

original

FIRST AMENDMENT TO USE AGREEMENT

THIS FIRST AMENDMENT TO USE AGREEMENT is made this 8 day of December, 2016 by and between the Town of Duluth, Minnesota ("Town"), North Shore Community School ("NSCS"), and ABC of North Shore Community School, Inc. ("ABC").

Whereas:

- A. The Town of Duluth, ABC and NSCS entered into a Use Agreement dated June 28, 2013 ("Use Agreement") related to the real estate legally described on Exhibit A attached hereto ("Land").
- B. The Use Agreement applied to all buildings, structures or other improvements ("Existing Buildings, Structures and Improvements") on the Land as of the date of the Use Agreement and does not include the 2015 addition or any future additions. While it is difficult to determine the future needs of the Town at the Community Center, it is in the Town's best interest to ensure access to the whole building as it currently exists and into the future.
- C. ABC and NSCS granted the Town the use of the Existing Buildings, Structures and Improvements in return for the Town transferring the Land, Existing Buildings, Structures and Improvements and other personal property to ABC pursuant to the terms and conditions of this Use Agreement.
- D. ABC, NSCS and the Town recognize in the Use Agreement that the scope of uses by the Town could change over time.
- E. The Use Agreement encourages the Town, ABC, and NSCS to make proposals about how CCF funds might be expended in ways that might mutually benefit ABC/NSCS, in their roles as owners of the property and administrators of school curriculum, and the Town, in its role as user of the property for community center purposes.
- F. The property, including the new addition, is the best location in the Township to provide emergency relief shelter to residents during widespread community emergencies. The building is equipped with an emergency generator. Services available to the community include ADA accessibility, water, air-conditioning, showers, commercial kitchen, Wi-Fi, and space to set up cots for sleeping if necessary.

NOW THEREFORE BE IT RESOLVED THAT, The Town of Duluth, ABC and NSCS hereby agree to amend the Use Agreement as follows:

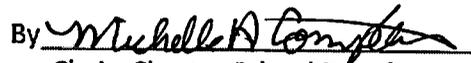
1. The term "Property" as used in the Use Agreement shall be amended by adding the following item to Section 2 of the Use Agreement: **(E) "Property" includes the 2015 addition.**
2. The Use Agreement shall be amended by adding the following language at the end of Section 6(C) Governmental: **The Town may use the Property for an Emergency Relief Shelter at the discretion of the Town, as long as the use does not unreasonably interfere with normal operations of the NSCS. ABC will provide a working emergency generator, and ensure access to water, showers, kitchen, AC, and Wi-Fi during Town designated emergency relief hours.**
3. ~~The Town agrees that the added value of the amendment to the Use Agreement is \$80,000 that the Town will pay to ABC, as explained in the Duluth Town Board's Resolution 120816.~~
4. Except as amended, the remaining terms and provisions of the Use Agreement remain in full force and effect.

IN WITNESS WHEREOF, each party hereto has read, agreed to and executed this First Amendment to Use Agreement as of the date hereof.

Town of Duluth

By 
Chair, Town Board of Supervisors
Dated: 8 Dec, 2016.

North Shore Community School

By 
Chair, Charter School Board
Dated: 22 Dec, 2016

~~ABC of North Shore Community School, Inc.~~

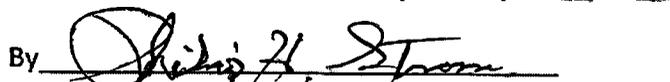
By 
Chair, ABC of North Shore Community School, Inc.
Dated: 12-22-16, 2016

EXHIBIT A
Legal Description

Parcel A: The West One-half of the Southwest Quarter of the Southwest Quarter of Section 32, Township 52, Range 12.

Parcel B: The East One-half of the Southwest Quarter of the Southwest Quarter of Section 32, Township 52, Range 12.

TOWN OF DULUTH
TOWN BOARD OF SUPERVISORS
RESOLUTION 120816 b

RE: EXPENDITURE OF COMMUNITY CENTER FUNDS AND
AMENDMENT OF JOINT USE AGREEMENT

The Board of Supervisors of the Town of Duluth adopts this Resolution regarding an expenditure of Community Center Funds in return for an amendment to the Joint Use Agreement (JUA) between the Town, North Shore Community School (NSCS), and ABC, Inc., which is NSCS's affiliated building corporation (ABC), regarding the property located at 5926 Ryan Road, which is being used pursuant to the JUA for both community center and charter school purposes.

WHEREAS:

1. Prior to June, 2013, the Town owned the property as a community center and leased it to NSCS for use as a charter school. The Town placed surplus proceeds from NSCS's rental payments into a township fund called the community center fund, from which the Town made expenditures related to its ownership of the property, including ongoing capital expenditures.

2. In June, 2013, the Town transferred ownership of the property to ABC, and the Town and ABC/NSCS entered into the JUA, which established and explained the Town's ongoing right to use the property for community center purposes.

3. The JUA, in Section 7, recognized that the remaining community center funds were town funds that could be used for any lawful town purposes, but encouraged using the community center funds only for the improvement and betterment of the property as a township community center. The JUA encouraged NSCS/ABC to make proposals about how the community center funds could be expended in ways that might mutually benefit the Town in its role as the user of the property for community center purposes and NSCS/ABC in their roles as the operator and owner of the property for public school purposes.

4. The Town Board has legal authority to expend community center funds if the expenditure (A) benefits the Town in its role as the user of the property for community center purposes, and (B) is in an amount roughly commensurate to those benefits.

5. The JUA, in Section 6 (C), defines appropriate community center uses, and lists certain types of uses that are recognized as being appropriate, including governmental uses, but does not expressly state that use of the property as an emergency relief shelter is appropriate.

6. The Town developed and adopted an emergency management plan in early 2016. In recent years, the township has been subject to extreme weather events, such as a windstorm in 2016 that left many residents without power, some for a week or more. There are many events that could create a need for emergency relief shelter in the township, and those include blizzards,

ice storms, wind storms, floods, fires, prolonged power outages, terrorism, or war. The community center property is the best facility in the township for providing emergency relief shelter, particularly if emergency shelter is needed on a large-scale or long-term basis, due to factors such as the size and capacity of the building, its showers and bathroom facilities, its septic system and septic capacity, its large commercial kitchen, and the presence of air conditioning.

7. The Town Board finds that it would benefit the Town to amend the JUA so that it expressly provides that use of the property as an emergency relief shelter is an allowed and appropriate community center use.

8. The JUA, in Section 2, applies to the property as it existed at the time of the transfer of ownership in June 2013. It does not expressly state that it applies to additions constructed after June 2013.

9. In 2015, ABC/NSCS constructed an addition to the building. The addition was funded solely by or through ABC/NSCS, without any contribution of community center funds or other financial support from the Town.

10. The 2015 addition is a 10,000 square foot addition, consisting primarily of classrooms, conference rooms, and washrooms. The construction was, and continues to be, of a very high degree of quality and workmanship.

11. The cost of the 2015 addition was approximately \$3.5 million.

12. The insured value of the property prior to the 2015 addition was \$3.2 million. The current insured value of the property is \$6.4 million. The \$3.2 million increase in the property's insurable value is due, almost entirely, to the 2015 addition.

13. The Town Board finds that the reasonable value of the 2015 addition is at least \$3.2 million.

14. The Town Board finds that it would benefit the Town, in its role as the user of the property for community center purposes, to amend the JUA to make it clear that the JUA includes the 2015 addition and that the Town can use the 2015 addition for community center purposes. The Town Board also notes that, if the Town is going to use the 2015 addition for community center purposes, it seems fair and reasonable that some amount be paid to ABC/NSCS for that use.

15. The Town Board cannot precisely calculate the monetary value of the benefits to the Town of (A) being able to use the 2015 addition for community center purposes and (B) being able to make use of the entire property, including the 2015 addition, for emergency relief shelter purposes.

16. The Town Board believes it is reasonable to assume that (A) the Town will continue using the property (including the 2015 addition) for community center purposes into the

foreseeable future, (B) the useful life of the building and the 2015 addition is at least forty years, and (C) it is likely the Town will continue using the property (including the 2015 addition) for community center purposes for at least the next 40 years.

17. The Town Board believes it is reasonable to assume that there will be a variety of community center uses of the 2015 addition's classrooms (~~which currently are the only air-conditioned classrooms and the only ones containing "adult-sized" furniture~~), conference rooms, and washrooms during that forty-year period. The Town Board believes it is reasonable to assume that there will be occasional use of the entire property, including the 2015 addition, for emergency relief shelter purposes during that forty year period. In any event, the Town Board believes the availability of the 2015 addition, and the availability of the property as a whole for emergency relief shelter purposes, has value.

18. If the future use of the 2015 addition during the next 40 years was approximately 99% for school purposes and 1% for community center purposes, it would indicate a value of approximately \$32,000, representing one percent of the use of a \$3.2 million addition. That \$32,000 would also represent an expenditure of approximately \$800 per year or \$2.19 per day for community center uses. If, instead, the future use was at a level of two percent of the total use, then it would indicate a value of approximately \$64,000, or \$1,600 per year, or \$4.38 per day. This methodology is a means by which the value of the use of the addition might be roughly calculated.

19. The Town Board finds that it is reasonable and appropriate to assume that the approximate amount of the use of the 2015 addition, for community center and emergency relief shelter purposes, during the course of the next forty years, would be approximately 2.5 % which, in relation to the \$3.2 million value of the 2015 addition, indicates a value of approximately \$80,000 for community center/emergency relief shelter purposes, which equates to approximately \$2,000 per year or \$5.48 per day.

20. Consequently, the Town Board finds that (A) it would be a benefit to the Town, in its role as the user of the property for community center purposes, to amend the JUA to expand its geographic scope to encompass the 2015 addition, and to expand the scope of appropriate uses to include the use of the property as an emergency relief shelter, and (B) an expenditure of community center funds in the amount of \$ 80,000 is roughly commensurate with those benefits.

WHEREFORE, IT IS RESOLVED:

1. The Town is willing to amend the JUA in the form attached hereto;
2. The Town asks the Boards of NSCS and ABC to consider the proposed amendments;
and
3. The Town is willing to expend \$80,000, from the community center fund, as consideration and payment to ABC, on behalf of both ABC and NSCS, in return for agreement to the proposed amendments.

Dated: December 8, 2016

TOWN OF DULUTH

By: 
Chair, Board of Supervisors

ATTEST: I attest that the foregoing is a resolution of the Board of Supervisors of the Town of Duluth, made on the 8 day of December, 2016, at a duly-noted meeting and upon a majority vote of said Board.

By: 
Town Clerk