

**PROSPER PORTLAND**

Portland, Oregon

**RESOLUTION NO. 7478**

**AUTHORIZING A GRANT AGREEMENT WITH AM/DRI WILLAMETTE LLC TO FUND  
SOUTH WATERFRONT GREENWAY IMPROVEMENTS IN THE NORTH MACADAM TAX  
INCREMENT FINANCE DISTRICT**

**WHEREAS**, Prosper Portland is undertaking the North Macadam Urban Renewal Plan, adopted August 11, 1999, and subsequently amended, within the North Macadam Urban Renewal Area (“North Macadam TIF District”);

**WHEREAS**, AM/DRI Willamette LLC plans to construct the Alamo Manhattan Blocks, consisting of mixed-use housing, affordable and market rate housing, and commercial development, in the four blocks commonly known as Block 41 (Lot 1), Block 42 (Lot 2), Block 44 (Lot 4) and Block 45 (Lot 3) within the North Macadam TIF District;

**WHEREAS**, the Alamo Manhattan Blocks will be on an approximately 9.83-acre site, will have five buildings with approximately 1,200 residential units, including 119 affordable housing units, and 22,000 square feet of ground-floor commercial space, and may include a grocery store;

**WHEREAS**, the project will also include an extension of the surrounding street grid and the South Waterfront Willamette River Greenway (“Greenway”), featuring walking trails, a water feature, lush native landscaping, a plaza, and an overlook to the Willamette River, providing a public benefit for the neighborhood and city of Portland;

**WHEREAS**, the Greenway improvements is consistent with, and furthers significant goals and priorities identified in the North Macadam Urban Renewal Plan, by helping “utilize the aesthetic, commercial, and qualitative benefits of the relationship among the uplands, the greenway, the waterfront, and the Willamette River” and by creating public improvements such as “new sidewalks or other pedestrian improvements, including bikeways, pedestrianways, and trails.”

**WHEREAS**, the Greenway improvements included as part of the Alamo Manhattan Blocks are in furtherance of the South Waterfront Greenway Development Plan (“Greenway Plan”), adopted by Portland City Council on December 8, 2004, implemented under the lead of Portland Park and Recreation (“PP&R”), which embraces an enhanced approach to the greenway and encourages innovation, flexibility, public/private partnerships, and design excellence;

**WHEREAS**, PP&R completed the Greenway Plan after 18 months of engagement and input from City of Portland bureaus, Prosper Portland, adjacent property owners, stakeholders, and the general public;

**WHEREAS**, AM/DRI Willamette LLC has requested \$749,000 in financial support for the Alamo Manhattan Block's Greenway improvements, which exceed code requirements by, for example, including an interactive water feature and plaza enhancements;

**WHEREAS**, Prosper Portland desires to support PP&R, the South Waterfront community, and other stakeholders, by encouraging AM/DRI Willamette LLC to include these design elements that both exceed code requirements and complement other improvements supported through a PP&R system development charge credit award; and

**WHEREAS**, Prosper Portland is willing to provide the requested financial support for the Alamo Manhattan Block's Greenway improvements, on the terms set forth in the Grant Agreement attached as Exhibit A to this resolution.

**NOW, THEREFORE, BE IT RESOLVED**, that the Prosper Portland Board of Commissioners authorizes the Executive Director to enter into a Grant Agreement with AM/DRI Willamette LLC that is substantially consistent with the Grant Agreement attached to this resolution as Exhibit A, in order to support Greenway improvements in the North Macadam TIF District;

**BE IT FURTHER RESOLVED**, that the Executive Director may approve changes to and amendments of the Grant Agreement prior to and subsequent to execution, so long as such changes do not materially increase Prosper Portland's risks or obligations, as determined by the Executive Director in consultation with Prosper Portland's General Counsel; and

**BE IT FURTHER RESOLVED**, that with the affirmative vote of no less than four Commissioners for this resolution, this resolution shall become effective immediately upon its adoption, and otherwise it will take effect thirty days after adoption.

Adopted by the Prosper Portland Commission on

March 8, 2023



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Pam Feigenbutz, Recording Secretary

## GRANT AGREEMENT (Funding Construction of Greenway Improvements)

This **GRANT AGREEMENT** (this “**Agreement**”) is made this \_\_\_\_ day of \_\_\_\_\_, 2022 (the “**Effective Date**”) by and between **AM/DRI WILLAMETTE LLC**, a Delaware limited liability company (“**Developer**”), and the **CITY OF PORTLAND**, a municipal corporation of the State of Oregon, acting by and through **PROSPER PORTLAND**, its economic development and urban renewal agency (“**Prosper Portland**”). Prosper Portland and Developer are referred to herein as the “**Parties**.”

### RECITALS

- A. Developer, or its affiliates or successors, anticipates constructing a mixed-use private development comprised of residential and retail uses in the four blocks commonly known as Block 41 (Lot 1), Block 42 (Lot 2), Block 44 (Lot 4) and Block 45 (Lot 3) in the North Macadam Urban Renewal Area, generally bounded by S Bond, S Lowell, S Lane, and the Greenway Open Space Tracts (defined below) (the “**Private Development**”). The location of the Private Development is depicted on Exhibit A (Plat Map).
- B. The South Waterfront Greenway Development Plan (“**GDP**”), adopted on December 8, 2004, is implemented under the lead of Portland Parks and Recreation (“**PP&R**”). The GDP embraces an enhanced approach to the greenway, and encourages innovation, flexibility, public/private partnerships and design excellence.
- C. PP&R completed the GDP design elements after 18 months of engagement and input from City of Portland Bureaus, Prosper Portland, adjacent property owners, stakeholders, and the general public.
- D. Prosper Portland is partnering with PP&R, and South Waterfront community and stakeholders, to support design elements that exceed City of Portland zoning code requirements, such as the interactive water feature and the plaza enhancement, which complement other improvements supported through a PP&R System Development Charge credit award, subject to the terms of this Agreement with Developer.
- E. As a condition of obtaining a permit for the Private Development, City of Portland zoning code requires Developer to construct certain improvements to the Willamette River Greenway within Tracts A and B of the Alamo Manhattan Blocks in the City of Portland, County of Multnomah (the “**Greenway Open Space Tracts**”) as well on adjacent portions of Block 41 (Lot 1) and Block 44 (Lot 4) as described more particularly in Exhibit B (Description of Greenway Improvements) and depicted in Exhibit C (Depiction of Greenway Improvements) (the “**Greenway Improvements**”). Included in the Greenway Improvements are the Interactive Water Feature (A2) and Plaza Enhancements (A3) (the “**Project**”). The Project is depicted in more detail in Exhibit D (Depiction of

*Project*). Specifically **excluded** from the Project is the sculpture that is included in the center of the Interactive Water Feature (the “**Sculpture**”). The Sculpture will be funded exclusively by Developer. To the extent that any of the Exhibits to this Agreement or construction plans include the Sculpture, the Sculpture’s inclusion is intended to depict the entirety of the Greenway Improvements, and does not supersede the express exclusion of the Sculpture from the Project. Developer estimates that the Greenway Improvements will cost approximately \$10,134,372, approximately \$1,114,734.50 of which will be the Project cost. Developer has worked cooperatively with the PP&R to obtain its approval of its plans and specifications for the Greenway Improvements and Project, with such review and approval is in PP&R’s ordinary course of review of improvements within the Greenway.

- F. The Project is within the North Macadam Urban Renewal Area. The Project is consistent with, and furthers significant goals and priorities identified in, the North Macadam Urban Renewal Plan, as adopted by City Council Ordinance No. 173651 on August 11, 1999 (the “**Plan**”), as follows:
  - 1. As set forth in Section 400.A.1 of the Plan, the Project will help to “utilize the aesthetic, commercial, and qualitative benefits of the relationship among the uplands, the greenway, the waterfront, and the Willamette River”; and
  - 2. As set forth in Section 600.5 of the Plan, the Project will create authorized public improvements such as “new sidewalks or other pedestrian improvements, including bikeways pedestrianways, and trails” and other associated improvements.
- G. Developer has requested, and Prosper Portland has agreed, to provide grant funding for the Project.
- H. The funding provided by Prosper Portland for the Project pursuant to this Agreement is in an amount of up to SEVEN HUNDRED AND FORTY-NINE THOUSAND AND 00/100 DOLLARS (\$749,000.00) (the “**Grant**”).
- I. The Grant shall be used exclusively to reimburse Developer for costs and expenses Developer reasonably incurs for the construction of the Project in accordance with the Approved Plans and Specifications (as defined below) and which are identified on the Budget (as defined below) (the “**Permitted Use**”). The Grant is not to be used to pay any costs or expenses that are properly attributable to the Private Development or to any element of the Greenway Improvements other than the Project.
- J. This Agreement was authorized by the Prosper Portland Board of Commissioners pursuant to Resolution No. 7478, adopted March 8, 2023.



## AGREEMENT

NOW THEREFORE, in consideration of the undertakings and mutual covenants of the parties set forth in this Agreement, and for other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, Developer and Prosper Portland hereby incorporate the Recitals set forth above and agree as follows:

### 1. DEFINITIONS

**“Approved Plans and Specifications”** means the plans and specifications for the Project, submitted to and approved by PP&R and reviewed by Prosper Portland prior to the Effective Date, together with any change orders or construction change directives approved by PP&R subsequent to the Effective Date (provided that copies of such change orders or construction change directives shall be concurrently provided to Prosper Portland). Changes to the plans and specifications that are permitted by PP&R without obtaining its written approval will automatically be deemed part of the Approved Plans and Specifications. Developer will promptly notify Prosper Portland in writing of the occurrence of any such change.

**“Architect’s Agreement”** means that certain Agreement for Landscape Architectural Design Services between Developer and Linda Tycher & Associates, Inc. related to the Project, as the same may be modified, amended, or supplemented from time to time.

**“BOLI Determination”** is defined in Section 2.

**“Budget”** means the sources and uses of funds for the Project set forth on Exhibit E (*Sources and Uses for Greenway Improvements*).

**“Completion of the Project”** shall mean the Developer achieving substantial completion of the Project as determined by the approval and closure of all City of Portland permits for the Project, reasonably satisfactory evidence that the Project has been completed in accordance with the Approved Plans and Specifications, together with a certification from the architect to that effect, and unconditional lien waivers confirming payment of all contractors and subcontractors that provide in excess of \$5,000 in labor, materials, or both to the Project (provided that (a) if Developer is engaged in a bona fide dispute with a contractor or subcontractor, the recording of lien release bond in the statutorily required amount will be accepted in lieu of a lien waiver and proof of payment and (b) if Developer is unable to obtain one or more of the required lien waivers, Completion of the Project will be deemed to have occurred on the 76<sup>th</sup> day after all of the other requirements for Completion of the Project have occurred and either (i) no liens have been filed within such 76-day period or (ii) any liens that are filed within such 76-day period have been removed from title including, without limitation, by the recording of a bond in the statutorily required amount).

**“Construction Contract”** means that certain AIA Document A102 between Developer and Anderson Construction Company of Oregon, LLC for the Project, as the same may be modified, amended, or supplemented from time to time.

**“Construction Documents”** means, collectively, the Construction Contract and the Architect’s Agreement.

**“Disbursement Period”** shall mean the time beginning with the Effective Date until February 3, 2025, or until the Grant proceeds have been fully disbursed, whichever comes first. The outside disbursement date set forth in this definition may be extended by Force Majeure Events.

**“Event of Default”** is defined in Section 8.

**“Force Majeure Events”** means circumstances that (i) are beyond Developer’s reasonable control, (ii) would not have been reasonably anticipated by a prudent developer under the circumstances, (iii) cause a delay in spite of reasonable attempts to mitigate or offset such delays by Developer, to the extent possible, (iv) are promptly disclosed by Developer to Prosper Portland in writing when Developer becomes aware of the occurrence of the delay; and (v) consist of one or more of the following enumerated events: (a) acts of God; (b) flood, fire, earthquake or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (d) government order or law; (e) actions, embargoes or blockades in effect on or after the date of this Agreement; (f) national or regional emergency; (g) strikes, labor stoppages or slowdowns or other industrial disturbances; (h) epidemic, pandemic or similar influenza or bacterial infection ; (i) emergency state; (j) shortage of adequate medical supplies and equipment; (k) weather conditions that are abnormal for the period of time and could not have been reasonably anticipated, (l) shortages of labor, materials, or both, (m) shortage of power or transportation facilities, and (n) any other matter outside of the reasonable control of Developer. Upon the occurrence of a Force Majeure Event, obligations of Developer hereunder will be tolled, and will not begin again to run until such time as the Force Majeure Event is no longer in effect or otherwise impacting the Project; provided that any such delay or delays, individually or in the aggregate, will not extend the Disbursement Period for more than one (1) year from the outside disbursement date set forth therein.

**“Grant”** is defined in the Recitals.

**“Greenway Improvements”** is defined in the Recitals.

**“Greenway Open Space Tracts”** is defined in the Recitals.

**“Permitted Use”** is defined in the Recitals.

**“Plan”** is defined in the Recitals.

**“Policies”** is defined in Section 4.

**“PP&R”** is defined in the Recitals.

**“Prevailing Wage Laws”** is defined in Section 2.

**“Private Development”** is defined in the Recitals.

“**Project**” is defined in the Recitals.

“**Property**” means the real property on which the Project is to be constructed, which includes portions of Tract A, Tract B, Block 41 and Block 44.

“**Request for Grant Disbursement**” is defined in Section 3.

## 2. **GENERALLY**

2.1 Prosper Portland Grant. On the terms and conditions of this Agreement, Prosper Portland agrees to make the Grant to Developer.

2.2 Prevailing Wage Rate Laws BOLI Determination. Developer obtained the January 25, 2023 Oregon Bureau of Labor and Industries determination attached as Exhibit F (BOLI Determination) that analyzed the Grant, the Project and this Agreement, and concluded that the Prevailing Wage Rate obligations under ORS 279C.800 to ORS 279C.870 and OAR Chapter 839, Division 025 (collectively “**Prevailing Wage Rate Laws**”) do not apply to the Project (the “**BOLI Determination**”).

### 2.3 Other Financing.

(a) Developer hereby represents and warrants to Prosper Portland that: (i) the sources and uses of funds for the Project set forth within the Budget is accurate and complete in all respects, and (ii) in no circumstance will Developer use any “funds of a public agency” (as defined in ORS 279C.800 et seq.) for the Greenway Improvements or for the Private Improvements (regardless of whether such funds are from another public agency) other than the Grant. The parties acknowledge that the BOLI Determination concludes that the term “funds of a public agency” does not include building and development permit fees waived by a public agency, tax credits or tax abatements, or System Development Charge credits or interest deferral, pursuant to ORS 279C.810(1)(a)(B) and (C). If cost overruns for the Project arise, such cost overruns will be covered by Developer’s own funds or by other private financing obtained by Developer, without the use of additional funds of any public agency.

(b) Prosper Portland hereby represents and warrants to Developer that in no circumstance will Prosper Portland use any “funds of a public agency” (as defined in ORS 279C.800 et seq.) for the Greenway Improvements or for the Private Improvements (regardless of whether such funds are from another public agency) other than the Grant. The parties acknowledge that the BOLI Determination concludes that the term “funds of a public agency” does not include building and development permit fees waived by a public agency, tax credits or tax abatements, or System Development Charge credits or interest deferral, pursuant to ORS 279C.810(1)(a)(B) and (C).

2.4 Covenants of Developer. Developer covenants as follows, unless Prosper Portland has expressly waived compliance in writing:

(a) All funds disbursed hereunder shall be used by Developer for the Permitted Use and the purposes shown on the applicable Request for Grant Disbursement and as a line item of the

Budget, and for no other purpose. Developer shall not loan or otherwise make available all or any part of the Grant proceeds to any person or entity without the prior written consent of Prosper Portland except that Developer may collaterally assign its rights to the Grant to any lender that provides financing for construction of the Private Development and Prosper Portland agrees to execute any document or agreement reasonably required by any such lender to implement or perfect any such collateral assignment.

(b) Prosper Portland and its agents and representatives shall have the right at any reasonable time and upon not less than two (2) business days' prior written notice to Developer to inspect the Project and any work or materials associated with the Permitted Use; provided, however, such inspection by Prosper Portland is solely for the purpose of protecting Prosper Portland's rights and interests, and no such inspection will result in a waiver of any default of Developer or be a representation that Developer is or will be in compliance with the applicable laws. Developer will reasonably cooperate in providing access to Prosper Portland and its agents and representatives to the Project and to information and documentation pertaining to the Project.

(c) Developer covenants that all necessary permits, operating licenses and business licenses required by the City of Portland, State of Oregon, and all governmental agencies have been issued, or will be issued prior to commencement of construction of the Project (with the exception of trade permits ordinarily obtained during the course of construction), and copies will be provided to Prosper Portland as requested.

(d) Developer expects that construction of the Project will commence no later than August 1, 2024 (subject to Force Majeure Events).

2.5 No Obligation to Develop Private Improvements. This Agreement does not obligate Developer to develop or construct the Private Improvements, nor does it apply to the Private Improvements except to the extent expressly stated to the contrary herein.

2.6 Approvals or Waivers by Prosper Portland. No approval, waiver, or action by Prosper Portland pursuant to this Agreement is binding upon the City of Portland's other agencies or bureaus, nor shall any approval, waiver, or action by Prosper Portland be construed to bind or limit the City of Portland in its regulatory capacity in any manner.

### 3. **DISBURSEMENT OF GRANT**

3.1 Generally. Prosper Portland agrees, on the terms and conditions of this Agreement and upon satisfaction of all conditions precedent, to disburse the Grant following the Completion of the Project in accordance with this Section within thirty (30) days of satisfaction of Sections 3.2 and 3.4.

3.2 Disbursements. The Grant shall be disbursed in one lump sum following Completion of the Project in accordance with the terms and conditions of this Agreement. Prior to disbursement, Developer will submit to Prosper Portland a grant disbursement authorization in the form attached hereto and fully incorporated by this reference as Exhibit G ("**Request for Grant Disbursement**"), together

with all supporting documentation required by Prosper Portland to confirm compliance with this Agreement or otherwise as required by this Agreement.

(a) Developer's submittal of a Request for Grant Disbursement to Prosper Portland shall constitute an affirmation that all of Developer's representations and warranties as set forth in this Agreement are true and correct as of the submittal date and that all conditions precedent to disbursement have been satisfied.

(b) The Request for Grant Disbursement shall include evidence of Completion of the Project.

(c) The Request for Grant Disbursement shall indicate the specific uses for the requested proceeds, described with reasonable particularity, for the costs or expenses for the Permitted Use, and must be submitted prior to the expiration of the Disbursement Period.

(d) Prosper Portland has no obligation to disburse Grant proceeds after expiration of the Disbursement Period.

3.3 Conditions Precedent to Commencement. Prior to commencing construction, Developer shall have satisfied the following conditions precedent:

(a) Each of Developer's representations and warranties contained in this Agreement shall be true and correct in all material respects as if made on and as of the date of such disbursement.

(b) No Event of Default (defined below) shall have occurred and be continuing under this Agreement, and no event shall have occurred that, with the giving of notice or passage of time or both, would constitute an Event of Default.

(c) There shall have been no condemnation or casualty that makes construction of the Project impossible.

(d) Developer shall have delivered to Prosper true and correct fully executed copies of the following agreements with the City:

(i) Greenway Trail Easement Granted to the City of Portland, Recorded as document number 2021-105925, Multnomah County Deed Records.

(ii) Declaration of Maintenance Agreement for Tract A, Greenway Open Space Tract, recorded as document number 2021-111050, Multnomah County Deed Records.

(iii) Declaration of Maintenance Agreement for Tract B, Greenway Open Space Tract, recorded as document number 2021-111051, Multnomah County Deed Records.

(iv) Development Agreement between City of Portland and Developer to develop Blocks 41, 42, 44, and 45 in South Portland and install South Portal Transportation Improvements, as approved by Ordinance 190433.

(v) Letter Agreement for Alamo Blocks Transportation SDC Payments – Block 41 and 42, dated June 9, 2021.

(vi) Inclusionary Housing Covenant Intended Transferring Building #1, recorded as document number 2021-170066, Multnomah County Deed Records (Block 42).

(vii) Inclusionary Housing Covenant Intended Transferring Building #2, recorded as document number 2021-170050, Multnomah County Deed Records (Block 41).

(e) Developer shall have provided to Prosper Portland satisfactory documentation confirming its ownership or leasehold interest in the Property.

(f) Developer shall have provided to Prosper Portland proof of any insurance required under this Agreement.

(g) Developer shall have provided to Prosper Portland true and complete copies of the Construction Documents, and other pertinent information to the construction and design of the Project as Prosper Portland may request.

(h) Developer shall have met with Prosper Portland's compliance personnel with respect to the Policies to confer regarding Policy compliance and discuss any pre-commencement steps the Developer must take to comply with the Policies.

3.4 Conditions Precedent to Disbursement. Prior to Prosper Portland's disbursement of any Grant funds pursuant to this Agreement, the following conditions precedent shall have been satisfied:

(a) Completion of the Project has occurred in accordance with the requirements of this Agreement.

(b) Developer has provided, with the Request for Grant Disbursement, the following, all of which must be satisfactory to Prosper Portland: (i) copies of applicable applications for payment and architect's certifications confirming Completion of the Project in accordance with the Approved Plans, Specifications, and Schedule; and (ii) such other backup or supporting documentation as reasonably requested by Prosper Portland, which may include, without limitation, copies of invoices from contractors, subcontractors, and suppliers.

(c) All conditions precedent to commencement of construction of the Project as set forth in the preceding Section 3.3 remain satisfied as of the date the Request for Grant Disbursement is submitted except that, in the event of any casualty after commencement of construction of the Project, this condition will be deemed satisfied if the applicable damage to the Project has been fully repaired.



(d) Prosper Portland has reasonably confirmed that the Project was completed substantially in accordance with the Approved Plans and Specifications.

(e) Prosper Portland has received any required final reporting pursuant to Section 4 and Developer has complied with the applicable requirements of the Policies.

(f) Prosper Portland has received such other information or documentation from Developer as Prosper Portland may reasonably request in order to confirm Developer's compliance with its obligations hereunder.

#### 4. **POLICIES.**

4.1 Policies Apply. Developer hereby acknowledges and agrees that the Project is and will be subject to Prosper Portland's Business Equity Policy and Workforce Equity Policy, together with any applicable specifications, copies of which are attached as Exhibit H and Exhibit I, respectively (collectively, the "**Policies**"). However, Prosper Portland acknowledges that the Project is just one component of a much larger project that includes the Private Development and the Greenway Improvements, which are not subject to the Policies. Accordingly, Developer will only be required to make good faith efforts to comply with the Policies and solely with respect to the Project and not with respect to the remainder of the Greenway Improvements or the Private Development.

4.2 Compliance With Policies. Prior to hiring a general contractor or commencing any bidding for construction of the Project, Developer shall consult with Prosper Portland's compliance personnel regarding the scope of its efforts to comply with the Policies.

4.3 Compliance Reporting. Developer shall provide Prosper Portland a report regarding its efforts to comply with the Policies within 90 days of completion of the Project, but not later than Developer's submittal of a Request for Grant Disbursement to Prosper Portland.

4.4 Failure to Comply; Liquidated Damages. Prosper Portland is a public entity that directs its resources, in part, to projects that will also advance important social benefits including equitable employment and the construction of buildings that are least impactful to the environment. If Prosper Portland believes that Developer has failed to comply with any or all of the Policies, Prosper Portland shall give written notice of such failure to Developer specifying with reasonable particularity the alleged failure to comply. Developer shall have a period of thirty (30) days after receipt of such notice to cure such alleged failure (whether or not such failure is susceptible to a cure), provided, however, if Developer has commenced but not completed such a cure and is working in good faith to diligently complete such cure then Developer shall have an additional sixty (60) days (for a total of up to ninety (90) days in aggregate) to complete such cure. The Parties agree that Prosper Portland would suffer actual damages if Developer fails to aid in the advancement of these social benefits by failing to comply with the Policies. The Parties agree that Developer's failure to comply with any one of the Policies after the expiration of the cure period shall give rise to liquidated damages in the amount of Seventy Five Thousand Dollars (\$75,000) for each Policy with which Developer fails to comply (or such greater amount as may be provided for by calculation of hours-worked damages in the Workforce Equity Policy). The Parties agree that this amount is, and it is hereby deemed, the best estimate of cost that Prosper Portland would



face to promote equitable employment and contracting on the Project. Upon receipt, Prosper Portland may apply such liquidated damages to other projects in order to achieve its social benefit goals and to compensate for the failure to achieve such goals on the Project. Prosper Portland may in the event of such default after the expiration of such cure period, in the alternative, bring an action to enjoin Developer to comply with the Policies or seek other remedies permitted by this Agreement.

## 5. **DEVELOPER’S REPRESENTATIONS AND WARRANTIES**

Developer represents and warrants to Prosper Portland as follows:

5.1 Status; Business. Developer is of the business entity type (limited liability company, corporation, non-profit corporation, limited partnership, etc.) so indicated in the first paragraph of this Agreement, duly incorporated and validly existing under the laws of the state so indicated in the first paragraph of this Agreement. If Developer does business under an assumed business name other than its legal name, Developer has registered such assumed business name. The person signing on Developer’s behalf on the signature page hereof has the power and authority to act on behalf of Developer and bind Developer to this Agreement in the capacity so indicated on the signature page.

5.2 No Violations or Default. Developer is not in default under or in violation of any indenture or agreement to which it is a party or by which it is bound, or any order, regulation, ruling, or requirement of a court or other public body or authority. No creditor has given Developer notice or threatened to give it any notice of default under any material agreement.

5.3 Litigation. No action, suit, investigation, or proceeding is pending against Developer or with respect to the Project before any court or administrative agency, (a) the outcome of which, by itself or taken together with other such litigation, might have a material adverse effect on Developer’s ability to pay for or complete the Project, or (b) which purports to affect the legality, enforceability, or validity of this Agreement or any document pertinent to the Project.

5.4 Tax Returns and Taxes. All federal, state, and other tax returns of Developer required by law to be filed have been filed. All other taxes applicable to Developer, including real property taxes (to the extent not abated in accordance with applicable law), are current.

5.5 Title to Property. Developer or its affiliate AM/DRI Block 41 Owner LLC owns fee title to the Property. Developer will provide a copy of a title policy demonstrating the same on or before the Effective Date.

5.6 Compliance With Laws. Developer is in material compliance with all federal, state and local laws, rules, regulations, ordinances and orders applicable to it, the Property, the Permitted Use, or its business, including, without limitation, all applicable health and safety, environmental, and zoning laws.

## 6. ADDITIONAL AFFIRMATIVE COVENANTS

At all times during the term of this Agreement through Completion of the Project, and until all obligations owing hereunder have been performed, Developer covenants and agrees as follows:

6.1 Licenses; Maintenance of Business. Developer will remain a business entity of the type (limited liability company, corporation, non-profit corporation, limited partnership, etc.) stated in the first paragraph of this Agreement, validly existing or authorized to conduct business under the laws of the State of Oregon, and will keep in force all licenses and permits necessary to the proper conduct of its ownership and operation of the Permitted Use, its business and the Property.

6.2 Performance of Obligations.

(a) Developer will pay when due any amounts payable by it under this Agreement.

(b) The construction of the Project will occur in a good and workmanlike, manner substantially in accordance with the Approved Plans and Specifications.

(c) All contractors and subcontractors on the Project shall be registered and bonded in accordance with ORS Chapter 701 and shall be licensed by the City of Portland for construction work, if required by applicable law.

6.3 Compliance with Laws and Use Restrictions. Developer will comply with all laws, ordinances, statutes, rules, regulations, orders, injunctions, or decrees of any government agency or instrumentality applicable to the Project, including (a) all applicable health and safety, environmental, and zoning laws; and (b) all restrictions on the use, occupancy or operation of the Property arising from the original source of the Grant proceeds or otherwise required by this Agreement, if any.

6.4 [Intentionally Deleted].

6.5 Indemnity. To the maximum extent permissible by law, Developer shall indemnify and hold Prosper Portland, its employees and agents harmless from and against any and all liabilities, claims, losses, damages, or expenses (including attorney fees and title costs and expenses) which any of them may suffer or incur in connection with (a) the inaccuracy of any of the representations and warranties made herein, (b) any transactions contemplated by this Agreement, and (c) any acts or omissions of Developer or its agents or employees in connection with the Project or this Agreement, except to the extent such liabilities, claims, losses, damages, or expenses arise from the negligence or willful misconduct of Prosper Portland or Prosper Portland's breach of its obligations under this Agreement.

6.6 Additional Acts. From time to time, Developer will execute and deliver all such instruments, provide such additional information, and perform all such other acts as Prosper Portland may reasonably request to carry out the transactions contemplated by this Agreement and Prosper Portland will execute and deliver all such instruments, provide such additional information, and perform all such other acts as Developer may reasonably request to carry out the transactions contemplated by this Agreement.

## 6.7 Books and Records; Audits.

(a) Developer shall keep proper books of account and records on all activities associated with the Grant, including but not limited to, books of account and records on the expenditure of all Grant proceeds. Developer will maintain these books of account and records in accordance with generally accepted accounting principles and shall retain the books of account and records until the later of three (3) years after the Completion of the Project or the date that all disputes, if any, arising under this Agreement have been resolved.

(b) Prosper Portland, either directly or through a designated representative, may conduct financial and performance audits at any time until Completion of the Project and during the three (3) year period thereafter. In the event of such audit, Developer agrees to provide the designated auditor with reasonable access to Developer's employees and make all such financial, performance and compliance records available to the auditor provided the auditor and Prosper Portland agree to keep all such information, data, and records confidential to the extent permitted under Oregon Public Records Law. This section shall survive any termination of this Agreement. Prosper Portland will bear the cost of any third-party auditor, except that Developer shall, upon Prosper Portland's written demand, reimburse Prosper Portland for its out-of-pocket costs of the audit in either of the following circumstances: (i) an Event of Default, or a circumstance that would, with the provision of notice, the passage of time, or otherwise, constitute an Event of Default, has occurred and is continuing, or (ii) the audit discloses fraud, material misrepresentation, or another material discrepancy on Developer's part.

## 6.8 Insurance.

(a) Required Insurance. Developer shall, at its own expense, during construction of the Project, carry, or cause to be carried, in full force and effect the following insurance coverages naming Prosper Portland and its commissioners, officers, agents and employees, as additional insureds on the policies listed in (ii), (iii), and (iv) below:

(i) Builder's risk insurance during construction of the Project in an amount of at least the contract price set forth in the Construction Contract (as may be modified from time to time). The insurance required by this paragraph shall provide coverage for direct physical loss or damage, and shall not exclude the risks of fire, explosion, theft, vandalism, malicious mischief, collapse, earthquake, flood, or windstorm. The insurance shall also provide coverage for ensuing loss or resulting damage from error, omission, or deficiency in construction methods, design, specifications, workmanship, or materials. The insurance required by this section shall provide coverage for loss or damage to falsework and other temporary structures, and to building systems from testing and startup. The insurance shall also cover debris removal, including demolition occasioned by enforcement of any applicable legal requirements, and reasonable compensation for architect and contractor services and expenses required as a result of such insured loss, including claim preparation expenses. Such coverage shall continue through the expiration of the period for correction of the work provided under the Construction Documents, if any.

(ii) A commercial general liability insurance policy with limits of not less than One Million Dollars (\$1,000,000) each occurrence, and not less than Two Million Dollars (\$2,000,000) in aggregate and shall include contractual indemnity coverage.

(iii) A business automobile liability insurance policy covering owned (if used for Developer's business), non-owned, and hired vehicles with a combined single limit bodily injury and property damage limit of not less than One Million Dollars (\$1,000,000).

(iv) Workers' compensation insurance for the statutory limits in compliance with applicable state and federal laws.

(v) If engaged in the sale or distribution of alcoholic beverages, Developer shall carry liquor liability insurance in a form and in such amounts satisfactory to Prosper Portland.

6.9 Generally. All insurance shall be primary and non-contributory. Insurance policies shall not be cancellable without at least 30 days' prior written notice to Prosper Portland (10 days in the event of cancellation due to non-payment of any premium), and Developer shall ensure that it obtains endorsements from the applicable insurers to this effect.

6.10 Insurers. Developer shall procure the required insurance from an insurance company eligible to do business in the State of Oregon having and maintaining a financial strength rating of "A-" or better and a financial size category of "VII" or better, as rated in the A.M. Best Key Rating Guide for Property and Casualty Insurance Companies, except that, Developer also may procure workers' compensation insurance from the state fund of the State of Oregon.

6.11 Evidence; Endorsements. Developer shall promptly furnish Prosper Portland with a certificate and applicable endorsements or other acceptable evidence that all required insurance is in effect as requested by Prosper Portland from time to time.

6.12 Disclaimer. Developer and Prosper Portland agree that: (a) failure of Prosper Portland to request such certificate of insurance or to identify any deficiency shall not be construed as a waiver of Developer's obligation to maintain insurance as required in this Agreement; (b) the required insurance does not mean that the coverage and limits will necessarily be adequate to protect Developer, nor shall it be deemed as a limitation on Developer's liability to Prosper Portland under this Agreement; and (c) Developer is responsible for any deductible or self-insured retention related to the insurance.

6.13 Waiver of Subrogation. Neither party shall be liable to the other for any loss or damage caused by fire or any of the risks enumerated in a standard multiperil insurance policy, including sprinkler leakage insurance if the Property has sprinklers, to the extent that insurance available to either party pays any such loss or damage. All claims or rights of recovery related to liability for any such loss or damage, however caused, are hereby waived. Without limiting the generality of the foregoing, said absence of liability shall exist whether or not such loss or damage is caused by the negligence of either party or by any of their respective agents, servants, or employees.

6.14 [Intentionally Deleted].

6.15 [Intentionally Deleted].

6.16 ORS 746.201 Statutory Notice.

### **WARNING**

**Unless you (Developer) provide us (Prosper Portland) with evidence of the insurance coverage as required by our contract or loan agreement, we may purchase insurance at your expense to protect our interest. This insurance may, but need not, also protect your interest. If the property becomes damaged, the coverage we purchase may not pay any claim you make or any claim made against you. You may later cancel this coverage by providing evidence that you have obtained property coverage elsewhere. You are responsible for the cost of any insurance purchased by us. The cost of this insurance may be added to your contract balance. If the cost is added to your contract balance, the interest rate set forth in this contract will apply to this added amount. The effective date of coverage may be the date your prior coverage lapsed or the date you failed to provide proof of coverage. The coverage we purchase may be considerably more expensive than insurance you can obtain on your own and may not satisfy any need for property damage coverage or any mandatory liability insurance requirements imposed by applicable law.**

7. [Intentionally Deleted]

### **8. EVENTS OF DEFAULT**

Except with respect to Developer's compliance with Section 4.4 above, any of the following shall constitute an event of default under this Agreement (each, an "**Event of Default**"):

8.1 Failure to Comply with Covenants. Any failure to perform or abide by any other covenant in this Agreement, and such failure is not curable or, if curable, if such failure is not cured within thirty (30) days after written notice from Prosper Portland specifying the default or, if such breach cannot with due diligence be cured within such period, if Developer shall fail within such thirty (30) day period to commence (or cause to commence) cure of the failure and thereafter diligently prosecute (or cause prosecution) to completion such cure.

8.3 Failure to Obtain Prosper Portland's Consent to Transaction. Developer uses Grant proceeds in a manner that is not expressly permitted under this Agreement and has not received Prosper Portland's express prior written consent for such unpermitted use.

8.4 Failure to Pay General Debts When Due.

(a) Developer (i) applies for or consents to the appointment of, or the taking of possession by, a receiver, custodian, trustee, or liquidator of itself or of all or a substantial part of Property, (ii) makes a general assignment for the benefit of creditors, (iii) commences a voluntary action under the United States Bankruptcy Code (as now or hereafter in effect), (iv) is adjudicated bankrupt or insolvent, (v) commences an action to take advantage of any other law relating to bankruptcy, insolvency,

reorganization, winding up, or composition or adjustment of debts, (vi) fails to controvert in a timely or appropriate manner, or acquiesces or consents in writing to, any petition filed against it, in an involuntary action under the United States Bankruptcy Code, or (vii) takes any action for the purpose of effecting any of the foregoing.

(b) (i) A proceeding or case is commenced against Developer, without its consent, in any court of competent jurisdiction, seeking the liquidation, reorganization, dissolution, windup, or composition or readjustment of the debts of Developer, (ii) a receiver, trustee, custodian, liquidator, or the like is appointed for Developer or for all or a substantial part of its assets, or (iii) relief is granted to Developer under any law relating to bankruptcy, insolvency, reorganization, winding up, or composition or adjustment of debts, and such proceeding or case continues undismissed, or (iv) an order, judgment, or decree approving or ordering any of the foregoing is entered and continues unstayed and in effect for any period of 60 days, or an order for relief against Developer is entered in an involuntary case under the United States Bankruptcy Code.

8.5 Failure to Disclose Material Facts. Developer fails to disclose any fact material to the making of the Grant and which would materially and adversely affect the feasibility or viability of the Project, or the basis for the making of the Grant by Prosper Portland; or upon discovery by Prosper Portland of any misrepresentation by, or behalf of, or for the benefit of Developer.

## 9. **RIGHTS AND REMEDIES ON DEFAULT**

Upon the occurrence of an Event of Default and at any time thereafter, Prosper Portland may, at its option, exercise the following rights and remedies:

9.1 Repayment of Grant. Prosper Portland may (i) if the applicable Event of Default occurs after funding of the Grant, demand repayment, in whole or in part, of the Grant, and Developer shall immediately repay the demanded amount or (ii) if the applicable Event of Default occurs before funding of the Grant, terminate this Agreement and its obligation to fund the Grant.

9.2 Exclusive Remedy. The remedies provided in Section 9.1 above shall be Prosper Portland's sole and exclusive remedies upon the occurrence of an Event of Default hereunder. However, the foregoing will not be deemed to limit any indemnity obligation of Developer hereunder or either Party's right to collect attorneys' fees pursuant to Section 9.4 below.

9.3 No Waiver. No failure or delay of Prosper Portland in exercising any right hereunder shall operate as a waiver of that right or any other right. No modification or waiver of any provision of this Agreement shall be effective unless in writing, and then only in specific instance and for the purpose given. No notice or demand on Developer shall entitle Developer to any other notice or demand in other similar circumstances.

9.4 Payment of Costs of Collection. In case of an Event of Default, or in case litigation is commenced to enforce or construe any term of this Agreement, the substantially non-prevailing party will pay to the substantially prevailing party such amounts as shall be sufficient to cover the cost and



expense of collection or enforcement, including, without limitation, reasonable attorney fees and costs prior to and at any arbitration proceeding or at trial, on appeal, or in any bankruptcy proceeding.

## 10. MISCELLANEOUS

10.1 Joint and Several. If multiple entities are defined as “Developer” in the first paragraph of this Agreement, then each and every obligation in this Agreement to which such entities are parties are joint and several, and all references to the term “Developer” shall be deemed joint and several references to each such entity, unless otherwise expressly stated.

10.2 Counterparts. This Agreement may be executed in any number of counterparts, and any single counterpart or set of counterparts signed, in either case, by all the parties hereto shall constitute a full and original instrument, but all of which shall together constitute one and the same instrument.

10.3 Survival. All agreements, representations, and warranties shall survive the execution and delivery of this Agreement, any investigation at any time made by Prosper Portland or on its behalf, and the making of the Grant.

10.4 Notice. Any notice required or permitted under this Agreement shall be in writing and shall be deemed effective (1) when actually delivered in person, (2) one business day after deposit with a commercial courier service for “next day” delivery, (3) two business days after having been deposited in the United States mail as first class mail, certified or registered mail, postage prepaid, (4) when transmitted by facsimile (answer back or receipt confirmed), or (5) when emailed (with proof of transmission) addressed to the parties as follows:

If to Developer: AM/DRI Willamette, LLC  
Attn: Matt Segrest  
3012 Fairmount Street, Suite 100  
Dallas, Texas 75201  
Email: [matt.segrest@alamomanhattan.com](mailto:matt.segrest@alamomanhattan.com)

If to Prosper Portland: Prosper Portland  
Attn: Wendy Wilcox  
220 NW 2nd Avenue, Suite 200  
Portland, OR 97209  
Email: [wilcoxw@prosperportland.us](mailto:wilcoxw@prosperportland.us)

10.5 Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the parties and their respective permitted successors and assigns.

10.6 Governing Law; Venue; Jury Trial Waiver. This Agreement shall be governed by and construed under Oregon law, without reference to conflicts of laws principles. The Parties agree that venue is proper, and any litigation shall take place, in Multnomah County, Oregon. The Parties hereby waive any right to trial by jury in connection with any claims in connection with this Agreement.



10.7 Assignment. Developer may not assign its rights or obligations under this Agreement without the prior written consent of Prosper Portland.

10.8 Modification; Prior Agreements; Headings. This Agreement may not be modified or amended except by an instrument in writing signed by Developer and Prosper Portland. This Agreement reflects and sets forth the entire agreement and understanding of the parties with respect to the subject matter hereof, and supersedes all prior agreements and understandings relating to such subject matter. The headings in this Agreement are for the purpose of reference only and shall not limit or otherwise affect any of the terms hereof.

10.9 Validity; Severability. If any provision of this Agreement is held to be invalid, such event shall not affect, in any respect whatsoever, the validity of the remainder of this Agreement, and the remainder shall be construed without the invalid provision so as to carry out the intent of the parties to the extent possible without the invalid provision.

10.10 Exhibits. Any exhibits attached to this Agreement and referred to herein are incorporated in this Agreement as if they were fully set forth in the text hereof. Exhibits include:

- (a) Exhibit A. Plat Map
- (b) Exhibit B. Description of Greenway Improvements
- (c) Exhibit C. Depiction of Greenway Improvements
- (d) Exhibit D. Depiction of Project
- (e) Exhibit E. Sources and Uses for Greenway Improvements
- (g) Exhibit F. BOLI Determination
- (g) Exhibit G. Request for Disbursement Form
- (h) Exhibit H. Prosper Portland's Business Equity Policy
- (i) Exhibit I. Prosper Portland's Workforce Equity Policy

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

10.12 Representation; Preparation; Independent Counsel.

THIS AGREEMENT AND ALL EXHIBITS, ATTACHMENTS AND AMENDMENTS WERE OR WILL BE PREPARED AT THE DIRECTION OF LENDER AND BORROWER, AND BOTH LENDER AND BORROWER HAVE BEEN ADVISED AND HAVE HAD (OR WILL HAVE, IN THE CASE OF AMENDMENTS) AN OPPORTUNITY TO SEEK INDEPENDENT COUNSEL TO

REVIEW SUCH DOCUMENTS. THE RULE OF CONSTRUCTION THAT A WRITTEN AGREEMENT IS CONSTRUED AGAINST THE PARTY PREPARING OR DRAFTING SUCH AGREEMENT SHALL SPECIFICALLY NOT BE APPLICABLE TO THE INTERPRETATION OR ENFORCEMENT OF THIS AGREEMENT AND ALL RELATED DOCUMENTS OR EXHIBITS, AMENDMENTS, OR MODIFICATIONS. NO REPRESENTATION OR RECOMMENDATION IS MADE BY PROSPER PORTLAND OR ANY OF ITS AGENTS INVOLVED IN THIS TRANSACTION CONCERNING THE LEGAL SUFFICIENCY OR TAX CONSEQUENCES ARISING FROM THIS AGREEMENT OR OTHER RELATED DOCUMENTS.

*[Signature Page Follows]*

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly-authorized representatives as of the Effective Date.

**GRANTOR:**

**DEVELOPER:**

**PROSPER PORTLAND**

**AM/DRI WILLAMETTE LLC**

By:

By:

\_\_\_\_\_  
Kimberly Branam, Executive Director

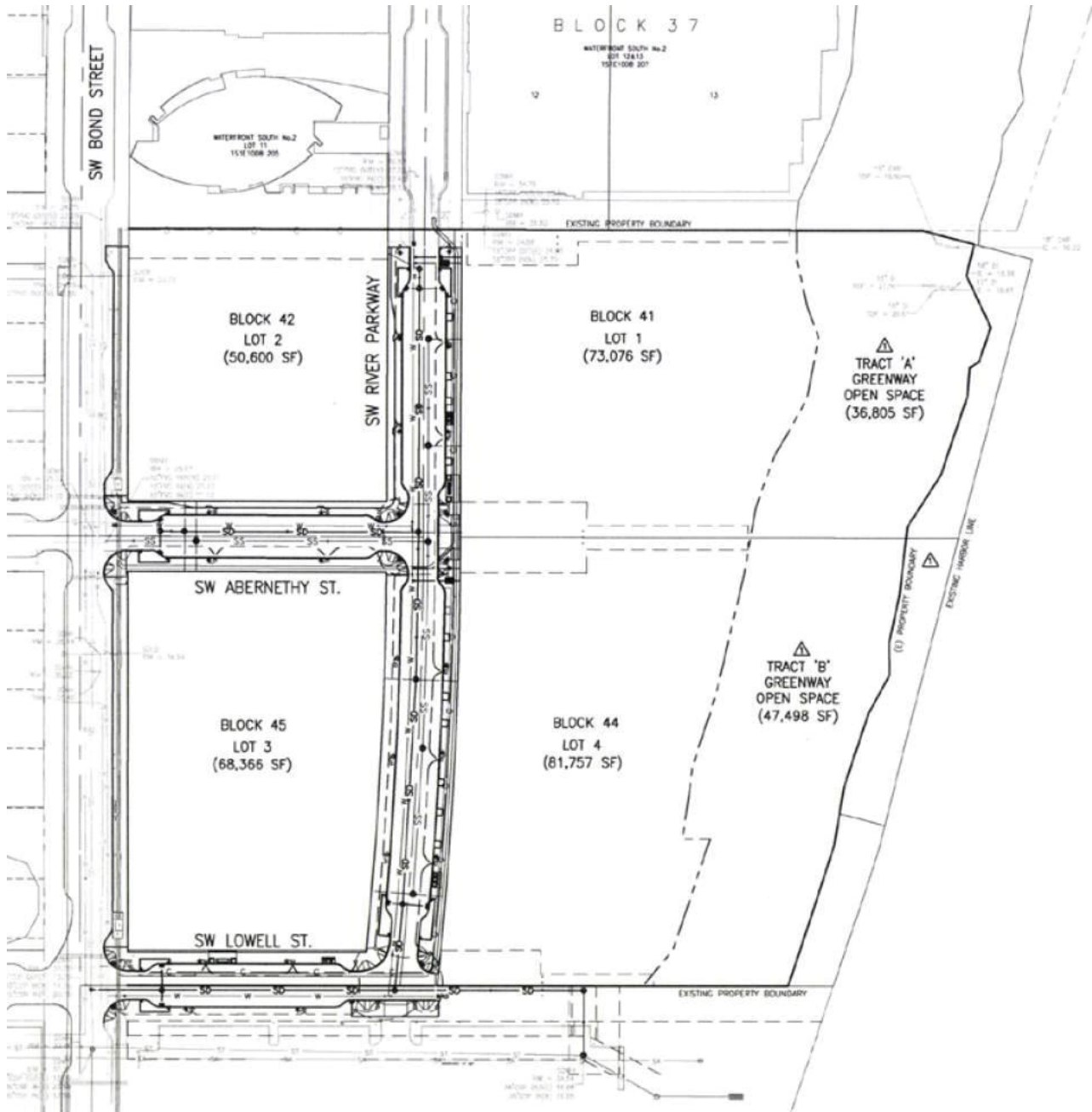
\_\_\_\_\_  
Matt Segrest, Manager

APPROVED AS TO FORM:

\_\_\_\_\_  
Prosper Portland Legal Counsel

## EXHIBIT A

### Plat Map



## EXHIBIT B

### Description of Greenway Improvements

A. Greenway Items		Areas Referenced on Ex. C to Agreement (Sheet L1.01)
A1	Pedestrian Overlook	A and F
A2	Interactive Water Feature	B and F
A3	Plaza Enhancements	C
A4	Maker’s Plaza	D
A5	Greenway Furnishings	E
A6	Additional Landscaping	F
A7	Retaining Wall	F
B. Bank Stabilization		
B1	Survey	
B2	Earthwork	
B3	Dewatering	
C. Miscellaneous Improvements		
C1	Riverbank Environmental Remediation	
C2	In-Water Pier and Piling Demolition and Removal	
C3	Greenway Environmental Remediation	
C4	Abernethy Accessway	
C5	Lane Accessway	
C6	Lowell Accessway	



**ALAMO MANHATTAN BLOCKS GREENWAY ENHANCEMENTS  
MARCH 5, 2021**

THE GREENWAY IN SOUTH WATERFRONT ALONG THE WILLAMETTE RIVER FOR THE ALAMO MANHATTAN BLOCKS PROJECT EXTENDS 650 L.F. FROM SW LANE STREET ON THE NORTH TO SW LOWELL STREET ON THE SOUTH. FOLLOWING IS A DESCRIPTION OF USER AMENITIES AND ENHANCED PLANTING THAT EXCEEDS MINIMUM ORDINANCE STANDARDS. \* LIST OF APPLICABLE PORTLAND ORDINANCES INDICATED AT THE END OF THIS REPORT. THE FOLLOWING FEATURES WILL ADD TO USERS EXPERIENCE OF THE GREENWAY AND ENHANCE THE WILDLIFE AND RESTORATION OF THE RIPARIAN ENVIRONMENT:

1. **PEDESTRIAN OVERLOOK** - LOCATED AT RIVERWARD END OF SW ABERNETHY & ADJACENT TO THE WILLAMETTE RIVER, THIS CURVED, IPE CLAD VIEWING OVERLOOK ALONG THE PEDESTRIAN TRAIL IS NOT REQUIRED BY ORDINANCE & ITS INCLUSION WAS APPROVED BY THE CITY COUNCIL, DESIGN REVIEW COMMISSION, BUREAU OF DEVELOPMENT SERVICES, BUREAU OF ENVIRONMENTAL SERVICES, & THE PARKS & RECREATION DEPARTMENT. THE CIVIL ENGINEER CONDUCTED A NO-RISE STUDY AND FINDINGS WERE PRESENTED TO BES WHICH CONCLUDED NO IMPACT TO THE RIVER. THIS 630 S.F. OVERLOOK IS FLANKED BY RAISED PLANTERS AND HAS A SOFTLY DOWNWARD ILLUMINATED CABLE RAILING ALLOWING MAXIMUM VISIBILITY AT THE RIVER'S EDGE. THE OVERLOOK IS SUPPORTED BY ENGINEERED CONCRETE RETAINING WALLS AND IS SEPARATED FROM ADJACENT PEDESTRIAN TRAIL BY CUSTOM - DESIGNED WOOD BOLLARDS CRAFTED FROM ON SITE REMAINS OF WOODEN PIERS. SEE LOCATION **A** ON THE ATTACHED LANDSCAPE MASTER PLAN AND DETAILED ENLARGEMENT ENCLOSED – **EXHIBIT A**.
2. **INTERACTIVE WATER FEATURE** - THIS 7' WIDE BY 19' LONG AT GRADE WATER FEATURE IS LOCATED AT THE LANDWARD TERMINUS OF SW ABERNETHY. TWELVE VARYING HEIGHT LOW SPRAY JETS RISE FROM THREE DARK GRAY BASALT SLABS. THE WATER FEATURE IS NOT REQUIRED BY ORDINANCE AND IS AXIALLY LOCATED & CENTERED ON THE GREENWAY OVERLOOK. THE WATER FEATURE AREA HAS MULTIPLE SEATING OPTIONS AND SERVES AS A GATEWAY INTO THE GREENWAY. . SEE LOCATION **B** ON THE ATTACHED LANDSCAPE MASTER PLAN AND DETAILED ENLARGEMENT ENCLOSED – **EXHIBIT B**.
3. **PLAZA ENHANCEMENT** – THE PLAZA AT THE TERMINATION OF SW ABERNETHY WAS CREATED TO ALLOW ADDITIONAL PLANTING AND HARDSCAPE ADJACENT TO THE GREENWAY AND THUS MEETS ORDINANCE IN TERMS OF REQUIRED PLANTING AND WALKABLE SURFACES THAT ENABLE ADDITIONAL BUILDING S.F. THERE ARE, HOWEVER, SEVERAL ENHANCEMENTS TO THE PLAZA THAT EXCEED ORDINANCE. THESE

ENHANCEMENTS WERE WELL-RECEIVED DURING THE DESIGN REVIEW PROCESS. LIGHT BLUE PAVER BANDS ARE PLACED IN THE PLAZA RUNNING PARALLEL TO THE WILLAMETTE RIVER REFERENCING THE RIVER. THE ENTIRE PLAZA IS COLORFUL CONCRETE PAVERS IN RUNNING BOND PATTERN TO RECEIVE LIGHTS AND EXPAND UPON THE E-W PEDESTRIAN MALL TERMINATING AT THE GREENWAY. CUSTOM WOOD CHAISE LOUNGES/RECLINERS LINE THE EDGE OF THE ENHANCED PLAZA FACING THE RIVER. THIS TYPE OF SEATING, SIMILAR TO THE HI LINE IN NYC, WAS SUGGESTED BY DRB & BDS AS A WAY TO PROVIDE A SPECIAL CONNECTION TO THE RIVER. A CURVILINEAR, FLOWING LAWN AREA ADJACENT TO THE PLAZA ALLOWS A SMOOTH FLOW OF USERS TO THE PLAZA & PROVIDES RECREATIONAL OPPORTUNITIES SUPPORTED BY THE PARKS & RECREATION DEPT. SEE LOCATION C ON THE ATTACHED LANDSCAPE MASTER PLAN AND DETAILED ENLARGEMENT ENCLOSED – **EXHIBIT C**.

4. **ENLARGED MAKER'S PLAZA** – THIS ELEVATED PLAZA AT THE SOUTH END OF THE GREENWAY EXCEEDS ORDINANCE REQUIREMENTS. WHILE THE ORDINANCE ENCOURAGES A LANDWARD PLAZA AT THE TERMINATION OF SW LOWELL PEDESTRIAN CORRIDOR, THE GEOMETRY OF THE TRAILS COMING TOGETHER IN THIS NARROW AREA OF THE GREENWAY PRESENTED A CHALLENGE. A PLAZA WAS PROVIDED ON THE EAST SIDE OF THE BUILDING AT LIVE-WORK/MAKER'S SPACE. CAREFUL STUDY BY BDS INDICATED THAT EXPANDING THE PLAZA TO BE A MUCH LARGER PLAZA AND OVERLOOK TO THE RIVER WAS ALLOWED IN TERMS OF GREENWAY ORDINANCE REQUIREMENTS IN THAT THIS PLAZA HARDSCAPE FOR PUBLIC USE PROVIDED A CONNECTION TO PUBLIC TRAILS, DID NOT ADVERSELY AFFECT PLANTING S.F. REQUIRED FOR GREENWAY, AND PROVIDED AN ADA COMPLIANT PATHWAY TO REACH THE MAKER'S PLAZA. THE SAME TYPE OF CUSTOM LOUNGE SEATING AS WAS PROVIDED IN PLAZA IS USED IN THIS EXPANDED MAKER'S PLAZA. SEE LOCATION D ON THE ATTACHED LANDSCAPE MASTER PLAN AND DETAILED ENLARGEMENT ENCLOSED – **EXHIBIT D**.
5. **UNIQUE CUSTOM FURNISHINGS IN THE GREENWAY** – IN TWO AREAS ALONG THE PEDESTRIAN TRAIL, MONOLITHIC BASALT NATIVE STONE BENCH AREAS ARE PROVIDED. THIS REFERENCE TO LOCAL MATERIALS ENHANCES THE GREENWAY AND THE 7' LONG BENCHES ARE PROVIDED ON NORTH & SOUTH SIDE OF GREENWAY. IN ADDITION, TWO "L" SHAPE BENCH GROUPINGS ARE PROVIDED ON THE RIVER SIDE OF THE PLAZA. THESE TWO GROUPINGS OF EXTRA WIDE TIMBERFORM COLOSSUS BENCHES ALLOWS USERS TO FACE THE WATER FEATURE OR TURN AROUND TO FACE THE RIVER. THEY ARE THE EQUIVALENT OF 8 STANDARD BENCHES AND REFLECT THE MARITIME HISTORY OF SOUTH WATERFRONT. AN ADDITIONAL 2 OF THESE COLOSSUS BENCHES FLANK THE WATER

FEATURE. IN ADDITION TO THE TWO STANDARD SAFETY DETAILS RECOMMENDED BY PARKS DEPT. ( AN INLAID PEDESTRIAN WALKER ON PEDESTRIAN TRAIL & BIKE SYMBOL ON BIKE TRAIL), THREE (3) RED BRASS STREET MARKERS ARE PROVIDED, ABOVE ORDINANCE REQUIREMENTS, WHERE THE BIKE TRAIL CROSSES SW LANE, SW ABERNETHY, AND SW LOWELL INDICATING A CITY OF PORTLAND SEAL & STREET NAME FOR ORIENTATION. SEE LOCATION E ON THE ATTACHED LANDSCAPE MASTER PLAN AND DETAILED ENLARGEMENT ENCLOSED – **EXHIBIT E**.

6. **LANDSCAPE DEVELOPMENT IN THE GREENWAY THAT EXCEEDS ORDINANCE REQUIREMENTS IS AS FOLLOWS:**



ALL PLANTING IS BASED ON THE REQUIREMENTS OF SECTION 33.510.253 E.5.F LANDSCAPING OF TITLE 33, PLANNING AND ZONING. THIS ORDINANCE STATES THE FOLLOWING PERTAINING TO THE GREENWAY:

“PLANTING IS NOT REQUIRED TO MEET THE SIZE AND SPACING REQUIREMENTS OF

33.248.030, PLANT MATERIALS,” HOWEVER, THE ORDINANCE STATES THAT THE PLANTING MUST MEET THE COVERAGE STANDARDS WITHIN 3 YEARS. AS NOTED BELOW IN EACH SUB-AREA, 1 GALLON GROUND COVER IS USED IN LIEU OF 4” POTS, 5 GALLON SHRUBS ARE USED IN LIEU OF 1 GALLON, AND TREES ARE SPECIFIED AS 3” CALIPER MINIMUM IN LIEU OF 1 1/2” CALIPER.

**SUB-AREA 1** REQUIRES A MINIMUM 80% PLANTING COVERAGE AND OF THAT REQUIRED COVERAGE, 80% MUST BE SHRUBS AND THE REMAINING AREA TO BE COVERED IN GROUND COVER. CURRENT PLANTING PLAN PROVIDES 86% PLANT COVERAGE WHICH RESULTS IN 760 SF OF PLANTING ABOVE REQUIRED. OF THE REQUIRED PLANTING AREA, 98% IS PLANTED IN SHRUBS EXCEEDING THE ORDINANCE. SHRUBS HAVE BEEN SPECIFIED AS 5 GALLON IN LIEU OF 1 GALLON, AND GROUND COVER HAS BEEN SPECIFIED AS 1 GALLON IN LIEU OF 4” POTS. THERE ARE NO TREES REQUIRED WITHIN SUB-AREA 1, BUT TREES ARE ALLOWED. CURRENT PLANS SHOW 10- 3” CALIPER TREES WITHIN THIS SUB-AREA EXCEEDING MINIMUM TREE SIZES SHOWN IN 33.248.030 WHICH ALLOWS FOR 1 1/2” CALIPER TREES.

**SUB-AREA 2** REQUIRES A MINIMUM 80% PLANTING COVERAGE AND OF THAT REQUIRED COVERAGE, 80% MUST BE SHRUBS AND THE REMAINING AREA TO BE COVERED IN GROUND COVER. CURRENT PLANTING PLAN PROVIDES 83% PLANT COVERAGE WHICH RESULTS IN 810 SF OF PLANTING ABOVE REQUIRED. OF THE REQUIRED PLANTING AREA, 90% IS PLANTED IN SHRUBS EXCEEDING ORDINANCE. SHRUBS HAVE BEEN SPECIFIED AS 5 GALLON IN LIEU OF 1 GALLON, AND GROUND COVER HAS BEEN SPECIFIED AS 1 GALLON IN LIEU OF 4” POTS. THERE ARE 63 TREES REQUIRED WITHIN SUB-AREA 2. CURRENT PLANS SHOW 67- 3” CALIPER MINIMUM, TREES WITHIN THIS SUB-AREA EXCEEDING MINIMUM TREE SIZES SHOWN IN 33.248.030 WHICH ALLOW FOR 1 1/2” CALIPER TREES.

**SUB-AREA 3** REQUIRES A MINIMUM 80% PLANTING COVERAGE AND OF THAT REQUIRED COVERAGE, 60% MUST BE SHRUBS AND THE REMAINING AREA TO BE COVERED IN GROUND COVER. CURRENT PLANTING PLAN PROVIDES 81% PLANT COVERAGE WHICH RESULTS IN 184 SF OF PLANTING ABOVE REQUIRED. OF THE REQUIRED PLANTING AREA, 63% IS PLANTED IN SHRUBS EXCEEDING THE ORDINANCE. SHRUBS HAVE BEEN SPECIFIED AS 5 GALLON IN LIEU OF 1 GALLON, AND GROUND COVER HAS BEEN SPECIFIED AS 1 GALLON IN LIEU OF 4” POTS. THERE ARE 19 TREES REQUIRED WITHIN SUB-AREA 3. CURRENT PLANS SHOW 27- 3” CALIPER MINIMUM, TREES WITHIN THIS SUB-AREA EXCEEDING MINIMUM TREE SIZES SHOWN IN 33.248.030 WHICH ALLOWS FOR 1 1/2” CALIPER TREES.

IN SUMMARY, THE SPECIFIED GREENWAY HAS PROVIDED AN ADDITIONAL 1,754 SF OF PLANTING AND 22 TREES ABOVE THE REQUIREMENTS OF SECTION 33.510.253 E.5.F LANDSCAPING OF TITLE 33, PLANNING AND ZONING. IN ADDITION, ALL PLANT MATERIAL HAS BEEN SPECIFIED LARGER THAN THE CITY OF PORTLAND STANDARDS LISTED IN 33.248.030, PLANT MATERIALS.

**7. MODULAR/SEGMENTED WALLS AT TOP OF BANK ALONG THE RIVER EXCEEDS ORDINANCE AS FOLLOWS:**

THESE RETAINING WALLS IN THREE (3) AREAS ALONG THE TOP OF BANK ALLOW FOR SLOPE IMPROVEMENTS AND BANK IMPROVEMENTS. LOCATION AND LENGTHS ARE 147 L.F. AT FAR SOUTH OF GREENWAY, 76’ L.F. SOUTH OF OVERLOOK, AND 146 L.F. NORTH OF OVERLOOK. MODULAR WALLS HAVE GUARDRAILS ON TOP – **EXHIBIT F.**

**THE FOLLOWING ORDINANCES ARE APPLICABLE TO THIS REPORT:**

CHAPTER 33.510 CENTRAL CITY PLAN DISTRICT OF TITLE 33  
PORTLAND CENTRAL CITY FUNDAMENTAL DESIGN GUIDELINES  
SOUTH WATERFRONT GREENWAY REVIEW 33-851  
SOUTH WATERFRONT GREENWAY DESIGN GUIDLINES ORDINANCE 183518  
WILLAMETTE GREENWAY PLAN

*\* exhibits referenced in this narrative are not attached to the Agreement, except for "Exhibit B and Exhibit C," which are attached to this Agreement as Exhibit D Project Depiction*

## EXHIBIT C

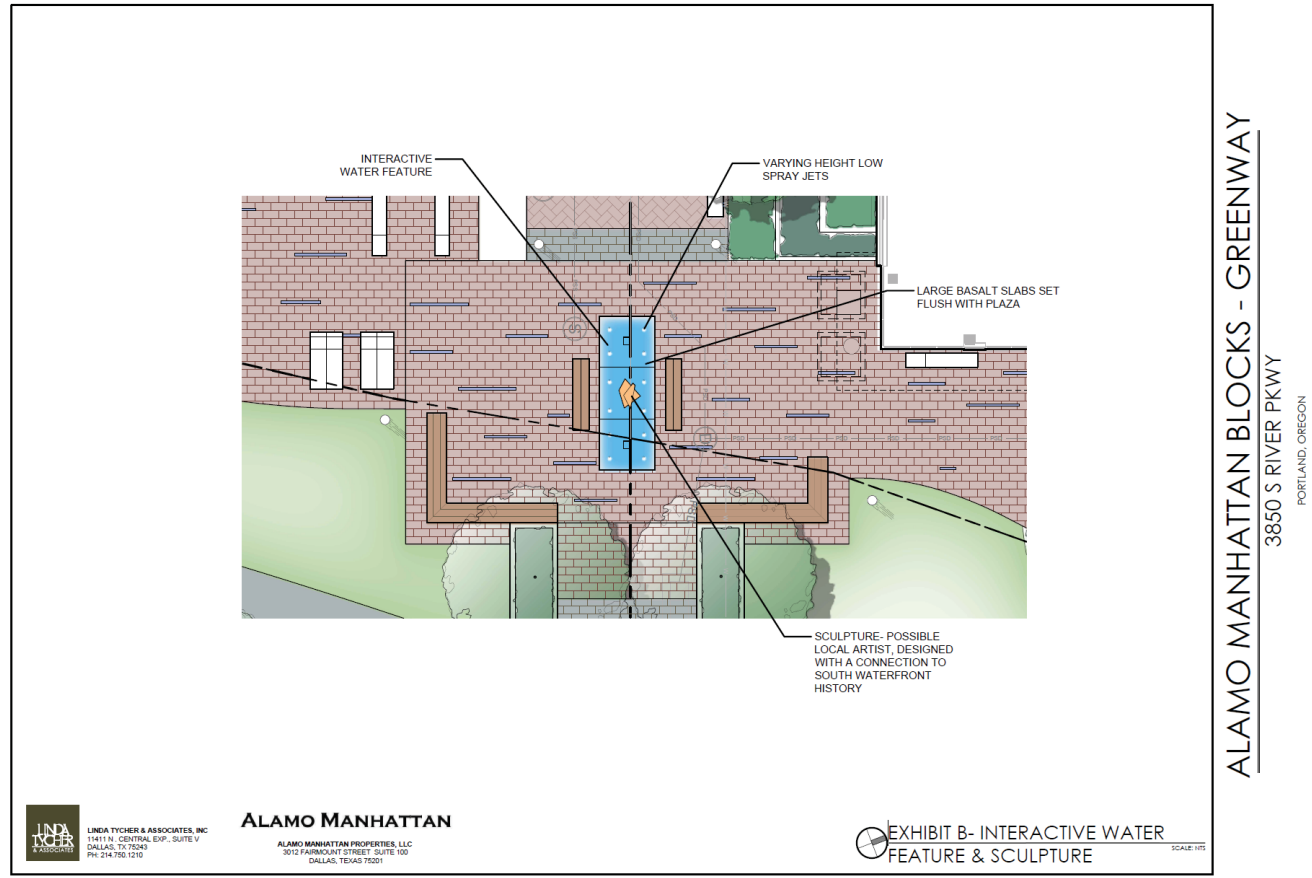
### Depiction of Greenway Improvements

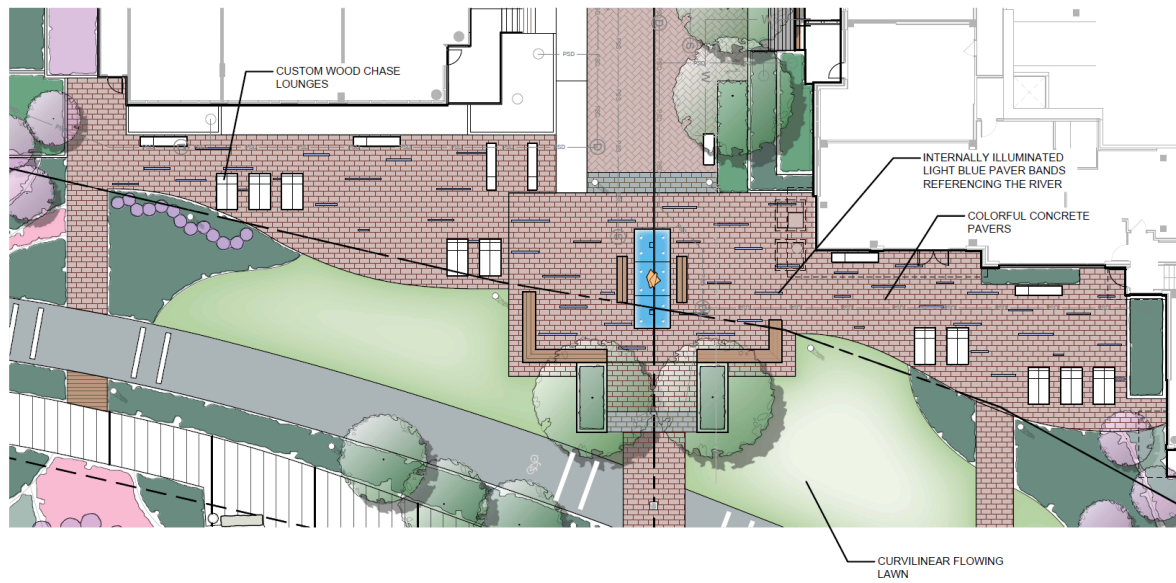


\* exhibits referenced in this plan are not attached to the Agreement, except for “Exhibit B and Exhibit C,” which are attached to this Agreement as Exhibit D Project Depiction

## EXHIBIT D

### DEPICTION OF PROJECT





ALAMO MANHATTAN BLOCKS - GREENWAY

3850 S RIVER PKWY

PORTLAND, OREGON



LINDA TYCHER & ASSOCIATES, INC.  
11411 N. CENTRAL EXP., SUITE V  
DALLAS, TX 75240  
PH: 214.750.1210

ALAMO MANHATTAN

ALAMO MANHATTAN PROPERTIES, LLC  
3012 FAIRMOUNT STREET, SUITE 100  
DALLAS, TEXAS 75201



EXHIBIT C- BONUS PLAZA ENHANCEMENT

SCALE 1/8"

## **EXHIBIT E**

### **Sources and Uses for Greenway Improvements**

All equity for the Greenway Improvements will be sourced and as used by AM/DRI Willamette, LLC.

## EXHIBIT F

### BOLI Determination



CHRISTINA E. STEPHENSON  
Labor Commissioner

January 25, 2023

Dana L. Krawczuk  
Stoel Rives LLP  
760 SW Ninth Avenue, Suite 3000  
Portland, OR 97205

Re: *Determination Whether Project is Subject to Prevailing Wage Rate Laws*  
Project: Alamo/Manhattan Blocks Development  
Requested by: Stoel Rives LLP on behalf of AM/DRI Willamette, LLC

Dear Ms. Krawczuk:

On October 22, 2022, the Bureau of Labor and Industries received the request you submitted on behalf of AM/DRI Willamette, LLC, asking if the Prevailing Wage Rate laws would apply to work referred to as the Interactive Water Feature and Sculpture and Plaza Enhancements project. However, this work is part of the larger Alamo/Manhattan Blocks Development project, and therefore, this determination considers whether the Prevailing Wage Rate laws apply to the overall project. Sufficient information to make a determination was received on January 13, 2023, and therefore, the commissioner issues the following determination:

#### **FINDINGS OF FACT**

1. AM/DRI Willamette, LLC, a Delaware limited liability company, ("Developer") owns approximately 9.83 acres located in the North Macadam Urban Renewal Area, generally bounded by South Bond Street, South Lowell Street, and South Lane Street in Portland, Oregon, now known as the Alamo-Manhattan blocks.
2. The previous owner of the property, The Landing at Macadam, LLC, a private entity, received tentative approval from the City of Portland (the "City") to subdivide the parcel to create four lots (Lots 41, 42, 44, and 45), public streets, and two Greenway Tracts (Lots A and B). The Subdivision of the property includes two conditions of approval: One, the design and construction of the South Portal Transportation Improvements; Two, the construction of two greenway trails in the Greenway Tracts that are subject to a public easement and maintenance agreement.
3. Developer purchased the property in February 2020.
4. On November 18, 2020, Developer received land use approval from the City to construct five mixed-use buildings with approximately 1,200 residential units, 22,000 square feet of

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[Help@boli.oregon.gov](mailto:Help@boli.oregon.gov)

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Ore. Relay TTY: 711





retail space, and approximately 738 underground parking spaces, as well as improvements within the Greenway Open Space Tracts (the “Project”).

5. On July 19, 2021, Developer received final plat approval for the Subdivision, known as the Alamo-Manhattan Blocks plat. One of the Conditions of Approval for the subdivision includes a Development Agreement between the City and Developer to develop Blocks 41, 42, 44, and 45 in South Portland and install South Portal Transportation Improvements. Developer expects to seek approximately \$3,000,000 in System Development Charges (“SDC”) credit for the South Portal Transportation Improvements.
  - a. Section 1.5 of the Development Agreement states “Developer will seek approval for immediate transportation system development charge (“TSDC”) credit for the full anticipated cost of designing, constructing, and installing the South Portal Transportation Improvements.”
  - b. Section 1.5.1 states “City and Developer agree and specifically provide that the South Portal Transportation Improvements are capital improvements listed on the City’s TSDC Project List, are not located on or contiguous to the Site,<sup>1</sup> and are intended to be a “qualified public improvement”. . .”
  - c. Section 1.5.2 states “City and Developer agree and specifically provide that the “initial development site” for “New Development” . . . is intended to include the entire Site so that TSDC Credit is available to each phase of the Project. The City may provide TSDC Credit prior to construction of the South Portal Transportation Improvements as long as all conditions set in PCC 17.15.060.4 .2.b are met.”
6. The June 9, 2021, Letter Agreement for Alamo Blocks TSDC Payments for Block 41 and Block 42 explains that “[Alamo Manhattan-related companies] will pay the TSDC obligation for Blocks 41 and 42 in cash, TSDC credit, or any combination thereof the earlier of (a) the TSDC Completion Adjustment; or (b) January 2, 2024. The TSDC obligation for Blocks 41 and 42 will not include interest.”
7. The mixed-use portion of the Project is subject to the City’s Inclusionary Housing requirements. Ten percent of the units in the mixed-use portion of the Project will be for affordable housing. Pursuant to the Inclusionary Housing covenants between the City and Developer, Developer will receive a Multi-Unit Limited Tax Exemption, SDC credits, and an Affordable Unit Construction Excise Tax.
8. On June 10, 2021, the City’s Park SDC Review Committee, part of Portland Parks & Recreation, recommended \$705,224.90 in Parks SDC credits pursuant to building permits for Lots 41, 42, 44, and 45. The Parks SDC credits were approved for a pedestrian overlook, greenway furnishings, additional landscaping, a retaining wall, and hard/soft costs.
9. Part of the improvements within the Greenway Open Space Tracts includes the construction of an interactive water feature, with a sculpture and plaza enhancements (the “water

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<sup>1</sup> The “Site” refers to Blocks 41, 42, 44, & 45, and Tracts A & B (Greenway Open Site Tracts).

feature”). The property where the water feature will be constructed is in the North Macadam Urban Renewal Area (“NMAC”). The NMAC is administered by Prosper Portland, a public agency under ORS 279C.800(5). The water feature is expected to cost approximately \$1,114,734.50. This portion of the Project was not awarded Parks SDC credits.

10. Developer and Prosper Portland have entered into a Grant Agreement (the “Agreement”) awarding a grant of \$749,000 for the water feature. Prosper Portland is the economic development agency of the City of Portland. Prosper Portland has not done any improvements on the property, nor will it contract for the work to be done.
11. Recital C of the Agreement includes “[t]he [water feature] is consistent with, and furthers significant goals and priorities identified in, the North Macadam Urban Renewal Plan. . .”
12. Recital F of the Agreement includes “[t]he Grant shall be used exclusively to reimburse Developer for costs and expenses Developer reasonably incurs for the construction of the [water feature] in accordance with the Approved Plans and Specifications.”
13. Section 1 of the Agreement includes that Developer need only notify Prosper Portland of any changes to the [water feature] plans.
14. Developer will select the contractor(s) and enter into the contract(s) for the work to be performed on the water feature. Under Section 4.1 of the Agreement, Developer will “make good faith efforts” to comply with Prosper Portland’s Business and Workforce Equity Policies.
15. No public agency will occupy or use any of the square footage of the completed Project.
16. No public agency will have an ownership interest in the any of the properties as divided.
17. Funds of a public agency to be used on the Project include:  
\$ 749,000 Prosper Portland Grant

Pursuant to ORS 279C.810(1)(a)(C), tax credits and tax abatements are not “funds of a public agency.” Therefore, the following funding to be used on the Project is not funds of a public agency:

\$10,754,360	Multi-Unit Limited Tax Exemption
\$ 3,000,000	Transportation SDC Credit
\$ 1,314,738	SDC Credit – Affordable Units
\$ 705,225	Parks SDC Credit
\$ 114,785	Construction Excise Tax – Affordable Units

An unspecified amount of additional funds from private sources will be used on the Project.

## **CONCLUSIONS OF LAW**

1. The Project will not be carried on or contracted for by a public agency. Therefore, the Project does not meet the definition of “public works” under ORS 279C.800(6)(a)(A).
2. The Project will not use \$750,000 or more in funds of a public agency. Therefore, the Project does not meet the definition of “public works” under ORS 27C.800(6)(a)(B).
3. No public agency will occupy or use any portion of the Project. Therefore, the Project does not meet the definition of “public works” under ORS 279C.800(6)(a)(C).

## **DETERMINATION**

Based on the foregoing, the Prevailing Wage Rate laws, ORS 279C.800 to ORS 279C.870, and OAR Chapter 839, Division 025, will not apply to the Alamo/Manhattan Blocks Development project.

This determination does not consider whether the Project is appropriate for division under ORS 279C.827, as it is not a public works project. If any future “funds of a public agency” are used at the Project properties, which are not anticipated at this time, division of the Project may or may not be appropriate at that time. This determination makes no conclusion on the applicability of Prevailing Wage Rate laws to future, potential uses of “funds of a public agency” at the Project properties.

This determination is based on the agency’s file as of the date of this determination. If any of the project information provided is incorrect or incomplete, this determination may no longer apply. If the project or project documents are modified or supplemented after the date of this determination, this determination may no longer apply. The commissioner may make a different determination if any of the project information is incomplete or incorrect, or if the project or project documents are modified or supplemented after the date of this determination. A new determination may be requested based on the modified or supplemented information or documentation.

## **REQUEST FOR A RECONSIDERATION**

After the commissioner issues a determination, the requestor or any public agency served with a copy of the determination may request that the commissioner reconsider the determination. A request for reconsideration must be submitted in writing to the Prevailing Wage Rate Unit, must include the reason or reasons for the request and any documents in support of the request, and must be received within 15 calendar days of the date the determination was mailed. A request for reconsideration does not toll the time period for requesting a contested case hearing on the determination.



## RIGHT TO A HEARING

The requestor and any person adversely affected or aggrieved by this determination are entitled to a hearing as provided by the Administrative Procedures Act (ORS 183.413 to 183.470) and ORS 279C.817. If you want a hearing, the Bureau of Labor and Industries, Wage and Hour Division must receive your written request for hearing within 21 days from the date this notice was mailed. Hearing requests should be addressed and delivered to:

Administrator  
Wage and Hour Division  
Bureau of Labor and Industries  
800 NE Oregon St., Suite 1045  
Portland, Oregon 97232

If a written request for hearing is not received within this 21-day period, your right to a hearing shall be considered waived, this determination order will be final, and the agency file on this matter shall serve as the record for purposes of proving a prima facie case.

If you request a hearing, you will be notified of the date, time and place of the hearing. You have the right to be represented by legal counsel at a hearing. However, if you are a government agency, corporation, partnership, or unincorporated association, you must be represented by either legal counsel or an authorized representative. If you request a hearing, you will receive information on Contested Case Rights and Procedures before the hearing. After the hearing, an order confirming, modifying, or reversing this determination order will be issued. This determination shall remain in effect until the final order is issued.

If you request a hearing, but fail to appear at any scheduled hearing, you will have waived your right to hearing, and the commissioner may issue a final order by default. If the commissioner issues a final order by default, the agency file on this matter shall serve as the record for purposes of proving a prima facie case.

Date: January 25, 2023

CHRISTINA E. STEPHENSON, Commissioner  
Bureau of Labor and Industries



Laura van Enckevort  
Acting Wage and Hour Administrator

Alamo/Manhattan Blocks Development Coverage Determination  
Stoel Rives LLP on behalf of AM/DRI Willamette, LLC  
Page 5 of 6

### **Certificate of Service**

On January 25, 2023, I mailed the Prevailing Wage Rate Determination for the Alamo/Manhattan Blocks Development project to the requestor, as follows:

Dana L. Krawczuk  
Stoel Rives  
760 SW Ninth Avenue, Suite 3000  
Portland, OR 97205



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Jolene Goodnight  
Compliance Specialist  
Wage and Hour Division  
Bureau of Labor and Industries

Alamo/Manhattan Blocks Development Coverage Determination  
Stoel Rives LLP on behalf of AM/DRI Willamette, LLC  
Page 6 of 6

## EXHIBIT G

### Request for Disbursement Form



## REQUEST FOR GRANT DISBURSEMENT

☐ Special handling

Alamo Manhattan Blocks Greenway Improvements

#### GRANT NUMBER

Grantee

AM/DRI Williamette LLC

#### FUND #

Grantee Vendor #

PROJECT ADDRESS

Approval Date of Loan:

Grant Program

Check if prevailing wage applies:

### I. TO BE COMPLETED BY BORROWER REQUESTING DISBURSEMENT

Payment Amount Requested: \$ 0.00

Date of Invoice	Vendor	Invoice Number	Amount

Payee is: ☒ Grantee

☐ Third party / contractor

Payee info: Name: AM/DRI Williamette LLC

Mailing address: 3012 Fairmount Street, Suite 100

City, State, Zip: Dallas, Texas 75201

The undersigned requests disbursement to the above payee in the amount shown above. The Grantee or Borrower certifies that such payment is in accordance with the terms and conditions of the documents executed in connection with the above referenced grant or loan, and (if applicable) related construction contracts or agreements for materials or services have been filed with the Commission. Additionally, the Grantee or Borrower certifies that any applicable certifications, receipts, invoices or change orders are attached and properly executed, and the Grantee or Borrower acknowledge acceptance of work performed and/or materials received.

Borrower signature: \_\_\_\_\_

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

### 2. TO BE COMPLETED BY PROSPER PORTLAND PROGRAM STAFF

Payee vendor # :	Amount requested: \$	Final disbursement?	Yes	Work order?	Yes
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Write here any comments to appear on check: (30 character limit)

#### REQUIRED INFORMATION ATTACHED FOR PROCESSING (attach all that apply):

Invoices from borrower / third party

Continuation sheet

Other:

### 3. PROSPER PORTLAND APPROVALS FOR PAYMENT

( name, signature, date)

PROSPER PORTLAND Grant Officer

Date:

Prosper Portland's Construction Services Project Manager

## **EXHIBIT H**

### **Business Equity Policy Specifications**





### Business Equity Program Specifications Exhibit

In furtherance of Prosper Portland's commitment to social and racial equity, the Prosper Portland Board of Commissioners adopted the *Construction Business and Workforce Equity Policy* on April 14, 2021 through Resolution No. 7411 (the "**CBWE Policy**"). The CBWE Policy establishes two different programs: (i) the Workforce Training and Hiring Program; and (ii) the Business Equity Program (the "**BEP**"). These specifications (these "**Specifications**") relate to the BEP, and identify specific requirements that contractors, developers, borrowers, grantees, purchasers, or other parties with whom Prosper Portland does business and to whom the BEP applies (each a "**Recipient**") must meet to comply with its contractual obligations. By attaching these Specifications to the contract, agreement, or instrument to which they are an exhibit (the "**Contract**"), the requirements of these Specifications are incorporated into the Contract.

The goal of the BEP is to improve outcomes for local small businesses and support the growth of construction and development firms owned by people of color and women by providing opportunities for State of Oregon Certified Firms. "Certified Firms" are Disadvantaged/Minority/Women/Emerging Small Business and Service-Disabled Veteran (sometimes abbreviated as "**D/M/W/ESB/SDV**") firms as certified by the State of Oregon's Certification Office for Business Inclusion and Diversity ("**COBID**")

#### 1. PROGRAM APPLICABILITY

These Specifications apply to the construction project described in the Contract (the "**Project**"), including construction-related professional services, such as design and engineering, associated with the Project, except to the extent otherwise expressly stated in the Contract.<sup>1</sup> Notwithstanding anything to the contrary in these Specifications, where a Recipient is not directly undertaking construction (e.g., a developer is instead contracting with a prime contractor to undertake construction), the Recipient must see to it that applicable requirements in these Specifications are passed through to its contractor and subcontractors, and ensure that any contractor / subcontractors comply with these Specifications and thereby enable Recipient to comply with these

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<sup>1</sup> Pursuant to the CBWE Policy, the BEP applies in the following circumstances (this footnote is for informational purposes only; if these Specifications are attached to the Contract, or the Contract otherwise indicates the BEP applies, the BEP applies to the Project):

- 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.

Specifications.

**2. PROGRAM GOALS**

The overall goal of the BEP is to ensure Prosper Portland projects and programs provide meaningful professional, supplier, and construction contracting opportunities for Certified Firms. The BEP's goals for the utilization of Certified Firms are as follows:

- 22% of the Project's total Hard Construction Costs (as defined in the CBWE Policy) 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 the Project's professional services<sup>2</sup> costs allocated to Certified Firms.

Prosper Portland strongly encourages Recipients to promote their prime contractors to utilize Certified Firms for all divisions of work. A directory of Certified Firms can be found by visiting the State of Oregon's COBID website at: <https://oregon4biz.diversitysoftware.com/>

For construction contracts not subject to ORS 279C.305 (e.g., Sponsored Projects (as defined in the CBWE Policy) 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 Prosper Portland, who may approve a higher percentage based on the type, size, available subcontractors, and other relevant project criteria.

**3. STANDARDS OF COMPLIANCE**

Recipients shall document all good faith efforts taken to contract with Certified Firms. If a Recipient, or a prime contractor/ consultant thereof, has difficulty in achieving BEP goals, it is such Recipient's and prime contractor's/consultant's obligation to immediately notify Prosper Portland and seek guidance. The following tasks are minimum reasonable and necessary steps to comply with BEP goals:

**a. Initial meeting**

Recipients shall attend an initial kickoff meeting with Prosper Portland Project Staff and Compliance Team at the earliest possible opportunity. Recipients of Prosper Portland project support on BEP applicable projects shall bring the following to the initial meeting:

- Project Description;
- Project Design/Construction Schedule; and
- Professional Services Team List (A/E, Survey etc.).

The purposes of the initial meeting are:

- To answer questions the Recipient may have regarding compliance with BEP and Prosper Portland's equity goals;
- For the Recipient to obtain information from Prosper Portland regarding resources the

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<sup>2</sup> For purposes of this goal, the term "professional services" means services within the scope of the professional practice of architecture, engineering, or registered land surveying, or those services performed by any architect, landscape architect, professional engineer or registered land surveyor in a professional capacity.

- Recipient may utilize in meeting its obligations under the BEP;
- For the Prosper Portland Compliance Team to explain the Utilization Plan (as explained below);
- To explain the Ongoing Compliance Report Requirements in the City of Portland's Contract Compliance Reporting System (CCRS) with the City of Portland Compliance Staff,
- To explain how the projects utilization is reported on Prosper Portland's website, and
- To explain the ramifications of noncompliance with this guidance, including debarment and liquidated damages.

If Hard Construction Costs are \$1,000,000 or more, the Recipient and its prime contractor shall attend an additional meeting with Prosper Portland's Compliance team and agency partners to review the scopes of work and determine a potential Outreach Plan at the earliest possible time, **and no later than two (2) months before bidding on construction contracts and the Project begins.**

**b. Outreach Methods - Additional Assistance**

Recipients, with and through their prime contractor, shall conduct outreach so that Certified Firms have at least fifteen (15) business days after the conclusion of such outreach to respond to any bidding deadlines and be considered for construction contracts on the Project. Any changes to this schedule must be approved by Prosper Portland. Recipients, with and through their prime contractor, consultant are encouraged to engage in additional outreach methods to ensure maximum participation by Certified Firms, including but not limited to:

- i. Working with the assistance of Prosper Portland's Partners (See list of partnering organizations in section 6, below) to develop an outreach plan; and
- ii. Hold Outreach events at Partnering Organizations meetings or spaces.

**c. Reporting Requirements (CCRS)**

BEP applicable projects are subject to compliance reporting requirements. Recipients are required to provide all contract compliance-related data electronically in the City of Portland's Contract Compliance Reporting System (CCRS).

All parties identified are responsible for responding to any instructions or requests for information from the City of Portland's Compliance Officer and Prosper Portland's Compliance Coordinator (see Section 5) and should regularly check the CCRS to manage contact information and contract records.

Recipients, with and through their prime contractor, consultant are responsible for ensuring all subcontractors/subconsultants have completed all requested items and that their contact information is accurate and up to date. Prosper Portland may require additional information related to the contract to be provided electronically through the system at any time before, during, or after contract award.

Information related to contractor/ consultant access of the system will be provided to a designated point of contact upon notification. The CCRS is web-based and can be accessed at the following internet address: <https://portlandoregon.diversitycompliance.com/>

i. **Utilization Plan (UP)**

The UP is due to Prosper Portland from a Recipient, with and through their prime contractor, consultant at the **beginning of the project for soft costs and one (1) month before construction begins** for hard costs. A completed UP is required to be submitted electronically in the CCRS. On-screen instructions in the CCRS will guide you through the UP-submittal process. The UP must list ALL subcontractors/subconsultants to be used on the project, their corresponding type of work, their subcontract amount, and their Certified Firm status, if applicable, regardless of the dollar amount. After submission of the UP, you may review your Dashboard for status updates.

ii. **Monthly Reporting**

Recipients, or any prime contractor thereof, shall submit records of subcontractor/subconsultant payments via the CCRS by the 15th day of each month once work has commenced and shall ensure that subcontractors/subconsultants are confirming payments reported to them in the system. Subprime firms are also responsible for reporting participation of lower tier subs.

iii. **Subcontractor Changes**

If any subcontractor/subconsultant is added or replaced after the UP is submitted, the Recipient, and any prime contractor/ consultant thereof, shall make good faith efforts to solicit bids from Certified Firms for the work to be performed.

All subcontractor/subconsultant changes/requests shall be made in the CCRS and will include supporting documentation of the foregoing prior to making any changes. A tutorial for adding subcontractors can be found here:

<https://portlandoregon.diversitycompliance.com/Help/Tutorial/TutorialView.asp?XID=5666&TFL=RequestingASub>

**A Recipient, or any prime contractor/ consultant thereof, shall not add, delete, or replace any subcontractor without prior written consent from Prosper Portland.**

iv. **Good Faith Effort Documentation**

D/M/W/ESB/SDV BIDS RECEIVED LOG: Recipient shall provide upon request if BEP program goals are not met:

- (1) If the CCRS shows that the program goals have not been met, the Recipient, with and through their prime contractor, must submit Form 2 and additional documentation as required. **To submit Form 2 and additional documentation, click Attach Waiver Files. When finished click Save Waiver Details before leaving the plan or attempting to complete another step.**
- (2) Any of Recipient's bidders must have contacted Certified Firm subcontractors/subconsultants in writing to advise them of potential subcontracting/subconsulting opportunities and ensure that they have an equal opportunity to compete for work by providing all subcontractors/subconsultants the same information and informing them of the date and time that sub-bids are due.
- (3) Any Recipient, with and through their prime contractor/consultant, must have obtained a minimum of three (3) written bids from Certified Firms that specialize in the type of work that will be subcontracted/sub consulted. Bidders shall submit additional

information and provide clarification upon request.

**v. Final Reporting**

All reporting is due in the CCRS 60 days after the Project is complete.

The Project's Business Equity Utilization will be posted on Prosper Portland's website (<https://www.prosperportland.us>) during the life of the project.

**4. CONSEQUENCES OF NON-COMPLIANCES WITH BEP**

Prosper Portland's commitment to construction business equity is reflected, in part, by the cost of administering and promoting the BEP and of Prosper Portland's initiatives to advance equity in the context of the construction industry. Failure of any Recipient to meet BEP requirements deprives Prosper Portland of the benefits of these costs and efforts, and impairs Prosper Portland's attempts to promote contractor diversity and to provide equitable opportunities to the public. A Recipient's failure to meet the requirements of these Specifications, including but not limited to the timely submission of required documentation, constitutes a material breach of these Specifications and thus the Contract. In the event of a material breach of these Specifications by any Recipient or an entity for whom a Recipient is responsible (e.g., a contractor or subcontractor performing work on the Project), in the sole discretion of Prosper Portland, Prosper Portland may take any or all the following actions (without limiting any other rights or remedies Prosper Portland may have under the Contract):

**a. Withholding Progress Payments**

If the Contract provides for progress payments, Prosper Portland may withhold all or part of any payments until the breach is remedied to Prosper Portland's reasonable satisfaction. If payments are so withheld, the Recipient shall in no event be entitled to interest on said payments, if reinstituted, unless otherwise required by applicable law.

**b. Liquidated Damages**

It would be difficult, if not impossible, to assess actual damages or costs incurred by Prosper Portland for a Recipient's failure to comply with the Specifications. Therefore, for violations of these Specifications, Prosper Portland reserves the right to assess an amount of liquidated damages of up to \$150,000 based upon the seriousness of the violation, as determined by Prosper Portland. These damages are independent of any liquidated damages that may be assessed due to any delay in the project caused by a Recipient's failure to comply with the Specifications or that may otherwise be available to Prosper Portland under any other agreement with the Recipient.

**c. Notification of Possible Debarment**

Recipient's acknowledge that failure to comply with the Specifications may lead to the Recipient's disqualification from bidding on and receiving other Prosper Portland contracts for a minimum of two years and a maximum of three years based on the violation.

**d. Other Remedies**

The remedies that are noted above do not limit any other remedies available to Prosper Portland under the Contract, at law, or in equity in the event that the Recipient fails to meet the requirements of the Specifications.

**5. REVIEW OF RECORDS**

Prosper Portland shall be entitled to inspect and copy any books and records of any such Recipient related to its compliance or non-compliance with the Specifications within 7 days of the date

when a Recipient receives a request under this provision. In the event that a Recipient fails to provide its books and records for inspection and copying when requested under this provision, such failure shall constitute a material breach of the Specifications and permit the imposition of any of the remedies set forth above. This provision does not limit any other audit or inspection rights Prosper Portland may have under the Contract.

**6. CONTACTS**

**Compliance Team**

**Wendy Wilcox-** (Business and Workforce Equity Compliance Coordinator)  
[wilcoxw@prosperportland.us](mailto:wilcoxw@prosperportland.us) | 503.823.3236

**Ay Saechao** – City of Portland Compliance Officer (Reporting Liaison)  
[Ay.Saechao@portlandoregon.gov](mailto:Ay.Saechao@portlandoregon.gov) | 503.823.1090

**John Cardenas** (Sr. Construction Business and Workforce Equity Project Manager)  
[cardenasj@prosperportland.us](mailto:cardenasj@prosperportland.us) | 503-823-3253

**Partnering Organizations**

**COBID-Certification Office for Business Inclusion and Diversity-**  
<https://oregon4biz.diversitysoftware.com/>

**PBDG-Professional Business Development Group**  
<http://pbdgweb.com/>

**NAMC-National Association of Minority Contractors of Oregon**  
<http://namc-oregon.org/>

**Latino Built**  
<https://latinobuilt.org>

**OAME-Oregon Association of Minority Entrepreneurs**  
<https://oame.org/>

**CCRS Links**

**Contract Compliance Reporting System**  
<https://portlandoregon.diversitycompliance.com>

**Changing a subcontractor**  
<https://portlandoregon.diversitycompliance.com/Help/Tutorial/TutorialView.asp?XID=5666&TFL=RequestingA>

## **EXHIBIT I**

### **Workforce Training and Hiring Program Specifications**





## Workforce Training and Hiring Program Specifications Exhibit

In furtherance of Prosper Portland’s commitment to social and racial equity, the Prosper Portland Board of Commissioners adopted the *Construction Business and Workforce Equity Policy* on April 14, 2021 through Resolution No. 7411 (the “**CBWE Policy**”). The CBWE Policy establishes two different programs: (i) the Business Equity Program, and (ii) the Workforce Training and Hiring Program (“**WTHP**”). These specifications (these “**Specifications**”) relate to the WTHP, and identify specific requirements that contractors, developers, borrowers, grantees, purchasers, or other parties with whom Prosper Portland does business and to whom the WTHP applies (each a “**Recipient**”) must meet to comply with its contractual obligations. By attaching these Specifications to the contract, agreement, or instrument to which they are an exhibit (the “**Contract**”), the requirements of these Specifications are incorporated into the Contract.

The goal of the WTHP is for each Recipient’s project workforce to reflect workforce diversity in the city of Portland, and to ensure that Prosper Portland’s contracting dollars provide equitable opportunities to Portland’s diverse populations, including those who have been historically underrepresented in the construction trades.

### 1. PROGRAM APPLICABILITY

These Specifications apply to the construction project described in the Contract (the “**Project**”), but not to Soft Construction Costs (as defined in the CBWE Policy), except to the extent otherwise expressly stated in the Contract.<sup>1</sup> Notwithstanding anything to the contrary in these Specifications, where a Recipient is not directly undertaking construction (e.g., a developer is instead contracting with a prime contractor to

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<sup>1</sup> Pursuant to the CBWE Policy, the WTHP applies in the following circumstances (this footnote is for informational purposes only; if these Specifications are attached to the Contract, or the Contract otherwise indicates the WTHP applies, the WTHP applies to the Project):

- A Prosper Portland-Owned Construction Contract consisting of construction work greater than \$300,000.
- A Prosper Portland-Sponsored Project consisting of construction, the WTHP 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 WTHP applies, it applies 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 WTHP does not apply to Personal Services Contracts, Flexible Services Contracts, and services contracts or agreements not involving construction work.

undertake construction), the Recipient must see to it that applicable requirements in these Specifications are passed through to its contractor and subcontractors, and ensure that any contractor / subcontractors comply with these Specifications and thereby enable Recipient to comply with these Specifications.

**2. PROGRAM REQUIREMENTS AND GOALS**

Recipients must do the following:

- Ensure that a minimum requirement of twenty percent (20%) of labor hours in each apprenticeable trade performed by any Recipient (or its prime contractor/subcontractor, as applicable), are filled by State Registered apprentices if working an excess of 300 hours or more on any trade; and
- Use active, good faith efforts towards achieving workforce goals of hiring thirty percent (30%) minority workers and fifteen percent (15%) women workers. 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., collecting data about journey and apprentice performance separately) to help inform future policy development.
- Not intentionally divide subcontracts into smaller scopes to avoid any requirements of the WTHP.

**3. STANDARDS OF COMPLIANCE**

Recipients shall comply with the following requirements:

**a. Initial Meeting**

Recipient shall attend an initial kickoff meeting with Prosper Portland's Compliance Coordinator at the earliest possible opportunity.

Recipients shall bring the following to the initial meeting:

- Project description;
- Proposed project schedule; and,
- Scopes of work, if any, to be subcontracted on the project.

Purpose of initial meeting:

- Answer questions Recipient may have regarding the WTHP;
- Identify any barriers to compliance and provide assistance, if possible;
- Present the ongoing compliance reporting requirements in the City of Portland's LCP Tracker Reporting System; and
- Explain the ramifications of noncompliance with this guidance, including but not necessarily limited to liquidated damages, withholding of progress payments (if applicable), and debarment.

**b. Subcontractor Workforce Plan**

Any Recipient required to register as a training agent pursuant to Section 4(a), below, shall submit **Exhibit 2, "Workforce Plan,"** prior to beginning work on the Project or within five (5) calendar days after the execution of an applicable subcontract, whichever occurs first. Work by any Recipient shall not begin prior to submission of such documentation. Failure to timely and properly enroll as a training agent prior to beginning work may subject a Recipient to liquidated damages.

**4. APPRENTICESHIP REQUIREMENTS**

**a. Training Agent**

Any Recipient (or their prime contractor and any subcontractor at any tier) that directly employs workers and has a subcontract of \$100,000 or more on a WTHP Project must be registered as a training agent with an Oregon Bureau of Labor and Industries (BOLI) approved training program. Registration as a training agent in a specific trade is not required if there are no training programs in that trade.

Any Recipient (or any prime contractor or subcontractor, as applicable) must submit proof to the Compliance Officer that they are registered Training Agents with BOLI prior to beginning any work on the Project. Failure to register as a training agent prior to beginning work may subject a Recipient to liquidated damages.

- i. Only training programs approved by and registered with BOLI may be used to fulfill training requirements under WTHP.
- ii. Training is intended to be primarily on-the-job training in apprenticeable crafts, and does not include classifications such as flag person, timekeeper, office engineer, estimator, bookkeeper, clerk/typist, fire fighter, or secretary. Hours performed in crafts which are not apprenticeable occupations are exempt from training agent requirements.

**b. Use of Apprentices**

Any Recipient shall:

- i. Ensure that a minimum of twenty percent (20%) of labor hours in each apprenticeable trade performed on a Project are worked by state registered apprentices throughout the duration of such Project. Recipients shall fulfill the twenty percent (20%) apprenticeship hours requirement without exceeding the apprentice ratios approved by the applicable apprenticeship program;
- ii. Pay all apprentices the wages required by any applicable collective bargaining contract or pursuant to state or federal law and regulations;
- iii. Not use workers previously employed at journey-level or those who have successfully completed a training course leading to journey-level status to satisfy the requirements of these provisions;
- iv. Notify the Compliance Officer when an apprentice is hired for this Project;
- v. Count apprentice hours as follows:
  - (1) Compile hours worked on the Project by apprentices enrolled in state-approved apprenticeship programs. If a Recipient is unable to fulfill its twenty percent (20%) requirement, then the Recipient may also use the methods below:
    - (a) Compile hours worked on the project by apprentices who are required to be away from the job site for related training during the course of the Project, but only if the apprentice is rehired by the same employer after completion of training; and
    - (b) Compile hours worked on the project by graduates of state-registered apprenticeship programs, provided that such hours are worked within the 12-month period following the apprentice's completion date.

**c. Use Apprenticeship Programs for Referrals**

Recipients must follow each of these steps in seeking apprentice referrals:

- i. Contact the appropriate apprenticeship program or dispatch center to request apprentices who are enrolled in the apprenticeship program;
- ii. Request female or minority apprentices from union or open shop apprenticeship programs if such an action will help remedy historical underutilization in the Recipient's (or its

- contractor's or subcontractors') workforce;
- iii. Keep a written record of any request for apprentices, including name of the contact person at apprenticeship program, phone, fax, e-mail, date, time, job location, start date, etc.; and
  - iv. Make reasonable best efforts to recruit apprentice applicants from community organizations/recruitment resources, and seek to enroll them into an apprenticeship program, if the apprenticeship program is unable to supply an apprentice and if the program is open for applications or allows direct entry from community resources.

**NOTE: Recipients may contact the Compliance Officer for assistance regarding the apprentice referral process, or may utilize Exhibit 3, Request for Apprentice form, to document their efforts. A list of community organizations/recruitment resources is also available.**

**5. WORKFORCE DIVERSITY GOAL**

Recipient shall make all active, good faith efforts consistent with applicable law to achieve workforce hiring goals of thirty percent (30%) minority and fifteen percent (15%) women workers, including apprenticeship and journey level hours, where applicable. See Exhibit 1 for a description of good faith recruitment efforts.

When hiring, requesting, recruiting, or replacing workers for a WTHP Project, any Recipient's active and good faith efforts to employ a diverse workforce shall include, without limitation:

- requesting minority and female applicants;
- making requests to unions, community-based organizations, apprenticeship programs, and other community resources, both union-affiliated and non-union-affiliated; and,
- making requests to community resources who assist contractors with recruitment and referral of workers.

Additional documentation will be requested by the Compliance Officer from any Recipient not meeting workforce diversity goals if it appears, in the sole discretion of Prosper Portland, that the Recipient has not made reasonable and necessary efforts to acquire an equitably diverse workforce. The Recipient shall provide any such requested documentation to the Compliance Officer within 7 calendar days.

Direct hiring of employees (such as "walk-ons") without providing notification of job opportunity may not constitute a reasonable effort.

**6. PROJECT REPORTING**

Any Recipient (and its contractors or subcontractors at any tier) that directly employs workers and has a subcontract of \$100,000 or more on the Project shall provide monthly employment reporting online via the City of Portland's LCP Tracker reporting system by the fifth day of each month.

The Compliance Officer and Compliance Coordinator will review the monthly reporting and share the status of the project to the Prosper Portland project team. The monthly reporting data from the Project will also be posted on Prosper Portland's website. Failure to submit timely monthly reporting could adversely affect the Project's ability to meet the program requirements and thus lead to Liquidated Damages as referenced in Section 7 below, or other consequences if applicable in the Contract. At the completion of the Project the Compliance Officer and Compliance Coordinator will provide a project closeout report documenting the overall compliance of the project.

The Compliance Officer's failure to object to the timeliness or completeness of documentation



submitted by any Recipient shall not relieve them of the requirements of this section.

A copy of certified payroll reports may be requested by the Compliance Officer to verify information in any workforce compliance report provided by a Recipient. Such payroll reports shall be provided within seven days of the date when a Recipient receives the request for the payroll reports.

**7. CONSEQUENCES OF NON-COMPLIANCE WITH WTHP**

Prosper Portland's commitment to construction workforce equity is reflected, in part, by the cost of administering and promoting the WTHP and of Prosper Portland's initiatives to advance equity in the context of the construction industry. Failure of any Recipient to meet WTHP requirements deprives Prosper Portland of the benefits of these costs and efforts, and impairs Prosper Portland's attempts to promote workforce diversity and to provide equitable opportunities to the public. A Recipient's failure to meet the requirements of these Specifications, including but not limited to the timely submission of required documentation, constitutes a material breach of these Specifications and thus the Contract.

In the event of a material breach of these Specifications by any Recipient or an entity for whom a Recipient is responsible (e.g., a contractor or subcontractor performing work on the Project), in the sole discretion of Prosper Portland, Prosper Portland may take any or all the following actions (without limiting any other rights or remedies Prosper Portland may have under the Contract):

**a. Withholding Progress Payments**

If the Contract provides for progress payments, Prosper Portland may withhold all or part of any payments until the breach is remedied to Prosper Portland's reasonable satisfaction. If payments are so withheld, the Recipient shall in no event be entitled to interest on said payments, if reinstituted, unless otherwise required by applicable law.

**b. Liquidated Damages for Noncompliance with the Apprenticeship Requirements**

It would be difficult, if not impossible, to assess actual damages or costs incurred by Prosper Portland for a Recipient's failure to comply with the Specifications. Therefore, if the Recipient fails to comply with the apprenticeship requirements of this program, the Recipient agrees to pay the sum of \$250 per day for each day of missed apprenticeship hours. These damages are independent of any liquidated damages that may be assessed due to any delay in the project caused by a Recipient's failure to comply with the Specifications or that may otherwise be available to Prosper Portland under any other agreement with the Recipient. For other violations of these Specifications not relating to missed apprenticeship hours, Prosper Portland reserves the right to assess an amount of liquidated damages of up to \$150,000 based upon the seriousness of the violation, as determined by Prosper Portland.

**c. Notification of Possible Debarment**

Recipient's acknowledgment that failure to comply with the Specifications may lead to the Recipient's disqualification from bidding on and receiving other Prosper Portland contracts for a minimum of two years and a maximum of three years based on the violation.

**d. Other Remedies**

The remedies that are noted above do not limit any other remedies available to Prosper Portland under the Contract, at law, or in equity in the event that the Recipient fails to meet the requirements of the Specifications.

**8. REVIEW OF RECORDS**

Workforce Training and Hiring Program Specifications (November 2021)

Exhibit Page 5 of 10

Prosper Portland shall be entitled to inspect and copy any books and records of any such Recipient related to its compliance or non-compliance with the Specifications within 7 days of the date when a Recipient receives a request under this provision. In the event that a Recipient fails to provide its books and records for inspection and copying when requested under this provision, such failure shall constitute a material breach of the Specifications and permit the imposition of any of the remedies set forth above. This provision does not limit any other audit or inspection rights Prosper Portland may have under the Contract.

**9. CONTACTS**

- a. For any notices or questions regarding apprenticeships, please contact:

**Bureau of Labor & Industries**  
Apprenticeship & Training Division  
800 N.E. Oregon St. # 32  
Portland, OR 97232 (971) 673-0760

- b. For any notices or questions regarding Prosper Portland WTHP requirements, please contact either:

**Ay Saechao**  
**Compliance Officer**  
City of Portland/Outside Services, Purchasing  
1120 S.W. Fifth Ave., Room 1000  
Portland, OR 97204  
(503) 823-1090 [Ay.Saechao@portlandoregon.gov](mailto:Ay.Saechao@portlandoregon.gov)

**Wendy Wilcox**  
**Compliance Coordinator**  
Prosper Portland  
220 NW 2nd Ave. Suite 200  
Portland, OR 97209-3859  
(503) 823-3236 [wilcoxw@prosperportland.us](mailto:wilcoxw@prosperportland.us)

**ATTACHMENTS:**

- Exhibit 1: Recommended Recruitment & Retention Practices
- Exhibit 2: Workforce Plan
- Exhibit 3: Request for Apprentice form
- Exhibit 4: Recipient Checklist

## EXHIBIT 1

### Recommended Good Faith Recruitment & Retention Practices

#### A. Recruitment Efforts

Good faith recruitment efforts are intensive, active, sincere, and result-oriented actions taken, and best practices used, by a Recipient designed to accomplish WTHP and Equal Employment Opportunity Program objectives and requirements. Good faith recruitment efforts include, but are not limited to:

1. Working aggressively with the Recipient's Joint Apprenticeship Training Committee (JATC) to recruit minorities, women and disadvantaged individuals and documenting these efforts;
2. Requesting JATC ideas on how to increase employment of underutilized groups, and assist JATC in conducting a recruitment workshop with potential minority and women employees;
3. Supporting JATC by giving all apprentices referred to the Recipient by JATC a fair chance to perform successfully, allowing for possible lack of previous experience, and taking responsibility for providing on- the-job training, understanding that all apprentices should not be expected to have previous experience;
4. Participation in job fairs, school-to-work, and community events to recruit minorities, women, and disadvantaged individuals into the construction trades;
5. Allowing scheduled job site visits by participants in community programs, as safety allows, to increase awareness of job and training opportunities in the construction trades; and
6. Retaining job applications of those recruited but not selected for a job, in the event a relevant job becomes open.

#### B. Retention Efforts

Recipients shall attempt to retain minorities, women, and disadvantaged employees by implementing steps such as the following:

1. Maintaining a harassment-free work place;
2. Ensuring that employees are knowledgeable about company policies if they need to report a harassment issue;
3. Making reasonable best efforts to keep apprentices working and train them in all work processes described in the apprenticeship standards;
4. Reviewing and disseminating, at least annually, the obligations under the WTHP, as well as the Recipient's EEO policy, with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions;
5. Reviewing, at least annually, of all supervisors' adherence to and performance under the Recipient's EEO policies and affirmative action obligations;
6. Taking steps to reduce any negative isolation of, or hostile attitudes or behavior toward, minorities and women (e.g., have several minorities and women at the job site; provide access to support group system);
7. Providing adequate toilet facilities for women on the job site; and
8. Matching minority, female, or disadvantaged apprentices who may need support to complete their apprenticeship programs with a journey-level mentor.



**EXHIBIT 2**  
**Workforce Plan**

This form must be completed by any Recipient. Please state how you plan to perform the work on this project, indicating the number of journey workers and apprentices by trade. This workforce plan must demonstrate how your company will fulfill all Workforce Training & Hiring Program (WTHP) requirements, including utilization of apprentices. Refer to Exhibit 5 for apprenticeship ratio data. Complete all columns, with project-specific information.

Bid# \_\_\_\_\_ Contract Amount \$ \_\_\_\_\_ Project Name: \_\_\_\_\_

Company Name \_\_\_\_\_ Federal ID #: \_\_\_\_\_

Prime Contractor: \_\_\_\_\_ Subcontractor \_\_\_\_\_

List all Trades to be used on this Project	Total # of Journey Workers	Total # of Apprentices	Total # of Female Workers	Total # of Minority Workers	# and Level of New Positions (i.e. 1A or 1J)	Anticipated Start Date	Estimated Total Hours (all workers in each trade)
Please list the apprentices who will work on this project. If you need more space, attach an additional sheet of paper. The Compliance Agency must approve all apprentices on the project.							
Name of Apprentice	Trade	Race	Gender	Date of Hire	STAFF USE ONLY		
If no current apprentices, indicate when and how they will be hired:							

Person in your company who does hiring: \_\_\_\_\_

Company: \_\_\_\_\_ CCB# \_\_\_\_\_ Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

E-mail address for submitting Monthly Employment Reports via e-mail: \_\_\_\_\_

Are you a registered Training Agent? Yes ☐ No ☐ Are you a Union ☐ or Open Shop ☐ contractor?

With which JATCs are you registered to train apprentices? \_\_\_\_\_

Apprentice committee or union contact person who dispatches apprentices to your company:

Name: \_\_\_\_\_ Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

Name: \_\_\_\_\_ Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

Prepared by: \_\_\_\_\_ Date: \_\_\_\_\_  
(Print and sign)

Prime Contractor must complete and submit to as designated to Compliance Agency:

Workforce Training & Hiring Program | 1120 S.W. Fifth Avenue #750, Portland, OR 97204 | Phone (503) 823-6850 or FAX (503) 823-5539

**EXHIBIT 3**  
**Request for Apprentice**

**The contractor may use this form to document efforts when recruiting apprentices.**

**FAX To:** \_\_\_\_\_ / \_\_\_\_\_  
(Apprenticeship Committee) (Contact/Dispatcher)

Fax Number : \_\_\_\_\_ Number of Pages: \_\_\_\_\_

**Request From:**

Company Name: \_\_\_\_\_ / \_\_\_\_\_  
(Registered Training Agent) (Contact Person)

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_ Date: \_\_\_\_\_ Time: \_\_\_\_\_

**Apprentice Request:**

As a registered Training Agent, I am using this form to request referral of an apprentice for employment with my company in cooperation with the City Workforce Training & Hiring Program. I would like to continue to diversify my workforce. Therefore, please make special efforts to include ethnic minorities and women for my consideration, among other available candidates you believe are well-qualified. If I am unable to receive a referral from my apprenticeship program within a reasonable time, and my apprenticeship program is open for applications or allows direct entry, I may use this form to request a referral to the apprenticeship program from community recruitment resources.

Apprentice referral is needed by this date: \_\_\_\_\_ Work Starts: \_\_\_\_\_

Job Site Location: \_\_\_\_\_ Expected Length of Employment: \_\_\_\_\_

Project: \_\_\_\_\_ Compliance Agency (City of Portland) \_\_\_\_\_

Number of Apprentices: \_\_\_\_\_ Trade/Occupation: \_\_\_\_\_

Number of Apprentices: \_\_\_\_\_ Trade/Occupation: \_\_\_\_\_

Minimum qualifications (if different from apprenticeship standards): \_\_\_\_\_

**Safety needs.** Hard hat: \_\_\_\_\_ Gloves: \_\_\_\_\_ Hard-toed boots: \_\_\_\_\_ Other? \_\_\_\_\_

**Please fax this Request for Apprentice form to your apprenticeship committee.**

To document your good faith efforts, copies may also be sent to:

City Workforce Training & Hiring  
1120 SW 5th Ave. Rm 750  
Portland, OR 97204  
Phone: (503) 823-6850  
FAX: (503) 823-5539

**(a) For Apprenticeship Program Only**

Please check the appropriate box and fax to City Workforce Equity Program:	
<input type="checkbox"/> I was able to dispatch an apprentice to the project listed above.	
Name of Apprentice _____	Race _____ Gender _____ Term _____
<input type="checkbox"/> I was unable to dispatch an apprentice to the project listed above because _____	
_____ Fax _____	
this form with dispatch information to 823-5539. Thank you.	

#### EXHIBIT 4

##### Workforce Training & Hiring Program Prime Contractor Checklist

The following Workforce Training & Hiring Program (WTHP) requirements are a summary of the key contractual obligations of Recipients. It is the Recipient's responsibility to read and fully understand this section of the bid specifications and to comply with all provisions of the program, regardless of whether they appear on this checklist. The City administers this program for the Prosper Portland.

#### CHECKLIST:

**1. Prime Contractor:**

- A. Submit Workforce Plan form (Exhibit 2) to Compliance Officer within 15 calendar days after bid opening or prior to contract award, whichever occurs first.
- B. Ensure compliance by all subcontractors with subcontracts of \$100,000 or more and provide them with a copy of the Specifications. Incorporate the Specifications into applicable subcontracts.

**2. Subcontractors, at all tiers, with contracts of \$100,000 or more:**

Submit Workforce Plan form (Exhibit 2) prior to beginning work on the project or within 5 days of signing subcontracts, whichever occurs first.

**3. Prime Contractor and all subcontractors with contracts of \$100,000 or more must:**

- A. Before starting work on this project: Submit proof of registration as a Training Agent with the Bureau of Labor & Industry (BOLI), Apprenticeship & Training Division. Not a BOLI registered training agent? Contact BOLI at (971) 673-0760 or the City of Portland at (503) 823-6888 for information on how to become a BOLI registered training agent.
- B. Throughout the duration of the project:
  - 1. Ensure that a minimum of 20% of labor hours in each apprenticeable trade performed by the prime and subcontractors of \$100,000 or more are worked by State-registered apprentices.
  - 2. Strive, actively and in good faith, to meet the applicable workforce diversity goals of employing people of color and women (including both journey level and apprentice workers).
  - 3. Make all active, good faith efforts to employ a workforce that reflects the diversity of the City of Portland, including recruitment of diverse workforce through the unions, apprenticeship programs and other community resources, as described herein.
  - 4. Maintain written documentation of all requests for workers from the unions, apprenticeship programs, and community organizations.
  - 5. When an apprentice is hired, notify the Compliance Officer, Ay Saechao at (503) 823-1090.
  - 6. Submit WTHP reporting online via LCP Tracker by the 5<sup>th</sup> business day of the month.
  - 7. Communicate with the Compliance Officer early and often regarding any issues with meeting the WTHP requirements.



# PROSPER PORTLAND

Building an Equitable Economy

## RESOLUTION NO. 7478

### RESOLUTION TITLE:

AUTHORIZING A GRANT AGREEMENT WITH AM/DRI WILLAMETTE LLC TO FUND SOUTH WATERFRONT GREENWAY IMPROVEMENTS IN THE NORTH MACADAM TAX INCREMENT FINANCE DISTRICT


Adopted by the Prosper Portland Commission on March 9, 2023

PRESENT FOR VOTE	COMMISSIONERS	VOTE		
		Yea	Nay	Abstain
<input checked="" type="checkbox"/>	Chair Gustavo J. Cruz, Jr.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	Commissioner William Myers	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	Commissioner Peter Platt	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	Commissioner Sam Rodriguez	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	Commissioner Serena Stoudamire Wesley	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> Consent Agenda <input checked="" type="checkbox"/> Regular Agenda				

### CERTIFICATION

The undersigned hereby certifies that:

*The attached resolution is a true and correct copy of the resolution as finally adopted at a Board Meeting of the Prosper Portland Commission and as duly recorded in the official minutes of the meeting.*

	<b>Date:</b>  March 9, 2023
<b>Pam Feigenbutz, Recording Secretary</b>	