

CONSTRUCTION AGREEMENT
(TUPV ENGINEERING EXTENSION BUILDING
PHASE 1 – GROUND FLOOR)

KNOW ALL MEN BY THESE PRESENTS:

This Agreement is made and entered into this 8th day of AUGUST, 2014 at the City of Talisay, Negros Occidental, by and between:

TECHNOLOGICAL UNIVERSITY OF THE PHILIPPINES VISAYAS, a state institution of higher learning established by law duly represented herein by DRA. MA. LEONOR F. VAIDOR, Campus Director, with office address at Capt. Sabi Street, City of Talisay, Negros Occidental, hereinafter referred to as the "OWNER";

- and -

WILKINSON CONSTRUCTION, existing under and by virtue of the laws of the Republic of the Philippines, duly represented by its Owner, WILKINSON Y. ONG, with business address at Dr. No. 4, Asian Dragon Building, Lacson St., Bacolod City, Negros Occidental, hereinafter referred to as the "CONTRACTOR".

WITNESSETH

WHEREAS, in accordance with the advertisement published/posted through the PHILGEPS by the OWNER's Bids and Awards Committee (BAC), pursuant to Republic Act No. 9184 and its Revised Implementing Rules and Regulation, the CONTRACTOR and other contractors/bidders submitted their respective bids for the construction of ENGINEERING EXTENSION BUILDING (PHASE 1 – GROUND FLOOR) located at TUP Visayas Campus, Negros Occidental, in accordance with the approved plans, drawings and technical specifications;

WHEREAS, the CONTRACTOR, representing itself to possess the competence, capability, experience, resources and the required license/s and permit/s to engage in the business of construction, has offered its services for the construction of the above-mentioned project by submitting its bid;

WHEREAS, after evaluating carefully the bids submitted following the published requirements and project specifications in the public bidding held on May 6, 2014 for the above mentioned project, it was determined that the CONTRACTOR'S bid is the lowest calculated responsive bid, and is most advantageous to the Government, and thus, the OWNER issued the required Notice of Award to the CONTRACTOR;

WHEREAS, the CONTRACTOR accepted the award and has agreed to undertake the above-mentioned project in accordance with the plans, drawings and technical specifications as embodied in the CONTRACT DOCUMENTS, as well as the OWNER'S desires, requirements and specific instructions;

NOW, THEREFORE, for and in considerations of the foregoing premises and the terms, conditions, stipulations and covenants set forth herein, the parties hereby agree as follows:

ARTICLE I. CONTRACT DOCUMENTS

1.1. The documents enumerated below, a copy each of which is attached hereto, shall be collectively referred to as the CONTRACT DOCUMENTS and be considered as integral part of this AGREEMENT, to wit:

- | | | |
|-----------|---|--|
| Annex "A" | - | Plans, Drawings and Technical Specifications |
| "B" | - | Detailed Bill of Quantities and Materials |
| "C" | - | Scope of Works |
| "D" | - | Performance Security |
| "E" | - | Bid Documents, including but not limited to the following: |
| | | E-1 Invitation to Bid |
| | | E-2 Authority of the Contractor's Representative to sign this Agreement and the Contract Documents |
| | | E-3 Construction Milestone Schedule (with Bar Chart) |
| | | E-4 Manpower Schedule |
| | | E-5 Construction Methods |
| | | E-6 Project Organizational Chart |
| | | E-7 Equipment Utilization Schedule pledged to this Contract supported by Contract of Lease or Proof of Ownership |
| | | E-8 Affidavit of Site Inspection |
| | | E-9 Construction Safety and Health Program |
| | | E-10 Certificate of Compliance of Labor Laws |
| "F" | - | Winning bidder's bid, including the Eligibility Requirements, Technical and Financial Proposals, and all other documents/statements submitted, such as duly signed bid breakdown, detailed cost estimates and Program of Works |
| "G" | - | Notice of Award signed by the OWNER'S duly authorized representative with CONTRACTOR'S conformity |
| "H" | - | Relevant licenses and permits, including but not limited to valid PCAB license and registration |

1.2. Other relevant documents, papers and notices issued or required by the OWNER or its duly authorized representative are likewise considered part of this Agreement.

1.3. In case of conflict between this Agreement and the Contract Documents, the OWNER will determine which one is controlling taking into consideration the successful completion of the above-mentioned project as well as applicable laws, rules and regulations and prevailing jurisprudence.

ARTICLE II. SCOPE OF WORK

2.1. The CONTRACTOR shall undertake the construction of the Engineering Extension Building (Phase 1 – Ground Floor), located at TUP Visayas Campus, Talisay City, Negros Occidental, strictly in accordance with the plans, drawings, technical specifications and scope of works approved by the OWNER as set forth in this Agreement and the Contract Documents.

2.2. The CONTRACTOR shall furnish all labour, materials, equipment, supplies and the performance of the CONTRACTOR of all operations necessary and/or desirable for the completion of the aforesaid project.

2.3. Any items mentioned in either the plans or specifications and not included in the other, shall be deemed included and covered by this Agreement. In case of doubt or conflict of some items or provisions in the plans, drawings, technical specifications and general conditions, and this Agreement, the matter shall be formally referred to the OWNER or its Project Manager for interpretation and resolution, opinions/decisions of which shall be given Ten (10) Calendar Days from receipt thereof.

2.4. Regular Clearing and cleaning of the premises shall be done by the CONTRACTOR before, during and after the performance and/or completion of all works.

2.5. The CONTRACTOR shall procure at the expense of the OWNER all the necessary government licenses, permits and certifications (such as building permit) that are directly related to the construction of the aforesaid project, excluding those that are necessary or required in the conduct of the business of the CONTRACTOR (such as PCAB license and business permit). The CONTRACTOR shall comply fully with all laws and regulations governing the construction of the aforesaid project to the satisfaction of the OWNER, and shall keep the OWNER indemnified against all fines, charges, penalties, damages and/or losses imposed, suffered or incurred by reason of any breach of this stipulation.

ARTICLE III. CONTRACT PRICE – LABOR AND MATERIALS

3.1. For and in consideration for the faithful, timely and complete construction of the aforesaid project and the satisfactory performance of the works stipulated in this Agreement and Contract Documents, the OWNER shall pay the CONTRACTOR a fixed lump sum total of PESOS: SIX MILLION NINE HUNDRED SEVENTY THOUSAND AND THIRTY FIVE CENTAVOS (Php 6,970,000.35), inclusive of value-added tax and other pertinent taxes, subject to the availability of funds and to the usual accounting and auditing rules and regulations.

ARTICLE IV. TERMS OF PAYMENT

4.1. The OWNER shall pay the CONTRACTOR the Contract Price stipulated in this Agreement thru progress billing submitted by the CONTRACTOR based on the reported progress of work for a specific period as verified, evaluated and certified by the OWNER'S Project Manager, within seven (7) days from receipt thereof, and endorsed for payment; provided that all progress billings are accompanied by certifications issued by the CONTRACTOR, that all wages of workers falling due within the billing period and all other charges and expenses (including utilities) incurred for the accomplishments being billed have been paid in full.

4.2. Payments made by the OWNER to the CONTRACTOR for any part of the work accomplishment shall not be considered acceptance of work.

4.3. An amount equivalent to ten Percent (10%) of each progress payment shall be retained by the OWNER until 50% of the value of the works has been completed, after which no additional retention shall be made provided that the work is on schedule. The total retention money shall be due for release upon final acceptance of the works. The CONTRACTOR may, however, request the substitution of the retention money for each progress billing with irrevocable standby letters of credit from a commercial bank, bank guarantees or surety bonds callable on demand, in such sum equivalent to the retention money substituted for, provided that the works is on schedule and is satisfactorily undertaken. Otherwise, the ten Percent (10%) of each progress payment shall be retained by the OWNER.



ARTICLE V. COMMENCEMENT AND COMPLETION OF WORK

5.1. The CONTRACTOR shall commence the construction of the aforesaid project within ten (10) calendar days after receipt of written Notice to Proceed from the OWNER, and complete it within one hundred twenty (120) calendar days therefrom.



ARTICLE VI. CONTRACTOR'S LIABILITIES

6.1. The CONTRACTOR shall employ QUALIFIED and COMPETENT labour force in the project.

6.2. The CONTRACTOR shall be responsible for any damages and/or losses of all materials before, during and after installations up to the time of acceptance by the OWNER unless such damages and/or losses are due to the fault or negligence of the OWNER.



6.3. That the CONTRACTOR shall make no changes or alterations in the plans, drawings and technical specifications whatsoever without the prior written approval of the OWNER.

6.4. It is hereby agreed and understood that the CONTRACTOR is an independent contractor and is the employer or principal of all persons that it will require or permit to work in the project. The CONTRACTOR shall be exclusively and directly liable for salaries, wages and other benefits of its labourers, workers and employees as well as all claims for damages and/or injuries to its employees or third parties, and shall hold the OWNER free and harmless therefrom.



ARTICLE VII. PERFORMANCE BOND

7.1. Prior to the execution of this Agreement, the CONTRACTOR shall secure at its own expense a Performance and Liability Bond, which it shall deliver forthwith to the OWNER, the form and amount of which shall be in accordance with the schedule stated in the Notice of Award as a guarantee of the CONTRACTOR'S satisfactory performance of the contract works and to cover possible deductions and obligations arising from this Agreement.

Such performance bond shall remain and continue to be in full force and effect until final completion and acceptance of works, provided the CONTRACTOR has submitted to the OWNER the Warranty Bond stipulated under Article VII of this Agreement.



7.2. That the CONTRACTOR shall upon OWNER'S acceptance of the works and prior to final payment, obtain at its own expense a Guarantee Bond equivalent to ten percent (10%) of the total contract price including all awarded additional amount to answer for faulty and/or defective materials or workmanship for a period of one (1) year starting from date of final acceptance of the work. All such defects shall be made good by the CONTRACTOR within fifteen (15) days after they have been brought to its attention. Failure of the CONTRACTOR to do so will entitle the OWNER to undertake such repairs without prior notice to the CONTRACTOR and/or surety, the expenses to be charged against the CONTRACTOR and/or its bond.

7.3. The aforesaid bonds and insurance requirements shall be secured from GSIS or other reliable bonding company acceptable to the OWNER.

ARTICLE VIII WARRANTIES AND RESPONSIBILITIES OF THE CONTRACTOR

8.1. In case of defect or defects in workmanship which may become apparent in the course of the construction the CONTRACTOR shall, upon request of the OWNER and at the CONTRACTOR'S own expense, tear down and replace such portion of the work done that is unsound, defective or not in accordance with the plans and specifications in the OWNER'S reasonable opinion, without prejudice to the provisions in Article VI Section 6.2.

8.2. The CONTRACTOR shall comply with all the terms, conditions and stipulations stated in this Agreement and the Contract Documents as well the entire guarantee and warranty provisions, and other specific instructions imposed by the OWNER.

8.3. That the CONTRACTOR shall at all time furnish and maintain an adequate and sufficient supply of tools, equipment and skilled/unskilled workmen at the project site. The CONTRACTOR shall diligently supervise the construction until completion and it shall designate and assign a full-time, competent and licensed construction engineer at the project site who shall act as Project Supervisor.

In addition, the CONTRACTOR shall also employ competent foremen on full-time duty to supervise the workmen under this Agreement. The OWNER reserves the right to reject for justifiable reasons any person or persons employed by the CONTRACTOR in the CONSTRUCTION work and the omission of the OWNER to exercise such right shall not in any way relieve the CONTRACTOR from its responsibility to perform its obligations.

8.4. Overall coordination will be done by the OWNER'S Project Manager. The CONTRACTOR will not supervise the work of other trades in direct contract with the OWNER. However, the CONTRACTOR shall not work independently; but rather, the CONTRACTOR shall coordinate with such persons of all other trades.

8.5. The CONTRACTOR shall be responsible for maintaining the general cleanliness and sanitation of the project site and shall undertake clearing of site and removal of his construction debris during the entire contract period. After final completion but before acceptance of the work and final settlement had been made between the parties, the CONTRACTOR shall forthwith remove all surplus apparatus, machinery, scaffolding, tools and equipment not a part of the work furnished or supplied by it and shall remove all debris and leave the work free and clean of all obstruction and hindrances.

8.6. The CONTRACTOR shall guarantee the completed works against latent defects for a period of one (1) year from the date of the Certification of Acceptance of the works. This guarantee shall be secured by a Warranty Security in form and amount stipulated in Section 62.2 of the IRR of R.A. 9184.

ARTICLE IX. COMPLETION AND FINAL ACCEPTANCE

9.1. If the work done by the CONTRACTOR is fully completed and in accordance with this Agreement and the Contract Documents, as certified by the Project Manager, the OWNER shall within thirty (30) days then issue a written certificate of acceptance thereof.

9.2. After completion of works, clean-up and demobilization of the CONTRACTOR, a working crew consisting of at least a Project Engineer or Supervisor, Finishing Carpenter, Finishing Mason and other trades as may be deemed necessary with an adequate stock of materials, tools and equipment shall be available at eight (8) hours working schedule at the project site until the final acceptance of the OWNER.

9.3. Before issuance of the Certificate of Acceptance, the CONTRACTOR shall submit to the OWNER satisfactory proof all payrolls, bills and other indebtedness of the work have been paid. Any claim filed by any party arising from this Agreement will be sufficient reason for the OWNER to withhold as payment due to the CONTRACTOR such amount of the claim.

ARTICLE X. DEFAULT OF THE CONTRACTOR

10.1. If the CONTRACTOR shall assign the Contract, without the consent in writing of the OWNER first obtained or shall have an execution levied on its goods, or if the Project Manager shall certify in writing to the OWNER that in his opinion, the CONTRACTOR:

- a. has abandoned the contract; or
- b. without reasonable excuse has failed to commence the work; or
- c. has suspended progress of the work for seven (7) days; or
- d. in case of workmanship rejected by the OWNER, the CONTRACTOR fails to undertake corresponding corrective measures within fifteen (15) days after receiving from the OWNER a written order that the said work had been condemned and/or rejected by the OWNER under these conditions; or
- e. despite previous written warning by the OWNER, the CONTRACTOR is not executing the works in accordance with this Agreement or the Contract Documents, or is persistently or flagrantly neglecting to carry out its obligations thereunder; or
- f. without reasonable excuse has accused the delay of the contract work by more than fifteen (15) days; or
- g. has, to the detriment of good workmanship or in defiance of the OWNER's instruction to the contrary, sub-contract any part of this Agreement or the Contract Documents; or

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h. in any case, actions taken by the CONTRACTOR, at any time, putting the OWNER in a bad light (ex. repetitive non-payment of wages of the CONTRACTOR to its workers) and failed to address properly the issues.

Then the OWNER may, after giving a three-day written notice to the CONTRACTOR and without the necessity of any judicial process or action in law, enter the project site and expel the CONTRACTOR therefrom immediately without voiding this Agreement or releasing the CONTRACTOR from its obligation or liabilities thereunder or adversely affecting the rights and powers granted and conferred on the OWNER by virtue of this Agreement, and may itself complete the work. All essential equipment and tools belonging to the CONTRACTOR shall, at the option of the OWNER, remain at the project site for such time as they are necessary for the completion of the project, and shall be rented at such price as may be considered reasonable under the circumstance.

10.2. If the OWNER shall enter and expel the CONTRACTOR under this clause, the OWNER shall be entitled to confiscate and forfeit the Performance Bond of the CONTRACTOR to compensate for all kinds of damages it may suffer without prejudice to other remedies and courses of action available the OWNER in law or equity. All expenses incurred to finish the project shall be charged to the CONTRACTOR and/or its bond. Further, the OWNER shall not be liable to the CONTRACTOR for any amount until the cost of execution, damages for delay in completion, if any, and all other expenses incurred by the OWNER shall have been ascertained, which amount shall be deducted from any money due the CONTRACTOR on account of the Contract.

ARTICLE XI TERMINATION OF AGREEMENT

11.1. If any time the CONTRACTOR violates any terms, conditions and stipulations set forth in this Agreement and/or the Contract Documents, or the work of the CONTRACTOR is suspended or delayed due to its fault or negligence, and there is reasonable ground to believe that the unfinished work cannot be done according to schedule of work, or if the work is not completed in one hundred twenty (120) calendar days, the CONTRACTOR shall pay the OWNER liquidated damages equivalent to one-tenth of one percent (0.1%) of the total contract price per working day of delay but not to exceed ten percent (10%) of the total contract price.

11.2. The Liquidated Damages Charges shall commence on the ONE HUNDRED TWENTY FIRST (121st) calendar day unless moved to a later date due to duly approved extension of the contract period. Also, if the CONTRACTOR cannot comply with the standard of workmanship required by the OWNER and/or Project Manager, the OWNER may terminate this Agreement upon three (3) days notice and the CONTRACTOR shall be liable for whatever damages or losses which the OWNER might suffer or incur by reason thereof.

11.3. Upon termination, the CONTRACTOR shall be entitled only to payment due to it based on the actual work accomplished as approved by the OWNER at the time of the termination, less whatever accounts or claims payable to the CONTRACTOR.

11.4. Completed items of works shall mean items in the concerned scope of work that are completed or accomplished and approved by the OWNER. Also, the retention money stipulated under Article 4.3 of this Agreement will be forfeited in favour of the OWNER.

ARTICLE XII. MISCELLANEOUS PROVISIONS

12.1 The CONTRACTOR shall not sub-contract the work subject to this Agreement, nor shall assign, convey or otherwise transfer his rights over this Agreement to any person or party without the written consent of the OWNER.

12.2 Should any part of this Agreement is declared to be invalid, illegal or void by a court of competent jurisdiction, all other provisions not affected thereby shall remain in force.

12.3 This Agreement shall take effect upon approval of the TUP Board of Regents.

IN WITNESS WHEREOF, the parties hereto have hereunto affixed their respective signatures on the date and place herein before written.

By:


DR. MA. LEONOR F. VALIDOR
Campus Director, TUP-Visayas


By:


WILKINSON YU ONG
Owner, Wilkinson Construction

CERTIFICATION OF AVAILABILITY OF FUNDS:


CELESTE GRACE B. DELUMPA
Accountant III

SIGNED IN THE PRESENCE OF:


IAN VITO V. RETANA


RONA MAE RECANADO

APPROVED:


ADORA S. PILI
President
Technological University of the Philippines

REPUBLIC OF THE PHILIPPINES)
City of _____)S.S.

ACKNOWLEDGEMENT

121 OCT 2014

BEFORE ME, A Notary Public for and in the City of _____ personally came and appeared this _____ day of _____, 2014, DR. MA. LEONOR F. VALIDOR, Campus Director of the TECHNOLOGICAL UNIVERSITY OF THE PHILIPPINES VISAYAS, City of Talisay, Negros Occidental with TUP ID No. _____ and TIN No. _____ issued at _____ on _____ and WILKINSON YU ONG, Owner of WILKINSON CONSTRUCTION located at Dr. 4, Asian Dragon Building, Lacson Street, Bacolod City, Negros Occidental with TIN No. 185-949-570-000 issued at the City of Bacolod on January 01, 1997; known to be the same persons who signed and executed the foregoing Construction Agreement for the construction of Engineering Extension Building (Phase 1- Ground Floor), located at TUP Visayas Campus, Talisay City, Negros Occidental, and they acknowledged to me that the same is their free and voluntary act and deed.

Peris

This instrument consists of NINE (9) PAGES including this page on which this acknowledgement is written, signed by the parties and their witness at the bottom and on the left margin of each and every page thereof.

[Signature]

WITNESS MY HAND AND NOTARIAL SEAL at the place and date written.

Doc. No. 229
Page No. 146
Book No. 28411
Series of 2014.

[Signature]

[Signature]
AUGUSTO F. HALLUS
NOTARY PUBLIC
APPOINTED AND COMMISSIONED FOR
IN THE CITIES OF BACOLOD, TALISAY
AND PARTIAL CITIES OF MURCIA
AND SAN ANTONIO, NEGROS OCCIDENTAL.
UNITED STATES OF AMERICA
IBP D.C. NO. 2009-15
PTR NO. 549324-DAN. 02, 2014
ROLL NO. 24706-JUNE 25, 1978
MILE COMPLIANCE NO. 0001699

[Signature]

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