



**DATE:** November 14, 2018

**TO:** Board of Commissioners Acting in its Capacity as the Prosper Portland Local Contract Review Board

**FROM:** Kimberly Branam, Executive Director

**SUBJECT:** Report Number 18-42

Adopting Findings in Support of and Exempting Lents Commons Tenant Improvements from Low-Bid Solicitation and Authorizing the Executive Director to Sign a Contract with Bremik Construction, Inc.

#### **BOARD ACTION REQUESTED AND BRIEF DESCRIPTION**

Adopt Resolution No. 7291

This action by the Prosper Portland Board of Commissioners (Board), acting as the Prosper Portland Local Contract Review Board (LCRB), will adopt Resolution No. 7291 that exempts construction of Lents Commons tenant improvements from the standard competitive bid process.

9101 Foster, LLC (the LLC), a limited liability company formed by Prosper Portland in 2016, is completing construction of the Lents Commons project at 9101 SE Foster Road in the Lents Town Center Urban Renewal Area (URA); an aerial map can be found in Attachment A. When complete, the mixed-use redevelopment project will include 54 multifamily apartment units (16 of which are affordable to households making up to 60 percent of the Median Family Income) and 7,514 square feet of affordable ground floor commercial space. Construction of the residential units, parking, and ground floor commercial shell was completed in spring 2018. This action by the Prosper Portland Board acting in its capacity as Prosper Portland's Local Contract Review Board (LCRB) will exempt build-out of the Tenant Improvements (TIs) in the four ground floor commercial spaces from the standard low-bid solicitation process and authorize staff to enter into a sole source alternative contract with Bremik Construction, Inc. (Bremik) to build out the commercial tenant spaces for a not-to-exceed contract amount of \$1,815,000.

The LLC will be the entity signing the underlying contract for which the exemption is sought, not Prosper Portland. Nonetheless, out of an abundance of caution (given the lack of existing legal clarity regarding applicability of public procurement rules to government-owned LLC's), staff are seeking this exemption as it would if Prosper Portland itself were the contracting party, because: (1) Prosper Portland is the sole member of the LLC; (2) Kimberly Branam (in her personal capacity) is the Manager of the LLC; and (3) it is expected that a loan by Prosper Portland will fund the LLC's payments under the contract.

#### **STRATEGIC PLAN ALIGNMENT AND OUTCOMES**

Lents Commons supports Objective 1 of Prosper Portland's Strategic Plan to Create Healthy, Complete Neighborhoods Throughout Portland and specifically Outcome 1.1 to Create Vibrant Communities &

Corridors. Lents Commons will support households of varying income levels through a mix of affordable and market-rate residential units and by targeting commercial tenants who qualify for Prosper Portland's Affordable Commercial Tenancing Program.

### **BACKGROUND AND CONTEXT**

Prosper Portland selected Williams/Dame & Associates, Inc. (WDA), through an October 1, 2014 Request for Interest, to develop a four-story mixed-use project that included market-rate housing, affordable housing, and ground floor commercial space in the Lents Town Center URA. During the design phase for this effort, in 2015 WDA issued a competitive Request for Proposals (RFP) for both preconstruction and construction services, ultimately selecting Bremik due to its experience with Prosper Portland projects, history of delivering on Social Equity Policy objectives, and detailed project cost estimate.

As the project financial returns, public benefits, and time commitments were refined and better understood, WDA elected to not proceed with the development beyond the design and permitting phase. To continue momentum on the project and to deliver on the agency's commitment to the Lents Five Year Action Plan, on June 8, 2016, the Prosper Portland Board through Resolution No. 7196 authorized actions to transfer responsibility for completing construction and managing the project to 9101 Foster, LLC. Due to Bremik's expertise from working with WDA and the project architect during design and pre-construction value-engineering, the Prosper Portland Board, acting as the Local Contract Review Board, also authorized Resolution No. 7197, which exempted the construction of the project from competitive bid, allowing Bremik to maintain progress and schedule with its sub-contractors.

Since these actions, contractors have completed the majority of the work on the project, now known as Lents Commons. The residential units, which were completed in spring 2018, are fully occupied. Staff has been working with a broker to lease the four ground-floor commercial tenant spaces which will all be leased to eligible tenants through Prosper Portland's Affordable Commercial Tenancing Program (see floorplans in Attachment B). Prosper Portland staff are currently evaluating Letters of Intent from two potential tenants and have completed test fits and cost estimates for interested parties. To reduce the likelihood of losing the two interested tenants, better manage build-out costs during the design phase, and minimize design conflicts during construction, staff is seeking authorization to enter into a Sole Source Alternative Contract with Bremik. In order to justify exempting this tenant improvement contract from traditional low-bid solicitation, staff have completed the findings, as described below.

**Findings:** Oregon Revised Statutes (ORS) Chapter 279C.335(2) and Prosper Portland's Local Contract Review Board Administrative Rules (LCRB Rules), Part 4, Section II(B)(2) provide that the Prosper Portland Board acting in the authority of Prosper Portland's LCRB may exempt certain public improvement contracts from a competitive low-bid process upon the LCRB making the following Findings:

- a. It is unlikely that such exemption will encourage favoritism in the awarding of a public contract or substantially diminish competition for the contract; and
- b. The awarding of public contract under the exemption is expected to result in substantial cost savings to the agency.

#### **1. No Favoritism or Diminished Competition**

As the general contractor of the project, Bremik has unique and specialized knowledge of the building, including its structure and utility infrastructure, and would be able to immediately assist Prosper Portland staff with cost estimating, constructability and design issues, and value engineering as needed to build out these unfinished commercial spaces.

It is doubtful that another general contractor would be able to acquire the same amount of specialized knowledge or work as efficiently and effectively as Bremik to make the unfinished commercial spaces ready for occupancy on the potential tenants' timeline.

To maximize competition and support the participation of State-certified minority-owned and women-owned businesses, Bremik will be required to competitively bid out all subcontracted scopes of work.

## **2. Substantial Cost Savings**

Bremik's special knowledge of Lents Commons' construction and previous project experience creates an opportunity for substantial cost and time savings. As the General Contractor for the Tenant Improvements (TIs), Bremik can resume work where it left off and provide cost estimating, constructability reviews, technical design assistance, value engineering, and other valuable preconstruction services based on its unique knowledge. Further, expediting coordination between Bremik, the architect, Prosper Portland staff, and potential tenants during the design stage will increase the likelihood that these TIs can be designed and built with minimal change orders, saving both time and money. Additionally, expediting construction of the TIs through this alternative contracting process will allow Lents Commons to earn rental income earlier than it would otherwise, substantially increasing revenue estimates for Lents Commons.

Having a single contractor on board, under a Construction Manager/General Contractor (CM/GC) form of agreement to construct the TIs, increases the likelihood of cost and time efficiencies found by running simultaneous build-outs. Two of the potential tenants are on similar timeframes and will likely move forward with leasing, design, permitting, and build-out around the same time. Bremik will be able to run two jobs under a single mobilization, minimizing general condition costs and staggering crews to minimize overall schedule duration, further contributing to cost savings. It is likely the remaining two TIs would run on a similar schedule, ramping up as the construction of the first two TIs is nearing completion.

The CM/GC structure under a Guaranteed Maximum Price (GMP) contract with Bremik increases the likelihood of cost savings through a contractor-vetted design in a building it built, leading to reduced change orders and minimized design-construction conflicts. These outcomes are unlikely if the TIs were solicited through four low-bid solicitations.

Based on preliminary estimates, staff anticipates the value of the GMP contract with Bremik to not exceed \$1,815,000. This amount is based on the current LOIs and two other targeted uses identified by the Lents Retail Tenancing Advisory Committee and includes scopes funded 100 percent by the LLC, through the Lents URA Prosperity Investment Program grants, and by the tenants through loans or other sources.

## **EQUITY IMPACT**

Prosper Portland's Social Equity Policy, including the Business and Workforce Equity program, will apply to the TI work. Bremik has a good track record in meeting established business equity goals; to date it has achieved 23 percent certified firm usage on the Lents Commons project with 26 percent of hours worked by apprentices, 54 percent by minority workers, and five percent by female workers. The Affordable Commercial Tenancing program will support businesses that align with Prosper Portland's Strategic Plan goals.

### **COMMUNITY PARTICIPATION AND FEEDBACK**

While staff has not conducted public participation specific to this proposed action, there has been significant outreach and input on tenanting efforts with the Lents Retail Tenanting Advisory Committee, comprised small business owners, members of the Lents Grown Business Association, and small business advisors in the Lents community. The committee has reviewed criteria for social equity and business types for potential tenants and supports the increase in the loan amount which will fund the construction contract.

### **BUDGET AND FINANCIAL INFORMATION**

There are adequate funds in the Lents Town Center URA fiscal year (FY) 2018-19 Adopted Budget and Five-Year Forecast (see Attachment C). The tenant improvement architect, Merryman Barnes Architect, worked with the broker and tenants on a concept design plan and Bremik provided cost estimates for these plans. Staff used square foot costs for these two of the four spaces to determine a likely square foot cost for full build-out; these combined costs are the basis for the total Bremik not-to-exceed contract.

### **RISK ASSESSMENT**

The risks for this action are:

- Actual estimates for final designs could be higher than the preliminary estimates. To mitigate this risk, staff used conservative assumptions for build-out costs.
- Construction costs have increased about 30 percent over the last two years. If this trend continues and the vacant spaces are not tenanted and built out now, the cost to build them out later could be even higher. To mitigate this risk, these spaces can be partially built out now to attract tenants who may not want to incur costs associated with new construction. The Affordable Commercial Tenanting Program along with LLC funds provides incentives to help prospective tenants cover these costs.

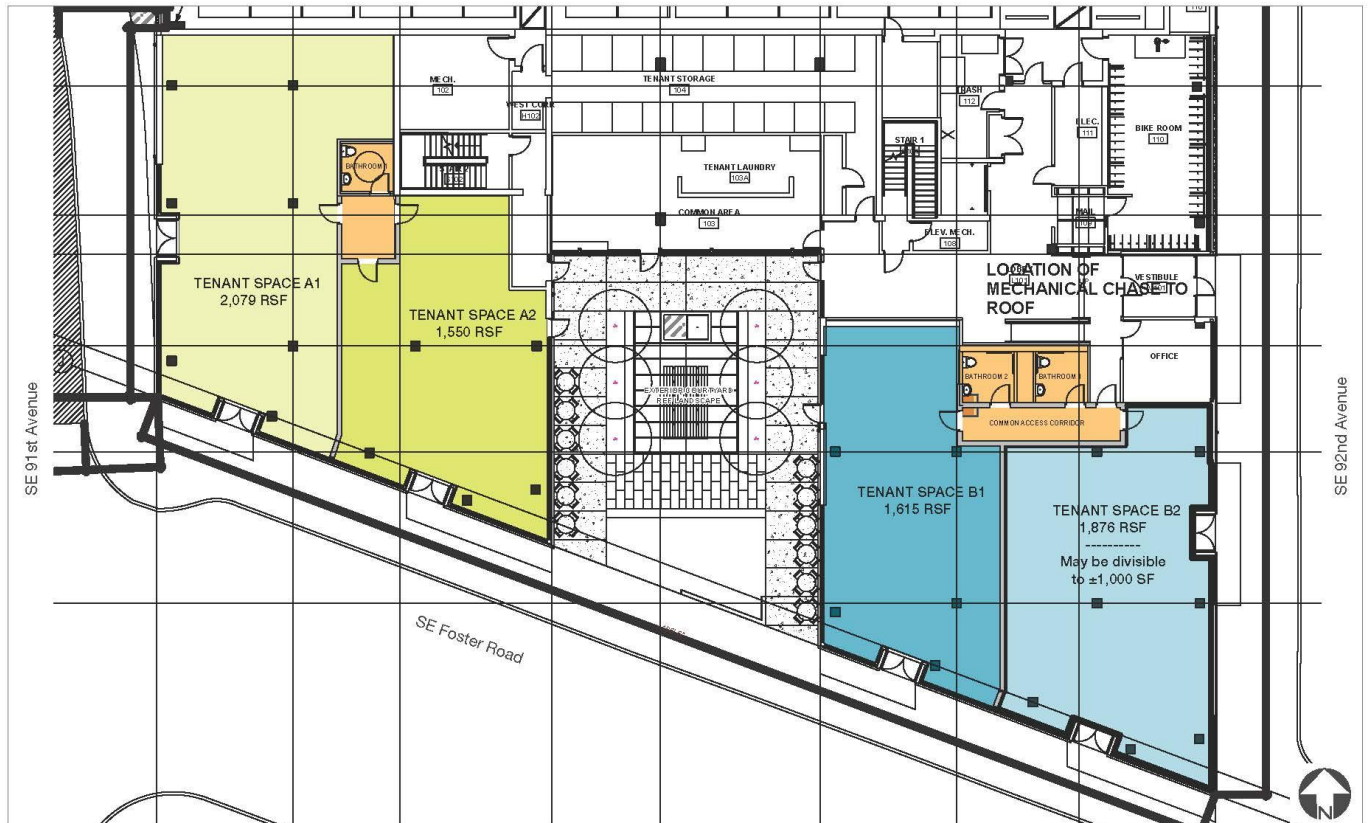
### **ATTACHMENTS**

- A. Aerial Map
- B. Floor Plan of Commercial Tenant Spaces at Lents Commons
- C. URA Financial Summary

### Aerial Map



### Tenant Improvement Spaces At Lents Commons



Approximate Demising Wall Plan, Ground Floor Tenant Improvement Spaces at Lents Commons

## URA Financial Summary

### Financial Summary Five-Year Forecast

Lents Town Center URA Fund	Revised 2 FY 2017-18	Adopted FY 2018-19	Forecast FY 2019-20	Forecast FY 2020-21	Forecast FY 2021-22	Forecast FY 2022-23
<b>Resources</b>						
Beginning Fund Balance	5,969,295	2,549,887	1,010,533	29,014,691	15,152,627	6,863,367
<b>Revenue</b>						
Fees and Charges	1,586	1,757	3,120	1,399	1,338	-
Interest on Investments	27,915	24,939	32,243	68,908	29,305	-
Loan Collections	1,275,444	874,583	614,653	461,053	461,053	461,053
TIF - Short Term Debt	11,988,000	11,988,000	11,988,000	-	-	-
TIF - Long Term Debt	17,000,000	8,000,000	30,669,003	-	-	-
Property Sales	0	200,000	-	-	-	-
Rent and Property Income	166,238	166,238	166,239	166,237	166,237	-
Reimbursements	64,905	64,905	64,905	64,905	64,905	-
<b>Total Revenue</b>	<b>30,524,088</b>	<b>21,320,422</b>	<b>43,538,163</b>	<b>762,502</b>	<b>722,838</b>	<b>461,053</b>
<b>Total Resources</b>	<b>36,493,383</b>	<b>23,870,309</b>	<b>44,548,696</b>	<b>29,777,193</b>	<b>15,875,465</b>	<b>7,324,420</b>
<b>Requirements</b>						
<b>Administration</b>						
A00029-Debt Management-LTC	38,243	38,243	38,243	38,243	38,243	38,243
<b>Administration Total</b>	<b>38,243</b>	<b>38,243</b>	<b>38,243</b>	<b>38,243</b>	<b>38,243</b>	<b>38,243</b>
<b>Traded Sector</b>						
A00113-Business Development-LTC	20,000	20,000	20,000	20,000	20,000	-
A00380-Lean Manufacturing-LTC	30,000	30,000	30,000	30,000	30,000	-
<b>Community Economic Development</b>						
A00121-Community Development-LTC	50,000	50,000	50,000	50,000	50,000	-
<b>Business Lending</b>						
A00208-BL-General-LTC	700,300	700,300	700,300	300,300	300,300	-
<b>Economic Development Total</b>	<b>800,300</b>	<b>800,300</b>	<b>800,300</b>	<b>400,300</b>	<b>400,300</b>	<b>-</b>
<b>Housing</b>						
A00170-Affordable Housing-LTC	14,503,326	8,149,654	3,255,191	2,706,061	2,059,950	1,792,049
<b>Housing Total</b>	<b>14,503,326</b>	<b>8,149,654</b>	<b>3,255,191</b>	<b>2,706,061</b>	<b>2,059,950</b>	<b>1,792,049</b>
<b>Infrastructure</b>						
<b>Parks</b>						
A00240-Leach Botanical Grdns-LTC	1,260,653	630,327	-	-	-	-
<b>Transportation</b>						
A00243-Foster-52nd to 82nd-LTC	726,900	726,900	-	-	-	-
<b>Infrastructure Total</b>	<b>1,987,553</b>	<b>1,357,227</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>
<b>Property Redevelopment</b>						
<b>Real Estate</b>						
A00325-Lents Little Lge Fld-LTC	10,500	10,500	10,500	10,000	10,000	10,000
A00326-Bakery Block-LTC	109,700	78,537	78,537	78,537	78,537	50,463
A00328-MetroAuto Whisl WLot-LTC	9,500	-	-	-	-	-
A00329-MetroAuto Bldg & Lot-LTC	28,544	7,113	7,113	7,113	7,113	7,113
A00330-ArchttctironPrdctBldg-LTC	14,925	14,742	14,742	14,742	14,742	11,242
A00332-Real Estate Mgmt-LTC	41,200	-	-	-	-	-
A00554-Dagel Triangle-LTC	0	15,000	15,000	15,000	15,000	15,000
A00557-Tate Lot-LTC	0	18,000	18,000	18,000	18,000	18,000
<b>Commercial Property Lending</b>						
A00365-CPRL-General-LTC	13,004,000	7,303,030	6,001,000	6,001,000	1,001,000	-
<b>Redevelopment Strategy</b>						
A00331-Project Development-LTC	90,000	1,650,000	1,650,000	1,650,000	1,650,000	-
A00548-Lents Stabilization/Industrial Dev-LTC	60,000	-	-	-	-	-
<b>Redevelopment Grants</b>						
A00130-CLG-General-LTC	250,000	250,000	250,000	250,000	250,000	259,213
A00501-Prosperity Investment Program (PIP) Grant-LTC	875,000	875,000	875,000	875,000	875,000	974,280
<b>Property Redevelopment Total</b>	<b>14,493,369</b>	<b>10,221,922</b>	<b>8,919,892</b>	<b>8,919,392</b>	<b>3,919,392</b>	<b>1,345,311</b>
<b>Total Program Expenditures</b>	<b>31,822,791</b>	<b>20,567,346</b>	<b>13,013,626</b>	<b>12,063,996</b>	<b>6,417,885</b>	<b>3,175,603</b>
Personnel Services	496,802	353,143	706,717	720,064	730,828	741,348
<b>Total Fund Expenditures</b>	<b>32,319,593</b>	<b>20,920,489</b>	<b>13,720,344</b>	<b>12,784,061</b>	<b>7,148,713</b>	<b>3,916,952</b>
Interfund Transfers - Indirect Charges	1,623,903	1,939,286	1,813,662	1,840,505	1,863,385	1,887,557
Contingency	2,549,887	1,010,533	29,014,691	15,152,627	6,863,367	1,519,911
<b>Total Fund Requirements</b>	<b>36,493,383</b>	<b>23,870,309</b>	<b>44,548,696</b>	<b>29,777,193</b>	<b>15,875,465</b>	<b>7,324,420</b>