



Request for City Council Committee Action from the Department of Community Planning & Economic Development - CPED

Date: June 9, 2015

TO: Council Member Lisa Goodman, Chair, Community Development & Regulatory Services Committee

Subject: Resolution authorizing execution of an amended and restated joint powers agreement with the Port Authority of the City of Saint Paul for a property assessed clean energy improvement financing program.

Recommendation: Adopt the attached resolution authorizing the execution of an amended and restated joint powers agreement with the Port Authority of the City of Saint Paul for a property assessed clean energy improvement financing program.

Previous Directives: On November 18, 2013 City Council authorized the execution of the joint powers agreement between the City of Minneapolis and Port Authority of the City of Saint Paul, designated the Port Authority of the City of Saint Paul to implement and administer the PACE program on behalf of the City of Minneapolis, and directed City staff to take necessary action to create the PACE Program and impose fees.

Prepared by: Becky Shaw, 673-5066

Approved by: D. Craig Taylor, Executive Director CPED _____

Charles T. Lutz, Deputy Director CPED _____

Presenters in Committee: Becky Shaw

Reviews

Permanent Review Committee: Approval N.A.

Financial Impact

Other financial impact: None. There is no financial impact on the City of Minneapolis, program related revenue bonds will be issued by the Port Authority of the City of Saint Paul, and project costs will be 100% assessed to the participating property owners.

Community Impact

Neighborhood Notification: Not applicable at this time, will occur when property owners request PACE financing.

City Goals: The City's participation in the PACE of Minnesota program will meet the City's goals of Great Places and A hub of economic activity and innovation.

Comprehensive Plan: This proposed finance tool is in compliance with the Minneapolis Plan for sustainable growth.

Zoning Code: Projects financed by PACE will comply with zoning regulations.

Supporting Information

The Property Assessed Clean Energy (PACE) program is a finance tool for clean energy improvements. Clean energy improvements can include building-related energy efficiency improvements such as upgraded lighting systems and mechanical systems and renewable energy systems such as solar thermal and photovoltaic systems.

On November 18, 2013, the City Council authorized the City of Minneapolis to enter into a Joint Powers Agreement (JPA) with the Port Authority of the City of Saint Paul (SPPA) in order to facilitate the PACE program. The agreement designates SPPA as the entity responsible for implementing and administering the program in Minneapolis. The City of Minneapolis is responsible for collecting special assessments necessary to pay debt service on the loans.

Since the inception of the PACE program, the SPPA has financed four projects within the City of Minneapolis.

- Longfellow Market – 3815 East Lake Street - \$270,000 over 5 years for energy efficient refrigeration systems, freezers, LED lighting and insulation.
- Elliot Park Lifesciences (Excelen) – 700 10th Ave S - \$218,450 over 10 years to installed a chilled water distribution system, insulation and controller.
- Miller Investments (Crankshaft Supply) – 2726 Washington Ave. N - \$56,425 over 9 years to finance the installation of a solar array.
- Greenway Office – 2801 21st Ave S - \$100,000 for the installation of a solar array.

As the PACE program continues to evolve in the early implementation phase, the SPPA and City of Minneapolis are requesting at this time to enter into an amended and restated Joint Powers Agreement, which further clarifies our respective roles and responsibilities in relationship to the PACE program. The original agreement authorized one lender (SPPA) with the City of Minneapolis collecting up to 20% of the property value to repay the loan. The new agreement will authorize other lenders to participate in a portion of up front financing of the projects and will define the roles and responsibilities of all parties involved.

Attachment.

**Port Authority of the City of Saint Paul
Property Assessed Clean Energy Program
(PACE OF MN)
JOINT POWERS AGREEMENT**

Saint Paul Port Authority
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Saint Paul, MN 55102
(651) 224-5686
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Revised 01/07/2015

AMENDED AND RESTATED JOINT POWERS AGREEMENT

This Agreement, made and entered into as of the ____ day of _____, 2015, by and between the Port Authority of the City of Saint Paul, a body corporate and politic (the "Port Authority"), and the City of Minneapolis, a Minnesota municipal corporation (the "City"), amends and restates that certain Joint Powers Agreement dated December 20, 2013 between the Port Authority and the City to provide as follows:

WHEREAS, the Port Authority has been engaged in governmental programs for providing financing in the City of Saint Paul and in other areas of the State of Minnesota by making loans evidenced by various financing leases and loan agreements, and in the process of operating these programs the Port Authority has developed a high degree of financial expertise and strength; and

WHEREAS, Minnesota Statutes, Sections 216C.435 and 216C.436 and Chapter 429 and 471.59 (collectively the "Act") authorize the City to provide for the financing of the acquisition and construction or installation of energy efficiency and conservation improvements (the "Cost Effective Energy Improvements" as defined in the Act or "Improvements") on "Qualifying Real Properties" as defined in the Act (the "Properties" or "Property") located within the boundaries of the City through the use of special assessments; and

WHEREAS, the Act authorizes the City to designate a local government unit other than the City to implement the program under the Act on behalf of the City; and

WHEREAS, the City has one or more projects within the boundaries of the City that have Improvements in need of financing and has adopted its Resolution No. 2013R-525 and Resolution No. 2015R___ (copies of which are attached hereto as Exhibit A) to designate the Port Authority to implement and administer a program under the Act on behalf of the City to finance such Improvements; and

WHEREAS, the Port Authority has created a program under the Act known as the Property Assessed Clean Energy Program ("PACE OF MN" or the "Program") for purposes of implementing and administering the activities described in the Act, and the Port Authority is willing to implement and administer the Program on behalf of the City as requested herein; and

WHEREAS, a joint powers agreement is required between the City and the Port Authority for PACE OF MN; and

WHEREAS, the Improvements will serve citizens of the City of Saint Paul and the City of Minneapolis, as well as Ramsey and Hennepin Counties and the State of Minnesota.

NOW THEREFORE, in consideration of the mutual covenants herein made, the parties to this Agreement hereby agree as follows:

1. The Port Authority will exercise the powers of the Act on behalf of the City to provide financing for Improvements located within the boundaries of the City. Except as otherwise provided in this Joint Powers Agreement, the Port Authority shall be solely responsible for the implementation and administration of PACE OF MN and the financing of the Improvements.

2. In connection with its implementation and administration of PACE OF MN, and its financing of the Improvements located within the boundaries of the City, it is anticipated that the Port Authority will enter into various agreements with persons wishing to obtain financing for Improvements located within the boundaries of the City as well as with sources of financing for such Improvements (collectively the "Program Documents").

3. The Port Authority may and is permitted to charge fees to borrowers for its implementation and administration of PACE OF MN, which fee will be described in, and payable under, the Program Documents.

4. The Port Authority will have the sole duty and responsibility to comply with or enforce covenants and agreements contained in the Program Documents. This power specifically includes the responsibility for monitoring and enforcing compliance with the provisions of the Program Documents.

5. Either the Port Authority or a participating lending institution (the "Lender") will use its own financial resources to finance the Improvements (the "Loan(s)"), or a taxable special assessment revenue bond(s) issued by the Port Authority in favor of the Lender will be used to finance the Improvements (the "Bond(s)"). Regardless of the financing mechanism, the Lender will advance funds under the Program Documents to be repaid from levied special assessments.

6. The Loan(s) or Bond(s) must be a special/limited obligation of the Port Authority and, with respect to Improvements located within the boundaries of the City, payable solely from special assessments levied by the City as provided herein. The Loan(s) or Bond(s) and interest thereon must neither constitute nor give rise to a general indebtedness or pecuniary liability, or a general or moral obligation, or a pledge or loan of credit of the Port Authority, the City, the City of Saint Paul or the State of Minnesota, within the meaning of any constitutional or statutory provision. To that end, the Port Authority hereby agrees to indemnify and hold harmless the City from and against any claims or losses arising out of the Program, including but not limited to the failure of the Port Authority to provide for the payment of principal of, and the interest or any premium on, the Loan(s) or Bond(s) from special assessment payments actually paid to the Port Authority by the City. This indemnity must not, however, be construed to relate to any claims or losses which might arise by virtue of the failure of the City to levy and collect special assessments with respect to the Improvements or promptly remit such special assessment payments to the Port Authority as provided in the Program Documents. Nothing in this Agreement will constitute a waiver of the statutory limits on liability set forth in Minnesota Statutes, Chapter 466, or a waiver of any available immunities or defenses.

7. For each proposed project located within the boundaries of the City, the Port Authority will request that the City, as and for its contribution to the financing of the Improvements, and as provided in the Act, impose and collect special assessments necessary to

pay debt service on that portion of the Loan(s) or Bond(s) attributable to the Improvements located within the boundaries of the City. Evidence that the City has imposed such special assessments is a precondition to the Port Authority's obligation to provide financing to any Improvements located within the boundaries of the City in accordance with the following process:

A. The Port Authority shall provide to City an application from an applicant under the Program (the "Applicant"), which includes the following documentation:

1) A copy of the application containing the legal name of the Applicant, its legal status, its legal address, a description of the proposed project, the cost of the Improvements, the total amount to be assessed against the Property and the address, legal description and tax identification code for the Property upon which the Improvements are to be constructed or installed.

2) A statement from the Port Authority that the proposed project as described in the application qualifies under the requirements of the Act and the Port Authority.

3) A fully-executed copy of the Applicant's "Petition and Assessment Agreement" suitable for evidencing, and recording if necessary, Applicant's agreement to be assessed for the amount of the Improvements.

B. Upon receipt of the documentation described in Subparagraph A above, City agrees that it will levy an assessment against the Property for the amount to be assessed as set forth in Subparagraph A above.

C. Evidence that the City has imposed such special assessments is a precondition to the Port Authority's obligation to provide financing for such Improvements located within the boundaries of the City.

D. In the event that, after the City levies an assessment against the Property for the costs of the Improvements and related costs as provided for in Subparagraph B above, the Port Authority does not fund the cost of the Improvements as contemplated by this Agreement, the Port Authority shall promptly notify City that it has not and will not fund the costs of the Improvements under the Program and City shall thereafter inform the County Auditor to remove the subject assessment from the Property.

8. Once the City has imposed special assessments to finance Improvements located within the boundaries of the City, the City must collect and transfer all collections of the assessments received by it upon receipt to the Port Authority for application to the payment of the applicable Loan(s) or Bond(s). The City will take all actions permitted by law for the recovery of the assessments, including without limitation, reinstating the outstanding balance of assessments when the land returns to private ownership, in accordance with Minnesota Statutes, Section 429.071, Subd. 4. The City acknowledges that the Lender is a third-party beneficiary of the City's covenants herein with respect to the imposition and transfer of special assessments described herein.

9. Unless otherwise provided by concurrent action of the Port Authority and the City, this Agreement will terminate upon a 30-day's advance written termination notice to the other Joint Powers Agreement partner or upon the retirement or defeasance of all Loan(s) or Bond(s), whichever is later; and notwithstanding any other provisions, this Agreement may not be terminated in advance of such retirement or defeasance.

10. This Agreement may be amended by the Port Authority and the City, at any time, by an instrument executed by both of them. The Port Authority or the City may not amend this Agreement, however, if the effect of the amendment would impair the rights of the holder of the Loan(s) or Bond(s), unless the holder has consented to the amendment. The Port Authority represents that this Agreement does not impair the rights of the holder of any Loan(s) or Bond(s) outstanding as of the date of this Agreement.

11. This Agreement may be executed in any number of counterparts, each of which when taken together will constitute a single agreement.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the Port Authority and the City have caused this Agreement to be executed on their behalf, by their duly authorized officers, as of the day and year first above written.

PORT AUTHORITY OF THE
CITY OF SAINT PAUL

By: _____
Its: President

By: _____
Its: Chief Financial Officer

CITY OF MINNEAPOLIS

By: _____
Its: Finance Officer

City Department Approval:

By: _____
Its: Director, Department of Community Planning
and Economic Development

Approved as to form:

Assistant City Attorney

**RESOLUTION
OF THE
CITY OF MINNEAPOLIS**

By Goodman

Authorizing execution of an amended and restated joint powers agreement with the Port Authority of the City of Saint Paul for a property assessed clean energy improvement financing program

Whereas, the Port Authority of the City of Saint Paul (the "Port Authority") has established the Property Assessed Clean Energy Program ("PACEMN") to finance the acquisition and construction or installation of energy efficiency and conservation improvements (the "Improvements") on properties located throughout the State of Minnesota through the use of special assessments pursuant to the authority granted by Minnesota Statutes, Sections 216C.435 and 216C.436 (the "Act") and Minnesota Statutes, Chapter 429; and

Whereas, pursuant to Resolution 2013R-525, adopted by the Minneapolis City Council on December 6, 2013, the City designated the Port Authority as the "implementing entity" pursuant to Minnesota Statutes, Section 216C.435, subd. 6, to implement and administer the program on behalf of the City and entered into a joint powers agreement with the Port Authority; and

Whereas, the Port Authority intends to revise the program to provide for financing of Improvements by the Port Authority or a lending institution using its own financial resources ("Loans") in addition to the previously contemplated special assessment revenue bonds (the "Bonds"); and

Whereas, the City and Port Authority desire to enter into an Amended and Restated Joint Powers Agreement to memorialize the changes to the agreement;

Now, Therefore, Be It Resolved by The City Council of The City of Minneapolis:

That the City shall enter into an Amended and Restated Joint Powers Agreement with the Port Authority for the purposes described in the Act and hereby authorizes the execution of the Amended and Restated Joint Powers Agreement.

Be It Further Resolved that, the Amended and Restated Joint Powers Agreement will provide that in order to facilitate and encourage the financing of the Improvements located within the City, the City will levy assessments for said Improvements on the property so benefitted in accordance with Minnesota Statutes, Chapter 429, and the Program Documents as defined in the Amended and Restated Joint Powers Agreement. The interest rate on the special assessments shall be the interest rate on the applicable Bond or Loan, plus 0.5%.

Be It Further Resolved that, the Amended and Restated Joint Powers Agreement will provide that after imposition of the special assessments the City will collect such assessments and remit them to the Port Authority for use in the repayment of the Bond or Loan, as applicable. The City will take all actions permitted by law to recover the assessments, including without limitation, for tax-forfeit parcels, reinstating the outstanding balance of assessments when the property returns to private ownership, in accordance with Minnesota Statutes, Section 429.071, subd. 4.