

PROSPER PORTLAND

Portland, Oregon

RESOLUTION NO. 7582

AUTHORIZING AN INTERGOVERNMENTAL AGREEMENT WITH THE CITY OF PORTLAND CITY OPERATIONS, PROCUREMENT SERVICES DIVISION IN AN AMOUNT NOT TO EXCEED \$629,375 FOR BUSINESS AND WORKFORCE EQUITY CONTRACT COMPLIANCE SERVICES

WHEREAS, Prosper Portland’s Construction Business and Workforce Equity Policy requires that terms be included in certain Prosper Portland contracts to promote contracting opportunities for certified disadvantaged, minority, woman-owned, and emerging small businesses (“Certified Firms”) as well as the hiring and training of a diverse construction workforce, including apprentices;

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

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

WHEREAS, Prosper Portland and City Procurement intend to enter into a new IGA so City Procurement may continue to provide contract compliance services for a period of five years and that cumulative expenditure exceeds the Prosper Portland Executive Director’s delegated authority.

NOW, THEREFORE, BE IT RESOLVED, that the Prosper Portland Board of Commissioners (“Board”) authorizes the Executive Director to enter into an IGA with City Procurement for a period of five years starting retroactive to July 1, 2024, and terminating June 30, 2029, in substantially the form attached hereto as Exhibit A;

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

BE IT FURTHER RESOLVED that with the affirmative vote of at least four members of the Prosper Portland Board and of all members present, this resolution will become effective immediately upon its adoption, and otherwise it will take effect thirty days after adoption.

INTERGOVERNMENTAL AGREEMENT
BETWEEN PROSPER PORTLAND AND THE CITY OF PORTLAND
FOR SUPPORT OF EEO, CONSTRUCTION BUSINESS AND WORKFORCE EQUITY POLICY AND PROJECT
SPECIFIC AGREEMENTS

This Intergovernmental Agreement (this "IGA") is between Prosper Portland and the City of Portland, City Operations, Procurement Services Division, (the "Bureau") and shall be a five-year agreement beginning July 1, 2024 (the "Effective Date"),

RECITALS

- A. The City of Portland ("The City") currently has certain Programs (as hereinafter defined) concerning purchasing and construction activities.
- B. The Bureau administers the Programs on behalf of the City.
- C. Prosper Portland acts as its own Local Contract Review Board, and has promulgated its own contracting and purchasing rules, including its own requirements for participation in some of the Programs and its own standards for Business and Workforce Equity to include Certified Firms (as defined below) in projects, as well as compliance with some city Programs.
- D. Prosper Portland engages in some direct contracting; however, the bulk of the construction generated by Prosper Portland activity is contracted by persons or entities that borrow money from, acquire property from, or receive financial benefit from other programs administered by Prosper Portland. Prosper Portland has adopted contracting policies that require, for contracts over certain dollar amounts, such persons or entities to participate in its construction contracting programs, which are substantially similar to the City's Programs.
- E. The Programs require considerable staff time, expertise and information technology systems to successfully implement. The City has the necessary staff, expertise and information technology systems in-place to administer the Programs on Prosper Portland's behalf. The Parties agree to enter into this IGA whereby each Party will undertake certain actions as described herein to ensure the successful implementation of the Programs. By contracting with the City to provide these services it is believed considerable cost savings will be achieved by avoiding the duplication of efforts that would otherwise be required. By utilizing some Programs and City employees with experience regarding the Programs, Prosper Portland will save money and avoid unnecessary duplication and effort. Therefore, Prosper Portland and the Bureau have agreed to work together.

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

AGREEMENT

1) DEFINED TERMS

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

2) PROGRAM DESCRIPTIONS

- A) The City shall administer and implement the following programs ("Programs") on behalf of Prosper Portland:
- i) City EEO Program. The City's Equal Employment Opportunity certification program (the "EEO Program") requires a vendor to obtain an EEO certification before the City can acquire more than \$2500 in goods and services from it during a fiscal year. The City will provide EEO certification services to Prosper Portland.
 - ii) Prosper Portland Business Equity and Workforce Training and Hiring Programs. The Prosper Portland Business Equity Program requires contractors on specified projects to make contracting opportunities available to Disadvantaged Business Enterprises ("DBE"), Minority Business Enterprises ("MBEs"), Women Business Enterprises ("WBEs") and Emerging Small Businesses ("ESBs"), Service Disabled Veteran Business Enterprises ("SDVs") and Veteran Owned Business Enterprises ("VBEs") (collectively, "Certified Firms") when subcontracting portions of Prosper Portland-funded projects. The Prosper Portland Workforce Training and Hiring Program requires contractors working on certain construction projects to make efforts to hire and train a diverse workforce including apprentices, as more specifically set forth in the Prosper Portland Construction Business and Workforce Equity Policy, attached hereto and incorporated herein. The City will provide Certified Firm utilization and workforce tracking as set forth in the Prosper Portland Construction Business and Workforce Equity Policy and Specifications. The City will provide access to Monthly Certified Firm Utilization and Workforce reports via its Contract Compliance Reporting System (CCRS) and LCP Tracker.
 - iii) Project Specific Agreements. Project specific agreements, surrounding Prosper Portland owned properties, and related City investments in infrastructure and housing which includes efforts to maximize community benefits by maximizing participation of certified minority-owned, women-owned and DBE firms in the design and construction and creates workforce opportunities for communities that have previously been underserved. The City will provide tracking specific to Project Specific Agreements, as outlined in Article 7.

3) FUNDING AND SCOPE

- A) Administration of the Programs on behalf of Prosper Portland will require the involvement of a portion of each of the following Bureau positions: Compliance Services Supervisor and Contract Compliance Specialist.
- B) This IGA covers all projects issued by Prosper Portland between July 1, 2024 and June 30, 2029. Support cost of any significant projects that are identified after the IGA has been executed and not included in the above cost structure shall be negotiated by the City and Prosper Portland. All additions to the IGA shall be memorialized through an addendum signed by both parties.
- C) As compensation for the City's services set forth in Section III herein, Prosper Portland shall pay the City bi-annual payments of \$62,937.50 each, for an annual not-to-exceed amount of \$125,875 within 30 calendar days of receiving the City's request for payment; and for a total not-to-exceed amount of Six Hundred Twenty-Nine Thousand Three Hundred Seventy-Five Dollars (\$629,375) for the life of the 5-year Agreement. Payment will be based on receipt of services as outlined in the Agreement. If Programs are added or additional services are required, this amount may be amended through an addendum to this agreement by both Parties.

4) EEO PROGRAM RESPONSIBILITIES

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

5) BUSINESS EQUITY PROGRAM

- A) The City shall:
 - i) Provide compliance activities to implement the Business Equity Program, at a level sufficient to satisfy program requirements. These activities include, but are not limited to, attendance at Prosper Portland pre-proposal, pre-bid, and preconstruction meetings to discuss the Business Equity Program requirements, monthly data collection and compliance reviews, site visits, and timely notification to Prosper Portland staff of compliance issues and monthly compliance reviews and data collection for all Prosper Portland projects.
 - ii) Monitor compliance with established goals on Prosper Portland owned construction projects, Prosper Portland sponsored projects, Sale of Prosper Portland real property to a

private party or intergovernmental agreements as covered in the Prosper Portland Business Equity Policy and Procedures.

- iii) Provide assistance to Prosper Portland employees, Contractors and vendors by telephone who desire information about the Prosper Portland Business Equity Program.
- iv) Collect Certified Firm utilization data on Prosper Portland -owned and Prosper Portland - sponsored projects from July 1, 2024 through June 30, 2029.
- v) Collect and confirm monthly payments to all subcontractors via the CCRS.
- vi) Provide access to project-specific Certified Firm utilization and payment reports via the CCRS.

B) Prosper Portland shall:

- i) Require compliance with the Business Equity Program, as provided in Prosper Portland's policies by including the requirements in contract specifications, RFPs, loan documents, development agreements and similar documents.
- ii) Cooperate with the City to implement the Business Equity Program, including for Prosper Portland projects by requiring its Construction/Compliance Project Manager, and purchasing staff to coordinate their efforts with the City and to review Prosper Portland solicitation documents and contract documents for inclusion of Program requirements and to forward appropriate documents to the City, and to take enforcement action against Contractors, as needed.
- iii) Require Contractors to submit a Utilization Plan to the City, via the CCRS, which lists all subcontractors working on the project, their corresponding type of work, their subcontract amount and certification type, if applicable.
- iv) Give written approval of all subcontractor additions, after submittal of the Utilization Plan and shall provide a copy to the City, for its records.
- v) Require Contractors to submit and confirm payments to the City via the CCRS, on a monthly basis.

6) WORKFORCE TRAINING AND HIRING PROGRAM

A) The City shall:

- i) Provide outreach and compliance activities to implement the Workforce Training and Hiring Program at a level sufficient to satisfy program requirements. These activities include, but are not limited to, attendance at Prosper Portland pre-proposal, pre-bid, and preconstruction meetings to discuss the Workforce Training and Hiring Program requirements, monthly data collection and compliance reviews, site visits, and timely notification to Prosper Portland staff of compliance issues and monthly compliance reviews and data collection for all Prosper Portland projects.

- ii) Provide access to project-specific reports via LCP Tracker, which provide workforce hours, apprentice utilization and achievement towards diversity goals for all subcontractors with subcontracts of \$100,000 or more, for Prosper Portland projects.
 - iii) Monitor compliance with established goals on Prosper Portland owned prime construction contracts or intergovernmental agreements, Prosper Portland projects that involve the sale of Prosper Portland real property to a private party, and Prosper Portland sponsored projects as set forth in the Prosper Portland Workforce Training and Hiring Program Specifications.
 - iv) Provide assistance to Prosper Portland employees, Contractors and vendors by telephone who desire information about the Prosper Portland Workforce Training and Hiring Programs.
- B) Prosper Portland shall:
- i) Require compliance with the Workforce Training and Hiring Program, as provided in Prosper Portland's Construction Business and Workforce Equity policy by including the requirements in contract specifications, RFPs, loan documents, development agreements and similar documents.
 - ii) Cooperate with the City to implement the Workforce Training and Hiring Program, including the Workforce Training and Hiring Program, for Prosper Portland projects by requiring its Construction Compliance Project Manager and purchasing staff to coordinate their efforts with the City and to review Prosper Portland solicitation documents and contract documents for inclusion of Program requirements and to forward appropriate documents to the City, and to take enforcement action against Contractors, as needed.
 - iii) Following City's recommended course of action on issues pertaining to warnings, assessment of damages, exemption requests and applicability of program requirements, Prosper Portland will provide written notification to the City of its decision regarding the recommendation and is responsible for conveying any decisions to the Owner/Contractor. Prosper Portland will promptly notify the City of its decisions and will communicate outcomes (issues resolved, damages paid, etc.) to the City. Damages collected will be handled by Prosper Portland or distributed according to the Workforce Training and Hiring Program Administrative Rules.

7) PROJECT SPECIFIC AGREEMENTS

- A) The City shall:
 - i) Provide workforce tracking and reporting activities on both Prosper Portland funded, City-funded, and privately funded construction projects subject to Project Specific Labor Agreements. Such activities include, but are not limited to:
 - (a) Verify the training agent status of contractors with the Bureau of Labor and Industries Apprenticeship and Training Division.
 - (b) Collect reporting from contractors via LCP Tracker.
 - (c) Verify State of Oregon apprentice registration status of contractor reported apprentices.
 - (d) Provide access to project-specific reports via LCP Tracker to Prosper Portland.
 - (e) Inform Prosper Portland of any discrepancies between contractors reported information and the City's verification of the accuracy of the reported information.
 - (f) Attend monthly Labor Management Community Oversight Committee meetings, as requested.
- B) Prosper Portland shall:
 - i) Convene, facilitate, and provide administrative support to the Labor Management Community Oversight Committee.
 - ii) Provide the City of Portland with information on upcoming projects and confirm with City of Portland staff each specific agreement that will apply.
 - iii) Compile data for each project and across projects and update the project specific website with progress on the project goals and requirements.
 - iv) Work with all parties to the specific project labor agreements (City Bureaus, public & nonprofit development partners) to ensure compliance with the agreements.

8) PROFESSIONAL SERVICES CONTRACTS

- A) The City shall:
 - i) Collect and confirm monthly payments to all subcontractors via the CCRS.
 - ii) Provide access to project-specific Certified Firm utilization and payment reports via the CCRS.
- B) Prosper Portland shall:

- i) Require Contractors to submit a Utilization Plan to the City, via the CCRS, which lists all subcontractors working on the project, their corresponding type of work, their subcontract amount and certification type, if applicable.
- ii) Require Contractors to submit and confirm subcontractor payments to the City via the CCRS, on a monthly basis.

9) CERTIFIED PAYROLL REPORTING

- A) The City shall:
 - i) Provide access to LCPtracker for designated staff to view and approve Certified Payroll Reports, for applicable projects.
 - ii) Enter master wage data sets for Region 2, for January and July for those zone differentials within 30 miles of City Hall and any wage modifications issued in April and October.
- B) Prosper Portland shall:
 - i) Direct contractors to enter Certified Payroll Reports in LCPtracker and ensure that contractors and subcontractors submit a copy of the certified statement (BOLI WH-38 form) with their payroll to Prosper Portland, as required by contract.

10) DOCUMENTATION AND TRAINING PROVIDED BY BUREAU.

- A) The City will provide access to reports and data necessary to compile the Prosper Portland Annual Equity in Business and Workforce Training and Hiring report via the CCRS and LCP Tracker.
- B) Upon request, Bureau will provide training to Prosper Portland Project Managers and other appropriate staff on an annual basis. The training will include but is not limited to: Overview of Program Requirements and revisions, clarification of process and appropriate documents that Prosper Portland staff should forward to Procurement Services, and methods of compliance.

11) DURATION AND TERMINATION

12) This IGA shall be effective from the Effective Date to June 30, 2029 (the "Expiration Date"). The Expiration Date may be extended through an addendum to this IGA by mutual agreement of the Parties. Either party may terminate this IGA upon giving thirty (30) days written notice. In the event of termination, the City shall be entitled to payment for work performed prior to the notice of termination.

13) COMPLIANCE WITH LAWS

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

14) MISCELLANEOUS PROVISIONS

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

CITY OF PORTLAND

Sara Morrissey, City Operations Deputy Administrator

Date

Approved as to Form

City Attorney

Date

PROSPER PORTLAND

Shea Flaherty Betin, Interim Executive Director

Date

Approved as to Form

Legal Counsel

Date