

**Board Report**

File #: 2019-0482, **File Type:** Policy

Agenda Number: 16.

**FINANCE, BUDGET AND AUDIT COMMITTEE
SEPTEMBER 18, 2019**

SUBJECT: DELEGATION OF AUTHORITY TO APPROVE REAL ESTATE TRANSACTIONS

ACTION: APPROVE RECOMMENDATIONS

RECOMMENDATION

AUTHORIZING the Chief Executive Officer (CEO) to:

- A. ESTABLISH just compensation for the acquisition of real property based on an approved appraisal of the fair market value as long as the amount is within the overall Life of Project (LOP) budget or within the approved current annual budget if LOP has not yet been adopted;
- B. APPROVE administrative or litigated settlements (including goodwill, furniture, fixtures, and equipment, and other acquisition costs) of up to \$1,000,000 above the appraised value or 20% above the appraised value (up to \$5 million), whichever is greater, if the amount is within the overall LOP budget or within the approved current annual budget if LOP has not yet been adopted;
- C. DIRECT the CEO to report back to the Board quarterly on just compensation and/or settlements over \$500,000; and

AUTHORIZE the Inspector General to perform periodic random spot-check audit of these transactions to ensure to the Board that the system and policy are performing in the manner described in the recommendation.

ISSUE

The Real Estate Department estimates that Metro will need to acquire thousands of parcels over the next three to ten years for Measure M projects. Currently, the authority for the CEO to establish just compensation or to enter into settlement agreements is limited to \$500,000; amounts above \$500,000 require Board approval. With the current threshold, and the nature of the property rights that will be required, the number of acquisitions that will require Board approval will be significantly increased. Therefore, delegating additional authority to the CEO will expedite the acquisition process, improve the ability to deliver the properties for construction in the necessary timeframes, and avoid placing unnecessary burdens on the Board.

BACKGROUND

The Authority of the CEO to approve just compensation was increased from \$200,000 to \$500,000 in September 2003 (see Attachment A). At the time of the 2003 Board action, the parcels being acquired were generally partial acquisitions and easements that affected residential and small commercial properties. The parcels to be acquired for future Measure M projects are generally in improved, urban areas which have higher acquisition costs. In addition, the value of real property has increased significantly. In the 15 years since the threshold's last increase, there has been a 72% increase in the purchase price for a single-family home in the Los Angeles area as reported by the S&P Case-Shiller Index

In January 2018, the Board authorized the CEO to negotiate and execute project-related agreements, including contract modifications, up to the authorized LOP budget on all transit and regional rail capital projects program-wide (see Attachment B). It is unclear whether that delegation authority applies to real estate transactions, and therefore staff has continued to bring real estate transactions above \$500,000 to the Board for approval. The authorization requested in this report is intended to clarify the CEO's real estate acquisition authority.

This request for additional delegation does not include relocation costs which are determined and paid in accordance with federal and state law, as well as Metro policy. Relocation costs do not require Board approval unless they exceed the LOP or approved current annual budget. Similarly, court costs and interest are statutorily required payments that do not require board approval or delegation of additional authority. In addition, the adoption of a Resolution of Necessity to initiate eminent domain requires a 2/3 vote of the Board and cannot be delegated to the CEO.

DISCUSSION

Just Compensation

According to the Federal Uniform Act and California State law, just compensation must be established by an agency official and be no less than the approved appraisal of the fair market value. The following process is required by Federal and State law:

- Upon identification of the property requirements for the project, an independent appraiser is contracted to prepare an appraisal report to opine on the fair market value of the property interest to be acquired.
- For federally-funded projects, the appraisal must be reviewed by a second independent appraiser.
- For projects funded by the Federal Transit Administration (FTA) where the valuation is greater than \$1 million, FTA concurrence is required.
- Just compensation is established by an authorized agency official based on the amount of the approved appraisal.
- An offer of just compensation is made to the property owner to acquire the necessary property rights.

The authorization being requested herein would allow the CEO to establish just compensation based on the approved appraisal, following the process listed above, as long as it is within the LOP or

approved current annual budget.

Settlements

After an offer of just compensation has been made to the property owner, the property owner has the opportunity to provide feedback or additional information about the property or the appraisal that may impact the value. When a property owner provides credible evidence, Metro staff reviews it and may make a recommendation to enter into a settlement above the Metro appraised value. When a settlement is reached outside of the eminent domain process, it is referred to as an administrative settlement. When a settlement is reached as part of the eminent domain process, it is referred to as a litigated settlement.

Generally, administrative or litigated settlements within 10% of just compensation are considered appropriate given the range of differing appraisal methodologies and opinions. Settlements within 20% of just compensation are generally considered allowable with adequate, documented rationale which includes a comparison to the appraisal on which just compensation was established.

The authorization being requested herein would allow the CEO to approve administrative or litigated settlements (including goodwill, furniture, fixtures, and equipment, and other acquisition costs) of up to \$1,000,000 above the appraised value or 20% above the appraised value (up to \$5 million), whichever is greater, as long as it is within the LOP budget or approved current annual budget.

Currently, the FTA must review all settlements that exceed \$50,000 of just compensation. However, the FTA will approve agency-specific and project-specific agreements to increase that threshold. Staff will pursue this type of agreement with the FTA to increase the settlement approval threshold and expedite the settlement process.

The full acquisition process can be seen in the flowchart provided as Attachment C.

LOP /Approved Current Annual Budget

Real Estate prepares the property acquisition estimates and Program Management incorporates them into the annual budget until LOP is adopted, at which time the remaining real estate estimates are included in the LOP. During the acquisition process, Real Estate monitors the appraised and settlement amounts against the estimate included in the annual budget or LOP. All transactions that would cause the annual budget or LOP to be exceeded for the project will be presented to the Board for approval.

Equity Platform

Expediting the acquisition approval process will allow many property owners to be paid sooner, create more certainty in the acquisition process and permit Metro to acquire needed properties faster, thereby facilitating construction and delivery of Metro projects.

DETERMINATION OF SAFETY IMPACT

This action has no safety impact.

FINANCIAL IMPACT

This action has no financial impact.

IMPLEMENTATION OF STRATEGIC PLAN GOALS

This policy change aligns with Metro Strategic Plan Goal Five to provide a more efficient, accountable, and trustworthy governance of Metro resources.

ALTERNATIVES CONSIDERED

The Board could maintain the current CEO approval level or authorize a lesser level than recommended herein. This is not recommended as it could delay the acquisition of the properties for Measures M projects and cause schedule issues for construction and service.

NEXT STEPS

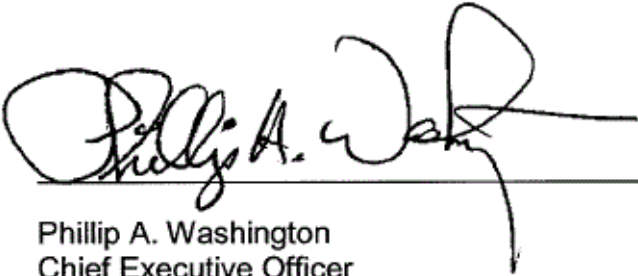
Upon approval, staff will only bring to the Board those settlements that exceed \$1 million above the appraised value or 20% above the appraised value (up to \$5 million), whichever is greater. All other transactions will be approved by the CEO. CEO will report back to the Board quarterly on just compensation and/or settlements over \$500,000. Staff will also pursue a higher settlement approval threshold with the FTA to expedite Metro's property acquisition process.

ATTACHMENTS

- Attachment A - Approval of Real Estate Transactions CEO Authority
- Attachment B - Like Authority for Construction Related Contracts
- Attachment C - Real Estate Acquisitions Flowchart

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EXECUTIVE MANAGEMENT AND AUDIT COMMITTEE
SEPTEMBER 18, 2003

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SUBJECT: APPROVAL OF REAL ESTATE TRANSACTIONS

ACTION: INCREASE AUTHORITY LEVEL OF CHIEF EXECUTIVE OFFICER FOR REAL ESTATE TRANSACTIONS

RECOMMENDATION

Increase the Chief Executive Officer's authority to approve just compensation for the acquisition of real property from \$200,000 up to an appraised value of \$500,000 plus any statutory relocation benefits and closing costs subject to the following conditions:

- (a) The parcel is required for a project that has been environmentally cleared and approved by the Board of Directors, and
- (b) Funds have been budgeted for the acquisition

RATIONALE

The Board recently increased the CEO's authority to approve just compensation for parcels acquired for the Eastside Light Rail Project and the San Fernando Valley Metro Rapidway Project when the appraised value was \$500,000 or less. This increased approval authority helped to expedite the acquisition process by reducing the time required to obtain approval of the just compensation amount and administrative settlements. Future transit projects, such as the Exposition Light Rail, the Division 10 Expansion, the Division 1 Expansion and other miscellaneous transit and administrative projects would also benefit from an expedited approval process.

By increasing the CEO's authority to approve just compensation up to \$500,000 for all projects, not just the Eastside Light Rail and San Fernando Valley Metro Rapidway projects, it is anticipated that the acquisition process will be significantly expedited. It should be noted that the Board will still retain the statutory authority to approve resolutions of necessity and conduct public hearings to acquire parcels by legal eminent domain proceedings. However, the CEO will have the authority to approve just compensation for property that will be acquired through eminent domain if the appraised value is \$500,000 or less.

An increase to the CEO's approval level is compatible with the Board's policy to delegate contract approval authority to the CEO under certain prescribed conditions. This action is in keeping with the Board policy to delegate administrative matters to staff and retain policy issues for the Board's consideration.

Additionally, with the considerable increase in property values over the past two years, an increase in the CEO's authorization approval level would be warranted. Lastly, staff requested and obtained approval from the Federal Transit Administration (FTA) to increase its prior concurrence level to \$1,000,000, an increase of \$750,000 over its standard level. This increase significantly reduced the administrative time involved in obtaining FTA's approval of federally funded acquisitions. The attached Summary Breakdown of Acquisition Levels chart illustrates the number of acquisitions for the Eastside and the San Fernando Valley projects and the acquisition levels of the parcels acquired. As noted, the majority of acquisitions fall into the under \$500,000 category.

FINANCIAL IMPACT

There would be no financial impact if this policy were implemented. The acquisition of the property is based on the appraised value and any justified settlement above the appraisal.

ALTERNATIVES CONSIDERED

The alternatives considered included recommending a lower approval level or maintaining the status quo. The CEO's current contract approval level is \$200,000. Considering the value of real estate in the Los Angeles Area, there are very few properties that are acquired in this price range. An increase to \$500,000 covers a higher number of acquisitions wherein the number of parcels that would require Board approval would be significantly reduced.

ATTACHMENT(S)

1. Summary Breakdown of Acquisition Levels.

Prepared by: Velma C. Marshall
Director of Real Estate



Don Ott
Executive Officer, Administration



Roger Snoble
Chief Executive Officer

ATTACHMENT 1

**SUMMARY BREAKDOWN OF PARCEL ACQUISITIONS
SFV METRO RAPIDWAY AND EASTSIDE GOLD LINE**

AS OF AUGUST 7, 2003

COST LEVEL	SFV BUSWAY PROJECT		EASTSIDE GOLD LINE		TOTAL	
Under \$200,000*	5		3		8	
\$200,000 to \$500,000	3		6		9	
Total Acquisition within CEO's Approval Authority		8		9		17
\$500,000 to \$1,000,000	3		1		4	
\$1,000,000 to \$5,000,000	2		3		5	
Over \$5,000,000			1		1	
Total Acquisitions Approved by Board		5		5		10
Total Acquisitions to Date		13		14		27

*Covers miscellaneous transactions-not full fee acquisitions



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Agenda Number: 31.

**CONSTRUCTION COMMITTEE
JANUARY 18, 2018**

**SUBJECT: BOARD DELEGATED AUTHORITY FOR LOP
BUDGET MANAGEMENT**

ACTION: APPROVE RECOMMENDATIONS

RECOMMENDATION

CONSIDER:

- A. RECEIVING AND FILING report on the Board delegated authority to the Chief Executive Officer (CEO) one-year pilot program authorizing negotiation and execution of project related agreements, including contract modifications, up to the Life-of-Project (LOP) budgets on Crenshaw/LAX, Regional Connector, Westside Purple Line Extension Section 1 and Section 2 Projects; and
- B. AUTHORIZING the Chief Executive Officer to negotiate and execute project related agreements, including contract modifications, up to the authorized Life-of-Project Budget on all transit and regional rail capital projects program-wide.

ISSUE

On January 26, 2017, the Board of Directors delegated the CEO authority, for a pilot period of one-year, to execute project related agreements including contract modifications up to the LOP budget on the four mega transit corridor projects currently in progress - Crenshaw/LAX, Regional Connector, Westside Purple Line Extension Section 1 and Section 2 Projects. The Board also directed staff to provide monthly reports, which included any pending project-related agreements, change orders, contract modifications and any significant changes to project contingency. This report summarizes the results and impacts of this one-year pilot program, and recommends the continuation and expansion of the program.

DISCUSSION

Metro construction projects are often fast-moving, challenging and complex. Quick decision-making is required to take advantage of opportunities to keep the project moving and avoid costly delays. These opportunities require actions to be taken by project management to direct contractors through execution of contract modifications. As Metro projects have grown in size and complexity over the years, the authorization levels delegated to staff and the CEO have not kept pace with the demands

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of the projects. On a large mega-project, the CEO's authorization level is often exceeded, thus requiring Board approval of an action.

The need to bring a contract modification to the Board for approval can add at least two months in the authorization process for all actions including time sensitive actions that may impact the project schedule critical path. By continuing the current Board delegated authority to the CEO, contractors will have the opportunity to start time-sensitive critical work immediately. Time is critical to achieving a successful project completion date and any time delay to a project can have exponential cost risks, including extended overhead payments due the contractor should the project be delayed.

In the most recent Los Angeles Construction Market Analysis Update received by the Board in September 2015, contractors working on Metro projects have indicated that the time in processing changes is a significant cost and schedule risk. As a result the contractors have had to include contingencies in their contract prices to address this risk. Any extended time in processing changes also puts subcontractors, including Disadvantaged Business Enterprises (DBEs), at risk of not receiving timely payment for work performed.

Under the current pilot program, changes and modifications are thoroughly reviewed and evaluated by a number of Program Management and Vendor/Contract Management (V/CM) executive management staff as follows:

- Up to \$500,000 by Director, Contract Administration and Project Manager;
- Above \$500,000 up to \$1M by Executive Officer, Vendor/Contract Management (V/CM) and Deputy Chief Program Management Officer;
- Above \$1M up to \$5M by Chief V/CM Officer and Chief Program Management Officer; and
- Above \$5M are elevated to the CEO for approval.

Based on the cumulative contract value, including changes and modifications executed under the Pilot Program, there was an overall increase in DBE participation across all four mega transit corridor projects during the one-year pilot period. Continuing forward, staff will review each change and modification for DBE participation to ensure opportunities for DBEs are maximized.

Results of the Program

As approved by the Board at the January 26, 2017 meeting, staff has implemented the pilot program and provided monthly reports to the Board. Staff also conducted an analysis to assess the program results and impact during the one-year pilot period.

Avoidance of Schedule Delays

Based on the data collected during the one-year pilot period, cumulatively among the four mega transit construction projects, change items were elevated to the CEO for expeditious action needed rather than waiting for the process for Board approval. This delegation resulted in projects avoiding schedule delays of up to 6 months and their related cost impacts. Metro staff has estimated that the pilot program has cumulatively generated cost savings that ranges from \$22.5M to \$30M, measured by project schedule delay avoidance. These cumulative cost savings are approximated using the average cost to the Crenshaw/LAX, Regional Connector, Westside Purple Line Extension Section 1 and 2 Projects for schedule delays range from \$3.3 to \$5 million per month for a total of \$6.6 to \$10

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million per action for a 2-month delay.

By example, in July 2017, Regional Connector Project was faced with an unexpected need to replace the three screw conveyers to the tunnel boring machine (TBM) as they had been damaged after striking unforeseen site conditions during the first of two mining drives. The tunnel boring activity is on the critical path for the entire project. The estimated cost for the task was in excess of \$1 million. Replacement was accomplished during the ten-week preparation period prior to launching the second drive. The task of overseas procurement, followed by the placement and fitting of the new screws into the TBM assembly was accomplished during the scheduled reset and made possible by the CEO authorizing the procurement and associated installation labor under the pilot program. Without the pilot program, a substantial delay to schedule, at a cost of \$5 million per month, would have been experienced owing to the lead-time connected with the development and approval of regular Board actions.

By another example, in late May 2017, Westside Purple Line Extension (PLE) Section 1 Project identified an opportunity to increase the project schedule float by advancing the excavation work at the Wilshire/La Brea Station, which is on the critical path of this project schedule. Those work activities estimated in excess of \$10 million were elevated to the CEO for review and approval. For this specific change, a prompt turn-around was needed to take advantage of the opportunity to increase the project schedule float. Any prolonged process to implement this change would have resulted in a lost opportunity to gain back float. Without the pilot program, at least two-thirds of the float savings could not have been realized. With the pilot program in place, the change was elevated for the CEO approval and for the work to begin in the field. With the pilot program in place for this specific change, 130 days were added to the project schedule float.

Additional Program Benefits

In addition to allowing the projects to expedite execution of changes rather than incurring delays due to a lengthy approval of changes, there were additional positive program benefits realized, which are summarized as follows:

- Provides staff with the flexibility, responsibility and authority to manage the fast moving projects consistent with the need for quick decision-making and approvals. This is consistent with the Inspector General Office's Capital Project Construction Management Best Practices Study that was presented to the Board in April 2016, which recommended that project/construction management staff in charge be empowered and responsible for the change control process, with support from co-located professional contract administrators. This approach creates streamlined and effective project management allowing for project decisions to be formalized quickly, thus avoiding schedule delays.
- Maintains transparency as projects are still required to seek Board approval for any action requiring LOP budget approval or increase. The Board receives project updates through detailed Monthly Project Status Reports, monthly updates on the project status to the Construction Committee, and the Annual Program Evaluation (APE) presentation.
- Keeps the big picture focus on overall project budget management as opposed to detailed change orders. Since inception of the pilot program through early December 2017, a total of fifteen (15)

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project actions were or will be addressed at the CEO level rather than requiring Board approval, one of which is pending CEO approval and execution.

- Maintain consistency with industry best practices for effective project management. The timely processing of contract modifications is a key element of project successes. With the significant increase in number and size of projects and the accelerated implementation schedule for delivering Metro's Capital Program, including the projects on the 28 by 2028 initiative presented at the November 30, 2017 Board meeting, a streamlined project management is integral to successful project delivery. This approach is consistent with other national transit agencies including San Jose, Seattle, and Denver.

ALTERNATIVES CONSIDERED

The alternative to staff recommendation is to not extend the delegated authority to other transit capital and regional rail projects program-wide. However, this is not recommended as capital projects will benefit from streamlined and efficient project management.

NEXT STEPS

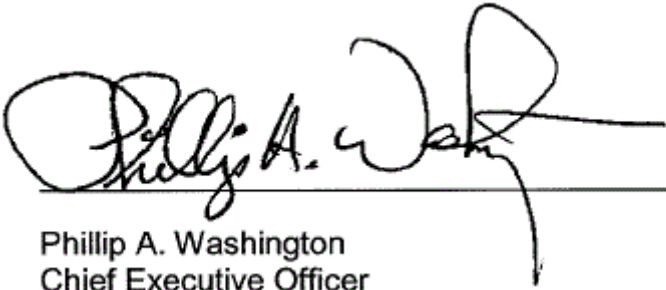
Staff will make the necessary changes to the policies and procedures to reflect this expanded delegation of authority to include all transit capital and regional rail projects program-wide. Monthly reports will be provided to the Board reflecting project related agreements and contract modifications executed under this delegated authority.

Prepared by: Brian Boudreau, Senior Executive Officer, Program Control, 213-922-2474

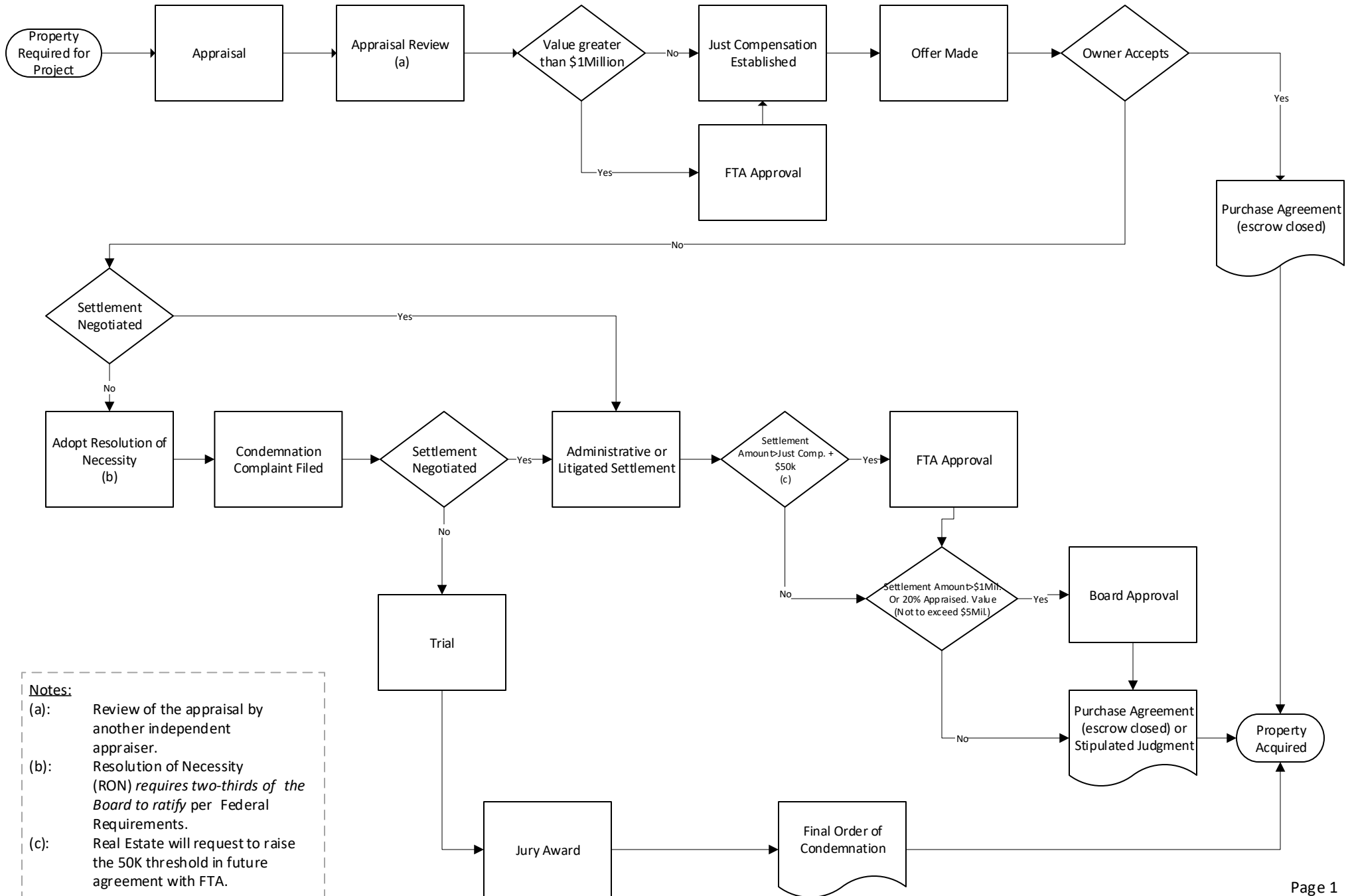
Reviewed by:

Debra Avila, Chief Vendor/Contract Management Officer, 213-418-3051

Richard F. Clarke, Chief Program Management Officer, 213-922-7557



Phillip A. Washington
Chief Executive Officer



Notes:

- (a): Review of the appraisal by another independent appraiser.
- (b): Resolution of Necessity (RON) requires two-thirds of the Board to ratify per Federal Requirements.
- (c): Real Estate will request to raise the 50K threshold in future agreement with FTA.

AUTHORIZING the Chief Executive Officer (CEO) to:

- A. ESTABLISH just compensation for the acquisition of real property based on an approved appraisal of the fair market value as long as the amount is within the overall Life of Project (LOP) budget or within the approved current annual budget if LOP has not yet been adopted;

- B. APPROVE administrative or litigated settlements (including goodwill, furniture, fixtures, and equipment, and other acquisition costs) of up to \$1,000,000 above the appraised value or 20% above the appraised value (up to \$5 million), whichever is greater, if the amount is within the overall LOP budget or within the approved current annual budget if LOP has not yet been adopted;

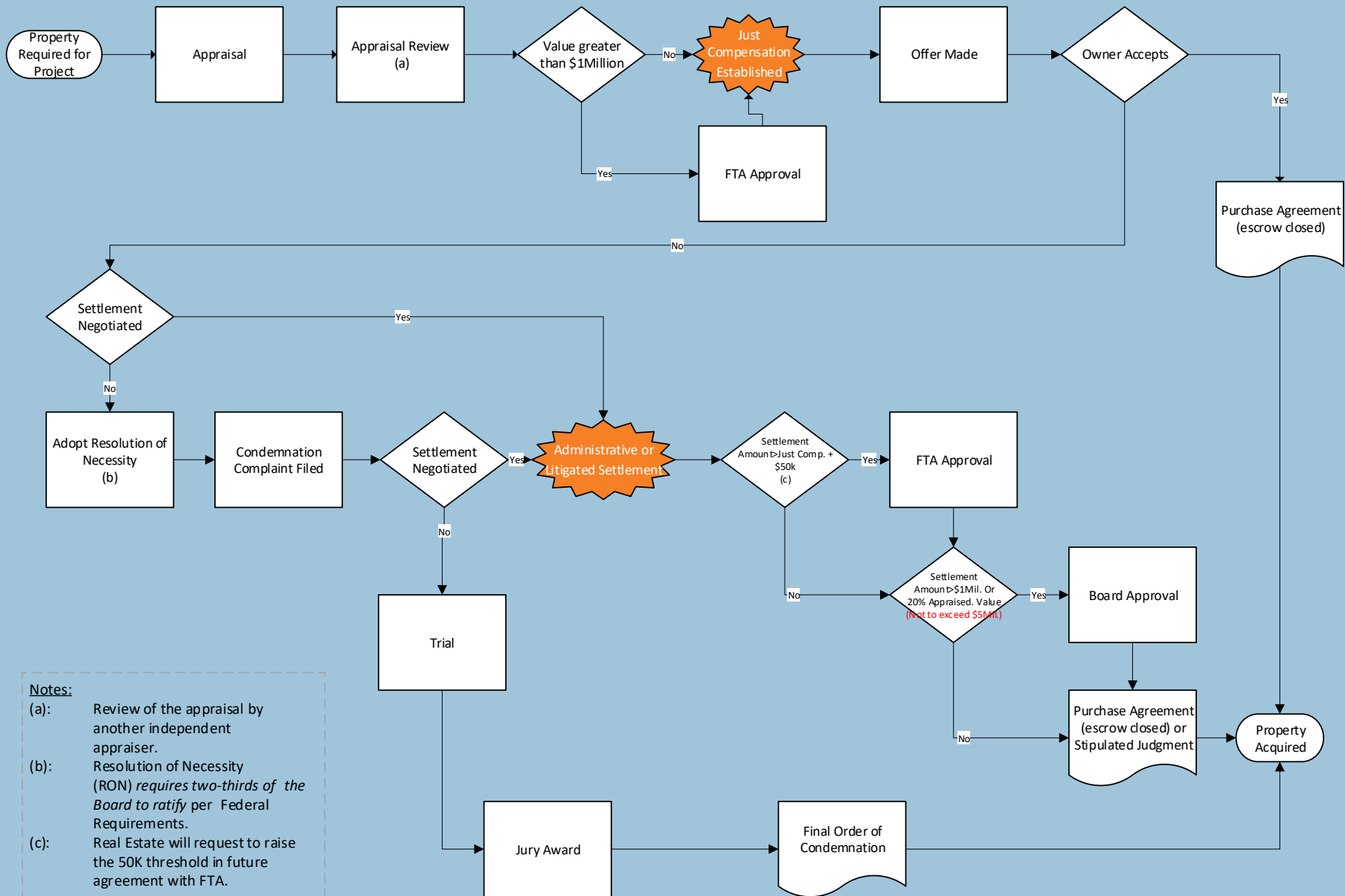


C. DIRECT the CEO to report back to the Board quarterly on just compensation and/or settlements over \$500,000; and

AUTHORIZE the Inspector General to perform periodic random spot-check audit of these transactions to ensure to the Board that the system and policy are performing in the manner described in the recommendation.



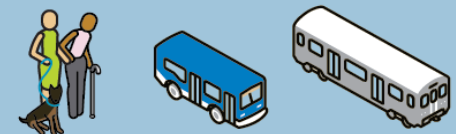
Proposed Real Estate Acquisitions Flowchart 2019-0482



Sample Authorizations

2019-0482

Appraised Value/ Just Compensation	20%> Appraised Value	\$1 Mil.> Appraised Value	CEO Settlement Authority (> of \$1 Mil. or 20% not to exceed \$5Mil.) within LOP or Budget	Requires Board Approval
\$2,000,000	\$2,400,000	\$3,000,000	\$3,000,000	No
\$20,000,000	\$24,000,000	\$21,000,000	\$24,000,000	No
\$30,000,000	\$36,000,000	\$31,000,000	\$35,000,000	Yes



- The Real Estate Department estimates that Metro will need to acquire thousands of parcels over the next three to ten years.
- Current CEO signing authority is limited to \$500,000, amounts above require Board approval.
- The number of acquisitions that will require Board approval will be significantly increased.
- Delegating additional authority to the CEO will expedite the acquisition process and avoid placing unnecessary burdens on the Board.

