

CONSENT ITEM – 3F



**CITY OF BOULDER
CITY COUNCIL AGENDA ITEM**

MEETING DATE: September 21, 2010

AGENDA TITLE: Consideration of a motion to adopt a Resolution authorizing and approving an energy performance contract expected to reduce energy consumption and result in cost savings to the City; establishing the City of Boulder Green Community Program; 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 and approving an energy savings performance contract guaranteeing energy savings from the proposed improvements, establishing a Green Community Program under the Qualified Energy Conservation Bond (QECCB) provisions of the Internal Revenue Code, and approving the use of lease purchase agreements to finance these improvements.

On July 20, 2010, City Council adopted Resolution 1073 approving use of QECCB's through a lease purchase arrangement to finance the first of three planned phases of the city's energy savings performance contract (ESPC). The American Reinvestment and Recovery Act authorizes local communities to use the QECCBs for capital expenditures that reduce energy consumption on publicly-owned buildings by at least 20% and for implementing green community programs. Phase 1A of the city's energy savings performance contract will reduce energy consumption by 20.3%. Because the projected savings are so close to the minimum requirement and upon advice of the city's bond

counsel (Kutak Rock), the city desires to define the Climate Action Plan, as a Green Community Program under the proposed resolution.

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 an energy savings performance contract expected to reduce energy consumption and result in cost savings to the City; establishing the City of Boulder Green Community Program; authorizing and approving lease-purchase financing for the funding of the energy conservation measures under the energy savings performance contract and other capital assets; and providing other matters relating thereto.

COMMUNITY SUSTAINABILITY ASSESSMENTS AND IMPACTS

- Economic - The lease purchases will finance investments in energy efficient and renewable technologies for certain city facilities which are expected to lead to decreased utility bills. The improvement project will also result in reductions in future maintenance costs with the installation of newer more energy efficient HVAC systems and lighting systems designed to last longer. 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 first phase of the energy savings performance contract (ESPC) partially funded by the QECBs is expected to reduce carbon emissions from city facilities by 1,340 metric tons a year. The remaining planned phases of the project are anticipated to reduce carbon emissions by another 3,700 metric tons a year. In total, the reductions represent 15 percent of the CO2 emissions from city operations.

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 ESPC with McKinstry. No additional fiscal obligations will be created by defining several of the city’s existing programs as a Green Community Program.
- Staff time - minimal impact since already on city’s work plan.

BACKGROUND

In June 2009, the City of Boulder partnered with the Governor’s Energy Office (GEO) on an energy savings performance contract (ESPC) project for energy saving upgrades to 66 city of Boulder facilities. On June 4, 2010, the city issued a request for proposals for a lender to finance the first phase of the ESPC using Qualified Energy Conservation Bonds

(QECBs). On July 20, 2010, City Council adopted a resolution approving and authorizing the use of \$1,500,000 in QECBs for the EPC in city facilities.

The City of Boulder's ESPC 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. Phase 1 construction will begin in 2010. Phases 2 and 3 are anticipated to follow through the middle of 2011.

In the July 20, 2010 Council Agenda Memo for Resolution 1073 (http://www.bouldercolorado.gov/files/Clerk/Agendas/2010/July_20/3C.pdf), the QECBs will finance the first of three phases of planned energy efficiency improvements. The remaining phases will be financed by traditional tax-exempt municipal lease purchase arrangements to follow in a subsequent resolution.

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>)

and more recently for the 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

Upon preparation for closing of the QECB financing, bond counsel considered the energy savings expected to be generated by the proposed improvements. Under the QECB regulations, one of the requirements is that either the project must result in a savings of 20% of energy consumption or it must be part of a Green Community Program to qualify for QECB treatment.

Since the city's calculated energy savings for the proposed improvements are estimated at 20.3%, the city was advised that the QECB tax subsidy could be jeopardized if the savings ever dropped below the 20% level during the 13 year term of the lease purchase agreement.

To help provide additional assurance that the project would continue to meet the QECB requirement to expend QECB proceeds on "qualified conservation purposes," as defined in IRC Section 54D, bond counsel advised the city to establish a Green Community Program by City Council resolution instead of solely relying upon the energy savings percentage.

The City already has the Climate Action Plan with many strategies and programs focused on improving energy efficiency and conservation that demonstrate its commitment to reduce greenhouse gas emissions. The proposed resolution identifies existing programs and potential future additions as components of the city of Boulder's Green Community Program for the purposes of IRC Section 54D.

NEXT STEPS

To facilitate closing on the QECB 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 QECB lease purchase financing with Bank of America Leasing and Capital, LLC and execute the energy performance contract for Phase 1 with McKinstry, currently scheduled for Sept 22, 2010.

ATTACHMENTS

- A. Resolution

RESOLUTION NO. _____

A RESOLUTION OF THE CITY OF BOULDER, COLORADO AUTHORIZING AND APPROVING AN ENERGY PERFORMANCE CONTRACT EXPECTED TO REDUCE ENERGY CONSUMPTION AND RESULT IN COST SAVINGS TO THE CITY; ESTABLISHING THE CITY OF BOULDER GREEN COMMUNITY PROGRAM; 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 SETTING FORTH RELATED DETAILS.

A. 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

B. Pursuant to the Charter and the Constitution, the City is authorized to enter into contracts and agreements affecting the affairs of the City; and

C. Section 301(a) of the Tax Extenders and Alternative Minimum Tax Relief Act of 2008 added Section 54D (as amended by Section 1112 of the American Recovery and Reinvestment Act of 2009, “Section 54D”) to the Internal Revenue Code of 1986, as amended (the “Code,”) to authorize states and political subdivisions to issue Qualified Energy Conservation Bonds (“QECBs”) for one or more Qualified Conservation Purposes (as defined in Section 54D); and

D. The City Council of the City (the “Council”) previously adopted Resolution No. 1073, on July 20, 2010 authorizing the execution and delivery of QECBs in the form of a lease purchase agreement to finance energy cost saving measures, which will further the goals of the Climate Action Plan of the City; and

D. The Council desires to designate the Climate Action Plan adopted by the Council on June 6, 2006, as it may be amended in the future, as a green community program within the meaning of Section 54D. The Climate Action Plan was adopted in furtherance of (a) the goal adopted by the Council in 2002 to reduce community greenhouse gas emissions by 7 percent below their 1990 levels by 2012, consistent with the 1997 Kyoto Protocol, and (b) the voters' approval in 2006 of a carbon tax as a fee on energy use to support programs that help achieve the goals of the Kyoto Protocol. The Climate Action Plan and more recent Community Guide to the Climate Action Plan includes baseline data and emissions reduction strategies for all sectors – commercial, residential, industrial, transportation and solid waste, It also addresses city operations, water conservation and urban forestry. The strategies of the Climate Action Plan focus on improving energy efficiency and conservation in homes and businesses, increasing use of renewable energy, minimizing waste sent to the landfill and reducing transportation emissions

E. An initial Energy Performance Contract, (“EPC”) has been negotiated with McKinstry Essention Inc. (the “Contractor”) for the construction, installation and service of

approximately \$2.2 million of energy efficiency improvements to implement the Climate Action Plan. Of that amount, \$1.5 million will be financed by the Lease/Purchase QECCB, as defined below. Pursuant to the EPC, the Contractor is to sell, install and service certain energy efficiency equipment of a specified type or class described in the EPC and provide other services (collectively, the "Energy Conservation Measures,") for the purpose of achieving utility cost reductions and guaranteed energy savings all as more specifically set forth in the EPC; and

F. The Energy Conservation Measures to be made to various public buildings of the City will lower the electrical, natural gas and water usage in the buildings and will create a cost savings to the City which is guaranteed by the Contractor as more specifically set forth in the EPC; and

G. The City has applied for, and received notification of award from the Governor's Energy Office, of volume cap allocation in the amount of \$1,500,000 for the issuance of QECCBs which allocation will result in a federal subsidy for a significant portion of the interest costs relating to the lease-purchase financing authorized pursuant to this Resolution (the "Federal Subsidy"); and

H. To finance the Energy Conservation Measures, the City intends to enter into (a) an Equipment Lease/Purchase Agreement (the "Lease/Purchase Agreement") with Bank of America Leasing and Capital, LLC (the "Lessor") in the amount of \$1,500,000, and the obligation created under the Lease/Purchase Agreement shall be designated as a "Qualified Energy Conservation Bond" pursuant to Section 54A and 54D of the Code of which the City immediately elects to have 6431(f) of the Code apply (the "Lease/Purchase QECCB") and (b) a Direct Purchase Agreement (the "Direct Purchase Agreement") with the Lessor for the purchase of the Lease Purchase QECCB, as previously approved by Resolution 1073; and

I. To implement the transactions described above, the City desires (a) to ratify the approval of the execution and delivery by the City of, and the performance by the City of its obligations under the Lease documents approved by Resolution 1073, (b) to designate the City's Climate Action Plan as the Boulder Green Community Program within the meaning of 54D, (c) to approve the execution and delivery of the Energy Performance Agreement for the cost of improvements up to \$2.2 million, and (d) to authorize, approve, ratify, make findings and take other actions with respect to the foregoing and related matters.

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

Section 1. Approval of the Energy Performance Contract. The Mayor and the Council hereby approve the EPC with such changes therein, not inconsistent herewith, as are approved by the persons executing the EPC (whose signature thereon shall constitute conclusive evidence of such approval.)

Section 2. Establishment of Boulder Green Community Program. The City hereby establishes the City's Climate Action Plan as a green community program within the meaning of Section 54D (the "Boulder Green Community Program.") The Boulder Green Community Program shall include without limitation, improvements to various public buildings of the City

that are to lower the electrical, natural gas and water usage in such buildings and create cost savings to the City.

Section 3. Future Additions to Program. The projects and programs listed in Section 2 hereof are not intended to represent an exhaustive description of the potential projects and programs to be included in the Boulder Green Community Program. The City intends and expects that additional projects and programs will be added to the Boulder Green Community Program as other components of the Plan are implemented by the City and by future resolutions of the City as such projects and programs are developed.

Section 4. Execution and Delivery of Documents. The Mayor, elected officials and city staff are hereby authorized and directed to execute the EPC and any and all additional agreements, certificates, documents and 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 Internal Revenue Service Forms 8038-TC and 8038-G. The documents approved pursuant to this Resolution, including, without limitation, the EPC, are subject to the final approval as to form by the City Attorney.

Section 5. Designation of the Lease Purchase Agreement Obligation as a “Qualified Energy Conservation Bond.” The City hereby elects to designate the obligation created by the Lease/Purchase Agreement as a “Qualified Energy Conservation Bond” within the meaning of Section 54D of the Code.

Section 6. Obligations of the City. No provision of this Resolution, Lease/Purchase Agreement or the Lease documents shall be construed as creating or constituting a general obligation or a multiple-fiscal year direct or indirect indebtedness or other financial obligation whatsoever of the City nor a mandatory payment obligation of the City in any ensuing fiscal year beyond any fiscal year during which the documents shall be in effect.

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 21st day of September, 2010.

Mayor

ATTEST:

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