

To: Members of the Boulder Planning Board, City Council, Boulder City Staff

From: The Citizen's Campaign on Considerations for Annexation of CU-South

Re: Feedback on CU's Annexation Terms for CU-South

Date: November 4, 2020

The Citizens' Campaign on Considerations for Annexation of CU-South is a collaboration between PLAN-Boulder and Save South Boulder, a coalition of South Boulder neighborhoods. We present the following discussion of the University of Colorado's "terms for annexation," the City's response to CU's initial proposal, and CU's counter-response, delivered to the City on October 5, 2020, with a promise to deliver additional information regarding specific topics on November 1, 2020.

### Statement of Guiding Principles and Conditions

We believe that the City of Boulder must confront CU's evasions, obfuscations and lack of cooperation over annexation. Further, the City must drop a good faith belief in CU's assertions about its desires for cooperation. CU is a corporation and its own fiscal and other goals trump its good citizenship behavior. The City should try to negotiate in good faith....but it must back up every single issue in writing in an air-tight annexation agreement first. We suggest that the negotiations should achieve the following conditions—as stated in the charter amendment document we circulated in the summer, 2020.

The City of Boulder shall only annex CU South in whole or in part, and if annexed only provide services for CU South in whole or in part, under the following conditions:

- a) There is a legally enforceable Annexation Agreement (hereinafter "the Agreement") agreed to by both the University of Colorado and the City of Boulder and binding on all future owners;
- b) The Agreement shall include a flood management plan that (1) mitigates up to a 500-year flood, as defined by the Federal Emergency Management Agency, both on-site and downstream of CU South, for all lands and property that are at risk of flooding by South Boulder Creek and its tributaries, or Viele Channel, and (2) includes removal of the existing levee; (3) is designed so as to preserve existing groundwater flows in the South Boulder Creek Floodplain, and (4) conforms, to the extent possible, with the philosophy of flood management articulated by Dr. Gilbert White.
- c) The Agreement shall require that all flood mitigation improvements included in this flood management plan that are located on CU South are implemented prior to the construction of any buildings or other facilities on CU South;
- d) The Agreement shall require that the University of Colorado or any future owner or owners provide or pay for all public infrastructure and services, both on-site and off-site, necessary and adequate to serve any on-site development on CU South and to prevent any diminution of current levels of service or service standards for off-site city residents and businesses, all as reasonably determined and calculated;
- e) The Agreement shall include a plan for mitigating adverse traffic impacts in the areas adjoining CU-South;

- f) The Agreement shall include a plan for mitigating negative impacts on wetlands and wild lands in accordance with local, state, and federal guidelines;
- g) The Agreement and any development allowed on CU South shall conform to the requirements of the Boulder Valley Comprehensive Plan, the Boulder City Charter, and the Boulder Revised Code, including development review processes;
- h) The Agreement shall include a plan for development that identifies the allowed uses, square footage by use, and location of all future development and infrastructure;
- i) Heights of buildings shall be limited to no more than 55 feet as defined and regulated by the Boulder City Charter and the Boulder Revised Code;
- j) Any housing on CU South shall be permanently affordable to low-, medium- and middle-income residents, as defined by the City of Boulder’s Affordable Housing Program.

### Enforceable Provisions and the Dangers of CU’s Sovereign Status

It is crucial to realize that the only enforceable stipulations regarding annexation will be those that are specifically stated in the annexation agreement. Only the annexation agreement has the force of law. Any limitations, conditions, or rules the City wishes for CU to follow cannot be decided at a later date “after annexation agreement is signed.” That is because CU’s status as a sovereign entity leaves it completely immune to any sorts of state and local regulations. Thus, anything CU is not specifically forbidden to do by the agreement will be permissible. CU makes this clear repeatedly in its proposed annexation terms, stating flatly, for example, that “CU will not be subject to city zoning, inclusionary housing, or affordable housing programs”—regardless of the City’s stated response requiring such compliance.

This is the key danger in the current rush to annex the CU-South property. The Citizen’s Campaign holds that it is absolutely imperative that any annexation agreement signed by the City with CU include extensive and specific details as to what CU may and may not do on the property. Any detail not clearly stipulated in the annexation agreement can, and will, be ignored by CU, as its sovereign status can be trumped only by an air-tight, legally enforceable annexation agreement. Right now, this key danger is both poorly understood and being ignored in the City’s negotiations.

### A Non-Starter

The current annexation terms presented by CU are replete with topics whose resolution of differences between the City and CU are dealt with by saying they are “to be addressed after the annexation agreement is signed.” **That phrase must be a complete non-starter for City negotiations.** Absolutely every point of disagreement between the City and CU must be settled and enshrined in the annexation agreement prior to signing. For the City to accede to CU’s demands without so doing would be total capitulation; it would fail to protect residents and property downstream of CU-South from flooding, impose an undue financial burden on Boulder taxpayers, dramatically increase negative impacts of traffic and environmental degradation, and destroy the iconic mountain viewscape at Boulder’s southern gateway. Crucially, there is no need at all to rush into a flawed annexation agreement.

## Flood Mitigation Must Be Prioritized

The rush to annexation is premature because CU repeatedly has declared that it has no immediate plans to begin development, or even to make public an initial plan for its proposed development. And the City and CU have conflicting priorities for CU-South. It is clear that CU's priority is construction of its third campus, regardless of its impact on the City and its infrastructure. It also seeks to shift as much of the cost of developing its campus to the City's taxpayers as possible. This is clear in the CU's terms for annexation. However, the Citizens' Campaign holds that the number one priority for the South Boulder Creek floodplain—and the CU-South property—must be to mitigate flooding. Boulder residents should pay for costs attendant only to design and implementation of an effective, environmentally sensible flood mitigation project.

## CU's Refusal to Provide a Site Plan as a Condition of Annexation

CU has repeatedly has stated that it is not ready to provide a site plan prior to signing an annexation agreement. This, however, is asking the City to sign a blank check. This demand must not be agreed to by the City. If CU is NOT ready to produce a site plan, it is NOT ready to begin annexation negotiations. This is especially true since many of CU's annexation terms require the City to assume responsibility, and provide compensation to the University, for potential damages to very specific buildings and recreational facilities. This is unreasonable; the City cannot assume risks for as-yet-unplanned buildings and facilities without even knowing what purposes these buildings and facilities will serve, their dimensions, and, importantly, where they will be located.

Such details must include what will be built, for which purposes, and where the locations will be, as well as absolute commitments by CU to follow all requirements of the Boulder Valley Comprehensive Plan, the Boulder City Charter, and the Boulder Revised Code, as well as state and federal regulations concerning building size, height, aesthetics, provisions for access and egress, and maintenance of all roads and infrastructure.

If CU does not sign off on such a specific set of stipulations in the annexation agreement, it will argue that sovereign status allows it to do anything at all it wishes on the CU-South property—even engaging in acts and practices inimical to life and safety of Boulder citizens and the City's fragile environment. Only the annexation agreement is legally enforceable, and CU's assurances to the contrary, without such an agreement, mean nothing.

## Annexation Is a Privilege, Not a Right

CU seems to have forgotten that being annexed to the City of Boulder is a privilege, not a right. No entity has a right to be annexed. The City is neither required to provide water and sewer services to CU's property nor to accede to any of the other demands CU has inserted in its annexation proposal. CU has not demonstrated sufficient community benefit of annexation to the City of Boulder to warrant the costs and risks included in the proposal—other than that of having a first tier university in the community. However, CU already exists in Boulder. Annexation will not alter or improve on that fact nor will it enhance CU's contributions. Growth does not improve quality.

Additionally, the wisdom and viability of CU's aspirational plans for expansion increasingly are called into question by CU's current and future precarious financial position, and the reduced need for more and bigger institutions of higher learning in Colorado. Finally, serious attention needs to be given to the carrying capacity of the City's existing resources and infrastructure. The Citizens' Campaign holds that Boulder can neither accommodate nor afford to have an entire third campus built at its south end, and should not agree to any project of the magnitude proposed by CU.

## Stalemated Negotiations

It is clear that the current annexation negotiations are stalemated over a number of issues, despite efforts to portray them otherwise. The Citizens' Campaign believes that this is because

1. Priority in annexation negotiations has not been given to designing and implementing a sensible, cost-effective and best-practice flood mitigation project for the South Boulder Creek floodplain. Flood mitigation should be constrained only by what's most effective for Boulder residents and least environmentally damaging to the sensitive habitat of the South Boulder Creek floodplain. It should neither prioritize nor subsidize CU's development aspirations.
2. CU's intransigence in requiring the City of Boulder to assume all risks, costs and liabilities for any aspects of the flood mitigation project and its construction. These demands, as well as the requirement that the City pay CU compensation for said risks, costs and liabilities in perpetuity, are non-starters. The City should never accede to them.
3. CU's refusal to provide a site plan for its development, a component required by all other major annexation proposals submitted to the City, makes it impossible for the City to assess impacts, risks, liabilities and other damages that CU's development plans will pose to the City of Boulder, and especially South Boulder's densely populated neighborhoods and already over-taxed infrastructure.
4. CU's refusal to provide information needed to assess non-compliance with state and local regulations and codes protecting city aesthetics and views, and protected and sensitive habitats, as well as codes enforcing quality of life issues such as building sizes, heights, and population density are a clear danger to the quality of life in Boulder. Similar refusals pose a threat to increased traffic, noise, air, light and water pollution in South Boulder.
5. CU's insistence in ignoring issues of increased traffic, light, noise and water pollution attendant to its development, requiring that these will be addressed "after an annexation agreement is signed" or once a "transportation study" – which decidedly does NOT address traffic issues – is completed.
6. CU's demands that 129 +36+30 acres land—whether within or outside of the 500 year floodplain—be made of fully developable at City expense. These demands pose an unacknowledged and unacceptable tax and fee burden on City residents without compensatory benefits.
7. CU's willingness to give the city 80 acres of land for flood mitigation complicates lack of certainty over how much land actually would be required for flood mitigation, where such land should be located, and how CU would apportion its 80 acre donation. First, CU specifies that the donated land should be in the NE portion of CU-South, the low-lying PKU-O portion closest to

Hwy 36. At the same time, CU divides use of the 80 acres as 36 acres for flood mitigation, and 44 for the City to convey to Open Space as compensation for loss of five acres of open space required for the flood mitigation project. The PKU-O land may be inappropriate for Open Space restoration, and neither its location nor its size may be adequate for floodwater detention.

8. Finally, the flood mitigation project most likely will require from 90-120 acres, not the 80 acres CU is willing to donate. CU says any additional land the City needs, whether for the flood project or open space compensation or any other purpose, must be purchased by the City (ratepayers) from CU at a cost per acre agreeable to CU—estimated by CU to be from \$1-\$2 million per acre.

Below we dissect the negotiations between CU and the City to date, pointing out the gaping holes in any presumed fabric of agreement. Differences between CU’s position and that of the City must cease being masked and smoothed over by phrases such as “needs more discussion”, “more information needed” and “will be addressed after annexation.” Those phrases disguise real and consequential unresolved conflicts which require resolution before an annexation agreement is signed, not after. Anything postponed will simply be trumped by CU’s sovereign status, which it already has said it will invoke.

### Hard Negatives, not Missing Data, from CU

Moreover, CU’s annexation terms demonstrate that CU has no intention of providing the needed information or engaging in more discussion prior to an annexation agreement. **That’s because these issues are not simple matters of missing information. They are topics in which CU’s responses constitute a hard “no” to the City’s requests.** CU has said it won’t, can’t, or doesn’t have to, provide more information because

- It **will not** follow local regulations or guidelines because it has its own guidelines and will follow them instead of the City’s;
- It **cannot** provide any more information because it has not yet developed a site plan for developing CU-South;
- It **does not have to** provide more information because it is a “sovereign entity” not governed by any local regulations or guidelines.

This is not a framework for negotiation.

### CU’s Demands Will Impose Unacceptable Financial Burdens on the City

We have discussed above the danger of CU’s demand that it not be required to provide a site plan as a condition of annexation, and how this demand prevents the City from adequately protecting residents from damage caused by CU’s future development, either because the City cannot devise protection when CU won’t reveal what it plans to do, or because the City cannot devise protection against the University’s outright refusal to follow rules, comply with guidelines, or insistence on substituting its own internal guidelines for what it calls “local” rules of the BVCP or the City of Boulder. Or, because, when all else fails, CU hides behind its “sovereign status.” CU could NOT use that status as protection against non-compliance if an annexation agreement explicitly required compliance in specific, clearly described issues.

CU's demands, furthermore, blatantly impose unacceptable financial burdens on the City's taxpayers without any compensatory community benefit. We explore this issue more fully below.

- CU demands that the City provide cash compensation in perpetuity for any damage to CU's future buildings or properties as a consequence of failure of the flood mitigation project—but refuses to describe where those buildings might be located
- CU demands that the City provide compensation if any of its playing fields don't drain and become usable within 24 hours of a flood event—but will not state where those playing fields will be located, or promise they won't be located within detention areas
- CU demands that the City pay \$1-\$2 million per acre for any additional acreage (beyond the 80 acres in the low-lying PKU-O property which CU has said it will "give") needed for the flood mitigation project.
- CU says that the City may take down the levee around CU-South if it wishes, but must do so at the City's expense. And then it requires that CU retain ownership of the resulting removed earth and fill. If the City wants to use that fill, it must buy it back from CU at a price CU will determine. CU wants to have its cake and eat it, too.

### Loopholes for Non-Compliance Riddle the Annexation Terms

CU has built loopholes throughout its annexation "terms." These loopholes mean that CU can renege on any of the promises made in the annexation proposal if everything it asks for doesn't go exactly as CU wants. These loopholes also are often identifiable with the phrase "more information needed." For example:

- CU says it will "prioritize" housing in its development....UNLESS CU deems that the configuration of the flood mitigation project and dam make it undesirable to build housing at all.
- CU says it only will build residential housing, BUT that housing also would include "local convenience retail, food services, student services, personnel facilities" and other amenities, needed for daily on-site resident needs." These also would include parking, maintenance buildings, even academic facilities.
- CU says it will not build anything within the 500-year floodplain....UNLESS the flood mitigation project requirements take some of the 129 acres (construction) and 36+30 acres (playing fields and facilities) CU "requires" for its development. If that happens, CU says it WILL build in the 500 year flood plain, and furthermore,
- CU will require that the City fill in and re-grade needed chunks of the OS-O designated property (aka, the 500 year flood plain) to raise it out of the floodplain—at the expense of Boulder City utility ratepayers.
- This includes relocating the existing tennis courts and raising its new location out of the floodplain with earthfill, at City expense.
- CU says it will not build any academic buildings at CU-South....UNTIL a sufficient number of residential buildings already have been constructed and inhabited. However, CU has not specified how many a "sufficient number" would be, how long that would take, and where such buildings, whether residential or otherwise, would be located.

- CU says that the City must pay (unspecified) compensation to the University if FEMA changes the boundaries of the floodplain after flood mitigation so as to increase the amount of CU-South property that thereby resides within the floodplain—DESPITE that the City has no control, either over FEMA actions or future flooding impact in an era of climate change
- CU says that it does not have to comply with BVCP and City guidelines and codes regulating the size, height, and environmental impact of buildings, or guidelines requiring playgrounds for residential buildings housing families, or rules enforcing consistency in plantings and open spaces—all because CU has its own guidelines and will follow them. A mere glance at CU’s most recent enormous construction project will make clear that CU does what it wants to do, not what the City would like our urban environment to resemble.
- CU flatly refuses to provide “payment in lieu” of paying taxes to support City services which CU wants for its proposed development—BECAUSE it is a “sovereign entity.” These are services such as police, fire, water and sewer services and flood protection, which all residents must pay for, either in taxes or in fees. THUS, the extra cost of providing such services to CU’s new campus will fall to Boulder taxpayers—who have not had a chance to vote on whether or not they even want CU’s campus to be built.

Taken altogether, even this limited list of the loopholes in CU’s annexation terms render it useless as a framework for agreement. Each promise contains an escape hatch which negates it.

### **CU’s Annexation Proposal Will Affect Both the Natural and the Human Environment.**

CU’s annexation will not occur in a vacuum. CU-South is surrounded on three sides by the South Boulder Creek Floodplain and open space, and on three sides by densely populated adjoining neighborhoods of single-family dwellings, townhomes and apartment complexes, and trailer parks. But CU’s annexation terms are curiously silent about any plans either to protect the sensitive natural environment and wetlands of the South Boulder Creek Floodplain or mitigate the negative impact of its massive development on the surrounding neighborhoods. Nor have any of the neighborhoods—including, at least, Martin Acres, Majestic Heights, Hyview, Tantra Park, Frasier Meadows, Greenbelt Meadows and Lower Chautauqua--concerned been kept apprised of CU’s intentions or the City’s responses.

#### **The Natural Environment**

CU’s annexation terms seem virtually to ignore the natural environment. Very little attention is given in the annexation proposal to mitigation of impacts to the natural environment other than stating that CU will attend to principles in the BVCP and will obtain required permits regarding building in the floodplain and in and near wetlands on its own property. Impacts specifically on water quality, sustainability of sensitive habitat, or viability of plant and animal populations are not addressed. Neither the impact of increased hardscaping in the South Boulder Creek floodplain on runoff from normal precipitation, nor increased water pollution in that runoff and its impact on the creek’s habitat, flora and fauna are mentioned. Light, noise, and increased particulate pollution will have negative impacts on the entire floodplain and are not addressed. Neither is the adverse impact of greatly increased human presence on the natural environment, its soils, plants, animals and water mentioned at all. In fact, the large portion

of CU-South designated as Open Space-Other is treated—as described below—as a reservoir or piggy bank to be filled in to above flood-plain status and built out according to CU’s development aspirations, as needed.

Not addressed is the probable negative impact which will occur if, as CU demands, parts of the OS-O land in the floodplain are filled in to raise them out of the floodplain for development. This land already has a very high water table, as is evidenced by the existing permanent ponds, which never dry up, even during severe droughts. If the floodplain is filled, it will be less absorbent. Where will the excess run off go, and what will be the impact on existing wetlands, the adjacent and downstream neighborhoods, and Open Space? Nowhere in the annexation terms is any mention of mitigating negative impacts caused by such earthfill.

## The Human Environment

### *Traffic and Cars—A Key Concern for Adjoining Neighborhoods*

One of the most important and completely ignored topics is the expected increase in vehicular traffic in South Boulder neighborhoods caused by annexation of CU-South and its subsequent development. The annexation terms never even use the word “car.” They mention no plans to mitigate any of the issues of access, egress, traffic and congestion of concern to adjoining neighborhoods, and the “transportation study” currently underway completely misses the point. A study of transportation is not the same as a study of existing and future traffic, and a transit plan is not a plan to manage fully predictable increased traffic congestion into and out of the CU-South site and within the existing, and already overtaxed, streets and intersections. CU’s annexation proposal discusses provision of and safe access to “multi-modal transit” facilities such as bike and pedestrian paths to and through the property. However, given CU-South’s location in the far southeast of the City, bikes and feet will not suffice to get people to and from the new campus. Able-bodied students may be able to walk, run, use skate boards and bicycles for transportation, but people with disabilities can’t, and neither can older persons. Nowhere is addressed how cars and buses for human transportation, as well as trucks and other vehicles providing services and maintenance, will be accommodated. CU also makes no mention of how people would get from one CU campus to another.

CU’s advocacy for a multi-modal transportation hub is no solution to the expected, highly predictable, negative traffic impacts on South Boulder neighborhoods. Further, the metrics being used in the transportation study to measure what is needed are completely opaque. The annexation terms call for “performance based transportation,” which is undefined, and using as a metric “trip budgets” which seem to be estimates of how many individual visits to the proposed campus can be optimally handled (or perhaps allowed). Neither of these provide an estimate of actual projected use. Aspirational ideas such as bus and transit passes, autonomous vehicles, pedestrian walkways and bike paths are no substitute for the real and adequate bus service needed to bring humans to and from academic buildings and residences. Unfortunately no such services exist and none are being planned for, either by the City or the University. Parking for employees is not mentioned at all, and only small parking lot (700 spaces) for residents has been ever noted--and not at all in the annexation proposal.

### *Access to the Site*

CU and the City are in agreement that they do not want access points to the CU-South property to facilitate its use as a “by-pass” from Table Mesa to Hwy 93. However, this is all they agree upon. CU

demands that there be an emergency access point to the campus from Hwy 93, as well as “multiple access points” to the property, without which, CU says it cannot consider constructing housing. However, it’s virtually impossible to imagine where those access point could be placed, given the population density and topography of the site. And neither CU nor the City express any desire to pay for them. Requiring the City to pay for these “improvements” means taxpayers will be paying for them, and they will be enormously expensive.

Tantra Park and E. Morehead, one of the current access points, cannot accommodate even their own existing traffic, much less that of an entire additional campus. Designating them as primary access points would require ripping through the Tantra subdivision to widen its very narrow streets. South Loop Road, the only other existing access point, is narrow, poorly paved and sandwiched between the RTD bus stop, the Hwy 36/Table Mesa on-ramp, several permanent ponds, and the Bridgewalk apartment complex. Something would have to be torn down or moved to accommodate access by several thousand additional users. The road would have to be re-routed over the flood mitigation project dam; both realities would be expensive and neither party wants to pay for it. Cutting a new access to Broadway through the Majestic Heights and Hyview neighborhoods also seems prohibitively expensive—in the millions of dollars. Putting an access point at Hwy 93, right at the hill marking the east “toe” of Table Mesa, also will be very expensive; each party wants the other to pay for it.

### *Noise, Dust, Light*

The construction phase of CU’s new campus can be expected to last at least a decade, profoundly disturbing the quiet neighborhoods around it. No mention in the annexation proposal is made of how these impacts might be mitigated. Even after the construction phase, negative impacts of the added development will continue, with increased traffic noise, light and water pollution. The addition of 1100 residences, each housing multiple individual residents, will add exponentially to the noise, congestion, and accumulation of wastes and trash. The proposed playing fields and recreational facilities will include evening lighting and feature bleachers, concessions, locker rooms and storage facilities that will draw spectators and attendant noise and disruption. Lighting the playing fields will disturb not only human inhabitants, but wildlife and plants as well. No mention of mitigation for these diseconomies to the neighborhoods are mentioned in CU’s annexation proposal.

## Who Pays for What? And Who Holds Ownership

### The Levee

CU says that if it wants to, the City can remove the levee around the old quarry pit which CU reinforced—at its own expense. The City has stated this as a priority. After that, agreement between the parties ceases. The City says it will retain ownership of any removed levee material. However, CU has made clear it must retain ownership of any material removed from the levee, whether or not the land under the levee has been purchased by the City. CU also demands the City compensate CU for damage to its property if removal of the levee leads to flood damage in the future. This issue has not been resolved.

## Additional Acres, Additional Costs, and Repurposing OS-O Land as a Piggy Bank for Development

CU says that if the City needs any acreage beyond the stated 80 acres, mostly in the PKU-O, that CU has agreed to donate, it must purchase that land from CU at fair market value. Land that might be needed by the City—and which CU requires the City to purchase from CU-- could include acres needed to compensate for loss of open space or wetlands during construction of the flood mitigation project, any land needed to compensate CU for any of the 129 acres of Public land needed for the City's flood project and therefore, not available to CU for housing and development, and any land needed for moving the existing tennis courts and facilities to a new location.

CU's development plans encompass all the land currently designated as Public. Most of the land CU is willing to donate to the City is in the PKU-O land next to Hwy 36. The only land remaining is OS-O, all of which is within the 500 year floodplain. This land has been discussed in the BVCP as suitable for protection, restoration, and preservation of open space. The BVCP argues for maximizing the amount of land used for Open Space. However, CU is ignoring this guiding principle in its request that the entire CU-South site be reclassified as Public, thus facilitating its use for other purposes. Effectively, CU would reclassify the OS-O land to Public, creating a kind of piggy bank to be swapped out for CU's development needs. This would occur, as described above, if CU's still unexplained "need" for 129 acres for buildings and some 36 additional acres for recreational facilities-- plus 30 other acres whose specific uses are alluded to but not described—cannot be met without such an "internal land swap."

An additional costly wrinkle is that CU requires that any OS-O land that would be swapped for the Public acres needed for the flood mitigation project not only must be purchased by the City from CU, but then raised out of the floodplain—at the City's expense—with trucked-in earth fill and then graded for development. The estimated cost of that earth fill already has been added to the cost of the flood mitigation project, so that City taxpayers will, in effect, be paying tens of millions of dollars for CU's land to be made developable.

Resolution of these issues has not been reached and must be determined prior to annexation.

## The Public Safety Facility

The City proposed, and CU agrees in principle, to locate a new fire and police facility on 2 acres of CU's property at CU-South. However, no mention is made of environmental hazards posed by placing such a facility both in a flood plain near South Boulder creek and its tributaries and near fragile habitat and threatened species. Prior to annexation, appropriate studies of feasibility, access, hazard and the ability to obtain permits for such a facility must be completed.

## Requiring the City to Assume Risks and Liability for Matters Over Which It Has No Control

CU's annexation terms include requiring the City to indemnify the University for any damage to its property and its facilities, in perpetuity, caused by any failure of the flood mitigation project. That project is only designed for a 100 year flood. The City cannot assume responsibility for events that are larger, even though their occurrence is certain, given climate change-induced increasingly severe storms. Further, CU demands the City indemnify the University for any changes FEMA might make in

floodplain boundaries, and as well, any changes to Dry Creek Ditch 2 that would place more of CU's property within the floodplain. The City has responded that it does not control decisions made by FEMA nor can it anticipate environmental changes caused by acts of God, and therefore, cannot accede to these demands.

### **In Conclusion**

We are heartened to have learned recently that the City Council no longer is planning to hold a vote on annexation for CU-South by the end of December 2020. While the new date for such a vote now appears to be in June 2021, we still hold that any such negotiations are premature. We also are heartened to learn that the City staff are doing technical studies of upstream detention for the flood mitigation project as a possible means to reduce its impact on the environment and Open Space. We do not know yet what the result of these studies will be, but we applaud Council and the Advisory Boards for pushing to have them implemented. That said, no annexation agreement should be negotiated until AFTER a sensible, cost-effective and minimally invasive flood project design has been developed and approved by all relevant regulatory bodies. Only then will the parameters constraining CU's vision of a new campus be known. And only then will it be possible for CU to come up with a site plan that conforms to the realities of life in a floodplain. That is the point at which an annexation agreement can be negotiated.