

## FOURTH AMENDATORY DESIGN SERVICES AGREEMENT

This **FOURTH AMENDATORY DESIGN SERVICES AGREEMENT** is made between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado (the "City") and **KIMLEY-HORN AND ASSOCIATES, INC.**, a North Carolina corporation, authorized to conduct business in Colorado, whose address is 4582 South Ulster Street, Suite 1500, Denver, Colorado 80237 (the "Design Consultant"), jointly ("the Parties").

### RECITALS:

**A.** The Parties entered into an Agreement dated August 28, 2018, an Amendatory Agreement dated April 30, 2020, a Second Amendatory Agreement dated December 2, 2020, and a Third Amendatory Agreement dated June 16, 2021, (collectively, the "Agreement") to furnish professional design services for the Project as set forth in the Agreement. The Design Consultant accepts such engagement upon, subject to and in accordance with the terms, conditions and provisions of the Agreement.

**B.** The Parties wish to amend the Agreement to increase the maximum contract amount, update section 5.06-No Discrimination in Employment, update section 5.19-No Employment of Illegal Aliens, and amend the scope of work/rates.

**NOW THEREFORE**, in consideration of the premises and the Parties' mutual covenants and obligations, the Parties agree as follows:

1. Section 3 of the Agreement entitled "**COMPENSATION, PAYMENT AND FUNDING**", Sub-section 3.05 (a) entitled "**Maximum Contract Amount:**" is hereby deleted in its entirety and replaced with:

**3.05 Maximum Contract Amount.**

(a) Notwithstanding any other provision of the Agreement, the City's maximum payment obligation will not exceed **ONE MILLION NINE HUNDRED SIXTY THOUSAND EIGHT HUNDRED SEVENTY-ONE DOLLARS AND EIGHTY-NINE CENTS (\$1,960,871.89)** (the "Maximum Contract Amount"). The City is not obligated to execute an Agreement or any amendments for any further services, including any services performed by Design Consultant beyond that specifically described in **Exhibit A**. Any services performed beyond those set forth therein are performed at Design Consultant's risk and without authorization under the Agreement."

2. Section 5.06 of the Agreement entitled "**NO DISCRIMINATION IN EMPLOYMENT.**" is hereby deleted in its entirety and replaced with:

**“5.06 NO DISCRIMINATION IN EMPLOYMENT.** In connection with the performance of work under the Agreement, the Design Consultant may not refuse to hire, discharge, promote, demote, or discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, ethnicity, citizenship, immigration status, gender, age, sexual orientation, gender identity, gender expression, marital status, source of income, military status, protective hairstyle, or disability. The Design Consultant shall insert the foregoing provision in all subcontracts.”

3. Section 5.19 of the Agreement entitled **“NO EMPLOYMENT OF ILLEGAL ALIENS TO PERFORM WORK UNDER THE AGREEMENT.”** is hereby deleted in its entirety and replaced with:

**“5.19 NO EMPLOYMENT OF WORKERS WITHOUT AUTHORIZATION TO PERFORM WORK UNDER THE AGREEMENT.**

(a) This Agreement is subject to Division 5 of Article IV of Chapter 20 of the Denver Revised Municipal Code, and any amendments (the “Certification Ordinance”).

(b) The Design Consultant certifies that:

(1) At the time of its execution of this Agreement, it does not knowingly employ or contract with a worker without authorization who will perform work under this Agreement, nor will it knowingly employ or contract with a worker without authorization to perform work under this Agreement in the future.

(2) It will participate in the E-Verify Program, as defined in § 8-17.5-101(3.7), C.R.S., and confirm the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement.

(3) It will not enter into a contract with a subconsultant or subcontractor that fails to certify to the Design Consultant that it shall not knowingly employ or contract with a worker without authorization to perform work under this Agreement.

(4) It is prohibited from using the E-Verify Program procedures to undertake pre-employment screening of job applicants while performing its obligations under this Agreement, and it is required to comply with any and all federal requirements related to use of the E-Verify Program including, by way of example, all program requirements related to employee notification and preservation of employee rights.

(5) If it obtains actual knowledge that a subconsultant or subcontractor performing work under this Agreement knowingly employs or contracts with a worker without authorization, it will notify such subconsultant or subcontractor and the City within three (3) days. The Design Consultant shall also terminate such subconsultant or subcontractor if within three (3) days after such notice the subconsultant or subcontractor does not stop employing or contracting with the worker without authorization, unless during the three-day period the subconsultant or subcontractor provides information to establish that the subconsultant or subcontractor has not knowingly employed or contracted with a worker without authorization.

(6) It will comply with a reasonable request made in the course of an investigation by the Colorado Department of Labor and Employment under authority of § 8-17.5-102(5), C.R.S., or the City Auditor, under authority of D.R.M.C. 20-90.3.

(c) The Design Consultant is liable for any violations as provided in the Certification Ordinance. If the Design Consultant violates any provision of this section or the Certification Ordinance, the City may terminate this Agreement for a breach of the Agreement. If this Agreement is so terminated, the Design Consultant shall be liable for actual and consequential damages to the City. Any termination of a contract due to a violation of this section or the Certification Ordinance may also, at the discretion of the City, constitute grounds for disqualifying the Design Consultant from submitting bids or proposals for future contracts with the City.”

4. **Exhibit A, Exhibit A-1, Exhibit A-2, and Exhibit A-3** are hereby deleted in their entirety and replaced with **Exhibit A-4 Scope of Work/Rates**, attached and incorporated by reference herein. All references in the original Agreement to **Exhibit A, Exhibit A-1, Exhibit A-2, and Exhibit A-3** are changed to **Exhibit A-4**.

5. As herein amended, the Agreement is affirmed and ratified in each and every particular.

6. This Fourth Amendatory Design Services Agreement will not be effective or binding on the City until it has been fully executed by all required signatories of the City and County of Denver, and if required by Charter, approved by the City Council.

**[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.]**

**Contract Control Number:** DOTI-202161604-04 [201843805-04]  
**Contractor Name:** KIMLEY-HORN AND ASSOCIATES, INC.

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:**

DOTI-202161604-04 [201843805-04]  
KIMLEY-HORN AND ASSOCIATES, INC.

By: DocuSigned by:  
*Brian Valentine*  
5C42CD1DEF9B490...

Name: Brian Valentine  
(please print)

Title: Senior Vice President  
(please print)

ATTEST: [if required]

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

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

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

## Exhibit A-4



December 2, 2021

Mr. James Colbert, PE  
City and County of Denver  
201 West Colfax Avenue  
Denver, CO 80202

**RE: *South Broadway Multimodal Transportation Design Project for Department of Public Works  
City and County of Denver, CO  
Amendment #4 to Professional Services Agreement***

Dear Mr. Colbert:

**Kimley-Horn and Associates, Inc.** (the "Consultant" or "Kimley-Horn") is pleased to submit this Amendment to modify the agreement dated August 28, 2018 (the "Agreement") with the **City and County of Denver** (the "Client" or "CCD") for the South Broadway Multimodal Transportation Design Project for Department of Public Works in Denver, Colorado (the "Project"). Kimley-Horn has entered into the Agreement with Client for the furnishing of professional services, and the parties now desire to amend the Agreement.

Therefore, it is mutually agreed that the Agreement is amended to include Additional Services to be performed by Consultant and provisions for additional compensation by the Client to the Consultant, all as set forth below. The parties ratify the terms and conditions of the Agreement not inconsistent with this Amendment, all of which are incorporated by reference.

Kimley-Horn will proceed with the following tasks upon receiving written authorization to proceed.

### **SCOPE OF SERVICES**

#### **Revised Task 5 – Final Design**

##### *Traffic Signal Design and Plans*

The Agreement included the design of traffic signal reconstruction at up to thirteen (13) intersections. Throughout the Project, it was determined that the additional redesign and reconstruction of the existing traffic signal at Broadway & Speer Blvd/7<sup>th</sup> Avenue was required to be completed as part of the Project. Throughout the Project it was also determined that a traffic signal modification design was required for the intersection of Broadway & 5<sup>th</sup> Avenue to include modifications as needed for the two-way protected cycle track. As a part of Revised Task 5, Kimley-Horn completed one (1) additional traffic signal design and one (1) traffic signal modification design and completed associated revisions to the Opinion of Probable Construction Costs and Specifications.

##### *Traffic Signal Interconnect Design and Plans*

Throughout the Project it was determined that improvements were required at each of the thirteen (13) signalized intersections along the Broadway corridor within the Project limits to provide CCD fiber optic interconnect design. Kimley-Horn revised the traffic signal design and plans to include CCD fiber optic interconnect. As a part of Revised Task 5, Kimley-Horn completed coordination and meetings with the City,



conducted a site visit to confirm improvements, revised design and plans, and completed associated revisions to the Opinion of Probable Construction Costs and Specifications.

#### *Wayfinding Design and Plans*

Throughout the Project, Kimley-Horn was directed to include wayfinding improvements to the construction drawings. As a part of Revised Task 5, Kimley-Horn completed coordination and meetings with the City regarding wayfinding design, revised the signing and striping plans, and completed associated revisions to the Opinion of Probable Construction Costs and Specifications.

#### *Redesign Due to CDOT Historic Requirements*

Amendment #3 New Task 18 included fee for CDOT Coordination and Environmental Analysis and FIR/FOR Review and Resubmittal. As a part of this task, a Historic analysis was completed. Based on coordination and meetings with CDOT and the findings of this analysis, it was determined that redesign of the Broadway improvements was necessary to avoid potential Historic impacts at CDOT's request. This redesign included up to six (6) storm alignments that were in conflict with the existing trolley tracks and historic gutter segments along Broadway. It was also determined that the civil and drainage design was required to be revised for one (1) corner at Center & Broadway due to existing historic curb. As a part of Revised Task 5, Kimley-Horn completed coordination and meetings with the City and CDOT regarding plan revisions due to historic considerations, completed design and plan revisions, and completed associated revisions to the Opinion of Probable Construction Costs and Specifications.

#### *Conditional ROW Plans and Specifications*

Throughout the Project, it was determined that temporary construction easements would be required at various Project Intersections. It was determined that revisions to the construction drawings and specifications were required to reflect the conditional ROW approval for the final construction drawings. As a part of Revised Task 5, Kimley-Horn completed coordination and meetings with the City regarding plan and specification revisions to document the conditional ROW conditions at the Project Intersections.

#### *Public Art Plans and Specifications*

Throughout the project, it was determined that support would be needed from Kimley-Horn for the Public Art component of the Project. As a part of Revised Task 5, Kimley-Horn completed coordination and meetings with the City and CDOT regarding plan and specification revisions for the Public Art locations along Broadway, completed design and plan revisions, and completed associated revisions to the Opinion of Probable Construction Costs and Specifications.

#### *Pride Crosswalk Plans and Specifications*

Throughout the project, it was determined that support would be needed from Kimley-Horn for replacement of the Pride Crosswalk at the intersection of Irvington Place & Broadway. As a part of Revised Task 5, Kimley-Horn completed coordination and meetings with the City regarding plan and specification revisions for the Pride Crosswalk location, completed design and plan revisions, and completed associated revisions to the Opinion of Probable Construction Costs and Specifications.



### *2021 CDOT Standard Specifications Revisions*

Kimley-Horn prepared specifications in accordance with the CDOT Standards and Specifications as outlined in the Agreement and Amendment #3. Following the preparation of these documents, CDOT released the 2021 Standard Specifications Book in October 2021. Kimley-Horn was required to revise the specifications to address changes necessary due to the new guidance.

### **Revised Task 14 – Survey and Subsurface Utility Engineering (SUE)**

#### *Easement Staking*

Throughout the Project, it was determined that temporary construction easements would be required at various Project Intersections. As a part of Amendment #3, legal descriptions were provided for the temporary easement locations. It was subsequently determined that the staking of these locations should be provided prior to construction. As a part of Revised Task 14, completion of staking of the temporary easement locations will be completed in the field.

### **Revised Task 18 – CDOT Coordination and Environmental Analysis**

#### *History*

The Kimley-Horn Team coordinated with the City and CDOT in advance of preparation of Amendment #3. New Task 18 included fee for CDOT Coordination and Environmental Analysis and FIR/FOR Review and Resubmittal. Based on this coordination, the scope and fee included in Amendment #3 was developed. Subsequently, CDOT has required additional historic resource review processes and Section 106 submittal requirements than outlined in Amendment #3. As a part of Revised Task 18, the Kimley-Horn Team completed a second revision to the Section 106 package with a revised approach to the evaluation of historic stone curb features at CDOT's request and completed additional coordination with the City and CDOT.

#### *Hazardous Materials*

The Kimley-Horn Team coordinated with the City and CDOT in advance of preparation of Amendment #3. New Task 18 included fee for CDOT Coordination and Environmental Analysis. Based on this coordination, the scope and fee included in Amendment #3 was developed. It was understood that Hazardous Materials coordination would not be provided as the City had completed a report prior and provided this report to Kimley-Horn for use in the Categorical Exclusion environmental narrative document. Subsequently, CDOT has requested additional information regarding specific Hazardous Materials components not included in the provided report. As a part of Revised Task 18, the Kimley-Horn Team provided additional information to CDOT regarding hazardous materials, with specific information related to lead-based paint on traffic poles, ground water elevation, and methane gas within areas of surface disturbance.

### **Revised Task 20 – Additional Tasks as Assigned by the City**

#### *Denver Water Utility Relocations and Improvements*

Amendment #3 New Task 20 included fee for water line lowering/improvements for up to ten (10) locations along the corridor. Throughout the design process it was determined that lowering was required in nine (9) locations and additional waterline improvements were required at five (5) locations, fourteen (14) locations total. As a part of Revised Task 20, Kimley-Horn responded to unanticipated late comments and direction from Denver Water and resubmitted the plans to Denver Water and Denver Fire Authority.



*Additional Comments and Coordination and Unforeseen Tasks*

Throughout project, Kimley-Horn completed additional services due to unforeseen changes in the project. These changes consisted of comments received from the City and CDOT related to the water quality improvements, storm drainage, utility improvements, and other project items. To address these changes, Kimley-Horn completed additional revisions to the final construction drawings and specifications submitted on October 1, 2021, and coordination and meetings with the City and CDOT.

**FEE AND EXPENSES**

Kimley-Horn will perform the services described in the new and revised tasks outlined below for the additional labor fee as follows:

<b>Task</b>	<b>Description</b>	<b>Additional Fee</b>
Revised Task 5	Final Design	\$67,620
Revised Task 14	Survey and Subsurface Utility Engineering (SUE)	(17,290)
Revised Task 18	CDOT Coordination and Environmental Analysis	\$12,160
Revised Task 20	Additional Tasks as Assigned by the City	\$27,450
<b>Total New Amendment #4 Fees</b>		<b>\$89,940</b>

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**CLOSURE**

If you concur in all the foregoing and wish to direct us to proceed with the additional services, please return an executed copy of this Agreement.

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

Sincerely,

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

**KHAMT  
53**

By: Brian Valentine, P.E.  
Vice President

**City and County of Denver  
A Municipality**

\_\_\_\_\_

(Date)

\_\_\_\_\_  
(Print or Type Name and Title)

\_\_\_\_\_  
(Email Address)

\_\_\_\_\_, Witness

\_\_\_\_\_  
(Print or Type Name)

Official Seal:

**City and County of Denver  
South Broadway MultiModal Work Plan - CO4  
Fee Worksheet**

Thursday, December 2, 2021

<b>CO#4 Total Labor Fee</b>	<b>\$ 89,940.00</b>
<b>CO#4 Reimbursable Expenses</b>	<b>\$ -</b>
<b>CO#4 Contract Total (Labor + Expenses)</b>	<b>\$ 89,940.00</b>
<b>CO#4 MWBE Fees</b>	<b>\$ 5,000.00</b>
<b>CO#4 M/WBE %</b>	<b>5.56%</b>

Item	Task	Kimley-Horn and Associates, Inc.						DIG	HKS	Pinyon	TOTALS
		Principal	Project Director	Engineer/ Professional	Analyst III	Analyst I	Sr. Clerical/ Admin	Staff	Staff	Staff	
	Rate	\$ 220.00	\$ 210.00	\$ 145.00	\$ 130.00	\$ 105.00	\$ 110.00	\$ -	\$ -	\$ -	
	Hours	-	68.0	216.0	220.0	188.0	-	-	-	-	692.0
	Estimated Labor Total	\$ -	\$ 14,280.00	\$ 31,320.00	\$ 28,600.00	\$ 19,740.00	\$ -	\$ -	\$ -	\$ -	\$ 93,940.00
	<b>Estimated Total by Firm</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 93,940.00</b>	<b>\$ 10,000.00</b>	<b>\$ (19,000.00)</b>	<b>\$ 5,000.00</b>	<b>\$ 89,940.00</b>
<b>Revised Task 5</b>	<b>Final Design</b>										
	Traffic Signal Design and Plans		10.0	24.0	40.0	80.0					154.0
	Traffic Signal Interconnect Design and Plans		4.0	24.0	40.0						68.0
	Wayfinding Design and Plans			24.0	16.0						40.0
	Redesign Due to CDOT Historic Requirements		4.0	24.0	16.0	50.0					94.0
	Conditional ROW Plans and Specifications			4.0	10.0						14.0
	Public Art Plans and Specifications		12.0	25.0	30.0	20.0					87.0
	Pride Crosswalk Plans and Specifications		4.0	15.0	16.0	8.0					43.0
	2021 CDOT Standard Specifications Revisions		2.0	2.0	8.0						12.0
											-
		\$ -	\$ 36.0	\$ 142.0	\$ 176.0	\$ 158.0	\$ -	\$ -	\$ -	\$ -	\$ 512.0
		\$ -	\$ 7,560.00	\$ 20,590.00	\$ 22,880.00	\$ 16,590.00	\$ -	\$ -	\$ -	\$ -	\$ 67,620.00
<b>Revised Task 14</b>	<b>Survey and Subsurface Utility Engineering (SUE)</b>										
	Easement Staking		4.0	6.0					6,000.0		6,010.0
	Original Agreement Pothole Budget Allowance								(25,000.0)		(25,000.0)
											-
		\$ -	\$ 4.0	\$ 6.0	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	(18,990.0)
		\$ -	\$ 840.00	\$ 870.00	\$ -	\$ -	\$ -	\$ -	\$ (19,000.00)	\$ -	\$ (17,290.00)
<b>Revised Task 18</b>	<b>CDOT Coordination and Environmental Analysis</b>										
	Historic		6.0	24.0							30.0
	Hazardous Materials		6.0	8.0							14.0
											-
		\$ -	\$ 12.0	\$ 32.0	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 44.0
		\$ -	\$ 2,520.00	\$ 4,640.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 5,000.00	\$ 12,160.00
<b>Revised Task 20</b>	<b>Additional Tasks as Assigned by the City</b>										
	Denver Water Utility Relocations and Improvements		6.0	12.0	24.0	10.0					52.0
	Additional Comments, Coordination, and Unforeseen Tasks		10.0	24.0	20.0	20.0					74.0
											-
		\$ -	\$ 16.0	\$ 36.0	\$ 44.0	\$ 30.0	\$ -	\$ -	\$ -	\$ -	\$ 126.0
		\$ -	\$ 3,360.00	\$ 5,220.00	\$ 5,720.00	\$ 3,150.00	\$ -	\$ 10,000.00	\$ -	\$ -	\$ 27,450.00
<b>EXP</b>	<b>Reimbursable Expenses</b>										
	Reimbursable Expenses										\$ -
<b>Contract Totals</b>											
											<b>CO#4 Total Labor Fee</b>
											<b>\$ 89,940.00</b>
											<b>CO#4 Reimbursable Expenses</b>
											<b>\$ -</b>
											<b>CO#4 Additional Services</b>
											<b>\$ -</b>
											<b>CO#4 Contract Total (Labor + Expenses)</b>
											<b>\$ 89,940.00</b>