

PROSPER PORTLAND

Portland, Oregon

RESOLUTION NO. 7264

AUTHORIZING AN INTERGOVERNMENTAL AGREEMENT WITH THE CITY OF PORTLAND BUREAU OF PARKS AND RECREATION IN AN AMOUNT NOT TO EXCEED \$1,890,986 FOR THE LEACH UPPER GARDEN DEVELOPMENT PROJECT

WHEREAS, on May 14, 2008 through Resolution No. 6583, the Prosper Portland Board of Commissioners (“Board”) amended the Lents Town Center Urban Renewal Plan to modify the boundaries of the Urban Renewal Area, which among other things, had the effect of adding the 17-acre Leach Botanical Garden, for the purpose of utilizing tax increment financing resources to overcome obstacles to development of the area;

WHEREAS, on September 25, 2014, Prosper Portland and Portland Parks and Recreation entered into an Intergovernmental Agreement (“IGA”) for the purpose of schematic design, phasing planning and cost estimation for the redevelopment of the Leach Upper Garden Development Project, an improvement project within the larger Leach Botanical Garden;

WHEREAS, since 2011, Prosper Portland has contributed a total of \$149,011 towards the Upper Garden Project to date for planning and design;

WHEREAS, funding for the Upper Garden Development Project construction includes \$5,565,054 from the City of Portland Bureau of Parks and Recreation, \$188,000 from Metro, and an estimated \$1,260,000 in capital campaign funds raised by Leach Garden Friends;

WHEREAS, to fulfill the goals of the Lents Town Center Urban Renewal Plan, Prosper Portland intends to commit \$1,890,986 to fund construction of the Upper Garden Development Project; and

WHEREAS, when complete, improvements made through the Upper Garden Development Project will enhance cultural, educational, and botanical offerings at Leach Botanical Garden, adding much needed open and natural space for residents of east and southeast Portland.

NOW, THEREFORE, BE IT RESOLVED, that the Prosper Portland Board authorizes the Executive Director to execute an IGA with Portland Parks and Recreation substantially in the form attached as Exhibit A;

BE IT FURTHER RESOLVED, that the Prosper Portland Executive Director has the authority to make minor amendments to this IGA in agreement with the Director of Portland Parks and Recreation; and

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

Adopted by the Prosper Portland Budget Committee on

March 14, 2018

A handwritten signature in black ink that reads "Pam Micek". The signature is written in a cursive, flowing style.

Pam Micek, Recording Secretary



**PROSPER
PORTLAND**
Building an Equitable Economy

RESOLUTION NO. 7264

RESOLUTION TITLE:

AUTHORIZING AN INTERGOVERNMENTAL AGREEMENT WITH THE CITY OF PORTLAND BUREAU OF PARKS AND RECREATION IN AN AMOUNT NOT TO EXCEED \$1,890,986 FOR THE LEACH UPPER GARDEN DEVELOPMENT PROJECT


Adopted by the Prosper Portland Commission on March 14, 2018

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 Alisha Moreland-Capuia MD	<input 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 William Myers	<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: March 16, 2018
Pam Micek, Recording Secretary	

INTERGOVERNMENTAL AGREEMENT
Between
Prosper Portland
And
Portland Parks & Recreation
For the
Leach Upper Garden Development Project

This Intergovernmental Agreement (this “Agreement”), dated this _____ day of _____, 2018, (“Effective Date”) is made and entered into by and between the **City of Portland, Parks & Recreation (“PPR”)** and the **Prosper Portland**

RECITALS

1. Prosper Portland, as the duly-designated Urban Renewal agency of the City of Portland, is granted broad powers under ORS 457.170 for the planning and implementation of urban renewal projects.
2. PPR is responsible for parks, open space, and recreation operations, services and improvements within the City.
3. A cooperative partnership between Prosper Portland and PPR will be beneficial to the implementation of urban renewal plans and the development of other public policies, plans and capital projects.
4. Both parties desire to enter into an agreement that will establish terms and conditions by which one party will engage and compensate the other party for performing specific services.
5. The Portland City Council (“Council”), through Ordinance No. 181232, which was duly adopted by Council on August 29, 2007, and amended by Ordinance No. 183435, passed by Council on January 6, 2010, delegated to the Director of PPR and the City Auditor the authority to enter into intergovernmental agreements with Prosper Portland. The form of agreement used for this Agreement is substantially similar to the template that was approved by City Council through the above referenced Ordinance.

Now therefore, the parties agree as follows:

AGREEMENT

I. THE PROJECT

A. Background.

Leach Botanical Garden's 16 acres are located just a quarter-mile from the busy intersection of SE 122nd Avenue and SE Foster Road. Straddling Johnson Creek, Leach Botanical Garden's valuable green space enhances a section of Portland that is deficient in developed park space and cultural opportunities. Created in the 1970s from the hillside estate of John and Lila Leach (community leaders and renowned plant collectors who willed their estate to the City of Portland in the 1970s), Leach Botanical Garden ("the Garden") is owned by the City and operated in partnership with PPR by the Leach Garden Friends, an Oregon nonprofit and IRC 501(c)(3) entity.

The Garden is maintained and developed for the purposes of education, research and conservation. In addition to its scientific value, the Garden serves an important open space function in a community that has very few parks and natural areas. The location on Johnson Creek allows for education as well as stewardship.

Leach Garden Friends (LGF) formed in 1981, and two years later the Garden opened to the public as a botanical garden. A Master Plan for the entire Garden was completed in 2010. This plan detailed moving the main entrance closer to 122nd Avenue and Foster Road, increasing Garden visibility and visitor functionality with parking, restrooms, and orientation and information services. The Garden's 2011 Business Plan identified new audiences and potential revenue streams that could help the facility become more self-sustaining in the future. In 2012, an Upper Garden Master Plan further expanded the vision of the 2010 Master Plan.

From 2014 through 2017, in partnership with Prosper Portland's, PPR, and LGF the project undertook further refinements of the earlier work and published the Leach Botanical Garden Development Plan. This plan strategically merged updated Business Plans and Upper Garden Master Plans into a phased set of goals and capital improvement for the Garden. During this process, a "catalyst project" was developed that intended to prioritize the following goal:

- Improve Upper and Lower Garden connections;
- Provide new gathering spaces and regional attractions;
- Improve Upper Garden infrastructure and parking; and,
- Restore and enhance existing site and collections.

The primary programming decisions that will guide this work were defined in the 2012 Upper Garden Master Plan and are unlikely to change. However, this process will

determine how various elements are laid out on the landscape to achieve both maximum functionality and a high quality visitor experience.

In 2017, the project team and partners continued design and permitting for the project scope that is to be constructed with this funding. This work included Design Development, Estimating and Land Use Permits. Construction, Site Development and bid documentation for the project are anticipated to continue into 2018.

Development of the Leach Upper Garden fulfills the 2014 Lents Five-Year Action Plan for, specifically Action 15.2,

Facilitate development and expansion of regional destinations and a connected open space network – Leach Botanical Gardens, Zenger Farms, and Springwater Wetlands.

- *Develop the six-acre Upper Garden at Leach Botanical Garden to enhance cultural, educational, and botanical offerings of the garden....”*

B. Summary of Work, Budget and Schedule.

1. The following is a summary of the scope of work

The Leach Upper Garden Project will construction the following scope of work in the Upper Garden and slope:

- R/W Improvements for S.E. Claybourne Street;
- Utilities serving the Upper Garden;
- Public Parking Lots serving Upper Garden entry and maintenance areas;
- Landscape and Irrigation for: Pollinator Garden, Woodland Hillside, parking buffers and gathering lawn;
- Fireside Arbor and Terrace;
- Aerial Tree Walk; and,
- ADA Path network and staircases.

2. The following is a summary of the budget:

This Agreement covers construction and construction related services for the project and contributes \$1,890,986 of Lents Urban Renewal funding. Spending for this money will occur in FY 2018/19 and FY 2019/20.

The Prosper Portland’s funding from this Agreement will be matched with partner construction funding from METRO’s Nature in Neighborhoods Grant of \$188,000 and PPR SDC funding of \$5,565,054. Total construction budget

is \$7,644,040. METRO funding will be administered by Portland Parks & Recreation, through a separate agreement. Estimated costs shown in this Agreement are based on a 95% Design Development package.

Total Approximate Funding for this Agreement is:

\$5.56M	PPR SDC Fund
\$1.89M	Prosper Portland Lent's Urban Renewal TIF
\$0.19M	METRO Grant
<hr/>	
\$7.64M	Total Construction / Permits and Construction Administration

This work is part of a multi-year, multi-agreement project to redesign and construct the Leach Upper Garden. The total project budget is approx. \$9.85M. Schematic, Design Development and Land-use permitting process were completed previous to this Agreement. Prosper Portland contributed \$149,011 to that work in a previous agreement. In total, between the two agreements for the project, Prosper Portland will have contributed a total of approx. \$2M for full project.

Additional project funds will come from Leach Garden Friends capital campaign. That contribution is anticipated to be approximately \$1.26M. These funds will pay for partial design and construction and be partially administered by PPR under a separate agreement. The Leach Garden Friends were also awarded a \$125,000 Community Livability Grant (CLG) for the project from Prosper Portland that is administered under a separate agreement. This CLG grant is included in the approx. \$1.26M capital campaign amount mentioned above.

Total Approximate Funding for the total project, including past expenditures, is:

\$6.40M	PPR SDC
\$2.00M	Prosper Portland Lent's Urban Renewal TIF
\$0.19M	METRO Grant
\$1.26M	Leach Garden Friends Capital Campaign Funding
<hr/>	
\$9.85M	

3. A detailed description of the scope of work and budget is set forth in Exhibit A (the "Scope of Work and Budget") to this Agreement. The tasks, activities, and deliverables described in this Section B and detailed in the Scope of Work and Budget shall be referred to in this Agreement as the "Work".

4. Project Schedule

Design / Engineering Documentation	2018	March – August
Permitting		July – August

Bidding / Contracting
Construction

September – November
2019 January - October

II. CONTRACT MANAGEMENT

- A. The party for whom the Work is being performed, and who will be compensating the other party for performing the Work, shall be referred to in this Agreement as the “Funding Agency”. Prosper Portland shall be referred to herein as the Funding Agency.
- B. The party performing the Work for the Funding Agency shall be referred to in this Agreement as the “Performing Agency”. PPR shall be referred to herein as the Performing Agency.

C. Funding Agency.

1. Contract Signatory. The Funding Agency Contract Signatory shall be *Kimberly Branam*, or such other person as designated in writing by the Funding Agency Director (the "Funding Agency Contract Signatory"). The Funding Agency Contract Signatory is authorized to give notices and to carry out other actions referred to herein, including termination of this Agreement as provided in Section V.
2. Contract Manager. The Funding Agency Contract Manager shall be *Bernie Kerosky* (the “Funding Agency Contract Manager”). The Funding Agency Contract Manager is responsible for the day-to-day management of this Agreement as provided herein and serves as the first level of conflict resolution.

D. Performing Agency.

1. Contract Signatory. The Performing Agency Contract Signatory shall be *Mike Abbaté*, or such other person as designated in writing by the Performing Agency Director (the "Performing Agency Contract Signatory"). The Performing Agency Contract Signatory is authorized to give notices and to carry out other actions referred to herein, including termination of this Agreement as provided in Section IV.
2. Contract Manager. The Performing Agency Contract Manager shall be *Ross Swanson* (the “Performing Agency Contract Manager”). The Performing Agency Contract Manager is responsible for the day-to-day management of this Agreement as provided herein and serves as the first level of conflict resolution.

E. Management Staffing.

1. A project manager shall be designated by the Performing Agency (the "Performing Agency Project Manager"), and a project manager shall be designated by the Funding Agency (the "Funding Agency Project Manager") to carry out designated responsibilities designated in this Agreement.
 - a) The Funding Agency Project Manager shall be Bernie Kerosky, or such other person as designated in writing by Lisa Abuaf.
 - b) The Performing Agency Project Manager shall be Ross Swanson, or such other person as designated in writing by Lauren McGuire and approved by the Funding Agency Project Manager.
2. If either project manager is not performing or is not able to continue performing the responsibilities designated in this Agreement, then the respective contract manager shall designate a replacement project manager. If a replacement project manager is not available, or cannot be made available by hiring, then upon written agreement of the parties, the other party may take on all project management responsibilities designated in this Agreement.
3. The Funding Agency Contract Manager and the Performing Agency Contract Manager will confer quarterly to review project management and staffing needs and performance, and identify desired changes, if any. If either Prosper Portland or PPR desires to replace a project manager, or other key staff identified in section II.F. or section II.G. of this Agreement, the party's contract manager shall 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.

F. Project Staffing – Performing Agency. The following Performing Agency personnel are being assigned to perform the Work. Only personnel listed below, or subsequently identified and authorized by the Funding Agency Project Manager, shall be reimbursed for performance of the Work. The Funding Agency will not unreasonably delay or withhold subsequent authorization for personnel identified by the Performing Agency to perform the Work, and its failure to notify the Performing Agency in writing of denial of authorization within 10 business days after the Project Manager's receipt of a written request for authorization from the Performing Agency shall be deemed as authorizing those identified personnel to perform the Work.

1. Ross Swanson, Capital Project Manager III
1001 SW 5th Ave., Suite 2200
Portland, OR 97204
Ross.swanson@portlandoregon.gov
(971) 940-5712
2. To be determined, Construction Manager

G. Project Staffing – Funding Agency. The following Funding Agency personnel are being assigned to perform the Work.

1. Bernie Kerosky, Project Manager
222 NW 5th Ave.
Portland, OR 97209
KeroskyB@prosperportland.us
(503) 823-3459

H. Approvals.

1. No work shall be performed and no funds shall be obligated until this Agreement is executed.
2. The Performing Agency is not obligated to perform, and the Funding Agency is not authorized to pay for, any work not identified in the Scope of Work and Budget.

I. Project Management.

1. In addition to any other obligations set forth in this Agreement, the Performing Agency Project Manager role is to: a) manage the design team through design, bidding and construction; b) manage the assigned Construction Manager for PPR during construction; c) respond to media inquiries.
2. In addition to any other obligations set forth in this Agreement, the Funding Agency Project Manager is responsible for: a) ensuring Prosper Portland Funds are spent according to this Agreement; b) monitoring project progress on behalf of the Funding Agency.
3. Project Status Reports, including those that may be required in connection with applicable Business and Workforce Policy, are required to be submitted by Performing Agency Project Manager beginning within 60 days after the Effective Date of this Agreement and thereafter at a frequency of *once per quarter*. A template report shall be discussed and agreed to as part of the Project's kickoff meeting.

J. Public Involvement.

1. Where projects require public involvement, PPR and Prosper Portland will collaborate on design of the public involvement plan that is endorsed by both project managers.

2. PPR and Prosper Portland will keep each other informed of written material (e.g., news releases, brochures, newsletters, reports) produced for the Project that are intended for public distribution and will provide adequate time for review and discussion prior to distribution.
3. Each project manager will inform the other of inquiry from a media or press representative and make reasonable efforts to consult with the other 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.

K. Meeting Participation. Each project manager will invite the other to attend all regular or significant Project meetings and to participate in steering, management, or technical advisory committees organized for the Project. This project work would include, Pre-bid, Pre-construction, weekly construction meetings and Leach Garden Working Group meetings.

L. Work Product. The Funding Agency Project Manager will, upon his or her request, receive timely copies of all work products, including drawings, specifications, designs, draft and final copies of technical and consultant analysis and reports, construction progress reports, and key correspondence prepared or received during the course of the Project.

M. Subcontractors. A subcontractor is any other entity that the Performing Agency contracts with to carry out all or part of the Work.

1. The Performing Agency will have the sole authority to direct the work of any authorized and approved subcontractors. Subcontractors approved by the Funding Agency Project Manager:
 - a) Land Morphology Design Team members, as contracted through the Leach Upper Garden Development Project.
2. The Performing Agency and/or any approved subcontractors are not obligated to perform, and the Funding Agency is not authorized to pay for, any work not identified in the Scope of Work and Budget.

N. Regional Arts & Culture Council (RACC) – Percent for Art Program.

City Code Section 5.74 sets the policy of the City of Portland to dedicate two percent of the total Eligible Costs, as defined by Code, or two percent of the total Eligible Funds, as defined by Code, of all Improvement Projects, as defined by Code, (whichever is less) to the selection, acquisition, fabrication, installation, maintenance, management, de-accessioning, community education, documentation and registration of Public Art.

1. Payments to RACC will be calculated based on the Eligible Costs of an Improvement Project and will be made according to one of three options: payment in full upon signing of this Agreement; payment in full upon issuance of the construction contract; or installation payments upon signing of this Agreement and the construction contract. The parties elect to make payment in full upon issuance of the construction contract.

O. Business and Workforce Equity.

1. The Business Equity Program of Prosper Portland's Business and Workforce Equity Policy (the "Policy") shall apply if the Project is anticipated to have hard construction costs greater than \$200,000 and Prosper Portland's compensation under this Agreement is more than \$100,000. If the Business Equity Program applies, Prosper Portland's utilization goal for Emerging Small Businesses and Women and Minority owned-businesses (collectively, "M/W/ESBs") is twenty percent (20%) of the hard construction costs ("Prosper Portland's Goal") of the Project (the "Utilization Goal"). The Workforce Equity Program of the Policy shall apply if the Project is anticipated to have hard construction costs greater than \$200,000. If the Workforce Equity Program applies, the prime contractor and all subcontractors with subcontracts greater than \$100,000 must comply with the Policy's Workforce Training and Hiring Program to, among other things, ensure that a minimum of twenty percent (20%) of labor hours in each apprenticeable trade performed by the contractor and subcontractors on the Project are worked by state-registered apprentices and to work toward achieving Prosper Portland's current Workforce Goals, The Utilization and Workforce Goals are aspirational only. There will be no legal consequence, including but not limited to termination, damages or liquidated damages, on account of the Performing Agency's failure to realize the goals described in the Policy. Nothing in this Agreement shall require the Performing Agency to discriminate in the award of contracts on the basis of race, sex or other impermissible criterion, or otherwise to violate the law. If the Policy applies, information on utilization will be included in monthly Project Status Reports, as described in Section II above.

P. Special Contract Management Provisions.

1. The Prosper Portland's Contract Manager shall review any change orders or contract changes to any construction contracts in excess of \$50,000.

III. FUNDING / COMPENSATION / ALLOWABLE COSTS

- A. The Funding Agency shall pay the Performing Agency a sum not to exceed **one million eight hundred ninety thousand nine hundred eighty six DOLLARS (\$1,890,986.00)** for accomplishment of the Work, subject to budget authorization by the Funding Agency.
- B. The funding is from Lents Town Center URA.
- C. The full amount of funds *is* authorized in the current fiscal year's budget. If the Project funding spans multiple fiscal years, the *Council / Prosper Portland* will encumber the funds as the funds are approved through budget appropriation. All funding is subject to budget appropriation. If the full amount of funds is not authorized in the current fiscal year's budget, it is acknowledged that contract amounts identified for expenditure in future fiscal years have not been appropriated in the current year budget. If funding has been identified in the Prosper Portland Five-Year Budget Forecast, Prosper Portland staff agrees to recommend to the Prosper Portland's Board of Commissioners that the funds identified in the Five-Year Budget Forecast be appropriated in subsequent budgets.
- D. Prosper Portland's funds shall only be expended on Tax Increment Financing eligible uses, for example, planning for improvements, design and engineering for improvements, and construction of improvements. Costs for operations, maintenance, and moving transit stock are not typically eligible for Tax Increment Financing.
- E. The Performing Agency may seek reimbursement from the Funding Agency for the following costs, subject to the expenditure of these funds for performance of the Work and within the authorized budget. In certain circumstances, such as advance payment to RACC, the Funding Agency Project Manager may authorize a prepayment of future expense obligations.
1. Direct Costs.
 - a) Personal Services. Covers reimbursement for direct wages paid to personnel engaged in performance of the Work.
 - b) 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.
 - c) Materials & Services. Covers actual costs for the purchase of materials, supplies, and services, or reimbursement of incidental expenses and PPR or Prosper Portland support staff personal services where the expenditure is for performance of the Work and within the authorized budget.

- d) **Contracted Services.** Covers reimbursement for contracted professional or construction services in carrying out the Work and within the authorized budget.
2. **Indirect Costs.** Covers reimbursement for overhead costs shall be at the rate established annually by Council for PPR in accordance with City Code Section 5.48 and for Prosper Portland in accordance with Cost Recovery Policy through Resolution 6560.
 - a) This Agreement was originated in Fiscal Year 2017-18. For that Fiscal Year, PPR's rate is 128.61% (ONE HUNDRED TWENTY EIGHT AND SIXTY ONE HUNDRETHS PERCENT) of the sum of Personal Services and Benefit Costs per Ordinance No. 182377. PPR Indirect costs pay for administrative time and generally fixed costs related to program management costs including Council charges, central administration costs, executive management staff, rent, telephone, power, insurance, office supplies, and equipment.
 - b) This Agreement was originated in Fiscal Year 2017-18. For that Fiscal Year, the Prosper Portland's rate is \$17.00 per labor hour (SEVENTEEN DOLLARS AND ZERO CENTS) of Personal Services and Benefit Costs billed under this Agreement. Prosper Portland Indirect costs pay for generally fixed costs related to the administration and operation of an organization, as well as program management costs including administrative staff, rent, telephone, power, insurance, office supplies and equipment.
 - c) If this Agreement extends to a new Fiscal Year, the Performing Agency Contract Manager shall provide written notification to the Funding Agency Contract Manager of the new Fiscal Year rate; a change to the rate does not require an amendment to this Agreement.
 3. The Funding Agency Project Manager shall be immediately notified of any actual or anticipated variance between the authorized budget and the estimated cost or expenditures described in the Scope of Work. The parties shall then make a good faith effort to negotiate for a successful modification to this Agreement. Unless this Agreement is modified, the Funding Agency shall not be obligated to make payments for costs that exceed the authorized budget.
- F. Expense Costs.** Expenses, including personal services, incurred for out of town travel, training, educational expenses and equipment purchase are not reimbursable under this Agreement unless mutually agreed to in advance.
- G. Project Cost Savings.** If there are cost savings at the completion of the Upper Garden Renovation (see Exhibit A – "Scope of Work and Budget") the Performing

Agency and Funding Agency shall share the savings in proportion of contribution to the Upper Garden Renovation which are; a) Funding Agency 25%; b) Performing Agency 75%.

IV. BILLING AND PAYMENT PROCEDURE

- A.** The Performing Agency shall submit to the Funding Agency Project Manager a separate itemized billing for work performed as described in the Scope of Work and Budget for review and approval at least quarterly.
1. In order to receive timely payment, interim billings must be received no later than thirty (30) days following the end of a billing period.
 2. Final billings upon termination or early termination of this Agreement need to be received within sixty (60) days of the date of termination. If no bill or interim Project Status Report is received within this time period, the Funding Agency will have no obligation to honor late billings.
- B.** Each billing shall include a Billing Detail Report in a format created and/or approved by the Funding Agency. At a minimum, each billing shall include:
1. a description of the nature and cost of work accomplished;
 2. the names, rates and hours worked of personnel;
 3. disbursements to consultants, contractors and outside vendors for materials and services; and
 4. any other specific detail or documentation as desired by the Funding Agency Contract Manager, which can be reasonably provided by the Performing Agency.
- C.** If billings are received with incomplete information or disputed items, the Funding Agency will advise the Performing Agency in writing what specific information is missing or disputed. The Funding Agency will proceed to process payment for items not in dispute.
- D.** Disbursements by the Funding Agency for Upper Garden Project invoices shall be 25% of approved expenditures for the Upper Garden Project (see Exhibit A – “Scope of Work and Budget”). The Prosper Portland Funds may be used for any TIF eligible expense in the Upper Garden Project “Scope of Work and Budget” as shown in Exhibit A.

V. GENERAL

A. Termination.

1. The Termination Date of this Agreement is June 30, 2020
2. Early Termination of Agreement.
 - a) This Agreement may be terminated at any time by mutual written consent.
 - b) Upon thirty (30) days written notice, either party may terminate this Agreement where the public interest requires work to cease.
 - c) In the event of early termination of this Agreement, the work shall cease promptly, as reasonably possible, and a final billing request submitted within sixty (60) days of the effective date of termination. In the event of early termination, eligible costs incurred through the date of the Agreement's termination will be reimbursed.

B. Change and Conflict Resolution.

1. Every effort has been made to accurately identify the scope, schedule and budget for the Work. The Performing Agency and the Funding Agency recognize that events and conditions may arise that significantly impact the Project. A "significant" impact is one that may require expenditure of the Funding Agency controlled contingency, increase the budget beyond the total authorized budget amount shown in the Scope of Work and Budget, or delay completion of this phase of the Project more than one year. Should either party identify or foresee such a circumstance, both parties agree to the following:
 - a) As soon as practicable, notify both the project manager and contract manager of the other party in writing of the circumstance, its origin and anticipated or confirmed impact.
 - b) Both project managers shall make reasonable efforts to meet within 14 days to identify anticipated or confirmed effects to the Project's scope, schedule and budget.
 - c) Both parties shall seek to reach agreement on any necessary revisions to this IGA as described in Section V. B. 2.
2. If a dispute arises regarding performance, cost, schedule, scope, quality or other terms and conditions of this Agreement, all parties agree to exercise good faith in expeditiously resolving said conflict in the following manner.

- a) All conflicts should first be discussed and resolved if at all possible by the project managers specified in Section II.
- b) If the conflict cannot be resolved by the project managers, or involves one of the project managers, then the conflict should be elevated to the contract managers specified in Section II for discussion and resolution.
- c) Any conflicts not resolved by the contract managers shall be elevated to the contract signatories for discussion and resolution.

C. Compliance with Laws. In connection with its activities under this Agreement, the parties shall comply with all applicable federal, state and local laws and regulations.

D. Indemnification.

1. Subject to the limits of the Oregon Tort Claims Act and Oregon Constitution, PPR 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 attorney's fees, resulting from or arising out of the activities of PPR, its officers, employees or agents under this Agreement.
2. Subject to the limits of the Oregon Tort Claims Act and Oregon Constitution, Prosper Portland agrees to indemnify, hold harmless and defend, PPR, its 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 attorney's fees, resulting from or arising out of the activities of Prosper Portland, its directors, employees or agents under this Agreement.

E. Subcontracting. Work under this Agreement shall not be subcontracted in whole or in part to other than City agencies, without the prior written approval of the Funding Agency Project Manager. The Funding Agency will not unreasonably delay or withhold subsequent authorization for contractors identified by the Performing Agency to perform the Work under the Agreement and that its failure to notify the Performing Agency in writing of denial of authorization within 10 business days after the Funding Agency Project Manager's receipt of a written request for authorization from the Performing Agency shall be deemed as authorizing those identified contractors to perform the Work. The Performing Agency shall require any approved subcontractor to agree, as to the portion subcontracted, to fulfill all obligations of the Performing Agency as specified in this Agreement. Notwithstanding approval by the Funding Agency Project Manager of a subcontractor, the Performing Agency shall remain obligated for full performance hereunder, and the Funding Agency shall incur no obligation to the subcontractor

hereunder. The Performing Agency shall have the sole authority to direct the work of any authorized and approved subcontractors.

F. Ownership of Work Product. 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 Agreement (the "Work Product") will be handled as described below. Ownership of the Work Product includes all rights, title and interest, including but not limited to copyright rights of specified Work Products.

1. Except as described in paragraph 2 below, the Performing Agency shall own all Work Product.
2. If the parties determine that the Performing Agency is unable or unwilling to complete the Project, and the Funding Agency determines that a transfer of ownership of the Work Product is necessary in order to effect completion of the Project, upon the Funding Agency's written request the Performing Agency shall assign ownership of the Work Product to the Funding Agency.
3. Regardless of ownership of the Work Product, both parties shall have reasonable access to the Work Product.

G. Delivery / Maintenance of Records. The Performing Agency shall maintain records on a current basis to support its billings to the Funding Agency. The Funding Agency or its authorized representative shall have the authority to inspect, audit and copy, on reasonable notice and from time to time, any records of the Performing Agency regarding its billings or its work hereunder, for a period of 3 years after completion or termination of this Agreement.

I. Funding Acknowledgement / Signage.

1. Any oral reports made to neighborhood, business, or other civic organizations, as well as to any members of the press shall acknowledge work being done is based on a partnership between PPR and the Prosper Portland.
2. For projects involving construction activities funded by Prosper Portland, PPR shall display a sign near the construction site and readily visible to the public, specifying that the Project is being "*funded by the Prosper Portland*". The sign shall remain in place until construction is complete.

VI. AMENDMENTS

1. Except as otherwise provided for in this Agreement, PPR or Prosper Portland's may amend this Agreement only in writing signed by the contract signatories.
2. Changes to the Scope of Work and Budget:
 - a) Changes to the Scope of Work and Budget, including changes to scope, schedule, and budget identified in Section I of this Agreement, which do not increase the total compensation under this Agreement, may be made upon written agreement by the project managers identified in Section II of this Agreement.
 - b) Changes will not take effect or be binding on either party until agreed to in writing.

VII. MERGER CLAUSE

This Agreement contains the entire agreement between Prosper Portland and PPR. It supersedes all prior written or oral discussions or agreements concerning work to be performed by either party.

[Signature page to follow]

IN WITNESS WHEREOF, PPR and Prosper Portland have executed this Agreement as of the Effective Date.

CITY OF PORTLAND

PROSPER PORTLAND

Mike Abbaté, Director, Portland Parks
and Recreation Bureau
(Executed under authority delegated by
Ordinance No. 181232, passed by
Council on August 29, 2007 and
amended by Ordinance No. 183435,
passed by Council on January 6, 2010.)

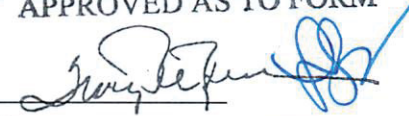
Kimberly Branam, Executive Director, Prosper
Portland

Date

Date

APPROVED AS TO FORM:
APPROVED AS TO FORM

APPROVED AS TO FORM:


City Attorney CITY ATTORNEY


Prosper Portland Legal Counsel

City Auditor

Date

Intergovernmental Agreement - Exhibit A
Scope of Work and Budget
Leach Botanical Garden: Upper Garden Project
Fiscal Year 2017-18

Tasks and/or Deliverables	Completion Date	Budget Uses				Budget Sources				Subtotals
		Personal Services	Materials & Services	Capital Outlay	Subtotals	Funding Agency	Performing Agency	Other Sources	Subtotals	
A SE 122nd Right of Way Work		\$ -	\$ 313,500.00	\$ -	\$ 313,500.00	\$ -	\$ 313,500.00	\$ -	\$ -	\$ 313,500.00
A.1 Utilities										
A.2 Roadway										
B 123232 Claybourne Expansion		\$ -	\$ 1,500,000.00	\$ -	\$ 1,500,000.00	\$ -	\$ 1,500,000.00	\$ -	\$ -	\$ 1,500,000.00
B.1 Parking Lot										
B.2 Utilities										
B.3 Landscape and Irrigation										
C Upper Garden Renovation		\$ -	\$ 3,155,000.00	\$ -	\$ 3,155,000.00	\$ 1,710,986.00	\$ 1,268,014.00	\$ 176,000.00	\$ -	\$ 3,155,000.00
C.1 ADA Paths Routes and walkways										
C.2 Parking Lot										
C.3 Arbor Structure										
C.4 Landscape and Irrigation										
C.5 Staircase(s)										
C.6 Canopy Walkway										
D Gen. Conditions/ Contracting/Bonding			\$ 1,102,360.00	\$ -	\$ 1,102,360.00	\$ -	\$ 1,102,360.00	\$ -	\$ -	\$ 1,102,360.00
E Project / Construction Administration		\$ 460,000.00	\$ -	\$ -	\$ 460,000.00	\$ -	\$ 448,000.00	\$ 12,000.00	\$ -	\$ 460,000.00
E.1 Project Management										
E.2 Construction Administration										
E.3 Overhead										
E.4 Consultant Construction Engineering										
F Permits/ Fees/ Escalation		\$ -	\$ -	\$ 394,000.00	\$ 394,000.00	\$ -	\$ 394,000.00	\$ -	\$ -	\$ 394,000.00
F.1 Trade and Development										
F.2 System Development Charges										
Contingency (Performing Agency Controlled)		\$ -	\$ -	\$ 425,000.00	\$ 425,000.00	\$ -	\$ 425,000.00	\$ -	\$ -	\$ 425,000.00
Contingency (Funding Agency Controlled)		\$ -	\$ -	\$ 142,180.00	\$ 142,180.00	\$ 142,180.00	\$ -	\$ -	\$ -	\$ 142,180.00
Fiscal Year Total =		\$ -	\$ -	\$ 7,492,040.00	\$ 7,492,040.00	\$ 1,853,166.00	\$ 5,450,874.00	\$ 188,000.00	\$ -	\$ 7,492,040.00
RACC Percent for Art PROJECT TOTAL =		\$ -	\$ -	\$ 152,000.00	\$ 152,000.00	\$ 37,820.00	\$ 114,180.00	\$ -	\$ -	\$ 152,000.00
PROJECT TOTAL =		\$ -	\$ -	\$ 7,644,040.00	\$ 7,644,040.00	\$ 1,890,986.00	\$ 5,565,054.00	\$ 188,000.00	\$ -	\$ 7,644,040.00
IGA TOTAL AUTHORIZED AMOUNT =						\$ 1,890,986.00				\$ 1,890,986.00