



Legislation Text

File #: RES 14-2174, **Version:** 1

Authorizing the execution and delivery of a Master Equipment Lease/Purchase Agreement dated January 9, 2015 and a Separate Lease Schedule with respect to the acquisition, purchase, financing and leasing of certain local area network equipment and software; authorizing the execution and delivery of documents required in connection therewith; and authorizing the taking of all other actions necessary to the consummation of the transactions contemplated by this resolution.

WHEREAS, CITY OF SAINT PAUL, MINNESOTA (the "Lessee"), a home rule charter city duly organized and existing as a political subdivision, municipal corporation or similar public entity of the State of Minnesota, is authorized by the laws of the State of Minnesota to purchase, acquire and lease personal property for the benefit of the Lessee and its inhabitants and to enter into contracts with respect thereto; and

WHEREAS, the Lessee desires to purchase, acquire and lease certain local area network equipment and software constituting personal property necessary for the Lessee to perform essential governmental functions (the "Equipment"); and

WHEREAS, the Lessee has taken the necessary steps, including those relating to any applicable legal bidding requirements, to arrange for the acquisition of the Equipment; and

WHEREAS, in order to acquire such equipment, the Lessee proposes to enter into that certain Master Equipment Lease/Purchase Agreement (the "Agreement") and separate Lease Schedules from time to time as provided in the Agreement with BANC OF AMERICA PUBLIC CAPITAL CORP (the "Lessor"), the form of which has been presented to the governing body of the Lessee at this meeting; and

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

WHEREAS, the governing body of the Lessee deems it for the benefit of the Lessee and for the efficient and effective administration thereof to enter into the Agreement and the separate Lease Schedules as provided in the Agreement for the purchase, acquisition and leasing of the Equipment to be therein described on the terms and conditions therein provided;

NOW, THEREFORE, BE IT AND IT IS HEREBY RESOLVED by the governing body of Lessee as follows:

Section 1. Approval of Documents. The form, terms and provisions of the Agreement and the separate Lease Schedule as provided in the Agreement are hereby approved in substantially the forms presented at this meeting, with such insertions, omissions and changes as shall be approved by the Mayor and the Director of the Office of Financial Services, or their designees, of the Lessee or other members of the governing body of the Lessee executing the same, the execution of such documents being conclusive evidence of such approval; and the Mayor and the Director of the Office of Financial Services, or their designees, of the Lessee is hereby authorized and directed to execute, and the Mayor and the Director of the Office of Financial Services, or their designees, of the Lessee is hereby authorized and directed to attest and countersign, the Agreement and each Lease Schedule and any related Exhibits attached thereto and to deliver the Agreement and each Lease Schedule (including such Exhibits) to the respective parties thereto.

Section 2. Other Actions Authorized. The officers and employees of the Lessee shall take all action necessary or reasonably required by the parties to the Agreement and each Lease Schedule to carry out, give effect to and consummate the transactions contemplated thereby (including the execution and delivery of Acceptance Certificates and any tax certificate and agreement, each with respect to separate Lease Schedules, as contemplated in the Agreement) and to take all action necessary in conformity therewith, including, without limitation, the execution and delivery of any closing and other documents required to be delivered in connection with the Agreement and each Lease Schedule; provided, however, the Agreement and each Lease Schedule shall include a not to exceed amount of \$3,750,000 and an not to exceed interest rate of 2.95% per annum.

Section 3. No General Liability. Nothing contained in this Resolution, the Agreement, any Lease Schedule nor any other instrument shall be construed with respect to the Lessee as incurring a pecuniary liability or charge upon the general credit of the Lessee or against its taxing power, nor shall the breach of any agreement contained in this Resolution, the Agreement, any Lease Schedule or any other instrument or document executed in connection therewith impose any pecuniary liability upon the Lessee or any charge upon its general credit or against its taxing power, except to the extent that the Rental Payments payable under each Lease are special limited obligations of the Lessee as provided in such Lease.

Section 4. Appointment of Authorized Lessee Representatives. The Mayor and the Director of the Office of Financial Services, or their designees, of the Lessee are each hereby designated to act as authorized representatives of the Lessee for purposes of the Agreement and each Lease Schedule until such time as the governing body of the Lessee shall designate any other or different authorized representative for purposes of the Agreement and each Lease Schedule.

Section 5. Not Qualified Tax-Exempt Obligations. The Agreement with each Lease Schedule, together with other tax-exempt obligations previously issued by and anticipated to be issued by the Lessee in calendar years 2014 or 2015 exceed \$10,000,000. Therefore, the Lessee cannot and does not designate the Equipment financing as a "qualified tax-exempt obligation" for purposes of Section 265 of the Internal Revenue Code of 1986, as amended (the "Code").

Section 6. No General Obligation Pledge; Initial Appropriation. The Agreement (and each Lease Schedule) is not a general obligation of the Lessee, but rather the Agreement (and each Lease Schedule) is payable from amounts to be annually appropriated, and the full faith, credit and taxing powers of the Lessee are not pledged to the payment of the Agreement (and each Lease Schedule). By other actions to be taken with respect to the calendar year 2015 City budget, the City Council will consider the appropriation of money to make the payments due on Leases in calendar year 2015.

Section 7. Records and Certificates. The officers of the Lessee are hereby authorized and directed to prepare and furnish to the Lessor and Barnes & Thornburg LLP, as bond counsel to the Lessee, certified copies of all proceedings and records of the Lessee relating to the Agreement and each Lease Schedule and to the financial condition and affairs of the Lessee, and such other affidavits, certificates and information as are required to show the fact relating to the legality of the Agreement, and all such certified copies, certificates, and affidavits, including any heretofore furnished, shall be deemed representations of the Lessee as to the facts recited therein.

Section 8. Negative Covenants as to Use or Proceeds and Equipment. The Lessee hereby covenants not to use the proceeds of the 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 Agreement to be a "private activity bond" within the meaning of Sections 103 and 141 through 150 of the Code. The Lessee reasonably expects that no actions will be taken over the term of the Agreement that would cause it to be a "private activity bond", and the average term of Agreement and each Lease

Schedule is not longer than reasonably necessary for the governmental purpose. The Lessee hereby covenants not to use the proceeds of the Agreement in such a manner as to cause the Agreement to be a "hedge bond" within the meaning of Section 149(g) of the Code.

Section 9. Bond Counsel. Barnes & Thornburg LLP is hereby designated as bond counsel to the Lessee with respect to the Agreement and is hereby authorized to take all actions necessary to prepare necessary documents to permit the execution of the Leases and the financing of the Equipment.

Section 10. Severability. If any section, paragraph, clause or provision of this Resolution shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Resolution.

Section 11. Repealer. All bylaws, orders and resolutions or parts thereof, inconsistent herewith, are hereby repealed to the extent only of such inconsistency. This repealer shall not be construed as reviving any bylaw, order, resolution or ordinance or part thereof.

Section 12. 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.

Section 13. Effective Date. This Resolution shall be effective immediately upon its approval and adoption.