CSJ: 0212-03-057
District #: 17
Code Chart 64#: 06100
Project: FM 158 Safety Lighting of Existing Sidewalks and Path
FHWA CFDA #: 20.205
Not Research and Development

STATE OF TEXAS §

COUNTY OF TRAVIS §

ADVANCE FUNDING AGREEMENT
FOR A TRANSPORTATION ALTERNATIVES PROGRAM PROJECT
State-Selected On-System

This Advance Funding Agreement for a Transportation Alternatives Project ("**Agreement**") is made between the State of Texas ("**State**"), acting through the Texas Department of Transportation, and City of Bryan ("**Local Government**"), acting through its duly authorized officials.

BACKGROUND

Local Government prepared and submitted to State or Metropolitan Planning Organization ("**MPO**") a nomination form for consideration under the Transportation Alternatives Program ("**TAP**") for the project, which is briefly described as FM 158 Safety Lighting of Existing Sidewalks and Path ("**Project**").

Federal law establishes federally funded programs for transportation improvements to implement its public purposes.

Federal law, 23 USC § 134 and 49 USC § 5303, requires that State and MPOs develop transportation plans and programs for urbanized areas of Texas.

Tex. Transp. Code §§ 201.103 and 222.052 establish that State shall design, construct, and operate a system of highways in cooperation with local governments.

Federal and state laws require local governments to meet certain contract standards relating to the management and administration of State and federal funds.

The Texas Transportation Commission ("**Commission**") passed Minute Order Number 114365 ("**MO**") dated September 24, 2015, awarding funding for projects in the 2015 TAP Program Call of the State, including Project.

The rules and procedures for TAP are established in 23 USC § 213, and 43 Tex. Admin. Code Subchapter 11.F.

The governing body of Local Government has approved entering into this Agreement by resolution or ordinance dated April 28, 2015, which is attached to and made a part of this Agreement as Attachment A.

Therefore, State and Local Government agree as follows:

AGREEMENT

1. Period of Agreement and Performance

1.1. Period of Agreement. This Agreement becomes effective when signed by the last party whose signing makes the Agreement fully executed. This Agreement shall remain in effect until terminated as provided in Article 2.

1.2. Period of Performance.

1. The Performance Period for each phase of work begins on the date specified in the Federal Project Authorization Agreement ("**FPAA**") for that phase of work. Local Government may not begin work until issued the State Letter of Authority ("**SLOA**") for that phase of work.
2. The Performance Period for each phase of work ends on the date specified in the FPAA for that phase of work.

2. Termination of the Agreement

2.1. This Agreement may be terminated by any of the following conditions:

a. By mutual written consent and agreement of all parties;

b. By any party with 90 days written notice; or

c. By either party, upon the failure of the other party to fulfill the obligations as set forth in this Agreement. Any cost incurred due to such breach of contract shall be paid by the breaching party.

2.2. If the potential termination of this Agreement is due to the failure of Local Government to fulfill its contractual obligations, State will notify Local Government that possible breach of contract has occurred. Local Government should make every effort to remedy the breach within a period mutually agreed upon by both parties.

2.3. If Local Government withdraws from Project after this Agreement is executed, Local Government shall be responsible for all direct and indirect Project costs as identified by the State's cost accounting system and with 2 CFR Part 200 recapture requirements.

2.4. A project may be eliminated from the program as outlined below. If Project is eliminated for any of these reasons, this Agreement will be appropriately terminated. A project may be eliminated from the program, and this Agreement terminated, if:

a. Local Government fails to satisfy any requirements of the program rules cited in 43 Tex. Admin. Code Subchapter 11.F.

b. The implementation of Project would involve significant deviation from the activities proposed in the nomination form and approved by the Texas Transportation Commission or MPO in consultation with State.

c. Local Government withdraws from participation in Project.

d. State determines that federal funding may be lost due to Project not being implemented and completed.

e. Funds are not appropriated, in which case this Agreement shall be terminated immediately with no liability to either party. Payment under this Agreement beyond the current fiscal biennium is subject to availability of appropriated funds.

f. The associated FPAA is not issued by the end of the third federal fiscal year following the federal fiscal year for which the funds are authorized. Federal fiscal years run October 1 through September 30.

g. Local Government fails to attend progress meetings at least twice yearly, as scheduled by State.

2.5. State, at its sole discretion, may terminate this Agreement if State does not receive project invoice within 270 days of FPAA.

3. Amendments

This Agreement may be amended due to changes in the work, the amount of funding required to complete Project, or the responsibilities of the parties. Such amendment must be made through a mutually agreed upon, written amendment that is executed by the parties.

4. Scope of Work, Use of Project, and Project Location

4.1. The scope of work for Project (located as shown in Attachment B, Project Location Map) consists of: the construction of roadway safety lighting along both sides of FM 158 from SH 6 to SH 30 to illuminate existing ADA compliant sidewalks and shared use path. Local Government will provide environmental documentation, design plans, specifications and estimate. This project will be let and constructed by the State.

4.2. Any project changes proposed must be submitted in writing by Local Government to State. Changes may also require an amendment to this Agreement and the approval of the FHWA, State, MPO, or the Commission. Any changes undertaken without written approval and amendment of this Agreement may jeopardize not only the federal funding for the changes, but the federal funding of the entire Project.

5. Right of Way and Real Property Acquisition

5.1. Right of way and real property acquisition shall be the responsibility of Local Government. Title to right of way and other related real property must be acceptable to State before funds may be expended for the improvement of the right of way or real property. If Local Government is the owner of any part of Project site under this Agreement, Local Government shall permit State or its authorized representative access to occupy the site to perform all activities required to execute the work.

5.2. Local Government will comply with and assume the costs for compliance with all the requirements of Title II and Title III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 USC § 4601 et seq., including those provisions relating to incidental expenses incurred by the property owners in conveying the real property to Local Government, and benefits applicable to the relocation of any displaced person as defined in 49 CFR § 24.2(g). Documentation to support such compliance must be maintained and made available to State and its representatives for review and inspection.

5.3. Local Government shall assume all costs and perform all work necessary to obtain needed evidence of title or right of use to the real property required for development of Project. Evidence of title or right of use shall be acquired in the name of (1) State, if the real property is to be made part of the State Highway System, and (2) Local Government, otherwise. The evidence of title or rights shall be acceptable to State, and be free and clear of all encroachments. Local Government shall secure and provide easements and any needed rights of entry over any other land needed to develop Project according to the approved Project plans. Local Government shall be responsible for securing any additional real property required for completion of Project.

5.4. Local Government shall prepare real property maps, property descriptions, and other data as needed to properly describe the real property and submit them to State for approval prior to Local Government

acquiring the real property. Tracings of the maps shall be retained by Local Government for a permanent record.

5.5. Local Government shall determine property values for each real property parcel to be purchased with federal funds using methods acceptable to State and shall submit to State a tabulation of the values so determined, signed by the appropriate Local Government representative. The tabulations must list the parcel numbers, ownership, acreage, and recommended compensation. The tabulation must be accompanied by an explanation to support the estimated values, together with a copy of the documentation and reports used in calculating each parcel's value. Expenses incurred by Local Government in performing this work may be eligible for reimbursement after Local Government has received written authorization by State to proceed with determination of real property values. State will review the data submitted and will base its reimbursement for parcel acquisitions on these in determining the fair market values.

5.6. For State-selected projects, Local Government shall not use eminent domain or condemnation to acquire real property for this TAP Project.

5.7. Reimbursement for real property costs will be made to Local Government for real property purchased in an amount not to exceed 80 percent of the cost of the real property purchased in accordance with the terms and provisions of this Agreement. Reimbursement will be in an amount not to exceed 80 percent of State's predetermined fair market value of each parcel, or the net cost thereof, whichever is less. In addition, reimbursement will be made to Local Government for necessary payments to appraisers for expenses incurred in order to assure good title.

5.8. Local Government and current property owner are responsible for any costs associated with the relocation of displaced persons and personal property as well as incidental expenses incurred in acquiring property to implement Project. State will not pay any of these costs.

5.9. If Project requires the use of real property to which Local Government will not hold title, a separate agreement between the owners of the real property and Local Government must be executed prior to execution of this Agreement. The separate agreement between Local Government and the current property owner must establish that Project will be dedicated for public use for a period of time not less than ten years after project completion and commensurate with the federal investment as outlined in 43 Tex. Admin. Code § 11.317. The separate agreement must define the responsibilities of the parties as to the use of the real property and operation and maintenance of Project after completion. The separate agreement must be approved by State prior to its execution and a copy of the executed separate agreement shall be provided to State.

5.10. Local Government shall execute individually or produce a legal document as necessary to provide for Project's continued use from the date of completion, and agrees to cause the same to be recorded in the land records of the appropriate jurisdiction.

5.11. Local governments receiving federal funds must comply with 23 CFR Part 710 and 49 CFR Part 24, and with the procedures provided in Chapter 6 of the State's Local Government Project Policy Manual. Local Government agrees to monitor Project to ensure: (1) continued use of the property for approved activities, and (2) the repayment of the Federal funds, as appropriate. Local Government agrees to the review of their Project accounts and site visits by State during the development of Project at any time. Upon Project completion, State will continue to perform periodic visits to confirm Project's continued use and upkeep.

5.12. Before the advertisement for bids, Local Government shall provide a certification to State that all real property has been acquired.

6. Utilities

Local Government shall be responsible for the adjustment, removal, or relocation of utility facilities in accordance with applicable State laws, regulations, rules, policies, and procedures, including any cost to State of a delay resulting from Local Government's failure to ensure that utility facilities are adjusted, removed, or relocated before the scheduled beginning of construction. Unless specified in (1) the nomination form approved by State or MPO in consultation with State and (2) this agreement, Local Government will not be reimbursed with federal or state funds for the cost of required utility work. Local Government must obtain advance approval for any variance from established procedures. Before a construction contract is let, Local Government shall provide, at State's request, a certification stating that Local Government has completed the adjustment of all utilities that must be adjusted before construction begins. Additional utility work may be required due to unknown conditions discovered during construction. These costs may be eligible for TAP participation if: (1) the activity is required to complete Project; (2) the cost is incidental to Project; and (3) TAP funding is available. Any change orders must be approved by State prior to incurring any cost for which reimbursement is sought.

7. Environmental Assessment and Mitigation

Development of Project must comply with the National Environmental Policy Act and the National Historic Preservation Act of 1966, which require environmental clearance of federal-aid projects.

7.1. Local Government is responsible for the identification and assessment of any environmental problems associated with the development of Project.

7.2. Local Government is responsible for the cost of any environmental problem's mitigation and remediation. These costs will not be reimbursed or credited towards Local Government's financial share of Project unless specified in the nomination form and approved by State or MPO in consultation with State.

7.3. Local Government is responsible for providing any public meetings or public hearings required for development of the environmental assessment.

7.4. Before the advertisement for bids, Local Government shall provide to State written documentation from the appropriate regulatory agency or agencies that all environmental clearances have been obtained.

8. Compliance with Texas Accessibility Standards and ADA

All parties to this Agreement shall ensure that the plans for and the construction of Project subject to this Agreement are in compliance with the Texas Accessibility Standards ("**TAS**") issued by the Texas Department of Licensing and Regulation, under Tex. Gov't Code § 469.052. The TAS establishes minimum accessibility requirements to be consistent with minimum accessibility requirements of the Americans with Disabilities Act (P.L. 101-336) ("**ADA**").

9. Architectural and Engineering Services

Architectural and engineering services for preliminary engineering will be provided by Local Government. In procuring professional services, the parties to this Agreement must comply with federal requirements cited in 23 CFR Part 172 if Project is federally funded and Local Government will be seeking reimbursement for these services; and with Tex. Gov't Code Subchapter 2254.A., in all cases. Professional services contracts for federally

funded projects must conform to federal requirements. For State-selected projects, architectural and engineering services are not eligible for TAP reimbursement.

9.1. The architectural contract documents shall be developed in accordance with the standards of the American Institute of Architects, the U.S. Secretary of the Interior's Standards for Historic Preservation Projects, Standards and Guidelines for Archeology and Historic Preservation, the National Register Bulletin Number 36: Guidelines for Evaluating and Registering Historical Archeological Sites and in consultation with the State Historic Preservation Officer, as applicable. The engineering plans shall be developed in accordance with State's applicable Standard Specifications for Construction and Maintenance of Highways, Streets and Bridges and the two American Association of State Highway and Transportation Officials' ("**AASHTO**") publications, "A Policy on Geometric Design of Highways and Streets" and "Guide for the Development of Bicycle Facilities," as applicable. All contract procurement procedures and documents must adhere to the applicable requirements established in the Standard Specifications for Construction and Maintenance of Highways, Streets and Bridges. The use of other systems of specifications shall be approved by State in writing in advance.

9.2. When architectural and engineering services are provided by or through Local Government, Local Government shall submit any plans it has completed to State for review and approval. Local Government may also submit the plans to State for review any time prior to completion. Local Government shall make the necessary revisions determined by State. Local Government will not let the construction contract until all required plans have received State approval.

9.3. When architectural and engineering services are provided by or through State, then the following applies:

State is responsible for the delivery and performance of any required architectural or preliminary engineering work. Local Government may review and comment on the work as required to accomplish Project purposes. State will cooperate with Local Government in accomplishing these Project purposes to the degree permitted by state and federal law.

10. Construction Responsibilities

10.1. The State shall advertise for construction bids, issue bid proposals, receive and tabulate the bids, and award and administer the contract for construction of Project. Administration of the contract includes the responsibility for construction engineering and for issuance of any change orders, supplemental agreements, amendments, or additional work orders that may become necessary subsequent to the award of the construction contract. In order to ensure federal funding eligibility, projects must be authorized by State prior to advertising for construction.

10.2. All contract letting and award procedures must be approved by State prior to letting and award of the construction contract, whether the construction contract is awarded by State or by Local Government.

10.3. All contract change order review and approval procedures must be approved by State prior to start of construction.

10.4. Upon completion of Project, the party constructing Project will issue and sign a "Notification of Completion" acknowledging Project's construction completion.

10.5. For federally funded contracts, the parties to this Agreement will comply with federal construction requirements provided in 23 CFR Parts 633 and 635, and shall include the latest version of Form "FHWA-1273" in the contract bidding documents. If force account work will be performed, a finding of cost effectiveness shall be made in compliance with 23 CFR Subpart 635.B.

10.6. Any field changes, supplemental agreements, or revisions to the design plans that may occur after the construction contract is awarded will be mutually agreed to by State and Local Government prior to authorizing the contractor to perform the work. Prior to completion of Project, the party responsible for construction will notify the other party to this Agreement of the anticipated completion date. All parties will be afforded the opportunity to assist in the final review of the construction services performed by the contractor.

11. Project Maintenance

11.1. Upon completion of Project, Local Government will be responsible for maintaining the completed facility for public use. The property shall be maintained and operated for the purpose for which it was approved and funded for a period of time commensurate with the federal investment or State rules, whichever is greater. Should Local Government at any time after Project completion decide it can no longer maintain and operate Project for its intended purpose, Local Government shall consult with State and the FHWA as to the disposal or alternate uses, consistent with Project's original intent. State may require Local Government to return the federal funds in accordance with 2 CFR Part 200 federal recapture requirements. Should Local Government consider conveying the property, State and FHWA must be notified prior to the sale, transfer, or disposal of any property that received federal funds. Written concurrence of approval for the transaction, detailing any required recapture, must be obtained from FHWA prior to the transaction. Advance notice from Local Government of their intended action must be submitted to State for an FHWA review a minimum of 90 days prior to any action being taken by Local Government. Local Government shall be held responsible for reimbursement of all federal funds used or a portion of those funds based on a pro-rata amount, considering the original percentage of federal funds provided and the time elapsed from Project completion date. This same percentage of reimbursement also applies to any amount of profit that may be derived from the conveyance of the property, as applicable.

11.2. Any manufacturer warranties extended to Local Government as a result of Project shall remain in the name of Local Government. State shall not be responsible for honoring any warranties under this Agreement.

11.3. Should Local Government derive any income from the development and operation of Project, a portion of the proceeds sufficient for the maintenance and upkeep of the property shall be set aside for future maintenance. A project income report shall be submitted to State on a quarterly basis. Monies set aside according to this provision shall be expended using accounting procedures and with the property management standards established in 2 CFR Part 200.

11.4. Should any historic properties be included in or affected by this federally funded Project, the historic integrity of the property and any contributing features must continue to be preserved regardless of any approved changes that may occur throughout the life of Project.

12. Local Project Sources and Uses of Funds

12.1. A Project Budget Estimate and Source of Funds is provided as Attachment C, showing the total estimated development cost of Project. This estimate shows the itemized cost of real property, utilities, environmental assessments, construction, and other construction related costs. To be eligible for reimbursement or as in-kind contribution, costs must have been included in the nomination form approved by the Texas Transportation Commission or MPO in consultation with State. State and the Federal Government will not reimburse Local Government for any work performed outside the

Performance Period. After federal funds have been obligated, State will send to Local Government a copy of the formal documentation showing the obligation of funds including federal award information. Local Government is responsible for 100 percent of the cost of any work performed under its direction or control before the federal spending authority is formally obligated.

12.2. If Local Government will perform any work under this Agreement for which reimbursement will be provided by or through State, Local Government must complete training in Local Government Procedures Qualification for the Texas Department of Transportation before federal spending authority is obligated. Training is complete when at least one individual who is working actively and directly on Project successfully completes and receives a certificate for the course. Local Government shall provide the certificate of qualification to State. The individual who receives the training certificate may be an employee of Local Government or an employee of a firm that has been contracted by Local Government to perform oversight of Project. State in its discretion may deny reimbursement if Local Government has not designated a qualified individual to oversee Project.

12.3. The Project budget and source of funds estimate based on the budget provided in the nomination form is included as Attachment C. Attachment C shows the percentage and estimated dollar amounts to be contributed to Project by state and local sources, as well as the maximum amount in federal Transportation Alternative Program funds assigned by the Commission or MPO in consultation with State to Project. This Agreement may be amended from time to time as required to meet the funding commitments based on revisions to the Transportation Improvement Program, Federal Project Authorization and Agreement ("**FPAA**"), or other federal documents.

12.4. Local Government will be responsible for all non-federal participation costs associated with Project, including any overruns in excess of Project's estimated budget and any operating or maintenance expenses.

12.5. State will be responsible for securing the federal share of funding required for the development and construction of Project, in an amount not to exceed 80 percent of the actual cost of the work up to the amount of funds approved for Project by the Texas Transportation Commission or MPO in consultation with State. Federal funds will be reimbursed on a cost basis. Project costs incurred prior to issuance of the SLOA are not eligible for reimbursement.

12.6. Following execution of this Agreement, but prior to the performance of any plan review work by State, Local Government will pay to State the amount specified in Attachment C for plan review. At least 60 days prior to the date set for receipt of the construction bids, Local Government shall remit its remaining local match as specified in Attachment C for State's estimated construction oversight and construction cost.

12.7. In the event State determines that additional funding is required by Local Government at any time during Project, State will notify Local Government in writing. Local Government is responsible for the percentage of the authorized Project cost shown in Attachment C and 100 percent of any overruns above the federally authorized amount. Local Government will make payment to State within 30 days from receipt of State's written notification.

12.8. Whenever funds are paid by Local Government to State under this Agreement, Local Government will remit a warrant made payable to the "Texas Department of Transportation." The warrant will be deposited by State and managed by State. Funds may only be applied by State to Project.

12.9. Upon completion of Project, State will perform an audit of Project costs. Any funds due to Local Government, State, or the Federal Government will be promptly paid by the owing party. If after final

Project accounting, any excess funds remain, those funds may be applied by State to Local Government's contractual obligations to State under another advance funding agreement with approval by appropriate personnel of Local Government.

12.10. In the event Project is not completed, State may seek reimbursement from Local Government of the expended federal funds. Local Government will remit the required funds to State within 60 days from receipt of State's notification.

12.11. If any existing or future local ordinances, commissioners court orders, rules, policies, or other directives, including but not limited to outdoor advertising billboards and storm water drainage facility requirements, are more restrictive than state or federal regulations, or if any other locally proposed changes, including but not limited to plats or re-plats, result in increased costs, then any increased costs associated with the ordinances or changes will be paid by Local Government. The cost of providing right of way acquired by State shall mean the total expenses in acquiring the property interests through negotiations, including, but not limited to, expenses related to relocation, removal, and adjustment of eligible utilities.

12.12. The state auditor may conduct an audit or investigation of any entity receiving funds from the State directly under the Agreement or indirectly through a contract or subcontract under the Agreement. Acceptance of funds directly under the Agreement or indirectly through a contract or subcontract under this Agreement 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.

12.13. State will not pay interest on any funds provided by Local Government.

12.14. State will not execute the contract for the construction of Project until the required funding has been made available by Local Government in accordance with this Agreement.

12.15. Local Government is authorized to submit requests for reimbursement by submitting the original of an itemized invoice in a form and containing all items required by State no more frequently than monthly, and no later than 90 days after costs are incurred. If Local Government submits invoices more than 90 days after the costs are incurred, and if federal funding is reduced as a result, State shall have no responsibility to reimburse Local Government for those costs.

12.16. If Local government is an Economically Disadvantaged County ("**EDC**") and if State has approved adjustments to the standard financing arrangement, this agreement reflects those adjustments.

13. Notices

13.1. All notices to either party shall be delivered personally or sent by certified or U.S. mail, postage prepaid, addressed to that party at the following address:

Local Government	State
City Engineer	Director of Contract Services Office
City of Bryan	Texas Department of Transportation
300 S. Texas Avenue	125 E. 11th Street
Bryan, Texas 77805	Austin, TX 78701-2483

13.2. All notices shall be deemed given on the date delivered in person or deposited in the mail, unless otherwise provided by 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 notices shall be delivered personally or by certified U.S. mail, and that request shall be carried out by the other party.

14. Legal Construction

In case one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions and this Agreement shall be construed as if it did not contain the invalid, illegal, or unenforceable provision.

15. Responsibilities of the Parties

Neither party is an agent, servant, or employee of the other party and each party is responsible for its individual acts and deeds as well as the acts and deeds of its contractors, employees, representatives, and agents.

16. Ownership of Documents

Upon completion or termination of this Agreement, all documents prepared by State shall remain the property of State. All data prepared under this Agreement shall be made available to State without restriction or limitation on their further use. All documents produced or approved or otherwise created by Local Government shall be transmitted to State in the form of photocopy reproduction on a monthly basis as required by State. The originals shall remain the property of Local Government.

17. Document and Information Exchange

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

18. Compliance with Laws

The parties shall comply with all federal, state, and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals in any manner affecting the performance of this agreement. When required, Local Government shall furnish State with satisfactory proof of this compliance.

19. Sole Agreement

This Agreement constitutes the sole and only agreement between the parties and supersedes any prior understandings or written or oral agreements respecting the Agreement’s subject matter.

20. Cost Principles

In order to be reimbursed with federal funds, the parties shall comply with the Cost Principles established in 2 CFR Part 200 that specify that all reimbursed costs are allowable, reasonable, and allocable to Project.

21. Procurement and Property Management Standards

The parties shall adhere to the procurement standards established in 2 CFR Part 200 and with the property management standard established in 2 CFR Part 200.

22. Inspection of Books and Records

The parties to this Agreement shall maintain all books, documents, papers, accounting records, and other documentation relating to costs incurred under this Agreement and shall make such materials available to State, Local Government, and, if federally funded, the FHWA, and the U.S. Office of the Inspector General, or their duly authorized representatives for review and inspection at its office during the Agreement period and for four years from the date of completion of work defined under this Agreement or until any impending litigation or claims are resolved. Additionally, State, Local Government, and the FHWA and their duly authorized representatives shall have access to all the governmental records that are directly applicable to this Agreement for the purpose of making audits, examinations, excerpts, and transcriptions.

23. Civil Rights Compliance

Local Government shall comply with the regulations of the U. S. Department of Transportation ("**DOT**")as they relate to non-discrimination (49 CFR Part 21 and 23 CFR Part 200), and Executive Order 11246 titled "Equal Employment Opportunity," as amended by Executive Order 11375 and supplemented in the Department of Labor Regulations (41 CFR Part 60).

24. Disadvantaged Business Enterprise Program Requirements

24.1. The parties shall comply with the Disadvantaged Business Enterprise ("**DBE**") Program requirements established in 49 CFR Part 26.

24.2. Local Government shall adopt, in its totality, State's federally approved DBE program.

24.3. Local Government shall set an appropriate DBE goal consistent with State's DBE guidelines and in consideration of Local market, project size, and nature of the goods or services to be acquired. Local Government shall have final decision-making authority regarding the DBE goal and shall be responsible for documenting its actions.

24.4. Local Government shall follow all other parts of State's DBE program referenced in TxDOT Form 2395, Memorandum of Understanding Regarding the Adoption of the Texas Department of Transportation's Federally-Approved Disadvantaged Business Enterprise by Entity, and attachments found at web address: http://ftp.dot.state.tx.us/pub/txdot-info/bop/dbe/mou/mou_attachments.pdf.

24.5. Local Government shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT-assisted contract or in the administration of its DBE program or the requirements of 49 CFR Part 26. Local Government shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure non-discrimination in award and administration of DOT-assisted contracts. State's DBE program, as required by 49 CFR Part 26 and as approved by DOT, is incorporated by reference in this Agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this Agreement. Upon notification to Local Government of its failure to carry out its approved program, State may impose sanctions as provided for under 49 CFR Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 USC 1001 and the Program Fraud Civil Remedies Act of 1986 (31 USC § 3801 et seq.).

24.6. Each contract Local Government signs with a contractor (and each subcontract the prime contractor signs with a subcontractor) must include the following assurance:

The contractor, sub-recipient, or sub-contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this agreement, which may result in the termination of this agreement or such other remedy as the recipient deems appropriate.

25. Debarment Certifications

The parties are prohibited from making any award at any tier to any party that is debarred or suspended or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549, "Debarment and Suspension." By executing this Agreement, Local Government certifies that it and its principals are not currently debarred, suspended, or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549, and further certifies that it will not do business with any party, to include principals, that is currently debarred, suspended, or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549. The parties to this Agreement shall require any party to a contract, subcontract, or purchase order awarded under this Agreement to certify its eligibility to receive federal funds and, when requested by State, to furnish a copy of the certification.

26. Lobbying Certification

In executing this Agreement, each signatory certifies to the best of that signatory's knowledge and belief, that:

26.1. No federal appropriated funds have been paid or will be paid by or on behalf of the parties to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

26.2. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with federal contracts, grants, loans, or cooperative agreements, the signatory for Local Government shall complete and submit the federal Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

26.3. The parties shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and all sub-recipients shall certify and disclose accordingly. Submission of this certification is a prerequisite imposed by 31 USC § 1352 for making or entering into this transaction. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

27. Insurance

27.1. Should this Agreement authorize Local Government or its contractor to perform any work on State right of way, before beginning work, the entity performing the work shall provide State with a fully executed

copy of 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 State right of way is complete. If coverage is not maintained, all work on State right of way shall cease immediately, and State may recover damages and all costs of completing the work.

27.2. For projects including buildings, Local Government agrees to insure the building according to Department specifications and further agrees to name the Federal Government as a "Loss Payee" should the building be destroyed.

28. Federal Funding Accountability and Transparency Act Requirements

28.1. Any recipient of funds under this agreement agrees to comply with the Federal Funding Accountability and Transparency Act ("**FFATA**") and implementing regulations at 2 CFR Part 170, including Appendix A. This agreement is subject to the following award terms:

http://www.gpo.gov/fdsys/pkg/FR-2010-09-14/pdf/2010-22705.pdf and

http://www.gpo.gov/fdsys/pkg/FR-2010-09-14/pdf/2010-22706.pdf.

28.2. Local Government agrees that it shall:

a. Obtain and provide to State a System for Award Management ("**SAM**") number (Federal Acquisition Regulation ("**FAR**") Subpart 4.11) if this award provides more than $25,000 in Federal funding. The SAM number may be obtained by visiting the SAM website whose address is https://www.sam.gov/portal/public/SAM/

b. Obtain and provide to State a Data Universal Numbering System ("**DUNS**") number, a unique nine-character number that allows the federal government to track the distribution of federal money. The DUNS number may be requested free of charge for all businesses and entities required to do so by visiting the Dun & Bradstreet on-line registration website http://fedgov.dnb.com/webform; and

c. Report the total compensation and names of its top five executives to State if:

1. More than 80 percent of annual gross revenues are from the Federal government, and those revenues are greater than $25,000,000; and

2. The compensation information is not already available through reporting to the U.S. Securities and Exchange Commission.

29. Single Audit Report

29.1. The parties shall comply with the requirements of the Single Audit Act of 1984, P.L. 98-502, ensuring that the single audit report includes the coverage stipulated in 2 CFR Part 200.

29.2. If threshold expenditures are met during Local Government's fiscal year, Local Government must submit a Single Audit Report and Management Letter (if applicable) to TxDOT's Audit Office, 125 East 11th Street, Austin, TX 78701 or contact TxDOT's Audit Office at http://www.txdot.gov/inside-txdot/office/audit/contact.html. The expenditure threshold for fiscal years beginning prior to December 31, 2014 is $500,000; the expenditure threshold for fiscal years beginning on or after December 31, 2014 is $750,000.

29.3. If expenditures are less than the threshold during Local Government's fiscal year, Local Government must submit a statement to TxDOT's Audit Office as follows:

We did not meet the $_____ expenditure threshold and therefore, are not required to have a single audit performed for FY _____.

29.4. For each year Project remains open for federal funding expenditures, Local Government will be responsible for filing a report or statement as described above. The required annual filing shall extend throughout the life of the agreement, unless otherwise amended or Project has been formally closed out and no charges have been incurred within the current fiscal year.

30. Signatory Warranty

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

Each party is signing this agreement on the date stated opposite that party's signature.

City of Bryan

Date: _____ By: _____
Jason P. Bienski
Mayor

THE STATE OF TEXAS

Date: _____ By: _____
Kenneth Stewart
Director of Contract Services
Texas Department of Transportation

ATTACHMENT A
RESOLUTION OF LOCAL GOVERNMENT

RESOLUTION NO. 3604

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BRYAN, TEXAS, TO CERTIFY FUNDING AND SUPPORT FOR THE STATEWIDE TRANSPORTATION ALTERNATIVES PROGRAM NOMINATION FORM 2015 WITH THE TEXAS DEPARTMENT OF TRANSPORTATION TO RECEIVE FUNDING TO IMPLEMENT THE FM158 SAFETY LIGHTING IMPROVEMENTS; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, on July 6, 2012, President Barack Obama signed the Moving Ahead for Progress in the 21st Century Act (MAP-21); and

WHEREAS, on January 16, 2015, the Texas Department of Transportation (TXDOT) issued a Call for Projects for funding through the Transportation Alternatives Program (TAP) with a submission deadline of May 4, 2015; and

WHEREAS, all TAP projects nominated by the City of Bryan must be endorsed by the City Council with a commitment to fund the project on a cost reimbursement basis, TAP funding will be for construction only and at least 20 percent of project total cost is required as the local match if the project is selected; and

WHEREAS, the project cost will be funded from existing bond funds, general fund balance or future bond funds; and

WHEREAS, the FM 158 Safety Lighting Improvements project was designated a high priority project; and

WHEREAS, on March 26, 2015, the FM158 Safety Lighting Improvements Project was presented to and endorsed by the Regional Bike Ped Advisory Panel; and

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Bryan, Texas that:

1.

The matters set forth in the preamble are true and correct and incorporated as if fully set forth herein.

2.

The City of Bryan will apply for funding through the Texas Department of Transportation to implement the FM158 Safety Lighting Improvements Project as the Project Sponsor. The Project Sponsor (the City) supports funding this project as described in the TAP 2015 Nomination Form (including the construction budget, the department's 15% administrative costs, and the required local match) and is willing to commit to the project's development, implementation, construction, maintenance, management, and financing. The project sponsor is willing and able to enter into an agreement with the department by resolution or ordinance should the project receive TAP funding.

3.

The City of Bryan agrees to execute an Advanced Funding Agreement with the Texas Department of Transportation for this project if awarded.

ATTACHMENT A
RESOLUTION OF LOCAL GOVERNMENT

4.

This Resolution shall be effective immediately upon its adoption.

APPROVED AND ADOPTED by the City Council of the City of Bryan, Texas, this 28th day of April, 2015.

ATTEST:

Mary Lynne Stratta, City Secretary

CITY OF BRYAN:

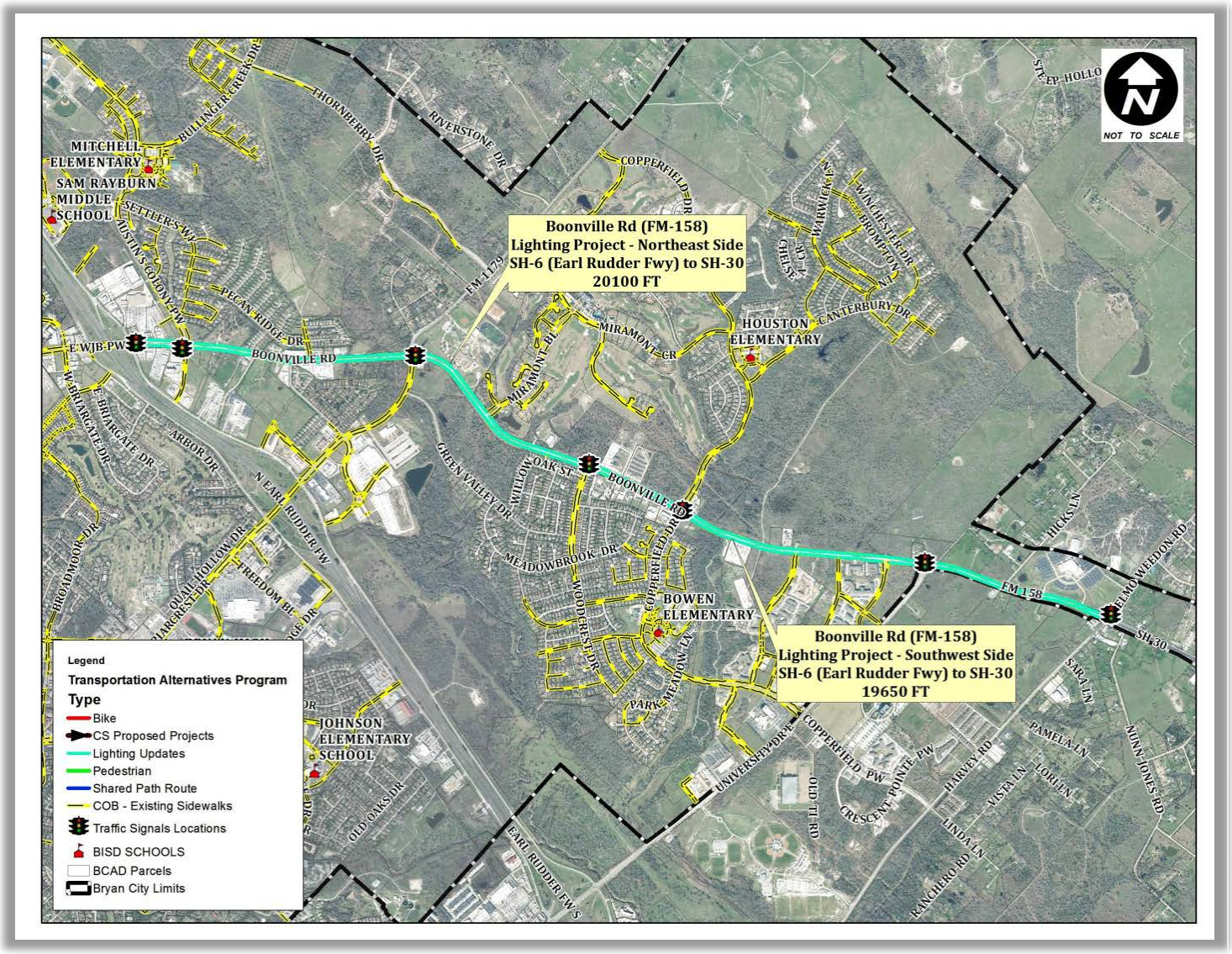
Jason P. Bienski, Mayor

APPROVED AS TO FORM:

Janis K. Hampton, City Attorney

CSJ: 0212-03-057
District #: 17
Code Chart 64#: 06100
Project: FM 158 Safety Lighting of Existing Sidewalks and Path
FHWA CFDA #: 20.205
Not Research and Development

ATTACHMENT B
PROJECT LOCATION MAP



Map above shows the FM158 corridor on which these lights are planned to be installed on both sides of the roadway providing lighting to a 6 foot wide sidewalk on the south side and a 12 foot wide shared use path on the north side. Existing sidewalk facilities are shown in yellow. As you can see there are numerous schools along the corridor and the most eastern end of the project leads to the City of College Station along Harvey Road (SH30) providing regional connection. This route is highlighted prominently in the City of Bryan Sidewalk Masterplan from the 2006 Comprehensive Plan.

CSJ: 0212-03-057
District #: 17
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ATTACHMENT C

PROJECT ESTIMATE AND SOURCE OF FUNDS

(State *or* LG) Performs PE Work or Hires Consultant / (State *or* LG) Lets Project to Construction

Work Performed by Local Government ("LG")							
Description of Project Costs to be Incurred	**Total Project Cost Estimate**	**Federal Participation** Includes additional percentage for TDC apportionment where applicable		**State Participation**		**Local Government (LG) Participation** Includes any EDC reduction where applicable	
		%	**Cost**	**%**	**Cost**	**%**	**Cost**
Planning/Maps/Education/Non-CST	$0	0%	$0	0%	$0	0%	$0
Preliminary Engineering	$0	0%	$0	0%	$0	0%	$0
Environmental Cost	$0	0%	$0	0%	$0	0%	$0
Right of Way	$0	0%	$0	0%	$0	0%	$0
Utilities	$0	0%	$0	0%	$0	0%	$0
Construction	$0	0%	$0	0%	$0	0%	$0
In-kind donation Value (Add to Total Project Cost - 20% Maximum value)	$0	0%	$0	0%	$0	0%	$0
Work by LG Subtotal	**$0**		**$0**		**$0**		**$0**
Work Performed by the State (Local Participation paid up front by LG to TxDOT)							
Preliminary Engineering[1]	$0	0%	$0	0%	$0	0%	$0
Environmental Cost[1]	$0	0%	$0	0%	$0	0%	$0
Right of Way[3]	$0	0%	$0	0%	$0	0%	$0
Utilities[2]	$0	0%	$0	0%	$0	0%	$0
Construction[2]	$1,975,630	70%	$1,382,941	0%	$0	30%	$592,689
Work by State Subtotal	**$1,975,630**		**$1,382,941**		**$0**		**$592,689**

CSJ: 0212-03-057
District #: 17
Code Chart 64#: 06100
Project: FM 158 Safety Lighting of Existing Sidewalks and Path
FHWA CFDA #: 20.205
Not Research and Development

Direct and Indirect State Costs Incurred for Review, Inspection, Administration & Oversight							
Description of Project Costs to be Incurred	**Total Project Cost Estimate**	**Federal Participation** Includes additional percentage for TDC apportionment where applicable		**State Participation**		**Local Government (LG) Participation** Includes any EDC reduction where applicable	
		%	**Cost**	**%**	**Cost**	**%**	**Cost**
Preliminary Engineering[1]	$44,452	70%	$31,116.40	0%	$0	30%	$13,335.60
Environmental Cost[1]	$29,635	70%	$20,744.50	0%	$0	30%	$8,890.50
Right of Way[1]	$8,890	70%	$6,223.00	0%	$0	30%	$2,667.00
Utilities[1]	$5,927	70%	$4,148.90	0%	$0	30%	$1,778.10
Construction[2]	$207,441	70%	$145,208.70	0%	$0	30%	$62,232.30
Direct State Costs Subtotal	$296,345	70%	$207,441.50	0%	$0	30%	$88,903.50
Indirect State Cost	$126,045	0%	$0	100%	$126,045	0%	$0
TOTAL PARTICIPATION	$2,398,020		$1,590,382.50		$126,045		$681,592.5
In-kind Contribution Credit Applied						0%	$0
TOTAL REMAINING PARTICIPATION AFTER IN-KIND CONTRIBUTION							**$681,592**

The estimated total participation by Local Government is $681,592 plus 100% of overruns.

Total estimated payment by Local Government to State is $681,592.

[1]Local Government's first payment of $26,671 is due to State within 30 days from execution of this contract.

[2] Local Government's second payment of $654,921 is due to State within 60 days prior to the Construction contract being advertised for bids.

[3]If ROW is to be acquired by State, Local Government's share of property cost will be due prior to acquisition.

The eligible percent of required local match is stated in the nomination and must be 20% or greater, unless In-Kind, EDC adjustments or TDCs are applied.

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

Maximum federal TAP funds available for Project are $1,590,382.