

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

RESOLUTION NO. 2023-015

Authorizing the County Chair to Execute an Intergovernmental Agreement with 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 charging, 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 of local improvement districts.
- 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 execute an Intergovernmental Agreement (“IGA”) with Prosper Portland to serve as the PropertyFit program administrator. The IGA, which has been amended four times since its original adoption, is set to expire in March 2023.
- D. The partnership between Prosper Portland and the County has given rise to this growing Program.
- E. To continue growing PropertyFit, Prosper Portland and the County developed a new IGA that extends this partnership for an additional five years, eliminates language no longer necessary given the Program’s maturity, and builds on the prior IGA to incorporate learnings from nearly 8 years of partnership.
- F. Through this partnership with Prosper Portland, and their work as program administrator for PropertyFit, Multnomah County is able to make progress on climate goals while minimizing administrative burdens to County programs.

The Multnomah County Board of Commissioners Resolves:

The County Chair is authorized to sign the Intergovernmental Agreement between Prosper Portland and Multnomah County for the Administration of PropertyFit (formerly CPACE Program) in Multnomah County, in substantially the same form attached hereto as Exhibit 1.

ADOPTED this 9th day of March, 2023.



BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

Jessica Vega Pederson, Chair

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

By:

Katherine Thomas, Assistant County Attorney

SUBMITTED BY: John Wasiutynski, Director, Office of Sustainability

EXHIBIT 1

INTERGOVERNMENTAL AGREEMENT

**Between Prosper Portland
and
Multnomah County
For the Administration of the PropertyFit Program in Multnomah County**

This Intergovernmental Agreement for the Administration of the PropertyFit Program ("Agreement") is authorized by ORS 190.010 and is made and entered into as of April 8, 2023 (the "Effective Date"), by and between Multnomah County, a political subdivision of the State of Oregon (the "County"), and Prosper Portland (formerly the Portland Development Commission), in its capacity as the economic development and urban renewal agency of the City of Portland ("Prosper Portland"). The County and Prosper Portland may be referred to jointly in this Agreement as the "Parties" and individually as a "Party."

RECITALS

- A. Prosper Portland, as the economic development and urban renewal agency of the City of Portland, is granted broad powers to support economic development activities pursuant to Chapter 15 of the Portland City Charter.
- B. ORS 223.680 and 223.685 authorize the County to establish a program to assist owners of certain types of real property with the financing of utility improvements and seismic rehabilitation improvements, collectively, "Building Resiliency Improvements," more specifically defined below.
- C. Pursuant to the County's Resolutions No. 2015-097 and 2016-118, the County has established the PropertyFit Program, formerly known as the Commercial Property Assessed Clean Energy Program or CPACE, to support property owners in performing Building Resiliency Improvements to their property.
- D. The Parties originally entered into an Intergovernmental Agreement dated September 22, 2015 (the "Original IGA"), whereby the Parties agreed that Prosper Portland would administer the PropertyFit Program on behalf of the County and in accordance with applicable law.
- E. The Original IGA expires on March 22, 2023, and the Parties wish to enter into a new intergovernmental agreement restating their agreement for Prosper Portland's continued administration of the PropertyFit program on behalf of the County.
- F. Upon the Effective Date, this Agreement will supersede and fully replace the Original IGA and all prior amendments to the Original IGA.

NOW, THEREFORE, the Parties agree as follows:

AGREEMENT

1. DEFINITIONS. As used in the Agreement, the capitalized terms below are defined as follows:

- 1.1. "Acts" means ORS 223.680 and 223.685, as amended.
- 1.2. "Benefit Assessment Lien" means the special assessment lien levied against the Qualifying Real Property securing the PropertyFit Financing, pursuant to the Acts.
- 1.3. "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.
- 1.4. "Certificate of Sale" means the certificate issued by the Multnomah County treasurer, pursuant to ORS 223.550 and Multnomah County Code Section 25.230.
- 1.5. "Capital Provider" means the entity that is providing financing under the PropertyFit Program.
- 1.6. "Capital Provider Agreement" means the agreement entered into by Capital Provider and the Program Administrator as part of the PropertyFit Financing transaction.
- 1.7. "Closing Documents" mean the Financing Agreement, the Capital Provider Agreement, the Property Owner Agreement, the Benefit Assessment Lien and any other agreements executed in connection with the PropertyFit Financing transaction.
- 1.8. "Financing Agreement" means the agreement entered into by the Capital Provider and the Property Owner as part of the PropertyFit Financing transaction.
- 1.9. "Program Administrator" means Prosper Portland, acting on behalf of the County as administrator of the PropertyFit Program under this Agreement.
- 1.10. "Program Guide" means the guide, published by and periodically updated by the Program Administrator with agreement of the County, 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>.
- 1.11. "Property Owner" means the legal owner of title to the Qualifying Real Property.
- 1.12. "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.
- 1.13. "PropertyFit Financing" means the financing provided to the Property Owner by the Capital Provider to fund certain Building Resiliency Improvements on Qualifying Real Property as part of the PropertyFit Program.
- 1.14. "PropertyFit Program" means the program provided for under the Acts and established in the County's Resolutions No. 2015-097 and 2016-118 for the financing and construction of Building Resiliency Improvements on Qualifying Real Property.

- 1.15. “Qualifying Real Property” and “Qualifying Real Properties” mean the real property, including multifamily residential dwellings with five or more units or commercial or industrial buildings, that qualifies to receive PropertyFit Financing for Building Resiliency Improvements under the PropertyFit Program and the Acts.
2. DESCRIPTION OF THE PROPERTYFIT PROGRAM. The PropertyFit Program provides an innovative financing structure that enables a Property Owner of Qualifying Real Property to obtain long-term financing for Building Resiliency Improvements to their property. These improvements provide public benefits that conserve energy and water, reduce greenhouse gas emissions, improve air quality, reduce energy costs and reduce life and safety risk in the event of an earthquake. They also foster economic growth, creating jobs and improving property values.

PropertyFit Financing is provided by private Capital Providers and secured with a Benefit Assessment Lien that has the same priority as a lien assessed for local improvements. The local improvement lien is an established mechanism used by municipalities for decades to finance projects that provide a public benefit such as street improvements, water, sewer, and street lighting.

3. TERM. The term of this Agreement shall begin on the Effective Date and end on the fifth anniversary of the Effective Date, unless otherwise terminated early in accordance with the terms of this Agreement. This Agreement may be renewed upon approval by both Parties as reflected in **Section 25**.
4. TERMINATION.
 - 4.1. This Agreement may be terminated by either Party upon 180 days written notice.
 - 4.2. Prior to termination as provided in **Section 4.1**, the Parties shall take steps necessary to ensure minimal interference with pending and fully funded PropertyFit-financed projects and execute all documents necessary to ensure that termination of this Agreement does not unreasonably disrupt the PropertyFit Program.
 - 4.3. Upon notice of intent to terminate under **Section 4.1**, Prosper Portland shall cease issuing new administrative approvals for PropertyFit Financing transactions and shall prepare the files and records of all pending and closed PropertyFit Financing transactions for transfer to the County or its designee. In preparing records, Prosper Portland shall include all information reviewed by the Program Administrator during the origination of the PropertyFit projects and payment histories, outstanding balances, and collection records, maintained by Prosper Portland in its role as Program Administrator.
 - 4.4. **Sections 8, , 11, 12, and 13** of will survive termination of this Agreement.
5. ADMINISTRATION OF THE PROPERTYFIT PROGRAM.
 - 5.1. For decisions regarding the administration of the PropertyFit Program or amendments to the Program Guide that require the consent of each Party:

- 5.1.1. Prosper Portland’s Board of Commissioners designates the Executive Director of Prosper Portland as the decision maker for Prosper Portland.
- 5.1.2. The Chair of the County designates the Director of the Office of Sustainability (“Sustainability Director”) as the decision maker for the County.
- 5.2. The Parties will allocate adequate staff resources to effectively and efficiently administer the PropertyFit Program.
- 5.3. Development of the Program Guide:
 - 5.3.1. Prosper Portland and the County have developed the Program Guide, which sets forth the guidelines and requirements for the administration of the PropertyFit Program. The current version of the Program Guide is attached to this Agreement as **Exhibit A**.
 - 5.3.2. Amendment of the Program Guide must be made in writing and agreed to by the persons identified in **Section 5.1**.
 - 5.3.3. For purposes of federal copyright law, Prosper Portland and the County are joint owners of the Program Guide and in all subsequent amendments.
- 5.4. Appointment and Delegation of Program Administration:
 - 5.4.1. Prosper Portland shall serve as the Program Administrator for the PropertyFit Program.
 - 5.4.2. The County delegates to Prosper Portland the authority to perform the following functions of a Program Administrator on behalf of the County, as specifically set forth in the Acts, including but not limited to executing all Closing Documents and such other documents required to be executed by the County under the PropertyFit Program:
 - 5.4.2.1. Evaluate and determine eligibility of Building Resiliency Improvements for participation in the PropertyFit Program consistent with the Acts and the requirements set forth in the Program Guide.
 - 5.4.2.2. Make exceptions to the requirements set forth in the Program Guide with the written consent of the Sustainability Director or the Sustainability Director’s designee.
 - 5.4.2.3. Impose requirements and conditions on PropertyFit Financings that are designed to ensure timely repayment.
 - 5.4.2.4. Verify that the Qualifying Real Property does not have delinquent property taxes owing.
 - 5.4.3. The County delegates to Prosper Portland the authority to develop a capitalization strategy for the PropertyFit Program which includes, but is not limited to, direct funding of PropertyFit Financing by private lenders.

- 5.4.4. Subject to the limitations included in **Section 6**, the delegation described in **Section 5.4** do not preclude the County from exercising the authority granted to it by the Acts independently from Prosper Portland.
- 5.4.5. Prosper Portland shall be responsible for meeting any performance standards jointly established by the Parties.
6. **EXCLUSIVITY.** The Parties agree that Prosper Portland shall be the exclusive Program Administrator of the PropertyFit Program on behalf of the County. If the County determines that there are markets that would be better served by another administrator, the Parties may negotiate for the removal of those markets from Prosper Portland's duties as Program Administrator, in lieu of terminating this Agreement.
7. **ENFORCEMENT AND COLLECTION OF DELINQUENT LOANS.**
- 7.1. The Parties agree to employ the lien collection methods authorized in ORS 223.680(7)(c) and ORS 223.685(6)(c), as amended.
- 7.2. Once the Closing Documents of the PropertyFit Financing transaction have been executed by the Property Owner and Prosper Portland, Prosper Portland shall execute and record a Benefit Assessment Lien in the official records of Multnomah County, Oregon.
- 7.3. The Benefit Assessment Lien will be imposed at the time the PropertyFit Financing is closed. The initial Benefit Assessment Lien will be imposed based upon the estimated amount of the PropertyFit Financing. At the Capital Provider's discretion and instruction, the Benefit Assessment Lien may be modified at the completion of construction to reflect the final amount of the PropertyFit Financing. The County delegates to Prosper Portland as Program Administrator the authority to:
- 7.3.1. Execute and record any Benefit Assessment Lien or modification related to the PropertyFit Financing;
- 7.3.2. Assign the payment stream secured by the Benefit Assessment Lien to the Capital Provider; and
- 7.3.3. Execute and record documents evidencing satisfaction of the Benefit Assessment Lien when the PropertyFit Financing is paid in full.
- 7.4. If a Property Owner becomes delinquent on the PropertyFit Financing, the Capital Provider may request that Prosper Portland enforce the Benefit Assessment Lien pursuant to ORS 223.505 to 223.650.
- 7.5. It is the intention of the Parties that any purchaser of the Qualifying Real Property through a foreclosure process on a Benefit Assessment Lien will be responsible for all fees, penalties and costs of collection and foreclosure incurred by the Parties.

- 7.6. 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 Sustainability Director.
- 7.7. The list of delinquent liens shall include the name of the Property Owner, the delinquent amount, the description of the Qualifying Real Property, the Benefit Assessment Lien recording number, and any other facts necessary to be given.
- 7.8. 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, based on DART's fee schedule, to confirm the list. 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.
- 7.9. Upon receipt of the confirmation from DART, Prosper Portland, on behalf of the 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 Director.
- 7.10. Prosper Portland shall provide copies of all notices required in ORS 223.505 to 223.650 to DART, CFO, and Sustainability Director.
- 7.11. If the Qualifying Real Property is sold for cash at the foreclosure sale, the County shall remit the proceeds to Prosper Portland within five business days of receipt. Prosper Portland shall disburse the proceeds in accordance with ORS 223.525.
- 7.12. 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, the 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.
 - 7.12.1. If the County, on behalf of the Capital Provider, purchases the Qualifying Real Property as provided in this **Section 7.11**, the Certificate of Sale shall be issued to the County, by and through Prosper Portland. Prosper Portland, on behalf of the 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 shall cause the assignment to the Capital Provider to be recorded in the official records of Multnomah County, Oregon.
 - 7.12.2. 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 Qualifying Real Property during the redemption period.

- 7.12.3. 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 Qualifying Real Property.
- 7.13. Prosper Portland shall carry out all redemption procedures as required by law. At Prosper Portland's instruction and direction, the County will refund the purchase price to the foreclosure purchaser, except as provided below:
- 7.13.1. 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 Qualifying 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.
- 7.13.2. If the Qualifying Real Property is subsequently redeemed, at Prosper Portland's direction, the 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 will be retained by Prosper Portland.
- 7.14. After the expiration of the redemption period, if the Qualifying Real Property is not timely redeemed, the 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 the 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.
- 7.15. Within three 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 Director.
- 7.15.1. DART will make any necessary entries into the lien docket based upon the updated delinquent list.

8. RECORDS.

- 8.1. Prosper Portland shall keep proper books of account and records on all activities associated with Prosper Portland's role as Program Administrator of the PropertyFit Program ("Records"). Prosper Portland shall maintain the Records in accordance with generally accepted accounting principles and shall retain the Records in accordance with the applicable public record retention schedules.
- 8.2. Each Party and its authorized representative(s) shall have access to the Records of the other that are related to this Agreement for the purpose of examination, copying and audit, unless otherwise limited by law. Any examination and copying of Records shall be at the reviewing Party's sole expense.

8.3. Access to Records is not limited to the required retention period(s). A Party and its authorized representative(s) shall have access to the Records at any reasonable time for as long as the Records are maintained.

9. REPORTING.

9.1. The Parties agree to meet on at least a quarterly basis to review the Program Administrator's performance under the terms of this Agreement unless the meeting is waived by mutual agreement.

9.2. Prosper Portland shall provide an annual report to the County that includes: a summary of all new originations; collection, payoff, and foreclosure activities; and a general description of the types of eligible improvements financed in each PropertyFit Program project.

9.3. Prosper Portland shall produce periodic reports on program outcomes as requested by the governing bodies of Prosper Portland and the County.

10. ADMINISTRATIVE COST RECOVERY. As Program Administrator, Prosper Portland is authorized to establish a fee structure to recover its costs related to the development and on-going administration of the PropertyFit Program.

11. AUDITS.

11.1. The County, either directly or through a designated representative(s), may conduct financial and performance audits on Prosper Portland's administration of the PropertyFit Program.

11.2. The County will provide Prosper Portland with 30 days notice of its intent to conduct an audit to enable Prosper Portland to assemble the necessary materials and schedule adequate staff resources to support the audit process.

11.3. Audits will be at the County's sole expense. Prosper Portland shall correct any deviations discovered as a result of the audit.

11.4. In the event of an audit, Prosper Portland agrees to provide the designated auditor with reasonable access to Prosper Portland employees and make all such PropertyFit Program financial, performance and compliance Records available to the auditor.

12. REPRESENTATIONS AND WARRANTIES.

12.1. The County has full power, authority, and legal right to enter this Agreement and to incur and perform its obligations hereunder. The undertaking provided for under this Agreement 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 Agreement, and for any material modification or amendment to the Agreement, except as provided in **Section 25**.

12.2. Prosper Portland has full power, authority, and legal right to execute and deliver this Agreement and to incur and perform its obligations hereunder. The execution and performance of this Agreement by Prosper Portland has been duly authorized by all necessary action of Prosper Portland's Board of Commissioners.

13. INDEMNIFICATION.

13.1. Subject to the conditions and limitations of the Oregon Constitution and the Oregon Tort Claims Act, ORS 30.260 through 30.300, the County shall indemnify, defend and hold harmless Prosper Portland from and against all liability, loss and costs arising out of or resulting from the acts of the County, its officers, employees and agents in the performance of this Agreement.

13.2. Subject to the conditions and limitations of the Oregon Constitution and the Oregon Tort Claims Act, ORS 30.260 through 30.300, Prosper Portland shall indemnify, defend and hold harmless the County from and against all liability, loss and costs arising out of or resulting from the acts of Prosper Portland, its officers, employees and agents in the performance of this Agreement.

14. RIGHTS AND REMEDIES UPON EVENT OF DEFAULT.

14.1. If either Party commits a material breach or material default in the performance or observance of any of its obligations under this Agreement, and such breach or default continues for a period of 30 days after delivery by the other Party of written notice reasonably detailing such breach or default, then the non-breaching or non-defaulting Party shall have the right to terminate this Agreement, with immediate effect, by giving written notice to the breaching or defaulting Party.

14.2. All rights and remedies provided in this Agreement are cumulative and not exclusive of any other rights or remedies that may be available to the Parties, whether provided by law, equity, statute, in any other agreement between the Parties or otherwise.

14.3. A Party's failure to exercise or delay in exercising any right, power or privilege under this Agreement shall not operate as a waiver; nor shall any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof.

14.4. All costs and expenses incurred in connection with the negotiation, preparation and enforcement of this Agreement, including, without limitation, all fees and expenses of attorneys shall be borne solely by the respective Party who incurred them, and the other Party shall have no liability in respect to such costs and expenses.

15. NOTICE. Any notice required or permitted under this Agreement shall be in writing and shall be deemed effective (a) when actually delivered in person, (b) one business day after deposit with a commercial courier service for "next day" delivery, (c) two business days after having been deposited in the United States mail as certified or registered mail, or (d) when transmitted by electronic mail (receipt confirmed), addressed to the Parties as follows:

If to Prosper Portland:
Shelly Haack
PropertyFit Program Administrator
Prosper Portland
220 NW 2nd Ave, Suite 200
Portland, OR 97209
haacks@prosperportland.us
503-360-4555

If to the County:
John Wasitynski
Director, Office of Sustainability
Multnomah County
501 SE Hawthorne, Suite 600
Portland, OR 97214
john.wasitynski@multco.us
503- 988-3193

With a copy to:
Prosper Portland General Counsel
220 NW 2nd Ave, Suite 200
Portland, OR 97209
LegalNotice@ProsperPortland.us

16. ORDER OF PRECEDENCE. In the event of any inconsistent or incompatible provisions, the Oregon Revised Statutes shall take precedence, followed by the provisions of this Agreement, and then by the Program Guide.
17. ADHERENCE TO LAW. Each Party shall comply with all federal, state and local laws and ordinances applicable to this Agreement.
18. NON-DISCRIMINATION. Each Party shall comply with all requirements of federal and state civil rights and rehabilitation statutes and local non-discrimination ordinances.
19. COUNTERPARTS. This Agreement may be executed in multiple counterparts and may be electronically signed. Any verified electronic signatures appearing on the Agreement are the same as handwritten signatures for the purposes of validity, admissibility, and enforceability. Any reproduction of the Agreement made by reliable means is considered an original.
20. SUCCESSORS; NO ASSIGNMENT, THIRD-PARTY BENEFICIARIES. This Agreement binds each Party, its successors, assigns and legal representatives. No Party may voluntarily assign or transfer its obligations to any third-party. Nothing in this Agreement provides any benefit or right to any non-party unless such third-person is individually identified by name in this Agreement and expressly described as an "intended third-party beneficiary" of this Agreement.
21. SUBCONTRACTS. Neither Party will subcontract any part of this Agreement without the written consent of the other Party.
22. GOVERNING LAW, JURISDICTION, VENUE. This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon, without regard to conflicts of law principles. Any legal action regarding this Agreement must be brought and conducted in the federal or state court, as appropriate, serving Multnomah County, Oregon, and the Parties consent to the jurisdiction and venue of such courts.

23. VALIDITY; SEVERABILITY. If any term or provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, that holding will not invalidate or render unenforceable any other provision of this Agreement.
24. EXHIBITS. The exhibits to this Agreement are, by this reference, incorporated into and deemed a part of this Agreement as if it was fully set forth in the text of this Agreement.
25. ENTIRE AGREEMENT; AMENDMENTS. This Agreement constitutes the entire Agreement between the Parties. The Agreement 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 Agreement, and clearly and with specificity describes the terms to be amended or supplemented. The County Chair and the Executive Director of the Prosper Portland and their respective designees are authorized to take all actions necessary to implement the terms of this Agreement and may approve amendments of this Agreement without further action by the Board of County Commissioners and the Prosper Portland Board of Commissioners, provided that such amendments to this Agreement do not materially increase the approving party's obligations or risks, as determined by that party's designated decision maker (i.e. County Chair or Prosper Portland Executive Director) in consultation with that party's top legal officer (i.e. Multnomah County Attorney or Prosper Portland General Counsel).

IN WITNESS WHEREOF, the Parties have executed this Agreement 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: _____

EXHIBIT A



PROGRAM GUIDE

VERSION 5.00

MARCH 2023

WWW.PROPERTYFITOREGON.COM

PROPERTYFIT is sponsored by:



OVERVIEW 4

- PROGRAM OVERVIEW – STATUTORY AUTHORITY 4
- POLICY LINKAGES..... 4
- SOCIAL EQUITY COMMITMENT 5

ADMINISTRATIVE GUIDELINES 6

- KEY DEFINITIONS 6
- MINIMUM STATUTORY AND PROGRAM REQUIREMENTS..... 7
- PROGRAM ADMINISTRATION FEES 10
- PARTICIPATION IN REBATE/INCENTIVE PROGRAMS 10

TECHNICAL STANDARDS AND REVIEW – UTILITY IMPROVEMENTS (ORS 223.680) 11

- CHOOSE YOUR PATH 11
- ELIGIBLE/INELIGIBLE UTILITY IMPROVEMENTS 11
- EXISTING BUILDINGS 12
- ENERGY IMPROVEMENTS IN MAJOR RENOVATION/NEW CONSTRUCTION 16
- RENEWABLE ENERGY FEASIBILITY ANALYSIS REQUIREMENTS 17
- REVIEW OF THE AUDIT/STUDY 18
- COST ESTIMATES 18
- UTILITY IMPROVEMENT INSTALLATION 18

TECHNICAL STANDARDS AND REVIEW – SEISMIC REHABILITATION IMPROVEMENTS (ORS 223.685) 19

- ELIGIBLE SEISMIC REHABILITATION IMPROVEMENTS..... 19
- EARTHQUAKE RISK EVALUATION 19
- DEFINED SEISMIC SCOPE AND COST ESTIMATE 20

CAPITAL PROVIDER PARTICIPATION 21

- ELIGIBILITY 21
- ENROLLMENT..... 21
- FINANCING TERMS..... 22
- ENROLLED CAPITAL PROVIDERS 22

RESOURCES, SAMPLE DOCUMENTS AND FORMS 23

VISIT WWW.PROPERTYFITOREGON.COM/MORE/RESOURCES FOR THE MOST CURRENT VERSION OF KEY PROGRAM DOCUMENTS, APPLICATION AND SAMPLE CLOSING FORMS..... 23

GENERAL TERMS AND PROVISIONS 24

OVERVIEW

Prosper Portland, Multnomah County and Energy Trust of Oregon (“**Energy Trust**”) have partnered to create **PROPERTYFIT**, a property assessed financing program, to provide Multnomah County commercial property owners with access to a new form of financing for the installation of clean energy, renewable energy, water conservation and seismic resiliency improvements (collectively “**Building Resiliency Improvements**”). This Program Guide documents the statutory and program requirements to which program participants must adhere. It is intended to be used as a reference document outlining key **PROPERTYFIT** provisions and the relationships between the Property Owner, the Program Administrator, the Capital Provider, and others.

PROGRAM OVERVIEW – STATUTORY AUTHORITY

PROPERTYFIT is an innovative financing structure that enables Property Owners of commercial, industrial, and multifamily residential properties (with five or more units) to obtain long-term financing for Building Resiliency Improvements to their property. These improvements provide public benefits that conserve energy and water, reduce greenhouse gas emissions, improve air quality, reduce energy costs, and reduce life and safety risk in the event of an earthquake. They also have the added benefit of fostering economic growth, creating jobs, and improving property values.

The Oregon Revised Statutes (“**ORS**”) [223.680](#) and [223.685](#)) authorize local governments to establish property assessed financing programs that help property owners finance Building Resiliency Improvements to Qualifying Real Property. The financing is secured with a lien on the Qualified Real Property ([Benefit Assessment Lien](#)) with the same priority as a lien for the assessment for local improvements districts. The local improvement district lien is an established mechanism used by municipalities for decades to finance projects that provide a public benefit such as street improvements, water, sewer, and street lighting.

PROPERTYFIT’s structure addresses key barriers to investments in building resiliency projects. It offers building owners up-front financing for up to 100 percent of the cost of building upgrades, secured by a Benefit Assessment Lien and repaid in periodic assessment payments. The maximum term is set at the average weighted useful life of the proposed Building Resiliency Improvements. In some cases, the energy and water cost savings that result from the improvements will cover all or a portion of the benefit assessment payment, potentially improving the buildings net operating income.

The Benefit Assessment Lien is recorded and attaches to and follows title to the Qualified Real Property. If the Qualified Real Property is sold before the **PROPERTYFIT** Financing is fully repaid, the Benefit Assessment Lien remains in place and the repayment obligation is automatically transferred to the next owner. The senior lien status of the Benefit Assessment Lien substantially reduces risk, making **PROPERTYFIT** financing very secure and attractive to investors. For more information about the benefits of **PROPERTYFIT** financing visit www.propertyfitoregon.com.

POLICY LINKAGES

PROPERTYFIT supports a number of public safety, carbon reduction, water conservation, redevelopment, and economic development goals. The program is designed to:

- Support the City of Portland and Multnomah County Climate Action Plan and other community goals to reduce carbon emissions, conserve water and improve seismic resiliency.
- Provide Property Owners with a cost-effective financing tool to encourage comprehensive Building Resiliency Improvements that improve the overall building performance.
- Stabilize the region’s economic infrastructure through Building Resiliency Improvements that reduce resource consumption; improve seismic resiliency; and increase property value, performance, and marketability of commercial, industrial, and multifamily real estate within Multnomah County.
- Stimulate new business development, job creation and the creation of new family wage jobs for Multnomah County residents through increased number of Building Resiliency Improvement projects.
- Develop a platform to launch new technology and leverage the region’s thought leadership in the sustainable building industries.

SOCIAL EQUITY COMMITMENT

PROPERTYFIT has a strong commitment to advancing social equity by increasing economic opportunity for historically disadvantaged populations and creating equitable access to living wage jobs and wealth creation opportunities. We seek to support a marketplace that is inclusive and supportive of certified disadvantaged, minority, and women (“**DMW**”) owned firms’ participation in the energy efficiency, renewable energy, and sustainable building industries.

One of our goals is to support the growth and diversity of the Portland region’s design, engineering, and construction sectors by encouraging long-term business-to-business relationships with DMW firms. We are seeking property owners, contractors and capital providers that share these values and will commit to participating in activities designed to further their end.

ADMINISTRATIVE GUIDELINES

This section outlines the **PROPERTYFIT** administrative guidelines that govern all participants in the **PROPERTYFIT** (“**Administrative Guidelines**”). All participants agree to adhere to the terms and conditions of the Administrative Guidelines, as amended from time-to-time by the Program Administrator to reflect changes in market conditions. The Program Administrator is authorized and reserves the right, at its sole discretion, to make exceptions to these Administrative Guidelines on a case-by-case basis.

KEY DEFINITIONS

BENEFIT ASSESSMENT LIEN	The lien that is recorded against the Qualified Real Property that establishes the benefit assessment lien and secures repayment of the PROPERTYFIT Financing. By statute the Benefit Assessment Lien has priority over all other liens recorded against the Qualified Real Property, junior only to real property taxes.
BUILDING RESILIENCY IMPROVEMENTS	Utility and Seismic Rehabilitation Improvements made to Qualified Real Property authorized by ORS 223.690 and 223.685.
CAPITAL PROVIDER	The entity that will provide the PROPERTYFIT Financing.
MAXIMUM TERM	The period from the completion of construction and final fully amortized payment the PropertyFit Financing may not exceed the weighted average useful life of all approved Building Resiliency Improvements as determined by the Program Administrator.
QUALIFIED REAL PROPERTY	Commercial, industrial, or multifamily residential (of five or more units) buildings located in Multnomah County that can benefit from Building Resiliency Improvements.
PROGRAM ADMINISTRATOR	Prosper Portland, the economic development and urban renewal agency of the City of Portland.
PROPERTYFIT PROJECT	Building Resiliency Improvements being made to Qualified Real Property, financed with PROPERTYFIT Financing.
PROPERTY OWNER	The legal owner(s) of the “ <i>fee simple</i> ” interest in the Qualified Real Property.
SEISMIC REHABILITATION IMPROVEMENTS	Improvements to Qualified Real Property intended to reduce or prevent harm to persons and property due to the effects of seismic activity on the Qualifying Real Property.

UTILITY IMPROVEMENTS

Improvements to Qualified Real Property that:

- Increase energy efficiency
- Generate renewable energy on-site,
- Store energy on-site,
- Charge electric vehicle, and
- Increases water efficiency.

MINIMUM STATUTORY AND PROGRAM REQUIREMENTS

SERVICE AREA

Multnomah County, Oregon

ELIGIBLE PROPERTY

Qualified Real Property

ELIGIBLE APPLICANT

Property Owner

SECURITY

The **PROPERTYFIT** Financing is evidenced by a financing agreement between the Property Owner and the Capital Provider and is secured by Benefit Assessment Lien recorded against the Qualified Real Property. By statute the Benefit Assessment Lien has priority over all other liens recorded against the property, junior only to property taxes.

MINIMUM CREDIT STANDARDS

The Property Owner (and its controlling entity) must meet the following minimum credit standards:

- Be current and in good standing on all debt owed to Multnomah County;
- Be current on all real property taxes;
- Not have outstanding involuntary liens, collections or charge-offs;
- Be current on all existing mortgages secured by the Qualified Real Property; and
- May not be in, or have filed for, bankruptcy in the past three years.

ELIGIBLE USES

Eligible uses of **PROPERTYFIT** Financing include payment of:

- The cost of building performance audits;
- The cost of approved Building Resiliency Improvements to the Qualified Real Property;

- The cost of non-Building Resiliency Improvements that are directly related to the installation of Building Resiliency Improvements (e.g. roof upgrades to support a roof-mounted solar PV installation);
- Commissioning; and
- Fees, reserves and other **PROPERTYFIT** Program costs.

LIEN-TO-VALUE (LTV)

Maximum lien-to-value is 35 percent of the “*after completed, as stabilized*” value of the Qualified Real Property.

APPRAISAL REQUIREMENTS

Existing Building. The property value for LTV purposes will be first evaluated by reviewing the real market value as determined by the county tax assessor. If the project performs within the LTV limitations, this value will be adequate for administrative review purposes. If the LTV limit is exceeded using the county tax assessor’s real market value, a current appraisal may be required. This requirement will be influenced by the needs of existing mortgage holders that must consent to the recording of the Benefit Assessment Lien against the Qualified Real Property and the underwriting requirements of the Capital Provider.

<https://multcoproptax.com/>

New Construction/Major Renovation. These projects require an appraisal that meets the Capital Provider’s underwriting requirements and provides ‘*as is*’, ‘*as completed*’, and ‘*as stabilized*’ value estimates.

MAXIMUM TERM

The period from the completion of construction and final fully amortized payment the PropertyFit Financing may not exceed the weighted average useful life of all approved Building Resiliency Improvements as determined by the Program Administrator.

AMORTIZATION

The **PROPERTYFIT** Financing must be fully amortized over its term. Balloon payments are not allowed.

REPAYMENT AND SERVICING

A minimum of one annual Benefit Assessment Lien payment is required and may be more frequent as negotiated between the Capital Provider and the Property Owner. Payments are made directly to the Capital Provider. Should the Property Owner (or succeeding owners) default on the **PROPERTYFIT** Financing, collection will be enforced through the Local Improvement District’s collection process outlined in ORS 223.505 to ORS 223.650.

CAPITALIZED INTEREST

The total **PROPERTYFIT** Financing may include capitalized interest for a period not to exceed the estimated construction

period plus three (3) months. The inclusion of capitalized interest in the **PROPERTYFIT** Financing may not cause the total LTV to exceed the program limit, nor the term of the **PROPERTYFIT** Financing to exceed the Maximum Term as defined above.

INTEREST ONLY PERIOD
AND CAPITALIZED INTEREST

The repayment structure for the **PROPERTYFIT** Financing may include an interest only period to enable the Qualified Real Property to achieve stabilized occupancy before fully amortized payments begin. The maximum interest only period will be set based upon the appraiser's estimated time frame for the Qualified Real Property to achieve stabilized occupancy. In addition, the portion of the interest only period that corresponds to the estimated construction period may be capitalized. Note, however, that the inclusion of an Interest Only Period and Capitalized Interest in the **PROPERTYFIT** Financing may not cause the total LTV to exceed the program limit, nor the term of the **PROPERTYFIT** Financing to exceed the Maximum Term.

LOOK-BACK FINANCING

Look-back projects are eligible for **PROPERTYFIT** Financing. A look-back project is one for which the Property Owner is seeking **PROPERTYFIT** Financing within 24-months of the Qualified Real Property's receipt of the certificate of occupancy issued by the local building permitting office. Look-back projects must comply with all Technical Standards and Program Guidelines required in this Program Guide.

EVIDENCE OF OWNERSHIP
AND ENCUMBRANCES

A preliminary title report is required prior to closing to show evidence of ownership and all encumbrances recorded against the Qualified Real Property.

MORTGAGEE CONSENT

Where there is an existing mortgage or deed of trust recorded against the Qualified Real Property, the mortgagee must:

- Be given written notification that the Property Owner has applied for PropertyFit Financing and intends to enter into a financing agreement and record a Benefit Assessment Lien against the Qualified Real Property;
- Provide its written consent for the Property Owner to enter into the financing agreement and allow the recording of the Benefit Assessment Lien against the Qualified Real Property; and
- Confirm in writing that the proposed **PROPERTYFIT** Financing does not constitute an event of default under the terms of

existing agreements between the Property Owner and the mortgagee.

PROGRAM ADMINISTRATION FEES

ADMINISTRATIVE PROCESSING FEE

PropertyFit Financing is subject to the Program Administrator's Processing Fee equal to one percent (1.00%) of the PropertyFit Financing, due at closing. In addition, the Property Owner is responsible for all third-party fees including, but not limited to, costs of the building performance audit report(s), title reports, recording fees, legal fees and appraisal costs ("Eligible Costs"). Eligible Costs can be included in the PropertyFit Financing and reimbursed at closing. The Capital Provider will remit the PropertyFit Administrative Fee to the Program Administrator as stated in the Capital Provider Agreement.

ON-GOING PROPERTYFIT SERVICING FEE

PropertyFit Financing is also subject to an annual **PROPERTYFIT** Administrative Fee equal to one-quarter of one percent (0.25%) of the outstanding balance of the **PROPERTYFIT** Financing. This PropertyFit Servicing Fee will be specifically detailed in the payment schedule and will be collected by the Capital Provider as part of the periodic assessment payments collected from the Property Owner. The Capital Provider will remit the **PROPERTYFIT** Servicing Fee to the Program Administrator, as stated in the Capital Provider Agreement.

PARTICIPATION IN REBATE/INCENTIVE PROGRAMS

Although not required, **PROPERTYFIT** strongly encourages Property Owners to participate in all rebate and incentive programs available to the Qualified Real Property based upon the proposed Building Resiliency Improvements. Rebates and incentive programs provide participants with cash payments or tax credits for implementing Building Resiliency Improvements, thus reducing overall project costs. Rebate and incentive programs can also act as a third-party check on the validity of the proposed Building Resiliency Improvements and their likely cost savings, thus reducing additional third-party project review costs that would otherwise be passed on to the Property Owners. To learn more about incentives and rebates visit:

[Energy Trust of Oregon](#)
[Northwest Natural Gas](#)
[Portland Water Bureau](#)

[Portland General Electric](#)
[Oregon Department of Energy](#)

[Pacific Power](#)
[US Dept. of Energy](#)

TECHNICAL STANDARDS AND REVIEW – UTILITY IMPROVEMENTS (ORS 223.680)

These “**Technical Standards**” describe the requirements to which Utility Improvements projects under ORS 223.680 must comply. The methodology is designed to provide a flexible framework within which to qualify and manage the multiple and varied Utility Improvement projects applying to **PROPERTYFIT**.

CHOOSE YOUR PATH

The PropertyFit Project must follow one of two approaches to meet the Technical Standards of the program. “**Existing Building Project**” or “**Major Renovation/New Construction Project**”.

An Existing Building Project is one in which no change of use is planned; is often an occupied building; and the scope of work is primarily focused on energy or seismic renovations. A Major Renovation/New Construction Project is one in which the existing building is being completely renovated; likely includes a change in use; or is ground up construction.

Existing Building Projects must use the existing buildings approach, which evaluates each Building Resiliency Improvement being installed/implemented.

Property Owners of Major Renovation/*New Construction* projects may select which approach they wish to use and then must meet the Technical Standards specific to the selected approach.

ELIGIBLE/INELIGIBLE UTILITY IMPROVEMENTS

ELIGIBLE UTILITY IMPROVEMENTS

Utility Improvements eligible for **PROPERTYFIT** Financing must:

- Lower a building’s energy consumption;
- Lower a building’s water consumption;
- Enable on-site renewable energy;
- Enable on-site energy storage;
- Create or improve a Qualified Real Property’s capacity to charge electric vehicles; and
- Be permanently affixed to the Qualified Real Property and taxed as “*real*” vs. “*personal*” property by the county tax assessor.

A few examples of proven energy efficiency, renewable energy and water conservation technologies include:

- HVAC upgrades
- Automated building controls
- Combustion and burner upgrades
- Heat recovery

- Variable speed drives on motors, fans, and pumps
- Electric vehicle charging stations
- On-site energy storage systems
- Geo Exchange
- High efficiency:
 - Lighting
 - Chillers
 - Boilers
 - Furnaces
 - Water heating systems
- Steam trap monitoring
- Building envelope improvements
- Energy management systems
- Automatic faucet sensors
- Low-flow plumbing
- Grey water irrigation systems
- Rainwater harvesting systems
- Irrigation rain sensors
- Renewable energy systems:
 - Solar
 - Fuel Cells
 - Wind

In addition, the costs of non-Utility Improvements that are directly related to the installation of eligible Utility Improvements are “**Eligible Costs**” (e.g., roof upgrades to support a roof-mounted solar PV installation, drywall replacement) and can be included in the PropertyFit Financing and reimbursed at closing.

INELIGIBLE UTILITY IMPROVEMENTS

Energy improvements **ineligible** for **PROPERTYFIT** Financing include:

- Appliances (e.g., refrigerators, dishwashers);
- Plug load devices;
- Vending machine controls; or
- Any energy improvement that is easily removed or not permanently installed on the Qualified Real Property.

EXISTING BUILDINGS

EXISTING BUILDING – UTILITY AUDIT REQUIREMENTS

Property Owners, with the assistance of qualified building performance experts, are required to submit an energy and/or water audit and a scope of work that defines the proposed Utility Improvements. This scope can range from installation of a single Utility Improvement to a project involving multiple Utility Improvements.

TECHNICAL METHODOLOGY

Building performance audits must be based upon protocols described below. The level of audit will be influenced by many factors, including the number and complexity of the Utility Improvements, and the project’s anticipated total capital investment.

- The most recent version of American Society for Testing and Materials (ASTM) E2797, Building Energy Performance Assessment (BEPA) Standard directed at data collection and baseline calculations for the building energy audit; and
- American Society of Heating, Refrigeration and Air-Conditioning Engineers (ASHRAE) Level I, Level II, and Level III Energy Audit Guidelines; or
- Water audit criteria described below.

ENERGY AUDIT CRITERIA

An energy audit or renewable energy feasibility analysis conducted by a qualified building performance expert is required. The audit report must provide:

- A representative, weather normalized baseline;
- Historical electrical and/or fuel use costs, consistent with the most current version of ASTM E2797;
- A description of the proposed energy measure(s);
- The estimated effective useful life (EUL) for each energy measure;
- The estimated total installed cost of each energy measure;
- The estimated incremental cost of each measure, where applicable
- The estimated total project cost;
- The source used to establish energy measure costs;
- The uncertainty (+/-) associated with the methodology used to establish energy measure costs;
- The estimated energy savings and/or energy generation that can confidently be achieved;
- The estimated energy cost savings that will result from the energy measures; and
- The uncertainty (+/-) associated with the methodology used to estimate the energy savings.

WATER AUDIT CRITERIA

A water audit conducted by a qualified building performance expert is required for Utility Improvements that include significant water efficiency Utility Improvements. The audit report must provide:

- A representative, weather normalized baseline;
- Historical water use costs;
- A description of the proposed water efficiency measure(s);

- The estimated effective useful life (“**EUL**”) for each water efficiency measure;
- The estimated total installed cost of each water efficiency measure;
- The estimated total project cost;
- The source used to establish water efficiency measure costs;
- The uncertainty (+/-) associated with the methodology used to establish water efficiency measure costs;
- The estimated reduction in the Qualified Real Property’s water consumption that can confidently be achieved;
- The estimated water cost savings that will result from the water efficiency measures; and
- The uncertainty (+/-) associated with the methodology used to estimate the water savings.

QUALIFIED BUILDING
PERFORMANCE EXPERT

All energy audits must be prepared by an energy engineer or by a team with an energy engineer. An energy engineer is defined as:

- An engineer with relevant demonstrated experience in evaluating a buildings water consumption and impact of various water conservation improvements;
- A Certified Energy Manager (“**CEM**”);
- A Certified Energy Auditor accreditation (“**CEA**”);
- A Professional Engineer (“**PE**”) with demonstrated relevant energy experience; or
- A contractor with relevant demonstrated experience as determined by Program Administrator.

AUDIT ELIGIBILITY

The Property Owner is responsible for the cost of the energy/water audit which may be incorporated into the **PROPERTYFIT** Financing and reimbursed at closing. Audits previously conducted for the Qualified Real Property may be eligible at the Program Administrator’s discretion. Factors such as scope and age of the audit and whether existing conditions have changed since the audit was completed will be considered.

AUDIT PROCESS

The level of audit will depend upon several factors, including but not limited to, the number and complexity of the Utility Improvements, size (cost) of the project, property type, and the Property Owner’s desired level of certainty about utility cost savings. It will generally consist of:

- An on-site survey of the building to assess a building’s utility cost and potential Utility Improvements (single or multiple);
- A utility bill analysis to assess its efficiency; and
- A report summarizing a building’s utility use, recommended eligible Utility Improvements, projected cost savings, and payback period.

The on-site survey may target a specific building component that is intended to be replaced, upgraded or added, or could include checking all major utility-using systems. If the latter, a more rigorous technical analysis study is warranted.

Energy Trust of Oregon

PROPERTYFIT is designed to leverage the energy audit capacity of Energy Trust. When Energy Trust is providing incentives and facilitating completion of an energy audit **PROPERTYFIT** will defer to its technical methodology in the performance of the audit. Energy Trust may cover all or a portion of the audit cost if it is conducted under an Energy Trust program.

EXISTING BUILDING UTILITY USE BASELINE

The ASTM Building Energy Performance Assessment (BEPA) protocol established a standardized methodology for baseline building energy use data collection, compilation, and analysis. The methodology is intended to fill data collection and analysis gaps in the ASHRAE audit guidelines and establish a sound, representative building energy use baseline. The ASTM BEPA methodology standardizes a number of major variables associated with data collection and analysis. ASTM BEPA methodology principles should also be applied in developing baseline building water use. This overarching methodology dictates the data and history that should be collected at each site. Preferably, baseline period over which the building’s utility consumption data is collected should be three years, or back to the last major renovation if completed less than three years ago, with a minimum of one year of data collection.

For buildings where it is impossible or prohibitively difficult to obtain the required historical utility consumption data, the following methodologies may be used to establish baseline building utility use. A building utility use simulation model can be used to project utility use after the Utility Improvements are complete and compare it to a modeled baseline which may be determined using equipment as specified in the building code, or a modeled baseline determined based upon existing equipment (that may no longer be operating.) Ultimately, the Program Administrator has responsibility and sole discretion to approve the appropriate utility use baseline for a project.

UTILITY USE BASELINE TABLE

BUILDING DESCRIPTION			
BUILDING TYPE	Existing	Existing	New Construction
EQUIPMENT/ SYSTEMS	Existing	Existing	New
PROPOSED USE	No change	Change of Use	New
OCCUPANCY	Fully Occupied	Partially Occupied or Vacant	Vacant

BASELINE REQUIREMENT			
UTILITY USE DATA	Existing utility data	Supplement existing utility data with utility use simulation model to achieve full occupancy estimates	Utility use simulation model based upon full occupancy under new use
UTILITY MODELING BASED UPON	Existing equipment, regardless of estimated remaining life	Existing equipment, regardless of estimated remaining life	Minimum code requirements

ENERGY IMPROVEMENTS IN MAJOR RENOVATION/NEW CONSTRUCTION

PROPERTYFIT has established the following requirements for Major Renovation/New Construction Projects. All program requirements outlined elsewhere in this Program Guide apply unless specifically modified below. Given the complexity of Major Renovation/New Construction Projects and new code transitions, project developers are ***strongly*** encouraged to engage with the **PROPERTYFIT** team early in the project development process.

STANDARDS FOR ‘AS DESIGNED MODELED ENERGY PERFORMANCE’

Major Renovation/New Construction Projects must demonstrate ‘As Designed Modeled Energy Performance (EUI)’ that exceeds the baseline performance requirements of the ASHRAE 90.1 version in effect when the building permits application is made by at least five percent. by at least five percent (5.00%.) These projects can qualify for **PROPERTYFIT** Financing in an amount up to twenty-five percent (25%) of Total Construction Costs (as defined below.)

DEFINITION OF NEW
CONSTRUCTION

The construction of an entirely new structure(s).

DEFINITION OF MAJOR
RENOVATION

A major renovation involves major electrical and mechanical renovation, significant envelope modifications, and major

	interior rehabilitation of an existing building. Major renovations are often accompanied by a change in use of the building.
APPRAISAL REQUIREMENTS	Copy of the primary construction lender’s appraisal detailing the “as is”, “as completed” and “as stabilized” values.
NEW CONSTRUCTION BASELINE	Most current version of ASHRAE 90.1 in effect at the time the Property Owner applies for building permits.
ADDITIONAL REQUIREMENTS FOR ‘AS DESIGNED MODELED ENERGY PERFORMANCE’	A report demonstrating that the building plans achieve a minimum energy savings of 5 percent above baseline energy use intensity (EUI) (or equivalent metric) is required. The report must use the ‘Whole Building Approach’ methodology in Appendix G of the ASHRAE 90.1 version in effect at the time the Property Owner applies for building permits.
DEFINITION OF TOTAL CONSTRUCTION COSTS	All direct and indirect costs of materials, labor and soft costs related to design, evaluation, installation, and construction or reconstruction of the Utility Improvements. This includes audit costs, architecture and engineering fees, surveyor fees, contractor general conditions, financing, (including capitalized interest) legal, title and other reasonable fees.
EXCLUDED COSTS	<ul style="list-style-type: none"> ▪ Land costs ▪ Acquisition cost of an existing building; ▪ Off-site improvements; ▪ Environmental remediation; and ▪ Equipment not permanently installed on the Qualified Real Property.

RENEWABLE ENERGY FEASIBILITY ANALYSIS REQUIREMENTS

Energy generating projects that use renewable energy sources are eligible for **PROPERTYFIT** Financing. A renewable energy feasibility analysis that assesses the energy cost savings over the project’s useful life is required. Studies, and the individuals qualified to complete those studies, will differ based upon the type of renewable energy project. At a minimum the report must:

- Be prepared by an appropriately licensed individual with the necessary credentials to perform the study;
- Describe the proposed renewable energy system;
- Describe the permitting requirements and utility design requirements for the specific system being considered;

- Identify and evaluate the suitability of the building/site for the proposed improvement (including determining the structural integrity of the building to support a rooftop solar PV installation if a roof-mounted solar is part of the planned Utility Improvements);
- Collect historical data on the building’s electrical and fuel use and cost;
- Assess the improvements’ expected performance, energy production and requirements to maintain optimized operation (including estimated maintenance costs);
- Compare improvements’ expected performance (electricity and/or heat production) against total energy consumption of the building;
- Estimate the effective useful life (“EUL”) of each improvement;
- Estimate total cost to acquire and install each Utility Improvement; and
- Estimate of the amount and source of all incentive being sought for the renewable energy project

REVIEW OF THE AUDIT/STUDY

The complete audit/study is to be submitted to the Program Administrator, or its representative, to validate that the scope of work meets the required Technical Standards, the Utility Improvements meet **PROPERTYFIT’S** eligibility requirements, the recommended Utility Improvements are technically and financially feasible, and all stakeholder underwriting data needs are satisfied.

COST ESTIMATES

Cost estimates in the building performance audit(s) are estimates only. Prior to closing of the **PROPERTYFIT** Financing, cost estimates must be updated with final costs based upon the construction/installation contracts executed between the Property Owner and their contractor. Although not required, the Property Owner may want to solicit multiple bids in order to ensure a competitive price for the purchase and installation of the Utility Improvements. The Program Administrator will review final contract amounts to determine that the final Utility Improvement scope of work is compliant with the requirements of ORS 223.690 and this Program Guide.

UTILITY IMPROVEMENT INSTALLATION

The Property Owner will enter into an agreement with their contractor to perform the installation of the Utility Improvements. The Program Administrator or the Capital Provider may conduct a site visit(s) during and at the completion of the Utility Improvements to monitor and verify installation.

TECHNICAL STANDARDS AND REVIEW – SEISMIC REHABILITATION IMPROVEMENTS (ORS 223.685)

These Technical Standards describe the requirements to which all Seismic Rehabilitation Improvement projects under ORS 223.685 must comply.

ELIGIBLE SEISMIC REHABILITATION IMPROVEMENTS

ELIGIBLE SEISMIC REHABILITATION IMPROVEMENTS

Seismic Rehabilitation Improvements eligible for **PROPERTYFIT** Financing must:

- Reduce or prevent harm to persons and property because of seismic activity on the Qualified Real Property; and
- Be permanently affixed to the Qualified Real Property and taxed as “real” vs. “personal” property by the county tax assessor.

A few examples of seismic rehabilitation improvements include:

- Bracing parapets, cornices, and chimneys
- Tension anchors
- Wood structural panel shear wall
- Concrete or fiber composite wall overlay
- Horizontal bracing
- Out-of-plane bracing
- Vertical bracing
- Veneer ties to brick masonry
- Shear anchors
- Crossties and sub diaphragms
- Supplemental vertical supports
- Steel bracing
- Steel moment frame
- Steel strap or angle
- Wood or steel strap reinforcement
- Wall to diaphragm ties
- Add or enhance cross walls

In addition, the costs of non-seismic rehabilitation improvements that are directly related to the installation of eligible Seismic Rehabilitation Improvements are Eligible Costs and may be included in the PropertyFit Financing and can be reimbursed at closing.

EARTHQUAKE RISK EVALUATION

Property Owners are required to submit an earthquake risk evaluation and a scope of work that defines the proposed Seismic Rehabilitation Improvements.

EARTHQUAKE RISK ASSESSMENT CRITERIA

Unless a Tier 3 evaluation is required by ASCE 41, a Tier 1 and Tier 2 building performance report that conforms to American Society of Civil Engineers and the Structural Engineering Institute 41 - Basic

Performance Objectives for Existing Buildings (ASCE 41 – BPOE) is required on all Seismic Rehabilitation Improvements.

QUALIFIED INDIVIDUAL

All ASCE 41 evaluation must be performed by a state licensed structural engineer.

DEFINED SEISMIC SCOPE AND COST ESTIMATE

In addition to the ASCE 41 evaluation, projects including Seismic Rehabilitation Improvements must also provide:

DEFINED SCOPE OF WORK	A certified scope of work prepared by a structural engineer, detailing the Seismic Rehabilitation Improvements needed for the Qualified Real Property to comply with current seismic code and separate notations identifying any additional Seismic Improvements that will exceed code. along with any additional improvements that are included that exceed code.
DETAILED COST BREAKDOWN	A detailed cost breakdown that includes a column for total cost and a separate column with the portion of that cost associated with the Seismic Rehabilitation Improvements.
COST REASONABLENESS CONFIRMATION	A letter from the structural engineer affirmatively stating that they have reviewed the detailed cost breakdown alongside the scope of work and that the cost associated with completing the Seismic Rehabilitation Improvements appear reasonable.

CAPITAL PROVIDER PARTICIPATION

PROPERTYFIT is an open market program. Enrolled Capital Providers have the opportunity to offer term sheets on projects originated by **PROPERTYFIT** or to originate by the Capital Provider directly. Additionally, Property Owners may bring a Capital Provider to provide the **PROPERTYFIT** Financing to fund their project.

The Property Owner is free to select a Capital Provider of their choice so long as the Capital Provider meets **PROPERTYFIT**'s minimum requirements. By establishing enrollment criteria, **PROPERTYFIT** is not recommending any particular Capital Provider. Eligibility requirements include:

ELIGIBILITY

TYPE OF ENTITY	<ul style="list-style-type: none">▪ Federally insured depository institution;▪ Insurance company authorized to do business in Oregon;▪ Registered investment company, business development company or a Small Business Administration small business investment company;▪ A US Treasury certified Community Development Financial Institution;▪ Any publicly traded entity; or▪ Any accredited investor.
COMMITMENT TO SOCIAL EQUITY	The Capital Provider's must describe how it will contribute to advancing PROPERTYFIT'S Social Equity Commitment.

ENROLLMENT

To participate in **PROPERTYFIT** all Capital Providers must complete the required Capital Provider Application and Participation Agreement, and agree to only provide **PROPERTYFIT** Financing for projects which adhere to the requirements of this **PROPERTYFIT** Program Guide (as amended from time-to-time by the Program Administrator.) The Program Administrator reserves the right to approve, reject or rescind approval of the Capital Provider's participation in **PROPERTYFIT**.

Upon approval by the Program Administrator, the Capital Provider will be considered an "enrolled" Capital Provider. As such, the enrolled Capital Provider will be listed on the **PROPERTYFIT'S** website, and will receive information from **PROPERTYFIT** regarding financing opportunities and other pertinent program information. This status also authorizes the Capital Provider to directly originate **PROPERTYFIT** Financing transactions, subject to the terms and conditions of this Program Guide and the Capital Provider Participation Agreement which must be signed at closing of each transaction.

Ultimately, Property Owners are responsible for selecting a Capital Provider to fund their Building Resilience Improvements and negotiating specific financing terms.

FINANCING TERMS

UNDERWRITING

The Administrative Guidelines and Technical Standards sections of this Program Guide outline the minimum standards that all **PROPERTYFIT** Financing must achieve. Capital Providers are free to establish its own financial underwriting standards within the parameters of the Administrative Guidelines. At closing each **PROPERTYFIT** Financing, the Capital Provider must enter into a Capital Provider Agreement that outlines the agreement between the Program Administrator and the Capital Provider about the minimum financing terms and servicing requirements for that transaction.

INTEREST RATE, FEES AND FINANCING TERMS

The interest rate, fees and financing terms are negotiable between the Capital Provider and Property Owner which must be incorporated in the financing agreement. The term of the PropertyFit Financing may be any length but cannot exceed the weighted average useful life of the Building Resiliency Improvements (as reviewed and approved by Program Administrator) and must be fully amortized by the scheduled maturity date. No balloon payments allowed.

SERVICING AND REPORTING

PROPERTYFIT uses a hybrid servicing model wherein the Capital Provider retains a more traditional borrower/lender loan servicing relationship. So long as the Property Owner is performing, the periodic payments are to be made directly to the Capital Provider and the Capital Provider will provide the Program Administrator with an annual report on activities and remit the on-going servicing fee. At the Capital Provider's discretion, a delinquent account can be referred to the Program Administrator for enforcement through the local improvement district collection process outlined in ORS 223.505 to 223.650. The collection process is more specifically described in the Capital Provider Agreement.

ENROLLED CAPITAL PROVIDERS

Visit the www.propertyfitoregon.com for a current list of enrolled Capital Providers.

RESOURCES, SAMPLE DOCUMENTS AND FORMS

VISIT WWW.PROPERTYFITOREGON.COM/MORE/RESOURCES FOR THE MOST CURRENT VERSION OF KEY PROGRAM DOCUMENTS, APPLICATION AND SAMPLE CLOSING FORMS.

GENERAL TERMS AND PROVISIONS

TAXES

Property Owners are solely responsible for any local, state, or federal tax consequences of their participation in **PROPERTYFIT**.

CHANGES IN STATE AND FEDERAL LAW

PROPERTYFIT'S ability to provide the Benefit Assessment Lien security structure is subject to a variety of state and federal laws. If those laws or the judicial interpretation thereof, were to change after the Property Owner has applied (and, thereafter, may have incurred the costs in anticipation of **PROPERTYFIT** Financing) but before the funding request is closed, **PROPERTYFIT** may be unable to provide the security mechanism for the **PROPERTYFIT** Financing. **PROPERTYFIT** and the Program Administrator have no liability as a result of any such change in law or judicial interpretation.

CHANGES IN THE PROGRAM TERMS; SEVERABILITY

PROPERTYFIT reserves the right to change this Program Guide and the terms and provisions set forth within at any time without notice. The Benefit Assessment Lien and the Property Owner Agreement executed between **PROPERTYFIT** and the Property Owner establishes the Property Owner's rights. This Program Guide is only a reference document.

If any provision of this Program Guide is determined to be unlawful, void, or for any reason unenforceable, then that provision shall be deemed severable from this Program Guide and shall not affect the validity and enforceability of any remaining provisions.

DISCLOSURE OF PROPERTY OWNER INFORMATION

All Property Owner information is treated with care in order to protect Property Owner's privacy and security. In addition to disclosure requirements under Oregon Public Records Law, Property Owners must agree to allow **PROPERTYFIT** to disclose personal/corporate information to third parties when such disclosure is essential to the conduct of **PROPERTYFIT** business or to provide services to the Property Owner, including but not limited to where such disclosure is necessary to:

- Comply with the law, legal process or regulators; and
- Enable **PROPERTYFIT** staff or consultants to provide services to the Property Owner or to otherwise perform their duties.

PROPERTYFIT will not provide Property Owner information to third parties for telemarketing, e-mail, or direct mail solicitation.

FRAUD

Giving materially false, misleading, or inaccurate information or statements to **PROPERTYFIT** or its agents and partners (or failing to provide material information) in connection with an application for **PROPERTYFIT** Financing is punishable by law. Material representations include, but are not limited to, representations concerning the Building Resiliency Improvement costs, ownership structure and financial information relating to the Qualified Real Property and the Property Owner.

EXCEPTIONS TO THIS PROGRAM GUIDE

PROPERTYFIT may make exception to the terms and provisions detailed in this Program Guide where there is a finding that such exception furthers **PROPERTYFIT'S** goals and objectives.

RISK DISCLOSURE

By submitting an application, Property Owner acknowledges that Multnomah County and Prosper Portland have formed **PROPERTYFIT** solely for the purpose of assisting Property Owners in Multnomah County finance eligible Building Resiliency Improvements. **PROPERTYFIT** is a financing program only. **PROPERTYFIT** is not responsible for the installed Building Resiliency Improvements or their performance. Should there be any unsatisfactory performance or other system-related issues that arise during or after installation, the Property Owner must address those directly with the responsible contactor according to the terms of the contract between the Property Owner and the Contractor. The Property Owner acknowledges that it is responsible for payment of the Benefit Assessment Lien regardless of whether the Building Resiliency Improvements are properly installed or operate as expected.

PROPERTY OWNER REPORTING

The Property Owner must comply with the City of Portland's Commercial Building Energy Performance Reporting Policy as amended, regardless of building size or location. This policy requires owners of commercial buildings to track energy use with the ENERGY STAR® Portfolio Manager web-tool, and report energy performance information to the City of Portland annually. In lieu of completing an annual **PROPERTYFIT** energy report, the Property Owner may provide **PROPERTYFIT** with *read-only* access to their ENERGY STAR® Portfolio Manager account. A detailed how-to guide, additional policy information and resources to improve your building performance are available on the policy website at [City of Portland - Benchmarking](#)

PRIVACY/PUBLIC INFORMATION

Multnomah County and the Program Administrator are subject to the Oregon Public Records Law ([ORS 192.410](#) to [ORS 192.505](#)). As such, to the extent any documents in a **PROPERTYFIT** Financing constitute "*public records*" under the public records law, for which the public has the right to inspect, such records will be made accessible and opened for public inspection in accordance with the public records law and Multnomah County's policies. Nothing contained herein will limit the Program Administrator's, Capital Provider's, or Property Owner's right to defend against disclosure of records alleged to be public pursuant to the public records law.

