

**MEMORANDUM OF UNDERSTANDING AND
FACILITY USE AGREEMENT BETWEEN
ASHEVILLE CITY BOARD OF EDUCATION
AND
COUNTERFLOW ASHEVILLE
FOR A WINTER SAFE SHELTER AT ASHEVILLE PRIMARY SCHOOL**

This Memorandum of Understanding ("MOU") for a Winter Safe Shelter at the former Asheville Primary School located at 441 Haywood Road in Asheville, North Carolina (the "Safe Shelter") is entered into this the 15th day of December, 2022 (the "Effective Date"), between Asheville City Board of Education ("Board"), on behalf of Asheville City Schools ("ACS" or "District") and Counterflow LLC (the "Organization").

Whereas, the Organization wishes to utilize the Safe Shelter to provide emergency accommodations for certain individuals as described below;

Whereas, pursuant to N.C. Gen. Stat. § 115C-524(c), the Board may adopt rules and enter into agreements with third parties to use school facilities; and

Whereas, the Board has adopted guidelines for such use and hereby modifies and amends those guidelines herein for the Safe Shelter use described below.

Now therefore, the undersigned Organization and ACS agree to the following MOU for the use of school facilities for the Safe Shelter and for the performance of certain tasks or services as described below:

1. Terms and Termination

- a. The term of this MOU begins on the Effective Date and continues until March 31, 2023 or unless terminated as herein provided. ACS or the Organization may terminate this MOU at any time in its complete discretion with thirty (30) days written notice from ACS to the Organization or from the Organization to ACS. The parties may extend or renew the terms of this MOU by mutual written agreement. If Organization terminates all physical use of the Safe Shelter at the time it gives notice of termination and otherwise complies with all terms and conditions herein, ACS shall waive any fees beyond actual costs accruing on or after the date of notice of termination.

2. Organization Responsibilities and Obligations

- a. Organization is responsible for:
 - i. Payment of Twelve Hundred Dollars (\$1,200.00) per month for utility costs to the District, pro-rated for any partial month.
 - ii. Accepting and vetting referrals from other shelters and service agencies for guests.
 - iii. Limiting total occupancy of the Safe Shelter to no more than 20 people at any one time to include a maximum of ten (10) guests and no more than ten (10) staff, volunteers, and program leaders to support the guests and provide supervision.

- iv. Operating the Safe Shelter nightly between the hours of 6:30 pm and 8:30 am only.
- v. Providing bedding, sheets, blankets, and any other necessities for the shelter to operate.
- vi. Maintaining the cleanliness of the spaces provided for the duration of this MOU.
- vii. Payment to the Board should the Board determine that an ACS custodian or supervisor is necessary in the space provided for the duration of this MOU or during any partial timeframe covered by this MOU.
- viii. Ensuring compliance with the Rules for Facilities Use established by Board Policy 5030 and Procedure 5030-P as amended and/or as supplemented herein.
- ix. Ensuring that parents assume responsibility for their minor children at all times.
- x. Maintaining an insurance policy for general liability and property damage coverage of at least one million dollars (\$1,000,000) for each claim made and name the Board, if specifically required hereafter by written request, as an additional insured on each applicable insurance policy. Each person performing services under the MOU shall be covered for all actions, omissions, injuries, or other liabilities occurring during the performance of the services.

3. ACS Responsibilities and Obligations

- a. ACS is responsible for:
 - i. Providing the Organization access to four (4) classrooms located within a single wing of the school as well as access to necessary halls, hall bathrooms, the upstairs kitchen, and the courtyard.
 - ii. Providing heat and water for the spaces being used, which will be reimbursed through payment from the Organization.
 - iii. Designating a liaison between ACS and the Organization.
 - iv. Providing additional supervisory or custodial staff as needed to maintain the space appropriately as needed.

4. Rules for Facilities Use

- a. Organization, its volunteers, staff, and guests must comply with all federal, state and local laws and rules established by the Board and the Superintendent or designee.
- b. Organization must comply with the requirements of the Americans with Disabilities Act (ADA) (particularly Subchapter III pertaining to Public Accommodations and Services Operated by Private Entities) and the federal regulations that have been adopted for the implementation of the ADA.
- c. Organization, its volunteers, staff, and guests must not make any modifications, improvements, or alterations to school facilities without the prior written approval of the Superintendent or designee.
- d. Organization, its volunteers, staff, and guests must not display or distribute materials that are vulgar, indecent, or obscene language while on school grounds.
- e. Organization is responsible for maintaining order and safety.

- f. Upon departure, Organization must remove any materials or equipment they brought onto school grounds.
- g. Use is restricted to space designated in the agreement.
- h. Damages to the facility beyond normal wear will be paid for by the Organization.
- i. Organization will be responsible for payment of rental fees for additional time/equipment.
- j. Organization will be responsible for strict supervision and security at all times.
- k. Organization, its volunteers, staff, and guests must comply with Board policy and legal requirements forbidding the use of tobacco products in school facilities and on school grounds.
- l. Organization, its volunteers, staff, and guests must not consume or possess alcohol or drugs on school grounds.
- m. Organization, its volunteers, staff, and guests must not possess weapons or explosives while on school grounds.
- n. Organization, its volunteers, staff and guests shall not use any kitchen equipment.

5. No Obligation

- a. Nothing in this MOU shall be construed to create any monetary obligation on the part of the Board to the Organization or any right or entitlement on the part of the Organization to any compensation or request for funding from the Board.

6. Monitoring and Auditing

- a. Organization shall cooperate with the District or with any other person as directed by the District in monitoring, auditing, or investigating activities related to this MOU as dictated by the District.

7. Indemnification

- a. Organization shall indemnify and hold harmless the Board and its members, officers, employees and agents from and against all claims, actions, demands, costs, damages, losses, and/or expenses of any kind whatsoever proximately resulting from the omission or commission of any act, lawful or unlawful, by Organization or its agents and/or employees, including but not limited to court costs and attorney's fees, incurred in connection with the defense of said matters. The parties agree that this indemnification clause is an "evidence of indebtedness" for the purpose of N.C. General Statute 6-21.2.

8. Authority of Superintendent and School Principal

- a. As a licensee, the parties recognize and agree that access to any District facility, including the Safe Shelter, on the part of the Organization or any other person or entity shall be subject, at all times, to the continuing approval of the Superintendent, in his sole discretion, to maintain order and safety and to safeguard school property.

9. Compliance with Directives of School Officials

- a. Organization shall ensure that its employees, volunteers, and guests are aware of any and all policies, rules, regulations, or directives of the Board of Education, the Superintendent, or the Superintendent's designees at all times while on ACS

premises or at ACS events. District shall maintain full, final, and plenary authority to grant, deny, or restrict Organization, its employees, volunteers, or guest's access to school premises. Nothing in this MOU shall be construed to create any right of access to school facilities on the part of the Organization, its employees, volunteers, or guests and the District expressly reserves the right to deny or restrict Organization, its employees, volunteers, or guests' access, on a temporary or permanent basis, to any school facility or property, with or without cause, at any time, and without prior notice to the provider agency. The decision to deny access to any facility or property shall be final and not subject to appeal. The District shall not incur any liability to Organization for denying or restricting access to school premises, with or without cause, and in exchange for access to District premises the Organization expressly waives the right to challenge any such denial or restricting of access in any judicial or administrative action.

10. Audit

- a. The Board or auditors contracted by the Board may be given access to persons and records that are generated as a result of, or are related to, the MOU for purposes of verifying accounts and data affecting fees or performance.

11. North Carolina Public Records Law

- a. Organization acknowledges that the Board is subject to the requirements of North Carolina's Public Records Law ("NCPRL"), N.C.G.S. § 132-1, *et. seq.* The MOU and any related documents, papers, letters, maps, books, photographs, films, sound recordings, magnetic or other tapes, electronic data-processing records, artifacts, or other documentary material, regardless of physical form or characteristics, made or received by the Board in connection with the transaction of the Agreement may be considered a "public record," subject to disclosure under the NCPRL. The Board is under no obligation to notify Organization prior to its compliance with its duties under NCPRL.

12. Assignment

- a. The Organization shall not assign, sub-contract, or otherwise transfer any interest in this MOU without prior written approval of ACS.

13. Amendments

- a. This MOU may be amended only by written amendments duly executed by and between ACS and the agency.

14. North Carolina Law

- a. North Carolina law will govern the interpretation and construction of the MOU. The Parties agree that the proper venue for any claims brought hereunder is in Buncombe County, North Carolina.

15. Entire Agreement

- a. This MOU and any other document(s) expressly incorporated by reference as part of this MOU constitutes and expresses the entire agreement and understanding; between the parties concerning its subject matter. This MOU supersedes all prior

and contemporaneous discussions, promises, representations, agreements, and understandings relative to the subject matter of this MOU. To the extent there may be any conflict between the four corners of this MOU and other documents incorporated by reference herein, the terms of this MOU will control.

16. Severability

- a. If any provision of this MOU shall be declared invalid or unenforceable, the remainder of the MOU shall continue in full force and effect.

17. Authority

- a. The person(s) executing this MOU on behalf of the Organization shall have authority to do so as an official, binding act of the Organization.

18. Sovereign Immunity

- a. Notwithstanding any other term or provision in the MOU, nothing herein is intended nor shall be interpreted as waiving any claim or defense based on the principle of sovereign or governmental immunity or other State or federal constitutional or statutory provision or principle that otherwise would be available to ACS under applicable law.

19. Attorney's Fees

- a. In the event of a dispute between the Parties regarding the enforceability of the Agreement, each party shall be responsible for its own attorney's fees.

20. Multiple Originals

This MOU may be executed in separate counterparts and the execution of a copy shall have the same effect as the execution of an original. Such execution may be by facsimile or PDF attachment to an electronic communication.

IN WITNESS WHEREOF, the parties hereby execute this Agreement.

ASHEVILLE CITY BOARD OF EDUCATION

By: _____
Dr. James Causby, Interim ACS Superintendent

Date: _____

COUNTERFLOW ASHEVILLE

By: _____

Date: _____

Print Name: _____

Title: _____