



**DATE:** November 14, 2018  
**TO:** Board of Commissioners  
**FROM:** Kimberly Branam, Executive Director  
**SUBJECT:** Report Number 18-45

Authorizing an Increase to the Maximum Contract Amount for the Parking Structure Development Agreement with Mortenson Development, Inc. for Design and Construction of the Convention Center Hotel Parking Garage

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

Adopt Resolution No 7294

This action will authorize the Executive Director to execute a change order to the Parking Structure Development Agreement (Development Agreement) with Mortenson Development (Mortenson) for costs associated with differing site conditions at the Convention Center Hotel Parking Garage (Garage) at the intersection of NE Holladay Street and NE 1<sup>st</sup> Avenue in the Oregon Convention Center Urban Renewal Area (URA); see a map in Attachment A. When complete, the Garage will serve the 600-room Convention Center hotel, provide TriMet with space for a transit police precinct, and offer Prosper Portland air rights for approximately 100,000 square feet of commercial office space above the Garage.

During excavation for garage foundations, Mortenson's contractors discovered previously unknown buried concrete slabs and contaminated soils on the site. Discovery of these soils triggers the Differing Site Conditions clause in the Development Agreement which allows Mortenson to request additional funds and schedule related to removing these soils. Mortenson submitted a change order for this work that included contractor and subcontractor costs to manage, transport, and dispose of the contaminated soil and related schedule delays. The total change order amount is \$639,978; per the terms of an interagency Purchase and Sale Agreement, TriMet is responsible for \$136,315 of that amount.

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

This action will deliver on the Prosper Portland Strategic Plan to create healthy neighborhoods by "strengthen[ing] eastside and Central City landmarks and attractions through strategic partnerships and focused use of urban renewal resources." More significantly, this action will support the 600-room Convention Center Hotel, currently under construction; create a long-term revenue stream for Prosper Portland from valet and other parking income; and provide ground floor space and parking for TriMet's critical agency operations.

#### **BACKGROUND AND CONTEXT**

The Convention Center URA was formed in 1989 with the primary goal of establishing "at least one headquarters hotel in the immediate vicinity of the Oregon Convention Center to capitalize on the

conventions center's capacity." Between 1991 and 2004, the Prosper Portland Board authorized acquisition of multiple properties as initial steps towards supporting development of a Convention Center hotel; this included acquisition of Block 49 and other properties in 1991.

Since 2004, Prosper Portland has partnered with Metro – owners and operators of the Oregon Convention Center – to pursue efforts to build a hotel in support of the Oregon Convention Center URA Plan and the region. The Convention Center Garage is part of the Convention Center hotel development agreement; it will provide 375 spaces dedicated to the hotel and 51 secured spaces dedicated for TriMet's use. In addition, there are two ground level retail spaces and the potential to add a future office tower above the garage structure.

In February 2016 through Resolution No. 7165, the Prosper Portland Board authorized the terms for the development, use, and operations of a parking garage on the 0.88 acre Prosper Portland owned property, known as Block 49, in the Oregon Convention Center URA. These terms were amended in December 2016 through Resolution No. 7222 with a revised budget and Lump Sum Contract Price of \$32,200,000.

During design, Mortenson contracted with an environmental consultant to conduct Phase One and Phase Two Environmental Site Assessments in June 2016 and January 2017, respectively. The investigations determined that the site had been exclusively used for residential purposes from approximately 1905 to the 1960s and no Recognized Environmental Conditions were identified. A geophysical survey and soil sampling were conducted at the site to screen for remnant residential heating oil tanks and assess shallow soil conditions. No remnant tanks were discovered, and no burn debris or contamination was encountered in the exploratory soil borings.

Permits were issued in late February 2018 and a Notice to Proceed for construction was issued on February 28, 2018. During excavation activities in late March and early April 2018, Mortenson encountered four historical building foundations overlain by soil containing burn debris, presumably resulting from the former residential structures burning down. Characterization sampling of the soil and burn debris identified contamination consisting of lead and polyaromatic hydrocarbons. At the conclusion of excavation activities in May 2018, approximately 2,780 tons of impacted material requiring disposal as Subtitle D waste had been transported from the site to the Waste Management Hillsboro Landfill facility.

This work added 22 days to the construction schedule and caused delays to several significant milestones, including foundations; slabs on grade; erecting the tower crane; and concrete work. Costs included in this change order include additional excavation and handling of contaminated soils and remnant concrete slabs, hauling and disposal fees, equipment standby during soil analysis, general conditions, additional services for third party consultant, and lab fees.

Staff are taking a conservative approach in requesting the Prosper Portland Board authorize the full amount of the change order, even though TriMet is responsible for contractually reimbursing Prosper Portland \$136,315 per the Purchase and Sale Agreement that the Proper Portland Board authorized through Resolution No. 7223 on December 14, 2016. There is still some lead contaminated soil remaining between the sidewalk and the shoring in the northwest corner of the site that is inaccessible until shoring can be removed this winter. The estimated cost of that soil disposal is approximately \$35,000. In addition, there are several unallocated allowances remaining in the project. However, construction is only approximately 50 percent complete and there are still some financial risks related to the contaminated soil that remains on site and the potential for future requested change orders related to the second floor tenant spaces. Any unused funds from this authorization and the unallocated allowances remains with the Convention Center URA budget.

### **EQUITY IMPACT**

Prosper Portland's Social Equity Policy, including the Business and Workforce Equity programs, apply to all of Mortenson's work and they are currently exceeding goals. To date, for the design phase, approximately 32 percent of design expenditure are going to certified first tier partners and second tier contractors. Construction is about 50 percent complete; the total value of first tier certified partners and second tier contractors is about 21 percent. There is just under \$400,000 of remaining subcontractor negotiation buyout that could further increase utilization percentages. In addition, Mortenson is reporting 31 percent of total project-to-date hours worked as apprentice hours, 31 percent hours worked by minority employees and nine percent hours worked by female employees.

### **COMMUNITY PARTICIPATION AND FEEDBACK**

There has not been any formal public participation related to this action. However, Lloyd district stakeholders have been strong advocates for the construction of a Convention Center hotel. In early November 2018, staff briefed the Go Lloyd Board of Directors, the body overseeing the neighborhood's transportation management association on the proposed cost increase. Board members (comprising of city bureau staff, property owners, businesses and residents) were generally supportive of the action to authorize the change order.

### **BUDGET AND FINANCIAL INFORMATION**

The cost increase associated with the differing site conditions will require the Prosper Portland Board amend the fiscal year (FY) 2018-19 Convention Center URA budget; this amendment is included in a different agenda item on the November 14, 2018 Prosper Portland Board agenda, during which staff will request a revision to the agency's FY 2018-19 Budget through Resolution 7294.

### **RISK ASSESSMENT**

The risks associated with this action include:

- If this amount is not approved, it is likely that Mortenson would pursue arbitration per the contract or suspend work on the Garage.
- If the Garage is not completed at least 60 days before the hotel, Hyatt, the hotel operator, has the option to pull out of the hotel project.
- TriMet's Board may not approve to pay the 21.3 percent of the costs associated with this change. To mitigate this risk, staff has coordinated with TriMet's Project Manager during the cost review process and provided pricing documentation for their review in preparation for the upcoming Tri Met Board meeting.

### **ATTACHMENTS**

- A. Site Map
- B. Convention Center URA Financial Summary

**Site Map**



## URA Financial Summary

### Financial Summary Five-Year Forecast

<u>Convention Center URA Fund</u>	<u>Revised 2 FY 2017-18</u>	<u>Adopted FY 2018-19</u>	<u>Forecast FY 2019-20</u>	<u>Forecast FY 2020-21</u>	<u>Forecast FY 2021-22</u>	<u>Forecast FY 2022-23</u>
<b>Resources</b>						
Beginning Fund Balance	38,305,125	21,118,115	400,325	5,899,624	3,734,747	1,615,448
<b>Revenue</b>						
Fees and Charges	3,350	7,678	6,074	4,998	4,998	-
Interest on Investments	375,442	5,000	-	-	-	-
Loan Collections	502,494	1,056,264	825,880	681,378	681,378	681,378
Other Debt	0	-	8,000,000	-	-	-
Property Sales	4,300,000	-	-	-	-	-
Rent and Property Income	2,616,656	4,023,240	5,500,153	5,572,241	5,646,130	5,646,130
Total Revenue	7,797,942	5,092,182	14,332,107	6,258,617	6,332,506	6,327,508
<b>Total Resources</b>	<b>46,103,067</b>	<b>26,210,297</b>	<b>14,732,432</b>	<b>12,158,241</b>	<b>10,067,253</b>	<b>7,942,956</b>
<b>Requirements</b>						
<b>Administration</b>						
A00027-Debt Management-CNV	12,121	12,121	12,121	12,121	12,121	12,121
Administration Total	12,121	12,121	12,121	12,121	12,121	12,121
<b>Business Lending</b>						
A00206-BL-General-CNV	110,000	150,000	150,000	150,000	150,000	150,000
Economic Development Total	110,000	150,000	150,000	150,000	150,000	150,000
<b>Housing</b>						
A00168-Affordable Housing-CNV	2,585,573	2,574,524	-	-	-	-
Housing Total	2,585,573	2,574,524	-	-	-	-
<b>Infrastructure</b>						
<b>Transportation</b>						
A00521-Sullivan's Crossing Bridge-CNV	0	1,000,000	1,000,000	-	-	-
Infrastructure Total	0	1,000,000	1,000,000	-	-	-
<b>Property Redevelopment</b>						
<b>Real Estate</b>						
A00301-Block47-CNV	4,000	-	-	-	-	-
A00306-910 NE MLK Building-CNV	32,056	26,822	26,822	26,822	26,822	26,822
A00307-Frmr B&K Car Rental-CNV	15,218	-	-	-	-	-
A00309-Inn at Conv Ctr Mgmt-CNV	2,614,987	3,053,338	2,453,338	2,453,338	2,453,338	2,453,338
A00310-Block 49-CNV	3,350	550,760	1,050,408	1,631,216	1,651,209	1,671,603
A00312-Real Estate Mgmt-CNV	5,000	5,000	5,000	5,000	5,000	5,000
<b>Commercial Property Lending</b>						
A00363-CPRL-General-CNV	500,000	500,000	500,000	500,000	500,000	500,000
<b>Redevelopment Strategy</b>						
A00298-Eco District-CNV	2,500	2,500	-	-	-	-
A00303-Rose Qtr Master Plan-CNV	0	250,000	500,000	1,000,000	1,000,000	1,000,000
A00311-Project Development-CNV	2,000,000	500,000	2,500,000	2,000,000	2,000,000	1,000,000
<b>A00437-Hotel Garage-CNV</b>	<b>15,724,575</b>	<b>15,978,121</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>
Property Redevelopment Total	20,901,686	20,866,542	7,035,569	7,616,377	7,636,370	6,656,763
<b>Total Program Expenditures</b>	<b>23,609,380</b>	<b>24,603,187</b>	<b>8,197,690</b>	<b>7,778,498</b>	<b>7,798,491</b>	<b>6,818,884</b>
Personnel Services	105,159	231,352	116,930	119,138	120,919	122,659
<b>Total Fund Expenditures</b>	<b>23,714,539</b>	<b>24,834,539</b>	<b>8,314,620</b>	<b>7,897,636</b>	<b>7,919,410</b>	<b>6,941,544</b>
Interfund Transfers - Indirect Charges	1,270,413	975,432	518,189	525,859	532,396	539,302
Contingency	21,118,115	400,325	5,899,624	3,734,747	1,615,448	462,110
<b>Total Fund Requirements</b>	<b>46,103,067</b>	<b>26,210,297</b>	<b>14,732,432</b>	<b>12,158,241</b>	<b>10,067,253</b>	<b>7,942,956</b>