

PROSPER PORTLAND

Portland, Oregon

RESOLUTION NO. 7282

AUTHORIZING AN AMENDMENT TO THE INTERGOVERNMENTAL AGREEMENT WITH THE BUREAU OF REVENUE AND FINANCIAL SERVICES, PROCUREMENT SERVICES IN AN AMOUNT NOT TO EXCEED \$799,100 FOR BUSINESS AND WORKFORCE EQUITY CONTRACT COMPLIANCE SERVICES

WHEREAS, the Prosper Portland Social Equity Policy and Administrative Procedures require that provisions be included in certain Prosper Portland contracts that promote contracting opportunities for certified disadvantaged, minority, woman-owned, and emerging small businesses (“Certified Firms”) as well as the hiring and training of a diverse construction workforce, including apprentices;

WHEREAS, the City of Portland (“City”) Bureau of Revenue and Financial Services, Procurement Services (“Bureau”), maintains the necessary staff, expertise, and information and technology systems and software to provide contract compliance services on behalf of the City and Prosper Portland;

WHEREAS, Prosper Portland and the Bureau have entered annually into an intergovernmental agreement (“IGA”) to provide business and workforce equity contract compliance services since fiscal year (“FY”) 2012-13; and

WHEREAS, Prosper Portland and the Bureau intend to amend the IGA to continue the provision of contract compliance services for FY 2018-19 and that cumulative expenditure exceeds the Prosper Portland Executive Director’s signature authority.

NOW, THEREFORE, BE IT RESOLVED, that the Prosper Portland Board of Commissioners authorizes the Executive Director to enter into an IGA amendment with the Bureau for FY 2018-19, substantially in the form attached hereto as Exhibit A;

BE IT FURTHER RESOLVED, that the Executive Director may approve changes to the IGA if such changes, in the opinion of the Executive Director in consultation with General Counsel, do not materially change Prosper Portland’s obligations or risks; and

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

CITY OF PORTLAND

**CITY INTERGOVERNMENTAL AGREEMENT NO. 30002880
PROSPER PORTLAND INTERGOVERNMENTAL AGREEMENT NO. 512011
AMENDMENT NO. SIX (6)**

**FOR SUPPORT OF EEO, BUSINESS AND WORKFORCE EQUITY PROGRAMS, AND PROJECT
APPRENTICESHIP AGREEMENT**

The Intergovernmental Agreement (this "IGA") was made and entered into on the 1st day of July 2012 between Prosper Portland and the City of Portland, Bureau of Revenue and Financial Services, Procurement Services (the "Bureau"). The Bureau and Prosper Portland may collectively be referred to herein as the "Parties" and individually as a "Party". Capitalized terms used in this Amendment have the same meanings ascribed to those terms in the IGA. This Amendment Number Six to the IGA (this "Amendment") modifies the IGA as follows:

- a. The IGA is hereby amended to extend the Contract term for one (1) additional year, from July 1, 2018 to June 30, 2019.
- b. This Amendment increases the maximum compensation of the IGA by \$116,700 for a new not-to-exceed amount of \$799,100.
- c. The following changes to the IGA are hereby made: The original IGA and Amendments One (1) through Five (5) are replaced with the following:

RECITALS

- A. The City of Portland (the "City") currently has certain Programs (as hereinafter defined) concerning purchasing and construction activities.
- B. The Bureau administers the Programs on behalf of the City.
- C. Prosper Portland acts as its own Local Contract Review Board, and has promulgated its own contracting and purchasing rules, including its own requirements for participation in some of the Programs and its own standards for Business and Workforce Equity to include Certified Firm (as defined below) contractors in projects.
- D. Prosper Portland engages in some direct contracting. However, the bulk of the construction generated by Prosper Portland activity is contracted by persons or entities that borrow money from, acquire property from, or receive financial benefit from other programs administered by Prosper Portland. Prosper Portland has adopted a contracting policy that requires such persons or entities to participate in its construction contracting programs, which are substantially similar to the City's Programs.
- E. By utilizing some Programs and City employees with experience regarding the Programs, Prosper Portland will save money and avoid unnecessary duplication and effort. Therefore, Prosper Portland and the Bureau have agreed to work together.

NOW THEREFORE, in consideration of the mutual covenants and undertakings contained in this IGA, including the foregoing recitals, the Parties hereby agree as follows:

AGREEMENT

1) DEFINED TERMS

Words that are capitalized, and which are not the first word of a sentence, are defined terms. A defined term has the meaning given it when it is first defined in this IGA. References to Prosper Portland's potential contractors include contracting with the persons or entities with which Prosper Portland does business (each, a "Contractor").

2) PROGRAM DESCRIPTIONS

- A) The City shall implement the following programs on behalf of Prosper Portland:
- i) The City's Equal Employment Opportunity certification program (the "EEO Program") requires a vendor to obtain an EEO certification before the City can acquire more than \$2500 in goods and services from it during a fiscal year. The City will provide EEO certification services to Prosper Portland.
 - ii) The Prosper Portland Business Equity Program requires contractors on specified projects to make contracting opportunities available to Disadvantaged Business Enterprises ("DBE"), Minority Business Enterprises ("MBEs"), Women-Owned Business Enterprises ("WBEs") and Emerging Small Businesses ("ESBs") (collectively, "Certified Firms") when subcontracting portions of Prosper Portland-funded projects. The Prosper Portland Workforce Equity Program requires contractors working on certain construction projects to make efforts to hire and train a diverse workforce including apprentices. This includes the City's Workforce Training and Hiring Program (the "WTHP"). The City will provide Certified Firm utilization and workforce tracking as set forth in the Prosper Portland Business and Workforce Equity Policy and Procedures. The City will provide access to Monthly Certified Firm Utilization and Workforce reports via its Contract Compliance Reporting System (CCRS) and LCP Tracker.
 - iii) The Project Apprenticeship Agreement refers to the agreement between Prosper Portland, Oregon Health and Science University, River Campus Investors and North Macadam Investors to implement strategies to diversify the workforce on the North/South Waterfront Central District Project. The City will provide Project Apprenticeship Agreement tracking specific to the North/South Waterfront Central District.
 - iv) The City will provide access to reports and data necessary to compile the Prosper Portland Annual Diversity in Contracting and Workforce Training Report for 2018/2019 via the CCRS and LCP Tracker.
 - v) This IGA covers all projects issued by Prosper Portland in 2018/2019. Support cost of any significant projects that are identified after the IGA has been executed and not included in the above cost structure shall be negotiated by the City and Prosper Portland. All additions to the IGA shall be memorialized through an addendum signed by both parties.

3) SERVICES TO BE PROVIDED BY THE BUREAU

- A) The Programs require considerable staff time, expertise and information technology systems to successfully implement. The City has the necessary staff, expertise and information technology systems in-place to administer the Programs on Prosper Portland's behalf. The Parties agree to enter into this IGA whereby each Party will undertake certain actions as described herein to ensure the successful implementation of the Programs. By contracting with the City to provide these services it is believed considerable cost savings will be achieved by avoiding the duplication of efforts that would otherwise be required.
- B) Upon request, Procurement Services will provide training to Prosper Portland Project Managers and other appropriate staff on an annual basis. The training will include, but is not

limited to: Overview of Program Requirements and revisions, clarification of process and appropriate documents Prosper Portland staff will forward to Procurement Services, and methods of compliance.

4) FUNDING

- A) Administration of the Programs on behalf of Prosper Portland will require the involvement of a portion of each of the following positions: Program Manager/Supervisor, Contract Compliance Specialist and Procurement Assistant.
- B) As compensation for the City's services set forth in Section III herein, Prosper Portland shall pay the City one payment of \$116,700 within 30 calendar days of receiving the City's request for payment. Payment will be based on receipt of services as outlined in the Agreement. If projects are added or additional services are required, this amount may be amended through an addendum to this IGA with agreement by both Parties.

5) EEO PROGRAM RESPONSIBILITIES

- A) The City shall:
 - i) Confirm EEO certification of potential vendors and prime contractors for Prosper Portland-owned and Prosper Portland-financed projects and services with EEO Program requirements.
- B) Prosper Portland shall:
 - i) Include in its reference material and in its written contract documents, including but not limited to, Invitations to Bid ("ITBs") and Requests for Proposals ("RFPs"), the requirement that its vendors and contractors, must be EEO certified.

6) BUSINESS EQUITY PROGRAM

- A) The City shall:
 - i) Provide compliance activities to implement the Business Equity Program, at a level sufficient to satisfy program requirements. These activities include, but are not limited to, attendance at Prosper Portland pre-proposal, pre-bid, and preconstruction meetings to discuss the Business Equity Program requirements, monthly data collection and compliance reviews, , site visits, and timely notification to Prosper Portland staff of compliance issues and monthly compliance reviews and data collection for all Prosper Portland projects.
 - ii) Monitor Prosper Portland owned construction projects greater than \$200,000; Prosper Portland sponsored projects receiving more than \$300,000 of Prosper Portland resources to finance a project with hard construction costs greater than \$300,000; 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; or intergovernmental agreement with hard construction costs greater than \$200,000 and more than \$100,000 in Prosper Portland resources for compliance with Prosper Portland's established goals as set forth in the Prosper Portland Business Equity Policy and Procedures.
 - iii) Provide assistance to Prosper Portland employees, Contractors and vendors by telephone who desire information about the Prosper Portland Business Equity Program.
 - iv) Collect Certified Firm utilization data on Prosper Portland -owned and Prosper Portland -sponsored projects from July 1, 2018 through June 30, 2019.
 - v) Collect and confirm monthly payments to Certified subcontractors via the CCRS.
 - vi) Provide access to project-specific Certified Firm utilization and payment reports via the CCRS.

- B) Prosper Portland shall:
- i) Require compliance with the Business Equity Program, as provided in Prosper Portland's policies by including the requirements in contract specifications, RFPs, loan documents, development agreements and similar documents. This paragraph (i) does not limit Prosper Portland's right to modify or supplement the Business Equity Program from time to time in its sole discretion.
 - ii) Cooperate with the City to implement the Business Equity Program, including for Prosper Portland projects by requiring its project managers and purchasing staff to coordinate their efforts with the City and to review Prosper Portland solicitation documents and contract documents for inclusion of Program requirements and to forward appropriate documents to the City, and to take enforcement action against Contractors, as needed.
 - iii) Require Contractors to submit a Utilization Plan to the City, via the CCRS, which lists all subcontractors working on the project, their corresponding type of work, their subcontract amount and certification type, if applicable.
 - iv) Give written approval of all subcontractor additions, after submittal of the Utilization Plan and shall provide a copy to the City, for its records.
 - v) Require Contractors to submit and confirm subcontractor payments to the City via the CCRS, on a monthly basis.

7) WORKFORCE EQUITY PROGRAM

- A) The City shall:
- i) Provide outreach and compliance activities to implement the Workforce Equity Program, including the Workforce Training and Hiring Program, at a level sufficient to satisfy program requirements. These activities include, but are not limited to, attendance at Prosper Portland pre-proposal, pre-bid, and preconstruction meetings to discuss the Workforce Equity Program requirements, monthly data collection and compliance reviews, site visits, and timely notification to Prosper Portland staff of compliance issues and monthly compliance reviews and data collection for all Prosper Portland projects.
 - ii) Provide access to project-specific reports via LCP Tracker, which provide workforce hours, apprentice utilization and achievement towards diversity goals for all subcontractors with subcontracts of \$100,000 or more, for Prosper Portland projects.
 - iii) Monitor Prosper Portland owned prime construction contracts or intergovernmental agreements whereas the prime contract is greater than \$200,000 and the sub-contract is greater than \$100,000; Prosper Portland projects that involve the 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; Prosper Portland sponsored projects receiving \$300,000 or more of Prosper Portland resources to finance the project with a hard construction cost greater than \$1,000,000 applicable to the prime contract and any sub-contract greater than \$100,000 for compliance with Prosper Portland's established goals as set forth in the Prosper Portland Workforce Equity Policy and Procedures.
 - iv) Provide assistance to Prosper Portland employees, Contractors and vendors by telephone who desire information about the Prosper Portland Workforce Equity Programs.
- B) Prosper Portland shall:
- i) Require compliance with the Workforce Equity Program, including the Workforce Training and Hiring Program, as provided in Prosper Portland's policies by including the requirements in contract specifications, RFPs, loan documents, development agreements and similar

- documents. This paragraph (i) does not limit Prosper Portland's right to modify or supplement the Workforce Equity Program from time to time in its sole discretion.
- ii) Cooperate with the City to implement the Workforce Equity Program, including the Workforce Training and Hiring Program, for Prosper Portland projects by requiring its project managers and purchasing staff to coordinate their efforts with the City and to review Prosper Portland solicitation documents and contract documents for inclusion of Program requirements and to forward appropriate documents to the City, and to take enforcement action against Contractors, as needed.
 - iii) Within 10 days of City's recommended course of action on issues pertaining to warnings, assessment of damages, exemption requests and applicability of program requirements, Prosper Portland will provide written notification to the City of their decision and is responsible for conveying any decisions to the Owner/Contractor. Damages collected will be handled by Prosper Portland or distributed according to the Workforce Training and Hiring Program Administrative Rules.

8) PROJECT APPRENTICESHIP AGREEMENT

- A) The City shall:
 - i) Provide workforce tracking and reporting activities to implement the Project Apprenticeship Agreement on both Prosper Portland funded, City-funded, and privately funded construction projects subject to the Project Apprenticeship Agreement. Such activities include, but are not limited to:
 - (a) Verify the training agent status of contractors with the Bureau of Labor and Industry.
 - (b) Collect payroll reporting from contractors via LCP Tracker.
 - (c) Verify State of Oregon apprentice registration status of contractor reported apprentices.
 - (d) Provide access to project-specific reports via LCP Tracker to Prosper Portland.
 - (e) Inform Prosper Portland of any discrepancies between contractors reported information and the City's verification of the accuracy of the reported information.
 - (f) Attend monthly South Waterfront Oversight Committee meeting.
- B) Prosper Portland shall:
 - i) Work with the Development Agreement Parties to ensure compliance with Project Apprenticeship Agreement.
 - ii) Notify the City of projects in the North/South Waterfront Central District Project Area subject to the Project Apprenticeship Agreement, before the project begins.
 - iii) Notify the City of the Prosper Portland staff person responsible for working with Contractors to develop the following documents:
 - (a) Comprehensive Plan outlining good faith efforts the Contractor will make to achieve minority and women workforce goals.
 - (b) Description of efforts the Contractor intends to make to ensure diversity goals are met.
 - (c) Description of any assistance the Contractor believes will be necessary from Prosper Portland to meet the minority and women workforce goals; and
 - iv) Provide copies of all commitments from the individual trade apprenticeship programs outlined in the North/South Waterfront Diversity and Strategy Agreement.

9) PROFESSIONAL SERVICES CONTRACTS

- A) The City shall:
 - i) Collect and confirm monthly payments to Certified subcontractors via the CCRS.
 - ii) Provide access to project-specific Certified Firm utilization and payment reports via the CCRS.
- B) Prosper Portland shall:
 - i) Require Contractors to submit a Utilization Plan to the City, via the CCRS, which lists all subcontractors working on the project, their corresponding type of work, their subcontract amount and certification type, if applicable.
 - ii) Require Contractors to submit and confirm subcontractor payments to the City via the CCRS, on a monthly basis.

10) DURATION AND TERMINATION

This IGA shall be effective from the Effective Date to June 30, 2019 (the "Expiration Date"). The Expiration Date may be extended by amending this IGA by mutual agreement of the Parties. Either party may terminate this IGA upon giving thirty (30) days written notice. In the event of termination the City shall be entitled to payment for work performed prior to the notice of termination.

11) COMPLIANCE WITH LAWS

In connection with its activities under this IGA, the Parties shall comply with all applicable federal, state and local laws and regulations including the appropriations and budget limitation laws of each Party.

12) MISCELLANEOUS PROVISIONS

The City or Prosper Portland may amend this IGA only in writing and by mutual consent. This IGA supersedes all prior written or oral discussions or agreements concerning services to be performed by either Party.

CITY OF PORTLAND

Approved as to Form

Lester Spitler, Chief Procurement Officer Date

City Attorney Date

PROSPER PORTLAND

Kimberly Branam, Executive Director Date
Date

Prosper Portland Legal Counsel