

**INTERGOVERNMENTAL AGREEMENT
BETWEEN SOUTHEAST METRO STORMWATER AUTHORITY AND
ARAPAHOE COUNTY PUBLIC AIRPORT AUTHORITY**

This **INTERGOVERNMENTAL AGREEMENT** (the “IGA”) is entered into this ____ day of _____ 2011 by and between the **SOUTHEAST METRO STORMWATER AUTHORITY** (“SEMSWA”), a political subdivision and a public corporation of the State of Colorado and the **ARAPAHOE COUNTY PUBLIC AIRPORT AUTHORITY** (“ACPAA”), a political subdivision of the State of Colorado; individually referred to herein as the “Party” and collectively referred to herein as the “Parties”.

WHEREAS, SEMSWA was formed and exists as a drainage authority pursuant to § 29-1-204.1, *et seq.*, C.R.S. for the purpose of planning, funding, constructing, acquiring, operating and maintaining drainage and flood control facilities, to and for the use and benefit of the governmental entities that formed and participate in SEMSWA, their residents, users, property owners and the public; and

WHEREAS, SEMSWA established SEMSWA Water Activity Enterprise and operates under that Enterprise; and

WHEREAS, ACPAA was formed and exists as an airport authority pursuant to § 41-3-101, *et seq.* C.R.S. for the purpose of planning, funding, constructing, operating and maintaining Centennial Airport, its air navigation facilities and related facilities, and

WHEREAS, ACPAA owns, operates and maintains Centennial Airport which is located within the boundaries of SEMSWA; and

WHEREAS, pursuant to § 29-1-204.2 (3)(b) C.R.S., SEMSWA is permitted to make and enter into contracts affecting its affairs; and

WHEREAS, pursuant to § 41-3-106 (1)(d) C.R.S., ACPAA is permitted to enter into contracts and agreements 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, SEMSWA has, since its inception, charged ACPAA, SEMSWA’s standard yearly impervious area fee (IAF) both in regard to the impervious areas within ACPAA’s boundaries that are leased to third parties as well as impervious areas within ACPAA’s boundaries that are owned by ACPAA including ACPAA’s runways, taxiways, and connectors; and

WHEREAS, ACPAA maintains that SEMSWA should not be charging an IAF in regard to ACPAA’s runways, taxiways, and connectors; and

WHEREAS, ACPAA is eligible for credits by SEMSWA towards SEMSWA's IAF charged ACPAA; and

WHEREAS, several storm water detention ponds are located within ACPAA's boundaries; one of which, Pond W-1, detains more storm water generated from areas upstream of ACPAA than storm water generated by ACPAA's impervious area. Pond W-1's detention of off site storm water is beneficial to SEMSWA and ACPAA is entitled to lease payments in regard to Pond W-1 calculated on the basis of the additional storage that it provides for that off site drainage unrelated to ACPAA's property; and

WHEREAS, (1) SEMSWA disagrees with ACPAA's position in regard to an IAF charged in regard to ACPAA's runways, taxiways, and connectors as shown on Exhibit "A" but (2) SEMSWA acknowledges that ACPAA is eligible for credits against the IAF it is being charged although the amount of that credit has not been calculated or agreed upon between the Parties, and (3) that ACPAA is entitled to lease payments in regard to the ponds located within ACPAA's boundaries, as shown on Exhibit "B" although the Parties disagree as to the amount of those lease payments; and

WHEREAS, SEMSWA and ACPAA have determined to resolve forever these three issues between them on the following basis.

AGREEMENT

NOW THEREFORE, 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. SEMSWA will continue to assess and ACPAA will promptly pay SEMSWA's full commercial IAF in regard to all impervious areas within Centennial Airport's boundaries except for the square footage of ACPAA's runways, taxiways, and connectors, now existing or as modified in the future, which will not be assessed an IAF for 2011 and thereafter. Where appropriate, SEMSWA shall apply its contiguous parcel policy to these impervious areas.

2. ACPAA will at no time assess or attempt to assess any fee or payment from SEMSWA for the use by SEMSWA of any property owned by ACPAA for the purpose of the detention or retention of storm water whether the ACPAA property is located within the secured areas of Centennial Airport or off site.

3. ACPAA will promptly withdraw its request to SEMSWA for credits towards SEMSWA's IAF charged ACPAA and, further, will not in the future make a request for credits towards SEMSWA's IAF charged ACPAA.

4. ACPAA will be responsible for mowing, at least twice each year, all ponds and other drainage and flood control facilities located within the secured areas of Centennial Airport except for the banks of Pond L-1 which will be mowed, at least twice a year, by SEMSWA.

5. ACPAA will be responsible for all weed control for all ponds including Pond L-1 and other drainage and flood control facilities within the secured areas of Centennial Airport.

6. SEMSWA will be responsible for all other maintenance of all of the ponds and other drainage and flood control facilities located within the secured areas of Centennial Airport including but not limited to Pond L-1, Pond W-1, Airport Pond No. 1 and Airport Pond No. 2.

7. ACPAA will grant SEMSWA, by separate document(s), a mutually agreeable permanent non-exclusive easement sufficient in size and dimensions over and across the secured areas of Centennial Airport to permit SEMSWA to complete its maintenance obligations within the secured areas of Centennial Airport. SEMSWA shall coordinate with ACPAA access to any secured areas of Centennial Airport in accordance with ACPAA's Standard Operational Procedures and Emergency Procedures, which procedures will be incorporated into any easement executed between the parties.

8. Currently there are two ponds North of Easter St. and outside of Centennial Airport's secured area known as Airport East Pond and Airport West Pond that are being expanded by ACPAA at no cost to SEMSWA. Prior to the time when the expansion of Airport East Pond and Airport West Pond is completed and they become one, ACPAA will continue to be responsible for all maintenance of those ponds.

9. Once the expansion of Airport East Pond and Airport West Pond is completed and they become one, SEMSWA will be responsible for all maintenance of that expanded pond. ACPAA will grant SEMSWA, by separate document(s), a mutually agreeable permanent non-exclusive easement sufficient in size and dimensions over and across the real property upon which the expanded pond is located to permit SEMSWA to complete its maintenance obligations of that expanded pond.

10. SEMSWA shall rebuild the bank on the West side of Pond W-1 at its sole cost and expense in order to eliminate the encroachment of Pond W-1 onto real property within the secured areas of Centennial Airport that are currently leased by SunBorne Companies.

11. All ponds referred to herein, except for the re-construction of Pond W-1 to eliminate the encroachment shall not, at any time, be modified so as to reduce the storage volume of any pond.

12. SEMSWA may continue to utilize for drainage and flood control purposes all ponds owned by ACPAA whether located either within the secured areas of Centennial Airport or off site.

13. This IGA resolves forever the issues between SEMSWA and ACPAA in regard to Centennial Airport relating to SEMSWA's fees assessed to ACPAA, credits to ACPAA by SEMSWA and lease payments to ACPAA from SEMSWA, other than any dispute arising out of or related to a breach of this IGA. In addition, both parties have consulted each of their staffs and board of directors and, after that consultation, each represents to the other that it is currently unaware of any other issues between them.

14. The IAF fees assessed by SEMSWA to ACPAA in regard to the year 2011 and thereafter will be modified consistent with the terms of this IGA and, if necessary, SEMSWA will refund any over payment of those fees to ACPAA.

15. This IGA can only be amended, modified or terminated, in whole or in part, by the mutual written agreement of both SEMSWA and ACPAA.

16. Any notices or other communications required or permitted by this IGA or by law to be served on, given to, or delivered to any Party hereto, by the other Party, 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, three days after deposit in the United States' mail, first-class postage prepaid, addressed as follows:

To ACPAA:

Executive Director
Arapahoe County Public Airport Authority
7800 South Peoria Street
Englewood, CO 80112

With a copy to:

Brian A. Magoon
Robinson Waters & O'Dorisio
1099 18th Street, Suite 2600
Denver, CO 80202-1937

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.

17. This IGA 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.

18. This IGA 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 IGA 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.

19. This IGA shall inure to and be binding on the administrators, successors, and permitted assigns of the Parties hereto.

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

21. Nothing in this IGA 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.

22. Each Party hereby confirms it is lawfully authorized to enter into this IGA, and has taken all steps necessary to authorize the execution of the IGA by the respective signatories below.

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

SOUTHEAST METRO STORMWATER
AUTHORITY:

By _____
Bart Miller, Chair

ATTEST:

By: Ron Weidmann
Its: Secretary/Treasurer

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APPROVED AS TO FORM:

Edward J. Krisor, Esq.
General Counsel to SEMSWA

ARAPAHOE COUNTY PUBLIC AIRPORT
AUTHORITY:

By _____
Susan Beckman, Chair

ATTEST:

By: Bob Doubek
Its: Clerk

APPROVED AS TO FORM:

Brian A. Magoon, Esq.
Robinson Waters & O'Dorisio, P.C.
General Counsel to Arapahoe County
Public Airport Authority