

**COLLABORATIVE CONSTRUCTION PROJECT AGREEMENT**

**between**

**The Salvation Army, a California Corporation dba: Helena Corps'**

**and**

**The University of Montana – Helena College of Technology**

This collaborative agreement (the Agreement), dated August 5, 2005, is by and between The Salvation Army, a California corporation dba: Helena Corps' (referred to in this Agreement as The Salvation Army), with its principal place of business located at 1905 Henderson, Helena, Montana 59601; and The University of Montana – Helena College of Technology (referred to in this Agreement as UM-Helena), a Montana state-funded educational institution with its principal place of business located at 1115 North Roberts Street, Helena, Montana 59601.

**RECITALS**

WHEREAS, UM-Helena desires to provide hands-on educational experience to its students enrolled in its Construction Technology Program; and

WHEREAS, The Salvation Army, Helena Corps', desires to foster a relationship with UM-Helena for the purposes of enhancing UM-Helena's Construction Technology Program; and

WHEREAS, UM-Helena desires to assist The Salvation Army in providing affordable housing to underprivileged families in Helena; and

WHEREAS, the parties have agreed to work together to construct a series of duplexes adjacent to The Salvation Army, 1905 Henderson, Helena, Montana (referred to in this Agreement as the Duplex(es) or the Project) in order to provide hands-on experience for the students of the Construction Technology Program and provide affordable housing for underprivileged families in Helena; and

WHEREAS, the parties wish to set forth in writing the terms and conditions of their agreement with regard to the construction of the Duplex(es);

NOW, THEREFORE, the parties mutually agree as follows:

## AGREEMENT

### ARTICLE 1. GENERAL DEFINITIONS

The following comprise the general definitions of terms used in this Agreement:

**Section 1.01. THE SALVATION ARMY, HELANA CORPS' PROJECT MANAGER:** The Salvation Army, Helena Corps' Project Manager (referred to as the Project Manager) is the project manager hired by the Salvation Army, Helena Corps' to perform all administrative tasks and functions related to the construction phases of the Duplex(es). The Salvation Army, Helena Corps' Project Manager shall be John Forbes

**Section 1.02. THE SALVATION ARMY, HELENA CORPS' COMMITTEE CHAIRPERSON:** The Salvation Army, Helena Corps' Committee chairperson is the chairperson of The Salvation Army, Helena Corps' Committee dedicated to the organization and oversight of the project for purposes of this Agreement; the Salvation Army, Helena Corps' Committee chairperson shall be Susan Bjerke. The Salvation Army, Helena Corps' Committee chairperson may be removed or replaced at any time by The Salvation Army, Helena Corps' Officer.

**Section 1.03. UM-HELENA CONSTRUCTION COORDINATOR:** The UM-Helena Construction Technology Coordinator (referred to as the Construction Coordinator) is the person designated by UM-Helena to provide daily coordination and oversight for the project as set forth in this Agreement. The UM-Helena Construction Technology Coordinator shall be Gary Duff. The UM-Helena Coordinator may be removed or replaced at any time by the UM-Helena Dean/CEO.

### ARTICLE 2. GENERAL PROVISIONS

**Section 2.01. COLLABORATIVE CONSTRUCTION PROJECT PURPOSE:** The purpose of the project (referred to in this Agreement as the Project) shall be the construction of three Duplexes completed over a three-year period. The project shall include all functions incidental to the construction of the Duplexes, including the purchase of materials, application for permits, coordination of necessary inspections, and provision for labor and oversight for construction of the Duplexes. The purpose of this Agreement is to set forth the rights and obligations of the parties with regard to these matters.

**Section 2.02. TERM OF THE AGREEMENT:** The Agreement shall commence on the date set forth above and shall continue in existence until terminated, liquidated, or dissolved by law or as hereinafter provided.

**Section 2.03. CONSTRUCTION SCHEDULE AND BUDGET:** The Salvation Army and UM-Helena shall be jointly responsible for the development of a schedule and budget for the project in advance of the date of commencement of construction. See Exhibit A for the Schedule and Exhibit B for the Budget.

**Section 2.04. CONSTRUCTION COMMENCEMENT DATE:** The commencement date of construction is the date upon which the parties agree that UM-Helena shall commence construction of the project. For purposes of this Agreement, the date of commencement of construction shall be November 5, 2005.

**Section 2.05. ESTIMATED DATE OF COMPLETION:** The estimated date of completion for the project is the date upon which the parties agree that the construction of the Duplex(es) shall be substantially completed. For purposes of this Agreement, the estimated date of completion for each of the projects shall be: First Project – June 30, 2006; Second Project – June 30, 2007; and Third Project – June 30, 2008. The date of completion may be amended by written agreement of both parties.

### **ARTICLE 3. SCOPE OF RESPONSIBILITIES**

**Section 3.01. PROJECT OVERSIGHT:** The Project Manager will provide oversight and project supervision in collaboration with the Construction Coordinator throughout the course of the project. The Project Manager shall act as a liaison for The Salvation Army with regard to oversight on the project. The Project Manager shall have full authority and discretion to control and manage the administrative functions associated with the project. Such administrative functions shall include, but are not limited to, the hiring or appointing of additional project managers; the development of the building site for the project; the coordination with UM-Helena and the Construction Coordinator; project scheduling and budgeting; the application and coordination of all financing; the coordination and payment of all materials suppliers and subcontractors; and the application for all permits necessary for the project.

**Section 3.02. PROJECT MANAGEMENT AND ADMINISTRATIVE OVERSIGHT:** UM-Helena

shall have primary responsibility for construction of the project, subject to The Salvation Army's oversight authority as set forth in the Agreement. The Construction Coordinator shall provide on-site supervision of UM-Helena Construction Technology students involved with the project; shall be responsible for construction of the Duplex(es); and shall act as a consultant on matters pertaining to labor subcontracting, budgeting, and project development and construction. The Project Manager shall have the authority to inspect the apartments at any time during the course of construction. The Salvation Army will promptly respond to matters relating to the project at the request of UM-Helena or the Construction Coordinator.

**Section 3.03. FINANCING:** The Salvation Army shall be responsible for the timely remittance of all costs and payments related to the project.

**Section 3.04. SCHEDULE AND BUDGET:** The Salvation Army shall provide the plans for the project, after which the Project Manager and Construction Coordinator shall prepare a schedule and budget for the project, including a budget for the cost of materials and subcontractor labor. The Salvation Army shall approve the schedule and budget prior to the date of commencement of construction. The parties agree that any changes to the budget or schedule shall be made through a written change order and signed by both parties.

**Section 3.05. PURCHASE OF MATERIALS:** The Salvation Army shall have full responsibility for the ordering of all materials that have been jointly agreed upon by both parties. The parties agree that material used in the construction of the Duplex(es) shall be purchased from a reliable source. The parties agree that whenever practical, donated materials may be used.

**Section 3.06. HIRING SUBCONTRACTORS:** The Salvation Army will obtain a list of qualified subcontractors from the Construction Coordinator prior to the date of commencement of the project and shall solicit a minimum of three subcontractor bids for all subcontracted work. The Project Manager will confirm the subcontractor's general liability insurance and contractor registration prior to the date upon which the subcontractor commences the work on the project.

**Section 3.07. CONTRACTOR LABOR:** UM-Helena will coordinate and review subcontractor labor and will inform the Project Manager immediately of any problems, concerns, or apparent deviations from the plans and specifications by such subcontractor(s) and/or any nonperformance by the subcontractor(s). The Construction Coordinator and Project Manager shall coordinate to ensure that any problems with subcontractor labor are addressed in a timely

fashion, and that defects in the subcontractor's work or non-performance by the subcontractor are corrected in a timely manner.

**Section 3.08. UM-HELENA LABOR:** UM-Helena shall provide sufficient construction labor through the Construction Technology Program at UM-Helena in order to ensure that the project is completed in a timely manner. In addition, UM-Helena shall ensure that all labor is performed in a good and workmanlike manner; and that the project complies with applicable construction code and the architectural plans for the project and the provisions of this Agreement. UM-Helena Construction Technology students shall complete all phases of construction except those items specifically delineated for subcontracting in the budget.

**Section 3.09. DUPLEX(ES) PLANS AND SPECIFICATIONS:** The Salvation Army shall have full discretion and authority to select the building plans and specifications for the Duplex(es), with input from UM-Helena. The Salvation Army shall ensure that the plans comply with all relevant federal, state, and municipal laws, ordinances, rules, and regulations.

**Section 3.10. PERMITS AND INSPECTIONS:** The Salvation Army shall secure all permits and licenses necessary for the project, as required by local, municipal, state, and/or federal building regulations. The Project Manager shall be responsible for the coordination of all necessary inspections of the Duplex(es), as required by local, municipal, state, and/or federal building regulations. Acquisition of the necessary permits and coordination of the inspections shall be done in a timely manner in order to ensure compliance with the project schedule.

**Section 3.11. RECEIPT AND ACKNOWLEDGEMENT OF MATERIALS AND SUBCONTRACTOR INVOICES:** The Salvation Army Project Manager will be responsible for the receipt and acknowledgement of all materials, of which all materials used will be of first quality and code conforming, and the coordination and review of subcontractors' labor.

**Section 3.12. SUBMITTAL OF INVOICES:** Invoices will be submitted to the Project Manager, who will forward them to The Salvation Army Office Manager and accounting department for careful review for accuracy and payment.

**Section 3.13. COORDINATION BETWEEN THE SALVATION ARMY AND UM-HELENA:** The Project Manager and Construction Coordinator shall meet a minimum of every two (2) weeks during the term of the project to review and approve plan changes and payment of invoices on the project. Interim meetings shall be scheduled as necessary.

**Section 3.14. PAYMENT FOR CONSTRUCTION COSTS:** The Salvation Army has full responsibility for payment of all charges and costs associated with the project, including payment of all invoices submitted for project materials, payment of subcontractors, payment of inspection fees and filing fees, and any other costs associated with the project. The Salvation Army Corps shall reimburse UM-Helena for consumable construction material/tools up to \$1,000.00 per project for incidental costs during construction of the project (saw blades, minor tool repair or replacement, et al.). Receipt(s) for consumables shall be presented to the Project Manager to be eligible for reimbursement. Coordination of all payments shall be handled by The Salvation Army and shall not exceed the designated cap set by The Salvation Army.

**Section 3.15. RETURNS AND CREDITS:** The Construction Coordinator shall coordinate with the Project Manager on the return of all unused materials to the supplier or distributor from which they came for credit. In the event that the supplier or distributor will not allow the return of unused materials, the Salvation Army shall be responsible for their storage, usage, and/or disposal.

#### **ARTICLE 4. PROPERTIES**

**Section 4.01. OWNERSHIP OF THE DUPLEX(ES):** The Salvation Army shall retain ownership of the land and Duplex(es) through all phases of the project and thereafter, retaining full authority and discretion to select any and all land that shall serve as the building site for construction of the Duplex(es).

**Section 4.02. BUILDING SITE:** The Salvation Army owns the land upon which the granted properties and Duplex(es) will be built, adjacent to the Corps Building, 1905 Henderson, Helena, Montana, identified as Lots 6, 7 & 8 in Blocks 43 and 49 of the Broadwater Second Addition to the City of Helena, according to the official map or plat on file and of record in the office of the County Clerk and Recorder of Lewis and Clark County, Montana, USA. See Exhibit C for a description of the property.

**Section 4.03. PROPERTIES GRANTED TO UM-HELENA:** Lots 7 & 8 of Block 43 of the Broadwater's Second Addition to the City of Helena, according to the official map of plat on file and of record in the office of the County Clerk and Recorder of Lewis and Clark County, Montana, USA, will be granted to UM-Helena, or the non-profit (501c3) organization of UM-Helena's choosing, in consideration for the completed construction of the Duplex(es) (Section

2.01) on behalf of UM-Helena's Construction Technology Program. The gift of said property shall take place in two stages: Lot 7, as identified above, shall be granted after the satisfactory completion of one (1) Duplex constructed on Lot 6 by UM-Helena's Construction Technology Program as per this Collaborative Construction Project Agreement between UM-Helena and The Salvation Army. The UM-Helena Construction Technology program will then construct an additional Duplex on Lot 6 per the same Agreement. Upon completion of the second Duplex, Lot 8, as identified above, shall then be gifted. A third and final Duplex on Lot 6 — for the total of three (3) duplexes, six units in all — will then be completed as per the same Collaborative Agreement. The two (2) lots granted to UM-Helena, or the non-profit (501c3) organization of UM-Helena's choosing, will be developed by UM-Helena and UM-Helena's Construction Technology Program and then sold on the market for fair market value. The proceeds of the sale of the properties are to be used for Construction Technology scholarship programs, tool and material replacement and depreciation, and construction overhead that directly benefits students of the UM-Helena Construction Technology Program.

#### **ARTICLE 5. LIABILITY, WARRANTY, AND INSURANCE**

**Section 5.01. WARRANTY FOR CONSTRUCTION OF THE DUPLEX(ES):** UM-Helena shall guarantee the work performed by students supervised by the Construction Coordinator for a period of one year from the date of completion of the work performed under this Agreement. The Salvation Army agrees to work with UM-Helena to ensure that any warranty work is completed in a timely and reasonable manner.

**Section 5.02. LIABILITY:** Each party acknowledges that it shall be responsible for any loss, cost, damage, or claim that arises out of or is caused by the actions of that party or its employees, student representatives, or agents. Neither party shall be liable for any loss, cost, damage, or claim that arises out of or is caused by the actions of the other party or its employees, student representatives, or agents.

**Section 5.03. INDEMNIFICATION:** UM-Helena and The Salvation Army expressly agree to indemnify both parties of this Agreement and hold them harmless from any and all costs, expenses, and/or damages arising out of any claim by any internal and/or external party to this Agreement for personal injury, property damage, death, or other damages of any type sustained or alleged to be sustained on the property in connection with the project. This indemnification shall include court costs, attorney fees, damages, and all expenses associated with any such

claim and shall be paid as such costs or losses are incurred by either party. Both parties shall promptly notify each other in writing of any claim, suit, or demand, written or verbal, of any kind against the project and will fully cooperate with each other in the defense of such claim(s). This indemnification shall survive the term of the agreement.

**Section 5.04. COMPLIANCE WITH APPLICABLE LAWS:** Each party shall ensure that the project complies fully with all applicable statutes, rules, and provisions relating to safety on the work site, including, but not limited to, the Montana Safety Act as set forth in 50-71-102, MCA, et seq.; the Construction Site Health and Safety Act as set forth in 50-77-101, MCA, et seq.; and the Occupational Health Act of Montana as set forth in 50-70-101, MCA, et seq. UM-Helena shall be considered the “employer” for purposes of each statute, rule, or provision.

**Section 5.05. REPRESENTATIONS OR WARRANTIES FROM THE SALVATION ARMY:** The Salvation Army represents that it will perform its duties and functions, as set forth in this Agreement, in a responsible and timely manner in compliance with the terms of this Agreement and with the laws of the state of Montana.

**Section 5.06. REPRESENTATIONS OR WARRANTIES FROM UM-HELENA:** UM-Helena and The Salvation Army represent that they will perform their duties and functions, as set forth in this Agreement, in a responsible and timely manner in compliance with the terms of this Agreement and with the laws of the state of Montana.

**Section 5.07. INSURANCE TO BE PROVIDED BY THE SALVATION ARMY:** The Salvation Army shall pay for and maintain “Course or Construction” or “Builders Risk” or any other insurance that provides coverage for the work in progress during the course of the project. The Salvation Army shall have responsibility to insure the dwelling and all work in progress against such perils, unless otherwise excluded. The Salvation Army shall carry general liability insurance and comply with the requirements of the Montana Workers’ Compensation laws.

**Section 5.08. INSURANCE TO BE PROVIDED BY UM-HELENA:** UM-Helena shall have the responsibility to obtain and maintain insurance, or maintain adequate levels of self-insurance, for the coverage of UM-Helena’s work performed in connection with the project. Such insurance shall be maintained at the statutory levels and shall include Workers’ Compensation insurance, employers’ liability insurance, commercial general liability insurance, and automobile liability



insurance. Each party shall provide the other with certificates of insurance prior to the commencement of the project.

**Section 5.09. LIMITED LIABILITY FOR STUDENT CONSTRUCTION PROJECT:** The parties acknowledge that Montana law at Chapter 521, 2005 Laws of Montana, limits the liability of a public postsecondary institution for damages for a construction project constructed as part of a public education program. The Salvation Army acknowledges its obligation to disclose to any buyer, renter, or lessee of the premises the fact that the construction project was constructed as part of a public education program and agrees to make such disclosure in accordance with the provisions of that law.

## ARTICLE 6. DISSOLUTION

**Section 6.01. DISSOLUTION OF AGEEMENT:** This agreement shall be dissolved and/or nullified upon the occurrence of any one of the following events:

- a) adjudication of bankruptcy and/or filing of a petition pursuant to any chapter of the Federal Bankruptcy Act, or the court-ordered removal or insolvency of either of the parties,
- b) one year after the satisfactory completion of the project,
- c) upon (30) thirty-day written notification by either party at any time during the project, at which time the project will be assessed as to the percentage of its completion and an equal percentage of land, per square footage, will be gifted to the College.

## ARTICLE 7. MISCELLANEOUS PROVISIONS

**Section 7.01. GOVERNING LAW:** This Agreement shall be governed and interpreted in accordance with the laws of the State of Montana.

**Section 7.02. VENUE:** The proper venue for any action commenced to enforce this Agreement shall be the State of Montana and Lewis and Clark County.

**Section 7.03. ENTIRE AGREEMENT:** This Agreement shall be the full and complete Agreement between the parties concerning the subject matter of this Agreement. No change or modification to this Agreement shall be effective unless it is in writing and signed by both parties.

**Section 7.04. SEVERABILITY:** If any provision of this Agreement is declared invalid by any

court, all other provisions shall remain in full force and effect.

**Section 7.05. WAIVERS:** Waiver by either party of any breach or failure to comply with any provision of this Agreement shall not be construed as, or constitutes a continuing waiver of such provision or a waiver of any other breach of or failure to comply with any other provision of the Agreement.


**Section 7.06. NOTIFICATION OF PARTY:** Should a dispute arise between the parties affected by this contract, each party shall communicate the dispute and or concern by means of written notification through certified US mail. Such communication shall be addressed to:

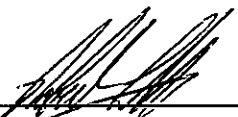
Salvation Army representative: David Ellison,  
Property Manager,  
Northwest Division, The Salvation Army,  
111 Queen Anne Ave N., Seattle, WA, 98109-9455  
PO Box 9219  
Seattle, WA 98109-0200 (mail)  
Phone 206 281-4600  
Fax 206 286-0182

The University of Montana – Helena COT: Dean/CEO Daniel J. Bingham, Ph.D.  
1115 Roberts Street  
Helena, Montana, 59601

**Section 7.07. DISPUTE RESOLUTION:** Disputes between the parties shall be resolved, if possible, by mediation. If mediation fails, each party shall have the remedies available by law. In the event of litigation, each party shall pay its own legal fees and costs.

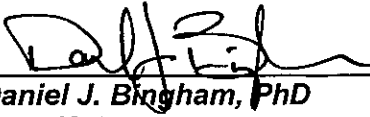
IN WITNESS WHEREOF, authorized representatives of The Salvation Army and UM-Helena have executed this Agreement on the date printed on the first page of this Agreement.

  
Name and Title  
Treasurer

  
Ass't Secretary

NOV 16 2005  
Date

**The Salvation Army, a California Corporation  
dba: The Salvation Army, Helena Corps'**



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**Daniel J. Bingham, PhD**  
**Dean/CEO**  
**The University of Montana – Helena**  
**College of Technology**

11.1.05  
Date