

**CITY AND COUNTY OF DENVER  
ACCESS & USE PERMIT AGREEMENT**

This **ACCESS & USE PERMIT AGREEMENT** (“**Agreement**”) is entered into, as of the date set forth on the City’s signature page below (the “**Effective Date**”), by and between the **CITY AND COUNTY OF DENVER**, a home rule city and municipal corporation (the “**City**”) and **The United States Department of Transportation, Federal Highway Administration, Central Federal Lands Highway Division** (“**Permittee**”) (each a “**Party**,” and collectively, the “**Parties**”).

**RECITALS**

- A. The United States Department of Transportation and the Federal Highway Administration (“**FHWA**”) is funding the repair of a certain roadway (“**Construction**”), specifically, State Highway 5, known as Mount Evans/Blue Sky Highway (“**State Highway 5**”), approximately milepost 8.7 to milepost 9.4, portions of which are within Summit Lake Park.
- B. The Construction is funded through the Federal Lands Access Program in cooperation with the Colorado Department of Transportation (“**CDOT**”), and is administered through FHWA. FHWA will provide Construction oversight and will implement its standard Quality Assurance and Quality Control procedures.
- C. City owns certain property managed and operated by the City’s Department of Parks and Recreation (“**DPR**”), in accordance with City Charter § 2.4.4., which includes Summit Lake Park, a designated “mountain park” (“**Park**”).
- D. FHWA requires entry and ongoing access in and to the Park in order to perform the Construction.
- E. By this Agreement, the City desires to authorize FHWA access to and use of the City-owned property as legally described and depicted on **Exhibit A**, attached hereto and incorporated by reference (“**Permit Area**”), for the sole purpose of performing the Construction and any other associated work as deemed necessary by FHWA with regard to the construction of State Highway 5. Other activities on other City property, if any, shall require separate authorization by the City or the appropriate City department or agency.

NOW, THEREFORE, in consideration of the above premises and the terms and conditions of this Agreement as set out below, the City and Permittee agree as follows:

- 1. **PERMIT.** Permittee and its officers, directors, employees, representatives, agents, consultants, contractors and subcontractors (hereinafter referred to collectively as “**Permittee**”) are hereby permitted access onto, and the use of, the Permit Area, as described in **Exhibit A**, solely for the purpose of the Construction as determined by FHWA (“**Permit**”). Permittee acknowledges and agrees that the exercise of this Permit by Permittee shall be in accordance with, and subject to, the terms and conditions set forth in this Agreement.

**2. COMPENSATION; COSTS.** There is no fee for the Permit. City shall not be liable or responsible for any of Permittee's direct or indirect costs of Construction unless otherwise agreed to between the Parties.

**3. BASIC TERMS & CONDITIONS.**

- a. The Permit is granted only to allow Permittee to perform the Construction within the Permit Area depicted in **Exhibit A**. The City shall have the right to control, monitor and establish procedures but only as limited to Permittee's access to the Permit Area. The Permit does not authorize Permittee to enter upon, or make any use of, any City property other than the Permit Area unless otherwise agreed to by the Parties.
- b. Nothing in this Permit creates or recognizes a property interest on the part of Permittee in or to the Permit Area. The Permit is not transferable and is exclusive only to the extent provided in this Agreement.
- c. Prior to initiating any Construction activities in the Permit Area, Permittee agrees and promises to obtain from DPR other required permits or approvals, if any needed, allowing for such work to be performed on Park property and to strictly comply with the terms and conditions of said permits or approvals. In case of an emergency, Permittee shall promptly notify DPR of the emergency and obtain the required permits or approvals, if any needed, for the emergency work.
- d. The Permit shall be revocable, subject to cure. City shall provide seven (7) days written notice to Permittee prior to any intent to revoke or suspend the Permit. If the reason for the notice is a result of Permittee's failure to comply with this Agreement, but is otherwise curable, upon receipt of such notice, Permittee shall 1) have thirty (30) calendar days, or such longer time as agreed to between the Parties, to cure the violation and to demonstrate to the satisfaction of the City that the violation has been cured; or 2) upon receipt of notice Permittee may provide City its estimated period needed for cure. Permittee agrees to act in good faith and cooperate with the City to reach a mutually acceptable resolution of the condition for revocation. The notice shall be null and void upon written confirmation by the City of resolution of the grounds for revocation.
- e. If applicable, Permittee, or Permittee's contractors, shall provide or obtain and maintain all applicable notices, permits, licenses, or approvals required by any governmental or quasi-governmental entity prior to commencing its maintenance and repair work or related activities within the Permit Area. Any Construction or related activity conducted by Permittee pursuant to the terms of this Agreement shall be deemed to be taken only on Permittee's behalf and not as agent for the City or any other party.

- f. Upon the Agreement becoming effective, a City employee, project manager, representative or contractor (“**City Rep**”) will be assigned to be Permittee’s contact for coordination of activities of Permittee under this Agreement, notifications under this Agreement, and in the event of an emergency. The City Rep may be changed or other City Reps added at any time and upon notice to Permittee.
- g. Permittee shall provide prior written notice to the City Rep before accessing the Permit Area to conduct any work on the Permit Area and identify by name, address, telephone number, and email address a representative of Permittee who will be available and responsive to the City Rep.
- h. All contractors, subcontractors, consultants, suppliers, laborers and agents retained or utilized by Permittee to perform the work or to undertake any activities on or within the Permit Area shall be regarded as being “Permittee” under this Agreement, shall be subject to the terms and conditions of this Agreement. Upon request by the City only, a designated representative of each shall be identified (by name, address, telephone number, and email address). At no time shall Permittee, its officials, employees, contractors, subcontractors, consultants, suppliers, laborers or agents be regarded as working for the City in any capacity nor shall they be regarded in any manner as being employees or contractors of the City.
- i. Permittee shall be solely responsible for all compensation or restitution for injuries to persons or damage to or loss of property belonging to persons arising from, or related to, any of the work or any other actions of Permittee in the Permit Area.
- j. Permittee shall not damage, destroy or harm any improvements or any other part of the Permit Area or other City property and shall promptly repair or replace any part of the Permit Area or City property damaged as the result of the Construction.
- k. If Permittee’s work or related activities within the Permit Area disturbs other City-owned property, regardless of whether it is DPR property, Permittee shall restore the adversely affected property to the same or similar condition, to DPR’s satisfaction, compared to the condition prior to the commencement of the Construction.
- l. At the conclusion of Construction, Permittee shall remove or have its contractors remove from the Permit Area all equipment, vehicles, temporary structures, signs, barriers, materials, supplies, construction debris and any another debris, soil, or waste brought on site or generated by Permittee on site and from any part of the Permit Area including all equipment, vehicles, signs and barriers brought onto any part of the Permit Area or City property by Permittee (“**Personal Property**”).
- m. This Agreement is not effective until executed by the City’s Mayor and all other City officials required by City Charter to sign binding contracts and by authorized signatories of Permittee.

#### 4. **CONDITION OF THE PROPERTY.**

- a. Permittee accepts the Permit Area “as is,” with all existing physical and environmental conditions. City shall not be liable for all costs and expenses associated with any Hazardous Materials, as defined below, brought onto the Permit Area or that are exposed or otherwise requiring remedial action as a consequence of the maintenance and repair work. The term “**Hazardous Materials**” shall mean asbestos, asbestos-contaminated soils, and asbestos-containing materials, special wastes, polychlorinated biphenyls (PCBs), any petroleum products, natural gas, radioactive source material, pesticides, any hazardous waste as defined at 42 U.S.C. § 6903(5) of the Solid Waste Disposal Act, any hazardous substance as defined at 42 U.S.C. § 9601(14) of the Comprehensive Environmental Response, Compensation and Liability Act, and chemical substance as defined at 15 U.S.C. § 2602(2) of the Toxic Substances Control Act, and any guidelines issued and rules or regulations promulgated pursuant to such statutes, or any other applicable federal or state statute. The obligations set out in this Section 4 shall survive the revocation or termination of this Agreement.
  - b. Permittee’s contractors shall assume all liability for proper manifesting and management of all waste and, in particular, Hazardous Materials generated or uncovered by the contractors in the course of the Construction or related activities. Contractors shall use best efforts to minimize the volume of Hazardous Materials associated with the maintenance and repair work or related activities on or about the Permit Area, and shall properly and lawfully handle, containerize, manage and lawfully dispose of all such Hazardous Materials and other waste. Contractors shall not take any action with respect to such Hazardous Materials that may cause any alteration in the chemical, physical or biologic nature or characteristics of the Hazardous Materials while the Hazardous Materials are on or about the Permit Area. Contractors shall remove all Hazardous Materials and other waste associated with the maintenance and repair work or related activities from the Permit Area on or before the revocation of this Agreement. City shall not own or be responsible for and does not take legal title to any of the Hazardous Materials and other waste associated with the maintenance and repair work.
- 5. LIABILITY.** At all times during the term of this Agreement, including any renewals or extensions, the Parties subject to the Colorado Governmental Immunity Act (“**CGIA**”), as amended, shall maintain such insurance, by commercial policy or self-insurance, as is necessary to meet its liabilities under the CGIA or FHWA contract requirements. This obligation shall survive the termination of this Agreement.
- 6. COMPLIANCE WITH LAWS.** All contractors and persons performing work by, through or under Permittee shall, while it is performing work under this Agreement, observe and comply with any applicable provisions of the City Charter, ordinances, and rules and regulations of the City, and all Colorado and federal laws which in any manner limit, control or apply to the Construction and work performed by Permittee’s contractors.

7. **GOVERNMENTAL APPROVALS & CHARGES.** Permittee’s contractors shall obtain and maintain, at contractors’ sole cost, and comply with all permits or licenses (federal, state, or local) required for the Construction work to be performed. Contractors shall pay promptly all taxes, excises, license fees, and permit fees and charges of whatever nature applicable to the Construction to be performed and shall not permit any of said taxes, excises or license or permit fees to become delinquent or to fail to pay any penalties or fines assessed with respect to the Construction to be performed under this Agreement. The City shall not be liable for the payment of fees, charges, taxes, late charges, penalties or fines of any nature related to the Construction. Permittee shall require, to the extent permissible, its contractors to indemnify and save harmless the City and FHWA for the extent of any and all liability for fees, charges, taxes, late charges, penalties or fines resulting from Permittee’s contractors’ failure to comply with this Section 7. This indemnification obligation shall survive the expiration or revocation of the Agreement.

8. **LIENS & OTHER ENCUMBRANCES.** Permittee’s contractors shall not permit any mechanic’s or materialman’s liens or any other liens to be imposed upon the Permit Area or any other part of City property due any worker for labor performed or materials or equipment furnished by any person or legal entity to or on behalf of Permittee, either pursuant to C.R.S. § 38-26-107 or by any other authority, or due to any other claim with respect to the Construction. Contractors shall promptly pay when due all bills, debts and obligations incurred in connection with the Construction and shall not permit the same to become delinquent. Contractors shall not permit any lien, judgment, execution or adjudication of bankruptcy which will in any way impair the rights of the City to the Permit Area. Contractor hereby indemnifies and saves harmless the City and FHWA for the extent of any and all liability for payments, expenses, interests, and penalties resulting from Permittee’s failure to comply with this Section 8. This indemnification obligation shall survive the revocation of the Agreement.

9. **NOTICES.** All notices required to be given to the City or Permittee hereunder shall be in writing and provided by personal delivery or sent by certified mail, return receipt requested, to:

City: Executive Director  
Department of Parks and Recreation  
201 West Colfax Ave., Dept. 601  
Denver, Colorado 80202

with copies to: City Attorney’s Office  
201 West Colfax Avenue, Department 1207  
Denver, Colorado 80202

Permittee: Federal Highway Administration, Central Federal Lands Highway  
Division  
12300 West Dakota Ave, Suite C3-2  
Lakewood, Colorado 80228  
neil.ogden@dot.gov

The effective date of service of any such notice shall be the date such notice is mailed or delivered to Permittee or the City. Daily communications and coordination between the City Rep, on the one hand, and the representative of Permittee and its contractor(s), on the other hand, may be telephone or email, if so allowed under this Agreement and as agreed by these representatives.

10. **GOVERNMENTAL IMMUNITY.** Nothing in any other provision of this Agreement shall be construed as a waiver of the notice requirements, defenses, immunities and limitations the City may have under the Colorado Governmental Immunity Act (§24-10-101, C.R. S., et. seq.) or to any other defenses, immunities, or limitations of liability available to the City against third parties by law.
11. **NO DISCRIMINATION IN EMPLOYMENT.** In connection with the performance of the work under this Agreement, Permittee agrees not to refuse to hire, discharge, promote or demote, or to discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, ethnicity, citizenship, immigration status, gender, gender identity or gender expression, age, military status, sexual orientation, marital status, source of income, protective hairstyle, or disability; and Permittee further agrees to insert the foregoing provision in all approved contracts and subcontracts hereunder.
12. **ENTIRE AGREEMENT.** This Agreement, including the exhibits which are hereby incorporated into this Agreement by reference, constitutes the entire agreement of the Parties. The Parties agree there have been no representations, oral or written, other than those contained herein and that the various promises and covenants contained herein are mutually agreed upon and are in consideration for one another.
13. **AMENDMENT.** Except as otherwise expressly provided in this Agreement, this Agreement may be amended, modified, or changed, in whole or in part, only by written agreement executed by the Parties in the same manner as this Agreement.
14. **NO ASSIGNMENT.** Neither Party shall assign its rights or delegate its duties hereunder, with the exception of contracting and subcontracting as provided in this Agreement, without the prior written consent of the other Party.
15. **SEVERABILITY.** If any term or provision of this Agreement is held by a court of law (following all legal rights of appeal or the expiration of time therefore) to be illegal or unenforceable or in conflict with any law of the State of Colorado or the City Charter or City ordinance, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid; provided, however, if the invalidated term or provision was a critical or material consideration of either Party in entering this Agreement, the Parties shall work together, in good faith, to come up with an amendment to this Agreement that substantially satisfies the previously intended consideration while being in compliance with Applicable Law and the judgment

of the court.

- 16. EXAMINATION OF RECORDS AND AUDITS.** Any authorized agent of the City, including the City Auditor or his or her representative, has the right to access, and the right to examine, copy and retain copies, at City's election in paper or electronic form, any pertinent books, documents, papers and records related to Permittee's performance pursuant to this Agreement, provision of any goods or services to the City, and any other transactions related to this Agreement. Permittee shall cooperate with City representatives and City representatives shall be granted access to the foregoing documents and information during reasonable business hours and until the latter of three (3) years after the final payment under the Agreement or expiration of the applicable statute of limitations. When conducting an audit of this Agreement, the City Auditor shall be subject to government auditing standards issued by the United States Government Accountability Office by the Comptroller General of the United States, including with respect to disclosure of information acquired during the course of an audit. No examination of records and audits pursuant to this paragraph shall require Permittee to make disclosures in violation of state or federal privacy laws. Permittee shall at all times comply with Denver Revised Municipal Code 20-276.
- 17. AUTHORITY TO EXECUTE.** The person signing for Permittee warrants that they have the complete authority to sign on behalf of and bind Permittee. The City in accordance with City Charter §§ 2.2.3 and 2.2.4 is authorized to enter into and execute this Agreement.
- 18. ELECTRONIC SIGNATURES AND ELECTRONIC RECORDS.** The Parties consent to the use of electronic signatures. The Agreement, and any other documents requiring a signature hereunder, may be signed electronically by the City in the manner specified by the City. The Parties agree not to deny the legal effect or enforceability of the Agreement solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of the Agreement in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

**[SIGNATURE BLOCKS BEGIN ON NEXT PAGE.]**

**Contract Control Number:** PARKS-202472813-00  
**Contractor Name:** United States Department of Transportation, Federal Highway Administration

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals at Denver, Colorado as of:

**SEAL**

**CITY AND COUNTY OF DENVER:**

**ATTEST:**

By:

\_\_\_\_\_

\_\_\_\_\_

**APPROVED AS TO FORM:**

**REGISTERED AND COUNTERSIGNED:**

Attorney for the City and County of Denver

By:

By:

\_\_\_\_\_

\_\_\_\_\_


By:

\_\_\_\_\_



**Contract Control Number:**  
**Contractor Name:**  
Highway Administration

PARKS-202472813-00  
United States Department of Transportation, Federal

By:  \_\_\_\_\_  
E3DE382FD904435...

Name: Neil Ogden  
(please print)

Title: Project Manager  
(please print)

ATTEST: [if required]

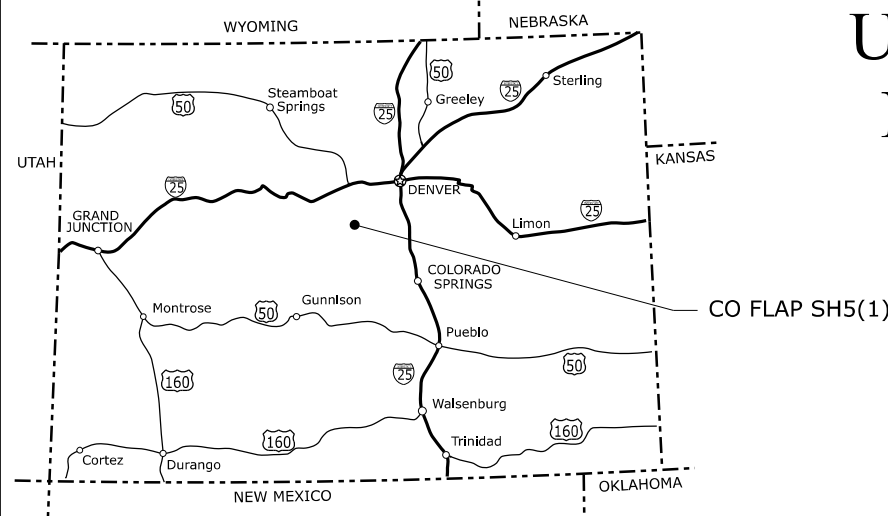
By: \_\_\_\_\_

Name: \_\_\_\_\_  
(please print)

Title: \_\_\_\_\_  
(please print)

# U.S. DEPARTMENT OF TRANSPORTATION FEDERAL HIGHWAY ADMINISTRATION

STATE	PROJECT	SHEET NUMBER
CO	CO FLAP SH5(1) MOUNT EVANS HIGHWAY	A1



**KEY MAP OF COLORADO**

## PLANS FOR PROPOSED CO FLAP SH5(1) **MOUNT EVANS HIGHWAY**

ARAPAHO & ROOSEVELT NATIONAL FORESTS  
CLEAR CREEK COUNTY  
LENGTH 0.81 miles  
SCHEDULE A LENGTH 0.69 miles  
OPTION X LENGTH 0.12 miles

INDEX TO SHEET	
SHEET	DESCRIPTION
A1	TITLE SHEET
A2 - A3	CONVENTIONAL PLAN SYMBOLS AND ABBREVIATIONS
A4	SURVEY CONTROL SHEET
A5	SITE MAP
A6 - A8	TYPICAL SECTIONS
A9	OVERFLOW PARKING LOT TYPICAL SECTION
A10	APPROACH ROADS TYPICAL SECTION
B1 - B2	SUMMARY OF QUANTITIES SCHEDULE A
B3	SUMMARY OF QUANTITIES OPTION X
B4	GRADING SUMMARY
B5	EARTHWORK REPRESENTATION DIAGRAMS
B6	SURFACING SUMMARY
B7	DRAINAGE SUMMARY
B8 - B11	MISCELLANEOUS SUMMARIES
C1 - C3	MOUNT EVANS HIGHWAY PLAN & PROFILE SHEETS
C4	ROADWAY OBLITERATION PLAN SHEET OPTION X
D1	ARCH PIPE AOP STATION 50+05.00
D2	OVERFLOW PARKING LOT GRADING PLAN
E1 - E3	REVEGETATION AND RESTORATION SCHEDULE A
E4 - E6	REVEGETATION AND RESTORATION OPTION X
E7	REVEGETATION AND RESTORATION STANDARD DETAIL
K1	401-1 PAVEMENT TRANSITION
T1	602-7 CONCRETE PIPE CULVERT INSTALLATION
T2	SP602-A CONCRETE ARCH PIPE
T3	SP619-A METAL GATE
T4	SP620-A STONE MASONRY HEADWALL
T5	W633-7 PERMANENT SIGN INSTALLATION WOOD POST
T6	C633-51 DELINEATORS
T7	SP633-A OBJECT MARKERS & DELINEATORS & SNOW POLES
T8	SP634A - PAVEMENT MARKINGS SYMBOL AND WORDS
T9 - T11	SIGNING AND PAVEMENT MARKINGS PLANS
T12 - T14	635-1,6,14 TEMPORARY TRAFFIC CONTROL STANDARDS
T15	SP635-A BIPARTISAN INFRASTRUCTURE LAW SIGN
X0	CROSS SECTION COVER SHEET
X1- X50	MAINLINE CROSS SECTIONS
Z1-Z3	MAINLINE CULVERT CROSS SECTIONS

**TYPE OF CONSTRUCTION:**

Pulverizing, road reconstruction, asphalt surfacing, parking area, drainage replacement, roadway obliteration, revegetation and restoration.

**DESIGN DESIGNATIONS:**

ADT (2024)	895
ADT (2044)	1330
DHV	159
T	10%
V	30 mph
e(max)	6%

**U.S. CUSTOMARY DIMENSIONS:**

Slopes are expressed as RISE:RUN

**SPECIFICATIONS:**

"STANDARD SPECIFICATIONS FOR CONSTRUCTION OF ROADS AND BRIDGES ON FEDERAL HIGHWAY PROJECTS, FP-14"

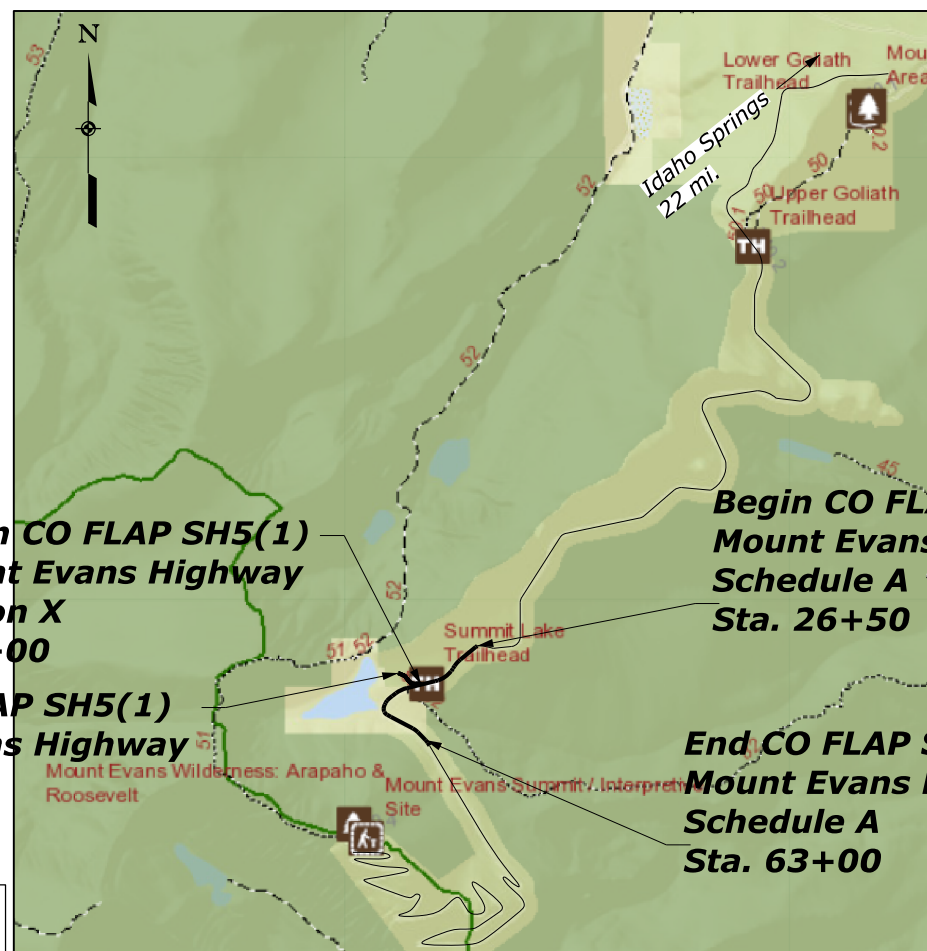


**Begin CO FLAP SH5(1)  
Mount Evans Highway  
Option X  
100+00**

**End CO FLAP SH5(1)  
Mount Evans Highway  
Option X  
106+45**

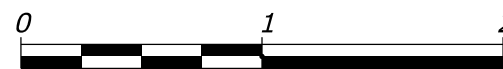
**Begin CO FLAP SH5(1)  
Mount Evans Highway  
Schedule A  
Sta. 26+50**

**End CO FLAP SH5(1)  
Mount Evans Highway  
Schedule A  
Sta. 63+00**



Know what's below.  
Call before you dig.  
www.call811.com

**PRELIMINARY 95%  
NOVEMBER 2023  
NOT FOR CONSTRUCTION**



Scale in Mile

PLANS PREPARED BY



U.S. DEPARTMENT OF TRANSPORTATION  
FEDERAL HIGHWAY ADMINISTRATION  
CENTRAL FEDERAL LANDS HIGHWAY DIVISION  
DENVER, CO

APPROVED:

\_\_\_\_\_  
CHIEF OF ENGINEERING  
CENTRAL FEDERAL LANDS HIGHWAY DIVISION

\_\_\_\_\_  
PROJECT APPLICANT TITLE  
DENVER COUNTY, COLORADO DEPARTMENT OF TRANSPORTATION

\_\_\_\_\_  
PROJECT APPLICANT TITLE  
DENVER PARKS AND RECREATIONS

\_\_\_\_\_  
PROJECT APPLICANT TITLE  
ARAPAHO & ROOSEVELT NATIONAL FORESTS

PROJECT MANAGER	LEAD DESIGNER
Ogden	Martinez

STATE	PROJECT	SHEET NUMBER
CO	CO FLAP SH5(1) MOUNT EVANS HIGHWAY	A5

**End Roadway Obliteration  
Revegetation and Restoration  
CO FLAP SH5(1)  
Option X  
106+45**

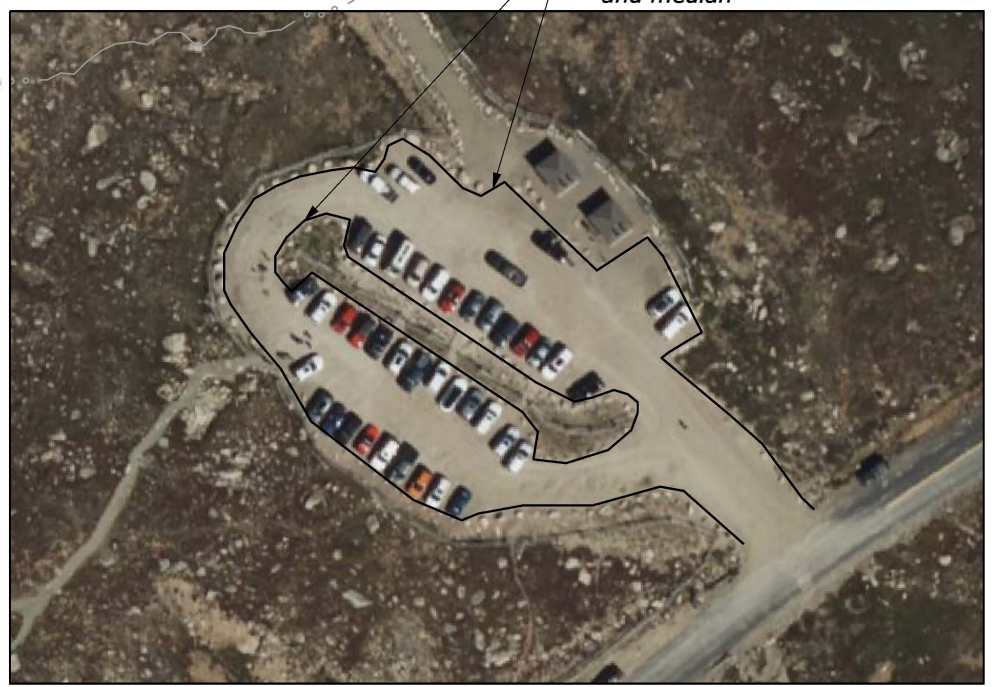
**Begin Mainline Project  
CO FLAP SH5(1)  
Schedule A  
26+50**

**Begin Roadway Obliteration  
Revegetation and Restoration  
CO FLAP SH5(1)  
Option X  
100+00**

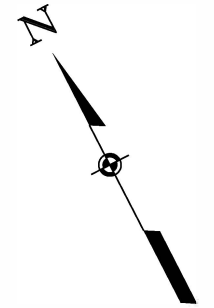
United State Forest Service

Denver Mountain Parks

**End Mainline Project  
CO FLAP SH5(1)  
Schedule A  
63+00**



Place construction fence around Summit Lake parking boundary and median



No Scale

**SITE MAP**

N:\CO\SH5(1)\Roadway\CADD\_Sheets\A-Gen\_sht\A5 - Site Map.dgn [Site Map] 24 October 2023 2:47 PM

