

IMPERIAL CONSTRUCTION, INC.
400 Interstate 20 West, Suite 200
Weatherford, Texas 76086 Telephone:
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341-0191

TEXAS SPECIFIC
BLANKET AGREEMENT BETWEEN CONTRACTOR AND SUBCONTRACTOR

This Blanket Agreement ("Blanket Agreement") is effective by the execution of this Blanket Agreement by IMPERIAL CONSTRUCTION, INC. ("Contractor") and by [SUBCONTRACTOR'S NAME] ("Subcontractor"), or by Subcontractor's acceptance of the terms of this Agreement by commencement of the performance of the Subcontract Work described herein.

WHEREAS, Contractor desires to establish procedures by which it may, from time to time, expeditiously engage the services of Subcontractor to provide labor, equipment, materials and services necessary to perform work in connection with construction projects being performed by Contractor; and

WHEREAS, Subcontractor desires to establish procedures by which it may, from time to time, expeditiously contract with Contractor to provide labor, equipment, materials and services necessary to perform work in connection with construction projects being performed by Contractor.

The undersigned parties hereby agree as follows:

I.
SUBCONTRACT WORK

1.01 Term of Blanket Agreement. This Blanket Agreement shall be for a term of one (1) year from the date hereof and shall continue on a year to year basis unless either Party cancels it prior to that time by written notice to the other; provided, however, the cancellation or expiration of the term of this Blanket Agreement shall not affect either Party's obligations under any Work Orders issued and accepted prior to such expiration or cancellation.

1.02 Ordering and Acceptance. Subcontract Work under this Blanket Agreement shall be ordered as follows:

a. In the event Contractor desires Subcontractor to perform work hereunder, Contractor shall deliver a written Work Order, a sample form of

which is attached hereto, to Subcontractor. Upon issuance and acceptance of a Work Order, as evidenced by the signatures of both Contractor and Subcontractor thereon or by Subcontractor's commencement of the work in the Work Order, Contractor and Subcontractor shall have entered into a binding contract for performance of the work as specified in the Work Order in accordance with the terms of this Blanket Agreement.

b. The work to be performed under any Work Order issued and accepted hereunder shall be described thereon.

c. The execution and delivery of this Blanket Agreement does not constitute a guaranty or commitment by Contractor that it will issue any Work Orders hereunder. The execution and delivery of this Blanket Agreement does not constitute a guaranty or commitment by Subcontractor that it will accept any Work Orders issued hereunder. The Parties acknowledge and agree that Contractor and Subcontractor are contractually bound only to the extent Work Orders are issued by Contractor and accepted by Subcontractor, as evidenced by the signatures of both parties thereon or by Subcontractor's commencement of the work in the Work Order.

1.03 Scope of Subcontract Work. For each Work Order issued and accepted hereunder, Subcontractor shall furnish and pay for all labor, materials, fuel, equipment, tools, machinery, and supplies; perform all work; obtain and pay for all necessary permits, licenses and fees; pay all state sales taxes, state and federal unemployment taxes, and all other taxes and fees associated with the subcontract labor or materials; provide all required construction layout and surveying; and do all things necessary to complete the work to be performed under the Work Order (hereafter referred to as the "Subcontract Work").

1.04 Contract Documents.

a. The Contract Documents for each Work Order issued and accepted hereunder shall include: (i)

this Blanket Agreement; (ii) the applicable Work Order along with any attachments thereto; and (iii) all documents reflecting the agreement between the Contractor and the Owner for the construction of the Project as described in the Work Order, including, but not limited to, the plans, specifications, general conditions, special conditions, addenda, performance bond, and payment bond (the "Prime Agreement"). For any Work Order issued hereunder, the Prime Agreement will be on file at the office of the Contractor, and available for Subcontractor's review during normal business hours.

b. Subcontractor agrees that prior to acceptance of any Work Order hereunder Subcontractor will read the Contract Documents pertaining to said Work Order and be familiar with each and every part thereof affecting the Subcontract Work together with all related drawings, plans, specifications, and all general conditions and special conditions incidental thereto. Subcontractor further agrees that (i) this Work Order and Blanket Agreement contains the entire agreement of the parties; (ii) no representations or warranties of any kind have been made by Contractor or its employees, nor relied upon by Subcontractor, other than those expressed in the Work Order and this Blanket Agreement; and (iii) the terms and conditions of the Work Order and this Blanket Agreement are not in any way amended or modified by any prior negotiations offers, bids, proposals, exclusions and/or agreements, whether written or oral, respecting the subject matter of the Work Order and this Blanket Agreement, and any such prior negotiations, offers, bids, proposals, exclusions and/or agreements are no longer of any force or effect. All modifications to this Blanket Agreement or any Work Order accepted hereunder shall be in writing signed by the parties.

c. Subcontractor agrees that prior to acceptance of any Work Order hereunder, Subcontractor will be satisfied by examination as to the nature and location of the work specified therein; the character, quantity, and kinds of materials necessary; the adequacy of any surface or subsurface conditions necessary to assure proper performance of such work; the kinds and quantity of equipment needed; and other local conditions or matters affecting compliance with the Contract Documents. Subcontractor accepts these existing conditions for the performance of the Subcontract Work at the Subcontract Price.

d. Subcontractor agrees that prior to acceptance of any Work Order hereunder, Subcontractor will review the Owner's Financial Information provided by Contractor and will accept the risks associated with the Owner's failure to make payment. Further, Subcontractor's acceptance of a Work Order, or initiation of work pursuant to a Work

Order, shall constitute Subcontractor's representation to Contractor and confirmation that prior to such acceptance of a Work Order or initiation of work: (i) Subcontractor received from Contractor and reviewed the Owner's Financial Information; (ii) such information was adequate for Subcontractor to evaluate and understand the risks of the Owner's non-payment; and (iii) Subcontractor accepted the risk of the Owner's payment as a condition precedent to Contractor's obligation to pay Subcontractor.

e. The Subcontractor represents to the Contractor that the Subcontractor is knowledgeable and familiar with all statutes, codes, ordinances, rules and regulations applicable to the Subcontract Work. The Subcontractor further agrees that the Subcontractor will not proceed with any Subcontract Work that is in violation or variance with any such statute, code, ordinance, rule or regulation, and will promptly notify the Contractor in writing of any such violation or variance before commencing with the Subcontract Work.

f. Any questions arising with respect to interpretation of the Contract Documents applicable to any Work Order issued and accepted hereunder or any related drawings, plans, or specifications, or any other communication related to the performance of the Subcontract Work, shall be submitted through the Contractor for submission to the Owner or the Owner's representative. The Subcontractor shall follow the directions of the Owner or the Owner's representative, as conveyed by the Contractor, with respect to any such matters. The Subcontractor agrees that the Owner's (or Owner's representative's) interpretation of the requirements of the Contract Documents shall be final, as long as such interpretation and/or decision is not in conflict with the terms of the Contract Documents.

g. For each Work Order issued and accepted hereunder, Subcontractor agrees to become familiar with the respective rights, powers, benefits and liabilities of the Contractor and the Owner under the Prime Agreement and hereby agrees to comply with and perform all provisions thereof which are applicable to the Subcontract Work. Subcontractor agrees to be bound to the Contractor under this Blanket Agreement according to the same terms and conditions as the Contractor is bound to the Owner under the Prime Agreement applicable to said Work Order. The Subcontractor shall assume and perform all of the obligations and responsibilities of the Contractor under the Prime Agreement, which pertain or relate to the Subcontract Work as stated in the applicable Work Order.

II.

PERFORMANCE AND PROSECUTION OF WORK

2.01 Independent Contractor. The Subcontractor agrees that he is an independent contractor under this Blanket Agreement. The Subcontractor is exclusively and solely responsible for, and has control over, all construction means, methods, techniques, procedures, and/or supervision of the Subcontract Work including any means, methods, techniques, procedures, and/or supervision related to the safety of the Subcontractor's employees and/or any other persons working in the area of the Subcontract Work.

2.02 Storage of Materials. The Subcontractor shall examine all equipment and materials furnished in connection with the Subcontract Work for compliance with the applicable Contract Documents. The Subcontractor shall then unload and properly store all such equipment and materials to prevent damage or loss. Contractor may deduct all costs for such damage or loss resulting from improperly stored materials from payments due to Subcontractor. If such costs exceed the unpaid Subcontract Price, Subcontractor shall pay the Contractor the balance of such excess upon demand.

2.03 Surface and Subsurface Conditions. The Subcontractor shall inspect surface and/or subsurface conditions affecting the Subcontract Work to assure that the Subcontract Work will be properly performed in accordance with the applicable Contract Documents. If any remedial work is required to the surface or subsurface, Subcontractor shall immediately notify Contractor in writing. IF SUBCONTRACTOR PERFORMS SUBCONTRACT WORK WITHOUT PROVIDING NOTICE THAT SUCH REMEDIAL WORK IS REQUIRED, SUBCONTRACTOR ACCEPTS ALL SURFACE AND SUBSURFACE CONDITIONS AND WAIVES ANY CLAIMS FOR EXTRA COMPENSATION TO REPAIR OR REMEDY SUCH CONDITIONS OR FOR REPLACEMENT OF THE SUBCONTRACT WORK ARISING OR RESULTING FROM DEFECTS IN THE SURFACE OR SUBSURFACE.

2.04 Protection of Work. Subcontractor shall take necessary precautions to properly protect the Subcontract Work and the work of the Contractor and other subcontractors. The Subcontractor shall promptly repair any damage it causes to the work of the Contractor or other subcontractors. If Subcontractor fails to promptly repair such damage, the Contractor may deduct the costs of such repairs from payments due the Subcontractor. If such costs exceed the unpaid Subcontract Price, Subcontractor shall pay the

Contractor the balance of such excess upon demand.

2.05 Inspection of Work. The Subcontractor shall provide sufficient, safe and proper facilities at all times for the inspection of the Subcontract Work by the Contractor or its authorized representatives. Subcontract Work not meeting the specifications or intent of the applicable Contract Documents, including, but not limited to, the drawings, plans and specifications, shall be removed, rebuilt and retested to conform to the requirements of the Contract Documents, all at Subcontractor's expense.

2.06 Cleanup. In the course of performing all Subcontract Work, the Subcontractor shall keep the construction site and work areas clean at all times of debris associated with the Subcontract Work and/or Subcontractor's employees. Subcontractor shall remove from the Project all wastes and excess materials related to the Subcontract Work. If the Subcontractor shall fail to remove construction wastes and excess materials, Contractor may proceed to perform such duties, and may deduct all costs incurred in performing such duties from payments otherwise due Subcontractor. If such costs exceed the unpaid Subcontract Price, Subcontractor shall pay the Contractor the balance of such excess upon demand.

2.07 DBE Participation. If Subcontractor is to perform as a Disadvantaged Small, Minority, or Female-Owned Business Enterprise ("DBE"), Subcontractor (i) agrees that all work required by any Work Order will be performed, managed and supervised by Subcontractor's own forces, except for work sub-subcontracted to others with Contractor's prior written consent, and (ii) shall do all things necessary to comply with all applicable federal, state, or municipal laws, rules, regulations, or ordinances governing the Subcontractor's performance and continuing certification as a DBE so that its performance will count toward Contractor's DBE requirements in the Prime Agreement.

III. TIME, SCHEDULES AND DELAYS

3.01 Time. Time is of the essence to this Blanket Agreement and to each Work Order issued and accepted hereunder. Subcontractor shall begin the Subcontract Work as soon as instructed by the Contractor and shall prosecute the Subcontract Work promptly, efficiently and in a manner that will not cause delay in the progress of Contractor's work or other work performed on the applicable Project by other subcontractors. ALL SUBCONTRACT WORK SHALL BE PERFORMED IN THE NUMBER OF DAYS SHOWN ON THE

APPLICABLE PROJECT SCHEDULE.

3.02 Project Schedule. The Contractor from time to time may issue a Project Schedule applicable to the Subcontract Work. Subcontractor shall perform all Subcontract Work as scheduled by Contractor, unless Subcontractor notifies Contractor within three (3) calendar days after receipt of schedule requirements that the Subcontract Work cannot be performed within the time scheduled by Contractor. Contractor may, from time to time, reschedule the order of the Subcontract Work or otherwise revise Subcontractor's schedule. Subcontractor agrees to comply with such schedule revisions without any increase to the Subcontract Price for acceleration or delays.

3.03 Performance Reports. Subcontractor shall furnish periodic progress reports of Subcontract Work as may be required by Contractor; and shall attend periodic conferences at the job site to discuss progress.

3.04 Damages for Delay to Contractor. Subcontractor shall be liable for any damages for delay sustained by Contractor caused directly or indirectly by Subcontractor; including, but not limited to, damages, liquidated or otherwise, for which Contractor is liable to Owner. Any such damages shall be deducted from payments due Subcontractor, and, if such damages exceed the amount of payments due, Subcontractor shall pay Contractor upon demand such excess damages due.

3.05 Time Extensions, Claims and Damages for Delay to Subcontractor. CONTRACTOR SHALL NOT BE LIABLE TO SUBCONTRACTOR FOR DELAYS, HINDRANCES, OR INTERRUPTIONS TO THE SUBCONTRACT WORK CAUSED BY THE ACT, NEGLIGENCE OR DEFAULT OF THE OWNER OR OWNER'S REPRESENTATIVE, OR BY REASON OF FIRE OR OTHER CASUALTY, OR ON ACCOUNT OF RIOTS OR STRIKES, OR ON ACCOUNT OF ANY ACTS OF GOD, OR ANY OTHER CAUSES BEYOND THE CONTRACTOR'S CONTROL, OR ANY CIRCUMSTANCES CAUSED OR CONTRIBUTED TO BY ANY OTHER PARTY PERFORMING A PART OF THE WORK; but, Contractor will cooperate with Subcontractor to enforce any just claim against the Owner or Owner's representative for delay as may be allowed under the applicable Prime Agreement. Contractor shall be reimbursed by Subcontractor for any expense, including attorney's fees, incurred in connection with any claims asserted at the request of Subcontractor. SHOULD SUBCONTRACTOR BE DELAYED IN THE SUBCONTRACT WORK BY CONTRACTOR, THEN SUBCONTRACTOR'S SOLE AND EXCLUSIVE REMEDY AGAINST CONTRACTOR SHALL BE AN EXTENSION OF TIME FOR COMPLETION EQUAL

TO THE DELAY CAUSED, AND THEN ONLY IF WRITTEN CLAIM FOR DELAY IS MADE TO CONTRACTOR PRIOR TO INTERFERENCE WITH THE SUBCONTRACT COMPLETION TIME. SUBCONTRACTOR WAIVES AND RELEASES CONTRACTOR FROM ALL CLAIMS AND CAUSES OF ACTION AGAINST CONTRACTOR FOR DAMAGES ARISING OUT OF ANY SUCH DELAYS, HINDRANCES, OR INTERRUPTIONS.

IV. PRICE AND PAYMENTS

4.01 Subcontract Price. The Subcontract Price for any Subcontract Work shall be as set forth in the applicable Work Order subject to adjustments as provided in applicable Contract Documents.

4.02 Progress Payments.

a. Unless otherwise specified in the applicable Work Order, Subcontractor shall submit to the Contractor separate monthly applications for payment for the Subcontract Work performed under each Work Order issued and accepted hereunder. Such applications shall be submitted on the date specified by the Contractor in the Work Order to enable Contractor to include such amount in its application for payment to the Owner. The amounts of progress payments requested shall be based on the Contractor's valuations of work performed by the Subcontractor, considering the schedule of values submitted by the Subcontractor of the various parts of the Subcontract Work aggregating the total price therefore. In applying for payment, the Subcontractor shall submit a statement based upon this schedule. Payments shall be made on account of materials not incorporated in the Work, but delivered and suitably stored at the site, only upon submission of evidence of payment from suppliers and only in accordance with the terms and conditions of the applicable Contract Documents. No applications for payment will be processed and no payments will be made unless Subcontractor has submitted a sworn statement certifying the name of all Subcontractor's unpaid materialmen and sub-subcontractors. Contingent upon Contractor's receipt of payment for that month by the Owner, payments for such applications shall be due after the expiration of the statutory period in which a laborer, materialman or subcontractor of the Subcontractor can perfect a valid lien or bond claim. Contractor may pre-pay any payment without waiving any of Contractor's rights under this Blanket Agreement. Applications for payment shall be accompanied by completed lien waivers and/or bills paid affidavit forms as may be required by Contractor or Owner.

b. Retainage shall be withheld under each

Work Order issued and accepted hereunder until completion and acceptance of all Subcontract Work to be performed in connection with such Work Order. Ten (10) days after all conditions precedent to Contractor's obligation to make payment listed below have been completed and satisfied, Contractor's payment of retainage shall be due if:

(i) Subcontractor has fulfilled the contract requirements for the Subcontract Work of both the Prime Agreement and this Blanket Agreement and the applicable Work Order, including the submittal of all information required thereby;

(ii) Subcontractor has completed all Subcontract Work and the Subcontract Work has been inspected, approved and fully paid for by the Owner; and

(iii) Subcontractor has submitted to Contractor a Bills Paid Affidavit for the Subcontract Work and has a lien and/or bond claim release contingent only upon payment of the retainage amount.

c. In the event the Contractor believes any of the conditions listed below warrant such action, the Contractor may withhold from any payments due, sums deemed necessary to protect the Contractor or Owner from any losses on account of: (i) Defects in the Subcontract Work not remedied; (ii) Failure of the Subcontractor to pay bills for labor and/or materials furnished in connection with the Subcontract Work; (iii) Inability of Subcontractor to complete the Subcontract Work for the unpaid balance of the Subcontract Price; (iv) Failure of the Subcontractor to diligently prosecute the Subcontract Work such that damages for delay are likely; (v) Damages to another subcontractor; (vi) Breach by the Subcontractor of any provision or obligation of this Blanket Agreement or of the Prime Agreement applicable to such Subcontract Work; or (vii) Breach by the Subcontractor of any provision or obligation of another subcontract agreement or Work Order with Contractor.

d. Contractor may in its sole discretion make any payments due hereunder by means of checks jointly payable to the Subcontractor and any of Subcontractor's materialmen or sub-subcontractors. Subcontractor agrees that any such joint check payments made shall constitute payment to the Subcontractor under this Blanket Agreement for the full amount of such joint check.

e. In the event Contractor receives notice of a lien claim or bond claim from Subcontractor's materialmen, sub-subcontractors or laborers, at any tier,

Contractor may, at Contractor's option, directly pay any such claimant. Any such direct payment to a claimant and any expenses in processing such claim and payment shall be deducted from payments otherwise due Subcontractor, and if such payments and expenses exceed the amount of payments due, Subcontractor shall pay Contractor upon demand such excess amount. Subcontractor and Contractor further agree that Contractor will incur substantial additional costs and expenses in administration of claims when a notice is received, that such costs would be difficult to ascertain, that the sum of \$350.00 would be a reasonable and just compensation to Contractor for each notice received, and that \$350.00 for each notice should be deducted from any money then due or thereafter to become due to the Subcontractor under this Blanket Agreement, as liquidated damages for such administration.

f. If the Contractor fails to make payments to the Subcontractor which are due pursuant to the terms of this Blanket Agreement, after receipt of payment by the Owner for the Subcontract Work, then the Subcontractor may, upon seven (7) days written notice to the Contractor, stop work without prejudice to any other remedy the Subcontractor may have, but only if Contractor fails to cure after receipt of notice.

4.03 Final Payment. Contractor's obligation to make final payment to Subcontractor under any Work Order issued and accepted hereunder is specifically contingent upon the following conditions, which are conditions precedent to final payment: (a) Submittal by the Subcontractor of an affidavit that all payrolls, bills for material and equipment, and other indebtedness connected with the applicable Subcontract Work, have been paid except for bills, invoices and/or indebtedness specifically listed and identified in the affidavit; (b) submittal by the Subcontractor of lien releases, or bond claim releases on bonded projects, indicating that all of the Subcontractor's materialmen, laborers, and sub-subcontractors have been fully paid and are releasing all statutory lien rights and releasing all bond claims, except claims specifically listed and identified in the releases; (c) consent of Surety to final payment, if required; (d) approval by the Owner, Architect/Engineer, and Contractor of the Subcontract Work; and (e) receipt by the Contractor of all payments related to the Subcontract Work, including any retainage withheld by the Owner from the Contractor. SUBCONTRACTOR'S ACCEPTANCE OF FINAL PAYMENT SHALL CONSTITUTE A WAIVER OF ALL CLAIMS BY THE SUBCONTRACTOR RELATING TO THE SUBCONTRACT WORK OR TO THE SUBCONTRACTOR'S WORK CONNECTED WITH THE APPLICABLE PROJECT OR CONTRACT

DOCUMENTS, BUT SHALL IN NO WAY RELIEVE THE SUBCONTRACTOR OF LIABILITY FOR THE OBLIGATIONS FOR REPLACING FAULTY OR DEFECTIVE WORK APPEARING AFTER FINAL PAYMENT.

**V.
CHANGES AND
ADDITIONAL COMPENSATION**

5.01 Changes. Contractor, from time to time, without invalidating the applicable Work Order or this Blanket Agreement, may order changes in the Subcontract Work within the general scope thereof consisting of additions, deletions or other revisions to the Subcontract Work. Subcontractor, prior to the commencement of such changed or revised work, shall promptly submit to the Contractor any claim for adjustment to the applicable Subcontract Price or Project Schedule because of such changed or revised work. All Change Orders, Modifications, Claims for Adjustments, and Notices provided in this Blanket Agreement shall be in writing.

5.02 Notice Required. SUBCONTRACTOR SHALL NOT BE ENTITLED TO ANY EXTRA COMPENSATION OR ADDITIONAL PERFORMANCE TIME UNLESS NOTICE IS GIVEN PRIOR TO BEGINNING THE WORK FOR WHICH CLAIM FOR EXTRA PAYMENT OR EXTRA TIME IS MADE; OTHERWISE, SUCH CLAIM SHALL BE WAIVED. Subcontractor shall not perform any changed, revised, or extra work unless prior to the performance of such work, either: (i) the Contractor and Subcontractor enter into a modification changing the Subcontract Price and/or Performance Schedule for such changed Subcontract Work; or (ii) the Contractor, after receiving the Subcontractor's claim, provides the Subcontractor written notice to proceed with the changed, revised, or extra Subcontract Work absent such modification.

5.03 Finality of Owner's Decision. Notwithstanding anything contained herein to the contrary, IF THE WORK FOR WHICH THE SUBCONTRACTOR CLAIMS EXTRA COMPENSATION TO BE DUE, IS DETERMINED BY THE OWNER, OR THE OWNER'S REPRESENTATIVE, TO BE SUCH THAT THE CONTRACTOR IS NOT ENTITLED TO ADDITIONAL COMPENSATION FOR SUCH WORK FROM THE OWNER, THEN SUBCONTRACTOR WAIVES ITS RIGHT TO EXTRA COMPENSATION FOR SUCH WORK AND RELEASES THE CONTRACTOR FOR ANY LIABILITY OF PAYMENT THEREFOR, EXCEPT TO THE EXTENT CONTRACTOR RECOVERS FROM OWNER ON A

CLAIM PURSUED AT SUBCONTRACTOR'S REQUEST AND EXPENSE. Subject to Subcontractor's right to participate in a proceeding disputing such a decision as provided in the applicable Prime Agreement, the decision of the Owner, or the Architect/Engineer as the Owner's representative, shall be final with regard to whether extra compensation is due and with regard to the amount of such extra compensation.

5.04 Claims Against Owner. Contractor will cooperate with Subcontractor to submit any valid and enforceable claim against the Owner or Owner's representative for extra compensation or other relief allowed under the applicable Prime Agreement. As a condition precedent to Contractor's agreement to cooperate in the submittal of Subcontractor's claim against the Owner, Subcontractor agrees to pay for any expense, including attorney's fees, incurred in connection with claims asserted at the request of Subcontractor, including the pre-payment of any retainage fee that may be requested. The intended result of this Blanket Agreement is to permit pass-through claims as authorized by Texas law, within the express understanding that Contractor's liability to Subcontractor on said claim is limited to the funds collected from Owner on the claims which Contractor asserts on behalf of Subcontractor, after deduction of Contractor's actual cost (such as expert witness fees, attorneys' fees, Court costs, etc.) incurred in pursuing said claims.

5.05 Proceeding with Work. If Subcontractor and Contractor do not agree upon either (i) whether or not the Subcontractor's written notice requesting extra compensation constitutes changed work or additional work beyond the original scope of the Subcontract Work, or (ii) the reasonable amount of extra compensation due for the changed or extra work, then Subcontractor shall proceed with the work in accordance with the instructions of the Contractor. In such event, the Subcontractor shall maintain and present to the Contractor, in such form as the Contractor may prescribe, an itemized accounting of costs, together with appropriate supporting data, for all extra labor, materials, and equipment expended at the Project by the Subcontractor for the changed or additional work. For changed or additional work beyond the scope of the original Subcontract Work, the Subcontractor shall be entitled to recover, subject to the requirements for notice, all actual costs for labor, material, and equipment, expended at the project site for the changed or additional work, minus the costs for any deleted work, plus a sum equal to the percentage amount allowed in the Prime Agreement for Subcontractor's overhead and profit. If the Prime Agreement does not specify a percentage or limitation for the Subcontractor's overhead and profit, then the maximum amount of the Subcontractor's overhead and profit shall be fifteen

percent (15%) of its labor, material, and equipment actual costs. In the event that Subcontractor's costs include second and third tier subcontractors, the aggregate sum of Subcontractor's overhead and profit, together with all its lower tier subcontractors' overhead and profit, shall not exceed the lesser of the percentage amount allowed by the Prime Agreement or twenty percent (20%) in addition to the actual costs for labor, materials, and equipment at the Project incurred by Subcontractor and all its sub-subcontractors.

VI.

INSURANCE AND INDEMNIFICATION

6.01 Insurance.

a. PRIOR TO STARTING THE SUBCONTRACT WORK the Subcontractor shall procure and maintain in force (i) statutory workers' compensation insurance for all Subcontractors' employees and/or workmen at the Project performing the Subcontract Work, employers liability insurance with \$500,000.00 coverage, (ii) commercial general liability insurance, (iii) business automobile liability insurance, (iv) umbrella insurance, and (v) such other insurance to the extent required by the Prime Agreement for the Subcontract Work. The Subcontractor's commercial general liability and, automobile liability insurance shall be primary and non-contributory; shall contain an endorsement listing the Owner and Contractor as additional insured (endorsement CG 20 10 10 01 and CG 20 37 10 01, or alternatively, endorsement CG 20 10 11 85, such that coverage is provided to the additional insured parties for completed operations); and shall be written for not less than limits of liability as follows:

- (i) Commercial General Liability.

\$1,000,000.00	Each Occurrence
\$2,000,000.00	General Aggregate per Project
\$2,000,000.00	Products/Completed Operations Aggregate
\$1,000,000.00	Personal and Advertising Injury
- (ii) Business Automobile Liability.

\$1,000,000.00	Combined Single Limit
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- (iii) Umbrella Liability Policy

\$3,000,000.00	Each Occurrence
\$3,000,000.00	General Aggregate per Project
\$3,000,000.00	Products/Completed Operations Aggregate

b. The commercial general liability policy shall contain a contractual liability endorsement and a products/completed operations endorsement. The umbrella insurance shall be excess over and no less broad than all coverages described in this paragraph 6.01. The Subcontractor shall maintain the coverage listed above including the additional insured coverage and the completed operations coverage, for a period of four (4) years after completion of the Project. Subcontractor's insurance coverage **shall not** include any of the following endorsements, excluding or limiting coverage:

- (i) Contractual Liability Limitation, CG 21 39;
- (ii) Amendment of Insured Contract Definition, CG 24 26;
- (iii) Exclusion-Explosion, Collapse and Underground Property Damage Hazard, CG 21 42 or CG 21 43;
- (iv) Limitation of Coverage to Designated Premises or Project, CG 21 44 07 98;
- (v) Exclusion-Damage to Work Performed by Subcontractors on Your Behalf, CG 22 94 or CG 22 95;
- (vi) Any type of Construction Defect Completed Operations exclusion;
- (vii) Any type of Punitive, Exemplary or Multiplied Damages exclusion; and/or
- (viii) Any type of Habitational, Residential, or Condominium Exclusion.

c. The Workers' Compensation Policy shall contain a waiver of subrogation endorsement in favor of Contractor and its employees. Subcontractor shall execute a joint agreement to be filed with the Texas Department of Insurance, Division of Workers' Compensation, stating the Subcontractor is an independent contractor.

d. For each Work Order issued and accepted hereunder, prior to starting the Subcontract Work, the Subcontractor shall deliver to Contractor an original Certificate of Insurance, meeting statutory requirements, which evidences the coverages and the endorsements required herein and which states that the coverages afforded under the policies will not be canceled or terminated unless at least 30 days written notice is given to the Contractor. Separate certificates of insurance will be provided for each Work Order. If Subcontractor subcontracts any portion of the Subcontract Work, Subcontractor shall deliver to Contractor for each of Subcontractor's sub-subcontractors or employee leasing companies, an original Certificate of Insurance which evidences the same coverages and endorsements for workers' compensation insurance as

required herein. All insurance companies providing coverage to Subcontractor pursuant to the requirements of this Blanket Agreement shall have a minimum Best's Rating of A- and a Financial Size Category listing of no lower than VII, both as provided by A.M. Best Company, Inc. Upon request from Contractor, Subcontractor shall deliver a copy of all policies of insurance required herein.

e. Subcontractor shall be solely responsible for insuring Subcontractor's equipment against physical loss or damage of any kind, and shall be responsible for the deductible portion of each claim covered by the Builder's Risk Insurance procured by either the Owner or the Contractor.

f. SUBCONTRACTOR WAIVES ANY CLAIM AGAINST CONTRACTOR, OWNER OR THEIR EMPLOYEES AND OFFICERS, FOR ANY AND ALL LOSSES, INJURIES, DAMAGES OR EXPENSES WHICH ARE COVERED BY POLICIES OF INSURANCE, EXCEPT SUCH RIGHTS AS SUBCONTRACTOR MAY HAVE TO THE PROCEEDS OF SUCH INSURANCE.

6.02 INDEMNIFICATION.

(a) ONLY TO THE EXTENT AND UNDER THE CONDITIONS ALLOWED UNDER TEXAS LAW, SUBCONTRACTOR AGREES TO DEFEND, INDEMNIFY AND HOLD HARMLESS THE CONTRACTOR, THE OWNER, AND THEIR PARTNERS, OFFICERS, REPRESENTATIVES AND EMPLOYEES (THE "INDEMNIFIED PARTIES") FROM AND AGAINST ALL CLAIMS, DAMAGES, LOSSES, EXPENSES (INCLUDING ANY LITIGATION EXPENSES), AND/OR ATTORNEYS' FEES ARISING OUT OF, RELATED TO, OR CONNECTED WITH, THE PERFORMANCE, OR FAILURE IN PERFORMANCE, OF THE SUBCONTRACT WORK UNDER THIS BLANKET AGREEMENT AND THE APPLICABLE WORK ORDER, EVEN IF ANY SUCH CLAIM, DAMAGE, LOSS, EXPENSE, AND/OR ATTORNEYS' FEES IS CAUSED BY A NEGLIGENT ACT OR OMISSION BY ANY OF THE INDEMNIFIED PARTIES. THE EXPRESSED INTENTION OF THE PARTIES IS THAT THE SUBCONTRACTOR'S INDEMNITY HEREIN WILL INDEMNIFY AND PROTECT THE INDEMNIFIED PARTIES FROM THE CONSEQUENCES OF

THEIR OWN NEGLIGENCE, BUT ONLY TO THE EXTENT AND UNDER THE CONDITIONS ALLOWED UNDER TEXAS LAW.

(b) In any and all claims against any of the Indemnified Parties by an employee of the Subcontractor, or anyone directly or indirectly employed by him or anyone for whose acts he may be liable, the indemnification obligation under this Paragraph 6.02 shall not be limited in any way by any limitation or bar under the Texas Workers' Compensation Act, or other employee benefit acts.

VII. BONDS AND WARRANTIES

7.01 Performance/Payment Bonds. If required by the Contractor, a Performance Bond and a Payment Bond in a form satisfactory to the Contractor shall be furnished in connection with any Work Order issued and accepted hereunder in the full amount of the price of the Subcontract Work as set forth therein. If the Contractor requires such Bonds after the Work Order is issued, the cost thereof shall be paid by Contractor as a change to the Subcontract Work, otherwise it shall be included in the Subcontract Price. This obligation shall continue throughout the term of this Blanket Agreement and any Work Order issued hereunder and may be required at any time during the performance of Subcontract Work under any Work Order. These bonds shall be furnished by a certified company on the Department of the Treasury's Listing of Approved Sureties (Department Circular 570), current as of the date the bonds are requested, with sufficient underwriting limitations published therein to cover the penal sum (face amount) of the bonds.

7.02 Conformance with Contract Documents. The Subcontractor warrants to the Owner and Contractor that all Subcontract Work shall be performed in a good and workmanlike manner and shall be free from any and all defects due to faulty workmanship and/or materials and shall comply with all requirements of the applicable Contract Documents. The Subcontractor shall promptly remove, replace, correct and/or repair any portion of the Subcontract Work that the Contractor or the Owner determines is defective or is not in compliance with the applicable Contract Documents. The Subcontractor further agrees to execute any special guarantees or warranties as provided by the terms of the Contract Documents and provide all close-out documents required by the Contract Documents in connection with the Subcontract Work, as a condition precedent to final payment.

7.03 Payments of Laborers and Materialmen. The Subcontractor warrants that all laborers, materialmen and sub-subcontractors, at any tier, providing labor, equipment, or materials for the Subcontract Work will be paid such that neither the Owner, nor Contractor, nor Owner's property, nor Contractor's Surety will be subject to any claims, liens, or encumbrances.

VIII. SUPPLEMENTATION OF WORK AND TERMINATION

8.01 Supplementation by Contractor. Should the Subcontractor fail at any time in connection with any Work Order accepted hereunder, to supply a sufficient number of properly skilled workmen and sufficient materials and equipment of the proper quantity or quality, as determined by the Contractor in its sole discretion, or fail in any respect to prosecute the Subcontract Work with promptness and diligence, or fail to promptly correct defective Subcontract Work or fail in the performance of any of the obligations contained in the applicable Prime Agreement, the Contractor may, at its option without notice, provide such labor, materials and equipment and deduct the cost thereof, together with all loss or damage occasioned thereby, from any money then due or thereafter to become due to the Subcontractor under this Blanket Agreement. If such cost, loss, and damage exceed the unpaid Subcontract Price, Subcontractor shall pay the Contractor the balance of such excess upon demand.

8.02 Termination of Work Order for Default. If the Subcontractor at any time shall refuse or neglect to supply sufficient properly skilled workmen, or materials or equipment of the proper quality and quantity, or fail in any respect to prosecute the Subcontract Work under any Work Order issued and accepted hereunder with promptness and diligence, or cause by any action or omission the stoppage or interference with the work of the Contractor or other subcontractors, or fail in performance of any of the covenants contained in the applicable Prime Agreement, or be unable to meet its debts as they mature, the Contractor may, at its option, at any time terminate the Subcontract Work under the Work Order for the Subcontractor's default by delivering written notice of termination to the Subcontractor. Thereafter, the Contractor may take possession of the materials and equipment of the Subcontractor at the Project, and through himself or others provide labor, equipment and materials to prosecute and complete the Subcontract Work on such terms and conditions as shall be deemed necessary. The Contractor shall deduct the

cost thereof, including without restriction all charges, expenses, losses, costs, damages, and attorney's fees, incurred as a result of the Subcontractor's failure to perform, from any money then due or thereafter to become due to the Subcontractor under this Blanket Agreement. If such completion cost exceeds the unpaid Subcontract Price, Subcontractor shall pay Contractor the balance of such excess upon demand.

8.03 Termination of Work Order for Convenience. The Contractor may, at its option, at any time, terminate without Subcontractor's default the whole or any part of the Subcontract Work under any Work Order for the convenience of the Contractor. Subcontractor agrees that upon any such termination, the Subcontractor's sole remedy shall be payment of the lesser of: (i) the appropriate share of the amount which Contractor is paid under the Prime Agreement for the Subcontract Work properly completed by Subcontractor as of the date of such termination; or (ii) the value of all work properly performed by Subcontractor, less all payments Subcontractor has previously received for Subcontract Work performed. The value shall not exceed Subcontractor's actual costs for labor, materials, and equipment, plus fifteen percent (15%) for profit and overhead. Subcontractor waives all claims for lost or anticipated profits, arising from or related to any such termination by Contractor.

8.04 Payments After Termination. If the Contractor terminates the Subcontract Work under a Work Order pursuant to 8.02 above, the Subcontractor shall not be entitled to any further payments under this Blanket Agreement until the Subcontract Work has been completed and accepted by the Owner, and payment has been received by the Contractor from Owner for any money then due or thereafter to become due to the Subcontractor under this Blanket Agreement. If the cost to complete the Subcontract Work (plus all charges, expenses, losses, costs, and attorney's fees recoverable under this Blanket Agreement) exceeds the unpaid Subcontract Price, Subcontractor shall pay the Contractor the balance of such excess upon demand. In the event the Contractor terminates the Subcontract Work under any Work Order for default, as provided in paragraph 8.02, and the Subcontractor is subsequently found not to be in default, then the Contractor's termination for default shall be deemed for all purposes to be a termination for convenience as provided in paragraph 8.03.

IX. DISPUTE RESOLUTION

9.01 Dispute Resolution. Except as provided herein, all claims, disputes and controversies

arising out of or relating to the Subcontract Work or this Blanket Agreement and any Work Orders issued hereunder, including claims for extra work or changed conditions to or related to the Subcontract Work, shall be decided pursuant to Texas law by a State District Court in Tarrant County, Texas. BOTH CONTRACTOR AND SUBCONTRACTOR AGREE TO WAIVE TRIAL BY JURY. Except, however, a claim for contribution and/or indemnity shall be asserted by the Contractor and decided by the Court, in the suit in which claims are brought against the Contractor for which the Contractor seeks contribution and/or indemnity from the Subcontractor; and a claim by the Subcontractor against the Contractor in which the Contractor asserts the claim, in whole or in part, against the Owner shall be asserted and resolved pursuant to the claims and dispute resolution procedures in the agreement between the Owner and the Contractor. If the forum or procedure of a dispute or controversy between the Contractor and Subcontractor is contested by either party, the issue shall be submitted to a court of competent jurisdiction in Tarrant County, Texas, and all other proceedings shall be stayed until the determination by the Court.

9.02 Claims under Prime Agreement. In the event the Contractor and Owner or others arbitrate or litigate matters relating to Subcontract Work, it shall be the responsibility of the Subcontractor to prepare and present the Contractor's case, to the extent the proceedings are related to the Subcontract Work under this Blanket Agreement, and Subcontractor shall be bound by the result of such litigation to the same degree as Contractor.

9.03 Continued Performance Pending Dispute Resolution. The Subcontractor shall carry on the Subcontract Work and maintain Subcontractor's progress during any litigation proceedings.

9.04 Statute of Repose: The Subcontractor and Contractor agree that for purposes of this Blanket Agreement and any Work Order issued hereunder the statute of repose shall commence to run thirty (30) days after the final completion of the entire Project.

X. ADDITIONAL OBLIGATIONS

10.01 Additional Obligations of Subcontractor. In addition to the other engagements of the Subcontractor hereunder, Subcontractor hereby agrees that with regard to this Blanket Agreement and/or any Work Order issued and accepted hereunder Subcontractor shall:

a. Not discriminate against any employee or applicant for employment because of race, creed, color, age, sex, national origin, or disability.

b. Not assign rights under this Blanket Agreement or any Work Order issued and accepted hereunder or any amounts due or to become due hereunder without the written consent of the Contractor; nor subcontract the whole of any Subcontract Work without the written consent of the Contractor; nor further subcontract portions of any Subcontract Work without written notification to the Contractor.

c. Promptly submit shop drawings and samples as requested by Contractor, in order to carry on the Subcontract Work efficiently without delay in the progress of the Project. Subcontractor shall resubmit within three (3) working days, any shop drawings or submittals returned for correction.

d. Comply with all Federal, State and local laws and ordinances relating to construction of buildings or structures, or improvements and give adequate notices relating to the Subcontract Work to the proper authorities, and secure and pay for all necessary licenses or permits to carry on the Subcontract Work as described in the applicable Contract Documents.

e. Comply with Federal and State laws relating to reporting and payment of (i) wages (including but not limited to, the Davis Bacon Act if applicable), (ii) federal and state payroll taxes on wages, including but not limited to, Federal Income Tax withholding provisions of the Internal Revenue Code, Federal Insurance Contribution Act (FICA) payments, and Federal Unemployment Tax Act (FUTA) payments, and (iii) applicable state unemployment tax payments.

f. Comply with all Federal, State and local laws, including, but not limited to, the statutes and regulations promulgated pursuant to statute related to the Texas Workers' Compensation Act; Consolidated Omnibus Budget Reconciliation Act (COBRA); Immigration Reform and Control Act of 1986; Consumer Credit Protection Act; Title 3, Title 7 of the 1964 Civil Rights Act; Age Discrimination Employment Act; Employees Retirement Income Security Act (ERISA); and Occupational Safety and Health Act of 1970 (OSHA), the Construction Safety Act of 1969, and the Clean Water Act, with all regulations promulgated by the Environmental Protection Agency including Storm Water Pollution Prevention Plan requirements. The Subcontractor shall defend and be responsible for all citations, fines and penalties, and shall indemnify and hold Contractor and all other subcontractors harmless from any loss sustained by reason of any failure to so

comply. As an independent contractor, Subcontractor is exclusively responsible for compliance with these regulations and laws and for the safety of Subcontractor's employees.

g. For the Subcontract Work under each Work Order issued and accepted hereunder, maintain a qualified person approved by Contractor on the job at all times.

h. Adopt a Drug Free Workplace Program equal to or exceeding the Contractor's Drug Free Workplace Program, including Subcontractor's pre-employment and post-accident testing of employees and Subcontractor's permanent removal of employees failing tests or refusing to submit to tests.

i. Exercise every precaution necessary to eliminate asbestos and/or lead-containing materials from any of the materials incorporated in the Subcontract Work. If asbestos fibers or lead contaminants are found in materials associated with the Subcontract Work, the Subcontractor shall be responsible for determining the source of and removing all materials containing asbestos fiber or lead contaminants.

j. Promptly provide Contractor notice of any condition which could increase Contractor's cost of the Subcontract Work or Contractor's liability for claims or damages, to allow Contractor to confirm the condition and mitigate damages arising from the condition. **SUBCONTRACTOR WAIVES ALL CLAIMS OR DAMAGES AND FULLY RELEASES CONTRACTOR FROM LIABILITY FOR ANY CLAIMS OR DAMAGES, WHICH ARISE PRIOR TO SUBCONTRACTOR'S NOTICE TO CONTRACTOR OF ANY SUCH CONDITION.**

XI. MISCELLANEOUS

11.01 Notices. All notices required to be given under this Blanket Agreement shall be deemed delivered when deposited in the United States mail, first class postage prepaid, addressed to the recipient at the following address, provided the notice is also transmitted via facsimile or email on the same day during normal business hours to the following facsimile number or email address:

CONTRACTOR:

IMPERIAL CONSTRUCTION, INC.
400 Interstate 20 West, Suite 200
Weatherford, Texas 76086

Telephone: (817) 341-8886
Facsimile: (817) 341-0191
EMAIL: hdonaldson@imperial-construction.com

SUBCONTRACTOR:

[SUBCONTRACTOR'S NAME]
[SUBCONTRACTOR'S ADDRESS]
[SUBCONTRACTOR'S PHONE]
[SUBCONTRACTOR'S FACSIMILE]
[SUBCONTRACTOR'S EMAIL]

Notices transmitted via facsimile or email after normal business hours shall be deemed delivered the following business day.

11.02 Conflicts in Terms. In the event there is a conflict between the terms of this Blanket Agreement, any Work Order issued and accepted hereunder, and the other Contract Documents applicable to the Work Order, the terms of the Work Order shall control over this Blanket Agreement and the other Contract Documents and the terms of this Blanket Agreement shall control over the other Contract Documents.

11.03 Attorney's Fees. In the event that the Contractor is required to retain the services of an attorney to enforce this Blanket Agreement, or any Work Order issued and accepted hereunder, or to defend against any cause of action, claim, or counterclaim brought by the Subcontractor on which the Subcontractor does not prevail, then the Contractor shall be entitled to recover the attorney's fees and costs incurred, in addition to other remedies to which the Contractor is entitled under Texas law. In the event that the Subcontractor is required to retain the services of an attorney to enforce this Blanket Agreement or any Work Order issued and accepted hereunder, and the Subcontractor prevails in asserting a valid claim under this Blanket Agreement, then the Subcontractor shall be entitled to recover attorney's fees and costs incurred, in addition to other remedies to which the Subcontractor is entitled under Texas law.

11.04 Unconditional Guaranty. To induce Contractor to enter into this Blanket Agreement with Subcontractor and from time to time, to issue Work Orders hereunder for the Subcontract Work as described therein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the undersigned Guarantor hereby unconditionally, irrevocably and absolutely, jointly and severally guaranties the performance of each and every obligation of Subcontractor, including warranties, under the Blanket Agreement, any Work Order issued and

accepted thereunder, and/or any modifications or Change Orders issued pursuant to the terms of this Blanket Agreement. The obligation of the Guarantor shall be performable upon demand by Contractor and shall be unconditional, irrespective of any alleged irregularity or equitable discharge of any Surety. Guarantor hereby waives all diligence, presentment, demand, and protest, and agrees to fully and faithfully perform the Subcontractor's obligations under the Blanket Agreement and all Work Orders upon demand by Contractor. Guarantor further agrees that Contractor may demand performance of the obligations under this Blanket Agreement or any Work Order without any obligation by Contractor to first: (a) proceed against Subcontractor; (b) proceed against any surety bond or exhaust any collateral held by Contractor as security for performance of Subcontractor's obligations guaranteed hereby; or (c) pursue any remedy it may now have or hereafter have against Subcontractor. Guarantor further agrees that at any time, without notice to Guarantor, Contractor and Subcontractor may agree to: (a) extend the time for Subcontractor's performance or compliance within any covenant, agreement, or warranty under the Blanket Agreement or any Work Order; (b) amend or change the scope of any Subcontract Work by Change Order; or (c) alter or amend any time for payment or amounts of payment, whether such payments are partial payments or final payment; all without affecting the liability and obligation of Guarantor. Guarantor hereby acknowledges that the withdrawal from, termination of, or restructuring of, any ownership interest that Guarantor may have in Subcontractor, shall not alter, affect, or in any way limit the obligations of the Guarantor hereunder. Guarantor further consents and agrees that this guaranty agreement shall be subject to and governed by the terms of the dispute resolution provisions in the Blanket Agreement and that any claims by either Guarantor or Contractor arising out of or relating to the obligations of this guaranty agreement shall be subject to the dispute resolution clause in this Blanket Agreement. Guarantor hereby agrees that in the event of the termination, liquidation, or dissolution of Subcontractor, this unconditional guaranty shall continue in full force and effect. The obligations of Guarantor shall not terminate until (i) Guarantor has sent notice of revocation of guaranty for Subcontract Work on future Work Orders issued after Guarantor's revocation, and (ii) Subcontractor has fully performed all obligations under Work Orders issued prior to Guarantor's revocation, including any and all modifications thereof.

EXECUTED in Tarrant County, Texas on this ____ day of _____ 20____.

CONTRACTOR:

IMPERIAL CONSTRUCTION, INC.

BY: _____
Holly Donaldson, Contract Administrator

SUBCONTRACTOR:

[SUBCONTRACTOR'S NAME]

BY: _____
[SUBCONTRACTOR'S OFFICER],
[TITLE]

GUARANTOR:

[GUARANTOR]