



April 10, 2019

To: Finance and Administration Committee

From: Darrell E. Johnson, Chief Executive Officer

Subject: Federal Incentive Payment Program and Modified Settlement Delegation Authority for the State Route 55 Improvement Project Between Interstate 405 and Interstate 5

Overview

The Orange County Transportation Authority is implementing the State Route 55 Improvement Project between Interstate 405 and Interstate 5, which requires acquisition of property from public and private parties for the construction of freeway improvements. The Orange County Transportation Authority's ability to enter into agreements with property owners to acquire needed right-of-way in an expedited manner is necessary to assist in maintaining the project delivery schedule.

Recommendations

- A. Authorize the Chief Executive Officer, or his designee, to implement the State Route 55 Acquisition – Incentive Payment Program to acquire needed right-of-way for the State Route 55 Improvement Project, which is consistent with Federal Highway Administration and California Department of Transportation guidelines.
- B. Authorize the Chief Executive Officer, or his designee, to execute agreements to acquire needed right-of-way in accordance with the modified settlement delegation authority for the State Route 55 Improvement Project.

Background

The State Route 55 (SR-55) Improvement Project between Interstate 405 (I-405) and Interstate 5 (Project) is part of Project F in the Measure M2 (M2) freeway program which will construct an additional high-occupancy vehicle lane in each direction and add one general purpose lane in each direction.

On September 11, 2017, the Orange County Transportation Authority (OCTA) Board of Directors (Board) authorized the negotiation and execution of the cooperative agreement with the California Department of Transportation (Caltrans) for OCTA to perform right-of-way (ROW) support services for the Project and authorized OCTA staff to initiate discussions with property owners and utility owners, make offers, and execute agreements for the acquisition of all necessary real property interests and necessary utility relocations.

OCTA has adopted Real Property Department Policies and Procedures (RPDPP) to properly handle the acquisition of property rights. The RPDPP incorporates requirements set by the Uniform Relocation Assistance and Real Property Acquisition Policies Act (Uniform Act). The Uniform Act was enacted by the federal government to ensure real property is acquired, and that relocation of persons, businesses, and personal property is performed in an equitable, consistent, and equal manner. The RPDPP also incorporates State of California laws and regulations enacted to provide benefits and safeguards to property owners.

Discussion

The Project requires all ROW to be available to the construction contractor in January 2021. Failure to acquire and obtain possession of the needed property for the Project will create significant risk of construction contractor delay claims against the Project. ROW acquisition is a critical path activity in carrying out the Project implementation. Staff is recommending the following two actions to expedite the acquisition of property.

SR-55 Acquisition – Incentive Payment Program

In accordance with federal and state laws and regulations, statutory offers for purchase will be made for an amount established as just compensation which shall be determined through the appraisal process. Pursuant to these laws, OCTA is required to offer property owners the full amount of the appraisal. In an effort to expedite agreements with property owners, staff requests approval of the proposed SR-55 Acquisition – Incentive Payment Program (Payment Program) to acquire needed ROW for the Project (Attachment A). OCTA's Payment Program will be consistent with Federal Highway Administration (FHWA) and Caltrans-adopted guidelines, as shown in the Caltrans memorandum (Attachment B).

The Payment Program will provide an incentive to all property owners that execute an agreement within 60 days of the first written offer. The Payment Program incentive will allow payment of a lump sum of 20 percent above the appraised value, with a minimum payment of \$1,000, and a maximum payment of \$100,000 for each acquisition. The Payment Program is intended to help maintain the Project's delivery schedule, reduce the possibility of impasses in negotiations with property owners, and reduce Project legal and administrative costs in trying to reach settlements. Considering fluctuating cost trends for real estate and construction labor and materials, as well as legal expense and Project delay cost risks associated with eminent domain, it is in the interest of the public and OCTA to use any method available to produce transportation projects quickly with as little reliance on eminent domain as possible.

Recent studies by FHWA on the use of incentive payments on transportation projects demonstrate that incentive payments can be effective in decreasing the time to acquire needed ROW. Recently, OCTA used incentive payments successfully on the I-405 design-build (DB) project. In 2013, Caltrans District 12 was the first agency to implement this type of incentive program in California on the State Route 91 westbound widening project from SR-55 to Tustin Avenue. Caltrans was successful in acquiring parcels for the project as a result of the incentive payment. OCTA has requested FHWA and Caltrans to recommend that OCTA implement the Payment Program for the Project using a 20 percent incentive payment principle. Upon receiving confirmation from Caltrans and FHWA to implement OCTA's request, staff will proceed with making offers to the owners which include the incentive payment policy.

SR-55 Acquisition Modified Settlement Delegation Authority

A second method recommended to expedite the acquisition of property to help maintain the Project's delivery schedule is to implement modifications to the existing Board-approved settlement delegation authority thresholds approved in the RPDPP. The requested modification would be related to ROW acquisition, negotiation, and eminent domain only for the Project. The proposed modifications authorize the Chief Executive Officer (CEO) to approve a settlement when the difference between the approved appraisal and the proposed settlement is no more than 50 percent over the approved appraisal, and no more than \$500,000. This is an increase in the settlement authority of \$250,000 from the existing policy. The CEO will also be authorized to approve a settlement when the difference between the approved appraisal and the proposed settlement is more than 50 percent over the approved appraisal, but not more than \$100,000. This is an increase in settlement authority of \$75,000 from the existing policy. This \$100,000 threshold is intended to resolve issues

for smaller-valued parcels. A comparison of the existing settlement delegation authority to the proposed Project-related settlement delegation authority is shown in Attachment C. The Project requires OCTA to enter into dozens of ROW agreements with property owners and dozens of settlement agreements with businesses over the next three years. The modifications to the settlement authority are intended to allow staff to react more quickly to reach a resolution of issues with property owners and reduce administrative and legal costs of lengthy negotiations. Based on the cost estimates for the Project, it is anticipated that a majority of the appraised values and subsequent ROW agreements with property owners will fall within the range of the requested modified Project-only settlement delegation authority. All proposed settlements will still require legal review and written justification that the proposed settlement is fair and reasonable.

It is critical to acquire as much ROW as possible prior to the beginning of construction, as shown in the ROW delivery schedule (Attachment D). OCTA has successfully implemented similar modifications to the delegation authority during negotiations on the I-405 DB project. The proposed Payment Program and modifications to the existing settlement delegation authority will be useful tools to allow staff to streamline the delivery of ROW and lessen the risk for construction delays.

Fiscal Impact

The anticipated apparent costs for the Payment Program will be offset by a cost savings through a reduction in legal fees and additional administrative costs. The funding for property acquisitions is in OCTA's Fiscal Year (FY) 2018-2019 Budget and will be proposed for the FY 2019-20 Budget, Capital Programs Division, Account 0017-7519-FF101-OKS, and will be funded through M2 funds.

Summary

Staff requests the Board of Directors to authorize the Chief Executive Officer, or his designee, to implement the State Route 55 Acquisition – Incentive Payment Program and to execute agreements in accordance with the modified State Route 55 settlement delegation authority.

Attachments

- A. Orange County Transportation Authority State Route 55 Acquisition – Incentive Payment Program
- B. State of California Department of Transportation Memorandum, Dated June 12, 2014, Re: Acquisition – Incentive Payment Program
- C. State Route 55 Improvement Project Modified Settlement Delegation Authority
- D. State Route 55 Improvement Project Right-of-Way Delivery Schedule

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