

**First Amendment to Facility Use Agreement
Between San José Unified School District
and Escuela Xochitl Tonatiuh, Inc.**

This First Amendment is made this 11th day of April, 2025, by and between the **San José Unified School District**, a California public school district (“District”), and **Escuela Xochitl Tonatiuh, Inc.**, a California non-profit public benefit corporation that operates **Sunrise Middle Charter School** (“Charter School”). District and Charter School may be referred to herein individually as a “Party” or collectively as the “Parties.”

RECITALS

The District and Charter School entered into a Facility Use Agreement (“Agreement”) on or about June 28th, 2024, for certain real property located at the site adjacent to San José High School located at 1149 East Julian Street, San José, California, 95116 (“School Site”); and

In accordance with the Agreement, the District and Charter School have reviewed the enrollment projections for the 2024-2025 school year and have agreed to keep the facility allocation consistent with the original agreement; and

In accordance with the Agreement, the Pro-Rata Share and FMV Use Fee will be adjusted to reflect the current applicable charges.

NOW THEREFORE, for valuable consideration, receipt of which is hereby acknowledged, District and Tenant agree as follows:

1. Section 3 Facility Use Charges. /3.1 of the Agreement shall be replaced in its entirety by the following:

3.1 For and in consideration of the use of the Premises during the Term, Charter School agrees to pay District **\$14.62** annually per square foot multiplied by the square footage of space to accommodate Charter School’s In-District Students (“Pro-Rata Share”). Based on Charter School’s anticipated 2025-26 square footage of 17,380 SF, the Pro-Rata Share is two hundred fifty-four thousand ninety-five dollars and sixty cents (\$254,095.60) annually or twenty-one thousand one hundred seventy-four dollars and sixty-three cents (\$21,174.63) monthly for each of the twelve (12) calendar months for 2025-26. The Pro Rata Share shall escalate annually during each of the option periods referenced in Section 2.2, above, based on District’s costs as determined in accordance with California Code of Regulations, title 5, § 11969.7.

2. Section 3 Facility Use Charges. /3.2 of the Agreement shall be replaced in its entirety by the following:

3.2 Charter enrollment includes students that do not meet the definition of “In-District Student” set forth in California Code of Regulations, title 5, §11969.2(c) (“Out-of-District Students”). For and in consideration of the use of the Premises during the Term for Charter School’s Out-of-District Students, Charter School agrees to pay District the following sums at the Fair Market Value (“FMV Use Fee”): **\$24.00** annually per square foot multiplied by the square footage of space to accommodate the number of Charter School’s Out-of-District Students.

Based on Charter School's 2025-26 square footage of 3,715 SF for Out-of-District Students, the lease fee is eighty-nine thousand, one hundred sixty dollars and zero cents (\$89,160.00) annually or seven thousand four hundred thirty dollars and no cents (\$7,430.00) monthly for each of the twelve (12) calendar months for 2025-26.

3. Replace Exhibit B of the Agreement with the revised Exhibit B attached hereto **Attachment 1**. The Exhibit is updated to include savings from energy saving projects that the Charter School has completed, current rates for the building lease and pro-rata share.
4. This First Amendment may be executed in any number of counterparts all of which when taken together shall constitute one and the same document. Except as expressly modified by this First Amendment, all other terms and provisions of the Agreement are in full force and effect. This First Amendment shall be governed and construed in accordance with the laws of the State of California.

The parties hereto have executed this First Amendment as of the later date set forth above.

ACCEPTED AND AGREED on the later date indicated below:

Dated:

Dated: 4/11/2025

SAN JOSÉ UNIFIED SCHOOL DISTRICT

ESCUELA XOCHITL TONATIUH, INC.

By:

By:

Signed by:

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Name: Tracy Morrison
Title: Director of Procurement

Name: Teresa Robinson
Title: Director

Attachment 1

EXHIBIT B PRO RATA SHARE AND FMV USE FEE

Sunrise Middle School San José HS Annex 2025-2026			
Total Enrollment (Students):	300	Out-of-district ADA (Students):	59
Total ADA (Students):	276	In-district ADA (Students):	217
[A] Dedicated Spaces (exclusive use)			
		Square Footage	
Teaching Station: Building A		960	
Teaching Station: Building B		1,440	
Teaching Station: Building 1		960	
Teaching Station: Building 2		960	
Teaching Station: Building 3		960	
Teaching Station: Building 4		960	
Teaching Station: Building G		1,440	
Teaching Station: Building K		960	
Teaching Station: Building L		960	
Teaching Station: Building M		960	
Teaching Station: Building N		960	
Teaching Station: Building P		960	
Building E (Restroom)		400	
Building F		1,440	
Kitchen		960	
Total Dedicated Space		15,280	
[B] Shared Spaces			
		Square Footage	
MUB (50% *2,400)		1,200	
Gym (10%*9,000)		900	
Total shared space		2,100	
[A+B] Total Space			
		Square Footage	
Sum of dedicated and shared spaces		17,380	
[C] Shares of total space (out-of-district and in-district students)			
		Square Footage	
Out-of-district/ADA = 59 out of 276	21%	3,715	
In-district students/ADA = 217 out of 276 total	79%	13,665	
[D] Pro Rata Share (per square foot per year)			
	Rate	Square Feet	Subtotal
Routine Maintenance	\$3.38	17,380	\$58,744.40
Custodial	\$4.07	17,380	\$70,736.60
Grounds	\$0.97	17,380	\$16,858.60
Aquatics - Pool	\$0.27	17,380	\$4,692.60
Security Monitoring	\$0.31	17,380	\$5,387.80
Furniture Replacement	\$0.16	17,380	\$2,780.80
Natural Gas and Electricity	\$2.12	17,380	\$36,845.60
Solar	\$1.25	17,380	\$21,725.00
Water	\$0.73	17,380	\$12,687.40
Sewer	\$0.11	17,380	\$1,911.80
Trash	\$0.17	17,380	\$2,954.60
Data Network	\$0.05	17,380	\$869.00
Hazardous Substance	\$0.04	17,380	\$695.20
Insurance Package	\$0.53	17,380	\$9,211.40
Property Self-insured	\$0.40	17,380	\$6,952.00
Safety	\$0.06	17,380	\$1,042.80
Total	\$14.62	17,380	\$254,095.60
[E] Building Lease (per square foot per year)			
	Rate	Square Feet	Subtotal
Building Lease (for out-of-district students only)	\$ 24.00	3,715	\$89,160.00
Total		3,715	\$89,160.00
[F] Annual Electric Bill Savings			\$16,251.00
[D+E-F] Total Cost			
			Amount
Annual (sum of pro rata share and building lease)			\$327,004.60
Monthly (annual divided by 12)			\$27,250.38