

**April 28, 2022**

**Item No. 8.7.**

**Advance Funding Agreement with TxDOT for Harvey Mitchell Parkway (FM 2818) Shared Use Path**

**Sponsor:** Venessa Garza

**Reviewed By CBC:** N/A

**Agenda Caption:** Presentation, discussion, and possible action regarding a resolution approving an Advance Funding Agreement in the amount of \$126,051 between the City of College Station and the State of Texas, acting through the Texas Department of Transportation for a shared-use path on Harvey Mitchell Parkway (FM 2818) and authorizing the City Manager to execute said agreement.

**Relationship to Strategic Goals:**

- Fiscal Sustainability
- Core Services & Infrastructure
- Improving Mobility
- Sustainable City

**Recommendation(s):** Staff recommends approval of the resolution authorizing the Advance Funding Agreement and authorizing the City Manager to execute said agreement.

**Summary:** The Harvey Mitchell Parkway (FM 2818) Shared Use Path Project will extend on the south side of the road from Waxwing Lane (Jones Crossing development) to Larry J. Ringer Library (.4 miles) and will provide a connection for students and residents to commercial areas, parks, schools, and surrounding neighborhoods.

This project was submitted as a part of the Transportation Alternatives Set-Aside Program (TASA) which is a federal grant program administered by the Texas Department of Transportation (TxDOT) that provides funding assistance to local communities to help enhance bicycle and pedestrian safety and connectivity through infrastructure projects. In May 2021, City Council passed a resolution of support and commitment to fund the project, if awarded, and enter into an Advancing Funding Agreement (AFA) with TxDOT. The City was notified in March 2022 that the project would be funded and implemented through TxDOT's Design Division using Statewide Americans with Disabilities (ADA) Pedestrian Program funds.

The City is being asked to provide the minimum local match of 20% for construction that was proposed for the application submittal. Any cost overruns will be paid for by TxDOT. The total project cost is estimated at \$794,671. The City's match for the construction portion is \$126,051. Payment is due to the State sixty (60) prior to the construction contract being advertised for bids. TxDOT will manage the design and construction of the project. Construction is anticipated to begin in 2023.

**Budget & Financial Summary:** This project will be funded through the City's Street Capital Improvements Fund.

**Attachments:**

1. Resolution for Advance Funding Agreement
2. Advanced Funding Agreement for FM2818



**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COLLEGE STATION, TEXAS, APPROVING AN ADVANCE FUNDING AGREEMENT WITH THE TEXAS DEPARTMENT OF TRANSPORTATION FOR THE DESIGN AND CONSTRUCTION OF A SHARED-USE PATH ON HARVEY MITCHELL PARKWAY (FM 2818) AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE ADVANCE FUNDING AGREEMENT.**

**WHEREAS**, FM 2818 is owned and maintained by the Texas Department of Transportation; and

**WHEREAS**, any construction or improvements on Texas Department of Transportation right-of-way must be approved through the permitting process; and

**WHEREAS**, the Texas Transportation Commission passed Minute Order No. 116126, dated October 28, 2021, authorizing the State to undertake and complete a highway improvement funded through the Statewide Curb Ramp Program, including the project described herein; and

**WHEREAS**, said project will enhance bicycle and pedestrian safety for residents between area schools, neighborhoods, commercial districts, and other points of interest; and

**WHEREAS**, the City of College Station supports the design and construction of a shared use path along FM 2818; and

**WHEREAS**, the City of College Station agrees to the terms and conditions stated in the Texas Department of Transportation’s Advance Funding Agreement for the design and construction of the FM 2818 shared use path.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF COLLEGE STATION, TEXAS:**

**PART 1:** That the City Council hereby approves the Advance Funding Agreement with the Texas Department of Transportation for the design and construction of the FM 2818 shared use path improvements.

**PART 2:** That the City Council hereby authorizes the City Manager to execute the Advance Funding Agreement for the design and construction of the FM 2818 shared use path.

**PART 3:** That this resolution shall take effect immediately from and after its passage.

**ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2022.**

**ATTEST:**

**APPROVED:**

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**City Secretary**

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**Mayor**

**APPROVED:**

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**City Attorney**

CSJ #	2399-01-085
District #	17 – BRY
Code Chart 64 #	09050 – City of College Station
Project Name	FM 2818 Shared Use Path

STATE OF TEXAS       §

COUNTY OF TRAVIS   §

**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 by and through the **Texas Department of Transportation** called the “State”, and the **City of College Station**, acting by and through its duly authorized officials, called the “Local Government”. The State and Local Government shall be collectively referred to as “the parties” hereinafter.

**WITNESSETH**

**WHEREAS**, federal law establishes federally funded programs for transportation improvements to implement its public purposes, and

**WHEREAS**, Texas Transportation Code, Chapters 201 and 221, authorize 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, authorize the State to contract with municipalities and political subdivisions; and

**WHEREAS**, the Texas Transportation Commission passed Minute Order Number **116073** authorizing the State to undertake and complete a highway improvement funded through the Statewide Curb Ramp Program generally described as FM 2818 Shared Use Path (Project). A map showing the Project location appears in Attachment C, Location Map Showing Project; and

**WHEREAS**, the Local Government has requested that the State allow the Local Government to participate in said improvement by contributing a fixed amount of funds towards the Project; and

**WHEREAS**, the governing body of the Local Government has approved entering into this Agreement by resolution or ordinance dated \_\_\_\_\_, which is attached to and made a part of this Agreement as Attachment B, Resolution or Ordinance, and

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

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**NOW, THEREFORE**, in consideration of the premises and of the mutual covenants and agreements of the parties, to be by them respectively kept and performed as set forth in this Agreement, it is agreed as follows:

## **AGREEMENT**

**1. Period of the Agreement**

This Agreement becomes effective when signed by the last party whose signing makes the Agreement fully executed. This Agreement shall remain in full force and effect until all funds contributed by the Local Government have been expended on the Project described in this Agreement or unless terminated as provided below.

**2. Project Funding**

At least sixty (60) days prior to the date set for receipt of the construction bids, the Local Government shall remit its financial share as stated in Attachment A, Payment Provision and Work Responsibilities (Attachment A) which is attached to and made a part of this contract. 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” or may use the State’s Automated Clearing House (ACH) system for electronic transfer of funds in accordance with instructions provided by TxDOT’s Finance Division. The funds shall be deposited and managed by the State and may only be applied by the State to the Project.

**3. 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.

**4. Adjustments Outside the Project Scope**

The Local Government will provide for all necessary right of way and utility adjustments needed for performance of the work on sites owned or controlled by the Local Government.

**5. Responsibilities of the Parties**

The State and the Local Government agree that neither party is an agent, servant, or employee of the other party and each party agrees it is responsible for its individual acts and deeds as well as the acts and deeds of its contractors, employees, representatives, and agents.

**6. 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 government creates the documents with its own forces or by hiring a consultant or professional provider. At

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the request of the State, the Local Government shall submit any information required by the State in the format directed by the State.

**7. Interest**

The State will not pay interest on funds provided by the Local Government. Funds provided by the Local Government will be deposited into, and retained in, the State Treasury.

**8. Inspection and Conduct of Work**

Unless otherwise specifically stated in Attachment A, 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 specifications. All correspondence and instructions to the contractor performing the work will be the sole responsibility of the State.

The State and the Local Government agree that the State may, in its sole discretion, modify the Project, including scope and project limits. Such modification will not impact the Local Government’s contribution to the Project.

**9. 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.

**10. Project Maintenance**

The Local Government shall be responsible for maintenance of locally owned roads and locally owned facilities after completion of the work. The State shall be responsible for maintenance of the State highway system after completion of the work if the work was on the State highway system, unless otherwise provided for in Attachment A or existing maintenance agreements with the Local Government.

**11. Termination**

- A. This agreement may be terminated in the following manner:
  - 1. By mutual written agreement and consent of both parties;
  - 2. By either party upon the failure of the other party to fulfill the obligations set forth in this agreement; or
  - 3. By the State if it determines that the performance of the Project is not in the best interest of the State.
- B. If the agreement is terminated in accordance with the above provisions, the State will return any remaining Local Government funds after all expenses are paid in accordance with the provisions of Attachment A.

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**12. Notices**

All notices to either party by the other required under this agreement shall be delivered personally or sent by certified or U.S. mail, postage prepaid or sent by electronic mail, (electronic notice being permitted to the extent permitted by law but only after a separate written consent of the parties), addressed to such party at the following addresses:

<b>Local Government:</b>	<b>State:</b>
City of College Station ATTN: Bicycle, Pedestrian, and Greenways Planning Administrator P.O. Box 9960 College Station, TX 77842	Texas Department of Transportation ATTN: Director of Contract Services 125 E. 11 <sup>th</sup> Street Austin, TX 78701

All notices shall be deemed given on the date so delivered or so deposited in the mail, unless otherwise provided in this agreement. Either party may change the above address by sending written notice of the change to the other party. Either party may request in writing that such notices shall be delivered personally or by certified U.S. mail and such request shall be honored and carried out by the other party.

**13. Sole Agreement**

In the event the terms of the agreement are in conflict with the provisions of any other existing agreements between the Local Government and the State, the latest agreement shall take precedence over the other agreements in matters related to the Project.

**14. 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.

**15. Amendments**

By mutual written consent of the parties, this agreement may be amended in writing prior to its expiration.

**16. State Auditor**

Pursuant to Texas Government Code § 2262.154, 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 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.



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**17. 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.

<b>THE STATE OF TEXAS</b>	<b>THE LOCAL GOVERNMENT</b>
Signature	Signature
Typed or Printed Name	Typed or Printed Name
Typed or Printed Title	Typed or Printed Title
Date	Date

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## **ATTACHMENT A PAYMENT PROVISION AND WORK RESPONSIBILITIES**

The Local Government will contribute a fixed amount of \$126,051 for the Local Government's participation in the Project.

The State will perform the work for the Project. Any changes, additions, or deletions to the Project will be at the State's sole discretion.

The Project may include any combination of Federal and State funds in addition to Local Government funds. After the Local Government funds are expended, Federal and State funds will be used to complete the Project. The total amount of Local Government participation shall not exceed the fixed amount stated above.

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**ATTACHMENT B**  
**Resolution of Local Government**

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## ATTACHMENT C Location Map Showing Project

