

RESOLUTION NO. 2020-

**RESOLUTION APPROVING A CONTRACT AMENDMENT TO THE TASK ORDER BETWEEN THE TOWN OF CASTLE ROCK AND KIMLEY-HORN & ASSOCIATES FOR CONSTRUCTION ADMINISTRATION AND INSPECTION SERVICES FOR THE SH 86 FOUNDERS PARKWAY AND CROWFOOT VALLEY ROAD INTERSECTION IMPROVEMENT PROJECT AND FOR PRIOR UNBUDGETED 2018 EXPENSES**

**WHEREAS**, the Town and Kimley-Horn & Associates (“Kimley”) have agreed to the terms and conditions by which Kimley will provide construction administration and inspection services for the construction of the SH 86 Founders Parkway and Crowfoot Valley Road Intersection Improvement Project.

**NOW, THEREFORE BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF CASTLE ROCK, COLORADO AS FOLLOWS:**

**Section 1. Approval.** The Task Order Amendment in the form attached as *Exhibit 1* is hereby approved. The Mayor and other proper Town officials are hereby authorized to execute the Contract by and on behalf of the Town of Castle Rock, Colorado.

**Section 2. Encumbrance and Authorization for Payment.** In order to meet the Town's financial obligation under the Contract, the Town Council authorizes the expenditure and payment from the 2020 appropriation account 135-3175-431.78-39, in an amount not to exceed \$90,838, which includes a Town managed contingency of \$8,258, and with adjustment to the project for prior unbudgeted 2018 expenses for Construction Services is authorized from account 135-3175-431.78-39, in an amount not to exceed \$45,605, unless authorized in writing by the Town of Castle Rock.

**PASSED, APPROVED AND ADOPTED** this \_\_\_\_ day of \_\_\_\_\_, 2020 by the Town Council of the Town of Castle Rock, Colorado, on first and final reading by a vote of \_\_\_\_ for and \_\_\_\_ against.

**ATTEST:**

**TOWN OF CASTLE ROCK**

\_\_\_\_\_  
Lisa Anderson, Town Clerk

\_\_\_\_\_  
Jason Gray, Mayor

**Approved as to form:**

**Approved as to content:**

\_\_\_\_\_  
Robert J. Slentz, Town Attorney

\_\_\_\_\_  
Dan Sailer, P.E., Director of Public Works



Task Order # KH2019-01
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## FIRST AMENDMENT TO TASK ORDER

This First Amendment to Task Order, dated this 24th day of March, 2020, is issued in accordance with the terms and conditions of the Town of Castle Rock Services Agreement for "Founders Pkwy/Crowfoot Valley Road Intersection Improvement Project Bid and Construction Phase Services", dated March 22, 2019 (**Exhibit A**). The Parties have determined a need to amend Task Order KH2019-01 in order to increase the cost of the task by an additional \$82,580 in order for the Consultant to complete the services authorized under Task Order KH2019-01, and the First Amendment (**Exhibit B**).

Task Title: Construction Phase Services – Founders and Crowfoot Intersection Improvements

Cost of Task: \$82,580.00

Schedule: 04/13/2020 to 6/31/2020

**Town of Castle Rock**

**Town of Castle Rock**

\_\_\_\_\_  
Jason Grey, Mayor

\_\_\_\_\_  
Dave Corliss, Town Manager

**Attest:**

**Approved as to Form:**

\_\_\_\_\_  
Lisa Anderson, Town Clerk

\_\_\_\_\_  
Robert J. Slentz, Town Attorney

**Approved as to Content:**

\_\_\_\_\_  
Sailer, P.E., Public Works Director

**Consultant:**  
Kimley-Horn and Associates, Inc.

By: 

Its: Vice President

Account Number(s): 135-3175-431-78-39 Project Manager: Aaron Monks
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**TOWN OF CASTLE ROCK  
SERVICES AGREEMENT  
(Founders Pkwy/Crowfoot Valley Road Intersection Improvement Project Bid and  
Construction Phase Services)**

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**DATE:** March 22, 2019.

**PARTIES:** **TOWN OF CASTLE ROCK**, a Colorado municipal corporation, 100 N. Wilcox Street, Castle Rock, Colorado 80104 ("Town").

**KIMLEY-HORN AND ASSOCIATES, INC.**, a North Carolina corporation, 4582 South Ulster Street, Suite 1500, Denver, Colorado 80237 ("Consultant").

**RECITALS:**

- A. Town wishes to engage Consultant to provide the services more fully described in the following Agreement and Exhibits.

**TERMS:**

**Section 1. Scope of Services.** Consultant shall provide bid and construction phase services for the Founders Parkway/Crowfoot Valley Road Intersection Improvement Project in accordance with the Scope of Services attached as *Exhibit 1* ("Services").

**Section 2. Payment.** Consultant shall invoice Town for the Services rendered on a monthly basis in accordance with the rate and fee schedule attached as *Exhibit 1*. Town shall pay such invoices within 30 days receipt of such invoice. In no event shall the cumulative payment to Consultant exceed \$209,580 unless authorized in writing by Town.

**Section 3. Completion.** Consultant shall commence the Services upon execution of this Agreement and complete the Services by December 31, 2019. Consultant shall devote adequate resources to assure timely completion of the Services. Consultant shall perform the Services under this Agreement using a standard of care, skill and diligence ordinarily used by reputable professionals performing under circumstances similar to those required by this Agreement.

Town shall have the right to terminate this Agreement at any time with 30 days written notice to Consultant. The Town's only obligation in the event of termination shall be payment of fees and expenses incurred up to and including the effective date of termination. Consultant shall turn over all work product produced up to the date of termination.

**Section 4. Subcontractors.** Consultant may utilize subcontractors to assist with specialized works as necessary to complete the Services. Consultant will submit any proposed subcontractor and the description of their services to the Town for approval.

**Section 5. Assignment.** This Agreement shall not be assigned by Consultant without the written consent of the Town.

**Section 6.     Notice.** Any notice required or permitted by this Agreement shall be in writing and shall be deemed to have been sufficiently given 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 on the first page of this Agreement, or at such other address as has been previously furnished in writing to the other party or parties. Such notice shall be deemed given when deposited in the United States mail.

**Section 7.     Prohibition Against Employing Illegal Aliens.** Consultant shall not knowingly employ or contract with an illegal alien to perform work under this contract. Consultant shall not enter into a contract with a subcontractor that fails to certify to the Consultant that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this contract.

Consultant has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under the public contract for services through participation in either the E-verify program or the Department program, as defined in C.R.S. §§ 8-17.5-101(3.3) and 8-17.5-101(3.7), respectively. Consultant is prohibited from using the E-verify program or Department program procedures to undertake pre-employment screening of job applicants while this contract is being performed.

If Consultant obtains actual knowledge that a subcontractor performing work under this Agreement for services knowingly employs or contracts with an illegal alien, Consultant shall:

A.     Notify the subcontractor and the Town within three days that the Consultant has actual knowledge that the subcontractor is employing or contracting with an illegal alien; and

B.     Terminate the subcontract with the subcontractor if within three days of receiving notice required pursuant to this paragraph the subcontractor does not stop employee or contracting with the illegal alien; except that the Consultant shall not terminate the contract with the subcontractor if during such three days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.

Consultant shall comply with any reasonable request by the Department of Labor and Employment made in the course of an investigation that the Department is undertaking pursuant to the authority established in C.R.S. §8-17.5-102(5).

If Consultant violates a provision of this Agreement required pursuant to C.R.S. §8-17.5-102, Town may terminate the Agreement for breach of contract. If the Agreement is so terminated, the Consultant shall be liable for actual and consequential damages to the Town.

**Section 8.     Insurance.** Consultant agrees to procure and maintain, at his own cost, the following policy or policies of insurance. Consultant shall not be relieved of any liability, claims, demands or other obligations assumed pursuant to this Agreement by reason of its failure to procure or maintain insurance, or by reason of its failure to procure or maintain insurance in sufficient amounts, durations, or types.

A. Consultant shall procure and maintain, and shall cause each subcontractor of the Consultant to procure and maintain a policy with the minimum insurance coverage listed below. Such coverage shall be procured and maintained with forms and insurers acceptable to the Town. All coverage shall be continuously maintained from the date of commencement of services hereunder. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage.

1. Workers Compensation insurance to cover obligations imposed by the Workers Compensation Act of Colorado and any other applicable laws for any employee engaged in the performance of Work under this contract, and Employer's Liability insurance with minimum limits of FIVE HUNDRED THOUSAND DOLLARS (\$500,000) each accident, FIVE HUNDRED THOUSAND DOLLARS (\$500,000) disease-policy limit, and FIVE HUNDRED THOUSAND DOLLARS (\$500,000) disease-each employee.

2. Comprehensive General Liability insurance with minimum combined single limits of ONE MILLION DOLLARS (\$1,000,000) each occurrence and ONE MILLION DOLLARS (\$1,000,000) aggregate. The policy shall be applicable to all premises and operations. The policy shall include coverage for bodily injury, broad form property damage (including for contractual and employee acts), blanket contractual, independent contractors, products, and completed operations. The policy shall contain a severability of interests provision.

3. Comprehensive Automobile Liability Insurance with minimum combined single limits for bodily injury and property damage of not less than ONE MILLION DOLLARS (\$1,000,000) each occurrence and ONE MILLION DOLLARS (\$1,000,000) aggregate with respect to each of Consultant's owned, hired and/or non-owned vehicles assigned to or used in performance of the services. The policy shall contain a severability of interests provision.

4. Professional Liability insurance with minimum limits of ONE MILLION DOLLARS (\$1,000,000) per claim and ONE MILLION DOLLARS (\$1,000,000) aggregate.

B. The policies required above, except Workers' Compensation insurance, Employers' Liability insurance and Professional Liability insurance shall be endorsed to include the Town, its officers and employees, as an additional insured. Every policy required above, except Workers' Compensation and Professional Liability insurance, if applicable, shall be primary insurance, and any insurance carried by the Town, its officers, or its employees, shall be excess and not contributory insurance to that provided by Consultant. The additional insured endorsement for the Comprehensive General Liability insurance required above shall not contain any exclusion for bodily injury or property damage arising from completed operations. The Consultant shall be solely responsible for any deductible losses under each of the policies required above.

C. Certificates of insurance shall be completed by Consultant's insurance agent as evidence that policies providing the required coverage, conditions and minimum limits are in

full force and effect, and shall be subject to review and approval by the Town. Each certificate shall identify the Project and shall provide that coverage afforded under the policies shall not be cancelled, terminated or materially changed until at least 30 days prior written notice has been given to the Town. If the words "endeavor to" appear in the portion of the certificate addressing cancellation, those words shall be stricken from the certificate by the agent(s) completing the certificate. The Town reserves the right to request and receive a certified copy of any policy and any endorsement thereto.

D. Failure on the part of Consultant to procure or maintain policies providing the required coverage, conditions, and minimum limits shall constitute a material breach of contract upon which at the Town's discretion may procure or renew any such policy or any extended connection therewith, and all monies so paid by the Town shall be repaid by Consultant to the Town upon demand, or the Town may offset the cost of the premiums against any monies due to Consultant from the Town.

E. The parties understand and agree that the Town is relying on, and does not waive or intend to waive by any provision of this contract, the monetary limitations (presently \$350,000 per person, \$990,000 per occurrence) or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, §24-10-101, *et seq.*, C.R.S., as from time to time amended, or otherwise available to Town, its officers, or its employees.

**Section 9. Indemnification.** Consultant expressly agrees to indemnify and hold harmless Town or any of its officers or employees from any and all claims, damages, liability, or court awards including attorney's fees that are or may be awarded as a result of any loss, injury or damage sustained or claimed to have been sustained by anyone, including, but not limited to, any person, firm, partnership, or corporation, to the extent caused by the negligent acts, errors or omissions of Consultant or any of their employees or agents in performing work pursuant to this Agreement. In the event that any such suit or action is brought against Town, Town will give notice within ten (10) days thereof to Consultant.

**Section 10. Delays.** Any delays in or failure of performance by any party of his or its obligations under this Agreement shall be excused if such delays or failure are a result of acts of God, fires, floods, strikes, labor disputes, accidents, regulations or orders of civil or military authorities, shortages of labor or materials, or other causes, similar or dissimilar, which are beyond the control of such party.

**Section 11. Additional Documents.** The parties agree to execute any additional documents or take any additional action that is necessary to carry out this Agreement.

**Section 12. Entire Agreement.** This Agreement represents the entire agreement between the parties and there are no oral or collateral agreements or understandings. This Agreement may be amended only by an instrument in writing signed by the parties. If any other provision of this Agreement is held invalid or unenforceable, no other provision shall be affected by such holding, and all of the remaining provisions of this Agreement shall continue in full force and effect.

**Section 13. Time of the Essence.** Time is of the essence. Notwithstanding any other provision of this Agreement, the Consultant shall not have liability for or be deemed in breach because of delays caused by any factor outside of its reasonable control, including but not limited to natural disasters, adverse weather, or act of the Client, third parties, or governmental agencies. If any payment or any other condition, obligation, or duty is not timely made, tendered or performed by either party, then this Agreement, at the option of the party who is not in default, may be terminated by the non-defaulting party, in which case, the non-defaulting party may recover such damages as may be proper.

**Section 14. Default and Remedies.** In the event either party should default in performance of its obligations under this agreement, 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 remedies and recover its reasonable attorney's fees and costs in such legal action. In addition, no Party will be entitled to lost profits, economic damages, or actual, direct, incidental, consequential, punitive or exemplary damages in the event of a default.

**Section 15. Waiver.** A waiver by any party to this Agreement of the breach of any term or provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach by either party.

**Section 16. Governing Law.** This Agreement shall be governed by the laws of the State of Colorado.

**Section 17. Independent Contractor.** Consultant and Town hereby represent that Consultant is an independent contractor for all purposes hereunder. As such, Consultant is not covered by any worker's compensation insurance or any other insurance maintained by Town except as would apply to members of the general public. Consultant shall not create any indebtedness on behalf of the Town.

**Section 18. No Third Party Beneficiaries.** It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to Town and Consultant, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other third party on such Agreement. It is the express intention of the parties that any person other than Town or Consultant receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

**ATTEST:**

*Lisa Anderson*  
Lisa Anderson, Town Clerk

**TOWN OF CASTLE ROCK**

*David L. Corliss*  
David L. Corliss, Town Manager

**Approved as to form:**

*Robert J. Slentz*  
Robert J. Slentz, Town Attorney



**CONSULTANT:**

**KIMLEY-HORN AND ASSOCIATES, INC.**

By: *Patty D. Rowe*

Its: *Vice President*

**KHAMT  
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October 23, 2019, Rev. 1-29-2020, Rev. 2-19-2020

Mr. Aaron Monks  
Town of Castle Rock – Public Works Department  
4175 N. Castleton Ct.  
Castle Rock, CO 80109

**Re: Amendment to Task Order # KH2019-01 Revised 2-19-2020  
Additional Construction Phase Services  
Founders Pkwy and Crowfoot Intersection Improvements**

Dear Mr. Monks:

Kimley-Horn and Associates, Inc. ("Kimley-Horn" or "Consultant") appreciates the opportunity to submit this amendment request to the Town of Castle Rock ("Town" or "Client") to provide additional construction phase services for the Founders Parkway and Crowfoot Valley Road Intersection Improvements project. This work will be completed under our current Services Agreement to provide On-Call Professional Services.

## **SCOPE OF SERVICES:**

The original scope of services assumed a 200 calendar day construction period. The current estimated completion is expected to extend the constructed period to 300 calendar days with construction completion anticipated in May 2020. The additional construction period will require additional construction phase services.

Kimley-Horn will provide the additional construction phase services specifically stated below:

- Attend up to 14 additional weekly progress meetings
- Perform up to 50 additional site visits to observe construction
- Review up to 5 additional change orders
- Review up to 4 additional pay applications
- Prepare up to 4 additional monthly progress reports

The scope of work these additional tasks will be per our original task order.

In addition, per our discussions we have coordinated with Kumar and Associates and incorporated their additional material testing services under this task order amendment request per their attached summary.

### **Fee and Expenses**

Kimley-Horn will perform the services described herein for a not-to-exceed fee of **\$52,580.00** to be billed hourly in accordance with the terms of our current Town of Castle Rock Service Agreement for On-Call Professional Services.

Kumar and Associates will perform additional services for a not-to-exceed fee of **\$30,000.00**.

**Total Amendment Not-to-Exceed Amount: \$82,580.00**

### **Additional Services**

Any services not specifically provided for in the above scope will be considered additional services and can be performed upon authorization by the Town.

**Closure**

We appreciate the opportunity to provide these services to you. Please contact me if you have any questions.

Sincerely,

**KIMLEY-HORN AND ASSOCIATES, INC.**

A handwritten signature in black ink, appearing to read 'Chris Hopkins', with a stylized flourish at the end.

By: Christopher Hopkins, P.E.  
Senior Project Manager



**Kumar & Associates, Inc.®**  
Geotechnical and Materials Engineers  
and Environmental Scientists

6735 Kumar Heights  
Colorado Springs, CO 80918  
phone: (719) 632-7009  
fax: (719) 632-1049  
email: kacolospgs@kumarusa.com  
[www.kumarusa.com](http://www.kumarusa.com)

**An Employee Owned Company**

Office Locations: Denver (HQ), Parker, Colorado Springs, Fort Collins, Glenwood Springs, and Summit County, Colorado

February 12, 2020

Kimley-Horn & Associates, Inc.  
Attention: Mr. Chris Hopkins  
4582 South Ulster Street, Suite 1500  
Denver, CO 80237  
Via Email: [chris.hopkins@kimley-horn.com](mailto:chris.hopkins@kimley-horn.com)

Subject: Request for an Increase in Funding for Materials Testing and Documentation Services for the Founders Parkway and Crowfoot Project, Castle Rock, Colorado.

K&A Project No. 19-2-146

Dear Mr. Hopkins:

We have prepared this letter to request a change in our overall budget total for the subject project. Overages have been due in part to additional time onsite by both field technicians and the supervisory staff to address site specific issues, and to facilitate the contractors scheduling. Our original project estimate dated February 8, 2019, was for the amount of \$44,220. Based on the billing the billing attached through February 8, 2020, we have exceeded our proposed amount by \$25,977.18. In researching the overage, it appears it is due to an increased number of trips, longer durations on site, and additional time to address site specific issues. It should also be noted that we anticipate several additional days of paving in March to April in order to finish out this project. Below is a summary of the overage through February 8, 2020, and our estimation for providing the final pavement testing and summarizing the final book per CDOT requirements.

Original Estimate		\$44,220.00
Overage Through Feb. 8 2020		\$25,977.18
Final Testing and Books (estimated)		
Senior Engineering Technician	32 hours @ \$55/hr.....	\$1,760.00
Asphalt Content	4 tests @ \$85/ea.....	\$340.00
Gradation	4 tests @ \$85/ea.....	\$340.00
Max Theoretical SPG	4 tests @ \$80/ea.....	\$320.00
Project Supervisor	10 hours @ \$115/hr.....	\$1,150.00

Total Estimated Additional Funding Including the Current Overage Amount **\$29,854.18**

It is our estimation that the total cost shown above will cover the remaining items for testing and finalization of the project book. If any other items are still open and were not covered above, we will gladly update this request to accurately portray the remainder of our work. (This request will be the final through the end of construction.) We do not anticipate additional requests for funding will be necessary.

If you should need further documentation, information, or clarification, please feel free to let us know.

Sincerely,

Kumar & Associates, Inc.

By

Brandon K. Barker  
Construction Services Manager

Rvd by: AK/bj