



Legislation Text

File #: RES 11-755, **Version:** 1

Authorizing tax-exempt capital lease financing under a governmental lease-purchase agreement and naming Wells Fargo Securities, LLC as the lender for the purchase of public safety vehicles, and determining other matters in connection therewith. (This item is a companion to Res 11-754 and does not require a public hearing.)

WHEREAS, the City of Saint Paul, Minnesota (the "City") is undertaking the purchase of approximately 46 police vehicles and 3 fire vehicles (the "Equipment"); and

WHEREAS, the City's Office of Financial Services initiated a Request for Financing - 2011 Public Safety Capital Lease on March 28, 2011 and received responses from four qualified bidders; and

WHEREAS, the City Treasurer and Debt Manager recommend awarding the bid to Wells Fargo Securities, LLC ("Wells Fargo") for up to \$1,950,500 for a three-year capital lease for purchase of the Equipment which will close on May 2, 2011; and

WHEREAS, the City now wishes to enter into Governmental Lease-Purchase Agreement (the "Lease Purchase Agreement") with Wells Fargo, which provides for a three-year lease in the principal amount of \$1,950,500 at an approximate interest rate per annum of 1.55% for the acquisition of the Equipment; and

WHEREAS, by entering into the Lease Purchase Agreement, the City will exercise the powers under the City's home rule charter and Minnesota Statutes, Section 465.71, as amended; and

WHEREAS, the Equipment is essential for the City to perform its governmental functions; and

WHEREAS, the funds made available under the Lease Purchase Agreement will be deposited with the City and will be used for the acquisition of the Equipment; and

WHEREAS, upon the termination of the three-year lease period, the City will have the option to purchase the Equipment for \$1.00; and

WHEREAS, the Lease Purchase Agreement is subject to annual non-appropriation, and the City has the right to terminate the Lease Purchase Agreement, in accordance with the terms thereof, at the end of any fiscal year; and

WHEREAS, on the same day hereof, the City Council of the City is considering a budget amendment, after conducting a public hearing, to allocate funds to make 2011 lease payments under the Lease Purchase Agreement, when due; and

WHEREAS, the City Attorney's office recommends that McGrann Shea Carnival Straughn & Lamb, Chartered, assist with the legal work relating to the Lease Purchase Agreement and provide the required tax exempt legal opinion; now, therefore, be it

RESOLVED by the City Council of the City of Saint Paul, Minnesota, as follows:

1. Selection of Wells Fargo Securities, LLC as Lender. It is hereby found and determined that the bid submitted by Wells Fargo is the most cost-effective of the four proposals submitted pursuant to the City's

Request for City Financing - 2011 Public Safety Capital Lease for the purpose of financing the acquisition of the Equipment and the City hereby awards the bid to Wells Fargo pursuant to the terms of its proposal (the "Proposal").

2. Proposal. The Proposal is for an amount of \$1,950,500 at an approximate interest rate of 1.55% per annum with a closing date of May 2, 2011.

3. Purchase. At the expiration of the Lease Purchase Agreement, the City shall have the option to purchase the Equipment for \$1.00.

4. Registration and Transfer. The Treasurer of the City is hereby appointed the registrar with respect to the Lease Purchase Agreement. The City will cause to be kept a register in which the registrar shall provide for the registration of the Lease Purchase Agreement.

The Lease Purchase Agreement shall be registered in the name of the payee on the books of the registrar initially and when notice of any transfer or assignment is received. The City and registrar may treat the registered owner of the Lease Purchase Agreement as the person exclusively entitled to exercise all the rights and powers of the owner.

The registrar shall require payment of a sum sufficient to cover any tax or other governmental charge payable in connection with the transfer of the Lease Purchase Agreement.

5. Treatment of Registered Owner. The City and the registrar may treat the person in whose name the Lease Purchase Agreement is registered as the owner of the Lease Purchase Agreement for the purpose of receiving payments thereon and for all other purposes whatsoever, and neither the City nor the registrar shall be affected by notice to the contrary.

6. Authorized Officials. The Lease Purchase Agreement and all related documents (the "Financing Documents") and the acquisition and financing of the Equipment under the terms and conditions as described in the Financing Documents are hereby approved. The Mayor of the City, the Interim Director of the Office of Financial Services, and any other officer of the City who is required to execute contracts on behalf of the City are, and each of them hereby is, authorized to execute, acknowledge and deliver the Financing Documents with any changes, insertions and omissions therein as may be approved by the officers who execute the Financing Documents, such approval to be conclusively evidenced by such execution and delivery of the Financing Documents. The Mayor of the City, the Interim Director of the Office of Financial Services, and any other required officer of the City are authorized to affix the official seal of the City to the Financing Documents and attest the same.

7. Execution of Documents. The proper officers of the City are hereby authorized and directed to execute and deliver any and all papers, instruments, documents opinions, certificates, affidavits and other documents and to do or cause to be done any and all other acts and things necessary or proper for carrying out this resolution and the Financing Documents.

8. Not Qualified Tax-Exempt Obligations. The Lease Purchase Agreement, together with other tax-exempt obligations previously issued by and anticipated to be issued by the City in calendar year 2011 exceed \$10,000,000. Therefore, the City cannot and does not designate the Lease Purchase Agreement as a "qualified tax-exempt obligation" for purposes of Section 265 of the Internal Revenue Code of 1986, as amended (the "Code").

9. No Arbitrage. Until expended on the Equipment, the proceeds of the Lease Purchase Agreement will be deposited with the City and utilized in conformance with the terms of the Lease Purchase Agreement. Payments on the Lease Purchase Agreement shall be made from annual appropriations, and

money to make such payments shall not be segregated in any special fund of the City. No portion of the proceeds of the Lease Purchase Agreement will be used directly or indirectly to acquire higher yielding investments or to replace funds which were used directly or indirectly to acquire higher yielding investments, except (1) for a reasonable temporary period until such proceeds are needed for the purpose for which the Lease Purchase Agreement is entered into, and (2) an addition to the above in an amount not greater than the lesser of \$100,000 or five percent (5.00%) of proceeds. In addition, the proceeds of the Lease Purchase Agreement and moneys used to make payments on the Lease Purchase Agreement shall not be invested in obligations or deposits issued by, guaranteed by or insured by the United States or any agency or instrumentality thereof if and to the extent that such investment would cause the Lease Purchase Agreement to be "federally guaranteed" within the meaning of Section 149(b) of the Code.

10. No General Obligation Pledge; Initial Appropriation. The Lease Purchase Agreement is not a general obligation of the City, but rather is payable from amounts to be annually appropriated, and the full faith, credit and taxing powers of the City shall not be and are not pledged to the payment of the Lease Purchase Agreement. Payments under the Lease Purchase Agreement are due semiannually in arrears over its three-year term. By other actions taken with respect to the 2011 budget, the City Council has appropriated money to make the payments due under the Lease Purchase Agreement in fiscal year 2011.

11. Records and Certificates. The proper officers of the City are hereby authorized and directed to prepare and furnish to Wells Fargo and McGrann Shea Carnival Straughn & Lamb, Chartered, as bond counsel to the City, certified copies of all proceedings and records of the City relating to Lease Purchase Agreement and to the financial condition and affairs of the City, and such other affidavits, certificates and information as are required to show the facts relating to the legality of the Lease Purchase Agreement, and all such certified copies, certificates, and affidavits, including any heretofore furnished, shall be deemed representations of the City as to the facts recited therein.

12. Negative Covenants as to Use or Proceeds and Equipment. The City hereby covenants not to use the proceeds of the Lease Purchase Agreement or to use the Equipment, or to cause or permit them to be used, or to enter into any deferred payment arrangements for the cost of the Equipment, in such a manner as to cause the Lease Purchase Agreement to be a "private activity bond" within the meaning of Sections 103 and 141 through 150 of the Code. The City reasonably expects that no actions will be taken over the term of the Lease Purchase Agreement that would cause it to be a "private activity bond", and the average term of Lease Purchase Agreement is not longer than reasonably necessary for the governmental purpose. The City hereby covenants not to use the proceeds of the Lease Purchase Agreement in such a manner as to cause the Lease Purchase Agreement to be a "hedge bond" within the meaning of Section 149(g) of the Code.

13. Tax-Exempt Status of Lease Purchase Agreement; Rebate; Elections. The City shall comply with the requirements necessary under the Code to establish and maintain the exclusion from gross income under Section 103 of the Code of the interest on the Lease Purchase Agreement. If any elections are available now, or hereafter with respect to arbitrage or rebate matters relating to Lease Purchase Agreement, the Mayor, Treasurer and then acting Director of the Office of Financial Services, or any of them, are hereby authorized and directed to make such elections as they deem necessary, appropriate or desirable in connection with the Lease Purchase Agreement in order to retain the tax-exempt status, and all such elections shall be, and shall be deemed and treated as, elections of the City.

14. Bond Counsel. McGrann Shea Carnival Straughn & Lamb, Chartered is hereby designated as bond counsel to the City with respect to the Lease Purchase Agreement and is hereby authorized to take all actions necessary to prepare necessary documents to permit the execution of the Lease Purchase Agreement and the financing of the Equipment.

15. Severability. If any section, paragraph or provision on this resolution shall be held to be invalid, or unenforceable for any reason, the invalidity or unenforceability of such section, paragraph, or provision shall

not affect any of the remaining provisions of this resolution.

16. Headings. Headings in this resolution are included for convenience only and are not a part hereof. The Headings in this resolution are not intended to limit or define the meaning of any provision hereto.

Adopted by the City Council of the City of Saint Paul, Minnesota on this 20th day of April, 2011.