### PURCHASE ORDER

**PO Number:** P0002483  
**Issue Date:** 12/22/08  
**Page No:** 1  
**Delivery Date:**

Please supply the following items or services in accordance with terms of your quotation, to TENNESSEE TECHNOLOGICAL UNIVERSITY Cookeville, Tennessee. **ALL DELIVERY CHARGES ARE TO BE PREPAID AND INCLUDED IN THE PRICES SHOWN UNLESS OTHERWISE INDICATED BELOW.** Cash discounts, when authorized, will be computed from the date of delivery or from the date correct invoice is received, whichever is later.

#### SHIP TO:
- 220 W 10th St  
- Facilities  
- Cookeville TN 38505

#### SEND INVOICE IN DUPLICATE TO:
- Tennessee Technological University  
- Business Office, Box 5037  
- Cookeville, Tennessee 38505-0001

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**TENNESSEE TECHNOLOGICAL UNIVERSITY IS AN EQUAL OPPORTUNITY, NON-RACIALLY IDENTIFIABLE, EDUCATIONAL INSTITUTION THAT DOES NOT DISCRIMINATE AGAINST INDIVIDUALS WITH DISABILITIES.**

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<th>DESCRIPTION</th>
<th>UNIT PRICE</th>
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<td>EA</td>
<td>To provide Tennessee Technological University the following services from January 1, 2009, through December 31, 2009, with the option to renew up to four (4) additional years with mutual consent of the University and Contractor. All terms and conditions shall be in accordance with the Contract between Tennessee Technological University and Russell Dyer dba Custom Builders last executed on December 22, 2008. For Information, Contact: Facilities (931) 372-3227</td>
<td>1.0000</td>
<td>100,000.00</td>
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**TOTAL:** CONTINUED

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The terms and conditions printed on the reverse side of this purchase order and any duly authorized change orders shall be the sole terms and conditions that apply to this purchase and shall prevail over any subsequent terms and conditions set forth by the Vendor on invoices or in any other manner, unless otherwise expressly agreed to in writing by the University.
TENNESSEE TECHNOLOGICAL UNIVERSITY
OFFICE OF BUSINESS SERVICES
FACILITIES AND BUSINESS SERVICES BUILDING
P.O. Box 5041, 220 W. 10th St.
Cookeville, TN 38505-0001
Phone (931) 372-3491 Fax (931) 372-3727
www.tntech.edu/purchasing

ISSUED TO: Custom Builders
4519 Burgess Falls Rd
Baxter TN 38544-5316

PURCHASE ORDER
PO Number: P0002483
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Page No: 2
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Cookeville TN 38505

SEND INVOICE IN DUPLICATE TO:
Tennessee Technological University
Business Office, Box 5037
Cookeville, Tennessee 38505-0001

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<td>- Hourly Rate for Skilled (Finish) Carpenters for jobs under $50,000.00 total aggregate: $29.00 / hour</td>
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<td>- Hourly Rate for Unskilled Carpenters (Helpers or Laborers) for jobs under $50,000.00 total aggregate: $16.00 / hour</td>
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<td>- For all jobs over $50,000.00 total aggregate the State of Tennessee’s Prevailing Wage Rate shall apply. The Contractor may then apply a multiplier of 1.50 to the State of Tennessee’s Prevailing Wage Rate.</td>
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<td>- Materials furnished by Contractor are to be charged to the University at a rate of &quot;cost plus fifteen percent (15%).&quot; Cost is defined as Contractor’s invoiced cost plus tax.</td>
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<td>- When work is done at the Craft Center, as</td>
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TOTAL: CONTINUED

The terms and conditions printed on the reverse side of this purchase order and any duly authorized change orders shall be the sole terms and conditions that apply to this purchase and shall prevail over any subsequent terms and conditions set forth by the Vendor on invoices or in any other manner, unless otherwise expressly agreed to in writing by the University.

AUTHORIZED SIGNATURE: ______________
FOR TENNESSEE TECHNOLOGICAL UNIVERSITY
Please supply the following items or services in accordance with terms of your quotation, to TENNESSEE TECHNOLOGICAL UNIVERSITY Cookeville, Tennessee. ALL DELIVERY CHARGES ARE TO BE PREPAID AND INCLUDED IN THE PRICES SHOWN UNLESS OTHERWISE INDICATED BELOW. Cash discounts, when authorized, will be computed from the date of delivery or from the date correct invoice is received, whichever is later.

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<td>defined in the above referenced Contract, Contractor may charge one (1) hour extra labor per day per person, in accordance with each person's labor classification. - The maximum liability of this contract shall not exceed $100,000.00.</td>
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DISCOUNT: 0.00

TOTAL: 100,000.00

The terms and conditions printed on the reverse side of this purchase order and any duly authorized change orders shall be the sole terms and conditions that apply to this purchase and shall prevail over any subsequent terms and conditions set forth by the Vendor on invoices or in any other manner, unless otherwise expressly agreed in writing by the University.

AUTHORIZED SIGNATURE: [Signature]
FOR TENNESSEE TECHNOLOGICAL UNIVERSITY
CONTRACT
BETWEEN TENNESSEE TECHNOLOGICAL UNIVERSITY
AND
RUSSELL DYER DBA CUSTOM BUILDERS

This Contract, by and between Tennessee Technological University, hereinafter referred to as the "University" and Russell Dyer DBA Custom Builders hereinafter referred to as the "Contractor," is for hourly carpentry labor services, as further defined in the "SCOPE OF SERVICES." This Contract is the University's secondary carpentry labor services contract, meaning that the Primary Contractor, Earth-Born Contractors, has right of first refusal of work to be performed under this contract.

The Contractor is a proprietorship. The Contractor's address is 4519 Burgess Falls Road, Baxter, TN 38544. The Contractor's place of organization is Tennessee.

A. SCOPE OF SERVICES:

The Contractor shall provide hourly carpentry services as outlined herein.

B. CONTRACT TERM:

B.1. Contract Term. This Contract shall be effective for the period commencing on January 1, 2009, and ending on December 31, 2009. The University shall have no obligation for services rendered by the Contractor which are not performed within the specified period.

B.2. Term Extension. The University reserves the right to extend this Contract for an additional period or periods of time representing increments of no more than one year and a total contract term of no more than five (5) years.

C. PAYMENT TERMS AND CONDITIONS:

C.1. Payments to the Contractor shall be made in accordance with the Tennessee Prompt Pay Act. Payments shall be made only after receipt of invoice(s) by the Contractor and after performance of the portion of the goods/services which the invoiced amount represents. The final payment shall be made only after the Contractor has completely performed its duties under this Contract.

C.2. The following rates shall apply to any project of $50,000.00 or less total cost.

- Skilled (Finish) Carpenter $29.00 /hour
- Unskilled Carpenter (Helper or Laborer) $16.00 /hour

C.3. In the event that a project exceeds $50,000.00 in total cost, the Contractor will be required to comply with all policies, conditions and rules of the Tennessee Department of Labor, pursuant to TCA Section 12-4-401, et seq. The Contractor will be required to pay the prevailing wage scale current to the area specific to that assigned to each project. Contractor will be required to furnish weekly payrolls with the appropriate decision number noted on each to the Tennessee Department of Labor and Workforce Development. Contractor shall apply the following multiplier to the prevailing wage rate hourly rates for those projects which are subject to said prevailing wage rates. This multiplied rate shall include all wages, costs, administrative expenses, etc. necessary to accomplish work in accordance with applicable statute(s). The multiplier to be applied to the above rates shall be 1.5.

C.4. Materials furnished by Contractor are to be charged to the University at a rate of cost plus fifteen percent (15%). (Note: Cost is defined as Contractor's invoiced cost plus tax. Upon request of the University, contractor may be required to furnish a copy of contractor's purchase invoice as proof of cost.)
C.5 **Financial Considerations and Invoicing:** Contractor must provide an invoice to the University for work performed under this Contract. Each invoice shall reference the University’s Purchase Order Number as well as identifying information for the particular project (i.e. work order number, name of project manager, location of work site, etc.). All charges for all work performed shall be itemized. In addition, labor shall be itemized by quoted labor rates (i.e. indicate how much of total labor costs is skilled labor and how much is unskilled/helper labor). Invoices shall also itemize all materials furnished by Contractor, as applicable, along with copies of any invoices acquired by the Contractor for said materials. Contractor shall submit invoices to the University every two weeks. If a project is completed in two weeks or less, a single invoice for the entire project must be submitted within fourteen (14) working days of project completion. Final invoices of all projects completed in a time period over two weeks must be submitted within fourteen (14) working days of project completion.

C.6 When work is done at the Craft Center (Off Hwy 56 at Hurricane Bridge near Smithville, TN), the University agrees to allow the Contractor to charge one (1) hour extra labor per day per person, in accordance with each person’s labor classification, in order to cover expenses incurred as a result of travel time to the Craft Center.

C.7 In no event shall the annual liability of the University under this Contract exceed $100,000.

D. **CONTRACTOR RESPONSIBILITIES:**

D.1 Contractor shall provide hourly labor services on an as required basis by the University.

D.2 The hourly labor rate shall include all costs associated with providing carpentry services to the University including, but not limited to, travel, meals, lodging, tools and equipment.

D.3 Labor rate charges shall begin at the time Contractor arrives on job site. Travel time to and from job site is at Contractor's expense.

D.4 Contractor personnel are required to notify University personnel when they reach job site and when they leave job site.

D.5 Contractor must possess a valid Contractor’s license with all applicable classifications and endorsements.

D.6 Contractor must provide its own tools of the trade. The University will not be responsible for lost or stolen items.

D.7 Contractor must have sufficient manpower to accommodate multiple extensive projects as necessary.

D.8 University requires, as to the nature of the work, that all workers wear shirts, pants (ankle length) and shoes.

D.9 The Contractor shall be responsible for adequately securing their work areas.

D.10 Contractor shall be responsible for clean up of all materials from the job site, unless otherwise instructed by the University.

D.11 All applicable permits, licenses and taxes shall be the sole responsibility of the Contractor.

D.12 Contractor shall assist University personnel with cost estimates on carpentry work contemplated or on renovations that include carpentry work and materials. These project estimates are to be provided at no cost to the University.
D.13 Prevailing Wage Scale Determination. Work under this Contract is subject to the policies, conditions and rules of the Tennessee Department of Labor, pursuant to TCA Section 12-4-401, et seq. The Contractor is required to pay the prevailing wage scale current to the area specific to each project to workers employed to accomplish any work pursuant to the project. For each project that exceeds fifty thousand dollars ($50,000), Contractor is required to furnish weekly payrolls with the appropriate decision number noted on each to the Tennessee Department of Labor and Workforce Development. Specific wage rate determinations will be acquired for each applicable project by the University Facilities Office and will be conveyed to Contractor prior to inception of work on said project. A copy of the 2007-2008 Building Prevailing Wage Rates is attached. Region 7 rates apply for Putnam County. (This information may also be accessed online at http://www.tennessee.gov/labor-wfd/lsbldgrates.pdf).

D.14 Wage scale guidelines will not apply to projects of $50,000 or less total aggregate.

D.15 Work to be performed under this contract is to include, but not be limited to, the following examples:
- All types of general carpentry work
- Finishing trim woodwork
- Installing metal stud walls
- Installing and finishing sheetrock
- Installing door frames, doors, and door hardware (which could include mortising in locksets)
- Installing lay in or suspended ceilings
- Wallpapering
- Masonry work on a limited basis (i.e. cutting a hole in a masonry wall to install a new frame and door)
- Painting and refinishing within renovation projects

E. GENERAL TERMS AND CONDITIONS:

E.1. **Required Approvals.** The University is not bound by this Contract until it is approved by the appropriate officials in accordance with applicable Tennessee laws and regulations as shown on the signature page of this Contract.

E.2. **Modification and Amendment.** This Contract may be modified only by a written amendment executed by all parties hereto and approved by the appropriate officials.

E.3 **Termination for Convenience.** With respect to the service contract, which may be executed upon completion of the initial phase (system implementation) of this Contract, the University may terminate the service contract with a thirty (30) day written notice submitted by the University Purchasing Office. Upon termination the Contractor shall be entitled to receive just and equitable compensation for any satisfactory authorized work completed as of the termination date.

E.4. **Termination for Cause.** If the Contractor fails at any time to perform its obligations under this Contract in a timely or proper manner, or if the Contractor violates any term of this Contract, the University shall have the right to immediately terminate the Contract and withhold payments in excess of fair compensation for goods received and/or work completed; however, the University shall have the option to give Contractor written notice and a specified period of time in which to cure. Notwithstanding the above, the Contractor shall not be relieved of liability to the University for damages sustained by virtue of any breach of this Contract by the Contractor.

E.5. **Subcontracting.** The Contractor shall not assign this Contract or enter into a subcontract for any of the services performed under this Contract without obtaining the prior written approval of the University. If such subcontracts are approved by the University, they shall contain, at a minimum,
sections of this Contract pertaining to "Conflicts of Interest" and "Nondiscrimination". Notwithstanding any use of approved subcontractors, the Contractor shall be the prime contractor and shall be responsible for all work performed.

E.6. **Nondiscrimination.** The Contractor hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Contractor on the grounds of disability, age, race, color, religion, sex, veteran status, national origin, or any other classification protected by Federal, or State constitutional or statutory law. The Contractor shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.

E.7. **Records.** The Contractor shall maintain documentation for all charges against the University under this Contract. The books, records, and documents of the Contractor, insofar as they relate to work performed or money received from the University under this Contract, shall be maintained for a period of three (3) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the University, the Comptroller of the Treasury, or their duly appointed representatives. The Contractor's financial statements shall be prepared in accordance with generally accepted accounting principles.

E.8. **Monitoring.** The Contractor’s activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the University, the Comptroller of the Treasury, or their duly appointed representatives.

E.9. **Strict Performance.** Failure by any party to this Contract to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the parties hereto.

E.10. **Independent Contractor.** The parties hereto, in the performance of this Contract, shall not act as employees, partners, joint ventures, or associates of one another. It is expressly acknowledged by the parties hereto that the parties are independent contracting entities and that nothing in this Contract shall be construed to create an employer/employee relationship or to allow either to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever.

The Contractor, being an independent contractor and not an employee of the University, agrees to carry adequate public liability and other appropriate forms of insurance on the Contractor's employees, and to pay all applicable taxes incident to this Contract.

E.11. **University Liability.** The University shall have no liability except as specifically provided in this Contract.

E.12. **Force Majeure.** The obligations of the parties to this Contract are subject to prevention by causes beyond the parties' control that could not be avoided by the exercise of due care including, but not limited to, acts of God, riots, wars, epidemics or any other similar cause.

E.13. **State and Federal Compliance.** The Contractor shall comply with all applicable State and Federal laws and regulations, including University policies and guidelines in the performance of this Contract.

E.14. **Governing Law.** This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Contractor agrees that it will be subject to the exclusive
jurisdiction of the Tennessee Claims Commission in actions that may arise under this Contract. The Contractor acknowledges and agrees that any rights or claims against the University or its employees hereunder, and any remedies arising therefrom, shall be subject to and limited to those rights and remedies, if any, available under Tennessee Code Annotated, Sections 9-8-101 through 9-8-407.

E.15. **Severability.** If any terms or conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions hereof shall not be affected thereby and shall remain in full force and effect. To this end, the terms and conditions of this Contract are declared severable.

E.16. **Headings.** Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.

E.17. **Communications and Contacts.** All instructions, notices, consents, demands, or other communications shall be sent in a manner that verifies proof of delivery. Any communication by facsimile transmission shall also be sent by United States mail on the same date as the facsimile transmission. All communications which relate to any changes to the Contract shall not be considered effective until agreed to, in writing, by both parties.

The University:
Mark Greenwood, Buyer
Tennessee Technological University
P. O. Box 5041
220 West 10th Street
Cookeville, TN 38505
Phone: (931) 372-6350
Fax: (931) 372-3727
Email: mgreenwood@tn-tech.edu

The Contractor:
Russell Dyer, Owner DBA
Custom Builders
4519 Burgess Falls Road
Baxter, TN 38544
(931) 260-1600

E.18. **Breach.** A party shall be deemed to have breached the Contract if any of the following occurs (However, this list is not exclusive):  

- failure to perform in accordance with any term or provision of the Contract;
- partial performance of any term or provision of the Contract;
- any act prohibited or restricted by the Contract, or violation of any warranty.

E.19. **Contract Documents.** Included in this Contract by reference are the following documents:

a. This Contract document and its attachments
b. The Request for Quotations and its associated amendments
c. The Contractor's Bid

In the event of a discrepancy or ambiguity regarding the interpretation of this Contract, these documents shall govern in order of precedence as listed above.

E.20. **Prohibited Advertising.** The Contractor shall not refer to this Contract or the Contractor's relationship with the University hereunder in commercial advertising in such a manner as to state or imply that the Contractor or the Contractor's services are endorsed.
E.21. **Hold Harmless.** The Contractor agrees to indemnify and hold harmless the University as well as its officers, agents, and employees from and against any and all claims, liabilities, losses, and causes of action which may arise, accrue, or result to any person, firm, corporation, or other entity which may be injured or damaged as a result of acts, omissions, or negligence on the part of the Contractor, its employees, or any person acting for or on its or their behalf relating to this Contract. The Contractor further agrees it shall be liable for the reasonable cost of attorneys for the University in the event such service is necessitated to enforce the terms of this Contract or otherwise enforce the obligations of the Contractor to the University.

In the event of any such suit or claim, the Contractor shall give the University immediate notice thereof and shall provide all assistance required by the University in the University's defense. The University shall give the Contractor written notice of any such claim or suit, and the Contractor shall have full right and obligation to conduct the Contractor's own defense thereof. Nothing contained herein shall be deemed to accord to the Contractor, through its attorney(s), the right to represent the University in any legal matter, such rights being governed by Tennessee Code Annotated, Section 8-6-106.

E.22. **Debarment and Suspension.** The Contractor certifies, to the best of its knowledge and belief, that it and its principals:

a. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal or state department or agency;

b. have not within a three (3) year period preceding this Contract been convicted of, or had a civil judgment rendered against them from commission of fraud, or a criminal offence in connection with obtaining attempting to obtain, or performing a public (Federal, State, or Local) transaction or grant under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;

c. are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State, or Local) with commission of any of the offenses listed in section b. of this certification; and

d. have not within a three (3) year period preceding this Contract had one or more public transactions (Federal, State, or Local) terminated for cause or default.

E.23. **Prohibition of Illegal Immigrants.** Tennessee Public Chapter No. 878 of 2006, TCA 12-4-124, requires that Contractor attest in writing that Contractor will not knowingly utilize the services of any illegal immigrants in the performance of this contract and will not knowingly utilize the services of any subcontractor, if permitted under this Contract, who will utilize the services of illegal immigrants in the performance of this Contract. The attestation shall be made on the form, Attestation re Personnel Used in contract Performance ("the Attestation"); which is attached and hereby incorporated by this reference.

If contractor is discovered to have breached the Attestation, the Commissioner of Finance and Administration shall declare that the Contractor shall be prohibited from contacting or submitting a bid to any Tennessee Board of Regents institution or any other state entity for a period of one (1) year from the date of discovery of the breach. Contractor may appeal the one (1) year by utilizing an appeals process in the rules of Finance and administration, 0620.

E.24 **Voluntary Buyout Program.** The Contractor acknowledges and understands that, for a period of two (2) years beginning August 16, 2008, restrictions are imposed on former state employees
who received a State of Tennessee Voluntary Buyout Program (VBP) severance payment with regard to contracts with state agencies that participated in the VBP.

a. The State will not contract with either a former state employee who received a VBP severance payment or and entity in which a former state employee who received a VBP severance payment or the spouse of such an individual holds a controlling financial interest.

b. The State may contract with an entity with which a former state employee who received a VBP severance payment is an employee or an independent contractor. Notwithstanding the foregoing, the Contractor understands and agrees that there may be unique business circumstances under which a return to work by a former state employee who received a VBP severance payment as an employee or an independent contractor of a State contractor would not be appropriate, and in such cases the State may refuse Contractor personnel. Inasmuch, it shall be the responsibility of the State to review Contractor personnel to identify any such issues.

c. With reference to either subsection a. or b. above, a contractor may submit a written request for a waiver of the VBP restrictions regarding a former state employee and a contract with a state agency that participated in the VBP. Any such request must be submitted to the State in the form of the VBP Contracting Restriction Waiver Request format available from the state and the Internet at www.state.tn.us/finance/rds/gcc/waiver.html. The determination on such a request shall be at the sole discretion of the head of the state agency that is a Party to this Contract, the Commissioner of Finance and Administration, and the Commissioner of Human Resources.
IN WITNESS WHEREOF:

RUSSELL DYER DBA CUSTOM BUILDERS

Russell Dyer, Owner

Date

TENNESSEE TECHNOLOGICAL UNIVERSITY:

Dr. Claire Stinson
Vice President for Business & Fiscal Affairs

Date

TENNESSEE BOARD OF REGENTS:

Dr. Charles Manning
Chancellor

Date