

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY OF DENTON, TEXAS APPROVING A LOCAL PROJECT ADVANCE FUNDING AGREEMENT FOR VOLUNTARY LOCAL GOVERNMENT CONTRIBUTIONS TO TRANSPORTATION IMPROVEMENT PROJECTS; AUTHORIZING THE EXPENDITURE OF FUNDS THEREFOR; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the State of Texas ("State"), acting through the Texas Department of Transportation ("TxDOT") is completing a highway-related improvement generally described constructing a raised median with left turn lanes, adding right turn lanes and restriping for shared use along US 377 from SL 288 to US 377/US 380 intersection in Denton County; and

WHEREAS, the City of Denton ("City") has requested that the State allow the City to participate in said improvement by funding that portion of the improvement described as the construction of a 10-feet sidewalk addition along US 380 between Mayhill Road and the nature park in the City of Denton; and

WHEREAS, the City and TxDOT desire to enter into a Local Project Advance Funding Agreement (the "Agreement") for the improvements, in substantially the same form as attached hereto as Exhibit "A"; and

WHEREAS, the City Council finds that the Agreement is in the public interest; NOW, THEREFORE,

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. The findings and recitations contained in the preamble of this Ordinance are incorporated herein by reference.

SECTION 2. The City Manager, or his designee, is hereby authorized to execute the Agreement, in substantially the same form as attached hereto as Exhibit "A", on behalf of the City with TxDOT, and is further authorized to carry out the rights and duties of the City under the Agreement, including the expenditure of funds provided for therein.

SECTION 3. This Ordinance shall become effective immediately upon its passage and approval.

PASSED AND APPROVED this the \_\_\_\_\_ day of \_\_\_\_\_, 2017.

\_\_\_\_\_  
CHRIS WATTS, MAYOR

ATTEST:  
JENNIFER WALTERS, CITY SECRETARY

BY: \_\_\_\_\_

APPROVED AS TO LEGAL FORM:  
AARON LEAL, INTERIM CITY ATTORNEY

BY:

A handwritten signature in blue ink, appearing to read 'A. Leal', is written over a horizontal line. The signature is fluid and cursive.

CSJ #: 0135-10-057  
District #: 18-Dallas  
Code Chart #: 11400  
Project: US 380  
Limits: From SL 288 to US 377/US 380 Intersection  
County: Denton

STATE OF TEXAS           §

COUNTY OF TRAVIS       §

**LOCAL PROJECT ADVANCE FUNDING AGREEMENT FOR  
VOLUNTARY LOCAL GOVERNMENT CONTRIBUTIONS  
TO TRANSPORTATION IMPROVEMENT  
PROJECTS WITH NO REQUIRED MATCH  
ON SYSTEM**

**THIS AGREEMENT** is made by and between the State of Texas, acting through the Texas Department of Transportation, called the "State", and the City of Denton, acting by and through its duly authorized officials called the "Local Government."

**WITNESSETH**

**WHEREAS**, Texas Transportation Code, Chapter 201 and 222 authorizes the State to lay out, construct, maintain, and operate a system of streets, roads, and highways that comprise the State Highway System; and,

**WHEREAS**, Texas Government Code Chapter 791 and Texas Transportation Code §201.209 and Chapter 221, authorizes the State to contract with municipalities and political subdivisions; and,

**WHEREAS**, Texas Transportation Commission Minute Order Number 114872 authorizes the State to undertake and complete a highway improvement generally described as raising median with left turn lanes, adding right turn lanes and restriping for shared use along US 377 from SL 288 to US 377/US 380 intersection in Denton County; and,

**WHEREAS**, the Local Government has requested that the State allow the Local Government to participate in said improvement by funding that portion of the improvement described as the construction of a 10-foot sidewalk addition along US 380 between Mayhill Road and the nature park in the City of Denton, called the "Project"; and,

**WHEREAS**, the State has determined that such participation is in the best interest of the citizens of the State;

**NOW, THEREFORE**, in consideration of the premises and of the mutual covenants and agreements of the parties hereto, to be by them respectively kept and performed as hereinafter set forth, the State and the Local Government do agree as follows:

**AGREEMENT**

**1. Time Period Covered**

The period of this Local Project Advance Funding Agreement (LPAFA) is as stated in the Master Agreement Governing Local Transportation Project Advance Funding Agreements (MAFA), without exception.

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## **2. Project Funding and Work Responsibilities**

The State will authorize the performance of only those Project items of work which the Local Government has requested and has agreed to pay for as described in Attachment A, Payment Provision and Work Responsibilities which is attached to and made a part of this contract. In addition to identifying those items of work paid for by payments to the State, Attachment A, Payment Provision and Work Responsibilities, also specifies those Project items of work that are the responsibility of the Local Government and will be carried out and completed by the Local Government, at no cost to the State.

## **3. Payment of Funds**

Whenever funds are paid by the Local Government to the State under this agreement, the Local Government shall remit a check or warrant made payable to the "Texas Department of Transportation." The check or warrant shall be deposited by the State and managed by the State. The funds may only be applied by the State to the Project. If after final Project accounting excess funds remain, those funds may be applied by the State to the Local Government's contractual obligations to the State under another advance funding agreement with approval by appropriate personnel of the Local Government.

## **4. Right of Access**

If the Local Government is the owner of any part of the Project site, the Local Government shall permit the State or its authorized representative access to the site to perform any activities required to execute the work.

## **5. Adjustments Outside the Project Site**

The Local Government will provide for all necessary right of way and utility adjustments needed for performance of the work on sites not owned or to be acquired by the State.

## **6. Responsibilities of the Parties**

Responsibilities of the Parties will be under the conditions as provided for in the MAFA, without exception.

## **7. Document and Information Exchange**

The Local Government agrees to electronically deliver to the State all general notes, specifications, contract provision requirements and related documentation in a Microsoft® Word or similar document. If requested by the State, the Local Government will use the State's document template. The Local Government shall also provide a detailed construction time estimate including types of activities and month in the format required by the State. This requirement applies whether the local entity creates the documents with its own forces or by hiring a consultant or professional provider. At the request of the State, the Local Government shall submit any information required by the State in the format directed by the State.

## **8. Inspection and Conduct of Work**

Unless otherwise specifically stated in Attachment A, Payment Provision and Work Responsibilities, to this contract, the State will supervise and inspect all work performed hereunder and provide such engineering inspection and testing services as may be required to ensure that the Project is accomplished in accordance with the approved plans and

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specifications. All correspondence and instructions to the contractor performing the work will be the sole responsibility of the State. Unless otherwise specifically stated in Attachment A to this contract, all work will be performed in accordance with the Standard Specifications for Construction and Maintenance of Highways, Streets, and Bridges adopted by the State and incorporated in this agreement by reference, or special specifications approved by the State.

**9. Increased Cost**

Increased cost will be under the conditions as provided for in the MAFA, without exception.

**10. Maintenance**

Project maintenance will be under the conditions as provided in Attachment A, Payment Provision and Work Responsibilities of this agreement.

**11. Termination**

Termination of this LPAFA shall be under the conditions as stated in the MAFA, without exception.

**12. Notices**

Notices of this LPAFA shall be under the conditions as stated in the MAFA, without exception.

Local Government:	State:
City Manager Attention: Director of Engineering Services City of Denton 215 East McKinney Denton, Texas 76201	Director of Contract Services Texas Department of Transportation 125 E. 11 <sup>th</sup> Street Austin, Texas 78701

**13. Successors and Assigns**

The State and the Local Government each binds itself, its successors, executors, assigns, and administrators to the other party to this agreement and to the successors, executors, assigns, and administrators of such other party in respect to all covenants of this agreement.

**14. Amendments**

Amendments to this LPAFA shall be made as described in the MAFA, without exception.

**15. Incorporation of Master Agreement Provisions**

This LPAFA incorporates all relevant provisions of the MAFA in effect on the date of final execution of this LPAFA, unless such MAFA provision is specifically excepted in this agreement. Any conflict between the terms of the MAFA and this LPAFA shall be governed and controlled by this LPAFA.

**16. State Auditor**

The state auditor may conduct an audit or investigation of any entity receiving funds from the State directly under the contract or indirectly through a subcontract under the contract. Acceptance of funds directly under the contract or indirectly through a subcontract under this contract acts as acceptance of the authority of the state auditor, under the direction of the

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legislative audit committee, to conduct an audit or investigation in connection with those funds. An entity that is the subject of an audit or investigation must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit.

**17. Insurance**

If this agreement authorizes the Local Government or its contractor to perform any work on State right of way, before beginning work the entity performing the work shall provide the State with a fully executed copy of the State's Form 1560 Certificate of Insurance verifying the existence of coverage in the amounts and types specified on the Certificate of Insurance for all persons and entities working on State right of way. This coverage shall be maintained until all work on the State right of way is complete. If coverage is not maintained, all work on State right of way shall cease immediately, and the State may recover damages and all costs of completing the work.

**18. Signatory Warranty**

Each signatory warrants that the signatory has necessary authority to execute this agreement on behalf of the entity represented.

**THIS AGREEMENT IS EXECUTED** by the State and the Local Government in duplicate.

**THE LOCAL GOVERNMENT – CITY OF DENTON**

**THE STATE OF TEXAS**

By: \_\_\_\_\_  
Todd Hileman  
City Manager

By: \_\_\_\_\_  
Kenneth Stewart  
Director of Contract Services  
Texas Department of Transportation

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**Approved as to Form:**

City Attorney

By:  \_\_\_\_\_  
City Attorney

**ATTEST:**

Jennifer Walters  
City Secretary

By: \_\_\_\_\_  
Jennifer Walters  
City Secretary

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## Attachment A

### PAYMENT PROVISION AND WORK RESPONSIBILITIES

The Local Government will be responsible for 100% of the cost and overruns for the construction of a 10-foot sidewalk addition along US 380 between Mayhill Road and the nature park in the City of Denton

The Project cost is to be as follows:

Description	Total Estimated Amount	Federal Participation		State Participation		Local Participation	
Construction – Shared Used Path (by State)	\$757,912.00	0%	\$0	0%	\$0	100%	\$757,912.00
Direct State Cost @ 10.69%	\$81,020.79	0%	\$0	0%	\$0	100%	\$81,020.79
Indirect State Cost @ 5.27%	\$39,941.96	0%	\$0	0%	\$0	100%	\$39,941.96
<b>TOTAL</b>	<b>\$878,874.75</b>		<b>\$0</b>		<b>\$0</b>		<b>\$878,874.75</b>

Total Estimated Local Government Participation = \$878,874.75

Total Estimated Payment by the Local Government to the State prior to construction = \$878,874.75

This is an estimate only. The final amount of the Local Government participation will be based on actual costs.

#### **Maintenance Cost by the Local Government**

Upon completion of the Project, the Local Government shall be responsible for 100% of the cost and overruns for the State to maintain any required or needed maintenance work on the Project's 10-foot sidewalk addition along US 380 between Mayhill Road and the nature park in the City of Denton

#### **Construction**

The State is responsible to ensure that all construction items of work for the Project are completed in accordance with the approved plans and specifications.