

## ESTABLISHING CONTRACT FOR THE JEFFERSON PARKWAY PUBLIC HIGHWAY AUTHORITY

This ESTABLISHING CONTRACT FOR THE JEFFERSON PARKWAY PUBLIC HIGHWAY AUTHORITY (“Contract”) is made and entered into effective this 30th day of \_May, 2008, pursuant to Colo. Const. Art. XIV, Sec. 18(2), title 30, C.R.S. title 31, C.R.S., appropriate municipal charter provisions, and part 5 of article 4, title 43, C.R.S. by and among the CITY OF ARVADA, a Colorado municipal corporation; the COUNTY OF JEFFERSON, a political subdivision of the state of Colorado; and the CITY AND COUNTY OF BROOMFIELD, a Colorado municipal corporation (singularly or collectively “the Governmental Unit(s)” or “the party(ies)”) .

### RECITALS

WHEREAS, the large population and population growth within the Denver metropolitan region, the substantial and growing demand for construction of a beltway around the Denver metropolitan region to facilitate traffic movement and the inadequacy of current transportation facilities to meet the traffic demand, the need to coordinate planning and construction of beltways and other transportation improvements to serve regional needs, and the limited availability of state and federal funds for such purposes, have caused the Colorado general assembly to enact the “Public Highway Authority Law” in part 5 of article 4, title 43, C.R.S. (“the Act”); and

WHEREAS, it is the stated intention of the Colorado general assembly that public highway authorities be formed to finance, construct, operate and/or maintain all or a portion of a beltway or other transportation improvements in the Denver metropolitan region which, because of the cost thereof and the location thereof in the jurisdiction of more than one municipality or county, cannot feasibly be financed, constructed, operated or maintained by a municipality or county acting alone; and

WHEREAS, a public highway denominated “the Jefferson Parkway” has been proposed for construction around the western perimeter of the Denver metropolitan area; and

WHEREAS, the creation of the public highway authority to finance, construct, operate or maintain the Jefferson Parkway is consistent with and is essential to the regional transportation system of the Denver metropolitan area, is in the public interest, and will promote the health, safety, and welfare of the citizens of this state by securing for them more adequate transportation; and

WHEREAS, the Originating Governmental Units comprise territory located generally on the northern and western perimeters of the Denver metropolitan area and are desirous of entering into this Contract in order to establish a public

highway authority, pursuant to the Act, to finance, construct, operate, and/or maintain the Jefferson Parkway, and to otherwise provide access to a public roadway in exchange for payment of tolls and user fees;

WHEREAS, one of the purposes of the Authority shall include facilitating the construction of the Jefferson Parkway concurrently with the construction of a connection south from the existing Northwest Parkway.

NOW, THEREFORE, in consideration of the mutual promises and benefits herein expressed, and for other good and valuable consideration, the receipt and sufficiency of which is hereby freely acknowledged, the Originating Governmental Units hereby covenant and agree as follows:

## DEFINITIONS

As used in this Contract, unless the context otherwise requires:

“Act” means the Public Highway Authority Law, in part 5 of article 4, title 43, C.R.S.

“Advisory Committee” means the Jefferson Parkway Executive Advisory Committee, as more specifically defined in this Contract, and/or other advisory committees established from time to time by the Board pursuant to Section 43-4-505(3)(h) of the Act.

“Alternate Director” means a person serving as such pursuant to Section 4.c. hereof, who shall have the powers, privileges and duties of a Director in the circumstances described in Section 4.

“Authority” means the Jefferson Parkway Public Highway Authority, a body corporate and political subdivision of the State of Colorado created pursuant to this Contract and the Act.

“Board” means the Board of directors of the Authority.

“Bond” means any bond, note, interim certificate, contract or other evidence of indebtedness of the Authority authorized by the Act.

“Bylaws” shall mean those bylaws adopted by the Board and as, from time to time, amended by the Board.

“Construct” or “Construction” means the planning, designing, engineering, acquisition, installation, construction and reconstruction of the Jefferson Parkway.

“Contract” means this Establishing Contract for the Jefferson Parkway Public Highway Authority, as amended from time to time in accordance herewith.

“Corridor” means the right-of-way acquired or to be acquired for the Jefferson Parkway, including such additional land acquired or to be acquired by the Authority in furtherance of its purposes hereof.

“County” means any county organized under the laws of the State, including any city and county.

“Director” means a voting member of the Board and shall include a qualified Alternate Director.

“Division” means the division of local government in the department of local affairs of the state.

“Jefferson Parkway” means a beltway or other transportation improvement located in the Denver metropolitan region, which generally circumscribes the western perimeters of the Denver metropolitan region, and which will be primarily designed for regional traffic movement. The Jefferson Parkway may, as the Board determines, consist of multi-modal improvements, including, but not limited to, paving, grading, landscaping, curbs, gutters, culverts, sidewalks, bikeways, lighting, bridges, overpasses, underpasses, rail crossing, frontage roads, access roads, interchanges, drainage facilities, mass transit, park-and-ride facilities, toll collection facilities, service areas, service plazas, administrative or maintenance facilities, buildings, conduit, gas, electric, water, sewer, telecommunications and fiber, and other utilities located or to be located in the rights-of-way for a public highway, and other real or personal property, including easements, rights-of-way, and other interests therein, relating to the financing, construction, operation, or maintenance of a public highway.

“Meeting” means the regular or special meeting of the Board.

“Member” means a municipality, county or city and county that has granted a voting Director on the Board.

“Municipality” has the same meaning as that provided in Section 31-1-101(6), C.R.S.

“Originating Governmental Unit” means the County of Jefferson, the City of Arvada and the City and County of Broomfield. Originating Governmental Units are Members.

“Person” means any natural person, corporation, partnership, association, or joint venture, the United States of America, or any Governmental Unit or Party.

“Revenues” means any tolls, fees, rates, charges, assessments, contributions, or other income and revenues received by the Authority.

“State” means the state of Colorado or any of its agencies.

## COVENANTS AND AGREEMENTS

1. Establishment and Denomination of Public Highway Authority. The Governmental Units hereby create and establish a public highway authority denominated “the Jefferson Parkway Public Highway Authority.”

2. Purpose. The purpose of the Authority shall be to finance, construct, operate, and/or maintain the Jefferson Parkway, and in this regard to carry out all or a portion of those functions or activities provided in this Contract or permitted by the Act or permitted by other state or federal laws, except as specifically limited by this Contract. It is the Authority’s intent to serve as an enterprise, as such term is defined in the Colorado Constitution, Article X, Sec 20(2)(d), and in furtherance thereof, to serve as a government-owned business, engaged in the business venture of providing roadway transportation and related activities in exchange for the payment of fees.

3. Powers. The Authority, by and through the Board, shall possess all the powers, privileges and duties permitted by the Act and any other applicable law, except as specifically limited by this Contract.

4. Establishment and Operation of Board of Directors. There is hereby established the Board, in which all legislative power of the Authority is vested.

a. Each Member shall have the right to appoint one Director to the Board, who shall be, at the time of the appointment and throughout such Director’s tenure on the Board, an elected official of the legislative or governing body of the Member. Such appointment shall be evidenced by notification, in writing, to the Authority by the chief elected official of each Member. Each Director shall serve at the pleasure of such Governmental Unit and may only be removed or replaced by the Member that appointed such Director. The Board shall elect a chairman, vice chairman and treasurer, each of whom must also be a Director, who shall have such powers and responsibilities as provided in the Bylaws and shall serve at the pleasure of the Board. The Board shall also select a secretary, who may be but need not be a Director, who shall maintain the records and files of the Board and the Authority, and who shall serve at the pleasure of the Board.

b. The Act provides that the State of Colorado may join in this Contract. In the event the State of Colorado joins in this Contract, the State shall have one Director on the Board.

c. Each Member and the State of Colorado, should it join in this Contract, may, from time to time, designate, in writing, an Alternate Director, who shall possess the same qualifications as a Director and who shall, in the absence of that Member's Director, be entitled to exercise the voting power of that Director.

d. The Board may act by motion and/or resolution, and the actual attendance of a majority of Directors of the Originating Governmental Units at a regular or special meeting of the Board shall constitute a quorum. The vote of a majority of Directors at a regular or special meeting of the Board at which a quorum is present shall be required to constitute action by the Board.

e. The Board may, by majority vote, enact bylaws to govern its operation and may amend them from time to time.

f. Each Originating Governmental Unit Director shall be entitled to two (2) votes. The Director for any subsequent Member of the Authority shall have one (1) vote.

g. Directors, Alternate Directors,) nonvoting representatives and officers (excepting a secretary who is not a Director) of the Board shall serve without compensation from the Authority, but the Board may reimburse such persons for actual, documented expenses upon terms and procedures established by the Board.

5. Participation Fees. A one-time participation fee of \$100,000 shall be paid by or on behalf of the County of Jefferson. A one-time participation fee of \$100,000 shall be paid by or on behalf of the City of Arvada. A one-time participation fee of \$100,000 shall be paid by or on behalf of the City and County of Broomfield. The participation fees, having been paid to the Authority and documented, may be refunded by the Authority at a later date upon a majority vote of the Directors. The participation fees of those later made parties shall be determined by the Board and paid and credited as provided by the Board.

6. The Originating Governmental Units acknowledge the prior existence of the IGA by and between the City Of Arvada and the Jefferson Center Metropolitan District (JCMD) (attached as Exhibit A) which relates to the conveyance of certain ROW within the service area of JCMD for the benefit of the Jefferson Center Parkway. The Authority shall not adopt or impose any impact fee in connection with any capital improvement on any properties within the JCMD District Boundaries without the concurrence of JCMD. Further, the Authority agrees to abide and comply with the time requirements as set forth in Paragraph 6.0 of said Parkway ROW IGA.

7. Non-Voting Representatives. The Board may, in its bylaws, establish associate and affiliate non-voting representatives including but not limited to a representative from the regional transportation agency, the air quality control commission, and the regional planning commission as set forth in 43-4-504, C.R.S.

8. Meetings. Regular meetings of the Board shall be held at such time, on such day, and at such hour as the Board shall from time to time establish. Special meetings of the Board may be held at any time at any place within the Denver Metropolitan region, either upon 24 hours' written notice delivered to the home or place of employment of each Director, unless such notice be waived in writing by a Director.

9. Boundaries and Alignment. The boundaries of the Authority are hereby designated and established generally as one quarter mile on either side of the proposed centerline of the Jefferson Parkway, except as otherwise depicted on the attached sketch Exhibit B and incorporated herein by reference, and shall not include any areas within the jurisdiction of any other Public Highway Authority organized under the Act. As regards the portion of the Boundary adjacent to the Rocky Flats National Wildlife Refuge, the Boundary shall be Indiana Street Right of Way and the 300 feet immediately to the west of the west edge of the Indiana Street Right of way. Boundaries may be changed from time to time by a majority vote of the Board and the concurrence of the Member wherein the boundary change is proposed. The Board shall decide the specific alignment of the Jefferson Parkway by majority vote and concurrence of the member wherein the alignment is proposed.

10. Land Donation. Upon application to the Board, all Originating Governmental Units that dedicate land for the Jefferson Parkway shall be reimbursed for all reasonable costs associated with the acquisition of the land. Any Member that dedicates land for the Jefferson Parkway may apply to the Board for reimbursement of the reasonable cost of the land, which the Board may reimburse on a case by case basis.

11. Right-of-Way Dedication. Each Member which is a municipality agrees to require dedication of land then currently designated by the Authority as being within the corridor upon annexation of such land to that Governmental Unit. In requiring right-of-way dedication for the Jefferson Parkway, the Members shall not be required by this Contract to compensate a property owner for the Jefferson Parkway right-of-way. If a Member is concerned that a required dedication may create a valid claim for compensation by the owner of the annexing land, the Member may notify the Authority of its concern and the Governmental Unit shall not be obliged to proceed with the requirement of that dedication until and unless the Authority extends the indemnification provided in Paragraph 21 hereof to the Member in connection with requiring dedication.

12. Facility Design. To the extent permitted by law and this Establishing Contract, all decisions relating the right-of-way acquisition and the design and construction of the Jefferson Parkway, including, without limitation, the provision or non-provision of slip ramps, interchanges, and grade separations, shall be subject to the exclusive control of the Authority. The Authority will submit its design plans for the Jefferson Parkway to each Member for review and comment.

13. Term. This Contract shall commence on the date of its full execution by the Originating Governmental Units, and shall continue in perpetuity, or until this Contract is terminated by the affirmative two-thirds vote of the Board, or until the Authority consists of fewer than two Originating Governmental Units.

14. Withdrawal. Any Member may request the Board to consider its withdrawal from participation in the Authority by notifying the Board in writing of its intent to do so. Unanimous consent of the Board is required for approval of said withdrawal so long as two Originating Governmental Units continue to participate in the Authority. However, no such termination, dissolution or withdrawal shall be effective until and unless satisfactory provisions have been made to discharge all the obligations of the Authority, including any Bonds issued or assumed thereby, in a manner that will protect the rights and interest of the holders of such obligations, including Bonds of the Authority.

15. Distribution, Disposition, or Division of Assets. Subject to the provisions of this paragraph and without other limitation of the powers of the Board established in law or this Contract, the Board may at any time make such decisions as it deems appropriate in connection with distribution, disposition or division of assets of the Authority. Provided, however, in all cases, the fixed assets of the Authority shall be distributed to the Member in which the fixed assets are situated, and fixed assets located in both a municipality and a county, shall be distributed to the municipality and liquid assets net of any obligations of the Authority shall be distributed to each Governmental Unit in proportion to the amount of participation fee made to the Authority by or on behalf of each Member.

16. Amendments. This Contract contains all of the terms agreed upon by and among the Members. Any amendments or modifications to this Contract must be reduced to writing and executed by all the Members to be valid and binding.

17. Eminent Domain. The Authority may exercise the power of eminent domain as provided in Section 43-4-506(1)(h) of the Act.

18. Addition of Parties. The Board may act to include additional parties to this Contract upon such terms and conditions as it deems appropriate. Provided, however, any decision by the Board to include additional parties shall be subject to and conditioned upon amendment of this Contract by the unanimous, written

agreement of the Originating Governmental Units, and shall be further subject to compliance with the provisions of the Act.

19. Successor to Prior Entity. The Authority may be successor in interest to the “Jefferson Parkway Non-Profit Foundation” formed in 2002 to perform a feasibility analysis of the Jefferson Parkway pursuant to Section 7-121-101, *et seq.* C.R.S., and shall be entitled to all of its assets, rights and privileges, and may assume all contracts, obligations and liabilities thereof as of the date of the execution of this Contract.

20. Reliance. The Originating Governmental Units acknowledge and agree that each is relying on the performance of the other(s) under this Contract, and that all actions or changes of positions undertaken pursuant thereto are made in such reliance.

21. Indemnification. The Authority shall indemnify and defend each Director, officer and employee of the Authority in connection with any claim or actual or threatened suit, action, or proceeding (civil, criminal, or other, including appeals), in which he or she may be involved in his or her official capacity by reason of his or her being or having been such a Director, officer or employee, or by reason of any action or omission by him or her in any such capacity, and shall pay any judgment resulting therefrom, except any liability arising from criminal offenses or willful misconduct or gross negligence. Such indemnification and duty to defend in either event shall be subject to and limited by the resources of the Authority available for such purposes, including available insurance coverage, which the Authority shall act in good faith to obtain and maintain. This indemnification shall not apply to any suit brought by the Authority as plaintiff or third-party plaintiff, or to any suit brought by a Member to enforce the terms of this Contract, excepting a suit brought solely to enforce this indemnification according to its terms.

22. No Obligations. No Bond or other obligation of the Authority shall be deemed to be an obligation or indebtedness of any Member.

23. Non-Impairment. Nothing in this Contract shall be deemed to restrict, modify or otherwise impair the powers of any Member in any manner, including any separate or discrete actions which may be taken by any Member relating to the financing, construction, operation or maintenance of the Jefferson Parkway.

24. Severability. If any provision of this Contract or the application thereof to any Person, entity or circumstances, is held invalid, such invalidity shall not affect other provisions or applications of this Contract, which can be given effect without the invalid provision or application, and to this end the provisions of this Contract, and each and every provision thereof, are declared to be severable.



25. Applicable Laws. This Contract shall be governed by and construed in accordance with the laws of the State of Colorado.

26. Assignability. No Member to this Contract may assign or transfer any of its rights or obligations hereunder without the prior written unanimous consent of the Originating Governmental Unit(s) that is a nonassigning Party (ies) to this Contract.

27. Binding Effect. The provisions of this Contract shall bind and shall inure to the benefit of the Member(s) and to their respective successors and permitted assigns, if any.

28. Enforcement. The Member(s) agree and acknowledge that this Contract may be enforced in law or equity, by decree of specific performance. In the event of a final judgment that a Member acted arbitrarily and capriciously or in bad faith in breach of this Contract, the Court shall award attorneys fees to the other Parties.

29. Counterpart Execution. This Contract may be executed in several counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

CITY OF ARVADA

\_\_\_\_\_  
Robert G. Frie, Mayor

Attest:

\_\_\_\_\_  
City Clerk

Approved as to Form:

\_\_\_\_\_  
Christopher K. Daly, City Attorney

COUNTY OF JEFFERSON

\_\_\_\_\_  
Chair

Attest:

\_\_\_\_\_  
Clerk and Recorder

Approved as to form:

\_\_\_\_\_  
County Attorney

CITY AND COUNTY OF BROOMFIELD

\_\_\_\_\_  
Mayor

Attest:

\_\_\_\_\_  
City Clerk

Approved as to form:

\_\_\_\_\_  
City and County Attorney

EXHIBIT A

Executed Arvada/JCMD IGA to be inserted here

EXHIBIT B

Boundary Map to be inserted here.