

RIGHT OF ENTRY AGREEMENT

This Right of Entry Agreement ("Right of Entry") is entered into this ____ day of _____, 2009 by and between the City of Centennial ("City"), a home rule municipal corporation of the State of Colorado and the Southeast Metro Stormwater Authority acting by and through SEMSWA Water Activity Enterprise ("SEMSWA") collectively ("Parties").

WHEREAS, City is the owner either in fee or easement of real property within its boundaries which is used for drainage and flood control, regional stormwater facilities and conveyances and NPDES MS4 Permit compliance ("Property").

WHEREAS, SEMSWA desires to obtain City's permission to access and utilize the Property for the purposes of operating and maintaining regional stormwater facilities and conveyances, carrying out NPDES MS4 Permit activities and responsibilities and for all other necessary drainage and flood control activity.

WHEREAS, the Parties wish to enter into this Right of Entry Agreement whereby the City will allow SEMSWA to access and utilize the Property for the purposes herein expressed and in accordance with the terms of this Agreement.

NOW, THEREFORE, the City and SEMSWA do hereby agree as follows:

1. The City hereby grants to SEMSWA and its agents, employees and contractors the temporary right to access and utilize the Property for the purposes of operating and maintaining regional stormwater facilities and conveyances, carrying out NPDES MS4 Permit activities and responsibilities and for all other necessary drainage and flood control activity. SEMSWA shall provide the City with written reports of work performed on the Property on a regular basis as mutually agreed upon between SEMSWA and the City.

2. This Right of Entry Agreement will terminate upon the conveyance to SEMSWA, either in fee or easement, of the Property or at such other time as deemed necessary by the City in the interest of public health and safety.

3. This Right of Entry Agreement is subordinate to all prior rights and obligations of City in the Property, except that City shall grant no rights inconsistent with the reasonable exercise by SEMSWA of its rights under this Right of Entry Agreement.

4. SEMSWA shall not permit to be placed against the Property, or any part thereof, any liens or other encumbrances with regard to SEMSWA's actions upon the Property. SEMSWA agrees to hold City harmless, to the extent permitted by law, for any loss or expense, including reasonable attorneys' fees and costs, arising from any such liens or encumbrances which might be filed against the Property.

5. SEMSWA hereby agrees, to the extent permitted by law, to indemnify, defend, assume all liability for and hold harmless City and its officers, employees, agents and representatives from all actions, claims, suits, penalties, obligations, liabilities, damages to property, environmental claims, or injuries to persons, which are caused by the SEMSWA's activities pursuant to this Right of Entry Agreement or arising out of or in connection with such activities, whether such activities or performance thereof is by SEMSWA or anyone directly or indirectly employed or under contract with SEMSWA, and whether such damage or claim shall accrue or be discovered before or after the termination of this Right of Entry Agreement.

6. If SEMSWA in the course of exercising its rights hereunder damages any facilities of City located on the Property, SEMSWA will promptly notify the City of such damage and promptly repair said facilities to the City's reasonable satisfaction.

7. SEMSWA shall, in all activities undertaken pursuant to this Right of Entry Agreement, comply and cause its contractors, agents and employees to comply with all federal, state and local laws, statutes, orders, ordinances, rules, regulations, plans, policies and decrees. Without limiting the generality of the foregoing, SEMSWA, at its sole cost and expense, shall obtain any and all permits which may be required by any law, regulation or ordinance for any activities SEMSWA desires to conduct or have conducted pursuant to this Right of Entry Agreement.

8. The City and its representatives, employees, agents or independent contractors may enter and inspect the Property or any portion thereof or any improvements thereon at any time and from time to time to verify SEMSWA's compliance with the terms of this Right of Entry Agreement.

9. It is expressly understood that this Right of Entry Agreement does not in any way whatsoever grant or convey any permanent easement, lease, fee or other real property interest in the Property to SEMSWA. This Right of Entry Agreement is not exclusive and City specifically reserves the right to grant other rights of entry in regard to the Property as long as the same do not interfere with the rights granted to SEMSWA herein.

10. In the event of a dispute between the parties with respect to the terms or conditions of this Right of Entry Agreement, the prevailing party shall be entitled to collect from the other its reasonable attorneys' fees as established by the judge presiding over such dispute.

IN WITNESS WHEREOF, the Parties hereto have executed this Right of Entry Agreement on the date first written above.

City of Centennial:

By: _____

Jacque Wedding-Scott, City Manager
City of Centennial
13133 E Arapahoe Road
Centennial, CO 80112

ATTEST:

Approved as to Form:

City Clerk or Deputy City Clerk

For City Attorney's Office

Southeast Metro Stormwater Authority:

By: _____

Executive Director