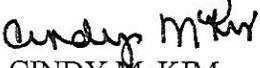


# Memorandum

To: CHAIR AND COMMISSIONERS

CTC Meeting: November 7-8, 2007

From:   
CINDY MCKIM  
Chief Financial Officer



Reference No.: 2.5e.  
Action Item

Prepared by: Rachel Falsetti  
Acting Division Chief  
Transportation Programming

Subject: ALLOCATION FOR SUPPLEMENTAL FUNDS FOR PREVIOUSLY VOTED PROJECTS  
RESOLUTION FA-07-04

## RECOMMENDATION:

The Department of Transportation (Department) recommends that the California Transportation Commission (Commission) approve Resolution FA-07-04, allocating an additional \$856,000 for two State Highway Operation and Protection Program (SHOPP) projects identified below.

## ISSUE:

Additional funds are needed for two previously approved projects in order to settle construction claims and close out the contracts.

## RESOLUTION:

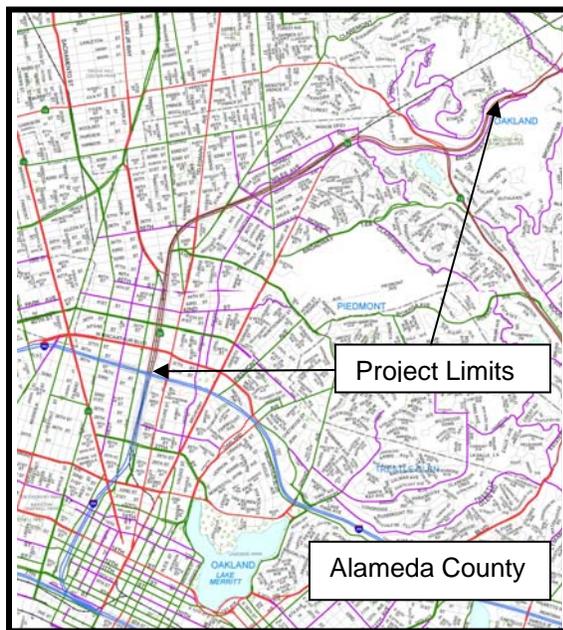
Resolved, that \$856,000 be allocated from the Budget Act of 2007, Budget Act Items 2660-302-0042 and 2660-302-0890 to provide additional funds for the projects identified below.

<u>Project</u>	<u>Dist-Co-Rte</u>	<u>Original Vote/G11 Amount</u>	<u>Original Award Amount</u>	<u>Current Allocation</u>	<u>Allocation Adjustment</u>	<u>Revised Allocation</u>	<u>% Increase Above Current Allocation</u>
1	04-Ala-24	\$4,600,000	\$4,051,000	\$4,551,000	\$425,000	\$4,976,000	9.3%
2	07-LA-5	\$5,767,000	\$6,498,000	\$6,498,000	\$431,000	\$6,929,000	6.6%

Project # Allocation Amount Recipient County Dist-Co-Rte Postmile	Location Project Description Reason for Supplemental Funds	EA PPNO Budget Year Prgm Codes Program	State Federal Current Budget Amount	State Federal Additional Allocation	State Federal Revised Total Amount
<b>2.5e. Supplemental Funds for Previously Voted Projects</b>					<b>Resolution FA-07-04</b>
1 \$425,000 Department of Transportation Alameda 04N-Ala-24 1.8/6.2	In Oakland, from Route 580 to 1 mile east of Route 13. Rehabilitate Roadway.  Supplemental funds are needed to settle construction claim and close out the contract.  (\$105,100 from remaining G-12 capacity)	0C6801 04-0056C 2003-04 302-0042 302-0890 20.20.201.121 SHOPP  0C8601 04-0056C 2004-05 302-0042 302-0890 20.20.201.121 SHOPP  0C8601 04-0056C 2007-08 302-0042 302-0890 20.20.201.121 SHOPP	\$465,000 \$3,586,000  \$57,500 \$442,500  - -	- -  - -\$49,000 -\$376,000	\$465,000 \$3,586,000  \$57,500 \$442,500  \$49,000 \$376,000
			\$4,551,000	\$425,000	\$4,976,000

**RECOMMENDATION:**

The Department recommends that this request for \$425,000 be approved to allow the Department to settle the construction claim and close out the contract.



**PROJECT DESCRIPTION:**

The project is located on Route 24 in Oakland, from Route 580 to east of Route 13, near the west entrance to the Caldecott tunnel. Route 24 is mostly an eight-lane freeway in the area of the project. This pavement rehabilitation project was to partially remove the existing asphalt pavement by grinding and then replace it with new open graded rubberized asphalt concrete (RAC) pavement along both mainline Route 24 and at several ramps. The project was to also replace existing concrete pavement slabs, where damaged.

**FUNDING STATUS:**

This SHOPP project was voted in June 2004 for \$4,600,000 and awarded in May 2005 for \$4,051,000. In October 2005, a G-12 authority request for \$500,000 was obtained in anticipation of added costs in directing the contractor to complete grinding and paving operations within the same night shift. The contract was accepted in October 2006. An additional \$425,000 in supplemental funds are needed to finalize the claim settlement with the contractor and close out the construction contract. This request for supplemental funds results in an overall increase of 9.3 percent over the current allocation.

**REASONS FOR COST INCREASE:**

The project cost increase is due to a changed method of operation to grind and pave in the same shift. The project contract documents allowed grinding existing asphalt pavement up to seven days before placing new RAC pavement. Work on the eastbound lanes was done first. However, during the time between grinding and re-paving, the Department received a large volume of public damage claims for windshield and paint damage that eventually totaled approximately \$250,000. The damages were caused by loose material that could not be completely removed by sweeping. The situation was made worse by the failing of the existing asphalt pavement material that remained after grinding and sweeping because traffic continuously broke up weakened portions of the remaining layers. As a result, when westbound work began, the contractor was directed by the Department to reduce the time between grinding and paving to three days to limit public exposure to unacceptable conditions. However, public property damage continued after the initial westbound work so the Department directed the contractor to grind and pave in the same shift for the remainder of the work. The G-12 authority funds were obtained at the time in order to pay for this change in the work.

After paving of the westbound lanes, the newly placed RAC pavement began to unravel and fail within a couple of weeks of completion. The contractor was required to maintain the westbound failing section by sweeping and patching throughout the winter of 2005/2006. The failed RAC was then removed and replaced with conventional open graded asphalt pavement in a 2.5-mile long section across all four westbound lanes and ramps. The eastbound RAC pavement did not fail.

An investigation into the failed westbound RAC pavement showed no issues with the quality assurance tests; however, several possible causes may have collectively contributed to the unraveling. Among these are changes in the contractor's work procedures that resulted from the Department's direction, low pavement surface temperature, control of material production, application of tack coat, compaction practices, and moisture in the aggregate.

The contractor pursued a claim after project acceptance that was subsequently heard by a board of review. The board recommended settlement as a result of change in character of work resulting from the Department's direction to grind and pave in the same shift. The claim amount includes payment

for the westbound pavement replacement plus interest. The recommended settlement amount exceeds the current project allocation by \$425,000.

**FUNDING OPTIONS:**

**OPTION A:** Approve this request for supplemental funds, as presented above, for \$425,000 to settle the construction claim and close out the construction contract.

**OPTION B:** Deny this request and allow the contractor to pursue the contract claim through legal action.

**RECOMMENDED OPTION:**

The Department recommends that this request of \$425,000, as presented in Option A above, be approved to allow the current construction contract to be closed out.

Project # Allocation Amount Recipient County Dist-Co-Rte Postmile	Location Project Description Reason for Supplemental Funds	EA PPNO Budget Year Prgm Codes Program	State Federal Current Budget Amount	State Federal Additional Allocation	State Federal Revised Total Amount
<b>2.5e. Supplemental Funds for Previously Voted Projects</b>					<b>Resolution FA-07-04</b>
2 \$431,000 Department of Transportation Los Angeles 07S-LA-5 28.7/47.8	In Burbank and the city of Los Angeles, from Providencia Avenue to south of Calgrove Boulevard. Replace broken slabs.  Supplemental funds are needed to pay an arbitration decision and close out the contract.  (\$45,700 from remaining G-12 capacity)	202501 07-2656 2000-01 302-0042 302-0890 20.20.201.120 SHOPP  202501 07-2656 2007-08 302-0042 302-0890 20.20.201.120 SHOPP	\$548,000 \$5,950,000	- -	\$548,000 \$5,950,000  \$37,000 \$394,000
			\$6,498,000	\$431,000	\$6,929,000

**RECOMMENDATION:**

The Department recommends that this request for \$431,000 be approved to allow the Department to pay the arbitration decision and close out the construction contract.



**PROJECT DESCRIPTION:**

The project is located on Route 5 in Burbank and Los Angeles, from Providencia Avenue to south of Calgrove Boulevard. Heavy traffic has severely deteriorated the freeway pavement over time. This rehabilitation project was to replace broken concrete pavement slabs with fast setting hydraulic cement concrete.

**FUNDING STATUS:**

This SHOPP project was voted in July 2000 for \$5,767,000. The project was awarded in October 2000 for \$6,498,000 using supplemental G-12 funds. The field construction work was completed in May 2002. A project claim went to arbitration before the Office of Administrative Hearing. An additional \$431,000 in supplemental funds are needed to pay the arbitration decision and close out the construction contract. This request for supplemental funds results in an overall increase of 6.6 percent over the current allocation.

**REASONS FOR COST INCREASE:**

A contractual dispute arose out of the replacement of cracked concrete slabs. The Department required that the contractor remove and replace at their own expense certain newly poured concrete slabs that had cracked. The contractor asserted that the cracking was due to reasons beyond their control and that the project was built according to the contract plans and specifications, so the costs should be borne by the Department. The Department argued that the contract was performance based and the contractor should bear the risk of cracking. The arbitration decision ruled against the Department in that this is a "design" based contract in which typically if there is contract compliance which results in a defect or additional costs, the State bears the risk. The arbitration decision called for the Department to reimburse the contractor for replacement of the cracked slabs, attorney fees, and interest in the amount of \$823,529.36 plus interest of \$73.15 per day. The amount exceeds the current project allocation by \$431,000.

**FUNDING OPTIONS:**

**OPTION A:** Approve this request for supplemental funds, as presented above, for \$431,000 to close out the construction contract.

**OPTION B:** Deny this request and require the contractor pursue payment from the Department through further legal action.

**RECOMMENDED OPTION:**

The Department recommends that this request of \$431,000, as presented in Option A above, be approved to pay the arbitration decision and allow the construction contract to be closed out.