

## CONSTRUCTION AGREEMENT

This AGREEMENT is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between Tuskegee University, 204 Kresge Center, Tuskegee, AL 36088, hereinafter referred to as "Owner", and CONTRACTOR NAME: \_\_\_\_\_, CONTRACTOR ADDRESS: \_\_\_\_\_, hereinafter referred to as the "Contractor," as follows:

1. For and in consideration of the payment by Owner as hereinafter provided, Contractor does hereby contract and agree to construct, install or perform, in accordance with the plans, specifications, requirements and/or directions furnished by Owner in a mandatory pre-bid walk-through and the bid documents (as amended through addenda), the following: PROJECT NAME: \_\_\_\_\_, PROJECT DESCRIPTION: \_\_\_\_\_.

More specifically, the Contractor shall perform the work in accordance with the requirements set forth in the attached exhibits: LIST ALL APPLICABLE EXHIBITS HERE AND ATTACH TO CONTRACT: \_\_\_\_\_.

In the event of a conflict between this Agreement and these exhibits, this Agreement shall control. The Contractor hereby represents that it, and its subcontractors, have performed all necessary building inspections and field measurements for adequately pricing the work under this Agreement and that it fully accepts the condition of the buildings "as is" for the performance of its work.

2. For the above described work, as and when performed to Owner's satisfaction, Owner agrees to pay CONTRACTOR by monthly progress payments the total sum of \_\_\_\_\_ (\$\_\_\_\_\_). Owner will withhold ten percent (10%) retainage on the first fifty percent (50%) of the work until final acceptance. Contractor will furnish Owner with partial lien waivers/releases and pay certifications on Owner approved forms with each draw request and will receive payment within thirty (30) days of proper and accurate submission of payment documentation for any approved work. Prior to release of retainage, Contractor will furnish Owner with (a) a standard one (1) year written warranty for labor and materials, any special warranties indicated by the plans, specifications and Owner requirements or directions, and any warranties otherwise available for equipment, materials, services and systems installed, (b) all O & M manuals, (c) Final Lien Waivers/Releases from Contractor, any subcontractor and any material suppliers, all on forms supplied by and satisfactory to the Owner, and (d) any other close-out certifications, government approvals or documents required by Owner.

3. Contractor shall promptly make payments to all persons supplying the Contractor with labor, tools, supplies and equipment used or to be used in the prosecution of the work or in connection therewith. Any payments not so made by the Contractor when earned or due may be made by the Owner and the amounts thereof deducted from any moneys at any time earned or due the Contractor under this agreement. Furthermore, Contractor and its surety shall hold and save the Owner harmless from any and all claims, actions, suits or liens by any such persons.

Contractor hereby waives and releases any lien or right of lien it may assert against the improved property, the Owner or any contract funds as provided by law or in equity.

4. All construction and work performed hereunder by Contractor and its employees, if any, shall be in strict accordance with the plans, specifications, requirements and directions furnished by the Owner. Contractor shall, at Contractor's expense, comply with the Owner's clean-up, operational and other facility procedures and at all times keep the facility and premises free from debris and unsafe conditions resulting from the Contractor's Work. Contractor shall give adequate notices to any and all authorities pertaining to the Contractor's Work and secure and pay for all permits, fees, licenses, assessments, approvals, inspections and taxes necessary to complete the Contractor's Work.

5. Contractor shall make all alterations, additions, deletions or changes, and perform all extra work or omit any work that the Owner may specifically require in writing, and at a reasonable addition to or deduction from the contract price set forth herein. NO EXTRA WORK, ALTERATIONS OR CHANGES SHALL BE MADE, HOWEVER, EXCEPT UPON WRITTEN ORDER FROM OWNER, AND OWNER SHALL NOT BE HELD LIABLE TO CONTRACTOR FOR ANY EXTRA WORK, ALTERATIONS OR CHANGES FURNISHED WITHOUT SUCH WRITTEN ORDER. NO OFFICER, EMPLOYEE OR AGENT OF OWNER HAS ANY AUTHORITY TO DIRECT ANY EXTRA WORK ALTERATIONS OR CHANGES BY ORAL ORDER.

6. Time is of the essence in Contractor's performance of its work, and Contractor shall perform according to the schedule furnished by Owner. The work shall commence on MONTH: \_\_\_\_\_ DAY: \_\_\_\_\_ YEAR: \_\_\_\_\_ and shall be substantially complete by MONTH: \_\_\_\_\_ DAY: \_\_\_\_\_ YEAR: \_\_\_\_\_. Any punch list work shall be completed to Owner's satisfaction within ten (10) days of substantial completion. The schedule can be updated or revised by the Owner in writing, and the Contractor shall perform accordingly. Should Contractor be delayed in its completion through no fault of its own, its subcontractors or vendors, it will only be entitled to a commensurate extension of time in the schedule, and Contractor hereby waives and releases any monetary claim for delay, disruption, inefficiency, impact or suspension. **It is hereby agreed that, for each calendar day that the work is not substantially complete by the scheduled completion date, Contractor, and its surety, shall pay Owner as liquidated damages the following: \$ \_\_\_\_\_ per calendar day for DESCRIPTION OF LD'S.** At its sole discretion, the Owner may withhold such damages from any payments due Contractor under this Agreement.

7. (a) Contractor shall at all times supply sufficient tools, equipment, materials, supervision, subcontracted services and labor to meet the then-current Owner approved project schedule. In addition to all other remedies available to it under this Agreement or the law, to the extent the Owner believes that the progress of the Work is such that the completion date, as adjusted for time extensions provided elsewhere in this Agreement, will not be met due to the fault or cause of Contractor or its subcontractors, suppliers, consultants, agents and employees, the Owner may direct Contractor in writing to take such steps as Owner deems necessary to improve Contractor's progress, all without additional cost or fee to the Owner. Such steps may include, but shall not be limited to, increasing the number of shifts, adding overtime operations,

increasing the labor force and/or supervision, working holidays and weekends and adding equipment and operators. Such an acceleration shall be separately accounted for by Contractor. If Contractor reasonably believes that acceleration is not justified under the terms of this clause, it shall so advise Owner in writing within three (3) calendar days of receipt of the directive to accelerate. In such case of objection, Contractor may expressly reserve its right to claim a compensable acceleration under paragraph (b) below, but nevertheless must proceed with the acceleration as directed.

(b) In the event the progress of the Work is on schedule for meeting the completion date, as adjusted for time extensions provided elsewhere in this Agreement, the Owner reserves the right to direct Contractor to accelerate its progress as a change in the Work and with compensation as provided in paragraph 5 hereof. Reasonable costs of such acceleration shall be separately accounted for by Contractor.

8. Contractor promises and agrees that it will be responsible for all workmen employed or engaged by it in the performance of this contract, that it will comply with the provisions of the Davis-Bacon Acts when applicable, and that it will be responsible for complying with all Federal and State laws and regulations pertaining to the withholding of income taxes, Social Security and unemployment compensation payments of its employees. Contractor will furnish Owner a Certificate of Insurance, performance and payment bonds, and evidence of required general contractor licensing, all acceptable to Owner, at the time of execution of this Agreement. Contractor warrants and agrees that it and its employees shall at all times observe and comply with all applicable laws and regulations of the United States and of any state, county, or city having jurisdiction of the place where any work hereunder is being done.

9. It is expressly agreed by and between the parties hereto that the Contractor is an independent contractor and said Contractor shall not be deemed or construed to be an employee or agent of Owner.

10. Contractor agrees to fully comply with the Occupational Safety & Health Act of 1970 and successive legislation and any and all regulations issued pursuant thereto. Contractor shall defend, indemnify and hold Owner harmless from any claims or charges of any kind by reason of Contractor failing to fully comply with the Act and its regulations, and agrees to reimburse the Owner for any fines, damages, or expenses of any kind incurred by the Owner by reason of the Contractor's failure to comply. Contractor shall be solely responsible for project safety and is solely responsible for the safety of its own employees.

11. Contractor hereby represents, warrants and covenants to Owner as follows: Contractor (i) has complied, and shall at all times during the term of this agreement comply, in all respects with all immigration laws, statutes, rules, codes, orders and regulations, including, without limitation, the Immigration Reform and Control Act of 1986, as amended, and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, as amended, and any successor statutes thereto, (ii) has properly maintained, and shall at all times during the term of this agreement properly maintain, all records required by the United States Citizenship and

Immigration Services (the "USCIS"), including, without limitation, the completion and maintenance of the Form I-9 for each of Contractor's employees, and (iii) has responded, and shall at all times during the term of this agreement respond, in a timely fashion to any inspection requests related to such I-9 Forms.

12. To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless Owner and all of its agents, officers, board members, managers, representatives and employees from and against all claims, damages, fines, penalties, losses, and expenses, including but not limited to, court costs, and reasonable attorneys fees, arising out of, related to or resulting from the performance of the Contractor's work or the Contractors' failure to perform its obligations under this Agreement or the Contractor's failure to comply with applicable laws and regulations, regardless of whether such claims, damages, losses, and expenses are caused by, or are alleged to be caused by, in whole or in part, the acts, omissions or negligence of a party indemnified hereunder.

13. If the Contractor refuses or fails to supply enough properly skilled workers, competent supervision, or proper materials, to maintain the schedule of work, or to make prompt payment to its workers, subcontractors, or suppliers, or if the Contractor disregards laws, ordinances, rules, regulations, or orders of any public authority having jurisdiction, or otherwise is responsible for a material breach of this Agreement, and thereafter fails within three (3) working days after receipt of written notice from Owner to commence and continue satisfactory correction of such default with diligence and promptness, then the Owner, without prejudice to any others rights or remedies, shall have the right to terminate Contractor's employment under this Agreement and withhold payment of any monies due the Contractor pending corrective or curative action to the extent required by and to the satisfaction of the Owner. All of the costs incurred by the Owner in completing or correcting the Contractor's work, including overhead, profit, court costs and reasonable attorney's fees, shall be deducted from any monies due or to become due the Contractor from Owner and shall otherwise be reimbursed by the Contractor and its surety.

14. Owner may expressly order the Contractor in writing to suspend, delay, interrupt, or terminate all or any part of the Contractor's work for such period of time as may be determined to be appropriate for the convenience of the Owner. In such event, Owner shall not be liable for unearned anticipated profit on the Contractor's work not performed as of the termination date, nor shall Owner be liable to the Contractor for any delay, impact, consequential, indirect, or other damages.

15. The Owner has received an abatement or exemption for sales and/or use taxes on this project for materials, supplies and/or equipment purchased for, delivered to and utilized on this project; and the Owner desires to take full advantage of such savings. Therefore, on behalf of the Owner, the Contractor is obligated to accomplish all available sales and use tax abatements or exemptions in the purchasing of such items by Contractor, its subcontractors, sub-subcontractors or vendors. Contractor agrees to execute and administer any documents and procedures necessary to accomplish the abatement or exemption, including, but not limited to, execution and administration of an appropriate purchasing agent agreement with the Owner. Upon completion of the project, or at Owner's discretion periodically throughout the project,

deductive change order(s) will be issued to Contractor removing from the contract price all sales and/or use tax that was, or could have been, avoided. Where not otherwise indicated, the Alabama Building Commission Guidelines and Forms for Tax Savings Arrangements should be used for guidance and reference.

16. All claims, disputes and any other matters in question between Owner and the Contractor arising out of or relating to this Agreement, at the sole election of the Owner, shall be decided by binding arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association. The location of the arbitration proceeding shall be Montgomery, Alabama. The award rendered by the arbitrator(s) shall be final and binding, and judgment may be entered thereon in accordance with applicable law in any court having jurisdiction thereof.

17. This Agreement represents the entire and integrated agreement between the parties hereto and supersedes all prior negotiations, representations or agreements, either written or oral. There shall be no modification of this Agreement, except in writing, signed by both parties, executed with the same formalities as with original instrument.

Witness this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.  
*day month year*

**TUSKEGEE UNIVERSITY (OWNER)**

By: \_\_\_\_\_  
Its: \_\_\_\_\_

\_\_\_\_\_ **(CONTRACTOR)**  
*Contractor Legal Name*

By: \_\_\_\_\_  
Its: \_\_\_\_\_

Federal ID# \_\_\_\_\_ or  
Social Security # \_\_\_\_\_  
General Contractor's License # \_\_\_\_\_ (if over \$50,000)

JOB# \_\_\_\_\_

Attachments: