

**CITY OF BOULDER
CITY COUNCIL AGENDA ITEM**

MEETING DATE: July 20, 2010

AGENDA TITLE: Consideration of a motion to adopt a resolution approving and authorizing use of \$1,500,000 in Qualified Energy Conservation Bond allocation for energy efficiency improvements in city facilities.

PRESENTERS:

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

Joe Castro, Facilities and Fleet Manager

John Frazer, Facilities and Fleet Financial Manager

EXECUTIVE SUMMARY:

The purpose of this agenda item is to request consideration and approval of a resolution, **Attachment A**, authorizing the use of \$1.5 million of Qualified Energy Conservation Bonds (QECB) allocated to the city by the Governor's Energy Office (GEO) for energy efficiency improvements to city facilities. The QECB allocation received from the GEO will be issued in the form of a special municipal lease purchase (LP) agreement.

This LP agreement for the QECBs will finance the first phase of the three planned phases of the city's Energy Savings Performance Contract (ESPC) with McKinstry. The first phase includes 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. Final financed costs total \$1,500,000.

After a formal selection process, the City of Boulder awarded the lease purchase contract for the \$1.5 million QECBs to All American Investment Group, LLC, (AAIG) out of Denver. In order to close on the LP financing and comply with QECB requirements, formal City Council approval in the form of the accompanying resolution is required.

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 approving and authorizing execution of a taxable Qualified Energy Conservation Bond lease purchase agreement in the amount of \$1.5 million.

COMMUNITY SUSTAINABILITY ASSESSMENTS AND IMPACTS:

- Economic: This lease purchase will finance investments in energy efficient and renewable technologies for certain city facilities which is 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 \$12 million investment in energy efficiency upgrades for all three phases is estimated to create 114 jobs with direct McKinstry employees, local subcontractors and in manufacturing jobs for the equipment installed.
- Environmental: The first phase of the ESPC, partially funded by the QECBs, is expected to reduce carbon emissions from city facilities by 1,340 metric tons a year. The remaining 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.
- Social: NA

OTHER IMPACTS:

- Fiscal: The lease payments on this project are expected to be covered by the net utility savings each year, resulting in no additional costs for the city. This is guaranteed under an ESPC with McKinstry, the city's consultant and general contractor on this project.
- Staff time: The proposed lease purchase will be issued under the direct interest subsidy provisions of the QECB program. These require periodic submission of the interest payments for reimbursement by the federal government. The submission of these forms is considered part of the debt administration work currently budgeted within the Finance Department and is not expected to require significant additional time.

BOARD AND COMMISSION FEEDBACK: NA

PUBLIC FEEDBACK: NA

BACKGROUND:

Qualified Energy Conservation Bonds (QECBs) were initially authorized by Congress in October 2008 under the Energy Improvement and Extension Act with a maximum authorization of \$800 million in volume cap nationwide. In 2009, the volume cap was expanded to \$3.2 billion under the provisions of the American Recovery and Reinvestment Act of 2009 and the State of Colorado received an allocation of \$51,244,000. In Colorado, the GEO is responsible for assigning the state's allocation to qualified projects that are selected through competitive process. In the fall of 2009, the City of Boulder received an allocation of \$1,500,000 for its energy efficiency improvement project. The \$1.5 million of QECB financing awarded to the City of Boulder is not a direct grant. Instead, it is a financing instrument that facilitates energy efficiency improvements that will be paid through the associated energy cost savings.

As provided by Colorado Revised Statutes § 29-12.5.103, a political subdivision can implement a utility costs-savings contract in which utility costs savings are used to pay for services or equipment or otherwise incur indebtedness to finance utility cost-savings measures or energy saving measures.

On March 18, 2010, the Hiring Incentives to Restore Employment (HIRE) Act was signed into law. It permitted issuers of QECBs to elect to receive a direct subsidy payment from the federal government similar to the Build America Bonds subsidy in lieu of providing tax credits to owners of the QECBs as originally designed. After discussion of this option with the city's bond attorneys and the ESPC contractor, the city has decided to elect the direct subsidy payment option for its QECBs, which will lower overall costs to the city.

Even though the QECBs are issued under a federal "bond" program, many local government agencies are using LP agreements instead of formal bond issuances for these purposes. The City of Boulder is planning on doing the same. From the Governor's Energy Office website:

"In the state of Colorado, the Tax Payers' Bill of Rights, or the TABOR amendment, essentially states that government agencies may not enter into multi-year financial obligations without voter approval. Performance contracts involve multi-year financing, typically through a tax-exempt lease purchase agreement. Through the GEO's Performance Contracting Program, lease purchase agreements include language that specifically states that the financing agreements are "annually renewable" and subject to the agency's annual appropriation of funds and are therefore not subject to TABOR restrictions."

Throughout Colorado, 9 state departments, 17 higher education institutions, 31 school districts, 15 county governments, and 29 cities and towns are using energy performance contracts to implement energy savings. Near Boulder, the cities of Fort Collins, Commerce City, Lafayette, Longmont, Louisville, Arvada, Westminster and Golden have or are using the GEO's performance contract.

Reducing energy use in the city operations is in the city's work plan. 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:

In an energy savings performance contract, facility owners implement and finance the initial costs to complete building energy improvements. These financing costs are then repaid over a 10- to 16-year period through guaranteed savings provided by decreased energy usage at the associated facilities.

McKinstry was selected, through an RFP process, as the city's contractor to conduct a technical energy audit and provide specific facility improvement measures. The City of Boulder's ESPC as developed with McKinstry, is envisioned as a three-phase \$12 million project. The first phase of the ESPC is calculated to reduce carbon emissions from city facilities by 1,340 metric tons a year. The effort will not only provide for electrical savings but will also install renewables such as solar photovoltaic and solar thermal along with implementing water conservation measures.

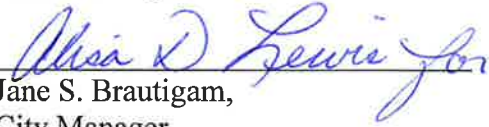
The first phase of our ESPC with McKinstry is detailed in **Attachment B** and includes solar photovoltaic installations at the Main Library and all three recreation centers, re-lamping of the Mapleton Ballfields, and HVAC controls and improvements at the Park Central Building, Meadows Library, North Boulder Recreation Center and West Senior Center. Phase 1 construction is expected to begin in September and continue through the end of 2010.

These improvements will be financed using the \$1.5 million of QECBs and other grants, including approximately \$359,500 in Energy Efficiency and Conservation Block Grant funding, rebates and city funding. In June, 2010, the city issued a request for financing proposals and after review of the responses, awarded a lease purchase contract for the \$1.5 million QECB to All American Investment Group, LLC (AAIG), out of Denver. AAIG will act as placement agent and Banc of America Leasing & Capital, LLC (or its designee) as Offeror.

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

With the passage of the resolution, staff will sign the Energy Savings Performance Contract for Phase 1A with McKinstry and close the QECCB lease purchase financing with AAIG. The staff will also formally accept the Colorado Carbon Fund (CCF) award of a \$50,000 grant for the solar thermal projects at the South Boulder Recreation Center and the East Boulder Community Center to be included in Phase 1B.

Approved By:


Jane S. Brautigam,
City Manager

ATTACHMENTS:

- A. Resolution
- B. Phase 1 - Energy Savings Performance Contract Measures

ATTACHMENT A - Resolution

RESOLUTION NO. ____

A RESOLUTION AUTHORIZING THE EXECUTION AND DELIVERY OF A TAXABLE QECB EQUIPMENT LEASE/PURCHASE AGREEMENT (DIRECT SUBSIDY) WITH RESPECT TO THE ACQUISITION, PURCHASE, FINANCING AND LEASING OF CERTAIN ENERGY CONSERVATION EQUIPMENT FOR THE PUBLIC BENEFIT; AUTHORIZING THE EXECUTION AND DELIVERY OF A PURCHASE CONTRACT, ACQUISITION FUND AGREEMENT AND OTHER DOCUMENTS REQUIRED IN CONNECTION THEREWITH; AND AUTHORIZING THE TAKING OF ALL OTHER ACTIONS NECESSARY TO THE CONSUMMATION OF THE TRANSACTIONS CONTEMPLATED BY THIS RESOLUTION.

WHEREAS, the City of Boulder supports the Governor's Energy Office allocation of \$1,500,000 in Qualified Energy Conservation Bonds for the city's energy performance contract; and

WHEREAS, the Qualified Energy Conservation Bonds will be used by a lease-purchase agreement to finance an energy savings performance contract; and

WHEREAS, § 29-12.5-103, C.R.S., provides that municipalities may enter into utility cost-saving measures or energy saving contracts in which utility cost savings are to pay for services or equipment or otherwise incur indebtedness to finance utility cost-savings measures or energy saving measures; and

WHEREAS, § 29-12.5-103, C.R.S., further provides that no such contract or indebtedness incurred pursuant to this section shall constitute or give rise to an indebtedness within the meaning of any constitutional, statutory, or home rule debt limitation and that such contracts do not require the approval of the qualified electors of the Political Subdivision.

WHEREAS, in connection with the financing of acquisition and installation of the Energy Conservation Equipment, Banc of America Leasing & Capital, LLC (in such capacity, the "*Offeror*") has submitted to the City of Boulder its written offer that, upon acceptance by the City of Boulder, will constitute a binding written contract (the "*Purchase Contract*") to enter into that certain Taxable QECB Equipment Lease/Purchase Agreement (Direct Subsidy) (the "*Agreement*") between the City of Boulder and Banc of America Leasing & Capital, LLC (or one of its affiliates) (in such

capacity, the “*Lessor*”) and that certain Acquisition Fund and Account Control Agreement (the “*Acquisition Fund Agreement*”) among the City of Boulder, the Lessor and the Acquisition Fund Custodian therein identified, and the Purchase Contract executed by the Offeror and the forms of the Agreement and the Acquisition Fund Agreement have been presented to the governing body of the City of Boulder at this meeting; and

WHEREAS, the City of Boulder desires to designate the aggregate principal component of Rental Payments under the Agreement for purposes Section 54D(a)(3) of the Code as a “*qualified energy conservation bond*” within the meaning of Section 54D(a) of the Code; and

WHEREAS, the Lessee desires to receive direct cash subsidy payments from the United States Department of Treasury as provided by Section 6431 of the Code with respect to the Agreement and, in that connection, to irrevocably elect to have Section 6431(f) of the Code apply to the Agreement; and

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND THE CITY COUNCIL OF THE CITY OF BOULDER THAT:

Section 1. The Mayor and the City Council of the City of Boulder hereby approves the city’s use of the Qualified Energy Conservation Bonds.

Section 2. The Mayor and the City Council of the City of Boulder have approved the expenditure of funds necessary to finance the terms and conditions of these bonds through adoption of the City of Boulder’s 2010 budget.

Section 3. The City of Boulder hereby designates the Agreement for purposes Section 54D(a)(3) of the Internal Revenue Code of 1986 as a “qualified energy conservation bond” within the meaning of Section 54D(a) of the Code. The City of Boulder hereby further irrevocably elects to have Section 6431(f) of the Code apply to the Agreement.

Section 4. The officers and employees of the City of Boulder shall take all actions necessary or reasonably required by the parties to the financing agreements to carry out, give effect to and consummate the transactions contemplated thereby (including the execution and delivery of acceptance certificates and any tax certificate and agreement, as contemplated in the agreement) and to take all actions necessary in conformity therewith, including, without limitation, the execution and delivery of any closing and other documents required to be delivered in connection with any of the financing agreements.

Section 5. This resolution to be in full force and effect from and after its passage and approval.

APPROVED this ____ day of _____, 2010.

Susan Osborne, Mayor

ATTEST:

City Clerk on behalf of the
Director of Finance and Record

Attachment B - Phase 1
Energy Savings Performance Contract Measures

Phase 1A

<i>Facility</i>	<i>Construction Cost</i>	<i>Rebates/Other Funds</i>
Main Library		
- Solar PV	\$ 522,685	\$ 195,520 (Xcel)
- Lighting Upgrades	\$ 111,173	\$ 13,158 (Xcel)
- HVAC Upgrades	\$ 32,187	
- Bldg Controls	\$ 19,177	
North Boulder Rec Center		
- Solar PV	\$ 524,997	\$ 200,000 (Xcel)
- Lighting Upgrades	\$ 163,699	\$ 31,601 (Xcel)
- Bldg Controls	\$ 37,192	\$ 2,932 (Xcel)
- Pool pump Upgrades	\$ 40,379	\$ 10,197 (Xcel)
South Boulder Rec Center		
- Solar PV	\$ 341,647	\$ 131,712 (Xcel)
East Boulder Community Center		
- Solar PV	\$ 312,151	\$ 104,832 (Xcel)
West Senior Center		
- Lighting Upgrades	\$ 24,635	\$ 3,145 (Xcel)
- HVAC Upgrades	\$ 7,901	\$ 1,750 (Xcel)
Park Central Bldg		
- Lighting Upgrades	\$ 32,477	\$ 2,397 (Xcel)
- HVAC Upgrades	\$ 22,202	\$ 2,613 (Xcel)
- Bldg Controls	\$ 14,993	\$ 3,842 (Xcel)
Meadows Library		
- HVAC Upgrades	\$ 118,333	\$ 112,870 (FAM)
Mapleton Ballfield Lighting	\$ 427,999	\$ 174,000 (EECBG) \$ 141,000 (P&R)
Additional P&R Funds		\$ 208,390 (P&R)
Audit Fee	\$ 39,501	\$ 9,251 (Xcel) \$ 39,501 (EECBG)
Construction Contingency	\$ 95,383	
Subtotals	\$ 2,888,711	\$ 1,388,711
LP Financing		\$ 1,500,000 (QECB)
Totals		\$2,888,711

Phase 1B – Preliminary List

Note: McKinstry is finalizing the scope and budget for each of these items prior to proposing the ESPC for Phase 1B. No construction costs are available at this time.

<i>Facility</i>	<i>Rebates/Other Funds</i>
Main Library	
- Boiler Replacement	
South Boulder Rec Center	
- Solar Thermal System	\$ 25,000 (CCF)
- Pool Heat Recovery	
- Lighting	\$ 36,000 (EECBG) \$ 36,000 (Xcel)
East Boulder Community Center	
- Solar Thermal System	\$ 25,000 (CCF)
- Pool Heat Recovery	
- Lighting	\$ 50,000 (EECBG) \$ 50,000 (Xcel)
West Senior Center	
- Boiler and Chiller Replacement	
Municipal Building	
- HVAC Replacement and Recommission	
- Lighting Upgrades	
Park Central Bldg	
- Boiler Replacement	
- HVAC Space Controls	
Meadows Library	
- Lighting Upgrades	
Audit Fee	\$ 60,000 (EECBG)
Current Subtotals	\$ 282,000