

PROSPER PORTLAND

Portland, Oregon

RESOLUTION NO. 7521

**AUTHORIZING SETTLEMENT OF NORTHWEST INFRASTRUCTURE LLC V.
CITY OF PORTLAND, ET AL.**

WHEREAS, the Broadway Corridor project to redevelop the 13-acre former U.S. Postal Service Processing and Distribution site in downtown Portland is critically important to meet the City of Portland's ("City's") goals of fostering inclusive, mixed-income, mixed-use communities and accommodating future growth of Portland's Central City;

WHEREAS, on December 17, 2020, Prosper Portland issued a notice of intent to award the demolition of the former USPS Processing and Distribution Center to Northwest Demolition and Dismantling ("NWDD"), which demolition firm teamed with Raimore Construction, a local African American-owned, COBID-certified firm, when it submitted its response to Prosper Portland's request for proposals ("RFP");

WHEREAS, the NWDD/Raimore Construction team was a partnership of an Alaska Native-owned firm and an African American COBID-certified MBE/DBE firm;

WHEREAS, the NWDD/Raimore Construction team received the highest score from 13 out of 16 evaluators after three cycles of review by diverse panels; nevertheless, the other finalist, Northwest Infrastructure, LLC ("NWI") a local African American-owned firm (COBID-certified MBE/DBE firm), that partnered with Kiewit Construction, protested the award of the contract to the NWDD/Raimore Construction team, alleging racial discrimination and other improprieties in the selection process;

WHEREAS, Prosper Portland strongly disagrees with the allegations made by NWI, having conducted a thorough review which did not substantiate the allegations lodged by the protest;

WHEREAS, after spending months trying to resolve this matter, Prosper Portland determined that it was in the public interest to cancel the RFP for this work to attempt to avoid costly, time-consuming litigation;

WHEREAS, after cancelling this RFP, Prosper Portland divided the scope of the demolition work into two new RFPs, one of which ultimately led to an award of the work on the USPS site to the NWDD/Raimore Construction team, and the other portion to NWI;

WHEREAS, the NWDD/Raimore Construction team has completed the work, reporting that over 95 percent of the work performed on the USPS Processing & Distribution Center demolition project was performed by COBID-certified disadvantaged enterprise and minority business enterprise firms, including 59 percent by Native American owned firms, 26 percent by African American owned firms, and 13 percent by Asian American owned firms. 75 percent of hours worked were performed by minority

workers, including 51 percent of hours worked performed by Latine and 18 percent of hours worked performed by African Americans, and 23 percent of hours worked performed by women;

WHEREAS, on May 19, 2021, NWI filed a complaint against the City and Prosper Portland alleging various violations of federal law related to Prosper Portland's decision to cancel the original RFP, claiming damages in the amount of \$5,500,000;

WHEREAS, on December 14, 2021, the Federal District Court granted the City's and Prosper Portland's Motion to Dismiss all claims, but also granted NWI leave to amend;

WHEREAS, on January 12, 2022, NWI filed an amended complaint against Prosper Portland;

WHEREAS, Prosper Portland maintains general liability and public officials and management liability insurance coverage, and since 2021, its insurer has been providing Prosper Portland with a defense to the race discrimination claims raised against it in this lawsuit;

WHEREAS, under the policy, the insurer controls the defense of the lawsuit, and if Prosper Portland wishes to have the benefits of the policy, it must allow the insurer to decide when and how to settle the lawsuit;

WHEREAS, the insurer has decided to settle the lawsuit;

WHEREAS, Prosper Portland's insurer has stated that this was a business decision to settle the case and should not be construed as an admission of liability or an admission that Prosper Portland engaged in discrimination;

WHEREAS, under the settlement, Prosper Portland's insurer will pay NWI \$1,300,000, and in exchange, NWI will dismiss the lawsuit and release Prosper Portland from any claims related to the facts underlying the lawsuit;

WHEREAS, no evidence has been produced that Prosper Portland discriminated against NWI;

WHEREAS, NWI has relied solely on the fact that one of the three panels that reviewed the RFP responses gave NWI a one-point advantage over NWDD and on an inference of discrimination from the fact that it is an African American-owned firm that was not awarded this work, even though the work was awarded to the Alaska Native firm that partnered with another African American-owned firm;

WHEREAS, settlement decisions are not based entirely on whether a claim is meritorious, and Prosper Portland and its insurer have incurred substantial expenses in the defense of the lawsuit to date, and expected to spend as much or more through the end of trial;

WHEREAS, if Prosper Portland decided not to accept settlement of the lawsuit, its contract with insurer would require that Prosper Portland use taxpayer funds to continue to defend this non-meritorious lawsuit; and

WHEREAS, to avoid spending taxpayer funds toward an expensive trial and associated legal costs, to refocus Prosper Portland's efforts on advancing the Broadway Corridor project and building an

equitable economy, the Board believes it is in the best interest of Prosper Portland to authorize the settlement of the litigation as outlined below.

NOW, THEREFORE, BE IT RESOLVED, that the Executive Director is authorized to settle the above-described legal action on the following terms: Prosper Portland’s insurer will pay NWI \$1,300,000, and in exchange, NWI will dismiss the lawsuit and release Prosper Portland from any claims related to the facts underlying the lawsuit;

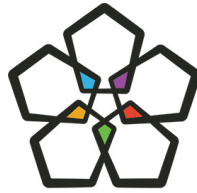
BE IT FURTHER RESOLVED, that the Executive Director is authorized to execute any documents she deems necessary or desirable to settle this litigation consistent with the foregoing terms; and

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

Adopted by the Prosper Portland Commission on February 1, 2024



Pam Feigenbutz, Recording Secretary



PROSPER PORTLAND

Building an Equitable Economy

RESOLUTION NO. 7251

RESOLUTION TITLE:

AUTHORIZING SETTLEMENT OF NORTHWEST INFRASTRUCTURE LLC V. CITY OF PORTLAND, ET AL.

Adopted by the Prosper Portland Commission on February 1, 2023


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 type="checkbox"/>	Commissioner William Myers	<input 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"/>

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.

	Date: February 5, 2024
Pam Feigenbutz, Recording Secretary	