



13133 East Arapahoe Road
Centennial, Colorado 80112
www.centennialcolorado.com

SENT VIA EMAIL to rjones@SEMSWA.org

October 15, 2012

John McCarty
Executive Director
Southeast Metro Stormwater Authority
76 Inverness Dr. E, Suite A
Englewood, CO 80112

RE: Piney Creek Hollow Park Annexation

Mr. McCarty:

At the September 26, 2012 SEMSWA Board meeting, I addressed the Board during public comment regarding the proposed annexation of Piney Creek Hollow Park (the "Park") to the City of Centennial, together with a couple of other smaller tracts in the vicinity of the Park.

As you know, the Park consists of approximately 45 acres and is owned by SEMSWA, SEMSWA having obtained title to the Park from the East Cherry Creek Valley Water and Sanitation District ("ECCV") in 2011.

The City has had the goal of annexing the Park since 2009 when discussions with the Arapahoe Park and Recreation District ("APRD") and ECCV first began.

The City has completed negotiations with APRD and ECCV pertaining to the annexation of the Park, together with smaller tracts owned by each of APRD and ECCV in the vicinity of the Park.

The City is ready to proceed with the annexation of the Park. Enclosed with this letter, please find a petition for annexation, along with a reduced-size version of the annexation map which has been prepared by a professional surveyor. I've also included a color vicinity map of the proposed annexation, which clearly highlights the location of the Park (owned by SEMSWA).

In order to move forward with this annexation, the City is requesting that the SEMSWA Board authorize execution of the annexation petition at its October 24, 2012 meeting. Once the SEMSWA Board authorizes execution of the annexation petition, and the same has been executed by SEMSWA, please return the original copy to my attention.

Currently, it is anticipated that the ECCV Board will consider the annexation petition at its November 8, 2012 meeting, and the APRD Board will consider the annexation petition at its November 20, 2012 meeting.

Once the petition has been executed by each of SEMSWA, ECCV and APRD, the petition will be filed of record with the City Clerk. Zoning of the property will be established concurrently with the annexation of the property, or shortly thereafter, and will not hinder SEMSWA's ability to maintain or operate any drainage facilities located within the Park.

The City appreciates SEMSWA's cooperation with respect to this proposed annexation. Please do not hesitate to contact me with any questions or concerns at 303.754.3356 or jbrasel@centennialcolorado.com.

Sincerely,

A handwritten signature in black ink that reads "Jeff Brasel". The signature is written in a cursive, flowing style.

Jeff Brasel, AICP
Principal Planner

cc: Wayne Reed, Director of Community Development
Marcus McAskin, Assistant City Attorney

SOUTHEAST METRO STORMWATER AUTHORITY
acting by and through
SEMSWA WATER ACTIVITY ENTERPRISE

RESOLUTION 12-38

Authorization to Join with the Arapahoe Park and Recreation District and the East Cherry Creek Valley Water and Sanitation District in the *Petition For Annexation To The City Of Centennial, Colorado* of the Piney Creek Hollow Park Property Owned by SEMSWA and Other Property Described in the *Petition*

WHEREAS, the City of Centennial (City) has requested that SEMSWA join the Arapahoe Park and Recreation District (APRD) and the East Cherry Creek Valley Water and Sanitation District (ECCV) in petitioning for the annexation of certain property located in unincorporated Arapahoe County, Colorado, consisting mainly of the Piney Creek Hollow Park (Park Property) and other real property in the general vicinity of the Park Property; and

WHEREAS, SEMSWA is the record owner of the Park Property, which consists of approximately 45.120 acres, more or less, and has Arapahoe County Parcel Number 2073-22-2-00-006; and

WHEREAS, the Park Property owned by SEMSWA is accurately described in the *Petition for Annexation to the City of Centennial* (Petition); and

WHEREAS, the Park Property is graphically shown on the attached **Exhibit A**; and

WHEREAS, a copy of the Petition is attached hereto as **Exhibit B** and incorporated herein by reference; and

WHEREAS, APRD currently operates, manages and maintains the Park Property for recreational and open space purposes pursuant to a non-exclusive easement agreement between APRD and ECCV and the September 28, 2006 Joint Operating Agreement between APRD and ECCV (JOA), a copy of which is recorded at Reception No. 6142826 in the real property records of Arapahoe County, Colorado; and

WHEREAS, the JOA was assigned to SEMSWA by and through that certain Assignment dated April 5, 2011, a copy of which is recorded at Reception No. D1032809 in the real property records of Arapahoe County; and

WHEREAS, the City and APRD have negotiated the terms of an annexation agreement related to APRD's continued operation, management and maintenance of the Park Property (Annexation Agreement); and

WHEREAS, a copy of the current draft of the Annexation Agreement is attached hereto as **Exhibit C** and incorporated herein by reference; and

WHEREAS, SEMSWA's Board of Directors has reviewed the Petition and the Annexation Agreement and has determined that the proposed annexation of the Park Property into the City will not have any adverse impact on SEMSWA or the Park Property, and further has determined that SEMSWA will maintain its ability to operate and maintain any drainage facilities located within the Park Property.

NOW, THEREFORE, BE IT RESOLVED THAT:

The Chairman of SEMSWA is authorized to execute the attached *Petition for Annexation to the City of Centennial, Colorado* and deliver the same to the City of Centennial.

SOUTHEAST METRO STORMWATER AUTHORITY
acting by and through
SEMSWA WATER ACTIVITY ENTERPRISE

Date: _____

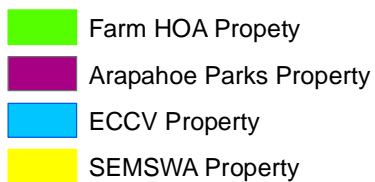
ATTEST:

Secretary

Chairperson

APPROVED AS TO FORM:
Attorney for
Southeast Metro Stormwater Authority

By _____
Edward J. Krisor



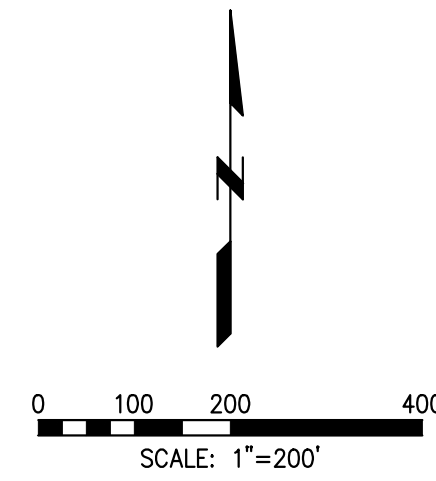
THAT PART OF NW 1/4 SEC 22-5-66 DESC AS BEG 50 FT E & 489.93 FT S OF NW COR OF SD NW 1/4 TH ALG CURVE RT 416 FT TH NE 239.73 FT TH SE 135.01 FT TH SW 228.65 FT TH ALG CURVE TO LEFT 276.78 FT TH S 172 FT TH SE 193.22 FT 95.7 FT 302.07 FT 140.98 FT 85.28 FT 226.12 FT 132.7 FT 59.14 FT 117.9 FT 116.91 FT 92.86 FT 121.53 FT 138.12 FT 51.82 FT 340.25 FT 210.61 FT 54.73 FT 109.26 FT 83.85 FT & 267.07 FT TO A PT ON S LINE OF SD NW 1/4 TH W 1960 FT TH NW 131.12 FT TH W 76.27 FT TH S 50 FT TH W 50 FT TH S 20 FT TH W 90 FT TH N 2099.74 FT TO BEG SEC 22-5-66



LYING IN THE NORTHEAST 1/4 OF SECTION 21 AND THE NORTH 1/2 OF SECTION 22, TOWNSHIP 5 SOUTH,
RANGE 66 WEST OF THE 6th PRINCIPAL MERIDIAN, COUNTY OF ARAPAHOE, STATE OF COLORADO.



LYING IN THE NORTHEAST 1/4 OF SECTION 21 AND THE NORTH 1/2 OF SECTION 22, TOWNSHIP 5 SOUTH,
RANGE 66 WEST OF THE 6th PRINCIPAL MERIDIAN, COUNTY OF ARAPAHOE, STATE OF COLORADO.



PARCEL	ASSESSOR'S PARCEL NUMBER	OWNER (AS OF OCTOBER 8, 2012)
"PINEY CREEK HOLLOW PARK"	2073-22-2-00-006	SOUTHEAST METRO STORMWATER AUTHORITY 76 INVERNESS DRIVE EAST, SUITE A ENGLEWOOD, CO 80112
TRACT K	2073-22-1-18-001	ARAPAHOE PARK AND RECREATION DISTRICT P.O. BOX 460575 AURORA, CO 80046-0575
TRACT E	2073-22-2-09-002	EAST CHERRY CREEK VALLEY WATER AND SANITATION DISTRICT 6201 S. GUN CLUB ROAD AURORA, CO 80016
"ECCV PARCEL "	2073-22-2-00-003	EAST CHERRY CREEK VALLEY WATER AND SANITATION DISTRICT 6201 S. GUN CLUB ROAD AURORA, CO 80016
TRACT B	2073-21-1-19-001	THE FARM AT ARAPAHOE COUNTY HOMEOWNER'S ASSOCIATION, INC. 4643 S. ULSTER ST., SUITE 1490 DENVER, CO 80237
"TOWER ROAD"	RIGHT-OF-WAY	ARAPAHOE COUNTY 5334 S PRINCE STREET LITTLETON, CO 80120

TOTAL PERIMETER:	19,295 FEET +/- 100%
CONTIGUOUS PERIMETER:	6,376 FEET +/- 33%
REQUIRED CONTIGUITY (1/6):	3,216 FEET +/-
TOTAL AREA TO BE ANNEXED:	59.4 ACRES +/-

**PETITION FOR ANNEXATION
TO
THE CITY OF CENTENNIAL, COLORADO**

**TO: THE CITY CLERK AND THE CITY COUNCIL OF THE CITY OF
CENTENNIAL, COLORADO**

RE: PINEY CREEK HOLLOW PARK ANNEXATION

**ANNEXATION OF LAND COMMONLY KNOWN AS PINEY CREEK
HOLLOW PARK (THE “SEMSWA PROPERTY”)**

AND

**TRACT K, TUSCANY SOUTH SUBDIVISION (THE “APRD
PROPERTY”)**

AND

**TRACT E, TUSCANY SOUTH SUBDIVISION TOGETHER WITH
THE ADJACENT WELL SITE (THE “ECCV PROPERTY”)**

AND

**TOGETHER WITH CERTAIN OTHER REAL PROPERTY AND
PORTIONS OF ADJACENT RIGHT-OF-WAY**

THE UNDERSIGNED PETITIONERS, being the **SOUTHEAST METRO STORMWATER AUTHORITY**, a political subdivision of the State of Colorado (“SEMSWA”); the **ARAPAHOE PARK AND RECREATION DISTRICT**, a quasi-municipal corporation and political subdivision of the State of Colorado (“APRD”); and the **EAST CHERRY CREEK VALLEY WATER AND SANITATION DISTRICT**, a quasi-municipal corporation and political subdivision of the State of Colorado (“ECCV”), in accordance with Title 31, Article 12, Part 1, of the Colorado Revised Statutes, as amended (commonly known as the Municipal Annexation Act of 1965), hereby petition the City of Centennial, for annexation to the City of Centennial of the unincorporated area more particularly described in this Petition. In further support of this Petition, the undersigned Petitioners allege and state the following:

1. That it is desirable and necessary that the real property more particularly described in **Exhibit 1**, attached hereto and incorporated herein by reference, be annexed to the City of Centennial.
2. That the area sought to be annexed to the City of Centennial meets all the applicable

requirements of Sections 31-12-104 and 31-12-105, C.R.S., as amended, of the Municipal Annexation Act of 1965, in that:

- (a) Not less than one-sixth (1/6th) of the perimeter of the area proposed to be annexed is contiguous with the City of Centennial.
- (b) A community of interest exists between the area proposed to be annexed and the City of Centennial.
- (c) The area proposed to be annexed is urban or will be urbanized in the near future.
- (d) The area proposed to be annexed is integrated with, or is capable of being integrated with the City of Centennial.
- (e) No land within the area proposed to be annexed and which is held in identical ownership, whether consisting of one tract or parcel of real estate or two or more contiguous tracts or parcels of real estate, meets either of the following:
 - (1) Such separate tract or parcel is being divided by the requested annexation without the written consent of the landowner or landowners thereof, unless such tracts or parcels are separated by a dedicated street, road or other public way, and to the extent a tract or parcel is so divided, this petition is intended to evidence such consent; or
 - (2) If such a separate tract or parcel comprises twenty (20) acres or more and which, together with the buildings and improvements situated thereon, such tract or parcel has an assessed value in excess of Two Hundred Thousand Dollars (\$200,000.00) for ad valorem tax purposes for the year next preceding the annexation, is included within the area proposed to be annexed without the written consent of the landowner or landowners thereof.
- (f) The annexation of the area proposed to be annexed will not result in the detachment of area from any school district and the attachment of such area to another school district.
- (g) No annexation proceedings have been commenced for the annexation to another municipality of any part or all of the area proposed to be annexed to the City hereunder nor is any part of said area presently a part of any incorporated city, town or city and county.
- (h) The annexation of the area proposed to be annexed will not have the effect of extending the boundary of the City of Centennial more than three miles in any direction from any point of the City's boundary in any one year.
- (i) In establishing the boundaries of the area proposed to be annexed, where a portion of a platted street or alley is annexed, the entire width of said street or alley is included with the area annexed.
- (j) Reasonable access shall not be denied to landowners, owners of easements, or the

owners of franchises adjoining a platted street or alley to be annexed by the City but is not bounded on both sides by the City.

- (k) The area proposed to be annexed comprises **more than ten (10) acres** and, therefore, the City's preparation of an Impact Report as provided for in Section 31-12-108.5, C.R.S., as amended, is required unless waived by the Board of County Commissioners for Arapahoe County, Colorado in accordance with Section 31-12-108.5, C.R.S.
- 3. That the annexation of the described area complies with Section 30 of Article II of the Colorado Constitution.
- 4. That accompanying this Petition are four (4) copies of the annexation map containing the information required by Section 31-12-107(1)(d), C.R.S.
- 5. That the Petitioners signed this Petition for Annexation not more than one hundred and eighty (180) days prior to the date of the filing of this Petition for Annexation with the City Clerk.
- 6. That the undersigned Petitioners comprise more than fifty percent (50%) of all of the landowners of the area proposed to be annexed and own more than fifty percent (50%) of the area proposed to be annexed, exclusive of streets and alleys.
- 7. That upon the Annexation Ordinance becoming effective, all lands within the area sought to be annexed shall become subject to all ordinances, resolutions, rules and regulations of the City of Centennial, except for general property taxes of the City of Centennial which shall become effective on January 1 of the next succeeding year following passage of the Annexation Ordinance.
- 8. That this Petition for Annexation includes the signature of the Petitioners proposing the annexation, the mailing address of the Petitioners, the legal description of the lands owned by each of the respective Petitioners, and the date of execution of this Petition by each of the named Petitioners. The legal description of the Property owned by each of SEMSWA, APRD and ECCV, respectively, is set forth in **Exhibit 2-A** (the "SEMSWA Property"), **Exhibit 2-B** (the "APRD Property"), and **Exhibit 2-C** (the "ECCV Property").
- 9. This instrument may be executed in one or more counterparts, all of which taken together shall constitute the same document.

THEREFORE, THE PETITIONERS, respectfully request that the City Council of the City of Centennial, Colorado, approve the annexation of the area proposed to be annexed, and the Petitioners do hereby consent to the annexation of the property described in **Exhibit 1**.

**SOUTHEAST METRO STORMWATER
AUTHORITY**, a political subdivision of the State of
Colorado

_____, 2012

Mailing Address: SEMSWA
76 Inverness Drive East, Suite A
Englewood, CO 80112

By: _____
Circulator

STATE OF COLORADO)
) ss.
COUNTY OF ARAPAHOE)

By: _____
Notary Public

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ARAPAHOE PARK AND RECREATION DISTRICT, a quasi-municipal corporation and political subdivision of the State of Colorado

_____, 2012

Mailing Address: APRD
16799 East Lake Avenue
Centennial, Colorado 80016

By: _____
Circulator

STATE OF COLORADO)
) ss.
COUNTY OF ARAPAHOE)

By: _____
Notary Public

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**EAST CHERRY CREEK VALLEY WATER AND
SANITATION DISTRICT**, a quasi-municipal
corporation and political subdivision of the State of
Colorado

_____, 2012

Mailing Address: ECCV
6201 S. Gun Club Road
Aurora, Colorado 80016

The undersigned, being of lawful age, who being first fully sworn upon oath, deposes and says that the undersigned was a circulator of the foregoing Petition for Annexation of lands to the City of Centennial, Colorado, and that the signature immediately above this Affidavit was witnessed by affiant and is the true signature of the person whose it purports to be.

STATE OF COLORADO)
) ss.
COUNTY OF ARAPAHOE)

[SEAL]

EXHIBIT 1

PROPERTY DESCRIPTION PINEY CREEK HOLLOW PARK ANNEXATION

(AREA TO BE ANNEXED TO CITY OF CENTENNIAL)

ANNEXATION PARCEL DESCRIPTION:

ALL THAT PROPERTY BEING A PORTION OF THE NORTHEAST 1/4 OF SECTION 21 AND THE NORTH HALF OF SECTION 22, TOWNSHIP 5 SOUTH, RANGE 66 WEST OF THE 6TH PRINCIPAL MERIDIAN, ARAPAHOE COUNTY, STATE OF COLORADO, DESCRIBED AS FOLLOWS:

THAT CERTAIN PARCEL OF LAND COMMONLY KNOWN AS **PINEY CREEK HOLLOW PARK** DESCRIBED IN PARAGRAPH 35 OF THAT CERTAIN QUITCLAIM DEED DATED APRIL 5, 2011 AND RECORDED APRIL 6, 2011 AT RECEPTION NO. D1032804 IN THE RECORDS OF ARAPAHOE COUNTY, BEING MORE PARTICULARLY DESCRIBED AS THAT PARCEL OF LAND DESCRIBED IN SPECIAL WARRANTY DEED RECORDED AUGUST 5, 1988 IN BOOK 5572 AT PAGE 44 EXCEPT THE PORTIONS DESCRIBED IN QUIT CLAIM DEED DATED AUGUST 21, 1996 AND RECORDED AUGUST 27, 1996 AT RECEPTION NO. A6111392 IN THE RECORDS OF SAID ARAPAHOE COUNTY;

ALONG WITH TRACT K, TUSCANY SOUTH SUBDIVISION;

ALONG WITH TRACT E, TUSCANY SOUTH SUBDIVISION;

ALONG WITH THAT PARCEL OF LAND DESCRIBED IN WARRANTY DEED DATED JANUARY 27, 1986 AND RECORDED JULY 21, 1986 IN BOOK 4823 AT PAGE 155 UNDER RECEPTION NO. 2696623 IN THE RECORDS OF SAID ARAPAHOE COUNTY;

ALONG WITH TRACT B, THE FARM AT ARAPAHOE COUNTY FILNG NO. 3;

ALONG WITH TRACT A, TUSCANY SOUTH SUBDIVISION, AS DEPICTED IN THE FINAL PLAT OF THE TUSCANY SOUTH SUBDIVISION RECORDED AUGUST 26, 1997 IN BOOK 140, PAGES 56-72 AT RECEPTION NO. A7106123 IN THE RECORDS OF SAID ARAPAHOE COUNTY;

ALONG WITH THAT PARCEL OF LAND DESCRIBED IN WARRANTY DEED DATED APRIL 30, 1999 AND RECORDED SEPTEMBER 10, 1999 UNDER RECEPTION NO. A9148050 IN THE RECORDS OF SAID ARAPAHOE COUNTY;

ALONG WITH THAT PORTION OF SOUTH TOWER ROAD WITHIN SAID SECTION 21 LYING BETWEEN THE NORTHERLY EXTENSION OF THE ADJACENT NORTH LINE OF SAID TRACT B AND A LINE PERPENDICULAR TO THE SOUTH TOWER ROAD RIGHT-OF-WAY LINES AT THE INTERSECTION OF THE EASTERLY RIGHT-OF-WAY LINE OF SOUTH TOWER ROAD AND THE SOUTHERNMOST POINT OF TRACT A, TUSCANY SOUTH SUBDIVISION, RECORDED AUGUST 26, 1997 IN BOOK 140, PAGES 56-72 AT RECEPTION NO. A7106123 IN THE RECORDS OF SAID ARAPAHOE COUNTY;

ALONG WITH THAT PORTION OF SOUTH TOWER ROAD AND EAST ORCHARD ROAD BOUNDED ON THE SOUTH BY THE NORTH LINE OF TRACT A, TUSCANY SOUTH SUBDIVISION, ON THE WEST BY THE EAST LINE OF SECTION 21 AND ON THE NORTHEAST BY A LINE BETWEEN THE NORTHWEST CORNER OF TRACT B, TUSCANY SOUTH SUBDIVISION AND THE SOUTHEAST CORNER OF A PARCEL OF LAND DESCRIBED IN BOOK 5457 AT PAGE 626, SAID CORNER BEING ON THE EAST LINE OF THE NORTHEAST 1/4 OF SAID SECTION 21 AND THE SOUTHERLY RIGHT-OF-WAY LINE OF EAST ORCHARD ROAD.

STATE OF COLORADO

EXHIBIT 2-A

**PROPERTY DESCRIPTION
("SEMSWA PROPERTY")**

Legal description of Piney Creek Hollow Park:

THAT CERTAIN PARCEL OF LAND COMMONLY KNOWN AS PINEY CREEK HOLLOW PARK DESCRIBED IN PARAGRAPH 35 OF THAT CERTAIN QUITCLAIM DEED DATED APRIL 5, 2011 AND RECORDED APRIL 6, 2011 AT RECEPTION NO. D1032804 IN THE RECORDS OF ARAPAHOE COUNTY, BEING MORE PARTICULARLY DESCRIBED AS THAT PARCEL OF LAND DESCRIBED IN SPECIAL WARRANTY DEED RECORDED AUGUST 5, 1988 IN BOOK 5572 AT PAGE 44 EXCEPT THE PORTIONS DESCRIBED IN QUIT CLAIM DEED DATED AUGUST 21, 1996 AND RECORDED AUGUST 27, 1996 AT RECEPTION NO. A6111392 IN THE RECORDS OF SAID ARAPAHOE COUNTY

(Arapahoe County Parcel ID number: 2073-22-2-00-006).

Consisting of 45.120 acres, more or less.

EXHIBIT 2-B

**PROPERTY DESCRIPTION
("APRD PROPERTY")**

Legal description of property owned by APRD:

TRACT K,
TUSCANY SOUTH SUBDIVISION,
COUNTY OF ARAPAHOE,
STATE OF COLORADO

(Arapahoe County Parcel ID number: 2073-22-1-18-001).

Consisting of 7.1 acres, more or less.

EXHIBIT 2-C

**PROPERTY DESCRIPTION
("ECCV PROPERTY")**

Legal description of property owned by ECCV:

TRACT E,
TUSCANY SOUTH SUBDIVISION,
COUNTY OF ARAPAHOE,
STATE OF COLORADO.

(Arapahoe County Parcel ID number: 2073-22-2-09-002, and consisting of approximately 2.03 acres).

ALONG WITH THAT PARCEL OF LAND DESCRIBED IN WARRANTY DEED DATED JANUARY 27, 1986 AND RECORDED JULY 21, 1986 IN BOOK 4823 AT PAGE 155 UNDER RECEPTION NO. 2696623 IN THE RECORDS OF SAID ARAPAHOE COUNTY.

(Arapahoe County Parcel ID number: 2073-22-2-00-003, and consisting of approximately 0.364 acres).

Consisting of a total of 2.39 acres, more or less.

NOTE: FOUR (4) COPIES OF THE PINEY CREEK HOLLOW PARK ANNEXATION MAP ACCOMPANY THIS PETITION.

ANNEXATION AGREEMENT
ARAPAHOE PARK AND RECREATION DISTRICT
PINEY CREEK HOLLOW PARK ANNEXATION

CITY OF CENTENNIAL, COLORADO

**ANNEXATION AGREEMENT
ARAPAHOE PARK AND RECREATION DISTRICT**

CITY OF CENTENNIAL, COLORADO

THIS ANNEXATION AGREEMENT (the "Agreement") is made and entered into as of this _____ day of _____, 2012 by and between the **ARAPAHOE PARK AND RECREATION DISTRICT**, a quasi-municipal corporation and political subdivision of the State of Colorado, whose address is 16799 East Lake Avenue, Centennial, Colorado 80016 ("APRD"), and the **CITY OF CENTENNIAL**, a Colorado home rule municipal corporation, with offices located at 13133 E. Arapahoe Road, Centennial, Colorado 80112 (the "City") (together, the "Parties").

RECITALS AND REPRESENTATIONS

WHEREAS, APRD is the record owner of the real property more particularly described in **Exhibit A** which property is currently located in unincorporated Arapahoe County, Colorado (the "APRD Property"); and

WHEREAS, APRD states that pursuant to an October 9, 2003 Non-Exclusive Easement Agreement with East Cherry Creek Valley Water and Sanitation District ("ECCV") a copy of which is recorded at Reception No. 3251978 in the real property records of Arapahoe County, Colorado, it operates, manages and maintains the Piney Creek Hollow Park for recreational and open space purposes, which real property is more particularly described in **Exhibit B** and which property is currently located in unincorporated Arapahoe County, Colorado (the "Park Property"); and

WHEREAS, APRD states that the Southeast Metro Stormwater Authority, a political subdivision of the State of Colorado ("SEMSWA") is the record owner of the Park Property; and

WHEREAS, annexation and zoning of the Property is desired by the Parties; and

WHEREAS, APRD was formed in 1982 in order to plan, acquire, develop, maintain and program parks, open space, trails and recreational amenities for the residents located within the boundaries of APRD; and

WHEREAS, APRD's boundaries currently include approximately 11.5 square miles and approximately 52,000 residents; and

WHEREAS, certain improvements were completed by APRD within the Park Property in 2007 and 2010, including two (2) multi-use fields, baseball field, trails, playground, off-street parking, pavilion / shelter and restrooms ("Existing Facilities and Amenities"); and

WHEREAS, APRD is the owner of the Existing Facilities and Amenities; and

WHEREAS, future improvements planned by APRD for the Park Property include, but are not necessarily limited to, entry signage and landscaping, a pavilion turf area for games and events and a spectator lawn adjacent to the second multi-use field; and

WHEREAS, APRD has, contemporaneously with the execution of this Agreement, executed a Joint Petition for Annexation (the “**Joint Petition**”) which Joint Petition seeks the annexation of the Property into the City of Centennial and will be filed of record with the City Clerk of the City of Centennial; and

WHEREAS, the Joint Petition has also been executed by SEMSWA, grantee from ECCV, as the owner of record of the Park Property; and

WHEREAS, APRD and the City desire to set forth in this Agreement certain agreements relating to the annexation and future use or development of the Property; and

WHEREAS, the Parties desire to continue to cooperate to the fullest extent possible to provide a high level of park, open space and recreational amenities to the shared citizens of APRD and the City;

NOW, THEREFORE, in consideration of the terms, conditions and covenants set forth in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, APRD and the City agree as follows:

AGREEMENT

I. DEFINITIONS AND GENERAL PROVISIONS

A. Definitions. For purposes of this Agreement, the following terms and references shall have the following meanings:

“**Act**” means the Colorado Municipal Annexation Act of 1965, §§31-12-101, *et seq.*, C.R.S.

“**Agreement**” means this Annexation Agreement and any exhibits attached to this Agreement, all of which are incorporated by this reference.

“**Annexation Ordinance**” means the ordinance effecting the annexation of the Property in accordance with the Act.

“**APRD**” means the Arapahoe Park and Recreation District, a quasi-municipal corporation and political subdivision of the State of Colorado, and APRD’s successors and permitted assigns.

“**City Council**” means the City Council of the City of Centennial.

“**Effective Date**” shall be the fortieth (40th) day after publication following final action by City Council to approve the latest of the: (a) Annexation Ordinance, (b) the Zoning Ordinance, or (c) the Ordinance approving this Agreement.

“Existing Facilities and Amenities” means those certain improvements completed by APRD within the Park Property in 2007 and 2010, including two (2) multi-use fields, baseball field, trails, playground, off-street parking, pavilion / shelter, and restrooms.

“Land Development Code” means the City of Centennial Land Development Code as initially adopted by reference on April 19, 2010 by Ordinance No. 2010-O-13, and readopted and made effective by Ordinance No. 2011-O-14, and as may be amended from time to time, which amendment shall not amend this Agreement. Section references to the Land Development Code in this Agreement refer to the sections of the City of Centennial Land Development Code.

“L&E Plan” means that certain Location and Extent Plan for the Piney Creek Hollow Park, as submitted to and approved by the Arapahoe County Planning Commission on January 15, 2004, and as amended by the Arapahoe County Board of County Commissioners, as set out in Sheets 1 through 8 of the L&E Plan. The L&E Plan generally identifies the recreational facilities and uses authorized to be constructed within the Park Property.

“Municipal Code” means the adopted laws and regulations of the City codified in the City of Centennial Municipal Code initially adopted by reference by Ordinance 2007-O-14, and as may be amended from time to time.

“Parties” means APRD and the City. The use of the singular “Party” shall mean either the City or APRD, as contextually appropriate.

“Property” means the real property specifically described in the attached **Exhibit A** (the “APRD Property”) and the attached **Exhibit B** (the “Park Property”), to be located in the City as a result of the annexation which is the subject of this Agreement.

“SEMSWA” means the Southeast Metro Stormwater Authority, a political subdivision of the State of Colorado.

“Zoning Ordinance” means the ordinance establishing the initial zoning of the Property.

II. GENERAL PROVISIONS

A. Annexation Fees Waived. Any and all City annexation fees for the APRD Property will be waived by the City.

B. Covenants. The provisions of this Agreement shall constitute covenants or servitudes that shall touch, attach to and run with the Property. The burdens and benefits of this Agreement shall bind and inure to the benefit of all estates and interests in the Property and all successors in interest to the Parties to this Agreement, except as otherwise provided in this Agreement.

C. Uses of Park Property to be Continued. The Parties agree that the approved land uses for the Park Property are set forth and described in the L&E Plan. The existing land use pattern for the Park Property is comprised of two (2) multi-use fields, a baseball field, trails, playground, pavilion / shelter, seasonal restrooms and off-street parking and detention ponds.

D. Future Operation, Management and Maintenance of Park Property. The Parties agree that the use, operation, management and maintenance of the Park Property is controlled by the APRD budget process and by the October 9, 2003 Non-Exclusive Easement Agreement between APRD and ECCV; the September 28, 2006 Joint Operating Agreement between APRD and ECCV (the "JOA"), a copy of which is recorded at Reception No. 6142826 in the real property records of Arapahoe County, Colorado, and which JOA was assigned to SEMSWA by and through that certain Assignment dated April 5, 2011, a copy of which is recorded at Reception No. D1032809 in the real property records of Arapahoe County; the April 5, 2011 Quitclaim Deed from APRD to SEMSWA, a copy of which is recorded at Reception No. D1032805 in the real property records of Arapahoe County; the Stipulation for Declaratory Judgment and Joint Motion for Dismissal between APRD and M.D.C. Land Corporation and Richmond American Homes of Colorado, Inc. (the "Stipulation") and the District Court Order approving the Stipulation dated January 4, 2006 in *APRD v. M.D.C. Land Corporation and Richmond American Homes of Colorado, Inc.*, Arapahoe County District Court Case Number 04CV3939; and by the operating procedures of APRD. In the event that, after annexation of the Park Property, there arises an inconsistency among the above listed documents, the Non-Exclusive Easement Agreement, as limited by the Stipulation and the L&E Plan, shall take precedence, followed by the operating procedures of APRD. APRD shall follow all applicable pre-development application procedures in order to secure and obtain construction approvals from the City prior to installing any uses not designated in the L&E Plan. If any particular use designated in the L&E Plan requires a building permit, APRD shall apply for such permit, comply with current applicable building codes, and be subject to inspections and approval by the City's Building Division.

E. No APRD Obligation for Open Space Dedication / Fee in Lieu. APRD shall have no obligation to dedicate open space land or pay a fee in lieu of open space land dedication to the City under this Agreement, or as a result of the annexation of the Property contemplated by this Agreement.

F. Future Cooperation of Parties. Nothing in this Agreement shall be construed to limit the ability of the Board of Directors of APRD or City Council to enter into one or more future intergovernmental agreement(s) related to the joint funding of open space, parks, or recreational amenities within the City of Centennial, which improvements are designed to jointly benefit the common residents and taxpayers of the City and APRD.

G. Special Improvements. No assessments for any special improvements shall be imposed on APRD at any time in the future.

III. CITY OBLIGATIONS

A. City to Provide Municipal Services. The City agrees that, upon annexation of the Property, the City shall commence the provision to the Property of all applicable governmental services which the City provides to other similarly situated property in the City ("Municipal Services"), and shall continuously provide for such Municipal Services in a uniform and nondiscriminatory manner.

B. City to Recognize L&E Plan. As set forth in Section V.C. below and Section II.C. above, the City shall continue to recognize the recreational and open space uses identified in the L&E Plan, including but not limited to the Existing Facilities and Amenities, as approved uses for the Park Property.

C. No Park Programming by City. The City shall have no right to participate in the operation, maintenance, programming or scheduling of the Park Property.

D. Utilities. The City does not currently provide and shall have no obligation to provide any water, wastewater, emergency medical or fire protection service to the Property, all of which are provided through existing special districts.

IV. APRD OBLIGATIONS

A. APRD to Maintain the Property. APRD agrees that, upon annexation of the Property, APRD shall continue to maintain the APRD Property and the Park Property, subject to and in accordance with Section II.D. above. The City shall have no responsibility to provide any maintenance to the Park Property or any funding whatsoever therefore, but may do so in the interest of its taxpayers and residents.

B. Park Programming. APRD agrees that following annexation, APRD shall continue to program and schedule the Park Property.

V. ZONING

A. Open Space and Recreation. The Parties agree that, upon annexation, the Property shall be zoned Open Space and Recreation (OSR), as more particularly depicted on the zoning map attached hereto as **Exhibit C**.

B. Future Rezoning. Nothing in this Agreement shall preclude APRD from seeking a rezoning of all or any part of the APRD Property zoned OSR to another zone district within the Land Development Code.

C. Uses Identified in L&E Plan are Approved Uses. Notwithstanding anything in the Land Development Code or the OSR zone district regulations to the contrary, the Parties expressly acknowledge and agree that the approved uses identified in the L&E Plan, including but not limited to the Existing Facilities and Amenities, are approved uses for the Park Property. The City hereby ratifies the L&E Plan as the official site plan for the Park Property.

VI. CITY CODES

Except as otherwise provided in this Agreement, all City ordinances, regulations, codes, policies and procedures now in existence, and as the same may be adopted or changed from time to time, shall be applicable to the use and development of the APRD Property and Park Property. Nothing contained in this Agreement shall constitute or be interpreted as a repeal of existing codes or ordinances or as a waiver or abrogation of the City's legislative, governmental or police powers to promote and protect the health, safety, or general welfare of the City or its inhabitants; nor shall this Agreement prohibit the enactment by the City of any rate, fee, toll, charge or tax which is uniform or of general application.

VII. DEFAULTS AND REMEDIES

A. Event of Default Defined. The violation of any provision of this Agreement by any Party, the occurrence of any one or more of the following events, and/or the existence of any one or more of the following conditions shall constitute an Event of Default under this Agreement:

1. The failure (a) to perform or observe any other covenants, agreements, or conditions in this Agreement on the part of any Party and (b) to cure such failure within thirty (30) business days of receipt of notice from the other party or parties of such failure.

B. Remedies; Fees and Costs. Subject to the terms and conditions set forth in this Agreement, the Party asserting that an Event of Default has occurred shall be entitled to pursue all remedies available in the State of Colorado at law or in equity, including, but not limited to, specific performance and injunctive relief, both mandatory and/or prohibitory, and the prevailing Party shall be entitled to a recovery of all reasonable costs and expenses, including attorneys fees, incurred by the prevailing Party to enforce the terms and conditions of this Agreement.

C. Withholding Permits. The City may not unreasonably withhold, delay, deny or condition any plat or site improvement plan approvals, building permits, certificates of occupancy, and/or other Municipal Services.

D. Contests. In any proceeding wherein any Party shall pursue remedies for an Event of Default hereunder, nothing shall prevent the other party or parties from contesting the existence or continuing nature of the alleged Event of Default.

VIII. REPRESENTATIONS

In addition to the other representations, warranties and covenants made by the Parties, the Parties make the following representations, warranties and covenants to the other parties, and may be held liable for any loss suffered as a consequence of any misrepresentation or breach under this Article VIII.

A. Full Authority. Each Party has the full right, power and authority to enter into, perform and observe this Agreement.

B. Other Instruments. Unless otherwise specified in this Agreement, neither the execution of this Agreement, the consummation of the transactions contemplated hereunder, nor the fulfillment of or the compliance with the terms and conditions of this Agreement by each Party will conflict with or result in a breach of any terms, conditions, or provisions of, or constitute a default under, or result in the imposition of any prohibited lien, charge, or encumbrance of any nature under any agreement, instrument, indenture, or any judgment, order, or decree to which either Party is a party or by which either Party is bound.

C. Binding Agreement. This Agreement is the valid, binding and legally enforceable obligation of the Parties and is enforceable in accordance with its terms. This Agreement shall extend to, inure to the benefit of, and be binding upon the City and its permitted successors and assigns and upon APRD, its successors and permitted assigns.

D. Covenants. The Parties shall keep and perform all of the covenants and agreements contained in this Agreement.

IX. RECORDING OF ANNEXATION AND DEVELOPMENT AGREEMENT

APRD and the City agree and acknowledge that this Agreement shall be recorded by the City Clerk in the office of the Arapahoe County Clerk and Recorder, and that the provisions of this Agreement shall be binding upon and shall inure to the benefit of the beneficiaries, successors and assigns of the Parties as provided by this Agreement. Such recordation shall not occur prior to the Effective Date.

X. MISCELLANEOUS PROVISIONS

A. Ordinance Not Repealable. Conditioned upon the approval of the Annexation Ordinance, this Agreement shall be approved by ordinance of the City Council for the City of Centennial. After the Agreement has been approved by ordinance of the City Council, this Agreement shall constitute a contract between APRD and the City as of the Effective Date.

B. No Third Party Beneficiaries. There are absolutely no third party beneficiaries intended by this Agreement; any third-party receiving a benefit from this Agreement is an incidental and unintended beneficiary only.

C. Relationship of Parties: This Agreement does not and shall not be construed as creating a relationship of joint venture, partners, or employer-employee between the Parties. Neither Party shall, with respect to an activity, be considered as agent or employee of the other Party.

D. Third Party Challenges. In the event of any legal challenge by a third party to the validity or enforceability of any provision of this Agreement, the Parties agree to cooperate in the defense of such challenge and to bear their own costs and attorneys' fees. Unless otherwise provided in this Agreement, during the pendency of any legal challenge, the Parties agree to abide by and carry out all of the terms of this Agreement, unless otherwise ordered by a court of competent jurisdiction.

E. Governing Law, Venue, and Interpretation. This Agreement shall be governed by and interpreted according to the law of the State of Colorado. Venue for any action arising under this Agreement shall be in the appropriate court for Arapahoe County, Colorado. The Parties agree that the rule of construction and interpretation of contracts that provides that ambiguities in a contract are to be construed against the drafting party shall not apply to the interpretation of this Agreement.

F. Assignment. APRD may assign or delegate this Agreement to any purchaser or transferee of ownership of the APRD Property or any portion thereof. A party shall be deemed a "successor" or "assign" of APRD under this Agreement only if specifically designated in a written instrument referring to this Agreement and duly recorded in the office of the Clerk and Recorder of Arapahoe County, Colorado, as a successor or assign of APRD under this Agreement.

G. Waiver. No waiver of one or more of the terms of the Agreement shall constitute a waiver of other terms. No waiver of any provision of this Agreement in any instance shall constitute a waiver of such provision in other instances. No waiver shall be effective unless in writing signed by the party against whom such waiver is to be charged.

H. Paragraph Captions. The captions of the paragraphs are set forth only for the convenience and reference of the Parties and are not intended in any way to define, limit or describe the scope or intent of this Agreement.

I. Integration. This Agreement represents the entire and integrated agreement between the City and APRD and supersedes all prior negotiations, representations, or agreements, either written or oral.

J. Amendment. To be effective, any amendments to this Agreement must be in writing and be signed by both Parties.

K. Severability. Invalidation of any of the provisions of this Agreement or any paragraph, sentence, clause, phrase, or word in this Agreement or the application thereof in any given circumstance shall not affect the validity of any other provision of this Agreement.

L. Incorporation of Exhibits. Unless otherwise stated in this Agreement, exhibits, applications, or documents referenced in this Agreement shall be incorporated into this Agreement for all purposes. In the event of a conflict between any incorporated exhibit and this Agreement, the provisions of this Agreement shall govern and control.

M. Notices. Unless otherwise specifically required by a provision of this Agreement, any notice required or permitted by this Agreement shall be in writing and shall be deemed to have been sufficiently given for all purposes if either: (a) hand delivered to the person(s) identified below; or (b) sent by certified mail or registered mail, postage and fees prepaid, or (c) sent by recognized overnight courier, for next business day delivery, addressed to the Party to whom such notice is to be given at the address set forth below or at such other address as has been previously furnished in writing, to the other Party.

<u>If to the City:</u>	<u>If to APRD:</u>
City Manager City of Centennial 13133 E. Arapahoe Road Centennial, Colorado 80112	APRD Attn: District Manager 16799 East Lake Avenue Centennial, Colorado 80016
With Copy to: City Attorney City of Centennial 13133 E. Arapahoe Road, Ste 100 Centennial, Colorado 80112	With Copy to: Hahn, Smith, Walsh & Mancuso P.C. 717 17 th Street, Suite 1520 Denver, Colorado 80202

N. Reasonable Efforts. Each Party shall use its reasonable efforts and shall cooperate, where prudent, with regard to any other action as may be reasonably required to effectuate the intention of this Agreement.

O. Time of the Essence. Time is of the essence of this Agreement; provided however, that if the last day permitted or the date otherwise determined for the performance of any act required or permitted under this Agreement falls on a Saturday, Sunday or legal holiday, the time for performance shall be extended to the next succeeding business day, unless otherwise expressly stated.

P. Good Faith of Parties. In any situation under this Agreement where consent of one of the Parties is required, or where one of the Parties requests an extension of time, the Parties agree that each will act in good faith and will not unreasonably withhold, delay, deny, or condition any approval or consent required or contemplated by this Agreement.

CITY OF CENTENNIAL, COLORADO

By: _____

Cathy A. Noon, Mayor
13133 E. Arapahoe Road
Centennial, Colorado 80112

Dated: _____, 2012

ATTEST:

Approved as to Form:

City Clerk or Deputy City Clerk

For City Attorney's Office

**ARAPAHOE PARK AND RECREATION
DISTRICT**, a quasi-municipal corporation and
political subdivision of the State of Colorado

By: _____

Ken Shuss, President

Dated: _____, 2012

ATTEST:

Secretary or Assistant Secretary

**EXHIBIT A
APRD PROPERTY**

Legal description of property owned by APRD:

Tract K,
Tuscany South Subdivision,
County of Arapahoe,
State of Colorado

(consisting of 7.100 acres, more or less, and having Arapahoe County Parcel ID number: 2073-22-1-18-001).

Note: the general location of the APRD Property is shown in Exhibit C, the Zoning Plan.

EXHIBIT B
PARK PROPERTY

Legal description of Piney Creek Hollow Park:

THAT CERTAIN PARCEL OF LAND COMMONLY KNOWN AS PINEY CREEK HOLLOW PARK DESCRIBED IN PARAGRAPH 35 OF THAT CERTAIN QUITCLAIM DEED DATED APRIL 5, 2011 AND RECORDED APRIL 6, 2011 AT RECEPTION NO. D1032804 IN THE RECORDS OF ARAPAHOE COUNTY, BEING MORE PARTICULARLY DESCRIBED AS THAT PARCEL OF LAND DESCRIBED IN SPECIAL WARRANTY DEED RECORDED AUGUST 5, 1988 IN BOOK 5572 AT PAGE 44 EXCEPT THE PORTIONS DESCRIBED IN QUIT CLAIM DEED DATED AUGUST 21, 1996 AND RECORDED AUGUST 27, 1996 AT RECEPTION NO. A6111392 IN THE RECORDS OF SAID ARAPAHOE COUNTY

(consisting of 45.120 acres, more or less, and having Arapahoe County Parcel ID number: 2073-22-2-00-006).

EXHIBIT C
ZONING PLAN