

PROSPER PORTLAND

Portland, Oregon

RESOLUTION NO. 7520

AUTHORIZING AN INTERGOVERNMENTAL AGREEMENT WITH THE CITY OF PORTLAND BUREAU OF TRANSPORTATION FOR UP TO \$1,925,000 IN FUNDING FOR INFRASTRUCTURE IMPROVEMENTS IN THE GATEWAY REGIONAL CENTER TAX INCREMENT FINANCE DISTRICT

WHEREAS, Prosper Portland is the City of Portland's (the "City's") Redevelopment Agency with broad powers to make investment towards economic development and community development outcomes;

WHEREAS, the City's Bureau of Transportation ("PBOT") oversees transportation operations and improvements in the City's public rights-of-way, and cooperation between Prosper Portland and PBOT is beneficial to the implementation of urban renewal plans and other public policies, plans, and capital projects;

WHEREAS, in March 1996, the Portland City Council (the "Council") adopted the Outer Southeast Community Plan, which identified the Gateway/Mall 205 Regional Center as an "...exciting new employment, commercial, and entertainment district, anchored by major retailers and office complexes";

WHEREAS, on May 15, 2001, through Resolution No. 5689, the Prosper Portland Board of Commissioners (the "Board") approved, and on June 21, 2001, through Ordinance No. 175699, the Council adopted, the Gateway Regional Center Urban Renewal Plan (as amended, the "TIF Plan") to provide tax increment funding and authorize urban renewal activities to improve conditions and foster development and redevelopment within the Gateway Regional Center Urban Renewal Area ("Gateway") in order to protect public health, safety, and welfare;

WHEREAS, the City and Prosper Portland share a commitment to Gateway becoming a vibrant, well-connected, and economically healthy community including through a diversity of housing and commercial development;

WHEREAS, the City and Prosper Portland have made significant investments in Gateway since 2001, including via the Gateway Action Plan accepted by the Council through Resolution No. 37228 on August 10, 2016 (as amended, the "Action Plan"), with a focus in three geographic subareas, including the Gateway Transit Center area;

WHEREAS, the Action Plan implements Prosper Portland's strategic objectives to create healthy, complete neighborhoods; to support equitable wealth creation for historically disadvantaged communities and low-income neighborhoods including through small business opportunities; and to increase access to high-quality employment for residents of East Portland;

WHEREAS, by Ordinance No. 183270, effective October 22, 2009, the Council approved City policy BCP-TRN-7.07, amending the Portland Transportation System Plan based on the Gateway Master Street Plan for the purpose of providing flexibility for connections while maintaining larger parcels for redevelopment; recognizing existing parcel lines; providing connectivity on the local network without altering the district or neighborhood collectors; and fostering redevelopment in Gateway;

WHEREAS, the Action Plan identified the Master Plan as a barrier to redevelopment and prioritized leveraging system development charge investment and local improvement district financing to implement transportation infrastructure improvements;

WHEREAS, collaboration between multiple public and private sector partners and community organizations is required to further the objectives of the Action Plan, including: to stimulate development, employment and educational opportunities; to connect new housing to jobs and transit; to support local businesses; and to leverage public infrastructure investments to increase safety and vitality with a focus on equitable outcomes;

WHEREAS, in 2015, David Douglas School District (“DDSD”) purchased certain real property located at NE 99th Avenue/NE Pacific Street as a site for a future elementary school, (the “New School”), as further described in that certain DDSD Long-Range Facility Master Planning submitted December 2020;

WHEREAS, on or about January 1, 2021, the predecessor to Modomi Gateway Development, LLC (“Modomi”) entered into a certain contract with White/Gabriel LLC and GMB Unlimited LLC to acquire approximately 5.18 acres of vacant real property located at NE 102nd Avenue and Pacific Street (the “Property”), and began certain development activities intending to construct a new development on the Property featuring modular construction methods and consisting of, to the extent of the work actually performed on the Property: (a) approximately 200 housing units within 6 mixed-use three-story buildings along NE 102nd Avenue and Pacific Street, with approximately 10,549 square feet of commercial space and 11,280 square feet of residential amenity space on the ground floors; (b) approximately 12 interior, multi-dwelling, three-story residential structures with one, two, and three-bedroom units; and (c) approximately 145 surface parking spaces located in the interior of the site, taking access from a proposed extension of Oregon Street to the south of the site, and a proposed NE 100th Avenue to the west of the site (collectively, the “Project”);

WHEREAS, PBOT has determined that the New School and the Project collectively would require, among other things, the construction of certain transportation system improvements, including: (a) sufficient dedication for and construction of half-street improvements on the NE Oregon Street alignment between NE 100th and 102nd Avenues (the “Oregon Street Improvements”); (b) sufficient dedication for and construction of a new street on the NE 100th Avenue alignment between Oregon and Pacific Streets (the “NE 100th Avenue Improvements”); (c) construction of a 12-foot-wide pedestrian corridor on the south side of NE Pacific Street (the “Pacific Street Improvements”); and (d) a 15-foot-wide pedestrian corridor on the west side of NE 102nd Avenue, which PBOT may allow to remain as is, subject to the conditions of Modomi’s public works permit;

WHEREAS, the NE 100th Avenue, Oregon Street, and Pacific Street Improvements would be adjacent to or otherwise in close proximity to the Project and would serve users of the Project as well as Gateway residents and the public generally, and PBOT has identified these road reconstruction and connectivity improvements as critical priorities in Gateway;

WHEREAS, on April 13, 2023, the PBOT Capital Investment Committee approved a Decision Memo allocating \$1,892,000 in Transportation System Development Charge (“TSDC”) revenue and credits under TSDC project #18-0082, Gateway Local Street Improvements Phase 2, for eligible expenses on the design and construction of NE 100th Avenue between Oregon Street and Pacific Street, and eligible credits on the private construction of Oregon Street between NE 100th Avenue and NE 102nd Avenue;

WHEREAS, the Prosper Portland Board authorizes the Executive Director to enter into a development agreement with Modomi and DDS D will enter into a development agreement governing the mutual obligations of those parties with respect to the Oregon and Pacific Street Improvements and the Project, and such development agreement would obligate Prosper Portland to enter into an intergovernmental agreement with PBOT concerning the funding and work of designing, engineering, and constructing the NE 100th Avenue Improvements;

WHEREAS, PBOT and Prosper Portland desire to establish the terms and conditions under which PBOT will perform work on the NE 100th Avenue Improvements and the financial obligations of each party for this work;

WHEREAS, Prosper Portland and PBOT have a long history of partnering to complete transportation infrastructure, such as the Project, that supports important public purposes; and

WHEREAS, Prosper Portland’s funding commitment for the NE 100th Avenue Improvements will not exceed \$603,000.

NOW, THEREFORE, BE IT RESOLVED, that the Prosper Portland Board authorizes the Executive Director to execute an IGA with PBOT to provide a portion of funding for the Project, in substantially the form attached hereto as Exhibit A;

BE IT FURTHER RESOLVED, that the Executive Director may approve changes to the terms set forth in the IGA, if such changes do not materially increase Prosper Portland’s obligations or risks, as determined by the Executive Director in consultation with Prosper Portland’s General Counsel;

BE IT FURTHER RESOLVED, that that the Prosper Portland Board requests and recommends that the Portland City Council enact ordinances, make resolutions, and take any other actions necessary to authorize the IGA with PBOT and to authorize and direct City bureaus to cooperate and coordinate with Prosper Portland to implement the IGA by its terms; and

BE IT FURTHER RESOLVED, that with the affirmative vote of no less than four commissioners for this resolution, this resolution shall become effective immediately upon its adoption, and otherwise it will take effect thirty days after adoption.

Adopted by the Prosper Portland Commission on January 24, 2024



Pam Feigenbutz, Recording Secretary

INTERGOVERNMENTAL AGREEMENT¹

Between Prosper Portland and the Portland Bureau of Transportation For the NE Oregon Street, NE 100th Avenue, and NE Pacific Street Right-of-Way Improvement Projects

This Intergovernmental Agreement (“*IGA*”), dated as of the last date of signature below (the “*Effective Date*”), is made and entered into by and between the CITY OF PORTLAND, BUREAU OF TRANSPORTATION (“*PBOT*”) and PROSPER PORTLAND, the redevelopment and urban renewal agency of the City of Portland (“*Prosper Portland*”).

RECITALS

A. Prosper Portland is the urban renewal agency of the City of Portland (the “*City*”) and is granted broad powers under ORS 457.170 *et seq.* for the planning and implementation of urban renewal projects.

B. PBOT oversees transportation operations and improvements in the City’s public rights-of-way, and cooperation between Prosper Portland and PBOT is beneficial to the implementation of urban renewal plans and other public policies, plans, and capital projects.

C. The Gateway Master Street Plan was approved by the City Council on October 22, 2009, by Ordinance No. 183270 (as amended, the “*Master Plan*”).

D. The City Council accepted the Gateway Action Plan by Resolution No. 37228 on August 10, 2016 (as amended, the “*Action Plan*”). The Action Plan identified the Master Plan as a barrier to redevelopment and prioritized leveraging SDC investment and LID financing to implement transportation infrastructure improvements.

E. On June 7, 2022, the Prosper Portland Board of Commissioners approved Resolution No. 7455, extending the permissible duration of the Gateway TIF District and offsetting potential impacts thereby to the David Douglas School District (“*DDSD*”) by committing \$3,000,000.00 in funding toward public improvements to infrastructure around DDSD’s property at NE 99th Avenue and NE Pacific Street.

F. On April 13, 2023, the PBOT Capital Investment Committee approved a Decision Memo allocating \$1,892,000 in Transportation System Development Charge (“*TSDC*”) revenue and credits under TSDC project #18-0082, Gateway Local Street Improvements Phase 2, for eligible expenses on the design and construction of NE 100th Avenue between NE Oregon Street and NE Pacific Street, and eligible credits on the private construction of NE Oregon Street between NE 100th Avenue and NE 102nd Avenue.

¹ Matters and items highlighted in yellow will be appended or resolved to the parties’ mutual satisfaction, and included, specified, or otherwise made certain prior to execution.

G. DDS D purchased the property at NE 99th Avenue and NE Pacific Street with the intent to construct a new elementary school (the “*New School*”). Currently, the property remains vacant and undeveloped.

H. Modomi Gateway Development, LLC, an Oregon limited liability company (“*Developer*”), the owner of approximately 5.18 acres of certain vacant real property located at NE 102nd Avenue and Pacific Street (the “*Development Property*”), has proposed a new development featuring modular construction methods and consisting of: (a) approximately 200 housing units within 6 mixed-use, three-story buildings along NE 102nd Avenue and NE Pacific Street, with approximately 10,549 square feet of commercial space and 11,280 square feet of residential amenity space on the ground floors; (b) 12 interior, multi-dwelling, three-story, residential structures with one, two, and three-bedroom units; and (c) 145 surface parking spaces located in the interior of the site, taking access from a proposed extension of NE Oregon St. to the south of the site and a proposed NE 100th Ave. to the west of the site (collectively, to the extent of work actually performed on the Development Property, the “*Development*”).

I. PBOT has determined that the New School and the Development each would require street network improvements to accommodate the additional transportation demand created thereby and to be consistent with the Master Plan. These requirements were identified in the course of PBOT Development Review Pre-Application Conference processes for DDS D and Developer and are described in PBOT response letters dated July 16, 2018 (regarding the New School) and May 10, 2022 (regarding the Development). Collectively, the New School and the Development would require, among other things, the construction of: (a) sufficient dedication and construction of half-street improvements on the NE Oregon Street alignment between NE 100th and 102nd Avenues (the “*Oregon Street Improvements*”); (b) sufficient dedication for a new street on the NE 100th Avenue alignment between NE Oregon and Pacific Streets (the “*NE 100th Avenue Improvements*”); (c) a 12-foot-wide pedestrian corridor on the south side of NE Pacific Street (the “*Pacific Street Improvements*”); and (d) a 15-foot-wide pedestrian corridor on the west side of NE 102nd Avenue, which PBOT may allow to remain as is, subject to the conditions of the Developer’s public works permit. (The Oregon Street Improvements, the NE 100th Avenue Improvements, and the Pacific Street Improvements are collectively referred to as the “*Street Improvements*.”) The Street Improvements are subject to other City bureau requirements as well, including but not limited to provision of stormwater management and street trees.

J. Concurrently with this IGA, Prosper Portland, Developer, and DDS D will enter into a development agreement governing the mutual obligations of those parties with respect to the Development and its effects on and interaction with adjacent properties (the “*Development Agreement*”). The Development Agreement will obligate Prosper Portland to enter into this IGA. PBOT and Prosper Portland anticipate that the Developer will perform the work of designing, engineering, and constructing the Oregon Street Improvements and the Pacific Street Improvements, pursuant to the Development Agreement and as required by permits and applicable law.

K. PBOT and Prosper Portland desire to enter into this IGA to establish the terms and conditions under which PBOT will perform work on the NE 100th Avenue Improvements and the financial obligations of each party for this work.

L. This IGA was authorized by the Prosper Portland Board of Commissioners by Resolution No. [REDACTED] adopted on January 24, 2024, and by the City Council by Ordinance No. [REDACTED], adopted on [REDACTED].

NOW THEREFORE, in consideration of the foregoing, and of the mutual promises set forth in this IGA, PBOT and Prosper Portland (the “*Parties*”) agree as follows:

AGREEMENT

1. NE 100th AVENUE IMPROVEMENTS

1.1. Description. NE 100th Avenue is a proposed 56-to-64-foot-wide right-of-way between NE Oregon Street and NE Pacific Street that will be designed as a Local Service Street, as that term is defined by the Portland City Code, with two vehicle travel lanes, on-street parking on one or both sides of the street, curbs, street trees, stormwater facilities, sidewalks, and street lights (the “*Project*”). With required traffic mitigation measures in place, the Project and the other Street Improvements will be capable of safely supporting the creation of the Development in addition to the surrounding uses in the area. The mitigation measures will also further enhance pedestrian, bicycle, and transit connections, improve intersection traffic capacity and safety, and be consistent with the Master Plan. Exact dimensions of the proposed Project features may be altered with the written approval of the City Engineer, City Traffic Engineer, and BES Chief Engineer, and in consultation with Prosper Portland.

1.2. PBOT Work. Promptly following the Effective Date, PBOT will commence and with all due diligence complete the design and construction of the Project (the “*PBOT Work*”), which will include the following elements:

1.2.1. Project Management. PBOT will provide a capital project manager to oversee the delivery of design, right-of-way, and construction of the Project, and to serve as a liaison with Prosper Portland and the Developer on any and all issues related to coordination of the Street Improvements with the Development.

1.2.2. Topographic and Construction Survey. PBOT will provide or retain surveyors to perform topographic survey and base mapping, construction staking, right-of-way legal descriptions and exhibits, and right-of-way monumentation.

1.2.3. Street Design. PBOT will provide and/or retain civil engineers, traffic engineers, and street lighting engineers to produce concept layout; 30% plans, specifications and estimate (“*PS&E*”); 60% PS&E; 95% PS&E; final PS&E; bid review; and construction consultation. Street Design will include any ancillary specialties needed to complete a successful design, such as geotechnical engineering and environmental services. PBOT will provide Prosper Portland the right to review and approve the design for the Project if

there are any material changes to the preliminary engineering plans for the Project or if PBOT identifies the potential for material Cost-Overruns (as defined below) associated with an aspect of the PBOT Work.

- 1.2.4. Right-of-Way Acquisition.** PBOT will provide a right-of-way agent to draft right-of-way dedication documents and work with real estate professionals at Prosper Portland, the Developer, and surrounding property owners on the dedication of right-of-way for the Project and any additional temporary or permanent easements needed to construct and maintain the Project.
- 1.2.5. Utility Coordination and Design.** PBOT will coordinate with City utility bureaus, franchise utilities, and private utilities to identify and resolve utility conflicts, determine locations for proposed utilities, and design stormwater management facilities for the Project.
- 1.2.6. Procurement.** PBOT will work with City Procurement Services to advertise, review bids, and award a contract for construction of the Project, including necessary City Council approvals.
- 1.2.7. Construction Management.** PBOT will provide a Construction Manager, Construction Technician, Public Works Inspector, and Quality Control Specialist to manage and oversee the construction contract on a daily basis during construction. PBOT will confer with Prosper Portland on change orders that materially affect the Project scope, schedule, and/or budget.

1.3. PBOT Work Schedule.

1.3.1 Design. As of the Effective Date, PBOT has only a preliminary engineer's estimate and no City-approved design plans or specifications for the NE 100th Avenue Improvements. Based on past projects of similar scope and complexity, PBOT will complete design by February 2026. PBOT and Prosper Portland will negotiate in good faith to extend the design schedule if unforeseen site conditions (including subsurface features), building demolition delays, or other events beyond PBOT's control delay or change the design of the PBOT Work.

1.3.2 Construction. PBOT will commence construction of the PBOT Work promptly following completion of design and procurement for the PBOT Work. PBOT will start construction of the PBOT Work no later than June 2026 and complete construction by June 2027, for a total construction period estimated at 12 months. PBOT and Prosper Portland will negotiate in good faith to extend the construction schedule if site access restrictions, unforeseen site conditions (including subsurface features), requirements of newly sought grants, or other events beyond PBOT's and its contractors' control delay construction.

2. FINANCIAL CONTRIBUTIONS

2.1. Project Costs.

2.1.1. Costs. As used in this IGA, “*Costs*” means PBOT’s actual project development, design, right-of-way acquisition, tenant relocation, building demolition, and construction management and engineering costs with respect to any of the PBOT Work. Costs include both direct and indirect costs as set forth below. Notwithstanding any other term of this IGA, expenses, including personal services, incurred for out-of-town travel, training, educational expenses, and equipment purchases are not reimbursable Costs under this IGA unless mutually agreed to in advance by the Parties.

2.1.2. Direct Costs. Direct costs are costs of the following:

- (1) Personnel Services. Covers reimbursement for direct wages paid to personnel engaged in performance of the PBOT Work.
- (2) Benefit Costs. Covers reimbursement for the fully-loaded benefit costs associated with direct wages, which represents the actual benefit load attributable to the respective employees.
- (3) Materials and Services. Covers actual costs for the purchase of materials and services or reimbursement of incidental expenses and PBOT or Prosper Portland support staff personal services where the expenditure is for performance of the PBOT Work and within the authorized budget.
- (4) Contracted Services. Covers reimbursement for contracted professional or construction services in carrying out the PBOT Work and within the authorized budget.

2.1.3. Indirect Costs. Indirect costs are generally those fixed costs related to administration and operation, as well as program management costs including Council charges, executive management staff, rent, telephone, power, insurance, office supplies and equipment. These costs may be included in the Cost Estimate at the rate established annually for PBOT, in accordance with City Code Chapter 5.48, and for Prosper Portland, in accordance with Cost Recovery Policy through Resolution 6560. At the beginning of each fiscal year, each Contract Manager (defined below) will provide written notification to the other of the new fiscal year rate.

2.2. Project Cost Estimate. PBOT estimates that the total fees, costs, and expenses of the PBOT Work, rounded up to the nearest thousand, will be \$1,925,000 (the “*Cost Estimate*”), as shown in the engineer’s estimate attached to this IGA as Exhibit A. This estimate has the following exclusions: (a) the market value of land to be dedicated as right-of-way for the Project, (b) water mains, (c) sanitary sewers, (d) underground or overhead electrical and telecommunications lines, and (e) contaminated media removal and disposal. PBOT will not pay for the cost of underground utilities except for street light conduit and stormwater collection and conveyance. PBOT will not pay for the cost of removal and disposal of any contaminated media found on or beneath the Development Property.

2.3. Funding by PBOT. PBOT will use TSDC revenue to fund the payment of Project Costs in an amount equal to the difference between \$1,892,000 and the value of TSDC credits granted to the Developer for eligible street improvements at the Development, the latter estimated by the

Developer at \$570,000, resulting in a potential PBOT TSDC cash contribution to the PBOT Work estimated at \$1,322,000, as further shown on **the Funding and Finance Plan attached to this IGA as Exhibit B**. PBOT may use other discretionary funding as needed to fulfill its commitment to the Cost Share.

2.4. Cost-Overruns. “Cost-Overruns” means any amount by which the actual Costs exceed the Cost Estimate. PBOT and Prosper Portland will share the Cost-Overruns based on a ratio of the total funds that each agency is contributing to the Project: \$1,322,000 PBOT / \$603,000 Prosper Portland, rounded to the nearest percentage point, resulting in a ratio of 69% PBOT / 31% Prosper Portland. Prosper Portland will pay for, or find other funding for, the cost of any contaminated media removal and disposal needed on the Project.

2.5. Notice of Cost Variance. PBOT will notify Prosper Portland immediately of any actual or anticipated variance between the Cost Estimate and its actual Costs. The Parties will then make a good faith effort to resolve the issue.

2.6. Funding by Prosper Portland. Subject to budget authorization and appropriation and to the terms of this IGA, Prosper Portland will reimburse PBOT up to the Limit for Qualified Costs (defined below) incurred by PBOT in performing the PBOT Work.

2.6.1. Funding Limit. Prosper Portland’s maximum aggregate funding commitment under this IGA (the “*Limit*”) is equal to the lesser of: (a) \$603,000 or (b) 31% of the Qualified Costs incurred.

2.6.2. Qualified Costs. Prosper Portland funds may only be expended to reimburse tax increment financing eligible Costs (“*Qualified Costs*”) (for example, planning for improvements, design and engineering for improvements, right-of-way acquisition and tenant relocation, and construction of improvements).

2.6.3. Reimbursement. PBOT shall submit to Prosper Portland an itemized billing for the PBOT Work for review and approval on a periodic basis. Final billings upon termination or early termination of this IGA must be received within sixty (60) days of the date of termination. Each billing shall include a description of the nature and cost of work accomplished; the names, rates, and hours worked of personnel; disbursements to consultants, contractors, and outside vendors for materials and services; and any other specific detail or documentation as desired by the Prosper Portland Contract Manager that can be reasonably provided by PBOT. If billings are received with incomplete information or disputed items, Prosper Portland will advise PBOT in writing what specific information is missing or disputed. Prosper Portland will proceed to process payment for items not in dispute.

3. CONTRACT MANAGEMENT

3.1. Prosper Portland.

3.1.1. Contract Signatory. Prosper Portland’s Contract Signatory will be *Kimberly Branam*, *Executive Director*, or such other person as she may designate in writing (the “*Prosper*”

Contract Signatory”). The Prosper Contract Signatory is authorized to give notices and to carry out other actions referred to herein, including termination of this IGA.

3.1.2. Contract Manager. Prosper Portland’s Contract Manager will be [REDACTED], or such other person as they may designate in writing (the “*Prosper Contract Manager*”). The Prosper Contract Manager is responsible for the day-to-day management of this IGA as provided herein and serves as the first level of conflict resolution.

3.2. PBOT.

3.2.1. Contract Signatory. PBOT’s Contract Signatory will be the *Commissioner-in-Charge of Transportation, Mingus Mapps*, or such other person as he may designate in writing (the “*PBOT Contract Signatory*”). The PBOT Contract Signatory is authorized to give notices and to carry out other actions referred to herein, including termination of this IGA.

3.2.2. Contract Manager. PBOT’s Contract Manager will be *Liz Rickles, Capital Project Manager*, or such other person as she may designate in writing (the “*PBOT Contract Manager*”). The PBOT Contract Manager is responsible for the day-to-day management of this IGA as provided herein and serves as the first level of conflict resolution.

3.3. Management Staffing. If PBOT or Prosper Portland staff are not performing or are unable to continue performing the responsibilities designated in this IGA, then the respective Contract Manager (or higher-level personnel at PBOT or Prosper Portland, if necessary) will designate replacement staff members. The Contract Managers will confer quarterly to review project management and staffing needs and performance and identify desired changes, if any. If either Prosper Portland or PBOT desires to replace a Contract Manager or other key staff identified below, the Party’s Contract Manager (or higher-level personnel at Prosper Portland or PBOT, if necessary) will notify the other Contract Manager in writing and, if required, they will meet to discuss and agree on any necessary adjustments to provide adequate time to make such change.

3.4. Project Staffing – PBOT. The following PBOT personnel will be the key staff that perform the PBOT Work: Project Manager, Civil Engineer, Traffic Engineer, Signals and Street Lighting Engineer, Surveyor, Construction Manager, Engineering Technician, Public Works Inspector, and Right-of-Way Agent. In addition, PBOT may retain one or more consultants to perform design engineering, drafting, and other tasks as needed to complete the PBOT Work. PBOT may assign billable work to staff at the Bureau of Environmental Services, Water Bureau, and Parks and Recreation (Urban Forestry) in order to complete design and construction of the PBOT Work.

3.5. Project Staffing – Prosper Portland. The following Prosper Portland personnel will be the key staff assigned to work with PBOT and coordinate with regard to the PBOT Work and

Prosper Portland's obligations under this IGA: Joel Devalcourt, Project Manager, and Brian Moore, Development Manager.

- 3.6. Status Reports.** PBOT will submit Project Status Reports to Prosper Portland beginning within 60 days after the Effective Date of this IGA and thereafter quarterly. Reports may be submitted by email or memo format and are intended to be brief (two to three paragraphs) updates. The reports will focus on the status of achieving these key milestones in following execution of this IGA: [REDACTED].
- 3.7. Public Involvement.** Where the Project requires public involvement, PBOT and Prosper Portland will collaborate on design of the public involvement plan that is endorsed by both Parties' project managers. PBOT and Prosper Portland will keep each other informed of written material (e.g., news releases, brochures, newsletters, reports) produced in connection with the Project that are intended for public distribution and will provide adequate time for review and discussion prior to distribution. Each Party's project manager will inform the other Party's project manager of any inquiries from a media or press representative and make reasonable efforts to consult with the other Party's project manager prior to any verbal or written information on the Project being provided to such a representative. If unable to make a prior consultation, notice will be provided afterwards.
- 3.8. Meeting Participation.** Each Party's project manager will invite the other Party's project manager to attend all regular or significant meetings regarding the Project and to participate in steering, management, or technical advisory committees organized for the Project.
- 3.9. Regional Arts & Culture Council (RACC) – Percent for Art Program.** City Code Chapter 5.74 requires City bureaus to dedicate the lesser of two percent of the total Eligible Costs or two percent of the total Eligible Funds of all Improvement Projects (as those terms are defined by Code) to the selection, acquisition, fabrication, installation, maintenance, management, de-accessioning, community education, documentation, and registration of Public Art. The Project will include Eligible Costs for the Percent for Art Program because of the use of Urban Renewal funding. However, Project costs paid for by TSDCs are not eligible to contribute to the Percent for Art Program due to limitations on eligible expenditures of system development charges established in Oregon Revised Statute 223.307.
- 3.10. Business and Workforce Equity Policies.** Prosper Portland's Business and Workforce Equity Policies (the "*Policies*") may apply to the PBOT Work. If the Policies apply, Prosper Portland's utilization goal for Certified Firms (as defined in the Construction Business and Workforce Equity Policy attached as Exhibit C) is described in the Business Equity Program Specifications attached as Exhibit D. If Prosper Portland determines that PBOT or City Procurement Services have a business equity program and Certified Firms utilization goal that are substantially equal to or more stringent than Prosper Portland's, then PBOT's or Procurement Services' program and goals will apply to the PBOT Work. Nothing in this IGA shall require PBOT to discriminate in the award of contracts on the basis of race, sex, or other impermissible criteria or otherwise to violate the law.

4. BILLING AND PAYMENT PROCEDURE

4.1. Generally. PBOT must regularly submit to Prosper Portland itemized bills for reimbursable Qualified Costs. Each bill must include: (a) a description of the nature and cost of work accomplished; (b) the names, rates, and hours worked of personnel; (c) disbursements to consultants, contractors and outside vendors for materials and services; (d) information regarding Policy compliance and utilization of Certified Firms; and (e) any other specific detail or documentation as desired by Prosper Portland’s Contract Manager that can be reasonably provided by PBOT.

4.2. Missing or Disputed Bill. If any bill is received by Prosper Portland with incomplete information or disputed items, Prosper Portland will advise PBOT in writing what specific information is missing or disputed. Prosper Portland will proceed to process payment for items not in dispute.

4.3. Records. PBOT will maintain records to support its billings to Prosper Portland. Prosper Portland or its authorized representative will have the authority to inspect, audit and copy, on reasonable notice and from time to time, any records of PBOT regarding its billings or the PBOT Work, for a period of three years after completion or termination of this IGA.

5. GENERAL PROVISIONS

5.1. Termination. The Termination Date of this IGA is [REDACTED] or such later date by which the Parties have fully performed their obligations hereunder. Notwithstanding the foregoing, this IGA may be terminated at any time by mutual written consent or upon 30 days’ written notice by either party where, in the determination of the terminating party, the public interest requires work to cease.

5.2. Significant Impacts.

5.2.1. Significant Impacts. Although every reasonable effort has been made to accurately identify the scope, schedule, and budget for the Project, PBOT and Prosper Portland recognize that events and conditions may arise that significantly impact the PBOT Work. A “significant” impact is one that may cause Cost-Overruns or delay completion of the any aspect of the Project for more than 90 calendar days.

5.2.2. Process. If either Party identifies or foresees such a circumstance, that Party will, as soon as practicable, notify the other Party’s project manager and Contract Manager in writing of the circumstance, its origin, and anticipated or confirmed impacts. Both Parties’ project managers will make reasonable efforts to meet within ten (10) days to identify anticipated or confirmed impacts to the Project’s scope, schedule, or budget. The Parties

will seek to reach agreement on any necessary revisions to this IGA in the manner described in Section 5.3 below.

5.3. Dispute Resolution.

5.3.1. Informal Dispute Resolution. If a dispute arises regarding performance, cost, schedule, scope, quality, or other terms or conditions of this IGA, the Parties agree to exercise good faith in expeditiously resolving said conflict in the following manner:

- (1) All conflicts should first be discussed and resolved, if possible, by the project managers identified in this IGA.
- (2) If the conflict cannot be resolved by the project managers, or involves one of the project managers, then the conflict will be elevated to the Contract Managers for discussion and resolution.
- (3) Any conflicts not resolved by the Contract Managers will be elevated to the Contract Signatories for discussion and resolution.

5.4. Compliance with Laws. Each Party will comply with all applicable laws, rules, regulations, orders, consents, and permits in the performance of all of their obligations under this IGA.

5.5. Indemnification by PBOT. Subject to the limits of the Oregon Tort Claims Act and Oregon Constitution, PBOT agrees to indemnify, hold harmless and defend, Prosper Portland, its directors, officers, employees, and agents from and against all claims, suits, actions of whatsoever nature, damages or losses, and all expenses and costs incidental to the investigation and defense thereof, including reasonable attorneys' fees, resulting from or arising out of the activities of PBOT, the City, or their officers, employees, or agents, under this IGA, except to the extent that such claims, suits, actions, damages, losses, expenses, or costs result from or arise out of the activities of Prosper Portland or its officers, employees, or agents.

5.6. Indemnification by Prosper Portland. Subject to the limits of the Oregon Tort Claims Act and Oregon Constitution, Prosper Portland agrees to indemnify, hold harmless and defend, PBOT, the City, their officers, employees, and agents from and against all claims, suits, actions of whatsoever nature, damages or losses, and all expenses and costs incidental to the investigation and defense thereof, including reasonable attorneys' fees, resulting from or arising out of the activities of Prosper Portland or its directors, employees, or agents under this IGA, except to the extent that such claims, suits, actions, damages, losses, expenses, or costs result from or arise out of the activities of PBOT or the City or their officers, employees, or agents.

5.7. Work Product.

5.7.1. Deliveries. The PBOT project manager will, upon request, timely provide to the Prosper project manager copies of the Work Product, as defined below.

5.7.2. Work Product Ownership.

- (1) Ownership of any and all plan sets, technical data, documents, plans, designs, drawings, technical data reports, specifications, working papers and other materials produced in connection with this IGA (the “**Work Product**”) will be handled as described in this Section 5.7.2. Ownership of the Work Product includes all rights, title, and interest therein, including but not limited to copyright rights of specified Work Product. Notwithstanding anything to the contrary contained in this IGA, the Parties acknowledge that Section 17.24.085 of the City Code may require that all or part of the Work Product will become the property of the City and be transferred to the City Engineer upon completion of the Project.
- (2) Except as described in Subsection (3) below, PBOT will own all Work Product. Regardless of ownership of the Work Product, both Parties will have reasonable access to the Work Product.
- (3) If the Parties determine that PBOT is unable or unwilling to complete the Project and Prosper Portland determines that a transfer of ownership of the Work Product is necessary in order to effect completion of the Project, upon Prosper Portland’s written request PBOT will assign ownership of the Work Product to Prosper Portland.

5.8. Amendments Generally. Except as otherwise provided for in this IGA, PBOT and Prosper Portland may amend this IGA only in writing signed by the Contract Signatories.

5.9. Certain Changes to the Scope of Work and Budget. Changes to the PBOT Work and the Cost Estimate, including changes to scope, schedule, and budget, that do not increase the total Cost Estimate may be made upon written agreement by the Parties’ project managers identified in this IGA. No changes will take effect or be binding on a Party until agreed to by that Party in writing.

5.10. Integration; Counterparts. This IGA contains the entire agreement between Prosper Portland and PBOT regarding its subject matter and the Project. This IGA supersedes all prior written or oral discussions or agreements concerning such subject matter and the Project. This IGA may be executed in one or more counterparts, including by electronic means, which, when taken together, will form one and the same agreement.

5.11. Time of the Essence. Time is of the essence of this IGA.

5.12. Assignment; Successors. Neither Party may assign or transfer any obligation under this IGA without the prior written consent of the other Party.

5.13. No Third-Party Beneficiaries. This IGA has been made solely for the benefit of the Parties hereto and their respective successors and permitted assigns, and nothing in this IGA

is intended to, or will, confer upon any other person, including but not limited to the Developer and DDS, any benefits, rights, or remedies under or by reason of this IGA.

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

CITY OF PORTLAND, by and through its
BUREAU OF TRANSPORTATION

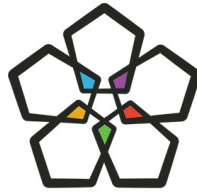
Title: _____
Date: _____

Approved as to form:

PROSPER PORTLAND

Title: _____
Date: _____

Approved as to form:



**PROSPER
PORTLAND**
Building an Equitable Economy

RESOLUTION NO. 7520

RESOLUTION TITLE:

AUTHORIZING AN INTERGOVERNMENTAL AGREEMENT WITH THE CITY OF PORTLAND BUREAU OF TRANSPORTATION FOR UP TO \$1,925,000 IN FUNDING FOR INFRASTRUCTURE IMPROVEMENTS IN THE GATEWAY REGIONAL CENTER TAX INCREMENT FINANCE DISTRICT


Adopted by the Prosper Portland Commission on January 24, 2024

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 Marcelino J. Alvarez	<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 checked="" type="checkbox"/>	Commissioner Michi Slick	<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 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.

	Date: January 29, 2024
Pam Feigenbutz, Recording Secretary	