

**PROSPER PORTLAND**

Portland, Oregon

**RESOLUTION NO. 7439**

**EXECUTING A CONTRACT WITH FULCRUM CONSTRUCTION TO  
RETROFIT THE ROOF OF THE PROSPER PORTLAND-OWNED PROPERTY  
LOCATED AT 2221 N. ARGYLE STREET IN THE INTERSTATE CORRIDOR  
TAX INCREMENT FINANCE DISTRICT**

**WHEREAS**, on May 11, 2011, the Prosper Portland Board of Commissioners (“Board”) through Resolution No. 6872 authorized acquisition of approximately 3.5 acres of real property in the Interstate Corridor tax increment finance district, including a property located at 2221 N. Argyle Street (“Property”);

**WHEREAS**, since acquisition, Prosper Portland has leased the Property to SparTek Industries, a Portland-based provider in the design, manufacture, and installation of production machinery for hydraulic press and material handling;

**WHEREAS**, the existing roof on the Property’s building is in need of retrofit; and

**WHEREAS**, after a competitive solicitation process, Fulcrum Construction Inc. (“Fulcrum”) was selected as the most responsive bidder to complete the roof retrofit.

**NOW, THEREFORE, BE IT RESOLVED**, that the Prosper Portland Board of Commissioners authorizes the Executive Director to execute a construction contract with Fulcrum in an amount not to exceed \$661,000 (“Contract”), in substantially the form of Exhibit A attached hereto, for the purpose of retrofitting the roof on the Property;

**BE IT FURTHER RESOLVED**, that the Executive Director may approve changes to the Contract if such changes do not materially increase Prosper Portland’s obligations or risks, as determined but 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

December 15, 2021



Pam Feigenbutz, Recording Secretary



CONSTRUCTION AGREEMENT (NO. xxxxxx) FOR

SparTek Industries Roof Retrofit  
2221 N. Argyle Street, Portland, OR 97217Portland, Oregon

THIS AGREEMENT, made the date of final execution by the Owner (as subsequently defined), by and between Fulcrum Construction and Building Services LLC d/b/a Fulcrum Construction, hereinafter called "Contractor", and Prosper Portland, hereinafter called the "Owner". The Contractor and the Owner for the considerations stated herein mutually agree as follows:

ARTICLE 1. The Work - The Contractor shall furnish and pay for all supervision, contract administration, labor, materials, machinery, tools, equipment and services, including utility and transportation services, and other costs necessary to perform and complete all work required for the SparTek Industries Roof Retrofit project, as more specifically outlined in the contract documents ("Work". Work is to be performed in strict accordance with the Contract Documents as outlined below in Article 3.

ARTICLE 2. The Contract Price - The Owner will pay the Contractor for performance of the Contract, in current appropriated funds, subject to additions and deductions as provided for in the contract documents the sum of four hundred ninety-five thousand eight hundred seventy-one dollars and zero cents (\$495,871.00).

ARTICLE 3. The Contract Documents - The Contract Documents shall consist of the following:

- a. This Agreement
- b. Addenda to the bid documents (if any)
- c. The Advertisement for Bids and Instructions to Bidders
- d. The General Conditions
- e. Technical Specifications
- f. Special Specifications
- g. Drawings per Schedule of Drawings (See definitions) list included in item e above
- h. Signed copy of bid
- i. Workforce Equity Program Specifications
- j. State of Oregon Prevailing Wage Rates dated July 1, 2021 with the August 1, 2021 prevailing wage rate amendments
- k. Performance and Payment Bonds
- l. Modifications to the Contract Documents issued after the execution of this Agreement.
- m. Business Equity Program Specifications

THIS AGREEMENT, together with the Contract Documents enumerated in this ARTICLE 3, which said other documents are as fully a part of the Contract as if hereto attached or herein repeated, forms the Contract between the parties hereto.

ARTICLE 4. The Schedule (Date of Commencement, Substantial Completion and Liquidated Damages): Contractor shall commence work upon issuance of a notice to proceed by the Owner. Contractor shall achieve substantial completion no later than sixty (60)calendar days following the date of the Notice to Proceed. Final Completion shall be achieved ten (10)calendar days after the date of Substantial Completion. Notice to proceed shall be issued on such a date as deemed appropriate by the Owner and in the Owner’s sole discretion. Provided however, the Owner shall endeavor to = issue the notice to proceed, within sixty (60) days of execution of this Agreement. The Contractor and its sureties shall be liable for and shall pay to the Commission the sum of two hundred fifty dollars (\$250.00) per calendar day as fixed, agreed, and liquidated damages for each calendar day of delay until the Work is satisfactorily completed.

***ARTICLE 5. WORKERS COMPENSATION. By signing this Agreement Contractor certifies it is exempt from providing workers compensation insurance coverage under ORS 656.027. \_\_\_\_\_ Yes \_\_\_\_\_ No Indicate one.***

ARTICLE 6. NOTICES. Any notices required to be given under this Agreement shall be deemed conclusively given if transmitted to the other party at the following address or telecopy number or at such other address or telecopy number as may be given hereunder:

**OWNER:**

Prosper Portland  
Attn: \_\_\_\_\_TBD\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

and a separate copy to:

\_\_\_\_\_TBD\_\_\_\_\_

Attn: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**CONTRACTOR:**

\_\_\_\_\_

Attn: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed in 2 original copies on the date and year first above written.

PROSPER PORTLAND

CONTRACTOR

By \_\_\_\_\_  
Kimberly Branam  
Executive Director

By \_\_\_\_\_  
Printed name \_\_\_\_\_

Title \_\_\_\_\_

Contractor \_\_\_\_\_

APPROVED AS TO FORM:

Address \_\_\_\_\_

\_\_\_\_\_  
Legal Counsel

City \_\_\_\_\_

State/Zip \_\_\_\_\_

Printed name \_\_\_\_\_

City Business License Number \_\_\_\_\_

State CCB Registration Number \_\_\_\_\_

**The General Conditions**  
Solicitation Number: **ITB #21-54**  
Project Title: **SparTek Industries Roof Retrofit**

**1. GENERAL PROVISIONS**

1.1 CONTRACT DOCUMENTS; INTENT. The Contract Documents consist of the Construction Agreement No. XXXXXX and those Documents listed therein (“Construction Agreement”, “Agreement”, or “Contract”). The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor.

1.2 CONFLICTS OR INCONSISTENCIES IN DOCUMENTS. In the event of conflicts or inconsistencies between, within, or among any of the Contract Documents, Contractor expressly understands and agrees that precedence shall be given to that term, provision, condition, or requirement that provides the greater benefit to Prosper Portland, as determined by Prosper Portland in its sole discretion.

1.3 INTEGRATED AGREEMENT. The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Change Order or Change Directive signed, as required, by Prosper Portland and the Contractor.

1.4 THE WORK. The term Work means all work that is required by the Contract Documents and includes all labor, materials, facilities, equipment, capital, insurances, bonds, and services provided by the Contractor, or to be provided by the Contractor or Subcontractors to fulfill the Contractor’s obligations under the Contract. All Work shall be performed in strict accordance with the Contract Documents. As used herein, “Subcontractor” means any subcontractor or supplier at any tier providing labor, materials, equipment, and/or services for the Project.

1.5 REVIEW OF CONTRACT DOCUMENTS. The Contractor shall carefully study and compare the Contract Documents with each other and shall immediately report to the Prosper Portland errors, inconsistencies or omissions discovered. If the Contractor performs any portion of the Work with knowledge that is involves a recognized error, inconsistency or omission in the Contract Documents without such notice to the Prosper Portland, the Contractor shall assume responsibility for such performance and shall bear the costs attributable to correction of the applicable portion of the Work.

1.6 CONTRACTOR’S REPRESENTATION. Execution of the Agreement by the Contractor is a representation that the Contractor has visited the site, become familiar with local and existing conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents. Contractor represents that it made its best effort as a professional contractor to investigate and observe existing conditions. Such an effort includes, but is not limited to, having requested access, clarification, and/or additional information during the ITB process as may be needed to thoroughly assess existing conditions.

1.7 NON-RESPONSIBILITY OF PROSPER PORTLAND. Prosper Portland will not have control over or charge of and will not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor’s responsibility. Prosper Portland will not be responsible for the Contractor’s failure to carry out the Work in accordance with the Contract Documents and will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, and Subcontractor, or their agents or employees, or of any other persons performing portions of the Work.

1.8 REJECTION OF WORK; TESTING. Prosper Portland will have authority to reject Work which does not conform to the Contract Documents and the authority to require additional inspection or testing of the Work, whether or not such Work is fabricated, installed or completed. However, neither this authority nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Prosper Portland to the Contractor, and Subcontractors, their agents or employees, or other person performing portions of the Work; nor will Prosper Portland’s authority or decision relieve Contractor of its sole responsibility for the means, methods, techniques, sequences, procedures, or safety precautions related to the Work.

1.9 WARRANTIES; DOCUMENTS REQUIRED FOR PAYMENT. The Contractor will provide to Prosper Portland for its review and records all written warranties and related documents required by the Contract, and Prosper Portland will approve payment to the Contractor upon Contractor’s compliance with these and other requirements of the Contract Documents.

1.10 Reserved.

## **2. CHANGES IN THE WORK.**

2.1 CHANGES. Changes in the Work within the general scope of the Contract, consisting of additions, deletions, or other revisions, may be accomplished after execution of the Contract, and without invalidating the Contract, by a prior written Change Order signed by both parties, or Change Directive signed by Prosper Portland.

2.2 ADDITIONAL COMPENSATION/TIME. All changes or changed conditions for which Contractor wishes to receive additional compensation or time must be approved in advance by Change Order and signed by Prosper Portland and Contractor before any additional work commences. Requests for additional compensation and/or time not in writing and signed in accordance with this paragraph will not be considered by Prosper Portland and are hereby waived by Contractor. Contractor further waives, and agrees not to assert, any argument that Prosper Portland’s knowledge of the additional work or conduct before, during, or after the Project amounts to an abrogation of the written change order requirements in this paragraph. All Change Orders or Change Directives shall incorporate the Unit Prices listed in Exhibit C to the ITB for any such Unit Pricing Items included therein. If Prosper Portland determines that the actual quantities required for completion of the Change Work differ substantially from the estimated quantities included on Exhibit C, Prosper Portland may equitably adjust the Unit Prices in its sole discretion. Prosper Portland may require the Contractor to provide reasonable documentation of actual costs to support any such equitable Unit Price adjustment decision.

2.2.1 CHANGE ORDER/CHANGE DIRECTIVE FEE LIMITATION. Fee is the allowance for all combined profit, overhead, and costs not directly related to the costs of construction. The following delineates the maximum Fee that may be included in Change Orders and Change Directives. The

Contractor and all tiers of the Contractor's sub-contractors may charge a fee of up to (10%) of the direct construction costs for work performed under Change Orders or Change Directives ("Change Work") by its own forces. The Contractor and all tiers of the Contractor's sub-contractors may charge a fee of up to five percent (5%) of the direct cost of construction for Change Work performed by any and all lower tier sub-contractors. The total amount of Fee under included in any Change Order or Change Directive shall not exceed twenty percent (20%) of the direct construction costs thereunder. If after applying the percentages (i.e., 10% and 5%) as delineated above, the total amount of Fee under a Change Order or Change Directive would exceed 20%, then the Contractor's Fee shall first be reduced, and then each highest tier sub-contractor's Fee shall be reduced as needed until the total cumulative Fee does not exceed 20% of the direct costs of construction under the respective Change Order or Change Directive.

### **3. PAYMENT.**

3.1 PAYMENT APPLICATIONS. Subject to the applicable provisions of the Contract Documents, Contractor shall submit payment applications to Prosper Portland. Subject to all applicable requirements of the Contract Documents having been met, progress payments will be made monthly for work duly certified, approved, and performed during the calendar month preceding the application.

3.2 WITHHOLDING OF PAYMENT. Prosper Portland may withhold payment, or any portion thereof, to Contractor on account of (1) defective or nonconforming Work not remedied, (2) claims filed or a reasonable basis to believe that such claims will be filed, (3) failure of Contractor to make payments properly for labor, materials, equipment, or subcontracts, (4) damages caused to Prosper Portland or another party, (5) failure of Contractor to submit to Prosper Portland any required final contract documents including, but not limited to, Prosper Portland's claim waivers and releases, or (6) failure by Contractor to carry out the Work in strict accordance with the Contract Documents. Prosper Portland may withhold from its payment to Contractor up to two hundred percent (200%) of the potential or actual costs associated with the above items.

3.3 TAXES. Contractor shall pay and remit to the applicable governmental agencies sales and use taxes, if any, on labor, supplies, and materials included in the Work.

### **4. PROMPT PAYMENT.**

4.1 PROMPT PAYMENT. Contractor shall promptly pay all of its obligations arising out of or in connection with the Work, including, but not limited to, payments (1) to all persons, as due, supplying to Contractor labor, equipment, services or material for the prosecution of the Work, (2) of all contributions or amounts due the Industrial Accident Fund from Contractor or any subcontractor incurred in the performance of the Work, and (3) to the Department of Revenue of all sums withheld from employees pursuant to ORS 316.167.

4.2 CONTRACTOR'S FAILURE TO MAKE PROMPT PAYMENT. Upon Prosper Portland's reasonable concern that Contractor has failed, neglected or refused to make prompt payment of any claim for labor, equipment, services or materials furnished to the Contractor or a subcontractor by any person in connection with the Project as such claim becomes due, Prosper Portland may (but is not required to) pay such claim and charge the amount of the payment against funds due or to become due the Contractor under the Contract. Prosper Portland reserves the right (but is not required) to make payments directly or by multiple-payee check and Contractor hereby consents to such direct and multiple-payee check payments. Upon Prosper Portland's request, Contractor shall furnish the

information required to facilitate such payments. Payment by the Prosper Portland as authorized herein shall not relieve the Contractor or its surety (if any) from obligation with respect to any unpaid claims.

4.3 CONTRACTOR’S/FIRST-TIER SUBCONTRACTORS’S FAILURE TO MAKE PAYMENT AFTER PAYMENT FROM PROSPER PORTLAND; INTEREST PENALTY. If the Contractor or a first-tier subcontractor fails, neglects or refuses to make payment to a person furnishing labor, equipment, services or materials in connection the Project within thirty (30) days after receipt of payment from the Prosper Portland or the Contractor, the Contractor or first-tier subcontractor shall owe the person the amount due plus interest charges commencing at the end of the 10-day period that payment is due under ORS 279C.580(3) and ending upon final payment, unless payment is subject to a good faith dispute as defined in ORS 279C.580. The rate of interest shall be calculated as described in ORS 279C.515 (2).

## **5. CONTRACTOR’S EMPLOYEES AND SUBCONTRACTORS.**

5.1 PROSPER PORTLAND REQUIREMENTS. Contractor shall be licensed to do business in the City of Portland as required by City Code and shall be certified as an Equal Employment Opportunity (EEO) employer through the City of Portland, Bureau of Purchases.

5.2 EMPLOYEE DRUG TESTING PROGRAM. Contractor shall certify to Prosper Portland that Contractor has initiated, and shall maintain through the completion of the Work of the Project, an employee drug testing program.

5.3 WORK DAY/WORK WEEK. No person shall be employed for more than 10 hours in any one day, or 40 hours in any one week, except in cases of necessity, emergency, or where the public policy absolutely requires it, and in such cases, the employee shall be paid at least time and a half pay (1) for all overtime in excess of eight hours a day or 40 hours in any one week when the work week is five consecutive days, Monday through Friday, or (2) for all overtime in excess of 10 hours a day or 40 hours in any one week when the work is four consecutive days, Monday through Friday, and (3) for all work performed on Saturday, and on any legal holiday specified in ORS 279C.540.

5.4 PROMPT PAYMENT FOR MEDICAL SERVICES. The Contractor shall promptly make payment, as due, to any person, co-partnership, association or corporation, furnishing medical, surgical and hospital care or other needed care and attention, incident to sickness or injury, to the employees of the Contractor, of all sums which the Contractor agrees to pay for such services and all moneys and sums which the contractor collected or deducted from the wages of employees pursuant to any law, contract or agreement for the purpose of providing or paying for such service. The Contractor shall also comply with ORS 656.017.

5.5 LIST OF SUBCONTRACTORS. Before commencing Work, Contractor shall provide for Prosper Portland’s approval a list of all Subcontractors to be involved on the Project. Prosper Portland shall have the ability to require removal and substitution of any Subcontractor prior to commencement of the Work. Prosper Portland further reserves the right during the Project to reasonably require removal from the Project of any of Contractor’s employees, agents, or Subcontractors for good cause, and to require a substitution that meets Prosper Portland’s approval. It shall be the responsibility of the Contractor to assure that all Subcontractors are duly registered with Oregon’s Construction Contractors Board and have not been declared ineligible to work on a public improvement contract pursuant to ORS 279C.860 or ORS 701.227.



## 5.6 REQUIRED PROVISIONS IN SUBCONTRACTOR AGREEMENTS.

5.6.1 BOUND BY CONTRACT DOCUMENTS. Contractor's subcontracts and supply contracts shall require the Subcontractor, as to the Work to be performed by the Subcontractor, be bound to Contractor by the terms of the Contract Documents and to assume toward Contractor all of the obligations which Contractor, by the Contract Documents, assumes toward Prosper Portland. Contractor's subcontracts and supply contracts shall include a provision whereby the Subcontractor consents to the assignment of the subcontract or supply contract to Prosper Portland contingent upon Contractor's default of this Agreement.

5.6.2 PAYMENT. Contractor shall include in each of its subcontracts and supply contracts a clause obligating the Contractor (1) to make payment to the Subcontractor for satisfactory performance within 10 days out of such amounts as are paid to the Contractor by the Prosper Portland, and (2) to pay to the Subcontractor an interest penalty as described in paragraph 3.2 above. Contractor shall also include in each of its subcontracts and supply contracts a clause obligating each Subcontractor to include a payment clause and an interest penalty clause conforming to the standards of this paragraph and paragraph 3.2 above in each of its subcontracts and supply contracts and to include such clauses in their subcontracts and supply contracts with each lower-tier Subcontractor.

5.7 NO CONTRACTUAL RELATIONSHIP WITH PROSPER PORTLAND. Nothing in this Agreement shall be construed to establish a contractual relationship between Prosper Portland and any Subcontractor; provided, however, that nothing in this Agreement shall prevent Prosper Portland from maintaining any third-party beneficiary claims against Subcontractors.

5.8 PROSPER PORTLAND’S APPROVAL OF SUBCONTRACTS AND ASSIGNMENTS. The Contractor shall not subcontract or assign its obligations under this Agreement in whole or in part, nor shall any Work be performed by any Subcontractor or assignee, nor shall any funds payable to Contractor under this Agreement be assigned, without the prior written approval of Prosper Portland. Prosper Portland’s approval of any such subcontracting or assignment shall not relieve Contractor of any of its obligations under this Agreement.

## **6. WARRANTY.**

6.1 PERFORMANCE OF THE WORK. Contractor shall perform the Work in a workmanlike manner and in strict accordance with the Contract Documents and industry standards. Contractor shall be solely responsible for all construction means, methods, techniques, and procedures, and for supervising, coordinating and performing all of the Work. The Work shall be subject to observation and approval by Prosper Portland, Prosper Portland’s representatives, and representatives of governmental agencies with jurisdiction over the Project. Neither the supervision, inspection, testing, observation, nor approval of the Work by Prosper Portland, Prosper Portland’s representative, or a governmental agency shall relieve Contractor from its obligation to perform the Work in strict accordance with the Contract Documents and industry standards.

6.2 CONTRACTOR’S WARRANTY. Contractor shall promptly correct, at no cost to Prosper Portland, all Work rejected by Prosper Portland or any governmental agency. Contractor warrants to Prosper Portland, for a period of two (2) year<sup>2</sup> following the date of Final Completion, that the materials and equipment furnished under this Agreement will be of good quality and new, unless otherwise required by the Contract Documents, that the Work will be free of defects, and that the Work will strictly conform to the Contract Documents and industry standards. Work not conforming to these requirements shall be considered defective. If within one (2) years from the date of Final Completion and acceptance by Prosper Portland, any Work is found to be defective or not in full conformance with the Contract Documents and industry standards, upon receipt of written notice, Contractor shall promptly correct it at no cost to Prosper Portland. The two (2) year warranty will start over on those items corrected from date correction is accepted. Should Contractor fail to correct Work as required herein, Prosper Portland may correct such Work and Contractor shall pay Prosper Portland’s costs of correction.

6.3 ACCEPTANCE OF NONCONFORMING WORK. If Prosper Portland prefers to accept Work which is not in accordance with the requirements of the Contract Documents, Prosper Portland may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate. Such adjustments shall be effected whether or not final payment has been made.

6.4 SUBMISSION OF ADDITIONAL WARRANTIES. Contractor shall collect and submit to Prosper Portland, prior to Final Completion, all additional warranties from Subcontractors, distributors, and manufacturers, hereby assigns to Prosper Portland all of Contractor’s rights under such warranties. All of warranties discussed in this Article 5 are in addition to, and not in lieu of, other remedies Prosper Portland may have, all of which are fully reserved by Prosper Portland.

## **7. PROSPER PORTLAND’S CONSTRUCTION AND SEPARATE CONTRACTS.**

7.1 Prosper Portland reserves the right to perform construction or operations related to the Project with Prosper Portland’s own forces or by separate contracts. Contractor agrees to cooperate with Prosper Portland and Prosper Portland’s separate contractors, and Prosper Portland agrees to cooperate with Contractor and to require its separate contractors to do the same, with respect to scheduling, material, and equipment deliveries and storage, security, cleanup, work activities, and other aspects of the Project.

## **8. SAFETY AND ENVIRONMENT.**

8.1 CONTRACTOR RESPONSIBILITY. Contractor shall be responsible for all safety precautions and programs in connection with the performance of the Work including, without limitation, precautions and programs to prevent damage, injury, and loss to those performing the Work and other persons, to the Work and materials and equipment to be incorporated into the Project, and to other personal and real property at the Project site and adjacent thereto.

8.2 CESSATION OF WORK UPON DISCOVERY OF HAZARDOUS MATERIALS; ACTIONS BY CONTRACTOR. Immediately upon discovery, Contractor shall cease performance of the Work in that area of the Project where there are, or reasonably appear to be hazardous materials which are not controlled or have not been rendered harmless. As used herein, the term “hazardous materials” shall mean and include all “hazardous substances” as defined in the federal Comprehensive Environmental Response Compensation Liability Act (CERCLA), all “hazardous waste” as defined in the federal Resource Conservation Recovery Act (RCRA), and similar terms as used in applicable federal, state and local statutes, rules and regulations. Upon ceasing the Work as described herein, or upon discovery of any occurrence or condition which constitutes or reasonably could constitute an immediate danger to persons, property or the environment, Contractor shall take such actions as are reasonably necessary to contain any suspected hazardous materials and to minimize the danger. Contractor shall immediately notify Prosper Portland and shall not resume the Work in the affected area until it has received a written order from Prosper Portland to do so.

## **9. INDEMNITY.**

9.1 To the fullest extent permitted by law, Contractor agrees to defend (with counsel meeting Prosper Portland’s approval), hold harmless, reimburse, and indemnify Prosper Portland from and against any and all claims, demands, losses, costs, damages, expenses, penalties, actions, suits, and liabilities of any kind, including, without limitation, attorney fees and related investigation, expert witness, and other legal expenses, arising out of or related to the Contract or performance of the Work, including, without limitation, injury to or death sustained by any person (including, but not limited to, Contractor’s employees) or damage to any real or personal property, to the extent such claims, demands, losses, costs, damages, expenses, penalties, actions, suits, or liabilities are caused in whole or part by any act or omission (negligent or otherwise), whether active or passive, of Contractor, Subcontractors, or Prosper Portland’s partners, officers, directors, agents, or employees of any of them, or the failure of such parties or persons to perform their obligations as required by the Contract Documents.

## **10. INSURANCE AND BONDS.**

10.1 CERTIFICATES OF INSURANCE. Contractor and all Subcontractors must provide Certificates of Insurance signed by an authorized insurance company representative before their portion

of the Work commences on the job site. The Certificates of Insurance provided by the Contractor shall be mailed to Prosper Portland within ten (10) days after Notice of Award and will be incorporated herein by this reference.

10.2 INSURANCE ON ALL OPERATIONS. Contractor must, at its own expense, procure, carry and maintain in force insurance on all operations as provided below. Contractor is responsible for paying its own deductibles on the required insurance. Consultant hereby waives any right to subrogation which any insurer of said Consultant may acquire against Prosper Portland by virtue of the payment of any loss under such insurance. Consultant agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not Prosper Portland has received a waiver of subrogation endorsement from the insurer. The required amounts of the Contractor’s insurance are as provided in paragraphs 10.2.1 and 10.2.2 below:

10.2.1 COMPREHENSIVE GENERAL LIABILITY.

\$ 1,000,000 Each Occurrence	Bodily Injury and Property Damage
\$ 1,000,000 Aggregate	(Combined Single Limit)

This insurance shall include products and completed operations, personal and advertising injury liability, property damage and bodily injury.

10.2.2 AUTOMOBILE LIABILITY INSURANCE.

\$ 1,000,000 Each Accident	Bodily Injury and Property Damage
	(Combined Single Limit)

10.2.3 WORKERS’ COMPENSATION. Unless exempt under ORS 656.027, Contractor shall deliver to Prosper Portland a certificate evidencing sufficient Oregon Workers’ Compensation coverage, in compliance with ORS 656.017, protecting Prosper Portland from any claims arising therefrom for work performed on the Project.

10.2.4 TERM OF INSURANCE. Contractor’s insurance shall be maintained from the date of commencement of the Work until one (1) year after the date of Final Completion and at all times thereafter if Contractor or Subcontractors is/are repairing, correcting, removing or replacing defective, rejected or warranty Work. In the event any of the policies required herein are canceled or materially altered, the Contractor and its insurer will give thirty (30) days’ written notice by registered mail to Prosper Portland’s Representative.

10.3 ADDITIONAL INSURED. **“Prosper Portland, the City of Portland, and each of their officers, officials, employees, and volunteers”** are to be covered as **additional insureds** on the CGL policy with respect to liability arising out of the work or operations performed by or on behalf of Contractor, including materials, parts, or equipment furnished in connection with such work or operations. Additional insured coverage can be provided in the form of an endorsement to Contractor’s insurance (at least as broad as ISO Form (1) CG 20 10 10 01 or (2) **both** CG 20 10, CG 20 26, CG 20 33, or CG 20 38; **and** CG 20 37 forms, if later revisions are used). It is understood and agreed that such insurance provided to Prosper Portland by Contractor (1) shall be primary as to any other insurance covering or available to Prosper Portland, (2) shall be at least as broad in its coverage of Prosper

Portland as it is in its coverage of Contractor, and (3) that such other insurance available to Prosper Portland shall not be required to contribute to any liability or loss until and unless the appropriate limit of liability afforded hereunder is exhausted.

10.3.1 ENDORSEMENT. The additional insured endorsement must be attached to Contractor's Comprehensive General Liability, Automobile Liability, and Excess Liability (if required) policies. Stating that the Prosper Portland is an additional insured on the insurance certificate only is not acceptable.

10.4 WAIVER OF SUBROGATION. Contractor's Worker's Compensation, Comprehensive General Liability, Automobile Liability, and Excess Liability (if required), any other policies as noted in the Contract Documents shall contain a "Waiver of Subrogation" endorsement.

10.5 SUBCONTRACTOR'S INSURANCE. It shall be the responsibility of the Contractor to assure that all Subcontractors carry adequate liability and Oregon Worker's Compensation insurance. In the event a Subcontractor fails to maintain adequate insurance coverage required under this Agreement, Contractor must maintain such coverage on behalf of the Subcontractor at no charge to Prosper Portland.

10.6 NO RESPONSIBILITY FOR MATERIALS AND/OR LABOR. Contractor acknowledges and agrees that Prosper Portland and the City of Portland assume no responsibility for materials and/or labor until subject improvements are installed, completed and accepted by the Prosper Portland. The contractor shall be responsible for all their own property losses including, but not limited to, vandalism, malicious mischief, collapse, false work, temporary buildings and debris removal, except to the extent such property losses are caused by the negligent or other wrongful acts or omissions of the Prosper Portland, their agents or employees, or their separate contractors.

10.7 BONDS. At the time the Contract is executed, Prosper Portland may require the Contractor to execute and deliver to the Prosper Portland good and sufficient payment and performance bonds, to be approved by the Prosper Portland, in a sum equal to the Contract Price, and on forms provided by Prosper Portland. If required, cost will be paid by Prosper Portland on a straight pass-through basis.

## **11. TERMINATION**

11.1 CONTRACTOR'S DEFAULT; TERMINATION AND TAKEOVER OF THE WORK BY PROSPER PORTLAND. If Contractor defaults on any of its obligations under the Contract Documents, and fails to remedy such default within seven (7) days after receipt of written notice of default from Prosper Portland, then Prosper Portland may terminate Contractor for cause and Prosper Portland may take possession of all of Contractor's materials, equipment, tools, construction equipment, and machinery and complete all or any part of the Work, and Contractor, upon request of Prosper Portland, and to the extent requested by Prosper Portland shall assign its subcontracts to Prosper Portland for the purpose of completing the Work. Prosper Portland's election to take over all or any part of the Work shall not constitute Prosper Portland's sole remedy upon any such default. Prosper Portland expressly reserves all other rights and remedies under this Agreement at law and in equity upon default, including without limitation the right to terminate this Agreement for convenience.

11.2 TERMINATION FOR CONVENIENCE. Prosper Portland may terminate the Agreement between the parties at any time and for any reason, with or without cause, upon seven (7) days written notice to Contractor. In the event of such termination for Prosper Portland's convenience, Prosper Portland shall pay Contractor a share of the Contract Price that is proportionate to the percentage of the Work completed. In no event will Contractor be entitled to profit, fee or markup on any unperformed Work. Any termination for cause later found by a Court or arbitrator to be without basis shall automatically be deemed a termination for convenience by Prosper Portland. At any time, Prosper Portland may change a termination for cause into a termination for convenience in its sole discretion.

## **12. DISPUTES**

12.1 INITIAL DISPUTE RESOLUTION. and Contractor agree that if a disagreement, dispute, or controversy arises out of or relates to this Contract, and Contractor will attempt in good faith to resolve the disagreement, dispute, or controversy through direct discussions between project site representatives of the parties who have authority to settle the matter. Compliance with this paragraph is a condition precedent to either party's right to initiate litigation or arbitration as provided below.

12.2 ARBITRATION/LITIGATION. Any dispute between and Contractor arising out of or relating to this Contract shall be subject to arbitration or litigation at the Prosper Portland's option. If arbitration is selected, the decisions and award of the arbitrator shall be final and binding. The arbitration shall be conducted pursuant to the latest edition of the Construction Industry Arbitration Rules of the American Arbitration Association ("AAA"), except as may be modified herein.

12.3 GOVERNING LAW; FORUM. All disputes arising out of or related to this Contract shall be governed by the law of the State of Oregon. Any arbitration, suit or action arising out of or relating to the Agreement shall be conducted in Portland, Oregon.

12.4 ATTORNEY FEES. Should any suit, action or arbitration be commenced in connection with any dispute arising out of or relating to this Contract, the prevailing party shall be entitled to recover its costs, together with such investigation costs and fees, expert witness costs and fees, and attorney costs and fees, as the court or arbitrator may adjudge reasonable, incurred in connection with such dispute before trial or arbitration, at trial or arbitration, upon any motion for reconsideration, upon petition for review, and on any appeal of such suit, action or arbitration proceeding.

## **13. MISCELLANEOUS PROVISIONS.**

13.1 INDEPENDENT CONTRACTOR. Contractor certifies that it is an Independent Contractor (as defined by ORS 670.600) and shall be responsible for taxes or contributions payable on its employees, including, without limitation, employee contributions under federal or state laws, and for full compliance with record keeping, reporting, and other requirements of such laws.

13.2 COMPLIANCE WITH LAWS. Contractor shall comply with all applicable federal, state, and local laws, statutes, codes, regulations and rules (including, but not limited to, ORS Chapter 279 and OAR Chapters 125 and 137) as well as all applicable construction industry standards, including

without limitation those governing labor, materials, equipment, construction procedures, safety, health, sanitation and the environment. Contractor agrees to indemnify, hold harmless, reimburse, and defend Prosper Portland from and against any penalties or liabilities arising out of violations of such obligations by Contractor or its Subcontractors. This Agreement incorporates by reference all public contract provisions required by ORS Chapter 279, OAR Chapters 125 and 137, and any other public contracting statutes or rules.

13.3 EXPLOSIVES. Explosives are not permitted without written approval of Prosper Portland.

13.4 MATERIAL SALVAGE. Pursuant to ORS 279C.510, the Contractor is required to salvage or recycle construction and demolition debris, if feasible and cost-effective.

13.5 PERMITS/INSPECTIONS/TESTING. Contractor shall secure and pay for those permits, plan check fees, testing, and all other fees required and necessary for the performance and completion of the Work. All testing results are to be submitted directly to the Prosper Portland from the testing laboratory.

13.6 CLEANUP. Contractor at all times shall keep the Project premises reasonably free from waste, debris, and other excess materials caused by the Work, and shall leave the premises in “broom clean” condition at the end of each day of Work. Upon both Substantial and Final Completion of the Work, Contractor shall remove all waste, debris, tools, equipment, and excess materials from the Project site, shall properly dispose of all such items, and shall leave the site in a neat and orderly condition. Should Contractor fail to perform its obligations under this paragraph, Prosper Portland may do so at Contractor’s expense.

13.7 WAIVER. Either party’s waiver of a breach by the other party shall not constitute a waiver of any further or additional breach of such provision or of any other provision of the Contract.

13.8 SEVERANCE. Should any provision of the Contract at any time conflict with any law, regulation, order, or ruling, or in any way be deemed unenforceable, then such provision shall continue in effect only to the extent that it remains valid. In the event any provision of the Contract becomes inoperative, the remaining provisions of the Contract shall remain in full force and effect.

13.9 CONTRACTORS BOARD. The Contractor must be registered with the Construction Contractors Board per ORS 701.055.

13.10 AUDIT OF BOOKS AND RECORDS. Prosper Portland shall have access to all books, documents, papers, and records of Contractor which relate to this Contract for purpose of making an audit during the work and for a period of three years after final payment.



# PROSPER PORTLAND

Building an Equitable Economy

## RESOLUTION NO. 7439

**RESOLUTION TITLE:**

EXECUTING A CONTRACT WITH FULCRUM CONSTRUCTION TO RETROFIT THE ROOF OF THE PROSPER PORTLAND-OWNED PROPERTY LOCATED AT 2221 N. ARGYLE STREET IN THE INTERSTATE CORRIDOR TAX INCREMENT FINANCE DISTRICT

Adopted by the Prosper Portland Commission on December 15, 2021


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 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 Serena Stoudamire Wesley	<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"/>

Consent Agenda                       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>  January 18, 2022
<b>Pam Feigenbutz, Recording Secretary</b>	