TEXAS
Health and Human Services

Attachment A

Contract Affirmations for State Architectural/Engineering and Construction Projects

Attachment A

Contract Affirmations for State Architectural/Engineering and Construction Projects

The term "**Owner**" used in these affirmations means Texas Health and Human Services ("**HHS**") or any of the agencies of the State of Texas that are overseen by Health and Human Services Commission ("**HHSC**") under authority granted under Texas law and the officers, employees, authorized representatives, and designees of those agencies. These agencies include HHSC and the Department of State Health Services.

By entering into this Contract, the Architect/Engineer, General Contractor, Construction Manager-Agent, Construction Manager-at-Risk, or Design-Build Firm (all of which are defined by the term the "**Contractor**", unless their specific name or title is given), as applicable, affirms, without exception, understands, and agrees to comply with the following terms through the life of the Contract:

1. **Parties to the Affirmations.** Contractor represents and warrants that the affirmations, representations, warranties, understandings, agreements, acceptances, acknowledgements, or statements contained herein ("**Contract Affirmations**" or "**Affirmations**") apply to Contractor and all of Contractor's principals, officers, directors, shareholders, managers, members, partners, owners, governing person(s) or governing authority, agents, employees, subcontractors, independent contractors, and any other representatives who may provide services under, have a financial interest in, or otherwise are interested in this Contract and any related solicitation.

2. **Headings.** Contractor further acknowledges and understands that the headings used below are for convenience and reference only; the headings shall not affect the interpretation or construction of these Affirmations.

3. **Standard of Care for Architect/Engineer.** Pursuant to Section 2254.0031 of the Texas Government Code, which incorporates by reference Section 271.904(d) of the Texas Local Government Code, Contractor shall perform services (1) with professional skill and care ordinarily provided by competent engineers or architects practicing under the same or similar circumstances and professional license, and (2) as expeditiously as is prudent considering the ordinary professional skill and care of a competent engineer or architect.

4. **Public Information Act.** Contractor understands that the Owner will comply with the Texas Public Information Act (Chapter 552 of the Texas Government Code) as interpreted by judicial rulings and opinions of the Attorney General of the State of Texas. Information, documentation, and other material prepared and submitted in connection with this Contract or any related Solicitation may be subject to public disclosure pursuant to the Texas Public Information Act. In accordance with Section 2252.907 of the Texas Government Code, Contractor is required to make any information created or exchanged with the State pursuant to the Contract, and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no additional charge to the State.

5. **Contracting Information Requirements.** Contractor represents and warrants that it will comply with the requirements of Section 552.372(a) of the Texas Government Code, and preserve all contracting information as required by, and specifically set forth in, Section 552.372(a). Unless Section 552.374(c) of the Texas Government Code applies, the requirements of Subchapter J, Chapter 552 of the Texas Government Code may apply to this Contract, and the Contractor agrees that the Contract can be terminated if the Contractor knowingly or intentionally fails to comply with a requirement of that subchaper.

6. **Terms and Conditions.** Contractor accepts the Solicitation terms and conditions unless specifically noted by exceptions advanced in the form and manner directed in the Solicitation, if any, under which this Contract was awarded. Contractor agrees that all exceptions to the Solicitation as well as terms and conditions advanced by the Contractor that differ in any manner from Owner's terms and conditions, if any, are rejected unless expressly accepted by the Owner in writing.

7. **Owner Right to Use.** Contractor agrees that the Owner has the right to use, produce, and distribute copies of and to disclose to the Owner's employees, agents, and contractors and other governmental entities all or part of this Contract or any related Proposal as the Owner deems necessary to complete the procurement process or comply with state or federal laws.

8. **Disclosure of Interested Parties.** Contractor certifies that, if the value of this Contract is $1 million or higher, Contractor has complied with Section 2252.908 of the Texas Government Code and 1 Texas Administrative Code, Part 2, Chapter 46, sections 46.1-46.5 as implemented by the Texas Ethics Commission ("**TEC**"), if applicable, and has provided the Owner with a fully executed TEC Form 1295, certified by the TEC and signed and notarized by the Contractor.

9. **Release from Liability.** ***CONTRACTOR GENERALLY RELEASES FROM LIABILITY AND WAIVES ALL CLAIMS AGAINST ANY PARTY PROVIDING INFORMATION ABOUT THE CONTRACTOR AT THE REQUEST OF THE OWNER.***

10. **Dealings with Public Servants.** Contractor has not given, has not offered to give, and does not intend to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with this Contract or any related Solicitation, or related Solicitation Proposal.

11. **Financial Participation Prohibited.** Under Section 2155.004, Texas Government Code (relating to financial participation in preparing solicitations), Contractor certifies that the individual or business entity named in this Contract and any related Proposal is not ineligible to receive this Contract and acknowledges that this Contract may be terminated and payment withheld if this certification is inaccurate.

12. **Prior Disaster Relief Contract Violation.** Under Sections 2155.006 and 2261.053 of the Texas Government Code (relating to convictions and penalties regarding Hurricane Rita, Hurricane Katrina, and other disasters), the Contractor certifies that the individual or business entity named in this Contract and any related Proposal is not ineligible to receive this Contract and acknowledges that this Contract may be terminated and payment withheld if this certification is inaccurate.

13. **Child Support Obligation.** Under Section 231.006(d) of the Texas Family Code regarding child support, Contractor certifies that the individual or business entity named in this Contract and any related Proposal is not ineligible to receive the specified payment and acknowledges that the Contract may be terminated and payment may be withheld if this certification is inaccurate.

14. **Suspension and Debarment.** Contractor certifies that it and its principals are not suspended or debarred from doing business with the state or federal government as listed on the State of Texas Debarred Vendor List maintained by the Texas Comptroller of Public Accounts and the System for Award Management ("**SAM**") maintained by the General Services Administration. This certification is made pursuant to the regulations implementing Executive Order 12549 and Executive Order 12689, Debarment and Suspension, 2 C.F.R. Part 376, and any relevant regulations promulgated by the Department or Agency funding this project. This provision shall be included in its entirety in Contractor's subcontracts, if any, if payment in whole or in part is from federal funds.

15. **Excluded Parties.** Contractor certifies that it is not listed in any prohibited vendors list authorized by Executive Order 13224, "*Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism*," published by the United States Department of Treasury, Office of Foreign Assets Control.

16. **Foreign Terrorist Organizations.** Contractor represents and warrants that it is not engaged in business with Iran, Sudan, or a foreign terrorist organization, as prohibited by Section 2252.152 of the Texas Government Code.

17. **Executive Head of a State Agency.** In accordance with Section 669.003 of the Texas Government Code, relating to contracting with the executive head of a state agency, Contractor certifies that it is not (1) the executive head of a Texas Health and Human Services agency, (2) a person who at any time during the four years before the date of this Contract was the executive head of a Texas Health and Human Services agency, or (3) a person who employs a current or former executive head of a Texas Health and Human Services agency.

18. **Certification Regarding Prohibition Related to Persons Involved in Human Trafficking.** Under Section 2155.0061 of the Texas Government Code, Contractor certifies that the individual or business entity named in this Contract is not ineligible to receive this contract and acknowledges that this Contract may be terminated and payment withheld if this certification is inaccurate.

19. **Franchise Tax Certification.** Contractor represents and warrants that it is not currently delinquent in the payment of any franchise taxes owed the State of Texas under Chapter 171 of the Texas Tax Code.

20. **Tax Exemption Certificates.** Purchases made for State of Texas use are exempt from the State Sales Tax and Federal Excise Tax. The Owner will furnish Tax Exemption Certificates upon request. Contractor represents and warrants that it shall pay all taxes or similar amounts resulting from the Contract, including, but not limited to, any federal, State, or local income, sales or excise taxes of Contractor or its employees. The Owner shall not be liable for any taxes resulting from the Contract.

21. **Debts and Delinquencies.** Contractor agrees that any payments due under this Contract shall be applied towards any debt or delinquency that is owed to the State of Texas.

22. **Excess Obligations Prohibited.** This Contract is subject to termination or cancellation, without penalty to the Owner, either in whole or in part, subject to the availability of state funds. Owner is a state agency whose authority and appropriations are subject to actions of the Texas Legislature. If the Owner becomes subject to a legislative change, revocation of statutory authority, or lack of appropriated funds that would render either the Owner's or Contractor's delivery or performance under the Contract impossible or unnecessary, this Contract will be terminated or cancelled and be deemed null and void. In the event of a termination or cancellation under this Section, the Owner will not be liable to Contractor for any damages that are caused or associated with such termination or cancellation, and the Owner will not be required to give prior notice.

23. **Lobbying Prohibition.** Contractor represents and warrants that payments to Contractor and Contractor's receipt of appropriated or other funds under this Contract or any related Solicitation are not prohibited by Sections 556.005, 556.0055, or 556.008 of the Texas Government Code (relating to use of appropriated money or state funds to employ or pay lobbyists, lobbying expenses, or influence legislation).

24. **Buy Texas.** In accordance with Section 2155.4441 of the Texas Government Code, Contractor agrees that during the performance of a contract for services it shall purchase products and materials produced in Texas when they are available at a price and time comparable to products and materials produced outside this state.

25. **Disaster Recovery Plan.** Contractor agrees that upon request of the Owner, Contractor shall provide copies of its most recent business continuity and disaster recovery plans.

26. **Former Agency Employees.** Contractor represents and warrants, during the twelve month period immediately prior to the date of the execution of this Contract, none of its employees including, but not limited to, those who will provide services under the Contract, was an employee of a HHS agency. Pursuant to Section 2252.901, Texas Government Code (relating to prohibitions regarding contracts with and involving former and retired state agency employees), Contractor will not allow any former employee of the Owner to perform services under this Contract during the twelve month period immediately following the employee's last date of employment by the Owner.

27. **Nepotism Prohibitions.** Contractor knows of no officer or employee of the Owner, nor any relative within the second degree of consanguinity or affinity of an officer or employee of the Owner, that has a financial interest in the Contractor's firm or corporation. Contractor further certifies that no partner, corporation, limited liability company, or unincorporated association that employs, retains or contracts with, or which may employ, retain, or contract with any of the above, has a financial interest in any entity with which Contractor will be dealing on behalf of the Owner pursuant to Chapter 573 of the Texas Government Code and Section 2254.032 of the Texas Government Code.

28. **Restricted Employment for Certain State Personnel.** Contractor acknowledges that, pursuant to Section 572.069 of the Texas Government Code, a former state officer or employee of a state agency who during the period of state service or employment participated on behalf of a state agency in a procurement or contract negotiation involving Contractor may not accept employment from Contractor before the second anniversary of the date the Contract is signed or the procurement is terminated or withdrawn.

29. **Disclosure of Prior State Employment.** If this Contract is for consulting services under Chapter 2254 of the Texas Government Code, in accordance with Section 2254.033 of the Texas Government Code, Contractor certifies that it does not employ an individual who was employed by Owner or another agency at any time during the two years preceding the submission of any Solicitation response related to this Contract or, in the alternative, Contractor has disclosed in any related Solicitation response the following: (i) the nature of the previous employment with Owner or the other agency; (ii) the date the employment was terminated; and (iii) the annual rate of compensation at the time the employment was terminated.

30. **No Felony Criminal Convictions.** Contractor represents that neither Contractor nor any of its employees, agents, or representatives, including any subcontractors and employees, agents, or representatives of such subcontractors, have been convicted of a felony criminal offense, or, that if such a conviction has occurred, Contractor has fully advised the Owner in writing of the facts and circumstances surrounding the convictions.

31. **No Conflicts of Interest.** Contractor represents and warrants that it has no actual or potential conflicts of interest in providing the requested goods or services to the Owner under this Contract or any related Solicitation and that Contractor's provision of the requested goods and/or services under this Contract and any related Solicitation will not constitute an actual or potential conflict of interest or reasonably create an appearance of impropriety. Contractor agrees that, if after execution of the Contract, Contractor discovers or is made aware of a conflict of interest, Contractor will immediately and fully disclose such interest in writing to Owner. In addition, Contractor will promptly and fully disclose any relationship that might be perceived or represented as a conflict after its discovery by Contactor or by Owner as a potential conflict. Owner reserves the right to make a final determination regarding the existence of conflicts of interest, and Contractor agrees to abide by Owner's decision.

32. **Fraud, Waste and Abuse.** Contractor understands that the Owner does not tolerate any type of fraud. The Owner's policy is to promote consistent, legal, and ethical organizational behavior by assigning responsibilities and providing guidelines to enforce controls. Violations of law, agency policies, or standards of ethical conduct will be investigated, and appropriate actions will be taken. All employees or contractors who suspect fraud, waste or abuse (including employee misconduct that would constitute fraud, waste, or abuse) are required to immediately report the questionable activity to both the Health and Human Services Commission's Office of the Inspector General at 1-800-436-6184 and the State Auditor's Office. Contractor agrees to comply with all applicable laws, rules, regulations, and Owner policies regarding fraud.

33. **Antitrust.** The Contractort affirms under penalty of perjury of the laws of the State of Texas that (a) in connection with this Contract and any related Solicitation Proposal, neither it nor

any representative of the Contractor has violated any provision of the Texas Free Enterprise and Antitrust Act, Tex. Bus. & Comm. Code Chapter 15; (b) in connection with this Contract and any related Solicitation Proposal, neither it nor any representative of the Contractor has violated any federal antitrust law; and (c) neither it nor any representative of the Contractor has directly or indirectly communicated any of the contents of this Contract and any related Solicitation Proposal to a competitor of the Contractor or any other company, corporation, firm, partnership or individual engaged in the same line of business as the Contractor.

34. **Legal and Regulatory Actions.** Contractor represents and warrants that it is not aware of and has received no notice of any court or governmental agency proceeding, investigation, or other action pending or threatened against Contractor or any of the individuals or entities included in numbered **paragraph 1** of these Contract Affirmations within the five calendar years immediately preceding execution of this Contract or the submission of any related Proposal that would or could impair Contractor's performance under this Contract, relate to the contracted or similar goods or services, or otherwise be relevant to the Owner's consideration of entering into this Contract. If Contractor is unable to make the preceding representation and warranty, then Contractor instead represents and warrants that it has provided to the Owner a complete, detailed disclosure of any such court or governmental agency proceeding, investigation, or other action that would or could impair Contractor's performance under this Contract, relate to the contracted or similar goods or services, or otherwise be relevant to the Owner's consideration of entering into this Contract. In addition, Contractor acknowledges this is a continuing disclosure requirement. Contractor represents and warrants that Contractor shall notify the Owner in writing within five business days of any changes to the representations or warranties in this clause and understands that failure to so timely update the Owner shall constitute breach of contract and may result in immediate termination of the Contract.

35. **Unfair Business Practices.** Contractor represents and warrants that it has not been the subject of allegations of Deceptive Trade Practices violations under Chapter 17 of the Texas Business and Commerce Code, or allegations of any unfair business practice in any administrative hearing or court suit and that Contractor has not been found to be liable for such practices in such proceedings. Contractor certifies that it has no officers who have served as officers of other entities who have been the subject of allegations of Deceptive Trade Practices violations or allegations of any unfair business practices in an administrative hearing or court suit and that such officers have not been found to be liable for such practices in such proceedings.

36. **Certification Regarding Boycotting Israel.** If the Contractor has ten or more full-time employees and the Contract has a value of $100,000.00 or more, then Contractor certifies that, pursuant to Section 2271.002 of the Texas Government Code, Contractor does not boycott Israel and will not boycott Israel during the term of this Contract. If this certification is required and Contractor refuses to make the certification, then Contractor shall state here any facts that make it exempt from the boycott certification:

_____

_____

_____

37. **Equal Employment Opportunity.** Contractor represents and warrants its compliance with all applicable duly enacted state and federal laws governing equal employment opportunities.

38. **E-Verify.** Contractor certifies that for contracts for services, Contractor shall utilize the U.S. Department of Homeland Security's E-Verify system during the term of this Contract to determine the eligibility of:

    (a) all persons employed by Contractor to perform duties within Texas; and
    (b) all persons, including subcontractors, assigned by Contractor to perform work pursuant to this Contract within the United States of America.

39. **Drug-Free Workplace.** Contractor represents and warrants that it shall comply with the applicable provisions of the Drug-Free Work Place Act of 1988 (41 U.S.C. § 701 *et seq.*) and maintain a drug-free work environment.

40. **Cybersecurity Training.**

    A. Contractor represents and warrants that it shall comply with the requirements of Section 2054.5192 of the Texas Government Code relating to cybersecurity training and required verification of completion of the training program.

    B. Contractor represents and warrants that if Contractor or Subcontractors, officers, or employees of Contractor have access to any state computer system or database, the Contractor, Subcontractors, officers, and employees of Contractor shall complete cybersecurity training pursuant to and in accordance with Government Code, Section 2054.5192.

41. **False Representations.** Contractor understands, acknowledges, and agrees that any false representation or any failure to comply with a representation, warranty, or certification made by Contractor may subject Contractor to all civil and criminal consequences provided at law or in equity including, but not limited to, immediate termination of this Contract. Contractor understands, acknowledges, and agrees that Owner is relying upon all representations, warranties, certifications, and affirmations made by Contractor.

42. **All Applicable Laws.** Contractor represents and warrants that it will comply with all applicable laws and maintain all permits and licenses required by applicable city, county, state, and federal rules, regulations, statutes, codes, and other laws that pertain to this Contract. Any alterations, additions, or deletions to the terms of the Contract that are required by changes in federal or state law or regulations are automatically incorporated into the Contract without written amendment hereto, and shall become effective on the date designated by such law or regulation.

43. **False Statements.** Contractor represents and warrants that all statements and information prepared and submitted by Contractor in this Contract and any related Solicitation Proposal are current, complete, true, and accurate. Contractor acknowledges any false statement or material misrepresentation made by Contractor during the performance of this Contract or any related Solicitation is a material breach of contract and may void this Contract. Further, Contractor understands, acknowledges, and agrees that any false representation or any failure

to comply with a representation, warranty, or certification made by Contractor may subject Contractor to all civil and criminal consequences provided at law or in equity including, but not limited to, immediate termination of this Contract. Contractor understands, acknowledges, and agrees that Owner is relying upon all statements and information prepared and submitted by Contractor in this Contract and any related Solicitation Proposal.

44. **Abortion Funding Limitation.** Contractor understands, acknowledges, and agrees that, pursuant to Article IX, Section 6.25 of the General Appropriations Act (the Act), to the extent allowed by federal and state law, money appropriated by the Texas Legislature may not be distributed to any individual or entity that, during the period for which funds are appropriated under the Act:

    (i) performs an abortion procedure that is not reimbursable under the state's Medicaid program;
    (ii) is commonly owned, managed, or controlled by an entity that performs an abortion procedure that is not reimbursable under the state's Medicaid program; or
    (iii) is a franchise or affiliate of an entity that performs an abortion procedure that is not reimbursable under the state's Medicaid program. The provision does not apply to a hospital licensed under Chapter 241, Health and Safety Code, or an office exempt under Section 245.004(2), Health and Safety Code. Contractor represents and warrants that it is not ineligible, nor will it be ineligible during the term of this Contract, to receive appropriated funding pursuant to Article IX, Section 6.25.

45. **Funding Eligibility.** Contractor understands, acknowledges, and agrees that, pursuant to Chapter 2272 of the Texas Government Code, except as exempted under that Chapter, HHSC cannot contract with an abortion provider or an affiliate of an abortion provider. Contractor certifies that it is not ineligible to contract with HHSC under the terms of Chapter 2272 of the Texas Government Code. If Contractor refuses to make that certification, Contractor shall state here any facts that make it exempt from the certification:

    _____
    _____
    _____
    _____

46. **Drug-Free Workplace.** Contractor represents and warrants that it shall comply with the applicable provisions of the Drug-Free Work Place Act of 1988 (41 U.S.C. §701 et seq.) and maintain a drug-free work environment.

47. **Federal Occupational Safety and Health Law.** Contractor represents and warrants that all articles and services shall meet or exceed the safety standards established and promulgated under the Federal Occupational Safety and Health Act of 1970, as amended (29 U.S.C. Chapter 15).

48. **Signature Authority.** Contractor represents and warrants that the individual signing this Contract is authorized to sign on behalf of Contractor and to bind the Contractor. The person signing the Contract also certifies that he or she is duly authorized to execute the Contract on behalf of Contractor.

(Remainder of Page Intentionally Left Blank)