

**BOARD OF COUNTY COMMISSIONERS BRIEFING PAPER**

**Topic: Jefferson Parkway Public Highway Authority – Withdrawal Agreement regarding Withdrawal of Broomfield from the Authority**

**Presented by: Kym Sorrells, County Attorney’s Office**

**Date: 10/22/2024**

For Information

For Discussion/Board Direction

Consent to  
Place on Business/  
Hearing Agenda

**Issue:** Jefferson County is party to an intergovernmental agreement between the City & County of Broomfield, the City of Arvada, and Jefferson County that formed the Jefferson Parkway Public Highway Authority (JPPHA). Broomfield has requested to withdraw from the Parkway. Staff will present the terms of the proposed withdrawal for the Board’s consideration. Additionally, due to the anticipated withdrawal of Broomfield, Jefferson County’s share of the JPPHA 2024 operating budget will increase by \$6,750 for a total contribution of \$26,250 by Jefferson County.

**Background:** The JPPHA was formed by the City and County of Broomfield, Jefferson County, and the City of Arvada on May 15, 2008, in order to build a parkway to connect Highway 128 in Broomfield to Highway 93 in unincorporated Jefferson County. The three parties then entered into an Amended and Restated Establishing Contract (Establishing Contract) dated October 4, 2010. The JPPHA is a separate and distinct government entity with the three parties as the originating government units. The parkway has been proposed to be constructed along 12 miles of public and private property. Since 2008, the Authority has purchased private property interests and the easternmost 300 feet of the Rocky Flats National Wildlife Refuge. However, Broomfield owns some of the land needed to build the parkway but has not yet transferred that land to JPPHA.

In early 2019, Broomfield requested that the JPPHA conduct soil sampling along the Right-of-way (ROW) adjacent to Rocky Flats, which it did in mid-2019. One of the soil samples detected 264 pCi/g (picocuries per gram) of Plutonium (Pu) 239/240, which exceeds the remediation standard from the Rocky Flats Closure Plan as stated in the Closure Legacy Report. Even though subsequent testing revealed no other soil samples that exceeded the remediation standard, Broomfield voted on February 25, 2020, to give JPPHA notice of its intent to withdraw from the Jefferson Parkway Public Highway Authority.

The Establishing Contract allows a party to withdraw from the JPPHA, but it requires

that the JPPHA board, made up of members from each of the three governing bodies, unanimously consent to the terms of withdrawal before a member is permitted to leave. Further, the Establishing Contract states that no “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.”

In 2021 and into 2022, Broomfield, Arvada and Jefferson County, through their attorneys and on behalf of their respective clients, attempted to come to mutually agreeable terms of withdrawal that each party could consent to in order for Broomfield to withdraw from JPPHA. On June 1, 2022, Arvada and Jefferson County filed a lawsuit against Broomfield for breach of contract, among others, regarding Broomfield’s request to withdraw from JPPHA. Broomfield filed a motion to dismiss the lawsuit. On November 2, 2023, the lawsuit was dismissed because it was not yet ripe—the Court found that JPPHA needed to meet, discuss the request to withdraw, decide what, if any, conditions for withdrawal would be asked of Broomfield, and give Broomfield a chance to comply with those conditions, before a lawsuit could be filed.

Negotiations continued as the lawsuit was pending and after it was dismissed. JPPHA Board meetings resumed on December 21, 2022. To date, the JPPHA board has not formally voted on Broomfield’s request to withdraw, deferring a decision on Broomfield’s withdrawal until the parties completed their negotiations. This proposed agreement, if approved by Broomfield, Arvada, Jefferson County, and the JPPHA allows Broomfield to fully withdraw from the JPPHA and settles all outstanding disputes.

### **Discussion:**

In order for Broomfield to withdraw from the JPPHA and no longer be obligated to the parkway project, the proposed terms that Broomfield must comply with in order to withdraw are:

1. Transfer Broomfield’s Right-of-way to JPPHA with a reversionary interest
  - Delayed transfer with 5-year escrow; property transfers at the end of the escrow period
  - Property transfers to JPPHA sooner if JPPHA enters into a construction agreement for the development of the parkway
  - Property reverts back to Broomfield:
    - if JPPHA is dissolved or the Establishing Contract is terminated; or
    - if, within 20 years, JPPHA does not enter into a construction agreement for the development of the parkway
2. Payment of \$636,175.34 to JPPHA

- \$400,000 contribution for 2019;
  - \$183,342 for one-third of the soil testing costs from 2019; and
  - \$52,833.34 for a 2023 contribution
3. Good faith permitting/approval decisions
- Penalty applies if action found arbitrary or capricious; \$13.2 million if project stopped; delay damages if delayed
4. Agreed-upon Environmental Mitigation and Monitoring terms that includes:
- Dust control
  - Air Quality Monitoring
  - Soil Sampling
  - Required cessation of work if an air sampling result or soil sample results hits a set level.
  - Monthly public reporting requirements and notice requirements if work is suspended because of a test result in excess of the set limits
4. Updated Reimbursement Agreement
- It has been the intent of the JPPHA to obtain reimbursement for costs incurred in the development of the parkway from the selected partner. Reimbursement would be at a later date once the facility has begun to generate a positive cash flow. Funds that the members advanced to JPPHA over the years will be reimbursed.
  - This agreement updates Broomfield’s contributions to include the payment referenced above and the value of the land.

In addition to considering these terms, the Board of County Commissioners (BCC) must consider a 2024 budget supplemental due to the increase in the annual assessment. Because Broomfield is withdrawing and will not be contributing, Jefferson County will need to pay an additional \$6,750 beyond what was originally budgeted for JPPHA for 2024.

**Fiscal Impact:**  **yes**  **no**

- Year of impact: 2024
- TABOR impact: none
- Existing grant or project: existing project
- New grant or project: no
- Requested in adopted budget: no – requesting budget supplemental
- Ongoing or one-time: Ongoing
- General Fund impact: An additional \$6,750 (bringing total to \$26,250)

- Staffing impact: none
- ARPA impact: no
- Match requirements: no
- Mandate/Contractual obligation: contractual obligation

**Revenue Limits Impact:**  yes  no

There is no impact to the County revenue limits because proceeds that will be paid by Broomfield under the Withdrawal Agreement are payable to JPPHA, not Jefferson County or Arvada.

**SPA Review:** Support, no concerns. Daniel Conway 10/15/2024

**County Attorney Review:** Kym Sorrells 10/15/2024

**Facilities Review:** N/A

**BIT Review:** N/A

**Fleet Review:** N/A

**Human Resources Review (new FTE only):** N/A

**Recommendations:** Request BCC approval to bring to future hearing business agenda the Withdrawal Agreement, which includes the First Amendment to the Establishing Contract (Ex. A), the Amended Reimbursement Agreement (Ex. B), the Escrow Agreement (Ex. C), the form of the Special Warranty Deed (Ex. D), and the Environmental Mitigation Measures (Ex. E). Also, request that BCC direct staff to include in a future hearing agenda a general fund supplemental of \$6,750 for the Operations Budget in 2024 to cover the increase in the annual assessment.

**Originator:** Kym Sorrells and Kate Newman

**Contacts for Additional Information:** Kym Sorrells; Kate Newman