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Title: A resolution authorizing the use of eminent domain to acquire real property owned by Amerco Real Estate Company needed for the Tejon Roundabout Project

Presenter:
Mike Chaves, Engineering Manager

Sponsors:

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Attachments: 1. Uhaul eminent domain resolution, 2. Exhibit A Legal Description, 3. AMERCO Parcel Vicinity Map

Date	Ver.	Action By	Action	Result
4/11/2017	2	City Council	withdrawn	Pass
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A resolution authorizing the use of eminent domain to acquire real property owned by Amerco Real Estate Company needed for the Tejon Roundabout Project

Presenter:
Mike Chaves, Engineering Manager

Summary:
The City of Colorado Springs (“City”) is responsible for providing a transportation system that allows travel in our community to be both safe and efficient. Currently, the City struggles to meet this responsibility at the intersection of South Tejon Street, Cascade Avenue, Ramona Avenue, and Cheyenne Boulevard. As a result, City Council approved the Tejon Roundabout Project.

The roadway improvements planned for the intersection will encroach on some existing residential and commercial properties. As a result, the City must acquire property from five owners for the Project. The Project team has negotiated settlements with four of the five owners. Negotiations with the fifth owner-AMERCO Real Estate Company (also known as U-Haul Real Estate Company) (“AMERCO”)-have reached an impasse.

AMERCO is the owner of a .376 acre parcel of land at the intersection of South Tejon Street and Cascade Avenue. A parcel vicinity map is attached. The need for the Property was identified during the preliminary and final design process for the Tejon Roundabout Project and approved by the Colorado Department of Transportation (“CDOT”).

The attached Resolution authorizes staff to proceed with the use of Eminent Domain to acquire a portion of the real property, two permanent easements and one temporary easement (collectively, the “Property”) from AMERCO for the Tejon Roundabout Project. Staff will continue to make all reasonable efforts to reach a negotiated settlement with AMERCO; obtaining the authority to proceed with Eminent Domain will allow the City to meet the deadlines on Project construction and to avoid financial penalties associated with the City’s receipt of federal funds for the Project.

Previous Council Action:

On October 25, 2011, City Council approved Resolution No. 177-11 to accept a grant from CDOT in the amount of \$1,579,239 that included Federal Highway Administration (“FHWA”) funds for the purpose of providing funding for design, plans, and construction of the Tejon Roundabout Project.

On March 22, 2016, City Council approved Resolution No. 29-16 authorizing the Public Works Department to enter into a Possession and Use Agreement with AMERCO to obtain possession of the Property for the Project and to continue negotiations with AMERCO in an attempt to reach a final negotiated settlement for the City to acquire the Property.

Background:

The Tejon Roundabout Project (“Project”) will convert the traffic control at the existing signalized intersection of South Tejon Street, Cascade Avenue, Ramona Avenue, and Cheyenne Boulevard to a modern roundabout. The existing intersection includes five approaches to a single point. The intersection has a fully-developed urban context, including retail, office, entertainment and residential uses in the Ivywild neighborhood. Both Cheyenne Boulevard and South Tejon Street have bicycle lanes. There is a pinch point of these bicycle lanes at the intersection in all directions, which forces bicyclists to merge into the travel lanes at the intersection rather than being able to follow bicycle lanes through the intersection.

The angles of the existing approaches are difficult for motorists to negotiate. The angle of each approach creates poor sight distance and exacerbates the difficulties of wayfinding signage and directional choice for drivers. As a result, the intersection creates considerable delay even in the absence of significant traffic volumes.

Since 2012, there have been 11 accidents at the intersection, one involving a fatality. In addition, local residents complain of near misses and episodes of road rage. A secondary consequence of the current intersection is that local drivers avoid the intersection and take “shortcuts” through nearby neighborhood streets, creating other local traffic conflicts and neighborhood concerns.

The roundabout solution at this signalized intersection will improve operations, reduce travel delay, reduce long-term maintenance costs with the removal of the traffic signal, and provide bicyclists and pedestrians safer routes through all legs of the intersection. It will also improve traffic operations and enhance the sense of community in compliance with the Ivywild Neighborhood Master Plan and the historic character of the neighborhood.

The City of Colorado Springs received environmental clearance for the Project in November 2013. The City has negotiated purchase agreements with 4 of the 5 property owners from whom land acquisition is needed.

A portion of the Property owned by AMERCO was identified as necessary to implement the proposed roadway improvements. The portion is identified as three separate interests: 0.016 acres in fee for

Right of Way; 0.039 acres for Permanent Easements; and 0.003 acres for Temporary Easements. The interests would be used in the Project for the construction and maintenance of roadway widening, drainage improvements, utilities, and sidewalk.

Section 1.4 of the Real Estate Manual states that if a project receives federal funds, all laws, regulations and guidelines of the appropriate federal agency should be followed. The Project has received federal funding from the FHWA.

Because this Project is federally funded, the City must follow the federal Uniform Relocation Assistance and Real Property Acquisition Policies Act (42 U.S.C. Chapter 61) (the "Uniform Act") and the federal regulations promulgated thereunder. The Uniform Act states that no owner shall be required to surrender possession of real property before the property owner is paid the agreed upon purchase price, or in the case of condemnation, the amount of the approved appraisal of the property is deposited with the court or the court award of compensation in the condemnation proceeding.

Following federal, state and City acquisition laws, regulations and guidelines, the City obtained an independent appraisal of the property. Based on that appraisal, CDOT, as the oversight agency for this federally-funded project, established and approved a Compensation Value for the Property. Applicable Colorado State laws and federal-aid project mandates were followed for this determination.

The City provided AMERCO with an offer to purchase the Property, but AMERCO did not respond directly to the offer. AMERCO made inquiries for additional information, and the City provided that information to AMERCO. The City has been unable to negotiate an acquisition settlement for the Property with AMERCO.

Because this Project is federally-funded and under the oversight of CDOT, the City attempted to use the CDOT Possession and Use Agreement form and the CDOT process of paying the property owner the appraised value in exchange for possession of the Property. Under the terms of the CDOT Possession and Use Agreement form, the property owner would agree that the amount tendered to the property owner in exchange for possession will be deducted from any final settlement amount, award or verdict, and in the event the final settlement amount, award or verdict is less than the amount tendered, the property owner would refund the difference to the City. The Possession and Use Agreement was sent to AMERCO April 27, 2016, but follow-up contacts with AMERCO have not resulted in a signed Possession and Use Agreement.

This item supports the City's strategic goal relating to investing in infrastructure by rebuilding the intersection, bringing pedestrian facilities up to ADA standards and eliminating an aging traffic signal.

Financial Implications:

With the acceptance of federal funds for this Project, it is extremely important to obtain possession of the Property needed for the Project so that the Project can proceed to construction within the allotted timeframe. It also is extremely important for the City to acquire the Property needed to complete the Project. If the City fails to acquire the Property, the City will be required to return \$263,750 to the CDOT/FHWA. In addition, the City's acquisition of the property interests from the four other property owners would be for naught. AMERCO will be fairly compensated for its Property, either through a negotiated settlement or a court judgment.

Board/Commission Recommendation:

N/A

Stakeholder Process:

Capital Projects Engineering staff and their consultant (CORE Engineering) have performed an extensive public involvement process for the Project. The Project team has conducted 2 public open house meetings. In addition, staff and their consultants continue to be engaged in their coordination efforts with key residential and commercial stakeholders along the Project. This effort has included a number of meetings with the Ivywild Improvement Society and individual meetings continue to take place. Capital Projects Engineering has done extensive coordination with the residential and commercial stakeholders over the last several years in order to arrive at a mutually acceptable plan for the Project. There is strong support from adjacent retail business, residents, and the Ivywild Improvement Society for this Project, as it will improve traffic operations, eliminate unsightly overhead power lines and create a gateway for the neighborhood.

Alternatives:

The City Council may approve, modify or deny approval of the attached resolution.

Proposed Motion:

Motion to Approve the Resolution Authorizing the Use of Eminent Domain for the Property Owned by AMERCO Real Estate Company Needed for the Tejon Roundabout Project.

N/A