

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

RESOLUTION 11-20

(IGA with Parker Jordan Metropolitan District Authorizing Participation
in the Repair of a Failed Drop Structure in Cherry Creek at 17 Mile House)

WHEREAS, SEMSWA maintains drainage structures and facilities within its jurisdictional boundary; and

WHEREAS, SEMSWA has identified the need for maintenance and repair of a drop structure at Cherry Creek at 17 Mile House; and

WHEREAS, Parker Jordan Metropolitan District (the District) and the City of Centennial own 107 acres of open space immediately north of the 17 Mile House property, known as the PJCOS; and

WHEREAS, the District is planning to complete certain stream improvements along Cherry Creek within the PJCOS and on the 17 Mile House property; and

WHEREAS, the District has previously completed the design for repair of the drop structure; and

WHEREAS, SEMSWA may realize substantial savings in construction costs by jointly contracting with the District; and

WHEREAS, funding for the repair is contained within the 2011 CIP budget in the amount of \$28,000 for design, \$210,000 for construction, plus 10% construction contingencies for a total of \$259,000; and

WHEREAS, Staff and legal counsel together with their counterparts at the District prepared an Intergovernmental Agreement Regarding Funding for Stream Improvements, which has been approved by the District and is attached to this Resolution.

NOW, THEREFORE, BE IT RESOLVED THAT:

1. The Executive Director is authorized to execute the attached Intergovernmental Agreement Regarding Funding for Stream Improvements, with Parker Jordan Metropolitan District.
2. \$259,000 is appropriated for the design and repair of a failed drop structure in Cherry Creek at 17 Mile House.
3. Payments will be made to the District according to the terms and conditions of the Intergovernmental Agreement.

SOUTHEAST METRO STORMWATER AUTHORITY
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SEMSWA WATER ACTIVITY ENTERPRISE

Date: _____

ATTEST:

Secretary

Chairperson

APPROVED AS TO FORM:
Attorney for
Southeast Metro Stormwater Authority

By _____
Edward J. Krisor

**INTERGOVERNMENTAL AGREEMENT
REGARDING FUNDING FOR STREAM IMPROVEMENTS**

This **INTERGOVERNMENTAL AGREEMENT** (the "Agreement") is entered into this ____ day of _____ 2011 by and between **PARKER JORDAN METROPOLITAN DISTRICT** (the "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 and The City of Centennial jointly own 107 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, the Open Space Property is directly north of property known as 17 Mile House (the "17 Mile House Property") which is detailed on Exhibit B, attached hereto and incorporated herein by reference; and

WHEREAS, the District is planning to complete certain stream improvements along the Cherry Creek within the Open Space Property (the "Open Space Stream Improvements"); and

WHEREAS, the District is planning to complete certain stream improvements along the Cherry Creek on the 17 Mile House Property (the "17 Mile Stream Improvements") (collectively the Open Space Stream Improvements and 17 Mile Stream Improvements shall be referred to herein as the "Stream Improvements"); and

WHEREAS, the District has incurred substantial design costs associated with the Stream Improvements; and

WHEREAS, SEMSWA wishes to assist the District in funding for design work associated with the Stream Improvements and completion of the 17 Mile Stream Improvements.

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 SEMSWA shall provide funding for a portion of the design work associated with the Stream Improvements and completion of the 17 Mile Stream Improvements.

2. Design Fees. The Parties acknowledge the District has previously expended time, and utilized its resources and money designing the Stream Improvements and will continue to expend its resources in construction management costs for the construction of the Stream Improvements and SEMSWA agrees to provide Twenty-Eight Thousand Dollars (\$28,000) (the "Design Fee") towards such design and construction management costs. The payment of the Design Fee to the District constitutes SEMSWA's entire funding obligation in regard to the design and construction management costs of the 17 Mile Stream Improvements. SEMSWA shall provide the District with the Design Fee within thirty (30) days of mutual execution of this Agreement.

3. 17 Mile Stream Improvements. The Parties acknowledge that the District is under no obligation to complete the 17 Mile Stream Improvements; copies of plans associated with the 17 Mile Stream Improvements are described in Exhibit C, attached hereto and incorporated herein by reference. The Parties further acknowledge that the 17 Mile Stream Improvements are vital to the continued maintenance of the Open Space Stream Improvements and all stream improvements along the Cherry Creek. The Parties agree that the current estimate for the 17 Mile Costs is Two Hundred Ten Thousand Dollars (\$210,000) (the "Estimated 17 Mile Costs"). Therefore, SEMSWA agrees to pay for all hard construction costs associated with the 17 Mile Stream Improvements (the "17 Mile Costs") up to a maximum of the Estimated 17 Mile Costs.

The Parties agree that the 17 Mile Stream Improvements shall be awarded as part of the contract the District enters into for the Open Space Stream Improvements. The Parties acknowledge that the 17 Mile Stream Improvements shall be bid as an alternate project to the Open Space Stream Improvements and that all Work associated with the 17 Mile Stream Improvements shall be kept separate from the Open Space Stream Improvements and funded by SEMSWA. SEMSWA agrees to pay 17 Mile Costs detailed in the awarded contract (the "Awarded 17 Mile Costs") up to a maximum of the Estimated 17 Mile Costs.

The Parties shall review the alternate bids on the 17 Mile Stream Improvements and shall mutually agree whether to award or not to award a contract for their construction. SEMSWA shall agree to the District's choice of contractor so long as the contractor is the lowest responsible and responsive bidder for the Stream Improvements and the costs associated with the alternate bid

on the 17 Mile Stream Improvements do not exceed the Estimated 17 Mile Costs. In the event the alternate bid on the 17 Mile Stream Improvements do exceed the Estimated 17 Mile Costs the Parties shall confer and determine how to proceed.

In the event there is a proposed change order to the Work associated with the 17 Mile Stream Improvements, SEMSWA will be allowed the opportunity to review and object to the proposed change order. If SEMSWA wishes to object to the proposed change order they shall notify the District of such objection within five (5) business days of receipt to the proposed change order and the change order will not be accepted. If SEMSWA accepts the change order, it will notify the District of such acceptance within five (5) business days and SEMSWA will be responsible for the additional costs associated with the accepted change order. If SEMSWA fails to timely respond to a proposed change order to the Work associated with the 17 Mile Stream Improvements, then SEMSWA shall be deemed to have rejected the proposed change order. In the event the cost of the accepted change order causes the 17 Mile Costs to exceed the amount of the Escrow Fund, SEMSWA shall provide the difference to the District in immediately available funds. The District will not approve the change order to the Work associated with the 17 Mile Stream Improvements until the additional funds are received.

The District agrees to provide SEMSWA with all pay requests and a final accounting related to the Work associated with the 17 Mile Stream Improvements.

4. 17 Mile Account. If the Parties have mutually agreed that a contract should be awarded for the construction of the 17 Mile Stream Improvements, SEMSWA shall, prior to the award of the contract for the construction of the 17 Mile Stream Improvements, transmit the Awarded 17 Mile Costs into an account of the District's (the "17 Mile Account") subject to the terms and conditions set forth below. In the event the Awarded 17 Mile Costs exceed the Estimated 17 Mile Costs and SEMSWA has agreed to do so, SEMSWA shall provide the difference to the District in immediately available funds to be deposited into the 17 Mile Account. In the event the cost of an accepted change order causes the 17 Mile Costs to exceed the amount of the 17 Mile Account, SEMSWA shall provide the difference to the District in immediately available funds to be deposited into the 17 Mile Account.

The payments made by SEMSWA shall be held by the District in the 17 Mile Account to pay for the construction of the 17 Mile Stream Improvements as authorized by SEMSWA and the District. The District shall provide a periodic accounting of the funds in the 17 Mile Account as well as a periodic notification to SEMSWA of any unpaid obligations. Any interest earned by the monies contributed by SEMSWA shall be accrued to the 17 Mile Account established by the District for the construction of the 17 Mile Stream Improvements and such interest shall be used only for the construction of the 17 Mile Stream Improvements.

Within sixty (60) days of final acceptance of the 17 Mile Stream Improvements; the District, if there are monies including interest earned remaining in the 17 Mile Account that are not committed, obligated or disbursed, shall pay SEMSWA those funds.

5. Management of Construction.

a. The District, with the assistance of SEMSWA, shall administer and coordinate the construction-related work for the 17 Mile Stream Improvements.

b. The District, with the assistance of SEMSWA, shall advertise for construction bids; conduct a bid opening; prepare construction contract documents; and award construction contract(s).

c. The District shall require the contractor to provide adequate liability insurance that includes SEMSWA. The contractor shall be required to indemnify SEMSWA. Copies of the insurance coverage shall be provided to SEMSWA.

d. The District, with the assistance of SEMSWA, shall coordinate field surveying; staking; inspection; testing; acquisition of right-of-way; and engineering as required to construct the 17 Mile Stream Improvements. The District, with the assistance of SEMSWA, shall assure that construction is performed in accordance with the construction contract documents including approved plans and specifications and shall accurately record the quantities and costs relative thereto. Copies of all inspection reports shall be furnished to SEMSWA on a monthly basis. The District shall retain an engineer to perform all or a part of these duties.

e. The District shall contract with and provide the services of the design engineer for basic engineering construction services to include addendum preparation; survey control points; explanatory sketches; revisions of contract plans; shop drawing review; as-built plans; weekly inspection of work; and final inspection.

f. The Parties shall have access to the site during construction at all times to observe the progress of work and conformance to construction contract documents including plans and specifications.

g. The District shall review and approve contractor billings and send them to SEMSWA for review.

h. The District, with the assistance and written concurrence by SEMSWA, shall prepare and issue all written change or work orders to the contract documents.

i. The Parties shall, at the completion of construction of the 17 Mile Stream Improvements, mutually agree whether or not the 17 Mile Stream Improvements were completed substantially in conformance with the plans and specifications for the 17 Mile Stream Improvements and whether or not to issue an initial acceptance of the 17 Mile Stream Improvements or to issue a punch list that will need to be completed prior to issuance of an initial acceptance. Final acceptance shall also require the mutual agreement of the Parties.

j. The District no later than the final acceptance of the 17 Mile Stream Improvements shall provide, if necessary, an easement over and across real property owned by the

District so that SEMSWA may have access to the 17 Mile Stream Improvements for their maintenance.

k. The District shall provide SEMSWA a set of reproducible “as-built” plans.

6. Ownership and Maintenance of Open Space Stream Improvements. The Parties agree that upon completion of the Open Space Stream Improvements, the District shall be solely responsible for the maintenance, repair and replacement of any improvements to the Open Space Stream Improvements as such maintenance, repair and replacement may be determined by the District, within its sole discretion, to be reasonably necessary and within the District’s authority and its budget and funding priorities. The District may enter into one or more agreements with each other or with third parties for the performance of such maintenance, repair, or replacement as deemed necessary or desirable by the District.

7. Ownership and Maintenance of 17 Mile Stream Improvements. The Parties agree that upon completion of the 17 Mile Stream Improvements, SEMSWA shall be solely responsible for the maintenance, repair and replacement of any improvements to the 17 Mile Stream Improvements as such maintenance, repair and replacement may be determined by SEMSWA, within its sole discretion, to be reasonably necessary and within SEMSWA’s authority and its budget and funding priorities. SEMSWA may enter into one or more agreements with each other or with third parties for the performance of such maintenance, repair, or replacement as deemed necessary or desirable by SEMSWA.

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

9. 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 & Associates Law Offices, 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.

10. 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.

11. 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.

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

13. 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.

14. 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.

15. 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.


16. 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.

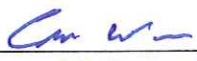
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IN WITNESS WHEREOF, the Parties hereto have duly executed this Agreement as of the day and year first above written.

PARKER JORDAN METROPOLITAN
DISTRICT:


Norman A. Sheldon, President

ATTEST:


By: Clint Waldron x
Its: ASSISTANT SECRETARY

APPROVED AS TO FORM:


Miller & Associates Law Offices, LLC
General Counsel to District

SOUTHEAST METRO STORMWATER
AUTHORITY:

By: John McCarty
Its: Executive Director

ATTEST:

By: Ron Weidmann
Its: Secretary

EXHIBIT A
OPENS SPACE PROPERTY – LEGAL DESCRIPTION

Parcel One:

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 a parcel of land described in 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 Two:

The following real property situate in Arapahoe County, State of Colorado, to wit:

A parcel of land located in the East Half of Section 32, 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 One-Quarter corner of 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 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 and the True Point of Beginning;

Thence along the South line of said deed recorded March 1, 1989 in Book 5641 at Page 421 of the Arapahoe County Records, North 89°48'52" East 42.99 feet; thence leaving said South line South 40°29'34" East 13.28 feet; thence South 21°09'49" East 323.18 feet; thence South 18°15'03" East 192.72 feet; thence South 08°23'07" West 99.13 feet; thence South 05°08'55" West 135.95 feet; thence South 09°29'01" West 237.38 feet; thence South 01°28'52" East 309.34 feet; thence South 01°06'33" East 210.60 feet; thence South 04°34'02" East 234.34 feet; thence South 12°53'52" East 159.59 feet; thence South 33°34'54" East 95.20 feet; thence South 32°22'53" East 92.21 feet; thence South 36°11'40" East 166.29 feet; thence South 49°39'45" East 113.09 feet; thence South 56°15'10" East 138.79 feet; thence South 38°08'27" East 58.61 feet; thence South 42°05'07" East 34.76 feet; thence South 10°51'57" East 164.45 feet; thence South 01°20'09" West 107.23 feet; thence South 02°28'05" East 89.61 feet; Thence South 17°12'58" East 91.36 feet; thence South 31°36'41" East 98.64 feet; thence South 31°03'03" East 45.17 feet; thence South 42°15'13" East 95.14 feet; thence South 52°07'12" East 176.21 feet to a point on the South line of the Northwest Quarter of the Southeast Quarter of Section 32, whence the South one-sixteenth corner of Sections 32 & 33 Bears North 89°38'20" East; thence along said South line 89°38'20" West 1084.88 feet to the Center-South one-sixteenth corner of Section 32; thence along the West line of the Northwest Quarter of the Southeast Quarter of Section 32 North 01°07'40" East 1322.27 feet to the center one-quarter corner of Section 32; thence along the West line of the Northeast Quarter of Section 32 North 01°06'52" East 1716.50 feet to the True Point of Beginning,
County of Arapahoe, State of Colorado

TOGETHER WITH:

All and any water, water rights, ditches and ditch rights, water stock, wells, well rights, reservoirs, minerals, mineral rights, oil and gas rights appertaining to the property described above, if any.

EXHIBIT B 17 MILE HOUSE PROPERTY

