State of California
DEPARTMENT OF TRANSPORTATION

Business, Transportation and Housing Agency

M e m o r a n d u m

To: CHAIR AND COMMISSIONERS

CTC Meeting: October 14-15, 2009

Reference No.: 2.5e.(2)
Action Item

From: NORMA ORTEGA
Chief Financial Officer (Interim)

Prepared by: Rachel Falsetti
Division Chief
Transportation Programming

Subject: **ALLOCATION FOR SUPPLEMENTAL FUNDS FOR PREVIOUSLY VOTED PROJECTS RESOLUTION FA-09-07**

RECOMMENDATION:

The Department of Transportation (Department) recommends that the California Transportation Commission allocate an additional $1,065,000 for the State Highway Operation and Protection Program (SHOPP) project identified below.

ISSUE:

Additional funds are needed for one previously approved project in order to pay the agreed arbitration settlement amount and close out the construction contract.

RESOLUTION:

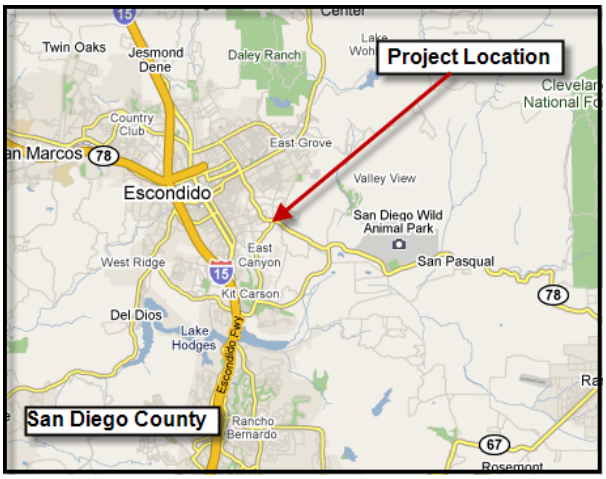
Resolved, that $1,065,000 be allocated from the Budget Act of 2009, Budget Act Items 2660-302-0042 and 2660-302-0890 to provide additional funds for the project identified below.

Project	Dist-Co-Rte	Original allocated Amount	Original Award Amount	Current Allocation	Allocation Adjustment	Revised Allocation	% Increase Above Current Allocation
1	11-SD-78	$2,750,000	$2,733,000	$3,206,300	$1,065,000	$4,271,300	33%

Project # Allocation Amount Recipient County Dist-Co-Rte Postmile	Location Project Description Reason for Supplemental Funds	EA PPNO Budget Year Item # Fund Type Program	Current Amount by Fund Type	Additional Amount by Fund Type	Revised Amount by Fund Type
2.5e. Supplemental Funds for Previously Voted Projects					**Resolution FA-09-07**
2 $1,065,000 Department of Transportation San Diego 11S-SD-78 20.7	Near Escondido, from Citrus Drive to Flora Vista Drive. Modify intersection. Supplemental funds are needed for settlement and closeout. Total Revised Amount: $4,271,300.	241901 11-0790 2003-04 302-0042 SHA 302-0890 FTF SHOPP	$288,500 $2,594,500	- -	$288,500 $2,594,500
		241901 11-0790 2006-07 302-0042 SHA 302-0890 FTF SHOPP	$33,300 $290,000	- -	$33,300 $290,000
		241901 11-0790 2009-10 302-0042 SHA 302-0890 FTF SHOPP		$107,000 $958,000	$107,000 $958,000

RECOMMENDATION:

The Department recommends that this request for $1,065,000 be approved to allow the Department to close out the contract.



PROJECT DESCRIPTION:

The project is located on State Route 78 in San Diego County near Escondido, from Citrus Avenue to Flora Vista Drive. The project consisted of adding a left turn channelization, widening shoulders, constructing retaining walls and drainage system, and replacing existing asphalt concrete pavement. All contract work was completed in December 2006.

FUNDING STATUS:

This SHOPP project was voted in June 2004 for $2,750,000 and awarded in August 2004 for $2,733,000. Two requests for supplemental funds were approved--one for $150,000 in September 2005, and one for $323,300 in August 2006. The current allocation is $3,206,300. An additional $1,065,000 in supplemental funds is needed to pay for the agreed arbitration settlement amount and close out the construction contract. This supplemental funds request results in an increase of 33 percent over the current allocation.

REASONS FOR COST INCREASE:

The contractor filed a complaint in arbitration for damages in the amount of $1,694,026 allegedly caused by delays and differing site conditions. The arbitrator ruled that the Department is liable for the damages and awarded the contractor $1,333,964, excluding attorney fees, costs and interest to be determined at a later date. Subsequent to this ruling, the Department and the contractor entered into a settlement agreement in which the Department will pay the contractor a sum of $1,500,000, plus interest at the rate of six percent per annum from October 8, 2009 until paid, to cover the award, attorney fees, and costs and interest. This settlement amount would be less than the total amount including attorney fees, costs and interest ruled by the arbitrator. The settlement agreement hinges on the Department's expedited payment of the agreed amount. The un-expended balance for this contract is $465,000. This request for $1,065,000 will be used to pay for the settlement and close out the construction contract.

FUNDING OPTIONS:

OPTION A: Approve this request for supplemental funds, as presented above, for $1,065,000 to close out the construction contract.

OPTION B: Deny this request and allow the contractor to continue the arbitration process for what is believed will be a higher final judgment cost.

RECOMMENDED OPTION:

The Department recommends that this request of $1,065,000, as presented in Option A above, be approved to allow the current construction contract to be closed out.