

**BOULDER CITY COUNCIL MEETING
MUNICIPAL BUILDING, 1777 BROADWAY
SPECIAL MEETING
Tuesday, July 14, 2015
6 PM
AGENDA**

1. CALL TO ORDER AND ROLL CALL

2. PUBLIC HEARING

- A. Request for Council consideration of a motion approving an agreement in principle for the City to purchase the Boulder Community Health Broadway campus for \$40 million and authorizing the City Manager to enter into negotiations for a purchase and sale agreement for that purchase

3. ADJOURNMENT

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If you need Spanish interpretation or other language-related assistance for this meeting, please call (303) 441-1905 at least three business days prior to the meeting. Si usted necesita interpretación o cualquier otra ayuda con relación al idioma para esta junta, por favor comuníquese al (303) 441-1905 por lo menos 3 negocios días antes de la junta.

Electronic presentations to the city council must be pre-loaded by staff at the time of sign up and will NOT be accepted after 3:30 p.m. at regularly scheduled meetings. Electronic media must come on a prepared USB jump (flash/thumb) drive and no technical support is provided by staff.



**CITY OF BOULDER
CITY COUNCIL AGENDA ITEM**

MEETING DATE: July 14, 2015

AGENDA TITLE: Request for Council consideration of a motion approving an agreement in principle for the city to purchase the Boulder Community Health Broadway campus for \$40 million and authorizing the city manager to enter into negotiations for a purchase and sale agreement for that purchase.

PRESENTERS

Jane S. Brautigam, City Manager

Tom Carr, City Attorney

David Gehr, Deputy City Attorney

Kathy Haddock, Senior Assistant City Attorney

Bob Eichen, Chief Financial Officer

Maureen Rait, Executive Director, Public Works

David Driskell, Executive Director, Community Planning and Sustainability

Doug Newcomb, Property Agent

EXECUTIVE SUMMARY

At the June 16, 2015 council meeting, council members expressed interest in purchasing the Boulder Community Health Broadway campus. BCH established a process using a professional real estate broker, CBRE, to market the property. Initial offers were due on June 29, 2015 and last and final offers on July 7, 2015. City staff prepared offers to participate at both levels of the process. On July 8, 2015, CBRE informed city staff that BCH was willing to enter into an agreement in principle with the city. The purpose of this agenda item is to seek council approval of the agreement in principle and to authorize the city manager to enter into negotiations for a purchase and sale agreement along the lines of the agreement in principle.

Staff Recommendation

Staff recommends that Council adopt the following motion:

The city council approves the agreement in principle to purchase the Boulder Community Hospital Broadway campus for \$40 million and further authorizes the city manager to negotiate and enter into a purchase and sale agreement that is subject to the general terms and conditions that are described in the letter of intent dated July 9, 2015, which includes the purchase of all properties deemed part of the BCH Broadway campus, including, but not limited to 1100 Balsam, 1155 Alpine, 2655 Broadway, 1136 Alpine, 1125 North and 1135 North, with an initial earnest money deposit of \$3 million which is non-refundable if the city does not close on the purchase after BCH meets all conditions of the agreement in principle, and a purchase price of \$40 million subject to such terms and conditions as the city manager deems appropriate and further, the city council directs the city manager to prepare the documents necessary for the use of certificates of participation to finance such land acquisition and bring forward the necessary documents for consideration at a future council meeting.

BACKGROUND & ANALYSIS

The BCH Broadway campus encompasses 8.8 acres of property in a rough rectangle bordered by Broadway, Balsam, Ninth and Alpine plus the parking garage with retail space, and office building fronting the south side of Alpine west of Broadway and two vacant lots south of the office building. The city's main interest in acquiring the property is twofold. First, for this important site it is crucial that the development fits in with the community's goals and visions. Development must be carefully managed to preserve the neighborhood and manage carefully the growth associated with the property.

Second, the city leases space spread throughout the city for its employees. This practice is both expensive and inefficient. With the New Britain and Park Central buildings identified for removal in the Civic Area Master Plan due to flood hazards, the BCH Broadway campus provides an opportunity to build a modern, centrally located government facility that can consolidate many city office functions as well as public-facing services.

The BCH Broadway campus includes the following:

- The hospital and associated grounds at 1100 Balsam;
- The Medical Pavilion at 1155 Alpine;
- The parking garage and retail space at 2655 Broadway;
- The Brenton Building at 1136 Alpine Street; and

- The two vacant lots associated with the Brenton Building at 1125 and 1135 North Street

Altogether, the buildings on these properties represent over 355,000 square feet of existing building space; and a three story parking structure as well as two large surface parking areas. The buildings continue to house medical uses and related activities, although overall utilization of the property has been reduced significantly since BCH relocated its emergency room and acute care functions to its Foothills campus location.

City staff has negotiated an agreement in principle with BCH to purchase the campus. The purchase price is \$40 million. The purchase includes a non-refundable earnest money payment of \$3 million, which will be deposited in escrow on July 15, 2015. This deposit would be refunded only if the environmental assessment and building inspection process identifies unacceptable conditions or BCH decides not to proceed with the transaction.

The agreement in principle is subject to the following:

- Council approval by motion presented in this agenda item;
- BCH Board approval on July 15, 2015;
- An acceptable assessment of environmental conditions;
- Satisfactory negotiation of a purchase and sale agreement;
- An acceptable building condition inspection, to be completed within thirty days of acceptance;
- Acceptable title;
- Agreement by the seller to maintain, pay utilities, and insure any buildings during the seller's occupancy of up to 24 months after closing.

Staff proposes financing the purchase through the issuance of certificates of participation. Certificates of participation are a financing method commonly used by many government entities. This form of financing has been used previously by the city for the East Boulder Recreation Center. Under Colorado law, any multi-year financial obligation is subject to the provisions of the Taxpayer Bill of Rights (other than a multi-year financial obligation of an “enterprise”). COPs are structured as leases subject to annual appropriation each year by the city and therefore not subject to TABOR. The Colorado Supreme Court has expressly held that COPs are not a multi-year fiscal obligation and therefore do not require voter approval under TABOR.

Staff recommends using an “asset transfer” form of COP. Under this structure, the city would sell or lease an existing city facility or facilities to the Boulder Municipal Property Authority (BMPA) to generate funds for the acquisition of the hospital property through the sale of COPs issued by BMPA. The City would lease that collateral facility or facilities back from BMPA and the city’s lease payments to BMPA would be assigned to a bond trustee under an Indenture and used to make the payments on the COPs issued by BMPA. The BMPA COPs would be secured by the lease payments from the city as well as a deed of trust on the collateral facility. The collateral facility must be free from liens

and it must be possible to sell the facility to pay off the COPs if the city did not make an annual appropriation for any of the lease payments. Staff is evaluating various city properties and will identify the specific properties as part of the council process for approving the financing in September. Staff will explain the COP financing process in more detail during the presentation at the meeting and will be prepared to answer any questions.

The annual lease payments would be repaid with city revenue over a maximum of thirty years. Depending on interest rates at the time of the COP sale and if taxable or tax exempt financing is used, the payments are estimated to be between \$2.5 million and \$3.1 million per year. One method of making the payments is the recent increase in property valuation could cover the anticipated lease payments. As an alternative, council could use other general fund revenues to pay the annual lease payments on the COPs though this would require reductions in other city programs. These options will be presented to council as part of the 2016 budget process.

COPs can be either taxable or tax exempt. Tax exempt funds can be used only for government purposes. Taxable COPs provide greater flexibility. Any decision regarding the ultimate use of the property will require an extensive public process. Thus, it is impossible to predict at this time what the ultimate combination of uses will be. Therefore, staff recommends that the city issue taxable COPs to preserve the flexibility to engage in public private partnerships or to sell portions of the property if necessary. Although the interest rate will be higher, it will provide the city with maximum flexibility and would not create problems with the Internal Revenue Service if private or non-profit partners eventually join the city in repurposing the site. Staff will cover more about this topic during the presentation that will be made at the council meeting.

The schedule to accomplish this transaction would include the following steps:

July 14, 2015	Council approval of agreement in principle with BCH
July 15, 2015	BCH Board approval of agreement in principle Deposit of \$3 million earnest money payment
July 27, 2015	BCH and City execute formal Purchase and Sale Agreement
September 1, 2015	Council consideration of ordinance allowing use of Certificates of Participation through BMPA for purchase of the property (this could occur later in September)
October 1, 2015	Effective date of the ordinance allowing use of COPs (30 days after adoption of ordinance)
Late October, 2015	Sale of COPs
Late November, 2015	Closing on the COPs
December 4, 2015	Closing on purchase of BCH property

If Council decides to move forward with the purchase, staff will bring a supplemental appropriation request to the August 4 council meeting for the earnest money payment. Currently, there are sufficient appropriations to make the payment on July 15 but a formal appropriation for this payment is best to specifically identify the three million dollar payment.

ATTACHMENTS

Attachment A – BCH Letter of Intent, Dated July 9, 2015



July 9, 2015

Mr. Doug Newcomb
City of Boulder Real Estate Services Division
P.O. Box 791, Boulder, CO 80306

Re: Purchase and Sale of the Boulder Community Health Broadway Campus

Dear Doug,

This Letter of Intent ("Letter") sets forth the material terms and conditions under which the City of Boulder ("Buyer"), would purchase from Boulder Community Health, a non-profit Colorado corporation ("Seller") certain property described below.

1. Property: The Property consists of 1100 Balsam Street, 1155 Alpine Street (The Medical Pavilion), 2655 Broadway (Parking Garage & Retail), and 1136 Alpine Street with the two vacant lots (The Brenton Building). See "Exhibit A"

The exact legal description shall be supplied by the Title Company for Buyer's approval for insertion into the formal purchase and sale agreement.

2. Purchase Price: The Purchase Price for the Property shall be Forty Million Dollars (\$40,000,000)
3. Earnest Money Deposit: On July 15th, 2015, Buyer will deliver to Core Title Company (the "Title Company") Three Million Dollars (\$3,000,000) as the Earnest Money Deposit ("Deposit"), which shall become non-refundable to Buyer immediately after the Boulder City Council approves this agreement by a motion on July 14th, 2015, only subject to Seller default and Seller's Board approval described below in paragraph 7.

The Deposit, and all interest accrued thereon, shall be credited to the Purchase Price at Closing.

4. Closing: The Closing of the Property shall occur Ninety (90) days from City Council's approval of the Certificates of Participation per an emergency ordinance, but no later than December 4th, 2015. At Closing, the Property will be delivered free and clear of all liens and encumbrances except Seller's post-closing occupancy and existing leases in place as previously disclosed to the Buyer.

The Buyer's obligation to close is contingent upon the following items:

- Successful negotiation of a formal purchase and sale agreement to be mutually executed by both parties.
- City Council's approval of the Certificates of Participation per an emergency ordinance.
- Buyer's inspection and approval of the property, in its sole discretion to be completed no later than sixty (60) days from mutual execution of the formal Purchase and Sale Agreement.

Attachment A - BCH Letter of Intent, Dated July 9, 2015

5. Authority: The person(s) executing this Letter hereby represent and warrant to the parties that they are authorized and empowered to execute this document on whose behalf they are signing, subject to City council approval and Seller's board's approval.
6. Post-Closing Occupancy: Seller will be allowed to occupy the property for up to 24 months following the closing. Seller will provide adequate insurance, provide the required maintenance to keep the property in a reasonable condition and pay for the required operational utilities during the occupancy.
7. Board Approval: This agreement shall be subject to the Seller's board approval, which shall occur on July 15th, 2015.
8. Preparation of Agreement: As expeditiously as reasonably possible following mutual execution of this Letter, Buyer shall cause the Agreement to be prepared, which shall reflect the transaction contemplated herein. Such Agreement shall be submitted to Seller's for its review. Seller and Buyer agree to use good faith efforts to negotiate and execute a formal Purchase and Sale Agreement **no later than July 27th, 2015.**
9. Brokerage: Seller and Buyer each hereby represent and warrant to each other that other than the listing broker (CBRE), whose fees shall be paid by Seller, no Brokers', Agents', finders fees, commissions or other similar fees are due in connection with the entering into of the Agreement for purchase of the Property.
10. Non-binding: Except for the provisions relating to the Deposit as set forth in paragraph 3, the terms and conditions contained in this letter are not to be contractual in nature; rather, the terms and conditions are intended to provide a structure from which the parties may proceed to draft definitive purchase documents. It must be clearly understood that except for the provisions relating to the Deposit as set forth in paragraph 3, neither party has any binding obligation to the other until such time as formal purchase documents have been approved and executed on behalf of both Seller and the Buyer and by their respective corporate officers, and that this Letter and/or any past or future oral communication between the representatives of either party shall not constitute a binding obligation.

If the foregoing terms are acceptable, please sign and return a copy of this Letter.

Buyer:

By: _____

Name: _____

Title: _____

Date: _____

Seller:

By:  _____

Name: DAVID GEHANT

Title: PRESIDENT and CEO

Date: 7-9-15

EXHIBIT A

