

WAYNCO CONSTRUCTION SUBCONTRACT AGREEMENT

This Subcontract Agreement is made as of the effective date by and between Waynco, Inc. as the Contractor and the Subcontractor for the work of the Project as set forth herein. The Contractor and the Subcontractor do hereby mutually bind themselves and agree to the terms and conditions of this Subcontract Agreement and to the Contract Documents incorporated herein.

EFFECTIVE DATE: May 3, 2013

CONTRACTOR: **WAYNCO CONSTRUCTION, INC.**
10213 E Buckeye Lane, Spokane Valley, WA 99206
Phone: (509) 624-3777 Fax: (509) 458-5390
Idaho Contractor License No.: RCE-6548

SUBCONTRACTOR: _____ Phone: _____
_____ Fax: _____

Check one: Corporation ___; Partnership ___; Sole Proprietorship ___; LLC ___

FEDERAL EMPLOYER IDENTIFICATION NO.: _____

IDAHO CONTRACTOR LICENSE NO.: _____

PROJECT: **Project Name**
Address 1
Address 2

OWNER: **Project Owner**
Address 1
Address 2

ARCHITECT: **Project Architect**
Address 1
Address 2

As per the 95-sheet construction set of plans dated 1/24/13 and the 2008 specifications, the UBC, local building codes, Geotechnical Report dated March 20, 2012, the Contract Documents, Addendum No. 1 dated 4/24/2013, and specifically per the following drawings (T1.0, DT1.0, A1.0, A1.2, A1.3, A2.0, A2.1, A4.0, A4.1, A5.0, A5.1, A5.2, A5.3, A5.4, A5.4, A6.0, S1.0, S1.2, S2.0, S2.1, S3.0, S3.1, S3.2, S4.0, M1.0, M1.2, M1.4, M2.0, M3.0, M4.0, M4.1, P1.0, P1.2, P1.4, P1.6, P2.0, P2.1, P2.2, P3.0, P4.0, P4.1, E1.0, E1.1, E2.0, E2.1, E3.0, E3.1, E4.0, E4.1, E4.2, K1.0, K2.0, K2.1, CVR-1, D1.0, D1.1, C1.0, C1.1, C1.2, C1.3, C1.4, C1.5, C1.6, C1.7, C2.0, C2.1, C2.2, C2.3, C3.0, C3.1, C3.2, C3.3, C3.4, C3.5, C3.6, C3.7, C3.8, L1.0, L2.0, all dated 2/20/13, ALTA/ACSM Survey dated 12/18/12, D0.0, D1.0, D1.1, D2.0, D2.1, D3.0, D4.0, D5.0, D6.0, D7.0, D8.0, D8.1, D8.2, D8.3, D8.4, all dated 4/3/13.

I. **Work:** The Contractor has entered into a contract for the Work of the Project, a portion of which the Contractor hereby subcontracts to the Subcontractor. The Subcontractor agrees to furnish all necessary materials, labor, tools, equipment and supplies necessary to perform all that portion of the Work in compliance with the plans, specifications, schedule, bid documents and Contract Documents for the Project, said Work set forth as follows: **Include all items in the attached [redacted] Scope of Work'**

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incorporated herein as Exhibit A. It is understood that [REDACTED] is providing a complete [REDACTED] package that includes all major and minor work to be performed as required per the drawings and specifications.

Waynco Construction has contracted for a **XX calendar day schedule**. Waynco's superintendent will coordinate your work with other trades and with Waynco's own forces. Progress payments shall be based upon timely performance and successful completion. Clean up within your scope daily. Waynco, Inc. charges \$75 per hour to clean up waste left by subcontractors. Change orders shall be submitted in writing to the Project Manager for approval prior to commencement of work. All submittals shall be reviewed and approved prior to commencing work.

II. **Price and Payment:** The Contractor shall pay Subcontractor for the Work, subject to all the terms and conditions set forth herein, the sum of:

- A. [REDACTED] /100 Dollars (\$ [REDACTED]) (Includes ISST)
- B. If unit pricing or time and materials pricing are applicable, such pricing shall be paid per the following schedule: <no schedule set>
- C. Retainage Rate: 5 %.
- D. Payment shall be as set forth herein with Subcontractor's billings due to Contractor's office by the 25th day of each month. A Waynco-approved payment application may be provided to you for convenience.

III. **Insurance:**

- A. Prior to commencement of any operations by or on behalf of Subcontractor and with respect to all such operations, Subcontractor shall, at its expense, procure, carry and maintain in force and effect at all times on all of its operations related to the Project insurance coverages to include as follows:
 - 1. Workers' Compensation and Employer's Liability Insurance as required by any applicable law, regulation or statute.
 - 2. Comprehensive General Liability Insurance for Personal Injury, Bodily Injury, Death, and Property Damage sustained or alleged to have been sustained by any person. Said insurance shall be in a form acceptable to Contractor and cover all operations of Subcontractor including, but not limited to, the following: Premises, Operations and Mobile Equipment Liability; Completed Operations and Products Liability; Contractual Liability insuring the obligations assumed by Subcontractor in this agreement; Liability which Subcontractor may incur as a result of the operations, acts or omissions of its subcontractors, suppliers or materialmen and their agents or employees; Automobile Liability including owned, non-owned and hired vehicles.
 - 3. Minimum insurance limits to be maintained shall be as follows:
 - \$1,000,000 injury to any one person
 - \$1,000,000 injury any one occurrence
 - \$1,000,000 property damage for each occurrence
- B. A Certificate of Insurance evidencing the coverages listed above shall be provided to the Contractor prior to Subcontractor commencing any operations or Work of the Subcontract. Failure to comply with or enforce this term shall not be a waiver of this or any other term of this Subcontract. Waynco

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Construction and any applicable Owners shall be listed as additional insureds on the certificate of liability insurance.

IV. **Bond:** Bond Required: No

Unless waived in writing by the Contractor, Subcontractor shall furnish to the Contractor performance and payment surety bond(s) in a form and with a surety acceptable to the Contractor each in an amount equal to the contract price conditioned upon and covering the faithful performance of and compliance with all the terms, provisions, and conditions of this contract and payment for all labor, materials, equipment and supplies used in the prosecution of the Subcontract Work provided herein. Failure to promptly provide a bond(s) as required shall entitle the Contractor to terminate this Agreement.

V. **Contract Documents:**

- A. The Contract Documents include, but are not limited to: the Contract between the Owner and Contractor with all documents incorporated therein by reference; General and Special Conditions, Project specifications, plans, drawings, addenda, modifications, exercised alternates, schedules, attachments, and other necessary documents for the Project; and, this Subcontract Agreement with all documents incorporated herein by reference.
- B. The Contract Documents are incorporated herein by this reference, and the Subcontractor agrees to be bound by the same.
- C. The Subcontractor acknowledges that it has reviewed or has had the opportunity to review the Contract Documents incorporated herein by reference prior to entering into this Subcontract Agreement. The Contract Documents for which the Contractor has copies are available for review by the Subcontractor in the office of the Contractor.
- D. In performing its work, Subcontractor shall comply with all applicable building codes and related statutes, codes, rules, regulations or standards. In the event of any discrepancy between the same and any contract documents, Subcontractor shall immediately bring the same to the attention of the Contractor and request the Contractor to seek clarification as necessary.
- E. In the event of any ambiguity or inconsistency in the Contract Documents, the Subcontractor shall immediately bring the same to the attention of the Contractor in writing and seek specific clarification of the same. In the event of any unresolved ambiguity, this Subcontract Agreement shall govern.

VI. **Assumption of Duties:** Subcontractor assumes toward the Contractor all the obligations and responsibilities that the Contractor assumes in and by the Contract Documents toward the Owner, or toward other parties insofar as they are applicable to the work of this Subcontract. The Subcontractor shall act, for all purposes herein, as an independent contractor, and not as an employee or agent of the Contractor. Unless otherwise set forth herein, the Subcontractor shall be entitled to all the terms and protections granted to the Contractor by the Owner under the terms of the general conditions, special conditions, specifications and addenda.

Subcontractor shall be responsible for all construction means and methods utilized in performance of its work of the Subcontract, and shall coordinate its work with other affected parties.

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- VII. **Employment:** Subcontractor shall employ no person whose employment on or in connection with this contract may be objectionable to the Contractor, and shall remove from job site any such person when objected to by the Contractor, provided that this shall not require the Subcontractor to violate any law or governmental regulation. If the Contract Documents require the payment of wages and related benefits as a specified rate or prevailing wage rate, such provisions and related statutory or regulatory requirements shall apply equally to the subcontractor and to the work of the subcontractors incorporated herein.
- VIII. **Submittals and Manuals:** Subcontractor agrees to timely furnish submittals such as shop drawings, samples, and product data as may be required by the Contract Documents and such other information on a timely basis as may be necessary to secure the approval by the Owner and/or Architect of such submittals. Subcontractor shall proceed immediately to obtain, as directed by contractor, copies of such submittals for approval.
- Operation and Maintenance Manuals required by the Contract Documents for any portion of the Subcontract Work shall be submitted to the Contractor prior to final payment and in the form and number set forth in the Contract Documents, plus one copy for Contractor's files.
- IX. **Schedule and Progress:**
- A. Subcontractor agrees to begin and carry out the Work as directed by the Contractor and with all speed and dispatch so as not to delay the progress of the Project. Sequence and scheduling shall be as directed by the Contractor.
 - B. Time is of the essence in the performance of the Work.
 - C. No extension of time for performance of the Work shall be recognized without written consent of the Contractor. Subcontractor shall be responsible to have adequate manpower on the project at all times to maintain the project schedule.
 - D. If Subcontractor delays the Project, and liquidated damages are assessed by the Owner against the Contractor, the Subcontractor shall reimburse Contractor for any liquidated damages resulting from Subcontractor's Work. The liquidated damages clause upon which the Contractor may be assessed such amounts is incorporated herein by this reference and such liquidated damages are at the rate set forth in that applicable clause and contract. Such liquidated damages are a reasonable estimate of the actual damage incurred as a result of Subcontractor's delay, and are not a penalty.
- X. **Subcontractor Diligence:** If by reason of strikes, picketing, informational pickets or disputes of any nature between the Subcontractor and any individual group or organization or should the Subcontractor be persistently, repeatedly, or for a period of two (2) calendar days (48 hours) be unable to supply enough properly skilled workmen or proper materials to execute the Work defined in the Subcontract, then the Contractor may cure any lack thereof or terminate this Subcontract for default following 24 hours written notice by Contractor to Subcontractor. Any such notice shall be effective when delivered to Subcontractor at the address set forth above or sent by facsimile to same. In such event, the Contractor may proceed to complete the Work of the Subcontractor and change any costs, expenses, or damages for the same to the account of the Subcontractor.

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XI. **Payment:**

- A. Subcontractor shall submit to the Contractor estimates and billings for all work completed and all materials delivered to the Project site to date of billing. All billings must be submitted on AIA Form G703 or on a Waynco-provided form to the Contractor's office no later than the day specified above of each month for processing consideration for Contractor's payment submission to the Owner.
- B. Partial lien releases from Subcontractor and its suppliers and lower tier subcontractors for all work completed and all materials and equipment delivered to the Project site to the date of each billing must be submitted on a monthly basis with each progress billing. Contractor is not required to process the Subcontractor's progress billing and payment to Subcontractor does not become due until this requirement has been satisfied.
- C. The Contractor agrees to include in its monthly or periodic estimate to the Owner the value of all work, labor and materials of the Subcontractor incorporated in the project covered by this agreement for which estimates or billings have been furnished on a timely basis by the Subcontractor and approved by the Contractor, and to pay the Subcontractor the amount received by the Contractor on account of the Subcontractors work to extent of the Subcontractor's interest therein.
- D. In all cases, payment by the Owner to the Contractor for the Subcontract Work shall be condition precedents to the duty of the Contractor to make any payment to the Subcontractor. No such payment shall be deemed due and owing until these conditions have been satisfied and with the Contractor being paid for the same Work by the Owner. This shall apply to any and all amounts that may become due and owing under the Subcontract, including retainage.
- E. Contractor shall be entitled to withhold from each payment due Subcontractor as retainage the percentage set forth above with such sum to not become due or be released to the Subcontractor until satisfactory final completion of the Subcontract and following payment of the retained funds to the Contractor by the Owner. State law may impose additional requirements on the retained funds, which must be satisfied before payment becomes due and owing.
- F. All payments due to or on account of laborers (including taxes and benefits), subcontractors or suppliers by Subcontractor shall be made by Subcontractor within 10 days of receipt of payment for the same from the Contractor.
- G. Subcontractor shall use the funds received under this subcontract to pay for all materials, labor, tools, equipment and supplies necessary to perform the Subcontractor's Work for the Project before use of any remaining funds for any other purpose. Contractor retains the right, but not the obligation, to issue joint checks to Subcontractor and third parties as Contractor deems necessary.
- H. The Contractor shall be entitled to charge back against Subcontractor, with or without notice and prior to final payment, any amount due or to become due under the Subcontract, for and including but not limited to, damages, costs and/or expenses for delay of the Subcontractor, failure of performance, and damages or expense which the Contractor or any other subcontractor may suffer as a result of the Subcontractor's failure, through causes within Subcontractor's control, to carry out any provision of the Subcontract.
- I. Unit Pricing: In the event the contract herein is based upon a unit price, either in whole or in part, it is understood and agreed that any quantities and amounts mentioned are approximate only and may be more or less at the same unit price, and subject to final determination based upon final pay quantities as received by the Contractor from the Owner according to terms and conditions as set

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forth in the plans, specifications or other Contract Documents, or upon such quantities and amounts as may be determined by the Contractor.

- J. Payment of any amount by Contractor does not imply acceptance of any part of the Subcontract work.

XII. **Indemnification:**

- A. Subcontractor agrees to defend, indemnify, and hold harmless Contractor from any and all claims, demands, losses, and liabilities to or by third parties arising from, resulting from or connected with services performed or to be performed under this Subcontract by Subcontractor, its agents or employees, even though such claims may prove to be false, groundless or fraudulent, to the fullest extent permitted by law and subject to any limitations provided herein.
- B. Washington Projects Only: For all projects located within the State of Washington, Subcontractor's duty to indemnify Contractor shall not apply to liability for damages arising out of bodily injury to persons or damage to property caused by or resulting from the sole negligence of Contractor or its agents or employees. Subcontractor's duty to indemnify Contractor for liability for damages arising out of bodily injury to persons or damage to property caused by or resulting from the concurrent negligence of (a) Contractor or its agents or employees, and (b) Subcontractor or its agents or employees shall apply only to the extent of negligence of Subcontractor or its agents or employees.

Subcontractor specifically and expressly waives any immunity that may be granted it under the Washington State Industrial Insurance Act, Title 51 RCW. Rather, the indemnification obligation under this Subcontract shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable to or for any third party under workers' compensation acts, disability benefits acts, or other employee benefits acts; provided Subcontractor's waiver of immunity by the provisions of this paragraph extends only to claims against Subcontractor by Contractor, and does not include, or extend to, any claims by Subcontractor's employees directly against Subcontractor.

Subcontractor's duty to indemnify Contractor for liabilities or losses other than for bodily injury to persons or damage to property shall apply only to the extent of the fault of Subcontractor or its agents, employees, sub-subcontractors or suppliers of any tier, except in situations where fault is not a requirement for liability in which case indemnity will be provided to the extent the liability or loss was caused by Subcontractor or its agents, employees, sub-subcontractors or suppliers of any tier.

- C. Any indemnification, hold harmless or defense duty herein owed by Subcontractor to Contractor shall include an assumption of all similar duties correspondingly owed by Contractor to others, including, but not limited to, the Owner as identified in any Contract Documents for this project.
- D. In the event Subcontractor fails to fulfill any indemnification obligation, Contractor shall be entitled to be reimbursed for all defense costs including all fees (of attorneys and experts), and costs and expenses incurred in good faith. In addition, Contractor shall be entitled to recover from Subcontractor compensation for all of contractor's in-house expenses (including materials and labor) consumed in defense or assistance provided to Subcontractor therewith whether that defense is provided by Subcontractor or not.

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- E. In the event the laws of the state where the Project is located allow greater rights of indemnification than as set forth herein, then Subcontractor agrees to indemnify Contractor to such greater extent.
 - F. Any applicable indemnification addendums to this agreement are to be incorporated into and attached to this agreement.
- XIII. **Changes in the Work:** The Contractor shall have the right to order the change, omission, or addition of any parts of the Work or materials including as ordered by the Owner or Architect. Fair deductions or increases shall be made in the contract price for such change, omission or additional Work or materials; provided, however, no additional time for completion of the Work with such changes shall be allowed, and no duty of Contractor to pay for the same shall arise unless and until authorized by the Contractor in writing before the work and/or changes are begun. Subcontractor shall submit written change order requests for such proposed time extensions or payment changes.
- XIV. **Protection and Guarantee of the Work:**
- A. Subcontractor agrees to adequately and properly protect the Work to be performed by it hereunder, to be responsible for damages to person and property occasioned by its failure to do so, and to be responsible for any defective or improper work or material caused by its failure to do so. The standards of protection shall not be less than those specified in the Owner's Contract Documents, those required of the Contractor, and as may be required by law.
 - B. Subcontractor agrees to guarantee its work against all defects in materials or workmanship as called for in the Contract Documents or, if no longer or broader guarantee is otherwise called for, then for a period of one year from the date of completion and acceptance of the Project. Completion and acceptance shall be as defined in the contract between the Owner and the Contractor.
- XV. **Claims:**
- A. **Claims Against Subcontractor:** If notification of any claims have been made against the Subcontractor or the Contractor arising out of labor, equipment or materials furnished the project covered by this agreement, or otherwise on account of any actions or failure to act by the Subcontractor in the performance of this agreement, the Contractor may, at its discretion, pay such amounts or withhold such amounts otherwise due to be come due hereunder to cover said claims and any costs or expenses arising or to arise in connection therewith pending legal settlement thereof, and any such amounts paid or withheld by the Contractor will be charged to the account of the Subcontractor. This right of the Contractor shall not be exclusive of any other rights of the Contractor herein or by law provided.
 - B. **Claims by Subcontractor on Account of Owner:** In the event of any claim of Subcontractor for or on account of acts or omissions of Owner, Owner's engineer, architect, consultants or any other agent or representative of Owner which are not resolved by the terms of the Contract Documents or otherwise by agreement, Contractor promises to invoke if requested in writing by Subcontractor any Disputes Clause in the Contract between the Contractor and the Owner and to present, in Contractor's name, all Subcontractor's claims (as prepared by Subcontractor) of any nature including, but not limited to, claims regarding scope of work, execution of work, progress of work, time, extensions, payments for work and time for payments. Contractor shall have the right but not

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the requirement (to be exercised in Contractor's sole discretion) to present such claims upon Subcontractor's behalf in advance of and without Subcontractor's request thereof.

All claims and notices are to be presented to the Contractor in writing within the time and in the form as required of the Contractor in the Contract Documents, and in sufficient time for Contractor to present the same to the Owner. Subcontractor shall have full responsibility for and shall pay expenses for preparation and presentation of such claims including, but not limited to, attorneys' fees, travel, food and lodging expenses for attorneys and witnesses, witness fees, including expert witness fees, reporter's fees, arbitrators' fees, filing fees and copying charges. Subcontractor agrees that it will not bring any legal action or initiate any administrative proceeding against Contractor or its surety with regard to any such claims and that final determination of such claims pursuant to the applicable Dispute Clause or by the party or board so authorized in the Contract Documents shall be final and conclusive and shall be Subcontractor's full and final remedy for any such claim. Subcontractor shall be bound by Contractor's determination made in good faith as to apportionment among Contractor's and other Subcontractor's claims, of any amounts received from Owner for claims, resolved under the Disputes Clause.

C. Claims by Subcontractor on Account of Contractor: In the event of any claim of Subcontractor for or on account of acts or omissions of Contractor, its other Subcontractors, agents or representatives which are not resolved by the terms of the Contract Documents or otherwise by agreement, then such claims shall be resolved by arbitration as set forth herein, unless otherwise agreed by the parties.

- XVI. **Correction of Work:** The Subcontractor shall correct, replace and/or re-execute faulty or defective work done and/or materials furnished under this Subcontract when and as required by the Contractor. In the event Subcontractor shall fail to comply with this requirement or to diligently proceed within the time herein provided for, or if the Contractor or any other Subcontractor shall be unable to proceed with the work because of any action by one or more employees of the Subcontractor or by a person or labor organization purporting or attempting to represent any employee of the Subcontractor, the Contractor upon notice to the Subcontractor shall have the right to correct, replace and/or re-execute such faulty or defective work or to take over this contract and complete same, and to charge the cost thereof to the Subcontractor together with any damages suffered by the Contractor and caused by a delay in the performance of the Work and any obligations under this Subcontract.
- XVII. **Default:** That in case of default on the part of the Subcontractor under any or all terms of this agreement, the material and equipment of the subcontractor shall be left on the site for the use of the Contractor in completing the work covered by the terms of this agreement.
- XVIII. **Statutory Compliance:** Subcontractor agrees to comply with all Federal and State law, codes, and regulations and all municipal ordinances and regulations effective where the work is to be performed and controlling under the Contract Documents and to pay all costs and expenses connected with such compliance, and to pay all fees and taxes, including sales and uses taxes, on all goods and services purchases by the Subcontractor, and also to pay all taxes imposed by any State or Federal law for any employment or industrial insurance, pensions, old age retirement funds or any similar purpose.

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Subcontractor shall hold the Contractor, each other subcontractor, and the Owner harmless from any and all loss or damage occasioned by the failure of the Subcontractor to comply with the terms of this paragraph.

XIX. Safety:

- A. Subcontractor agrees to abide at all times and comply with all local, state and federal regulations respecting safety rules, OSHA and the state ISHA and any and all others applicable. For any violations thereof, claims, fines, or penalties that may be levied, assessed or retracted from Contractor herein, the Subcontractor hereby agrees to reimburse and/or hold harmless the Contractor on account of any such claim, fine or penalty which may be paid by the Contractor which arises out of or which is due to any action on the part of the Subcontractor, its agents, employees, subcontractors or suppliers. The sums necessary to hold the Contractor harmless as provided herein shall be deducted from any payment due the Subcontractor as it becomes due.
- B. Subcontractor to maintain at all times a safe work site for its employees, agents, subcontractors, equipment or material suppliers and all other persons, whether controlled by the Subcontractor or not, who may at any time be in or around any of the work of the Subcontractor.
- C. Subcontractor to maintain and provide to Contractor a current site specific MSDS Book, Fall Protection Plan, and a Hazardous Waste Communication Program, each to be submitted to Contractor's office prior to commencing work at the Project site and a copy kept at the project site during the work of the Subcontract.

XX. Use of Equipment: The Contractor's equipment shall be available to the Subcontractor only at the Contractor's discretion and on mutually agreed upon terms and conditions. The Subcontractor's equipment shall be available to the Contractor only at the Subcontractor's discretion and on mutually satisfactory terms, except as provided in the event of the default of the Subcontractor.

XXI. Royalties, Patents, Fees: Subcontractor agrees to pay all royalties and license fees and further agrees to defend all suits or claims for infringement of any patent rights involved in the Work of the Subcontractor under this agreement, and further agrees to defend and hold the Contractor harmless from damages, loss, cost or expense on account of any claim of such use or infringement by the Subcontractor.

XXII. Dispute Resolution:

- A. Unless otherwise set forth herein, all claims, disputes and other matters in question arising out of, or relating to, this Subcontract, or the breach thereof, except for claims which have been waived by the making or acceptance of final payment, shall be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then in effect unless the parties mutually agree otherwise.
- B. Pending the resolution of any claim or dispute during the course of the Work of the Subcontract, the Subcontractor shall carry on the Work in full compliance with all terms and provisions herein. This term shall be waived only in writing by the Contractor, or upon termination or suspension of the Subcontract.

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- XXIII. **Suspension of Work:** Failure of the contractor to make payments as provided herein shall in addition to all other rights entitle the Subcontractor to suspend all Work and shipments during the continuances of such default on the part of the Contractor, and shall further entitle the Subcontractor to an extension of time for the performance of the Work covered by this agreement for the period for which the Work was suspended.
- XXIV. **Clean-Up:** Subcontractor shall provide labor throughout the work of the Project to clean and pick up debris related to Subcontractor's work as needed or as directed by the Contractor. Excess materials shall not be allowed to accumulate. Subcontractor shall be responsible for the removal from the job site of all trash, debris and excess materials.
- XXV. **Assignment:** Subcontractor agrees to not assign this contract, or sublet the same, or any part thereof covering work to be performed at the site of the Project named in this agreement, and to not assign any payments hereunder, without first obtaining the written consent of the Contractor.
- XXVI. **Severability and Waiver:** If any portion of this contract is determined void or unenforceable for any reason, the balance shall remain in full force and effect. The failure of Contractor to insist on compliance with any term or condition shall not be a waiver or relinquishment of the right to enforce such term or condition.
- XXVII. **Entire Agreement:** This shall constitute the entire agreement of the parties hereto and shall supersede any prior proposals, offers, and written communications not incorporated herein and any oral discussions, statements, representations, or agreements. Titles of any section herein are for ease of reference and are not to be relied on for any purpose.

THE UNDERSIGNED HEREBY CERTIFY THAT THEY HAVE REVIEWED AND AGREED TO THE TERMS AND CONDITIONS SET FORTH HEREIN, AND THAT ALL TERMS, SPECIFICALLY INCLUDING THOSE REGARDING INDEMNIFICATION, HAVE BEEN MUTUALLY NEGOTIATED.

SUBCONTRACTOR:

Signed: _____

Name: _____

Title: _____

Date: _____

CONTRACTOR:

Waynco Construction, Inc.

10213 E. Buckeye Lane

Spokane Valley, WA 99206

Signed: _____

Name: Robert A. Rosier

Title: President

Date: _____

Any applicable addenda, attachments or exhibits follow.

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WAYNCO SUBCONTRACT INDEMNIFICATION ADDENDUM

Subcontractor agrees to defend, indemnify, and hold harmless **Waynco Construction, Inc.** from any and all claims, penalties, fines, citations, demands, losses, and liabilities to or by third parties, including, but not limited to public authorities or governmental regulatory entities or agencies, whether federal, state, local or other, arising from, resulting from, or connected with services performed or to be performed under this Subcontract by Subcontractor, its agents or employees, even though such claims may prove to be false, groundless or fraudulent, to the fullest extent permitted by law and subject to the limitations provided below.

Subcontractor's duty to indemnify Contractor shall not apply to liability for damages arising out of bodily injury to persons or damage to property caused by or resulting from the sole negligence of Contractor or its agents or employees. Subcontractor's duty to indemnify Contractor for liability for damages arising out of bodily injury to persons or damage to property caused by or resulting from the concurrent negligence of (a) Contractor or its agents or employees, and (b) Subcontractor or its agents or employees shall apply only to the extent of negligence of Subcontractor or its agents or employees.

Subcontractor specifically and express waives any immunity that may be granted it under the Washington State Industrial Insurance Act, Title 51 RCW. Rather, the indemnification obligation under this Subcontract shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable to or for any third party under workers' compensation acts, or other employee benefits acts; provided Subcontractor's waiver of immunity by the provisions of this paragraph extends only to claims against Subcontractor by Contractor, and does not include, or extend to, any claims by Subcontractor's employees directly against Subcontractor.

Subcontractor's duty to indemnify Contractor for claims, penalties, fines, citations, demand, liabilities or losses other than for bodily injury to persons or damage to property shall apply only to the extent of the fault of Subcontractor of its agents, employees, sub-subcontractors or suppliers of any tier, except in situations where fault is not a requirement for liability in which case indemnity will be provided to the extent the liability or loss was contributed to or caused by Subcontractor or its agents, employees, sub-subcontractors or suppliers of any tier.

For purpose of this Addendum, any duty to indemnify, hold harmless or defend set forth herein and owed by Subcontractor to Contractor shall include an assumption by Subcontractor of all similar duties correspondingly owed by Contractor to others, including, but not limited to, General or other Contractors and the Owner as identified in any contract documents for this project.

To the extent expended by Contractor, Subcontractor shall reimburse Contractor for all of Contractor's defense costs. Defense costs shall include all fees (of attorneys and experts), and costs and expenses incurred in good faith. In addition, Contractor shall be entitled to recover from Subcontractor and be reimbursed compensation for all of its in-house expenses (including materials and labor) consumed in its defense or in assisting in the defense provided by Subcontractor as required herein.

If any portion of this addendum is determined void or unenforceable for any reason, the balance shall remain in full force and effect.

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EXHIBIT A

Project Name—Division Name or Number Scope of Work

May 3, 2013

The following items are to be included in your scope of work for this project.

Furnish and install the complete [redacted] scope of work. Include all necessary mobilizations. Furnish all equipment necessary to perform the work. Note that Waynco may allow use of Waynco's rental forklift on an as-available basis at the discretion of Waynco's site superintendent. Include all necessary weather protections for your scope of work. Supply a sufficiently sized crew in order to complete your scope per the schedule. Keep streets free of mud, dirt and debris. **Order any long-lead materials immediately.** Provide submittals and/or samples as required for Owner and/or Architect approval. Provide an acceptable written fall protection plan to Waynco's onsite superintendent prior to beginning work if applicable to your scope. Furnish and use all safety gear as required by any authorities having jurisdiction. Ensure that you are licensed as a contractor in the state of Idaho.

END OF EXHIBIT A