



## SUBCONTRACT AGREEMENT

Dated:

Sub. #:

Subcontractor:

Address:

Phone:

Project Owner:

Project Name:

Project Site:

This agreement (the "Subcontract") is made as of , between William H. Lane Incorporated with a principal address at 113 Court Street, Binghamton, New York 13901 ("Contractor"), and \_with a principal address at ("Subcontractor"), to perform portions of the work on the Project set forth herein.

Article 1. Prime Contract. Contractor has entered into a contract dated ("Prime Contract") with ("Owner") concerning a construction project known as based on plans and specifications prepared by : ("A/E"). Now, Contractor and Subcontractor desire to enter into this Subcontract for Subcontractor's performance of a portion of the work required by the Prime Contract.

Article 2. Contract Documents. This Subcontract consists of the following documents and all associated documents incorporated by reference therein (the "Contract Documents"):

- a. This Subcontract form, including the attached Terms and Conditions;
- b. Exhibit "B" Sample Certificate of Insurance

Article 3. Scope of Work. The Subcontractor shall provide all labor, materials, equipment, tools, machinery, supplies, work and related fuel to complete in accordance with the Contract Documents the following scope of work (the "Work"):

Article 4. Consideration/Subcontract Sum. The parties enter into this Subcontract in consideration of the promises herein and other good and valuable consideration, receipt of which is hereby acknowledged. As additional consideration, in exchange for the complete, timely and proper performance of the Work, Contractor shall pay Subcontractor a total of \$ , subject to additions and deductions as provided for in this Subcontract.

Article 5. Completion Date. Time is of the essence. Subcontractor shall cooperate with and coordinate all Work in good faith with Contractor and all other trades working on the Project.

Article 6. Complete Agreement. The parties acknowledge that they have read and understand the terms of this Subcontract, including all documents incorporated therein and the attached Terms and Conditions, and that this Subcontract constitutes the entire Subcontract. Neither party has relied on any promises or representations of the other not stated herein. No terms or provisions of this Subcontract may be waived or changed except in writing signed by authorized representatives of the parties.

Agreed to and Accepted:

Contractor: William H. Lane Incorporated

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

Subcontractor: \_\_\_\_\_

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

SUBCONTRACT  
TERMS AND CONDITIONS

General Terms

1. Before commencing any Work or entering the Project worksite, Subcontractor shall provide the following:
  - a. A fully executed copy of the Subcontract.
  - b. All certificates of insurance and endorsements called for in the Subcontract.
  - c. A proposed schedule of values.
  - d. A list of all key employees assigned to the Project and a statement setting forth Subcontractor's anticipated crew size for the various stages of the Project.
  - e. A written certification stating the subcontractor will make a measurable good faith effort to achieve the applicable workforce participation goal and will contractually require any of its subcontractors to make a measurable good faith effort to achieve the applicable workforce participation goal in any subcontracted work;
  - f. Documentation establishing that all workers on the Project have received OSHA 10-hour certification.
  - g. All other forms, documents, certifications and records required by law, by the Owner, by the Contract Documents, by the Contractor or otherwise requested.
  
2. Subcontractor shall not be entitled to any payments unless and until Subcontractor furnishes, and keeps current, in forms satisfactory to Contractor, the following:
  - a. All documents specified in section 1 above.
  - b. Subcontractor payment and performance bonds, if required.
  - c. For public work, a verified statement from Subcontractor and each of its first and second tier sub-subcontractors attesting that Subcontractor and each sub-subcontractor have received and reviewed a copy of the schedule of wages and supplements specified in the Contract Documents (or any applicable schedule subsequently issued) and agreeing to pay the applicable prevailing wages and supplements specified therein.
  - d. For public work, weekly certified payrolls.
  - e. If requested by Contractor from a Subcontractor that employs or expects to employ union-affiliated labor, an affidavit from every associated employee benefit trust or fund verifying that all payments on account of persons employed in the Subcontract Work are current.
  - f. A safety plan and a quality control plan specific to and covering all the Work of this Subcontract.
  - g. A list of all lower tier sub-subcontractors and vendors to be employed by Subcontractor in the Work.
  - h. Releases and lien waivers as required by Contractor and/or the Contract Documents.
  
3. Subcontractor agrees to comply with all non-discrimination, equal employment opportunity and affirmative action (including MBE, WBE, DVB utilization and workplace participation goals, if required) obligations imposed by law, by Contractor and/or by the Contract Documents.
  
4. Subcontractor assumes toward Contractor all of the obligations and responsibilities that Contractor assumes pursuant to the Prime Contract for the performance of all work subcontracted to Subcontractor, except as otherwise expressly provided in this Subcontract. Subcontractor shall perform this Subcontract so as not to violate any terms, covenants, or conditions of the Prime Contract.

### Subcontractor Performance

5. Subcontractor warrants that all materials and equipment furnished hereunder and incorporated in the Project shall be new unless otherwise provided and that all Work shall be of good quality, free from faults and defects and in conformance with the Contract Documents. All incidental work reasonably necessary to complete this Subcontract shall be performed by Subcontractor as part of this Subcontract notwithstanding that such incidental work may not have been expressly identified in the plans and specifications, including but not limited to cutting, fitting and patching. Subcontractor shall provide at its sole expense all temporary offices, sheds, tools, telephones, equipment, temporary heat, temporary lights, temporary power, and other equipment or utility required in the performance of its Work.
6. Subcontractor shall perform all Work in strict compliance with the Contract Documents and applicable laws and building codes, and to the satisfaction of A/E, Owner, and Contractor. Subcontractor shall be bound to all determinations of A/E and Owner concerning the Work to the same extent as Contractor is bound, and shall promptly complete, repair, or replace, at its own expense, any Work found to be deficient, defective or non-compliant. It is the intent of the Contractor to flow down all terms, obligations and requirements of the Prime Contract and Contract Documents applicable to the Subcontractor and/or the Work so that the Subcontractor hereby assumes toward Contractor all of the obligations that Contractor has assumed toward the Owner relating directly and/or indirectly to the Work under this Subcontract and the Subcontractor's performance thereof.
7. No substitutions shall be made except in strict compliance with the Contract Documents and only after receipt of all required approvals in writing. Requests for substitutions shall be at Subcontractor's expense and shall not delay the progress of the Work or the work of any others on the Project. Subcontractor shall not be entitled to additional compensation for the use or requirement of any specified product, brand, quality assurance, certification or product grade. Subcontractor shall promptly furnish such certifications, tests, and reports as may be required and/or requested to demonstrate that materials comply with the Contract Documents.
8. Subcontractor shall immediately issue all required purchase orders, promptly submit shop drawings, product data, and samples as required by the Contract Documents. Contractor's approval of submittals is general only and will not excuse Subcontractor from any requirements of the Contract Documents, including those pertaining to substitutions, or those pertaining to correction of defective, incomplete, or non-compliant Work.
9. Subcontractor shall, after notice to proceed by Contractor, continue diligently in the performance of the Work. Subcontractor shall progress and coordinate all of its material deliveries, submittals and Work with all other Project work so as to enable Contractor to obtain the quickest possible completion of the Project and in accordance with Contractor's most current Project schedule. Subcontractor shall employ sufficient labor and work sufficient hours and shifts so as not to hinder or delay the progress of the Project and shall complete the Work in accordance with all specified milestones and completion dates, and at such times as will enable Contractor to fully comply with the terms of the Contract Documents. Time is of the essence for the Work. Subcontractor shall be liable for any liquidated or other damages assessed against Contractor by Owner as a result of or attributable to Subcontractor's failure to prosecute the Work diligently and such amounts may be back-charged against the Subcontract Sum. Subcontractor shall promptly furnish such reports and attend such Project meetings as may be required and/or requested to demonstrate compliance with the Contract Documents and/or the progress of the Work.
10. Subcontractor shall promptly pay all wages and supplements (at prevailing rates for public work) and shall pay for all labor, materials, and equipment when due. Subcontractor shall receive and apply all payments received hereunder in trust for those furnishing labor, materials, and/or equipment in the performance of this Subcontract, including sub-subcontractors who perform any portion of such work and vendors, before they are used in any other manner. Contractor may contact Subcontractor's employees (or their representatives), sub-subcontractors and vendors to ensure that they are being paid promptly by Subcontractor. If Contractor has

reason to believe that any obligations incurred in connection with this Subcontract are not being paid when due, Contractor may, upon notice to Subcontractor, take any steps Contractor deems necessary to assure that future payments are utilized to pay such obligations including, but not limited to, the issuance of joint checks or direct payment. If upon receipt of such notice Subcontractor does not either supply proof satisfactory to Contractor that such obligations are paid or post acceptable security indemnifying Owner, Contractor, and Contractor's surety against claims for such obligations, then Contractor may withhold from future payments an amount sufficient to protect Owner, Contractor, and Contractor's surety from any and all loss, damage or expense, including reasonable attorneys' fees, occasioned by such claims. Subcontractor shall also comply with federal, state and local tax laws, social security acts, labor laws, unemployment compensation acts, and workers' compensation acts as applicable to the performance of this Subcontract, and shall to the extent permitted by law, indemnify Contractor, Contractor's Surety and Owner from any claims, costs, damages, or liability incurred, including reasonable attorneys' fees, as a result of Subcontractor's failure to so comply.

11. All costs, liabilities or expenses, including reasonable attorneys' fees, that Contractor incurs by reason of any claim of non-payment for labor, materials and/or equipment furnished in connection with the Subcontract Work shall be borne by Subcontractor and may be back-charged against the Subcontract Sum. In the event that a Notice of Lien is filed by any person for labor or materials furnished in connection with the Subcontract Work, Subcontractor shall discharge such lien within 10 days of demand by Contractor; otherwise Contractor may take such steps as it deems necessary to discharge such lien, and all of Contractor's expenses, direct or indirect, including reasonable attorneys' fees and bonding costs, shall be borne by Subcontractor and may be back-charged against the Subcontract Sum.
12. Subcontractor shall verify all field dimensions for all materials and Work to be performed hereunder prior to fabrication. The proper fitting of Subcontractor's Work with that of others is Subcontractor's sole responsibility.
13. Subcontractor acknowledges that it has satisfied itself as to the nature and location of the Work and Project, including but not limited to uncertainties of weather and underground conditions, and assumes the risk thereof.
14. All materials shall be adequately protected from damage during shipment, storage and installation by protective coverings and in conformance with Contract Documents. If in Contractor's opinion conditions require accessibility to an area occupied by Subcontractor's materials, equipment or facilities, they shall be moved at once by Subcontractor at Subcontractor's expense to an area approved by Contractor.
15. Subcontractor shall take all necessary precautions to properly protect its own Work and the work of all other trades from damage caused by its operations. In addition, Subcontractor shall sequence, coordinate and protect its Work so as to prevent weather damage and water intrusion (as well as attendant mold growth) to its own Work and materials, as well as the work and materials of others. To the fullest extent permitted by law, Subcontractor shall be responsible for all costs, including testing, remediation, repair and/or replacement, caused by any breach of this section, and shall defend and indemnify Contractor against all claims and liabilities arising from any breach, except to the extent caused by Contractor's own negligence.
16. Subcontractor shall at all times keep the Project site and adjoining premises clean of trash and debris arising out of Subcontractor's Work, promptly remove all such trash and debris from the Project site and leave all areas of Work neat and clean from trash, debris, surplus materials, tools and equipment. Contractor may, upon reasonable notice, remedy any failure to perform hereunder and may back-charge the cost thereof against the Subcontract Sum. In addition, the Subcontractor shall remove all snow and ice as may be required for the proper protection and prosecution of the Work, all employees and all materials, and all times maintain adequate protection against weather.
17. Subcontractor shall comply with all applicable federal, state, and local laws, rules, regulations, and standards

including those under the Occupational Safety and Health Act (OSHA), and shall perform its Work safely, consistent with the Contractor's Safety Policies and any applicable site-specific safety program. Before commencing its Work, and as requested by Contractor, Subcontractor shall furnish a safety plan and a quality control plan specific to the Work of this Subcontract. Subcontractor shall immediately communicate verbally to Contractor any injury to any person performing any Work of this Subcontract at the Project site and follow up within 24-hours by written report. Subcontractor shall, to the extent permitted by law, defend and indemnify Contractor against all claims, costs, damages, and liability arising on account of Subcontractor's actions, omissions and/or neglect in relation to the Subcontractor's performance of the obligations under this section, including but not limited to OSHA fines, penalties, and reasonable attorneys' fees.

18. Subcontractor shall not use or permit others to use any scaffold, ladders, lifts or other equipment or tools owned or leased by Contractor, except with Contractor's written consent. By using or permitting others to use any Contractor- owned or leased equipment or tools, Subcontractor represents that it has independently confirmed the safety and adequacy thereof, and that such use shall comply with all applicable safety requirements. To the extent permitted by law Subcontractor shall defend, indemnify, and hold harmless Contractor from and against all claims, demands, costs, losses, damages, and liability arising out of Subcontractor's or its licensee's use of such equipment or tools. The insurance required by this Subcontract shall apply to Subcontractor's or its licensee's use of any Contractor owned or leased equipment or tools.
19. Subcontractor shall secure and pay for all permits, fees and licenses necessary for the execution of the Work of this Subcontract and shall cooperate with any testing agency engaged by Contractor and/or Owner to perform services in connection with the material furnished and Work performed pursuant to the terms of this Subcontract. Subcontractor shall provide all necessary and/or requested samples for testing at its sole cost and expense.
20. Subcontractor agrees to employ only such labor as will not delay or interfere with the quick, timely and lawful progress and completion of the Project. Subcontractor shall continue with the prompt and diligent performance of the Work hereunder notwithstanding the occurrence of any labor dispute on the Project. To the fullest extent permitted by law, Subcontractor shall indemnify, defend, and hold harmless Contractor from and against any and all claims, demands, costs, losses, liability and damage, including reasonable attorneys' fees, occasioned by its failure to comply with the requirements of this section.
21. If required, Subcontractor shall furnish performance and payment bonds using forms reasonably acceptable to Contractor, each in an amount equal to one hundred percent (100%) of the Subcontract Sum, as security for the faithful performance of the Subcontract and for payment of all persons performing labor or furnishing materials or equipment in connection with the Subcontract. The surety company must be authorized in the jurisdiction where the Project is located and have a Best's Rating of A- or better.

#### Payment

22. Contractor shall pay Subcontractor for satisfactory performance of Subcontractor's Work the Subcontract Sum, subject to additions and deductions as provided for herein. Subcontractor agrees that the Subcontract Sum is inclusive of all applicable scaffolding, hoisting, tests, inspections, permits, equipment, transportation, cartage, bonding, guarantees, insurance, taxes, and future wage and price increases unless otherwise provided in this Subcontract.
23. Contractor shall pay Subcontractor progress payments to the extent and with such frequency as Contractor receives such payments for Subcontractor's Work from Owner. Payment for materials or equipment suitably stored at the Project site or elsewhere shall be made only to the extent allowed and paid by Owner. Such payments will be made by Contractor within such period as provided by law after being paid for the Work by Owner, not to exceed 30 days, and will equal the value of the Work done by Subcontractor according to Owner's

and Contractor's estimate at unit prices or a percentage of total completion, whichever is applicable, less the sum of previous payments and less retainage at the rate of ten percent; provided that if Subcontractor is indebted to Contractor or anyone else for cash advances, labor, supplies, materials, equipment, rental or other proper charges and/or back-charges against the Work, a reasonable amount for such indebtedness may be deducted from any payment or payments to be made under this provision; and provided further that Contractor may withhold release of any progress payment to the extent that Subcontractor is in default of any provision of this Subcontract. All statements for which payment is requested by Subcontractor must be received by Contractor on or before the day of the month for Work performed the preceding month. Receipt of progress payments from Owner shall dictate, to the extent permitted by law, the timing of Contractor's progress payments hereunder to Subcontractor. The making of a progress payment shall not constitute or imply acceptance of any Work of Subcontractor. Notwithstanding anything contained in the Contract Documents, receipt of payment by the Contractor from the Owner for the approved portion of Subcontractor's monthly estimate constitutes a condition precedent to Contractor's payment obligation to the Subcontractor and the source of such payment. The parties agree that inclusion of this provision hereby shifts the risk of nonpayment by the Owner to the Subcontractor. Approval and payment of Subcontractor's monthly estimate is specifically agreed not to constitute or imply acceptance by the Contractor or Owner by any portion of Subcontractor's Work.

24. Subcontractor shall, at execution of the Subcontract, submit to Contractor a detailed schedule of values of the various parts of the Work aggregating the Subcontract Sum. This schedule, when approved by Contractor, shall be used as a basis for payment applications, unless it is found to be in error. In applying for payment, Subcontractor shall submit a statement based upon this schedule in the form of AIA G-702 and G-703 ("Application and Certification for Payment") and provided Release and Subcontractor/Supplier Disclosure or the Contractor provided Application for Payment form.
25. Notwithstanding any other provision, the Contractor may withhold any payment or payments due or to become due to the Subcontractor if and to the extent that the Contractor deems it necessary to protect itself against possible loss or damage due to:
  - a. defective or non-compliant Work not remedied to the satisfaction of the Contractor; or
  - b. third-party claims or reasonable evidence indicating probable third-party claims; or
  - c. failure or alleged failure of the Subcontractor to make payments to its sub-subcontractors or vendors as required; or
  - d. inability, or reasonable doubt as to the ability, of the Subcontractor to complete the Subcontractor's Work within the required time or for the unpaid balance of the Subcontract Sum; or
  - e. damage to the Contractor or a separate subcontractor; or
  - f. unsatisfactory prosecution of the Subcontractor's Work by the Subcontractor; or
  - g. erroneous estimates by the Subcontractor of the value of the Work performed; or
  - c. unauthorized deviations from the Contract Documents; or
  - d. liquidated damages or other damages alleged or assessed against the Contractor in relation to the Subcontractor's performance.
26. Final payment, constituting retainage and any other unpaid balance of the Subcontract Sum, shall not become due to Subcontractor unless and until Subcontractor's Work is fully performed in accordance with the requirements of the Contract Documents; A/E has issued a final certificate for payment; Contractor has received final payment from Owner; Subcontractor has submitted evidence satisfactory to Contractor and/or Owner that all payrolls, benefit obligations, bills for materials and equipment, and all known indebtedness connected with Subcontractor's Work have been satisfied; and that Subcontractor has fulfilled all

administrative requirements under the Contract Documents including, but not limited to, delivery of any required warranties, guarantees, manuals, as-built drawings, insurance certificates, as well as any releases, lien waivers and payment affidavits that Contractor may, in its sole discretion, require. Subcontractor's acceptance of final payment waives any and all claims against Contractor and Owner, including but not limited to claims for further compensation. Notwithstanding anything contained in the Contract Documents, receipt of payment by the Contractor from the Owner for all Subcontractor's Work, including retainage, constitutes a condition precedent to Contractor's payment obligation to the Subcontractor and the source of such payment, unless otherwise provided by law. The parties agree that inclusion of this provision shifts the risk of nonpayment by the Owner to the Subcontractor.

27. If the Owner files for protection under bankruptcy laws, as a condition precedent to asserting a claim against the Contractor and/or its surety, Subcontractor must: (a) timely file a mechanic's lien; (b) timely file a claim in the bankruptcy proceeding; and (c) diligently prosecute that bankruptcy claim to a final conclusion. For purposes of this section, "final conclusion" means either full payment to the Subcontractor of its claim in bankruptcy or a final disposition of the bankruptcy. Solely and only to the extent that Subcontractor remains unpaid after completion or disposition of the bankruptcy proceeding may the Subcontractor maintain a claim for the unpaid amounts against the Contractor and/or its surety. If the bankruptcy is dismissed, without a final disposition, Subcontractor must proceed to exhaust its lien rights by foreclosure and deficiency judgment.

#### Indemnification

28. To the fullest extent permitted by law, the Subcontractor shall indemnify, defend, save and hold the Owner and Contractor, and their respective partners, officers, shareholders, directors, members, managers, employees and anyone else acting for or on behalf of any of them (herein collectively called "Indemnitees") harmless from and against all liability, damage, loss, claims, demands and actions of any nature whatsoever which arise out of or are connected with, or are claimed to arise out of or be connected with:
- a. The performance of Work by the Subcontractor, or any act or omission of Subcontractor; or
  - b. Any accident or occurrence which happens, or is alleged to have happened, in or about the place where such Work is being performed or in the vicinity thereof: (a) while the Subcontractor is performing the Work, either directly or indirectly through a sub-subcontractor or vendor, or (b) while any of the Subcontractor's property, equipment or personnel are in or about such place or the vicinity thereof by reason of or as a result of the performance of the Work; or
  - c. The use, misuse, erection, maintenance, operation or failure of any machinery or equipment (including, but not limited to, scaffolds, derricks, ladders, hoists, rigging supports, etc.) whether or not such machinery or equipment was furnished, rented or loaned by the Owner or the Contractor or their officers, employees, agents, servants or others, to the Subcontractor; or
  - d. A breach of this Agreement by Subcontractor.

This Subcontract is not intended to provide indemnification for the negligence of the Indemnitees, except and unless the applicable law allows partial indemnification. In the event such partial indemnification is determined to be permissible under the applicable law, there shall be partial indemnification of the Indemnitees herein to the extent permitted by law, but in any event not for the Indemnitees' own negligence.

Without limiting the generality of the foregoing, such defense and indemnity includes all liability, damages, loss, claims, demands and actions on account of personal injury, death or property loss to any Indemnitee, any of Indemnitee's employees, agents, contractors or subcontractors, licensees or invitees, or other contractors or subcontractors, their employees, agents, sub-subcontractors, vendors, licensees or invitees or to any other persons, whether based upon, or claimed to be based upon, statutory (including, without limiting the generality



of the foregoing, Worker's Compensation), contractual, tort or other liability of any Indemnitee, contractor, subcontractor or any other persons. In addition, the liability, damages, loss, claims, demands and actions indemnified against shall include all liability, damage, loss, claims, demands and actions for trademark, copyright or patent infringement, for unfair competition or infringement of any other so-called "intangible" property rights, or any other infringement of personal or property rights of any kind whatever or which arise out of any failure of Subcontractor to discharge its duties specified in the Contract Documents and/or at law.

In the event more than one subcontractor is connected with an accident or occurrence covered by this indemnification, then all of such subcontractors shall be jointly and severally responsible to the Indemnitees for indemnification and the ultimate responsibility among such indemnifying subcontractors for the loss and expense of any such indemnification shall be settled by separate proceedings and without jeopardy to any Indemnitee.

The foregoing indemnification agreement by Subcontractor shall be included in each of its sub-subcontracts and shall be in favor of the Indemnitees and Subcontractor.

The Subcontractor shall bear any expense, whether incurred or paid, of any Indemnitee because of any claim or other matter indemnified against hereunder, including reasonable attorneys' fees and court costs in the defense of, or preparing for the defense against, any such claim, even if such claim or any lawsuit arising therefrom is groundless, false or fraudulent. If any such claim has not been settled or discharged when the Work is finished, final settlement between the Contractor and the Subcontractor and final payment of the Subcontract Sum and the acceptance of the Work shall be deferred until any such claim is paid or settled or the Subcontractor provides a bond, acceptable to the Contractor, in its sole discretion, to satisfy such claim.

In any and all claims against the Contractor or any of its agents or employees by any employee of the Subcontractor, anyone directly or indirectly employed by Subcontractor or anyone for whose acts Subcontractor may be liable, the indemnification obligation under this section shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Subcontractor under Workers' Compensation acts, disability benefit acts or other employee benefit acts.

All indemnification provisions set forth in this Agreement shall survive termination of this Agreement and all rights and remedies of Contractor under the Subcontract are cumulative.

#### Insurance

29. Prior to commencing Work or entering the Project site, the Subcontractor shall procure and maintain in force until final payment under the Prime Contract is made by the Owner to the Contractor, in the form and with insurance companies acceptable to the Contractor the insurance set forth below along with all other insurance required by the Contract Documents. The Owner, the Contractor and all other parties as designated in the Contract Documents shall be named as additional insureds on a primary and non-contributing basis on each of these policies except Workers' Compensation (a copy of the endorsement shall be attached to certificate). The additional insured endorsement must specifically include completed operations coverage. The Subcontractor's insurance shall be written on an occurrence basis in the types, for the coverages, and for not less than the limits of liability, on a per project basis, as follows:
  - a. Worker's Compensation and Employer's Liability including Broad Form All States Endorsement, Voluntary Compensation Endorsement, U.S. Longshoremen's and Harborworker's Compensation Act Endorsement, and Maritime coverage as required by law.
  - b. Commercial General Liability:

Combined Single Limit -  
\$1,000,000 each occurrence  
\$2,000,000 general aggregate

Such coverage shall include:

Premises-Operations, Contractor's Protective, Products-Completed Operations, Contractual Liability covering the liability assumed by this Agreement, Personal Injury, Broad Form Property Damage (including Completed Operations), full Explosion, Collapse, and Underground Coverage, Broad Form Notice of Occurrence.

c. Comprehensive Automobile Liability:

Combined Single Limit  
\$1,000,000 each occurrence

Such coverage will include all automobiles, including, but not limited to, owned, non-owned, leased and hired automobiles.

d. Umbrella Liability:

Bodily Injury and Property Damage  
Combined Single Limit  
\$5,000,000 each occurrence  
\$5,000,000 aggregate

e. Property Insurance:

"All Risk" property coverage covering the Subcontractor's Work and all materials and equipment on the Project site, in transit, or in storage to be used in the construction in amounts sufficient to protect the Subcontractor, unless and to the extent relieved from this obligation by the Contractor or by the terms of the Contractor's contract with the Owner, such insurance being made payable to the Owner, the Contractor and the Subcontractor. The Subcontractor assumes sole responsibility for any deductible amounts that may be applied in an insurance claim settlement for damage to its Work.

f. Any and all additional insurance coverage and limits required by the Contract Documents or the laws of the state in which the Project is located. If any Work is sublet by the Subcontractor under this Subcontract, the Subcontractor must nevertheless carry contingent liability coverages on its sub-subcontracts in the above minimum limits to cover the Work so sub-subcontracted.

The carrying of the above coverages shall not relieve the Subcontractor of its obligations assumed under this Subcontract.

Insurance may be arranged under a single policy for the full limits required or by a combination of underlying policies with the balance provided by an Excess or Umbrella policy. The amount of such insurance shall, at all times be sufficient to cover the cost of repairing, rebuilding or replacing the property lost or damaged by causes to which such insurance is applicable.

The foregoing policies shall contain a provision that coverages afforded under the policies will not be cancelled or not renewed until at least thirty (30) days prior written notice has been given to the Contractor. Certificates of insurance acceptable to the Contractor shall be filed with the Contractor prior to the commencement of

Work. Subcontractor shall provide to Contractor a copy of the policies of insurance upon the request of Contractor.

The policies shall provide waivers of subrogation by endorsement or otherwise in favor of the Contractor and Owner, and the Subcontractor hereby waives any and all such subrogation claims. A waiver of subrogation shall be effective as to Contractor and Owner even though that person or entity did not pay the insurance premium directly or indirectly.

#### Default and Termination

30. Should the Subcontractor fail at any time to supply a sufficient number of properly skilled workmen or sufficient materials and equipment, or fail in any respect to prosecute the Work with promptness and diligence, or fail to promptly correct defective Work or fail in the performance of any of the agreements or obligations herein contained, the Contractor may, at its option, provide such labor, materials and equipment and deduct the cost thereof, together with all loss and damage occasioned thereby, from any money then due or thereafter to become due to the Subcontractor under this Subcontract.

If the Subcontractor at any time shall refuse or neglect to supply sufficient properly skilled workmen, or sufficient materials or equipment, or fail in any respect to prosecute Subcontractor's Work with promptness and diligence, or cause by any action or omission the stoppage, delay or interference with the work of the Contractor or other subcontractors, or fail in the performance of any of the covenants or obligations herein contained, or be unable to meet its debts as they mature, or assign or sublet the Work or any monies due hereunder without the Contractor's written consent, the Contractor may at its option at any time after serving written notice of such default with direction to cure in a specific period, but not less than two (2) working days, and after the Subcontractor fails to timely cure the default, terminate the Subcontractor's services by delivering written notice of termination to the Subcontractor. Thereafter, the Contractor may take possession of the materials, tools, appliances and equipment of the Subcontractor at the Project site, and through itself or others provide labor, equipment and materials to prosecute Subcontractor's Work on such terms and conditions as shall be deemed necessary, and shall charge the cost thereof, including without restriction all charges, expenses, losses, costs, damages, and attorneys' fees, incurred as a result of the Subcontractor's failure to perform, against Subcontractor.

If the Contractor so terminates the services of the Subcontractor, the Subcontractor shall not be entitled to any further payments under this Subcontract until Subcontractor's Work has been completed and accepted by Owner, and payment has been received by the Contractor from the Owner with respect thereto. In the event that the unpaid balance due exceeds the Contractor's cost of completion and/or damages otherwise owed by Subcontractor, the difference shall be paid to the Subcontractor, but if such expenses and damages exceed the balance due, the Subcontractor agrees to promptly pay the difference to the Contractor.

31. Contractor shall have the right to terminate this Subcontract, by written notice, without Subcontractor being at fault, for any cause or for its own or the Owner's convenience, and require Subcontractor to immediately stop Work. In such event, Contractor shall pay Subcontractor for that Work actually performed through the date of termination. Contractor shall not be liable to Subcontractor for any other costs, nor for prospective profits on work not performed. Any default termination subsequently determined to have been erroneous shall be treated as a termination for convenience.

Should the Owner suspend its contract with the Contractor or any part which includes the Subcontractor's Work, the Contractor shall so notify the Subcontractor in writing and upon written notification the Subcontractor shall immediately suspend the Subcontractor's Work. In the event of such Owner suspension, the Contractor's liability to the Subcontractor is limited to the extent of the Contractor's recovery from the Owner

on the Subcontractor's behalf under the Contract Documents.

### Changes and Disputes

32. Contractor may add to or deduct from the amount and scope of the Subcontract Work by change order, or by written directive where there is no agreement concerning any change in price and/or time. Subcontractor shall be bound by any changes or alterations made by Owner to the Contract Documents or to the Subcontract Work to the same extent that Contractor is bound. Subcontractor shall give Contractor immediate written notice of any asserted change or claim as required by the Contract Documents and in no event any later than three (3) days from the event giving rise to the claim and before any changed or extra work is performed. Such timely written notice is a condition precedent to any recovery by Subcontractor of additional time or compensation, and failure to give such notice shall be deemed a waiver of any claim by Subcontractor. Subcontractor shall, within three (3) days of receiving a direction to perform a change, alteration or extra work, submit to Contractor a written cost or credit proposal; otherwise Subcontractor shall be bound by such cost increase or credit as Contractor shall determine or is able to obtain from Owner, if any. Subcontractor waives any claim against Contractor for compensation or equitable adjustment for any claims, changes, or extra work for which Owner or its representatives may be responsible except to the extent that the same is allowed and paid to Contractor by Owner. In no event shall Contractor be liable to Subcontractor for any damages for delays or changes in sequence of the Work, it being understood and agreed that the occurrence of such circumstances was contemplated by the parties. Contractor shall reasonably cooperate with Subcontractor in submitting meritorious claims to Owner for changes, unforeseen conditions, and the like, with respect to Subcontract Work, but this shall not be interpreted as an attempt to create any direct contractual relationship between Subcontractor and Owner. All costs, including reasonable attorneys' fees, incurred by Contractor in any formal or informal claim proceeding for the benefit of Subcontractor shall be borne solely by Subcontractor. No change or extra work ordered or required by either Owner or Contractor shall invalidate any bonds furnished by Subcontractor, and all Work Subcontractor performs at Contractor's request or direction shall be subject to the provisions of this Subcontract and covered by the insurance provided hereunder.
33. Subcontractor shall diligently proceed with all Subcontract Work, including any changed or disputed work directed in writing, notwithstanding that an outstanding change order request, claim, or protest with respect to such Work is pending or unresolved or Contractor has withheld payment in good faith.
34. Contractor shall be entitled, upon written request, to receive promptly from Subcontractor such assurance as Contractor may require, including without limitation scheduling information and manpower commitments, that Subcontractor will duly and timely perform its obligations hereunder. Failure to furnish such assurance satisfactory to Contractor shall be a material breach of the Subcontract.
35. All claims, disputes and other matters in question arising out of or relating to this Subcontract or the breach thereof shall, at Contractor's sole election, which election may be made at any time prior to the commencement of a judicial proceeding by Contractor or up to the last day to answer or respond to a Summons and/or Complaint filed by Subcontractor, be submitted to arbitration before a single arbitrator through the American Arbitration Association in accordance with its Construction Industry Arbitration Rules then in effect. In the event of such arbitration, Subcontractor agrees that any other person or entity related to the Subcontract Work may be joined as a party to such arbitration proceeding, and further agrees that arbitration proceedings under this Subcontract may be consolidated with arbitration proceedings between other parties if those arbitration proceedings arise from the same transaction or relate to the same subject matter. The arbitration procedures shall not include depositions or other pre-hearing discovery, except that the parties shall exchange documents, including but not limited to all exhibits to be introduced at the hearing and shall provide reports from any expert witnesses who are to testify at the hearing. The arbitrator(s) shall not be entitled to award punitive or exemplary damages. Judgment may be entered on the arbitration award by

any court having jurisdiction.

In the event Contractor becomes involved in an arbitration proceeding with any other person which relates to the Work or the Subcontract, upon receiving notice of such proceeding and an opportunity to join therein or present evidence therein, Subcontractor will be bound by the decision of such proceeding in the same manner as Contractor shall be bound. In the event the Prime Contract provides for final and conclusive decisions by A/E with respect to the Project, Subcontractor agrees to be bound by any such decision which becomes binding upon Contractor. Any litigation, mediation or arbitration arising out of or pertaining to this Subcontract shall be venued in Broome County, New York, except that if such litigation, mediation or arbitration includes the Owner as a party such action shall be venued in the County where the Project is located.

36. Subcontractor shall be liable for all loss, damage or expense, direct and indirect including reasonable attorneys' fees and enforcement costs, which Contractor may suffer or incur by reason of any non-performance or breach by Subcontractor of this Subcontract, and any loss, damage, or expense so suffered or incurred may be back-charged against the Subcontract Sum. All rights and remedies of the Contractor under this Subcontract and at law are cumulative and shall survive a termination of this Agreement and/or the completion of the Work.

#### Miscellaneous

37. In the event that Subcontractor encounters materials reasonably believed to be hazardous material or toxic substance in any form, including but not limited to, mold, lead, asbestos or polychlorinated biphenyl (PCB) which has not been rendered harmless (and is not within the scope of Subcontractor to render harmless), the Subcontractor shall immediately stop Work on the area affected and report the condition to the Contractor in writing. The Work in the affected area shall not thereafter be resumed except by written agreement of the Owner, Subcontractor and Contractor if in fact the material is hazardous material or toxic substance in any form, including mold, lead, asbestos or polychlorinated biphenyl (PCB), or when it has been rendered harmless, by written agreement of the Owner, Subcontractor and Contractor. Subcontractor shall indemnify, defend and hold harmless Owner and Contractor from and against all claims, costs, damages, losses and expenses, including reasonable attorneys' fees, arising out of or relating to Subcontractor's failure to comply with this section.
38. Subcontractor shall not assign or subcontract the whole of this Subcontract without the prior written consent of Contractor, and shall not assign any amounts due or to become due under the Subcontract without advance written notice to and written approval by Contractor.
39. Subcontractor shall, upon completion of all the Work and prior to final payment, deliver to Contractor at least three (3) copies, or greater if required in the specifications of as-built drawings, operations and maintenance manuals, parts lists, instruction manuals, and any other information and/or data required by the Contract Documents, Architect, or Owner. In the event an instruction session and/or meeting is required or requested, Subcontractor shall arrange and conduct such session as part of the Work herein.
40. Subcontractor warrants and guarantees that the Work, including all workmanship and materials, shall be in strict compliance with the requirements of the Subcontract, the Contract Documents and not defective. Subcontractor further agrees to comply with any warranty or guarantee obligations of the Contract Documents applicable to Subcontractor's Work. Subcontractor shall furnish a separate certificate of guaranty or warranty if requested by Owner or if required by the Contract Documents. In addition to the foregoing warranty obligations, for a period of one year from Substantial Completion of the Project or such longer period as is specified in the Contract Documents, Subcontractor shall repair and/or replace at its own expense cost any Work that is defective or otherwise not in compliance with the Contract Documents.
41. To the fullest extent permitted by law, Contractor shall have the right to set off against this Subcontract any amounts owed by Subcontractor on account of any other matter; and to set off amounts Subcontractor owes

or may owe hereunder against any property, payments or credits otherwise owing by or due to Subcontractor on account of any other matter. Subcontractor waives all claims and losses covered by insurance, along with all claims for consequential damages that relate to the Subcontract and/or Work.

42. Notices required hereunder are to be given by either: (a) hand delivery or overnight courier to an officer of the party; (b) U.S. mail to the postal address of the party set forth in the Subcontract; or (c) for notice to Subcontractor, confirmed transmission to an email address regularly utilized by Subcontractor to communicate with Contractor. Notice is effective upon confirmation of delivery, except that U.S. mail notice shall be deemed effective on the second calendar day after mailing.
43. All matters relating to the validity, performance, interpretation or construction of this Agreement, or the breach thereof, shall be governed by the laws of the State of New York. Subcontractor and Guarantor, if any, hereby submit to the jurisdiction of the courts of the State of New York. The venue of any proceeding brought under this Subcontract shall be Broome County, New York.
44. Subcontractor is an independent contractor hereunder and nothing herein contained shall be construed to establish Subcontractor as an agent or representative of Contractor.
45. Nothing in this Subcontract shall be construed to create any third-party beneficiary rights in any person, except as otherwise expressly stated in the Contract Documents.
46. If Contractor does not insist in any instance upon strict compliance with any of the provisions of this Subcontract, or fails to exercise any rights or remedies provided, it shall not be construed as a waiver of its right to thereafter require such compliance and/or to exercise all rights and remedies of Contractor.
47. To the best knowledge and belief of the parties, this Subcontract contains no provision that is contrary to federal or state law, ruling or regulation. However, if any provision of this Subcontract shall conflict with any such law, ruling or regulation, then such provision shall continue in effect only to the extent permissible. In the event that any provision is thus inoperative, the remaining provisions shall, nevertheless, remain in full force and effect.
48. All communications from Contractor or any representative of Owner, and all other information that Subcontractor learns about Contractor's or Owner's business, products, processes or facilities during the performance of this Subcontract, are confidential and may not be disclosed to anyone else without Contractor's prior written consent. Additionally, Subcontractor agrees that it shall not publish any information about the Project or this Subcontract without Contractor's prior written consent.
49. Subcontractor agrees that it shall not circumvent Contractor or contract to perform any work related to the Project directly for the Owner, unless disclosed to and agreed upon by the Contractor in writing.
50. Subcontractor acknowledges and agrees that it has read, understands and has negotiated the terms of this Subcontract. As a result, this Subcontract shall not be deemed the product of either Contractor or Subcontractor and shall not be interpreted more stringently or strictly against either party.

GUARANTY

The undersigned hereby agrees to be personally liable and responsible for and guarantees the performance and obligations of the Subcontractor under the terms of the Subcontract with William H. Lane Incorporated to which the Guaranty is attached.

In addition, the undersigned Guarantor shall make good and pay and otherwise hold William H. Lane Incorporated and the Owner on the Project harmless from all unpaid claims by Subcontractor's laborers, subcontractors, materialmen or others under contract with Subcontractor for the Project.

All matters relating to the validity, performance, interpretation or construction of this Guaranty, or the breach thereof, shall be governed by the laws of the State of New York. The undersigned Guarantor hereby submits to the jurisdiction of the courts of the State of New York. The venue of any proceeding brought under this Guaranty shall be in Broome County, New York.

The undersigned Guarantor also hereby agrees to pay all reasonable attorneys' fees and costs incurred by William H. Lane Incorporated in connection with the enforcement of this Guaranty.

Dated:

\_\_\_\_\_  
(MUST BE AN OWNER OF THE COMPANY)

Dated:

\_\_\_\_\_  
(ADDITIONAL GUARANTOR (if any))