



RFP #21-2013

CITY OF BOULDER, COLORADO
REQUEST FOR PROPOSALS
FOR INDEPENDENT REVIEW AND
VERIFICATION OF MODELING OF NEW
ELECTRIC UTILITY

ISSUE DATE: April 17, 2013

DUE DATE: April 29, 2013

CONTACT:

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www.boulderenergyfuture.com

CITY OF BOULDER, COLORADO
REQUEST FOR PROPOSALS
THIRD PARTY INDEPENDENT REVIEW AND VERIFICATION OF
CITY MODELING OF NEW ELECTRIC UTILITY

The City of Boulder (City) is seeking firms qualified to provide an independent verification of the City's modeling of creation of a new electric utility by the City.

The voters of the City approved an amendment to the City's Home Rule Charter allowing for the formation of a light and power utility. Section 178 of the Charter provides that the City can form a new electric utility if the City demonstrates, with verification by a third-party independent expert, that:

the utility can acquire the electrical distribution system in Boulder and charge rates that do not exceed those rates charged by Xcel Energy at the time of acquisition and that such rates will produce revenues sufficient to pay for operating expenses and debt payments, plus an amount equal to twenty-five percent (25%) of the debt payments, and with reliability comparable to Xcel Energy and a plan for reduced greenhouse gas emissions and other pollutants and increased renewable energy.

The City staff and expert consultants analyzed and modeled the rates that it would need to charge to acquire the electrical system serving Boulder, pay operating expenses and debt payments, and provide levels of reliability comparable to Xcel Energy and the resources available to reduce greenhouse gas emissions and other pollutants and increase renewable energy (referred to as the "Charter Requirements") under various options. The results as presented to the Boulder City Council on February 26, 2013 are available at:http://www.bouldercolorado.gov/files/City%20Council/Study%20Sessions/2013SS/Boulders_Energy_Future_SS_02262013.pdf

Staff presented additional information to the City Council on April 16, 2013 (all of the materials presented to council for the February 26 and April 16 council meetings are referred to herein as the "Base Material"). Based on the Base Material, the City Council determined that the conditions precedent in Section 178(a) of the Boulder Home Rule Charter by Ordinance No. 7898 (the "Council Preliminary Determination").

The firm(s) selected must demonstrate that its personnel have the training, expertise and proficiency to verify the Council Preliminary Determination and underlying analysis to determine whether the Council Preliminary Determination demonstrates that the utility can meet the requirements in Section 178 of the Charter, and the assumptions and inputs of the materials relied upon are reasonable and realistic given the current standards and practices in the public power industry and applicable laws and regulations. The selected firm(s) must also demonstrate that it can perform the review in a manner to retain its independence from the City staff and consultants. The selected firm(s) must also meet the requirements of Ordinance No. 7898

adopted by the Boulder City Council on April 16, 2013, and be willing to enter into the agreement with the City in substantially the same form as attached hereto.

The selected firm(s) will present its findings to the City Council at a study session on July 23, 2013. The selected firm(s) will work with the project manager to address any questions raised by the City Council at the study session in preparation for a regular meeting of the City Council on August 6, 2013. Within 30 days of its final presentation to the City Council, the selected firm(s) shall provide a written report to the City of its findings.

The review to be performed is not to create a separate analysis, but to verify that the Council Preliminary Determination complies with the Charter Requirements. It is not anticipated that the review will require knowledge of underlying legal strategy or other confidential or work product materials prepared by the City. However, if such review of privileged materials is required, the selected firm(s) must sign appropriate confidentiality agreements so as not to jeopardize the City's legal position in any judicial or regulatory forum or otherwise reveal any privileged information. The work of the selected firm is limited to verification that the Council Preliminary Determination demonstrates that the City can meet the Charter Requirements. The City is not requesting that the selected firm(s) evaluate the risk of unexpected results of future litigation, unanticipated changes in financial or energy markets, or world conditions that may change the reasonableness of the Council Preliminary Determination.

Five originals and an electronic version of the proposal are required by 4:00 p.m. on Monday, April 29, 2013 to the City Manager's Office, 1777 Broadway, 2nd Floor, Boulder, CO 80304. The electronic version should be sent to: bannond@bouldercolorado.gov

The proposals are for professional services in a specialized area of financial and engineering analysis of electric facilities. The city manager has determined it is not advantageous to follow the City's formal competitive bidding procedures for selection of consulting firm(s). In the event an agreement is entered into with one or more of the firms responding to this Request for Proposals, such agreement will be a public record of the City, and the conclusions reached by the selected firm(s) will be presented to the City Council in a public forum. In the event that the selected firm(s) determines it requires knowledge of confidential or privileged information to make its analysis, it shall maintain the confidentiality of such information, and its conclusions must be based on publicly-available information.

The services upon which proposals are submitted shall equal or exceed the specifications outlined in this RFP. The City shall have the right to reject any and all proposals and waive any informality or irregularity contained in any proposal accepted. The City may amend the project scope as it determines necessary.

PART I: General RFP Information

PROJECT SCOPE

Introduction:

The selected firm(s) will work with the city manager, and City Council if requested by the City, to provide the review and verification required by the Charter. The selected firm(s) will have access to all other City staff and consultants that worked on the Base Material. The proposal should include an outline of a proposed scope of work, specifically addressing all elements necessary to satisfy the following objectives:

- Examine the Base Material to determine whether the inputs used are appropriate to verify that the City can meet the Charter Requirements;
- Examine the Base Material to determine whether it meets industry standards and represents a reasonable manner to evaluate anticipated debt service costs and revenues;
- Review the Base Material to verify that the City can provide reliability comparable to Xcel Energy;
- Review the Base Material to verify that the City can reduce greenhouse gas emissions and other pollutants and increase renewable energy.

Primary Issues of Review

Primary issues to be answered as part of the scope of work will include the review and verification whether the Council Preliminary Determination meets the Charter Requirements. Specifically, the scope of work will include:

- Whether staff's assumptions are reasonable based on established standards and practices of the public power industry;
- Whether staff's assumptions fail to include any components necessary based on established standards and practices of the electric utility industry to answer the Charter Requirements, including the following:
 - Findings that the utility can acquire the electrical distribution system in Boulder and charge rates that do not exceed those rates charged by Xcel Energy at the time of acquisition;
 - Findings that the anticipated rates charged by the utility will produce revenues sufficient to acquire the system, pay for operating expenses and

- debt payments, plus an amount equal to twenty-five percent (25%) of the debt payments;
 - Findings that the acquisition, separation, and operational plan will result in electric reliability comparable to Xcel Energy ; and
 - Findings that the City’s plan for reduced greenhouse gas emissions and other pollutants and increased renewable energy is reasonable;
- Whether, based on established standards and practices of the electric utility industry, the inputs of the Base Material are sufficient to determine whether the utility can meet the Charter Requirements;
- Whether any significant factors necessary to determine the Charter Requirements are not included in the Base Material;
- Verify that the utility can meet the Charter Requirements.

Assumptions to be Relied Upon

Information which will be provided by the City and may be assumed as correct by the selected firm:

- Amounts provided for the cost to acquire the electrical system serving the City of Boulder (The City will provide a range. The City is not requesting that the selected firm(s) perform separate legal analysis of the amounts provided by the City to acquire property).
- Amounts provided for any stranded costs that may be due from the City to Xcel Energy under FERC Rule 888 (The City will provide a range. The City is not requesting that the selected firm(s) perform separate legal or factual analysis of the amounts for which the City may be liable for stranded costs).

Detailed Scope of Work

Detailed scope of work to be developed should include:

- The work to be performed to verify that the Council Preliminary Determination meets the Charter Requirements as described in the Primary Issues of Review section of this RFP;
- Information necessary from City staff and consultants, with approximate time and work needed from City staff and consultants, to verify that the Council Preliminary Determination meets the Charter Requirements;
- A presentation to the City Council, including any audio or visual aids, reporting the findings and conclusion of the third party verification process;
- A written report. A suggested form of the written report is attached; and

- Any recommendations related to additional information, analysis or study that may be necessary to complete tasks associated with the Primary Issues of Review in this RFP.

Follow-Up Verification

In the event that the City makes material changes to the Base Material to examine other opportunities, incorporates newly discovered information, or desires a follow-up review as the project progresses, it may request a follow-up review by the selected firm(s).

BASE PROPOSAL

The proposal shall contain and will be evaluated on the following sections:

1. A cover letter describing the following:
 - A. The firm and the individuals on the proposed project team, including relevant email addresses and telephone numbers;
 - B. The project contact person, including complete contact information; and
 - C. Brief background qualifications and experience, specific to this project, for the principal individuals who will work on this project.
2. A description of how the firm would implement the Detailed Scope of Work and Follow-Up Verification above in narrative form describing factors and information the firm wishes to offer for consideration, including the following:
 - A. The procedures to perform the independent verification, make the presentation to City Council, and finalize a written report;
 - B. The anticipated time necessary of City staff and consultants to obtain the information necessary for the verification by the selected firm;
 - C. Proposed schedule for performing Detailed Scope of Work, including meetings with City staff and consultants to prepare to present to the city manager by July 16, 2013 in accordance with timeline below;
 - D. Proposed form of presentation to the City Council on July 23 and August 6, 2013;
 - E. Proposed form of written report to the extent it varies from Suggested Form of Report;
 - F. Detailed discussion of the municipal utility work the firm has done related to the factors in the scope described above, including

- i. acquisition of distribution assets;
- ii. financing of a municipal utility;
- iii. software used by the City for modeling of financial, resource mix and decision analysis factors;
- iv. experience with decision analysis used in Base Material;
- v. reliability standards for electric distribution system;
- vi. innovative technology and strategies for reducing greenhouse gas emissions and other pollutants and increasing the use of renewable energy;
- vii. consultation to investor-owned utilities; and
- viii. consultation to public power utilities.

- G. References for work the firm has done on the matters identified above;
- H. The licenses and certifications held as engineers and financial advisors licensed in Colorado and nationally;
- I. The special talents or expertise of the firm related to advising municipal utilities on the matters identified above;
- J. Recent teaching, workshops or other forums in which any individuals of the firm have participated related to financing start-up government operations or financing municipal utilities;
- K. Recent awards or certificates made to any member of the proposed team;
- L. Experience in project planning and meeting timelines and participating as part of a team of consultants;
- M. Disclosure of any positions taken in lobbying, court actions, public financing, or other forums that would be contrary to the City's position in acquiring or operating the electrical utility infrastructure;
- N. Disclosure of any lobbying, financing, court actions, or other forums performed for Xcel Energy or any other electrical or alternative energy provider; and
- O. Disclosure of any ownership interest in Xcel Energy or any other electric utility serving any portion of Colorado.

3. Fee and cost information including the following (fee proposal should be marked as “Confidential” and separable from response):
 - A. The billing rate of each individual proposed as part of the team;
 - B. Any rate concessions, discounts or rate freezes;
 - C. A detailed alternative billing plan or set of plans or options which you would propose for providing services other than on an hourly basis, such as flat fees, blended rates, not to exceed pricing, etc.; and
 - D. A description of how the firm stays within previously established budgets and how you would propose to handle a situation when the firm is over budget on a particular task or matter.
4. Confirmation that the firm does not have any legal conflicts of interest if its proposal is accepted by the City; and
5. Confirmation that the firm can enter into a confidentiality agreement with the City for the work that would be performed if selected.

Proposals from interested firm(s) are due by April 29, 2013 at 4:00 p.m. The City will host a question and answer opportunity on April 22, 2013 at 10:30 a.m. to 12:30 p.m. which may be attended in person or by telephone. The City will post a recording of the meeting and any follow-up written responses by April 24, 2013. The proposals of the firms selected to interview will be selected by May 3 and posted for public view (without fee proposals). The public may submit comment on the proposals to the City between May 3 and 10. Interviews of the selected firms by the city manager and project manager and public presentation will be held on May 8 between 12:00 p.m. and 7:00 p.m. The city manager shall award the contract or reject all submittals by May 16, 2013. While this assignment is for an independent expert so the role of City staff in assisting the firm is limited, the selected firm will have as much access as necessary to City staff and consultants between May 16 and July 10 to answer any questions the selected firm may have in order to perform its work.

SELECTION PROCESS AND PROJECT SCHEDULE

The selection process shall include an opportunity for public comment on the proposals of the posted finalists and interviews May 3-10. Interviews will be set and include a short presentation to the public with question and answer to follow.

A kick-off meeting shall be held with the selected firm and the project manager by May 28. This meeting is to specify protocols for communication with City staff and consultants, and any other procedures necessary to facilitate the work of the selected firm(s). During the performance of the work, the selected firm(s) shall meet with the project manager, which meeting may be held

electronically, biweekly between June 3 and July 15. These meetings are for the selected firm(s) to identify any issues or concerns, determine any additional modeling necessary, identify additional resources that may be necessary, and to ensure that the selected firm has the necessary access to City staff and consultants between May 16 and July 10 to answer any questions the selected firm may have in order to perform its work. The anticipated schedule for the selection process and project schedule is:

2013

- 3/28 RFP published with notice not issued until 4/17/13 if approved by Council
- 4/2 First reading of ordinance
- 4/16 Second reading of ordinance
- 4/17 RFP issued
- 4/22 Q&A session for all interested proposers (Bidders conference)
10:30 a.m. – 12:30 p.m. 1777 Broadway, Second Floor, Fishbowl Conference Room
- 4/24 City posts audio of Q&A and any follow-up written responses from staff
- 4/29 Proposals due
- 5/3 Finalists selected and proposals posted
- 5/3-10 Public comments accepted
- 5/8 Interview firms; firms make presentation to public
- 5/13-15 Check references; consider public comments
- 5/16 Award RFP
- 5/28 By this date, selected firm(s) provides project manager with list of staff and consultants to meet with, additional document requests, final schedule, and kick-off meeting held with project manager
- 6/3-7/8 Bi-weekly meetings with project manager (present open questions, communicate concerns, and identify missing information)
- 7/1 Draft findings presented to staff for clarifying comments and response
- 7/8 Preliminary evaluation presented to project manager
- 7/16 Draft presentation to city manager
- 7/23 Selected firm(s) presents findings to Council
- 8/6 Selected firm(s) available to answer questions of Council
- 9/2 Selected firm(s) present written report, if requested by city manager

RESOURCES PROVIDED BY CITY OF BOULDER

1. Access to staff and other consultants that worked on Base Material;
2. Background information to Base Material and municipalization project; and
3. Any other documents requested by selected firm and available to the City.

PROJECT CONTACT INFORMATION AND INFORMATION MEETING

Upon release of this RFP, all firm communications concerning the overall RFP should be directed to the project manager listed below. Any oral communications will be considered unofficial and non-binding on the City. Any information provided in such communications will be made available to other proposers. Firms should rely only on written statements issued by the project manager.

Name: Dave Bannon
Telephone: 303-441-3230
E-mail: bannond@bouldercolorado.gov

An informational meeting will be held on **Monday, April 22, 2013 at 10:30 a.m. – 12:30 p.m.** The purpose of this meeting is to provide an opportunity for potential responders to ask questions. The information from this session will be available to the public. The meeting will be conducted electronically, so you may participate in person or remotely. The location and connection information will be provided to those who are interested in attending by request to bannond@bouldercolorado.gov.

PART II: Required Proposal Response

PROPOSAL MATERIALS

For purposes of review and in the interest of the City's Sustainable Paper Use Policy and sustainable business practices in general, the City encourages the use of submittal materials (i.e. copy paper, brochures, etc.) that contain post-consumer recycled content and are readily recyclable. The City discourages the use of materials that cannot be readily recycled such as PVC (vinyl) binders, spiral bindings, and plastic or glossy covers or dividers. Firms are encouraged to print/copy on both sides of a single sheet of paper wherever possible (if sheets are printed on both sides, it is considered to be two pages) and use 8½ x 11 paper. Color is acceptable; content should not be lost by black-and-white printing or copying.

PROPOSAL CONTENT

The proposal must contain the following information, in the same sequence as presented below. Each proposal should provide a straightforward and concise presentation adequate to satisfy the requirements of this RFP. Substantial portions of the proposals will be made public. Interested firms should clearly identify confidential information not intended for public distribution, including rate information or other competitively sensitive information. Public comment will be an important part of the selection decision. It is important therefore that submitting firms allow as much information as practicable to be distributed to the public.

1) Cover Letter

2) Detailed Scope of Work

3) Follow-Up Verification

4) Confidential Fee Proposal

5) Conflict of Interest and Certificate of Lobbying Disclosures

6) Statement of Acceptance of Terms of Consulting Services Agreement

The form of the Consulting Services Agreement that is used by the City is attached. If the firm takes exception to any of the specifications, terms, or conditions of the Consulting Services Agreement or this RFP, or desires to offer substitutions, the firm must provide a statement of the specific exception(s), reasons(s) therefor, and language substitution(s), if any. Failure to specify any exception(s) shall mean that the firm accepts the conditions, terms, and specifications of the Consulting Services Agreement and this RFP. If your firm takes no exception to the specifications, terms, and conditions of this RFP, please so indicate.

7) References with respect to advising public power utilities

APPENDIX AND ADDITIONAL INFORMATION

Suggested Form of Report

Form Consulting Services Agreement

At www.boulderenergyfuture.com you will find several documents that will provide background on this project under “Resources” and information staff has presented to the City Council under “Events.”

SUGGESTED FORM OF REPORT TO INCLUDE:

EXECUTIVE SUMMARY

BRIEF DESCRIPTION OF WORK PERFORMED

VERIFICATIONS:

Reasonability of assumptions of the Council Determination based on common practices applied by public power utilities to perform this type of analysis;

- The following assumptions are reasonable;
- The following assumptions are not reasonable;
- The following assumptions should be amended as follows:
- Models with the following additional/different assumptions should be run to demonstrate the Charter Requirements:

Components not included in the City Demonstration necessary, based on common practices applied by public power utilities to perform this type of analysis, to answer the Charter Requirements:

- All components are included
- Identification of components excluded:
- Whether each identified components materially affect result of any of the models;
- Recommendations for change to City Demonstration to correct the models with inclusion of the components;

The anticipated rates charged by the utility will produce revenues sufficient to pay for operating expenses and debt payments, plus an amount equal to twenty-five percent (25%) of the debt payments,

- Sufficient information provided
- Identify additional information required
- Describe effect on models of lack of information

Whether the Base Material shows the acquisition, separation, and operational plan will result in electric reliability comparable to Xcel Energy as of the time of acquisition;

- Sufficient information provided
- Identify additional information required
- Describe effect on models of lack of information

Whether the options that meet the charter requirements show a plan(s) for reducing greenhouse gas emissions and other pollutants and use or an increased amount of renewable energy;

- The models that do show such a plan are:
- The models that do not show such a plan are:
- Recommendations for alterations to model(s) to show such a plan

Based on established standards and practices of the public power electric utility industry, to determine whether the utility can meet the Charter Requirements, the inputs of the City Demonstration:

- are complete
- are incomplete
- with the following could be complete:

The Council Determination

- demonstrates that the Charter Requirements can be met in the following models:
- demonstrates that the Charter Requirements cannot be met in the following models.

CONCLUSION

APPENDIX

CONSULTING SERVICES AGREEMENT THIRD PARTY EXPERT REVIEW

This Agreement (“Agreement”) is made to be effective the _____ day of May, 2013, by and between the City of Boulder (the “City”) and _____, (“Independent Expert”).

1. SCOPE OF WORK: The Independent Expert submitted a response to the Request for Proposals for Independent Review and Verification of Modeling of New Electric Utility of the City dated April 17, 2013. Independent Expert is retained, consist with such Request and the Independent Expert’s response thereto dated April ___ 2013 (collectively the “RFP Response”) to verify for the City Council whether or not the Base Materials, as defined in the RFP Response, demonstrates that:

- A. The utility can acquire the electric distribution system in Boulder and charge rates that do not exceed those charged by Xcel Energy at the time of acquisition;
- B. The rates charged by the utility will produce revenues sufficient to pay the operating expenses and debt payments, plus an amount equal to twenty-five percent (25%) of the debt payments;
- C. The utility will have reliability comparable to Xcel Energy; and
- D. The utility will have a plan for reducing greenhouse gas emissions and other pollutants, and a plan for increasing the use of renewable energy.

(collectively referred to as the “Project”). The evaluation of the Independent Expert is to be independent of those working with the Department of Energy Strategy and Electric Utility Development that prepared the Base Materials. However, the staff and consultants of the city that worked on the Base Materials shall be available to the Independent Expert for the Project, as coordinated with the City Manager, to answer any questions of the Independent Expert. In the event that the Independent Expert determines it needs to have access to any confidential computer software, including computer instructions, macros, programming, or other parts of the modeling, Independent Expert shall enter into a separate confidentiality agreement with the City regarding such information.

The Project does not include the Independent Expert providing an independent review or opinion of the results of the Base Materials, or on any of the assumptions of the litigation costs, including determination of fair market value of property to be acquired or stranded costs. The Project Scope is as set forth in the RFP Response.

The parties may agree to add to this Agreement expansion of the Project to include review and verification of material changes to the Base Materials or other information related to the City’s municipalization efforts.

2. COORDINATION WITH THE CITY MANAGER: Independent Expert agrees to coordinate with the City Manager and Project Manager its schedule, contacts with city staff and consultants as necessary to complete the Project; progress reports; and presentation to the City Council. Independent Expert agrees that City Manager staff will be utilized, to the extent that is reasonably feasible, to assist with aspects of project investigation and preparation that involve City personnel or that involve the collection and coordination of evidentiary materials that are in the possession of the City.

3. PROJECT PLANNING AND MONITORING: The City Manager has a responsibility to ensure that the work of the Independent Expert is completed and presented to City Council in accordance with the schedule for the Project. The Independent Expert recognizes that it is to be independent of the Department of Energy Strategy and Electric Utility Development and shall provide the work for the Project independent of that Department. Independent Expert agrees to meet with the City Manager, or her designated Project Manager, at least every other week between May 3 and July 15, 2013. Such meetings may be electronic rather than in person. The purpose of the meetings include Independent Expert to identify any issues or concerns, determine any additional modeling necessary, identify additional resources that may be necessary, and to coordinate access of Independent Expert to staff and consultants that are needed to answer questions or provide responses necessary for Independent Expert to complete the Project within the schedule set forth in the RFP Response, and prepare for presentation of the findings of the Independent Expert to the City Council.

The Project to be performed by Independent Expert is prepared for decisions by the City Council and is therefore subject to work product and other privileges. While the findings of the Independent Expert will be public, not all of the work performed by the Independent Expert may become public. Independent Expert will supply copies of all work-product documents, including modeling, research memoranda and reports of project-significant developments to the City Attorney for review prior to finalization or distribution to courts or third parties. Upon finalization, all documents shall be provided to the city in electronic format. Independent Expert shall not be the custodian of any records of the City under the Colorado Open Records Act. C.R.S. 24-72-201, *et seq.*

4. PAYMENT OF FEES: Independent Expert shall be paid for professional and paraprofessional services rendered as provided on **Attachment A**. **Attachment A** includes the name of all professional and paraprofessionals that may work on the Project.

Independent Expert is being retained based upon the City Manager's evaluation of Independent Expert's personal skill and competence. Except as provided by **Attachment A**, Independent Expert shall not delegate such duties to other individuals without prior approval from the City Manager.

5. PAYMENT OF EXPENSES: Independent Expert shall be reimbursed for project-related costs and expenses shall be as follows:

- Service fees Actual cost
- Electronic filing fees Actual cost
- Court reporters Actual cost

- Courier/Messenger service Actual cost
- Photocopies Not to exceed 10 cents per page

Other costs may be reimbursed upon agreement of the City Manager. Such costs may include, without limitation, actual costs incurred by Independent Expert for documents sent to a commercial printer or other outside contractor for reproduction, enlargement, reduction, display or mounting. In the absence of prior written agreement from the City Manager to the contrary, costs for the salaries of Independent Expert’s office personnel and Independent Expert’s overhead shall not be reimbursable. Overhead shall include secretarial, administrative services and all legal research tools.

The City shall not pay for meals or for travel time or reimburse mileage for travel. Only with advance approval by the City Manager in writing, Independent Expert may be reimbursed for actual costs incurred for necessary project-related travel expenses with the following limitations: Potentially reimbursable air travel will be only by commercial carrier at the lowest available fare and be related to and in furtherance of the purposes of Independent Expert's engagement. Vehicle rental costs shall be reimbursed only when efficiency and economy are served by incurring such rental expenses. Use of rented vehicles for personal travel shall not be reimbursed. Sleeping accommodation costs, if reimbursed, are limited to a reasonable amount, taking into account costs of alternate facilities in the location and other relevant factors.

6. SCOPE OF PROFESSIONAL SERVICES: Independent Expert is being retained to provide advice and representation to (a) evaluate the Base Materials to determine whether it demonstrates the conditions prerequisite to establishment of a light and power utility as set forth in Section 178(a) of the Boulder Home Rule Charter can be met as specified in Ordinance No. _____, adopted by the Boulder City Council on April ____, 2013, (b) coordinate with the City Manager to obtain the information necessary from those who prepared the Base Materials to perform such evaluation; (c) meet semi-weekly with the City Manager to advise on the progress of its evaluation and whether there are omissions or errors in the Base Material so the City Manager can determine whether to have additional materials prepared, (d) present the findings of the Independent Expert to the City Council in a presentation format, (e) prepare a written report of the findings of the Independent Expert, and (f) if requested by the City Manager or City Council within two years of the presentation of the findings to the City Council, review updates to the Base Material reflecting a change in assumptions or change in other circumstances. The specific services of Independent Expert to be provided are identified in **Attachment B**, which Attachment may be amended by the parties as additional projects are identified. The term “project” herein refers to each Project identified in **Attachment B**, as it may be amended. Independent Expert will take all necessary and professionally prudent steps to enforce City claims or defenses in connection with the project.

7. CONSULTANTS, EXPERT WITNESSES AND SPECIAL SERVICES: Independent Expert may, with the prior written approval of the City Manager, incur costs for the services of expert witnesses or consultants, in amounts determined at the time of approval.

8. LIMITATION ON MAXIMUM PAYMENT: In the absence of prior written authorization of the City Manager, the obligation of the City to pay Independent Expert under this

Agreement shall not exceed the maximum amount set forth in **Attachment B**, as it may be amended, for each project or phase thereof. Any increase in the scope of work or payments to Independent Expert requires an addition to **Attachment B**, signed by both parties. Independent Expert acknowledges that the laws of the City of Boulder and State of Colorado preclude payment by the City under any implied or quasi-contract and that this written Agreement shall be the sole basis for any fee claims by Independent Expert.

9. MONTHLY BILLING STATEMENT: Independent Expert shall submit a billing statement to the City within 30 days after the presentation to the City Council, or an earlier time as determined by the Independent Expert, that provides details with regard to all services rendered and specifies the costs incurred by Independent Expert pursuant to this Agreement. The statement shall provide the following information with regard to work performed or expenses incurred with regard to the project:

- An identifier of the portion of the Project performed for the entry;
- The date that each service was provided;
- The time attributable to that service;
- The identity of the person who performed the service;
- The nature of the service rendered;
- The hourly rate, total hours and total amount being charged for each person rendering a service; and
- A complete statement of reimbursable expenses for the period covered by the statement.

The City may require additional documentation with regard to services provided if it deems that such additional information is necessary to evaluate the costs of the services being provided by Independent Expert. Invoices should be mailed to the Office of the City Manager, P.O. Box 791, Boulder, CO 80306-0791. The City Manager may provide the name of a contact person within the City Manager's Office to whose attention invoices should be directed.

10. CONTACTS WITH MEDIA: Unless otherwise directed by the City Manager in writing, all requests from the media or any other third party for comment on any work Independent Expert is performing for the City shall be referred to the City Manager.

11. CHARTER AND ORDINANCE COMPLIANCE: This Agreement shall be subject to the provisions of the Charter of the City of Boulder and to all applicable provisions of the Boulder Revised Code, and any other applicable law, rule or regulation.

12. NONDISCRIMINATION: In connection with the performance of work under this Agreement, Independent Expert agrees not to discriminate in employment or in the promotion or demotion of employees, or to discriminate in matters of compensation, against any person otherwise qualified solely because of race, creed, color, sexual orientation, gender variance, genetic characteristics, marital status, religion, national origin, ancestry, age, or physical or mental disability. Independent Expert further agrees to insert the foregoing provision in all subcontracts into which Independent Expert may enter in furtherance of the project.

13. INSURANCE: Independent Expert shall maintain Professional Liability insurance in an amount of at least \$1,000,000.

14. LIABILITY FOR ERRORS: Independent Expert shall indemnify, defend, and hold harmless the City, its employees, and agents against any and all claims, damages, liability and court awards including costs, expenses and attorneys' fees, to the extent such claims are caused by a negligent act or omission of, or breach of contract by Independent Expert, its employees, agents, subcontractors or assignees pursuant to the terms of this Agreement, but not to the extent such claims are caused by any act or omission of, or breach of contract by the City, its employees, agents, other contractors or assignees, or other parties not under the control of or responsible to Independent Expert.

15. TERMINATION: This Agreement shall terminate when:

- All Projects identified in **Attachment B**, as it may be amended, are complete;
- The parties agree in writing to terminate their relationship;
- The City exercises its option to terminate this Agreement; or

The City has the right to terminate this Agreement at any time, with or without reason. If Independent Expert is discharged before all the services contemplated by this Agreement are completed, or the services are for any reason terminated, stopped or discontinued because of the inability of Independent Expert to provide them, Independent Expert shall be paid only for those services performed prior to termination.

Independent Expert shall have no claim of any kind against the City by reason of the termination of this Agreement or by reason of any act incidental to termination, except for compensation for work satisfactorily performed as described by this Agreement.

16. EXAMINATION OF RECORDS: For a period of time not to exceed three years after final payment under this Agreement, the City shall have the right to examine any directly pertinent books, documents, papers and records of Independent Expert involving this Agreement.

17. ASSIGNMENT AND SUBCONTRACTING: The City shall not be obligated under this Agreement to any party other than Independent Expert. Independent Expert understands and agrees that it shall not assign or subcontract with respect to any of its rights, benefits, obligations or duties under this Agreement except upon prior written consent and approval of the City Manager. However, Independent Expert may enter into contracts with third parties for exhibit preparation, service of process, and court reporting services without specific prior approval or specific authorization on the part of the City Manager.

No assignment that is made by Independent Expert and no subcontract into which Independent Expert enters shall be construed to create a contractual relationship between the City and an assignee or subcontractor unless the City enters into a written agreement to the contrary. No subcontract or assignment entered into by Independent Expert shall relieve Independent Expert from full responsibility for the provision of legal services pursuant to this Agreement.

18. PROHIBITIONS ON PUBLIC CONTRACT FOR SERVICES: Independent Expert shall comply with the provisions of section 8-17.5-101, *et seq.*, C.R.S.

19. AGREEMENT MADE IN COLORADO: This Agreement shall be deemed to have been made in Colorado and shall be construed in accordance with the laws of the State of Colorado. Venue of any judicial proceedings shall be in the 20th Judicial District of Colorado.

20. FINAL APPROVAL: This Agreement shall not become effective or binding upon the City until fully executed by all signatories of the City of Boulder.

Independent Expert

By: _____

Title: _____

CITY OF BOULDER

Jane S. Brautigam, City Manager

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

ATTACHMENT A

Independent Expert Professional and Paraprofessional Services Fees

ATTACHMENT B

Description of Project(s) and Maximum Fee

Project 1 –

Project 1 – Maximum Fee: _____

* * *

Project 2 –

Project 2 – Maximum Fee: _____

* * *

Project 3 –

Project 3 – Maximum Fee: _____