

JOINT POWERS AGREEMENT

This Agreement, made and entered into as of the _____ day of _____, 2016, by and between the Port Authority of the City of Saint Paul (the “Port Authority”), a body corporate and politic, and the City of Saint Paul, Minnesota, a municipal corporation (the “City”), provides as follows:

WHEREAS, the Port Authority has been engaged in governmental programs for providing financing throughout the State of Minnesota (the “State”) 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 its boundaries that have Improvements in need of financing, and has adopted its Resolution No. _____ (a copy of which is attached hereto as Exhibit A) to designate the Port Authority to implement and administer a program 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”) for purposes of implementing and administering the activities described in the Act, and the Port Authority is willing to implement and administer that program on behalf of the City as requested herein; and

WHEREAS, the City intends to make energy improvement financing programs of the kind managed by the Port Authority available for improvements of eligible properties within its boundaries, including but not limited to the Energy Savings Partnership, Trillion BTU and PACE OF MN, and a joint powers agreement between the City and the Port Authority for PACE OF MN is required to do so; and

WHEREAS, the Improvements will serve citizens of the City of Saint Paul 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 its powers pursuant to 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 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. The Port Authority's responsibility specifically includes monitoring and enforcing compliance with the provisions of the Program Documents.

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

6. The Loan(s) or Bond(s) must be a special/limited obligation of the Port Authority, 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 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 exercise, by the City, of its governmental powers in connection with the Project, or 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.

7. As and for its contribution to the financing of the Improvements, and as provided in the Act, the City will 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 shall provide to City an application from an Applicant under the Program 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 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 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, and the Applicant's agreement to be assessed for the amount of the Improvements.

B. Upon receipt of the documentation described in Subparagraph A above, and upon confirmation that the Project and Application meet applicable legal requirements, City agrees that it will levy an assessment against the Property for the amount to be assessed as set forth in Section 7.A. above.

C. 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.

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 does not fund the cost of the Improvements as contemplated by this Agreement, the Port 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 such special 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 Minn. Stat. Section 429.071, Subd. 4. The City has no obligation to make any payment on the applicable Loan(s) or Bond(s) other than by the imposition and collection of special assessments pursuant to the Act. 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 within 30 days of an advance written termination notice by one Joint Powers Agreement partner to the other Joint Powers Agreement partner, provided that this Agreement may not be terminated in advance of the retirement or defeasance of all outstanding Loans or Bonds.

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.

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

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