



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

Date: June 17, 2014
To: Council Member Lisa Goodman, Chair, Community Development & Regulatory Services Committee
Subject: Joint Powers Agreement with Saint Paul Port Authority

Recommendations:

1. Adopt the attached resolution authorizing a Joint Powers Agreement with the Port Authority of the City of Saint Paul and its instrumentality, Capital City Properties, to facilitate New Markets Tax Credit investments in Minneapolis

Previous Directives: None

Prepared by: Casey Dzieweczynski, Senior Project Coordinator (612-673-5070)
Approved by: Cathy Polasky, Director of Economic Development & Policy _____
Charles T. Lutz, Interim CPED Director _____
Presenter in Committee: Casey Dzieweczynski

Financial Impact:

- None

Community Impact:

- **Neighborhood Notification:** N/A. Neighborhoods would be engaged as potential projects are identified and opportunities pursued.
- **City Goals:** A hub of economic activity and innovation: Businesses – big and small – start, move, stay and grow here
- **Comprehensive Plan:** Future projects will comply with the comprehensive plan.
- **Zoning Code:** Future projects will comply with zoning.
- **Living Wage/Business Subsidy Agreement:** Yes _____ No X
- **Job Linkage:** Yes _____ No X

Supporting Information

The Port Authority of the City of Saint Paul (the “Port Authority”) has requested that the City of Minneapolis enter into a Joint Powers Agreement with the Port Authority enabling them to use future New Markets Tax Credit Allocations for Minneapolis projects.

The New Markets Tax Credit (NMTTC) Program is a federal program established in 2000 to facilitate private investment in low-income communities across the country. Equity investors in eligible projects receive a 39% federal tax credit based on their investment over a 7 year compliance period. The tax credits can be used to finance operating businesses or for real estate development. Projects must be located in low-income census tracts or serve targeted/low-income populations. While each project is

different, the business/project receiving the NMTC investment typically receives a 20% net benefit, either in the form of forgivable capital, or substantially below market rate financing. Since the NMTC Program's inception, over \$36.5 billion in tax credit authority has been allocated for projects across the country. Many Minneapolis businesses and nonprofits have utilized the NMTC program to finance new construction or redevelopment projects, including:

- Washburn Center for Children – new facility on Glenwood Ave
- Izzy's Ice Cream – new retail & production facility on S 2nd St.
- Midtown Global Market – redevelopment of Sears Building on Chicago Ave
- Seward Co-op - existing Franklin Ave store and upcoming Friendship Store
- African Development Center – new headquarters on Riverside Ave

The NMTC Program is administered through the Community Development Financial Institutions (CDFI) Fund, a division of the U.S. Treasury. Each year the CDFI Fund awards tax credit allocations to Community Development Entities (CDEs) based on a competitive application process. CDEs then “sell” the tax credits to equity investors as an incentive to make investments in eligible projects. In the Port Authority’s case, they have created a CDE called Capital City Properties (CCP) to carry out their New Markets activity.

The NMTC program is highly competitive, and potential projects are often identified several months - even years - in advance by organizations that have received or are applying for tax credit allocations. By partnering with CCP the City will be opening up another avenue for businesses seeking funding through the NMTC program.

The Port Authority and CCP already have a history of using NMTC in Minneapolis, as they used a portion of their tax credit allocation in the Washburn Center for Children Project on Glenwood Ave. However, as required by the CDFI Fund, each CDE must declare an eligible service area in which they are required to invest a majority (85%) of their allocations. CCP is currently required to invest at least 85% of their tax credit allocations in Saint Paul/Ramsey County. Entering into a Joint Powers Agreement with the City of Minneapolis would allow CCP to expand its service area and invest a greater share of future tax credit allocations in Minneapolis.

Under the Joint Powers Agreement, CCP and the City will work cooperatively to identify potential Minneapolis projects that could benefit from NMTC financing. If a Joint Powers Agreement is executed, CCP will be able to request an expansion of its service area in conjunction with its application for the next round of NMTC allocations. If another round of tax credit funding is authorized by the federal government the application period will likely be later this summer, with awards announced in early 2015 and tax credits made available for eligible projects by the summer of 2015. Due to the complex nature of the NMTC Program, CCP will be entirely responsible for the implementation, administration and use of its NMTC Allocations for projects located in Minneapolis. The City of Minneapolis will have no financial, managerial, administrative or other kinds of obligations related to the NMTC program.

Previous Capital City Properties Projects

Since its inception, Capital City Partners has received three NMTC allocation awards (2008, 2009, 2011) totaling \$49 million. Below are brief descriptions of a few NMTC projects that CCP has been involved in.

- Washburn Center for Children - new 50,000 square foot facility currently under construction on Glenwood Ave in North Minneapolis; \$25.6 million project (CCP - \$5.1 million of allocation plus \$11 million from United Fund Advisors and \$4.5 million from US Bank CDC).
- Baldinger Bakery – new 145,000 square foot commercial bakery on the east side of St. Paul (CCP - \$9 million of allocation plus \$10 million from CRF.)
- West Side Clinic – new 34,000 square foot facility in St. (CCP - \$5 million of allocation plus \$6 million from LISC).
- HealthEast Ambulance – new 46,000 square foot facility on the east side of St. Paul (Capital City Properties - \$6 million of allocation).

EXHIBIT A

JOINT POWERS AGREEMENT

BY AND AMONG

CITY OF MINNEAPOLIS, THE PORT AUTHORITY

OF THE CITY OF SAINT PAUL, AND CAPITAL CITY PROPERTIES

FOR THE USE OF NEW MARKETS TAX CREDIT FINANCING

This Agreement, made and entered into as of the _____ day of _____, 2014, by and among the City of Minneapolis, a Minnesota municipal corporation organized and existing under its home rule charter and the constitution and laws of the State of Minnesota (the "City"), the Port Authority of the City of Saint Paul, a body corporate and politic under Minnesota law (the "Port Authority"), and Capital City Properties, a Minnesota nonprofit corporation created to carry out the exclusively public purposes of the Port Authority ("CCP"), and provides as follows:

WHEREAS, the Port Authority has been engaged in governmental and other programs for providing economic development aid including, among other things, financing in the City of Saint Paul and in other areas of the State of Minnesota (the "State") by providing economic and brownfields services, and 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 economic development and financial expertise and strength; and

WHEREAS, CCP has been created by the Port Authority to aid, assist and provide advice to the Port Authority in its economic development activities both in the Saint Paul area and through joint venture or joint powers arrangements outside of the Saint Paul area; and

WHEREAS, as part of its work to support the Port Authority, CCP has previously applied for and been selected to receive, and hopes to receive in the future, New Markets Tax Credits ("NMTC") allocations (collectively the "Allocations") from the Community Development Financial Institutions Fund ("CDFI"); and

WHEREAS, in connection with the award of the existing Allocations, CCP has been certified by CDFI as a community development entity ("CDE"), accountable to low income communities through its work on behalf of the mission of the Port Authority; and

WHEREAS, to make use of existing and future Allocations, and to facilitate the equity investment required for the use of the NMTC, CCP has previously created a number of subsidiary entities (each a "Subsidiary CDE"), each of which has or will receive a sub-allocation of NMTC from CCP; and

WHEREAS, the City believes that there are or will be projects within the boundaries of the City that might benefit from the use of this unique financing tool and the expertise developed by the Port Authority and CCP in that regard and in economic development generally; and

WHEREAS, as a result the City believes that it would be beneficial to engage the Port Authority and CCP and authorize them to use the Allocations available to CCP and its Subsidiary CDEs, as well as, where appropriate, the financial expertise developed by both the Port Authority and CCP, in connection with community economic development projects located within the City; and

WHEREAS, such NMTC projects will benefit the low income residents and/or the low income communities in which said projects are located within the City and the State of Minnesota; and

WHEREAS, Minnesota Statutes, Section 471.59 (the "Act") authorizes the City to enter into a joint powers agreement with the Port Authority whereby the Port Authority, CCP and the Subsidiary CDEs will make their NMTC Allocations and other expertise available in connection with economic development projects located within the boundaries of the City.

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

1. Purpose. The purpose of this Agreement is to enable CCP, acting in support of the Port Authority and on behalf of the City, and the City hereby authorizes CCP to exercise the powers available to it in connection with the NMTC program to provide financing for eligible projects located within the boundaries of the City. CCP shall work cooperatively with the City to identify and qualify eligible projects for the potential use of Allocations. Because of the complexity of the NMTC program, however, CCP shall be solely responsible for the implementation, administration and use of NMTC Allocation for projects located within the City, through CCP's governing board, its advisory board, its consultants, its staff and the Subsidiary CDEs.

2. Program. In connection with its implementation and administration of the NMTC program, and its financing of projects located within the boundaries of the City, it is anticipated that CCP and the Subsidiary CDEs will enter into various agreements with persons wishing to obtain financing for projects located within the boundaries of the City (collectively the "Program Documents"). CCP and the Subsidiary CDEs will have the sole duty and responsibility to negotiate, comply with or enforce covenants and agreements contained in the Program Documents. This duty shall specifically include the responsibility for monitoring and enforcing compliance with the provisions of the Program Documents.

3. Where appropriate, and only if needed in connection with the financing of a project using the NMTC Allocations, CCP and/or the Port Authority may also provide services in the form of economic development or brownfields expertise to the project.

4. CCP will charge a fee for its implementation and administration of the NMTC Program, which fee will be described in, and payable under, the Program Documents. The City will have no responsibility for payment of any fees.

5. Reports. The Port Authority will, or will require CCP to, report on an annual basis to the City as to the identity of projects financed using the NMTC Allocations. Such report shall include such details as shall be reasonably required by the City, but at a minimum include expectations as to jobs retained, jobs created, community impacts realized and taxes generated by such projects.

6. Indemnification. The Port Authority agrees to defend and indemnify the City for any liability claims arising from CCP's activities or operations and decisions of the CCP. Nothing in this Agreement shall 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. Nothing herein shall be construed to provide insurance coverage or indemnification to an officer, employee, or volunteer of any party for any act or omission for which the officer, employee, or volunteer is guilty of malfeasance in office, willful neglect of duty or bad faith.

7. Term. This Agreement shall be for an indefinite term and shall continue until terminated or rescinded in accordance with the terms of this Agreement. The City and the Port Authority will review this Agreement on an annual basis to ensure that it is meeting the needs of the parties.

8. Termination. This Agreement may be terminated at any time by mutual consent of the parties evidenced by identical resolutions adopted by the governing bodies of each party.

9. Rescission. Any party may rescind this Agreement for any reason by a resolution passed by the governing body of the rescinding party. The rescission shall not be effective until after six- (6) months written notice of the rescission has been given to the other parties. A notice of rescission may be cancelled at any time prior to the effective date of the rescission by notifying the other parties in writing. Notwithstanding the above, a rescission shall not affect any current and unused NMTC Allocation that CCP has received prior to the rescission notice and the Port Authority and CCP may continue, in cooperation with the City as outlined in Section 1 above, to exercise the powers available to them under this Agreement, but only with regard to existing NMTC Allocation available as of the date of receipt of the written notice required in this Section.

10. Distribution of Funds and Property. Since the parties do not intend to create a separate joint powers entity through this Agreement, there will be no joint funds or assets to distribute upon termination or rescission of this Agreement.

11. Amendments. This Agreement may be amended by the Port Authority, CCP and the City, at any time, by an instrument executed by all of them. No amendment hereof may be entered into by the Port Authority, CCP or the City, however, if the effect of such amendment would be to impair the rights of any parties to the Program Documents, without the prior written consent of such party or parties to such amendment.

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

13. Authority. The Port Authority certifies that CCP constitutes an instrumentality of the Port Authority within the meaning of Minnesota Statutes, section 471.59, subd. 1, and has all requisite authority to undertake the NMTC program.

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

CITY OF MINNEAPOLIS

By: _____

Its: Finance Officer

Department head approval:

Director of Economic Policy &
Development, CPED

Approved as to form:

Assistant City Attorney

PORT AUTHORITY OF THE CITY OF
SAINT PAUL

By: _____

Its: President

CAPITAL CITY PROPERTIES

By: _____

Its: Chief Executive Officer

RESOLUTION
OF THE
CITY OF MINNEAPOLIS

AUTHORIZING A JOINT POWERS AGREEMENT AMONG
THE CITY OF MINNEAPOLIS, THE PORT AUTHORITY OF
THE CITY OF SAINT PAUL AND CAPITAL CITY
PROPERTIES TO FACILITATE THE USE OF NEW MARKETS
TAX CREDIT ALLOCATIONS IN PROJECTS LOCATED IN
MINNEAPOLIS

WHEREAS, the Port Authority of the City of Saint Paul (the “Port Authority”) has been engaged in governmental and other programs for providing economic development aid including, among other things, financing in the City of Saint Paul and in other areas of the State of Minnesota, and in the process of operating these programs the Port Authority has developed a high degree of economic development and financial expertise and strength; and

WHEREAS, the Port Authority has created Capital City Properties, a Minnesota nonprofit corporation (“CCP”) to aid, assist and provide advice to the Port Authority in its economic development activities both in the Saint Paul area and through joint venture or joint powers arrangements outside of the Saint Paul area; and

WHEREAS, as part of its work to support the Port Authority, CCP has previously applied for and been selected to receive New Markets Tax Credits allocations (the “NMTC Allocations”) from the Community Development Financial Institutions Fund (“CDFI”); and

WHEREAS, in connection with the award of the existing NMTC Allocations, CCP has been certified by CDFI as a community development entity (“CDE”), accountable to low income communities through its work on behalf of the mission of the Port Authority; and

WHEREAS, the Port Authority and CPP have proposed expanding the service area for their NMTC Allocations to include the City of Minneapolis (the “City”); and

WHEREAS, the City believes that there are or will be projects within the boundaries of the City that might benefit from the use of this unique financing tool; and

WHEREAS, as a result, the City believes that it would be beneficial to allow the Port Authority and CCP to use the NMTC Allocations available to CCP and its subsidiary CDEs in connection with community economic development projects located within the City; and

WHEREAS, such NMTC Allocations will benefit the low income residents and/or the low income communities in which said projects are located within the City and the State of Minnesota; and

WHEREAS, Minnesota Statutes, Section 471.59 (the “Act”) authorizes the City to enter into a joint powers agreement with the Port Authority and its instrumentalities whereby the Port Authority, CCP and the subsidiary CDEs will make their NMTC Allocations and other expertise available in connection with economic development projects located within the boundaries of the City.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Minneapolis:

That the City shall enter into a Joint Powers Agreement in substantially the form attached hereto as Exhibit A with the Port Authority and CCP for the purposes described herein and in the Act and the Finance Officer or his designee is hereby authorized and directed to execute the Joint Powers Agreement.