



Legislation Text

File #: RES 12-721, **Version:** 1

Authorizing 2012 tax-exempt capital lease financing and related documents under a master tax-exempt lease/purchase agreement, and naming U.S. Bancorp Government Leasing and Finance, Inc. as the lender for the purchase of public safety and public works vehicles and determining other matters in connection therewith. (This item is a companion to RES PH 12-113 and does not require a public hearing.)

WHEREAS, the City of Saint Paul, Minnesota (the "City") is undertaking the purchase of approximately 45 police vehicles, six motorcycles, one fire vehicle and two paramedic vehicles (the "Public Safety Equipment"); and

WHEREAS, the City is undertaking the purchase of approximately nine dual purpose public works trucks (the "Public Works Equipment" and, together with the Public Safety Equipment, the "2012 Equipment"); and

WHEREAS, the City's Office of Financial Services initiated a Request for City Financing 2012 Public Equipment Leases on March 26, 2012 and received responses from five qualified bidders; and

WHEREAS, the City Treasurer, Deputy Director and Debt Manager recommend awarding the bid to U.S. Bancorp Government Leasing and Finance, Inc. ("U.S. Bank") for a three-year capital lease for purchase of the Public Safety Equipment and a seven-year capital lease for purchase of the Public Works Equipment, which will close on May 1, 2012; and

WHEREAS, the City now wishes to enter into the Master Tax-Exempt Lease/Purchase Agreement, which will not be designated as a bank-qualified obligation, along with Property Schedule No. 1 thereto related to the purchase of the Public Safety Equipment (the "Public Safety Property Schedule") and Property Schedule No. 2 thereto related to the purchase of the Public Works Equipment (the "Public Works Property Schedule") (collectively, the "Lease Purchase Agreement") with U.S. Bank, which provides for a three-year lease in the principal amount of \$2,700,000 at an approximate interest rate per annum of 1.131% for the acquisition of the Public Safety Equipment and a seven-year lease in the principal amount of \$1,210,000 at an approximate interest rate per annum of 1.716% for the acquisition of the Public Works Equipment; and

WHEREAS, the funds made available under the Lease Purchase Agreement will be deposited with U.S. Bank National Association (the "Escrow Agent") pursuant to one or more Escrow Agreements (the "Escrow Agreement"), to be dated on or about May 1, 2012, by and between the City, U.S. Bank and the Escrow Agent and such funds will be applied to reimburse the City for the acquisition of the 2012 Equipment in accordance with the terms of the Lease Purchase Agreement and Escrow Agreement; 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 2012 Equipment is essential for the City to perform its governmental functions; and

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

WHEREAS, upon the termination of the seven-year lease period pursuant to the Public Works Property Schedule, the City will have the option to purchase the Public Works 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 2012 budget amendment, after conducting a public hearing, to allocate funds to make 2012 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 the Escrow 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 U.S. Bancorp Government Leasing and Finance, Inc., as Lender. It is hereby found and determined that the bid submitted by U.S. Bank is the most cost-effective of the five proposals submitted pursuant to the City's Request for City Financing 2012 Public Equipment Leases for the purpose of financing the acquisition of the 2012 Equipment and the City hereby awards the bid to U.S. Bank pursuant to the terms of its proposal (the "Proposal").

2. Proposal. The Proposal is for an amount of \$2,700,000 at an approximate interest rate of 1.131% per annum for the Public Safety Equipment and an amount of \$1,210,000 at an approximate interest rate of 1.716% per annum for the Public Works Equipment with an expected closing date of May 1, 2012 (the "Closing Date").

3. Purchase. At the expiration of the Public Safety Property Schedule, which schedule expires approximately three years after the Closing Date, the City shall have the option to purchase the Public Safety Equipment for \$1.00. At the expiration of the Public Works Property Schedule, which schedule expires approximately seven years after the Closing Date, the City shall have the option to purchase the Public Works 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, the Escrow Agreement and all related documents (the "Financing Documents") and the acquisition and financing of the 2012 Equipment under the terms and conditions as described in the Financing Documents are hereby approved. The Mayor of the City, the 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 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 2012 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 2012 Equipment, the proceeds of the Lease Purchase Agreement will be deposited and utilized in conformance with the terms of the Escrow 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 related to the Public Safety Property Schedule are due semiannually in arrears over its three-year term. Payments under the Lease Purchase Agreement related to the Public Works Property Schedule are due semiannually in arrears over its seven-year term. By other actions taken with respect to the 2012 budget, the City Council has appropriated money to make the payments due under the Lease Purchase Agreement in fiscal year 2012.

11. Records and Certificates. The proper officers of the City are hereby authorized and directed to prepare and furnish to U.S. Bank 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 the 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 2012 Equipment. The City hereby covenants not to use the proceeds of the Lease Purchase Agreement or to use the 2012 Equipment, or to cause or permit them

to be used, or to enter into any deferred payment arrangements for the cost of the 2012 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 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 2012 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.