

EXHIBIT H – CONSTRUCTION FUNDING AND DISBURSEMENT AGREEMENT

On _____, _____ (the “**Property Owner**”) and the City of Portland acting by and through the Portland Development Commission doing business as Prosper Portland (the “**Capital Provider**”) entered into a PropertyFit Financing Agreement (the “**Financing Agreement**”) to finance Building Resiliency Improvements to the Qualified Real Property as described in Exhibit A to the Financing Agreement and more commonly referred to as _____.

Similarly, Property Owner entered into a contract with _____ (the “**Contractor**”) for the construction and installation of the Energy Improvement (the “**Construction Contract**”). This Construction Funding and Disbursement Agreements (the “**Disbursement Agreement**”) is an exhibit to the PropertyFit Financing Agreement and details the terms and conditions under which proceeds from the PropertyFit Financing will be disbursed.

AGREEMENT

Now, therefor, the Parties hereby agree as follows:

ARTICLE I: DEFINITIONS

Capitalized terms used herein have the meanings given such terms as set forth in SCHEDULE I – SCHEDULE OF DEFINITIONS attached to this agreement.

ARTICLE II: CONSTRUCTION ACCOUNT, BUDGET AND INSPECTIONS

SECTION 2.01. Construction Account

Capital Provider has agreed to provide Property Owner with PropertyFit Financing in the amount of \$ _____ to construct and install the Building Resiliency Improvements under the terms and conditions of the Transaction Documents. The proceeds from the PropertyFit Financing will be held by Capital Provider in an account (the “**Construction Account**”) for periodic disbursement to pay for costs associated with the construction or installation of the Building Resiliency Improvements (the “**Project**”) as detailed in the Budget (the “**Disbursement(s)**”). Funds from the Construction Account will be disbursed by Capital Provider in accordance with, and subject to, the terms and conditions set forth in this Disbursement Agreement.

SECTION 2.02. Budget

- a. The Budget for construction of the Project submitted by the Property Owner to Capital Provider is attached to this Exhibit H as ATTACHMENT 1-H – PROPERTYFIT PROJECT BUDGET (the “**Budget**”) and is an accurate estimate of all cost necessary to construct the Project (the “**Project Costs**”) in accordance with the Construction Documents. Project Costs are not expected to exceed the cost therefore set forth in the Budget. All Construction Documents and the Budget have been approved by Capital Provider and shall not be modified subsequent thereto in any material respect without Capital Provider's prior written approval, not to be unreasonably withheld, conditioned or delayed.
- b. Property Owner may apply any Project Costs savings realized with respect to any Budget line item to increase the amount of any other line item in the approved Budget, subject in each instance to Capital Provider’s review and approval, which approval shall not be unreasonably withheld.
- c. A construction contingency (the “**Construction Contingency**”) is a line item on the Budget and is intended to provide funds in the event of unforeseen costs or required building code corrections. The Construction Contingency shall only be available to Property Owner upon compliance with the disbursement procedures set forth in Sections 3.01 and 3.02. If at any time prior to completion of construction, Capital Provider determines that the unused portion of the Construction Contingency is unreasonably low in relation to the amount of work remaining to complete the Project, Capital Provider may restrict or prohibit the use of the remaining portion of the Construction Contingency or require Property Owner to make a cash deposit into the Construction Account within a specified time period to bring the Construction Contingency up to a reasonable level, as determined by Capital Provider.
- d. All change orders to the Construction Contract must be approved by Capital Provider prior to implementation.
- e. Capital Provider may, at its sole discretion, withhold five percent (5.0%) of each of Disbursement to Property Owner to ensure performance by the Contractor (the “**Retainage**”). The withheld amount shall be retained and shall only be disbursed upon satisfaction of all applicable conditions precedent to the final disbursement as set forth in Section 3.02. In case of default, Capital Provider may, but is not obligated to, use the withheld amount to make any payments necessary to correct the default.
- f. The Property Owner is responsible for any costs in excess of the Budget. If at any time Capital Provider determines that the undisbursed funds in the Construction Account, together with any sums provided or to be provided by Property Owner, by other Non-PropertyFit lenders, or by any other third party are insufficient to complete the Project in accordance with the Construction Documents, Property Owner agrees, within fifteen (15) days after written notice from Capital Provider, to deposit such funds with Capital Provider as are necessary to enable the

Project to be so completed (the “**Financing in Balance**” requirement.) Capital Provider will deposit the additional funds in the Construction Account and control disbursement of those funds in the same manner as the PropertyFit Financing.

SECTION 2.03. Inspections

Capital Provider and their agents and representatives shall have the right at any reasonable time to enter upon the Qualified Real Property to inspect the Project, observe the work of construction, examine all records, materials, plans, specifications, work drawings and other matters relating to the construction, and verify that construction is progressing in compliance with the Budget and all Construction Documents; provided, however, such inspection by Capital Provider is solely for the purpose of protecting Capital Provider’s rights and interests, and shall under no circumstances impose any liability on Capital Provider or Local Government or result in a waiver of any default of Property Owner or be a representation that Property Owner is or will be in compliance with the Construction Documents or other applicable laws or requirements. In addition, Capital Provider may perform such examinations or energy audits as it may deem necessary or desirable to assure compliance with the Transaction Documents and the Act.

ARTICLE III: DISBURSEMENTS FROM CONSTRUCTION ACCOUNT

SECTION 3.01. Conditions Precedent to Initial and Periodic Disbursements. Capital Provider’s obligation to make any Disbursement of any PropertyFit Financing proceeds is subject to satisfaction of the following conditions precedent:

- a. Prior to the first Disbursement, Property Owner shall comply with all of the following conditions precedent:
 - i. The Plans shall have been approved by Capital Provider and the local jurisdiction in which the Qualified Real Property is located;
 - ii. Property Owner will have provided to Capital Provider copies of all Permits required to complete the Building Resiliency Improvements;
 - iii. Property Owner shall have secured a commitment(s) for all Non-PropertyFit financing described in ATTACHMENT 1-H –PROJECT BUDGET, which, when combined with Property Owner’s equity, Non-PropertyFit Financing and other third party resources will be sufficient, in Capital Provider's reasonable opinion, to complete the Project; and,
 - iv. The Budget shall have been approved in all respects by Capital Provider and Local Government.

- b. Each of Property Owner's representations and warranties contained in Article III of the Agreement shall be true and correct in all material respects as if made on and as of the date of such Disbursement;
- c. No order or notice shall have been given by any governmental agency stopping construction or stating that the work or construction is in violation of any law, ordinance, code or regulation, unless such order or notice has been rescinded and a copy of such rescission has been delivered to and shall be satisfactory to Capital Provider;
- d. No default shall have occurred and be continuing under the Agreement or any other Transaction Document, and no event shall have occurred that, with the giving of notice or passage of time or both, would constitute a default;
- e. All government agencies in which the Qualified Real Property is located have issued all necessary permits and licenses for the Project and same remain in full force and effect;
- f. The Contractor and all subcontractors shall have been paid for the amounts covered by prior disbursement requests and such parties have executed unconditional lien waivers for such prior disbursement and lien waivers conditioned on receipt of payment for the current disbursement;
- g. There shall have been no condemnation, casualty, or catastrophe affecting the security value of the Qualified Real Property;
- h. All change orders included in the Request for Disbursement which require Capital Provider's approval pursuant to Section 2.02(d) have been reviewed and approved by Capital Provider;
- i. No construction lien shall have been filed against the Qualified Real Property and Capital Provider shall have received a construction lien endorsement to its title policy confirming that no construction liens have been filed; and,
- j. The Financing in Balance requirement set forth in Section 2.03 shall be satisfied.

SECTION 3.02. Conditions Precedent to Final Disbursement. At the time of the final disbursement:

- a. Each of the conditions specified in Section 3.01 and Article IV shall be satisfied;
- b. All construction work, including all punchlist items, shall be completed as certified by the Property Owner, architect, Contractor, and all non-PropertyFit Financing sources;
- c. Capital Provider:
 - i. Shall have received copies of executed ATTACHMENT 5-H – INTERIM LIEN/CLAIM WAIVER(S) lien waivers, in form and substance reasonably satisfactory to Capital Provider, from the Contractor and all subcontractors who worked on the Project indicating that they have been paid for all work performed; and

- ii. The 75-day construction lien period shall have expired (without any liens having been filed);
or,
 - iii. Property Owner shall have obtained, at its option and expense, an early issue title policy insuring the lien of the Benefit Assessment against all construction liens that have been or may be filed against the Project.
- d. A completion notice shall have been posted in accordance with ORS 87.045 and Capital Provider shall have inspected (unless it waives inspection in its sole discretion) the Project to determine that it was completed in accordance with the Construction Documents and other applicable requirements;
- e. A certificate of occupancy (or its equivalent) shall have been issued for the Project and all other governmental approvals, licenses, or permits necessary for the use and/or occupancy of the Project shall have been obtained;
- f. Capital Provider shall have received from Property Owner all required reporting forms applicable to the Project in form and substance reasonably acceptable to Capital Provider and such supporting documentation as Capital Provider may request;
- g. Property Owner shall have submitted and Capital Provider shall have accepted and approved the Property Owner Certification substantially in the form of ATTACHMENT 6-H – FORM OF PROPERTY OWNER CERTIFICATION; and,
- h. Property Owner shall have satisfied the final disbursement checklist attached hereto as ATTACHMENT 7-H – FINAL DISBURSEMENT CHECKLIST.

SECTION 3.03. Amount and Frequency of Disbursements.

- a. Each Disbursement from the Construction Account by Capital Provider shall, at Capital Provider's election, either:
- i. Reimburse the Property Owner for Project Costs already incurred by the Property Owner;
or,
 - ii. Be disbursed directly to the Contractor and/or suppliers retained for the Project, for Project Costs incurred by the Property Owner in accordance with the Budget.
- b. Capital Provider may, in its sole discretion, determine the number and frequency of each Disbursement which shall only be made upon the Property Owner's compliance with the terms hereof and in such proportion of the total cost of that part of the work completed to Capital Provider's satisfaction, so that at all times the undisbursed portion of the Construction Account shall be sufficient, in Capital Provider's sole discretion, to complete the Project (including, without limitation, to pay all non-construction costs associated with the Project.)

- c. No Disbursement shall be made for materials not yet installed or incorporated into the Project, except that Capital Provider may agree, in its sole and absolute discretion, to make a Disbursement for such materials if:
 - i. They are in the custody of the Contractor, or stored on the Qualified Real Property or in a bonded warehouse and segregated from other items;
 - ii. They are covered by insurance; and
 - iii. They are protected against theft and damage in a commercially reasonable manner.
- d. Capital Provider shall have the right to make the final determination as to the amount of each Disbursement. In no event shall the amount of any Disbursement exceed an amount equal to (x) 100% the cost of the construction work in place at the Project, subject to the retainage provisions set forth in Section 2.02.e hereof, plus the amount of non-construction costs paid or payable by the Property Owner pursuant to the approved Budget as of the date of the requested Disbursement, less (y) the sum of all previous Disbursements.
- e. In no event shall the aggregate amount of all Disbursements exceed the sum of the PropertyFit Financing and any amounts deposited into the Construction Account by Property Owner as required under Section 2.02.f hereof.
- f. The final Disbursement will only be made upon full completion of the Project in accordance with the Plans and satisfaction of the conditions precedent set forth in Section 3.02 hereof.

SECTION 3.04. Disbursement Process. The request for a Disbursement of funds from the Construction Account shall be made in accordance with this Section 3.04 and shall be for one or more line items shown on the approved Budget;

- a. Property Owner shall initiate the disbursement process by submitting to Capital Provider a completed ATTACHMENT 2-H – AIA DOCUMENT G702 – APPLICATION AND CERTIFICATE FOR PAYMENT and ATTACHMENT 3-H – AIA DOCUMENT G703 – CONTINUATION SHEET. The “Description of Work” and “Scheduled Value” on the *Attachment 3-H* shall correspond with the line items detailed in the Budget approved by Capital Provider;
- b. Upon receipt of the completed *Attachment 2-H and 3-H*, Capital Provider, or its agent, will meet on-site with Property Owner and Contractor to review construction progress, and discuss the payment request, at which time Capital Provider will determine the percentage of the Project that is complete;
- c. Property Owner will make any necessary adjustments to the AIA forms and submit them to Capital Provider along with an executed ATTACHMENT 4-H – REQUEST FOR DISBURSEMENT, copies of invoices and billing statements, and corresponding ATTACHMENT 5-H – INTERIM LIEN/CLAIM

WAIVER(S) signed by the appropriate Contractor, subcontractor and material supplier to the Project;

- d. In addition to the conditions and restrictions set forth in this Disbursement Agreement, the Disbursements shall be subject to such other arrangements and procedures established by Non-PropertyFit capital providers to the Project and accepted by Capital Provider; and,
- e. Property Owner shall have submitted such additional documents as Capital Provider may reasonably require.

ARTICLE IV: COVENANTS

SECTION 4.01. Property Owner Covenants. Property Owner covenants as follows with respect to the Project:

- a. Property Owner covenants that there has been no material change in the Project financing as described in the Construction Documents, Budget and the Agreement.
- b. Property Owner will not commence construction work on the Project until Property Owner has substantially met the conditions precedent to initial disbursement under Section 3.01. Property Owner will commence construction within thirty (30) days after the date of the Agreement. All construction work will be done under and in accordance with building Permits issued by the appropriate governmental body of the local jurisdiction in which the Qualified Real Property is located.
- c. The Project will be constructed in a good, workmanlike, expeditious, and continuous manner. The Project shall be completed in accordance with the Construction Documents, as evidenced by the written certification of the Project architect and Contractor in form and substance satisfactory to Capital Provider, no later than the end of the Construction Period as defined in the Agreement (including any extensions approved by Capital Provider).
- d. During construction, Property Owner, at its expense, shall post at a visible location in front of the Project a sign identifying Capital Provider as facilitating the Project financing. The location and format of the sign shall be approved by Capital Provider prior to its display.
- e. All funds disbursed hereunder shall be used by Property Owner for costs:
 - i. Eligible for PropertyFit Financing; and ,
 - ii. That relate to the construction of the Project as shown on the Budget, and for no other purpose.
- f. Property Owner agrees to provide to Capital Provider upon Capital Provider's request supporting documentation of all costs incurred by Property Owner that are shown on the Budget, whether or not such costs are paid from PropertyFit Financing proceeds.

- g. The Contractor and subcontractors on the Project shall be registered and bonded in accordance with ORS Chapter 701 and, if required, shall be licensed by the local jurisdiction in which the Qualified Real Property is located.
- h. In addition to, and not in lieu of, any other insurance required under the Agreement and until completion of the Project, Property Owner shall:
 - i. Obtain and maintain builder's risk/course of construction insurance for the Project, written on an "all risks" basis with a coverage limit not less than the full replacement cost of all improvements located or to be located on the Qualified Real Property and naming Capital Provider as loss payee, and as additional insured, by endorsement, and Property Owner as the named insured;
 - ii. Cause its Contractor to obtain and maintain worker's compensation coverage, as required by Oregon law, and employer's liability insurance with a coverage limit of not less than \$1 million. Capital Provider shall also be named as additional insured, by endorsement on such coverage. Each such policy of insurance shall be written by a company or companies acceptable to Capital Provider and shall require at least 30 days' prior written notice to Capital Provider of cancellation or reduction of Coverage; and,
 - iii. If Property Owner fails to provide Capital Provider with evidence of the insurance coverage as required by this Disbursement Agreement or the Agreement, Capital Provider may purchase insurance at Property Owner's expense to protect Capital Provider's interest. This insurance may, but need not, also protect Property Owner's interest. If the Qualified Real Property becomes damaged, the coverage Capital Provider purchases may not pay any claim Property Owner makes or any claim made against Property Owner. Property Owner may later seek to cancel this coverage by providing evidence to Capital Provider that Property Owner has obtained the insurance coverage, with the required coverages and endorsements, elsewhere.

Property Owner is responsible for the cost of insurance purchased by Capital Provider. The cost of any Capital Provider purchased insurance may be added to the balance of the PropertyFit Financing and accrue interest at the Delinquency Rate until paid. The effective date of coverage may be the date Property Owner's prior coverage lapsed or the date Property Owner failed to provide proof of coverage.

The coverage Capital Provider purchases may be considerably more expensive than insurance Property Owner can obtain on its own and may not satisfy any need for property damage coverage or any mandatory liability insurance requirements imposed by applicable law.

REMAINDER OF PAGE INTENTIONALLY BLANK

IN WITNESS WHEREOF, the Property Owner, the Local Government and the Capital Provider have executed this Agreement as of the date first written above by and through their duly authorized representatives.

Property Owner

Capital Provider

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

LIST OF EXHIBIT/ATTACHMENTS/SCHEDULES REFERENCED WITHIN THIS PROPERTYFIT CONSTRUCTION FUNDING AND DISBURSEMENT AGREEMENT

SCHEDULE I – SCHEDULE OF DEFINITIONS

EXHIBIT A – LEGAL DESCRIPTION

EXHIBIT H – CONSTRUCTION FUNDING AND DISBURSEMENT AGREEMENT

ATTACHMENT 1-H –PROJECT BUDGET

ATTACHMENT 2-H – AIA DOCUMENT G702 – APPLICATION FOR CERTIFICATE FOR PAYMENT

ATTACHMENT 3-H – AIA DOCUMENT G703 – CONTINUATIONS SHEET

ATTACHMENT 4-H – REQUEST FOR DISBURSEMENT

ATTACHMENT 5-H – INTERIM LIEN/CLAIM WAIVER

ATTACHMENT 6-H – PROPERTY OWNER CERTIFICATION

ATTACHMENT 7-H – FINAL DISBURSEMENT CHECKLIST