

**FIRST AMENDMENT TO THE INTERGOVERNMENTAL AGREEMENT
BETWEEN THE TOWN OF CASTLE ROCK, EDWARD KRAEMER & SONS, INC. (dba
Kraemer North America, LLC),
AND THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF DOUGLAS,
STATE OF COLORADO, REGARDING ADDITIONAL FUNDING FOR ADDITIONAL
WORK ASSOCIATED WITH THE NORTH MEADOWS DRIVE EXTENSION TO US 85
AND I-25 PROJECT**

FIRST AMENDMENT TO THE INTERGOVERNMENTAL AGREEMENT BETWEEN THE TOWN OF CASTLE ROCK, (the "Town") THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF DOUGLAS, STATE OF COLORADO, (the "County") AND EDWARD KRAEMER & SONS, INC., (now doing business as Kraemer North America, LLC), (the "Contractor") made this _____ day of _____, 2016.

RECITALS

WHEREAS, the County, Town and the Contractor entered into an Intergovernmental Agreement, dated July 8, 2014, Regarding Funding for a Portion of the North Meadows Drive Extension to US 85 and I-25 Project, (hereinafter referred to as the "Agreement") and the County previously agreed to contribute \$10,500,000 to assist the Town in completing the **Work** identified in the Agreement; and

WHEREAS, the Town and County desire to amend the Agreement, (hereinafter referred to as "Amendment #1") in order to construct additional improvements on the segment of North Meadows Drive, (aka Castle Rock Parkway), that will be located between US 85 and I-25; and

WHEREAS, the Town and County desire to cooperate and share in the additional funding needed to construct additional improvements in order to increase the roadway capacity and enhance traffic operations. The proposed improvements for Castle Rock Parkway is hereinafter referred to as the "Amended Project" which includes the additional work associated with Amendment #1; and

WHEREAS, the County is willing, according to the terms and conditions stated herein, to contribute additional funding needed to advance additional construction within the segment connecting US 85 to I-25. More specifically the County agrees to contribute the additional funds needed to construct two additional bypass lanes at the proposed southbound I-25 / Castle Rock Parkway roundabout intersection (namely adding an eastbound Castle Rock Parkway to southbound Promenade Parkway bypass lane and adding a northbound Promenade Parkway to southbound I-25 on-ramp bypass lane – which includes the cost to widen the southbound I-25 on-ramp). Further, the County

agrees to contribute a small portion of the costs to assist the Town in widening Castle Rock Parkway from two to four through lanes.

WHEREAS, the Town is responsible for all the work related to the additional work associated with Amendment #1. The limits of construction associated with the additional work begin on the west end at a point 200-feet west of the existing intersection of Castlegate Drive North and Castlegate Drive West, and extends eastward such that it includes the proposed new interchange at I-25. The additional work associated with Amendment #1 is hereinafter referred to as the "**Additional Work**"; and

WHEREAS, the Contractor shall construct the **Additional Work** pursuant to a separate Construction Manager General Contractor (CMGC) contract, (amended to include the **Additional Work**), between the Town and the Contractor, referenced herein; and

WHEREAS, the Town has budgeted, appropriated and otherwise made available committed and uncommitted funds in an amount sufficient to construct the Amended Project and its portion of the **Additional Work**, which takes into consideration the additional contribution from the County; and

WHEREAS, the Town anticipates construction of the **Additional Work** will likely commence in the first quarter 2016 and should likely be completed on or before July 1, 2016; and

WHEREAS, the Contractor has entered into a CMGC contract with the Town entitled "Agreement For Negotiated Unit Price Development Up To A Fixed Contract Amount And Construction Services" to construct various segments of the North Meadows Drive Extension Project, and further the Contractor understands that the **Additional Work** will be funded, jointly by the Town and the County. The **Additional Work** will require an amendment to the Contractor's existing CMGC contract with the Town, (utilizing a construction change order(s) to authorize the **Additional Work**); and

WHEREAS, a portion of the additional funding to construct the **Additional Work** consists of the direct payment to the Contractor by the County for an aggregate amount not to exceed Seven Hundred and Fifty Thousand Dollars and No Cents (\$750,000.00), for the actual work completed, in order to pay for one hundred percent (100%) of the actual construction costs to complete the two additional bypass lanes at the proposed southbound I-25 / Castle Rock Parkway roundabout intersection, (namely adding an eastbound Castle Rock Parkway to southbound Promenade Parkway bypass lane and adding a northbound Promenade Parkway to southbound I-25 on-ramp bypass lane – which includes the cost to widen the southbound I-25 on-ramp), and the remaining County contribution shall be used to pay for a small portion of the construction costs to widen Castle Rock Parkway from two to four through lanes between US 85 and I-25. The County contribution for the **Additional Work** is, hereinafter referred to as the "County Contribution"; and

WHEREAS, the County Contribution for the **Additional Work** may be increased to \$900,000.00 - provided the County is successful in executing a separate agreement with

the Colorado Department of Transportation (CDOT) concerning the County obtaining a volunteer contribution from CDOT for a portion of the cost to construct the two additional bypass lanes. At this time, the County estimates the potential CDOT contribution to be \$150,000.00 (hereinafter referred to as the CDOT Contribution); and

WHEREAS, if the County is successful in obtaining a CDOT Contribution to offset a portion of the cost to construct the additional bypass lanes, then the County will be able to increase its contribution to the Town for widening Castle Rock Parkway (from 2 to 4 through lanes) by an amount equal to the actual CDOT Contribution; and

WHEREAS, the Town is responsible for the total actual cost to complete the **Additional Work** less the County Contribution (which may include the potential CDOT Contribution); and

WHEREAS, the Town, County and Contractor desire to agree upon the division of funding and payment that is needed to complete the construction of the **Additional Work**; and

WHEREAS, the execution of **Additional Work** by the Contractor is contingent upon the Town and the Contractor amending the CMGC contract to include the **Additional Work**, which requires the Town and Contractor executing a construction contract change order(s) and the Town providing the Contractor written authorization to proceed with the **Additional Work**; and

WHEREAS, Amendment #1 is executed under the authority of §§29-1-203, C.R.S., and Exhibits A and B.

COVENANTS

NOW, THEREFORE, for and in consideration of the mutual promises and covenants contained herein, the receipt and sufficiency of which are mutually acknowledged, the Town, County and Contractor agree as follows:

Section 1. Limited Purpose of County Contribution for the Additional Work.

The County Contribution shall be used exclusively to pay the Contractor for constructing a portion of the **Additional Work** in accordance with the final approved contract documents (plans and specifications), except by written modification to Amendment #1.

Section 2. Project Funding Provisions for the Additional Work.

A. The Town and County has estimated the cost of the **Additional Work** and the Town and the County are prepared to provide the funding for the **Additional Work**, as evidenced by an appropriate resolution approved and adopted by the Town (the "Town

Resolution”) and an appropriate resolution approved and adopted by the County (the “County Resolution”). The County Resolution expressly authorizes the County to enter into Amendment #1 and to expend the County Contribution for the **Additional Work**. A copy of the County’s Resolution is attached as **Exhibit A**. The Town Resolution expressly authorizes the Town to enter into this Agreement and confirms the appropriation of the Town funding for the Project and the **Additional Work**, remaining after the County Contribution, and is attached as **Exhibit B**.

B. Currently, the Town and County have estimated the total construction cost to complete the **Additional Work** to be between \$1,400,000 and \$2,000,000 which is to be funded as follows:

1. County Contribution for the Additional Work.

The County Contribution for its portion of the **Additional Work**, shall not exceed \$750,000.00 in order to pay for one hundred percent (100%) of the cost necessary to construct the two additional bypass lanes at the proposed southbound I-25 / Castle Rock Parkway roundabout intersection, (namely adding an eastbound Castle Rock Parkway to southbound Promenade Parkway bypass lane and adding a northbound Promenade Parkway to southbound I-25 on-ramp bypass lane – which includes the cost to widen the southbound I-25 on-ramp), and is estimated to cost \$400,000 to \$500,000. And the remaining County Contribution (estimated to be between \$250,000 and \$350,000) shall be used to pay for a portion of the construction costs to widen Castle Rock Parkway from two to four through lanes between US 85 and I-25.

The County Contribution shall be paid directly to the Contractor, based on the actual cost to complete the **Additional Work** associated with Amendment #1. The Contractor shall invoice the County directly, on a monthly basis, for the actual **Additional Work** completed. Each of the Contractor’s monthly progress payment requires written approval by the Town prior to its submittal to the County.

2. County/CDOT Contribution.

If the County is successful in executing a separate agreement with CDOT, (regarding the County obtaining a volunteer contribution from CDOT to reimburse the County for a portion of the cost to construct the two additional bypass lanes), then the County will be able to increase its contribution to the Town for widening Castle Rock Parkway by an amount equal to the actual amount CDOT reimburses the County. However, if CDOT elects not participating financially in the cost to construct the additional bypass lanes, then the County’s maximum contribution shall not exceed \$750,000.00 for the **Additional Work**.

Presently, the County estimates the potential CDOT Contribution will not exceed \$150,000.00 for the **Additional Work**.

Town Contribution for the Additional Work.

The Town Contribution shall be the total actual cost to complete the Additional Work less the County Contribution.

2. Retainage for the Additional Work.

The Town shall be responsible to withhold two and one-half percent (2.5%) retainage for the **Additional Work** completed. The parties agree that the retainage will be withheld by the Town, from the periodic monthly progress payments, for the actual costs to construct the **Additional Work** completed, which includes the retainage percentage that would be allocated for the portion of the **Additional Work** to be paid by the County. The Contractor agrees to this retainage methodology and shall seek recourse and enforcement of the retainage and any release thereof solely with the Town, and waives any contractual rights it may have with respect to any claims against the County with respect to the retainage for the **Additional Work**.

C. The maximum aggregate amount payable by the County to complete the **Additional Work** under Amendment #1 is \$750,000.00. However, the County Contribution for the **Additional Work** may be increased to \$900,000 if and only if the County is successful in obtaining \$150,000.00 from CDOT.

D. Both the Town and the County have appropriated and encumbered funds in fiscal year **2016** to meet their respective obligations hereunder, and the Town shall complete the entire Amended Project and the **Additional Work** in a timely and diligent manner.

Section 3. Term for the Additional Work.

Amendment #1 shall be effective upon approval of the amendment by the parties. The term of Amendment #1 shall continue through the completion and final acceptance of the Amended Project by CDOT, FHWA, and the Town.

Section 4. Payment Provisions for the Additional Work.

On a monthly basis, after commencement of the **Additional Work**, the Contractor shall submit a monthly progress payment request to the Town for the **Additional Work** which the Town is responsible to verify and approve. Upon approval of the progress payment request by the Town, the Contractor will prepare and submit two separate monthly invoices for the **Additional Work**. One invoice shall be submitted to the Town (the "Town Invoice") and one invoice shall be submitted to the County (the "County Invoice").

The Contractor shall enclose with each invoice, a copy of the Town-approved monthly progress payment request, which contains detailed information regarding the construction completed and costs incurred during that progress payment as well as depict the accumulative amount of **Additional Work** completed through the end of each progress payment application.

The Contractor's monthly progress payment request shall track the unit prices, actual quantities and expenditures completed for the **Additional Work** for which payment is requested. Both the County Invoice and the Town Invoice shall be prepared in accordance with the Town's standard policies and procedures. The Contractor's monthly progress payment request shall be reconciled to the amounts reflected in the monthly invoices to the Town and County as discussed below.

The County shall remit payment to the Contractor for the monthly invoices within thirty (30) days of receipt of each invoice, subject to the limits on the County Contribution contained in Section 2 for the **Additional Work**.

The Town shall remit payment to the Contractor, less retainage as addressed in Section 2.B.3. for the monthly invoices within thirty (30) days of receipt of each invoice, subject to the terms for the Town Contribution contained in Section 2 for the **Additional Work**.

Section 5. Town Commitment for the Amended Project and Additional Work.

The Town is responsible to construct the entire Amended Project, which includes several construction packages in order to extend North Meadows Drive from the Meadows development to connect with a proposed interchange at US 85 and extends east to include the proposed interchange at I-25. The Town is responsible to manage and complete the Project, which includes construction of Design Package 2, in accordance with the final approved construction contract documents (plans and specifications), associated with the **Additional Work** identified herein.

The Town's project management and administration responsibilities shall include but are not limited to the following: preparing the final contract documents (plans and specifications), project inspection, material testing, approving sources of materials; performing required plant and shop inspections; documentation of contract payments, testing and inspection activities; preparing and approving pay estimates; preparing, approving and securing the funding for contract modification orders and minor contract revisions; processing contractor claims; construction supervision; and include meeting the Quality Control requirements in accordance the FHWA/CDOT Stewardship Agreement, as described in the Local Agency Contract Administration Checklist, when applicable.

Section 6. Right-of-Way for the Additional Work.

Town is responsible for obtaining all the necessary right-of-way and easements to construct the Amended Project, which includes the **Additional Work**. Prior to commencement of the **Additional Work**, the Town shall confirm to the County in writing that all necessary right-of-way and easement acquisition clearances, pertaining to the **Additional Work**, have been obtained from CDOT.

No portion of the County Contribution shall be applied to reimburse the Town for property acquisition for the Amended Project.

Section 7. Utilities for the Additional Work.

The Town is responsible for obtaining the proper clearance or approval from any utility company, which may become involved in order to complete the Amended Project and **Additional Work**. Prior to commencement of the **Additional Work**, the Town shall confirm in writing to CDOT that all such clearances have been obtained from the appropriate utility companies; and a copy of said clearances shall be provided to the County upon written request.

Section 8. Environmental Obligations for the Additional Work.

The Town shall complete the Amended Project and perform the **Additional Work** in accordance with the requirements of the current federal and state environmental regulations including the National Environmental Policy Act of 1969 (NEPA) as applicable, and in accordance with all other applicable permits required to construct the Project and in accordance with other requirements identified in the construction documents (plans and specifications).

Section 9. Maintenance Obligations for the Additional Work.

The County has no maintenance obligations for any of the elements constructed as part of the Amended Project or associated with the **Additional Work**. The Town shall be responsible to maintain and operate the improvements constructed under Amendment #1 at its own cost and expense during their useful life, unless the Town and CDOT have executed a separate agreement that identifies CDOT responsibilities.

Section 10. Record Keeping for the Additional Work.

The Town shall maintain a complete file of all records, documents, communications, and other written materials, which pertain to the costs incurred under Amendment #1. The Town shall maintain such records for a period of seven (7) years after the date of termination of this Agreement (as amended) or final payment hereunder, whichever is later, or for such further period as may be necessary to resolve any matters which may be pending. The Town shall make such materials available for inspection at all reasonable times and shall permit duly authorized agents and employees of the County to inspect the project and to inspect, review and audit the project records.

Section 11. Order of Precedence for the Additional Work.

In the event of conflicts or inconsistencies between the Agreement, Amendment #1 and their associated exhibits, such conflicts and inconsistencies shall be resolved by reference to the documents in the following order of priority:

1. Amendment #1
 - a. Exhibit A (County Resolution)
 - b. Exhibit B (Town Resolution)
 - c. CMGC contract, as to be amended to include the **Additional Work**, between the Town and the Contractor (referenced herein)
2. Existing Agreement (dated July 8, 2014)
 - a. Exhibit A (County Resolution)
 - b. Exhibit B (Town Resolution)
 - c. CMGC contract, as to be amended to include the **WORK**, between the Town and the Contractor (referenced herein)

Section 12. Termination for Convenience for the Additional Work.

The Town may terminate Amendment #1 at any time prior to commencement of the **Additional Work**. The Town shall effect such termination by giving written notice of termination to the County and specifying the effective date thereof, at least thirty (30) days before the effective date of such termination. Thereafter, the Town, County and Contractor shall have no further obligation hereunder.

Section 13. Default and Remedies for the Additional Work.

In the event that either the Town or County should default in performance of its obligations under Amendment #1, and such default shall remain uncured for more than 10 days after notice of default is given to the defaulting party, the non-defaulting party shall be entitled to pursue any and all legal and equitable remedies. Default and remedies of the Town and Contractor concerning the **Additional Work shall be governed by the CMGC contract, as amended.**

Section 14. Legal Authority for the Additional Work.

Each party represents to the other that it possesses the legal authority to enter into Amendment #1 and that it has taken all actions required by its procedures, by-laws, and/or applicable law to exercise that authority, and to lawfully authorize its undersigned signatory to execute Amendment #1 and to bind the parties to its terms. The person(s) executing Amendment #1 on behalf of the parties represent that such person(s) has full authorization to execute this Amendment.

Section 15. Notice for the Additional Work.

Any notice required or permitted by Amendment #1 shall be in writing and shall be deemed to have been sufficient for all purposes if sent by certified mail or registered mail, postage and fees prepaid, addressed to the party to whom such notice is to be given, at the address set forth below, or at such other address as has been previously furnished in writing, to the other party. Such notice shall be deemed to have been given when deposited in the United States mail.

If to Town:	Director of Public Works Town of Castle Rock 4175 North Castleton Court Castle Rock, CO 80109
With a copy to:	Town Attorney Town of Castle Rock 100 North Wilcox Street Castle Rock, CO 80104
If to County:	Public Works Engineering Director Department of Public Works Engineering 100 Third Street, Suite 220 Castle Rock, CO 80104
With a copy to:	County Attorney Douglas County / Attorney's Office 100 Third Street Castle Rock, CO 80104
If to Contractor:	Edward Kraemer & Sons, Inc. (dba Kraemer North America, LLC) 900 West Castleton Road, Suite 220 Castle Rock, CO 80226

with a copy to both the County and Town.

Section 16. Annual Appropriations for the Additional Work.

This Amendment does not create a multiple fiscal-year obligation of the County under Article X, Section 20 of the Colorado Constitution nor does it create indebtedness of the County within the meaning of any constitutional or statutory limitation or provision. The obligations of the County under this Amendment shall be from year to year and the decision to annually continue with payments of the County Contribution in the succeeding fiscal year is entirely at the discretion of the County.

Section 17. Third Party Beneficiaries for the Additional Work.

It is expressly understood and agreed that the enforcement of the terms and conditions of this Amendment and all rights of action relating to such enforcement, shall be strictly reserved to the Town, County and the Contractor. Nothing contained in this Amendment shall give or allow any claim or right of action whatsoever by any other third person. It is the express intention of the Town and the County that any such person or entity, other than the Town, County and the Contractor receiving services or benefits under this Amendment shall be deemed an incidental beneficiary only.

Section 18. Governmental Immunity for the Additional Work.

Notwithstanding any other provision of this Amendment to the contrary, no term or condition of this Amendment shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions of the Colorado Governmental Immunity Act, § 24-10-101, et seq., C.R.S., as now or hereafter amended. The parties understand and agree that liability for claims for injuries to persons or property arising out of negligence of the Town or County, their departments, institutions, agencies, boards, officials and employees is controlled and limited by the provisions of § 24-10-101, et seq., C.R.S., as now or hereafter amended and the risk management statutes, §§ 24-30-1501, et seq., C.R.S., as now or hereafter amended.

Section 19. Severability for the Additional Work.

To the extent that this Amendment may be executed and performance of the obligations of the parties may be accomplished within the intent of the Amendment, the terms of this Amendment are severable, and should any term or provision hereof be declared invalid or become inoperative for any reason, such invalidity or failure shall not affect the validity of any other term or provision hereof.

Section 20. Waiver for the Additional Work.

The waiver of any breach of a term, provision, or requirement of this Amendment shall not be construed or deemed as a waiver of any subsequent breach of such term, provision, or requirement, or of any other term, provision or requirement.

Section 21. Entire Understanding for the Additional Work.

This Amendment is intended as the complete integration of all understandings between the parties, (with the exception of the CMGC contract, as to be amended to include the **Additional Work**, between the Town and the Contractor). No prior or contemporaneous addition, deletion, or other amendment hereto shall have any force or effect whatsoever, unless embodied herein by writing. No subsequent novation, renewal, addition, deletion, or other amendment hereto shall have any force or effect unless embodied in a writing executed and approved pursuant to the same formalities as this Agreement.

Section 22. Survival of Amendment Terms.

Notwithstanding anything herein to the contrary, the Town, County and Contractor understand and agree that all terms and conditions of this Amendment and the exhibits and attachments hereto which may require continued performance, compliance or effect beyond the termination date of the Amendment shall survive such termination date and shall be enforceable by any party as provided herein in the event of such failure to perform or comply by any party.

Section 23. Modification and Amendment.

This Amendment is subject to such modifications as may be required by changes in federal or State law, or their implementing regulations. Any such required modification shall automatically be incorporated into and be part of this Amendment on the effective date of such change as if fully set forth herein. Except as provided above, no modification of this Amendment shall be effective unless agreed to in writing by the Town, the County and the Contractor, in an amendment to this Amendment that is properly executed and approved in accordance with applicable law.

Section 24. Limited Purpose for the Additional Work

The CMGC contract between Town and Contractor is amended for the **Additional Work** only to the extent necessary to accommodate the direct payments by County to Contractor in lieu of payment by Town as expressly stated herein.

TOWN OF CASTLE ROCK

Paul Donahue, Mayor

APPROVED AS TO CONTENT:

ATTEST:

Robert J. Slentz, Town Attorney

Sally A. Misare, Town Clerk

DOUGLAS COUNTY:

**DOUGLAS COUNTY BOARD OF
COUNTY COMMISSIONERS**

David A. Weaver, Chair

(Place corporate seal here, if available)

APPROVED AS TO FISCAL CONTENT:

ATTEST:

Andrew Copland, County Director of Finance

Melissa Pelletier, Clerk to the Board

APPROVED AS TO CONTENT:

APPROVED AS TO LEGAL FORM:

Douglas J. Debord, County Manager

Nick Pijoan, Sr. Assistant County Attorney

Contractor Name:

EDWARD KRAEMER & SON, INC.
(dba Kraemer North America, LLC)

Signed By: 

Dated: 02/09/16

Print Name: Timothy J. Maloney

Print Title: Vice President

Attest By: 

Dated: 02/09/16

Print Name: Eric Baumgardt

Print Title: Asst. Secretary

Signature of Notary Public Required:

STATE OF Colorado)

ss)

COUNTY OF Douglas)

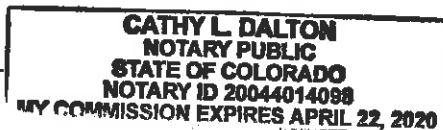
The foregoing instrument was acknowledged before me this

9th day of February, 2016, by Timothy J. Maloney.

Witness my hand and official seal



Notary Public



My commission expires: 04/22/2020