

PROSPER PORTLAND

Portland, Oregon

RESOLUTION NO. 7326

**APPROVING AN INTERGOVERNMENTAL AGREEMENT WITH THE
MULTNOMAH COUNTY LIBRARY DISTRICT FOR IMPROVEMENTS TO THE
CENTRAL LIBRARY**

WHEREAS, the Portland City Council (“City Council”) adopted the South Park Blocks Urban Renewal Plan (as amended, the “SPB Plan”) on July 24, 1985, by Ordinance No. 157635, which had previously been approved and adopted by the Prosper Portland Board of Commissioners (“Board”) on July 9, 1985 through Resolution No. 3362, with general goals for public improvements to support housing, cultural and park areas;

WHEREAS, the Multnomah County Library District (“MCLD”) has identified the Multnomah County Central Library (“Central Library”) located in downtown Portland’s Cultural District, as a significant community and cultural asset providing access to collective knowledge and resources including books and periodicals, job search assistance, and public gathering space;

WHEREAS, the Central Library, which is listed in the National Registry of Historic Places and has been described as “Portland’s Crown Jewel,” having served the community since 1913 as a historic public space for all to gather, learn, create, and access the benefits of the community’s collective knowledge and resources;

WHEREAS, the Central Library has critical infrastructure needs to provide quality services and experience for the community, including replacing failing electrical transformer and remedying HVAC problems, increasing emergency exit path safety. and addressing longstanding landscaping issues;

WHEREAS, on May 8, 2019 through Resolution No. 7310, the Prosper Portland Board approved an amendment to the SPB Plan to make the Central Library eligible for financial investment via tax increment financing in a manner that is consistent with SPB Plan goals and June 19, 2019 through Resolution No. 37436, the Portland City Council approved the SPB Plan amendment as required by Oregon Statutes Chapter 457.085(2)(j); and

WHEREAS, the estimated cost for the Central Library improvements is \$1,500,000 and is expected to be completed by 2021; Multnomah County staff have committed to meeting the terms of the SPB Plan funds including using the money in a way that is consistent with tax increment financing requirements and spending timelines.

NOW, THEREFORE, BE IT RESOLVED, that the Prosper Portland Board authorizes the Executive Director to enter into an IGA, attached hereto as Exhibit A;

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

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

Adopted by the Prosper Portland Commission on August 14, 2019



Pam Feigenbutz, Recording Secretary

INTERGOVERNMENTAL AGREEMENT
Between
Portland Development Commission
And
The Multnomah County Library District
For the
Multnomah County Central Library Renovation Project

THIS INTERGOVERNMENTAL AGREEMENT (this “Agreement”), dated this _____ day of _____, 2019 (the “Effective Date”), is made by and between the MULTNOMAH COUNTY LIBRARY DISTRICT, a district established pursuant to the Multnomah County Charter Chapter 9.10 and voter approved Ballot Measure 26-143, by County Board Order No. 2013-020, dated March 14, 2013 (“MCLD”), and Prosper Portland, the assumed business name of the Portland Development Commission, the economic development and urban renewal authority of the City of Portland, Oregon (“PROSPER PORTLAND”). MCLD and PROSPER PORTLAND may be referred to jointly in this Agreement as the “Parties” and individually as a “Party.”

RECITALS

- A. PROSPER PORTLAND, as the duly-designated urban development and urban renewal agency of the City of Portland (“City”), is granted broad powers under Chapter ORS 457 and the City Charter for the planning, funding and implementation of urban renewal projects.
- B. The South Park Blocks District Urban Renewal Plan was adopted by the Prosper Portland Board July 9, 1985 through resolution No. 3362 and by Portland City Council on July 24, 1985 through Ordinance No. 157635 (as amended from time to time, the “Plan”).
- C. MCLD owns the Central Library at 801 SW 10th Avenue which is in the South Park Blocks Urban Renewal Area (the “URA”).
- D. The Central Library has served the community since 1913, providing a historic public space for all to gather, learn, create, and access the community’s collective knowledge and resources. The Central Library receives approximately 665,000 visits per year for a variety of purposes including access to books and periodicals, job search assistance, and public gathering space.
- E. The Central Library was last renovated in 1997. MCLD staff has more recently identified a series of infrastructure improvements necessary to continue to provide quality services and

experience for the community. The total amount of improvements is estimated to be \$1,500,000 and the work is expected to be complete by 2021.

F. Prosper Portland and Multnomah County have a long history of collaborating on projects including the development of the Multnomah County Headquarters, acquisition of property for the Multnomah County Central Court House and the recent development and construction of Multnomah County's new Gladys McCoy Health Department Headquarters.

G. The City has remaining proceeds from the 2008B South Park Blocks tax increment financing ("TIF") bond that require investment into a TIF-eligible project. The City of Portland, Multnomah County, MCLD and Prosper Portland jointly identified the Central Library scope of improvements as an eligible project for investment. (the "Project").

H. PROSPER PORTLAND amended the Plan to allow for expenditures for a public building consistent with the Project to be owned by MCLD.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and the conditions, covenants and agreements set forth below, the Parties hereby agree as follows:

ARTICLE 1 PROSPER PORTLAND GRANT GENERALLY

1.1 **PROSPER PORTLAND Grant Amount.** On the terms and conditions of this Agreement, PROSPER PORTLAND agrees to disburse a one-time payment to MCLD in a total aggregate amount not to exceed ONE MILLION FIVE HUNDRED THOUSAND DOLLARS (\$1,500,000) subject to forecasted availability (the "PROSPER PORTLAND Grant"). MCLD may use the PROSPER PORTLAND Grant funds solely for the Project and on the terms and conditions set forth herein.

1.2 **Disbursement.** PROSPER PORTLAND shall disburse the one-time payment of funds to MCLD. MCLD shall have no obligation to repay the PROSPER PORTLAND Grant except upon the occurrence of an Event of Default (as hereinafter defined).

1.2.1 **Conditions Precedent to Payment.** The disbursement of the payment of the PROSPER PORTLAND Grant is subject to the following conditions to be satisfied by MCLD to PROSPER PORTLAND's satisfaction prior to disbursement:

- (a) PROSPER PORTLAND shall have determined, in its sole discretion, that there is sufficient budget appropriation and availability of the PROSPER PORTLAND Grant;
- (b) MCLD has submitted to PROSPER PORTLAND a complete scope of work for the improvements with all sources and uses and a project schedule demonstrating the funds will be spent by October 25, 2022. PROSPER PORTLAND has confirmed the scope of improvements provided by MCLD are Tax Increment Financing eligible uses: for example, design and engineering for improvements, and construction improvements for the Project;
- (c) No litigation is pending that prevents PROSPER PORTLAND or MCLD from performing their respective obligations under this Agreement; and
- (d) No Event of Default shall have occurred.

1.3 **Proof of TIF-Eligible Costs.** MCLD will submit certifications, in a form reasonably acceptable to PROSPER PORTLAND, that the costs for which MCLD has expended the PROSPER PORTLAND Grant funds are eligible urban renewal costs under ORS Chapter 457. The certifications shall be accompanied by certified invoices detailing the PROSPER PORTLAND Grant expenditures. All such certifications and invoices shall be submitted on a quarterly basis, and the final invoices are due at the completion of the Project, which will be on or before October 25, 2022.

1.4 **Return of PROSPER PORTLAND Grant.** Notwithstanding anything set forth herein to the contrary, in the event that MCLD has not spent the full grant amount on TIF-eligible expenses for the Project by October 25, 2022, MCLD shall return the portion of the PROSPER PORTLAND Grant representing the balance of the unspent funds immediately.

ARTICLE 2

MCLD'S REPRESENTATIONS AND WARRANTIES

2.1 MCLD represents and warrants to PROSPER PORTLAND as follows:

2.1.1 **Authority.** MCLD has full power, authority, and legal right to execute and deliver this Agreement and to incur and perform its obligations hereunder. The execution and performance by MCLD of this Agreement has been duly authorized by all necessary action of MCLD.

2.1.2 **No Violations or Default.** No event has occurred and no condition exists that constitutes an Event of Default (as hereinafter defined) by MCLD. Each of the following shall constitute an "Event of Default":

- a) **Breach of Agreement.** If MCLD breaches a material provision of this Agreement, whether by action or inaction, and such breach continues and is not remedied within thirty (30) days after MCLD receives written notice from

PROSPER PORTLAND specifying the breach it shall be an Event of Default under this Agreement. In the case of a breach that cannot with due diligence be cured within a period of thirty (30) days, it shall be an Event of Default under this Agreement if MCLD does not commence the cure of the breach within thirty (30) days after MCLD receives written notice from PROSPER PORTLAND and thereafter diligently prosecute to completion such cure within sixty (60) days unless such cure requires additional time as is reasonably necessary; or

- b) **Misuse of Funds.** It shall also be an Event of Default under this Agreement and PROSPER PORTLAND shall be irreparably harmed by such default, if MCLD uses any portion of the PROSPER PORTLAND Grant in a manner materially inconsistent with the purposes of this Agreement or in violation of applicable laws, statutes, or rules, including but not limited to the limitations set forth in ORS Chapter 457 regarding tax increment finance expenditures.

2.1.3 Limitations on Expenditure of PROSPER PORTLAND Grant Proceeds. MCLD acknowledges and agrees that, to the extent that the PROSPER PORTLAND Grant includes resources derived from tax increment financing (“TIF Funds”), such TIF Funds shall only be used for “TIF eligible expenditures” by MCLD. “TIF eligible expenditures” means expenditures for urban renewal projects that are permitted under Article XI, Section 1c of the Oregon Constitution, ORS Chapter 457 and the Plan. To the extent that TIF Funds are misspent under this Agreement, such misuse shall constitute an Event of Default hereunder and PROSPER PORTLAND shall be entitled to exercise all available legal and/or equitable remedies for such misuse.

ARTICLE 3 PROSPER PORTLAND’S REPRESENTATIONS AND WARRANTIES

3.1 PROSPER PORTLAND represents and warrants to MCLD as follows:

3.1.1 **Authority.** PROSPER PORTLAND has full power, authority, and legal right to execute and deliver this Agreement and to incur and perform its obligations hereunder. The execution and performance by PROSPER PORTLAND of this Agreement has been duly authorized by all necessary action of PROSPER PORTLAND.

ARTICLE 4

MCLD'S AFFIRMATIVE COVENANTS

4.1 MCLD covenants and agrees as follows:

4.1.1 Records and Inspection. MCLD shall keep proper books of account and records on all activities associated with the PROSPER PORTLAND Grant (collectively, the "Records"). MCLD shall maintain the Records in accordance with generally accepted accounting principles and shall retain the Records in accordance with the records retention laws pertaining to urban renewal projects. MCLD shall permit PROSPER PORTLAND and/or its duly authorized representatives, including representatives from the City of Portland, to inspect, review and make excerpts and transcripts of the Records with respect to the receipt and disbursement of funds received from PROSPER PORTLAND, provided that any such examinations and audits shall be at the reviewing party's sole expense. Access to the Records is not limited to the required retention period. The authorized representatives shall have access to the Records at any reasonable time for as long as the Records are maintained. This Section 4.1.1 shall survive any termination of this Agreement.

4.1.2 Audits. PROSPER PORTLAND, either directly or through a designated representative, may conduct financial and performance audits of the use of PROSPER PORTLAND Grant proceeds at any time at PROSPER PORTLAND's expense; provided, however, that to the extent that an audit reveals any malfeasance, MCLD shall reimburse PROSPER PORTLAND for any costs associated with the audit and MCLD shall correct any deviations discovered as a result of the audit. Audits will be conducted in accordance with generally accepted auditing standards as promulgated in *Government Auditing Standards* by the Comptroller General of the United States General Accounting Office. In the event of an audit, MCLD agrees to provide the designated auditor with reasonable access to MCLD's employees and make all such financial, performance and compliance records available to the auditor. This Section 4.1.2 shall survive any termination of this Agreement.

4.1.3 Business and Workforce Equity. In working on the Project, MCLD shall comply with PROSPER PORTLAND's Business and Workforce Equity Policy or substantially equivalent County policies.

4.1.4 Green Building. If a Green Building Policy is applicable to the scope of work under this Agreement, MCLD will adhere to whichever Green Building Policy commands the highest performance for the project between MCLD and PROSPER PORTLAND'S respective policies.

4.1.5 MCLD's Obligation to Indemnify. To the extent permitted by law and within the limitations of the Tort Claims Act, MCLD shall defend, save, hold harmless, and indemnify PROSPER PORTLAND and its officers, employees and agents from and against all claims, suits, actions, losses, damages, liabilities, costs and expenses of any nature whatsoever, including attorneys fees, resulting from, arising out of, or relating to the activities of MCLD or its officers, employees, subcontractors, or agents under this Agreement. MCLD shall have control of the defense and settlement of any claim that is subject to this paragraph. However, neither MCLD

nor any attorney engaged by MCLD shall defend the claim in the name of PROSPER PORTLAND or any department of PROSPER PORTLAND, nor purport to act as legal representative of PROSPER PORTLAND or any of its departments, without first receiving from PROSPER PORTLAND's General Counsel, authority to act as legal counsel for PROSPER PORTLAND, nor shall MCLD settle any claim on behalf of PROSPER PORTLAND without the approval of PROSPER PORTLAND's General Counsel's Office. PROSPER PORTLAND may, at its election and expense, assume its own defense and settlement.

ARTICLE 5 PROSPER PORTLAND'S AFFIRMATIVE COVENANTS

5.1 PROSPER PORTLAND covenants and agrees as follows:

5.1.1 PROSPER PORTLAND Obligation to Indemnify. To the extent permitted by law and within the limitations of the Tort Claims Act, PROSPER PORTLAND shall defend, save, hold harmless, and indemnify MCLD and its officers, employees and agents from and against all claims, suits, actions, losses, damages, liabilities, costs and expenses of any nature whatsoever, including attorneys' fees, resulting from, arising out of, or relating to the activities of PROSPER PORTLAND or its officers, employees, subcontractors, or agents under this Agreement. However, neither PROSPER PORTLAND nor any attorney engaged by PROSPER PORTLAND shall defend the claim in the name of MCLD or any department of MCLD, nor purport to act as legal representative of MCLD or any of its departments, without first receiving from the Multnomah County Attorney's Office, authority to act as legal counsel for MCLD, nor shall PROSPER PORTLAND settle any claim on behalf of MCLD without the approval of the Multnomah County Attorney's Office. MCLD may, at its election and expense, assume its own defense and settlement.

5.1.2 PROSPER PORTLAND shall, prior to the Closing Date, amend the Plan to accommodate expenditure of the PROSPER PORTLAND Grant on the Project which is a public building.

ARTICLE 6 RIGHTS AND REMEDIES UPON EVENT OF DEFAULT

6.1 **Rights and Remedies.** Upon the occurrence of an Event of Default and at any time thereafter, PROSPER PORTLAND may, at its option, exercise any one or more of the following rights and remedies:

6.1.1 **Repayment.** PROSPER PORTLAND may declare the entire original PROSPER PORTLAND Grant pursuant to this Agreement, to be immediately due and payable in full and, upon such declaration, MCLD shall pay to PROSPER PORTLAND the amount declared to be immediately due and payable.

6.1.2 No Election Required. PROSPER PORTLAND shall have any other right or remedy provided in this Agreement, or available at law, in equity, or otherwise in such order and manner as it may select.

6.1.3 Rights and Remedies Cumulative. All rights and remedies described in this Article 4 are cumulative and in addition to any other remedy PROSPER PORTLAND may have by agreement, at law, or in equity. Partial exercise of any right or remedy shall not limit or restrict PROSPER PORTLAND's subsequent exercise of such right or remedy nor shall it restrict PROSPER PORTLAND's contemporaneous or subsequent exercise of any other right or remedy.

6.1.4 No Waiver. No failure on the part of PROSPER PORTLAND to exercise, and no delay in exercising, any right, power, or privilege under this Agreement shall operate as a waiver of that right or any other right. No modification or waiver of any provision of this Agreement shall be effective unless in writing, and then only in specific instance and for the purpose given. No notice or demand on MCLD shall entitle MCLD to any other notice or demand in other similar circumstances.

6.1.5 Payment of Costs of Collection. In case of an Event of Default, or in case litigation is commenced to enforce or construe any term of this Agreement, the losing party will pay to the prevailing party such amounts as shall be sufficient to cover the cost and expense of collection or enforcement, including, without limitation, reasonable attorney fees and costs prior to and at any arbitration proceeding or at trial, on appeal, or in any bankruptcy proceeding.

ARTICLE 7 MISCELLANEOUS

7.1 Counterparts. This Agreement may be executed in any number of counterparts, and any single counterpart or set of counterparts signed, in either case, by the Parties hereto shall constitute a full and original instrument, but all of which shall together constitute one and the same instrument.

7.2 Survival. All agreements, representations, and warranties shall survive the execution and delivery of this Agreement, any investigation at any time made by PROSPER PORTLAND or on its behalf and the making of the PROSPER PORTLAND Grant.

7.3 Notice. Any notice required or permitted under this Agreement shall be in writing and shall be deemed effective (1) when actually delivered in person, (2) one business day after deposit with a commercial courier service for "next day" delivery, (3) two business days after having been deposited in the United States mail as certified or registered mail, or (4) when transmitted by facsimile (answer back or receipt confirmed), addressed to the Parties as follows:

If to PROSPER PORTLAND:
Kimberly Branam
Portland Development Commission
222 NW 5th Avenue

If to MCLD:
Deborah Kafoury
Office of the Chair
Multnomah County

Portland, OR 97209

501 SE Hawthorne Blvd., 6th Floor
Portland, OR 97214

7.4 **Successors and Assigns.** MCLD may not assign this Agreement, in whole or in part, without the prior written consent of PROSPER PORTLAND. This Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective permitted successors and assigns.

7.5 **Subgrants.** MCLD may not subgrant any portion of the PROSPER PORTLAND Grant without the prior written consent of PROSPER PORTLAND, which consent shall be entirely within PROSPER PORTLAND'S sole discretion and which is substantially limited by law. Notwithstanding an approved subgrant, MCLD shall remain fully responsible for the proper use of all PROSPER PORTLAND Grant proceeds.

7.6 **Governing Law, Jurisdiction, Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon, without regard to its conflicts of law principles. Any legal action regarding this Agreement must be brought and conducted in the federal or state court, as appropriate, serving Multnomah County, Oregon, and the parties hereby consent to the jurisdiction and venue of such courts.

7.7 **Validity; Severability.** If any provision of this Agreement is held to be invalid, such event shall not affect, in any respect whatsoever, the validity of the remainder of this Agreement, and the remainder shall be construed without the invalid provision so as to carry out the intent of the Parties to the extent possible without the invalid provision.

7.8 **Exhibits.** The exhibits to this Agreement are, by this reference, incorporated into and deemed a part of this Agreement as if they were fully set forth in the text hereof.

7.9 **Time of Essence.** Time is of the essence of this Agreement.

7.10 **Relationship of the Parties.** Nothing contained in this Agreement or any acts of the Parties hereto shall be deemed or construed to create the relationship of principal and agent, or of partnership, or of joint venture or of any other association other than that of independent contracting parties.

7.11 **No Third Party Beneficiary Rights.** No person not a party to this Agreement is an intended beneficiary of this Agreement, and no person not a party to this Agreement shall have any right to enforce any term of this Agreement.

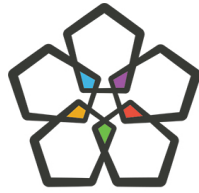
7.12 **Funding Acknowledgement / Signage.** Any oral reports made to neighborhood, business, or other civic organizations, as well as to any members of the press should acknowledge work being done is based on a partnership between MCLD and PROSPER PORTLAND and, if appropriate, financed with funds from the "*the South Park Blocks Urban Renewal Area*".

7.13 **Amendments.** This Agreement may only be amended by a written agreement signed by both PROSPER PORTLAND and MCLD. MCLD's Chair and the Executive Director of PROSPER PORTLAND and their respective designees are authorized to take all actions necessary to implement the terms of this Agreement and may authorize amendments of this Agreement without further action by the Board of County Commissioners and the PROSPER PORTLAND Board, respectively, so long as the amount of the PROSPER PORTLAND Grant is not increased.

7.14 **Merger Clause.** This Agreement contains the entire agreement between PROSPER PORTLAND and MCLD with respect to the subject matter thereof. It supersedes all prior written or oral discussions or agreements concerning work to be performed by either Party.

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

THE MULTNOMAH COUNTY LIBRARY DISTRICT By _____ Deborah Kafoury, Chair APPROVED AS TO FORM: JENNY M. MADKOUR, County Attorney For MULTNOMAH COUNTY By _____ Kenneth M. Elliott Assistant County Attorney	PORTLAND DEVELOPMENT COMMISSION By _____ Kimberly Branam, Executive Director APPROVED AS TO FORM: _____ Alison Kean, PROSPER PORTLAND Legal Counsel
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PROSPER PORTLAND

Building an Equitable Economy

RESOLUTION NO. .

RESOLUTION TITLE:


Adopted by the Portland Development Commission on .

PRESENT FOR VOTE	COMMISSIONERS	VOTE		
		Yea	Nay	Abstain
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<input type="checkbox"/>	Commissioner William Myers	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> Consent Agenda <input 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.

	Date: August 19, 2019
	, Recording Secretary