

**INTERGOVERNMENTAL AGREEMENT
REGARDING STORM DRAINAGE IMPROVEMENTS ON UPPER CHERRY CREEK**

This **INTERGOVERNMENTAL AGREEMENT** (the “Agreement”) is entered into this ____ day of _____ 2009 by and between **PARKER JORDAN METROPOLITAN DISTRICT** (“District”), a quasi-municipal corporation and political subdivision of the State of Colorado and the **SOUTHEAST METRO STORMWATER AUTHORITY** (“SEMSWA”), a political subdivision of the State of Colorado; individually referred to herein as the “Party” and collectively referred to herein as the “Parties”.

WHEREAS, the District was formed and exists as a special district pursuant to § 32-1-101, *et seq.*, C.R.S. for the purpose of providing certain public improvements, facilities and services, to and for the use and benefit of the District, its residents, users, property owners and the public; and

WHEREAS, pursuant to § 32-1-1001(1)(d) & (f), C.R.S., the District is permitted to enter into contracts affecting its affairs; and

WHEREAS, pursuant to § 29-1-203, C.R.S., the Parties are permitted to cooperate or contract with one another to provide any function, service or facility lawfully authorized to each of the Parties; and

WHEREAS, the District has completed and/or funded substantial regional storm drainage improvements within the District, which include the Happy Canyon Creek Channel, Reach E of Parker Road and Jordan Road Line B; and

WHEREAS, the District has purchased 81 acres of open space property lying generally between Broncos Parkway and County Line Road, and along Cherry Creek (the “Open Space Property”) which is legally described on Exhibit A attached hereto and incorporated herein by reference; and

WHEREAS, stream stabilization improvements, which are part of the remaining storm drainage improvements within the District along the Upper Cherry Creek, will need to be completed within the Open Space Property; and

WHEREAS, storm drainage improvements remain to be completed and funded along the Upper Cherry Creek, north of the Open Space Property and within the District; and

WHEREAS, the Parties wish to recognize the District’s previous expenditures on regional storm drainage improvements and exempt the District from completing and funding various future storm drainage improvement along the Upper Cherry Creek.

AGREEMENT

NOW THEREFORE, in consideration of the regional storm drainage improvements previously completed and/or funded by the District and in consideration of the mutual covenants

and promises set forth herein, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

1. Purpose. The purpose of this Agreement is to set forth the terms upon which the District shall be exempt from completing and funding various future storm drainage improvements along the Upper Cherry Creek.

This Agreement shall only apply to the property within the boundaries of the District as of November 1, 2009.

2. Capital Storm Drainage Improvement Fees. As a result of the storm drainage improvements already funded by the District, and as a result of the commitment of the District to fund up to \$2,400,000 of stream stabilization improvements to stabilize Cherry Creek in the Open Space Property, SEMSWA shall not impose any System Development Fee upon any taxpayer, resident or property within the District for capital storm drainage improvements.

3. Stream Stabilization Improvements in the Open Space Property. The District, its successors and assigns, including subsequent property owners, shall be responsible for completing and funding up to a maximum of \$2,400,000 for all hard and soft costs related to the CLOMR/LOMR/404 permit and stream stabilization construction and improvements in the Open Space Property. The \$2,400,000 includes design, engineering, construction, administration, legal and management fees and permitting through all applicable federal, state and local governments and agencies. Such engineering and design shall be approved by SEMSWA which approval shall not be unreasonably withheld. The completed construction shall also be approved by SEMSWA which approval shall not be unreasonably withheld.

The stream stabilization improvements shall be completed by no later than thirty-six (36) months after the District receives a CLOMR, 404 Permit and any other required jurisdictional approvals for the stream stabilization improvements. The District shall pursue those required approvals as promptly as reasonably possible.

4. Remaining Storm Drainage Improvements within the District. Within the District, the only remaining necessary storm drainage improvements which are the sole responsibility of SEMSWA, are those within the Cherry Creek Valley Ecological Park.

5. Maintenance. The Parties agree that the District shall not be responsible for the maintenance, repair or replacement of any Improvement.

6. Modification. This Agreement may not be amended, modified, or changed, in whole or in part, without a written agreement executed by the Parties.

7. Notices. Any notices or other communications required or permitted by this Agreement or by law to be served on, given to or delivered to any Party hereto, by the other Parties shall be in writing and shall be deemed duly served, given or delivered when personally delivered to the Party to whom it is addressed or in lieu of such personal services, upon receipt in the United States' mail, first-class postage prepaid, addressed as follows:

To the District:

Parker Jordan Metropolitan District
c/o RS Wells, LLC
8390 E. Crescent Parkway, Suite 500
Greenwood Village, CO 80111

With a copy to:

Dianne D. Miller
Miller Rosenbluth, LLC
700 17th Street, Suite 2200
Denver, CO 80202

To SEMSWA:

Executive Director
Southeast Metro Stormwater Authority
76 Inverness Drive East, Suite A
Englewood, CO 80112-5106

With a copy to:

Edward J. Krisor
Attorney At Law
3900 S. Wadsworth Blvd., Suite 320
Lakewood, CO 80235-2220

Either Party may change its address for the purpose of this Paragraph by giving written notice of such change to the other Party in the manner provided in this Paragraph.

8. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and together shall constitute one and the same instrument.

9. Governing Law/Venue. This Agreement shall be governed by, and enforced in accordance with, the laws of the State of Colorado. Any suit or proceeding arising from or relating in any way to the subject matter of this Agreement shall be brought only in the district court for Arapahoe County, Colorado, or the federal district court for the State of Colorado. Each Party hereby consents to the exclusive personal jurisdiction and venue of the courts, state and federal, located in Arapahoe County, Colorado, and the State of Colorado.

10. Binding Agreement. This Agreement shall inure to and be binding on the administrator, successors, and permitted assigns of the Parties hereto.

11. Entire Agreement. This Agreement constitutes the complete and exclusive statement of the agreement of the Parties with respect to the subject matter of this Agreement and supersedes all prior oral and written proposals, negotiations, representations, promises, agreements, warranties or understandings concerning such subject matter.

12. Governmental Immunity. Nothing in this Agreement shall be construed as a waiver of the rights and privileges of the Parties pursuant to the Colorado Governmental Immunity Act, § 24-10-101, *et seq.*, C.R.S., as the same may be amended from time to time.

13. Authority To Enter Into Agreement. Each Party hereby confirms it is lawfully authorized to enter into this Agreement, and has taken all steps necessary to authorize the execution of the Agreement by the respective signatories below.

14. Covenant Running with the Open Space Property and Recordation. The covenants, terms, conditions, and restrictions of this Agreement shall be binding upon, and inure to the benefit of, the Parties and their respective successors and assigns and subsequent owners of the real property described in Exhibit A and shall continue as a servitude running with the real property described in Exhibit A. This Agreement shall be recorded in the official records of the Clerk and Recorder of Arapahoe County, Colorado.

[remainder of page intentionally left blank]

IN WITNESS WHEREOF, the Parties hereto have duly executed this Agreement as of the day and year first above written.

PARKER JORDAN METROPOLITAN
DISTRICT:

Norman A. Sheldon, President

ATTEST:

Don Leyn, Secretary/Treasurer

APPROVED AS TO FORM:

Miller Rosenbluth, LLC
General Counsel to District

SOUTHEAST METRO STORMWATER
AUTHORITY:

By: _____
Its: _____

ATTEST:

By: _____
Its: _____

EXHIBIT A
OPENS SPACE – LEGAL DESCRIPTION

Parcel A

A parcel of land located in the East Half of Section 32 and the West Half of Section 33, Township 5 South, Range 66 West of the 6th Principal Meridian, County of Arapahoe, State of Colorado, being more particularly described as follows:

Commencing at the North 1/4 corner of Section 32, whence the center 1/4 corner of said Section 32 bears South 01°06'52" West a distance of 2645.34 feet, said line forming the basis of bearings for this description;

Thence along the West line of the Northeast 1/4 of Section 32 South 01°06'52" West 928.84 feet to the Southwest corner of a parcel of land described in Deed recorded March 1, 1989 in Book 5641 at Page 421 of the Arapahoe County records;

Thence along the South line of said parcel North 89°48'52" East 42.99 feet to the true point of beginning;

Thence continuing along the South line of said Deed recorded March 1, 1989 in Book 5641 at Page 421 and along the South line of River Run II, a Plat recorded April 24, 2000 at Reception No. B0047322 of the Arapahoe County records North 89°48'52" East 1198.89 feet;

Thence leaving said South line South 00°11'08" East 99.81 feet;

Thence South 00°10'51" East 660.00 feet;

Thence South 89°51'13" West 7.95 feet;

Thence South 00°00'00" East 138.22 feet;

Thence along the arc of a curve to the left (said curve having a radius of 1120.00 feet, a central angle of 16°29'14" and a chord which bears South 11°45'48" East 321.18 feet), a distance of 322.29 feet;

Thence South 04°32'24" East 221.27 feet;

Thence South 08°12'21" East 599.92 feet;

Thence South 40°46'39" East 329.86 feet;

Thence South 57°20'46" East 241.75 feet;

Thence South 49°25'16" East 377.13 feet;

Thence South 57°06'50" East 685.78 feet to a point on the South line of the Northwest 1/4 of the Southwest 1/4 of Section 33;

Thence along said South line South 89°36'31" West 83.11 feet to the South 1/16 corner of Sections 32 and 33;

Thence along the South line of the North 1/2 of the Southeast 1/4 of Section 32 South 89°38'20" West 1577.87 feet;

Thence leaving said South line, North 52°07'12" West 176.21 feet;

Thence North 42°15'13" West 95.14 feet;

Thence North 31°03'03" West 45.17 feet;

Thence North 31°36'41" West 98.64 feet;

Thence North 17°12'58" West 91.36 feet;

Thence North 02°28'05" West 89.61 feet;

Thence North 01°20'09" East 107.23 feet;

Thence North 10°51'57" West 164.45 feet;

Thence North 42°05'07" West 34.76 feet;

Thence North 38°08'27" West 58.61 feet;
Thence North 56°15'10" West 138.79 feet;
Thence North 49°39'45" West 113.09 feet;
Thence North 36°11'40" West 166.29 feet;
Thence North 32°22'53" West 92.21 feet;
Thence North 33°34'54" West 95.20 feet;
Thence North 12°53'52" West 159.59 feet;
Thence North 04°34'02" West 234.34 feet;
Thence North 01°06'33" West 210.60 feet;
Thence North 01°28'52" West 209.34 feet;
Thence North 09°29'01" East 237.38 feet;
Thence North 05°08'55" East 135.95 feet;
Thence North 08°23'07" East 99.13 feet;
Thence North 18°15'03" West 192.72 feet;
Thence North 21°09'49" West 323.18 feet;
Thence North 40°29'34" West 13.28 feet to the true point of beginning,
County of Arapahoe, State of Colorado.

Parcel B

A parcel of land located in the Northeast quarter of Section 32, Township 5 South, Range 66 West of the Sixth Principal Meridian, County of Arapahoe, State of Colorado, being more particularly described as follows:

Commencing at the North one-quarter corner of said Section 32, whence the center one-quarter corner of said Section 32 bears South 01°06'52" West a distance of 2645.34 feet (said line forming the basis of bearings for this description);

Thence along the West line of the Northeast quarter of said Section 32, South 01°06'52" West 928.84 feet to the Southwest corner of a parcel of land described in Deed recorded March 1, 1989 in Book 5641 at Page 421 of the Arapahoe County records;

Thence along the South line of said parcel and along the South line of River Run II, a plat recorded April 24, 2000, under Reception No. B0047322 of the Arapahoe County Records, North 89°48'52" East 1241.88 feet to the True Point of Beginning;

Thence continuing along the South line of River Run II, a plat recorded April 24, 2000 at Reception No. B0047322 of the Arapahoe County Records, North 89°48'52" East 615.26 feet;

Thence leaving said South line South 17°56'19" East 105.00 feet to a point on the North line of a parcel described in Book 2928 at Page 609 of the Arapahoe County Records;

Thence South 89°48'52" West along said North line, 647.28 feet to a point on the East line of a parcel described at Reception No. B6120689 of the Arapahoe County Records;

Thence North 00°10'51" West 0.19 feet along said East line;

Thence North 00°11'08" West along said East line 99.81 feet to the True Point of Beginning,
County of Arapahoe, State of Colorado.