

Jefferson Parkway Public Highway Authority
Regular Board Meeting Agenda
Thursday, February 21, 2019
Arvada City Hall
8101 Ralston Road, Arvada, CO 80002



Regular Board Meeting/Workshop
3:00 p.m.
Council Chambers, 2nd Floor

- I. Call to Order
- II. Pledge of Allegiance
- III. Approval of Minutes
 - A. January 17, 2019 Regular Board Meeting (Attached)
- IV. New Business
 - A. Approval of Consulting Services Agreement with GBSM for Media Relations, Communications, and Citizen Engagement Services (Attached)
- V. Workshop
 - A. Discussion of Jefferson Parkway Advisory Committee (JPAC) Recommendations and Staff Response (Attached)
- VI. Adjournment

Jefferson Parkway Public Highway Authority Regular Board Meeting Minutes



**Thursday, January 17, 2019
Arvada City Hall
8101 Ralston Road, Arvada, CO 80002**

Executive Session 3:00 p.m. Council Conference Room, 3rd Floor

Greg Johnson requested matters for discussion that required an Executive Session, pursuant to C.R.S., Section 24-6-402(4)(a), Section 24-6-402(4)(b) and Section 24-6-402(4)(e) for the purposes of discussing real property matters, receiving legal advice on specific legal questions and determining positions relative to matters that may be subject to negotiations and instructing negotiators related to FAA matters, right-of-way agreements, potential concession matters and professional services agreements.

Director Williams made a motion to go into Executive Session for the purposes stated above. Director Szabo seconded the motion.

The following votes were cast on the Motion:

Those voting Yes: Ahrens, Beacom, Jones, Szabo, Williams

Regular Board Meeting immediately following Executive Session Council Chambers, 2nd Floor

Call to Order:

Chairman David Jones called the meeting of the Jefferson Parkway Public Highway Authority (JPPHA) to order at 4:00 p.m. Present were Director Randy Ahrens, Director David Beacom, Chairman David Jones, Vice Chair Libby Szabo, and Director Marc Williams. Also in attendance: Bill Ray, Exec. Director; Tamara Seaver, JPPHA Counsel; Greg Johnson, JPPHA Counsel; Kevin Standbridge, Broomfield Deputy City and County Manager

Pledge of Allegiance

Election of Officers

- A. Chair, Vice-Chair; Treasurer; Secretary

The following nominations were submitted for the 2019 election of officers:

- Chair: David Jones
- Vice Chair: Libby Szabo
- Secretary: David Beacom
- Treasurer: Randy Ahrens

Director Williams made a motion that the directors remain for 2019 in the same offices they have held the past year. Director Beacom seconded the motion.

The following votes were cast on the Motion:

Those voting Yes: Ahrens, Beacom, Jones, Szabo, Williams

Organizational Matters

- A. Resolution 19-01, A Resolution Concerning Annual Administrative Items (Attached)

Director Williams moved that Resolution 19-01, A Resolution Concerning Annual Administrative Items, be approved. Director Beacom seconded the motion.

The following votes were cast on the Motion:

Those voting Yes: Ahrens, Beacom, Jones, Szabo, Williams

Approval of Minutes:

Director Szabo made a motion to approve the December 20, 2018 board meeting minutes as presented. Director Williams seconded the motion.

The following votes were cast on the Motion:

Those voting Yes: Ahrens, Beacom, Jones, Szabo, Williams

Consent Items:

Bill Ray stated that the items on the consent agenda are the annual contracts and letters of engagement for the consultants and firms that have been working with JPPHA over the past year.

- A. Letter of Engagement for Icenogle, Seaver, Pogue (Attached)
- B. Letter of Engagement for Jones & Keller (Attached)
- C. Letter of Engagement for Squire, Patton & Boggs (Attached)
- D. Letter of Engagement for Venable (Attached)

Director Williams moved for approval of the Consent Agenda. Director Beacom seconded the motion.

The following votes were cast on the Motion:

Those voting Yes: Ahrens, Beacom, Jones, Szabo, Williams

New Business:

- A. Approval of HDR Task Order #7 not to exceed the amount of \$428,539.24

Bill Ray reviewed the work HDR performs for the authority.

Director Williams moved for approval of the HDR Task Order #7 not to exceed the amount of \$428,539.24. Director Szabo seconded the motion.

The following votes were cast on the Motion:

Those voting Yes: Ahrens, Beacom, Jones, Szabo, Williams

- B. First Amendment to Consulting Contract for Financial Advisory Services – Ernest & Young Infrastructure Advisors, LLC (Attached)

Director Williams moved that the First Amendment to the Consulting Contract for Financial Advisory Services – Ernest & Young Infrastructure Advisors, LLC, be approved. Director Beacom seconded the motion.

The following votes were cast on the Motion:

Those voting Yes: Ahrens, Beacom, Jones, Szabo, Williams

Report from Executive Director

Bill Ray said a meeting was held yesterday to meet with the three finalists to get a better understanding of their issues and concerns of the procurement process. He said the three teams are extremely competent, able and ready to proceed with this project, knowing that this project will be 100% underwritten by the private sector.

Mr. Ray said the Authority received earlier this week a statement with his recommendations on the Jefferson Parkway Advisory Committee's Final Report. He said these recommendations will be posted on the website either today or tomorrow. He said the committee's recommendations will be made a part of the RFP process. He also said an RFQ has been issued for a marketing person to work with the Authority, staff and citizens.

Report from the General Counsel - None

Report from the Board of Directors - None

Informational Items - None

Public Comment:

Prior to public comment from citizens, Chairman Jones said he would like to make a few comments. He said there have been statements made via social network about how the authority operates and what has and hasn't been done. He said some of those comments are not true, factual, or contain all of the information. He read the following Statements and Responses from the Authority into the record:

Statement: The local member governments have appropriated a combined \$10.5 million for the Jefferson Parkway since inception and are being asked for \$7.5 million this year.

Response: All local funds provided to the Jefferson Parkway are advances, not grants, and the Jefferson Parkway is contractually obligated to repay those funds through the proceeds of the Parkway over time once the Parkway is in operation.

Statement: Voters turned down the W-470 proposal in 1989.

Response: The W-470 proposal was a different alignment with a different funding mechanism from a different time. The Jefferson Parkway alignment is the result of a 5 year \$15 million EIS process initiated by CDOT studying 73 alternatives to connect the NW Parkway terminus with the W-470 extension terminus. The preferred alignment determined by the draft EIS is the alignment of the Jefferson Parkway.

Statement: The 2000 Northwest Quadrant Study concluded improvements to existing arterials was the best solution for future traffic.

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Response: Problematically the source of the \$900 million (in 2000 dollars) to pay for this alternative was never identified and the plan for implementation was never developed. Shortly after this process ended, CDOT began the groundwork for the EIS process mentioned above to address the same issue of improving regional mobility.

Statement: The NW Parkway has under-performed financially and is now leased to a Portuguese firm for a century.

Response: The NW Parkway financial performance reflects the roller coaster economy with dot-com bust and the great recession. Recently, the rights to the concession held originally by Brisa (a Portuguese based firm) was purchased, by an international consortium at a handsome premium above Brisa's original investment. The good news is that Colorado tax payers were never at risk, the NW Parkway is meeting its traffic expectations and a significant regional arterial operates without subsidy from the public.

Statement: Construction along Rocky Flats may be a health risk.

Response: The post-clean up final report from the EPA and the Colorado Department of Health concluded that the area including the Jefferson Parkway ROW is safe for unlimited use. The State has reaffirmed that finding as recently as December 2018. The Jefferson Parkway does plan to establish a baseline condition before construction begins and to have an air monitoring system in use during construction.

Bill Ray gave an update on the Request for Proposals (RFP) and said staff is hoping to publish it the first half of March. He said it is very common over the course of an RFP being issued that there are routine and regular addenda that are issued as the RFP progresses. He said these addenda carry equal weight as the original RFP.

Chairman Jones then called those wishing to speak.

Brett Vernon talked about the importance of the Jefferson Parkway Advisory Committee's recommendations being included in the original RFP.

Don Figgins talked about the negative impacts of the Parkway on the Leyden Community.

Jeff Staniszewski talked about the importance of citizens having the time needed to discuss questions they have about the Parkway.

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Marla Griffith talked about the architectural drawing they were given by the builder at the time they bought their house and how what is being done now does not reflect what they were told. Cassie Goldfine talked about speeds along the highway and the close proximity of the road to her backyard.

Michael Ennis talked about the importance of incorporating the unique aspects of the Parkway that are being submitted by citizens through the survey.

Ian Owens said the survey results are showing the citizens of Leyden Rock are concerned about sound and safety mitigation.

Adjournment: Meeting was adjourned at 4:50 p.m.

David Jones, Chair

Christine Koch
Recording Secretary

JEFFERSON PARKWAY PUBLIC HIGHWAY AUTHORITY

CONSULTING SERVICES AGREEMENT

This AGREEMENT FOR CONSULTING SERVICES (the "Agreement") is entered into effective as of this ____ day of _____, 2019, by and between the Jefferson Parkway Public Highway Authority (JPPHA), a body corporate and political subdivision of the State of Colorado (the "Authority"), and GBSM, Inc., a Colorado corporation (the "Consultant").

RECITALS

WHEREAS, the Authority has determined it will require certain communications consulting services (the "Services"); and

WHEREAS, the Authority desires to engage the Consultant to render the Services consistent with the terms of this Agreement.

NOW THEREFORE, in consideration of the mutual covenants and stipulations hereinafter set forth, the sufficiency of which is hereby acknowledged, the parties do hereto agree as follows:

TERMS

1. **SCOPE OF SERVICES.** The Consultant and JPPHA shall jointly develop a Scope of Services within the budget amounts contained in the 2019 budget and submit separately for JPPHA Board approval. The Consultant shall be responsible for providing, at its cost and expense, all management, supervision, labor, materials, administrative support, supplies and equipment necessary to perform the Services in the manner required by this Agreement. Consultant shall perform the Services using that degree of skill and knowledge customarily employed by other professionals performing similar services in the Denver metropolitan area.

2. **TERM OF AGREEMENT.** The term of this Agreement shall begin on the date of execution set forth above and shall expire on the 31st day of December, 2019, or when the Services have been completely performed to the Authority's satisfaction, whichever first occurs, or otherwise by mutual written agreement of the parties or by the exercise of the termination provisions specified in Section 12. Thereafter, the Authority, in its sole discretion, may extend the term for two (2) additional one-year terms by providing written notice to the Contractor of such renewal.

3. **ADDITIONAL SERVICES.** The Authority may, in writing, request the Consultant to provide the Authority with certain additional or different services which are not required in **Exhibit A** (hereinafter the "Additional Services"). Additional Services shall not be performed by the Consultant unless Consultant receives a written request for the performance of Additional Services from the Authority. Upon receipt of the written request, the Authority and the Consultant shall negotiate the scope of the relevant Additional Services, which shall be subject to the mutual written agreement of the Consultant and the Authority. If the Consultant performs any Additional Services prior to or without receiving a signed agreement to do so from

the Authority, the Consultant shall not be entitled to any compensation for such Additional Services.

4. **COMPENSATION.**

A. **Services.** The Authority shall compensate the Consultant for the Services, subject to the Authority's annual appropriations and in accordance with and subject to all of the conditions in this Agreement for the not-to-exceed amount of Fifty Thousand Dollars (\$50,000.00), based, if applicable, on the hourly rates set forth in **Exhibit A**. The Consultant is not entitled to any compensation beyond this amount for performing the Services.

B. **Additional Services.** Compensation for Additional Services of the Consultant shall be negotiated by the parties and included in the written agreement contemplated by Section 3.

C. **Progress Payments.** Consultant shall submit monthly invoices to the Authority for progress payments of portions of the Services satisfactorily performed during the term of the Agreement with progress payments to be made monthly for Services performed during the preceding month unless another invoice submittal/payment interval is specified in **Exhibit A**. The Authority shall be invoiced only for actual time, administrative fees and direct costs incurred for the performance of the Services. The Authority will pay approved invoices, or parts thereof, within thirty (30) days after receipt. All invoices shall be addressed to the Authority as follows: "Jefferson Parkway Public Highway Authority, P.O. Box 1108, Arvada, Colorado 80001 ATTN: Bill Ray."

D. **Requirements for Progress Payment.**

1. **Invoices.** For Services completed, the Consultant shall submit to the Authority an invoice itemizing the costs of the Services performed. The Consultant's invoices shall be a condition to payment. Invoices shall be supported by cost information in such detail as may be required by the Authority to substantiate the charges being invoiced and for a proper audit and post audit thereof.

2. **Invoice Documentation.** If and to the extent requested by the Authority, the Consultant shall submit with each invoice a progress report describing Services performed, results achieved, deliverable status and certification of payment to all employees, vendors and sub-consultants.

E. **Unsatisfactory Invoices.** The Authority may reject any portion of the Consultant's invoices and may withhold payment for the rejected portion until it is resolved by the Consultant provided the Authority provides written notice to the Consultant of the question or issue within ten (10) business days upon receipt of the invoice.

F. **Unsatisfactory Performance of Services and Right to Withhold Payment.** The Authority reserves the right to withhold payment and to continue to withhold any such

payment for Services which are not completed as scheduled, completed unsatisfactorily, behind schedule or otherwise performed in an inadequate or untimely fashion, as determined by the Authority in its sole discretion. All payments previously withheld by the Authority shall be released and paid to the Consultant promptly when the Services are subsequently determined by the Authority to be satisfactory.

5. INDEPENDENT CONTRACTOR. The Consultant is an independent contractor and nothing contained herein shall be construed as constituting any relationship with the Authority other than that of owner and independent contractor, nor shall it be construed as creating any relationship whatsoever between the Authority and the Consultant's employees. Neither the Consultant nor any of its employees are or shall be deemed employees or agents of the Authority. The Consultant is not, and shall not act as, the agent of the Authority. The employees who assist the Consultant in the performance of the Services shall, as Consultant's employees, be under the Consultant's exclusive direction and control.

6. WARRANTIES AND REPRESENTATIONS. The Consultant represents, warrants and covenants that:

A. It has the required authority, ability, skills and capacity to, and shall, perform the Services in a manner consistent with this Agreement. Further, all employees and sub-consultants of Consultant employed in performing the Services shall have the skill, experience and licenses required to perform the Services assigned to them.

B. It has knowledge of all of the legal requirements and business practices in the State of Colorado that must be followed in performing the Services, and the Services shall be performed in conformity with such requirements and practices.

C. It is validly organized and exists in good standing under the laws of the State of Colorado and has all requisite power to own its properties and assets and to carry on its business as now conducted or proposed to be conducted and it is duly qualified, registered to do business and in good standing in the State of Colorado.

D. The execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized by all necessary action and do not and will not (a) require any further consent or approval of the board of directors or any shareholders of the Consultant or any other person which has not been obtained or (b) result in a breach of or a default under the certificate of incorporation or by-laws of the Consultant or any indenture or loan or credit agreement or other material agreement or instrument to which the Consultant is a party or by which its properties and assets may be bound or affected. All such consents and approvals are in full force and effect.

E. This Agreement constitutes the legal, valid and binding obligation of the Consultant enforceable in accordance with its terms.

7. **CONSULTANT'S INSURANCE.** The Consultant shall maintain that insurance coverage required in **Exhibit B** attached hereto.

8. **INDEMNIFICATION.** Subject to the provisions of Section 13-50.5-102(8), Colorado Revised Statutes, to the extent applicable to this Agreement, the Consultant shall indemnify, defend and hold harmless the Authority and each of the governmental entities that is now or may in the future become a party to the Authority's Establishing Contract, and each of its directors, employees, agents and consultants, from and against any and all claims, demands, suits, actions, proceedings, judgments, losses, damages, injuries, penalties, costs and expenses (including reasonable attorneys' fees) and liabilities, of, by or with respect to third parties ("Any Claims") to the extent they arise from or may be alleged to arise, directly or indirectly, in whole or in part, from the intentional or negligent acts or omissions of the Consultant or any of its sub-consultants, material suppliers, agents, representatives or employees, or the agents, representatives or employees of any sub-consultants or material suppliers (collectively the "Consultant/Related Parties"), in connection with this Agreement and/or the Consultant's Services hereunder, including, without limitation, Any Claims which cause or allow to continue a condition or event which deprives the Authority or any of its directors or employees of its sovereign immunity under the Colorado Governmental Immunity Act, Sections 24-10-101, *et seq.*, Colorado Revised Statutes. Provided, however, that the Consultant shall not be liable for any claim, loss, damage, injury or liability arising out of the negligence of the Authority, its directors, employees, agents and consultants.

The obligations of the indemnifications extended by the Consultant to the Authority under this Section shall survive termination or expiration of this Agreement.

The Consultant's defense, indemnification and insurance obligations shall be to the fullest extent permitted by law and nothing in this Agreement shall be construed as requiring the Consultant to defend in litigation, indemnify or insure the Authority against liability for damage arising out of the death or bodily injury to persons or damage to property caused by the negligence or fault of the Authority or any third party under the control or supervision of the Authority.

To the extent the terms of Section 13-50.5-102(8), Colorado Revised Statutes, are applicable to this Agreement, the Consultant and the Authority hereby agree for the purposes of this Section that: (i) "the degree or percentage of negligence or fault attributable" to the Consultant/Related Parties as used in Section 13-50.5-102(8)(a), Colorado Revised Statutes, shall be conclusively determined by a trial court at the state or federal level and (ii) the term "adjudication" used in Section 13-50.5-102(8)(c), Colorado Revised Statutes, shall mean a trial court order at the state or a federal level.

Insurance coverage requirements specified in this Agreement in no way lessen or limit the obligations of the Consultant under the terms of this Section. The Consultant shall obtain, at the Consultant's own expense, additional insurance, if any, required to satisfy the terms of this Section.

9. **CONFIDENTIALITY.** During the performance of this Agreement the Consultant may have access to confidential information and hereby agrees that the Consultant will not use or disclose to anyone, except as required in the performance of this Agreement or by law, or as otherwise authorized by the Authority, any or all confidential information given to the

Consultant by the Authority, developed by the Consultant as a result of the performance of this Agreement, or accessed by the Consultant as a result of this Agreement.

10. **ASSIGNMENT.** The Consultant shall not assign this Agreement or parts hereof or its duties hereunder without the express written consent of the Authority. In the event of the dissolution or termination of the Authority, the parties agree that the Authority may assign to a successor entity any rights, obligations and functions it may have remaining under this Agreement.

11. **SUB-CONSULTANTS.** Consultant is solely and fully responsible to the Authority for the Services under this Agreement. Use of any sub-consultant by Consultant shall be pre-approved by the Authority. Consultant agrees that each and every agreement of Consultant with any sub-consultant to perform Services under this Agreement shall be terminable not for cause and shall include the insurance required herein.

12. **TERMINATION NOT FOR CAUSE.** In addition to any other rights provided herein, the Authority shall have the right, at any time and in its sole discretion, to terminate, not for cause, in whole or in part, this Agreement and further performance of the Services by delivery to the Consultant of written notice of termination specifying the extent of termination and the effective date of termination. As a result of a termination not for cause, the Authority shall pay the Consultant, in accordance with Section 4 hereof, for Services performed up to the termination and unpaid at termination.

13. **RECORD KEEPING REQUIREMENT.** The Consultant shall maintain all records and documents relating to the term of this Agreement for three (3) years after the termination or expiration of this Agreement. This includes all books and other evidence bearing on the Consultant's costs and expenses under this Agreement. The Consultant shall make these records and documents available to the Authority, at the Consultant's office, at all reasonable times, without any charge. If accepted by the Authority, photographs, microphotographs or other authentic reproductions may be maintained instead of original records and documents.

14. **WORK PRODUCT.** All work product of the Consultant prepared pursuant this Agreement, including but not limited to all maps, plans, drawings, specifications, reports, electronic files and other documents, in whatever form, shall remain the property of the Authority under all circumstances, whether or not the Services are completed. When requested, all work product shall be delivered to the Authority in a format compatible to the Authority's computer applications. All work product shall be provided to the Authority at the time of completion of any of the discrete tasks specified in the Services or at the time of termination of this Agreement, whichever event first occurs, and shall be provided to the Authority's successor or to any subsequent owners, only with the Authority's express permission. The Consultant shall maintain copies on file of any such work product involved in the Services for three (3) years, shall make them available for the Authority's use, and shall provide such copies to the Authority, upon request, at commercial printing or reproduction rates. At any time within the three (3) years during which Consultant must retain copies of all work product involved in the Services, the Authority may obtain copies of the Consultant's work product by paying printing or reproduction costs as set forth above.

15. CONSULTANT'S TRADE SECRETS AND OPEN RECORDS REQUESTS.

A. Application of the Act. The Consultant acknowledges and agrees that all documents in the Authority's possession, including documents submitted by the Consultant, are subject to the provisions of the Colorado Open Records Act (Sections 24-72-200.1, *et seq.*, C.R.S.) (the "Act"), and the Consultant acknowledges that the Authority shall abide by the Act, including honoring all proper public records requests made thereunder. The Consultant shall be responsible for all costs incurred in connection with any determinations required to be made by a court, pursuant to the Act. The Consultant is advised to contact legal counsel concerning such acts in application of the Act to the Consultant.

B. Confidential or Proprietary Materials. If the Consultant deems any document(s) which the Consultant submits to the Authority to be confidential, proprietary or otherwise protected from disclosure under the Act, then the Consultant shall appropriately label such document(s), and submit such document(s) to the Authority together with a written statement describing the material which is requested to remain protected from disclosure and the justification for such request. This request will either be approved or denied by the Authority; however, the Authority will make a good-faith effort to accommodate all reasonable requests.

C. Stakeholder. In the event of litigation concerning the disclosure of any document(s) submitted by the Consultant to the Authority, the Authority's sole involvement will be as stakeholder retaining the document(s) until otherwise ordered by the court, and the Consultant shall be fully responsible for otherwise prosecuting or defending any actions concerning the document(s) at its sole expense and risk.

16. ILLEGAL ALIENS.

A. Certification. Prior to the execution of this Agreement, the Consultant shall certify to the Authority, as attached hereto as **Attachment 1**, that at the time of certification, it does not knowingly employ or contract with an illegal alien who will perform work under this Agreement and that the Consultant will participate in either the E-Verify Program administered by the U.S. Department of Homeland Security and the Social Security Administration, or in the Colorado Department of Labor and Employment's Employment Verification Program (the "Department Program"), as further described in subsection F of this Section, in order to confirm the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement.

B. Prohibited Acts. The Consultant shall not:

1. Knowingly employ or contract with an illegal alien to perform work under this Agreement; or

2. Enter into a contract with a sub-consultant that fails to certify to the Consultant that the sub-consultant shall not knowingly employ or contract with an illegal alien to perform work under this Agreement. The Consultant shall provide

the Authority with all certifications received from sub-consultants in which sub-consultants certify that said sub-consultants do not knowingly employ or contract with an illegal alien to perform work under this Agreement.

C. Verification.

1. The Consultant has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement through participation in either the E-Verify Program or the Department Program.

2. The Consultant shall not use either the E-Verify Program or the Department Program procedures to undertake pre-employment screening of job applicants while this Agreement is being performed.

3. If the Consultant obtains actual knowledge that a sub-consultant performing work under this Agreement knowingly employs or contracts with an illegal alien, the Consultant shall:

a. Notify the sub-consultant and the Authority within three (3) days that the Consultant has actual knowledge that the sub-consultant is employing or contracting with an illegal alien; and

b. Terminate the subcontract with the sub-consultant if, within three (3) days of receiving the notice required pursuant to subsection C.3.a of this Section, the sub-consultant does not stop employing or contracting with the illegal alien; except that the Consultant shall not terminate the contract with the sub-consultant if during such three (3) days the sub-consultant provides information to establish that the sub-consultant has not knowingly employed or contracted with an illegal alien.

D. Duty to Comply with Investigations. The Consultant shall comply with any reasonable request by the Colorado Department of Labor and Employment (the "Department") made in the course of an investigation conducted pursuant to Section 8-17.5-102(5), Colorado Revised Statutes to ensure that the Consultant is complying with this Section.

E. Breach. If the Consultant violates a provision of this Section, the Authority may terminate the Agreement for a breach of the Agreement. If the Agreement is so terminated, the Consultant shall be liable for actual and consequential damages to the Authority. The Authority shall notify the Colorado office of the Secretary of State if the Consultant violates a provision of this Section and the Authority terminates the Agreement.

F. Department Program. If the Consultant participates in the Department Program, in lieu of the E-Verify Program, the Consultant shall notify the Department and the Authority of such participation. The Consultant shall, within twenty (20) days after

hiring an employee who is newly hired for employment to perform work under the Agreement, affirm that the Consultant has examined the legal work status of such employee, retained file copies of the documents required by 8 U.S.C. Sec. 1324a, and not altered or falsified the identification documents for such employees. The Consultant shall provide a written, notarized copy of the affirmation, similar in form as attached hereto as **Attachment 2**, to the Authority.

17. **CONFLICTS OF INTEREST.** The Consultant shall not engage in any business or personal activities or practices or maintain any relationships which conflict in any way with the full performance of the Consultant's obligations under this Agreement. The Consultant acknowledges that with respect to this Agreement, even the appearance of a conflict of interest is harmful to the Authority's interests. Should the Consultant be requested to engage in any project that could potentially have the appearance of a conflict of interest, it will notify the Authority immediately. Absent the Authority's written approval, the Consultant shall refrain from any practices, activities or relationships that are in conflict or reasonably appear to be in conflict with the full performance of the Consultant's obligations under this Agreement.

18. **NOTICES.** Any notices or other communications required or permitted by this Agreement or by law to be served on, given to or delivered to either party hereto by the other party shall be in writing and shall be deemed duly served, given or delivered when personally delivered to the party to whom it is addressed or in lieu of such personal services, upon receipt in the United States' mail, first-class postage prepaid, addressed to the Authority at:

Jefferson Parkway Public Highway Authority
P.O. Box 8101
Arvada, Colorado 80001-8101
Attn: Bill Ray, Executive Director

with a copy to:

Icenogle Seaver Pogue, P.C.
4725 South Monaco Street, Suite 360
Denver, Colorado 80237
Attn: Tamara K. Seaver, Esq.

or to the Consultant at:

GBSM, Inc.
555 17th Street, Suite 900
Denver, CO 80202
Attn: Andy Mountain, President

Either party, the Authority or the Consultant, may change its address for the purpose of this Section by giving written notice of such change to the other party in the manner provided in this Section.

19. **TIME OF THE ESSENCE.** The Services of the Consultant shall be undertaken and completed in such a manner and in such a sequence as to assure their expeditious completion in light of the purposes of this Agreement. It is agreed that time is of the essence in the performance of this Agreement.

20. **ENTIRE AGREEMENT.** This Agreement constitutes the entire agreement between the parties hereto relating to the Services and sets forth the rights, duties and obligations of each to the other as of this date. Any prior agreements, promises, negotiations or representations not expressly set forth in this Agreement are of no force and effect.

21. **AMENDMENT.** This Agreement may not be modified or amended except by a writing executed by both the Consultant and the Authority.

22. **BINDING AGREEMENT.** This Agreement shall inure to and be binding on the heirs, executors, administrators, successors and assigns of the parties hereto.

23. **NO WAIVER.** No waiver of any of the provisions of this Agreement shall be deemed to constitute a waiver of any other of the provisions of this Agreement, nor shall such waiver constitute a continuing waiver unless otherwise expressly provided herein, nor shall the waiver of any default hereunder be deemed a waiver of any subsequent default hereunder.

24. **CONTROLLING LAW.** This Agreement shall be governed by and construed in accordance with the law of the State of Colorado, and any disputes hereunder shall be tried in the courts of the State of Colorado.

[Remainder of page intentionally left blank].

GBSM, INC.

By: _____
Title: _____

ATTEST:

By: _____
Title: _____

STATE OF _____)
))
COUNTY OF _____)

ss.

The foregoing instrument was acknowledged before me this _____ day of _____, 2019, by _____ and _____, as _____ and _____ of GBSM, Inc.

WITNESS my hand and official seal.

My commission expires: _____

Notary Public



Jefferson Parkway Public Highway Authority
P.O. Box 1108
Arvada, CO 80001-1108
jppha.org

MEMORANDUM

TO: Board of Directors
FROM: Bill Ray, Executive Director
RE: JPAC Recommendations
DATE: January 15, 2019

Background

In November 2018, the Jefferson Parkway Advisory Committee (JPAC) presented their recommendations on various aspects of the Jefferson Parkway in anticipation of its construction. JPAC was composed of 12 citizens and represented a wide variety of perspectives. They met throughout 2018 to both educate themselves on the history and status of the Parkway, as well as to gain insights from each other's perspective. Ms. Heather Bergman facilitated the group.

The JPAC recommendations can be placed in four general categories:

- Recommendations pertaining to process
- Recommendations pertaining to Rocky Flats and environmental issues
- Recommendations pertaining to community safety, connectivity and well-being
- Recommendations with mixed levels of support

The purpose of this memo is to offer my perspective to these recommendations and, with the Board's concurrence, identify those that should be carried forward in the process. My thoughts will not be a surprise to JPAC members as we had the opportunity for several sessions of dialogue prior to the November presentation. Many of the recommendations represent best practices or current regulations and will be incorporated into the planning and Request for Proposal process. Some are outside the purview of the Authority or are contrary to policies already adopted by the Board. Some will be a question of further refinement to quantify a desired outcome. A few will be a matter of money.

Process Recommendations

JPAC should continue to meet regularly throughout the RFP and construction process.
Executive Director Response: suggest approval in concept.

The Board of Directors initially discussed having the committee meet for the year of 2018 as other aspects of the project were still being defined and then evaluate the status of the project. From the perspective of November 2017, the FAA matter was still unresolved and the Level 1 traffic and revenue study had not yet been completed. The

thinking was that if the project was not viable, there would be no need for additional citizen participation beyond 2018.

Since the project does show strong viability, the Board will want to seek out citizen involvement and engagement on a variety of fronts. A portion of the approved 2019 budget is to hire a marketing firm or person to educate and engage the public in a variety of ways as the RFP process proceeds - having a group of citizens with good understanding of the issues involved will be a key component. The Board will need to consider if they wish to reframe the mission of a citizen advisory group to reflect impending construction, and if there is a need for other citizen perspectives to be represented. My recommendation is that the Board first review their objectives for a citizen advisory group in light of active construction in 2020, consider the stakeholders they want to have represented and seek volunteers, strongly encouraging JPAC members to apply.

*JPPHA should include criteria for creativity, innovation, and aesthetics in RFP development.
Executive Director Response: suggest this concept be included in the RP, with a caveat.*

Creativity and innovation will occur naturally as a part of the competitive process. It will be difficult to quantify those as criteria, except as a bottom line cost savings or efficiency improvement. To the extent that the RFP is crafted as a performance document vs. a prescriptive document there will be opportunities for the respondents to show creativity and innovation, especially in operations and maintenance over the long haul. It is reasonable to expect that all three teams will offer proprietary alternative technical concepts (ATCs) during the course of the RFP development. These will be evaluated by the review team to determine if the ATC will meet the performance goal stated in the RFP.

Aesthetics are hard to quantify as well. Clearly no one wants a mediocre looking bridge or median - but what gives advantage to one team over another in the evaluation? Perhaps this is a matter that can be discussed with the three respondents in a community setting where all three teams can receive the public's comment and feedback. In any event, it is only to everyone's advantage that this is seen as a public improvement on a visual basis.

The caveat is over-innovation or over-creativity; witness the G line.

JPPHA should ensure that member governments will never subsidize the operation and maintenance of the Parkway.

Executive Director Response: this will be included as a goal in the RFQ and RFP.

Throughout development of the RFQ, all private sector teams were repeatedly advised that the Authority views this project as a 100% revenue risk transfer to the private sector for the construction, operations and maintenance of the Parkway. In 2019, each respondent will spend about \$1 million to have an investment grade traffic and revenue

study done. The results of the T&R study will ultimately determine each team's willingness to take on the Jefferson Parkway as a total revenue risk. As the economy sits today, given the infrastructure market, current interest rates and construction costs it is still a reasonable expectation. Any and all of those things can change between now and financial close. Even if there are perceived initial shortfalls, there are a number of strategies that would be explored before ever taking up the question of direct subsidies from the local governments, which would be politically distasteful in any event.

Until the metro beltway is completely connected, JPPHA should promote use of the Jefferson Parkway by financial and other incentives.

Executive Director Response: Private partner will be responsible.

The winning RFP respondent will be strongly motivated to promote use of the Jefferson Parkway from day one of operations since that is their source of repayment for the hundreds of millions they have invested.

JPPHA should provide public education on why the current alignment was chosen and how the Parkway meets regional transportation goals.

Executive Director Response: Included in 2019 work plan.

JPAC correctly notes that with the continued inflow of new residents, many may not be aware of the long history of the Jefferson Parkway or the metro beltway. A portion of the marketing plan is to provide such information in a variety of platforms as part of the public education process.

Rocky Flats and Environmental Issues

JPPHA should adopt 2008 TEPS mitigation measures.

Executive Director Response: these will be included in the RFP. Virtually all of these mitigation measures are existing industry standards and/or best management practices.

In 2008, CDOT completed the draft Northwest Corridor Environmental Impact Statement. Beginning in 2003 with 73 alternatives, the NWCEIS purpose was to connect the terminus of C-470 in Golden to the Northwest Parkway in Broomfield. The EIS process was discontinued at that point and the draft EIS was published as the Northwest Corridor Transportation and Environmental Planning Study (TEPS).

As part of that analysis, there was a review of environmental factors from archeology to wetlands with standard mitigation measures described. A summary of those suggested mitigation measures can be found in Section 4.27 of the TEPS document.

JPPHA should require dust control, and comply with air pollution controls required under the Denver Metro State Implementation Plan under the Clean Air Act.

Executive Director Response: included in the RFP will be all dust control, storm water runoff, monitoring and other related standards or requirements issued by agencies having jurisdiction.

No other comments.

JPPHA should install air monitoring equipment along Indiana Street, establishing a baseline prior to construction and have a public process for the methodology used to design the air monitoring equipment, and allow public comment on equipment, threshold of airborne contamination levels and consequences for exceedances.

ALSO, JPPHA should require radiological testing by an independent expert prior to any construction including CDPHE notification if there are exceedances.

ALSO, JPPHA should develop a response plan should remediation be required.

Executive Director Response: suggest approval in part and approval of concept in part.

The Colorado Department of Public Health and Environment (CDPHE) Hazardous Materials Division does not anticipate that it will require special radiological permitting for the Parkway. This is consistent with its determination in 2007 that the Parkway right of way, as part of the Refuge lands, is open to unlimited use as a result of the cleanup. Nor will they require any radiological monitoring in the course of construction. DOE in their required five year review confirmed that the cleanup and other remedies continue to be protective of human health and the environment to the standards established. They affirm that the Parkway right of way remains suitable for unlimited use.

Separate permits for monitoring air quality (dust), storm water runoff, and ground water discharge will be needed from CDPHE. JPPHA will apply for these permits and monitor as required under those permits.

JPPHA will establish a pre-construction radiologic baseline conditions within the transportation corridor by verifying previous sampling results in the transportation corridor and a number of additional sampling sites. The testing/analysis regime will mirror that being used by the Rocky Mountain Greenway, which has been developed following stakeholder involvement and public meetings. The testing regime is generally acceptable to the parties involved in that process.

JPPHA will also work with EPA, CDPHE and the private partner to have a response protocol (including media outreach and notice to the community) in the event remediation is necessary because of radiological material in excess of actionable levels.

Community Safety, Connectivity, and Well-being

JPPHA should include construction of multi-modal opportunities parallel and across the right of way including connections at the north and south ends of the Parkway.

Executive Director Response: suggest approval to design for multi-modal.

RFP respondents will be required to design for future bike and pedestrian trails. The design will be executed so as to not preclude future transit opportunities. A typical

bike trail costs \$1,000,000 per mile (perhaps \$10 million in total for the right of way corridor) and was not included in the original cost estimate.

JPPHA should require the following mitigation measures for Candelas and Leyden Rock:

- *Sound attenuation measures such as lids, depressing the road bed, vegetation.*
- *Sound walls should be avoided.*
- *Night sky measures to limit light pollution from vehicles, signs and street lights.*
- *Safety measures to prevent vehicles in accidents from colliding with houses.*

Executive Director Response: suggest acceptance in concept.

An important next step for this recommendation to be implemented is to have a community discussion with the neighborhoods to see if there is common agreement on what measures are appropriate within the scope of the project. Some specific suggestions, such as a lid over the Parkway are not financially feasible. Working in close cooperation with members of JPAC, several community meetings are being scheduled to receive input from the neighbors on measures that will be broadly acceptable and within budget.

JPPHA should require construction of pedestrian bridges across the Parkway within Leyden Rock. IN addition, JPPHA should work with the Metro District and Arvada to maintain the character of the neighborhood, including compatibility with various Arvada Master Plans (Arts and Culture, transportation, trails, et. al.)

Executive Director Response: suggest pedestrian bridge be declined, absent significant other funding. Suggest Compatibility recommendation be accepted in concept.

Pedestrian crossings over major highways are expensive. The total costs for the pedestrian bridge across south Wadsworth at SW Plaza was almost \$9 million. The vehicle/pedestrian bridge in Golden at 19th Street was over \$25 million. The preliminary cost estimate did not include a pedestrian bridge and the private concessionaire will push back on major costs that do not provide additional revenue to the project. There would have to be significant funding provided either by the Metro District, Arvada, or some other third party in order to implement this.

To the extent that the Parkway can further integrate into the City Master Planning process, it will do so.

JPPHA should modify the preliminary design to include a local access road from Leyden Rock northbound to SH 72

Executive Director Response: suggest this recommendation be declined.

This recommendation would require the complete redesign of the SH 72 interchange and the acquisition of additional property, adding significant time and cost to the project. It is not clear that such an access road can be designed and meet industry safety standards.

Mixed JPAC Support

JPPHA should redesign the Parkway from the east side of Rocky Flats to the west side.

Executive Director Response: suggest this recommendation be declined.

The present alignment was the preferred alternative of the Northwest Corridor Environmental Impact Statement process conducted by CDOT from 2003-08. Beginning with 73 alternatives CDOT identified what is now the Jefferson Parkway right of way in the draft EIS stage and issued as the NW Corridor Transportation and Environmental Study. At this stage, it is not practical to revisit the alignment.

JPPHA should use Indiana Street ROW as the northbound lanes of the Parkway and eliminate Indiana Street as a local road.

Executive Director Response: suggest this recommendation be declined.

JPPHA has long committed ensuring there would always be a local Indiana Street. It is conceivable that the Indiana Street road bed would become the northbound lanes of the Parkway, but only if a new local Indiana Street was constructed at the same time.

JPPHA should sponsor an independent review of public health impacts of Rocky Flats.

Executive Director Response: suggest this recommendation be declined.

The residual impact of Rocky Flats is a continuing public discussion that is also outside the purpose and scope of JPPHA.

FINAL JPAC RECOMMENDATIONS

Below are the final JPAC recommendations for the JPPHA Board's consideration. Please note, these recommendations are not listed in any order of priority or intended sequence, with one exception: The JPAC respectfully requests that the JPPHA Board consider the recommendation regarding continual JPAC engagement first.

Recommendations Pertaining to Process

These recommendations received full support by the JPAC.

- *The JPAC should meet regularly (subject to cancellation during the RFP process and construction of the Jefferson Parkway).*
- *JPPHA should state in the request for proposals (RFP) that evaluation criteria will include creativity, innovation, and aesthetics.*
- *JPPHA should ensure in perpetuity that local communities do not subsidize the operation and maintenance of the Parkway.*
- *During the period of time when the Parkway is not contiguously connected to the rest of the beltway, JPPHA should promote utilization of the Parkway by using financial incentives and/or other methods.*
- *JPPHA should clarify for the public how the Jefferson Parkway helps achieve current Front Range transportation objectives and why JPPHA chose the Indiana Street alignment over other alternative alignments (e.g., Highway 93).*

Recommendations Pertaining to Rocky Flats and Environmental Impacts

These recommendations received full support by the JPAC.

- *JPPHA should adopt the mitigation measures from the 2008 Northwest Corridor Transportation Study Environmental Impact Statement (EIS).*
- *JPPHA should require dust control and mitigation during the construction of the Jefferson Parkway to deal with high winds. Additionally, air pollution control measures and strategies are required under Colorado's State Implementation Plan for the Denver Metro/North Front Range non-attainment area under the Clean Air Act. Dust control measures should be taken along the entire length of the Jefferson Parkway.*
- *The JPPHA Board should install adequate air monitoring equipment and continuously monitor air quality in the Indiana Street corridor to assess whether construction activity re-suspends Rocky Flats contaminants into the air. Monitoring should begin before construction to establish an air quality baseline. Prior to construction there should be a transparent public process to show the methodology used to design the air monitoring equipment and allow people to:*
 - *Evaluate and comment on the air monitoring equipment*
 - *Specify thresholds of airborne contamination that should not be exceeded*
 - *Specify consequences of exceedances of those thresholds*

- *JPPHA should require testing for plutonium and also engage an expert independent of the concessionaire to identify any additional Rocky Flats contaminants to sample within the Parkway right-of-way and other impacted areas before allowing any construction-related, surface-disturbing activities, and the JPPHA should provide a public comment period to review the test results.*
 - *Results showing elevated levels of contaminants should be reported to CDPHE and any other relevant agencies.*
 - *If contaminant levels exceed CDPHE's standards, construction should pause in the area where contaminants are found while mitigation measures are followed, then a resampling should be conducted.*
- *JPPHA should develop a contingency plan for the unlikely but potentially disastrous event that a buried nuclear dump site is unearthed during construction of the Parkway.*

Recommendations Pertaining to Community Safety, Connectivity, and Wellbeing

These recommendations received full support by the JPAC.

- *JPPHA should include multimodal paths designed to allow users to cross or travel along the Parkway. Those paths should link up at the north and south ends and with the Greenway Trail. Development of multimodal options should be included in Phase 1 of construction.*
- *Mitigation measures should be taken to insulate the residential neighborhoods from the negative impacts of the Jefferson Parkway during the construction phase and when operational, to reduce the impacts of the Parkway dividing the community, and to keep the residents living alongside the Parkway safe. Mitigation measures should include:*
 - *Regarding sound mitigation, measures should be considered carefully, and creative solutions should be explored and implemented.*
 - *One option could include a sound absorbing tunnel, similar to the one built at the Beijing Zoo. Other creative solutions of this type, beyond traditional sound mitigation measures, should be encouraged.*
 - *Another option could be to deepen the roadway in residential neighborhoods as appropriate and build several at-grade, wide pedestrian walkways to partially cover the span to deflect noise and light pollution. Heavy vegetation could reduce light and sound impacts in the open areas between pedestrian walkways.*
 - *Traditional sound walls should be avoided near the Leyden Rock community, per the wishes of the local residents.*
 - *Regarding light pollution (both highway lighting and headlights from motorists), tall light poles should be avoided, and highway lighting should be directed to the roadway and not visible to homes lining the Parkway or the surrounding neighborhoods. Signage for the Parkway should be positioned well away from residential neighborhoods.*
 - *Regarding safety, guard rails and similar safety measures should be utilized to keep vehicles away from residences in the event of an accident.*
- *JPPHA should prioritize measures to maintain the continuity of the Leyden Rock neighborhood. The City of Arvada embraces community connectivity and has invested significant time and resources to bring neighborhoods together. The Leyden Rock subdivision has organically become a strong community, with 15 community events in 2017 which drew over 5,200 total participants.*
 - *There should be several wide, clear, park-like pedestrian walkways that span the Parkway to connect one end of the Leyden Rock community to the other.*

- *The design should integrate forested areas in empty spaces between the walkways to improve safety, provide sound mitigation, create green space, and increase neighborhood connectivity.*
- *The JPPHA should pursue partnerships with the City of Arvada and the Leyden Rock Metro District to maintain the character of the Leyden Rock neighborhood.*
- *The City of Arvada should ensure that the objectives in the City of Arvada's community plans, including the Arvada Arts and Culture Master Plan, the Arvada's Bicycle Master Plan, and the Parks Plan are incorporated into Parkway design. These objectives include expanding the arts and culture throughout Arvada and improving bicycle and pedestrian access (i.e., reducing barriers to access).*
- *The design should include provisions for an access road from the northern side of the Leyden Rock neighborhood, along the Parkway, to the Highway 72 interchange. The access road could:*
 - *Provide residents with an additional escape route if the area was threatened by a natural or man-made disaster.*
 - *Provide an alternative route for access by first responders in the event that 82nd Street is blocked by flood, fire, or accident.*
 - *Be slaved to the Parkway, or a separate roadway. Additionally, it could be tolled or un-tolled.*
 - *Increase utilization of the Parkway by giving Leyden Rock Residents access they would not otherwise have. The increase in tollway utilization could be significant.*
 - *Reduce traffic on Indiana and delay the need for expansion on that roadway.*
 - *Reduce local opposition to the Parkway. The City of Arvada may need to consider partnering with the Authority in this effort since the access road would benefit and work towards many of the City's priorities.*
- *JPPHA should ensure the objectives of all Master Plans for the county and municipalities adjacent to the Parkway are included in the final design.*

Recommendations with Mixed Levels of JPAC Support

These recommendations did not receive full support, but JPAC members would like to submit them and ask that the JPPHA Board consider the various perspectives represented for each recommendation.

- *JPPHA should change the alignment of the Jefferson Parkway to go up Highway 93 instead of Indiana Street to avoid conflict regarding public health and contaminants from Rocky Flats; the west side of Rocky Flats is less contaminated than the east side.*
 - *A majority of the JPAC does not support this recommendation because it is outside the scope of this group and the design decisions have been established.*
 - *Other members of the JPAC support this recommendation because it would avoid the controversy of stirring up Rocky Flats contaminants.*
- *JPPHA should utilize Indiana Street as the northbound lanes of the Parkway and construct the new southbound lanes in the Rocky Flats right-of-way (from west 96th Avenue north to Highway 128). A Parkway entrance/exit could be provided at 96th Avenue onto Indiana Street.*
 - *A majority of the JPAC does not support this recommendation because they believe it would take away transportation opportunities from local residents. These members*

- oppose the idea of taking away access to a public road. Additionally, people traveling from east of Indiana Street would not have access.*
- *A minority of the JPAC supports this recommendation because they believe that very few people will use the Parkway if they have the option to use Indiana Street. Additionally, they believe that the reuse of an existing right-of-way and the necessity to only add two lanes to Indiana Street would substantially decrease the cost of construction.*
 - *JPPHA should sponsor an independent review of public health impacts by a qualified national institution that is independent of the Department of Energy (e.g., the National Academy of Sciences). The independent reviewer should assess risks and conclusions surrounding public health impacts.*
 - *A majority of the JPAC does not support this recommendation because they question the necessity of conducting a retrospective review and believe it would be redundant.*
 - *Others support this recommendation, emphasizing the importance of clarifying the public health impacts associated with Rocky Flats.*