGA**”) dated April ____, 2024 is made and entered into by and between the City of Portland, through its Bureau of Parks and Recreation (“**Parks**”) and Prosper Portland (“**Prosper Portland**”), the City of Portland’s urban renewal and economic development agency (each individually a “**Party**” and collectively the “**Parties**”).

RECITALS

- A. Ordinance _____ gives the authority to PP&R Director to accept the donation of the personal property detailed in this IGA.
- B. Prosper Portland and Parks are each a unit of local government organized and existing under the Charter of the City of Portland and, pursuant to ORS 190.003 to 190.130, are authorized to enter into this written agreement for the performance of the functions and activities described herein. This Agreement will not result in the creation of a new intergovernmental entity.
- C. Prosper Portland owns certain personal property and real property improvements located on the east-bank of the Willamette River adjacent to the Hawthorne Bridge consisting of a floating dock, pilings, gangway ramp, and associated components, commonly known as the Holman Floating Dock (the “**Dock**”), and more particularly described in Exhibit A. The upland portion of the Dock is located within an easement granted to the City of Portland from the Oregon Department of Transportation (ODOT) and recorded as instrument number 2002-128099 on July 19, 2002 (the “**ODOT Easement**”). PBOT conveyed all City interests in the ODOT Easement to Prosper by quitclaim deed recorded as instrument number 2002-128104. Prosper Portland is releasing all rights to the ODOT Easement back to ODOT, and Parks is in the process of permitting the upland area with ODOT for an annual land use permit.
- D. The floating portion of the Dock is located on and above submerged Department of State Lands (DSL) property. On September 8, 2004, Prosper Portland was granted a Public Facility License No. 31117-LI (the “**DSL License**”) from DSL for the construction, maintenance, repair, and/or replacement of the Dock, with an initial term of fifteen (15) years, and an extension term for an additional fifteen (15) years. The extension term was exercised in 2019, and the DSL License will expire on September 7, 2034. The DSL License is hereby incorporated in Exhibit B. The Dock, and DSL License are collectively referred to herein as the “**Dock Improvements**”.
- E. The primary function of the Dock Improvements is to provide recreational river access to the public, particularly for the use of small, non-motorized watercraft. The users of the Dock Improvements have included casual users as well as programmed use by non-profit rowing

clubs, universities and other groups that utilize the dock for launching crew shells, canoes, kayaks, and similar nonmotorized personal watercraft.

- F. Prosper Portland built the original Dock Improvements in 2004, consisting of a gangway, ramp, and floating lower freeboard area. In 2016, Prosper Portland replaced the gangway and ramp. In January 2021, Prosper Portland removed the lower freeboard portion of the Dock Improvements to address safety issues related to its structural integrity.
- G. Prosper Portland desires to convey, and Parks desires to receive, all of Prosper Portland's rights and interests to the Dock Improvements, subject to the terms of this IGA.

Now therefore, in consideration of the mutual promises, conditions and covenants contained herein, the Parties hereby incorporate the above Recitals and agree as follows:

AGREEMENT

- 1) CONVEYANCE OF PROPERTY.** Prosper Portland agrees to irrevocably convey, transfer and assign to Parks, and Parks agrees to acquire from Prosper Portland, upon the terms and conditions set forth in this IGA, the Dock Improvements.
- 2) EFFECTIVE DATE.** This IGA will be effective on the date of execution by all parties ("Effective Date") and will terminate upon the conveyance contemplated by this IGA, including the satisfaction or waiver in writing of all conditions precedent to transfer set forth in Sections 5 and 6 of this IGA and the approval from Portland City Council. Parks shall become responsible for the maintenance of the Dock upon transfer of the Maintenance Funds as defined below. The parties agree that they will use their best efforts to complete the conveyance contemplated by this IGA as soon as is reasonably practicable.
- 3) DOCUMENT REVIEW.** Prosper Portland has made available to Parks all documents and instruments reasonable requested by Parks relating to the Dock Improvements, to the extent such documents are in Prosper Portland's possession or control.
- 4) SITE REVIEW AND DUE DILIGENCE; AS IS.** Prior to the Effective Date, and to Parks satisfaction, Parks may engage consultants, engineers or any other person of Parks' choosing to conduct non-invasive site studies of the Dock Improvements as Parks seems necessary. All inspections conducted by Parks must be conducted in a reasonable manner in order not to physically damage the Dock Improvements in any material respect and minimize any material interference with public use and enjoyment of the Dock Improvements. Notwithstanding the foregoing, Parks accepts the Dock Improvements "AS IS, WITH ALL FAULTS" and without any representations or warranties by Prosper Portland, expressed or implied.
- 5) PROSPER PORTLAND'S CONTINGENCIES TO TRANSFER.** Prosper Portland's obligation to convey the Dock Improvements will be subject to Parks satisfaction in all material respects with all of Parks' covenants to be performed under this IGA.

- 6) **PARKS' CONTINGENCIES TO TRANSFER.** In addition to the other conditions set forth in this IGA, Parks' obligation to complete this transaction will be subject to each of the following conditions precedent:
- a) Prosper Portland's assignment of the DSL License to Parks.
 - b) Prosper Portland's execution of a Quit Claim Deed to transfer all rights under the ODOT Easement back to ODOT.
 - c) Prosper Portland's execution of other instruments necessary to convey all right, title, and interest in the Dock improvements to Parks.
 - d) Prosper Portland will provide Parks with all maintenance records of the Dock, in accordance with State public records retention laws and the retention schedules set for by the City.
 - e) Prosper Portland's transfer of restricted maintenance funds to Parks, in an amount of \$270,000 (the "**Maintenance Funds**") at the Effective Date, from the sources and with the restrictions detailed in Exhibit C of this IGA.
- 7) **IGA MANAGER AND NOTICES.** All notices or other communications required or permitted under this IGA must be in writing and delivered in a manner reasonably assured to provide actual notice to the other Party. Prosper Portland's project manager for this IGA is Ember Breckenridge. Parks project manager for this IGA is PP&R's Property and Business Development Manager. Notice will be provided as follows:

TO PROSPER PORTLAND:

Prosper Portland
Attn: Ember Breckenridge
220 NW Second Avenue, Suite 200
Portland, OR 97209
breckenridgee@prosperportland.us

TO PARKS:

Portland Parks & Recreation
Attn: Property and Business
Development Manager
1120 SW 5th Avenue, Suite 858
Portland, OR 97204
parksproperty@portlandoregon.gov

If either IGA Manager or their designee is not performing or is not able to continue performing the responsibilities designated in this Agreement, then the respective Party will designate a replacement IGA Manager or a designee.

- 8) **DOCK MAINTENANCE AND REPAIR.** The conveyance of the Dock improvements to Parks is not contingent upon Prosper Portland performing any actions related to the repair or replacement of any portion of the Dock improvements. Parks acknowledges that it will receive \$270,000 in Maintenance Funds from Prosper Portland at closing, and Parks agrees that it will be solely responsible for any and all maintenance, repair or replacement made to the Dock improvements after closing and accepts the Dock "AS-IS" as provided in Section 4 of this IGA. Parks further agrees that the Maintenance Funds will be used in accordance with the funding restrictions detailed in Exhibit C.
- 9) **DISPUTE RESOLUTION.** Dispute Resolution. If a dispute arises regarding the terms and conditions of this IGA, all parties agree to exercise good faith in expeditiously resolving said conflict in the following manner:
- i) All conflicts should first be discussed and resolved, if at all possible, at the staff level.
 - ii) In the conflict cannot be resolved at the staff level, then the conflict should be elevated to the Department Heads for each designated program manager.

- iii) Any conflicts not resolved by the Department Heads shall be elevated to the signatories of this Agreement.

- 10) APPROVALS.** Time is of the essence in this IGA. If any obligation under this IGA requires the approval or disapproval of the governing body for a party (City Council for Parks or Prosper Portland Board of Commissioners for Prosper Portland), the party under such obligation will submit the matter for consideration to their governing body at its earliest convenience.
- 11) NO THIRD-PARTY BENEFICIARY RIGHTS.** No person not a party to this IGA is an intended beneficiary of the IGA, and no person not a party to this IGA will have any right to enforce any term of this IGA.
- 12) COMPLIANCE WITH LAWS.** In connection with its activities under this Agreement, the parties shall comply with all applicable federal, state and local laws and regulations.
- 13) AMENDMENTS.** Except as otherwise provided for in this Agreement, Parks or Prosper Portland may amend this Agreement only in writing signed by the IGA signatories.
- 14) MERGER CLAUSE.** This Agreement contains the entire agreement between Parks and Prosper Portland. It supersedes all prior written or oral discussions or agreements concerning work to be performed by either Party.

SIGNATURES TO FOLLOW ON NEXT PAGE

IN WITNESS WHEREOF the Parties have duly executed this IGA as of the date written on Page 1.

Portland Bureau of Parks and Recreation

Prosper Portland

Adena Long, Director

Kimberly Branum, Executive Director

APPROVED AS TO FORM:

Portland City Attorney

Prosper Portland General Counsel

Exhibit A
"Holman Dock"

Red line indicates Holman Dock Boundaries

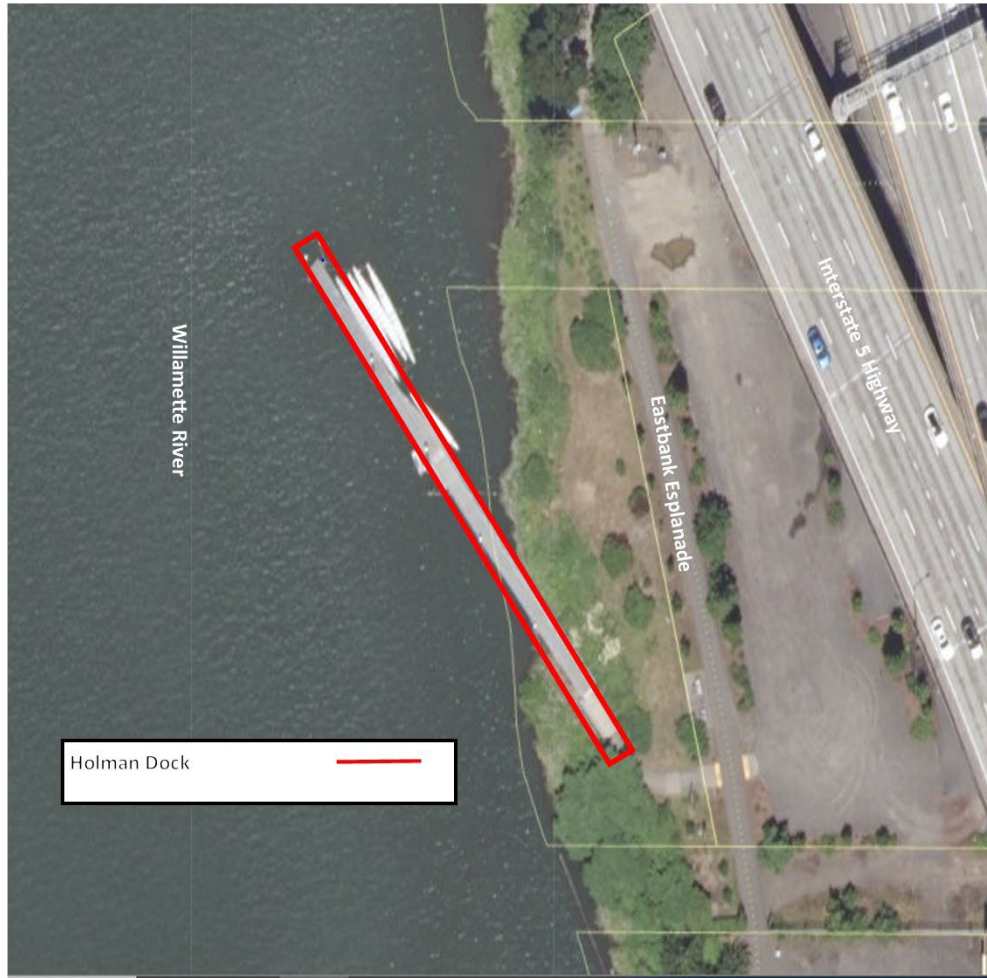


Exhibit B
Copy of DSL License #31117-LI

COPY

**STATE OF OREGON
DEPARTMENT OF STATE LANDS
PUBLIC FACILITY LICENSE
31117-LI**

The STATE OF OREGON, by and through its Department of State Lands (STATE), GRANTOR, does hereby grant to Portland Development Commission, LICENSEE, a License for the construction, maintenance, repair, and/or replacement of a public recreational facility for the specific purpose of public boat launch ramp with carry down launching dock for public use on the following described property, to wit:

All state-owned submerged lands in the Willamette River in Section 3, Township 1 South, Range 1 East, Willamette Meridian, Multnomah County, Oregon, more particularly described as follows:

Commencing at a point on the intersection of the Southwesterly line of Tax Lot 1600 (Multnomah County Assessor's Map Number 1S1E3DA) and the line of Ordinary High Water on the right bank of the Willamette river;

thence riverward along a line perpendicular to the thread of the stream to the line of Ordinary Low Water and the TRUE POINT OF BEGINNING;

thence continuing riverward along said perpendicular line a distance of 60 feet;

thence downstream a distance of 430 feet;

thence shoreward along a line perpendicular to the thread of the stream a distance of 240 feet to the line of Ordinary Low Water;

thence upstream along said line of Ordinary Low Water a distance of 380 feet, more or less, to the TRUE POINT OF BEGINNING, containing 1.31 acres, more or less, and as shown on the attached Exhibit "A".

1. LICENSE TERM AND RENEWAL

The LICENSEE, subject to compliance with the terms and provisions of this License, shall have and hold the Licensed Premises for the purposes stated above for fifteen (15) years from the execution date.

The LICENSEE Shall have an option to renew this License for an additional period of 15 years after the original and each renewal license term provided that Licensee has submitted a completed license renewal application form to State not

less than one hundred and eighty (180) days prior to the License Expiration Date. Upon receipt of such application, this License shall be renewed by State unless:

- a) State determines, in its sole discretion, that Licensee has not complied with the terms of this License, the applicable statutes and Oregon Administrative Rules; or
- b) Licensee is no longer the preference right holder as provided in ORS 274.040(1) and defined in OAR 141-082-0020(48); or
- c) State determines that the renewal of this License for all or any portion of the License area would be contrary to local, state, or federal law, or would be inconsistent with the policies set forth in OAR 141-082-0010.

2. CONSTRUCTION

Construction in navigable waters shall conform to standards and specifications set by U.S. Army Corps of Engineers or U.S. Coast Guard for the project. The bed and banks of the waterway shall be restored to a condition acceptable to the STATE as soon as construction or maintenance is completed. Any blasting construction shall be performed according to the laws of the state. Underwater blasting permits are required under ORS 509.140.

3. PREVENTION OF WASTE, DAMAGE AND INJURY

LICENSEE shall exercise reasonable diligence in its operation on and from said Licensed Premises; shall carry on all operations hereunder in a good and workmanlike manner having due regard for public safety and the prevention of waste and for the restoration and conservation of said Licensed Premises for future use, and shall take all reasonable steps to avoid damage to soil, timber, fish and fish habitat, wildlife and wildlife habitat and water quality of both ground water and surface water; shall make all reasonable efforts to minimize interference with existing navigational and recreational activities and scenic values; shall substantially restore the Licensed Premises to its original condition and shall do all things reasonably necessary to minimize erosion.

4. HAZARDOUS WASTE

LICENSEE shall refrain from storing on, or discharging from or onto, the Licensed Premises any hazardous wastes or toxic substances as defined in 42 USC§ 9601-9657, except as otherwise permitted by law.

5. COMPLIANCE WITH LAW

LICENSEE shall comply with all applicable federal, state, and local statutes, ordinances, rules and regulations in its use of the Licensed Premises. This License

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does not give LICENSEE permission to conduct any use on the Licensed Premises which is not in conformance with applicable land use requirements, and it is the LICENSEE's responsibility to determine and comply with those and all other requirements.

LICENSEE shall use the Licensed Premises only in a manner, or for such purposes, that assure fair and nondiscriminatory treatment of all persons without respect to race, creed, color, religion, handicap, disability, age, gender or national origin.

6. DELIVERY OF PREMISES

Delivery of the Licensed Premises will occur upon the date of execution of this License. STATE will not provide a survey or pay any costs of a survey to determine boundaries. It is the LICENSEE's responsibility to make an accurate determination of the boundaries. The legal description provided by STATE is drawn from an assessor's map and/or other data deemed to be reliable. If LICENSEE elects not to have a survey performed and a discrepancy or boundary overlap later becomes evident, STATE, at its discretion, may provide a corrected description of the Licensed Premises.

7. ALTERATIONS AND IMPROVEMENTS

LICENSEE shall obtain the written consent from the STATE prior to making any alterations or additions to the Licensed Premises or improvements upon the Licensed Premises. Any removal/fill activity in the waters of the state shall require a permit from the Director in accordance with ORS 196-800 et seq.

8. ACCESS TO PROPERTY AND RECORDS

The STATE shall have access to the Licensed Premises at all reasonable times for the purpose of ensuring compliance with the terms and conditions of this License. The STATE shall have the right to examine pertinent records of LICENSEE for the purpose of ensuring compliance with the License.

Public access to the navigable waters must be maintained.

9. REPAIRS AND MAINTENANCE

LICENSEE agrees to make all repairs to the Licensed Premises which are necessary for the purposes set forth in this License. LICENSEE further agrees to maintain the Licensed Premises in reasonable safe condition during the period of this License. If LICENSEE fails to make the repairs required under this provision or fails to maintain the Licensed Premises in reasonably safe condition, STATE may revoke this License, provided LICENSEE fails to make the necessary repairs

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or perform the required maintenance within a reasonable time not to exceed thirty (30) days after written notification by STATE.

10. ASSIGNMENT OR SUBLETTING

This License shall not be assigned, mortgaged or sublet.

11. DEFAULT, NOTICE AND CURE BY LICENSEE

A default by the LICENSEE shall occur if any of the following shall occur and if said default shall continue and not be remedied within sixty (60) days after the STATE shall have given notice specifying the breach:

a. LICENSEE charging the public for use of the Licensed Premises (a nominal charge for maintenance costs of the Licensed Premises may be allowed with written approval of the STATE).

b. Failure of LICENSEE to comply with any term or condition imposed by the STATE in the License.

c. Failure of LICENSEE to use the Licensed Premises for the purposes authorized under the terms of the License.

d. LICENSEE maintaining a nuisance on the Licensed Premises.

e. Failure by LICENSEE to remove any lien or encumbrances placed upon the Licensed Premises.

12. TERMINATION UPON LICENSEE'S DEFAULT

In the event of a default by LICENSEE, the License may be terminated at the option of STATE by thirty (30) days advance notice in writing to LICENSEE. In the event the License is terminated by either party, all remedies afforded under this License shall survive such termination. LICENSEE shall have sixty (60) days after date of termination to remove all fixtures and property from the Licensed Premises and to restore the Premises to its original (natural) condition. Failure to remove such items and restore the Premises within the sixty (60) day period will result in assignment of the file to the Department of Justice.

13. TERMINATION UPON MUTUAL CONSENT

This License may also be terminated by mutual written consent of LICENSEE and STATE.

14. INDEMNIFICATION

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LICENSEE shall perform the services under this License as an independent entity. LICENSEE and STATE each shall be responsible, to the extent required by the Oregon Tort Claims Act (ORS 30.260-30.300), only for the acts, omissions or negligence of its own officers, employees or agents.

15. RESERVATIONS

The interest of LICENSEE under this License shall at all times be subject to STATE's right to grant rights-of-way in and over said Licensed Premises or a portion of the Licensed Premises for other purposes, including but not limited to, railroads, telegraph and telephone lines, pipelines, irrigation or other water canals and ditches, and to STATE's right to lease all or part of the Licensed Premises for the exploration, discovery, development and production of oil, gas, or minerals of any nature whatsoever, provided the right-of-way or lease does not unreasonably interfere with the purpose of this License.

16. NON WAIVER

Waiver by either party of strict performance of any term of this License on any occasion shall not be construed as a waiver nor prejudice either party's right to require strict performance of the same provision in the future or any other provision.

17. PARTNERSHIP

STATE is not a partner nor a joint venturer with LICENSEE in connection with this License and shall have no obligation with respect to LICENSEE's debts or other liabilities.

18. MERGER

This License constitutes the entire agreement between the parties, and no oral statement, representation or agreement not herein expressed shall be binding upon any party.

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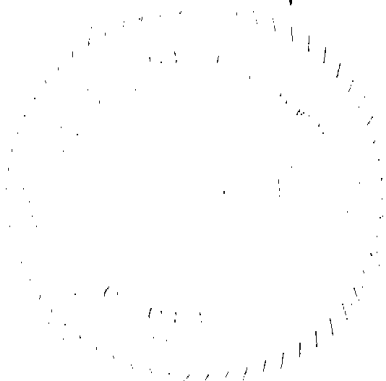
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19. MODIFICATION

This agreement may not be changed, altered or amended without mutual written consent of the parties.

This License is granted in order that LICENSEE can provide public recreational utilization of the Licensed Premises at no charge to the public, however, a nominal fee may be charged to cover maintenance costs of the Licensed Premises. If the facility is not used in compliance with this condition, the License will automatically terminate and the land shall revert to STATE.

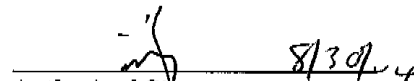
WITNESS the seal of the Department of State Lands affixed
this 8th day of September, 2004.



STATE OF OREGON, acting by and
through its Department of State Lands


Authorized Signature

Portland Development
Commission

 8/30/04
Authorized Signature
Executive Director
Title

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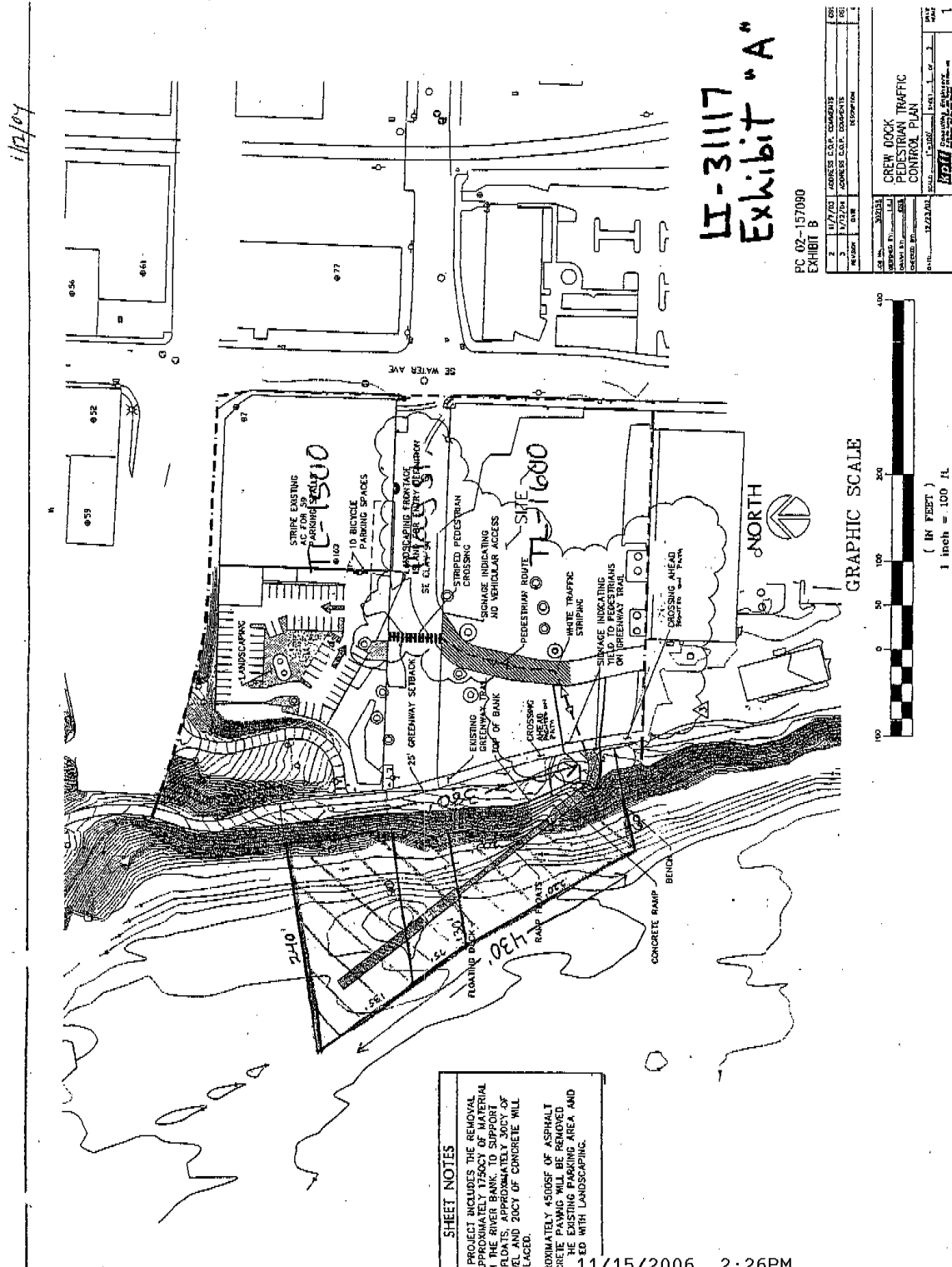


Exhibit C
Funding source and restrictions

Per ORS 457 – Urban Renewal, Prosper Portland funds transferred as Maintenance Funds shall only be expended on Tax Increment Financing eligible uses., for example, planning for improvements, design and engineering for improvements, and construction of improvements. Costs for operations, maintenance, and moving transit stock are not typically eligible for Tax Increment Financing.