

CONSENT ITEM – 3E



**CITY OF BOULDER
CITY COUNCIL AGENDA ITEM**

MEETING DATE: October 19, 2010

AGENDA TITLE: Consideration of a motion to adopt a Resolution authorizing and approving a second phase to an Energy Performance Contract expected to reduce energy consumption and result in cost savings to the city; authorizing and approving a lease-purchase financing for the funding of the energy conservation measures under the energy performance contract and other capital assets; and providing other matters relating thereto.

PRESENTER/S

Jane S. Brautigam, City Manager
Paul J. Fetherston, Deputy City Manager
Bob Eichen, Finance Director /Acting Executive Director of Administrative Services
Maureen Rait, Executive Director of Public Works
Duane Hudson, Deputy Finance Director / Controller
Joe Castro, Facilities and Fleet Manager

EXECUTIVE SUMMARY

The purpose of this agenda item is to request consideration and approval of a resolution authorizing a second phase to an Energy Performance Contract (EPC) guaranteeing energy savings from proposed improvements and using a lease purchase agreement to finance these improvements.

The proposed resolution is for a second of three planned phases and will include solar thermal pool heating systems at East Boulder Community Center and South Boulder Recreation Center; lighting upgrades and water conservation measures throughout certain city facilities; solar photovoltaic systems at Betasso and 63rd Street water treatment plants, Municipal Services Center, Open Space and Mountain Parks Cherryvale offices, and FAM maintenance facility; and various HVAC upgrades and controls. The project will be financed for \$6,460,000 through a lease purchase arrangement.

STAFF RECOMMENDATION

Suggested Motion Language:

Staff requests council consideration of this matter and action in the form of the following motion:

Motion to adopt a Resolution authorizing and approving the second phase to an Energy Performance Contract expected to reduce energy consumption and result in cost savings to the city; authorizing and approving lease-purchase financing for the funding of the energy conservation measures under the Energy Performance Contract and other capital assets; and providing other matters relating thereto.

COMMUNITY SUSTAINABILITY ASSESSMENTS AND IMPACTS

- Economic - The lease purchase will finance investments in energy efficient and renewable technologies for certain city facilities. The improvements are expected to lead to decreased utility bills and result in reductions in future maintenance costs with the installation of newer, more energy efficient HVAC and lighting systems. Improvements will be performed by local workers, helping to contribute to the local economy. The total planned \$12 million investment in energy efficiency upgrades for all three phases is estimated to create 114 jobs with McKinstry employees, local subcontractors and in manufacturing jobs for the equipment installed.
- Environmental - The second phase of the EPC is expected to reduce carbon emissions from city facilities by 4,364 metric tons of CO₂ per year starting in 2011. Combined with the 1,340 metric tons/year reduction from Phase 1, a total 5,704 tons/year reduction is expected. These reductions represent 19 percent of the CO₂ emissions from city operations. This exceeds the previous anticipated total emissions reduction of 3,700 metric tons/year from all three phases of the EPC.

OTHER IMPACTS

- Fiscal – The lease payment on this project will be covered by the net utility savings each year, resulting in no additional costs to the city. This is guaranteed under the EPC with McKinstry.
- Staff time - minimal impact to the city's work plan.

BACKGROUND

In January 2002, City Council adopted Resolution 906, which established a policy to take effective actions that benefit the community by reducing local greenhouse gas emissions. In that resolution, it was stated:

“the Council intends for the city to take a leadership role in increasing energy efficiency and reducing greenhouse gas emissions from municipal operations;”

The Council Resolution led to the 2006 Climate Action Plan, which further identified possible strategies to reduce greenhouse gas emissions from city operations.

In June 2009, the City of Boulder partnered with the Governor's Energy Office (GEO) on an Energy Performance Contract (EPC) project for energy saving upgrades to 66 city of Boulder facilities. The City of Boulder's EPC is envisioned as a three-phase \$12 million project. The first phase of the three planned phases includes solar photovoltaic installations at the Main Library and all three recreation centers; re-lamping of the Mapleton Ballfields; and HVAC controls and improvements at the Park Central Building, Meadows Library, North Boulder Recreation Center and West Senior Center. This phase was financed using Qualified Energy Conservation Bonds through a lease purchase contract adopted by City Council on July 20, 2010, with Resolution 1073.

(http://www.bouldercolorado.gov/files/Clerk/Agendas/2010/July_20/3C.pdf)

On Sept. 21, 2010, City Council adopted Resolution 1081

(http://www.bouldercolorado.gov/files/Clerk/Agendas/2010/09_21_2010_Agenda/Green_Community_Ag_Memo_and_Resolution.pdf) approving a lease purchase arrangement to finance Phase 1. Phase 1 of the city's EPC was awarded and closed on Sept. 27, 2010 with a financed amount of \$1,500,000. Construction started in Oct. 1, 2010.

On Aug. 16, 2010, the city issued a request for proposals (RFP) for a lender to finance the next phases of the EPC with traditional tax-exempt municipal lease purchase arrangements. Contracts and lease purchase arrangements for phase 2 of the EPC are expected to be signed and closed before the end of October. The energy improvements include solar thermal pool heating systems at East Boulder Community Center and South Boulder Recreation Center; lighting upgrades and water conservation measures throughout certain city facilities; solar photovoltaic systems at Betasso and 63rd Water Treatment Plants, Municipal Service Center, Open Space and Mountain Parks Cherryvale offices, and FAM maintenance facility; and various HVAC upgrades and controls. See **Attachment B** a list of energy improvements for Phase 2. Should Amendment 61 pass in the November election and limit the city's ability to borrow, a third phase may not be possible under a lease purchase arrangement.

Previous updates were provided as part of the Sept. 17, 2009 WIP on the 2010

Recommended Budget, Attachment B:

(<http://www.bouldercolorado.gov/files/City%20Council/WIPS/2009/09-17-09/2B.pdf>)

April 13, 2010 study session on renewable energy credits, Appendix G:

(http://www.bouldercolorado.gov/files/City%20Council/Study%20Sessions/2010/Apr_13/Renewable_Energy_Credits.pdf)

ANALYSIS

The city's Climate Action Plan focuses on improving energy efficiency and conservation and demonstrates its commitment to reducing greenhouse gas emissions. The proposed resolution and actions further demonstrate the city's commitment to modeling energy

efficiency in its own operations by using resources currently allocated to paying utility bills to offset the costs of the capital improvements with guaranteed savings from energy efficiencies.

In response to Council questions about boiler replacements and work at the Dairy Center for the Arts, the following information is provided:

Boiler rebates are available from Xcel Energy if Xcel is the natural gas provider. There were no boiler replacements in Phase 1. Phase 2 work includes the replacement of boilers at the Main Library, West Senior Center and the Park Central Building. BP Energy is the natural gas provider and while no rebates are available, the city realizes a competitive cost for the natural gas. Phase 2 work also includes the replacement of the domestic hot water heater at Fire Station #1 and the replacement of furnace at Fire Station #2. Xcel is the energy provider for those facilities and Xcel rebates are available and will be obtained.

Regarding the proposed PV installation at the Dairy Center for the Arts, there was the opportunity to include the Dairy in the energy performance contract. However, the Board of Directors solicited other providers and are considering a no-cost power purchase agreement, separate from this agreement. The power purchase agreement being considered by the Dairy will involve the city due to the need for a lease extension. Only 10 years remains in the 20 year lease and the payback involves more than 10 years.

NEXT STEPS

To facilitate closing on the Phase 2 lease purchase financing, formal City Council approval of the resolution at **Attachment A** is requested.

With the passage of the resolution, staff will close the lease purchase financing with All American Investment Group, LLC and execute the energy performance contract for Phase 2 with McKinstry, currently scheduled for Oct. 25, 2010. Work is anticipated to begin in December 2010 and be completed around June 2011.

ATTACHMENTS

- A. Resolution
- B. Phase 2 Energy Improvements

RESOLUTION NO. _____

A RESOLUTION OF THE CITY OF BOULDER, COLORADO AUTHORIZING THE EXECUTION AND DELIVERY OF AN ENERGY PERFORMANCE CONTRACT EXPECTED TO REDUCE ENERGY CONSUMPTION AND RESULT IN COST SAVINGS TO THE CITY; AUTHORIZING THE EXECUTION AND DELIVERY OF A LEASE-PURCHASE FINANCING WITH RESPECT TO THE ACQUISITION, PURCHASE, FINANCING AND LEASING OF CERTAIN ENERGY CONSERVATION EQUIPMENT; AUTHORIZING THE EXECUTION AND DELIVERY OF DOCUMENTS REQUIRED IN CONNECTION THEREWITH AND AUTHORIZING OFFICIALS OF THE CITY TO TAKE ALL ACTION NECESSARY TO CARRY OUT THE TRANSACTIONS CONTEMPLATED HEREBY AND PROVIDING FOR RELATED MATTERS

WHEREAS, the City of Boulder, Colorado (the “City”), is a municipal corporation duly organized and existing as a home rule city pursuant to Article XX of the Constitution of the State of Colorado (the “Constitution”) and the home rule charter of the City (the “Charter”); and

WHEREAS, pursuant to the Charter and the Constitution, the City is authorized to enter into contracts and agreements affecting the affairs of the City, and may purchase, receive, hold, lease and enjoy or sell and dispose of real and personal property pursuant to Section 2(b) of the Charter; and

WHEREAS, the City Council of the City (the “Council”) hereby determines to execute and deliver an Energy Performance Contract (the “EPC”) between the City and McKinstry (the “Contractor”), pursuant to which the Contractor is to install, supply, maintain and/or service certain energy efficiency equipment of a specified type or class described in the EPC (collectively, the “Equipment”), for the purpose of achieving utility cost reductions and guaranteed energy savings all as more specifically set forth in the EPC; and

WHEREAS, in order to finance (i) the purchase, acquisition and lease of the Equipment and (ii) related costs, the City, as lessee, proposes to enter into that certain Equipment Lease/Purchase Agreement (the “Lease Purchase Agreement”) with All American Investment Group, LLC (or one of its affiliates) (the “Lessor”) and Bank of America, N.A. (the “Assignee”); and

WHEREAS, in order to implement the transactions described above, the City desires (a) to authorize and approve the execution and delivery by the City of, and the performance by the City of its obligations under the EPC, the Lease Purchase Agreement and all ancillary documents and certificates executed in connection therewith (collectively, the “Lease Documents”) and (b) to authorize, approve, ratify, make findings and take other actions with respect to the foregoing matters; and

WHEREAS, pursuant to the Lease Documents, copies of which have been reviewed by City's staff and made available to Council, the details of the financing are fully set forth, and the financial obligation of the City under the Lease Documents shall constitute currently budgeted expenditures of the City payable from the City's General Fund and any other legally available funds of the City, which expenditures are expected to be offset by the savings realized by the City from the acquisition and installation of the Equipment;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY AS FOLLOWS:

Section 1. Approval of Lease Purchase Terms. The Council hereby approves the lease-purchase of the Equipment for the amount not to exceed \$6,500,000, with aggregate calendar year annual payments not to exceed \$725,000 over annual terms which shall not extend beyond 2026. The total Rental Payments (defined in the Lease Purchase Agreement) shall not exceed \$8,600,000.

Section 2. Approval of Lease Documents. The Lease Documents, in substantially the form and with substantially the content presented to the City, are in all respects approved, authorized and confirmed, with such changes therein, not inconsistent herewith, as are approved by the persons executing the Lease Documents.

Section 3. Execution and Delivery of Lease Documents. The Mayor, the Deputy Mayor, the Director of Finance and Record and the City Clerk are hereby authorized and directed to execute the Lease Documents and the signature of the Mayor, the Deputy Mayor, the Director of Finance and Record and the City Clerk shall conclusively determine acceptance of the final form and content of the Lease Documents and the valid execution of the Lease Documents by the City. Additionally, the Mayor, the Deputy Mayor, the Director of Finance and Record and the City Clerk and other officials and employees of the City are hereby authorized and directed to execute and deliver for and on behalf of the City any other papers and to perform all other acts that they may deem necessary or appropriate in order to implement and carry out the financing authorized and contemplated by this Resolution, including but not limited to a tax compliance certificate and an Internal Revenue Service Form 8038-G. The documents approved pursuant to this Resolution are subject to the final approval as to form by the City's general counsel.

Section 4. Designation of the Lease Purchase Agreement as a Qualified Tax Exempt Obligation. The City hereby designates the Lease Purchase Agreement as a qualified tax exempt obligation within the meaning of Section 265(b)(3) of the Code. The City covenants that the aggregate face amount of all tax exempt obligations issued by the City, together with governmental entities which derive their issuing authority from the City or are subject to substantial control by the City, shall not be more than \$30,000,000 during calendar year in which the Lease Purchase Agreement is executed.

Section 5. No General Obligation or Other Indebtedness. The obligation of the City to make rental payments under the Lease Purchase Agreement is subject to annual appropriation by the Council and constitutes an undertaking of the City to make current expenditures. No provision of this Resolution or the Lease Purchase Agreement shall be construed, individually or collectively with other provisions, as constituting or

giving rise to a general obligation or other indebtedness or multiple fiscal year financial obligation of the City within the meaning of any home rule, constitutional or statutory debt limitation nor a mandatory charge or requirement against the City in any ensuing fiscal year beyond the current fiscal year. The City shall have no obligation to make any payment except in connection with the payment of the Rental Payments (as defined in the Lease Purchase Agreement) and certain other payments under the Lease Purchase Agreement, which payments shall be subject to termination and nonrenewal by the City in accordance with the provisions of the Lease Purchase Agreement.

Section 6. Additional Findings; Expression of Need; Reasonable Rentals. The City hereby declares its current need for the Equipment. The Council hereby determines and declares that the Rental Payments due under the Lease Purchase Agreement, so long as they are within the limits provided in this Resolution, will represent the fair value of the use of the Equipment.

The City hereby elects to apply all of the provisions of the Supplemental Public Securities Act, Part 2 of Article 57, Title 11, C.R.S. (the “Supplemental Securities Act”), to the extent applicable and not inconsistent herewith, to the Lease Purchase Agreement.

Section 7. Ratification of Prior Actions. All actions heretofore taken (not inconsistent with the provisions of this Resolution) by the Council or by the officers and employees of the City regarding the City’s obligations under the Lease Documents, are hereby ratified, approved and confirmed.

Section 8. Severability. It is hereby expressly declared that all provisions hereof and their application are intended to be and are severable. In order to implement such intent, if any provision hereof or the application thereof is determined by a court or administrative body to be invalid or unenforceable, in whole or in part, such determination shall not affect, impair or invalidate any other provision hereof or the application of the provision in question to any other situation; and if any provision hereof or the application thereof is determined by a court or administrative body to be valid or enforceable only if its application is limited, its application shall be limited as required to most fully implement its purpose.

Section 9. Repealer. All Resolutions, or parts thereof, inconsistent or in conflict herewith are hereby repealed to the extent only of such inconsistency or conflict.

Section 10. Effective Date. This Resolution shall take effect and be enforced immediately upon its approval.

APPROVED this 19th day of October, 2010.

Mayor

ATTEST:

City Clerk, on behalf of the
Director of Finance and Record

PHASE 2 ENERGY IMPROVEMENTS

<i>Facility</i>	<i>Construction Cost</i>	<i>Xcel Rebates/Other Funds</i>
Multiple Facilities		
- Lighting Upgrades	\$ 1,878,256	\$ 242,015
- Water Fixture Upgrades	180,944	
- Boiler Room Insulation	9,233	
- Envelope Improvements - weatherization	385,966	26,883
Recreation Centers		
- EBCC Solar Thermal	488,060	25,000 (CO Carbon Fund)
- SBRC Solar Thermal	371,842	25,000 (CO Carbon Fund)
- Variable Speed Pool Flows	43,709	4,850
- Occupancy/demand controls	13,792	3,397
- Pool hot water return upgrade	8,130	
- SBRC – new pool heat recovery air handler	267,506	
- Various pool efficiencies	68,114	3,218
Iris Center – new automation system	15,814	786
- Install 13 new windows	37,794	121
Municipal Building - HVAC Controls	3,847	1,062
- Replace 2 RTUs, south wing	50,615	1,805
Main Library - Air Handler Controls	6,039	1,908
- Boiler replacement – north wing	194,155	
Carnegie Library – replace 1 RTU	26,117	992
Park Central – boiler replacement	190,046	
- New 4th floor automation system	32,229	
West Senior Center – boiler replacement	138,511	
- Air cooled chiller replacement	141,281	3,058
Solar PV Systems		
- 63rd Water Treatment Plant – 103 kW	629,827	200,000
- Municipal Service Center – 103 kW	615,159	200,000
- OSMP Cherryvale Ops- 89 kW	564,536	178,000
- Betasso Water Treatment – 81 kW	496,395	162,680
- FAM Maintenance – 19 kW	125,531	38,220
75th WWTP		
- Variable speed blowers	563,509	42,428
- Heat recover to lab	64,758	
- Variable speed drive, dilution pump	10,975	5,001
Public Safety Building – replace AHUs	237,627	8,157
Fire Stations		
- Radiant heat to truck bays	69,946	1,368
- FS #1, replace hot water heater	16,129	65
- FS #2, replace furnace	13,086	164
Airport – programmable thermostats	798	605
Municipal Service Center/Fleet		
- New automation system	66,780	5,483
- Boiler controls	8,043	886
- Heat recovery and compressed air	18,010	7,490
Technical Energy Audit	94,850	55,449
Construction Costs / Rebate Totals	\$ 8,147,959	\$ 1,196,090
Financing Fee	50,000	
Additional EECEBG Funds		146,499
Additional City Funds		398,337
Lease Purchase Financing		\$ 6,457,033

Note: CO Carbon Fund are shown but not part of rebate totals.