

**CITY OF BOULDER
CITY COUNCIL AGENDA ITEM**

MEETING DATE: August 18, 2009

AGENDA TITLE:

Items related to 6400 Arapahoe, Recycle Row, and Chapter 3-10, "Trash Tax," B.R.C. 1981:

1. Consideration of a motion to direct the City Manager to purchase the property at 6400 Arapahoe Ave.
2. Consideration of a motion to authorize the City Manager to approve an intergovernmental agreement with Boulder County to fund the purchase of 6400 Arapahoe Ave.
3. Second reading and consideration of four ordinances amending Section 3-10-2, "Imposition of Occupation Tax," B.R.C. 1981, raising the rates of the trash tax.
4. Consideration of a motion to adopt a resolution declaring the City of Boulder's official intent to reimburse Boulder County for \$5,000,000 with the proceeds of a future bond issue that will occur in the fourth quarter of 2009 or the first quarter of 2010.

PRESENTER/S:

Jane S. Brautigam, City Manager
Paul Fetherston, Deputy City Manager
Bob Eichen, Finance Director/ Acting Executive Director of Administrative Services
David Driskell, Executive Director of Community Planning
Ruth McHeyser, Deputy Director of Community Planning
Jonathan Koehn, Manager of Environmental Affairs
Kara Mertz, Assistant to the City Manager for Environmental Affairs
Elizabeth Vasatka, Environmental Coordinator
Marie Zuzack, Environmental Affairs Planner

I. EXECUTIVE SUMMARY

Staff is requesting direction on whether to purchase the property at 6400 Arapahoe Ave. to further the city's waste reduction goals; whether to increase the trash tax to pay for site acquisition and improvements; and if so, to what level.

The purpose of this site purchase is to relocate the Eco-Cycle office, the Center for Hard to Recycle Materials (CHaRM), and the Center for Resource Conservation's (CRC) ReSource used building materials facility. Key questions for this agenda item are:

1. Does council wish to purchase 6400 Arapahoe or the brickyard site for these facilities?
2. If 6400 Arapahoe Ave. is the preferred site:
 - a. How does council wish to structure the financing of the purchase and improvements?
 - b. Does council wish to increase the trash tax to pay for the site purchase and improvements, and if so, to what level?

To help council answer these questions, this memo compares cost and financing scenarios for the two possible sites and - for 6400 Arapahoe - two levels of site retention

as well as two levels of facility development. If the city chooses to sell a portion of the site later, the proceeds would be used first to pay back the county's cash contribution; then the remainder could be used to buy down the bond issued to purchase the property, fund additional waste reduction infrastructure on 6400 Arapahoe or elsewhere, and/or fund other city priorities.

Council will be asked on Aug. 18 to decide on the site purchase, financing method, bond amount, and trash tax increase, if 6400 Arapahoe is selected. Final decisions about what extent to develop facilities for Eco-Cycle, CHaRM and ReSource can be decided later, by this or a future council. However, the scenarios covered in this memo illustrate which financing option provides the most flexibility in later decisions (Scenario B on page 7).

The results of the follow-up environmental site assessment for 6400 Arapahoe Ave. by Temkin Wielga Hardt & Longenecker are expected on Thursday, Aug. 13. The results will either be included in the final version of this memo or e-mailed to council. The assessment results may affect staff's recommendation regarding site purchase.

The city currently diverts approximately 31 percent of its waste from landfills; the goal from the Master Plan for Waste Reduction (MPWR) is to achieve 85 percent diversion by 2017. New single-stream recycling and curbside compost collection are expected to increase diversion by an additional 7 to 10 percent by the end of 2009. Future infrastructure, programs and regulations are expected to increase diversion rates an additional 43 percent over the next five to eight years. For a summary of all existing and future needed waste reduction infrastructure and programs, see **Attachment C**. These estimates will be refined through the update to the MPWR, which will commence in 2010.

Securing permanent facilities for CHaRM and ReSource will be a key step in providing the needed infrastructure to meet our zero waste goals. Although moving and expanding CHaRM and ReSource will contribute only 1 or 2 percent diversion, as shown in **Attachment C**, these facilities are key components of a comprehensive package of waste reduction infrastructure and programs that will promote more sustainable behavior by city residents and businesses. They also support a portion of the community's waste reduction infrastructure that is less likely to be provided by the private sector.

The Analysis section of this memo (Section VIII.) provides the following information council requested on July 21:

- The uses allowed by zoning on 6400 Arapahoe Ave.,
- The trade-offs in funding the nonprofits' facilities versus other waste reduction infrastructure and programs to meet the zero waste goal, and
- The county's role in the possible purchase of 6400 Arapahoe Ave.

The intergovernmental agreement between the city and the county is discussed in Section VII E. The timeline and land use review requirements, should council chose to pursue purchase 6400 Arapahoe Ave., are outlined in Section VII F.

Should council decide to move forward on the purchase of 6400 Arapahoe, the closing on the property will occur before the bond proceeds are received by the city. A

reimbursement resolution (**Attachment I**), which does not authorize the bond sale, is a formality required by federal law to allow the city to reimburse costs to the city or the county incurred for land, other capital purchases or costs incurred prior to receipt of the proceeds. The amount is set at \$5,000,000 to cover the cost of reimbursing the county and to cover any capital costs that the city may incur that could be reimbursed from bond proceeds. (The amount has been rounded for simplicity.)

The main concept of issuing tax exempt bonds is the proceeds received will be used for governmental purposes, or in this case for tax exempt 501(c)(3) nonprofit purposes. When a governmental organization issues bonds to purchase or build capital improvements, there are restrictions that apply to what can later be sold. This concept is covered in depth in the analysis section under bonding restrictions.

II. STAFF RECOMMENDATION

Staff recommends:

- Pending the outcome of the environmental site assessment, purchasing 6400 Arapahoe Ave.;
- Structuring the financing of the purchase so that the city has sufficient equity to consider selling a portion of the site in the future, if it is determined that it is not needed for future waste reduction efforts or other city needs (per Scenario B);
- Increasing the trash tax rates to the maximum rates allowed by voters in order to fund the site purchase and near term improvements, and possibly in the long term, additional waste reduction infrastructure and/or programs at 6400 Arapahoe or elsewhere;
- Approving the reimbursement resolution that will ensure compliance with tax and legal bond requirements for reimbursing the funds used to purchase the property and improvements prior to receipt of the bond proceeds.

Suggested Motion Language:

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

1. A motion to direct the City Manager to purchase the property at 6400 Arapahoe Ave.
2. A motion to authorize the City Manager to approve an intergovernmental agreement with Boulder County to fund the purchase of 6400 Arapahoe.
3. A motion to direct the City Manager to structure the financing for the property acquisition generally consistent with Scenario B in Section XII C, which would provide sufficient cash equity to consider selling a portion of the property in the future.
4. A motion to approve trash tax ordinance option 4, increasing the rates of the trash tax to the maximum level.
5. Motion to adopt a resolution to reimburse funds to the city or the county or a combination thereof for capital expenditures with the proceeds of the city's future tax-exempt borrowing.

III. COMMUNITY SUSTAINABILITY ASSESSMENTS AND IMPACTS

The community sustainability assessments and impacts are included in the July 7, 2009 council packet: www.bouldercolorado.gov/files/Clerk/Agendas/2009/07-07-09/5c.pdf.

IV. OTHER IMPACTS

- **Fiscal:** The total cost to the city for purchasing and developing a site for the relocation of the Eco-Cycle office, CHaRM and ReSource could range from \$6.7 million to \$8 million, depending on the level of facility development. If 6400 Arapahoe Ave. is purchased, there is the potential (with restrictions) that a portion of the land equal to the amount of the transaction that was cash funded (creating an equity interest) could be sold at a future date.
- **Staff time:** The project cost estimates (**Attachment D**) for each scenario include staff time for managing repairs, construction and ongoing property maintenance and management.

V. PUBLIC FEEDBACK:

To date, 63 e-mails have been received about this project via council correspondence and the project Web site. Most of the concerns have related to the construction and demolition material and hazardous material facilities the county had considered proposing for 6400 Arapahoe Ave. These uses are no longer being considered for this site, as city and county staff agree that they would be incompatible with the site's Boulder Valley Comprehensive Plan Land Use designation. Answers to frequently asked questions (FAQs) have been posted on the project Web site (**Attachment G**); subscribers to the project e-mail listserv received a notice when the FAQs were posted. The project listserv has 37 subscribers.

On June 30 the city and county jointly hosted a public open house, which provided information on the potential purchase of 6400 Arapahoe Ave. and possible uses. Approximately 15 members of the public attended. City staff is following up with individuals (mostly neighbors) who have been the most active in the public process, to address their questions and concerns and offer a formal meeting. Staff also had a follow-up meeting with Boulder Valley School District (BVSD) Assistant Superintendent Joe Sleeper to update him on the project. While the District has not taken a formal position on the possible uses for the 6400 Arapahoe Ave. property, Mr. Sleeper expressed interest in pursuing discussions around potential lease and/or purchase opportunities at the site for BVSD parking, as well as the potential of secondary access to the site.

On Aug. 6, the Boulder County Resource Conservation Advisory Board (RCAB) hosted a brainstorming session on countywide waste reduction needs. Participants included: four members of RCAB, including Council member Lisa Morzel; two members of the City of Boulder Environmental Advisory Board; representatives from the CRC and Eco-Cycle; county and city staff; and a member of the public. Most of the discussion focused on

waste reduction program ideas and potential uses for additional land for infrastructure needs (**Attachment C**).

VI. BACKGROUND:

At its July 21 meeting, City Council directed staff to extend the purchase contract for 6400 Arapahoe Ave. to allow time to complete the environmental assessment of the site. Just prior to this meeting, the county indicated an interest in transferring the purchase agreement for the property to the city, as the city and county staff jointly determined that the site would likely not be suitable for a construction and demolition materials facility, a top priority for any land purchase by the county. On July 23, the county assigned the purchase contract for 6400 Arapahoe Ave. to the city. With the contract transfer, county staff forwarded a copy of the property survey, which shows the property is 10.0 acres in size. This includes 0.44 acres of right-of-way along Arapahoe Avenue, resulting in 9.56 usable acres. Staff anticipates that the Colorado Department of Transportation will require additional right-of-way from the site for the expansion of Arapahoe Avenue within the next five years, possibly totaling half an acre, but expects that CDOT will provide compensation for the value of that land. (The purchase agreement states that the property is “approximately 9.7 acres.” The acreage included in purchase agreements is typically from property reports available on the Web, which are not usually based on a survey.)

The July 21 meeting also included the first reading of four alternative ordinances to increase the trash tax in order to fund site acquisition and improvements. These ordinances are included in **Attachment A** and represent three options for less-than-maximum trash tax rates and one option for the maximum trash tax rates.

VII. ANALYSIS:

A. Waste Reduction Facilities Needed to Meet the City’s Goals

Both the city and the county have adopted a zero waste goal and have worked together to provide the infrastructure needed to meet this goal. The city has taken the lead in providing some of the facilities, and the county has assumed responsibilities for others. In the case of the Boulder County Recycling Center, the city initiated the recycling function by providing land for Eco-Cycle’s recyclables processing center in 1989. This responsibility was taken over by the county after the 1994 Boulder County Recycling Sales and Use tax was approved by the voters and the Boulder County Recycling Center was built. Western Disposal has also played a critical partnering role in creating needed infrastructure by providing land for yard and wood waste drop-off centers, capitalizing on a residential composting facility and restructuring its business model to provide pay-as-you-throw trash rates and curbside composting collection programs.

The city and county have partnered to identify and plan for the outstanding waste reduction infrastructure needs. For example, Boulder County staff played a key role in formulating the city’s MPWR, and the county and city have cooperated on yard waste

and wood waste drop-off centers. In addition, the city and county, along with six area communities, have jointly designed and allocated funds for a new hazardous material management facility, to be built behind the Boulder County Recycling Center on 63rd Street. Key outstanding infrastructure needs for the Boulder area (that would be used by both city of Boulder and Boulder County residents and businesses) are the following.

- Permanent locations for Eco-Cycle, CHaRM and ReSource, which currently are in temporary locations;
- Community-wide composting facility; and
- Construction and demolition (C&D) materials facility.

The table in **Attachment C** summarizes current and future waste reduction infrastructure needed to meet the city's waste diversion goals. Question 3 in Section VIII further discusses the city-county partnership that over time has resulted in building this infrastructure. Boulder County is currently planning new waste reduction facilities in consort with other county municipalities to provide more convenient drop-off locations, which also supports the city and county goals of reducing greenhouse gas emissions.

B. Results of Follow-up Environmental Assessment

Staff expects to receive the results of the follow-up environmental site assessment for 6400 Arapahoe Ave. from Temkin Wielga Hardt & Longenecker on Aug. 13 and will forward them to City Council either in the final version of this memo or by e-mail.

C. Site Purchase and Financing Scenarios

Scenario Overview

The three scenarios below lay out options for the key decisions council needs to make on Aug. 18 regarding site selection, financing and trash tax increase. The scenarios are summarized below; the table in **Attachment J** shows the total purchase and improvement costs, the funding components, and needed trash tax increase for each scenario.

Attachment D provides details on the estimated costs for each scenario.

The financing methods for all scenarios are:

- A maximum \$6 million bond, and
- Approximately \$800,000 in Capital Improvement Program (CIP) funds already set aside for Recycle Row.

Additional financing options for 6400 Arapahoe Ave. include:

- A \$500,000 contribution offered by the county, which would need to be paid back at some point in the future, and
- Possible sale of a portion of 6400 Arapahoe, if all bonding restrictions are met (see important bonding restrictions below).

The funding source for all financing methods is the trash tax.

All three scenarios would provide a permanent location for the nonprofits and upgrade their current facilities in terms of usable indoor square footage and outdoor storage area and allow for better organization of their materials.

Scenario A: Purchase 6400 and use entire property:

- Purchase 6400 Arapahoe (\$5.45 million);
- Finance the purchase with the intention to use the entire property by not accepting the county's offer to contribute \$500,000;
- Raise the trash tax by a significant amount, but not to the maximum level (Trash Tax Options 1, 2, or 3, in Section D below); and
- Modify existing facilities to accommodate the nonprofit operations (approximately \$1.2 million), either by enclosing the existing warehouse on the site or by moving ReSource's two warehouses from their current location on 63rd Street to the site.

Note that it is not financially feasible to both retain the entire site and build a new warehouse, even if the trash tax is maximized.

Scenario B: Purchase 6400 and use majority of property, with sufficient equity to consider selling a portion in the future

- Purchase 6400 Arapahoe (\$5.45 million);
- Finance the purchase to provide sufficient equity to consider selling a portion in the future, while complying with all bond requirements, accepting the county's offer to contribute \$500,000, which could be paid back by selling a portion of the site (while meeting bonding restrictions) or using excess trash tax revenues for five years;
- Raise the trash tax to the maximum level; and
- Either:
 - Modify existing facilities to accommodate the nonprofit operations by enclosing the existing warehouse on the site or by moving ReSource's two warehouses from their current location on 63rd Street to the site (approximately \$1.2 million), or
 - Construct a new warehouse on the site (approximately \$2.6 million) - only feasible if the equity portion of the land is sold, in conformance with all bonding restrictions.

It is important to note that whether or not to construct a new warehouse or fund waste reduction programs can be decided later; council is not being asked to make this decision on Aug. 18. These two alternatives for facility development on 6400 Arapahoe Ave. are included only to indicate their feasibility in terms of trash tax increase and site retention.

Scenario C: Purchase the brickyard site

- Purchase the brickyard site (\$2.02 million),
- Raise the trash tax by a significant amount, but not to the maximum level (Trash Tax Options 1, 2, or 3, in Section D below); and
- Construct a new building for Eco-Cycle, CHaRM and ReSource (\$4.6 million), reduced in size from that originally proposed¹.

The baseline assumption for 6400 Arapahoe Ave. is that ReSource would move to the existing buildings after repairs, ideally by June 1, 2010 but no later than by Aug. 31, 2010, in order to accommodate Special Transit's move to ReSource's current site on 63rd Street. Ultimately, the western half of the 6400 Arapahoe site would be occupied by ReSource, the Eco-Cycle office, and CHaRM. **Attachment E** shows draft illustrations of the two different levels of facility development for 6400 Arapahoe referred to in the scenarios. A table comparing the current Eco-Cycle/CHaRM and ReSource facilities with those proposed for each scenario is provided in **Attachment F**. Letters from Eco-Cycle and the CRC outlining their current and desired facilities for CHaRM and ReSource, respectively, are included in **Attachment H**.

Determining the Future of the East Half of 6400 Arapahoe

Uses for the eastern half of the site have not yet been determined. To determine uses, staff would work with the city Environmental Advisory Board and county Resource Conservation Advisory Board, along with other interested residents and professionals to update the Waste Reduction Master Plan and refine future waste reduction infrastructure and program needs. Future needs may also be influenced by the results of any county pilot programs. Once future needs have been identified, the city can evaluate which waste reduction uses, or other city needs, may be appropriate for the site, including a public process specifically involving (but not limited to) input from the nearby neighborhoods. A letter from Eco-Cycle with their ideas for uses for the eastern half of the site is included in **Attachment H**.

If this or a future council decides the entire site is not needed, the city could sell the northeast quadrant of the property (approximately 2.4 acres), provided the financing for the initial purchase is arranged to provide that flexibility and meets all applicable bond requirements (Scenario B).

While there have been no formal discussions with the BVSD, there may be an opportunity to sell or lease a portion of the eastern side of the site to the BVSD for additional parking (perhaps in the middle or southern portion of the site), or to negotiate a cross-parking agreement for an access easement.

¹ 41,284 square feet was the size proposed in the Planning Board Concept Plan Review, presented on March 5, 2009 with the Western Disposal annexation review; 31,000 square feet was used for the financial analysis of this scenario

Staff Recommendation

Staff recommends Scenario B, purchasing 6400 Arapahoe and financing the purchase so that a portion of the land that was purchased with cash (not bond proceeds) could be sold later if desired. This scenario meets the immediate need to relocate the nonprofits and also provides maximum flexibility for the future. Proceeds from a sale and/ or reserved trash tax revenues (see section below) could be used to expand facilities for CHaRM and ReSource later, if desired, or other waste reduction or city needs. Alternatively, the city could decide to keep the entire site and use it for additional waste reduction infrastructure or other city needs. The next section outlines staff's recommendation regarding the trash tax increase.

Bonding

All of the scenarios propose using the maximum bond amount allowed by voters in 1994 (\$6 million; \$100,000 bond issuance fee nets \$5.9 million). Though the scenarios for modifying existing facilities at 6400 Arapahoe would require a slightly lower bond amount (\$5.4 million) Finance Department staff recommends issuing the full amount of the bond. The additional \$500,000 would be available for other capital improvement project expenditures for waste reduction activities on the site, for additional unexpected contingency costs that could occur on the site, or to cover unexpected inflationary costs. If the additional \$500,000 of bond capacity is not used but cost overruns occur, it will be too small of an amount to issue a second bond at a later date.

Note that all the scenarios will cost the city more than the maximum \$5.7 million approved by council on May 19, since a \$2 million contribution by the county was assumed at that time. As mentioned previously, the county wishes to devote their resources to the purchase and development of a site suitable for a construction and demolition material facility (which may be the brickyard site, pending the city's decision).

Bonding Restrictions

Tax exempt bonds are issued for governmental purposes, in this case, for 501(C)(3) non-profits uses. The use of bond proceeds by a governmental agency is restricted. The purchase of land and buildings with bond funds means that the property will be retained and used for governmental and/or non-profit purposes. In the event the property purchased with bond proceeds is considered for sale in the future, such a sale is limited to the property or portion of property that was paid for with non-bond proceeds (cash). Such a sale could be to any entity (for-profit, non-profit or government) without violating bond restrictions.

Example only: Eight acres of land and buildings are purchased with cash and bond money for \$5.45 million. \$1.45 million is allocated to the building value in the bond documents. Therefore, the remaining amount, \$4 million dollars, is allocated to the price of the land. If \$1 million was paid in cash and allocated to the land then 1/4 or 25 percent of the land could be sold off at any time and should not cause any tax or bond issuer concerns. The 25 percent purchased with cash is called the equity interest.

Another way of looking at it, if there are eight acres in the parcel

At the date of purchase:

Purchase price of land and property	\$5.45 million
Cost allocated to building from bond proceeds	<u>(\$1.45) million</u>
Cost allocated to land	\$4.00 million
Cash paid at purchase and allocated to land	\$1.00 million
Purchase price allocated to land from bond proceeds	\$3.00 million

At the date of purchase the equity interest is the \$1 million that was paid in cash for land (this allocation is done in the bond documents). This is 25 percent of the total cost allocated to land. Therefore, 25 percent of the land or two acres could be sold off at any time.

The remaining land and buildings that were purchased with bond proceeds accumulate additional equity interest as the payments are made to the bond holders each year. As payments are made a portion of the payment goes to pay off principal and part of the payment pays off interest expense. For the principal portion, a pro-rata amount of the remaining land and the buildings are paid off each time a bond payment is made. This means the principal payments made each time are building up equity interest in both the buildings and the land.

If there came a time when a future city council wanted to know if the equity interest in the property that was building up could be sold off the answer is yes with certain restrictions. It could be sold to another governmental entity or organization (department within the city, a county, school district, state, special district, etc.) without creating federal tax problems for the issuer of the bonds (the city) and the people or organizations that bought the bonds. The land or buildings could also be sold to a 501(c)(3) nonprofit organization.

However, if bond-financed land was sold to a private party or for-profit organization, the sale would have to be for cash and any money received for the sale of property in the future would have to be:

- (a) Placed in escrow and used on the earliest call date to pay off a pro-rata portion of each remaining maturity of the bonds, or
- (b) Used within approximately 18 to 24 months for another governmental capital improvement program (CIP) purpose by the issuer of the bonds. In this case it would be best if it was another CIP item that would have been paid by the trash tax (i.e. related to composting or recycling).

If the city wants to lease a portion of the land to a for-profit organization, there are limitations regarding private use of bond-financed property that restrict how much the property could be leased for per year. The limit is approximately 3 percent of the present value of the bond payments, or approximately \$1,500 per year or \$30,000 over the life of

the bonds that may be allocated to private use. There are no limits on the amount that 501(c)(3) nonprofit organizations can pay for leasing purposes.

Since these will be classified as 501(c)(3) bonds there is an administrative hearing requirement. It must be held at least fifteen days before the date of the bond sale that is set by council to meet Internal Revenue Service requirements. This hearing is held by staff and the information will be compiled and included in the bond agenda item when it is brought forward to council.

D. Trash Tax Options

The first reading for four alternative trash tax rate increase ordinances was held on July 21 (**Attachment A**). Three of the four ordinances were for the tax increase necessary to pay back a \$4.7 million bond. This bond amount was based on the assumption that the county would be contributing \$2 million toward the joint purchase of 6400 Arapahoe Ave. Now that the city would be the sole purchaser of the site, these three tax increase options would no longer be adequate to fund site acquisition and even minimal building repairs and code upgrades. The fourth tax increase ordinance (Option 4) – maximizing the tax to the levels approved by voters in 1994 – remains a viable option and is the one that staff recommends.

If council wishes to consider a lower tax increase than the maximum (tax increase ordinance option 4), then staff recommends amending the three first reading ordinances (ordinance options 1 through 3) as outlined in **Attachment B**. These amended trash tax options would provide enough revenue, estimated to be \$480,000 per year, to pay back the maximum bond amount (\$5.9 million, plus \$100,000 bond issuance fee). This would be adequate funding for Scenario A., modifying existing facilities at 6400 Arapahoe Ave. or Scenario C, brickyard site.

The amended trash tax ordinance options would increase rates similarly to the July 21 ordinances:

- Amended Tax Increase Ordinance Option 1 would place the largest increase on the majority of residential customers, those who subscribe to one can – 32 gallon weekly service. It would raise the commercial rate to about half-way between the current rate and the maximum commercial rate.
- Amended Tax Increase Ordinance Option 2 distributes the residential tax increase more evenly among four residential service levels than Option 1. It would raise the commercial rate to about half-way between the current rate and the maximum commercial rate.
- Amended Tax Increase Ordinance Option 3 tiers the residential tax increase among four residential service levels, with the lower service levels experiencing the lowest tax increase. The commercial rate would increase to the maximum.

Tax Increase Ordinance Option 4 remains the same as for the July 21 first reading: It maximizes the rates for all trash customers. (Note that the residential 96-gallon service is already at the maximum rate.)

Staff recommends adopting ordinance option 4, maximizing the trash tax. This will provide adequate funding for site acquisition, plus flexibility for the future to expand ReSource and CHaRM facilities and/or provide additional waste reduction programs or infrastructure. However, if council prefers the lower tax increase in one of the amended ordinance options, or would like to continue the item, then a third reading would be required on Sept. 1.

E. Intergovernmental Agreement between the City and the County

An intergovernmental agreement (IGA) between the city and the county will be required in order for a purchase of the property to occur. That agreement will reflect the financial expectations and obligations of the each of the parties. Terms of such an agreement are currently being negotiated and a report on the status of the proposed agreement will be made at the Aug. 18 council meeting.

Assuming that council wishes to proceed with the purchase, it is suggested that council provide the city manager with authority to negotiate final details of the contract and enter into a final IGA on behalf of the city. That approach will allow sufficient flexibility so that the purchase can proceed on schedule and without the need for additional council action.

Generally, the IGA will explain that the county will be providing funding in the amount of \$5,440,000² for the purchase. The agreement will then set forth a schedule for reimbursement by the city to the county at 3 percent interest (approximately \$40,000). It will also reflect a county contribution of \$500,000 towards the purchase price of the property and provide the county with a corresponding one tenth interest in the property in consideration of that contribution.

The IGA will reserve management of the property exclusively to the city. It will ensure that if the city sells any portion of the property, the county's financial contribution will be protected. It will also provide for reimbursement to the county at a future date when the county needs to extract its investment and will ensure that after that reimbursement, the city will have sole ownership of the entire parcel. Finally, the agreement is expected to discuss elements of a future transfer to the county of the city's option to purchase the brickyard site.

F. Land Use Review Timing and Requirements for 6400 Arapahoe

The following outlines the tentative timeline and land use review requirements if the city chooses to move forward with the purchase of 6400 Arapahoe Ave:

² \$10,000 of the \$5,450,000 purchase price has already been paid as earnest money

1. Closing on purchase contract – **Aug. 25**
2. Repair existing buildings, move ReSource (could be done prior to completion of annexation, as this use is allowed under county zoning) – ideally by **June 1, 2010**, but no later than Aug. 31, 2010
3. Annexation process and concept plan, site and use reviews for the west half of the site (concurrent processes) – by **June 2010**
4. Move Eco-Cycle offices and CHaRM – date depends on desired level of facility development and on whether/ when Pollard Motors exercises its option to purchase the city yards site where Eco-Cycle and CHaRM are currently located.
5. Subsequent process to determine uses/ status of the east half of the site to be developed as part of the MPWR update, beginning in 2010

If ReSource moves into the existing buildings prior to annexation of the site, then under county zoning, no review would be required, as ReSource would be considered a continuation of the previous lumberyard retail use, provided that county non-conforming regulations are met. If ReSource moves in after annexation, then building repairs and code upgrades would require a city building permit.

With annexation to the city, any expansion of existing buildings or new construction on the site, as is expected for moving CHaRM to the site, would trigger Concept Plan Review and Site Review, due to the size of the site (over five acres). The CHaRM use also may trigger Use Review. All three of these reviews could occur concurrently with the annexation process, which is expected to take four to eight months once an application is filed. These processes would include review by Planning Board and City Council, with hearings before each for the public to provide input.

As stated above, the process for determining uses for the eastern portion of the site would include more extensive public and neighborhood outreach and input, and any proposed development would require another Site Review.

VIII. ADDITIONAL INFORMATION REQUESTED BY CITY COUNCIL

Responses are provided below to three questions asked by council its July 21 meeting. Answers to frequently asked questions from the public are also provided in **Attachment G**.

Question 1: What type of development would be allowed to occur on 6400 Arapahoe Ave. under county zoning or, if annexed, under city zoning?

The property at 6400 Arapahoe Ave. is currently located in the jurisdiction of Boulder County and served by out-of-city utilities. The existing county zoning is Commercial (C). The C zone district provides for a variety of commercial, business, retail, and service uses with a maximum building height of 50 feet. While a recycling collection facility would be permitted under the existing county zone district through the Special Review process, the zone district does not allow recycling processing facilities. The following link provides a complete listing of permitted land uses in the C zone district:

http://www.bouldercounty.org/lu/lucode/pdf/Boulder_County_Land_Use_Code_Article_4.pdf

If the property is annexed to the city, city staff will recommend a city zone designation of Industrial General (IG). The IG zone district provides for general industrial areas where a wide range of light industrial uses may occur, including research and manufacturing operations, recycling processing / collection facilities, and service industrial uses. The maximum building height in the IG district is 40 feet. The following link provides a complete listing of permitted land uses in the IG zone district (Boulder Revised Code section 9-6, use module 12): <http://www.colocode.com/boulder2/chapter9-6.htm>.

Question 2: What are the trade-offs for funding infrastructure for Eco-Cycle, CHaRM and ReSource versus funding other waste reduction efforts to meet the city's zero waste goal?

In 2006, the City Council accepted the Master Plan for Waste Reduction (MPWR) as the roadmap to achieve an 85 percent waste diversion rate by 2017. Meeting this diversion rate requires waste reduction programs, regulations and supporting infrastructure. Securing a permanent location for CHaRM and ReSource is the last piece of major property the city anticipates investing in, as the county has indicated that it will be exploring property and infrastructure needs for construction and demolition materials and commercial composting. (Existing and future infrastructure is detailed in **Attachment C**.) This unique opportunity to purchase 6400 Arapahoe Ave. or the brickyard site has expanded the city's scope of investment beyond what was planned in the MPWR. The MPWR assumed a three-year Capital Improvements Plan (CIP) budget of \$400,000 to relocate Eco-Cycle, CHaRM and ReSource. However, owning additional land for waste reduction purposes will allow the city more flexibility in the future for programs not yet identified.

The current community-wide diversion rate is estimated to be 31 percent; the new residential curbside compost program and existing construction and demolition mandates are expected to increase diversion by 7 to 10 percent in 2009³, which would result in an estimated community-wide diversion rate of approximately 40 percent. Reducing and diverting commercial waste is an essential component of increasing Boulder's community-wide diversion rate and is critical to meeting the zero waste goal. To implement the Action Plan of the MPWR, new commercial and multi-family recycling programs can be paid for with the existing trash tax revenue. However, the majority of commercial waste diversion will likely rely on legislative requirements, and these may need to be enacted earlier than originally anticipated in order to meet the goal.

The current council discussion anticipates spending between \$6 million and \$8 million to relocate Eco-Cycle, CHaRM and ReSource. The ability to bond for a majority of this funding allows the trash tax to support this significant cost increase. However, it is not without its impacts. To support the bond at this time, council will need to increase the

³ Actual diversion is calculated on an annual basis using data collected each year from area haulers. 2009 diversion should be calculated by April 2010

trash tax now, which is earlier than what was originally discussed (for the vision plan in 2013). Also, although trash tax funding will be available for the Action Plan commercial programs planned for 2010 – 2012, there will not be funding for as many Vision Plan programs, therefore, council may need to consider regulating the commercial sector earlier than planned, in order to achieve the zero waste goal.

An update to the MPWR is scheduled in 2010 and will reflect any revised conditions and available budget for waste reduction programs. This update will review all existing and proposed waste reduction programs and evaluate their effectiveness and ability to maximize waste diversion and provide the biggest “bang for the buck.”

Question 3: What is the county’s role in the possible purchase of 6400 Arapahoe Ave.?

The City of Boulder and Boulder County have a longstanding partnership regarding waste diversion efforts, and both organizations are committed to continuing this partnership. With Boulder County’s recent investment of more than \$5 million in installing single stream equipment at the Recycling Center, the county’s recycling fund has about \$2.7 million remaining to invest in waste reduction infrastructure. The estimated cost of establishing a construction & demolition (C&D) recycling facility in Boulder, perhaps in conjunction with a commercial composting pilot project, is more than \$2 million. As the CHaRM facility currently is located on city owned property and the city negotiated the move of ReSource off of land owned by Western, both county and city staff believe it makes sense for the city to take the lead on funding the 6400 Arapahoe acquisition, while the county takes the lead on development of a C&D/commercial composting project in the same vicinity.

The table in **Attachment C** outlines the nature of the current city and county waste reduction partnerships.

Approved By:

Jane S. Brautigam,
City Manager

VIII. ATTACHMENTS

- A. Four tax ordinances
- B. Tax increase options spreadsheet
- C. Table summarizing current and needed waste reduction infrastructure
- D. Detailed cost estimates for each scenario
- E. Draft illustrative drawings for two possible levels of facility development at 6400 Arapahoe
- F. Table comparing current nonprofit facilities with those for scenarios
- G. FAQs from project Web site
- H. Correspondence

- Eco-Cycle/CHaRM letter regarding current and desired facilities
- CRC/ ReSource letter regarding current and desired facilities
- Eco-Cycle letter regarding ideas for eastern half of 6400 Arapahoe

- I. Reimbursement Resolution
- J. Site purchase and financing scenarios table