

**CITY OF EL PASO, TEXAS
AGENDA ITEM
DEPARTMENT HEAD'S SUMMARY FORM**



DEPARTMENT: El Paso Police

AGENDA DATE: 5/13/25

PUBLIC HEARING DATE:

CONTACT PERSON NAME: Assistant Chief J. F. Briones

PHONE NUMBER: 915-212-4304

2nd CONTACT PERSON NAME:

PHONE NUMBER:

DISTRICT(S) AFFECTED: All Districts

STRATEGIC GOAL:

Goal 2: Set the Standard for a Safe and Secure City

SUBGOAL:

Subgoal 2.1: Maintain Standing as one of the Nation's Top Safest Cities

SUBJECT:

A resolution authorizing the Mayor to sign an Interlocal Agreement between the City of El Paso and the Texas Department of Transportation ("TXDOT") for the El Paso Police Department to provide uniformed officers and equipment necessary for law enforcement, general surveillance, and traffic control at and around sites for which TXDOT is providing maintenance, repair, construction, and other services to State maintained roads and highways. Such services are to promote safety of construction zone workers and the traveling public.

BACKGROUND / DISCUSSION:

The Texas Manual of Uniform Traffic Control Devices addresses placement of emergency vehicles at the construction sites. In order for TXDOT to comply with such, services are requested of the El Paso Police Department. This Agreement ensures reimbursement to the City for overtime and vehicle usage costs associated with providing services. In addition, this Agreement updates the reimbursement amounts and terms outlined in the previous agreement.

COMMUNITY AND STAKEHOLDER OUTREACH:

N/A

PRIOR COUNCIL ACTION:

City Council approved a TXDOT interlocal agreement with the City of El Paso on June 9, 2020.

AMOUNT AND SOURCE OF FUNDING:

N/A

REPORTING OF CONTRIBUTION OR DONATION TO CITY COUNCIL:

N/A

NAME	AMOUNT (\$)

*****REQUIRED AUTHORIZATION*****

DEPARTMENT HEAD:



(If Department Head Summary Form is initiated by Purchasing, client department should sign also)

RECEIVED

By City Clerk's Office at 12:40 pm, May 01, 2025

Resolution

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO

That the Mayor be authorized to sign an Interlocal Work Zone Enforcement Agreement between the City of El Paso ("Local Government") and the Texas Department of Transportation ("TxDOT") for the El Paso Police Department ("EPPD") to provide uniformed officers and equipment necessary for law enforcement, general surveillance, and traffic control at and around sites for which TxDOT is providing maintenance, repair, construction and other services to State maintained roads and highways. Such services are to promote safety of construction zone workers and the traveling public. TxDOT will pay up to \$ 147,767.04 for the service on reimbursement basis for actual salary and vehicle costs for a twenty-four month period beginning upon the execution of the agreement by both parties and ending two years from that date.

APPROVED this _____ day of _____, 20____.

THE CITY OF EL PASO:

Renard U. Johnson
Mayor

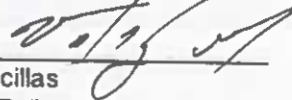
ATTEST:

Laura D. Prine
City Clerk

APPROVED AS TO FORM:


Eric Gutierrez
Senior Assistant City Attorney

APPROVED AS TO CONTENT:


for Peter Pacillas
Chief of Police

Exec. A/C Victor Zarur #1515

[illegible]

THE STATE OF TEXAS §
THE COUNTY OF TRAVIS §

INTERLOCAL WORK ZONE ENFORCEMENT AGREEMENT

THIS CONTRACT is entered into by the Contracting Parties under Government Code, Chapter 791 and Transportation Code, Chapter 201, Section 2.09.

I. CONTRACTING PARTIES:

**The Texas Department of Transportation
City of El Paso**

TxDOT
Local Government

II. PURPOSE: To provide uniformed, armed peace officers and equipment for law enforcement, general surveillance, and traffic control.

III. STATEMENT OF SERVICES TO BE PERFORMED: The Local Government will undertake and carry out services described in **Attachment A, Scope of Services.**

IV. CONTRACT PAYMENT: The total amount of this contract shall not exceed \$ 147,767.04 and shall conform to the provisions of **Attachment B, Budget**. Payments shall be billed monthly.

V. TERM OF CONTRACT: Payment under this contract beyond the end of the current fiscal biennium is subject to availability of appropriated funds. If funds are not appropriated, this contract shall be terminated immediately with no liability to either party. This contract begins when fully executed by both parties and terminates two years from the date that both parties have signed the agreements or when otherwise terminated as provided in this Agreement.

VI. LEGAL AUTHORITY:

THE PARTIES certify that the services provided under this contract are services that are properly within the legal authority of the Contracting Parties

The governing body, by resolution or ordinance, dated _____, has authorized the Local Government to provide the Scope of Services.

This contract incorporates the provisions of Attachment A, Scope of Services, Attachment B, Budget, Attachment C, General Terms and Conditions, Attachment D, Resolution or Ordinance, and Attachment E, Information Technology and Security Requirements.

TxDOT
Texas Department of Transportation

LOCAL GOVERNMENT

NAME OF LOCAL GOVERNMENT

BY: _____
 AUTHORIZED SIGNATURE

BY: _____
 AUTHORIZED SIGNATURE

TYPED OR PRINTED NAME AND TITLE

TYPED OR PRINTED NAME AND TITLE

DATE: _____

DATE: _____

ATTACHMENT A

Scope of Services

The Local Government shall provide uniformed, armed, peace officers and equipment for law enforcement, general surveillance, and traffic control on TxDOT roads, within the City of El Paso city limits, new highway construction sites, or maintenance and utility projects, time periods, and hours to be determined by TxDOT.

The officers on duty shall:

1. be in full uniform and armed at all times while on duty;
2. provide law enforcement, general surveillance, and traffic control for the dates, location, and time periods, as assigned;
3. project as much visibility as possible to the public during the entire scheduled shift through the presence of marked patrol vehicles and uniformed officers to deter speeding, vandalism, and any other types of undesirable behavior;
4. continue operations as scheduled during conditions arising from force majeure such as hurricanes, floods, or other major disasters occurring in other parts of the State, which is subject to the discretion of the Local Government and the availability of manpower;
5. ensure that transportation of alleged perpetrators will not interfere with the contract responsibilities of any officers on duty; and
6. perform a radio check and identify himself or herself by name, upon reporting for duty at the designated location.

The Local Government shall:

1. supply equipment and vehicles for officers during their patrol;
2. provide the appropriate number of officers per shift in accordance with the requirements set by TxDOT;
3. be responsible for all complaints against officers;
4. provide TxDOT with a contact name and telephone number of a designated representative to coordinate schedules, duties, and other items with TxDOT's representative; and
5. appoint a supervising officer to coordinate scheduling and duties to include mitigation of any traffic control of law enforcement matters with the designated TxDOT representative.

TxDOT will:

1. provide the Local Government with a contact name and telephone number of a designated representative to coordinate schedules, duties, and other items with the Local Government's representative;
2. establish logging in and reporting procedures for the Local Government to follow; and
3. terminate the contract as outlined in the provisions of Article 6, Attachment C, General Terms and Conditions, if the Local Government fails to have an officer on duty during TxDOT scheduled work hours any three times during the 24 month term of service.

Right of Access - If any party is the owner of any part of the location site needed to perform requested services, then that party shall permit the other party or their authorized representative access to the site to perform any activities required to carryout the work.

Contractor-Related Entity shall perform its work in accordance with the attached, Information Resources and Security Requirements. A Contractor-Related Entity might create, access, transmit, store, or use Sensitive TxDOT data in a Contractor – Related Entity Environment. Contractor shall ensure that Contractor Related Entity Environments comply with the TxDOT low Security Baseline Sensitive, Privacy Overlay.

The Local Government will be reimbursed the actual rate paid to the officer based on the following table:

Local Government's Hourly Rates/Rank

Rank	Hourly Rate
Officer/Detective	\$73.34
Police Sergeant	\$87.79
Police Lieutenant	\$111.78

Average Hourly Rate x Estimated Number of Hours = (\$90.97 x 1152) \$104,797.44

A vehicle utilization fee of \$ 37.30 per vehicle per day will be paid regardless of length of use. The vehicle must be fully equipped with all necessary equipment to provide proper traffic control.

The estimated budget is calculated as follows:

Average Hourly Rate x Estimated Number of Hours	\$90.97 x 1152 hours	\$104,797.44
Vehicle Utilization	\$37.30 x 1152 days	\$42,969.60
	Total Estimated Budget	\$147,767.04

If cancellation of the requested assistance is not made at least three (3) hours prior to the anticipated service commencement time, TxDOT shall reimburse each assigned officer 3 hours at their billable rate.

The Local Government will be responsible for issuing timely invoices as the work is completed and work reports must be submitted to TxDOT's El Paso District Office. Invoice payments shall be submitted within 30 calendar days of receipt of a valid invoice. Such payments will be mailed to:

The Local Government is authorized to submit requests for reimbursement no more frequently than monthly and no later than ninety (90) days after costs are incurred.

**Texas Department of Transportation
Attention: District Maintenance Office
13301 Gateway Blvd. West
El Paso, Texas 79928**

ATTACHMENT C

General Terms and Conditions

Article 1. Additional Work

- A. If the Local Government is of the opinion that any assigned work is beyond the scope of this contract and constitutes additional work, it shall promptly notify TxDOT in writing. The written notice shall present the relevant facts and show how the work constitutes additional work.
- B. If TxDOT in its sole discretion finds that the work does constitute additional work, TxDOT shall so advise the Local Government and a written amendment will be executed. The Local Government shall not perform any proposed additional work or incur any additional costs before the execution of an amendment.
- C. TxDOT shall not be responsible for actions by the Local Government or for any costs incurred by the Local Government relating to additional work that is performed before an amendment is executed or that is outside the scope of the contract, as amended.

Article 2. Amendments

This contract may only be amended by written agreement executed by both parties before the contract is terminated.

Article 3. Notice to Proceed

If Attachment A requires a notice to proceed, the Local Government shall not proceed with any work or incur any costs until TxDOT issues a written notice to the Local Government authorizing work to begin. Any costs incurred by the Local Government before receiving the notice are not eligible for reimbursement.

Article 4. Conflicts Between Agreements

If the terms of this contract conflict with the terms of any other contract between the parties, the most recent contract shall prevail.

Article 5. Nonconforming Work

If the Local Government submits work that does not comply with the terms of this contract, TxDOT shall instruct the Local Government to make any revisions that are necessary to bring the work into compliance with the contract. No additional compensation shall be paid for this work.

Article 6. Termination

This contract terminates at the end of the contract term, when all services and obligations contained in this contract have been satisfactorily completed, by mutual written agreement, or 30 days after either party gives notice to the other party, whichever occurs first. TxDOT shall compensate the Local Government only for those eligible expenses that are incurred during this contract and that are directly attributable to the completed portion of the work covered by this contract and only if the work has been completed in a manner satisfactory and acceptable to TxDOT. The Local Government shall neither incur nor be reimbursed for any new obligations after the date of termination.

Article 7. Funding

TxDOT shall pay for services from appropriation items or accounts from which like expenditures would normally be paid. Payments received by the Local Government shall be credited to the current appropriation items or accounts from which expenditures of that character were originally made. If for any reason subcontractors and suppliers, if any, are not paid before TxDOT reimburses the Local Government for their services, the Local Government shall pay the subcontractors and suppliers all undisputed amounts due for work no more than 10 days after the Local Government receives payment for the work unless a different time is specified by law. This requirement also applies to all lower-tier subcontractors and suppliers and must be incorporated in all subcontracts. If the Local Government fails to comply with this Article, TxDOT may withhold payments and suspend work until the subcontractors and suppliers are paid. The Local Government is authorized to submit requests for reimbursement no more frequently than monthly and no later than ninety (90) days after costs are incurred.

Article 8. Basis for Calculating Reimbursement Costs

TxDOT will reimburse the Local Government for actual costs incurred in carrying out the services authorized in Attachment A, Scope of Services, subject to the cost categories and estimated costs set forth in Attachment B, Budget. TxDOT shall compensate the Local Government for only those eligible expenses incurred during this

contract that are directly attributable to the completed portion of the work covered by this contract, provided that the work has been completed in a manner satisfactory and acceptable to TxDOT. The Local Government shall not incur or be reimbursed for any new obligations after the effective date of termination. The Local Government shall bill TxDOT for actual travel expenses, not to exceed the limits reimbursable under state law. Out-of-state or out-of-country travel by the Local Government requires prior approval by TxDOT.

Article 9. Gratuities

Any person who is doing business with or who reasonably speaking may do business with TxDOT under this contract may not make any offer of benefits, gifts, or favors to employees of TxDOT. The only exceptions allowed are ordinary business lunches and items that have received the advanced written approval of the Executive Director of the Texas Department of Transportation.

Article 10. Conflict of Interest

The Local Government shall not assign an employee to a project if the employee:

- A. owns an interest in or is an officer or employee of a business entity that has or may have a contract with the state relating to the project;
- B. has a direct or indirect financial interest in the outcome of the project;
- C. has performed services regarding the subject matter of the project for an entity that has a direct or indirect financial interest in the outcome of the project or that has or may have a contract with TxDOT; or
- D. is a current part-time or full-time employee of TxDOT.

Article 11. Local Government Resources

All employees of the Local Government shall have adequate knowledge and experience to enable them to perform the duties assigned to them. The Local Government certifies that it currently has adequate qualified personnel in its employment to perform the work required under this contract or will be able to obtain adequate qualified personnel from sources other than TxDOT. On receipt of written notice from TxDOT detailing supporting factors and evidence, the Local Government shall remove from the project any employee of the Local Government who is incompetent or whose conduct becomes detrimental to the work. Unless otherwise specified, the Local Government shall furnish all equipment, materials, supplies, and other resources required to perform the work.

Article 12. Assignment Subcontracts

A subcontract may not be executed by the Local Government without prior written authorization by TxDOT. Subcontracts in excess of \$25,000 shall contain all applicable terms and conditions of this contract. No subcontract will relieve the Local Government of its responsibility under this contract. Neither party shall assign any interest in this agreement.

Article 13. Responsibilities of the Parties

Each party acknowledges that it is not an agent, servant, or employee of the other party. Each party is responsible for its own acts and deeds and for those of its agents, servants, or employees.

Article 14. Disputes

The Local Government shall be responsible for the settlement of all contractual and administrative issues arising out of procurements entered in support of contract services. TxDOT shall be responsible for the settlement of any dispute concerning this contract unless the dispute involves a subcontract.

Article 15. Records and Ownership

- A. The Local Government agrees to maintain all books, documents, papers, accounting records, and other evidence pertaining to costs at its office during the contract period and for four years from the date of final payment under the contract or until any impending claims are resolved. These materials shall be made available for inspection and copying by TxDOT, by the State Auditor's Office, and by their authorized representatives. If the contract is federally funded, these materials shall also be made available for inspection and copying by the U.S. Department of Transportation, the Office of the Inspector General, and the Federal Highway Administration.**
- B. After completion or termination of this contract, all documents prepared by the Local Government or furnished to the Local Government by TxDOT shall be delivered to and become the property of TxDOT. All sketches, photographs, calculations, and other data prepared under this contract shall be made available, on request, to TxDOT without restriction or limitation of further use.**
- C. TxDOT shall own all title to, all interests in, all rights to, and all intellectual property (including copyrights, trade and service marks, trade secrets, and patentable devices or methods) arising from or developed under this contract.**

- ## Article 16. Reference to Costs Principles and Circulars

Article 17. Equal Employment Opportunity

Article 18. Civil Rights Compliance

- ### Interlocal Work Zone Enforcement

however, that in the event an Local Government becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the Local Government may request the Texas Department of Transportation to enter into such litigation to protect the interests of the State; and, in addition, the Local Government may request the United States to enter into such litigation to protect the interests of the United States.

Article 19. Compliance with Laws

The parties shall comply with all federal, state, and local laws, statutes, ordinances, rules, and regulations and with the orders and decrees of any courts or administrative bodies or tribunals in any manner affecting the performance of this agreement. After receiving a written request from TxDOT, the Local Government shall furnish TxDOT with satisfactory proof of its compliance with this Article.

Article 20. Cost Principles

The parties shall comply with the cost principles established in 2 CFR 200.

Article 21. Procurement and Property Management Standards

The parties shall adhere to the procurement standard established in 49 CFR §18.36 and with the property management standard established in 49 CFR §18.32.

Article 22. Office of Management and Budget (OMB) Audit Requirements

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 200.

Article 23. Disadvantaged Business Enterprise Program Requirements

The parties shall comply with the Disadvantaged/Minority Business Enterprise Program requirements established in 49 CFR Part 26. The Local Government's program is subject to approval by TxDOT.

Article 24. 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." The parties to this contract shall require any party to a subcontract or purchase order awarded under this contract to certify its eligibility to receive federal funds and, when requested by TxDOT, to furnish a copy of the certification in accordance with Title 49 CFR Part 29 (Debarment and Suspension).

Article 25. Lobbying Certification

In executing this agreement, each signatory certifies that:

- a. 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.
- b. 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 the Developer shall complete and submit the federal Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- c. The parties shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

By executing this agreement, the parties affirm this lobbying certification with respect to the Project and affirm this certification of the material representation of facts upon which reliance will be made. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Title 31 U.S.C. §1352.

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.}

Article 26. Non-Discrimination Provisions

- A. Relocation Assistance:** The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects.
- B. Disability:**
 - a.** Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794 et. Seq.), as amended, prohibits discrimination on the basis of disability; and 49 CFR Part 27.
 - b.** Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by the Department of Transportation regulations at 49 C.F.R. parts 37 and 38.
- C. Age:** The Age Discrimination Act of 1974, as amended, (42 U.S.C. § 6101 et. Seq.), prohibits discrimination on the basis of age.
- D. Race, Creed, Color, National Origin, or Sex:**
 - a.** The Airport and Airway Improvement Act of 1982 (49 U.S.C. § 4.71, Section 4.7123), as amended, prohibits discrimination based on race, creed, color, national origin, or sex.
 - b.** The Federal Aviation Administration's Nondiscrimination state (4 U.S.C. § 47123) prohibits discrimination on the basis of race, color, national origin, and sex.
 - c.** Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et. seq.), prohibits discrimination on the basis of sex.
 - d.** Title IX of the Education Amendments of 1972, as amended, prohibits discrimination because of sex in education program or activities (20 U.S.C. 1681 et. seq.).
- E. Civil Rights Restoration Act:** The Civil Rights Restoration Act of 1987 (PL 100-209), Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs and activities" to include all of the programs or activities of the Federal-aid recipients, subrecipients and contractors, whether such programs or activities are Federally funded or not.
- F. Minority Populations:** Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures non-discrimination against minority and low-income populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations.
- G. Limited English Proficiency:** Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, the Engineer must take reasonable steps to ensure that LEP persons have meaningful access to its programs (70 Fed. Reg. at 74087 to 74100).

Article 27. Signatory Warranty

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

ATTACHMENT E

Information Resources and Security Requirements

1. TYPES OF DATA

"TxDOT Data" means TxDOT information, data, records, and information to which a Contractor-Related Entity has access, has possession, or is otherwise provided to a Contractor-Related Entity by TxDOT, whether or not intended under or for the purposes of the agreement, including, without limitation, data generated or collected under this agreement, intellectual property created as a work for hire under this agreement, and Personal Identifying Information (as defined below).

TxDOT Data is classified into the four categories that control applicability of security standards: Public, Sensitive, Confidential, and Regulated. See Section 4 for Definitions.

Any data that a Contractor-Related Entity accesses and downloads from a TxDOT system, for use, manipulation, storage, or management is considered Confidential Data unless otherwise specified in writing by TxDOT.

2. DATA REQUIREMENTS

2.1 Data, Data Dictionaries, and Data Flow Diagrams

Contractor shall ensure that all TxDOT Data that is generated, manipulated, transmitted, or stored, utilizes the TxDOT taxonomy, with documented data dictionaries, and data flow diagrams (including security protocols).

2.2 Data Transfer

- (a) At the completion of a deliverable, the Contractor shall transfer all TxDOT Data generated and stored for that deliverable to TxDOT in a manner and format acceptable to TxDOT and approved by TxDOT's Information Technology Division ("ITD").
- (b) All metadata associated with the TxDOT Data transferred must remain attached to that data.
- (c) Contractor shall maintain the appropriate level of data security throughout the transfer of the TxDOT Data.

2.3 Backup and Disaster Recovery

- (a) Contractor shall implement business continuity procedures to fulfill all requirements of this agreement that address, as a minimum, fire, theft, natural disaster, technical difficulty, workforce problems equipment failure, or other disruption of business.
- (b) Contractor shall maintain a disaster recovery plan. Contractor is responsible for all project related costs of disaster recovery during the project except for costs associated with disasters beyond Contractor's reasonable control, and for those costs included as part of the TxDOT infrastructure responsibilities.

2.4 Open Records Requests

Contractor shall not release Information in response to an open record request related to this agreement request unless TxDOT has approved the release in writing.

2.5 Encryption

For Sensitive, Confidential, and Regulated TxDOT Data, the Contractor shall ensure TxDOT Data is encrypted while in-transit and while at-rest in accordance with the TxDOT Controls Catalog Standard SC-13, Cryptographic Protection and SC-08, Transmission Confidentiality and Integrity security requirements.

2.6 Accessibility

Contractor shall ensure all products provided under this agreement comply with the State of Texas Accessibility requirements for Electronic and Information Resources specified in 1 Texas Administrative Code (TAC) Chapters 206 and 213.

3. INFORMATION RESOURCE AND SECURITY REQUIREMENTS

3.1 Information Security Safeguards

- (a) Contractor shall implement appropriate administrative, physical, and technical safeguards, in accordance with TxDOT's security requirements, that reasonably and appropriately protects the confidentiality, integrity, and availability of TxDOT Data.
- (b) Contractor shall conform its policies and procedures relating to the implementation of security safeguards to comply with TxDOT's Information Resources security program pursuant to the TxDOT and DIR's Information Security Controls Catalog Standards.

3.2 Potential Cybersecurity Incident or Breach Notification

Contractor shall immediately report to TxDOT via the Report Cybersecurity Incident Page on TxDOT.gov, any potential cybersecurity incident or breach involving TxDOT Data (See Section 4, Definitions).

3.3 Demonstrating Compliance with Information Security Requirements

If required by TxDOT, prior to contract award, at renewal, and on a recurring basis, Contractor shall provide a TxDOT Security Questionnaire as documented in the contract. Additionally, upon reasonable notice to the Contractor, and if TxDOT determines that the Contractor has violated this agreement, TxDOT, directly or through its agent, may request an attestation, which may include additional attestations, and evidence that Contractor is in compliance with applicable laws, regulations, and standards outlined in 3.5.

3.4 Security Training

In accordance with Section 2054.5192 of the Texas Government Code, each Contractor-Related Entity that will access a TxDOT computer system or database must complete a TxDOT approved cybersecurity training program that is certified under Section 2054.5192 of the Texas Government Code. The training program must be completed during the term of the contract and during any renewal period. The Contractor shall provide verification of completion of the cybersecurity training program in a method designated by TxDOT.

3.5 Applicable Laws, Regulations, and Standards

Contractor shall perform the services in accordance with the following standards, notify TxDOT of situations where compliance is not achievable, and assist TxDOT with the prevention of security gaps or conflicts that could impair security performance. Contractor shall comply with all applicable federal, state, and local laws and regulations necessary to perform the services. A non-exhaustive list of federal, state, and local laws and regulations that might be applicable includes the following.

- (1) DIR Security Controls Standard Catalog and applicable TxDOT Security Requirements
 - (A) For Public Data, TxDOT and DIR Security Controls Standards Catalog low baseline and applicable TxDOT security requirements.
 - (B) For Sensitive Data TxDOT and DIR Security Controls Standards Catalog low baseline with Sensitive overlay and applicable TxDOT security requirements.
 - (C) For Confidential Data, TxDOT and DIR Security Controls Standards Catalog moderate baseline and applicable TxDOT security requirements.
 - (D) For Regulated Data, TxDOT and DIR Security Controls Standards Catalog moderate

baseline, applicable TxDOT security requirements, and applicable regulated security requirements.

(2) TX-RAMP Requirements

- (A) Contractor shall ensure that any Contractor-Related Entities providing a Cloud Computing Service to TxDOT that creates, accesses, transmits, uses, or stores TxDOT Data must be authorized in the Texas Risk and Authorization Management Program ("TX-RAMP") if TxDOT determines TX-RAMP is required.**
- (B) TxDOT may approve the use of a TX-RAMP provisional status in lieu of a TX-RAMP certification. This approval is not effective unless approved in writing by the TxDOT Chief Information Security Officer ("CISO") and DIR.**
- (C) Applicable Contractor-Related Entities must achieve the following levels of authorization by the following dates for any new contract or renewal of existing contract:**
 - a. TX-RAMP Level 1 Status no later than January 1, 2024**
 - b. TX-RAMP Level 2 Status no later than January 1, 2022**

(3) State Laws and Regulations:

- (A) Texas Administrative Code, Chapter 202 - Information Security Standards**
- (B) Texas Administrative Code, Chapter 206 - State Websites**
- (C) Texas Administrative Code, Chapter 213 - Electronic and Information Resources**
- (D) Texas Government Code, Chapter 552 - Public Information**
- (E) Texas Government Code, Chapter 2054 - Information Resources**
- (F) Texas Penal Code, Chapter 33 - Computer Crimes**
- (G) For Confidential data, Texas Business and Commerce Code, Chapter 521 - Unauthorized Use of Identifying Information**
- (H) For Confidential data containing Protected Health Information, Texas Health and Safety Code, Chapter 181 - Medical Records Privacy**
- (I) For Regulated data containing Payment Card Industry ("PCI") information, the Payment Card Industry Data Security Standards ("PCI-DSS")**
- (J) For Regulated data containing Criminal Justice Information ("CJI"), the Criminal Justice Information Services ("CJIS") Security Policy**

3.6 Information Resources Technology

- (a) Any proposed information resources technology that will be installed on any TxDOT owned equipment or that will access any TxDOT network must be reviewed and approved by the ITD Architectural Review Board ("ARB") prior to any development or design.**
- (b) Any proposed information resources technology that will be installed on any TxDOT owned equipment or that will access any TxDOT network must be reviewed and approved by the ITD Change Advisory Board ("CAB") prior to implementation or delivery.**

3.7 Information Resources Technology ("IRT") Procurements

ITD must approve all procurements of:

- (1) Information Resources Technology that will be owned by TxDOT.**
- (2) IT services for any environment that provides processing, storage, networking, management and the distribution of data to ensure alignment with Texas Government**

3.8 Prohibited Technologies

In accordance with the Texas Statewide Plan for Prohibited Technologies, Contractor shall not provide services, equipment, or systems to TxDOT determined to be a Prohibited Technology by TxDOT. A list of the entities currently determined to be Prohibited Technologies is available at:

https://ftp.txdot.gov/pub/txdot_it/cybersecurity/prohibited-technologies-list-cybersecurity.pdf

3.9 Background Checks Required for Access to TxDOT Data and TxDOT Systems

- (a) The contractor shall ensure that a Background Check is performed on each Contractor-Related Entity prior to that person receiving access to any TxDOT system.
- (b) Contractor shall ensure that a Background Check is performed on each Contractor-Related Entity prior to that person receiving access in a Contractor-Related Entity Environment to TxDOT Data that requires a Moderate or High Security Baseline
- (c) A "Background Check" must include the following:
 - (1) Verification of Social Security number;
 - (2) All true alias names and counties
 - (3) Federal and county level checks for felony and misdemeanor arrest and convictions for the past seven years, including sentences of deferred adjudication - all names;
 - (4) Search of national criminal database - all names;
 - (5) Search of state and national sex offender registry - all names; and
 - (6) Search of the government sanction registry listings.
- (d) Contractor shall not allow any Contractor-Related Entity for which Contractor received any unfavorable result when conducting a Background Check to access TxDOT Data or any TxDOT System.
- (e) TxDOT may make exceptions to 3.9(d) on a case-by-case basis. Any exception granted by TxDOT must be in writing to be effective.
- (f) Upon request by TxDOT, Contractor shall provide documentation that demonstrates to TxDOT's satisfaction that Background Checks have been conducted as required and that no Contractor-Related Entity with one or more unfavorable results has received access to TxDOT Data or any TxDOT System.
- (g) Contractor shall immediately notify TxDOT if it learns of any change in status that might cause a Contractor-Related Entity to receive an unfavorable result from a Background Check.
- (h) If Contractor fails to meet the requirements of 3.9, TxDOT may terminate this contract immediately with no further liability to the Contractor.

3.10 Interconnection of TxDOT and Contractor-Related Entity Environment

If a Contractor-Related Entity has or will have one or more interconnections between an Information System in that Contractor-Related Entity's Environment and a TxDOT System or Systems, the Contractor shall execute or cause to be executed an Interconnection Security Agreement ("ISA") for each interconnection. An executed ISA must be provided to TxDOT for each new interconnection prior to connection.

- 3.11 Upon request by TxDOT, the Contractor shall provide any additional information or documentation that TxDOT determines is necessary to confirm a Contractor-Related Entity's compliance with this section. If Contractor fails to provide requested information as required, TxDOT may terminate this contract immediately with no further liability to the Contractor.

- 3.12 If completion of any of the requirements in this section requires obtaining information and/or action from a Contractor-Related Entity or other non-party entity, Contractor shall obtain the required information or action from that entity. For example, if the Contractor is a reseller of a Contractor-Related Entity's product or service, the Contractor is responsible for completing the TxDOT Security Questionnaire and the Contractor must obtain all the information or actions from the Contractor-Related Entity necessary for the Contractor to complete the questionnaire.

3.13 SOC 1 Type 2 and SOC 2 Type 2 Requirements

If a Contractor-Related Entity is determined to be providing a function that is a key internal financial control or has a material financial impact on the TxDOT financial statements, then the following are applicable:

- (a) Provide an Annual Report - Contract-Related entity must provide TxDOT the audit SSAE 18 Results within 15 days of Contract-Related receipt of final report from independent auditor. Licensor will engage a third party (the "Service Provider") to conduct an examination in accordance with Statement on Standards for Attestation Engagements No. 18, as established by the American Institute of Certified Public Accountants (AICPA), and commonly referred to as a Service Organization Controls (SOC) 1, relevant to controls related to the solution, and prepare a SOC 1 Type 2 report with respect thereto (the "SOC 1 Report").
- (b) In addition, Licensor will engage a Service Provider to conduct an examination in accordance with AT Section 101 of the Statement on Standards for Attestation Engagements to report on controls at a Service Organization relevant to security and availability, established by the AICPA ("AICPA Standards") and, subject to AICPA Standards, prepare a Type 2 service organization controls report with respect thereto (the "SOC 2 Report"). Once the SOC 1 Report and SOC 2 Report are each available, upon written request from Licensee, Licensor must make available Licensor personnel to discuss with TxDOT the reports. Other report types will not be considered to meet these requirements.

4. DEFINED TERMS

- 4.1 **"baseline"** means the set of minimum-security controls defined for a low-impact, moderate-impact, or high-impact information system. Information on applicable baselines is available at <https://www.txdot.gov/inside-txdot/division/information-technology/cybersecurity/cybersecurity-resources.html>.
- 4.2 **"Breach"** means "breach of system security" as defined in Section 521.053(a) of the Texas Business and Commerce Code, which defines breach of system security as "the unauthorized acquisition of computerized data that compromises the security, confidentiality, or integrity of sensitive personal information maintained by a person, including data that is encrypted if the person accessing the data has the key required to decrypt the data."
- 4.3 **"Cloud Computing Service"** means a model for enabling ubiquitous, convenient, on-demand network access to a shared pool of configurable computing resources (e.g., networks, servers, storage, applications, and services) that can be rapidly provisioned and released with minimal management effort or service provider interaction. Cloud computing is referenced in Texas Government Code Title 10, Subtitle D, Chapter 2157, Subchapter A, Section 2157.007 and is defined in NIST 800-145.
- 4.4 **"Confidential Information"** has the meaning provided in 1 Texas Administrative Code § 202.1(5), which states the confidential information means "information that must be protected from unauthorized disclosure or public release based on published laws or legal agreements." Information that is Confidential Information under this definition includes:
 - (a) Dates of birth of living persons
 - (b) Driver's license numbers

- (c) License plate numbers
 - (d) Credit card numbers
 - (e) Insurance policy numbers
 - (f) Attorney-Client communications
 - (g) Drafts of policymaking documents
 - (h) Information related to pending litigation
 - (i) Audit working papers
 - U) Competitive bidding information before contract awarded.
 - (k) Personal Identifiable Information
 - (l) Sensitive Personal Information
 - (m) Regulated data
 - (n) Information excepted from disclosure requirements of Chapter 552 of the Texas Government Code ("Texas Public Information Act") or other applicable state or federal law
 - (o) Compliance reports for which the Texas Attorney General has granted permission to withhold
 - (p) Investigative working papers and draft reports excepted from disclosure under Section 552.116 of the Texas Government Code
- 4.5 **"Contractor-Related Entity"** means Contractor; subcontractors; their employees, agents and officers; and all other persons for whom Contractor might be legally or contractually responsible.
- 4.6 **"Contractor-Related Entity Environment"** means an Environment for which TxDOT does not manage or control the system environment, servers, operating systems, or storage with the exception of user-specific configuration settings.
- 4.7 **"Data"** means the representation of facts; as the raw material of information that is used as a basis for reasoning, decision-making, discussion, or calculation.
- 4.8 **"Data Dictionary"** means a directory of the definitions, purpose, policies and structure about data. It is a compilation of information about the data owned by the enterprise. It describes every data item in a database in enough detail for users and application developers to know what the data is and how to make use of it.
- 4.9 **"Environment"** means an aggregate of procedures, conditions, and objects affecting the development, operation, and maintenance of an information system.
- 4.10 **"Information"** means data, regardless of form, that is created, contained in, or processed by information resources facilities, communications networks, or storage media.
- 4.11 **"Information Resources Technology"** means data processing and telecommunications hardware, software, services, supplies personnel, facility resources, maintenance and training that are employed, designed, built, operated, and maintained to collect, record, process, store, retrieve, display, and transmit information.
- 4.12 **"Information System"** means a discrete set of information resources organized for the collection, processing, maintenance, use, sharing, dissemination, or disposition of information. An Information System normally includes, but is not limited to, hardware, software, network infrastructure, information, applications, communications, and people.
- 4.13 **"Personal Identifying Information"** means information that alone or in conjunction with other information identifies an individual, including an individual's:

- (a) Name, social security number, date of birth, or government-issued identification number;
 - (b) Mother's maiden name;
 - (c) Unique biometric data, including the individual's fingerprint, voice print, and retina or iris image; and
 - (d) Unique electronic identification number, address, or routing code.
- 4.14 **"Potential Cybersecurity Incident"** means an event which may result in the accidental or deliberate unauthorized access, loss, disclosure, modification, disruption, or destruction of information or information resources.
- 4.15 **"Public Data"** means Data that is subject to public disclosure pursuant to the Texas Public Information Act and freely and without reservation made available to the public.
- 4.16 **"Public information"** means information written, produced, collected, assembled, or maintained by or for a governmental body, including information held by individual officers or employees of a governmental body, in connection with the transaction of official TxDOT business. This includes information that is held by contractors and consultants and that TxDOT owns, to which TxDOT has a right of access, or on which public money was spent for the purpose of writing, producing, collecting, assembling, or maintaining the information. Public information includes any electronic communication created, transmitted, received, or maintained on any device if the communication is in connection with the transaction of official business. Public information may be stored in any medium and may exist in forms such as books, papers, letters, documents, e-mails, Internet postings, text messages, instant messages, printouts, photographs, maps, drawings, and audio and video recordings. Public information does not include tangible items, such as computers or guardrails.
- 4.17 **"Regulated Data"** means information for which the use and protection of is dictated by a state or federal agency or by third party agreements.
- 4.18 **"Sensitive Data"** means information that could be subject to release under an open records request, but should be controlled to protect third parties, and should be vetted and verified before release. At TxDOT, this could include operational information, personnel records, research, or internal communications.
- 4.19 **"Sensitive Personal Information"** has the meaning provided by Section 521.002(2) of the Texas Government Code, which defines sensitive personal information as:
- (a) An individual's first name or first initial and last name in combination with any one or more of the following items, if the name and item are not encrypted:
 - (1) Social Security Number
 - (2) Driver's license number or government-issued identification number; or
 - (3) Account number or credit or debit card number in combination with any required security code, access code, or password that would permit access to an individual's financial account; or
 - (b) Information that identifies an individual and relates to:
 - (1) The physical or mental health or condition of the individual;
 - (2) The provision of health care to the individual; or
 - (3) Payment for the provision of health care to the individual.
- 4.20 **"TxDOT Security Questionnaire"** means a cybersecurity and privacy questionnaire that provides TxDOT ITD necessary information for third party attestation in accordance with TxDOT requirements.

- 4.21 **"TxDOT System"** means an Information System that is owned, managed, or maintained by TxDOT or on behalf of TxDOT.