



Dated: _____
No. _____

SUBCONTRACT AGREEMENT

THIS AGREEMENT made at Binghamton, New York
This ____ Day of _____, 20____, by and between William H. Lane Incorporated, 113 Court Street,
Binghamton, New York 13901, hereinafter referred to as the Contractor, and

hereinafter referred to as the Subcontractor, to perform part of the work on the following Project:

PROJECT:

OWNER:

ARCHITECT/ENGINEER:

ARTICLE I Scope of Work

1.1 The Contractor employs the Subcontractor as an independent contractor to perform the following part of the Work which the Contractor has contracted with the Owner to provide on the Project:

PLEASE NOTE:

- YOU WILL NOT BE ALLOWED ON SITE WITHOUT OUR MAIN OFFICE RECEIVING A FULLY EXECUTED SUBCONTRACT AND CERTIFICATE OF INSURANCE MEETING THE REQUIREMENTS NOTED IN EXHIBIT "B" OF THIS AGREEMENT.
- WILLIAM H. LANE INCORPORATED'S SAFETY REQUIREMENTS & SITE POLICIES DOCUMENT IS PROVIDED UNDER SEPARATE COVER AND IS INCLUDED AS PART OF THIS AGREEMENT.
- HARD HATS AND SAFETY GLASSES ARE REQUIRED BY ALL ON-SITE EMPLOYEES.
- A SCHEDULE OF VALUES IS TO BE RECEIVED BY OUR OFFICE WITHIN FIVE (5) DAYS OF RECEIPT OF THIS SUBCONTRACT AGREEMENT.
- TWO (2) FULLY COMPLETED COPIES OF THE SUBCONTRACTOR'S APPLICATION AND CERTIFICATE OF PAYMENT FORM (4 PAGES) MUST BE RECEIVED IN OUR OFFICE NO LATER THAN THE ____ DAY OF EACH MONTH TO BE INCLUDED WITH OUR APPLICATION FOR PAYMENT TO THE OWNER. COPIES OF THESE FORMS ARE BEING SENT UNDER SEPARATE COVER.



The Subcontractor agrees to perform such part of the Work (hereinafter called "Subcontractor's Work") under the general direction of the Contractor and subject to the final approval of the Architect/Engineer or other specified representative of the Owner, in accordance with the Contract Documents, a non-exhaustive list of the Contract Documents is attached hereto as Exhibit A . The Work to be performed by the Subcontractor includes that Work specifically set forth in this Agreement, as well as any and all other work incident or related thereto, including but not limited to that work reasonably necessary for a complete and proper Project, or which is necessary to have a properly working and totally acceptable system and Project. Subcontractor will furnish all of the labor and materials, along with competent supervision, shop drawings and samples, tools, equipment, scaffolding, and permits which are necessary for such performance.

1.2 The Contract Documents include this Agreement, all addenda attached hereto, the Contractor's contract with the Owner, together with all changes, additions, and modifications thereof. The Contractor's contract with the Owner includes, but is not limited to, the agreement between the Contractor and Owner, all addenda, modifications, revisions, plans, drawings, specifications, details, all general, technical, supplementary, and special terms and conditions, any invitation for bids or information for bidders, if any, to the extent applicable, and all other documents listed in or referred to by the Contractor's contract with the Owner.

1.3 The Subcontractor binds itself to the Contractor for the performance of Subcontractor's work in the same manner as the Contractor is bound to the Owner for such performance under Contractor's contract with Owner. The pertinent parts of such contract will be made available upon Subcontractor's request. The terms and conditions of the Subcontract are intended to supplement the Contract Documents. If any of the provisions of this Subcontract change, modify, eliminate, or are inconsistent with any of the provisions of the Contract Documents, the provision of the Subcontract shall govern.

1.4 Should any question arise with respect to the interpretation of the drawings and specifications, such questions shall be submitted to the Architect/Engineer and his decision shall be final and binding. If there is no Architect/Engineer for this Project, the Contractor's decision shall be followed by the Subcontractor.

1.5 The Subcontractor shall pay all inspection fees, royalties, and license fees. The Subcontractor shall make all necessary arrangements and agreements so as not to infringe any patents, trademarks, or copyrights; and Subcontractor agrees to defend and hold harmless the Contractor and the Owner and the Architect/Engineer for any claims including attorneys' fees arising out of any such infringement or alleged infringement.

1.6 The Subcontractor's Work shall include, at no extra cost, all cutting, fitting, and patching required to make it come together properly and fit to receive or be received by work of other contractors, all as shown on or reasonably implied by the Contract Documents, or as required by job conditions.

1.7 The Work shall proceed under the direction of the Architect/Engineer and the Contractor. Work, which in the opinion of the Architect/Engineer or Contractor fails to conform to the Contract Documents, shall be removed and replaced with satisfactory materials and workmanship, and the Subcontractor shall make good any other work damaged thereby. If removal of such work is inexpedient, it may be accepted and the Contractor may deduct from the amount due to the Subcontractor the difference in value between the Work specified and the Work furnished.

1.8 The Subcontractor shall, within 24 hours after receiving specific written notice from the Contractor, commence to take down and remove any designated portion of its Work which is condemned, or disapproved, as not being in strict compliance and conformity with the requirements of this Agreement or the Contractor's contract with the Owner. The Subcontractor shall promptly, at its own expense, correct and rectify same. If the Contractor determines that it will accept non-conforming work, the Contractor shall be entitled to a credit for the non-conformity, and all other costs incurred.

1.9 If work of others is damaged by Subcontractor, the Subcontractor will cause such damage to be corrected to the satisfaction of and without cost to the Contractor and Owner.



ARTICLE 2 Payments

2.1 The Contractor agrees to pay to the Subcontractor for the satisfactory completion of Subcontractor's Work the sum of _____ AND 00/100-----
---- DOLLARS (\$) _____) (Contract Sum") in monthly payments of ninety (90) percent of the Work performed in any preceding month, in accordance with estimates prepared by the Subcontractor, submitted by the date set by the Contractor, and approved by the Contractor and the Architect/Engineer, unless otherwise provided by law. Payments made on account of materials not incorporated in the Work, but delivered and suitably stored at the site, or at some other location agreed upon in writing, shall be in accordance with the terms and conditions of the Contract Documents. Subcontractor will provide monthly completed lien waivers and supplier affidavit forms, in a form satisfactory to the Owner and Contractor. In addition, with each application for payment, Subcontractor shall provide Contractor with the names of all union benefit accounts, subcontractors and suppliers, an acceptable schedule of values showing the amount of each sub-subcontract or the price of such labor, material and equipment needed for its entire portion of the Work, evidence of monthly toolbox talks and any other documentation requested by the Contractor. Payment shall be made by the Contractor to the Subcontractor subject to the provisions of paragraphs 2.9 herein. Approval and payment of the Subcontractor's monthly estimate is specifically agreed not to constitute or imply acceptance by the Contractor or Owner of any portion of the Subcontractor's Work.

2.2 In the event the Subcontractor does not submit to the Contractor such monthly estimates as directed, then the Contractor may at its option include in its monthly estimate to the Owner for Work performed during the preceding month such amount as it may deem proper for the Work of the Subcontractor for the preceding month and the Subcontractor agrees to accept such approved portion thereof in lieu of monthly payment based upon the Subcontractor's estimate.

2.3 In the event it appears to the Contractor that the labor, material and other bills incurred in the performance of Subcontractor's Work are not being currently paid, the Contractor may take such steps as it deems necessary to insure that the money paid with any progress payment will be utilized to pay such bills, including but not limited to issuing joint checks to the Subcontractor and its suppliers and/or subcontractors.

2.4 Subject to the provisions of paragraphs 2.9 herein, final payment shall be paid by the Contractor to the Subcontractor upon approval by the Owner, Architect/Engineer and the Contractor of the Subcontractor's Work and, satisfactory evidence having been received by the Contractor that all labor, including customary fringe benefits and payments due under collective bargaining agreements, and all subcontractors and materialmen have been paid to date and are waiving their lien rights upon the final payment of a specific balance due.

2.5 The Application for final payment shall be accompanied by the same details as set forth hereinabove for the application of partial payments except, however, that the following additional conditions must be fulfilled:

- a. A full and final waiver of all liens in connection with the Work shall be submitted by each person to receive a payment thereunder, which waiver of lien shall be in a form as approved by the Contractor for the Project. In the event that any such release or waiver of lien is not or cannot be furnished, then there shall be furnished to Owner and Contractor a bond or other security reasonably satisfactory to Owner and Contractor to indemnify them against any such lien.
- b. The Subcontractor shall have made, or caused to have been made, all corrections in its portion of the Work which are required to remedy any defects therein or obtain compliance with the applicable drawings and specifications or any requirements of applicable codes and ordinances or to fulfill any of the orders or directions of the Contractor or Architect/Engineer.
- c. The Subcontractor through the Contractor shall have delivered to the Owner all written guarantees, warranties, statements of Application and bonds required by the Contract Documents of this portion of the Work.



- d. The Subcontractor shall deliver to the Architect/Engineer through Contractor reproducible final drawings showing Subcontractors' Work "as built," and all guarantees and operation and maintenance instructions for equipment and apparatus.
- e. The Architect/Engineer shall have issued a Final Certificate for Payment.
- f. The Subcontractor shall have furnished to the Contractor a detailed sworn statement of all liens, claims and demands, just or unjust, of sub-subcontractors, materialmen and others then outstanding or which the Subcontractor has reason to believe may hereafter be made on account of the Work or the performance thereof.
- g. The Subcontractor shall have delivered to the Contractor all releases required by the Contractor of such liens, claims and demands, or receipts in full in lieu therefor, and an affidavit to the effect that insofar as Subcontractor has knowledge or information, such releases and receipts included all the labor, materials, supplies, equipment and other services or items for which a lien, claim or demand could be filed or asserted. In lieu of such affidavit, the Subcontractor may, if the Contractor consents, furnish a bond satisfactory to the Contractor indemnifying the Owner and Contractor against such lien or demand.

Acceptance by Subcontractor of the Final Payment shall constitute a release of the Owner, the Contractor, and the Architect/Engineer from all uninsured liability for all things done or furnished in connection with the Work, and for every uninsured act or omission or neglect by the Owner, the Contractor and the Architect/Engineer relating to or arising out of the Work. The Subcontractor, before Final Payment, shall also execute and deliver a General Release to the Owner, Contractor and Architect/Engineer of all liability as set forth in the preceding sentence.

2.6 The Contractor may deduct from any amounts due or to become due to the Subcontractor any sum or sums owing by the Subcontractor to the Contractor; and in the event of any breach by the Subcontractor of any provision or obligation of the Subcontract, or in the event of the assertion by other parties of any claim or lien against the Owner, the Contractor, Contractor's surety, or the premises upon which the Work was performed, which claim or lien arises out of the Subcontractor's performance of this Agreement, the Contractor shall have the right, but is not required, to retain out of any payments due or to become due to the Subcontractor an amount sufficient to completely protect the Contractor from any and all loss, damage or expense therefrom, until the claim or lien has been adjusted by the Subcontractor to the satisfaction of the Contractor. The Subcontractor shall remove, within five (5) days after filing, any liens filed against the premises or public improvement fund by any party or parties performing labor or services or supplying materials in connection with the Subcontractor's Work. If the Subcontractor fails to remove such liens, the Contractor may remove the liens at the Subcontractor's expense, including attorney's fees. This paragraph shall be applicable even though the Subcontractor has posted a full payment and performance bond.

2.7 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 or desirable to protect itself against possible loss or damage due to:

- a. defective 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 subcontractors or suppliers 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
- h. unauthorized deviations from the Contract Documents.

2.8 None of the issuance of the final certificate, final payment pursuant thereto, or any provisions in the Contract Documents, shall relieve the Subcontractor of responsibility for faulty materials, equipment or workmanship, and, unless otherwise specified, the Subcontractor shall remedy any defects due thereto and pay for any damage to other Work resulting therefrom in accordance with the applicable guarantee or warranty provisions of the Contract Documents. The Owner or Contractor shall give written notice of such observed defects with reasonable promptness.

2.9 Progress payments, final payment and retainage payments to the Subcontractor, otherwise due under the terms of the Contract for satisfactory performance of the Work, shall be made no later than 15 calendar days after receipt by the Contractor of payment from the Owner for the Work. If payment from the Owner for such Work is not received by the Contractor, through no fault of the Subcontractor, the Contractor will make payment to the Subcontractor within a reasonable time for the Work satisfactorily performed, subject to the requirements for Subcontractor to first proceed with the primary collection remedies described below.

2.9.1 The Subcontractor hereby acknowledges that it is relying primarily on the credit of the Owner, not the Contractor, for payment for its Work. In situations where the Subcontractor has not been paid by the Contractor and Contractor has not been paid by the Owner as a consequence of Owner's financial and credit condition and/or inability or unwillingness to pay, Subcontractor agrees to first exhaust its lien and other collection remedies described below before proceeding, secondarily, with any claims against Contractor and Surety.

In situations where the Owner has not paid the Contractor (and the Contractor has not paid the Subcontractor) and the Owner may be alleging that the basis for Owner's non-payment to the Contractor is the Contractor's breach of the contract with the Owner, if Contractor then certifies to the Subcontractor in writing that no material breach by Contractor exists (as a reason for Owner's non-payment) then Subcontractor agrees to first exhaust its lien and other remedies described below before proceeding, secondarily, with any claims against Contractor and Surety.

Subcontractor agrees with Contractor that the requirements set forth above, for Subcontractor to exhaust its primary remedies is consistent with the public policy of the State of New York and with the express financial understandings of the parties to this Subcontract.

2.9.2 If Subcontractor elects to take legal action to collect any amounts properly approved and due but unpaid for the reasons set forth in paragraph 2.9.1, Subcontractor shall be obligated, as a condition precedent to maintaining a claim against Contractor and/or its surety, to timely file a mechanic's lien and thereafter to timely commence and diligently exhaust all rights and remedies thereon in a lien foreclosure action pursuant to paragraph 2.9.3 or in a bankruptcy proceeding pursuant to paragraph 2.9.4 as provided herein. Subcontractor acknowledges and agrees that it must exhaust all rights and remedies to mitigate its damages before seeking to recover against Contractor and/or its surety.

2.9.3 If the Owner has not filed in bankruptcy, Subcontractor must prosecute a foreclosure action on its mechanic's lien to a final conclusion. For purposes of this paragraph 2.9.3, "final conclusion" means that Subcontractor must exhaust all rights and remedies to obtain a judgment of foreclosure and sale for the real property and improvements which are the subject of its mechanic's lien and, if Subcontractor remains unpaid in full thereafter, Subcontractor must exhaust all rights and remedies by prosecuting a deficiency judgment proceeding against the Owner and any other person liable on the debt (except Contractor and its surety) for any and all amounts remaining due to Subcontractor after the judgment of foreclosure and sale. Solely and only to



the extent that Subcontractor remains unpaid after exhausting all rights and remedies to obtain a judgment of foreclosure and sale and to obtain a deficiency judgment may the Subcontractor maintain a claim for the unpaid amounts against the Contractor and/or its surety.

2.9.4 If the Owner files for protection under the 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 claim to a final conclusion. For purposes of this paragraph 2.9.4, "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 as provided in paragraph 2.9.3 above.

2.9.5 If, after exhausting its rights and remedies in a foreclosure and deficiency judgment proceeding as provided in paragraph 2.9.3 and/or in bankruptcy as provided in paragraph 2.9.4, Subcontractor elects to assert or maintain a claim against the Contractor and/or its surety, Contractor and/or the surety may assert all proper defenses thereto and shall be entitled to full disclosure of all of Subcontractor's bid documents, cost records and litigation papers in the lien foreclosure and deficiency judgment litigation or the bankruptcy proceeding. In any such proceeding against the Contractor, the Subcontractor shall have the burden as a condition precedent to establish that it properly and timely exhausted its lien and other remedies as set forth above.

2.9.6 If the Subcontractor proceeds with a lien foreclosure action as provided under paragraph 2.9.3 above, or proceeds in bankruptcy as provided under paragraph 2.9.4 above, Contractor agrees to cooperate reasonably by providing Subcontractor with documents or information reasonably necessary to prosecute or pursue said claims; provided however, that if Contractor incurs any material expenses, including attorney fees, in providing said cooperation, Subcontractor agrees to reimburse Contractor for all such expenses upon receipt of a bill verified by an officer of Contractor which shall be prima facie proof of the amount thereof.

2.9.7 Because Contractor has no control over Subcontractor's election or pursuit of its rights or remedies in a lien foreclosure action under paragraph 2.9.3 above, or in bankruptcy under paragraph 2.9.4 above, Subcontractor agrees that any interest on its claims against Contractor or its surety shall not accrue or commence to run until after all of Subcontractor's remedies have been finally exhausted as provided above.

ARTICLE 3 Prosecution of the Work

3.1 Time is of the essence as to the prosecution of the Subcontractor's Work. If requested, the Subcontractor shall provide the Contractor with scheduling information and Subcontractor's proposed schedule for the Subcontractor's Work. The Contractor may prepare the Schedule of Work for the Project and, as may be necessary, revise the same as the Work progresses. The Subcontractor shall commence the Subcontractor's Work promptly within five days after the date of the notice to proceed. The Subcontractor shall commence, continue, and complete its performance of the Project in a prompt and diligent manner at such times, in such order, and in such manner, as directed by the Contractor or in accordance with the Schedule of Work without hindering the Work of the Contractor or any other subcontractor, and so as to insure completion as directed by the Contractor. Any time specified for the completion of this Agreement, or portion thereof, is a material provision of this Agreement. The Subcontractor shall proceed with the Subcontractor's Work, making all necessary deliveries, so as to make timely progress and complete the same in accordance with the Project's Schedule of Work or as directed by the Contractor. Whenever, in the Contractor's opinion, the Subcontractor fails to maintain its part of the Schedule of the Work, Subcontractor shall, without additional compensation, work such overtime as the Contractor may direct until Subcontractor's Work is in accordance with such Schedule.



3.2 The Subcontractor shall be responsible for and will prepare for performance of Subcontractor's Work, including, without limitation thereto, the submission of shop drawings, samples, tests, field dimensions, determination of labor requirements and ordering of materials as required to meet the Schedule of Work or the direction of the Contractor. Subcontractor shall notify Contractor when portions of its Work are ready for inspection.

3.3 The Subcontractor will furnish periodic progress reports of the Subcontractor's Work as requested including the progress of materials or equipment to be provided under this Agreement that may be in the course of preparation or manufacture. Deliveries to the site must be prearranged on at least 24 hours notice, unless received by the Subcontractor.

3.4 The Subcontractor shall cooperate with the Contractor and subcontractors whose work may interfere with the Subcontractor's Work and participate in the preparation of coordinated drawings and work schedules in areas of congestion, specifically noting and advising in writing the Contractor of any interference by other contractors or subcontractors.

3.5 The Contractor shall not be obligated or liable to the Subcontractor for, and the Subcontractor hereby expressly waives any claims against the Contractor on account of, any damages, costs or expenses of any nature which the Subcontractor or its subcontractors may incur as a result of any delays, interferences, suspensions, changes in sequence or the like arising from or out of any act or omission of or attributed to the Contractor, the Owner or the Owner's representatives, it being understood and agreed that such delays, interferences, changes in sequence or the like are contemplated by the parties and that the Subcontractor's sole and exclusive remedy in such event shall be an extension of time, but only in accordance with the provisions of this Agreement and only to the extent an extension of time is actually allowed to the Contractor by the Owner or its representative under the terms of the Contractor's contract with the Owner.

In addition, the Subcontractor expressly agrees not to make, and hereby waives, any claim for damages, including those resulting from increased supervision, labor or material cost, on account of any delay, obstruction or hindrance for any cause whatsoever, including but not limited to the aforesaid causes, and agrees that the sole right and remedy therefor shall be an extension of time and only to the extent an extension of time is actually allowed to the Contractor by the Owner or its representatives under the terms of the Contractor's contract with the Owner.

3.6 The Subcontractor shall keep the building and premises reasonably clean of debris resulting from the performance of Subcontractor's Work. In keeping the premises reasonably clear of debris, Subcontractor shall, at a minimum, provide and maintain dumpsters and legally dispose of all debris off site. If the Subcontractor fails to comply with this paragraph within 24 hours after receipt of notice of noncompliance from the Contractor, the Contractor may perform such necessary clean-up and deduct the cost from any amounts due to the Subcontractor.

3.7 The Subcontractor shall give adequate notices pertaining to the Work of the Subcontractor to proper authorities and secure and pay for all necessary licenses and permits to carry on the Subcontractor's Work, the furnishing of which is required by the Contract Documents.

3.8 The Subcontractor shall comply with all Federal, State, and local laws, Social Security Laws and Unemployment Compensation Laws, Workers' Compensation Laws, Safety Laws and all other laws insofar as applicable to the performance of this Agreement. Subcontractor shall also maintain its own safety program for compliance with such laws. Subcontractor shall pay all contributions, premiums and all sales, use or other taxes, of whatever nature applicable to the performance of Subcontractor's Work. The Subcontractor shall abide by all prevailing wage rate schedules as set forth in the Specifications and any changes thereto during the course of the Work. The Subcontractor shall indemnify and save harmless the Contractor from all costs, damages, penalties, legal expenses and attorney's fees and other charges to which the Contractor may be subjected by reason of the failure of the Subcontractor to comply with this Paragraph.

3.9 The Subcontractor shall not assign this Subcontract or the proceeds thereof nor subcontract any part of the Work to be performed hereunder without the prior written consent of the Contractor, with the exception of



those subcontractors listed by the Subcontractor and furnished to the Contractor at the time this Agreement is executed.

3.10 The Subcontractor, upon twenty-four (24) hours notice, in person or by a duly authorized representative having power to act and acceptable to Contractor, shall attend, at its own expense, all meetings or conferences that the Owner, Architect/Engineer or Contractor may call, at the building site or elsewhere, for the purpose of discussing the progress of the Work, safety at the site, or ways to expedite the completion of the Project.

3.11 In prosecuting its Work, the Subcontractor shall protect the Work and property by abiding by the following provisions:

- a. The Subcontractor shall continuously protect the Work and the Owner's and Contractor's property, and the property of others, from damage, injury or loss arising in connection with operations under the Contract Documents. The Subcontractor shall make good any such damage, injury or loss, except such as may be solely due to errors in the Contract Documents or caused by agents or employees of the Owner or Architect/Engineer, or due to causes beyond the control of Subcontractor and not to its fault or negligence.
- b. The Subcontractor will remove all snow and ice as may be required for the proper protection and prosecution of its Work. The Subcontractor shall at all times provide and maintain adequate protection against weather so as to preserve its Work, materials, equipment, apparatus, and fixtures free from injury or damage.
- c. The Subcontractor shall employ only methods of constructing or erection, and hoists, rigging, forms, scaffolding, cribbing, tools, structures, etc., at the site of the Work which conform to OSHA regulations and local, State and Federal safety laws and codes.
- d. The Subcontractor shall confine its construction equipment, the storage or materials and the operations of workmen to the limits indicated by laws, ordinances, permits, and as may be established by the Contractor, and shall not unreasonably encumber the premises with construction equipment or materials.
- e. The Subcontractor shall use its best efforts to enforce the Owner's and Contractor's instructions and all laws and regulations regarding signs, advertisements, fires and smoking and the presence of liquor, and the supply or withholding of firearms by any person at the job site.
- f. The Subcontractor shall use its best efforts to prevent dust or smoke from interfering with the normal activities of others.
- g. The Subcontractor, as necessary for its Work, shall provide flagmen and erect proper barricades and other safeguards, post danger signs and other warnings as warranted by hazards and existing conditions.
- h. The Subcontractor has the responsibility for participating in and enforcing the safety and loss prevention programs established for the Project which will cover all Work performed by it and its subcontractors. Subcontractor shall designate a responsible member of its organization whose duties shall include loss and accident prevention and who shall have the responsibility and full authority to enforce the program. This person shall attend meetings with the representatives of the various trades employed to ensure that all employees understand and comply with the programs. Subcontractor shall cooperate fully with the Contractor, the Owner, and all insurance carriers and loss prevention engineers on loss and accident prevention.
- i. The Subcontractor, its subcontractors and materialmen shall cooperate fully with all interested parties on accident prevention and claim handling procedures.



- j. The Subcontractor must promptly report in writing to the Contractor all accidents whatsoever arising out of, or in connection with, the performance of the Work, whether on or off the site, which caused death, personal injury or property damage, giving full details and statements of witnesses. In addition, if death or serious injuries or serious damages are caused, the accident shall be reported immediately by telephone or messenger.

ARTICLE 4 Labor, Workmanship and Materials

4.1 The Subcontractor's Work shall be done in the best manner by workmen who are satisfactory to the Contractor and the materials used shall be acceptable to the Contractor.

4.2 The on-site construction employees of the Contractor are organized by the various building trades unions and contracts between these unions and the Contractor are in effect. It is expressly understood and agreed that all of the terms and conditions of such contracts between the Contractor and the various building trades are hereby specifically incorporated by reference in this contract as though specifically set forth herein. The Subcontractor agrees as follows: (i) to be bound and to comply with the terms of the aforementioned contracts between the Contractor and the various building trades unions as if a party thereto. The Subcontractor represents and acknowledges that it is fully familiar with the terms and provisions of all such Collective Bargaining Agreements in effect on the date of execution of the Subcontract and shall, with reasonable diligence, become fully familiar with the terms and conditions of all Collective Bargaining Agreements hereafter entered into by the Contractor in any way related to the Subcontractor's Work; (ii) to insert in any subcontracts which may be made by the Subcontractor for any part of the Work, a provision requiring such sub-subcontractors to assume toward the Subcontractor and towards the Contractor the same obligations with reference to the matters contained in this Paragraph as are assumed in this Paragraph by the Subcontractor; (iii) to be primarily liable for and to indemnify and save harmless the Contractor from any and all damage and expense including attorney's fees arising out of, or resulting from the Subcontractor's or sub-subcontractor's breach or violation of this Paragraph or any of the terms or conditions contained in the Collective Bargaining Agreements between the Contractor and the various building trades unions, referred to in this Paragraph, including, but not limited to, all Subcontractor and work jurisdiction provisions; and (iv) if the Subcontractor becomes involved in any labor difficulties which, in the opinion of the Contractor, impedes or slows down the Work, then the Contractor may, without prejudice to any other right or remedy, terminate this Subcontract with the Subcontractor, after giving Subcontractor seven (7) days written notice of Contractor's intention to do so, and may thereupon take possession of all materials and equipment thereon, and complete the Work, in which case the Subcontractor shall not be entitled to receive any further payments until the Work is completed. If the unpaid balance under the Subcontract shall exceed the expense of finishing the Work, including compensation for additional managerial and administrative services, and all other expenses made necessary by the termination of the Subcontract, including attorney's fees, the excess shall be paid to the Subcontractor. If such expense is greater than such unpaid balance, the Subcontractor shall pay the difference to the Contractor.

ARTICLE 5 Use of Hoist

The Subcontractor agrees to pay for use of the Contractor's hoist at the rate of _____ per hour. In the event that the Contractor supplies a bellman in connection with the Subcontractor's use of the hoist, the Subcontractor agrees to pay to the Contractor the amount of the bellman's wages at union rates, and the cost of insurance required by employment of such bellman.



ARTICLE 6 Changes in the Work

6.1 The Contractor and Subcontractor agree that the Contractor may add to or deduct from the amount of Work covered by this Agreement, and any changes so made in the amount of Work involved, or any other parts of this Agreement, shall be by a written amendment hereto setting forth in detail the changes involved and the value thereof which shall be mutually agreed upon between the Contractor and Subcontractor. The Subcontractor agrees to proceed with the Work as changed when so ordered in writing by the Contractor so as not to delay the progress of the Work, and pending any determination of the value thereof unless Contractor first requests a proposal of cost before the change is effected. If the Contractor requests a proposal of cost for a change, the Subcontractor shall promptly comply with such request.

6.2 Subcontractor shall be entitled to receive no extra compensation for extra work or materials or changes of any kind regardless of whether the same was ordered by the Contractor or any of its representatives unless a Change Order therefor has been issued in writing by the Contractor.

If extra work was ordered by the Contractor and the Subcontractor performed same but did not receive a written order therefor, the Subcontractor shall be deemed to have waived any claim for extra compensation therefor, regardless of any written or verbal protests or claims by the Subcontractor. The Subcontractor shall be responsible for any costs incurred by the Contractor for changes of any kind made by the Subcontractor that increase the cost of the Work for either the Contractor or other subcontractors when the Subcontractor proceeds with such changes without a written order thereof.

6.3 The Subcontractor agrees that no claim for additional services rendered or materials furnished by the Subcontractor to the Contractor shall be valid unless written notice is given to the Contractor prior to the furnishing of the services or material or unless written notice of the claim therefor is given by the Subcontractor to the Contractor not later than the last day of the calendar month following that in which the claim originated, with the amount of the claim to be given in writing by the Subcontractor as soon as practicable.

6.4 If the Subcontractor believes that any order, directive, or condition entitles Subcontractor to extra compensation or an extension of time, Subcontractor shall give the Contractor written notice of its claim not later than three (3) days after the occurrence of the event giving rise to the claim and shall as soon as practicable furnish sufficient facts in support of its position as may be necessary for a decision. Any claim by the Subcontractor for extra compensation or an extension of time not so made shall be waived, and the Subcontractor shall not be entitled to any extra compensation or an extension of time as a result thereof.

6.5 Notwithstanding any other provision, if the Work for which the Subcontractor claims extra compensation is determined by the Owner or Architect/Engineer not to entitle the Contractor to a Change Order or extra compensation, then the Contractor shall not be liable to the Subcontractor for any extra compensation for such Work, unless Contractor agreed in writing to such extra compensation.

6.6 The Subcontractor shall pay, immediately upon demand therefor, all costs, losses, damages and expenses, and all administrative, management, overhead and other direct or indirect expenses, including reasonable attorneys' fees (the "Costs") incurred by the Contractor in connection with any default by Subcontractor or exercise of any right to remedy upon Subcontractor's default. If the Subcontractor does not pay the Costs immediately, the Contractor may deduct all Costs from any payments of the Subcontract Price. If payments due to the Subcontractor for completed portions of the Work are not sufficient to cover the Costs, the Subcontractor immediately shall pay to Contractor the full amount of any such excess with interest thereon until paid in full at three (3) percentage points in excess of the rate of interest announced from time to time by Chase Manhattan Bank as its prime rate or if it is less, at the maximum interest rate permitted by law. The liability of the Subcontractor hereunder shall extend to and include, without limitation, the full amount of Costs incurred and obligations assumed by the Contractor in good faith under the reasonable belief that such Costs or obligations were necessary or required, whether actually necessary or required, (i) in completing the Work and providing labor, materials, equipment, supplies and other items therefor or resubcontracting the Work, and/or (ii) in settlement, discharge or compromise of any claims, demands, suits and judgments pertaining to or arising out of



the Work. An itemized statement of such obligations and payments shall be prima facie evidence of the Subcontractor's liability.

ARTICLE 7 Insurance and Indemnity

7.1 Prior to starting Work the Subcontractor shall procure and maintain in force until final payment under the Owner-Contractor contract is made by the Owner to the Contractor, in the form and with insurance companies acceptable to the Contractor as provided on Exhibit B, Workers' Compensation Insurance, Employer's Liability Insurance, Comprehensive General Liability Insurance with contractual coverage and Automobile Liability Insurance, Property Insurance, and such other insurance required by the Contract Documents for the Subcontractor's Work. The Owner, the Contractor and all other parties as designated in the Contract Documents shall be named as additional insureds on a primary and noncontributing 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. Before starting Work, the Subcontractor shall complete Exhibit B attached to this Subcontract and shall cause its insurer to complete the certificate of insurance as set forth in Exhibit B.

7.2 The Subcontractor's Insurance required by Paragraph 7.1 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. Comprehensive 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 situated.

g. If requested by Contractor, Subcontractor shall provide, during the term of this Agreement, in the name of the Contractor, Owner's and Contractor's Protective Liability Insurance coverage for the limits set forth in paragraph 7.2(b) above.

If any Work is sublet by the Subcontractor under this Subcontract Agreement, the Subcontractor must nevertheless carry contingent liability coverages on its subcontracts in the above minimum limits to cover the Work so subcontracted.

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

7.3 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, insuring all Work done and all materials, equipment, apparatus, fixtures, supplies and temporary structures incident to the construction described in the contract between the Contractor and the Owner, if the same are not otherwise insured by the Subcontractor, and while the same are located on the site of the Work, or adjacent thereto on sidewalks, streets or alleys. Such insurance shall not apply to plant, equipment, tools or fixtures forming part of the capital assets of the Subcontractor, or belonging to any of its employees, and which are not included in the cost of the Work herein described, nor to usual exclusions in standard policies of insurance. 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. In the event of such loss or damage, if the Contractor is liable to repair, rebuild or replace such property so lost or damaged, the Subcontractor agrees to be and remain liable for the replacement to its original condition of such portion of the Subcontractor's Work as may be so lost or damaged, which replacement shall be in accordance with the provisions of this Subcontract and of the aforesaid Owner-Contractor contract, and shall be at the sole cost and expense of the Subcontractor; provided, that the Contractor shall be obligated to pay the Subcontractor on account of the cost of such replacement, such sum or sums as shall be paid to the Contractor by the insurance carrier on account of such loss or damage to the Work performed by, or property owned, controlled or furnished by the Subcontractor and covered by such insurance. The Subcontractor agrees to cooperate to the extent required to establish a proper appraisal of the property lost or destroyed and otherwise to perform the conditions precedent to adjustment of such loss or damage.

7.4 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, in duplicate, 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.

7.5 The Contractor and Subcontractor waive all rights against each other and against the Owner, the Architect/Engineer, separate contractors, and all other subcontractors for damages caused by fire or other perils to the extent covered by Builder's Risk or any other property insurance, except such rights as they may have to the proceeds of such insurance. The Subcontractor shall require of the Subcontractor's sub-subcontractors, agents and employees, by appropriate agreements, written where legally required for validity, similar waivers in



favor of the parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

7.6 To the fullest extent permitted by law, the Subcontractor shall indemnify, defend, save and hold the Owner, the Contractor and Architect/Engineer, their respective partners, officers, 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 subsubcontractor or material agreement, 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 Agreement is not intended to provide indemnification for the negligence of the Indemnitees except and unless the law allows partial indemnification. In the event such partial indemnification is determined to be appropriate and permissible under the 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 contractor or subcontractor, their employees, agents, subcontractors, 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, for defamation, false arrest, malicious prosecution 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.

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 provisions of the indemnity provided for herein shall not be construed to indemnify any Indemnitee for its sole negligence if not permitted by law or to eliminate or reduce any other indemnification or right which Owner, Contractor or Architect/Engineer has by law.

Subcontractor expressly understands and agrees that any performance bond or insurance protection required by this Article or any other provision of the Contract Documents, or otherwise provided by Subcontractor,



shall in no way limit the responsibility to indemnify, save and hold harmless and defend the Indemnitees as herein provided.

The foregoing indemnification agreement by each 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 Price 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. At the request of any Indemnitee, the Subcontractor, at its own expense, shall assume the defense, on behalf of such Indemnitee, of any such claim; provided, however, that any attorney employed in such defense must be satisfactory to such Indemnitee.

7.6.1 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 Paragraph 7.6 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.

7.6.2 The obligations of the Subcontractor under Paragraph 7.6 shall not extend to the liability of the Architect/Engineer, its agents or employees, arising out of (a) the preparation or approval of maps, drawings, opinions, reports, surveys, Change Orders, designs or specifications, or (b) the giving of or failure to give directions or instructions by the Architect/Engineer, his agents or employees, providing such giving or failure to give is the primary cause of the injury or damage.

7.7 All indemnification provisions set forth in this Agreement shall survive termination of this Agreement.

ARTICLE 8 Performance Bond and Labor and Material Payment Bond

Prior to commencing Work, the Subcontractor shall furnish Contractor, in a form satisfactory to Contractor, full and duly executed Performance and Labor and Material Payment Bonds, underwritten by a surety or sureties satisfactory to the Contractor, in the full amount of this Subcontract. The premium is for the Subcontractor's account. The Subcontractor's failure to deliver satisfactory bonds within ten (10) calendar days after demand may be deemed a material breach of this Subcontract.

ARTICLE 9 Warranty

9.1 The Subcontractor agrees to promptly make good without cost to the Owner or Contractor any and all defects due to faulty workmanship and/or materials which may appear within the guarantee or warranty period so established in the Contract Documents; and if no such period be stipulated in the Contract Documents, then such guarantee shall be for a period of one year from date of completion and acceptance of the Project by the Owner. The Subcontractor further agrees to execute any special guarantees as required by the terms of the Contract Documents, prior to final payment. The Subcontractor also agrees to pay for any damage to the Project resulting from defects in the Work and all costs of removal, replacement or repair of other work damaged in complying with this guarantee.

9.2 Subcontractor warrants to the Contractor and Owner that all materials and equipment furnished shall be new unless otherwise specified, and that all Work under this Subcontract shall be of good quality, free from faults and defects and in conformance with the Contract Documents.

ARTICLE 10 Contractor's Obligations



10.1 Upon request, the Contractor will give the Subcontractor written authorization to obtain directly from the Architect/Engineer or Owner's authorized agent, evidence of amount and percentages of completion certified on its account.

10.2 The Contractor shall not issue or give any instructions, orders or directions directly to employees or workmen of the Subcontractor other than to the persons designated as the authorized representative(s) of the Subcontractor.

10.3 Subcontractor and Contractor recognize that time is of the essence and that prompt completion of the Work is essential under the Contract Documents. As provided in this Paragraph, Subcontractor shall be liable to Contractor for liquidated damages, not as a penalty, to the same extent Contractor shall be liable to the Owner under the Contract Documents, and Contractor shall have no obligation to prove actual damages. The Contractor shall make no demand for liquidated damages in any sum in excess of the amount specifically named in this Agreement or the Contract Documents. Liquidated damages shall not be assessed for delays not caused by the Subcontractor. Liquidated damages, when assessed, shall not exceed the Subcontractor's proportionate share of the responsibility for such damages. To this extent, the Subcontractor accepts responsibility for liquidated damages. This provision does not preclude any claim the Contractor may have for direct damages under the law.

10.4 The Subcontractor will furnish those temporary facilities and services required by the Subcontractor except for those to be provided by the Contractor set forth in Exhibit C of this Agreement. Adequate storage areas, if available, will be allocated by the Contractor for the Subcontractor's materials and equipment during the course of the Work.

ARTICLE 11 Termination and Suspension

11.1 Should the Subcontractor fail at any time to supply a sufficient number of properly skilled workmen or sufficient materials and equipment of the proper quality, 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 herein contained, the Contractor may, at its option, 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 Agreement.

11.2 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 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 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 cure the default, terminate the Subcontractor's employment by delivering written notice of termination to the Subcontractor. Thereafter, the Contractor may take possession of the plant and work, materials, tools, appliances and equipment of the Subcontractor at the building 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 deduct the cost thereof, including without restriction thereto all charges, expenses, losses, costs, damages, and attorneys' 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 Agreement.

11.3 If the Contractor so terminates the employment of the Subcontractor, the Subcontractor shall not be entitled to any further payments under this Agreement 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, the difference shall be paid to the Subcontractor, but if such expense exceeds the balance due, the Subcontractor agrees promptly to pay the



difference to the Contractor. In addition, Subcontractor agrees to promptly pay to Contractor, all costs set forth under paragraph 6.6 of this Agreement.

11.4 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 in an amount proportionate to this Subcontract sum. Contractor shall not be liable to Subcontractor for any other costs nor for prospective profits on work not performed. However, if the reason for the termination and cancellation is due to any default or action by the Owner, or as a result of court order or order of public authority, then Contractor shall not be liable to Subcontractor for any sum greater than that which Contractor receives from Owner with respect to Subcontractor's performance, less any costs incurred by Contractor. Any default termination subsequently determined to have been erroneous shall be treated as a termination for convenience.

11.5 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 on the Subcontractor's behalf under the Contract Documents.

11.6 The Contractor may order the Subcontractor in writing to suspend, delay, or interrupt all or any part of the Subcontractor's Work for such period of time as may be determined to be appropriate for the convenience of the Contractor. Phased or interrupted Work when required shall not be deemed a suspension of Work.

The Subcontractor shall notify the Contractor in writing within ten (10) working days after receipt of the Contractor's order of the effect of such order upon the Subcontractor's Work. To the extent allowed the Contractor under the Contract Documents, the Contract Sum or contract time shall be adjusted by Change Order for any increase in the time or cost of performance of this Agreement caused by such suspension, delay, or interruption.

No claim under this Article shall be allowed for any costs incurred more than ten (10) working days prior to the Subcontractor's notice to the Contractor.

Neither the Contract Sum nor the contract time shall be adjusted under this Article for any suspension, delay or interruption to the extent that performance would have been so suspended, delayed, or interrupted by the fault or negligence of the Subcontractor or by a cause for which Subcontractor would have been responsible.

The Contract Sum shall not be adjusted under this Paragraph for any suspension, delay or interruption to the extent that performance would have been suspended, delayed or interrupted by a cause for which the Subcontractor would have been entitled only to a time extension under this Agreement.

ARTICLE 12 Disputes

12.1 All claims, disputes and other matters in question arising out of, or relating to, this Subcontract or the breach thereof shall be decided in accordance with the Disputes provision of the Contract Documents.

12.2 In the event the Contractor and Owner or others become involved in any proceedings, be they judicial, administrative, arbitration or other, concerning matters relating to this Subcontract, it shall be the responsibility of the Subcontractor to prepare and present the Contractor's case, to the extent the proceedings are related to claims by the Subcontractor under this Subcontract. To the extent such proceedings are related to claims by the Owner or others against Contractor relating to this Subcontract, Subcontractor shall give its full cooperation and assistance to Contractor in the preparation and presentation by Contractor of its defense to such claims, and produce and make available to Contractor any books, records, documents, information or other evidence, and witnesses, including expert witnesses, which may be required by Contractor in connection therewith.



12.3 Should the Contractor become involved in any proceedings, be they judicial, administrative, arbitration or other, with the Owner or others concerning matters relating to this Subcontract, the Subcontractor shall be bound by the result to the same degree as the Contractor.

12.4 The Subcontractor shall carry on Subcontractor's Work and maintain its progress during any such proceedings.

ARTICLE 13 Safety Compliance

In addition to the requirements of Paragraph 3.8, the Subcontractor shall maintain and institute on the job site a written safety program ("Program"). The Program shall include, but not be limited to, provisions for weekly "tool-box talks" relating to safety issues, on-site safety inspections of the Work, a hazard communication program which complies with all federal and state occupational safety and health guidelines, procedures to train employees in safe work methods and a comprehensive listing and catalog of all Material Safety Data Sheets. At Contractor's request, Subcontractor shall provide to Contractor Subcontractor's Program for Contractor's review. The review of the Program by Contractor shall not be deemed to release Subcontractor or in any way diminish its liability, by way of indemnity or otherwise, as assumed by it under this Subcontract.

When so ordered, Subcontractor shall stop any part of the Work which Contractor deems unsafe until corrective measures satisfactory to Contractor have been taken. Should Subcontractor neglect to adopt such corrective measures, Contractor may do so and deduct the cost from any payments then due or thereafter to become due to Subcontractor. Subcontractor shall timely submit copies of all accident or injury reports to Contractor.

On a monthly basis or with each requisition for payment, whichever is sooner, Subcontractor shall submit to Contractor, on a form acceptable to Contractor, a record of job site safety inspections detailing the date of each inspection, who performed such inspections, and the parameters of such inspections. Failure to submit such documented safety inspections may result in a delay and/or withholding of payment, in the Contractor's sole discretion.

Subcontractor shall be responsible for the use, erection, maintenance and operation of any scaffolds, machinery or equipment, (including but not limited to scaffolds, derricks, ladders, hoists rigging supports, etc.) on the Project by Subcontractor, its subcontractors or anyone whom Subcontractor is responsible. Subcontractor should perform daily inspections of any scaffolding, machinery and equipment (including but not limited to scaffolds, derricks, ladders, hoists rigging supports, etc.) and document such daily inspection prior to use by any of Subcontractor's employees, its subcontractors or anyone whom Subcontractor is responsible. The Subcontractor's employee or independent contractor performing such inspections shall have the knowledge to identify existing or potential hazards and have the authority to take prompt correction action when necessary. Subcontractor accepts the responsibility to provide proper training to employees to perform such inspections and the safe use of any scaffolding, machinery or equipment (including but not limited to scaffolds, derricks, ladders, hoists rigging supports, etc.) prior to performing work on the Project.



ARTICLE 14 Hazardous Material and Toxic Substance

In the event the Subcontractor encounters on the site 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, the Subcontractor shall immediately stop Work on the area affected and report the condition to the Owner, the Contractor and Architect/Engineer in writing. The Work in the affected area shall not thereafter be resumed except by written agreement of the Owner, the 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, the Subcontractor and Contractor, or in accordance with final determination by the Architect/Engineer on which arbitration has not been demanded, or by arbitration under the Contract Documents. Subcontractor shall indemnify and hold harmless Owner, Contractor and Architect Engineer, their consultants, agents and employees from and against claims, costs, damages, losses and expenses, including reasonable attorneys' fees, arising out of or relating to Subcontractor's failure to comply with this Article.

ARTICLE 15 Equal Opportunity

During performance, Subcontractor shall not discriminate against any employee or applicant for employment because of race, creed, disability, color, sex, age, marital status or national origin. Subcontractor shall comply with any equal opportunity or affirmative action requirements or plans as may be set forth in the Contract Documents or in any exhibit attached hereto.

ARTICLE 16 Privity

Until final completion of the Project, the Subcontractor agrees not to perform any work directly for the Owner or any tenants thereof, or deal directly with the Owner's representatives in connection with the Project, unless otherwise directed in writing by the Contractor. All Work for this Project performed by the Subcontractor shall be processed and handled exclusively by the Contractor.

ARTICLE 17 Miscellaneous Provisions

17.1 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, the Contractor's principal place of business. 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.

17.2 Upon acceptance of this Agreement by signature on the last page of this Agreement, all prior negotiations and communications between the parties, verbal or written, are superseded by and merged in this Agreement and evidence of such negotiations or communications prior to such execution shall be inadmissible to vary the terms hereof. No modification of this Agreement shall be binding unless the same is in writing signed by the Contractor and Subcontractor.

17.3 If Contractor does not insist in any instance upon strict compliance with any of the provisions of this Subcontract, or to exercise any options provided, this shall not be construed as a waiver of its right to thereafter require such compliance or to exercise such option.

17.4 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 any provision is thus inoperative, the remaining provisions shall, nevertheless, remain in full force and effect.

17.5 Subcontractor acknowledges and agrees that it has read, understands and has negotiated the terms of this Subcontract. As a result, this Agreement shall not be deemed the product of either Contractor or



Subcontractor. Therefore, this Subcontract shall not be enforced or interpreted any more stringently or strictly against either Contractor or Subcontractor.

17.6 Except as otherwise provided herein, no provision of this Agreement shall in any way inure to the benefit of any third person (including the public at large) so as to constitute any such person a third party beneficiary of this Agreement or of any one or more of the terms hereof or otherwise give rise to any cause of action in any person not a party hereto.

17.7 If Subcontractor is a corporation or limited liability company, the person signing this Agreement on behalf of Subcontractor hereby agrees to be personally liable and responsible for and guarantees the performance and obligations of the Subcontractor under the terms of this Agreement.

17.8 Should any part of this Subcontract be found to be invalid or illegal by reason of any existing or subsequently enacted legislation or by any decision of a court of competent jurisdiction, it is agreed that such finding shall not affect the remainder of the Subcontract and the remaining paragraphs or parts shall remain in full force and effect.

IN WITNESS WHEREOF the parties hereto have executed this Agreement under seal, the day and year first above written.

SUBCONTRACTOR

ATTEST:

_____ By _____ (Title) _____ (Date)

WILLIAM H. LANE INCORPORATED
CONTRACTOR

ATTEST:

_____ By _____ (Title) _____ (Date)



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 Agreement 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 any 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: _____

STATE OF)
) SS.:
COUNTY OF)

On this _____ day of _____, 20____, before me, the subscriber, personally appeared _____, to me personally known and known to me to be the same person(s) described in and who executed the foregoing (within) instrument, and (t)he(y) acknowledged that (t)he(y) executed the same.

Notary Public

STATE OF)
) SS.:
COUNTY OF)

On this _____ day of _____, 20____, before me, the subscriber, personally appeared _____, to me personally known and known to me to be the same person(s) described in and who executed the foregoing (within) instrument, and (t)he(y) acknowledged that (t)he(y) executed the same.

Notary Public



SUBCONTRACT AGREEMENT BETWEEN
WILLIAM H. LANE INCORPORATED

and

EXHIBIT "D"

Equal Employment Opportunity Policy

1. Write out an Equal Employment Opportunity Policy for your company. Make this policy known to all your employees and potential sources of employees and to your subcontractors, asking their cooperation. Use every appropriate means (bulletin boards, handbooks, letters, etc.) to get your points across. Be sure you are understood. One way is to ask for signed acknowledgments and assurances of cooperation.
2. Appoint a top management official in your company as Equal Employment Officer (or equivalent title), to coordinate company efforts, to advise and assist your key staff, including Superintendents and Foremen, and to serve as a focal point for any complaints.
3. Assure non-discriminatory recruiting for your company, taking appropriate steps such as:
 - a. Placing employment advertisements in newspapers which serve the largest number of minority group people in the recruiting area.
 - b. Recruiting through schools and colleges having substantial proportions of minority students.
 - c. Maintaining systematic contact with minority and human relations organizations, leaders, and spokesmen to encourage referral of qualified minority applicants (including those in related work such as fabricating shops and home repair) and minority youths interested in construction occupations.
 - d. Encouraging present employees to refer minority applicants.
 - e. Making it known to all recruitment sources that qualified minority members are being sought for consideration for supervisory, journeyman, office, and technical jobs as well as others, whenever the company hires.
4. Assure non-discriminatory hiring by your company, by taking appropriate steps such as:
 - a. Instructing personally those of your staff who make hiring decisions that minority applicants for all jobs (including supervisory, journeyman, office, and technical jobs) are to be considered without discrimination.
 - b. Where union agreements exist:
 1. cooperating with your union (perhaps through your Contractor's organization) in the development of programs to assure qualified minority persons - including apprentices of equal opportunity for employment in the construction trades.
 2. include an effective non-discrimination clause in new or renegotiated union agreements.
 - c. Using as many apprentices and summer and part-time trainees - particularly from the minority group as work needs and union agreements, if any, will permit.
5. Assure that your company makes maximum use of apprenticeship and other training to help equalize opportunity for minority persons, taking appropriate steps such as:



- a. Sponsoring and assisting minority youths as well as others to enter pre-apprentice and apprentice training, and making such training available to the maximum extent within your company.
- b. Actively encouraging minority employees as well as others to increase their skills and job potential through participation in training and education programs, and helping to assure that such programs are adequate and are in fact, available to minority persons.
- c. Actively participating in Joint Apprenticeship Committees.
- d. Working with civic, labor and contractor's organizations (helping to organize a sponsoring group, if necessary) to conduct an open-admission training resource for the construction trades in your area.

6. Assure non-discriminatory placement and promotion within your company, taking appropriate steps as:

- a. Instructing personally those of your staff who make decisions on placement and promotion that minority employees are to be considered without discrimination, and that job areas in which there is little or no minority representation should be reviewed to determine whether this results from discrimination.
- b. Distributing written questionnaires to all lower-paid employees, inquiring as to their interest and skills with respect to any of the higher-paid trades, followed by assistance, counseling, and effective measures to enable employees with interest and potential to qualify themselves for such trades.

7. Assure non-discriminatory pay, other compensation, and working conditions in your company, taking appropriate steps such as:

- a. Examining rates of pay and fringe benefits for present employees with equivalent duties, and adjusting any inequities found.
- b. Not reducing the compensation of existing employees whom you have converted to on-the-job trainee status.
- c. Advising all qualified employees whenever there is an opportunity to perform overtime work.

8. Assure non-discriminatory demotion, layoff, or termination; perhaps by requiring advance clearance of such actions through your company's Equal Employment Opportunity Officer.

9. Encourage non-discriminatory subcontracting for your company, taking appropriate steps such as:

- a. Encourage minority-group subcontractors, and subcontractors with minority representation to bid for subcontracting work.
- b. Counseling and assisting minority craftsmen who have the interest and potential to become subcontractors, with respect to securing performance bonds, writing contracts and making bids.

10. Follow through, questioning, verifying, making whatever changes of additions to your program may be necessary to obtain results.

William H. Lane Incorporated

Subcontractor



SUBCONTRACT AGREEMENT BETWEEN
WILLIAM H. LANE INCORPORATED

and

EXHIBIT "E"

CERTIFICATION OF NONSEGREGATED FACILITIES

This Contractor certifies that he does not maintain or provide for his employees any segregated facilities at any of his establishments, and that he does not permit his employees to perform their services at any location, under his control, where segregated facilities are maintained. The Contractor certifies further that he will not maintain or provide for his employees any segregated facilities at any of his establishments, and that he will not permit his employees to perform their services at any location, under his control, where segregated facilities are maintained. The Contractor agrees that a breach of this certification is violation of the Equal Opportunity clause in this Contract. As used in this certification, the term "segregated facilities" means waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time blocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, creed, color, or national origin, because of habit, local custom, or otherwise. The Contractor agrees that (except where he has obtained identical certifications from proposed subcontractors for specific time periods) he will obtain identical certifications from proposed subcontractors prior to the award of a subcontract exceeding \$10,000.00 which are not exempt from the provisions of the Equal Opportunity clause, and that he will retain such certifications in his files.

WILLIAM H. LANE INCORPORATED

By _____

Subcontractor

By _____