

Memorandum

To: CHAIR AND COMMISSIONERS
CALIFORNIA TRANSPORTATION COMMISSION

CTC Meeting: February 22-23, 2012

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

From: NORMA ORTEGA
Chief Financial Officer

Prepared by: Rachel Falsetti
Division Chief
Transportation Programming

Subject: **ALLOCATION FOR SUPPLEMENTAL FUNDS FOR PREVIOUSLY VOTED PROJECTS
RESOLUTION FA-11-18**

RECOMMENDATION:

The Department of Transportation (Department) recommends that the California Transportation Commission (Commission) allocate an additional \$6,200,000 for the State Route 87 HOV Lane (from State Route 85 to I-280) project (PPNO 0443S) in Santa Clara County.

ISSUE:

Additional funds are needed for one previously voted State Transportation Improvement Program (STIP) project in order to close out the construction contract.

RESOLUTION:

Resolved, that \$6,200,000 be allocated from the Budget Act Items 2660-301-0042 and 2660-301-0890 to provide additional funds for the project identified below.

Project	Dist-Co-Rte	Current Budget (GARVEE)	Budget Adjustment (RIP)	Revised Budget (GARVEE & RIP)	% Increase Above Current Budget
1	04-SCI-87	\$41,195,000	\$6,200,000	\$47,395,000	15.0%

Project # Allocation Amount Recipient <u>RTPA/CTC</u> County Dist-Co-Rte Postmile	Location Project Description Reason for Supplemental Funds	PPNO Program Funding Year Item # Fund Type Program Codes Project ID Adv Phase EA	State Federal Current Amount by Fund Type	State Federal Additional Amount by Fund Type	State Federal Revised Amount by Fund Type
2.5e.(2) Supplemental Funds for Previously Voted Project			Resolution FA-11-18		
1 \$6,200,000 Department of Transportation MTC Santa Clara 04N-SCI-87 0.0/5.1	In San Jose, from 0.3 mile north of Branham Lane to 0.3 mile north of Virginia Street. Construct high occupancy vehicle (HOV) lane and auxiliary lanes in each direction, construct 13 retaining walls and widen six bridges. Outcome/Output: Widen freeway from four to six lanes, construct auxiliary lanes, and widen six bridge structures Supplemental funds needed to pay for an Arbitration Agreement. Total Revised Amount: \$47,395,000	04-0443S GARVEE 2003-04 801-6801 20.20.075.600 RIP 2011-12 301-0042 SHA 301-0890 FTF 20.20.075.600 0400001059	\$41,195,000	\$712,000 \$5,488,000	\$41,195,000 \$712,000 \$5,488,000

RECOMMENDATION:

The Department recommends that this request for \$6,200,000 in Regional Improvement Program (RIP) funds be approved to allow the Department to close-out construction contract for the State Route 87 HOV Lane (from State Route 85 to I-280) project in Santa Clara County.

PROJECT DESCRIPTION:

This project is located on State Route 87, in the city of San Jose, from SR 85 to I-280. The project scope includes construction of a High Occupancy Vehicle (HOV) lane in each direction, auxiliary lanes within the project limits, 13 retaining walls and the widening of six bridges. The Santa Clara Valley Transportation Authority (VTA) prepared the contract plans and the Department administered the construction contract for the project.

FUNDING STATUS:

This STIP project was allocated \$41,195,000 in Grant Anticipation Revenue Vehicles (GARVEE) funds in January 2004. For construction purposes, this project was combined with a State Highway Operations and Protection Program (SHOPP)-funded pavement rehabilitation project (PPNO 0442E). The construction contract was awarded in December 2004. The construction started in March 2005 and was completed in May 2007.

REASONS FOR ADDITIONAL FUNDS:

After construction was completed, the Department issued the Proposed Final Estimate in August 2007. In its Exceptions to the Proposed Final Estimate, the Contractor claimed damages caused by unexpected naturally occurring asbestos (NOA) and 116 days of time related overhead (TRO) expenses. The Contractor claimed that, even though the soils containing high levels of NOA were shown on the plans, they were shown only in specific locations. The high levels of NOA were encountered in almost all the excavation locations for the roadway and the retaining walls. It should be noted that the Department paid over \$6 million in Contract Change Orders (CCOs) to compensate the Contractor for the direct cost of handling, stockpiling and reusing the NOA materials.

The Contractor submitted a claim of \$4,895,000 to the Board of Review (Board). In March 2008, the Board concluded that the Contractor is only entitled to \$6,056 which was for one day of administrative delay. The Contractor rejected the Board conclusions. In February 2009, the Contractor filed for arbitration for an amount of \$6,842,000. That amount was later amended to \$12,640,000.

On October 31, 2011, the Arbitrator awarded the Contractor compensable damages of \$4,745,724 plus attorney fees and interest. Since all the existing project contingencies have been exhausted, \$6,200,000 in addition Regional Improvement Program (RIP) funds is needed to fully settle this claim.

FUNDING OPTIONS:

OPTION A: Approve this request for supplemental funds, as presented above, for \$6,200,000 to close-out construction contract.

OPTION B: Deny this request. The Department does not believe that it would be in the best interest of the public to appeal the final award as it will result in further litigation and the Department liability will increase.

RECOMMENDED OPTION:

The Department recommends that this request of \$6,200,000, as presented in Option A above, be approved to close-out construction contract for the State Route 87 HOV Lane (from State Route 85 to I-280) project (PPNO 0443S) in Santa Clara County.