

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

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JOINT POWERS AGREEMENT¹

This Agreement, made and entered into as of the ____ day of _____, 20__, by and between the Port Authority of the City of Saint Paul (the “Port Authority”), a body corporate and politic, and the County of _____, Minnesota, a political subdivision under the laws of Minnesota (the “County”), provides as follows:

WHEREAS, the Port Authority has been engaged in governmental programs for providing financing in the County of _____ and in other areas of 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 County 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 County through the use of special assessments; and

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

WHEREAS, the County has one or more projects within the boundaries of the County 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 County 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 County as requested herein; and

WHEREAS, the County has expressed a desire 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 is required between the County and the Port Authority for PACE OF MN; and

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

¹ Revise as needed to reflect Host Jurisdiction.

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 County by utilizing to provide financing for Improvements located within the boundaries of the County. 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 County, 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 County 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. 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 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 County 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 County, 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 County 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 County. This indemnity must not, however, be construed to relate to any claims or losses which might arise by virtue of the exercise, by the County, of its governmental powers in connection with the Project, or by virtue of the failure of the County 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 County must 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 County. Evidence that the County 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 County in accordance with the following process:

A. The Port shall provide to County 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, Applicant's agreement to be assessed for the amount of the Improvements.

B. Upon receipt of the documentation described in Subparagraph A above, County 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 County 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 County.

D. In the event that, after the County 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 County that it has not and will not fund the costs of the Improvements under the Program and County shall thereafter inform the County Auditor to remove the subject assessment from the Property.

8. Once the County has imposed special assessments to finance Improvements located within the boundaries of the County, the County 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 County 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 County acknowledges that the Lender is a third-party beneficiary of the County'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 County, this Agreement will terminate upon a 30-day's advanced written 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 County, at any time, by an instrument executed by both of them. The Port Authority or the County 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.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the Port Authority and the County 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

COUNTY OF _____, MINNESOTA

By: _____
Its: _____

By: _____
Its: _____

EXHIBIT A

Extract of Minutes of Meeting of the
Board of Commissioners of the County of _____, Minnesota

Pursuant to due call and notice thereof, a regular meeting of the Board of Commissioners
of the County of _____ (the "County"), was duly held at the _____
County Government Center in the County, on _____, _____, 20____, at
_____ P.M.

The following members were present:

and the following were absent:

* * * * *

The Chair announced that the next order of business was consideration of the designation
of the Port Authority of the City of Saint Paul to implement and administer a program under
Minnesota Statutes, Sections 216C.435 and 216C.436 and Chapter 429 and 471.59 on behalf of
the County.

Member _____ introduced the following resolution and moved its
adoption, the reading of which had been dispensed with by unanimous consent:

RESOLUTION NO. _____

RESOLUTION DESIGNATING THE PORT AUTHORITY TO
IMPLEMENT AND ADMINISTER A PROJECT ASSESSED
CLEAN ENERGY IMPROVEMENT FINANCING ON BEHALF
OF THE COUNTY, AND PROVIDING FOR THE IMPOSITION
OF SPECIAL ASSESSMENTS AS NEEDED IN CONNECTION
WITH THAT PROGRAM

BE IT RESOLVED by the Board of Commissioners of the County of _____
(the "County"), as follows:

1. The Port Authority of the City of Saint Paul (the “**Port Authority**”) has established the Property Assessed Clean Energy Program (“**PACE OF MN**”) 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 Minnesota Statutes Sections 216C.435 and 216C.436 and Chapter 429 and 471.59 (the “Act”).

2. The County has received and approved one or more applications and petitions for Special Assessments from owners of property located in the County desiring to participate in and receive financing pursuant to the Act.

3. In order to finance the Improvements, the County hereby determines that it is beneficial to participate in PACE OF MN, and to designate the Port Authority as the implementor and administrator of that program on behalf of the County for purposes of financing Improvements located within the County.

4. The County understands that the Port Authority may obtain funding from designated lending institutions or may issue its PACE OF MN special assessment revenue bond(s) to finance the Improvements, and that the sole security for the loan(s) or bond(s) will be special assessments imposed by the other cities participating in PACE OF MN.

5. To facilitate and encourage the financing of Improvements located within the County, the County covenants to levy assessments for said Improvements on the property so benefitted, in accordance with the Application and Petition for Special Assessments received from the owner(s) of the Property and approved by the Port Authority. The interest rate on the Special Assessments shall be the interest rate on the Loan(s) or Bond(s), and may include additional interest.

6. After imposition of the special assessments, the County shall collect such assessments and remit them to the Port Authority for use in the repayment of the Loan(s) or Bond(s). The County will take all actions permitted by law to recover 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.

7. The County Manager or Assistant County Manager are authorized to execute on behalf of the County, any documents, certificates or agreements necessary to implement the program authorized by this resolution.

The motion for the adoption of the foregoing resolution was duly seconded by Member

_____ upon vote being taken thereon the following voted in favor thereof:

and the following voted against the same:

whereupon said resolution was declared duly passed and adopted.

STATE OF MINNESOTA)
COUNTY OF _____) SS.

I, the undersigned, being the duly qualified and acting _____ of the County of _____, hereby certify that I have carefully compared the attached and foregoing extract of minutes of a meeting of the Board of Commissioners of said County held _____, with the original thereof on file and of record in my office and the same is a full, true and complete transcript therefrom.

WITNESS My hand officially and the seal of the County this _____ of _____.

By: _____
Its: _____
County of _____

(Seal)