



Memorandum

To: Tracy Homfeld, PE

From: Brian Reinhardt, PE

Date: September 21, 2021

Subject: Contract Amendment Two (2) – Traffic Analysis/Modeling

Ms. Homfeld,

Attached, please find our proposed amendment to add traffic demand modeling/traffic analysis to the contract to accommodate TxDOT requirements for gaining approval of traffic numbers along FM 546 for Phase II. Coordination is needed with TxDOT's Transportation Planning and Programming (TP&P) Division in Austin and the Texas A&M Transportation Institute (TTI) to obtain approval of projected traffic so the preliminary engineering (schematic design) can be approved by TxDOT and needed traffic information for inclusion into the Environmental Assessment (EA) process can be developed.

This step is required when following TxDOT guidelines to gain TxDOT's approval so that future state/federal funding is not excluded as a possible funding source to supplement the development of Phase II of the FM 546/CR 400 Corridor.

BGE is recommending that Kimley-Horn be added as a sub-consultant to BGE to perform this work. Kimley-Horn is currently developing traffic for the TxDOT EIS for both US 380 and SP 399 through McKinney, immediately adjacent to the FM 546 project limits. Utilizing them saves time and money for the County to develop the needed traffic data within the study limits of our project.

Best Regards,

Brian Reinhardt, PE
Principal/Sr. Project Manager
BGE, Inc.
2595 Dallas Parkway, Suite 101
Frisco, TX 75034
Cell: 214-551-2376
breinhardt@bgeinc.com

September 15, 2021

Brian Reinhardt, PE
Brown & Gay Engineers, Inc.
2595 Dallas Pkwy #101
Frisco, TX 75034

RE: *Proposal for traffic projections for FM 546 from Bridgefarmer Road to Spur 399*

Dear Mr. Reinhardt,

Thank you for the opportunity to provide a proposal for traffic projections along FM 546 from Bridgefarmer Road to proposed Spur 399 in Collin County. Kimley-Horn and Associates, Inc. (“Kimley-Horn” or “the Consultant”) is pleased to submit this letter agreement (the “Agreement”) to Brown & Gay Engineers, Inc. (the “Client”) to provide Professional Civil Engineering services for the referenced project.

Please see below for a summary of our understanding of the project, our proposed scope, and our proposed fee.

Project Understanding:

Kimley-Horn has been requested by Brown & Gay Engineers, Inc. to perform traffic projections in support of the schematic project along FM 546. The limits for the traffic projections are along FM 546 from Bridgefarmer Road to proposed Spur 399.

The following sections provide details of the scope of services to be performed by Kimley-Horn for the Client as part of this Proposal.

Consultant will perform the following services:

The scope of services to develop traffic projections along FM 546 are outlined below.

Task 1: Project Management and Administration

Kimley-Horn will prepare for and attend up to twelve (12) meetings with the Client to review and discuss the project through the duration of the contract. Two of these meetings are anticipated to be in-person and ten of these meetings are anticipated to be conference calls. These meetings may include the Client, Collin County, and TxDOT. Up to two (2) Kimley-Horn staff will attend each meeting.

Task 2: Traffic Projections

The Engineer will develop traffic projections along FM 546 from Bridgefarmer Road to proposed Spur 399 for the No Build scenario and up to three (3) Build Alternatives. The traffic projections will be developed for Average Daily Traffic, AM Peak Hour Traffic, and PM Peak Hour Traffic for the opening-year, design-year (opening year +20) and pavement design year (opening year + 30). The Engineer will request the consultant information packet from TxDOT’s Transportation Planning and Programming (TPP) Division. The Engineer will use historical traffic count data to determine appropriate traffic growth factors using regression worksheets. The Engineer will develop the K-factor, AM and PM peak-hour directional distribution, and truck percentage based on historical information. The Engineer will obtain the regional travel demand model (TDM) from the North Central Texas Council of Governments (NCTCOG) to determine the growth rate for the FM 546 corridor. The Engineer will not run the TDM or update the network or demographics. The Engineer

will determine population growth rate using the US Census data. The Engineer will follow TPP's Corridor Planning Standard Operating Procedures to develop traffic growth rates and balance projected volumes. The Engineer will prepare a Traffic Projections Methodology memo. The Engineer will address one round of comments on the memo. The Engineer will submit traffic projections and address one round of comments. The Engineer will prepare the Traffic Analysis for Highway Design (TAHD) table and coordinate with TPP regarding pavement design date in TAHD table.

Additional Services

Any services not specifically provided for in the above scope, as well as any changes in the scope the Client requests in writing or re-analysis resulting from modifications to the area roadway network, will be considered additional services and will be performed at our then current hourly rates. Additional Services could include but are not limited to the following:

- Traffic Analysis;
- Origin-Destination study;
- Public Involvement; and
- Travel Demand Modeling Network Updates and Runs

Information Provided By Client

The FM 546 schematics shall be provided by the Client. Kimley-Horn shall be entitled to rely on the completeness and accuracy of all information provided by the Client.

Schedule

The scope of services will be completed within a mutually agreed upon schedule with Brown & Gay Engineers, Inc. Any required additional services will be completed within a mutually agreed upon schedule, once authorized by the Client in writing.

Fee and Billing

For the services set forth above, Client shall pay Consultant the following compensation: Kimley-Horn will perform the services described in Tasks 1 and 2, of the Scope of Services on a lump sum fee basis exclusive of direct reimbursable expenses. All permitting, application, and similar project fees will be paid directly by the Client.

Direct reimbursable expenses such as express delivery services, fees, and other direct expenses will be billed at 1.15 times cost. All permitting, application, and similar project fees will be paid directly by the Client.

The following are the lump sum labor fees for Tasks 1 through 2.

Task 1: Project Management and Administration	\$13,800.00
Task 2: Traffic Projections	\$116,095.00
TOTAL	\$129,895.00

Fees and expenses will be invoiced monthly based, as applicable, upon the percentage of services performed or actual services performed and expenses incurred as of the invoice date. Payment will be due within 25 days of receipt of the invoice. Fees and times stated in this Proposal are valid for sixty (60) days after the date of this Proposal.

COVID-19

Due to the everchanging circumstances surrounding the COVID-19 Virus, situations may arise during the performance of this Agreement that affect availability of resources and staff of Kimley-Horn, the client, other consultants, and public agencies. There could be changes in anticipated delivery times, jurisdictional approvals, and project costs. Kimley-Horn will exercise reasonable efforts to overcome the challenges presented by current circumstances, but Kimley-Horn will not be liable to Client for any delays, expenses, losses, or damages of any kind arising out of the impact of the COVID-19 Virus. Additionally, meetings outlined in the scope of services may be conducted virtually using electronic media in lieu of in person meetings due to the impacts of the COVID-19 Virus.

Closure

In addition to the matters set forth herein, our Agreement shall include and be subject to, and only to, the terms and conditions in the attached Standard Provisions, which are incorporated by reference. As used in the Standard Provisions, the term "the Consultant" shall refer to Kimley-Horn and Associates, Inc., and the term "the Client" shall refer to Brown & Gay Engineers, Inc.. Kimley-Horn, in an effort to expedite invoices and reduce paper waste, offers its clients the option to receive electronic invoices. These invoices come via email in an Adobe PDF format. We can also provide a paper copy via regular mail if requested. Please select a billing method from the choices below:

____ Please email all invoices to _____@_____.

____ Please email invoices to _____@_____.

AND provide a hard copy to the address listed above (please note below if it should be to some else's attention or an alternative address).

____ Please ONLY provide a hardcopy invoice to the address listed above (please note below if it should be to some else's attention or an alternative address).

If you concur in all the foregoing and wish to direct us to proceed with the services, please have authorized persons execute both copies of this Agreement in the spaces provided below, retain one copy, and return the other to us. Fees and times stated in this Agreement are valid for sixty (60) days after the date of this letter.

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

Very truly yours,

KIMLEY-HORN AND ASSOCIATES, INC.



Dhruva Lahon, P.E., PTOE
Project Manager



Senior Vice President

Attachments: Standard Provisions

Authorized by:

Brown & Gay Engineers, Inc.

By: _____

(Date)

(Print or Type Name)

Title: _____

(Member or Manager, as authorized)

(Email Address)

_____, Witness
(Print or Type Name)

KIMLEY-HORN AND ASSOCIATES, INC.
STANDARD PROVISIONS

(1) Consultant's Scope of Services and Additional Services. The Consultant will perform only the services specifically described in this Agreement. If requested by the Client and agreed to by the Consultant, the Consultant will perform Additional Services, which shall be governed by these provisions. Unless otherwise agreed to in writing, the Client shall pay the Consultant for any Additional Services an amount based upon the Consultant's then-current hourly rates plus an amount to cover certain direct expenses including telecommunications, in-house reproduction, postage, supplies, project related computer time, and local mileage. Other direct expenses will be billed at 1.15 times cost.

(2) Client's Responsibilities. In addition to other responsibilities herein or imposed by law, the Client shall:

- (a) Designate in writing a person to act as its representative, such person having complete authority to transmit instructions, receive information, and make or interpret the Client's decisions.
- (b) Provide all information and criteria as to the Client's requirements, objectives, and expectations for the project and all standards of development, design, or construction.
- (c) Provide the Consultant all available studies, plans, or other documents pertaining to the project, such as surveys, engineering data, environmental information, etc., all of which the Consultant may rely upon.
- (d) Arrange for access to the site and other property as required for the Consultant to provide its services.
- (e) Review all documents or reports presented by the Consultant and communicate decisions pertaining thereto within a reasonable time so as not to delay the Consultant.
- (f) Furnish approvals and permits from governmental authorities having jurisdiction over the project and approvals and consents from other parties as may be necessary.
- (g) Obtain any independent accounting, legal, insurance, cost estimating and feasibility services required by Client.
- (h) Give prompt written notice to the Consultant whenever the Client becomes aware of any development that affects the Consultant's services or any defect or noncompliance in any aspect of the project.

(3) Period of Services. Unless otherwise stated herein, the Consultant will begin work after receipt of a properly executed copy of this Agreement. This Agreement assumes conditions permitting continuous and orderly progress through completion of the services. Times for performance shall be extended as necessary for delays or suspensions due to circumstances that the Consultant does not control. If such delay or suspension extends for more than six months, Consultant's compensation shall be renegotiated.

(4) Method of Payment. Client shall pay Consultant as follows:

- (a) Invoices will be submitted periodically for services performed and expenses incurred. Payment of each invoice will be due within 25 days of receipt. The Client shall also pay any applicable sales tax. All retainers will be held by the Consultant and applied against the final invoice. Interest will be added to accounts not paid within 25 days at the rate of 12% per year beginning on the 25th day. If the Client fails to make any payment due under this or any other agreement within 30 days after the Consultant's transmittal of its invoice, the Consultant may, after giving notice to the Client, suspend services and withhold deliverables until all amounts due are paid.
- (b) If the Client relies on payment or proceeds from a third party to pay Consultant and Client does not pay Consultant's invoice within 60 days of receipt, Consultant may communicate directly with such third party to secure payment.
- (c) If the Client objects to an invoice, it must advise the Consultant in writing giving its reasons within 14 days of receipt of the invoice or the Client's objections will be waived, and the invoice shall conclusively be deemed due and owing. If the Client objects to only a portion of the invoice, payment for all other portions remains due.
- (d) If the Consultant initiates legal proceedings to collect payment, it may recover, in addition to all amounts due, its reasonable attorneys' fees, reasonable experts' fees, and other expenses related to the proceedings. Such expenses shall include the cost, at the Consultant's normal hourly billing rates, of the time devoted to such proceedings by its employees.
- (e) The Client agrees that the payment to the Consultant is not subject to any contingency or condition. The Consultant may negotiate payment of any check tendered by the Client, even if the words "in full satisfaction" or words intended to have similar effect appear on the check without such negotiation being an accord and satisfaction of any disputed debt and without prejudicing any right of the Consultant to collect additional amounts from the Client.

(5) Use of Documents. All documents and data prepared by the Consultant are related exclusively to the services described in this Agreement, and may be used only if the Client has satisfied all of its obligations under this Agreement. They are not intended or represented to be suitable for use or reuse by the Client or others on extensions of this project or on any other project. Any modifications by the Client to any of the Consultant's documents, or any reuse of the documents without written authorization by the Consultant will

be at the Client's sole risk and without liability to the Consultant, and the Client shall indemnify, defend and hold the Consultant harmless from all claims, damages, losses and expenses, including but not limited to attorneys' fees, resulting therefrom. The Consultant's electronic files and source code remain the property of the Consultant and shall be provided to the Client only if expressly provided for in this Agreement. Any electronic files not containing an electronic seal are provided only for the convenience of the Client, and use of them is at the Client's sole risk. In the case of any defects in the electronic files or any discrepancies between them and the hardcopy of the documents prepared by the Consultant, the hardcopy shall govern.

(6) Opinions of Cost. Because the Consultant does not control the cost of labor, materials, equipment or services furnished by others, methods of determining prices, or competitive bidding or market conditions, any opinions rendered as to costs, including but not limited to the costs of construction and materials, are made solely based on its judgment as a professional familiar with the industry. The Consultant cannot and does not guarantee that proposals, bids or actual costs will not vary from its opinions of cost. If the Client wishes greater assurance as to the amount of any cost, it shall employ an independent cost estimator. Consultant's services required to bring costs within any limitation established by the Client will be paid for as Additional Services.

(7) Termination. The obligation to provide further services under this Agreement may be terminated by either party upon seven days' written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof, or upon thirty days' written notice for the convenience of the terminating party. The Consultant shall be paid for all services rendered and expenses incurred to the effective date of termination, and other reasonable expenses incurred by the Consultant as a result of such termination.

(8) Standard of Care. The standard of care applicable to Consultant's services will be the degree of care and skill ordinarily exercised by consultants performing the same or similar services in the same locality at the time the services are provided. No warranty, express or implied, is made or intended by the Consultant's performance of services, and it is agreed that the Consultant is not a fiduciary with respect to the Client.

(9) LIMITATION OF LIABILITY. IN RECOGNITION OF THE RELATIVE RISKS AND BENEFITS OF THE PROJECT TO THE CLIENT AND THE CONSULTANT, THE RISKS ARE ALLOCATED SUCH THAT, TO THE FULLEST EXTENT ALLOWED BY LAW, AND NOTWITHSTANDING ANY OTHER PROVISIONS OF THIS AGREEMENT OR THE EXISTENCE OF APPLICABLE INSURANCE COVERAGE, THAT THE TOTAL LIABILITY, IN THE AGGREGATE, OF THE CONSULTANT AND THE CONSULTANT'S OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, AND SUBCONSULTANTS TO THE CLIENT OR TO ANYONE CLAIMING BY, THROUGH OR UNDER THE CLIENT, FOR ANY AND ALL CLAIMS, LOSSES, COSTS OR DAMAGES WHATSOEVER ARISING OUT OF OR IN ANY WAY RELATED TO THE SERVICES UNDER THIS AGREEMENT FROM ANY CAUSES, INCLUDING BUT NOT LIMITED TO, THE NEGLIGENCE, PROFESSIONAL ERRORS OR OMISSIONS, STRICT LIABILITY OR BREACH OF CONTRACT OR ANY WARRANTY, EXPRESS OR IMPLIED, OF THE CONSULTANT OR THE CONSULTANT'S OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, AND SUBCONSULTANTS, SHALL NOT EXCEED TWICE THE TOTAL COMPENSATION RECEIVED BY THE CONSULTANT UNDER THIS AGREEMENT OR \$50,000, WHICHEVER IS GREATER. HIGHER LIMITS OF LIABILITY MAY BE NEGOTIATED FOR ADDITIONAL FEE. THIS SECTION 9 IS INTENDED SOLELY TO LIMIT THE REMEDIES AVAILABLE TO THE CLIENT OR THOSE CLAIMING BY OR THROUGH THE CLIENT, AND NOTHING IN THIS SECTION 9 SHALL REQUIRE THE CLIENT TO INDEMNIFY THE CONSULTANT.

(10) Mutual Waiver of Consequential Damages. In no event shall either party be liable to the other for any consequential, incidental, punitive, or indirect damages including but not limited to loss of income or loss of profits.

(11) Construction Costs. Under no circumstances shall the Consultant be liable for extra costs or other consequences due to unknown conditions or related to the failure of contractors to perform work in accordance with the plans and specifications. Consultant shall have no liability whatsoever for any costs arising out of the Client's decision to obtain bids or proceed with construction before the Consultant has issued final, fully-approved plans and specifications. The Client acknowledges that all preliminary plans are subject to substantial revision until plans are fully approved and all permits obtained.

(12) Certifications. All requests for the Consultant to execute certificates, lender consents, or other third-party reliance letters must be submitted to the Consultant at least 14 days prior to the requested date of execution. The Consultant shall not be required to execute certificates, consents, or third-party reliance letters that are inaccurate, that relate to facts of which the Consultant does not have actual knowledge, or that would cause the Consultant to violate applicable rules of professional responsibility.

(13) Dispute Resolution. All claims by the Client arising out of this Agreement or its breach shall be

submitted first to mediation in accordance with the American Arbitration Association as a condition precedent to litigation. Any mediation or civil action by Client must be commenced within two years of the accrual of the cause of action asserted but in no event later than allowed by applicable statutes.

(14) Hazardous Substances and Conditions. Consultant shall not be a custodian, transporter, handler, arranger, contractor, or remediator with respect to hazardous substances and conditions. Consultant's services will be limited to analysis, recommendations, and reporting, including, when agreed to, plans and specifications for isolation, removal, or remediation. The Consultant will notify the Client of unanticipated hazardous substances or conditions of which the Consultant actually becomes aware. The Consultant may stop affected portions of its services until the hazardous substance or condition is eliminated.

(15) Construction Phase Services.

(a) If the Consultant prepares construction documents and the Consultant is not retained to make periodic site visits, the Client assumes all responsibility for interpretation of the documents and for construction observation, and the Client waives any claims against the Consultant in any way connected thereto.

(b) The Consultant shall have no responsibility for any contractor's means, methods, techniques, equipment choice and usage, sequence, schedule, safety programs, or safety practices, nor shall Consultant have any authority or responsibility to stop or direct the work of any contractor. The Consultant's visits will be for the purpose of endeavoring to provide the Client a greater degree of confidence that the completed work of its contractors will generally conform to the construction documents prepared by the Consultant. Consultant neither guarantees the performance of contractors, nor assumes responsibility for any contractor's failure to perform its work in accordance with the contract documents.

(c) The Consultant is not responsible for any duties assigned to it in the construction contract that are not expressly provided for in this Agreement. The Client agrees that each contract with any contractor shall state that the contractor shall be solely responsible for job site safety and its means and methods; that the contractor shall indemnify the Client and the Consultant for all claims and liability arising out of job site accidents; and that the Client and the Consultant shall be made additional insureds under the contractor's general liability insurance policy.

(16) No Third-Party Beneficiaries; Assignment and Subcontracting. This Agreement gives no rights or benefits to anyone other than the Client and the Consultant, and all duties and responsibilities undertaken pursuant to this Agreement will be for the sole benefit of the Client and the Consultant. The Client shall not assign or transfer any rights under or interest in this Agreement, or any claim arising out of the performance of services by Consultant, without the written consent of the Consultant. The Consultant reserves the right to augment its staff with subconsultants as it deems appropriate due to project logistics, schedules, or market conditions. If the Consultant exercises this right, the Consultant will maintain the agreed-upon billing rates for services identified in the contract, regardless of whether the services are provided by in-house employees, contract employees, or independent subconsultants.

(17) Confidentiality. The Client consents to the use and dissemination by the Consultant of photographs of the project and to the use by the Consultant of facts, data and information obtained by the Consultant in the performance of its services. If, however, any facts, data or information are specifically identified in writing by the Client as confidential, the Consultant shall use reasonable care to maintain the confidentiality of that material.

(18) Miscellaneous Provisions. This Agreement is to be governed by the law of the State of Texas. This Agreement contains the entire and fully integrated agreement between the parties and supersedes all prior and contemporaneous negotiations, representations, agreements or understandings, whether written or oral. Except as provided in Section 1, this Agreement can be supplemented or amended only by a written document executed by both parties. Any conflicting or additional terms on any purchase order issued by the Client shall be void and are hereby expressly rejected by the Consultant. Any provision in this Agreement that is unenforceable shall be ineffective to the extent of such unenforceability without invalidating the remaining provisions. The non-enforcement of any provision by either party shall not constitute a waiver of that provision nor shall it affect the enforceability of that provision or of the remainder of this Agreement.

FM 546
Fee Schedule

SUBCONSULTANT: Kimley-Horn and Associates, Inc.

TASK DESCRIPTION	Traffic Project Manager	Quality Manager	Project Engineer	Engineer-In-Training	Traffic Modeler (Senior)	Project Controller	TOTAL HRS.	TOTAL LABOR HRS. & COSTS
	\$285.00	\$295.00	\$180.00	\$130.00	\$285.00	\$125.00		
PROJECT MANAGEMENT AND ADMINISTRATION								
Project management and coordination	10		2				12	\$ 3,210.00
Progress reports and invoices (assuming 12 invoices)	12					12	24	\$ 4,920.00
Meetings (assuming 12 meetings)	16		2	6			24	\$ 5,700.00
TRAFFIC PROJECTIONS								
TPP Coordination regarding Consultant Information Packet	2		6	2			10	\$ 1,910.00
Historical Traffic Data Growth Rate	1	4	16	38			59	\$ 9,285.00
NCTCOG Coordination regarding Travel Demand Model	2		6	2	6		16	\$ 3,620.00
Travel Demand Model Growth Rate	1	4	8	12	15		40	\$ 8,740.00
US Census Growth Rate	1	2	5	8			16	\$ 2,815.00
Traffic Projections Methodology Memo	4	12	28	68	16		128	\$ 23,120.00
Address TPP comments on Traffic Projections Methodology Memo	1		5				6	\$ 1,185.00
Traffic Projections for ADT, AM, PM for opening year, design year, and pavement design year for no-build and up to 3 build	4	24	78	140	30		276	\$ 49,010.00
Address TPP comments on Traffic Projections	1		26	46			73	\$ 10,945.00
Traffic Analysis for Highway Design and Coordination with TPP	2	5	8	15			30	\$ 5,435.00
HOURS SUB-TOTALS	57	51	190	337	67	12		714
TOTAL LABOR COSTS	\$16,245.00	\$15,045.00	\$34,200.00	\$43,810.00	\$19,095.00	\$1,500.00		\$ 129,895.00