PROSPER PORTLAND

Portland, Oregon

RESOLUTION NO. 7573

AUTHORIZING EXECUTION OF THE FISCAL YEAR 2024-25 INTERGOVERNMENTAL AGREEMENT WITH THE CITY OF PORTLAND BUREAU OF PLANNING AND SUSTAINABILITY FOR PORTLAND CLEAN ENERGY FUNDS OF \$42,500,000 OVER A FIVE-YEAR TERM FOR PROGRAM CAPITAL AND PROGRAM DELIVERY ACTIVITIES RELATED TO IMPLEMENTATION OF THE CLIMATE INVESTMENT PLAN

WHEREAS, Prosper Portland, as the duly designated economic development and urban renewal agency of the City of Portland ("City"), is granted broad powers under Oregon Revised Statutes 457 and City Charter Chapter 15 for the planning and implementation of tax increment finance ("TIF") funded projects and economic development activities;

WHEREAS, Prosper Portland has established expertise in economic development activities which, to the extent they are financed with TIF revenues, are restricted to the City's TIF districts;

WHEREAS, Prosper Portland's strategic goal is to achieve widely shared prosperity among all residents of Portland by harnessing and expanding Prosper Portland's tools for job creation, place-making, and economic opportunity;

WHEREAS, the City and Prosper Portland desire that Prosper Portland implement certain economic development activities on a citywide basis, primarily small contractor business technical assistance and small commercial building funding and improvements in furtherance of the City's Climate Investment Plan ("CIP") and related strategic priorities and programs funded through the Portland Clean Energy Community Benefits Fund ("PCEF");

WHEREAS, the CIP, developed with significant community engagement and input, is PCEF's five-year plan to guide the program's investments in community-led and informed projects that reduce carbon emissions, create economic opportunity, help make our city more resilient and prepared for a changing climate, and support the City's goal of net-zero carbon emissions by 2050;

WHEREAS, implementing these economic development activities supports Prosper Portland's mission and goals related to increasing entrepreneurship and access to capital and fostering equitable wealth creation; and

WHEREAS, the City and Prosper Portland desire to enter into an agreement to establish the terms and conditions by which the City will provide funding to Prosper Portland to implement economic development activities on a citywide basis.

NOW, THEREFORE, BE IT RESOLVED that the Prosper Portland Board of Commissioners authorizes the Executive Director to execute the Fiscal Year 2024-25 Intergovernmental Agreement, substantially in the form attached to this resolution as Exhibit A, to provide \$42,500,000 to Prosper Portland for economic development activities over a 5-year period;

BE IT FURTHER RESOLVED, that the Executive Director is authorized to amend the agreement provided such changes do not materially increase Prosper Portland's risks and costs as set forth in the agreement, 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 fewer than four commissioners for this resolution, 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

Portland Bureau of Planning and Sustainability

This Intergovernmental Agreement ("Agreement"), dated as of the last date of signature below (the "Effective Date"), is made and entered into by and between the CITY OF PORTLAND, BUREAU OF PLANNING AND SUSTAINABILITY ("BPS") and PROSPER PORTLAND, the economic development and urban renewal agency of the City of Portland ("Prosper Portland").

RECITALS

- A. Prosper Portland is the economic development and urban renewal agency of the City of Portland (the "City") and is granted broad powers under ORS 457.170 *et seq*. for the planning and implementation of economic development and capital projects.
- B. BPS oversees the Portland Clean Energy Community Benefits Fund ("PCEF") program, which was created by Portland voters in November 2018 to fund clean energy projects, including renewable energy and energy efficiency, transportation decarbonization projects, regenerative agriculture and green infrastructure projects, and climate action-related workforce development and contractor support programs.
- C. The Climate Investment Plan ("CIP"), developed with significant community engagement and input, is the PCEF program's five-year plan to guide the program's investments in community-led and informed projects that reduce carbon emissions, create economic opportunity, help make our city more resilient and prepared for a changing climate, and support the City's goal of net-zero carbon emissions by 2050.
- D. Advance Portland, Portland's economic development strategy, presents an ambitious and actionable strategy to collectively deliver inclusive and sustainable economic growth; builds on Portland's industries, workforce, innovation activities, built environment, and institutions; and identifies opportunities to align and propel Portland's economic growth with equity and climate action.
- E. As authorized by ORS 457.210(2), BPS desires to contract with Prosper Portland so that Prosper Portland may implement portions of BPS's PCEF CIP activities aimed at increasing contractor capacity to compete for and execute on clean energy construction projects including energy efficiency and renewable energy projects in commercial and multifamily middle-income buildings and at providing access to capital via loans and grants to businesses to make clean energy and renewable energy investments.
- F. This Agreement was authorized by the Prosper Portland Board of Commissioners by Resolution No. 7573 adopted on August 28, 2024.

NOW THEREFORE, in consideration of the foregoing, and of the mutual promises set forth in this Agreement, the parties agree as follows:

AGREEMENT

SECTION 1 TERM

1.1 This Agreement is effective as of the date it is fully executed by the parties, and it will terminate on June 30, 2029. Notwithstanding the foregoing, this Agreement may be terminated at any time by mutual written consent.

SECTION 2 PROSPER PORTLAND SCOPE OF WORK AND PROGRAM DESIGN

- 2.1 Prosper Portland will provide the services and programs set forth in the chart on Exhibit A (the "Scope of Work") at the costs also set forth in the chart on Exhibit A (which costs are referred to in this Agreement as the "Budget"). Exhibit A is incorporated into this Agreement by this reference as if set forth in full. Prosper Portland will provide all services and programs in a competent and professional manner in accordance with the Scope of Work.
- 2.2 Prosper Portland will administer three programs, summarized in Exhibit B ("Program Summaries"). Exhibit B is incorporated into this Agreement by this reference as if set forth in full. During the first six months of the term of this Agreement, Prosper Portland will work in consultation with PCEF staff to develop program guidelines, performance metrics, and goals for each of the three programs. These program guidelines, performance metrics, and goals must be approved by the BPS Contract Manager before program implementation can begin.

SECTION 3 FINANCIAL CONTRIBUTIONS

- Subject to the terms and conditions of this Agreement, BPS agrees to provide to Prosper Portland \$29,750,000 in program capital ("Program Capital") funds and \$12,750,000 in program delivery and administrative support ("Program Delivery") funds for Prosper Portland to provide the services and undertake programs pursuant to the Scope of Work over the five-year term of this Agreement. The Program Capital and the Program Delivery funds are collectively referred to in this Agreement as the "Funds." At Prosper Portland's request, the City will advance the Funds in semi-annual allocations of \$4,250,000 each, contingent on Prosper Portland submitting timely and acceptable semi-annual reporting. Prosper Portland may have no more than two advances outstanding at any time and must report on all Direct and Indirect Costs charged against an advance within six months from the period of performance covered by that advance (e.g., period of performance of January 1 to June 30, report would be due by December 31.). The first semi-annual allocation will be paid to Prosper Portland promptly following execution of this Agreement.
 - 3.1.1 The Prosper Portland Contract Signatory and the BPS Contract Signatory (each as defined in Section 4 below) are authorized to modify the Budget or Budget line-items, through a duly executed amendment to this Agreement, if sufficient funds have been appropriated for BPS in the City's budget to cover the costs of providing the services under this Agreement, or if such Budget line-item adjustments do not increase the maximum compensation under this Agreement. The authority to modify this Agreement will include the authority to advance additional Program Capital funds during any fiscal year if Prosper Portland has successfully spent the annual allocation of Program Capital funds prior to the end of the fiscal year.

- 3.2 Prosper Portland Program Capital and Program Delivery funds set forth in the Budget for performing activities set forth in the Scope of Work will include:
 - 3.2.1 Direct Costs, including:
 - 3.2.1.1 Personnel Services. The direct salary and benefit costs paid to staff.
 - 3.2.1.2 External Materials and Services. The actual costs for the purchase of materials, supplies, and external services, including but not limited to, professional/technical/expert services, equipment, construction services, travel, training, and incidental expenses.
 - 3.2.1.3 Capital and Financial Assistance. Disbursements made under loan, grant, or other financial assistance agreements.
 - 3.2.2 Indirect Costs, including:
 - 3.2.2.1 Personnel Services. Prosper Portland administrative, planning, and policy unit indirect staff costs.
 - 3.2.2.2 Support Costs. Support costs including space rental, and other generally accepted fixed costs of doing business.
- 3.3 Prosper Portland will submit to the BPS Contract Manager semi-annual reconciliation reports itemizing:
 - 3.3.1 A description of the nature of work accomplished.
 - 3.3.2 The names, rates and hours worked of personnel.
 - 3.3.3 Disbursements to consultants, contractors and outside vendors for materials and services.
 - 3.3.4 Descriptions of grants, loans, and other financial assistance provided for in this Agreement, including associated projected outcomes.
 - 3.3.5 Updates to agreed-upon performance metrics and progress towards goals outlined for each of the programs in Exhibit B.
- 3.4 If reconciliation reports are received with incomplete information or disputed items, BPS will advise Proper Portland in writing what specific information is missing or disputed.

SECTION 4 CONTRACT MANAGEMENT

- 4.1 **By Prosper Portland**.
 - 4.1.1 <u>Prosper Portland Contract Signatory.</u> Prosper Portland's Contract Signatory will be *Kimberly Branam, Executive Director,* or such other person as they may designate in writing (the "**Prosper Portland Contract Signatory**"). The Prosper Portland's Contract Signatory

is authorized to give notices and to carry out other actions referred to herein, including termination of this Agreement as provided in Section 1.1.

- 4.1.2 <u>Prosper Portland Contract Manager</u>. Prosper Portland's Contract Manager will be *Kay Little, Asset and Investment Manager*, or such other person as they may designate in writing (the "**Prosper Portland Contract Manager**"). The Prosper Portland Contract Manager is responsible for the day-to-day management of this Agreement as provided herein and serves as the first level of conflict resolution.
- 4.1.3 Prosper Portland Program Managers. Prosper Portland's Program Manager for the Small Contractor Business Technical Assistance Program will be Robert Smith, Entrepreneurship and Community Economic Development Manager or other staff level designee; the Program Manager for the Small Commercial Building Energy Efficiency Grant Program will be Amy Nagy, Development Manager or other staff level designee; and the Program Manager for the Small Commercial Building Low-Cost Access to Capital Fund Program will be Shelly Haack, Project Manager II or other staff level designee. The Program Managers are responsible for the day-to-day management of their assigned program, and general program or project questions should be directed to these individuals.

4.2 **By BPS**.

- 4.2.1 <u>BPS Contract Signatory</u>. BPS's Contract Signatory will be *Eric Engstrom, Interim Director,* or such other person as they may designate in writing (the "BPS Contract Signatory"). The BPS Contract Signatory is authorized to give notices and to carry out other actions referred to herein, including termination of this Agreement as provided in Section 1.1.
- 4.2.2 <u>BPS Contract Manager</u>. BPS's Contract Manager will be Sam Baraso, PCEF Program Manager (the "**BPS Contract Manager**"). The BPS Contract Manager is responsible for the day-to-day management of this Agreement as provided herein and serves as the first level of conflict resolution.
- 4.2.3 <u>BPS Program Managers</u>. BPS's Program Manager for the Small Contractor Business Technical Assistance Program and the Small Commercial Building Low-Cost Access to Capital Fund Program will be Jaimes Valdez, Strategic Partnerships and Policy Manager, or other staff level designee; and the Program Manager for the Small Commercial Building Energy Efficiency Grant Program will be Wendy Koelfgen, Clean Energy Commercial and Multifamily Programs Manager, or other staff level designee. The Program Managers are responsible for the day-to-day management of their assigned program, and general program or project questions should be directed to these individuals.

4.3 Collaboration; Reporting.

4.3.1 The Prosper Contract Manager and the BPS Contract Manager will confer quarterly to review project management and staffing needs and performance, and identify desired changes, if any. If either Prosper Portland or BPS desires to replace a Contract Manager, or other key staff identified below, the party's Contract Manager (or higher-level personnel at Prosper Portland or BPS, if necessary) will notify the other Contract Manager in writing, and if required, they will meet to discuss and agree on any necessary adjustments to provide adequate time to make such change.

4.3.2 In addition to the semi-annual reconciliation report required above, Prosper Portland will submit data and information to BPS on its activities under this Agreement, as BPS may reasonably request from time to time in order to monitor the delivery of services and the expenditure of funds budgeted for the services.

SECTION 5 GENERAL

5.1 **Delivery / Maintenance of Records**. Both parties will maintain records on a current basis to support billings and reimbursement for work performed under this Agreement. Such billing records will be retained as well as all other records related to performance of work done under this Agreement as long as necessary to satisfy records retention requirements and, in any event, until the later of (a) 3 years after termination of this Agreement, (b) the date that any dispute arising under this Agreement is resolved or (c) the date that such records may be destroyed under applicable records retention laws. Either party or its authorized representative will have the authority to inspect, audit and copy, on reasonable notice and from time to time, all such records to comply with audit requirements or meet other business needs.

5.2 **Conflict Resolution**.

- 5.2.1 If a dispute arises regarding performance, cost, schedule, scope, quality or other terms and conditions of this Agreement, all parties agree to exercise good faith in expeditiously resolving said conflict in the following manner.
 - 5.2.1.1 All conflicts should first be discussed and resolved, if possible, by the Project Managers identified in SECTION 4.
 - 5.2.1.2 If the conflict cannot be resolved by the Project Managers, or involves one of the project managers, then the conflict will be elevated to the Contract Managers identified in SECTION 4 for discussion and resolution.
 - 5.2.1.3 Any conflicts not resolved by the Contract Managers will be elevated to the Contract Signatories for discussion and resolution.
- 5.3 **Compliance with Laws.** Each party will comply with all applicable laws, rules, regulations, orders, consents and permits in the performance of all of their obligations under this Agreement.

5.4 **Indemnification**.

5.4.1 Subject to the limits of the Oregon Tort Claims Act and Oregon Constitution, BPS agrees to indemnify, hold harmless and defend, Prosper Portland, its directors, officers, employees and agents from and against all claims, suits, actions of whatsoever nature, damages or losses, and all expenses and costs incidental to the investigation and defense thereof including reasonable attorney's fees, resulting from or arising out of the activities of City or its officers, employees, or agents under this Agreement, except to the extent that such claims, suits, actions, damages, losses, expenses, or costs result from or arise out of the activities of Prosper Portland or its officers, employees, or agents.

- 5.4.2 Subject to the limits of the Oregon Tort Claims Act and Oregon Constitution, Prosper Portland agrees to indemnify, hold harmless and defend, City, its officers, employees and agents from and against all claims, suits, actions of whatsoever nature, damages or losses, and all expenses and costs incidental to the investigation and defense thereof including reasonable attorney's fees, resulting from or arising out of the activities of Prosper Portland or its directors, employees, or agents under this Agreement, except to the extent that such claims, suits, actions, damages, losses, expenses, or costs result from or arise out of the activities of City or its officers, employees, or agents.
- Amendments. Except as otherwise provided for in this Agreement, BPS or Prosper Portland may amend this Agreement only in writing signed by the contract signatories. Notwithstanding the foregoing, changes to the Scope of Work and Budget, which do not increase the total compensation under this Agreement, may be made upon written agreement by the contract managers identified in SECTION 4 of this Agreement. Changes will not take effect or be binding on either party until agreed to in writing.
- 5.6 **Merger Clause; Counterparts.** This Agreement contains the entire agreement between Prosper Portland and BPS. It supersedes all prior written or oral discussions or agreements concerning work to be performed by either party. This Agreement may be executed in one or more counterparts, including by electronic means, which, when taken together, will form one and the same agreement.
- 5.7 **Assignment; Successors**. Neither party may assign or transfer any obligation under this Agreement without the prior written consent of the other parties.
- 5.8 **No Third-Party Beneficiaries**. This Agreement has been made solely for the benefit of the parties hereto and their respective successors and permitted assigns, and nothing in this Agreement is intended to, or will, confer upon any other person any benefits, rights or remedies under or by reason of this Agreement.

5.9 **Termination for Convenience of City**.

- 5.9.1 BPS may terminate this Agreement for any reason deemed appropriate in its sole discretion by providing at least ninety (90) days' prior written notice to Prosper Portland (the "Termination Notice"). The Termination Notice will identify the termination date (the "Termination Date") of this Agreement. Unless the parties agree otherwise, upon receipt of the Termination Notice:
 - 5.9.1.1 Prosper Portland will conclude any work funded by Funds already paid to Prosper Portland by BPS, and Prosper Portland will not commence any new work that would require payment of additional funds from BPS to Prosper Portland.
 - 5.9.1.2 Prosper Portland may provide a report to BPS of all commitments of Funds that Prosper Portland has made to third parties, which commitments such as loans or grants) might not close prior to the Termination Date, due to timing and other considerations.
 - 5.9.1.3 The parties will meet and confer regarding whether contracts for services should be transferred to BPS.

CITY OF PORTLAND, by and through its

5.9.2 On or prior to the Termination Date, Prosper Portland will provide a final accounting of all direct, indirect, and loan/grants/contract expenditures to BPS, and Prosper Portland will return any remaining Funds in Prosper Portland's possession. Notwithstanding the foregoing, Prosper Portland may retain Funds in an amount required to close those third-party commitments identified in the report described in Section 5.9.1.2, above, along with a reasonable administrative allocation to complete those transactions.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

BUREAU OF PLANNING AND SUSTAINABILITY	
	Approved as to form:
Eric Engstrom, Interim- Director	
Date:	
PROSPER PORTLAND	
Kimberly Branam, Executive Director	Approved as to form:
Date:	

FINAL 06/21/2024

Exhibit A - Scope of Work and Program Budgets BPS/Prosper/PCEF IGA									
CIP STRATEGIC PRIORITY	PROSPER PORTLAND PROGRAM NAME	PRODUCT	DRAFT PERFORMANCE METRICS	5-Y	EAR ALLOCATION	ı	ANNUAL		
		PROGRAM CA	APITAL						
	Small Contractor - Business Technical Assistance	Business Technical Assistance (IBRN)	Business owner demograhics# of bus. receiving TA# of bus. offering clean energy services	\$	3,500,000	\$	700,000		
SUBTOTAL				\$	3,500,000	\$	700,000		
Strategic Program 4 - Clean Energy for Small Commercial Buildings	Small Commercial Building Energy Efficiency Grant Program	Grants to increase the energry efficiency of small commercial buildings	 Efficiency measures installed \$ amount invested Business owner demographics Business location Leverage 	\$	17,500,000	\$	3,500,000		
Strategic Program 11 - 82nd Ave. Business Stabilization	Small Commercial Building Energy Efficiency Grant Program	Grants targeted to 82nd Ave. businesses.	 Efficiency measures installed \$ amount invested Business owner demographics Business location Leverage 	\$	1,540,000	\$	308,000		
Strategic Program 11 - 82nd Ave. Business Stabilization	Small Commercial Building Energy Efficiency Grant Program	Marketing/Events targeted to 82nd Ave. businesses.	 Marketing collateral produced # of marketing & outreach events 	\$	210,000	\$	42,000		
SUBTOTAL				\$	19,250,000	\$	3,850,000		
Strategic Program 14 - Access to Capital	Low-cost Access to Capital fund	CPACE loans for projects <>\$250K-\$1M	 Measures installed \$ amount invested Business owner demographics Business location Leverage 	\$	7,000,000	\$	1,400,000		
SUBTOTAL				\$	7,000,000	\$	1,400,000		
SUBTOTAL - ALL PROGRAM CA	APITAL			\$	29,750,000	\$	5,950,000		
	PR	OGRAM DELIVERY/ADM	IINISTRATIVE COSTS						
NA - Program Delivery	Staffing, Indirect, and Materials and Services	NA	NA	\$	12,750,000	\$	2,550,000		
SUBTOTAL ADMINISTRATIVE	COSTS			\$	12,750,000	\$	2,550,000		
GRAND TOTAL				\$	42,500,000	\$	8,500,000		

Exhibit B - Program Summaries - BPS/Prosper/PCEF IGA

PCEF funding will provide resources for three programs:

- Small Contractor Technical Assistance
- Small Commercial Building Energy Efficiency Grants
- Low-cost access to capital for energy efficiency improvements to commercial buildings

During the first six months of this IGA, Prosper Portland, in collaboration with PCEF staff, will develop program guidelines for each of these programs. Program implementation is expected to begin as soon as program design is complete but in no event later then six months after the Effective Date of the IGA. A summary of each program is given below.

Small Contractor Business Technical Assistance

PCEF Community Responsive Grants - \$5,000,000 - Small Contractor support

Summary

In collaboration with PCEF staff and industry partners, Prosper Portland will establish a contractor development program that delivers business supports to the construction industry, building capacity to pivot operations towards advancing climate action initiatives, mitigating carbon emissions, and contributing to a more sustainably built environment. The program will be paired with the Community Opportunities and Enhancements Program (COEP) which aims to increase diversity and equity in construction contracting.

Prosper Portland will conduct an industry engagement process to solicit feedback from community, construction industry stakeholders, and other partners (e.g., Energy Trust of Oregon) to inform what assistance and supports will have the greatest impact on achieving programmatic goals. Additionally, this process will establish meaningful measures of success to accompany the number of contractors served and demographic reporting.

Small Commercial Building Energy Efficiency Grant Program

PCEF Strategic Program 4 – Clean Energy for Small Commercial Buildings - \$25,000,000 PCEF Strategic Program 11 – 82nd Avenue Business Stabilization - \$2,500,000

Summary

The Small Commercial Building Energy Efficiency Grant Program incents small businesses and commercial building owners to increase business competitiveness through energy efficient upgrades that reduce energy usage and cost, create health benefits, and increase resilience for small businesses in Portland, with a focus on businesses owned by disadvantaged and underserved individuals. Additionally, this program will prioritize investment in businesses in high energy use sectors that have high energy savings opportunities such as food service, food sales, small manufacturing, lodging, and laundromats.

The Small Commercial Building Energy Efficiency Grant program provides a matching grant of 75% for eligible costs up to a maximum of \$300,000 split into two (2) categories:

- 1. Up to \$100,000 for energy efficient appliance and equipment upgrades.
- 2. Up to \$200,000 in clean energy building upgrades.

In addition to clean energy building improvements, electric vehicle charging stations may be included with a comprehensive energy efficiency scope. These improvements must result in energy and carbon emissions savings and improved indoor air quality for small businesses and small commercial properties.

Small Commercial Building - Low-Cost Access to Capital Fund

Strategic Program 14 – Access to Capital – \$10,000,000

Summary

The PropertyFit program provides strategic, long-term financing for energy efficiency, renewable energy, and water conservation improvements to commercial, industrial, and multifamily properties with five or more units. These projects are typically funded by private capital providers, however increasingly these capital providers are focusing on larger project above \$1 million. This creates a gap in the market and a lost opportunity to small commercial building owners to take advantage of the CPACE lien structure that provides unique benefits traditional commercial financing sources do not.

The Small Commercial Building – Low-Cost Access to Capital Fund will provide CPACE or other forms of low-cost financing to project ranging from \$250,000 to \$1 million dollars throughout Portland, with specific outreach and marketing efforts targeted towards disadvantaged and underserved communities.