

**PROSPER PORTLAND**

Portland, Oregon

**ACTING IN ITS CAPACITY AS THE  
LOCAL CONTRACT REVIEW BOARD**

**RESOLUTION NO. 7291**

**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.**

**WHEREAS**, by adoption of Resolution No. 3550, the Prosper Portland Board of Commissioners (“Board”) was established as Prosper Portland’s Local Contract Review Board (“LCRB”) pursuant to State law;

**WHEREAS**, Oregon Revised Statutes (“ORS”) 279C.335(2) and LCRB Rules Part 4(II)(B)(2) allow exemptions to the general requirements for low-bid solicitation of public improvement contracts upon the LCRB’s approval of written findings;

**WHEREAS**, the Prosper Portland Board acts as the sole member of 9101 Foster, LLC (the “LLC”), a limited liability corporation created for the sole purpose of developing and owning Lents Commons, a mixed-use redevelopment project in the Lents Town Center Urban Renewal Area;

**WHEREAS**, Prosper Portland staff proposes that the LLC enter into a sole-source, not-to-exceed, alternative contract with Bremik Construction Inc., (“Bremik”) in the amount of \$1,815,000 to perform construction and other services for Lents Commons tenant improvements (“Project”); and

**WHEREAS**, after due public notice, Prosper Portland staff held a public hearing to receive comments on the draft Low Bid Exemption Findings (“Findings”) (see Exhibit A) for the exemption for the Project as required by ORS 279C.355(5) and LCRB Rule Part 4(II)(B)(2).

**NOW, THEREFORE, BE IT RESOLVED**, that the LCRB hereby adopts the Findings;

**BE IT FURTHER RESOLVED**, that based on adoption of the Findings, the LCRB hereby exempts the Project from the low-bid requirements of ORS Chapter 279 and the LCRB Rules and specifically approves the Project for the alternative contract set forth in the Findings;

**BE IT FURTHER RESOLVED**, that the Executive Director may, on behalf of Prosper Portland, authorize the LLC to execute a contract with Bremik in an amount not to exceed \$1,815,000 and also approve changes to the Bremik contract once executed provided such changes do not materially increase

Prosper Portland or the LLC's obligations or risks, as determined by the Executive Director in consultation with Prosper Portland's General Counsel; and

**BE IT FURTHER RESOLVED**, that this resolution shall become effective immediately upon its adoption.

Adopted by the Prosper Portland Commission on November 14, 2018

A handwritten signature in blue ink that reads "Pam Feigenbutz". The signature is written in a cursive, flowing style.

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Pam Feigenbutz, Recording Secretary



## MEMORANDUM

**DATE:** October 26, 2018

**TO:** Prosper Portland Board of Commissioners, acting in its capacity as the Sole Member of 9101 Foster, LLC and as Prosper Portland's Local Contract Review Board

**FROM:** Kimberly Branam, Executive Director

**SUBJECT:** Findings in Support of Exemption from Low Bid Solicitation for the Four (4) Tenant Improvements at Lents Commons (formerly 9101 SE Foster Road Project)

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.

With this exemption, staff are seeking to enter into a Sole Source Alternative Contract for a General Contractor to build out the four (4) vacant commercial spaces on the ground floor of Lents Commons. The total value of this contract may be above \$2 million. To reduce the likelihood of losing the tenants currently interested in leasing space in this building and to better manage build out costs during the design phase, it necessary to get a Contractor on board as quickly as possible.

9101 Foster, LLC, a limited liability company formed by Prosper Portland staff in 2016 (9101 Foster), will be the entity signing the underlying contract for which the exemption is sought, and 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 9101 Foster; (2) Kimberly Branam (in her personal capacity) is the Manager of 9101 Foster; and (3) it is expected that a loan or other capital contribution by Prosper Portland will fully-fund 9101 Foster's payment of the contract.

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**I. FINDINGS**

**A. No Favoritism or Diminished Competition**

Prosper Portland selected Williams/Dame & Associates, Inc. (WDA), via an October 1, 2014 Request for Interest (RFI), to develop a four-story mixed-use project that included market rate housing, affordable housing, and ground floor commercial space (the Lents Commons Project; formerly known as the 9101 SE Foster Road Project) in the Lents Town Center Urban Renewal Area. 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. The project was transferred to Prosper Portland for construction in 2016.

During the design phase for the Lents Commons Project in 2015, WDA issued a Request for Proposals (RFP) to Colas Construction, Yorke & Curtis, Howard S. Wright, and Bremik Construction, Inc. for both preconstruction and construction services. Bremik was ultimately selected from the RFP due to their prior experience with Prosper Portland projects and Equity Policy compliance as well as a more thorough cost estimate.

Due to Bremik's specialized expertise from working with WDA and the project architect, Hacker Architects Inc., during design and pre-construction value-engineering, the requirement that Bremik competitively bid out the majority of sub-contractor scopes of work, and opportunity for significant cost and time savings, Prosper Portland was authorized through Board Resolution 7197 to enter into a Guaranteed Maximum Price (GMP) agreement for construction and other services on the Lents Commons Project.

The residential portion of the project was completed in the spring of 2018 and is fully occupied. Prosper Portland staff have been working with a broker to lease the four (4) commercial tenant spaces on the ground floor. See the attached EXHIBIT A to these Findings for a floorplan of the available commercial spaces. Tenants will be eligible for Prosper Portland's Affordable Commercial Tenancing Program.

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 value engineering as needed to build out these unfinished commercial spaces.

On behalf of Lents Commons, Prosper Portland staff have received Letters of Intent from three potential tenants and have completed test fits for two of those interested parties. It is doubtful that another general contractor would be able acquire the same amount of specialized knowledge, nor work as efficiently and effectively as Bremik to make the unfinished commercial spaces ready for occupancy on the potential tenants' timeline given their prior experience on this project.

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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.

**B. 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 they left off and provide cost estimating, constructability reviews, technical design assistance, value engineering, and other valuable preconstruction services based on their unique knowledge. Further, expediting coordination between Bremik, the architect for the tenant improvement (Merryman Barnes Architects), 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 projects for the Project.

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 time frame 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 but ramping up as the construction of the first two TIs are nearing completion.

The CM/GC structure under a GMP contract with Bremik increases the likelihood of cost savings through a Contractor-vetted design in a building they built, leading to reduced change orders and minimized design-construction conflicts. These outcomes are unlikely if Prosper Portland or Lents Commons were to construct these TIs through four (4) low-bid solicitations.

**II. PUBLIC HEARING**

In accordance with ORS 279C.335(5) and Prosper Portland’s LCRB Rules, Part 4 (II)(B)(2), Prosper Portland published notice of the required public hearing on October 29, 2018. The hearing was held on November 13, 2018. There were no attendees at the hearing and no public comments were received.

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### III. RECOMMENDATION

Prosper Portland staff recommends that the LCRB adopt these Findings on behalf of Lents Commons to exempt the Project from a competitive low bid solicitation process pursuant to ORS Chapter 279C.335(2) and Prosper Portland's *Local Contract Review Board Administrative Rules* (LCRB Rules), Part 4, Section II(B)(2) and commence negotiations with Bremik on a GMP contract to build out the tenant improvements described above.

### ATTACHMENTS

- EXHIBIT A: Ground Floor of Lents Commons

### EXHIBIT A Ground Floor of Lents Commons

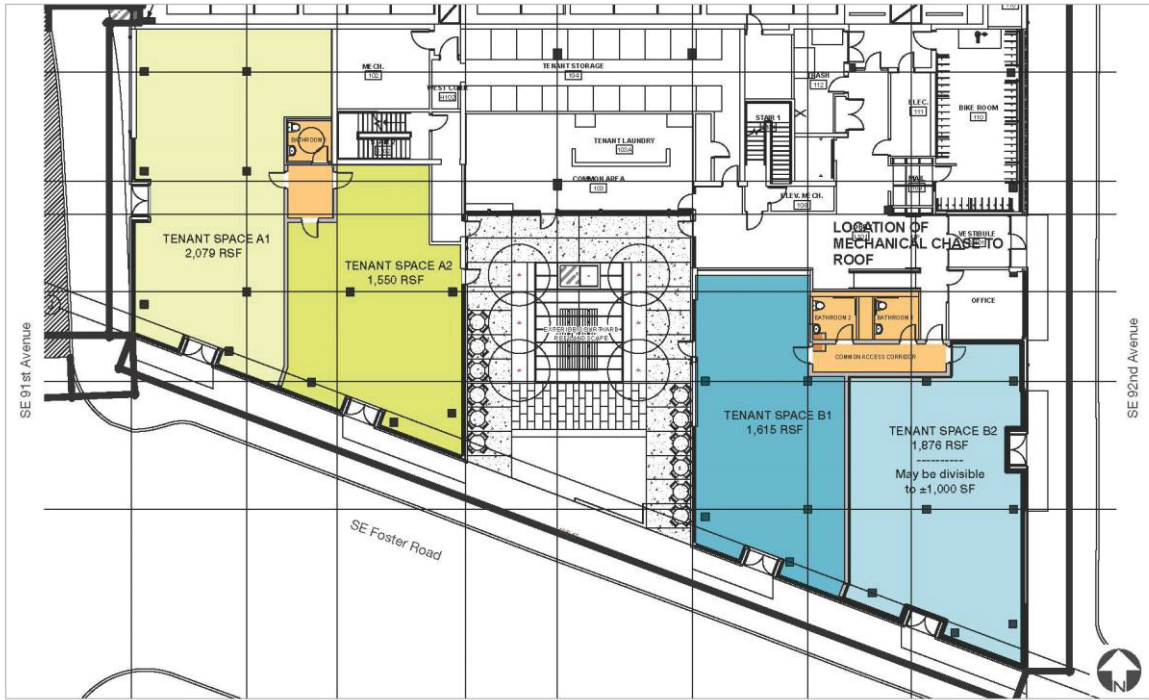
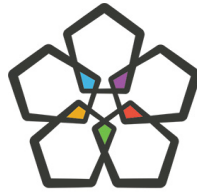


Figure 1: Tenant Improvement Demising Plan, Lents Commons



**PROSPER  
PORTLAND**  
Building an Equitable Economy

**RESOLUTION NO. 7215**

**RESOLUTION TITLE:**

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.


Adopted by the Prosper Portland Commission on November 14, 2018

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 Alisha Moreland-Capua MD	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	Commissioner Francesca Gambetti	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	Commissioner Peter Platt	<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"/> 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> November 15, 2018
	<b>Pam Feigenbutz, Recording Secretary</b>