

RESIDENTIAL CONSTRUCTION CONTRACT

THIS RESIDENTIAL CONSTRUCTION CONTRACT-TINY HOUSE ("Contract") is made as of this ____ day of _____, _____, by and between _____ (whether one or more, "Owner"), and the STATE OF MINNESOTA, by and through the Board of Trustees of the Minnesota State Colleges and Universities, on behalf of St Cloud Technical and Community College ("College").

RECITALS

A. College offers a carpentry program course, which is designed to give its students practical experience in constructing residential dwellings and related improvements.

B. Owner desires to have College's carpentry program students provide certain services in connection with the construction of a tiny house in the College's carpentry lab (the "Site"), as specifically set forth in this Contract.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals, the agreements set forth in this Contract and other good and valuable consideration, and pursuant to the authority granted in Minnesota Statutes section 136F.36, subdivision 1 (2010), Owner and College agree as follows:

- 1. WORK TO BE PERFORMED BY COLLEGE'S STUDENTS; SUPERVISION OF STUDENTS.** Subject to the provisions of this Contract, students enrolled in College's carpentry plumbing and electrical programs (the "Students"), under the supervision of College's instructors(the "Instructors"), shall provide usual and customary labor and equipment to accomplish the carpentry, plumbing and electrical work (the "Work") needed to complete the house as shown on, and in reasonable accordance with, the final plans and specifications attached hereto as *Exhibit B* (the "Plans"), which are incorporated into this Contract, as modified by any Change Orders (defined in Section 2 of this Contract and as shown on attached *Exhibit C*) requested by Owner and approved by College. College anticipates that the Work will commence on _____, _____ (the "Commencement Date"), or as soon thereafter as College deems feasible. Owner acknowledges that the Work is to be performed by the Students, under the supervision of the Instructors, as part of an educational process, and that College shall not be held to any greater standard, duty or quality of workmanship than what can reasonably be expected under such circumstances.

The overall focus of the project is based on student learning outcomes for the courses and programs. Owner understands that instructor(s) must give completion of courses/program outcomes a priority when scheduling work on the project.

The Instructors shall supervise the Work. Owner agrees that only the Instructors or other employees, representatives or agents of College shall have the right to give

instructions and directions to the Students. Owner shall contact the Instructors regarding any complaints, inquiries or suggestions relating to the Work. If Owner interferes with or attempts to instruct or direct any Student, and if such activity continues after College delivers written notice to Owner, then in addition to any other right or remedy College may have, College shall have the right at any time thereafter to terminate this Contract by giving written notice of such termination to Owner, and upon such termination, Owner shall pay College the Service Charge (as defined in Section 8 of this Contract), and thereafter, the parties hereto shall have no further obligations under this Contract.

When St Cloud Technical and Community College is closed due to weather conditions, special circumstances or scheduled breaks, the instructor(s) and students will not be on the site and will be unavailable.

2. **CHANGE ORDERS.** If Owner desires any changes or modifications to the Plans, Owner shall submit to College's Dean of Trades & Industry a written change order, on a form acceptable to College, which shall describe in detail the proposed changes or modifications and such other information relating thereto as College may require (the "Change Order(s)"). There are no fees assessed for a Change Order(s). All Change Orders shall be subject to the approval of College. Each Change Order will be reviewed for applicability to the curriculum and impact on the overall project. Owner and/or Instructors do not have the authority to approve the Change Orders or implement changes to the project without a written Change Order approved by the Dean of Trades & Industry in advance.
2. **OWNER'S OBLIGATIONS AND RESPONSIBILITIES.** Employees of St Cloud Technical and Community College shall not act as general contractors. Any discussion about subcontractors or materials with College employees or students are suggestions only. The responsibility for all decisions lies solely with the Owner and/or the Owner's general contractor.

Owner shall act as general contractor in connection with the construction of the improvements shown on the Plans (the "Improvements"), and in addition to other obligations and responsibilities of Owner set forth in this Contract, Owner shall be obligated and responsible for each of the matters listed below. Owner shall ensure that all construction related decisions and purchases are made in a timely manner so as not to delay progression of the Work.

- (a) **Subcontractors.** Owner shall contract or subcontract for all labor and services necessary to complete the Improvements, other than the Work, including, without limitation, painting and staining (except for such priming as may be expressly agreed to in writing by College). The providers of all such labor and services (collectively, the "Subcontractors") shall be duly qualified and licensed, if required by law and must adhere to all OSHA and environmental rules. Owner shall provide College's Dean of Trade & Industry with a true, correct and complete list of the Subcontractors no later than ten (10) days before the Commencement Date of the Subcontractor work. Owner shall cause each

Subcontractor to perform its work to the Improvements in compliance with all laws and in good and workman-like manner. Owner shall coordinate with College regarding the order and priority of construction of the Improvements, and shall cause all of the Subcontractors to cooperate with College, so that the construction of the Improvements, including, without limitation, the Work, shall be completed in an orderly manner and in accordance with such schedule as College may require to complete the Work on or before the Completion Date (as defined in Section 7 of this Contract).

- (b) **Vendor Accounts.** Owner shall open accounts in Owner's name with such material suppliers as College may deem necessary or desirable. Such accounts must be established on or before the Commencement Date. The Instructors shall have the right to charge to such account all materials obtained for the Work. No materials obtained in connection with the Improvements, including, without limitation, the Work, shall be charged to the College.
- (c) **Compliance of the Plans and Change Orders with Laws.** Owner assumes full responsibility for the compliance of the Plans and any Change Orders with all applicable laws, and with sound building and engineering practices. No approval of the Plans or any Change Order by College or the Instructors, Students or any other representative, employee, agent or student of College shall make College responsible for the adequacy, form or content of the Plans or any Change Order.
- (d) **Record Keeping.** It is the responsibility of the Owner or General Contractor to maintain all records regarding costs and materials. Within 30 days of the end of every calendar month, the Owner will provide a copy of invoices for all Materials, or other supporting evidence as College may require to the College. These documents will be used to verify amount of the Service Charge (as defined in Section 8) and will be invoiced monthly.

If Owner breaches any of its obligations set forth above, then in addition to any other right or remedy that College may have, College shall have the right to terminate this Contract if Owner fails to cure such breach within ten (10) days after College delivers written notice of such breach to Owner, and upon any such termination, the Owner must remove the Tiny House and all Owner purchased materials within ten (10) days after termination and pay the amount of Service Charge due prior to removal. College shall have no further obligations under this Contract.

4. **OWNER'S REPRESENTATIONS AND WARRANTIES.** To induce College to enter into this Contract, Owner represents and warrants as follows:

- (a) **Authority.** Owner has the power and authority to enter into and perform this Contract. This Contract and the obligations of Owner herein are valid and binding obligations of Owner, and are enforceable in accordance with the terms herein.

- (b) **Financial Ability.** Owner either has funds in Owner's possession sufficient to pay for the total cost of materials and services to construct the Improvements, or has received a binding commitment from a lender for such funds to pay for such cost as and when due.

Owner shall promptly provide College such information as College may request to verify the validity of any or all of the foregoing representations.

5. **INSURANCE; WAIVER OF CLAIMS; INDEMNIFICATION.** At all times during the term of this Contract, Owner shall obtain and keep in effect insurance policies for the following coverage relating to the Improvements:

- (a) insurance against loss or damage by fire, lightening, vandalism, malicious mischief and other perils covered by a policy of "builder's all risk" property insurance, in an amount not less than the full replacement value of the Improvements; and
- (b) general liability insurance against claims for bodily injury, death and property damage occurring at the Site, which shall provide coverage in the amount of at least \$100,000 with respect to any occurrence.

At execution of this contract, Owner shall promptly provide College with a true, correct and complete copy of such policies, certificates of insurance for such policies or other evidence of insurance required by this section in a form acceptable to College. The "builder's all risk" policy required by this section shall provide that any losses shall be payable notwithstanding (1) any act or neglect by Owner or Owner's agents, representatives, contractors or subcontractors, including, without limitation, College and the Students, the Instructors, and any other representative, employee, agent or student of College, (2) any waiver of subrogation rights by the insured, and (3) any change in title.

Owner hereby releases College and the Students, the Instructors, and any other representative, employee, agent or student of College from any and all liability and responsibility (to Owner or anyone claiming through or under Owner by way of subrogation or otherwise) for any loss or damage covered by property insurance or coverall by a customary "builder's all risk" policy required by this section, even if such loss or damage shall have been caused by the fault or negligence of College or anyone for whom College may be responsible, including, without limitation, the Students, the Instructors, or any other representative, employee, agent or student of College.

Owner shall defend, indemnify and hold College and the Students, the Instructors, and any other representative, employee, agent or student of College, harmless from and against all claims, losses, damages and expenses in connection with:

- (i) the inadequacy or illegality of any portion of the Plans and/or any Change Orders;

- (ii) any defects in any materials used to construct the Improvements, unless such defects result from damage caused by the Students or the Instructors; and
- (iii) any actions or inactions relating to the construction of the Improvements by any person other than the Students, the Instructors, or any other representative, employee, agent or student of College.
- (iv) not completing the entire project as described in Appendix B or subsequently identified in a punch list.

Owner's releases and indemnification obligations set forth in this section shall survive the termination of this Contract.

6. **INSPECTION OF WORK.** On or before _____, _____ [e.g., the date that is ten (10) days before the Completion Date], Owner, Dean of Trades & Industry, and the Instructors shall collaboratively inspect what portion of the Work remains unfinished or are defective, if any. During such inspection, a punch list of any unfinished or defective portions of the Work will be created. The Owner, Dean of Trades & Industry, and Instructors will prioritize the punch list to reflect which items can reasonably be completed prior to DATE and will also meet any remaining required student learning outcomes.

In addition, at any time and from time to time during the performance of the Work prior to said inspection, if required by either Owner or College, Owner, Dean of Trades & Industry, and the Instructors shall inspect the Improvements to determine whether any portions of the Work performed prior to the date of any such inspections are defective.

If there is a dispute as to any alleged defect or any punch list items, Owner and College will meet to determine what items remain and to mutually resolve any other issues with respect to the project. The college will be represented by the Vice President of Administration.

7. **COMPLETION OF WORK.** College shall use good faith efforts to complete the Work (including any punch list items prepared in accordance with Section 6 of this Contract) on or before _____, _____ (the "Completion Date"). Degree of completion will depend on weather conditions, complexity of project, change orders, delivery delays or other constraints beyond the control of the college. There is no guarantee that the Project or Addendum Work will be 100% completed by St Cloud Technical and Community College, including its students or faculty.
8. **COMPENSATION, DEPOSIT, SERVICE CHARGE AND REIMBURSEMENT FOR CERTAIN EXPENSES.** Simultaneously with executing and delivering this Contract to College, Owner shall deliver to College a cashier's check in the amount of Two Thousand Dollars and 00/100 (\$2,000) made payable to College, as an earnest money deposit, which shall be nonrefundable. The deposit is applied as retainage to be applied at the end of the contract term. Subject to the completion of the Work in accordance with this Contract, on or before the Completion Date, or upon earlier termination of this contract as provided

herein, Owner shall pay College, by a cashier's check made payable to College, the following:

- (a) a service charge (the "Service Charge") for the performance of the Work in the amount equal to 20% of the retail cost of all materials and supplies (See Exhibit D) incorporated into or used in connection with the Work; provided that the Deposit collected by College shall be credited to the Service Charge; plus

Owner's payment of the Service Charge shall be accompanied by a copy of invoices for all Materials, or other supporting evidence as College may require, to verify the correct amount of the Service Charge. Invoices must be paid with 30 (thirty) days of receipt. OWNER AGREES THAT OWNER SHALL NOT OCCUPY THE IMPROVEMENTS OR THE SITE UNTIL OWNER HAS PAID COLLEGE ALL AMOUNTS OWING UNDER THIS SECTION.

- 9. **Use of Photograph, Video and Promotional Materials.** The College will have full access to take photographs and videos of the tiny house during stages of construction and of the completed product. These photographs and videos may be used in future St. Cloud Technical and Community College(SCTCC) or SCTCC Foundation publications, on the SCTCC website or in other associated materials.
- 10. **NOTICE TO OWNER.** The following notice is provided by College to Owner pursuant to Minn. Stat. § 514.011, subd. 1:
 - (a) Any person or company supplying labor or materials for this improvement to your property may file a lien against your property if that person or company is not paid for the contributions.
 - (b) Under Minnesota law, you have the right to pay persons who supplied labor or materials for this improvement directly and deduct this amount from our contract price, or withhold the amounts due them from us until one hundred twenty (120) days after completion of the improvement unless we give you a lien waiver signed by persons who supplied any labor or material for the improvement and who gave you timely notice.
- 11. **NO REPRESENTATIONS OR WARRANTIES.** PURSUANT TO THE AUTHORITY GRANTED BY MINNESOTA STATUTES, SECTION 136F.36, SUBDIVISION 3, COLLEGE ELECTS NOT TO OFFER THE WARRANTIES CONTAINED IN MINNESOTA STATUTES, CHAPTER 327A. OWNER ACKNOWLEDGES THAT THE WARRANTIES CONTAINED IN MINNESOTA STATUTES, CHAPTER 327A DO NOT APPLY TO ANY PART OF THE WORK. OWNER FURTHER ACKNOWLEDGES THAT, EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN THIS CONTRACT, COLLEGE MAKES NO REPRESENTATIONS OR WARRANTIES REGARDING THE WORK. OCCUPANCY OF THE IMPROVEMENTS BY OWNER SHALL BE CONCLUSIVE EVIDENCE THAT OWNER HAS ACCEPTED THE WORK "AS-IS,"

SUBJECT ONLY TO THE COMPLETION OF ANY ITEMS IDENTIFIED IN A PUNCH LIST PREPARED IN ACCORDANCE WITH SECTION 6 OF THIS CONTRACT.

12. **NOTICES.** Any notice required or permitted under this Contract shall be in writing and given by personal delivery upon an authorized representative of a party hereto, or by mailing in a sealed wrapper by United States registered or certified mail, return receipt requested, postage prepaid, properly addressed as follows:

If to College: _____

If to Owner: _____

Notices shall be deemed effective on the earlier of the date of receipt or the date of deposit; provided, however, that if notice is given by deposit, the time for response to any notice by the other party shall commence to run two (2) business days after any such deposit. Any party may change its address for the service of notice by giving notice of such change ten (10) days prior to the effective date of such change.

13. **BUSINESS DAYS.** The term “Business Days” as used in this Agreement means any day other than a Saturday, Sunday or a holiday on which the offices (other than emergency services) of the State of Minnesota are closed.
14. **MISCELLANEOUS.** The section headings or captions appearing in this Contract are for convenience only, are not a part of this Contract and are not to be considered in interpreting this Contract. This Contract, together with the exhibits and the addendum, if any, attached hereto, constitute the entire agreement between the parties, and no other agreements prior to this Contract or contemporaneous herewith shall be effective except as expressly set forth or incorporated herein. This Contract may not be amended or modified except by a written agreement signed and delivered by Owner and an authorized representative of College. This Contract shall be interpreted and governed by the laws of the State of Minnesota. Venue for all legal proceedings arising out of this contract, or breach thereof, shall be in the state or federal court with competent jurisdiction in Ramsey County, Minnesota. If any provision of this Contract or the application to any circumstance shall be invalid or unenforceable to any extent, the remainder of this Contract and the application of such provision to any other circumstance shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

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IN WITNESS WHEREOF, Owner and College have executed and delivered this Agreement as of the date first written above.

OWNER:

By: _____

(Print name and title)

Date: _____

By: _____

(Print name and title)

Date: _____

COLLEGE:

STATE OF MINNESOTA
Board of Trustees of the
Minnesota State Colleges and Universities

By: _____

(Print name and Title)

Date: _____

Verified as to allotment/encumbrance

By: _____

Title: _____

Date: _____

Verified as to form and execution:

By: _____

Title: _____

Date: _____

EXHIBITS:

- Exhibit A:** (N/A)
- Exhibit B:** Plans and Specifications
- Exhibit C:** Change Order Form
- Exhibit D:** Service Charge Calculation Procedures

AG:2203358, v. 1

EXHIBIT A

[Legal Description of Site]

N/A

EXHIBIT B

[Attach Plans and Specifications]

EXHIBIT C

[Change Order]

CHANGE ORDER NO. _____

Dated: _____

Owner: _____

Job Site Address: _____

TO: St Cloud Technical & Community College

Signature of Owner
[both must sign if married couple]

Signature of Owner

Nature of Change: _____

Attachments (Amended Drawings, plans, specifications): _____

Change in Contract Time: _____

Approved by: _____ Date _____
St Cloud Technical & Community College

EXHIBIT D

[Service Charge Calculation Procedures]

Specific service charge calculation procedures include the following:

- The fee is based on the full retail value of ALL items purchased by the owner (includes cost of the trailer) and included in construction of the tiny house project (not net of discounts, coupons, gift cards, etc.)
- If the owner chooses to use recycled materials, the instructor will obtain an estimate from a vendor for the retail value of the items (e.g., using reclaimed lumber instead of new)
- The amount of tax used in the service charge calculation is based on the gross amount of the charges
- Shipping is not included
- Equipment rentals that are instructional are included (e.g., scaffolding, sheet rock jack, etc.); equipment rentals that are not instructional are excluded (e.g. portable toilets, etc.)