



**CITY OF BOULDER
CITY COUNCIL AGENDA ITEM**

MEETING DATE: March 5, 2019

AGENDA TITLE: Consideration of a motion to adopt Resolution 1255 authorizing and directing the City Manager to make applications to the Northern Colorado Water Conservancy District to release Water Allotment Contract Nos. 5097, 2578 and 3384 currently issued to the City of Boulder, and to make applications to Northern Colorado Water Conservancy District for new Water Allotment Contracts to be issued respectively to the City of Boulder, Open Space and Mountain Parks Department, and the City of Boulder, Water Utility Enterprise

PRESENTER/S

Jane S. Brautigam, City Manager
Mary Ann Weideman, Deputy City Manager and Interim Director of Public Works
Jeff Arthur, Director of Public Works for Utilities
Joe Taddeucci, Water Resources Manager-Public Works Department (Utilities)
Dan Burke Interim Director, Open Space and Mountain Parks (OSMP)
John Potter, OSMP Resource and Stewardship Division Manager
Andy Pelster, OSMP Agricultural Stewardship Supervisor
Amy Willhite, OSMP Water Resources Administrator

EXECUTIVE SUMMARY

This agenda item is prepared to request City Council authorization for an administrative procedure to separate, by department, Colorado-Big Thompson (C-BT) water contracts owned by the city. The city's Open Space and Mountain Parks Department (OSMP) and the Utilities Division of the Public Works Department (Utilities) have both acquired C-BT water over time from the Northern Colorado Water Conservancy District (Northern). Northern currently administers the C-BT contracts to the city as a single entity, which is standard for municipalities, but is willing to consider issuance of separate OSMP and Utilities contracts.

The proposed separation would change OSMP's C-BT designation from municipal to a more applicable agricultural designation under Northern's rules, which has certain benefits including lower annual assessments for the water and the ability to continue to acquire C-BT units with open space land for agricultural purposes. The separation would not change Utilities' municipal

designation and would not have any effect on the city's municipal water supply. This item does not require disposal, acquisition, or a change in the value of the water, nor would it result in an increase in diversions from the Colorado River, as the proposed resolution applies to water the city already owns. If authorized by council, the proposed resolution (Attachment A) will allow Northern's board of directors to consider approval of the contract changes at upcoming board meetings.

STAFF RECOMMENDATION

Suggested Motion Language:

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

Resolution 1255 authorizing and directing the City Manager to make applications to the Northern Colorado Water Conservancy District to release Water Allotment Contract Nos. 5097, 2578 and 3384 currently issued to the City of Boulder, and to make applications to Northern Colorado Water Conservancy District for new Water Allotment Contracts to be issued respectively to the City of Boulder, Open Space and Mountain Parks Department, and the City of Boulder, Water Utility Enterprise.

COMMUNITY SUSTAINABILITY ASSESSMENTS AND IMPACTS

- Economic – Separating city allotment contracts by department will allow OSMP to continue to acquire existing C-BT water rights for acquisitions that involve both land and water. Doing so will maximize irrigation options and associated revenue potential for OSMP agricultural lessees.
- Environmental – C-BT water used by the city originates in the upper Colorado River Basin. Diversions from the Colorado River have been the subject of ongoing public concern due to increased demand, drought and climate change. Diversions from the Colorado River would not be subject to increase due to the separation of city allotment contracts.
- Social – Separating city allotment contracts by department would not have any impact on the city's water supply, which is an essential city service provided to city Water Utility customers. The separation will also have a positive impact on the city's ability to deliver open space services.

OTHER IMPACTS

- Fiscal – By separating city allotment contracts by department, OSMP C-BT water would be assessed at Northern's agricultural rate (\$28.20 per acre-foot in 2019) rather than the higher municipal and industrial rate (\$46.70 per acre-foot in 2019), which would result in an overall decrease in C-BT costs for the city.
- Staff Time – Staff time to facilitate the separation and administer the allotment contracts is part of the normal work plan. Upon approval of the separation, OSMP will be able to more directly manage its C-BT water, which will lead to some additional efficiency.

BACKGROUND

The [C-BT system](#) is an important water resource in northeastern Colorado for municipal, industrial and agricultural irrigation uses and is operated by Northern and the U.S. Bureau of Reclamation. Water from the Colorado River basin is pumped through a series of [conveyance features](#), including reservoirs, a tunnel, canals and pipelines, starting at Grand Lake and Lake Granby on the western slope of the continental divide, and is eventually delivered to east slope end users.

The city joined the Northern District in 1953 to better meet municipal water supply needs. Today, C-BT water provides Boulder Water Utility customers approximately one third of the city's annual municipal water supply on average but can be as much as half of the supply in dry years. C-BT also provides water for irrigation of some OSMP properties. The City of Boulder currently owns municipal and industrial allotment contracts for 21,324 units of C-BT water. Of those units, 21,000 have been acquired by Utilities, and 324 units have been acquired by OSMP.

Northern rules limit or “cap” the amount of C-BT water that any single allottee can own. The cap's purpose is to ensure that C-BT is being used as a supplemental supply, which requires allottees to own other primary water sources or “native” supplies. The cap is calculated according to different formulas for [municipal and industrial allottees](#) compared to [agricultural users](#), but in each case it considers the proportion of C-BT water to native supplies. Currently the city is considered as a single municipal and industrial allottee by Northern, even though Utilities and OSMP C-BT water is used for entirely different purposes.

BOARD, COMMISSION AND PUBLIC FEEDBACK

No concerns were raised related to the proposed action at the February 2019 Open Space Board of Trustees meeting.

ANALYSIS – FINAL STAFF RECOMMENDATIONS

OSMP recently acquired the Boulder Valley Farm property, and the acquisition included 60 units of C-BT, which prompted Northern to request a cap analysis of Boulder's C-BT ownership in order to allow a formal transfer of the C-BT units to the city. At the onset of the cap analysis, it became evident that consideration of all of Boulder's C-BT water as municipal and industrial would put OSMP's ability to acquire additional C-BT water much closer to a cap restriction than if it were classified as agricultural and considered separate from Utilities' C-BT water. Directors representing OSMP and Utilities co-signed a letter (Attachment B) to Northern in 2017 formally requesting that Northern consider separation of the city's C-BT allotment contracts by department and use. Northern has historically been reluctant to consider such requests due to the potential for municipalities to circumvent the intent of ownership cap requirements. However, Northern has been willing to consider issuing separate departmental contracts for the City of Boulder because the separate OSMP and Utilities funding structures create a formal layer of separation between department assets, as described in the city's letter.

As a final step in considering separate allotment contracts by city department, Northern requested documentation of the city's authority to do so, which is the reason for the resolution described herein. Council's options include approval of the resolution or denying such approval.

If council approves the resolution, the Northern Board during March and April 2019 meetings will consider reissuing certain city allotment contracts by department and making final release of the 60 Boulder Valley Farms C-BT units to the city's OSMP department. The city technically already owns the 60 units, but full use of them won't be authorized until the process described herein is complete. Upon approval of the separation, Utilities through the Water Enterprise Fund would still own 21,000 C-BT units and OSMP would own 324 C-BT units as summarized in the Attachment C table. The separation of allotment contracts would not change Utilities' municipal designation and would not have any effect on the city's municipal water supply. This action would change the designation of units owned by OSMP to agricultural use. No disposal, acquisition, or change in the value of the water would be required for either department's interest in the water.

Without council authorization of the resolution, Water Allotment Contract Nos. 5097, 2578 and 3384 will remain in effect, and all city owned C-BT units will presumably be assessed at the municipal and industrial rate and subject to Northern's municipal and industrial ownership cap. Northern would need to reevaluate the city's ability to fully acquire the 60 Boulder Valley Farms C-BT units, which, depending on the outcome, could be a barrier to agricultural use of the property as well as future properties acquired by OSMP. Such an outcome would be counter to both Northern and city policy goals of supporting local agriculture. Therefore, staff recommends that council approve the resolution.

ATTACHMENTS

Attachment A – Resolution 1255

Attachment B – 2017 letter from the City of Boulder to Northern Water

Attachment C – City of Boulder C-BT Summary Table

RESOLUTION 1255

A RESOLUTION AUTHORIZING AND DIRECTING THE CITY MANAGER TO MAKE APPLICATIONS TO THE NORTHERN COLORADO WATER CONSERVANCY DISTRICT TO RELEASE WATER ALLOTMENT CONTRACT NOS. 5097, 2578 AND 3384 CURRENTLY ISSUED TO THE CITY OF BOULDER, AND TO MAKE APPLICATIONS TO NORTHERN COLORADO WATER CONSERVANCY DISTRICT FOR NEW WATER ALLOTMENT CONTRACTS TO BE ISSUED RESPECTIVELY TO THE CITY OF BOULDER, OPEN SPACE AND MOUNTAIN PARKS DEPARTMENT, AND THE CITY OF BOULDER, WATER UTILITY ENTERPRISE.

- A. The City of Boulder owns water allotments contracts in the Northern Colorado Water Conservancy District (“Northern Water”);
- B. The City desires the ability to acquire additional water allotments contracts as part of its open space program;
- C. Northern Water rules and regulations limit the ownership of water allotment contracts for domestic or municipal purposes;
- D. The City of Boulder desires to have such water allotment contracts reissued to distinguish between water allotment contracts held by the City of Boulder Water Utility that are used for municipal purposes, and water allotment contracts that are managed by the City of Boulder Open Space and Mountain Parks Department for open space purposes;

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

Section 1. The City Manager is hereby authorized and directed to make applications to Northern Water for the release of water allotment contract numbers 5097, 2578 and 3384, and to do any and all other things reasonably necessary and related to such release.

Section 2. The City Manager is hereby authorized and directed to make applications to Northern Water for new water allotment contracts to be issued respectively to the City of Boulder, Open Space and Mountain Parks Department, and the City of Boulder, Water Utility Enterprise, and to do any and all other things reasonably necessary and related to such applications.

INTRODUCED, READ, PASSED, AND ADOPTED this 5th day of March 2019.

Suzanne Jones
Mayor

Attest:

Lynnette Beck
City Clerk



Mr. Eric Wilkinson
General Manager
Northern Water
220 Water Ave
Berthoud, CO 80513

December 18, 2017

RE: City of Boulder
Departmental C-BT Ownership

Dear Eric and Northern Water staff,

Thank you for meeting with Boulder staff on November 30 to discuss the C-BT units associated with Boulder Valley Farm at 4536 N. 95th Street in Lafayette. As discussed, the City of Boulder's Open Space and Mountain Parks Department (OSMP) is in the process of acquiring the 615-acre property with the intention to continue its use as a farm under the department's agricultural program, which includes the leasing of more than 15,000 acres of land to ranchers and farmers (please see: <https://bouldercolorado.gov/osmp/osmp-agriculture>).

The property includes 60 units of C-BT water used for late-season agricultural irrigation and OSMP intends to continue this use upon successful acquisition of the property. However, the property acquisition is not feasible without sufficient water rights to continue or expand the ongoing agricultural operation (OSMP does not "buy-and-dry"). The OSMP water portfolio has no permanently available alternative supplies deliverable to this property if the C-BT units are not acquired.

To maintain the agricultural viability of the property, OSMP would like to acquire the 60 units of C-BT and the city is asking that municipal cap calculations described in Resolution D-962-02-95 not include OSMP's C-BT interests and only include C-BT units held by the Utilities Division of the Public Works Department (Utilities).

Utilities currently has allotment contracts for 21,000 C-BT units for municipal use (primarily drinking water) and OSMP has 264 C-BT units for agricultural use and natural resource preservation. While both departments are part of the City of Boulder organization, the legal framework and funding structure of the two departments essentially preclude the comingling of assets such as water. Utilities assets are funded by the Water Utility Enterprise, and the use of such assets are restricted to purposes consistent with the successful operation of the Boulder Water Utility and the provision of treated water to its customers (relevant Boulder Revised Code

language attached). Excess water supplies may be leased to other City of Boulder departments, including OSMP, if a determination is made that such water is not needed for immediate use by the Water Utility and such use is consistent with the Water Utility's agricultural water leasing program.

OSMP acquires land, water, and mineral interests using a dedicated open space sales and use tax fund. By City of Boulder Charter, water rights acquired with these dedicated OSMP funds are wholly separate from the Water Utility's water rights holdings and can only be used for open space purposes (see Section 176 of the Boulder Charter – attached), and are, therefore, not available for municipal water supply purposes even during a drought. The lease or sale of OSMP real estate interests and assets, including water, involves a comprehensive and public disposal process that requires Open Space Board of Trustees and City Council approval during public hearings. This disposal process would also be required for any transfer or use by the Boulder Water Utility for municipal water supply purposes. After the two-body approval, there is then a 60-day petition period (see to Section 177 of the Boulder Charter – attached) available to the City of Boulder electorate. The charter and the disposal process would prevent casual transfer of C-BT assets from OSMP to the Water Utility and would, therefore, prevent the city from being able to circumvent Northern Water's municipal cap. The city would be open to considering contractual restrictions that would prevent the C-BT units associated with the Boulder Valley Farm property from ever being formally transferred from OSMP to the Water Utility through the above-described disposal process.

We understand that Northern Water staff plans to discuss this matter with the board at the January 4 Planning and Action Meeting. Our staff is available to attend the meeting and answer any questions you or the board may have. We look forward to working with Northern Water to investigate options to keep these important agricultural lands irrigated and productive. We thank you for your consideration of this matter.

Sincerely,



Tracy Winfree
Director, Open Space and Mountain Parks



Jeff Arthur
Director of Public Works for Utilities

Cc: Sherri Rasmussen, Northern Water
Bethany Collins, City of Boulder (OSMP)
Joe Taddeucci, City of Boulder (Utilities)

Enclosures

City of Boulder – Utilities Division

Municipal water service is provided for by a water utility enterprise. Boulder operates and maintains its water utility enterprise so as to maintain its enterprise status and be excluded from the requirements of TABOR and (Boulder Revised Code (BRC) 11-1-1(f), 11-1-2 and 11-1-58). The water utility owns the municipal water supplies and they must be used in a manner that does not interfere with the operation of the municipal water system (BRC 11-1-5 and Boulder Charter Section 121). Water utility enterprise funds are used to acquire municipal water supplies and the funds may only be spent for the purpose of the water utility (BRC 11-1-53 and Boulder Charter Sections 100 and 127).

Below are excerpts of relevant sections of the City Code and Charter. For the entire code and charter, go to

https://library.municode.com/co/boulder/codes/municipal_code?nodeId=THCHBOCO and https://library.municode.com/co/boulder/codes/municipal_code?nodeId=18020

BOULDER REVISED CODE (excerpts)

11-1-1. - Legislative Intent.

- (a) The purpose of this chapter is to define the water utility of the City, to set forth the responsibilities of water service users, and to promote the public health, safety and welfare by adopting a system of plant investment fees that insures that each new user of City water services pays its proportionate share of the current replacement cost of water facilities. The plant investment fees in this chapter reflect varying service requirements of residential users and are designed to encourage the construction of moderate-income housing.
- (b) Utilities should be extended outside the city limits of Boulder consistent with the Boulder Valley Comprehensive Plan and City charter requirements. The comprehensive plan projects extension of urban services, including utilities, in an orderly fashion in order to ensure the most efficient and cost effective service to the existing utility system.
- (c) It is the intent of the city council to promote efficient water use that is compatible with the City's water supply system, water resource management strategy and the values of the community. The utility will encourage water conservation programs that create incentives for water conservation by users of the water supply of the City, prevent unnecessary depletion of the raw and treated water supply of the City, attempt to supply a continuing level of satisfactory service to existing water utility customers, and ensure the City's ability to meet the present and future basic water needs of the City.
- (d) It is the intent of the city council to create a water rate structure to encourage the efficient use of water and prevent unnecessary depletion of the raw and treated water supply of the City, to attempt to supply a continuing level of satisfactory service to existing water utility customers, and to ensure the City's ability to meet the present and future basic water needs of the City.

- (e) It is the intent of the city council that it will be a presumptive waste of water if any customer exceeds a properly determined water budget as may be designated from time to time by the city manager.
- (f) The city council finds and determines that the City has historically provided and will continue to provide water services by means of an enterprise, as that term is defined by Colorado law. The city council further declares its intent that the City's water utility enterprise be operated and maintained so as to exclude its activities from the application of article X, section 20 of the Colorado Constitution.

Ordinance Nos. 5601 (1993); 7783 (2011)

11-1-2. – Definitions

For the purpose of this chapter and chapter 11-2, "Wastewater Utility," B.R.C. 1981, and the related fees in chapter 4-20, "Fees," B.R.C. 1981, the following words have the following meanings, unless the context clearly indicates otherwise:

Water utility enterprise means the water utility business owned by the city, which business receives under ten percent of its annual revenues in grants from all Colorado state and local governments combined and which is authorized to issue its own revenue bonds pursuant to this code or any other applicable law.

Ordinance Nos. 5075 (1987); 5106 (1988); 5526 (1992); 5601 (1993); 5760 (1995); 5769 (1996); 5930 (1997); 7024 (1999); 7168 (2001); 7416 (2005); 7428 (2005); 7643 (2009)

11-1-5. - Composition of Water Utility.

All water and water rights, waterworks and appurtenances thereto, machinery, equipment and supplies used by the city to supply its water users with water constitute the "water utility." The water service line from the customer's side of the meter to the structure or property served, however, is the property of the owner of the structure or property served.

11-1-53. - Use of Fees.

The water utility shall hold all monies received by the city as water plant investment fees pursuant to this chapter and make expenditures thereof only for the purpose of water utility capital improvements, reconstruction or expansion of the water utility, or other purposes related to the foregoing functions of the water utility system.

11-1-55. - Water Utility Enterprise.

In addition to any of the powers it may have by virtue of any of the applicable provisions of state law, the city charter and this code, the water utility enterprise shall have the power under this chapter:

- (a) To acquire by gift, purchase, lease or exercise of the right of eminent domain, to construct, to reconstruct, to improve, to better and to extend water facilities, wholly within or wholly without the city or partially within and partially without the city, and to acquire in the name of the city by gift, purchase or the exercise of the right of eminent domain water rights, lands, easements and rights in land in connection therewith;

- (b) To operate and maintain water facilities for its or the city's own use and for the use of public and private consumers and users within and without the territorial boundaries of the city;

Ordinance No. 5601 (1993)

11-1-58. - Maintenance of Enterprise Status.

The water utility enterprise shall at all times and in all ways conduct its affairs so as to continue to qualify as a "water activity enterprise" within the meaning of § 37-45.1-102, C.R.S., and as an "enterprise" within the meaning of article X, section 20 of the Colorado Constitution. Specifically, but not by way of limitation, the water utility enterprise is not authorized and shall not receive ten percent or more of its annual revenue in grants.

Ordinance No. 5601 (1993)

The Charter of the City of Boulder, Colorado (excerpts)

Article VI. Finance and Record

Sec. 100. - Water and sewer revenues.

Revenues derived from the operation of the water and sewer systems shall be used exclusively for the maintenance, operation, and extension of either or both of such systems and for interest on and discharging of principal of debt and other obligations incurred in the acquirement, construction, and improvement of either or both of such systems.

(Amended by Ord. No. 1907 (1955), § 1, adopted by electorate on November 8, 1955.)

Article VIII. Franchises and Public Utilities

Sec. 121. - Oversight of franchise for use of water reserved to city.

Every franchise, right, or privilege which has been or which may be hereafter granted conveying any right, permission, or privilege to the use of the water belonging to the city or to its water system shall always be subject to the most comprehensive oversight, management, and control in every particular by the city; and the rights of the city to such control for municipal purposes are retained by the city in order that nothing shall ever be done by any grantee or assignee of any such franchise, right, or privilege which shall in any way interfere with the successful operation of the waterworks of the city, or which shall, or which shall tend to, divert, impair, or render the same inadequate for the complete performance of the trust for the people under which such waterworks are held by the city.

Sec. 127. - Books of account of city-owned utilities-examinations.

The city, when owning any public utility, shall keep the books of account for such public utility distinct from other city accounts, and in such manner as to show the true and complete financial result of such city ownership, or ownership and operation, as the case may be. Such accounts shall be so kept as to show the actual cost to the city of the public utility owned; all cost of maintenance, extension, and improvement; all operating expenses of every description, in case of such city operation; the amounts set aside for sinking fund purposes; if water or other service shall be furnished for the use of such city owned or operated public utility without charge, the accounts shall show, as nearly as possible, the value of such service and also the value of such similar service rendered by the public utility to any other city department without charge; such accounts shall show reasonable allowance for interest, depreciation, and insurance, and also estimates of the amount of taxes that would be chargeable against such property if owned by a private corporation. The council shall cause to be printed annually for public distribution a report showing the financial results, in form as aforesaid, of such city ownership or ownership and operation. The accounts of such public utility, kept as aforesaid, shall be examined at least once a year by an expert accountant, who shall report to the council the result of the examination. Such expert accountant shall be selected in such manner as the council may direct, and said accountant shall receive for the services such compensation, to be paid out of the income or revenue from such public utility, as the council may prescribe.

City of Boulder – Open Space and Mountain Parks Department

Sections of the Charter of the City of Boulder relevant to the funding, mission and operations of the Open Space and Mountain Parks Department are included below. Those sections referenced in the letter are highlighted.

Article XII. Open Space

Sec. 170. - Creation of a department of open space.

There shall be a department of open space, which shall be responsible for all open space land and other property associated therewith.

As used in this charter, "open space land" shall mean any interest in real property purchased or leased with the sales and use tax pledged to the open space fund pursuant to the vote of the electorate on November 7, 1967, or proceeds thereof, any interest in real property dedicated to the city for open space purposes, and any interest in real property that is ever placed under the direction, supervision, or control of the open space department, unless disposed of as expressly provided in section 177 below. (Added by Ord. No. 4996 (1986), § 1, adopted by electorate on November 4, 1986.)

Sec. 171. - Functions of the department.

Under the direction, supervision, and control of the city manager, there shall be a director of the department of open space, who may also serve as the city's director of real estate. Subject to the limitations set forth in section 175 below, the department of open space:

- (a) Shall acquire, supervise, administer, preserve, and maintain all open space land and other property associated therewith and may grant nonexclusive licenses and permits and agricultural leases for crop or grazing purposes for a term of five years or less;
- (b) Shall supervise, administer, and execute all open space programs, plans, functions, and activities of the city;
- (c) Shall prepare and submit to the open space board of trustees written recommendations on those matters on which this article requires a recommendation from said board prior to council or department action;
- (d) May, at the request of the open space board of trustees, prepare and submit to the board information and recommendations on such open space matters as are not provided for by (c) above; and
- (e) May request advice on any open space matter from the open space board of trustees. (Added by Ord. No. 4996 (1986), § 1, adopted by electorate on November 4, 1986. Amended by Ord. No. 7155 (2001), § 1, adopted by electorate on November 6, 2001.)

Sec. 172. - Creation of the open space board of trustees.

There shall be an open space board of trustees consisting of five members appointed by the city council. The members of the board shall be qualified to serve on an advisory commission pursuant to Section 130, shall not hold any other office in the city, and shall serve without pay.

(Added by Ord. No. 4996 (1986), § 1, adopted by electorate on November 4, 1986. Amended by Ord. No. 7914 (2013), § 2, adopted by electorate on November 5, 2013.)

Sec. 173. - Term of office of board members-removal-vacancies.

The term of each member shall be five years; provided, however, that in appointing the original members of the board, the city council shall continue the terms of the current members and shall stagger the initial terms so that one board member's term expires in each year.

Five members of the council may remove any board member for cause.

The council shall fill all vacancies. (Added by Ord. No. 4996 (1986), § 1, adopted by electorate on November 4, 1986.)

Sec. 174. - Organization and procedure of the board.

The board shall choose a chair and a secretary. The director of the department of open space may be designated as secretary by the board.

The board shall have regular meetings once a month. Special meetings may be called at any time by three members of the board upon the giving of at least 24 hours' notice of said special meeting to the board members.

Three members of the board shall constitute a quorum. An affirmative vote of a majority of the members present shall be necessary to authorize any action by the board, except as otherwise expressly provided herein.

The board shall keep minutes and records of its meetings and transactions.

Except as otherwise expressly provided herein, the board shall have power to make rules for the conduct of its business. (Added by Ord. No. 4996 (1986), § 1, adopted by electorate on November 4, 1986.)

Sec. 175. - Functions of the board.

The open space board shall not perform any administrative functions unless expressly provided in this charter. The board:

- (a) Shall make recommendations to the council concerning any proposed disposal of open space lands pursuant to section 177 below;
- (b) Shall make recommendations to the council concerning any expenditure or appropriation from the open space fund pledged pursuant to the vote of the electorate on November 7, 1967, or proceeds of property acquired with the assets of the fund;
- (c) Shall make recommendations to the council concerning any land that is to be placed under the direction, supervision, or control of the department of open space, including, without limitation, recommendations concerning use policies on, planned uses of, and restrictions on uses of, open space land;
- (d) Shall make recommendations to the council concerning the open space program;
- (e) Shall review the open space elements of the Boulder Valley Comprehensive Plan and make recommendations concerning any open space-related changes to the plan;

- (f) Shall pursue vigorously the implementation of the open space elements of the Boulder Valley Comprehensive Plan and the acquisition of additional property required to fulfill the goals of the open space program;
- (g) Shall review the city manager's proposed budget as it relates to open space matters and submit its recommendations concerning said budget to the council;
- (h) Shall make recommendations concerning the grant or denial of any nonexclusive license or permit in or on open space land;
- (i) Shall make recommendations concerning the incurring of any indebtedness payable from the open space fund, pursuant to section 97 above; and
- (j) May prepare and submit to the council, the city manager, or the open space department recommendations on any other matter relating to the open space program, and may request and obtain from the open space department and the city manager information relating thereto.

The city council, the city manager, and the open space department shall not act on any of the matters set forth in paragraphs (a) through (i) above without securing a recommendation from the board as above provided; however, the council, the manager, and the department may act on the matters set forth in paragraphs (b) through (i) above without a board recommendation if the board fails to submit its recommendation within thirty days after request therefor is made by the council.

The board's recommendation shall not be binding upon the city council, except as expressly provided in section 177 below. (Added by Ord. No. 4996 (1986), § 1, adopted by electorate on November 4, 1986.)

Sec. 176. - Open space purposes-open space land.

Open space land shall be acquired, maintained, preserved, retained, and used only for the following purposes:

- (a) Preservation or restoration of natural areas characterized by or including terrain, geologic formations, flora, or fauna that are unusual, spectacular, historically important, scientifically valuable, or unique, or that represent outstanding or rare examples of native species;
- (b) Preservation of water resources in their natural or traditional state, scenic areas or vistas, wildlife habitats, or fragile ecosystems;
- (c) Preservation of land for passive recreational use, such as hiking, photography or nature studies, and, if specifically designated, bicycling, horseback riding, or fishing;
- (d) Preservation of agricultural uses and land suitable for agricultural production;
- (e) Utilization of land for shaping the development of the city, limiting urban sprawl, and disciplining growth;
- (f) Utilization of non-urban land for spatial definition of urban areas;
- (g) Utilization of land to prevent encroachment on floodplains; and

- (h) Preservation of land for its aesthetic or passive recreational value and its contribution to the quality of life of the community.

Open space land may not be improved after acquisition unless such improvements are necessary to protect or maintain the land or to provide for passive recreational, open agricultural, or wildlife habitat use of the land. (Added by Ord. No. 4996 (1986), § 1, adopted by electorate on November 4, 1986.)

Sec. 177. - Disposal of open space land.

No open space land owned by the city may be sold, leased, traded, or otherwise conveyed, nor may any exclusive license or permit on such open space land be given, until approval of such disposal by the city council. Such approval may be given only after approval of such disposal by the affirmative vote of at least three members of the open space board of trustees after a public hearing held with notice published at least ten days in advance in a newspaper of general circulation in the city, giving the location of the land in question and the intended disposal thereof. No open space land owned by the city shall be disposed of until sixty days following the date of city council approval of such disposal. If, within such sixty-day period, a petition meeting the requirements of Section 45 above and signed by registered electors of the city to the number of at least five percent of the registered electors of the city as of the day the petition is filed with the city clerk, requesting that such disposal be submitted to a vote of the electors, such disposal shall not become effective until the steps indicated in Sections 46 and 47 above have been followed.

This section shall not apply to agricultural leases for crop or grazing purposes for a term of five years or less.

This section is to be construed liberally in favor of providing opportunities for the citizens of the city to refer measures proposing the disposal of any open space land. (Added by Ord. No. 4996 (1986), § 1, adopted by electorate on November 4, 1986.)

Article IV. Direct Legislation
The Referendum

Sec. 43. - Power of referendum.

The people shall have power at their option to approve or reject at the polls any legislative measure passed by the council or submitted by the council to a vote of the electors, excepting, however, measures levying a tax for or appropriating money to defray the general expenses of the city government or any existing department or commission thereof; also, excepting measures creating improvement districts and levying special assessments in payment therefor; also, measures ordering the construction of public improvements and levying assessments on the property specially benefited thereby, for the payment thereof. Such power shall be known as the referendum; which power shall be invoked and exercised as herein provided. All legislative measures, save those hereinabove specifically excepted, submitted to the council by initiative petition and passed by the council without change or passed in an amended form and not required by the committee of the petitioners to be submitted to a vote of the electors shall be subject to the referendum in the same manner as other measures.

(Amended by Ord. No. [8195](#) (2017), § 2, adopted by electorate on November 7, 2017.)

Sec. 44. - Referendum petition.

If, within thirty days after final passage of any measure by the council, a petition signed by registered electors of the city to the number of at least ten percent of the registered electors of the city as of the day the petition is filed be filed with the city clerk requesting that any such measure, or any part thereof, be repealed or be submitted to a vote of the electors, it shall not, except in the case of an emergency measure, become operative until the steps indicated herein have been taken.

(Amended by Ord. Nos. 4598 and 4599 (1981), § 1, adopted by electorate on November 3, 1981.)*

Sec. 45. - Signatures to petition.

The signatures thereto need not all be on one paper, but the circulator of every such paper shall make an affidavit that each signature appended thereto is the genuine signature of the person whose name it purports to be. With each signature shall be stated the place of residence of the signer, giving the street and number or other description sufficient to identify the place. All such papers shall be filed in the office of the city clerk as one instrument. A referendum petition need not contain the text of the measure designated therein and of which the repeal is sought.

Sec. 46. - Certificate of petition.

Within ten days after the filing of the petition the city clerk shall ascertain whether or not the petition is signed by registered electors of the city to the number of at least ten percent of the registered electors of the city as of the day the petition was filed, and the clerk shall attach to such petition a certificate showing the result of such examination. If by the city clerk's certificate the petition is shown to be insufficient, it may be amended within ten days from the date of said certificate by the filing of supplementary petition papers with additional signatures. The city clerk shall within ten days after such amendment make like examination of the amended petition and certify the result thereof.

(Amended by Ord. Nos. 4598 and 4599 (1981), § 1, adopted by electorate on November 3, 1981.)*

Sec. 47. - Referendum election.

If the petition be found sufficient, the council shall proceed to reconsider such measure, or such part thereof, as the petition shall specify. If upon such reconsideration such measure, or such part thereof, be not repealed or amended as demanded in the petition, the council shall provide for submitting the same, by the method herein provided, to a vote of the electors at the next municipal election occurring not less than thirty days after the receipt by the council of the city clerk's certificate, and such measure, or such part thereof, shall thereupon be suspended from going into effect until said election and shall then be deemed repealed unless approved by a majority of those voting thereon. Or the council by two-thirds vote may submit such measure

or part thereof with like effect to the electors at a special election to be called by said council not less than thirty days after the receipt of said city clerk's certificate.

Sec. 48. - Title of ballots.

Proposed measures and charter amendments shall be submitted by ballot title. There shall appear upon the official ballot a ballot title which may be distinct from the legal title of any such proposed measure or charter amendment and which shall be a clear, concise statement, without argument or prejudice, descriptive of the substance of such measure or charter amendment. The ballot title shall be prepared by a committee of the council which may be a committee of the whole.

(Amended by Ord. No. [8195](#) (2017), § 2, adopted by electorate on November 7, 2017.)

Sec. 49. - Form of ballots.

The ballots used when voting upon such measure shall designate the same, and below it the two propositions, "for the measure" and "against the measure."

Sec. 50. - Emergency measures subject to referendum.

Measures passed as emergency measures shall be subject to referendum like other measures, except that they shall not be suspended from going into effect while referendum proceedings are pending. If, when submitted to a vote of the electors, an emergency measure be not approved by a majority of those voting thereon, it shall be considered repealed, as regards any further action thereunder, and all rights and privileges conferred by it shall be null and void; provided, however, that such measure so repealed shall be deemed sufficient authority for any payment made or expense incurred in accordance with the measure previous to the referendum vote thereon.

Sec. 51. - Official publication.

Every measure or charter amendment submitted to the voters in any election shall be published at least once in a daily newspaper of the city.

(Amended by Ord. No. 1632 (1951), § 8, adopted by electorate on November 6, 1951.)

Sec. 52. - Number of measures initiated or referred.

Any number of measures may be initiated or referred for a vote at the same election, in accordance with the provisions of this charter.

Sec. 53. - Conflict of measures.

If two or more measures adopted or approved at the same election conflict in any of their provisions, they shall go into effect in respect to such of their provisions as are not in conflict and the one receiving the highest affirmative vote shall prevail insofar as their provisions conflict.

Sec. 54. - Repeal of initiated or referred measures.

No ordinance that has been passed by vote of the people under the initiative or has received a favorable vote of the people under the referendum shall be repealed except by an ordinance submitted to a vote of the people.

Attachment C - COB C-BT Summary Table

C-BT Quantity	Action	Department Designation
15 C-BT units	Contract Number 5097 – to be reissued from City of Boulder to City of Boulder OSMP	OSMP
215 C-BT units	Contract Number 5097 – to be reissued to City of Boulder, Water Utility Enterprise	Utilities ¹
159 C-BT units	From Contract Number 2578 – to be reissued from City of Boulder to City of Boulder OSMP	OSMP
90 C-BT units	From Contract Number 3384 – to be reissued from City of Boulder to City of Boulder OSMP	OSMP
10 C-BT units	Finalizing ownership transfer from Boulder Valley Farms Inc. Contract Number 32	OSMP
50 C-BT units	Finalizing ownership transfer from Boulder Valley Farms Inc. Contract Number 2778	OSMP
20,785 C-BT units	None required	Already in use as Utilities assets under various Northern Water Contracts

¹ The 215 C-BT units are already Utilities assets and wouldn't require any action, except the "Class B" contract that the C-BT units were originally acquired under is an outdated contract form. Current Northern C-BT contracts are issued as "131 Contracts" (no substantive difference from Class B). In order to separate and reclassify the OSMP C-BT units under Contract Number 5097, Northern required the Utilities units under the same 5097 contract also be reissued under a new 131 contract.