

TxDOT:		Federal Highway Administration:	
CSJ #	2094-01-063	CFDA No.	20.205
District #	21 – Pharr	CFDA Title	Highway Planning and Construction
Code Chart 64 #	50109		
Project Name	FM 2220, from FM 1925 to SH 107	<i>AFA Not Used For Research &amp; Development</i>	

STATE OF TEXAS §

COUNTY OF TRAVIS §

**ADVANCE FUNDING AGREEMENT**  
**For**  
**Metropolitan and Urban Area Corridor Project**  
**On-System**

**THIS AGREEMENT** is made by and between the State of Texas, acting by and through the **Texas Department of Transportation** called the “State”, and the **County of Hidalgo**, acting by and through its duly authorized officials, called the “Local Government”. The State and Local Government shall be collectively referred to as “the parties” hereinafter.

**WITNESSETH**

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

**WHEREAS**, the Texas Transportation Code, Section 201.103 establishes that the State shall design, construct and operate a system of highways in cooperation with local governments, and Section 222.052 authorizes the Texas Transportation Commission to accept contributions from political subdivisions for development and construction of public roads and the state highway system within the political subdivision, and

**WHEREAS**, federal and state laws require local governments to meet certain contract standards relating to the management and administration of State and federal funds, and

**WHEREAS**, the Texas Transportation Commission passed Minute Order Number **115005 and 115291** authorizing the State to undertake and complete a highway improvement generally described as **the widening of FM 2220 to 6 lanes with median** for an authorized cost of \$18,520,000, and

**WHEREAS**, the Local Government will fund and perform the improvement described as **the preparation of the preliminary engineering (schematic, environmental document and public involvement) for the widening of FM 2220 from FM 1925 to SH 107 (Project)**; and

**WHEREAS**, the Governing Body of the Local Government has approved entering into this Agreement by resolution or ordinance dated \_\_\_\_\_, which is attached to and made a part of this Agreement as Attachment A, Resolution or Ordinance, for the improvement covered by this Agreement. A map showing the Project location appears in Attachment B, Location Map Showing Project (Attachment B), which is attached to and made a part of this Agreement.

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

## AGREEMENT

### 1. Responsible Parties:

The parties shall be responsible for the following work as stated in the article of the Agreement referenced in the table below:

1	N/A	Utilities	Article 8
2.	Local Government	Environmental Assessment and Mitigation	Article 9
3.	Local Government	Architectural and Engineering Services	Article 11
4.	N/A	Construction Responsibilities	Article 12
5.	N/A	Right of Way and Real Property	Article 14

### 2. Period of the Agreement

This Agreement becomes effective when signed by the last party whose signing makes the Agreement fully executed. This Agreement shall remain in effect until the Project is completed or unless terminated as provided below.

### 3. Scope of Work

**The preliminary engineering (schematic, environmental document, and public involvement) for the widening of FM 2220 from FM 1925 to SH 107 as shown on Attachment B.**

### 4. Project Sources and Uses of Funds

The total estimated cost of the Project is **\$666,560** as shown in Attachment C, Project Budget, (Attachment C) which is attached to and made a part of this Agreement.

- A. If the Local Government will perform any work under this Agreement for which reimbursement will be provided by or through the State, the Local Government must complete training. If federal funds are being used, the training must be completed before federal spending authority is obligated. Training is complete when at least one individual who is working actively and directly on the Project successfully completes and receives a certificate for the course entitled “Local Government Project Procedures and Qualification for the Texas Department of Transportation” and retains qualification in accordance with applicable TxDOT procedures. Upon request, the Local Government shall provide the certificate of qualification to the State. The individual who receives the training certificate may be an employee of the Local Government or an employee of a firm that has been contracted by the Local Government to perform oversight of the Project. The State in its discretion may deny reimbursement if the Local Government has not continuously designated in writing a qualified individual to work actively on or to directly oversee the Project.

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- B. The expected cash contributions from the federal government, the State, the Local Government, or other parties are shown in Attachment C. The State will pay for only those Project costs that have been approved by the Texas Transportation Commission. The State and the federal government will not reimburse the Local Government for any work performed before the federal spending authority is formally obligated to the Project by the Federal Highway Administration (FHWA). After federal funds have been obligated, the State will send to the Local Government a copy of the formal documentation showing the obligation of funds including federal award information. The Local Government is responsible for 100% of the cost of any work performed under its direction or control before the federal spending authority is formally obligated.
- C. Attachment C shows, by major cost categories, the cost estimates and the party responsible for performing the work for each category. These categories may include but are not limited to: (1) costs of real property; (2) costs of utility work; (3) costs of environmental assessment and remediation; (4) cost of preliminary engineering and design; (5) cost of construction and construction management; and (6) any other local project costs.
- D. The State will be responsible for securing the federal and State share of the funding required for the development and construction of the local Project. If the Local Government is due funds for expenses incurred, these funds will be reimbursed to the Local Government on a cost basis.
- E. The Local Government will be responsible for all non-federal or non-State participation costs associated with the Project, unless otherwise provided for in this Agreement or approved otherwise in an amendment to this Agreement. Where Special Approval has been granted by the State under 43 TAC §15.52, the Local Government shall only in that instance be responsible for overruns in excess of the amount specified in Attachment C to be paid by the Local Government.
- F. If the Project has been approved for a specified percentage or a periodic payment non-standard funding or payment arrangement under 43 TAC §15.52, the budget in Attachment C will clearly state the specified percentage or the periodic payment schedule.
- G. When Special Approval has been granted by the State so that the Local Government bears the responsibility for paying cost overruns, the Local Government shall make payment to the State within thirty (30) days from the receipt of the State’s written notification of those amounts.
- H. Prior to the performance of any engineering review work by the State, the Local Government will pay to the State the amount specified in Attachment C. At a minimum, this amount shall equal the Local Government’s funding share for the estimated cost of preliminary engineering performed or reviewed by the State for the Project. At least sixty (60) days prior to the date set for receipt of the construction bids, the Local Government shall remit its remaining financial share for the State’s estimated construction oversight and construction cost.
- I. The State will not execute the contract for the construction of the Project until the required funding has been made available by the Local Government in accordance with this Agreement.
- J. Whenever funds are paid by the Local Government to the State under this Agreement, the Local Government shall remit a check or warrant made payable to the “Texas

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Department of Transportation” or may use the State’s Automated Clearing House (ACH) system for electronic transfer of funds in accordance with instructions provided by TxDOT’s Finance Division. The funds shall be deposited and managed by the State and may only be applied by the State to the Project.

- K. The State will not pay interest on any funds provided by the Local Government.
- L. If a waiver for the collection of indirect costs for a service project has been granted under 43 TAC §15.56, the State will not charge the Local Government for the indirect costs the State incurs on the local Project, unless this Agreement is terminated at the request of the Local Government prior to completion of the Project.
- M. If the Local government is an Economically Disadvantaged County (EDC) and if the State has approved adjustments to the standard financing arrangement, this Agreement reflects those adjustments.
- N. Where the Local Government is authorized to perform services under this Agreement and be reimbursed by the State, the 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 the State no more frequently than monthly, and no later than ninety (90) days after costs are incurred. If the Local Government submits invoices more than ninety (90) days after the costs are incurred and if federal funding is reduced as a result, the State shall have no responsibility to reimburse the Local Government for those costs.
- O. Upon completion of the Project, where Special Approval has been granted by the State under 43 TAC 15.52, the State will perform a final accounting of the Project costs. Any funds due by the Local Government, the State, or the federal government will be promptly paid by the owing party.
- P. The state auditor may conduct an audit or investigation of any entity receiving funds from the State directly under this Agreement or indirectly through a subcontract under this Agreement. Acceptance of funds directly under this Agreement or indirectly through a 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.
- Q. Payment under this Agreement beyond the end of the current fiscal biennium is subject to availability of appropriated funds. If funds are not appropriated, this Agreement shall be terminated immediately with no liability to either party.

**5. Termination of This Agreement**

This Agreement shall remain in effect until the Project is completed and accepted by all parties, unless:

- A. The Agreement is terminated in writing with the mutual consent of the parties;
- B. The Agreement is terminated by one party because of a breach, in which case any costs incurred because of the breach shall be paid by the breaching party;
- C. The Local Government elects not to provide funding after the completion of preliminary engineering, specifications, and estimates (PS&E) and the Project does not proceed because of insufficient funds, in which case the Local Government agrees to reimburse the State for its reasonable actual costs incurred during the Project; or

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D. The Project is inactive for thirty-six (36) consecutive months or longer and no expenditures have been charged against federal funds, in which case the State may in its discretion terminate this Agreement.

**6. Amendments**

Amendments to this Agreement due to changes in the character of the work, terms of the Agreement, or responsibilities of the parties relating to the Project may be enacted through a mutually agreed upon, written amendment.

**7. Remedies**

This Agreement shall not be considered as specifying the exclusive remedy for any agreement default, but all remedies existing at law and in equity may be availed of by either party to this Agreement and shall be cumulative.

**8. Utilities**

The party named in Article 1, Responsible Parties, under AGREEMENT 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 the State of a delay resulting from the Local Government’s failure to ensure that utility facilities are adjusted, removed, or relocated before the scheduled beginning of construction. The Local Government will not be reimbursed with federal or State funds for the cost of required utility work. The Local Government must obtain advance approval for any variance from established procedures. Before a construction contract is let, the Local Government shall provide, at the State’s request, a certification stating that the Local Government has completed the adjustment of all utilities that must be adjusted before construction is completed.

**9. Environmental Assessment and Mitigation**

Development of a transportation 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. The party named in Article 1, Responsible Parties, under AGREEMENT is responsible for the following:

- A. The identification and assessment of any environmental problems associated with the development of a local project governed by this Agreement.
- B. The cost of any environmental problem’s mitigation and remediation.
- C. Providing any public meetings or public hearings required for the environmental assessment process. Public hearings will not be held prior to the approval of the Project schematic.
- D. The preparation of the NEPA documents required for the environmental clearance of this Project.

If the Local Government is responsible for the environmental assessment and mitigation, before the advertisement for bids, the Local Government shall provide to the State written documentation from the appropriate regulatory agency or agencies that all environmental clearances have been obtained.

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**10. Compliance with Accessibility Standards**

All parties to this Agreement shall ensure that the plans for and the construction of all projects subject to this Agreement are in compliance with standards issued or approved by the Texas Department of Licensing and Regulation (TDLR) as meeting or consistent with minimum accessibility requirements of the Americans with Disabilities Act (P.L. 101-336) (ADA).

**11. Architectural and Engineering Services**

The party named in Article 1, Responsible Parties, under AGREEMENT has responsibility for the performance of architectural and engineering services. The engineering plans shall be developed in accordance with the applicable State’s *Standard Specifications for Construction and Maintenance of Highways, Streets and Bridges* and the special specifications and special provisions related to it. For projects on the State highway system, the design shall, at a minimum conform to applicable State manuals. For projects not on the State highway system, the design shall, at a minimum, conform to applicable American Association of State Highway and Transportation Officials (AASHTO) design standards.

In procuring professional services, the parties to this Agreement must comply with federal requirements cited in 23 CFR Part 172 if the Project is federally funded and with Texas Government Code 2254, Subchapter A, in all cases. Professional contracts for federally funded projects must conform to federal requirements, specifically including the provision for participation by Disadvantaged Business Enterprises (DBEs), ADA, and environmental matters. If the Local Government is the responsible party, the Local Government shall submit its procurement selection process for prior approval by the State. All professional services contracts must be reviewed and approved by the State prior to execution by the Local Government.

**12. Construction Responsibilities**

The party named in Article 1, Responsible Parties, under AGREEMENT is responsible for the following:

- A. Advertise for construction bids, issue bid proposals, receive and tabulate the bids, and award and administer the contract for construction of the 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 the State prior to advertising for construction.
- B. If the State is the responsible party, the State will use its approved contract letting and award procedures to let and award the construction contract.
- C. If the Local Government is the responsible party, the Local Government shall submit its contract letting and award procedures to the State for review and approval prior to letting.
- D. If the Local Government is the responsible party, the State must concur with the low bidder selection before the Local Government can enter into a contract with the vendor.
- E. Upon completion of the Project, the party constructing the Project will issue and sign a “Notification of Completion” acknowledging the Project’s construction completion and

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submit certification(s) sealed by a professional engineer(s) licensed in the State of Texas.

- F. For federally funded contracts, the parties to this Agreement will comply with federal construction requirements cited in 23 CFR Part 635 and with requirements cited in 23 CFR Part 633, 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 635, Subpart B.

**13. Project Maintenance**

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

**14. Right of Way and Real Property**

The party named in Article 1, Responsible Parties, under AGREEMENT is responsible for the provision and acquisition of any needed right of way or real property.

**15. Insurance**

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

**16. Notices**

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:

<b>Local Government:</b>	<b>State:</b>
County of Hidalgo ATTN: Judge PO Box 1356 Edinburg, TX 78540	Texas Department of Transportation ATTN: Director of Contract Services 125 E. 11 <sup>th</sup> Street Austin, TX 78701

All notices shall be deemed given on the date 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.

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**17. Legal Construction**

If 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.

**18. Responsibilities of the Parties**

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

**19. Ownership of Documents**

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

All information resources and information resources technology shall comply with Attachment E, Information Resources and Security Requirements, which is attached and made a part of this agreement.

**20. Compliance with Laws**

The parties to this Agreement 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, the Local Government shall furnish the State with satisfactory proof of this compliance.

**21. 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.

**22. Cost Principles**

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

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**23. Procurement and Property Management Standards**

The parties to this Agreement shall adhere to the procurement standards established in Title 49 CFR §18.36, to the property management standards established in 2 CFR 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, and to the Texas Uniform Grant Management Standards. The State must pre-approve the Local Government’s procurement procedures for purchases to be eligible for state or federal funds.

**24. 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 the State, the 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 seven (7) years from the date of final reimbursement by FHWA under this Agreement or until any impending litigation or claims are resolved. Additionally, the State, the 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.

**25. Civil Rights Compliance**

The parties to this Agreement are responsible for the following:

- A. Compliance with Regulations: Both parties will comply with the Acts and the Regulations relative to Nondiscrimination in Federally-assisted programs of the U.S. Department of Transportation (USDOT), the Federal Highway Administration (FHWA), as they may be amended from time to time, which are herein incorporated by reference and made part of this Agreement.
- B. Nondiscrimination: The Local Government, with regard to the work performed by it during the Agreement, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The Local Government will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the Agreement covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.
- C. Solicitations for Subcontracts, Including Procurement of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the Local Government for work to be performed under a subcontract, including procurement of materials or leases of equipment, each potential subcontractor or supplier will be notified by the Local Government of the Local Government’s obligations under this Agreement and the Acts and Regulations relative to Nondiscrimination on the grounds of race, color, or national origin.
- D. Information and Reports: The Local Government will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto, and will permit access to its books, records, accounts, other sources of information, and facilities as may be determined by the State or the FHWA to be pertinent to ascertain compliance with such Acts, Regulations or directives. Where any information required

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of the Local Government is in the exclusive possession of another who fails or refuses to furnish this information, the Local Government will so certify to the State or the FHWA, as appropriate, and will set forth what efforts it has made to obtain the information.

- E. Sanctions for Noncompliance: In the event of the Local Government's noncompliance with the Nondiscrimination provisions of this Agreement, the State will impose such contract sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:
1. withholding of payments to the Local Government under the Agreement until the Local Government complies and/or
  2. cancelling, terminating, or suspending of the Agreement, in whole or in part.
- F. Incorporation of Provisions: The Local Government will include the provisions of paragraphs (A) through (F) in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The Local Government will take such action with respect to any subcontract or procurement as the State or the FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Local Government becomes involved in, or is threatened with, litigation with a subcontractor or supplier because of such direction, the Local Government may request the State to enter into such litigation to protect the interests of the State. In addition, the Local Government may request the United States to enter into such litigation to protect the interests of the United States.

**26. Pertinent Non-Discrimination Authorities**

During the performance of this Agreement, each party, for itself, its assignees, and successors in interest agree to comply with the following nondiscrimination statutes and authorities; including but not limited to:

- A. Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- B. 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).
- C. Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), as amended, (prohibits discrimination on the basis of sex).
- D. 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.
- E. The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age).
- F. Airport and Airway Improvement Act of 1982, (49 U.S.C. Chapter 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex).
- G. 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 or activities” to include all of the

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programs or activities of the federal-aid recipients, subrecipients and contractors, whether such programs or activities are federally funded or not).

- H. Titles II and III of the Americans with Disabilities Act, which prohibits 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 Department of Transportation regulations at 49 C.F.R. parts 37 and 38.
- I. The Federal Aviation Administration’s Nondiscrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex).
- J. Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations.
- K. 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 parties must take reasonable steps to ensure that LEP persons have meaningful access to the programs (70 Fed. Reg. at 74087 to 74100).
- L. Title IX of the Education Amendments of 1972, as amended, which prohibits the parties from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq.).

**27. Disadvantaged Business Enterprise (DBE) Program Requirements**

If federal funds are used:

- A. The parties shall comply with the Disadvantaged Business Enterprise Program requirements established in 49 CFR Part 26.
- B. The Local Government shall adopt, in its totality, the State’s federally approved DBE program.
- C. The Local Government shall incorporate into its contracts with subproviders an appropriate DBE goal consistent with the State’s DBE guidelines and in consideration of the local market, project size, and nature of the goods or services to be acquired. The Local Government shall submit its proposed scope of services and quantity estimates to the State to allow the State to establish a DBE goal for each Local Government contract with a subprovider. The Local Government shall be responsible for documenting its actions.
- D. The Local Government shall follow all other parts of the 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](http://ftp.dot.state.tx.us/pub/txdot-info/bop/dbe/mou/mou_attachments.pdf).
- E. The Local Government shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any U.S. Department of Transportation (DOT)-assisted contract or in the administration of its DBE program or the requirements of 49 CFR Part 26. The Local Government shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure non-discrimination in award and administration of

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DOT-assisted contracts. The 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 the Local Government of its failure to carry out its approved program, the State may impose sanctions as provided for under 49 CFR Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).

- F. Each contract the Local Government signs with a contractor (and each subcontract the prime contractor signs with a sub-contractor) 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.*

**28. Debarment Certifications**

If federal funds are used, 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, the 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 subcontract or purchase order awarded under this Agreement to certify its eligibility to receive federal funds and, when requested by the State, to furnish a copy of the certification.

If state funds are used, the parties are prohibited from making any award to any party that is debarred under the Texas Administrative Code, Title 34, Part 1, Chapter 20, Subchapter G, Rule §20.585 and the Texas Administrative Code, Title 43, Part 1, Chapter 9, Subchapter G.

**29. Lobbying Certification**

If federal funds are used, in executing this Agreement, each signatory certifies to the best of that signatory’s knowledge and belief, 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.

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- 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 Local Government 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 shall be included in the award documents for all sub-awards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and all sub-recipients shall certify and disclose accordingly. 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.

**30. Federal Funding Accountability and Transparency Act Requirements**

If federal funds are used, the following requirements apply:

- A. 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>.
- B. The Local Government agrees that it shall:
  1. Obtain and provide to the State a System for Award Management (SAM) number (Federal Acquisition Regulation, Part 4, Sub-part 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/>
  2. Obtain and provide to the State a Data Universal Numbering System (DUNS) number, a unique nine-character number that allows federal government to track the distribution of federal money. The DUNS may be requested free of charge for all businesses and entities required to do so by visiting the Dun & Bradstreet (D&B) on-line registration website <http://fedgov.dnb.com/webform>; and
  3. Report the total compensation and names of its top five executives to the State if:
    - i. More than 80% of annual gross revenues are from the federal government, and those revenues are greater than \$25,000,000; and
    - ii. The compensation information is not already available through reporting to the U.S. Securities and Exchange Commission.

**31. Single Audit Report**

If federal funds are used:

- A. The parties shall comply with the single audit report requirements stipulated in 2 CFR 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.
- B. If threshold expenditures of \$750,000 or more are met during the fiscal year, the Local Government must submit a Single Audit Report and Management Letter (if applicable)

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to TxDOT's Compliance Division, 125 East 11th Street, Austin, TX 78701 or contact TxDOT's Compliance Division by email at [singleaudits@txdot.gov](mailto:singleaudits@txdot.gov).

- C. If expenditures are less than the threshold during the Local Government's fiscal year, the Local Government must submit a statement to TxDOT's Compliance Division as follows: "We did not meet the \$\_\_\_\_\_ expenditure threshold and therefore, are not required to have a single audit performed for FY \_\_\_\_\_."
- D. For each year the Project remains open for federal funding expenditures, the 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 the Project has been formally closed out and no charges have been incurred within the current fiscal year.

**32. 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 under that party's signature.

<b>THE STATE OF TEXAS</b>	<b>THE LOCAL GOVERNMENT</b>
Signature	Signature
Kenneth Stewart	Richard F. Cortez
Typed or Printed Name	Typed or Printed Name
Director of Contract Services	Hidalgo County Judge
Typed or Printed Title	Typed or Printed Title
Date	Date

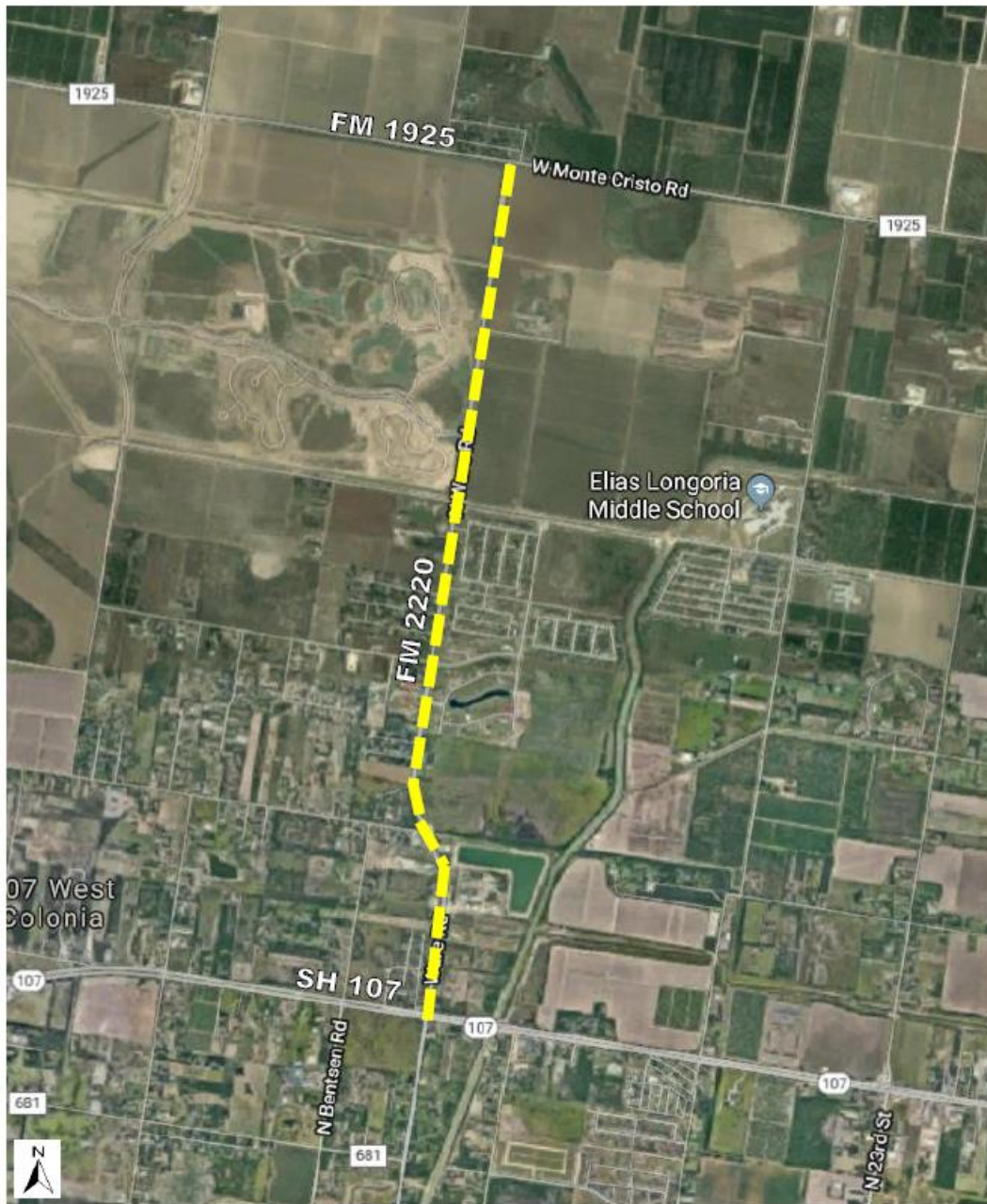
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**ATTACHMENT A**  
RESOLUTION OR ORDINANCE

FOR REVIEW ONLY

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**ATTACHMENT B**  
LOCATION MAP SHOWING PROJECT



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**ATTACHMENT C**  
**PROJECT BUDGET**

The Local Government's participation will be limited to providing the preliminary engineering (schematic, environmental document, and public involvement). The estimated cost for these services is \$632,830. The Local Government will be responsible for 100% for the cost of these services and cost overruns.

Description	Total Estimated Cost	Federal Participation	State Participation	Local Participation
		Cost	Cost	Cost
Preliminary Engineering (by Local Government)	\$414,180	\$0	\$0	\$414,180
Environmental document (by Local Government)	\$218,650	\$0	\$0	\$218,650
Indirect State Costs	\$33,730	\$0	\$33,730	\$0
<b>TOTAL</b>	<b>\$666,560</b>	<b>\$0</b>	<b>\$33,730</b>	<b>\$632,830</b>

The Local Government will be responsible for any costs incurred by the State that are due to errors or omissions in the design plans provided by the Local Government.

The Local Government will complete and submit the Schematic Guideline Checklist to the State along with the schematic, and electronic files in .dgn format created using the Open Roads design software (Power GeoPak SS4). The Schematic Guideline Checklist is shown in Attachment D, which is attached and made a part of this agreement.

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## ATTACHMENT D SCHEMATIC GUIDELINE CHECKLIST



### SCHEMATIC GUIDELINE CHECKLIST

All Schematics

Project: \_\_\_\_\_ Submitted By: \_\_\_\_\_ Date: \_\_\_\_\_  
 Limits: \_\_\_\_\_ Reviewed By: \_\_\_\_\_ Date: \_\_\_\_\_  
 CSJ: \_\_\_\_\_ Submitted To: \_\_\_\_\_ Date: \_\_\_\_\_  
 County: \_\_\_\_\_ Review Stage: \_\_\_\_\_

Local Government Projects - See \*\* Note below for additional project requirements.

REQUIRED ELEMENTS	✓	N/A	Notes
Project Limits & Functional Classification			
Project Vicinity Map			
Design Speed			
Superelevation Rates			
Design Criteria Utilized (i.e. Sec. of Design Manual used & emax = 6%)			
Horizontal and Vertical Alignment*			
Lane Strips and/or Arrows Indicating Number of Lanes			
Tentative Right-Of-Way Limits			
Typical Sections Geometrics (i.e. lane widths, cross-slopes)			
Current and Projected Traffic Volumes (turning movement volumes if applicable)			
Traffic Flow Direction on all Roadways			
Location and Width of Median Openings (if applicable)			
Bridge & Bridge Class Culverts (if applicable)			
Geometrics of Speed Change (acceleration, deceleration) & auxiliary lanes			
Existing Roadways and Structures to be Closed or Removed			
Location of Existing and/or Proposed Outfalls (if applicable)			
Location of Retaining Walls and/or Noise Walls			
Bike Route Features (if applicable)			
"NOT A BIDDING DOCUMENT" Stamp Signed by Responsible Engineer w/ Serial Number, P.E. Designation and Dated			
Design Summary Report (DSR)			
Design Exceptions and/or Design Waivers			
Page 3 of Form 1002 (Basic Design Data) [done by Consultant Mgmt. Sec.]			
Prints of Final Schematic: (1-4) Austin, (1) Area Office, (2) District			

Pharr District

Consultant Management Section

1 of 2

FOIA

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**SCHEMATIC GUIDELINE CHECKLIST**  
All Schematics

RECOMMENDED ELEMENTS	✓	N/A	Notes
CSJ			
Scale			
North Arrow			
Exist. & Prop Corner Clips			
Turnout Radii			
Posted Speed			
Label Existing Development Adjacent to Roadway			
Existing & Proposed Intersection Traffic Control (i.e. Stop or Signal)			
Superelevation Transitions			
Aerial Photography			
ADDITIONAL GUIDELINES FOR FREEWAY SCHEMATICS	✓	N/A	Notes
Location of Interchanges, Main Lanes, Grade Separations, Frontage Roads, Turnarounds, and Ramps			
Main Lane Guide Signs			
Control -of -Access Lines (existing and proposed)			
Capacity Analysis (on added capacity projects)			
Add Note: "The" intersection of travel ways" for the frontage road/ramp gores is a defined as the point where the centerlines of the 8" solid white gore stripes are exactly 8" apart."			
<p>Note: According to the Design Division, neither the FHWA nor TxDOT requires an explanation of the sequences of construction for schematics.</p> <p>* On freeway schematics, frontage road alignment data need not be shown; however it should be developed in sufficient detail to determine right-of-way needs.</p> <p>* * For Local Government - sponsored preliminary engineering, the local government and their consultant engineer need to provide the following as part of the schematic: 1) Need to provide a complete design topography survey as well as a subsurface utility engineering survey. Use SUE Level B for the length of the project and include Level A as needed, 2) All survey work provided needs to meet the applicable TxDOT Survey Contract Specifications, 3) The Survey Work needs to use the TxDOT Pharr District Geodetic Control Network, 4) The schematic Horizontal &amp; Vertical Alignments need to be created using the design topography survey, 5) The Local Gov't. needs to submit the schematic utilizing the new 3D design workflow by adopting the OpenRoads technology offered in the SS4 version of Geopak. 6) The Local Government needs to provide TxDOT with electronic copies of all the survey and schematic files.</p>			
Additional Schematic Review Stage Notes:			

FOR A

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## Attachment E

### Information Resources and Security Requirements

#### 1. TYPES OF DATA

“State Data” means State information, data, records, and information to which the Local Government has access, has possession, or is otherwise provided to the Local Government by State, 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 information that may be used to identify a person including name, address, e-mail address, passwords, account numbers, social security numbers, credit card information, personal financial or healthcare information, personal preferences, demographic data, marketing data, credit data, or any other identification data.

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

Any data that the Local Government accesses and downloads from a State system, for use, manipulation, storage, or management is Confidential Data, unless otherwise specified in writing by State.

#### 2. DATA REQUIREMENTS

##### 2.1. Data, Data Dictionaries, and Data Flow Diagrams

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

##### 2.2. Data Transfer

2.2.1. At the completion of a deliverable, the Local Government shall transfer all State Data generated and stored for that deliverable to State in manner and format acceptable to the State and approved by IMD.

2.2.2. All metadata associated with the State Data transferred must remain attached to that data.

2.2.3. Local Government shall maintain the appropriate level of data security throughout the transfer of the State data.

##### 2.3. Backup and Disaster Recovery

2.3.1. Local Government 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.

2.3.2. Local Government shall maintain a disaster recovery plan. Local Government is responsible for all project related costs of disaster recovery during the project except for costs associated with disasters beyond Local Government’s reasonable control, and for those costs included as part of the State infrastructure responsibilities.

##### 2.4. Open Records Requests

2.4.1. Local Government shall not release Information in response to an open record request related to this agreement request unless State has approved the release in writing.

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**2.5. Encryption**

For Sensitive and Confidential State data, the Local Government shall encrypt the data while in-transit and while at-rest in accordance with the Department of Information Resources (“DIR”) Controls Catalog Standard SC-13, Cryptographic Protection and SC-08, Transmission Confidentiality and Integrity and State security requirements.

**3. INFORMATION RESOURCE AND SECURITY REQUIREMENTS**

**3.1. Information Security Safeguards**

3.1.1. Local Government shall implement appropriate administrative, physical, and technical safeguards, in accordance with State’s security requirements, that reasonably and appropriately protects the confidentiality, integrity, and availability of State data.

3.1.2. Local Government shall conform its policies and procedures relating to the implementation of security safeguards to comply with State’s Information Resources security program pursuant to the Texas Department of Information Resources’ Information Security Controls Catalog Standards. Systems with Public data must be in compliance with the low baseline and systems with Sensitive and Confidential data must be compliant with the moderate baseline.

**3.2. Breach Notification**

Local Government shall immediately report to State via [IMD-Security@TxDOT.gov](mailto:IMD-Security@TxDOT.gov) any security breach of State data that the Local Government is responsible for (See Section 4, Definitions).

**3.3. Demonstrating Compliance with Information Security Requirements**

Upon reasonable notice to the Local Government, or if State determines that the Local Government has violated this agreement, State, directly or through its agent, may request an attestation and evidence that Local Government is in compliance with applicable laws, regulations, and standards outlined in 3.4.

**3.4. Security Training**

Any Local Government or its contractor that has access to a State computer system or database must complete a State approved cybersecurity training program certified under Section 2054.519. The training program must be completed by the Local Government or its contractor during the term of the contract and during any renewal period. The Local Government is required to verify completion of the cybersecurity training program in a method designated by State.

**3.5. Applicable Laws, Regulations, and Standards**

Local Government shall perform the services in accordance with the following standards, notify State of situations where compliance is not achievable, and assist State with the prevention of security gaps or conflicts that could impair security performance. Local Government 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 include the following.

**3.5.1. DIR Security Controls Standard Catalog and applicable State Security Requirements**

3.5.1.1. For Public Data, Texas DIR Security Controls Standards Catalog low baseline and applicable State security requirements

3.5.1.2. For Sensitive and Confidential Data, Texas DIR Security Controls Standards Catalog moderate baseline and applicable State security requirements.

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3.5.2. State Laws and Regulations:

3.5.2.1. Title 1 of Texas Administrative Code

3.5.2.1.1. Chapter 202 – Information Security Standards

3.5.2.1.2. Chapter 206 – State Websites

3.5.2.1.3. Chapter 213 – Electronic and Information Resources

3.5.2.2. Texas Government Code, Chapter 552 – Public Information

3.5.2.3. Texas Penal Code, Chapter 33 – Computer Crimes

3.5.2.4. For Confidential data, Texas Business and Commerce Code, Chapter 521 – Unauthorized Use of Identifying Information

3.5.2.5. For Confidential data containing Protected Health Information, Texas Health and Safety Code, Chapter 181 – Medical Records Privacy

3.6. Information Resources Technology

3.6.1. Any proposed information resources technology that will be installed on any State owned equipment or that will access any State network must be reviewed and approved by the Architectural Review Board (“ARB”) in the Information Management Division (“IMD”) prior to any development or design.

3.6.2. Any proposed information resources technology that will be installed on any State owned equipment or that will access any State network must be reviewed and approved by the IMD Change Advisory Board (“CAB”) prior to implementation or delivery.

3.7. Information Resources Technology (“IRT”) Procurements

IMD must approve all procurements of:

3.7.1. Information Resources Technology that will be owned by State.

3.7.2. IT services for any environment that provides processing, storage, networking, management and the distribution of data to ensure alignment with GAC, Chapter 2054, Subchapter L.

4. DEFINED TERMS

4.1. “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.”

4.2. “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

4.2.1. Dates of birth of living persons

4.2.2. Driver’s license numbers

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- 4.2.3. License plate numbers
- 4.2.4. Credit card numbers
- 4.2.5. Insurance policy numbers
- 4.2.6. Attorney-Client communications
- 4.2.7. Drafts of policymaking documents
- 4.2.8. Information related to pending litigation
- 4.2.9. Audit working papers
- 4.2.10. Competitive bidding information before contract awarded.
- 4.2.11. Personal Identifiable Information
- 4.2.12. Sensitive Personal Information
- 4.2.13. Regulated data
- 4.2.14. Information excepted from disclosure requirements of Chapter 552 of the Texas Government Code (“Texas Public Information Act”) or other applicable state or federal law
- 4.2.15. Compliance reports for which the Texas Attorney General has granted permission to withhold
- 4.2.16. Investigative working papers and draft reports excepted from disclosure under Section 552.116 of the Texas Government Code

4.3. **“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.

4.4. **“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.

4.5. **“Information”** means data, regardless of form, that is created, contained in, or processed by information resources facilities, communications networks, or storage media.

4.6. **“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.

4.7. **“Personal Identifying Information”** means information that alone or in conjunction with other information identifies an individual, including an individual's:

- 4.7.1. Name, social security number, date of birth, or government-issued identification number;
- 4.7.2. Mother's maiden name;
- 4.7.3. Unique biometric data, including the individual's fingerprint, voice print, and retina or iris image;

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4.7.4. Unique electronic identification number, address, or routing code; and

4.8. **“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.

4.9. **“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 State business. This includes information that is held by Local Government and its contractors and consultants and that State owns, to which State 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.

4.10. **“Sensitive Data”** means as any information that could be subject to release under an open records requests, but should be controlled to protect third parties, and should be vetted and verified before release. At State, this could include operational information, personnel records, research, or internal communications.

4.11. **“Sensitive Personal Information”** has the meaning provided by Section 521.002(2) of the Texas Government Code, which defines sensitive personal information as:

4.11.1. 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:

4.11.1.1. Social Security Number

4.11.1.2. Driver’s license number or government-issued identification number; or

4.11.1.3. 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

4.11.2. Information that identifies an individual and relates to:

4.11.2.1. The physical or mental health or condition of the individual;

4.11.2.2. The provision of health care to the individual; or

4.11.2.3. Payment for the provision of health care to the individual.