

COUNCIL OF THE CITY OF SEAT PLEASANT, MARYLAND

RESOLUTION NO. 09-07

Introduced By **City Council**
Date Introduced December 8, 2008
Date Adopted December 8, 2008
Date Effective December 8, 2008

A RESOLUTION concerning

Approval of SunTrust Bank Lease-Purchase Financing for Acquisition of Police Vehicles

FOR the purpose of approving a lease-purchase agreement from SunTrust Bank to finance the acquisition of up to 10 new vehicles for the Seat Pleasant Police Department; authorizing City officials to consummate the lease-purchase transaction; and matters generally relating to the acceptance and consummation of a proposal from SunTrust Bank to provide lease-purchase financing for the acquisition of vehicles of the use of the Seat Pleasant Police Department.

EXPLANATORY STATEMENT: the City of Seat Pleasant, Maryland (the "City") has received from SunTrust Bank ("the Bank"), a proposal to finance the acquisition of certain new vehicles for the use of the Seat Pleasant Police Department (the "Equipment"). The staff of the City has advised the City Council that the proposal of the Bank, a copy of which is attached to this Resolution (the "Proposal"), offers to provide a tax-exempt fixed rate of financing to the City and has recommended its acceptance as in the best interest of the City. The City Council has been presented with a draft of an Equipment Lease Purchase Agreement (the "Lease Agreement") between the Bank, as Lessor, the City, as Lessee, and SunTrust Bank, Corporate Trust Department, as escrow agent (the "Escrow Agent"), to implement such financing, a copy of which draft Lease Agreement is attached to this Resolution. Now, therefore,

SECTION I. BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SEAT PLEASANT, as follows:

1. The City Council determines that it is in the best interest of the City to accept the Proposal and enter into the Lease Agreement.

2. The Lease Agreement shall provide for the Bank to acquire the Equipment and lease the Equipment to the City and for the Escrow Agent to invest the funds provided by the Bank for the benefit of the City pending the expenditure of such proceeds on the acquisition of the Equipment, all upon terms as the Mayor of the City shall deem to be in the best interest of the City; provided, however, that (a) the cost of the Equipment shall not exceed \$10,000,000; (b) the term of the Lease Agreement shall not extend beyond November, 2012; (c) the interest component of the rental payments due under the Lease Agreement (the "Rental Payments") shall be based on an annual rate not to exceed 3.70%% (exclusive of any interest penalties); and (d) the monthly Rental Payment shall not exceed \$7, 855.77 plus an amount equal to interest thereon accrued at the rate constituting the interest component of the Rental Payments.

3. The Mayor of the City is authorized and directed to execute the Lease Agreement, which shall be in substantially the form attached to this Resolution, which is approved, which such completions, omissions, insertions and changes not inconsistent with this Resolution as may be approved by the Mayor, whose execution thereof shall constitute conclusive evidence of his approval of any such completions, omissions, insertions and changes.

4. The officers of the City and the City are authorized and directed to execute and deliver all certificates and instruments and to take all actions necessary or desirable in connection with the execution and delivery of the Lease Agreement and the completion of the financing.

5. The obligations of the City under the Lease Agreement shall be limited obligations payable solely from funds to be appropriated by the City Council and shall not constitute a debt of the City within the meaning of any constitutional or statutory limitation or a pledge of the faith and credit of the City beyond any fiscal year for which the City receives moneys lawfully appropriated from time to time by the City Council. Nothing therein or in the Lease Agreement shall constitute a debt of the City within the meaning of any constitutional or statutory limitation or a pledge of the faith and credit or taxing power of the City.

6. The City Council believes that funds sufficient to make payment of all amounts payable under the Lease Agreement can be obtained. While recognizing that it is not empowered to make any binding commitment to make such payments beyond the current fiscal year, the City Council requests the persons who are charged with the responsibility for preparing the annual budget of the City to include in the budget request for each fiscal year during the term of the Lease Agreement an amount sufficient to make the payment of all amounts due in such fiscal year under the Lease Agreement, and hereby recommends that future City Councils make similar requests during the term of the Lease Agreement.

7. (a) The City Council covenants that it will not take or omit to take any action the taking or omission of which will cause the Lease Agreement to be an "arbitrage bond" within the meaning of Section 148 of the Internal Revenue Code of 1986, as amended, and regulations issued pursuant thereto (the "Code"), or otherwise cause interest due under the Lease Agreement to be includable in the gross income of the holder thereof under existing statutes. Without limiting the generality of foregoing, the City Council shall comply with any provision of law that may require the City at any time to rebate the United States any part of the earnings derived from the investment of the funds received under the Lease Agreement, unless the City receives an opinion of nationally recognized bond counsel that such compliance is not required to prevent interest due under the Lease Agreement from being includable in the gross income for federal income tax purposes of the holder thereof under existing law.

(b) The City Council covenants that during the term of the Lease Agreement it will not permit the use of the Equipment other than for the purpose of performing one or more government or proprietary functions of the City consistent with the scope of the City's authority and will not permit the use of the Equipment in a trade or business of any person or entity other than the City.

8. Such officers of the City as may be requested are authorized and directed to execute an appropriate certificate setting forth the expected use and investment of the funds received under the Lease Agreement, and any elections such officers deem desirable regarding rebate of earnings to the United States, for purposes of complying the Section 148 of the Code.

9. The City Council designates its obligations under the Lease Agreement as "qualified tax-exempt obligations" for the purpose of Section 265(b)(3) of the Code. The City Council represents and covenants as follows:

(a) The City Council will in no event designate more than \$10,000,000 of obligations as qualified tax-exempt obligation in calendar year 2008, including the obligations under the Lease Agreement, for the purpose of such section 265(b)(3);

(b) The City, all its "subordinate entities," within the meaning of such Section 265(b)(3), and all entities which issues tax-exempt obligation on behalf of the City and its subordinate entities have not issued , in the aggregate, more than \$10,000,000 of tax-exempt obligations in calendar year 2008 (not including "private activity bonds," within the meaning of Code Section 141, other than "qualified 501(c)(3) bonds," within the meaning of Section 145 of the Code), including its obligations under the Lease Agreement;

(c) Barring circumstances unforeseen as of the date of delivery of the Lease Agreement, the City Council will not approve the issuance of tax-exempt obligations of any such other entities if the issuance of such tax-exempt obligations would, when aggregated with all other tax-exempt obligations theretofore issued by the City and such other entities in calendar year 2008 result in the City and such other entities having issued a total of more than \$10,000,000 of tax-exempt obligations in 2008 (not including private activity bonds other than qualified 501(c)(3) bonds), including its obligations under the Lease Agreement; and

(d) The City Council has no reason to believe that the City and such other entities will issue tax-exempt obligations in calendar year 2008 in an aggregate amount that will exceed such \$10,000,000 limit;

provided, however, that if the City receives an opinion of nationally recognized bond counsel that compliance with any covenant set forth in (a) or (c) above is not required for the obligations under the Lease Agreement to be qualified tax-exempt obligations, and the City need not comply with such covenant.


10. All other actions of officers of the City and the City in conformity with the purposes and intent of this Resolution and in furtherance of the financing are hereby ratified, approved and confirmed.

11. All resolutions or parts of resolution in conflict herewith are repealed.

12. This Resolution shall take effect immediately.

ATTEST:

COUNCIL OF THE CITY OF
SEAT PLEASANT


Dashaun N. Lanham, City Clerk


Brian K. Shivers, City Council President