

OIA

**REIMBURSEMENT AGREEMENT
(CHERRY CREEK STREAM RECLAMATION AT PJOS)**

THIS REIMBURSEMENT AGREEMENT (“Agreement”) is entered into this 17th day of June, 2010 by and between the **CHERRY CREEK BASIN WATER QUALITY AUTHORITY**, a quasi-municipal corporation and political subdivision of the State of Colorado (“Authority”) and the **PARKER JORDAN METROPOLITAN DISTRICT**, a quasi-municipal corporation and political subdivision of the State of Colorado (“District”), collectively the “Parties.”

RECITALS

WHEREAS, Authority is authorized to enter into contracts and to fund the design and construction of water quality and drainage improvements that improve, protect or preserve the water quality of Cherry Creek and the Cherry Creek Reservoir (“Reservoir”); and

WHEREAS, District was formed to design, plan, construct, acquire, and in some cases operate and maintain various public improvements, including by not limited to storm drainage and recreational improvements; and

WHEREAS, District is in the process of finalizing the design of a project known as the Cherry Creek Stream Reclamation at Parker Jordan Open Space (the “Project”), formally known as Cherry Creek Stream Reclamation at Vermillion Creek; and

WHEREAS, the Project consists of reclaiming that portion of Cherry Creek and its related wetlands that extends for approximately 5,100 lineal feet from 17 Mile House Open Space on the south to the Broncos Parkway Trailhead on the north, all as more particularly depicted on Exhibit A as attached hereto and incorporated herein by this reference; and

WHEREAS, the Authority recognizes that the Project will preserve and protect water quality in Cherry Creek and in the Reservoir by reducing phosphorus loads and concentrations in both Cherry Creek and the Reservoir; and

WHEREAS, the Project is part of the Authority’s 2010 capital improvement program and ranks high in priority based upon the criteria established by the Authority’s Technical Advisory Committee for water pollution abatement projects; and

WHEREAS, District has requested partial reimbursement of its design costs from the Authority; and

WHEREAS, the Authority desires to reimburse the District for a portion of such costs; and

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the adequacy of which is hereby acknowledged, the Parties agree as follows:

1. **Obligations of the District.**

1.1 **Design.** The District shall complete or cause to be completed the final design of the Project, which final design shall be submitted to the Authority for review and approval, which approval shall not be unreasonably withheld, conditioned or delayed. To the extent practical, the final design shall incorporate the Authority's comments and suggestions so that the Authority is reasonably satisfied that the Project, once constructed, will produce the water quality benefits and enhancements envisioned by the Authority at the time the Project was approved as part of the Authority's 2010 Capital Improvement Program. The anticipated completion of the final design is August 31, 2010, and the District shall diligently manage and oversee the final design process so as to meet this timeline.

1.2 **Construction.** As soon as funds become available District shall cause the Project to be constructed substantially in accordance with the approved final design. The Authority may, but shall be under no obligation to, consider reimbursing the District a portion of the actual cost of constructing the Project.

2. **Design and Construction Costs.** The cost of designing and constructing the Project are currently projected to be as follows:

1. Design	\$ 244,000 ¹
2. Construction	\$ 3,544,200 ²
3. Construction Management	\$ 237,600
TOTAL	\$ 4,025,800

3. **Reimbursement of Costs.** The Authority shall, in accordance with the terms and provisions of this Agreement reimburse the District for costs incurred and paid by the District for the preliminary and final design of the Project in an amount not to exceed \$56,000.

4. **Request for Reimbursement.** Once the District has issued a notice of award of a contract for the construction of the Project, the District shall submit to the Authority a written request for reimbursement. The request shall be accompanied by invoices, cancelled checks and such other supporting documentation as Authority may reasonably request to enable the Authority to verify that the amount requested was paid by District for the Project and has not been reimbursed to District by any other entity or

¹ Does not include design fees for trail work.

² Does not include recreation amenities. Includes one-half of regional/maintenance trail costs.

source whatsoever. The reimbursement request shall be paid by the Authority within 45 days after the request is received; provided, however, the Authority shall have the right to refuse to pay all or any portion of the request that is inconsistent with this Agreement.

The Authority's funding provided pursuant to this Agreement shall constitute the entire funding provided by the Authority for the design of the Project. The District shall be solely responsible for any costs or expenses incurred for the preliminary and final design of the Project in excess of the Authority's funding.

5. **No Agency or Other Relationship.** This Agreement is not intended to create any partnership or other agency relationship between the parties.

6. **Article X, Section 20/TABOR.** The Parties understand and acknowledge that the Authority is subject to Article X, Section 20 of the Colorado Constitution ("TABOR"). The Authority represents to the District that it has budgeted and appropriated sufficient funding to meet the Authority's obligations provided in this Agreement and, specifically, the Authority has appropriated and reserved \$56,000 in its general fund to pay its obligations under this Agreement. The parties acknowledge that the provisions of Article X, Section 20 of the Colorado Constitution are satisfied. For any amounts not fully appropriated, the Parties do not intend to violate the terms and requirements of TABOR by the execution of this Agreement. It is understood and agreed that this Agreement does not create a multi-fiscal year direct or indirect debt or obligation within the meaning of TABOR and therefore, all payment obligations of the Authority are expressly dependent and conditioned upon the continuing availability of funds beyond the term of the Parties current fiscal year.

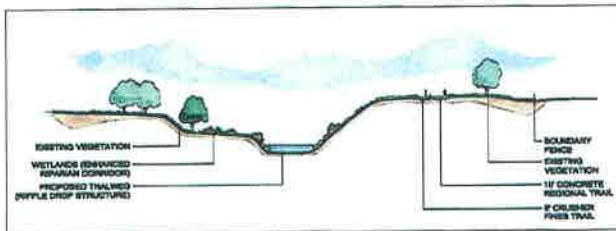
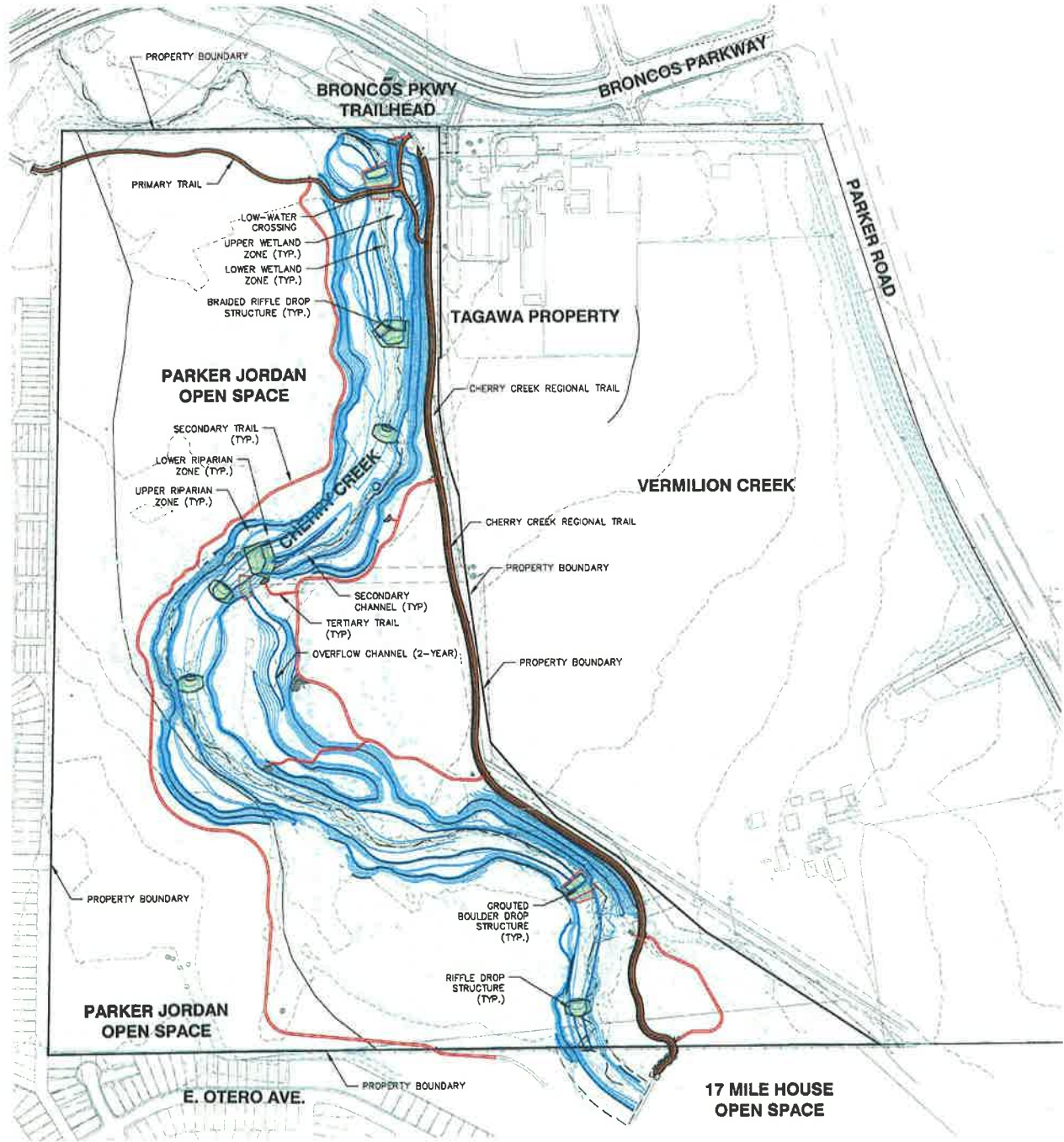
7. **Term.** This Agreement shall be effective upon execution by the Parties and shall terminate on December 31, 2010, subject to extension by mutual agreement of the Parties hereto in writing.

8. **Assignment and Release.** This Agreement may not be assigned in whole or in part by either Party without the express written consent of the other Party, which consent maybe withheld for any or no reason.

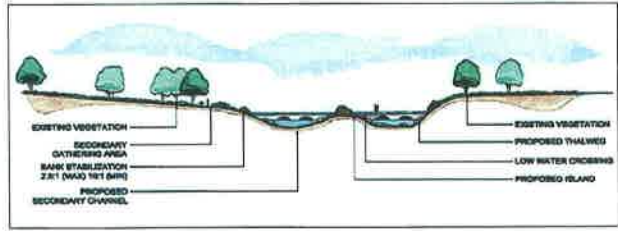
9. **Entire Agreement.** This Agreement embodies the complete agreement between the Parties regarding the subject matter herein and supersedes all prior agreements or understandings, if any.

10. **No Third Party Beneficiaries.** The Parties to this Agreement do not intend to benefit any person not a party to this Agreement. No person or entity, other than the Parties to this Agreement, shall have any right, legal or equitable, to enforce any provision of this Agreement.

EXHIBIT A



TYPICAL CHANNEL CROSS-SECTION



TYPICAL BRAIDED CHANNEL CROSS-SECTION



Parker Jordan Open Space
 CHERRY CREEK STREAM RESTORATION PROJECT
 MARCH 18, 2010

