

**PROSPER PORTLAND**

Portland, Oregon

**RESOLUTION NO. 7586**

**AUTHORIZING THE ACQUISITION OF REAL PROPERTY LOCATED AT NE  
102<sup>nd</sup> AVENUE AND PACIFIC STREET IN THE GATEWAY REGIONAL  
CENTER TAX INCREMENT FINANCE DISTRICT**

**WHEREAS**, Prosper Portland is the City of Portland’s (“City’s”) redevelopment agency with broad powers to make investment towards economic development and community development outcomes;

**WHEREAS**, in March 1996, the Portland City Council (“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 (“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 TIF District”) in order to protect public health, safety, and welfare;

**WHEREAS**, on August 10, 2016, Council approved the Gateway Action Plan (“Action Plan”), which identified the Gateway Transit Center area as one of three strategic geographic areas for TIF investment;

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

**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**, 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, the David Douglas School District (“DDSD”) purchased property located at NE 99th Avenue and NE Pacific Street as a site for a future elementary school, as further described in DDSD’s Long-Range Facility Master Plan dated December 2020;

**WHEREAS**, pursuant to Resolution No. 7455, the Prosper Portland Board directed staff to “work to offset any potential financial impact [of the Gateway TIF District] to DDSD by committing funding of \$3,000,000 tied to land development and infrastructure costs at properties at NE 99th and Pacific or otherwise within [the Gateway TIF District]” and to memorialize the same through a binding agreement with DDSD that “acknowledges and addresses any potential financial impact to DDSD and supports investment in site planning, design, land development, or infrastructure costs related to properties at NE 99th Avenue and Pacific Street and in coordination with surrounding private development activities”;

**WHEREAS**, Prosper Portland entered into an intergovernmental agreement with the City Bureau of Transportation (“PBOT”) relating to the funding and construction of the NE 100<sup>th</sup> Avenue Improvements, whereby PBOT promised to use system development charges to constructed these improvement, and intends to enter into an agreement with DDSD whereby Prosper Portland contributes \$3,000,000 to the cost of nearby infrastructure improvements along Pacific and Oregon streets, in order to satisfy the Prosper Portland Board’s directive in Resolution No. 7455;

**WHEREAS**, in 2023, Modomi Gateway Development, LLC (“Modomi”) acquired approximately 5.18 acres of vacant real property located at NE 102nd Avenue and Pacific Street (“Property”) from White/Gabriel LLC and GMB Unlimited LLC for \$11,070,000, and began development activities intending to redevelop the Property;

**WHEREAS**, market conditions and changes to business strategy caused members of the Modomi team, comprised of an investor and Cody Development Corp. (“Cody”) to seek sale of the Property;

**WHEREAS**, Cody approached Prosper Portland seeking assistance to stay engaged and involved in the development of the Property;

**WHEREAS**, Prosper Portland sees benefit in public ownership of the Property, which would further the goals of the Gateway TIF Plan and the Action Plan and capture of the value added from PBOT’s and Prosper Portland’s public infrastructure investments;

**WHEREAS**, staff have identified general terms for Prosper Portland’s acquisition of the Property that would protect Prosper Portland’s efforts to invest in public infrastructure and preserve the opportunity for Cody to move forward with a project on the Property in alignment with the next real estate cycle;

**WHEREAS**, the proposed terms for a Purchase and Sale Agreement are attached as Exhibit A to this resolution (the “Term Sheet”); and

**WHEREAS**, as described in the Term Sheet, the Purchase and Sale Agreement will provide for, among other things, Prosper Portland’s acquisition of the Property at the appraised Fair Market Value price of \$10,600,000, and an option in favor of Cody, whereby Cody will have the opportunity to repurchase the Property at this price (with escalations for inflation), provided that Cody has performed certain predevelopment work on the Property.

**NOW, THEREFORE, BE IT RESOLVED**, that the Prosper Portland Board finds that acquisition of the Property is necessary to achieve the objections of the Gateway TIF Plan;

**BE IT FURTHER RESOLVED**, that the Prosper Portland Board authorizes the Executive Director to execute the Term Sheet and enter into a Purchase and Sale Agreement for the Property on terms substantially consistent with the Term Sheet;

**BE IT FURTHER RESOLVED**, the Executive Director is authorized to execute any amendments or modifications to the Term Sheet or the Purchase and Sale Agreement, provided that the terms of the amendment to 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 the Prosper Portland Board authorizes the Executive Director to take such further actions and execute other documents as may be necessary or appropriate to complete the transaction described in the Term Sheet, including, without limitation, execution of deeds, easements, leases, options, covenants, or other agreements, instruments, amendments, certificates, and documents, so long as such actions do not materially increase Prosper Portland's financial obligations or materially alter Prosper Portland's risks, as determined in consultation with the General Counsel; and

**BE IT FURTHER RESOLVED**, that with the affirmative vote of at least four commissioners and of all Commissioners present 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

November 13, 2024



---

Pam Feigenbutz, Recording Secretary

**Non-Binding Term Sheet**

This Non-Binding Term Sheet (“**Term Sheet**”) is made by and among between **Modomi Gateway LLC** (formerly known as **Mosaic Gateway LLC**), a Delaware limited liability company (“**Seller**”), **Cody Development Corp.**, an Oregon corporation (“**Developer**”), and the City of Portland, acting by and through **Prosper Portland**, the economic development and urban renewal agency of the City of Portland (“**Prosper Portland**”).

This Term Sheet is not a binding agreement or an offer to enter into the same and is intended only to provide an outline of anticipated key terms of a potential binding and final purchase and sale agreement (“**Agreement**”). This Term Sheet is intended as a non-binding framework for the parties to work towards establishing their roles and responsibilities with respect to the matters described herein. No party makes any representations or warranties, express or implied, by execution of this Term Sheet. There are no implied conditions or covenants arising out of this Term Sheet, including no implied covenant of good faith. Terms like “will,” “shall,” and “must” in this Term Sheet refer to the anticipated actions of the parties, and to the anticipated terms of a future Agreement, but are not intended to bind any party.

<b>Agreement Purpose</b>	The purpose of the Agreement would be for Prosper Portland, consistent with the Gateway Regional Center Urban Renewal Plan (“ <b>Plan</b> ”), to acquire the Property (defined below) from Seller, subject to an option for Developer to purchase the Property (the “ <b>Option</b> ”), as further described below.
<b>Property</b>	Real property commonly known as 102 <sup>nd</sup> and Pacific, approximately 5.182 acres in size, consisting of tax lots 100, 200, 300, 400, 500, 600, 700, 800, 1500 and 1600, situated in the NE 1/4 of Sec. 33, T. 1 N., R. 2 E., W.M., City of Portland, Multnomah County, Oregon, together with all pertinent designs, surveys, studies, inspections, or other rights, privileges, contracts, and documents relating to the inspection and/or development of the real property or necessary or convenient thereto.
<b>Acquisition Price</b>	\$10,600,000, payable in cash at closing.
<b>Due Diligence</b>	Prosper Portland will have 90 days following execution of the Agreement to study the Property, the Property’s operations, and all applicable documents. Seller will cooperate in all respects with Prosper Portland’s study of the Property. Within 10 days after execution of this Term Sheet, Seller will give to Prosper Portland copies of the all reports, surveys (including a Seller’s most recent ALTA survey of the Property), studies, as-built plans, specifications, agreements, correspondence to and from governmental authorities, contracts, and other documents pertaining to the Property, the condition of the Property, and the Property’s operations which are in Seller’s possession or within its control.
<b>Express Conditions to Acquisition</b>	The Agreement will provide that Prosper Portland’s obligation to acquire the Property shall be conditioned upon Prosper Portland’s approval, in its sole and absolute discretion, of the results of its study of the Property and of the documents described in in the Due Diligence section, above, and all other studies conducted by Prosper Portland during the due diligence period, and on Prosper Portland’s satisfaction that all required or advisable third party consents to the acquisition and to the creation of the Option have been obtained, and on Prosper Portland’s satisfaction that no encumbrances other than permitted exceptions to title exist or are threatened to exist against the Property.
<b>Title</b>	Seller will deliver fee simple title to the Property by statutory warranty deed subject only to exceptions approved by Prosper Portland in its sole and absolute discretion. Any tax deferred status will be removed by Seller at Seller’s sole cost and expense at or prior to closing. Real property taxes and rents will be prorated

	as of the closing date. Prosper Portland will obtain an ALTA extended form policy of title insurance issued by Lawyer’s Title Insurance Company (or another title company selected by Prosper Portland) (the “ <b>Title Company</b> ”) in the amount of the purchase price at closing. Seller will pay for standard coverage and Prosper Portland will pay any costs to upgrade the policy to extended coverage. Costs of escrow will be shared equally by Seller and Prosper Portland.
<b>Representations and Warranties</b>	The Agreement will include representations and warranties from Seller with respect to the good standing of Seller, Seller’s authorization to do business, absence of outstanding litigation against Seller, the physical condition of the Property, the terms of any leases, absence of liens, assessments, and condemnation proceedings, the environmental condition of the Property, the status of contracts affecting the Property, and the completeness and accuracy of documents provided. The representations and warranties will be reasonably acceptable to Prosper Portland.
<b>Closing</b>	Closing will occur, in escrow, at the offices of the Title Company in Portland, Oregon, within 30 days after the end of the due diligence period.
<b>Option</b>	The Agreement will provide that, simultaneous with the taking of title by Prosper Portland, an option to purchase the Property will arise in favor of Developer (the “ <b>Option</b> ”) in accordance with the terms of a separate option agreement (“ <b>Option Agreement</b> ”) between Prosper Portland and Developer in a form to be set forth as an exhibit to the Agreement. The Option will expire if not exercised before the date that is the third anniversary of the date of the closing of Prosper Portland’s acquisition. The Option is assignable only with the consent of Prosper Portland, provided that no consent shall be required to an assignment to an entity in which Developer has control of the development of the Property. If the Option is duly exercised in accordance with the Option Agreement, Prosper Portland and Developer will promptly enter into a comprehensive agreement to carry out the transactions and conveyances contemplated thereby such that the Property is conveyed to Developer within 180 days of the Option’s exercise on the terms and conditions of the Option Agreement (the “ <b>Development Agreement</b> ”). Seller will have no obligations under the Option Agreement or Development Agreement. Prosper Portland will have the right to terminate the Option Agreement after two years, if Prosper Portland, in its sole discretion, determines that Developer has made insufficient progress toward development of the Property. Prosper Portland will give Developer six months notice and an opportunity to cure prior to terminating the Option Agreement.
<b>Predevelopment Obligations</b>	Developer will: <ul style="list-style-type: none"> <li>• Provide support, in the form of advocacy and technical analysis, for any funding requests to assist in capitalizing the development including, but not limited to, requests to the state middle income housing fund, potential DEQ middle income housing program, and federal TOD applications for funding.</li> <li>• Continue bi-annual construction cost monitoring and periodic re-pricing of horizontal and vertical project improvements, proforma development, including incorporating cost, income, and expense updates for variations of the development scenario using either modular or traditional construction methods.</li> <li>• Provide consistent and continuing work on current and alternative capitalization strategies (including, but not limited to, equity and bank financing for the vertical project leveraging the Developer</li> </ul>

	<p>reputation/relationships), and provide monthly updates to Prosper Portland on progress toward capitalization of the project.</p> <ul style="list-style-type: none"> <li>• Communicate and coordinate with Gateway stakeholders, including but not limited to David Douglas School District.</li> <li>• Provide Prosper Portland with quarterly market updates, including but not limited to monitoring of apartment rents and expenses for use in updating financial projections..</li> <li>• Continue evaluation and discussion with potential non-profit partners for value added interim and long term activation of the property.</li> <li>• Provide Prosper Portland with development advisory services with regard to improvements to this or adjacent properties that Prosper Portland, in its sole discretion, elects to undertake, such as the Pacific Street Improvements described herein.</li> </ul> <p>Prosper Portland will provide an up to \$200,000 predevelopment loan to the Developer for the purpose of conducting these and other predevelopment activities, subject to standard Prosper Portland underwriting criteria and approval processes.</p>
<p><b>Pacific Street Improvements</b></p>	<p>Prosper Portland may, but will have no obligation to, contract for the construction of certain improvements to or adjacent to NE Pacific Street, expected to consist generally of 12-foot-wide pedestrian corridor on the south side of NE Pacific Street, as further described in PBOT response letters dated July 16, 2018 and May 10, 2022.</p>
<p><b>Option Price</b></p>	<p>As a condition to Developer’s acquisition of the Property pursuant to exercise of the Option, (a) Developer will have completed the predevelopment work described above, and (b) Developer will pay Prosper Portland, in cash at closing, an amount equal to the Acquisition Price (stated above) adjusted upward by a percentage thereof based on the change in the CPI-U index from the date of the Agreement to the date on which the Option is exercised. If Prosper Portland and Developer, in their respective sole and absolute discretion, elect to enter into a land lease instead of a Development Agreement, such lease would include, without limitation, substantially the same terms described herein as the Development Agreement, but Prosper Portland would retain fee simple title, the leasehold estate would be for a finite duration mutually acceptable to the parties and consistent with law, and periodic lease payments would be required rather than a lump sum payment at lease execution or commencement.</p>
<p><b>Development Agreement</b></p>	<p>The Development Agreement will, as a covenant running with the land (to be recorded only after the closing of the sale of the Property by Seller to Prosper Portland), require the Developer to develop substantially the entire Property, together with all public improvements (including street improvements to or involving NE Oregon Street and NE Pacific Street) required by such development of the Property, and to break ground on such development not later than 18 months after taking title (subject to mutually agreeable provisions regarding equitable adjustment).</p> <p>The Development Agreement will also obligate Developer to develop the Property consistent with applicable laws, including zoning laws, and to adhere to all then-applicable Prosper Portland policies.</p>

	Remedies available to Prosper Portland for Developer's failure to satisfy this obligation may, at Prosper Portland's election, include any remedies allowable under the Plan or the policies, as the case may be.
<b>Terms and Conditions Not Exhaustive</b>	The terms set forth in this Term Sheet are an outline of anticipated key provisions of a future Agreement, but they are non-exhaustive in nature. The Agreement and ancillary documents will provide additional terms and conditions.
<b>Board Approval</b>	Seller and Developer acknowledge that all transactions described in or contemplated by this Term Sheet, and any Agreement, are within the parties' discretion, and expressly subject to and conditioned upon the discretionary approval of the Prosper Portland Board of Commissioners.

This non-binding Term Sheet is made and entered into by and among the parties by the signatures of their authorized representatives below. This Term Sheet may be executed in any number of counterparts, all of which together constitute the same original Term Sheet.

**PROSPER PORTLAND**

By: \_\_\_\_\_  
Shea Flaherty Betin, Interim Executive Director

Approved as to Form:

\_\_\_\_\_  
Prosper Portland Legal Counsel

**SELLER:**

**MODOMI GATEWAY LLC**

A Delaware Limited Liability Company

By: Modomi Gateway Development LLC, its managing member

By: Cody Development Corp., its sole member

By:  
Name: Tom Cody  
Title: President

**DEVELOPER:**

**CODY DEVELOPMENT CORP.**

An Oregon Corporation

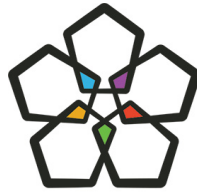
By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

DRAFT





**PROSPER  
PORTLAND**  
Building an Equitable Economy

**RESOLUTION NO. 7586**

**RESOLUTION TITLE:**

AUTHORIZING THE ACQUISITION OF REAL PROPERTY LOCATED AT NE 102nd AVENUE AND PACIFIC STREET IN THE GATEWAY REGIONAL CENTER TAX INCREMENT FINANCE DISTRICT


Adopted by the Prosper Portland Commission on November 13, 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 type="checkbox"/>	Commissioner Marcelino J. Alvarez	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	Commissioner Felisa Hagins	<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.*

	<b>Date:</b>  November 15, 2024
	<b>Pam Feigenbutz, Recording Secretary</b>