

CU South Annexation Agreement
Summary of Key Changes
September 2, 2021

Context

The Boulder City Council approved an annexation agreement for the CU Boulder South property on First Reading Aug. 10, 2021. Additional amendments to the agreement have been made in response to input from the city's Planning Board, Boulder County staff and community members. This document briefly details those key changes. Next steps in the review process include:

- Sept. 14, 2021 at 6 p.m.: City Council Second Reading of the annexation ordinance and public hearing. Community members are encouraged to provide public testimony during this meeting.
- Sept. 21, 2021 at 6 p.m.: City Council deliberation and possible decision on the annexation.

Section I: Definitions

- Combined the general and use definitions into one list.
- Added cooperative housing definition.
- Added a sentence to the "Governmental Facilities" definition, underlined below.

"Governmental Facilities" means a (i) municipal, county, state, or federal structure, building, or use operated and maintained for the benefit or convenience of the occupants, employees, and customers of, or visitors to, the property, or (ii) joint research institute or endeavor between or among the University and federal departments or agencies in support of the University's educational mission; but does not include academic buildings. Governmental Facilities will be compatible with walkable 15-minute neighborhoods. Examples of Government Facilities include research facilities used jointly with the National Institute of Standards and Technology, fire station, and a postal annex; but do not include airports."

Section II: Regulatory Requirements Upon Transfer to a Subsequent Owner

- Paragraph 4: Added language clarifying that the intent, if transferred, is not for an "isolated enclave of single-family detached homes."
- Paragraph 5: Added a list of uses that would be allowed if the property (or portion thereof) is transferred to any owner other than a university affiliate. The intent of these uses is to encourage a 15-minute residential neighborhood. The subsequent owner(s) would be subject to other limitations of the agreement, as well as the city's regulatory

requirements, costs and review processes. Several uses will be required to undergo the city's Use Review process (indicated with a "U" below), while the others will be allowed by right.

Residential Uses, including:

- Efficiency Living Unit
- Dwelling Unit, Attached (U)
- Dwelling Unit, Detached
- Duplex
- Townhouse

Non-residential Uses that are intended to serve residents of the Property:

- Art or Craft Studio Space (U)
- Restaurants, Brewpubs and Taverns (U)
- Daycare Center
- Personal Service Uses
- Retail Sales, including: Accessory Sales, Convenience Retail Sales, Retail Sales
- Other uses, if, as part of a Use Review, the City, in its sole discretion, finds the proposed use consistent with the goal of establishing a development that is primarily residential in nature and furthers the implementation of a 15-minute walkable neighborhood (U)"

Section III: General Standards

- Paragraph 12.c: Clarified that the city will purchase open space on the property within one year following the "de-annexation period" (i.e., 3 – 5 years after the annexation).
- Collaboration on Open Space Land
 - Paragraph 14.a: The city and university will conduct an independent, third-party study of the existing light and noise conditions on the property prior to construction of any recreation facilities. The study will inform decisions on development to encourage the city and university to consider technological, operational, and locational options to mitigate light and noise impacts. The agreement will include a requirement that if the current conditions of noise and light degrade due to development by the university, the city and university will collaborate to mitigate impacts at the university's expense.

All lighted recreation facilities (including fields) or event facilities will be setback back at least 250 feet from the state natural area (i.e., adjacent city open space) or any existing dwelling units on adjacent properties.

- Paragraph 14.b: The university will hold no more than 20 nighttime events each year at parks and recreation facilities that require pole lighting.
- Paragraph 14.c: Plants and shrubs will be planted along the property boundary if any unlighted recreation facilities are constructed within 50 feet of the border between the Development Zone and Open Space Zone.
- Paragraph 15.a: The university will only construct parks and recreation facilities and not be permitted to connect to city utilities during the “De-annexation Period” (i.e., 3 – 5 years after annexation).
- Paragraph 15.d: If requested by the city, the university (or any owner) will construct fencing between its recreation facilities and adjacent city Open Space. Design goals for fencing were added to the agreement, including protection of sensitive habitat; prevention of social trails and access to active restoration sites; delineate property boundaries where different regulations may apply; wildlife passage; and limit cost to the extent possible.
- Paragraph 16.c, 16.d: Future university master planning will look for opportunities to minimize and mitigate light and noise impacts from future development.

Section IV: Zones of Consideration

- Paragraph 20.h: The university will consider the city’s preferred planting list.
- Paragraph 21.h: The university will prioritize consideration of shared facilities, like a running track and dog park, when developing a master plan for the property.
- Paragraph 22.a: The city and university are each required to mitigate the impacts of development to receive federal permits (e.g., flood mitigation, university development). Both parties will pursue joint mitigation work in the Open Space Zone. The city will own the Open Space Zone and perform all mitigation work, while the university will pay the city for the actual cost of mitigation, if needed.

Section V: Transportation

- Paragraph 24.d: Language added specifying that the university will employ physical and technological measures, for example RFID-activated gates, to prevent use of the roadways on the property to be used as a roadway bypass between State Highway 93 and Foothills Parkway.
- Paragraph 25: Phasing language added that development will be phased from north to south. Later development phases on the southern portion of the property may include a new access point from State Highway 93. A complementary phasing line was added to Exhibit C.
- Paragraph 26.d: Trips via public transit will not count towards the trip cap limits.
- Paragraph 27: The university will consider real-time vehicle traffic monitoring in lieu of traditional traffic counts.
- Paragraph 28: The agreement allows 12 special event days per year that may exceed the trip cap limits. A special event definition was added as: any university or community related outdoor gathering on the Remaining Land Interest of at least 25 individuals assembled with a common purpose for a period of one hour or longer.
- Paragraph 35.a: Added language to state that Vision Zero Action Plan, 2019-21 will inform future design and construction of State Highway 93 access.
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- Paragraph 35.d, 35.e: The university will pay a transportation fee to the city, assessed at the time of development, for each residential unit and each square foot of non-residential space. The fee amount, shown below, would result in approximately \$3M if the property were completely built out. The city and university will jointly agree on allocating 50% of the fee to specific projects that benefit the CU South property. The remaining 50% will be allocated to network-wide impacts.

Section VII: Right of First Offer

- Paragraph 43.h: The amended agreement includes a Right of Second Refusal that provides the city with a second option to purchase within two years of declining an offer. This option is valid if an offer is made that is less than 90% of the offer the city previously declined.

Section VIII: Miscellaneous Provisions

- Paragraph 58: New language to address the parties' responsibilities in the event that annexation is challenged by referendum, initiative or judicially.

Grantor:

Grantee:

Case No. LUR2019-00010

ANNEXATION AGREEMENT

September __, 2021

This Annexation Agreement (“Agreement”) is entered into this ____ day of _____ 2021 (the “**Effective Date**”) by and between the City of Boulder, a Colorado home rule city (the “City”), and The Regents of the University of Colorado, a body corporate (the “University”), on behalf of the University of Colorado Boulder (“CU Boulder”). The City and the University are hereafter collectively referred to as the “Parties” and individually as the “Party.”

RECITALS

The University is the owner of the real property consisting of approximately 308 acres located at the intersection of Table Mesa Drive and South Loop Drive, generally known as CU Boulder South or CU South (4886 Table Mesa Drive, 0 Highway 36, 5278 Table Mesa Drive, 718 Marshall Road and 4745 W. Moorhead Circle) and more particularly described on **Exhibit A (“Property” or “CU Boulder South”)**, attached hereto and incorporated herein by this reference.

- A. The University and the City are separate governmental agencies with a complementary relationship which allows for collaboration on mutually beneficial strategies and initiatives.
- B. In this matter, the City desires to construct public improvements to mitigate the risk of flood damage, such as the damage that occurred in the September 2013 flood.
- C. The University, through its partnership with the City to annex CU Boulder South, wishes to contribute positively and collaboratively to the good of future generations by not only supporting its educational mission but by, among other things, providing housing, engaging in environmental preservation and sustainability, and by contributing toward the safety of the greater Boulder and Colorado community.
- D. This Agreement provides the framework for future partnership to develop joint benefits such as public safety facilities, Open Space access and transportation improvements such as underpasses that will benefit the Boulder community and the Property.
- E. Annexation is a negotiated process which will provide the Parties with the natural resources to collaboratively develop the Property in ways which will protect the public health, safety and welfare as well as advance the educational mission of the University.

- F. The Parties expect that approximately 119 acres of land will be acquired by the City as Open Space land. The exact acreage may vary depending on the amount of land needed for flood mitigation and a final survey of the land verifying updated flood plains.
- G. In furtherance of these shared goals, on February 4, 2019, the University submitted to the City an application for annexation of the Property into the city limits of the City of Boulder.
- H. The Parties anticipate an initial zoning designation of Public.
- I. The University is entering into this Agreement with the understanding that the provisions of this Agreement set forth all the binding requirements for annexation and development of CU Boulder South, and any additional binding requirements imposed on the University and this Agreement are not permitted or consented to by the University.
- J. The Parties have agreed to these provisions to prevent the placement of an unreasonable burden on the physical, social, economic, or environmental resources of the City and the University.

NOW, THEREFORE, in consideration of the Recitals, promises and Covenants herein set forth and other good and valuable consideration herein receipted for, the Parties agree as follows:

SECTION I - DEFINITIONS

1. **General Definitions.** As used in this Agreement, the following terms have the following meanings:
“Accessory Building” or “Accessory Structure” means a detached Building or Structure that is:

- a. subordinate to and customarily found with the principal Building, Structure, or use of the land;
- b. for residential uses, the Building coverage is no greater than the Building coverage for the existing or proposed principal Building;
- c. operated and maintained for the use, benefit or convenience of the occupants, employees, or customers of or visitors to the premises with the Principal Use; and
- d. not used as living or sleeping quarters.

Examples of Accessory Buildings or Accessory Structures include detached garages, sheds, bicycle storage and trash enclosures.

“Accessory Dwelling Unit” means a separate and complete single housekeeping unit within a Detached Dwelling Unit or within an Accessory Structure to the principal dwelling unit of the lot or parcel upon which the unit is located.

“Accessory Sales” means incidental Retail Sales where the floor area devoted to sales does not exceed 15 percent of the gross floor area of the Principal Use and if the products sold are directly related to the Principal Use. Examples are artwork sold at an artist’s studio, convenience goods in a hotel or motel, health care products sold by a healing arts practitioner, or a factory outlet store selling products manufactured on the site.

“Accessory Use” means a use located on the same area as the principal Building, Structure, or use to which it is related and that is subordinate to and consistent with or serving the Principal Use of the land; and operated and maintained for the benefit or convenience of the occupants, employees, and customers of or visitors to the premises with the Principal Use.

“Airport” means areas used for landing or take-off of aircraft, Airport buildings, tie down areas, and appurtenant areas, which the City has represented to the federal government as being held for Airport purposes.

“Appurtenances” means architectural features not used for human occupancy, consisting of spires, belfries, cupolas or dormers, silos, parapet walls, and cornices without windows; and necessary mechanical equipment usually carried above the roof level, including, without limitation, chimneys, ventilators, skylights, antennas, microwave dishes, and solar systems, and excluding wind energy conversion systems.

“Art or Craft Studio Space” means the workshop of an artist, sculptor, photographer, craftsman, furniture maker, or cabinet maker primarily used for on-site production of unique custom goods by hand manufacturing involving the use of hand tools and small-scale equipment, which may include an accessory gallery.

“Brewpub” means an establishment that is primarily a Restaurant where malt liquor is manufactured on the premises as an Accessory Use. A Brewpub may include some off-site distribution of its malt liquor consistent with state law.

“Building” see **“Enclosed Structure”**

“Building Height” means the vertical distance from the lowest point within 25 horizontal feet of the tallest side of the Structure to the uppermost point of the roof or Structure. The lowest point will be calculated using the Natural Grade. The tallest side will be that side where the lowest exposed exterior point is lower in elevation than the lowest exposed exterior point of any other side of the Building.

“BVCP” means the 2015 Major Update of the Boulder Valley Comprehensive Plan.

“City Council” means the City of Boulder City Council.

“City Manager” means the City Manager of the City, or the City Manager’s authorized representative.

“Community Garden” means land or rooftops that are gardened by a group of people that may or may not reside on the property and where the garden activities are not commercial crop production or greenhouse, and plant nursery uses.

“Conceptual Design” means a phase of design which the University of Colorado Design Review Board (the **“Design Review Board”**) will evaluate the overall development of the Property that includes without limitation an illustration of the land use, Building massing and design, and transportation concepts with accompanying descriptive text.

“Convenience Retail Sales” means a retail establishment offering for sale a limited line of groceries and household items intended for the convenience of the neighborhood.

“Cooperative Housing” means a housing arrangement in which residents share expenses, ownership or labor.

“CU Boulder South Master Plan” or **“CUBSMP”** means the planning document that will set forth a framework for development of the physical environment to address goals, objectives and design principles specific to the CU Boulder South Property.

“Daycare Center” means a facility providing care for children or adults who do not reside in the facility, are present primarily during daytime hours, and do not regularly stay overnight, which may include some instruction, and is licensed by the state, if applicable.

“De-Annexation Period” means the period beginning with the effective date of the ordinance annexing the Property and ending with the three-year anniversary date of the Effective date of the Annexation Ordinance annexing the Property, plus any extensions duly exercised under Section 56.

“Drive Alone Rate” means a single occupancy vehicle operated by one individual, compared over time with the intent of measuring shifts to different modes of transportation.

“Duplex” means a Structure containing two dwelling units.

“Dwelling Unit, Attached” means three or more dwelling units within a Structure.

“Dwelling Unit, Detached” means no more than one dwelling unit within a Structure.

“Efficiency Living Unit” means a dwelling unit that contains a bathroom and kitchen and does not exceed a maximum floor area of 475 square feet.

“Effective Date” means the effective date of this Agreement set forth in the introductory paragraph hereof.

“Effective Date of Annexation” means the date upon which the Annexation Ordinance and map are filed for Record with the Boulder County Clerk & Recorder pursuant to CRS 31-12-113(2).

“Effective Date of Annexation Ordinance” means the effective date of the Ordinance annexing the Property, as such date is reflected in such Ordinance and established by the Home Rule Charter.

“Enclosed Structure” or **“Building”** means any Structure having one or more walls and a roof built for the support, shelter, or enclosure of persons, animals, or property of any kind. For purposes of this Agreement, portions of Buildings connected by fully enclosed attachments that are useable by the Buildings’ occupants will be treated as one Building.

“First-Year Student Housing” means housing leased by first-year undergraduate college students.

“Flood Mitigation Project” or **“Project”** means the City’s South Boulder Creek Flood Mitigation Project.

“Fraternity and Sorority” means a social Fraternity or Sorority consisting of university students and that is recognized as an active member by a national organization.

“Fraternity or Sorority House” means a house occupied exclusively by a Fraternity or Sorority, which often is equipped with a central kitchen or dining area maintained exclusively for members of the Fraternity or Sorority and guests or visitors.

“Governmental Facilities” means a (i) municipal, county, state, or federal Structure, Building, or use operated and maintained for the benefit or convenience of the occupants, employees, and customers of, or visitors to, the property, or (ii) joint research institute or endeavor between or among the University and federal departments or agencies in support of the University’s educational mission; but does not include academic Buildings. Governmental Facilities will be compatible with walkable 15-minute neighborhoods. Examples of Governmental Facilities

include research facilities used jointly with the National Institute of Standards and Technology, fire station, and a postal annex; but do not include Airports.

“Guiding Principles” means the CU South Guiding Principles in the BVCP.

“Habitable Space” means space in a Structure for living, sleeping, eating, or cooking.

Bathrooms, toilet compartments, closets, halls, storage or utility space, and similar areas are not considered Habitable Space.

“Large-scale Sport or Event Venue” means an arena, stadium, or any other type of sports or event facility with fixed seating in excess of 3,000 people including without limitation a football stadium or a basketball arena.

“Mixed Use” means a Building that contains both residential uses and non-residential uses.

“MUTCD” means the then-applicable edition of the Manual on Uniform Traffic Control Devices used by the Colorado Department of Transportation.

“Natural Grade” means the existing grade or elevation of the ground surface as it exists following construction of the Project.

“Non-Residential Building, Large” means a Building that is accessory to a university use, including without limitation academic uses, research and development uses, and related educational operations provided by the University. Large Non-Residential Buildings have a floor area of 175,000 square feet or more.

“Open Space” means land owned by the City and managed by the City of Boulder Open Space and Mountain Parks Department.

“Owner” means the University’s successors in interest, assignees, and all persons who may hereafter be Transferred any real property interest, including a fractional interest, in the Property. However, “Owner” does not include the University or University Affiliates, the City of Boulder or the City’s Housing Authority.

“Parks and Recreation Uses” means uses which include playfields, playgrounds, and athletic and other recreational facilities or amenities, which are owned by the University or a public agency and are operated primarily for the benefit of the employees, guests, residents of the Development Zone (as defined herein below).

“Peak Hour” means the concept referring to the hour of a day when the highest volume of traffic occurs on a transportation facility.

“Personal Service Uses” means an establishment that provides personal services for the convenience of the neighborhood, including, without limitation, barber and beauty shops, shoe repair shops, bicycle repair shops, dry cleaners, laundries, self-service laundries, bakeries, travel agencies, newsstands, pharmacies, photographic studios, duplicating services, automatic teller machines, and the healing arts (health treatments or therapy generally not performed by a medical doctor or physician such as physical therapy, massage, acupuncture, aromatherapy, yoga, audiology, and homeopathy).

“Principal Use” means the primary or predominant use of any lot, Building or Structure.

“Remaining Land Interest” means the University’s remaining land interests on the Property after the consummation of all conveyances of real estate interests contemplated in this Agreement, including any future conveyances of ROFO Parcels (as defined herein below).

“Residence Hall” means a Building used principally for long-term sleeping accommodations only by students at a college, university, or other public, quasi-public, or private institution. A

common kitchen and common rooms for social, media, entertainment, and recreation purposes may also be provided.

“Restaurant” means an establishment provided with a food preparation area, dining room equipment, and persons to prepare and serve, in consideration of payment, food or drinks to guests.

“Retail Sales” means the selling of goods or merchandise directly to a consumer.

“Setback” means the minimum distance in linear feet measured on a horizontal plane between the outer perimeter of a Structure, above grade, and the adjacent property boundaries.

“Structure” means anything constructed or erected with a fixed location on the ground above grade, but the term does not include poles, lines, cables, or other transmission or distribution facilities of public utilities.

“Tavern” means an establishment serving malt, vinous, and spirituous liquors in which the principal business is the sale of such beverages at retail for consumption on the premises and where snacks are available for consumption on the premises.

“Townhouse” means an attached single-family dwelling unit that is separated from adjoining dwelling units by a wall extending from the foundation through the roof which is structurally independent of the corresponding wall of the adjoining unit.

“Transfer” means any sale, assignment or Transfer, voluntary, involuntary or by operation of law (whether by deed, contract of sale, gift, devise, bequest, trustee’s sale, deed in lieu of foreclosure, or otherwise) of any interest in the Property, including but not limited to fee simple interest, joint tenancy interest, tenancy in common, a life estate, leasehold interest, or any interest evidenced by a land contract by which possession of the Property is Transferred and grantor retains title; provided, however, that, notwithstanding any provision of this Agreement to the contrary, a Transfer specifically does not include any of the following: (i) conveyance of a leasehold interest or permit to individual units or areas in the ordinary course of business; (ii) collateral assignments for the benefit of lenders or equity providers; or (iii) the Transfer of interests to a partnership or similar business relationship in connection with (a) securing low income housing tax credit financing and the admission or departure of the low income housing tax credit financing, or contributing equity or imputed equity provider as a member or partner in the partnership or a similar relationship, or (b) the development and financing of University-related facilities or improvements through a public-private partnership arrangement.

Notwithstanding the foregoing, a Transfer by the University to an affiliated entity, including, but not limited to the CU Boulder Enterprise Corporation, or subsidiary of such affiliated entity, will be a permitted Transfer under this Agreement.

“Transportation Demand Management” means any action or set of actions aimed at reducing the impact of automobile traffic by influencing people’s travel behavior.

“Trip” means each single ingress to or egress from the Property onto an adjacent roadway via a motor vehicle or motorcycle.

“University” means the University, or a University Affiliate (as defined herein below), including, but not limited to the CU Boulder Enterprise Corporation, or subsidiary of such affiliated entity.

“University Affiliate” means the CU Boulder Enterprise Corporation or any other Internal Revenue Service Type I, Type II or Type III supporting organization created on behalf of and to support and benefit the University, or any subsidiary of such supporting organization.

“**Vehicle Trip Rate**” means the actual number of vehicles determined by traffic monitoring at the points of ingress to and egress from the Property.

SECTION II - REGULATORY REQUIREMENTS UPON TRANSFER TO A SUBSEQUENT OWNER

2. Transfer of Property Interest by the University. This Agreement will remain in effect and continue to apply to a Transfer of the Property, or any portion thereof, by the University to a person or subsequent Owners otherwise subject to the City’s ordinances and regulations; and the respective obligations, rights, benefits, and duties of the City and the University under this Agreement will continue to apply during the term of this Agreement to the use and development of Property Transferred by the University. This Agreement runs with the land in perpetuity. If the Property is Transferred to any Owner other than a University Affiliate as contemplated herein or State of Colorado, such Owner will be subject to the City’s police powers, the authority to zone and regulate land uses for the public health, safety and general welfare of the public together with all review and approval processes associated with such regulatory authority. Subsequent Owners will be subject to the regulatory requirements of the Boulder Revised Code in effect at the time of development.

3. Use of the Terms “University” and “Owner”. To identify how the Remaining Land Interest will be regulated if owned by an entity other than the University, the term “Owner” is used to indicate those provisions which will apply to any Owner other than the University. Provisions that refer to “University” will apply to the Property held by the University of Colorado or a University Affiliate. This includes the five acres of land Transferred to a University Affiliate for the purposes of entering a joint venture with the City’s Housing Authority for the development of affordable housing as contemplated under this Agreement. The terms “Owner” and “University” are defined in Section I. Where neither is specified, the regulation in this Agreement applies regardless of ownership.

4. Acknowledgement of Intent. The Parties have negotiated the annexation of the Property with the understanding that the Property will be a public asset held by the University for the benefit of the community and used to further its education and research missions. The Parties agree that if the Remaining Land Interest or any portion thereof (defined in Section I as the Property or any portion that is owned by the University after land is Transferred to the City under this Agreement) is Transferred by the University to a subsequent Owner, then the applicable real property will be regulated more strictly than if it was owned by the University. If Transferred by the University to a subsequent Owner, the Parties agree that such land is not intended for an isolated enclave of single-family detached homes. The Parties intend that the land be designed and regulated to support the creation of walkable 15-minute neighborhoods, as articulated in the 2020 BVCP, including policies: 2.14 Mix of Complementary Land Uses; 2.24 Commitment to a Walkable & Accessible City; and 6.19 Transportation Infrastructure to Support Walkable 15-Minute Neighborhoods.

5. Additional Regulations Upon Subsequent Owners. If the Remaining Land Interest or any portion thereof is Transferred by the University to a subsequent Owner, then the Transferred land will be subject to additional regulation as indicated in this Agreement. The additional regulations include:

- a. Any development will comply with the regulatory requirements, costs, and review processes of the Boulder Revised Code, 1981, including but not limited to applicable Building Height, noise, wetland, fire and safety building codes, and outdoor lighting regulations except as expressly modified in this Agreement;
- b. The Development Zone will have an initial zoning of Public. Use Transition Zone restrictions will continue to apply. Unless and until rezoned to a new zoning district, development is further limited to the following Principal Uses; no other Principal Uses will be allowed:
 - i. Residential uses, including:
 - 1. Efficiency Living Unit
 - 2. Dwelling Unit, Attached (U)
 - 3. Dwelling Unit, Detached
 - 4. Duplex
 - 5. Townhouse
 - ii. Non-residential uses that are intended to serve residents of the Property:
 - 1. Art or Craft Studio Space (U)
 - 2. Restaurants, Brewpubs and Taverns (U)
 - 3. Daycare Center
 - 4. Personal Service Uses
 - 5. Retail Sales, including: Accessory Sales, Convenience Retail Sales, Retail Sales
 - 6. Other uses, if, as part of a use review, the City, in its sole discretion, finds the proposed use consistent with the goal of establishing a development that is primarily residential in nature and furthers the implementation of a 15-minute walkable neighborhood (U).

Uses followed by a “(U)” are subject to review and approval under Section 9-2-15, “Use Review,” B.R.C. 1981; all other listed uses shall be uses allowed by right. Uses requiring a Use Review under this Agreement will not be required to demonstrate consistency with the purpose of the Public zoning district (Paragraph 9-2-15(e)(1), B.R.C. 1981). Uses listed in this Section supersede uses otherwise allowed in a Public zone. The listed uses may be provided in one building as a mixed-use

building. Accessory uses and structures to the listed uses are also permitted.

- c. The Development Zone development will be primarily residential in nature with a goal of implementing 15-minute walkable neighborhoods as articulated in the 2020 Boulder Valley Comprehensive Plan, including policies: 2.14 Mix of Complementary Land Uses; 2.24 Commitment to a Walkable & Accessible City; and 6.19 Transportation Infrastructure to Support Walkable 15-Minute Neighborhoods. The Development Zone will be developed in accordance with Section 20.i.iv. regarding the 750,000 square foot total non-residential cap for the whole Remaining Land Interest and the 2:1 ratio for residential to non-residential construction.
 - i. 45 percent or more of all dwelling units owned or constructed by the Owner will be permanently affordable units as defined meeting the requirements of Chapter 9-13, "Inclusionary Housing," B.R.C. 1981.
- d. Potential tax consequences associated with not being owned by a public university will be the responsibility of the Owner.

6. Restriction on Transfer of Property. The University agrees that it will not Transfer or otherwise alienate the Property for a period of 10 years following the Effective Date of Annexation Ordinance unless the Transfer is to the City of Boulder. Such 10-year period is referred to herein as the **"City's Exclusive Option."**

7. Land Valuation for Transfer to the City of Boulder. Except as specified in this Agreement for the Transfer of land to the City for Open Space or flood mitigation, the Parties agree that for any Transfer of the Remaining Land Interest or any portion thereof, during the City's Exclusive Option the price will be capped at \$348,450 an acre increased by the percentage change above the prior year, if any, in the Denver-Aurora-Lakewood U.S. Bureau of Labor and Statistics Consumer Price All Items Index or if such index is no longer available, such successor index or any other index as is reasonably agreed upon by the Parties.

SECTION III - GENERAL STANDARDS

8. Acknowledgment of Consideration. The Parties have negotiated the rights and responsibilities of this Agreement in good faith based on projected costs. The Parties acknowledge that actual costs may vary from projected costs, especially since development will not occur for several years. Therefore, the Parties agree that the projected costs will be considered final costs for this Agreement. The City and the University each acknowledge and agree that their respective rights and obligations under this Agreement are supported by good and valuable consideration.

9. Requirements Prior to First Reading. Prior to the first reading of the annexation ordinance before City Council, the University will:

- a. Sign this Agreement, subject to University of Colorado Board of Regents final approval.
- b. Provide to the City an updated title commitment current within 30 days of the date of the first reading of the annexation ordinance or an attorney's memorandum that concludes or otherwise states that the University is the owner of the Property and authorized to execute this Agreement.
- c. Sign and file a petition for inclusion in the Northern Colorado Water Conservancy District – Boulder Municipal Subdistrict and pay all applicable fees on land and improvements for inclusion in such subdistrict.

10. Access. The University will permit public access (subject to standard University access and use policies including the Campus Use of University Facilities policy) to recreational facilities, sidewalks, trails, Buildings and other amenities that are open to University guest use. Such public access includes use of any multi-use paths (“**MUPS**”) and trails connecting to Open Space land, use of recreation fields such as a possible running track, and any dog park. The Parties will collaborate on public access to the Property during development. The duty to collaborate applies to any Owner.

11. Addressing. The University will submit proposed street names and Building numbers (“**Addresses**”) to the City during its design development phase. Addresses will comply with the City of Boulder Addressing Policy, as amended. Provided that University-submitted Addresses comply with the City of Boulder Addressing Policy, the City will deliver timely written approval of same.

12. Conveyance of Land. The University will convey to the City by special warranty deed the applicable portions of the Property described below in accordance with the provisions of this Section 12. Conveyance will take place in a reasonable amount of time as mutually agreed to by the Parties.

- a. The University will convey to the City the applicable City Premises (as defined herein below) at no cost to the City (save and except City's costs associated with closing of the Transfer) within 45 days following the date the City has delivered both (a) written notice to the University that the City (i) has received the approvals for the Flood Mitigation Project described in Section 41, and (ii) is waiving all contingencies to the complete performance of its obligations set forth herein (the “**Waiver Notice**”), and (b) draft ALTA/NSPS Land Title Surveys, updated title commitments and legal descriptions for said premises, draft special warranty deeds for each of the City Premises, and other documentation necessary to effectuate conveyance of such premises. The “**City Premises**” will consist of the following portions of the Property (as applicable) at no cost to the City:

- i. 80 acres to the City for flood mitigation purposes. If the City does not require the entire 80 acres for flood mitigation purposes, the remaining portion of the 80 acres (the “**Land Credit**”) conveyance will be applied to land in the Open Space Zone (as defined herein below).
 1. The City expects to use 36 acres for flood mitigation in the Flood Control Zone (as defined herein below).
 2. The Land Credit, expected to be 44 acres, not used for flood mitigation facilities, will be dedicated as Open Space within the Open Space Zone.
- b. In addition to the 80 acres, upon written request of the City, the University will convey two acres in a mutually agreed upon location on the Property to the City for public safety purposes at no cost to the City. The City will have the option of electing to have the land conveyed as either a fee simple conveyance or a long-term lease. The City will pay its pro rata share of costs of extending infrastructure to the two-acre site and all costs of improving the property. The Parties may enter into an intergovernmental agreement (“**IGA**”) to mutually provide public safety services based on the Parties’ public safety goals and planning processes.
- c. The City will have the option to purchase remaining land in the Open Space Zone, expected to be approximately 75 acres, for a price of \$37,500 per acre. The exact amount and location of land available to purchase will be determined by the Parties after the Flood Mitigation Project is designed. Unless an alternative timeline is agreed to by the Parties, if the City has not exercised its option to purchase this remaining Open Space Zone land on or before the date that is the one-year anniversary of delivery of the Waiver Notice, then this option will expire without any further action by the Parties.

13. Conveyance of Water Rights. Upon the City’s delivery of the Waiver Notice, the University agrees to convey the 30.2 shares of the Dry Creek No. 2 Ditch Company water rights (the “**Water Rights**”) that are historically associated with the Property. Recognizing that the Water Rights provide a perpetual value to the University for irrigating the Remaining Land Interest and that if the University disposes of and disclaims the use of such rights, the value of the Water Rights is the opportunity cost equal to the value of obtaining annually, in perpetuity, equivalent irrigable water to replace such rights from the City. The City agrees to: (i) credit the amount that the University would otherwise pay as an irrigation Plant Investment Fee (“**PIF**”) to the cost of the PIFs assessed to the Property (as specified in Section 16.h.iv.), and (ii) provide an annual credit of 140 acre-feet of water that the University will be able to use for irrigation on its Remaining Land Interest, except during any water emergency declared by a governmental entity having jurisdiction over the Property pursuant to lawful authorization.

14. Collaboration on Open Space Land. The Parties acknowledge the value and importance of Open Space land and will collaborate on restoration and protection thereof. The Parties will share the goal of minimizing disturbance to protect Open Space area given its potential for high Open Space value and presence of sensitive species.

- a. The Parties agree to cooperate to execute an IGA to fund an independent, third-party study to understand and establish baseline light and noise conditions and impacts on the state natural area. The intent of the study will be to inform decisions on development to encourage the Parties to consider technological, operational, and locational options to minimize or mitigate light and noise impacts on the state natural area. No recreation or event facility or field will be constructed until the study is completed. When constructed, any lighted Parks and Recreation Use or event facility will comply with a Setback of 250 feet from the state natural area and all then-existing dwelling units on adjacent properties existing as of the Effective Date of this Agreement.
- b. The University will hold no more than 20 lighted night events each calendar year at any lighted Parks and Recreation facilities or fields. The IGA will consider if lighted, night events should be limited during certain times of the year that are more sensitive for wildlife such as breeding or migration periods. The 20-night limit may be increased in the IGA by mutual agreement.
- c. The IGA will include the requirement that if the current conditions of noise and light degrade relative to the baseline established by the study referenced above due to development by the University, the Parties will collaborate to mitigate the impacts at the University's expense. Upon commencing construction of Structures or lighted Parks and Recreation Uses within 50 feet of the border between the Open Space Zone and its Remaining Land Interest, the University will plant and maintain trees and shrubs along said boundary, to the reasonable and mutual satisfaction of the Parties. Additionally, the University will comply with the City noise and outdoor lighting standards applicable to uses on the Remaining Land Interest.
- d. The collaboration obligation and development limitations apply to subsequent Owners.

15. General Development Standards. The following general development standards will apply to the Property.

- a. Development Phasing. The University may only construct Parks and Recreation Uses that do not require connection to City utilities during the De-Annexation Period. After the City's delivery of the Waiver Notice to the University, the University may begin construction for other uses and connect to City utilities (see Section 16.h).

- b. Building and Structure Setbacks. All Buildings and Structures will be Setback at least 20 feet from all property lines. Notwithstanding the foregoing, the Setbacks along the western property line are depicted in **Exhibit B**, attached hereto and incorporated herein by this reference.
- c. Existing Wells. The City will not restrict or otherwise prohibit use of existing wells on the Property for irrigation purposes, even if served by City water utility. Provided that the City provides and continues to provide domestic water to the Remaining Land Interest, under no circumstances may existing wells be used for domestic water purposes once the University or Owner has connected to City water utility. No person will make any cross connections to the City's municipal water supply system from any well on the Property.
- d. Fencing. If requested by the City, the University, or any Owner, will construct fencing between its property and City Open Space. Design goals for fencing include protection of sensitive habitat; prevention of social trails and access to active restoration sites; delineate property boundaries where different regulations may apply; wildlife passage; and limit cost to the extent possible. The fence will be designed and constructed as a typical Open Space boundary fence or such other design as the parties may mutually agree.

16. Site Planning Standards. The University will construct Buildings, Structures, or infrastructure in accordance with state fire codes and the following City of Boulder site planning standards.

- a. Fire Standards.
 - i. Fire Department access must, at a minimum, meet the City of Boulder Design and Construction Standard for emergency access concerning road widths, turn-arounds, and turning radius.
 - ii. Fire hydrants will be spaced and installed in accordance with the applicable City of Boulder Design and Construction Standard.
 - iii. All development will comply with State of Colorado primary and secondary emergency access requirements. Emergency access routes will not exceed eight percent grade. The University will develop an emergency access plan when it begins the development of a site plan for the Property. Owners other than the University will comply with City of Boulder emergency access requirements.
- b. Floodplains. Any University Buildings, Structures, or infrastructure constructed on the Remaining Land Interest will be built in accordance with the following flood plain safety standards.
 - i. The University will apply for, and the City will issue, flood plain development permits for regulated activities performed in the 100-year floodplain or conveyance zone.

- ii. No portion of Enclosed Structures that include Habitable Space, including offices and residential uses, will be constructed in the 500-year floodplain.
 - iii. Enclosed restrooms, locker rooms or other Accessory Uses serving visitors to the recreation fields/area are permitted in the 500-year floodplain.
- c. Lighting, Outdoor. The University agrees to comply with the City of Boulder 2021 Outdoor Lighting Standards attached hereto as **Exhibit E** and incorporated herein by this reference, irrespective of any exemption for state institution sovereignty, right or privilege that may be contained in **Exhibit E**.
 - i. Prior to the installation of outdoor lighting on the Property, the University will submit lighting plans, as required by the City's Outdoor Lighting Standards. The City will review the lighting plans and provide the University a certification of compliance or notice of any deficiencies within 30 days following the University's submission. The University will correct any deficiencies prior to installation. The University will consider the impact of potential lighting on wildlife in the adjacent Open Space and Open Space Zone as it develops the master plan for the Remaining Land Interest and will look for opportunities to minimize or mitigate impacts from development.
- d. Noise Standards. The University agrees to comply with the 2021 City Noise Standards attached hereto as **Exhibit G**, and incorporated herein by this reference irrespective of any exemption for state sovereignty, right or privilege that may be contained within **Exhibit G**. The University will consider the potential impacts of noise on wildlife in the adjacent Open Space and Open Space Zone as it develops the master plan for the Remaining Land Interest and will look for opportunities to minimize or mitigate impacts from development.
- e. Steep Slopes. No development except for roads, driveways, soil disturbance, MUPS, renewable energy Structures, and necessary utility infrastructure will be located on slopes of 15 percent or greater.
- f. Grades and Building Design. Where applicable, Buildings will be designed to conform to the natural contours of the land. The site plan will minimize erosion, slope instability, landslide, mudflow or subsidence, and minimize the potential threat to property caused by geological hazards. The University or Owner will consult a professional registered engineer to eliminate or control any problems of instability or inadequate drainage prior to grading or the construction of any Buildings in areas with geological hazards.
- g. Wetlands. Prior to any activity occurring on the Property that is regulated under Section 9-3-9, "Stream, Wetlands, and Water Body Protection,"

B.R.C. 1981, the Parties will share the cost to cause all stream, wetland, water bodies and buffer areas on the Property to be mapped and functionally evaluated, meeting the requirements for such mapping and evaluation in Section 9-3-9, B.R.C. 1981. The City may adopt the Wetland Mapping by ordinance following the Effective Date of Annexation. The University will comply with the Stream, Wetland, and Water Body Requirements that are attached hereto as **Exhibit F** and incorporated herein by this reference based on the Wetland Mapping when performing any applicable development activity on the Property. If the Property is Transferred by the University, the Owner will comply with then-current City of Boulder regulatory requirements for streams, wetlands, or water bodies effective at the time of Transfer and as amended thereafter based on the Wetland Mapping, unless the Wetland Mapping was adopted by ordinance, then based on the then-current stream, wetland and water regulatory maps of the City.

- h. Utilities. All water, wastewater, storm water and flood management facilities within, adjacent to or otherwise necessary to serve the Property and dedicated to the City for ownership, operation, and maintenance will be constructed in a manner consistent with this Agreement and the applicable City of Boulder Design and Construction Standards and applicable rules and regulations of the water, wastewater, storm water and flood management utilities.
 - i. Prior to connecting to the City's water system, the following is required:
 - 1. A water system distribution analysis is needed prior to connection to the City's water distribution system to assess the impacts and service demands of the proposed development. Conformance with the City's Treated Water Master Plan, October 2011 and the 2019 Water Transmission Study findings is necessary.
 - 2. A mutually agreeable water and wastewater service agreement between the City and University for the Property.
 - 3. The University or Owner will connect applicable portions of the Remaining Land Interest to a portion of the City's water system known as Zone 3. This Zone 3 has a pipeline in Broadway which is higher in water pressure and may require the University or Owner to install, own and maintain its own pressure reducing valves.
 - ii. Prior to connecting to the City's wastewater system, the following is required:
 - 1. A collection system analysis is needed prior to connection to the City's wastewater collection system to determine any

system impacts based on the proposed demands of the development. The analysis will need to show conformance with the City's Wastewater Collection System Master Plan of July 2016.

2. A water and wastewater service agreement between the City and University for the Property.
- iii. On-site and off-site water main and wastewater main construction per the applicable City of Boulder Design and Construction Standards (DCS) as necessary to serve the development, as well as maintain the overall system, may be required. All proposed public utilities for this Project will be designed in accordance with the DCS.
- iv. The University will be responsible for paying all applicable PIFs at the time of development and/or connection to City utilities, except for the credit provided in Section 13, and the stormwater PIF of \$437,500 which will be paid at the end of the De-Annexation Period.
- v. The Parties understand and agree that the requirements of this Section are the only requirements the University must satisfy for connection to City utilities.

SECTION IV - ZONES OF CONSIDERATION

17. Zones of Consideration. The Property includes three zones. These zones are shown on **Exhibit B**.

- a. The “**Development Zone**” (approximately 129 acres) is that portion of the Property within which development of Structures containing Habitable Space is permitted to occur, within the total discretion of the University, subject only to state and federal statutes and regulations and the limitations in this Agreement.
- b. The “**Flood Control Zone**” (approximately 60 acres) is that portion of the Property where the City intends to implement Phase I of the South Boulder Creek Major Drainageway Plan and the University intends to construct recreational facilities.
- c. The “**Open Space Zone**” (approximately 119 acres) is that portion of the Property where wetland mitigation for both the Flood Mitigation Project and for future University development will occur.

18. Zoning. The Property will be annexed to the City with an initial zoning classification of Public. Except as provided in this Agreement, if owned by the University, the Property is subject to the rights and restrictions associated with Public zoning, subject to the University's status as a state sovereign entity. If the land is Transferred to an Owner other than the University, an application may be made to the City for re-zoning.

19. Subdivision Exemption. The Parties agree that no subdivision process is required pursuant to Title 9, “Land Use Code,” B.R.C. 1981, in connection with any conveyance of any portion of the Property from the University to the City.

20. The Development Zone. The following general development standards apply to the Development Zone portion of the Property:

- a. Permitted Uses. The Development Zone will be primarily residential in nature and supportive of the University’s educational mission. The Parties’ intent is that development occur which supports the University’s academic mission or offers services to Property residents. Uses listed in this Section supersede uses otherwise allowed in a Public zone. The listed uses may be provided in one Building as a Mixed-Use Building. If owned by the University, the Development Zone may only be used for the following uses, unless those uses are prohibited by Subsection b. below:
 - i. Residential Uses, including:
 - 1. Efficiency Living Unit
 - 2. Dwelling Unit, Attached
 - 3. Dwelling Unit, Detached
 - 4. Duplexes
 - 5. Townhouse
 - 6. Student housing, including Residence Hall
 - 7. Cooperative Housing
 - ii. Non-residential Uses:
 - 1. Public Colleges and Universities
 - 2. Limited types of Governmental Facilities as defined in Section I.
 - 3. Parks and Recreation Uses including a sports field with fixed seating for attendance up to 3,000 people.
 - 4. Accessory Building and Accessory Structure
 - 5. Accessory Uses, including but not limited to: Accessory Dwelling Units, Restaurants, Brewpubs and Taverns; Daycare Center and Community Gardens
- b. Prohibited Uses. The Parties agree that some uses are not consistent with the shared goal of a 15-minute walkable neighborhood and the University’s educational mission. To that end, the following uses are expressly prohibited in the Development Zone or any portion of the Property:
 - i. Non-Residential Building, Large
 - ii. First-Year Student Housing
 - iii. Fraternities and Sororities
 - iv. Fraternities or Sorority House
 - v. Airports
 - vi. Large-scale Sport or Event Venue;

- or any combination of stadium, arena, or facility which would equal a fixed seating capacity equal or greater to 3,000.
- c. Building Height Limits. If owned by the University, all Buildings on the Property will be limited to a height not exceeding 55 feet. Buildings will vary in height and articulation.
 - d. Exceptions. If the Property is owned by the University, the 55-foot height limit will not apply to:
 - i. spires, belfries, cupolas, domes, or Building roof Structures with a pitch of 2:12 or greater and not exceeding 10 feet, not used for human occupancy, nor to silos, parapet walls, cornices without windows, antennas, chimneys, ventilators, skylights, or other necessary mechanical Appurtenances usually carried above the roof level so long as they do not take up more than 25 percent of the roof area;
 - ii. light poles at government-owned recreation facilities;
 - iii. light and traffic signal poles in the right-of-way, nor to service and transmission line electrical utility poles; or
 - iv. renewable energy improvements carried on or above the roof level.
 - e. Appurtenances. All roof top mechanical equipment will be screened from the perspective of the adjacent public right-of-view or paths, regardless of the height of the Building, unless such screening conflicts with the function of the mechanical equipment. The University or Owner will consider the materials and color based on the following criteria:
 - i. Screening is consistent with the Building design, colors and materials;
 - ii. Appurtenances are placed on the portion of the roof which is least visible from adjacent streets and properties;
 - iii. The height of the screen is at the minimum appropriate to adequately screen the mechanical equipment; and
 - iv. Screening does not increase the apparent height of the walls of the Building. The use of parapet walls to screen mechanical equipment is discouraged. The height of parapet walls should be at the minimum necessary to screen mechanical equipment.
 - f. Building Height Ceiling. The Building Height ceiling is a plane over the Property in which no portion of a Building may exceed, except as permitted elsewhere in this Agreement. The plane is described as 5,493.0' North American Vertical Datum of 1988 (NAVD 88), based on field survey conducted June 30, 2021. The City of Boulder's benchmark used for this reference was #S-407-1, a found chiseled "+" located in the sidewalk between 1230 and 1240 Chambers Drive, at the southeast corner of Ludlow Street and Chambers Drive.
 - g. Use Transition Zone. The intent of the Use Transition Zone is to promote residential development that is contextually appropriate to neighboring

properties. The boundary of the Use Transition Zone is illustrated in **Exhibit C**, attached hereto and incorporated herein by this reference. The following uses are permitted in the Use Transition Zone:

- i. Dwelling Unit, Attached
 - ii. Dwelling Unit, Detached
 - iii. Duplexes
 - iv. Efficiency Living Unit
 - v. Accessory Dwelling Unit
 - vi. Parks and Recreation Uses, private open space areas and private clubhouse intended for the benefit of on-site residents, and contextually appropriate to the adjacent neighborhood.
- h. Viewsheds and Landscaping. Building location, massing and height in the Development Zone will be designed and constructed to protect and complement views of the mountain backdrop from the Highway 36 bike path and the South Boulder Creek Trail. The University or Owner will plant trees and shrubs to screen Buildings and built infrastructure on the Remaining Land Interest from these viewsheds. The University or Owner will consider the City's preferred planting list. The City will augment this landscaping on the portions of the Property acquired by the City.
- i. Housing the Predominant Use. Housing will be the predominant use of the site for areas within the Development Zone, although the site may include a mix of residential and non-residential facilities. The site will emphasize housing units over non-residential space (jobs) to help balance jobs and housing in the community.
- i. As of the Effective Date, the anticipated number of housing units is approximately 1,100 residential units, with the Parties acknowledging that additional housing may be desirable consistent with the terms of this Agreement. The final number of residential units within the Development Zone will be guided by transportation performance and other site constraints.
 - ii. No less than 150 residential units will be constructed prior to the construction of non-residential Buildings, except as exempted below. Exempted uses include:
 - 1. A public safety facility;
 - 2. Accessory Uses limited to those neighborhood uses which will serve the 150 residential units provided that the units and the space for such uses are scheduled for contemporaneous construction;
 - 3. Replacement or reconstruction of existing facilities existing on the Property at the time of annexation; and
 - 4. Parks and Recreation Uses.
 - iii. To establish residential units as the predominant use of the Property over non-residential uses and to contribute positively to

the balance of jobs and housing in the community, a mix of uses will be phased according to a ratio of two square feet of enclosed residential floor area to one square foot of enclosed non-residential floor area. As a disincentive to building large dwelling units, residential units larger than 2,000 square feet will only receive a credit of 2,000 square feet. Residential and non-residential units may be constructed concurrently, consistent with this formula. After the first 150 units have been constructed the University or Owner may construct and occupy non-residential Buildings, notwithstanding the two to one ratio described in this Section, provided that the University or Owner commences construction of additional residential floor area necessary to maintain the two to one ratio within two years after the construction of the non-residential Buildings.

- iv. Limitation on non-residential Buildings. The cumulative floor area of all non-residential Buildings on the entirety of the Remaining Land Interest will not exceed 750,000 square feet, regardless of ownership or subdivision.
- j. Housing for University needs. Housing on the site will meet the needs of the University faculty, staff and non-freshmen students in order to address the fact that Boulder housing is currently unaffordable to faculty, staff and students. Providing housing for the University faculty, staff and non-freshmen students will contribute positively to the community's housing affordability goals and aid the University in its recruitment, retention, and equity goals. Housing should be mutually beneficial to the community and University and integrated with needs of the community rather than built as isolated enclaves.
- k. Affordable Housing. As of the Effective Date of this Agreement, the University has been engaged in discussions for an arrangement with the city's housing authority to continue the University's mission to provide much-needed housing. The goal of this arrangement will be to serve low- to moderate-income levels for the broader Boulder community.
 - i. Prior to connecting to the City's water or wastewater systems, the University will convey approximately five acres of the Development Zone to a University Affiliate to partner with the City's housing authority for the development of permanent, deed-restricted affordable housing. While the intent of any potential partnership will be to pursue low- to moderate-income housing, the developer will maintain flexibility on targeted area median income levels based on then-current Boulder needs at the time of development, with priority consideration for the University's community members.

- ii. Based on the acreage, the University and the developer expect approximately 100-110 units will be available to the community through this arrangement. The University affiliate will provide the land through a long-term ground lease and the opportunity to develop within the Development Zone consistent with the University's desire to help the City meet its affordable housing goals.
- iii. Due to the requirements set forth in Section 21.l. below, the requirement of the University to dedicate five acres to affordable housing will not Transfer to a subsequent Owner.
- l. Affordable Housing Requirement upon Transfer. If the University Transfers the Development Zone, or any portion thereof to a subsequent Owner, the Transferred property will be subject to a requirement that 45 percent of any new dwelling units be permanently affordable. Except for the percent of units required to be affordable, all other aspects of the affordable housing will be as required by 9-13, "Inclusionary Housing," B.R.C. 1981, or any successor ordinance. This percentage may be adjusted by mutual written agreement between the City Manager and Owner so long as the community benefit is equivalent to 45 percent of the residential development.
- m. Design Goals. Conceptual Design and Development Goals are shown as **Exhibit D**, attached hereto and incorporated herein by this reference. The University will incorporate the Conceptual Design and Development Goals (or similar goals), which include the University's standard goals for environmental conservation, into the CU Boulder South Master Plan and other plans relating to the site, including but not limited to future design guidelines.

21. Flood Control Zone. The following terms, standards and conditions will apply to that portion of the Property designated as the Flood Control Zone. The City has determined that the site will provide adequate areas for construction, maintenance, and operation of city flood control dams, Appurtenances, and associated flood storage including freeboard to reduce flood risks. The Flood Control Zone will also provide opportunities for passive and active recreation activities, or other uses compatible with the floodwater mitigation system and where possible, conserve and/or restore areas within the flood mitigation facilities with high ecological value and provide opportunities to minimize or mitigate impacts of the flood control project on habitat with high ecological values.

- a. Review of Engineering Details. The City will provide the University with digital copies of construction plans at the completion of 60 percent design of the preliminary design phase. The City will provide a period of 60 days for the University to review and provide comments on the Project. The City will consider the input in its refinement of engineering plans and respond in writing providing a rationale for material comments unable to be addressed.

- b. Permitting. The City will be responsible for all federal, state, and other governmental approvals for the Flood Mitigation Project, including approvals required for removal of the existing levee system and will otherwise design and construct the Project improvements in accordance with applicable regulations and law.
- c. Drainage in flood detention areas. The City will design the Project to ensure that flood detention areas will meet the following standards:
 - i. The detention area will be designed to meet applicable state water rights drain time requirements.
 - ii. Ponding will not occur during non-flooding periods.
 - iii. The detention area adequately drains following a flood event.
- d. Increases in Floodplain. The City will not increase the 100- or 500-year floodplain limits onto the Development Zone without prior approval from the University, which approval may be withheld in the University's sole discretion.
- e. Tennis Courts and Warehouse Building. Based on current Project design and plans, the existing tennis courts and warehouse building will be impacted by the Project. The City will demolish these facilities as part of the Flood Mitigation Project and will give the University written notice 90 days prior to the date that the City commences such demolition. Prior to demolition, the University will remove the contents of the facilities. Any items left in the facilities will be considered abandoned and the University agrees that such items may be removed or destroyed.
- f. Site Access. The City will reestablish access along South Loop Drive at a width of 80 feet. The reestablished road will follow an alignment that is subject to the University's prior written approval and be paved to approximately 24 feet.
- g. Parks and Recreation Uses in the Flood Control Zone. The following terms, standards and conditions will apply to recreation facilities located in the Flood Control Zone.
 - i. Parks and Recreation Uses in the Flood Control Zone. Any Parks and Recreation Uses proposed in the Flood Control Zone of the Project require the City's review and approval to ensure they do not interfere with the functionality of the Project. The areas of the Flood Control Zone in which Parks and Recreation Uses may be constructed, subject to City review, are shown as **Exhibit I**, attached hereto and incorporated herein by this reference.
 - ii. Construction. The University will be responsible for the design and construction of the recreational facilities. The University will coordinate the design of the recreation fields with the design of the drainage plan for the Flood Control Zone with the City. Use of City-owned land for recreational facilities will be contingent upon

- a license agreement executed by the Parties which addresses liability and community access.
- iii. Running Track. The Parties agree to jointly consider a formal running track with public access during future planning of the Property.
- iv. Dog Park. The Parties agree to jointly consider a multi-acre public dog park on the Property.
- h. Shared recreation facilities. The intent of the Parties is that shared recreation facilities, such as a running track, dog park and other recreation facility will be constructed and available to the public. The University agrees to prioritize consideration of construction of shared facilities when developing its master plan for the property. The Parties agree to jointly determine the appropriate uses of any shared parks and recreation facilities. Design standards for future park amenities will be mutually agreeable to the Parties. The University will consider incorporating City of Boulder Parks and Recreation Design Standards.

22. Open Space Zone. The following terms, standards and conditions will apply to that portion of the Property designated as the Open Space Zone.

- a. Mitigation. The City and University are each required to minimize or mitigate their respective impacts of development in order to receive federal permits allowing, respectively, the City's Flood Mitigation Project and the University's development to occur. Related to any University development that displaces wetlands within the Remaining Land Interest, the Parties may elect to pursue joint mitigation work and execute an IGA to that effect. If the Parties so decide, the City will construct any improvements associated with an approved mitigation plan and the University will pay for the actual cost of mitigation that will fulfill the University's local, state and federal permit obligations. Such an agreement will be optional by both Parties and dependent on operational limitations and business needs.
- b. Levee. The City may, at its expense, remove the existing levee system, an appurtenance of the land to be conveyed to the City, and will be responsible for necessary permitting and other requirements associated therewith.
- c. Open Space Trail Connections. The City will coordinate with the University on the development of any new trail, or the designation or abandonment of any existing roads and trails, on land conveyed to the City. Any trail connection, construction, abandonment, use and maintenance will be at the City's sole discretion. No gates, trail connections or other pedestrian or vehicular access points (formal or informal) will be allowed from the Remaining Land Interest onto the City's Open Space without prior approval by the City and only in

accordance with the Open Space and Mountain Parks Department's policies, processes, and plans, as amended. Within 10 years following the Effective Date of the Annexation Ordinance, the City will undertake a planning process to determine future uses within the Open Space Zone that are within City ownership, including but not limited to a consideration of future public access.

- d. Uses. The Open Space Zone will be maintained, preserved and used only in a manner consistent with the Open Space purposes identified for Open Space land in Section 176 of the Charter of the City of Boulder.

SECTION V - TRANSPORTATION

23. Access, Transportation, and Mobility – Generally. The intent of this Agreement is to ensure that the transportation needs generated by future development on the Property will not unduly adversely impact the transportation networks that serve the Property and surrounding area. Adverse impacts to local and regional networks will be minimized or mitigated through implementation of performance-based standards. The University has completed planning and transportation analyses to inform performance-based standards including, but not limited to, parking ratios, Trip Caps (as defined herein below), transit use, pedestrian and trail connections, and access to transit passes. The access, transportation, and mobility requirements of this Agreement are intended to:

- a. Continue and extend the ongoing collaboration between the Parties in other areas within the City of Boulder (such as the 30th and Colorado underpass project) to manage the off-site transportation impacts of future development on the Property by mitigating directly or collaborating and cost sharing with the City to mitigate material impacts on the City's transportation system.
- b. Ensure that future transportation performance of the Property is consistent with the University's Transportation Master Plan and generally consistent with the goals of the City's Transportation Master Plan.
- c. Inform University efforts to encourage daily transportation habits of future residents and employees of and visitors of the Property that are consistent with other CU Boulder campus locations.

24. Access. The University or Owner will provide vehicular access to the Property subject to the following requirements:

- a. Primary access to the Property will be Table Mesa Drive via South Loop Drive and a new roadway and access point to South Broadway (State Highway 93).
- b. Secondary access may be Table Mesa Drive via Tantra Drive. Access via Tantra Drive will be controlled through a physical method implemented at the sole discretion of the University and utilized for emergency access, maintenance vehicles, or by the University's transit. For any secondary

access via Tantra Drive, the University will prioritize the use of electric-powered buses.

- c. The University or Owner will be responsible for obtaining necessary permits, design, right-of-way acquisition and construction necessary to establish vehicular access to the Property, including, but not limited to, applicable access permits from the City and Colorado Department of Transportation (“CDOT”) for new or improved access to City streets and state highways and the construction of all necessary road improvements and traffic control infrastructure required by the City and CDOT (e.g., stop sign, acceleration/deceleration lanes, traffic signal). The University will be responsible for the cost of installing a new traffic signal on State Highway 93 at the new access point should the intersection meet the MUTCD warrants for signalization. For clarity, the University cannot install a traffic signal without the intersection meeting the requirements of CDOT for a signal; the installation of a signal can only proceed at the sole and absolute discretion of CDOT. The Trip Cap for each point of access, as established in this Agreement, will not change because of the University’s or Owner’s inability to obtain access permits.
- d. In order to protect the safety of residents and guests, the University or Owner will employ physical and technological measures, such as radio-frequency identification (RFID)-activated gates, to prevent use of the roadways of the Property as a Roadway Bypass (as herein defined below) similar to how the University manages traffic at other campus locations. **“Roadway Bypass”** means an uninterrupted roadway on the Property between State Highway 93 and State Highway 157 (Foothills Parkway), the design of which would incentivize its use as a “shortcut” between State Highway 93 and State Highway 157.

25. Phasing. The University will develop an initial phasing plan as part of a CU Boulder South Master Plan. The phasing plan will be consistent with this Agreement. The University may modify the phasing plan in the future in a manner consistent with the development goals in this Agreement and will notify the City in writing of such changes prior to carrying out any work based on the modified phasing plan. All on-site access improvements (roads, trails, multi-modal hub) will be built, as applicable, at a level sufficient to accommodate, support, and serve each development phase. The University expects to first develop the northern portion of the Property with primary access from Table Mesa Drive and secondary access from Tantra Drive. A later development phase will be on the southern portion of the Property and may include a new access point from State Highway 93.

26. Trip Cap Program. The University or Owner will implement a Trip Cap program that establishes a maximum number of daily automobile Trips to and from the Property (the **“Trip Cap”**) as follows:

- a. South Loop Drive: No more than 5,550 daily Trips each day.

- b. State Highway 93: No more than 750 daily Trips each day.
- c. A Trip Cap for Tantra Drive is not established because it is reserved for transit, emergency and maintenance vehicle access.
- d. Trips via public transit will not count towards the Trip Cap limits. Public transit includes University, City or regional transit vehicles.

27. Trip Cap Monitoring. Traffic counts and determination of traffic volume will occur as described in this Agreement consisting of annual monitoring to gauge compliance and to understand the impacts of development. The University or Owner will consider the accuracy of available methods of monitoring traffic counts and will consider implementing methods that track real-time vehicle traffic.

- a. Recognizing that the initial phases of development will not approach the Trip Cap, the University or Owner will commence monitoring as follows:
 - i. A minimum of one count prior to commencing development phases of residential or Mixed-Use development.
 - ii. Annual monitoring commences following construction and occupancy of 900,000 square feet of floor area of development.
- b. The University or Owner will be responsible for annually monitoring daily Trips at times that coincide with the University's academic calendar. All monitoring periods will be conducted during the academic year and will not include breaks or end-of-quarter finals, or other events that otherwise influence normal traffic patterns. Monitoring periods will consist of at least three weekday counts taken over a two-week period. No more than one monitoring period will be conducted annually.
- c. Prior to occupancy of 900,000 square feet of floor area of development, a monitoring period will be conducted between phases of development to verify compliance with Trip Cap requirements prior to proceeding with the following phase of development. Once 900,000 square feet of floor area is developed, one monitoring period will be conducted annually.
- d. Measurement points will include each vehicular access point.
- e. No later than 60 days following each monitoring period, the University or Owner will provide a written report at the conclusion of each monitoring period that, at a minimum, includes the following:
 - i. Raw traffic count data;
 - ii. A summary of any anomalies in the data or Trip exemptions permitted under this Agreement and as a result, any necessary adjustments made to the final Trip counts;
 - iii. Any Special Event (as defined below) days that have occurred since the previous reporting period, with a brief description of the event; and
 - iv. Transportation Demand Management Monitoring, including but not limited to daily Peak Hour vehicle Trips, Drive Alone Rate; and Vehicle Trip Rate.

- f. The costs of all traffic counts conducted for determination of compliance with this Agreement will be paid for by the University or Owner and be performed by an independent consultant in consultation with the City.

28. Special Event Days/Outside Programming. The City recognizes that Special Events (as defined herein below), like visits from political candidates and small-scale sporting events, may occasionally exceed the Trip Caps. As such, the University may designate 12 Special Event days annually for the Property, whereas the traffic associated with such events will not count against the Trip Cap. No later than March 31 of each calendar year, the University will submit to the City in writing the list of exempt Special Events for the preceding calendar year. Traffic counts for Special Events not so designated by the University will count against the Trip Cap. The University will be responsible for security and traffic control for such events. A **“Special Event”** is defined as any University or community related outdoor gathering on the Remaining Land Interest of at least 25 individuals assembled with a common purpose for a period of one hour or longer. Events beyond control of the University transit such as the shared use of recreational fields with groups unaffiliated with the University or municipal groups will not count against the Trip Cap or count against Special Event days.

29. Compliance. The following actions will be taken if the Trips to the Property exceed the Trip Cap within a monitoring period:

- a. The University or Owner will identify and communicate to the City additional Transportation Demand Management (as defined herein below) strategies and/or infrastructure investments to lower the number of Trips to within the allowable threshold within 90 days from the date of delivery of a written report showing the Trip Cap has been exceeded.
- b. The University or Owner will implement the strategies and programs to reduce Trips to the Property within 180 days from the date of completion of the monitoring period (the **“Trip Cap Cure Period”**).
- c. Further phases of development not yet underway will be placed on hold until a minimum of two monitoring reports indicate compliance with this Agreement.
- d. After a determination that the Trip Cap has been exceeded, monitoring reports will be provided each quarter following the Trip Cap Cure Period until a minimum of two consecutive reports indicate that Trips have been reduced below the Trip Cap. The University or Owner will revert to annual monitoring following two consecutive reports indicating compliance with this Agreement.
- e. The University or Owner will take the following action if four consecutive quarterly reports indicate non-compliance with this Agreement:
 - i. The University or Owner will budget and reinvest funding into its transportation programs for the purpose of further reducing Trips to and from the Property. The University or Owner will provide the City with information in sufficient detail to demonstrate how

the funds are invested and consider feedback from the City on expenditure. The University or Owner will consider utilizing the funds to lower the amount of funding provided by the City for underpass construction. For example, the University may use funds assessed due to non-compliance to fund an underpass on a 49/51 cost share basis instead of 50/50.

- ii. The amount of funding is calculated as an amount not to exceed the cost of a regional fare charged by the Regional Transportation District (“**RTD**”), per each Trip over the Trip Cap, applied daily (the “**Trip Cap Fee**”). If the daily fare is no longer offered by RTD, the amount of funding will be the last daily fare published and charged by RTD, increased by the percentage change above the prior year, if any, in the Denver-Aurora-Lakewood U.S. Bureau of Labor and Statistics Consumer Price All Items Index or if such index is no longer available, such successor index or any other index as is reasonably agreed upon by the Parties. However, in no event will the Trip Cap Fee (a) be less than \$5.00 as increased by the percentage change above the prior year, if any, in the Denver-Aurora-Lakewood U.S. Bureau of Labor and Statistics Consumer Price All Items Index or if such index is no longer available, such successor index or any other index as is reasonably agreed upon by the Parties, or (b) exceed 103 percent of the prior year’s Trip Cap Fee.

30. Parking. The University will provide parking areas that meet the following requirements:

- a. Maximum parking for residential and non-residential development will be calculated at a ratio of one space for each Attached Dwelling Unit and one space for each 600 square feet of non-residential floor area.
- b. If tax credit financing for affordable units requires the provision of off-street parking with the affordable unit, then the parking space required for tax credit financing will be exempt from the parking cap.
- c. Detached Dwelling Units and Townhouses will provide parking within the respective premises and will not count against the maximum number of parking spaces.
- d. Residential parking allocated to a specific unit will be determined by residential type, at the sole discretion of the University, and be located off of streets to the maximum extent practical. Residential parking will include reasonable space for vehicles needed by residents for their employment or entrepreneurial activities. Such parking areas will not count against the parking cap.

- e. All parking areas will include the appropriate federally mandated spaces for accessibility and separation of pedestrian and cyclist movements from vehicular movements.
- f. Parking areas will be designed to incorporate measures to provide reasonable parking for ride hailing, transit vehicles, repair vehicles, landscaping vehicles, and domestic service vehicles. Such parking areas will not count against the parking cap.
- g. Short-term bicycle parking is intended to offer a convenient and accessible area to park bicycles for customers and other visitors, and will be located on a public access level, within 50 feet of the main Building entrances and outside of a Building. Long-term bicycle parking will offer a secure and weather-protected place to park bicycles for employees, residents, commuters and other visitors who generally stay at a site for several hours. Long-term bicycle parking will be secured by a locked or monitored area or be visible by employees at work, located within 300 feet of the Building it serves, provide adequate lighting and adequate clearance around the rack to prevent conflicts with pedestrians or parked cars, and, if located in a parking garage, will be clearly marked as a bicycle parking space and separated from auto parking. Off-street bicycle parking spaces will be provided for all residential units and other facilities and meet the following minimum requirements:
 - i. Dwelling units without a private garage. Two spaces per unit, with 75 percent dedicated to long-term parking and 25 percent dedicated to short-term parking.
 - ii. Non-residential Buildings. One space per 1,500 square feet of floor area, with 50 percent dedicated to long-term parking and 50 percent dedicated to short-term parking.
 - iii. Accessory Uses. One space per 750 square feet of floor area, minimum of four.

31. Transportation Demand Management (“TDM”).

- a. The University will implement a transportation system that supports multi-modal mobility and transit connections between the Property and other campus locations to manage employee and resident access and mobility and to materially reduce car Trips between the Property and main campus.
- b. Alternatives to automobiles will be promoted by incorporating site design techniques, land use patterns and supporting infrastructure that encourages walking, biking, and other alternatives to the single-occupant vehicle.
- c. At a minimum, the University agrees to implement the following additional TDM measures:
 - i. Micro mobility program memberships.
 - ii. Carpool opportunity and a vanpool subsidy program.
 - iii. Incorporate neighborhood services, office and retail, into the development to the extent the market supports such services.

- iv. Transportation Network Company loading zones.
- v. Parking Management. The University agrees to manage the parking associated with the Development Zone in the following manner:
 - 1. Parking spaces will be shared by different uses to reduce the amount of built parking infrastructure.
 - 2. Any parking that is provided for Attached Dwelling Units will be charged at prices separate from the rent for the unit, except as prohibited by tax credit financing for affordable units. The University will charge market rates or rates that are similar to parking rates set at the main CU Boulder Campus.
 - 3. The University will actively evaluate, monitor, and enforce its parking policies.
 - 4. Except for Detached Dwelling Units and Townhouses, provided that parking for such units is included in a garage accompanying the unit, the University will charge for all parking in the Development Zone, including, without limitation, on-street or off-street parking areas, unless prohibited by low-income tax credit financing for affordable units.

32. Transportation Options Access. The University will establish and operate transit/shuttle service to its campuses and facilities, other commercial destinations (as determined by the University), transit routes and connection points to regional transit.

- a. Bike and pedestrian access to local and regional transit and the MUPS system will be improved.
- b. Multi-modal facilities will have direct connection to internal and external mobility options.

33. Mobility Hub. The University will construct a multi-modal mobility hub and implement transit connections between the Property and other University campus locations to manage employee and resident access and mobility. The initial hub improvements will be constructed prior to completion of the first non-residential Building, unless an alternative date is requested by the University and approved by the City. The hub will be expanded over time to adequately meet the demand generated by development of the Property. The multi-modal mobility hub will be designed, constructed, and operated as follows:

- a. Integrate transit, pedestrian and bicycle facilities, car/ridesharing, and a context-appropriate parking supply compliant with applicable accessibility standards and regulations.
- b. Be designed at size and with services that are proportionate to development.
- c. Primarily support residents, visitors, and employees of the Property.

- d. Implement first and last mile connections to the hub, consistent with the University's TDM program.
- e. At a minimum, the hub will include the following improvements and services: frequent transit service and bus stop infrastructure; clearly identifiable and safe bicycle and pedestrian connections; bikeshare or micro-mobility services; managed curb for pick-up and drop-off; real-time information and a wayfinding kiosk; and, charging connections for mobility devices.
- f. The University will consider including vending services, retail and/or food service options to the hub.

34. On-site Improvements. Onsite improvements and the timing of delivery of the same will be determined within the micro-master planning of the Property and include trails and MUPS connections to public rights-of-way.

- a. The University will design and construct the internal transportation improvements including without limitation streets, curb, gutter, sidewalks, MUP's, trails and associated multi-modal features that, at a minimum, include the following:
 - i. Construct a 12-foot-wide Multi-Use path with two-foot-wide shoulders on each side of the path along the west boundary of the site on an alignment (and associated connections to local streets) consistent with what is in the City of Boulder Transportation Master Plan from State Highway 93 to Table Mesa Drive.
 - ii. When reconstructed by the University, South Loop Drive will include a detached Multi-Use path and buffered bicycle lanes.
- b. The University will maintain and allow public access to all trails and MUPS constructed on the Property.
- c. The University will provide the City the opportunity, pursuant to Section VI below to review and provide comments on the design of transportation improvements and coordinate the design and construction of on-site multi-modal improvements.

35. Off-Site Improvements. The University will construct the public transportation improvements necessary to serve the Property, including, but not limited to, engineering design, right-of-way acquisition, construction and obtaining required permits. The City will review and approve the construction drawings. Public improvements will be constructed as needed by development on the site. For example, when the northern portion of the Property is developed, the University will construct the improvements needed for Table Mesa Drive. Only after the University begins development on the southern portion of the site will the University construct an access point to State Highway 93. The public improvements the University is required to construct are:

- a. Prior to the date that the University begins development of Buildings south of the phasing line shown on **Exhibit C** (note that the University

intends to develop the Development Tract from north to south), the University will, subject to CDOT and City approval of design, construct a new access point onto State Highway 93 meeting the standards contained in the State Highway Access Code. The State Highway Access Permit Application for the new access point will include a revised traffic study with updated existing and projected traffic data. The City's Vision Zero Action Plan, 2019-21 and subsequent similar reports, will inform the University's future design and construction of the State Highway 93 access point and its related pedestrian/bicycle crossing to minimize or mitigate the risk of serious injury or death to pedestrians and bicyclists from motorists turning left onto southbound State Highway 93.

- b. Enter into an agreement with the City for a 50/50 cost sharing arrangement for the evaluation, and provided that, in the determination of the Parties, the evaluation indicates financial and technical feasibility of such a project, of the cost for a MUP underpass under Table Mesa connecting the RTD Park-n-Ride lot to Thunderbird Drive.
- c. Reconstruction of the existing Table Mesa Drive / South Loop Drive / Highway 36 off-ramp intersection consistent with the design recommendations included in the CU Boulder South Traffic Impact Study dated May 27, 2021 (figures 5, 11 and 12), and meeting the standards contained in the State Highway Access Code and the City's Design and Construction Standards unless administratively amended by the City. The Parties may mutually agree to alternative intersection designs. The State Highway Access Permit Application for the land use changes on the Property will include a revised traffic study with updated existing and projected traffic data.
- d. The University will pay a transportation fee to the City (i) prior to occupancy of any new residential or non-residential Buildings, and (ii) whenever existing developed Property is expanded, for any subsequent net increase in floor area or number of dwelling units, as applicable. In a manner that is timely to when the fee is assessed, the Parties will discuss how the transportation fee will be allocated. The Parties will jointly agree on allocating 50 percent of the fee to specific projects which will provide a direct benefit to the Property with the remaining 50 percent dedicated to network-wide impacts. The Parties will use good faith efforts to agree on reasonable uses for the 50 percent of the transportation fee that will be used for projects that provide a direct benefit to the Property. The transportation fee will be calculated based on the following rates (as adjusted annually for inflation as provided herein below):
 - i. \$1.46 for new or additional square foot of floor area of non-residential development.
 - ii. \$2,307.08 for each new Detached Dwelling Unit.
 - iii. \$1,673.83 for each new Attached Dwelling Unit or mobile home.

- e. The transportation fee rates set forth in Section 35.d. above will increase annually by the percentage change above the prior year, if any, in the Denver-Aurora-Lakewood U.S. Bureau of Labor and Statistics Consumer Price All Items Index or if such index is no longer available, such successor index or any other index as is reasonably agreed upon by the Parties; provided, however, that in no event will such adjusted annual rates exceed 103 percent of the prior year's rates.

SECTION VI - REVIEW OF PLANS

36. CU Boulder South Master Plan. The University will provide the City opportunities to review the CU Boulder South Master Plan. Prior to any University development in the Development Zone, the University will submit a draft CUBSMP to the City for its review and comment. The City will review the draft CUBSMP and provide written comments to the University within 90 days following the University's submission of the CUBSMP.

37. Conceptual Design Reviews. For each active phase of development on the site, but prior to Design Review Board review of such plans, the University will submit 90 percent Conceptual Design plans to the City for development on the Property (the "**Concept Plans**"). The City will have a period of 60 days to review and provide comments following the University's delivery of the Concept Plans. The intent of the concept design phase is to apply the goals, objectives, priorities of the CUBSMP, observations of the specific project phase site characteristics, and the program summary for the applicable phase of development.

38. Conceptual Plan Requirements. Plan submittal requirements for conceptual building and site development review are the same as those required for consideration of the concept design phase by the University of Colorado Design Review Board as may be updated from time to time.

39. City Comments. The City's comments will pertain to two categories:
- a. Compliance review to verify that the proposed development activity complies with the terms of this Agreement.
 - b. Discretionary comments intended to further the City's goals and policies. The University will consider the City's discretionary comments and may recommend associated conceptual plan amendments to the Design Review Board. The University will respond in writing providing a rationale for material City comments unable to be addressed.

40. Final Plans. Upon completion of any improvements on the Property, the University will provide the City with the final as-built construction documents in portable document format (PDF) or in other such formats mutually agreeable to the Parties.

41. Flood Mitigation Project.

- a. Development Phasing. The City is in the process of designing the Project for South Boulder Creek. Until the City obtains the approvals for the Project listed in Section 41.b. below, the only facilities constructed by the University will be for Parks and Recreation Uses, temporary access roads, parking, and renewable/alternative energy systems on the Property.
- b. Disconnection from the City. Prior to construction, the Project will require approvals from: the U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service, Federal Emergency Management Agency, Colorado Department of Transportation, Colorado State Engineer's Office and City of Boulder. Necessary permits include: USACE/EPA 404 Individual Permit (this include USFWS Consultation), FEMA CLOMR, CDOT Right of Way Permit and Landowner Agreement, Colorado Dam Safety Engineer Design Approval, and city of Boulder wetland and floodplain permits; which the City will use reasonable efforts to obtain. If the City does not receive such approvals by the end of the De-Annexation Period, the City, in its discretion, may require that the University apply and otherwise commence the process to disconnect the Property from the City using the process described in § 31-12-501, C.R.S. *et seq.* Upon written request by the City to commence the process to disconnect, the University will take action within 30 days to commence and complete the legislative process to disconnect. If so requested by the University the City will not charge the University for any cost associated with disconnection from the City. For the purposes of this annexation, the City adopts the disconnection procedures § 31-12-501, C.R.S. *et seq.* which will be the sole and exclusive procedure for disconnection, if the same is requested.
- c. Written Notice to Proceed. After the earlier of (i) the City has received all the required approvals described above, or (ii) after the De-Annexation Period, at the written request of the City, the University will convey to the City all the Property so agreed to by the Parties.

42. No Right or Remedy of Disconnection. No right or remedy of disconnection of the Property from the City will accrue, other than as provided for in this Agreement and applicable state laws.

SECTION VII – RIGHT OF FIRST OFFER

43. Right of First Offer. If the University determines to sell the Remaining Land Interest or a portion thereof (the “**ROFO Parcel**”), whether after receiving an offer from a third-party or of its own volition, the University will first provide the City with an option to purchase the ROFO Parcel (the “**ROFO Option**”) as set forth below.

- a. ROFO Notice and Option Notice. Prior to entering negotiations with any third party, the University will deliver written notice of the ROFO Option

no later than the next occurring April 1st (the “**ROFO Notice**”). Upon receipt of such notice, the City will have until June 1st of the same calendar year as the ROFO Notice (the “**Option Year**”) to notify the University in writing that it wishes to exercise its option to purchase the ROFO Parcel (the “**Option Notice**”).

- b. ROFO Negotiation Period. Provided that the City has duly exercised the ROFO Option by timely delivery of the Option Notice, the Parties will have until August 1st of the Option Year to negotiate and agree to terms of a contract for the City to purchase the ROFO Parcel.
- c. Option Not Exercised. If the City (i) fails to timely deliver the Option Notice, or (ii) declines to exercise the ROFO Option, then the City’s ROFO Option will be deemed withdrawn and will no longer apply to the applicable ROFO Parcel.
- d. Option Closing Deadline. If the closing of the City’s acquisition of the ROFO Parcel does not occur on or before January 31st of the calendar year immediately following the Option Year, then the City’s ROFO Option will be deemed withdrawn and will no longer apply to the applicable ROFO Parcel, unless otherwise agreed to by the Parties in writing.
- e. Failed Ballot Measure to acquire ROFO Parcel. If the acquisition of the ROFO Parcel appears as a ballot measure in a City of Boulder election, and the voters fail to approve the measure, then the City’s ROFO Option will be deemed withdrawn and will no longer apply to the applicable ROFO Parcel.
- f. Survival of City’s Exclusive Option. Notwithstanding the provisions of Sections 43.c., d., and e. above, if the 10-year term of the City’s Exclusive Option has not yet expired, then such Exclusive Option will still have the effect of prohibiting a sale to a third-party until its expiration.
- g. Right of First Offer Following Expiration of City’s Exclusive Option. After expiration of the City’s Exclusive Option, and provided that the City has not failed or declined to exercise its ROFO Option during the City’s Exclusive Option under Sections 43.c., d., or e. above with respect to the then-offered ROFO Parcel, the City will maintain the right of first offer for previously unoffered ROFO Parcels in accordance with this Section 43.
- h. Right of Second Refusal. Notwithstanding anything in this Section 43 to the contrary, from and after the expiration of the City’s Exclusive Option, the City will have a right of second refusal option provided that:
 - i. within the previous two years, the City has declined to exercise its ROFO Option on an applicable ROFO Parcel (for the purposes of this Section 43.h. such applicable parcel is referred to herein as the “**ROSR Parcel**”);

- ii. the University has reached an acceptable purchase price, terms, and conditions of a sale to a third-party intent on consummating a purchase of the ROSR Parcel; and
- iii. such third-party purchase price acceptable to the University is less than 90 percent (adjusted for increases in valuation of similar properties within the City of Boulder since the original ROFO Option) of the ROFO Option purchase price previously offered to the City, then, prior to executing a contract for sale to a third-party:
 - 1. the University will deliver written notice to the City offering the ROSR Parcel to the City at the same price and on similar terms and conditions as contained in the third-party offer (the “**ROSR Notice**”);
 - 2. the City will have 30 days from its receipt of the ROSR Notice to accept or reject said offer in writing. This time period will be extended to 45 days, if needed to be able to schedule an agenda item for city council in keeping with standard city scheduling and public notice requirements.
 - 3. if the City accepts the terms of the ROSR Notice, then, within 30 days, or as the Parties mutually agree with the provision of earnest money, the Parties will enter into a purchase and sale contract on the terms and conditions set forth in the ROFR Notice and the City will purchase the applicable ROFR Parcel on such terms and conditions; or
 - 4. if the City rejects the terms of the ROSR Notice, fails to timely respond to such notice, or, after having affirmatively responded to such notice, fails to timely enter into or close on a contract to acquire the ROSR Parcel, then the University’s obligations under this Section 43 will no longer apply to such parcel.

44. Determination of Fair Market Value. The Parties will determine the fair market value of the ROFO Parcel as set forth below:

- a. Sale of Raw Land Valuation. During the City’s Exclusive Option, provided that the ROFO Parcel is in the state of raw unimproved land, the purchase price for the ROFO Parcel will be determined in accordance with Section 7 above.
- b. Valuation of Improved Land or After Expiration of City’s Exclusive Option. If at the time of offering the ROFO Option, the City’s Exclusive Option has expired or the University has commenced constructing any infrastructure or vertical improvements on or to the ROFO Parcel, then the purchase price for the ROFO Parcel will be determined by the appraisal method set forth in this Section 44.b. The Parties will each select an appraiser. The selected appraisers will, within 45 days of being retained,

provide their respective opinions of the fair market value of the ROFO Parcel (“**Appraised Value**”). In their determinations of the Appraised Value, each appraiser will determine the fair market value of the ROFO Parcel based on customary appraisal practices and methods most applicable to the ROFO Parcel. If the two Appraised Values are within 10 percent of each other, the purchase price will be the average of the two Appraised Values. If the two Appraised Values are not within 10 percent of each other, the two selected appraisers will mutually agree upon a third appraiser. The third appraiser will determine an opinion of the Appraised Value. The purchase price will be the average of the three Appraised Values obtained pursuant to this Section.

SECTION VIII - MISCELLANEOUS PROVISIONS

45. Provision of Utility Service. Upon adoption of an ordinance by the City Council annexing the Property, the City is obligated to provide utilities and other municipal services on the same general terms and conditions as the rest of the municipality receives.

46. Timeline of Responsibilities at Key Milestones. The Parties have agreed on the timeline of responsibilities at key milestones shown in **Exhibit H**, attached hereto and incorporated herein by this reference.

47. No Encumbrances. The University agrees that between the time of signing this Agreement and the time when final legislative action on the annexation of the Property has occurred, the University will neither convey ownership nor further encumber the University’s Property, without the express approval from the City. Prior to the recording of this Agreement with the Boulder County Clerk and Recorder, the University agrees not to execute transactional documents encumbering the Property or otherwise affecting title to the Property without first notifying the City.

48. Original Instruments. Prior to the first reading of the annexation ordinance, and subject to Board of Regents approval, the University will provide an original of this Agreement signed by the University, along with any instruments required in this Agreement. The City agrees to hold such documents until after final legislative action on the annexation of this Property has occurred. Final legislative action by the City Council will constitute acceptance of such documents by the City. If the City does not annex the Property, all such documents will become null and void without further action and the City agrees to return all such documents to the University.

49. Waiver of Vested Rights. The University waives any vested property rights expressly superseded by annexation or this Agreement that may have arisen under Boulder County jurisdiction. This Agreement will replace any such rights that may have arisen under Boulder County jurisdiction.

50. Dedications. The University acknowledges that any dedications and public improvements required herein with this annexation are rationally related and reasonably proportionate to the impact of the development of the Remaining Land Interest as set forth in this Agreement.

51. Term and Future Interests. This Agreement and the covenants set forth herein will run with the land and be binding upon the University as set forth in this Agreement, the University's successors and assigns, Owners, and all persons who may hereafter acquire an interest in the Remaining Land Interest, or any part thereof. If any of the terms set forth in this Agreement are found to be void for violation of the rule against perpetuities or some other analogous provision, then such provisions will continue only for the period of the lives of current duly elected City Council members, their now living descendants, if any, and the survivor of them, plus 20 years and 364 days.

52. Historic Drainage. The University agrees to convey drainage from the Remaining Land Interest in a historic manner that does not materially and adversely affect abutting properties.

53. Right to Withdraw. The University retains the right to withdraw the petition for annexation and, as a consequence thereof, withdraw from this Agreement by providing written notice thereof to the City up until the time that final legislative action has been taken on the ordinance that will cause the Property to be annexed into the City. The final legislative action will be the vote of the City Council after the final reading of the annexation ordinance. The University's right to withdraw will terminate upon the City Council's final legislative action approving the annexation. If the University withdraws the petition in the manner described above, this Agreement will be null and void, and, thereafter, the Parties will have no further rights or obligations hereunder. The City agrees, within 30 days of a written request by the University after a withdrawal, to return all previously submitted fees (other than annexation application and review fees), application, conveyance deeds, leases, licenses and easement and/or rights of way dedication documents which the University submitted or entered into with the City pursuant to this Agreement.

54. Failure to Annex. This Agreement and any document executed pursuant hereto will be null and void and of no consequence if the Property is not annexed to the City.

55. Breach of Agreement. If either Party breaches or fails to perform any required action under or fails to pay any fee specified under this Agreement, each Party acknowledges that the other Party may take all reasonable actions to cure the breach, including but not limited to, the filing of an action for breach of contract or specific performance of the obligations described in this Agreement. The Parties agree that a failure to perform due to citizen petitions, citizen referendums, or litigation will not be considered a breach of this Agreement. In no event may either Party be entitled to claim or receive any form of damages, including without limitation compensatory, exemplary, punitive or economic, including lost profits.

56. Extension of the De-Annexation Period. The De-Annexation Period will automatically extend for up to two successive terms of one year in the absence of either Party giving notice of intent to not extend. Notice of the intent to not extend must be given at least 30 days prior to the end of the De-Annexation Period. This extension will apply to all references in this Agreement with a milestone or deadline based on the De-Annexation Period. The De-Annexation Period may be extended by mutual agreement of the Parties for five additional one-year terms (for a total period of 10 years) if the Parties are involved with litigation from third parties that prevent the Parties from satisfying the obligations of this Agreement. In no event will the De-Annexation Period extend beyond the 10th anniversary of the original Effective Date of the Annexation Ordinance (without regard to a suspension thereof or stay imposed thereon) for the Property and will automatically terminate upon such 10th anniversary.

57. Force Majeure. In the event either Party is unable to perform its obligations under the terms of this Agreement due to a Force Majeure Event (as defined herein below), such Party will not be liable for damages to the other for any damages resulting from such failure to perform or otherwise from such causes. A “**Force Majeure Event**” includes pandemics and epidemics (provided that a governmental authority having jurisdiction over the Property has issued an order that requires the cessation of work or activities related to a Party’s performance under this Agreement), lockouts, labor disputes, failures of power, acts of God, acts of public enemies, terrorism, riots, insurrections, civil commotion, inability to obtain labor or materials or reasonable substitutes for either, wildfire, citizen initiatives or referendum petitions, injunctions resulting from litigation, or similar cause, provided such similar cause is beyond the reasonable control of either the City or the University, as applicable; and further provided that the affected party must notify the other of the Force Majeure Event and exercise commercially reasonable efforts to attempt to overcome the impediment to performance, which performance will not be excused nor relief given unless the Party demonstrates that despite commercially reasonable efforts or that due to applicable law, performance remains impossible or unreasonably expensive.

58. Annexation Challenged by Referendum, Initiative or Judicially.

- a. If the annexation of the Property or any portion thereof is challenged or conditioned, by a referendum or initiative petition, the procedure required by the Charter and Colorado Revised Statutes, as applicable, will be followed. If a referendum or initiative petition results in the disconnection of the Property or any portion thereof from the City, then this Agreement will be void and the Parties relieved from all obligations hereunder. If not, the Parties will continue to be bound by this Agreement provided, however, that only this Agreement shall establish the binding requirements for annexation and development of the Property, and no additional requirements will be imposed on the University and this Agreement for annexation and development of the Property, through referendum or otherwise, nor does the University consent to any such additional requirements. In the event the annexation of the Property or any portion thereof is voided by a final action of any court and the Parties are able to cure the legal defect, the University may, in its discretion, again petition to annex the Property pursuant to the terms hereof or other terms to which the Parties agree.

- b. If any measure is approved by the voters of the City that seeks to impose additional requirements for annexation and development of the Property beyond those set forth in this Agreement, the University will have the option at any time by written notice to the City to void this Agreement and apply and otherwise commence the process to disconnect the Property from the City using the process described in § 31-12-501, C.R.S. et seq. Upon notice by the University that it is commencing such process, this Agreement will become void, and the City will cooperate diligently with the University to commence and complete the legislative process to disconnect. If so requested by the University, the City will not charge the University for any cost associated with disconnection from the City. As provided in Section 41(b) above, for the purposes of this annexation, the City adopts the disconnection procedures § 31-12-501, C.R.S. et seq. which will be the sole and exclusive procedure for disconnection, if the same is requested.

59. Entire Agreement; Amendments. The Parties understand and agree that the University is entering into this Agreement with the understanding that the provisions of this Agreement set forth all the requirements for annexation and development of CU Boulder South, and any additional requirements imposed on the University or on this Agreement, other than by mutual agreement of the Parties, will trigger the provisions of Section 58.b. above. The Parties reserve the right to amend this Agreement by written instrument approved and executed by both Parties. The consent of the City to such amendment may be approved by the City Council by motion. Notwithstanding the above, in no event will the Property remain annexed without this Agreement being the regulatory land use instrument controlling use and development of the Property.

60. Dispute Resolution. The Parties have entered into this Agreement with the understanding and expectation that they will continue to collaborate on issues related to annexation. The Parties will attempt to resolve any dispute arising out of or relating to this Agreement through negotiations between designees of the Parties, who have authority to settle the same. If the matter is not resolved by negotiation within 30 days of receipt of a written ‘invitation to negotiate,’ the Parties will attempt to resolve the dispute in good faith through an agreed Alternative Dispute Resolution (“ADR”) procedure, or in default of agreement, through an ADR procedure as recommended to the Parties by a mutually agreed upon mediator. Nothing in this clause will be construed as prohibiting a Party from applying to a court for interim injunctive relief.

61. Sovereign Status. Except as otherwise provided for in this Agreement, the University does not waive any state sovereignty right or privilege. Notwithstanding the above, where the University has agreed that provisions of the Boulder Revised Code apply to the Property, the University has waived the defense of sovereignty.

62. Future IGA for Construction Access. Prior to any development on the Property, with the potential for shared liability, the Parties will execute an IGA that addresses issues of mutual concern such as liability, access, and construction staging.

EXECUTED on the day and year first above written.

(Signatures appear on following pages)

UNIVERSITY:

By: _____

Printed Name: _____

**CITY OF BOULDER,
a Colorado home rule city**

By: _____
Nuria Rivera-Vandermyde,
City Manager

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney's Office

Date: _____

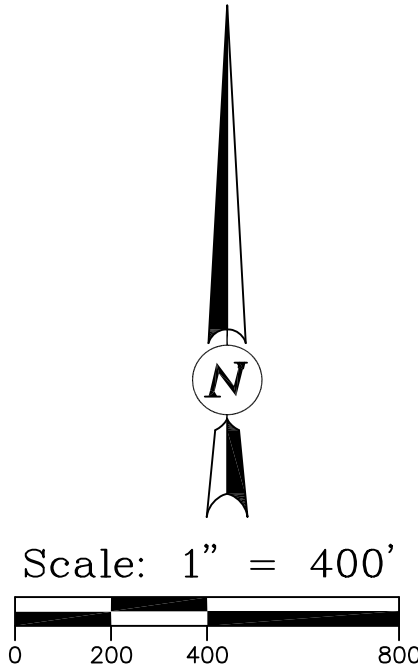
EXHIBITS

Exhibit A	Legal Description of Property and Annexation Map
Exhibit B	Zones of Consideration
Exhibit C	Use Transition Zone and Buffer Map
Exhibit D	Conceptual Design and Development Goals
Exhibit E	Outdoor Lighting
Exhibit F	Stream, Wetland and Water Body Requirements
Exhibit G	Noise
Exhibit H	Timeline of Responsibilities at Key Milestones
Exhibit I	Location of Parks and Recreation Uses in the Flood Control Zone

CU SOUTH

SHEET 2 OF 2

SOUTH BOULDER ROAD / TABLE MESA DRIVE




	SCOTT, COX & ASSOCIATES, INC. consulting engineers • surveyors 1530 55th Street • Boulder, Colorado 80303 (303) 444 - 3051																
Designed by <u>AJB</u> Drawn by <u>JAS</u> Checked by <u>AJB</u>	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 25%;">Date</td> <td style="width: 25%;">Scale</td> <td style="width: 25%;">Drawing no.</td> <td style="width: 25%;">Sheet</td> </tr> <tr> <td>07/13/21</td> <td>1" = 200'</td> <td>18492A-1</td> <td style="text-align: center; font-size: 2em;">2</td> </tr> <tr> <td>Revision</td> <td>Description</td> <td>Date</td> <td>Project no.</td> </tr> <tr> <td> </td> <td> </td> <td> </td> <td>18492A</td> </tr> </table>	Date	Scale	Drawing no.	Sheet	07/13/21	1" = 200'	18492A-1	2	Revision	Description	Date	Project no.				18492A
Date	Scale	Drawing no.	Sheet														
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Exhibit B: Zones of Consideration

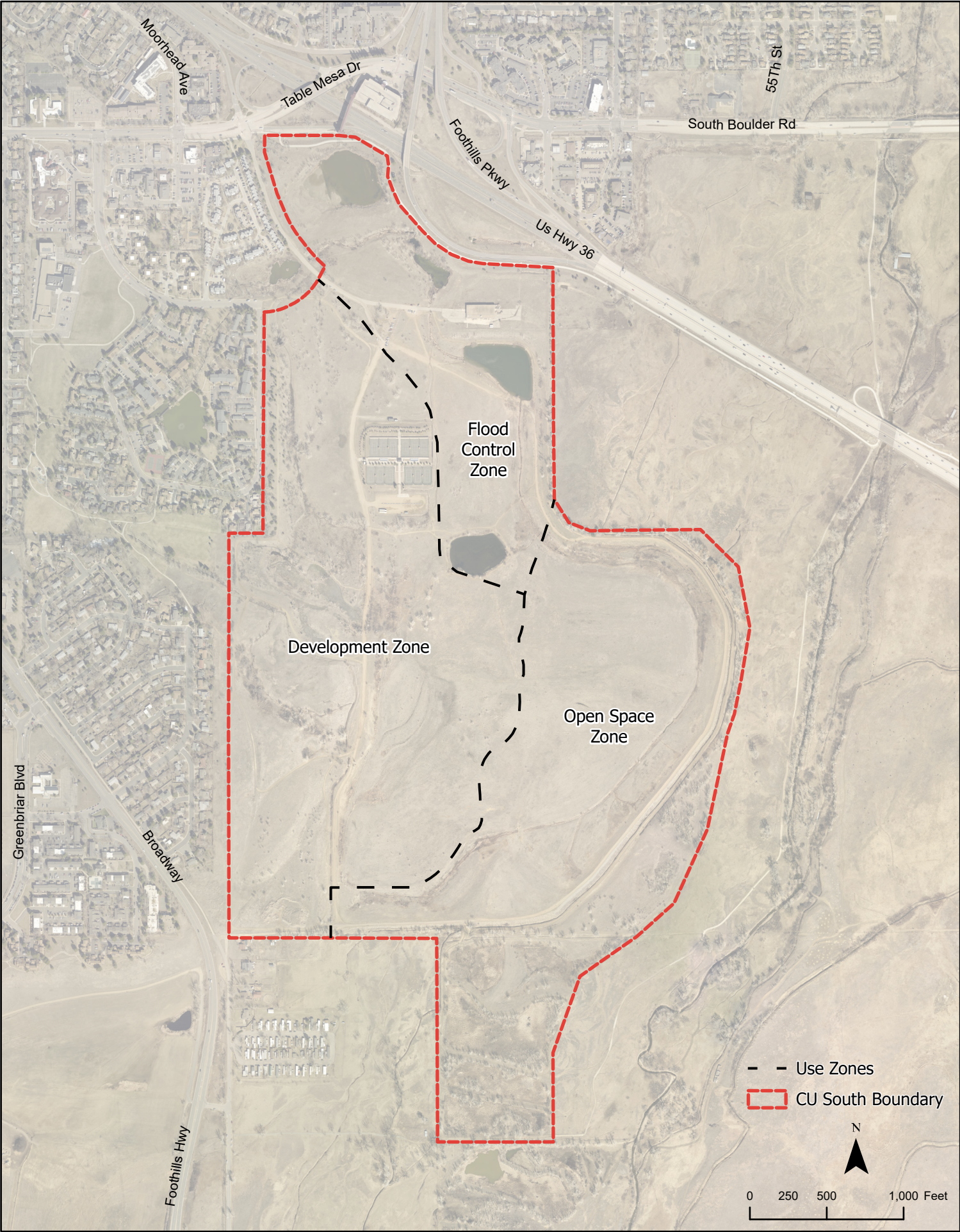


Exhibit C: Use Transition and Buffer Map

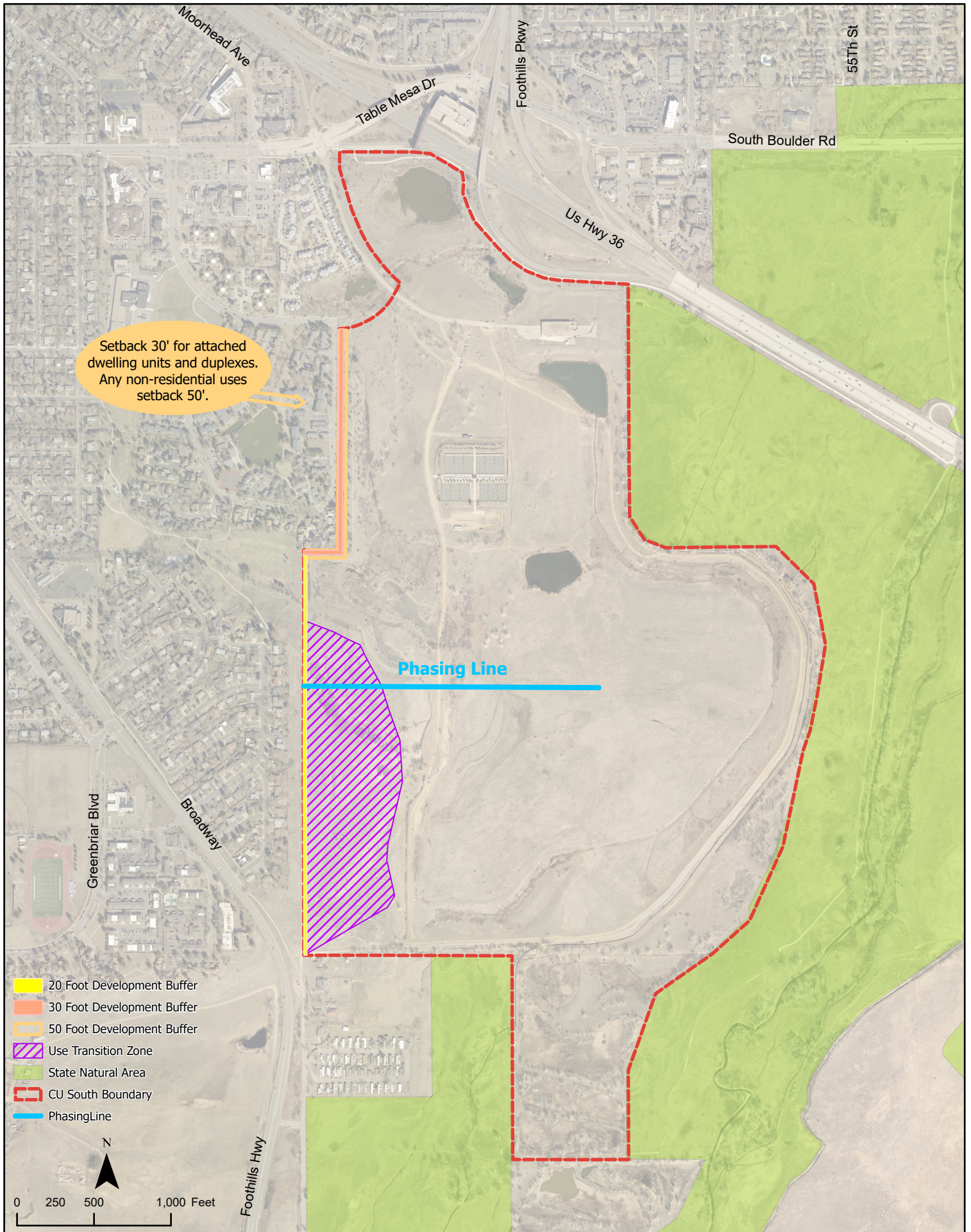


Exhibit D: Conceptual Design and Development Goals

A. PURPOSE AND INTENT

To offer a conceptual framework of future development goals for CU Boulder South. These goals are not “set in stone” as the binding obligations of the University with respect to design and development are memorialized in the Agreement. Rather, these goals are offered by the University to inform qualitative aspects and intent for future development on the Property.

B. CU BOULDER SOUTH GUIDING PRINCIPLES

The CU Boulder South - Guiding Principles (the “Guiding Principles”) appear in Chapter V (page 119) of the 2015 Major Update of the Boulder Valley Comprehensive Plan (the “BVCP”). The Guiding Principles begin with the following statement of intent:

“The Guiding Principles are intended to guide an intergovernmental agreement or multiple agreements between the City of Boulder and University of Colorado that will specify future uses, services, utilities, and planning on and for the Property (also referred to herein as, “CU Boulder South”).

C. DEVELOPMENT & DESIGN GOALS

Design Principles

1. Context and Compatibility

Acknowledge and incorporate into future planning and design the Property’s historical place within the City of Boulder as a destination for recreation and ensure compatibility with surrounding property by reflecting the character of adjacent neighborhoods with contextually appropriate land uses, setbacks, building scale, landscape, and traffic mitigation.

2. Place Making and Public Realm

Contemplate the Development Zone (the “Zone”) in its entirety as a collection of walkable neighborhoods with an integrated system of streets, trails, recreation amenities, and freely accessible, usable Green Space, collectively known as the public realm.

3. Quality Design

Architectural style and site planning on CU Boulder South will reflect the quality, continuity, and consistency of the broader Boulder community. Height and massing will relate to a

pedestrian scale with careful thought to the spaces between vertical improvements, such as the courtyards, terraces, parks and Green Spaces that knit the buildings together.

4. Compact Development

Employ compact development strategies that maximize Green Space, embody a hierarchy of experiences, and encourage mixed-use, pedestrian friendly and vibrant areas.

5. Ecology and Environment

Incorporate natural areas and restore or mitigate wetlands within the Development Zone. Collaborate with the City, including but not limited to Open Space and Mountain Parks, to mitigate Zone wetlands impacts in the Open Space Zone. Embrace current best methods and practices for similar developments related to environmental stewardship and ecological preservation.

6. Mobility and Connectivity

Transportation design shall minimize neighborhood traffic impacts by (i) planning for future transit options, including to and from other CU Boulder campuses, integrating multimodal systems throughout the site, and creating connections with existing (and potentially new) trails and paths at the Property boundaries and (ii) mixing uses serving residents and visitors (neighborhood-serving retail/office, recreational amenities) to minimize off-site trips, (iii) creating a multimodal hub on the Property, and (iv) incorporating TDM best practices to encourage alternative modes of transportation.

7. Sustainability

Plan the future of the Zone based on a holistic approach to sustainability which considers social and economic impacts, as well as those on natural systems and resources.

8. Feasibility, Flexibility, and Economic Viability

Develop an economically feasible plan using sound financial approaches and land use planning principles that can be phased over time and will maintain resilience to everchanging market conditions and the state of higher education to support the educational mission of the University while contributing positively to the community.

Uses

1. Residential

Housing will be the predominant use of the Development Zone, with a stated target of 1,100 residential units. The final unit count on the site will be guided by university needs and planning, market conditions at the time of planning for each phase, a transportation study, and other site attributes

2. Non-Residential

The site may include a mix of residential and non-residential facilities. Non-residential facilities may include, but is not limited to, academic, office, recreation, athletic, research and commercial uses.

Complementary neighborhood-serving retail and office uses will be contextually appropriate, incorporated into neighborhoods and generally centralized within walking distance to residential development on the site to support University TDM efforts, enliven the community, and promote an active community character.

Direct pedestrian linkages will be provided between residential and non-residential uses.

Site Planning

1. Overview

To attain a cohesive and uniform quality of development, site planning will consider the entire property and its context relative to surrounding land uses when planning new neighborhoods, structures, or recreational amenities.

The natural environment will be incorporated into the design in a manner that minimizes or mitigates impacts to natural systems. Connection to and integration with the natural environment will be realized through thoughtful site selection, building design, choice of building materials, and landscaping materials and design.

Building Height, massing, scale, orientation, architecture, and orientation will be compatible with the existing character of the surrounding area and, thoughtfully connected into adjacent neighborhoods and land uses.

2. Definition of “High Quality” and Building Materials

Building design shall maintain general consistency or compatibility in materials and detailing. “High Quality” Building design shall be design that takes into account some or all the following considerations: impact on local community and environment, accessibility, quality of views and

outlook, overall standards and durability of materials (including life-cycle maintenance considerations), alignment with campus sustainability principals, energy conservation, innovation of design and systems, public safety, and risk mitigation.

Building materials will relate to the surrounding area, reflect site characteristics, be of durable material, meet sustainable principles, and will not necessarily adhere to the design aesthetic of the main campus.

3. Definition of “Human-Scaled”

All development within the campus property will be designed to a human scale, fostering a pedestrian-friendly, lively, energetic community. “Human-Scaled” development shall mean development that incorporates the following principals:

Future building sites shall contextually interrelate and promote a safe and vibrant pedestrian experience through the location of building frontages along public streets, plazas, sidewalks and paths and shall consider and incorporate solar access and view preservation.

Building elements, design details and landscape materials shall consider the location of entrances and windows, and the creation of transparency and activity at the pedestrian level.

Buildings shall be connected to an integrated pedestrian network.

Building footprints will define a variety of courtyard spaces connecting to small parks within walking distance.

Buildings will clearly define primary access points from public ways with architectural detailing and fenestration.

4. Definition of “Compact, clustered in a village style”

Compact, clustered, village style developments are characterized by discrete physical boundaries, and a pedestrian scale and orientation. Additionally, this style shall be defined as similar type residential buildings situated in contiguous groups, with adjacent and fronting lots oriented toward each other in some ordered geometric way - as on a street, a green, or a paved square - and forming a distinct boundary with the surrounding natural environment.

5. Public Realm and Access

Public access to the Boulder campus properties is welcomed and encouraged to foster integration with the greater Boulder community to create a diverse and lively community.

The design of the buildings, circulation and Green Spaces are meant to be shared with the local community. Access will continue to be allowed in the Zone consistent with the public access

provided on other CU campuses, subject to temporary closures for construction and public safety requirements.

Non-residential amenities will be planned and designed to incorporate public access, encourage public use, and to support community needs. These include recreational fields, trails, and others will be evaluated and shall include thoughtful public engagement.

Site design of the Zone will include a network of public spaces with strong pedestrian connections to city open space (subject to OSMP's processes for evaluation and approval of such connections) and adjoining neighborhoods to create a welcoming, vibrant campus community open to and integrated with the broader community.

6. Viewsheds, Gateways, and Property Edges

Buildings will be designed and sited in a manner to protect views and contribute positively to the character of the city's "gateway".

Materials for gateways will use material palettes consistent with, but not necessarily identical to, other campus properties.

Building location, massing and height will protect and complement views of the mountain backdrop, particularly the viewsheds from the Highway 36 bike path, the South Boulder Creek Trail, Highway 36 and Highway 93.

Building Heights will transition gently from the eastern boundary of the Zone to neighborhoods to the west, which will be realized by implementing the Height Ceiling method specified in the Agreement.

7. Green Spaces and Typologies

Boulder campuses incorporate a variety of types of Green Space uses. Planning and design of these spaces is determined by specific typologies identified within a property based on adjacent uses and context. Useable Green Spaces within the Development Zone shall include amenities, be interconnected, and be arranged to be accessible and functional, incorporating quality landscaping, a mixture of sun and shade, and places for residents and the community to gather. Typologies shall include parks, recreation, natural areas, courtyards and interstitial spaces, and green buffer areas.

Parks - Development of building sites will include a variety of park types and sizes with direct connection to surrounding amenities and public access. Parks are to be shaded, include room for casual and passive recreation

Recreation - Recreation amenities may include multipurpose fields, a running track, challenge course, or other activities as determined by the University and shall be located primarily within the Flood Control Zone (e.g., multipurpose fields) or interspersed throughout the Development

Zone (e.g., trails). The amenities ultimately developed on the site shall be informed by public engagement. Multipurpose fields will be located near public transportation, connected to the pedestrian network and open at different times for scheduled and unscheduled public use.

Natural Areas - Much of the property is uniquely situated next to city Open Space. Natural areas within the Development Zone shall include native grassland, habitat, protected wetlands and green buffers. These areas will be defined throughout the site and shall be preserved, mitigated and/or augmented with careful design of the transportation network and thoughtful selection of building sites.

Courtyards & Interstitial Spaces - Within the hierarchy of the CU Boulder campus green spaces, courtyards play an important role in the transitional connection between the built and natural environments. The interstitial spaces between the buildings connect the open space fabric of the campus. These spaces will include tree canopy, pedestrian connections and enhanced landscaping to create a sense of cohesion among varying uses and different phases of development.

Green Buffer Space - The Development Zone will incorporate green buffer areas along select edges (such as along the boundary with the neighborhoods to the west and points of access) to create natural separation from the neighboring properties and rights-of-way. Green buffers may also be used to enhance gateway aesthetics at select campus access points and to address steep slope conditions, view protection, and view framing.

8. Development of Green Spaces and Permeable Surfaces

Within specific building sites - individual building sites (i.e., the planned footprint of land associated with a specific building to be developed) will retain no less than 30% of the area within the allocated boundaries of each building site for the design and development of useable Green Space.

Between building sites - spaces between individual building sites or clusters of buildings will be scaled to the pedestrian for a variety of uses and shall include trail/ path connections and amenities that may include playgrounds and picnic areas.

Tree plan - CU Boulder South will establish a tree plan in conjunction with utility and circulation plan to be implemented for early establishment of tree canopy.

Landscaping - plant and grass selection will be a biodiverse palette with primary focus on sustainability, durability, native or adaptive material with consideration for pollinators, bio retention, and storm water quality. The selection of species and materials will seek to provide a variety of color, contrast and seasonal expression. The University will be designed to conserve water through application of Xeriscape landscaping principles and irrigation efficiency. Very low and low water use zone plants and turf grass will be used to the extent practicable.

9. Sustainability

Sustainable design and sustainable practices are a priority for the University of Colorado Boulder. The university adheres to the State of Colorado's high-performance construction (HPC) program requiring all capital projects to achieve LEED gold certification or higher:

Development following the U.S. Green Building Council's LEED program will address a wide array of sustainability considerations including: high efficiency building systems that minimize energy use and support on-site renewable energy generation; consideration of the life cycle costs and content of all materials deployed; design of zero waste systems for the construction and on-going maintenance of facilities; mitigation of the urban heat island effect; minimization of indoor and outdoor water use; and a host of other design and maintenance considerations such as water quality, green cleaning, integrated pest management, and access to quality transit.

In addition to overarching site issues such as flood mitigation, sustainable design concepts will be addressed at both at the individual (LEED) project level (assuming phased development) as well as at the larger CU Boulder South site level. This includes but is not limited to a comprehensive energy plan, connectivity to the surrounding community, and a lighting plan that augments security, safety, and aesthetics.

Additional aspects of sustainability not covered by the HPC program or LEED include the potential to design the broader site with a systems approach in mind, one that values innovation and respects the interrelationship of the natural systems. Several such opportunities include orienting buildings to maximize the use of solar energy, a wholistic plan for the movement of wildlife both through and around the site and mitigating the impact of our waste systems on the health of the immediate natural systems.

The site will model future resilience needs in major areas such as energy and water, housing, and transit.

Transportation

1. Circulation/Street Network

Plan for a hierarchy of safe streets and pathways creating neighborhood community, access for emergency services and other services while reducing cut through traffic

The property should include the minimum number of streets necessary for adequate property circulation without compromising the natural amenities and existing site character.

The street design will minimize adverse traffic impacts into nearby residential neighborhoods, such as Tantra Park, Basemar, Martin Acres and High View.

Site and traffic circulation design will disincentivize outside traffic from cutting through the property to avoid impacts to the Table Mesa Drive/Broadway connection.

Limited ingress and egress via local connections may be implemented for emergency and life safety situations. The campus will develop an Emergency Service and Evacuation Plan to address emergencies and use of emergency access and connections.

2. Trails

Develop a strong network of trails and multi-use pathways throughout the property with connections to the city network to encourage bike and pedestrian use.

Incorporate connected and safe pedestrian, bike and transit systems through CU Boulder South integrated into the broader city and regional bicycle and pedestrian network, including safe street crossings, trailhead(s), soft surface recreation trails, and a trail link(s) to the South Boulder Creek Trail in coordination with OSMP.

Create safe and convenient connections that support multimodal mobility through and among building sites and amenities, accessible to the public within the project and between the project and the existing and proposed transportation systems, including, without limitation, streets, bikeways, pedestrian ways and trails.

Exhibit E: Outdoor Lighting

9-9-16. Lighting, Outdoor.

- (a) Purpose: The purposes of the outdoor lighting standards are to:
 - (1) Provide adequate light for safety and security;
 - (2) Promote efficient and cost effective lighting and to conserve energy;
 - (3) Reduce light pollution, light trespass, glare and offensive light sources;
 - (4) Provide an environmentally sensitive nighttime environment that includes the ability to view the stars against a dark sky so that people can see the Milky Way Galaxy from residential and other appropriate viewing areas;
 - (5) Prevent inappropriate, poorly designed or installed outdoor lighting; and
 - (6) Encourage quality lighting design; light fixture shielding, establish maximum uniformity ratios and establish maximum light levels within and on property lines.
- (b) Legislative History: The city council adopted the outdoor lighting standards of this section in 2003 with an amortization provision requiring that the outdoor lighting of all properties in the city be brought into compliance with the standards of this section no later than 2018. As of November 16, 2018, all existing outdoor lighting in the city must be in compliance with the design standards, maximum light standards, and prohibitions of this section, unless this section expressly provides for a different compliance time line.
- (c) Scope: This section shall apply to all exterior lighting, including illumination from outdoor signs that impact the outdoor environment. No person shall install or maintain any light fixture unless such fixture meets the requirements of this section. If an existing light fixture is removed, it shall only be replaced with a conforming light fixture. Chapter 9-16-1, "General Definitions," B.R.C. 1981, contains specific definitions applicable to the implementation of this section, including but not limited to, "Control", "Full cut-off light fixture", "Fully shielded light fixture", "Glare", "Illuminance", "Light bulb", "Light fixture", "Luminaire", "Light pollution", "Light trespass", "Lumen", "Luminaire", "Maximum allowable light level", "Maximum allowable light level", "Maximum lumen rating", "String of lights", "Uniformity ratio", and "White light source".
- (d) Design Standards: No person shall install or maintain any exterior lighting that fails to meet the requirements of this section:
 - (1) Maximum Light Levels at Property Line: The maximum light level at any point on a property line shall not exceed 0.1 footcandles within or adjacent to a residential zone or 0.2 footcandles in nonresidential zones except as follows:
 - (A) The light emitted by light fixtures mounted on a structure built within five feet of a public street right-of-way or sidewalk shall not exceed the maximum allowable light levels for "pedestrian areas" specified in subsection (e) of this section for the underlying zoning district or use. The maximum allowable light level shall include any existing or proposed street or pedestrian lighting located within the right-of-way. In no case shall the maximum allowable light level within the right-of-way, excluding street lights, exceed 0.2 footcandles when measured at the curbline.
 - (B) In nonresidential zoning districts, unless a variance has been granted, light levels exceeding 0.2 footcandles at the property line may be approved by the city manager upon finding that the increased light levels will not adversely affect an adjacent property owner. Evidence that the light will not adversely affect an adjacent property owner may include, without limitation, a statement from such property owner that it will not be adversely affected by the increased light levels. The maximum allowable light levels specified in subsection (e) of this section shall not be exceeded when measured on the property line.

- (2) **White Light Source Required:** White light sources that include, without limitation, metal halide, fluorescent, or induction lamps, but excluding incandescent and halogen lamps, shall be required for any light fixture which exceeds two thousand four hundred lumens that is within a parking lot, vehicular circulation, or pedestrian use area.
- (3) **Use of High Pressure Sodium Lamps:** Full cutoff high pressure sodium lamps, not exceeding a maximum lumen rating of sixteen thousand lumens, may be used in outdoor storage areas and other similar use areas not accessible to the general public and the need for good color rendering capabilities for safety and security is not necessary.
- (4) **Architectural Lighting of Building Facades:** The lighting of a building facade for architectural, aesthetic, or decorative purposes is permitted subject to the following restrictions:
 - (A) Upward aimed building facade lighting shall not exceed nine hundred lumens. All upward aimed light shall be fully shielded, fully confined from projecting into the sky by eaves, roofs, or overhangs, and mounted as flush to a wall as possible.
 - (B) Building facade lighting exceeding nine hundred lumens shall be fully shielded, aimed downward, and mounted as flush to a wall as possible.
 - (C) Building facade lighting shall be fully contained within the vertical surface of the wall being illuminated.
 - (D) Building facade lighting that is measurable at the ground level shall be included in the maximum allowable light levels.
- (5) **Unshielded Lighting:**
 - (A) Unshielded lighting that emits more than nine hundred lumens but less than or equal to one thousand two hundred lumens is permitted provided that it is activated by a motion sensor and provided it is aimed and located in such a manner as to prevent glare and light trespass. The light shall only go on when activated and go off within five minutes of activation. Motion sensor activated lighting shall not be triggered by any movement or activity located off the property on which the light is located.
 - (B) All lamps and bulbs less than nine hundred lumens located in residential zones shall be within a fully shielded fixture, or must be within a light fixture where the bulb or lamp are obscured from view by a material that diffuses the light. (i.e., frosted or milk colored materials), except as otherwise permitted in this section. (See Figure 9-15 of this section.)

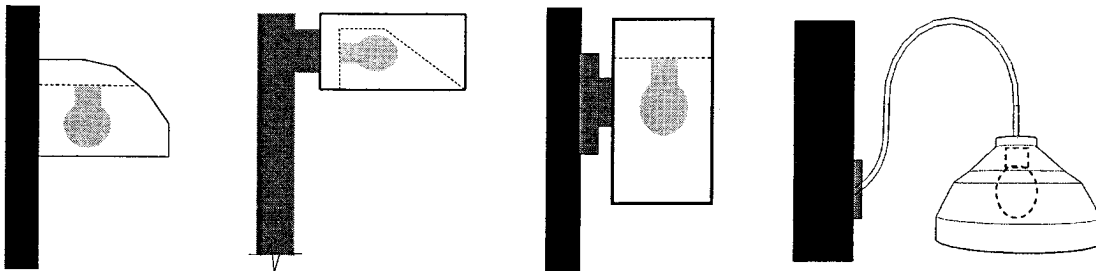


Figure 9-15: Fully Shielded Fixtures

Examples of fully shielded light fixtures: Sconce, Pole, Canister, and Canopy. In each case the fixture has a solid housing with a flat lens or bottom and the bulb is fully within the housing.

- (6) **Signs:** All exterior signs shall be required to meet the standards for this section. In addition, all exterior signs are also subject to the requirements set forth in Section 9-9-21, "Signs," B.R.C. 1981.

- (7) Standards for Lights Adjacent to Residential Zoning Districts, Residential Uses, or Public Rights of Way: Any light fixture located within ten feet of a property line, of a residential zoning district, an existing residential use, or within ten feet of a public right-of-way, except as permitted in Subparagraph (d)(1)(A) of this section shall be:
- (A) Aimed away from the property line, residential zone, residential use, and/or right-of-way;
 - (B) Classified as an IESNA Type III or Type IV light fixture; and
 - (C) Shielded on the side closest to the property line, residential zone, residential use, or public right-of-way.
- (8) Canopy Lighting: Lighting fixtures mounted under canopies used for vehicular shelter shall be aimed downward and installed such that the bottom of the light fixture or its lens, whichever is lower, is recessed or mounted flush with the bottom surface of the canopy. A full cutoff light fixture may project below the underside of a canopy. All light emitted by an under-canopy fixture shall be substantially confined to the ground surface directly beneath the perimeter of the canopy. No lighting, except that permitted by the sign ordinance, shall be permitted on the top or sides of a canopy.
- (9) Flagpoles: A flagpole meeting the requirements of Section 9-9-21, "Signs," B.R.C. 1981, may be illuminated by one upward aimed fully shielded spotlight light fixture which shall not exceed three thousand five hundred lumens. The light fixture shall be placed as close to the base of the flagpole as reasonably possible.
- (10) Strings of Lights: No person shall use a string of lights on property with nonresidential uses except as follows:
- (A) Strings of lights may only be used if they are approved by the city manager as part of an outdoor lighting plan or landscape plan. The plan must comply with all of the standards of this Subsection. The purpose of such lighting is intended to create pleasing pedestrian spaces, such as outdoor dining or patio areas, utilizing low lighting levels.
 - (B) Strings of lights permitted under this subsection shall be displayed in compliance with the following standards:
 - (i) The string of lights contains only low wattage bulbs that are not greater than fifty lumens per bulb (equivalent to a seven watt C7 incandescent bulb);
 - (ii) The string of lights shall be located within a pedestrian way, plaza, patio, outdoor dining area, or the primary entry into a building;
 - (iii) The string of lights is not placed in any required landscape setback adjacent to a street;
 - (iv) The string of lights shall be displayed on a building, wall, fence, trees, and shrubs; and
 - (v) The string of lights shall not suspend horizontally between any buildings, walls, fences, trees, or shrubs (for the purposes of this paragraph, *horizontally* means any portion of the suspended string which dips less than forty-five degrees below the horizontal).
- (11) Parking Lot Lights and Trees: Parking lot light fixtures and poles shall be located such that trees located within the parking lot do not obscure the operation of the light fixture.
- (12) Full Cutoff Fixtures: Full cutoff fixtures shall be installed in a horizontal position as designed.
- (13) Color Temperature: All exterior lighting installed after November 15, 2018, shall have a correlated color temperature (CCT) below three thousand one degrees Kelvin.
- (e) Maximum Light Standards: No person shall operate any device which makes light in excess of the levels specified in this section. Light from any fixture shall not exceed any of the limits for the applicable zoning district or use classification in Tables 9-11 and 9-12 of this section. In the event an applicant utilizes light

levels at the highest level permitted for a specific use area, such lighting shall be substantially confined to that particular use area.

TABLE 9-11: ZONING DISTRICT REQUIREMENTS

	Residential Zoning Districts (Not Including Public Uses)	Commercial, Mixed Use, Downtown, Business, and Industrial Zoning Districts	Public Zoning District and Public Uses in Residential Zones
Maximum allowable light levels (measured in footcandles)	5.0 at building entries	5.0 at building entries	5.0 at building entries
	3.0 in parking areas	5.0 in parking areas	5.0 in parking lots
	3.0 along pedestrian walkways	3.0 along pedestrian walkways	3.0 along pedestrian walkways
	2.0 in common open space areas	2.0 in outdoor storage areas (maximum uniformity ratio requirements are not applicable)	
Maximum uniformity ratio (maximum to minimum)	n/a	10:1 (except as noted above)	15:1
Maximum lumen rating for a full cutoff luminaire shielded from view of adjacent streets and properties	8,500 - parking areas of 6 or more spaces	8,500 - pedestrian areas 14,000 - parking and loading areas	14,000 - parking and loading areas
	4,000 - walkway lights and common areas	23,500 on 35 foot pole when permitted (parking and loading areas)	
	1,800 stairways and entryways	16,000 for high pressure sodium when permitted	
Maximum lumen rating for a partially shielded (IES TM-15-11 G1 rating) fixture	900	1,250	1,250
Maximum lumen rating for an unshielded light fixture	900: except no lamp or bulb, other than for seasonal displays and landscape ornamental lighting, shall be visible beyond the property line	900	900
Controls	Motion sensors required for all unshielded fixtures in excess of 900 lumens	Recommended after close of business	Recommended after close of business
Maximum allowable pole height (includes base, pole and luminaire)	20 feet in parking lots	25 feet in parking lots	20 feet in parking lots within or adjacent to residential zones, otherwise 25 foot maximum
	15 feet in all other areas	35 feet for contiguous parking lots of 5 or more acres in size	
		20 feet in all other areas	

TABLE 9-12: SPECIAL USE REQUIREMENTS

	Open Parking Structures and Parking Below a Building	Private Recreation Use	Public Recreation Use	Service Stations, Automobile Dealerships, Drive-Thru Windows
Maximum allowable light levels (measured in footcandles)	<p>5.0 within open parking structure and parking below a building</p> <p>5.0 for uncovered upper levels</p> <p>5.0 for covered exterior pedestrian circulation areas that are a part of a parking structure or parking below a building</p>	<p>The lesser of 30 footcandles or the IESNA recommended standards for the specific sports venue</p> <p>5.0 in parking lots</p> <p>4.0 in pedestrian areas</p>	<p>The IESNA recommended standards for the specific sports venue</p> <p>5.0 in parking lots</p> <p>4.0 in pedestrian areas</p>	<p>5.0 in building entries and drive-up windows</p> <p>20.0 under service station canopies</p> <p>15.0 within vehicular display areas</p> <p>5.0 in parking lots</p> <p>3.0 along pedestrian walkways</p>
Maximum uniformity ratio (maximum to minimum)	<p>5:1 within parking structure</p> <p>10:1 remainder of site</p>	<p>3:1 on sports field or court</p> <p>10:1 remainder of site</p>	<p>3:1 on sports field or court</p> <p>10:1 remainder of site</p>	10:1
Maximum lumen rating for a full cutoff light fixture shielded from view of adjacent streets and properties	14,000	<p>23,500 for field or court area</p> <p>8,500 for parking and pedestrian areas</p>	<p>107,000 for sports field</p> <p>23,500 for courts</p> <p>14,000 for parking areas</p> <p>8,500 for pedestrian areas</p>	14,000
Maximum lumen rating for a partially shielded (IES TM-15-11 G1 rating) fixture	1,800	1,250	4,000	1,800
Maximum lumen rating for an unshielded light fixture	900	900	900	900

Sports shielding	n/a	Internal and external	Internal and external	n/a
Light fixture aiming angle	n/a	n/a	Not greater than 60 degrees from nadir	n/a
Controls	Automatic daylight adaptation controls required	Field or court lights shall be turned off within 30 minutes of the last event or 12:00 midnight, whichever is earlier	Field or court lights shall be turned off within 30 minutes after the last event	Service station canopies and vehicular display lights shall not exceed 5.0 footcandles within 1 hour of the close of business
Maximum allowable pole height (includes base, pole, and light fixture)	12 feet for uncovered upper level parking	20 feet in residential zones 25 feet in all other zones	20 feet in parking lots within or adjacent to residential zones, otherwise 25 feet 35 feet for sports lighting or as approved by the city manager per Section 9-2-14, "Site Review," B.R.C. 1981	20 feet when adjacent to residential zones, otherwise 25 feet in parking lots 20 feet in all other areas

- (f) Prohibitions: No person shall install any of the following types of outdoor lighting fixtures:
- (1) Mercury vapor lamps;
 - (2) Low pressure sodium lamps, unless within six hundred feet of an existing astronomical observatory, which is owned or operated by a governmental entity;
 - (3) Blinking, flashing, moving, revolving, flickering, changing intensity or color, and chase lighting, except lighting for temporary seasonal displays, lighting for public safety or required for air traffic safety;
 - (4) Any light fixture that may be confused with or construed as a traffic control device;
 - (5) Any upward oriented lighting except as otherwise provided for in this section;
 - (6) Searchlights, beacons, and laser source light fixtures;
 - (7) Exposed linear lamps that include, without limitation, neon, Light Emitting Diode (L.E.D.), and fluorescent lighting, primarily intended as an architectural highlight to attract attention or used as a means of identification or advertisement except as permitted by Section 9-9-21, "Signs," B.R.C. 1981;
 - (8) Any lamp or bulb, except for seasonal displays and landscape ornamental lighting, which is visible beyond the property line on which it is located; and
 - (9) After November 15, 2018, any lamp or bulb with a correlated color temperature (CCT) that exceeds three thousand degrees Kelvin.
- (g) Lighting Plans Required: A lighting plan shall be submitted with any building permit application in which outdoor lighting is proposed or required, except when all proposed lighting is provided by fixtures of nine hundred lumens or less, and except for a single detached dwelling unit on an individual lot. The lighting plan shall include:

- (1) A site plan showing the location of all buildings and building heights, parking, and pedestrian areas on the lot or parcel;
 - (2) The location and description including mature height of existing and proposed trees and the location of light fixtures on adjacent properties or the street right-of-way within ten feet of the subject property;
 - (3) The location and height above grade of all proposed and existing light fixtures on the subject property;
 - (4) The type, initial lumen rating, color rendering index, and wattage of each lamp source;
 - (5) The general style of the light fixture such as cutoff, lantern, coach light, globe, and a copy of the manufacturer's catalog information sheet and IESNA photometric distribution type, including any shielding information such as house side shields, internal, and/or external shields;
 - (6) Control descriptions including type of controls (timer, motion sensor, time clock, etc.), the light fixtures to be controlled by each type, and control schedule when required;
 - (7) Aiming angles and diagrams for sports lighting fixtures; and
 - (8) A light calculation which shows the maximum light levels on a grid not to exceed ten feet by ten feet across the entire site and a minimum of ten feet beyond the lot or parcel property line. The grid shall also indicate maximum to minimum uniformities for each specific use area such as parking and circulation areas, pedestrian areas, and other common public areas.
- (h) Final Inspection and Certification: Prior to a building permit final inspection or the issuance of a certificate of occupancy, the applicant shall provide certification that the outdoor lighting as installed complies with the approved illumination plan and the requirements of this section unless waived or amended by the city manager in writing. The certification shall be submitted in a format prescribed by the city manager. The certification shall be completed by the architect, electrical engineer, electrical contractor, or lighting consultant responsible for the plans or the final installation.
- (i) Exceptions: The standards of this section shall not apply to the following types of exterior lighting:
- (1) Ornamental Lighting: Low voltage (twelve volts or less), low wattage ornamental landscape lighting fixtures, and solar operated light fixtures having self-contained rechargeable batteries, where any single light fixture does not exceed one hundred lumens.
 - (2) Strings of Light: Strings of light, not exceeding a maximum of fifty lumens per lamp, (equivalent of a seven watt C7 incandescent light bulb) on properties located in all residential zoning districts or on properties that are used exclusively for residential uses shall be exempt from the requirements of this chapter.
 - (3) Aviation Lighting: Lighting used exclusively for aviation purposes. All heliport lighting, except lighting associated with emergency facilities, shall be turned off when the heliport is not in use.
 - (4) Right-of-Way Lighting: Public lighting that is located within the right-of-way.
 - (5) Seasonal Lighting Displays: Lighting displays from November 15 through January 30 of the following year.
 - (6) Ballfields: Lighting at ballfields, including the Stazio, Mapleton, and Scott Carpenter Park ballfields, to the extent the lighting is necessary to maintain certification for league and tournament play at the ballfield.
- (j) Variances and Exemptions: The city manager is authorized to grant variances to this section in accordance with the following standards:
- (1) Equivalent Material: The provisions of this section are not intended to prevent the use of any design, material or method of installation not specifically prohibited by this section provided any such alternate has been approved by the city manager. The city manager may approve any such alternate

provided that the proposed design, material or method provides an approximate equivalent method of satisfying the standards of this section.

- (2) Historic Lighting: The city manager may grant a variance from the provisions of this section if the manager finds the following:
 - (A) The lighting fixture is located on a property designated as a landmark or recognized as a contributing property to a designated historic district;
 - (B) The lighting fixture is of historic significance to the property; and
 - (C) Removal of or a modification to the lighting that would otherwise be required to come into compliance with the requirements of this section would have an adverse impact on the historic character of the property.
- (3) Variance: The city manager may grant a variance from the provisions of this section if the city manager finds that one of the criteria of Subparagraph (j)(3)(A), (j)(3)(B) or (j)(3)(C), and Subparagraphs (j)(3)(D) and (j)(3)(E) of this section have been met:
 - (A) There are special circumstances or conditions applying to the land, buildings, or outdoor light fixtures for which the variance is sought, which circumstances or conditions are peculiar to such land, buildings or outdoor light fixtures and do not apply generally to the land, buildings or outdoor light fixtures in the neighborhood;
 - (B) For nonresidential uses, there are occupational safety lighting requirements for activities or processes that occur outdoors that are required by another governmental agency; or
 - (C) Upon a finding by the city manager that outdoor lighting in specific areas of the community, that otherwise meets the requirements of this section is not adequate and additional lighting is necessary to improve safety or security for the property or its occupants; and
 - (D) The granting of the variance will generally be consistent with the purpose of this section and will not be injurious to the neighborhood or otherwise detrimental to the public welfare; and
 - (E) The variance is the minimum variance that provides the relief required.
- (4) Temporary Lighting Exemption: The city manager may grant an exemption from the requirements of this section for temporary outdoor activities that include, without limitation, fairs, carnivals, sporting events, concerts, and promotional activities, if the city manager finds the following:
 - (A) The length of time that the temporary lighting is to be used is not longer than thirty days;
 - (B) The proposed lighting is designed in such a manner as to minimize light pollution, light trespass, and glare as much as feasible; and
 - (C) The proposed lighting will comply with the general purpose of this section.
- (k) Amortization: All exterior lighting fixtures which do not conform to the following standards shall be brought into conformance no later than November 15, 2018.
 - (1) Extension of Amortization Period: The city manager may extend the amortization period of this section. The city manager shall provide a compliance date for meeting the requirements of this section under a plan whereby the owner's actual investment in the improvements before the time that the use became nonstandard under this section can be amortized within a definite time period. The city manager shall consider the following factors in determining a reasonable amortization period:
 - (A) The owner's investment in improvements and other assets on the property before the time the improvements became nonstandard.
 - (B) Any costs that are directly attributable to the establishment of a compliance date, including demolition expenses and reconstruction expenses.

- (C) Any return on investment since inception of the use, including net income and depreciation.
- (D) The anticipated annual recovery of investment, including net income and depreciation.
- (2) Compliance Requirement: If the city manager establishes a compliance date for a nonconforming use, the use must cease operations on that date and it may not operate thereafter unless it meets the lighting standards of the Boulder Revised Code.
- (3) Appeal: A property owner that requested the extension of an amortization period under this section that is aggrieved by any decision of the city manager denying such an extension may appeal to the BOZA by providing a notice to the city manager of the owner's intent to appeal within fourteen days after receiving notice of the City's decision. The hearing shall be held in conformance with the requirements of Subsection 9-2-3(g), B.R.C. 1981.
- (4) Exempt From Amortization Requirements: The following shall be exempt from the amortization provisions, but not the shielding requirements, of this section:
 - (A) Existing high pressure sodium and metal halide light fixtures which do not exceed the maximum allowable light levels of subsection (e) of this section by more than twenty percent;
 - (B) Existing high pressure sodium and metal halide light fixtures mounted on poles which exceed the maximum allowable pole heights of subsection (e) of this section, but do not exceed thirty-five feet in height and do not exceed the maximum allowable light levels of subsection (e) of this section;
 - (C) Existing high pressure sodium and metal halide light fixtures which exceed the maximum lumen ratings of subsection (e) of this section, but comply with the maximum allowable light levels of subsection (e) of this section.
- (I) Immediate Compliance Required: No person shall fail to comply with and no property owner shall fail to ensure compliance of its property with the following:
 - (1) Operation of unshielded mercury vapor light fixtures is prohibited.
 - (2) Installation and operation of a light bulb that does not meet the requirements of this section is prohibited.
 - (3) Fixtures shall be aimed consistent with the requirements of this section.

Ordinance Nos. 6017 (1998); 7297 (2003); 7484 (2006); 7522 (2007); 7568 (2007); 7577 (2007); 8005 (2014) ; 8018 (2014) ; 8257 (2018); 8280 (2018) ; 8409 (2020)

Exhibit F: Stream, Wetland and Water Body Requirements

9-3-9. Stream, Wetlands, and Water Body Protection.

(a) Legislative Intent:

- (1) It is the intent of the city council in enacting this section to preserve, protect, restore, and enhance the quality and diversity of wetlands and water bodies. The council finds that streams, wetlands, and water bodies are indispensable and fragile natural resources with significant development constraints due to high groundwater, flooding, erosion, and soil limitations and that development activities may threaten these resources. The preservation of streams, wetlands, and water bodies under this section is consistent with the goal of wetland protection set forth in the Boulder Valley Comprehensive Plan.
- (2) The city council finds that many streams, wetlands, and water bodies have been either lost or impaired by draining, dredging, filling, excavating, building, channelizing, polluting, and other acts. Piecemeal and cumulative losses destroy or diminish the functions of the remaining streams, wetlands, and water bodies.
- (3) The city council finds that it is necessary for the city to ensure protection by discouraging development activities in streams, wetlands, and water bodies and those activities at adjacent sites that may adversely affect the visibility and functional values of these resources.
- (4) The city council finds that it is necessary to ensure no net loss of wetlands, by encouraging avoidance of direct or indirect impacts from activities that destroy or diminish the quantity, quality, and biological diversity of the city's water resources and adjacent buffers.
- (5) The city council acknowledges that much of the city was developed prior to awareness of the value of protecting streams, wetlands, and water bodies. The city council seeks to find a reasonable balance between the property owners' desire to make reasonable uses of their properties and the public's interest in preserving and protecting these important water resources. When the destruction or diminution in function of these resources cannot be avoided, the city council finds that impacts on streams, wetlands, and water bodies should be minimized and mitigation provided for unavoidable losses.
- (6) Nothing in this section shall be construed to prevent irrigation companies from altering water levels through the diverting, storage, or delivery of water under their historic water rights or owners of such rights from exercising those historic rights.
- (7) Nothing in this section shall be construed to prevent compliance with applicable state or federal statutes and regulations.
- (8) It is not the intent of this section to prohibit all activities within the regulated area, but rather to encourage avoidance and minimization of regulated activities within the regulated area to mitigate the impact that these activities have on streams, wetlands, and water bodies.

(b) Scope and Application: No person shall violate any provision of this section or fail to obtain a permit for any regulated activity or to use best management practices in regulated areas as required by this section.

(1) Regulated Area: This section applies to the following:

- (A) Areas within the city shown on the streams, wetlands, and water bodies maps adopted pursuant to this subsection, as amended;
- (B) All streams, wetlands, and water bodies on city owned or managed lands inside or outside the city limits;
- (C) All city activities affecting streams, wetlands, and water bodies inside or outside of the city limits;

- (D) Inner and outer buffer areas associated with all of the above and as defined in Paragraph (l)(3) of this section.
- (2) Exempt Wetlands: Isolated wetlands with a size of less than four hundred square feet, regardless of property boundaries, are exempt from this section unless the wetland site provides habitat for the following species:
 - (A) Plant, animal or other wildlife species listed as threatened or endangered by the United States Fish and Wildlife Service;
 - (B) Plant, animal or other wildlife species listed by the State of Colorado as rare, threatened or endangered, or as a species of special concern; or
 - (C) Plant, animal or other wildlife species listed in the Boulder County Comprehensive Plan as critical; or
 - (D) Plant, animal or other wildlife species listed in the Boulder Valley Comprehensive Plan as a species of local concern.
- (3) Regulatory Maps: Stream, wetland and water body regulatory maps are hereby adopted and will be maintained on file in the planning department.
- (4) Most Stringent Restrictions Prevail: It is not intended that this section repeal, abrogate, supersede or impair any existing federal, state or local law, easement, covenant or deed restriction. However, if this section imposes greater or more stringent restrictions or requirements, the provisions of this section shall prevail. Specifically, if an applicant for a wetlands permit pursuant to this section also acquires authorization under section 404 of the Clean Water Act from the United States Army Corps of Engineers, the applicant shall meet any greater or more stringent restrictions or requirements set forth in this section in addition to and independent of the restrictions of such permit.
- (c) Permitted, Allowed and Prohibited Uses within the Regulated Area: The purpose of this subsection is to describe activities that are exempted, conditionally permitted, requiring development review or prohibited:
 - (1) Explanation of Table Abbreviations: The abbreviations used in the cells in table 3-1 have the following meanings:
 - "E" (Exempted Activities): indicates that the use type is allowed as a matter of right and no stream, wetland or water body permit is required.
 - "C" (Conditional Use Review): indicates that the use type will be reviewed in accordance with the requirements in paragraph (e)(3) of this section.
 - "S" (Standard Permit Review): indicates that the use type will be reviewed in accordance with the requirements in paragraph (e)(4) of this section.
 - "P" (Prohibited Activities): indicates that the use type is prohibited in the zone.
 - "N" (Allowed with Notice): indicates that the use type is allowed as a matter of right subject to the application of best management practices as defined in chapter 9-16, "Definitions," B.R.C. 1981, and provision of notice in paragraph (5) of this subsection. Such activity shall not significantly alter the function of the stream, wetland or water body. No person shall conduct any activity that is allowed with notice in violation of the best management practices.
 - (2) Interpretation: The city manager may decide questions of interpretation as to which category activities not specifically listed are properly assigned to, based on precedents, similar situations and relative impacts. If a proposed activity has more than one requirement, the most restrictive requirement applies.
 - (3) Table 3-1: No person shall engage in any regulated activity within a regulated area except in accordance with the requirements described in this section.

TABLE 3-1: REGULATED ACTIVITIES WITHIN REGULATED AREAS

<i>Types of Activities</i>	<i>Wetland, Stream or Water Body Zone (High and Low Functioning)</i>	<i>Inner Buffer (High Functioning)</i>	<i>Outer Buffer (High and Low Functioning)</i>
Buildings and Additions			
1. Construction of a new or an addition to a principal building and any attached structure (e.g., decks, carports, balconies) that would result in a cumulative total of 20% or more impervious surface in the zone on a single property.	P	P	S
2. Construction of a new or an addition to a principal building and any attached structure (e.g., decks, carports, balconies) that would result in a cumulative total of less than 20% impervious surface in the zone on a single property.	P	P	C
Other Structures			
3. Construction of a new accessory or minor structure (e.g., mechanical equipment, sheds, signs, decks, ramps, permanent recreational structures, hot tubs, gazebos) covering a total surface area of 25 feet or more and resulting in a cumulative total of 20% or more impervious surface in the zone on a single property.	P	P	S
4. Construction of a new accessory or minor structure (e.g., mechanical equipment, sheds, signs, decks, ramps, permanent recreational structures, hot tubs, gazebos) covering a total surface area of 25 feet or more and resulting in a cumulative total of less than 20% impervious surface in the zone on a single property.	P	P	C
5. Construction of a new accessory or minor structure covering a total surface area of less than 25 square feet.	P	C	E
6. Construction of a new fence.	P	C	E
7. Replacement or repair of an existing fence.	C	E	E
8. Construction of a retaining or other landscape wall.	S	S	E
9. Expansion or addition of a stormwater detention or retention facility for new development.	P	S	S
Pavement, Surfacing and Trails			
10. Construction of new or expansion of existing impervious surface (e.g., parking lots, driveways, utility pads or patios) covering a total surface area of 25 square feet or more and resulting in a	P	S	S

cumulative total of 20% or more impervious surface in the zone on a single property.			
11. Construction of new or expansion of existing impervious surface (e.g., parking lots, driveways, utility pads or patios) covering a total surface area of 25 square feet or more and resulting in a cumulative total of less than 20% impervious surface in the zone on a single property.	P	S	C
12. Construction of a new accessory or minor structure covering a total surface area of less than 25 square feet.	P	C	E
13. Grading that disturbs 25 square feet or more surface area (including construction of new or expansion of existing play fields, terracing, etc.)	S	C	C
14. Grading that disturbs less than 25 square feet surface area (including construction of new or expansion of existing play fields, terracing, etc.)	C	E	E
15. Construction of new paths, trails or steps for private use.	C	C	E
16. Temporary access roads associated with a public improvement or maintenance project.	S	C	E
Landscaping and Landscape Maintenance			
17. "Vegetation removal - major" as defined in chapter 9-16, "Definitions," B.R.C. 1981.	S	C	E
18. Addition of new plant material in a total area of 20% or more of the zone on a single property.	S	C	E
19. Addition of new plant material in a total area of less than 20% of the zone on a single property.	C	E	E
20. Installation of a permanent landscape irrigation system.	C	C	E
21. New lighting.	P	E	E
Stream Channel and Flood Improvements			
22. Water quality treatment facilities associated with a flood improvement project.	S	C	C
23. Construction of a new, addition to or complete replacement of a bridge or underpass.	S	S	E
24. Repair of an existing utility line and not involving complete replacement.	C	N	E
25. Installation, complete replacement or relocation of surface or subsurface utility lines, pipes, culverts, storm drains, inlets or stormwater quality facilities.	S	C	N
26. Installation or replacement of overhead utility lines through trench-less construction methods.	C	C	N
27. Stream channel widening, regrading or reconstruction; new drop structure installation; or sediment removal involving alteration of the existing side slope or banks.	S	S	C

28. Removal of sediment in a stream channel or outlet without altering existing side slopes or banks.	C	C	E
29. Drop-structure repair or replacement in existing location without enlargement of the existing structure and following best management practices.	C	E	E
30. Stream bank or slope stabilization.	S	C	C
31. Alteration of surface or subsurface hydrology through draining, ditching, trenching, impounding, pumping or flooding (including permanent or temporary dewatering for a structure or construction).	S	S	C

(4) Activities Exempt From a Stream, Wetland or Water Body Permit: In addition to the activities exempted in table 3-1, the following activities are allowed within a regulated area and do not require a permit:

- (A) Buildings, structures or improvements existing prior to June 4, 2009;
- (B) Construction of an addition to or replacement of an existing principal building and any attached structure, such as a deck, carport or balcony, that does not result in an increase in impervious surface area in the zone;
- (C) Placement of temporary objects that are not permanently attached to the ground such as planters, garden or lawn furniture, play equipment such as swing sets, and temporary irrigation systems;
- (D) Maintenance of an impervious or pervious surface not involving expansion of the existing surface area;
- (E) "Vegetation removal - minor" as defined in chapter 9-16, "Definitions," B.R.C., 1981;
- (F) Removal of trees or other live vegetation posing an immediate threat to the public or property; removal of damaged or disease-ridden trees or vegetation; or removal of vegetative debris and trash;
- (G) Weed management consistent with state and county laws;
- (H) Grading or removal of vegetation or debris within six feet of an existing building or structure;
- (I) Removal of vegetation or debris from an existing structure in order to maintain its structural integrity and function;
- (J) Alteration of water levels through the diversion, storage or delivery of water under a water right;
- (K) "Maintenance" as described in chapter 9-16, "Definitions," B.R.C. 1981;
- (L) Emergency repair of utilities;
- (M) Installation or replacement of overhead utility lines following best management practices;
- (N) Herbicide and pesticide application consistent with federal, state and local laws;
- (O) Continuing agricultural practices (harvesting of hay, pasturing of livestock);
- (P) Outdoor recreation involving minimal or no harm or disturbance to a wetland, including, without limitation, fishing, bird watching, hiking, boating and swimming); and
- (Q) Education, scientific research or field surveying.

- (5) Notice of Regulated Activities: Except for emergency activities required for the immediate protection of life, safety or property, or to restore essential public services, written notice of activities listed in table 3-1 above, shall be provided to the city manager at least two weeks prior to the commencement of work. The written notice shall include a full description of the activity, including duration and extent of impacts. Written notice of any emergency maintenance activity shall be provided immediately following the activity.
- (d) Stream, Wetland or Water Body Permit Applications:
- (1) All Permit Applications: An applicant for a stream, wetland or water body conditional use or standard permit shall pay the fee prescribed by Section 4-20-53, "Stream, Wetland or Water Body Permit and Map Revision Fees," B.R.C. 1981, and shall complete an application form provided by the city manager. The application shall include, at a minimum, the following information:
- (A) The written consent of the owners of all property subject to the permit request;
- (B) A detailed description of the proposed activity and how the application meets all applicable review criteria as set forth in subsection (e) of this section;
- (C) A site plan which illustrates the regulatory stream, wetland or water body boundary and buffer area as set forth in subsection (b) of this section; the property boundary and the proposed area of impact; and all existing and proposed structures and roads on the property; and
- (D) A description of and specifications for best management practices to be applied as part of the proposed activities;
- (2) Standard Review Applications: The manager may require an applicant for a standard review to furnish additional information and details deemed necessary to evaluate the effects of the proposed activity upon the stream, wetland, water body or buffer area, including, without limitation:
- (A) An evaluation of the direct and indirect impacts of the proposed activity;
- (B) A description of the types and sizes of wetlands and buffer areas that will be impacted by the regulated activities;
- (C) An evaluation and analysis of the proposed design of an activity and all alternatives considered with respect to the criteria for review as set forth in subsection (e) of this section, including a description of why less damaging alternatives have been rejected by the applicant;
- (D) Any applicable field investigation, monitoring and clearances for critical species which may be impacted by the proposed activities;
- (E) The source, type and method of transport and disposal of any fill material to be used as applicable. Certification that placement of the fill material will not violate applicable state and federal statutes and regulations also shall be required; and
- (F) A mitigation plan as set forth in subsection (f) of this section, prepared by a qualified wetland biologist where required by the city manager to mitigate direct or indirect impacts to a stream, wetland or water body as a result of the proposed activities.
- (e) Stream, Wetland and Water Body Permit Application Review:
- (1) Acceptance of Application: Applicants for stream, wetland or water body permits shall submit an application as set forth in subsection (d) of this section. Upon receipt of an application, the city manager shall review the application for completeness. A permit application will be accepted when the city manager determines that it is complete.
- (2) Public Notification of Application: Upon acceptance of a complete standard review application, public notice shall be provided according to the requirements shown in section 9-4-3, "Public Notice Requirements," B.R.C. 1981, using Public Notice Type 5 from table 4-2. Public notice of a conditional use review application is not required.

- (3) Criteria for Review: For an activity requiring conditional use or standard review, the applicant shall demonstrate that the stream, wetland or water body permit application meets the following criteria:
- (A) Criteria for all zones: In all zones, the following criteria apply:
- (i) Any activity requiring conditional use or standard review shall not result in a significant change to the hydrology affecting the stream, wetland or water body. Percolation of storm runoff on-site through vegetated swales, permeable paving materials or other similar methods to slow and clean runoff being discharged directly into the wetland, stream or water body may be required as part of the permit.
 - (ii) Minimization: The applicant shall demonstrate that the activity is designed and located to minimize direct or indirect impacts to the adjacent wetland, stream or water body.
 - (iii) Mitigation: If required, the applicant shall demonstrate that unavoidable direct and indirect impacts to vegetation, pervious surface or hydrology affecting the adjacent stream, wetland or water body can be successfully mitigated through design of the activity or by compensating for the impact.
 - (iv) Restoration of Temporary Impacts: The applicant shall demonstrate that direct, temporary impacts to a wetland, stream water body, or buffer area will be successfully restored according to the requirements in subsection (f) of this section.
 - (v) Application of Best Management Practices: The applicant shall demonstrate compliance, at a minimum, with all applicable city rules concerning best management practices as described in chapter 9-16, "Definitions," B.R.C. 1981.
- (B) Criteria for the Outer Buffer Zone: In the outer buffer zone, the following criteria shall apply:
- (i) The provisions of subparagraph (e)(3)(A) of this section.
 - (ii) Impervious surface coverage: Any new building or attached structure, expansion of an existing building or attached structure, new surfacing or expansion of an existing surface that would result in a cumulative total of twenty percent or more impervious surface in the outer zone on the property shall provide mitigation according to the requirements in subsection (f) of this section for the loss of pervious surface.
- (C) Criteria for the Inner Buffer Zone: In the inner buffer zone, the following criteria shall apply:
- (i) The provisions of subparagraph (e)(3)(A) of this section.
 - (ii) The provisions of subparagraph (e)(3)(B) of this section.
 - (iii) Channel bank protection or stabilization shall utilize, to the extent feasible, techniques that involve landscaping with appropriate native plants rather than rock or artificially hardened structures.
 - (iv) All new plant material adjacent to wetlands or water bodies or along the banks of a stream shall be consistent with all applicable city rules concerning best management practices as described in chapter 9-16, "Definitions," B.R.C. 1981. Mitigation monitoring for restoration projects may be required by the city manager.
 - (v) "Vegetation removal - major" shall only be allowed to prevent noxious weed infestation, provide for native habitat restoration or for other permitted projects. Major removal of vegetation shall be mitigated within the inner buffer according to the requirements in subsection (f) of this section.
 - (vi) New steps, paths or other minor access to or over a stream on private property will be permitted if there is no more than one access on an individual property, the path or steps are designed to have minimal impact to the wetland, stream or water body, and the path and the area of impact does not exceed four feet in width.

- (D) Criteria for the Wetland, Stream or Water Body: In the wetland, stream, or water body, the following criteria shall apply:
 - (i) The provisions of subparagraph (e)(3)(A) of this section.
 - (ii) The provisions of subparagraph (e)(3)(B) of this section.
 - (iii) The provisions of subparagraph (e)(3)(C) of this section.
 - (iv) Replacement or repair of an existing fence shall be generally in the same location and not result in additional impacts to the wetland, stream, or water body.
 - (v) Utility line or drop structure maintenance or repair shall not impact the existing functions of the wetland, stream, or water body.
 - (vi) Activities conducted solely for the purpose of removing stream sediment shall not alter the flood capacity as shown on the adopted floodplain maps. Vegetated channel bottoms shall be restored and stabilized.
- (4) Criteria for Standard Review: In addition to the standards in paragraph (e)(3) of this section, the applicant shall demonstrate that the stream, wetland or water body permit application meets the following criteria:
 - (A) Minimization: Any direct or indirect adverse impact on a stream, wetland or water body and its associated buffer area has been minimized to the maximum extent feasible through a reduction in the size, scope or density of the project or a change of project configuration or design;
 - (B) Minimal Impact: The activity will result in minimal impact or impairment to any stream, wetland or water body function;
 - (C) Protection of Species: The activity will not jeopardize the continued existence of habitat for the following species:
 - (i) Plant, animal or other wildlife species listed as threatened or endangered by the United States Fish and Wildlife Service;
 - (ii) Plant, animal or other wildlife species listed by the State of Colorado as rare, threatened or endangered, species of special concern;
 - (iii) Plant, animal or other wildlife species listed in the Boulder County Comprehensive Plan as critical; and
 - (iv) Plant, animal or other wildlife species listed in the Boulder Valley Comprehensive Plan as a Species of Local Concern.
 - (D) Mitigation Demonstration: Unavoidable direct and indirect impacts can be successfully mitigated based on the submission of a mitigation plan in conformance with the standards outlined in subsection (f) of this section.
- (5) Coordination With Other Development Reviews: The city manager may coordinate the application review process with other development review, administrative review or permit review processes.
- (f) Mitigation Plans:
 - (1) Mitigation Plan Required: As a condition of a permit issued under this section, the approving authority may require a mitigation plan. A mitigation plan requires the applicant to engage in the enhancement, restoration or creation of a stream, wetland or water body in order to offset, in whole or in part, the losses or impacts resulting from that applicant's actions. This mitigation plan shall not be an alternative to the standards set forth in this subsection, but shall be used only to compensate for unavoidable losses or impacts. In making a determination of whether a mitigation plan will be required, and the degree to which it is required, the following factors will be considered:

- (A) The type and value of the altered stream, wetland or water body adopted functions, the functions and associated resources to be impaired or destroyed as a result of the proposed regulated activity, and the ecological equivalency of the enhanced, restored or created stream, wetland or water body. In considering whether the enhanced, restored or created wetland is the ecological equivalent to the stream, wetland or water body impaired or destroyed, the city manager will accept an evaluation of functional values comparing the impaired or destroyed stream, wetland or water body and the proposed enhanced, restored or created stream, wetland or water body using the procedures described in "City of Boulder, Comprehensive Wetland Remapping Project," by Land Stewardship Consulting, October 18, 2004. In interpreting the provisions of this section, the city manager may adopt design standards pursuant to chapter 1-4, Rulemaking," B.R.C. 1981;
 - (B) The type, size and location of the altered stream, wetland or water body and gains or losses of this particular type of resource in the Boulder Valley planning area and in the area of the altered stream, wetland or water body; and
 - (C) The cost and probability of success of the mitigation measures.
- (2) Mitigation Plan Requirements: A mitigation plan shall contain:
- (A) An evaluation of all of the factors set forth in paragraph (1) above;
 - (B) The location and ownership of the proposed mitigation site;
 - (C) An evaluation of the suitability of the proposed mitigation site for establishing the restored or created stream, wetland or water body;
 - (D) The source and ownership of any water to be used for establishing or maintaining the restored or created stream, wetland or water body;
 - (E) A description of the sizes and types of stream reaches, wetlands or water bodies to be impaired or destroyed and restored or created;
 - (F) The site hydrology of the restoration or creation area;
 - (G) A maintenance program for a period of up to five years, including, without limitation, weed control, litter and debris removal, temporary irrigation, repair of water control structures, maintenance of vegetation and wildlife habitat and clearing of culverts;
 - (H) A description of any critical elements and possible problems that may influence the success of the project;
 - (I) A timetable for construction and monitoring;
 - (J) A monitoring program, including monitoring schedule, technique and success criteria; and
 - (K) A demonstration of fiscal, administrative and technical competence to successfully execute the overall project.
- (3) Mitigation Location: Selection of a location for an enhancement, restoration or creation project shall consider the following order of geographic preferences in the context of the goals of this section:
- (A) On-site;
 - (B) Adjacent to the site;
 - (C) Within the sub-basin of the existing wetland;
 - (D) Within the Boulder Valley planning area; or
 - (E) In unusual cases, outside the Boulder Valley planning area.
- (4) Mitigation Type:

- (A) In a mitigation plan, replication of the same or greater stream, wetland or water body functional value is required (in-kind replacement), unless a wetland of a different type is justified based on the functions and values of the stream, wetland or water body which is proposed to be altered.
 - (B) Permanent, direct impacts to streams, wetlands or water bodies shall be compensated through restoration or creation.
 - (C) Temporary, direct impacts to streams, wetlands or water bodies shall be compensated through restoration or enhancement at the location of impact at a 1:1 ratio.
 - (D) Indirect impacts as a result of activities within a buffer area shall be compensated through enhancement of the buffer area that compensates for the impacted function.
- (5) Compensatory Mitigation Amount:
- (A) The guidelines for wetland compensation indicating the amount of impacted streams, wetlands or water bodies to be restored or created compared to the area destroyed or impaired are in table 3-2 of this subsection. Wetland and water body compensation shall be based on total surface area.

TABLE 3-2: WETLAND COMPENSATION

<i>Impacted Resource</i>	<i>Enhancement</i>	<i>Restoration</i>	<i>Creation</i>
Streams and water bodies	1:1	1:1	1:1
Wetlands	1:1	1.5:1	2:1
Rare or hard-to-create wetlands	1.5:1	2:1	2.5:1

- (B) Higher wetland compensation ratios may be applied to mitigation that is not in-kind and/or outside the sub-basin of the original wetland.
 - (C) A combination of creation, restoration and enhancement for direct impacts that meets the above compensation requirements may be considered under the following conditions:
 - (i) Water rights for agricultural use within the sub-basin are unavailable;
 - (ii) Created, restored or enhanced wetlands are all within the basin of the original wetland; and
 - (iii) There is a high potential for long-term success of mitigation.
- (6) Mitigation Banking Program: Upon adoption of a wetland mitigation banking program by the city council, if the city manager, the planning board or the city council determines that the public interest is better served, a fee may be accepted in lieu of direct action on the part of the applicant to initiate a wetland restoration or wetland creation project to offset wetland destruction or impairment from the permitted activity. Fees for compensation of wetland destruction or impairment will be set based upon the amount that would be required to perform equivalent wetland restoration or creation. Such fees shall be held for the express use of wetland restoration and creation projects, including, without limitation, the acquisition of water rights for the use of compensatory mitigation.
- (7) Mitigation Monitoring and Release of Mitigation Plan Responsibilities:
- (A) The applicant and any successor owner of any portion of any property subject to a wetland permit is responsible for the implementation of any related stream, wetland or water body mitigation plan for an initial period of up to five years from the date of completion of construction and planting of all vegetation required by the plan and acceptance of such construction and planting by the city manager.
 - (B) Any failure of a mitigation plan during the monitoring period shall be remedied by the applicant and any successor owner of any portion of the property, who shall be jointly and severally liable

to the city for the costs of such remedy. Any such failure shall trigger a new guarantee period of equivalent length to that specified in the stream, wetland or water body permit. The city manager will release the financial guarantee required by subsection (h) of this section at the end of the monitoring period if the original goals of the plan have been achieved.

(g) Permit Issuance:

- (1) Permit Decision: The city manager shall determine whether the application meets the requirements of this section and shall approve a permit, approve a permit with conditions or deny the application. Standard permits shall be final fourteen days after issuance. Conditional use permits shall be final upon issuance.
- (2) Permit Conditions: The approving authority may attach such conditions to the granting of a stream, wetland or water body permit as are reasonably necessary to carry out this section. To the extent necessary for the regulated activity to take place without adverse impact on the stream, wetland or water body, such conditions may include, without limitation:
 - (A) Requiring that structures be elevated on piles and otherwise protected against natural or man-made hazards;
 - (B) Restricting the use of an area;
 - (C) Requiring erosion control and stormwater management measures;
 - (D) Restricting fill, deposit of soil and other activities which may be detrimental to a stream, wetland or water body;
 - (E) Modifying the project design to ensure continued water supply or other necessary protections for the purpose of maintaining stream, wetland or water body functions;
 - (F) Requiring compliance with best management practices as described in chapter 9-16, "Definitions," B.R.C. 1981.
 - (G) Requiring or restricting maintenance of a regulated area for the purpose of maintaining stream, wetland or water body functions; and
 - (H) Requiring submission and approval of a mitigation plan as set forth in subsection (f) of this section.
- (3) General Permits: The city manager may issue a general permit for up to five years for on-going operational activities such as, without limitation, stormwater facility management, stream channel sediment removal and repair or replacement of other public facilities.
- (4) No person who has obtained a permit shall fail to conduct an activity in accordance with their approved application.
- (5) Referrals, Call-up or Appeal:
 - (A) Conditional Use Permits: For conditional use permits, there shall be no referrals, call-ups or appeals. An applicant may resubmit a standard permit application for a denied conditional use application, pay the balance of the standard permit fee and proceed pursuant to the standard permit review process.
 - (B) Standard Review Permits: The decision of the city manager shall be subject to call-up by the planning board, or appealed by the applicant to the planning board, subject to the call-up and appeal procedure of section, 9-4-4 "Appeals, Call-Ups and Public Hearings," B.R.C. 1981.

(h) Financial Guarantees:

- (1) The city manager may require a financial guarantee in an amount, and with surety and conditions, sufficient to secure compliance with the conditions and limitations set forth in the permit.

- (2) Mitigation Plan Guarantee: Prior to receiving a final certificate of occupancy, the applicant and any successor owner of any portion of the property subject to a stream, wetland or water body mitigation requirement shall either complete the mitigation or provide a financial guarantee in an amount sufficient to guarantee the performance of the mitigation plan. If a building permit is not required for a proposed activity, a financial guarantee is required prior to issuance of a wetland permit. The guarantee shall be in an amount necessary to secure the full costs, as determined by the city manager, of construction and monitoring as described in the approved mitigation plan.
 - (3) The financial guarantee may be in any of the forms as described in subsection 9-12-13(f), B.R.C. 1981. If the financial guarantee is in the form of the escrow of funds, the city manager will take the measures described in subsection 9-12-13(g), B.R.C. 1981, to ensure that the funds are maintained in an appropriate manner.
 - (4) Annual Review: The city manager shall review the financial guarantee annually to assure that it meets the full current cost of installing or completing the mitigation plan that it guarantees and may require the recipient of the permit to augment the guarantee to meet such costs.
 - (5) Collection: If the mitigation plan is not completed within the required time, the city manager may cause it to be completed and collect against the financial guarantee, or, if the guarantee is exhausted, against the property owner for the full cost of completion.
- (i) Permit Amendment Procedures:
- (1) Changes to conditions of an approved permit or changes to an approved mitigation plan may be approved by the city manager without submittal of a new application if such changes are minor. Applicants for a minor change to a wetland permit must pay the fee for a revision as prescribed in section 4-20-53, "Stream, Wetland and Water Body Permit and Map Revision Fees," B.R.C. 1981. All minor changes to the permit shall be noted, signed and dated on the approved permit.
 - (2) If an applicant proposes to amend an approved permit and the proposed amendment is not considered minor by the city manager, the applicant must submit a complete application and pay the fee for a standard wetland permit as prescribed in section 4-20-53, "Stream, Wetland and Water Body Permit and Map Revision Fees," B.R.C. 1981.
- (j) Expiration of Permit:
- (1) Unless otherwise specified, a stream, wetland or water body permit expires three years after the date of final approval.
 - (2) For good cause, an applicant or any successor owner of any portion of land subject to a stream, wetland or water body permit may request an extension of an original permit by filing an application with the city manager prior to the expiration date of the permit, for up to an additional three-year period. The city manager may deny the request if good cause is not shown, if the original intent of the permit is altered or extended by the renewal or if the applicant failed to abide by the terms of the original permit.
- (k) Stream, Wetland and Water Body Boundaries:
- (1) For the purpose of mapping the boundaries of a stream, wetland or water body, the following standards and criteria shall be used:
 - (A) Wetland boundary determinations shall be performed in accordance with the procedures specified in the 1987 Corps of Engineers Wetlands Delineation Manual or defined in chapter 9-16, "Definitions," B.R.C. 1981.
 - (B) The boundaries of a stream shall include the bank-full width of the channel.
 - (C) The boundaries of a water body shall include the ordinary high water mark.

- (2) Annexation: Prior to annexation, all stream, wetland, water bodies and buffer areas on the property to be annexed shall be mapped by the City after the fee prescribed in section 4-20-53, "Stream, Wetland and Water Body Permit and Map Revision Fees," B.R.C. 1981, is paid and according to the procedures set forth in this section. This mapping shall include a functional evaluation of the stream, wetland or water body performed by the City. The approved mapping and evaluation shall be adopted as an update to the regulatory maps as a part of the annexation ordinance.
- (3) Map Revisions: At the request of a property owner and after submittal of an application and payment of the fee prescribed in section 4-20-53, "Stream, Wetland and Water Body Permit and Map Revision Fees," B.R.C. 1981, or at the city manager's initiative, adopted stream, wetland and water body boundaries may be modified by the city manager by means of the performance of a boundary determination in accordance with the requirements of this subsection:
 - (A) Applications: An application for a stream, wetland or water body boundary revision shall include, at a minimum, the following information:
 - (i) The written consent of all the landowners of all property subject to the boundary change request;
 - (ii) A report completed by a qualified wetlands biologist that describes the methodology used in determining the proposed new stream, wetland or water body boundaries; and
 - (iii) A site plan showing the exact location of the current regulatory stream, wetland or water body boundary; the property boundary; and the proposed new boundary determination.
 - (B) Review of Map Revision Applications:
 - (i) The city manager shall review the application in accordance with subsection (I) of this section, and may approve the proposed boundary change, approve the proposed boundary change with modifications or deny the proposed boundary change.
 - (ii) The decision of the city manager shall be subject to call-up by the planning board or appeal by the applicant, subject to the call-up and appeal procedure of Section 9-4-4, "Appeals, Call-Ups and Public Hearings," B.R.C. 1981.
- (I) Stream, Wetland and Water Body Functional Evaluations, Designations and Buffer Areas:
 - (1) Stream, Wetland and Water Body Functional Evaluations: The functions of all regulated stream, wetland and water bodies within the city limits have been evaluated and are described in the "City of Boulder, Comprehensive Wetlands Remapping Project" by Land Stewardship Consulting, October 18, 2004. The detailed report, including functional evaluations, is adopted and maintained on file in the planning department.
 - (2) Stream, Wetland and Water Body Designations: Streams, wetlands and water bodies are designated as either high or low functioning on the adopted regulatory maps. Streams, wetlands and water bodies are designated according to the following criteria:
 - (A) High Functioning: The additive value of all adopted functional value ratings, excluding recreation, equals twenty-six or more; or at least one function, excluding recreation, is rated high or very high.
 - (B) Low Functioning: The additive value of all adopted functional value ratings, excluding recreation, equals twenty-five or below.
 - (3) Buffer Areas: All regulated streams, wetlands and water bodies shall have a buffer area. The extent of the buffer area boundaries shall vary according to the stream, wetland or water body designation.
 - (A) High Functioning buffer area widths: The buffer area width for High Functioning streams, wetlands and water bodies shall be fifty feet and shall include an inner and outer buffer area.

- (i) The inner buffer area width shall be twenty-five feet from each point on the stream, wetland or water body boundary.
 - (ii) The outer buffer area width shall be twenty-five feet from each point on the inner buffer area boundary.
- (B) Low Functioning buffer area widths: The total buffer area width for Low Functioning streams, wetlands and water bodies shall be twenty-five feet from each point on the stream, wetland or water body boundary and shall be considered an outer buffer area.
- (4) Stream, Wetland or Water Body Functional Evaluation Request: At the request of all the owners of the majority of the land in the regulatory area of an individual wetland, water body or stream reach; and after payment of the fee prescribed in section 4-20-53, "Stream, Wetland and Water Body Permit and Map Revision Fees," B.R.C. 1981; or at the city manager's initiative, the city manager may perform a functional evaluation. Functional evaluations shall only be performed upon determination by the city manager that conditions have changed significantly from the adopted functional evaluation due to changes in land use or hydrology.
 - (A) Initial Request: An application for a stream, wetland or water body functional evaluation shall include the following information:
 - (i) Statement of request for the city to perform a functional evaluation of the stream, wetland or water body.
 - (ii) A description and other relevant information supporting potentially changed conditions of the stream, wetland or water body.
 - (iii) Number of the wetland, stream reach or water body as specified in the "City of Boulder Comprehensive Wetland Remapping Project" by Land Stewardship Consulting, Inc, October 18, 2004.
 - (iv) Signatures and addresses of the landowners party to the request.
 - (v) Payment of the fee for a functional evaluation initial application as indicated in section 4-20-53, "Stream, Wetland and Water Body Permit and Map Revision Fees," B.R.C. 1981.
 - (B) Review Process:
 - (i) The city manager shall review the request for a functional evaluation of a stream reach, wetland or water body and determine if conditions have changed sufficiently to warrant a new functional evaluation.
 - (ii) If the city manager determines that conditions have changed sufficiently to warrant a new functional evaluation and upon receipt of the fee for a functional evaluation final application as indicated in section 4-20-53, "Stream, Wetland and Water Body Permit and Map Revision Fees," B.R.C. 1981, the city will perform a functional evaluation of the stream reach, wetland or water body described in the initial request.
 - (iii) Upon receipt of the fee for a functional evaluation final application, mailed notice shall be provided to owners of all property affected by the regulated area described in the initial request according to the requirements shown in subsection 9-4-3(b), "Mailed Notice," B.R.C. 1981.
 - (iv) Functional evaluations shall be performed in accordance with the procedure described in the report entitled: "City of Boulder Comprehensive Wetland Remapping Project" by Land Stewardship Consulting, Inc., October 18, 2004.
 - (v) If the city manager determines that the functional values of an individual stream reach, wetland or water body have changed enough to result in a change to the designation of the

stream reach, wetland or water body, a proposal shall be taken to the planning board for a recommendation and to city council for adoption by ordinance.

(m) Variances:

- (1) Purpose: It is the intent of the city that the application of this chapter not result in an unlawful taking of private property without the payment of just compensation.
- (2) A person wishing to conduct an activity that does not conform to the requirements of this chapter and cannot be made to conform without unreasonable expense or unreasonable hardship may apply to the city manager for a variance from the requirements of paragraph (c)(3) of this section.
- (3) The manager may grant a variance only if it finds that the application satisfies at least one of the following criteria:
 - (A) There are unusual physical circumstances or conditions, including, without limitation, irregularity, narrowness or shallowness of the lot or exceptional topographical or other physical conditions peculiar to the affected property; because of these physical circumstances or conditions, the property cannot reasonably be developed or utilized in conformity with the provisions of the land use code; and any unnecessary hardship has not been created by the current property owner; or
 - (B) There is a physical disability affecting the owners of the property or any member of the family of an owner who resides on the property which impairs the ability of the disabled person to utilize or access the property;
- (4) For publicly funded projects, a variance may be issued if the city manager finds that the project is in the community interest and part of an approved master plan or capital improvements program.
- (5) Requirements for all Variance Approvals: Considering the functions of the wetland, stream or water body, the applicant must show that the variance is the minimum necessary to afford relief.
- (6) An applicant for a variance shall apply on forms provided by the city manager and pay the fee prescribed by section 4-20-53, "Stream, Wetland and Water Body Permit and Map Revision Fees," B.R.C. 1981.
- (7) The decision of the city manager shall be subject to call-up by the planning board, or appeal by the applicant to the planning board, subject to the call-up and appeal procedure of Section 9-4-4, "Appeals, Call-Ups and Public Hearings," B.R.C. 1981.

(n) Enforcement:

- (1) In order to carry out the provisions of this section, the city manager may enter upon private land not otherwise open to the public in a reasonable and lawful manner, with reasonable notice to the owner or manager of the property during reasonable business hours, for the purposes of inspection and observation.
- (2) If denied access to any property or building, the city manager may apply to the municipal court for a search warrant or administrative inspection warrant.
- (3) The city manager may suspend or revoke a wetland permit pursuant to the procedures set forth in sections 4-1-10, "Revocation of Licenses," and 4-1-11, "Revocation Not Exclusive Penalty," B.R.C. 1981. Permits may be suspended or revoked for a failure to comply with the provisions of the permit.
- (4) In addition to other remedies, the city manager will have the following powers:
 - (A) In the event of a violation, the city manager will have the power to issue an appropriate order to any person responsible for a violation of this section and to the property owner. In the order, the manager may specify the initial corrective measures required, including, without limitation, wetland restoration and creation measures for the destroyed or impaired wetland. If the responsible person or property owner does not complete such measures within the time required by the order, or request an administrative hearing by the city manager within seven

days of the issuance of such order, the city may restore the affected wetland to its prior condition and restore or create other wetlands for the purpose of offsetting losses sustained as a result of the violation. The person responsible for the original violation and the property owner shall be liable to the city for the cost of such actions, in addition to any fines that may be levied by the municipal court for violating this section.

- (B) If any property owner fails or refuses to pay, when due, any charges imposed pursuant to this section, the city manager may charge the costs against the financial guarantee, pursue other collection remedies and certify due and unpaid charges, including interest, to the Boulder County Treasurer, to be levied against the person's property for collection by the county in the same manner as delinquent general taxes upon such property are collected, as provided by section 2-2-12, "City Manager May Certify Taxes, Charges and Assessments to County Treasurer for Collection," B.R.C. 1981.
- (C) To guide stream, wetland and water body enhancement, restoration and creation actions, the city manager may order the violator to develop and amend a plan as described in subsection (f) of this section.
- (o) Emergency Exemption: The city manager may suspend any portion of this section in the event of an emergency situation which threatens irreparable harm to the health, safety or welfare of the inhabitants of the city or the city's planning area or to the city's environment.
- (p) Regulations: The city manager may adopt rules and regulations that the manager determines are reasonably necessary to implement the requirements of this section.

Ordinance Nos. 5562 (1993); 5604 (1993); 5725 (1995); 5788 (1996); 7182 (2002); 7373 (2004); 7366 (2004); 7522 (2007); 7658 (2009); 7681 (2009)

Exhibit G: Noise

Chapter 9 Noise

5-9-1. Legislative Intent.

The purpose of this chapter is to protect the public health, safety and welfare by defining those noises and sounds which by their volume or other physical characteristics, and, depending on their time, place and manner, disturb people of normal sensitivity, and to regulate such noises and sounds to the extent that can be done without detrimentally affecting necessary residential, commercial and governmental activities.¹ It is not the intention of the council to differentiate on the basis of the content, if there be any, of the prohibited sounds. However, in certain instances the council finds that there is a compelling governmental interest in making an exception for the loudness of certain sounds, such as warnings of imminent hazard.

¹For other provisions involving noise, see sections 6-1-19, "Barking, Howling, or Other Unreasonable Animal Noise Prohibited," 7-3-4, and "Adequate Muffling of Noise Required," B.R.C. 1981.

5-9-2. Definitions.

As used in this chapter, the following words are defined to mean:

Commercial district or commercial zone or commercial means any area zoned A, BCS, BMS, BC, MU, P, BT, BR or DT.

Group living arrangement means those group residencies in which the individual or family lives in a room or rooms of their own, but which contains common dining facilities and where decisions concerning the use of common areas for social events are shared among the individual residents. These include, without limitation, cooperative housing units, congregate or residential care facilities, rooming houses, dormitories, fraternities and sororities, as those terms are used in Title 9, "Land Use Code," B.R.C. 1981. These exclude buildings where people only reside temporarily such as hotels, motels or bed and breakfasts and buildings where each person resides in and controls a complete dwelling unit, including, without limitation, duplexes, triplexes, fourplexes, apartment buildings and condominiums.

Industrial district or industrial zone or industrial means any area zoned IG, IM, IS, or IMS.

Light construction work means work which uses only hand tools and power tools of no more than five horsepower, but not including power actuated fastening devices (e.g., nail guns).

Residential district or residential zone or residential means any area zoned RE, RH-1, RH-2, RH-3, RH-4, RH-5, RL, MH, RM, RMX, RR-1, or RR-2.

Zoned means classified into one of the zoning districts specified in Section 9-5-2, "Zoning Districts," B.R.C. 1981, as shown on the zoning map adopted by Section 9-5-3, "Zoning Map," B.R.C. 1981. Each district includes all areas zoned under the same prefix (i.e., RL includes RL-1 and RL-2). If new districts are established without amendment to this section, it is intended that the new district be governed under this chapter as if in the existing district which it most closely resembles, and if it could as easily be in one category or another, that it be in the category with the lower allowable decibel levels.

Ordinance No. 7522 (2007)

5-9-3. Exceeding Decibel Sound Levels Prohibited.

(a) No person shall:

- (1) Operate any type of vehicle, machine, or device;
 - (2) Carry on any activity; or
 - (3) Promote or facilitate the carrying on of any activity, which makes sound in excess of the level specified in this section.
- (b) Sound from any source, other than a moving vehicular source located within the public right of way, shall not exceed any of the following limits for its appropriate zone:
- (1) The sound limits prescribed by this section are set forth in the following table for the zoning district within the following use classifications in Section 9-5-2, "Zoning Districts," B.R.C. 1981:

<i>Zoning District of the Property on Which the Sound is Received</i>	<i>Maximum Number of Decibels Permitted from 7 a.m. until 11 p.m. of the Same Day</i>	<i>Maximum Number of Decibels Permitted from 11 p.m. until 7 a.m. of the Following Day</i>
Residential	55 dBA	50 dBA
Mixed use and other	65 dBA	60 dBA
Industrial	80 dBA	75 dBA

- (2) Sound from construction work for which a building permit has been issued:
 - (A) During the hours of 7 a.m. to 5 p.m., sound for work of any type shall be deemed received in an industrial zoning district;
 - (B) During the hours of 5 p.m. until 9 p.m., sound from light construction work received in a residential zone shall be deemed received in a commercial zoning district; and
 - (C) Under no circumstances shall amplified sound be considered as construction work activity.
- (3) Sound from a source regulated by this subsection:
 - (A) Sound from a source on private property shall be measured at or inside the property line of property other than that on which the sound source is located;
 - (B) Sound from a source on public property may be measured on that receiving property so long as the measurement is taken at least twenty-five feet from the source, or it may be measured at or inside the property line of receiving property other than the public property on which the sound source is located;
 - (C) For the purposes of this paragraph, a leasehold shall be deemed a property of the lessee, and its boundary, other than a boundary with adjacent property owned by the lessee, shall be deemed a property line.
- (c) All sound measurements shall be made on a sound level meter that meets ANSI specification S1.4-1974 for Type I or Type II equipment. The manufacturer's published indication of compliance with such specifications is prima facie evidence of compliance with this subsection.
- (d) It shall be a defense to a charge of violating this section that:
 - (1) The sound was made by an authorized emergency vehicle when responding to an emergency or as otherwise authorized by law or acting in time of emergency or by an emergency warning device operated by a government;
 - (2) The sound was made by the sounding of the horn of any vehicle as a danger warning signal or by the sounding of any warning device as required by law;
 - (3) The sound was made within the terms of a fireworks display or temporary street closure permit issued by the city manager, or was made by the rendering of military honors at a funeral by a military funeral honors detail;

- (4) The sound was made by an animal;¹
 - (5) The sound was made within the terms and conditions of a sound level variance granted by the city manager;
 - (6) The sound was made on property belonging to or leased or managed by a federal, state, or county governmental body other than the city and made by an activity of the governmental body or by others pursuant to a contract, lease, or permit granted by such governmental body;
 - (7) The sound was made by a police alarm device, if the police alarm shuts off automatically after no longer than ten minutes, by a fire alarm, or by an alarm system installed in a motor vehicle, if the car alarm shuts off automatically after no longer than five minutes;
 - (8) The sound was made by snow removal equipment equipped with a standard muffling system in good repair while removing snow; or
 - (9) The sound was made between the hours of 7 a.m. and 9 p.m. by a lawn mower or gardening equipment equipped with a standard muffling system in good repair.
- (e) This section shall not be construed to conflict with the right of any person to maintain an action in equity to abate a noise nuisance under the laws of the state.

Ordinance Nos. 7522 (2007); 7831 (2012); 7965 (2014)

5-9-4. Exceeding Decibel Sound Levels From a Motor Vehicle Prohibited.

- (a) Sound from a motor vehicle located within the public right of way shall not exceed eighty decibels on the "A" weighting scale (dBA), except that sound from a vehicle with a manufacturer's gross weight rating of ten thousand pounds and above may exceed eighty dBA but shall not exceed eighty-eight dBA. Such sound shall be measured at a distance of at least twenty-five feet from a vehicle located within the public right of way.
- (b) Such sound measurements shall be made on a sound level meter that meets the requirements of Subsection 5-9-3(c), B.R.C. 1981.
- (c) It shall be an affirmative defense to a charge of violating this section that:
 - (1) The sound was made by an authorized emergency vehicle when responding to an emergency or as otherwise authorized by law or acting in time of emergency or by an emergency warning device operated by a government;
 - (2) The sound was made by the sounding of the horn of any vehicle as a danger warning signal or by the sounding of any warning device as required by law;
 - (3) The sound was made within the terms and conditions of a sound level variance granted by the city manager;
 - (4) The sound was made by an alarm system installed in a motor vehicle, if the car alarm shuts off automatically after no longer than five minutes; or
 - (5) The sound was made by snow removal equipment equipped with a standard muffling system in good repair while removing snow.

Ordinance Nos. 7831 (2012); 7965 (2014)

¹Animal noises are covered in chapter 6-1, "Animals," B.R.C. 1981.

5-9-5. Disrupting Quiet Enjoyment of Home.

- (a) No person shall engage in, or be responsible for, a course of conduct which is so loud that it materially interferes with or disrupts another individual in the conduct of activities at such individual's home.
- (b) The following standards and definitions shall be used in the application of this section:
 - (1) The person engaging in such conduct must be at a location other than the complainant's home.
 - (2) *Home* includes the physical residence as well as the outside premises.
 - (3) *Another individual* includes all members of the household as well as others rightfully in the residence or on the premises.
 - (4) No person shall be convicted of a violation of this section unless that person has been warned that conduct violating this section is occurring or has recently occurred and, following such warning, the conduct is repeated or continued.
 - (A) No additional warning need be issued as a precondition to enforcement of this provision if similar conduct occurred within the previous ninety days and if a warning was communicated to an individual regarding his or her role in that past conduct.
 - (B) A prior warning shall be sufficient with respect to each of the residents of an individual dwelling unit at which a prior noise incident occurred (including any resident in a group living arrangement), if, after a personal communication was made to a person who engaged in conduct subject to the provisions of this section, the city manager caused a warning letter to be sent by first class mail addressed to "residents" of the dwelling unit in which the person who received the prior warning resided at the time of the issuance of the prior warning and at which the prior noise incident occurred. If a warning was attempted but could not be personally communicated because no one would answer the door or the person engaged in the conduct could not be identified, a warning letter under this subparagraph shall be sufficient.
 - (C) No warning under this paragraph is required if the conduct would violate Subsection 5-9-6(b), B.R.C. 1981, concerning unreasonable unamplified sound, and it originated on private property.
- (5) If conduct violative of this section:
 - (A) Originates upon private property;
 - (B) The owner or some other person with authority to control that property is present at the time that such occurs; and
 - (C) The owner or authorized person has received a communication requesting cessation or reduction in the level;then the owner or authorized person is also responsible for the repeated or continued conduct under this section, even though not directly engaged in the conduct.
- (6) Whether or not noise is "so loud that it materially interferes with or disrupts" shall be measured against the objective standard of a reasonable person of normal sensitivity.
- (7) It shall be an affirmative defense to a charge of violating this section that:
 - (A) The sound was made by an authorized emergency vehicle when responding to an emergency or as otherwise authorized by law or acting in time of emergency or by an emergency warning device operated by a government;
 - (B) The sound was made by the sounding of the horn of any vehicle as a danger warning signal or by the sounding of any warning device as required by law;

- (C) The sound was made within the terms of a parade, fireworks display, or temporary street closure permit issued by the city manager, or was made by the rendering of military honors at a funeral by a military funeral honors detail;
 - (D) The sound was made by an animal;²
 - (E) The sound was made on property belonging to or leased or managed by a federal, state, or county governmental body other than the city and made by an activity of the governmental body or by others pursuant to a contract, lease, or permit granted by such governmental body;
 - (F) The sound was made by a police alarm device, if the police alarm shuts off automatically after no longer than ten minutes, by a fire alarm, or by an alarm system installed in a motor vehicle, if the car alarm shuts off automatically after no longer than five minutes;
 - (G) The sound was made by snow removal equipment equipped with a standard muffling system in good repair while removing snow;
 - (H) The sound was made between the hours of 7 a.m. and 9 p.m. by a lawn mower or gardening equipment equipped with a standard muffling system in good repair; or
 - (I) The loud conduct consisted solely of natural speech or communication by or between people, unless such conduct was used as a guise materially to interfere with or disrupt another individual in the conduct of activities at the individual's home and that was the result.
- (8) It is not a defense to a charge of violation of this section that the sound levels complied with the requirements of Section 5-9-3, "Exceeding Decibel Sound Levels Prohibited," B.R.C. 1981.

Ordinance Nos. 7831 (2012); 7965 (2014)

5-9-6. Unreasonable Noise Prohibited Between the Hours of 11 P.M. Through 7 A.M.

Between the hours of 11 p.m. through 7 a.m., no person shall:

- (a) Amplified Sound: Electronically amplify any sound, or make any noise by means of any electronic amplifier, which is loud enough to be audible to a person of normal hearing:
 - (1) One hundred or more feet beyond the property line of the property upon which the loudspeakers are located where they are located in a residential district.
 - (2) One hundred fifty or more feet beyond the property line of the property upon which the loudspeakers are located where they are located in a commercial or industrial district.
 - (3) Each resident or person in control of an activity or event in or on the premises of a dwelling unit who is present within that dwelling unit or upon the premises of that dwelling unit when sound in violation of this section is amplified or generated upon the premises shall be responsible for the generation of that sound or noise.
 - (4) Each owner, manager, or person in control of an activity or event in or on the premises of a commercial or industrial property upon which sound in violation of this subsection is generated shall be responsible for the generation of that sound or noise.
 - (5) It shall be an affirmative defense to a charge of violating this subsection that:
 - (A) The sound was made by an authorized emergency vehicle when responding to an emergency call or acting in time of emergency or by an emergency warning device operated by a government;

²Animal noises are covered in chapter 6-1, "Animals," B.R.C. 1981.

- (B) The sound was made by the sounding of the horn of any vehicle as a danger warning signal or by the sounding of any warning device as required by law;
 - (C) The sound was made within the terms of a parade or temporary street closure permit issued by the city manager;
 - (D) The sound was made on property belonging to or leased or managed by a federal, state, or county governmental body other than the city and made by an activity of the governmental body or by others pursuant to a contract, lease, or permit granted by such governmental body;
 - (E) The sound was made by a police alarm device if the police alarm shuts off automatically after no longer than ten minutes, by a fire alarm, or by an alarm system installed in a motor vehicle, if the car alarm shuts off automatically after no longer than five minutes;
 - (F) For a charge of violation based on Paragraph (a)(3) or (a)(4) of this section, the defendant did all that a reasonable person could have done under the circumstances of the creation of the noise to prevent the offense and, if requested to do so, cooperated with law enforcement officers to identify accurately the offender or offenders; or
 - (G) For a charge of violation based on Paragraph (a)(4) of this section, the sound was made by a trespasser.
- (b) Unreasonable Unamplified Sound:
- (1) While on public property within a residential district, no person shall yell, scream, shout, cheer, sing, or otherwise make noise with the human voice louder than that which is reasonably necessary for normal conversational speech.
 - (2) It shall be an affirmative defense to a charge of violating this subsection that the sound was reasonably necessary to gain assistance to prevent a crime, catch a criminal, warn of fire or other danger, or to seek assistance for a health problem or injury or for assistance in dealing with an accident.
- (c) Trash Pickup: No person shall make any trash pickup with a truck which has a compactor or the capacity to raise and dump dumpsters in any residential or commercial district, and no employer shall fail to prevent its employee from violating this subsection while the employee is driving a trash truck owned by or under the control of the employer. For the purposes of this subsection, testimony that the name of a business which holds itself out as being in the business of trash hauling was written on the trash truck shall be prima facie evidence that the trash truck was owned by or was under the control of the employer so identified.

Ordinance Nos. 7831 (2012); 7965 (2014)

5-9-7. Unreasonable Noise Prohibited Between the Hours of 9 P.M. Through 7 A.M. - Lawn Mowers, Leaf Blowers, and Construction.

Between the hours of 9 p.m. through 7 a.m., no person shall:

- (a) Lawn Mowers and Leaf Blowers: Operate any lawn mower, leaf blower, or other power lawn or gardening tool on any private property within, or within one hundred feet of the boundary of, any residential district.
- (b) Construction in a Residential Zone: In a residential zone, use power tools which are audible off the property upon which they are being used as part of construction work for which a building permit has been issued or is required for the work.

Ordinance Nos. 7831 (2012); 7965 (2014)

5-9-8. Unreasonable Noise Prohibited at Any Time - Motor Vehicle Amplified Sound.

- (a) No person shall operate any electronic amplifier in or attached to any motor vehicle so that the sound is audible at a distance of twenty-five feet or more from the motor vehicle, or which emits vibrations which can be felt by persons outside of that vehicle. This prohibition does not apply to sound made on private property with the permission of the property owner and not audible or palpable beyond the property line.
- (b) It shall be an affirmative defense to a charge of violating this section that:
 - (1) The sound was made by an authorized emergency vehicle when responding to an emergency call or acting in time of emergency or by an emergency warning device operated by a government;
 - (2) The sound was made by the sounding of the horn of any vehicle as a danger warning signal or by the sounding of any warning device as required by law;
 - (3) The sound was made within the terms of a parade or temporary street closure permit issued by the city manager; or
 - (4) The sound was made by an alarm system installed in a motor vehicle, if the car alarm shuts off automatically after no longer than five minutes.

Ordinance Nos. 7831 (2012); 7965 (2014)

5-9-9. Certain Musical Instruments Prohibited on the Mall Between 12 Midnight and 7 A.M.

No person shall play any percussive or amplified musical instrument on the mall between the hours of 12 midnight and 7 a.m.

Ordinance Nos. 7831 (2012); 7965 (2014)

5-9-10. Sound Variances.

- (a) Decibel Variance: A variance shall be granted for the decibel limits of Section 5-9-3, "Exceeding Decibel Sound Levels Prohibited," or 5-9-4, "Exceeding Decibel Sound Levels From a Motor Vehicle Prohibited," B.R.C. 1981, after application is made if the city manager finds that compliance will cause an undue hardship and further finds that:
 - (1) Additional time is necessary for the applicant to alter or modify the activity or operation to comply with this section; or
 - (2) The activity, operation, or sound source will be of temporary duration, and even with the application of the best available control technology cannot be done in a manner that would comply with this section.

In either case, the manager must also find that no reasonable alternative is available to the applicant. If the manager grants a variance, the manager shall prescribe such reasonable conditions or requirements as are necessary to minimize adverse effects upon the community or the surrounding neighborhood.

- (b) Trash Variance: Trash haulers may apply to the city manager for a variance of the provisions of Subsection 5-9-6(c), B.R.C. 1981, for locations within a commercial district. Possession of a valid variance shall be a specific defense to any charge under Subsection 5-9-6(c), B.R.C. 1981, if the act complained of was within the variance granted. The manager may grant all or a part of any requested variance, and may place such conditions upon any variance granted as are reasonably suited to limit the harmful effects of the variance. Such variances shall be granted only if the applicant can demonstrate to the manager's satisfaction:
 - (1) That the location in question is sufficiently removed from any residential use that the noise of trash removal will not disturb anyone in their residence, including, without limitation, hotel and motel accommodations; or

- (2) That the location cannot feasibly be serviced during permitted hours, and that the variance is the least necessary to permit trash removal while still assuring nearby residents reasonable nocturnal quiet.

5-9-11. Flood Debris Removal.

Notwithstanding any other provision of this chapter, until April 15, 2014, individuals and entities involved in debris removal necessitated by flooding, may engage in operations as necessary from 5 a.m. until 12 midnight.

Ordinance No. 7946 (2013)

Exhibit H: Summary of Responsibilities at Key Milestones

The Parties have negotiated responsibilities in good faith based on projected costs. The Parties agree that these cost and credits will not be recalculated based on actual costs. The following represents responsibilities at key milestones and not an exhaustive list of responsibilities detailed in the Agreement. Note that this summary only references the University. Refer to specific sections of the Agreement to determine terms for both the “University” and subsequent “Owners”.

1. During the De-Annexation Period

- a. The University may construct facilities and buildings for Parks and Recreation Uses that do not require connection to city utilities (Section 15.a).
- b. The University will review and comment on 60 percent design of the preliminary design phase of the flood mitigation project (Section 21.a).
- c. ALTA/NSPS Land Title Surveys, updated title commitments and legal descriptions, draft special warranty deeds of other documentation necessary for conveyance of land (Section 12).
- d. Prior to construction of recreation or event facilities of field, the Parties will execute and Intergovernmental Agreement to fund an independent, third-party study on existing light and noise conditions (Section 14).

2. At the conclusion of the De-annexation Period (or as extended): Once the option to de-annex the property has expired, the Parties will have the following responsibilities:

- a. If the City does not receive such approvals or does not have land upon which the Project may be constructed within the De-annexation Period, the City, in its discretion, may require that the University apply and otherwise commence the process to disconnect the Property from the City within 30 days (Section 41).
- b. Land Conveyance (Section 12):
 - i. The University conveys 80 acres to the City for its flood mitigation project and open space.
 - ii. The University conveys two acres or enter into a lease agreement for use of land for a public safety facility. The Parties may enter into an Intergovernmental Agreement to mutually provide public safety services.
 - iii. The City will either pay the University for the remaining land in the Open Space Zone or credit the cost to the PIF’s owed by the University to be paid at the time of development.
 - iv. The City purchases remaining portion of the Open Space Tract.
- c. The University pays the City an Impervious Coverage Fee to the City (Section 16.h.iv).
- d. The Parties will execute water use agreements and the 30.2 water rights will be conveyed to the City (Section 13).
- e. The City will be responsible for all federal, state and other governmental approvals for the flood mitigation project (Section 21.b).
- f. City develops a mitigation plan for the Open Space Zone (Section 22.a).
- g. The City will remove the existing levee system (Section 22.b).

3. At the Time of University Development(distributed among phases of development)

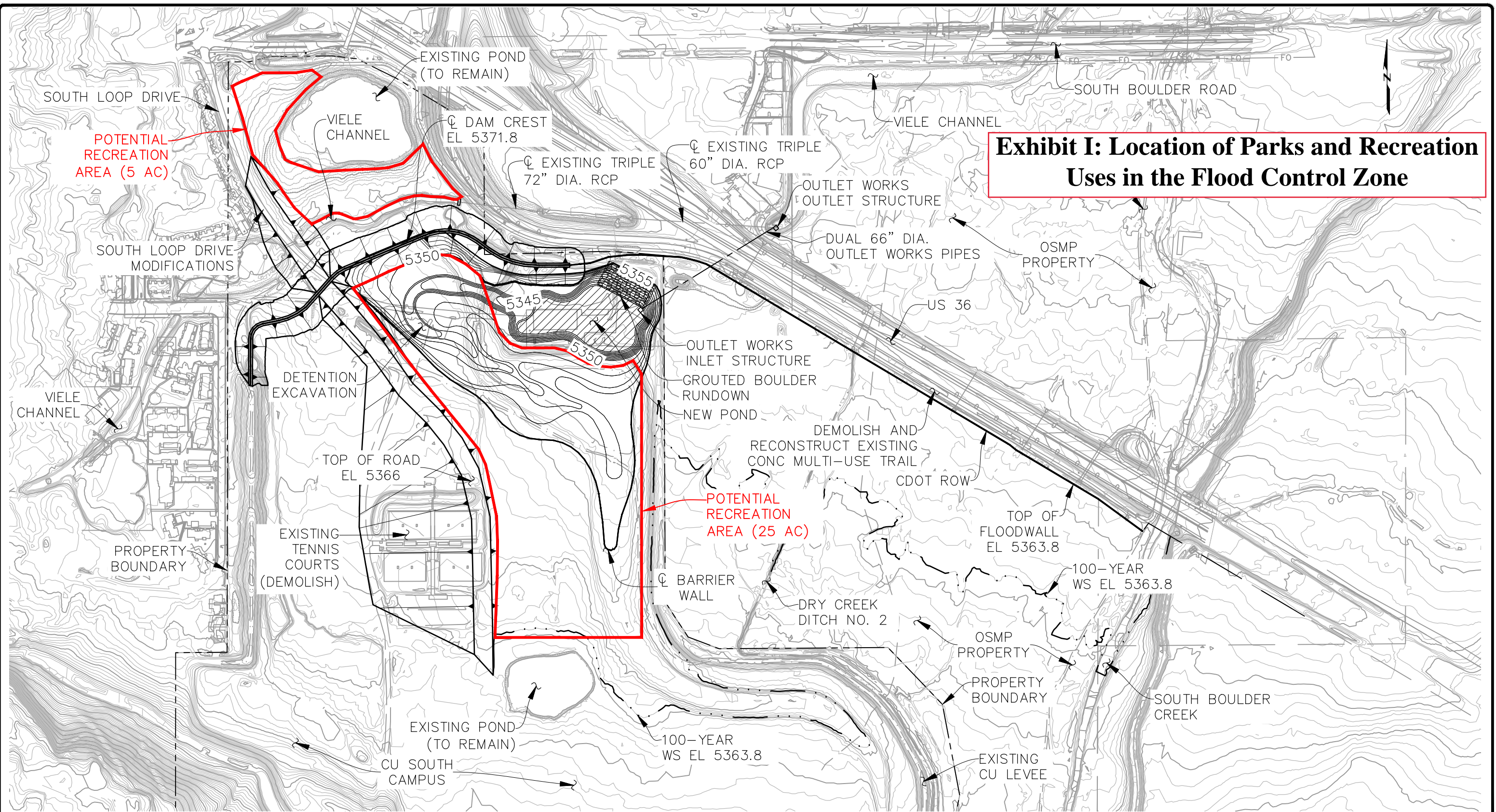
- a. Prior to connecting to the City’s water or wastewater system, the University will (Section 16.h)
 - i. Enter into a water and wastewater service agreement;
 - ii. Submit to the City a water system distribution analysis and wastewater collection analysis; and
 - iii. Convey approximately five acres of land to a University Affiliate to partner with the City’s housing authority for development of affordable housing (Section 20.k).
- b. The University will submit lightings plans for 30-day City review (Section 16.c.i).
- c. The University will pay to the City all applicable Plant Investment Fees at the time of development and/or connection to City utilities (Section 16.h.iv).
- d. The University will submit proposed street names and Building numbers (“Addresses”) to the City during its design development phase for City approval (Section 11).
- e. The University may pay the City for mitigation within Open Space Zone as a result of development in the Development Zone that displace wetlands (Section 22.a).
- f. The University will obtain necessary permits, right-of-way acquisition and construction necessary to establish vehicular access to the property (Section 24.c).
- g. The University will commence trip cap monitoring and reporting prior to commencing development and annually following construction and occupancy of 900,000 square feet of floor area of development (Section 27).
- h. The University will construct a multi-modal mobility hub prior to completion of the first non-residential building and expand over time to adequately meet the demand generated by development on the property (Section 33).
- i. The University will apply for a State Highway Access Permit prior to constructing building south of the phasing line shown in Exhibit C (Section 35.a).
- j. The University will pay a transportation fee at the time of development (Section 35.d).

4. Ongoing

- a. The Parties will collaborate on the restoration and protection of Open Space land (Section 14).
- b. The University will enter into an agreement with the City for a 50/50 cost sharing arrangement for a new underpass (Section 35.b).
- c. The City and University jointly consider construction of a running track and dog park (Section 21.g.iii – iv).
- d. The City will undertake a planning process to determine future uses within the Open Space Zone (Section 22.c).
- e. The City and University will continue and extend ongoing collaborations for off-site transportation planning projects (Section 23.a).
- f. The University will provide the City opportunities to review the CU Boulder South Master Plan (Section 36).
- g. The University will submit 90 percent conceptual design plan to the City for development of the Property. The City will have a period of 60 days to review (Section 37).
- h. The University will provide final as-built construction document in a portable document format (PDF) (Section 40).

- i. The City will have a right of first offer to purchase the Remaining Land Interest (Section 43).

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**Exhibit I: Location of Parks and Recreation
Uses in the Flood Control Zone**



PRELIMINARY
NOT FOR CONSTRUCTION



SOUTH BOULDER CREEK
REGIONAL DETENTION
CONCEPT DESIGN
PROJECT NO. 16134

PLAN OF OPTION 1
July 2021
Figure 1