

**BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON**

RESOLUTION NO. 2020-005

Authorizing the County Chair to Execute a Second Amendment to an Intergovernmental Agreement with the Portland Development Commission, doing business as Prosper Portland, for the Administration of the PropertyFit Program.

The Multnomah County Board of Commissioners Finds:

- A. In 2015, Multnomah County ("County") established the Commercial Property Assessed Clean Energy ("CPACE") program in Resolution 2015-097. The CPACE program facilitates private loans to commercial, industrial, and certain multifamily residential building owners and developers to assist with financing energy-efficiency upgrades, renewable energy development such as roof-top solar, energy storage, electric vehicle storage, water efficiency and seismic rehabilitation projects. Those private loans are secured by a lien on the property that has the same priority as a lien for assessments for local improvements.
- B. "PropertyFit" is the branded name for the CPACE program.
- C. In Resolution 2015-098, the Board of County Commissioners authorized the County Chair to enter into an Intergovernmental Agreement ("IGA") with the Portland Development Commission, now doing business as Prosper Portland ("Prosper Portland"), to serve as the PropertyFit program administrator.
- D. In 2016, the County and Prosper Portland executed the First Amendment to the IGA to, among other things, recognize statutory changes that allowed the PropertyFit program to help with financing for seismic rehabilitation.
- E. To align the PropertyFit program with national best practices, the County's enforcement mechanism for PropertyFit liens will transition from certifying delinquent liens to the tax rolls to the mechanism described in the local improvement district statutes, ORS 223.505 to 223.650, as authorized by ORS 223.680(7)(c) and ORS 223.685(6)(c).
- F. Through this partnership with Prosper Portland, and their work as program administrator for PropertyFit, Multnomah County is able to make progress on Climate Action Plan goals while minimizing administrative burdens to County programs.

The Multnomah County Board of Commissioners Resolves:

1. The County Chair is authorized to sign the Second Amendment to the Intergovernmental Agreement Between Portland Development Commission (doing business as Prosper Portland) and Multnomah County for the Administration of the PropertyFit Program (formerly CPACE Program) in Multnomah County, in substantially the same form attached hereto as Exhibit 1. Board approval is needed for any modification or amendment that results in a material increase or decrease in the obligations of, or benefits to, the County under the IGA or the Second Amendment.

ADOPTED this 9th day of January, 2020.




BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

Deborah Kafoury

Deborah Kafoury, Chair

REVIEWED:
JENNY M. MADKOUR, COUNTY ATTORNEY
FOR MULTNOMAH COUNTY, OREGON

By 
William Glasson, Senior Assistant County Attorney

**SECOND AMENDMENT
to
INTERGOVERNMENTAL AGREEMENT**

**Between Portland Development Commission (doing business as Prosper Portland)
and
Multnomah County
For the Administration of the PropertyFit Program (formerly CPACE Program) in
Multnomah County**

This second amendment (“Second Amendment”) to the Intergovernmental Agreement for the Administration of the PropertyFit Program (the “IGA”) is authorized by ORS 190.010 and is made and entered into as of January 17, 2020 (the “Effective Date”), by and between Multnomah County (the “County”), a political subdivision of the state of Oregon, and Portland Development Commission (“PDC”), doing business as Prosper Portland (“Prosper Portland”), in its capacity as an urban renewal agency under ORS Chapter 457 and Chapter 15 of the City of Portland Charter. County and Prosper Portland may be referred to jointly in this Second Amendment as the “Parties” and individually as a “Party.”

RECITALS

- A. The Parties entered into the IGA on September 22, 2015. On December 21, 2016, the Parties signed the first amendment to the IGA (“First Amendment”). The IGA and its First Amendment authorize and delegate the PDC, to act on behalf of County, as the Program Administrator of the Multnomah County PropertyFit Program (“PropertyFit Program”), formerly the Commercial Property Assessed Clean Energy Program (“CPACE”).
- B. Certain modifications to the collection process agreed to by the Parties have made it necessary to amend the IGA.
- C. The Parties agree to amend the IGA to include Prosper Portland’s enforcement role in the default collection process authorized pursuant to ORS 223.680(7)(c) and 223.685(6)(c).

DEFINITIONS

As used in this Second Amendment, the capitalized terms below are defined as follows.

“Acts” means ORS 223.680 and 223.685, as amended.

“Benefit Assessment Lien” means the special assessment lien levied against the Qualifying Real Property securing the PropertyFit Financing, pursuant to ORS 223.680(7)(a) and 223.685(6)(a).

“Building Resiliency Improvements” means those certain utility and seismic rehabilitation improvements to the Qualifying Real Property that meet the requirements of the Acts and Program Guide.

“Capital Provider” means the entity that is providing financing under the PropertyFit Program.

“Capital Provider Agreement” means the agreement entered into by Capital Provider and the Program Administrator as part of the PropertyFit Financing transaction.

“Closing Documents” mean the Financing Agreement, the Capital Provider Agreement, the Notice of Benefit Assessment Lien and any other agreements executed in connection with the PropertyFit Financing transaction.

“Financing Agreement” means the agreement entered into by the Capital Provider and the Property Owner as part of the PropertyFit Financing transaction.

“Notice of Benefit Assessment Lien” means the lien the Program Administrator records against the Qualifying Real Property, securing the PropertyFit Financing pursuant to the Act.

“Program Administrator” means Prosper Portland, acting on behalf of County under this IGA, as amended.

“Program Guide” means the guide, published by and periodically updated by the Program Administrator, that documents the statutory and program requirements to which PropertyFit Program participants must adhere. The current version of the Program Guide may be found at <http://www.propertyfitoregon.com/resources>.

“Property Owner” means the legal owner of title to the Qualifying Real Property.

“Property Owner Agreement” means the agreement entered into by the Program Administrator and the Property Owner agreeing to the terms of the PropertyFit Financing transaction.

“PropertyFit Financing” means the financing provided by the Capital Provider to fund certain Building Resiliency Improvements on Qualified Real Property as part of the PropertyFit Program.

“PropertyFit Program” means the program provided for under the Acts for the financing and construction of Building Resiliency Improvements on Qualifying Real Property.

“Qualifying Real Property” and “Qualifying Real Properties” mean the real property that qualifies to receive PropertyFit Financing for Building Resiliency Improvements under the PropertyFit Program.

TERMS

The Parties agree as follows:

1. All references to Portland Development Commission and PDC are changed to Prosper Portland.
2. **Section 1**, as amended in the First Amendment, is replaced in its entirety as follows:

The PropertyFit Program is a new initiative which County and Prosper Portland are implementing on a cooperative basis. The PropertyFit Program is a mechanism designed to support the financing of disaster and climate resiliency investments in Qualifying Real Property. The PropertyFit Program serves a public purpose by reducing carbon emissions, decreasing water use, and decreasing seismic life safety risks through energy conservation, renewable power, and seismic rehabilitation. The PropertyFit Program leverages the security of County's lien enforcement authority to increase access to capital for Building Resiliency Improvement projects. Under the PropertyFit program, Building Resiliency Improvements are funded by a Capital Provider and secured by a Notice of Benefit Assessment Lien recorded against the Qualifying Real Property. The PropertyFit Program is designed to increase building resiliency across Qualifying Real Properties in Multnomah County.

3. **Section 6.d.ii**, as amended in the First Amendment, is amended as follows:

County delegates and authorizes Prosper Portland, on its behalf, to perform the following functions of a Program Administrator, as specifically set forth in ORS 223.680 and 223.685, including but not limited to executing all Closing Documents and such other documents required to be executed by County under the PropertyFit Program:

* * *

(g) Subject to the limitations included in **Section 7**, this delegation does not preclude County from exercising the authority granted to it by ORS 223.680 and 223.685 independently from Prosper Portland.

* * *

4. **Section 8**, as amended in the First Amendment, is replaced in its entirety as follows:

8. Enforcement and Collection of Delinquent PropertyFit Financing.

- a. Prosper Portland and County agree to employ the lien collection methods authorized in ORS 223.680(7)(c) and 223.685(6)(c).

- b. Once the Closing Documents have been executed by the Property Owner and Prosper Portland, Prosper Portland will execute and record a Notice of Benefit Assessment Lien in County deed records.
- c. The Benefit Assessment Lien will be imposed at the time the PropertyFit Financing is closed. The initial Notice of Benefit Assessment Lien will be imposed based upon the estimated amount of the PropertyFit Financing. At the Capital Provider's discretion and instruction, the Notice of Benefit Assessment Lien may be modified at the completion of construction to reflect the final amount of the PropertyFit Financing. County delegates and authorizes Prosper Portland, on its behalf, to:
 - i. Execute and record any Notice of Benefit Assessment Lien or modification;
 - ii. Assign the payment stream secured by the Benefit Assessment Lien to the Capital Provider; and
 - iii. Execute and record documents evidencing satisfaction of the Notice of Benefit Assessment Lien when the PropertyFit Financing is paid in full.
- d. If a Property Owner becomes delinquent on the PropertyFit Financing and Benefit Assessment Lien, the Capital Provider may request that Prosper Portland enforce the delinquent lien pursuant to ORS 223.505 to 223.650.
- e. It is the intention of the Parties that the purchaser of the Qualifying Real Property will be responsible for all fees, penalties and costs of collection and foreclosure incurred by Prosper Portland and County.
- f. Upon receipt of a complete enforcement request (including payment of any applicable foreclosure initiation fees) from a Capital Provider, Prosper Portland shall provide a written list of delinquent liens to the Deputy Director of the Multnomah County Division of Assessment, Taxation, and Recording ("DART"), the Multnomah County Chief Financial Officer ("CFO"), and the Director of the Office of Sustainability ("Sustainability").
 - i. The list of delinquent liens shall include the name of the Property Owner, the delinquent amount, the description of the Qualifying Real Property, the Notice of Benefit

Assessment Lien recording number, and any other facts necessary to be given.

- f. Upon receipt of the list of delinquent liens, DART shall confirm the liens are entered in the Multnomah County lien docket and shall provide written confirmation of same to Prosper Portland along with an accounting of the costs incurred to confirm the list, based on DART's fee schedule. Prosper Portland shall include those fees in the costs of sale it recovers as part of the foreclosure proceedings and shall remit those fees to DART upon collection.
- g. Upon receipt of the confirmation from DART, Prosper Portland, on behalf of County and the Capital Provider, shall proceed to collect the delinquent lien(s) as provided in ORS 223.505 to 223.650, and all other applicable statutes. Prosper Portland shall not foreclose or collect a delinquent lien by suit in equity under ORS 223.605 to 223.650 without prior written consent from the CFO and Sustainability.
- h. Prosper Portland shall provide copies of all notices required in ORS 223.505 to 223.650 to DART, the CFO, and Sustainability.
- i. If the Qualifying Real Property is sold for cash at the foreclosure sale, County shall remit the proceeds to Prosper Portland within 5 days of receipt. Prosper Portland shall disburse the proceeds in accordance with ORS 223.525 (2019).
- j. Pursuant to ORS 223.545, if no bid is received for the sale of the Qualifying Real Property, and upon written direction from the Capital Provider and Prosper Portland, County, on behalf of the Capital Provider, may purchase the Qualifying Real Property by credit bidding the amount of the delinquent lien, interest, fees and the cost of advertising and sale.
 - i. If County, on behalf of the Capital Provider, purchases the Qualifying Real Property under this method, the certificate of sale will be issued to County, by and through Prosper Portland. Prosper Portland, on behalf of County, shall immediately assign the certificate of sale to the Capital Provider until the Qualifying Real Property is redeemed, or the redemption period expires, whichever occurs first. Prosper Portland will cause the assignment to the Capital Provider to be recorded in the lien records.
 - ii. If the Certificate of Sale is assigned to the Capital Provider, the Capital Provider, at its own expense, will be responsible

for protecting, preserving and maintaining the Qualified Real Property during the redemption period.

- iii. It is the intention of the Parties that, after a foreclosure sale, neither the County or Prosper Portland will take possession of or be responsible for protecting, preserving and maintaining the Qualified Real Property.
- k. Prosper Portland shall carry out all redemption procedures as required by law. At Prosper Portland's instruction and direction, County will refund the purchase price to the foreclosure purchaser, except as provided below:
 - i. If the Qualifying Real Property is subsequently redeemed, and the foreclosure purchaser wants to be reimbursed for costs incurred to protect, preserve and maintain the Qualified Real Property during the redemption period, the costs must have been preapproved, in writing, by Prosper Portland at its sole discretion. In no event is the foreclosure purchaser entitled to reimbursement of an amount greater than the 10% penalty paid by the redemptioner.
 - ii. If the Qualifying Real Property is subsequently redeemed, at Prosper Portland's direction, County, shall disburse all or part of the penalty paid by the person redeeming the Qualifying Real Property to the foreclosure purchaser as reimbursement for preapproved costs incurred in maintaining the Qualifying Real Property during the redemption period. Any penalty sums remaining after payment of these expenses shall be retained by Prosper Portland.
- l. After the expiration of the redemption period, if the Qualifying Real Property is not timely redeemed, County delegates and authorizes Prosper Portland to execute and record a deed of conveyance to the purchaser. If the Qualifying Real Property was sold by credit bid to County and the Certificate of Sale was subsequently assigned to the Capital Provider, Prosper Portland shall execute and record a deed of conveyance to the Capital Provider.
- m. Within three (3) days after the sale of the Qualifying Real Property, Prosper Portland shall update the delinquent list to include the sale information and provide the updated list to DART, CFO and Sustainability.

- i. DART shall make any necessary entries into the lien docket based upon the updated delinquent list.
5. The remainder of the IGA, as amended by the First Amendment, remains unchanged and in full force and effect.
6. The undertaking provided for under this Second Amendment constitutes an authorization by a public body under ORS 190.010 for a Party to perform one or more inherent governmental responsibilities of or for the other Party. As a result, the consent of the Board of County Commissioners is required for the County to sign the Second Amendment, and for any material modification or amendment to the IGA, as amended by the Second Amendment. The Second Amendment may only be amended or supplemented by a writing that is signed by a duly authorized representative of each Party, clearly recites the Parties' understanding and intent to amend the Second Amendment, and clearly and with specificity describes the terms to be amended or supplemented. The Second Amendment may be executed in multiple counterparts and may be electronically signed. Any verified electronic signatures appearing on the Contract are the same as handwritten signatures for the purposes of validity, admissibility, and enforceability. Any reproduction of the Contract made by reliable means is considered an original.

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

PROSPER PORTLAND

Approved as to form:

By: _____
Kimberly Branam
Executive Director

General Counsel

Date: _____

MULTNOMAH COUNTY

Approved as to form:

By: _____

Assistant County Attorney

Title: _____

Date: _____