

**MAINTENANCE AGREEMENT
BETWEEN CITY OF COMMERCE CITY
AND THE
UNITED STATES FISH AND WILDLIFE SERVICE**

I. PURPOSE

This Maintenance Agreement (Agreement) prescribes the process and procedures for maintenance and repairs to Access Connections to the Rocky Mountain Arsenal National Wildlife Refuge (Refuge) constructed using Federal Lands Access Program (FLAP) funds between the City of Commerce City, Colorado (hereafter referred to as the “CCC”), and the United States Department of the Interior (DOI), U.S. Fish and Wildlife Service (hereafter referred to as the “Service”), pursuant to the terms of the following authority.

II. AUTHORITY

This Agreement between the CCC and the Service is hereby entered into under the following authorities granted in Section 7 of the Fish and Wildlife Act of 1956 (16 U.S.C. 742f (a)(4), (d)(2)(A), (d)(2)(B)(ii), and (d)(2)(C)(iii)).

III. STATEMENT OF MUTUAL INTEREST AND MUTUAL BENEFITS

WHEREAS, the CCC in collaboration with the City and County of Denver and the Service applied for design engineering and construction funding for the Access Connections included in this Agreement under the Federal Lands Access Program.

WHEREAS, the FLAP funding was programmed for the Access Connections included in this Agreement.

WHEREAS, the Access Connections included in this Agreement will be constructed under contract by the United States Department of Transportation, Federal Highway Administration, Central Federal Lands Highway Division on the Rocky Mountain Arsenal National Wildlife Refuge, with construction beginning in the spring of 2020.

WHEREAS, the Access Connections included in this Agreement, once constructed, will become real property assets of the Service.

WHEREAS, the CCC and the Service have determined that maintenance and repair of the Access Connections to the Refuge would provide substantial benefits to the American people.

WHEREAS, the CCC and the Service have defined the Access Connections under this Agreement to include:

- o Henderson Hill Trail and trailhead at 96th Avenue.
- o Henderson Hill Overlook

WHEREAS, the CCC has agreed in prior correspondence and discussions to provide financial contributions toward maintenance of the Access Connections, including the March 2018 Federal Lands Access Program and Federal Lands Program Project Memorandum of Agreement..

THEREFORE, the CCC agrees, subject to the availability of funds lawfully appropriated through the CCC’s legally required budgeting, authorization, and appropriation process, to provide funding for recurring and routine maintenance of the Access Connections, and the Service agrees to provide substantial repairs of the Access Connections under the procedures set forth in Section I of this Agreement.

I. PROCEDURES

- A. The statements below provide a general framework for how future recurring and routine maintenance and substantial repairs will be addressed during the term of this agreement. It is mutually agreed and understood:
1. The Service shall perform regular condition inspections of the Asset Connections, in cooperation with the Federal Highway Administration, subject to annual allocations for public use transportation assets.
 2. The CCC shall perform recurring and routine maintenance of the trails, trailhead parking, bridges, and overlooks. Recurring and routine maintenance includes, but is not limited to the following:
 - i. General site inspection of all areas is performed once per week.
 - ii. Litter is removed once per week.
 - iii. Graffiti is washed off or painted over within 48 hours after it has been reported.
 - iv. Routine repairs, typically below \$5,000 per repair, are completed within one week of discovery, assuming replacement parts are available.
 - v. Safety issues are repaired as quickly as possible.
 3. Any single repair that costs more than \$5,000 shall be considered a substantial repair. Such repairs shall be the obligation of the Service. Substantial repairs must be planned and programmed using appropriate funding through the Federal Lands Transportation Program or the Service's Deferred Maintenance program.
 4. When appropriate, both parties may determine that substantial repair work will be performed by the CCC with the costs to be reimbursed by the Service as described in Paragraph 3 above. In no event shall the CCC undertake work in advance of Federal allocation.
- B. Capital improvements and enhancements (e.g., changing the alignment or surface type of the trail or trailhead parking) are the responsibility of the Service and shall be funded through funding authorized for the purposes of real property public recreational use assets.
- C. Emergency repairs are excluded from this Agreement and shall be addressed as needed on a case-by-case basis.
- D. Nothing herein shall be read to convey to the CCC any right, title or interest in the Access Connections, which shall remain solely the property of the Service.

II. TERM OF AGREEMENT

This Agreement shall become effective upon signature of both parties, with a term of 20 years. The parties shall review and renew the Agreement each succeeding five years. Any party may terminate the Agreement for cause (i.e., any violation of the terms of the Agreement).

III. SPECIAL PROVISIONS

- A. Notwithstanding any other term or condition of this Agreement, all obligations of the CCC under this Agreement, whether direct or contingent, will only extend to payment of monies duly and lawfully appropriated and encumbered for the purpose of this Agreement through the CCC's legally required budgeting, authorization, and appropriation process, as applicable. By this Agreement, the CCC: (1) does not presently commit to the expenditure of any funds; (2) does not create a multiple fiscal year obligation or debt either within or without this Agreement; and (3) do not bind future legislatures to appropriate any funds for the performance of any obligations of the CCC under this Agreement.
- B. The Service and the CCC do not assume any liability for any act, omission, or activity by the other party in connection with the activities undertaken on the described real property. Each party agrees that it will be responsible for its own acts and the results therein to the extent authorized by law and shall not be responsible for the acts of the other party and the results thereof. The Service's liability shall be governed by the provisions of the Federal Tort Claim Act (28 U.S.C., Section 2671, et seq.). The CCC's liability shall be governed by the provisions of the Colorado Government Immunity Act (C.R.S. §§ 24-

10-101, et seq.); no term or condition of this Agreement will be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections or other provisions of the Colorado Governmental Immunity Act. This provision shall survive the expiration or termination of this Agreement.

- C. The CCC shall comply with all Federal statutes relating to non-discrimination, as permitted by the State of Colorado. These include but are not limited to Title VII of the Civil Rights Act of 1964, which prohibits discrimination on the basis of race, color, handicap, or national origin.
- D. Pursuant to 41 U.S.C. 22, no member of or delegate to Congress shall be admitted to any share or part of this Agreement, or to any benefit to arise therefrom, separate and apart from any benefit accruing to the general public.

IV. MODIFICATIONS

This Agreement may be modified only by a written instrument executed by both parties. Amendments or changes to this Agreement may be proposed by either party at any time, and will become effective upon written ratification by both parties. This Agreement shall become effective upon ratification by both parties and shall remain in force and effect until cancelled, revoked or terminated as provided herein.

V. DISPUTES

In the event of a dispute, the Regional Chief of Refuges or designee and CCC City Council or their designated representative shall attempt to negotiate an amicable solution.

VI. NOTICES

Any notice required by this management agreement shall be in writing and delivered personally or sent by email, or certified or registered mail and shall be effective upon receipt or refusal of receipt, as follow:

For CCC: City of Commerce City
 7887 E 60th Ave.
 Commerce City, CO 80022
 Phone: 303-289-3600
 Attn: Traci Ferguson

For USFWS: USFWS Rocky Mountain Arsenal National Wildlife Refuge
 6550 Gateway Road
 Commerce City, CO 80022
 Phone 303-298-0334
 Attn: Nick Kaczor

VII. APPROVALS

By signature below, each party certifies that the individuals listed in this document as representatives of the individual parties are authorized to act in their respective areas for matters related to this Agreement. In witness whereof, the parties hereto have executed this Agreement as of the last date written below.

UNITED STATES DEPARTMENT OF THE INTERIOR FISH AND WILDLIFE SERVICE

Will Meeks
Assistant Regional Director, Refuges
Mountain Prairie Region

Date

CITY OF COMMERCE CITY, COLORADO

Sean Ford, Mayor

Date

APPROVED AS TO FORM:

City Attorney

ATTEST:

City Clerk