

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

This Second Amendment (“Amendment 2”) is made this 10th day of June, 2026, 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

- A. WHEREAS, the Parties 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, San José HS Annex, located at 1149 East Julian Street, San José, California, 95116 (“School Site”); and
- B. WHEREAS, the Parties entered into an MOU dated December 14, 2017, for energy savings projects to be funded by Charter School’s California Clean Energy Jobs Act funds (“MOU”) and subsequently executed Amendment 1 to the then current Facility Use Agreement (“FUA”) dated May 28, 2020, adding Section 9.1.2 to the FUA incorporating the savings transfer to Charter School in accordance with the MOU (“Section 9.1.2”); and
- C. WHEREAS, the Parties acknowledge the inadvertent omission of Section 9.1.2 in subsequent and current FUA’s and agree to re-incorporate this section as Section 7.1 and add clarity to the same as intended in the MOU; and
- D. WHEREAS, the Parties previously amended the agreement (“Amendment 1”) on or about May 5, 2025, to adjust the Pro-Rata Share and FMV Use Fee to reflect applicable rates in accordance with the Agreement for 2025-2026; and
- E. WHEREAS, the Parties have reviewed the enrollment projections for the 2026-2027 fiscal year and have agreed to keep the facility allocation consistent with the original agreement; and
- F. WHEREAS, the Parties in accordance with the Agreement, the Pro-Rata Share and FMV Use Fee will be adjusted to reflect the current applicable rates for the 2026-2027 fiscal year.

NOW, THEREFORE, in light of the foregoing facts and in further consideration of the promises and agreements of the Parties set forth herein below, it is mutually agreed as follows:

TERMS AND CONDITIONS

- 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 **\$15.68** 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 2025-2026 square footage of 17,380 SF, the Pro-Rata Share is two hundred seventy-two thousand five hundred eighteen dollars and forty cents (\$272,518.40) annually for 2026-27. 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"): **\$24.84** 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 2026-27 square footage of 4,764 SF for Out-of-District Students, the lease fee is one hundred eighteen thousand, three hundred thirty-seven dollars and seventy-six cents (\$118,337.76) annually for 2026-27.

3. Add to Section 7. Utilities, subsection 7.2 as follows:

7.2 Charter School to receive an annual rent credit for energy savings produced by lighting and solar installation projects ("Improvements") constructed on District property in accordance with the MOU ("Savings").

7.2.1 Refer to **Exhibit D** "Savings From Energy Saving Project" for anticipated savings which shall be utilized in calculating the Savings.

7.2.2 The Savings shall terminate upon termination of the Agreement or on June 30, 2043 whichever occurs first.

7.2.3 The Parties agree to review the actual production ("Production") and savings generated by the solar installation to adjust the Savings should Production exceed a 10% variance (increase or decrease) from the anticipated production and agree to work cooperatively to make such adjustments to the Savings for future years ("Review").

7.2.4 The Parties agree to conduct the Review every five years beginning with year ten (2027-2028).

7.2.5 The Improvements are the property of the District and shall remain upon termination of the Agreement. As such, the District is responsible for the care, maintenance and operation of the Improvements in perpetuity.

4. Add to Exhibit B of the Agreement with the "Exhibit B Sunrise Middle School – San José HS Annex – 2026-2027" attached hereto **Attachment 1**. The Exhibit is updated to include savings from energy saving projects, as referenced in Exhibit D attached hereto **Attachment 2**, that the Charter School has completed, current rates for the building lease and pro-rata share.

5. Except as set forth in this Amendment, all provisions of the Agreement and any previous extension(s) and/or amendment(s) thereto shall remain unchanged, in full force and effect, and are reaffirmed. This Amendment shall control over any inconsistencies between it and the Lease and/or any previous extension(s) and/or amendment(s).

6. Charter School acknowledges and agrees that this Amendment shall not be binding on the Parties until and unless the San José Unified School District's Board of Education approves this Amendment.

[Signature Page Immediately Follows]

IN WITNESS WHEREOF, the parties hereto have accepted and agreed to this Amendment on the later date indicated below.

Dated:

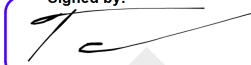
Dated: 6/12/2026

SAN JOSÉ UNIFIED SCHOOL DISTRICT

ESCUELA XOCHITL TONATIUH, INC.

By:

By:

Signed by: 
955EAF14A6384D9...

Name: Tracy Morrison
Title: Director of Procurement

Name: Teresa Robinson
Title: Director

DRAFT

Attachment 1

EXHIBIT B
PRO RATA SHARE AND FMV USE FEE

Sunrise Middle School San José HS Annex 2026-2027			
Total Enrollment (Students):	312	Out-of-district ADA (Students):	83.46
Total ADA (Students):	304.46	In-district ADA (Students):	221
[A1] Dedicated Spaces (exclusive use) - Allocation per District Standard:		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
[A2] Dedicated Spaces (exclusive use) - In Excess of District Standards:		Square Footage	
n/a			0
Total Dedicated Space			0
[B1] Land Lease: Charter School Provided Buildings		Square Footage	
n/a			0
Subtotal of Charter School Provided Space			0
[B2] Shared Spaces		Square Footage	
MUB (50% *2,400)			1,200
Gym (10%*9,000)			900
Total shared space			2,100
[A1+A2+B1+B2] Total Space		Square Footage	
Sum of dedicated and shared spaces			17,380
[C] Shares of total space [A1]+[B2] (out-of-district and in-district students):		Square Footage	
Out-of-district/ADA = 83.46 out of 304.46	27%		4,764
In-district students/ADA = 221 out of 304.46 total	73%		12,616
[D] Pro Rata Share (per square foot per year)		Rate	Square Feet
Routine Maintenance	\$3.14	17,380	\$54,573.20
Custodial	\$4.39	17,380	\$76,298.20
Grounds	\$1.03	17,380	\$17,901.40
Aquatics - Pool	\$0.30	17,380	\$5,214.00
Security Monitoring	\$0.33	17,380	\$5,735.40
Furniture Replacement	\$0.17	17,380	\$2,954.60
Natural Gas and Electricity	\$0.05	17,380	\$869.00
Solar	\$2.52	17,380	\$43,797.60
Water	\$0.40	17,380	\$6,952.00
Sewer	\$0.22	17,380	\$3,823.60
Trash	\$0.55	17,380	\$9,559.00
Data Network	\$1.27	17,380	\$22,072.60
Hazardous Substance	\$0.05	17,380	\$869.00
Insurance Package	\$0.72	17,380	\$12,513.60
Property Self-insured	\$0.49	17,380	\$8,516.20
Safety	\$0.05	17,380	\$869.00
Total	\$15.68	17,380	\$272,518.40
[E] Facility Lease (per square foot per year)		Rate	Square Feet
Land Lease	\$ 24.84	0	\$ -
Building Lease (for out-of-district students only)	\$ 24.84	4,764	\$118,337.76
Dedicated Spaces in Excess of District Standards [A2]	\$ 24.84	0	\$0.00
Total			\$118,337.76
[F] Annual Electric Bill Savings			\$16,368.00
[D+E-F] Total Cost			Amount
Annual (sum of pro rata share and building lease)			\$374,488.16
Monthly (annual divided by 12)			\$31,207.35

Attachment 2

EXHIBIT D
SAVINGS FROM ENERGY SAVING PROJECT

2012 Proposition 39-The California Clean Energy Jobs Act
Energy Savings Facility Enhancements
(Sunrise Middle Charter School)

Year	Fiscal Year	PV Generation (kWh)	PV Savings (\$)	Lighting Savings (\$)	Annual Electric Bill Savings (\$)
1	18-19	35,139	\$10,904	\$4,560	\$15,464
2	19-20	34,963	\$11,013	\$4,560	\$15,573
3	20-21	34,788	\$11,123	\$4,560	\$15,683
4	21-22	34,615	\$11,235	\$4,560	\$15,795
5	22-23	34,441	\$11,347	\$4,560	\$15,907
6	23-24	34,269	\$11,461	\$4,560	\$16,021
7	24-25	34,098	\$11,575	\$4,560	\$16,135
8	25-26	33,927	\$11,691	\$4,560	\$16,251
9	26-27	33,758	\$11,808	\$4,560	\$16,368
10	27-28	33,589	\$11,926	\$4,560	\$16,486
11	28-29	33,421	\$12,046	\$4,560	\$16,606
12	29-30	33,254	\$12,166	\$4,560	\$16,726
13	30-31	33,088	\$12,288	\$4,560	\$16,848
14	31-32	32,922	\$12,411	\$4,560	\$16,971
15	32-33	32,758	\$12,535	\$4,560	\$17,095
16	33-34	32,594	\$12,661	\$4,560	\$17,221
17	34-35	32,431	\$12,788	\$4,560	\$17,348
18	35-36	32,269	\$12,916	\$4,560	\$17,476
19	36-37	32,107	\$13,045	\$4,560	\$17,605
20	37-38	31,947	\$13,175	\$4,560	\$17,735
21	38-39	31,787	\$13,307	\$4,560	\$17,867
22	39-40	31,628	\$13,441	\$4,560	\$18,001
23	40-41	31,470	\$13,575	\$4,560	\$18,135
24	41-42	31,313	\$13,711	\$4,560	\$18,271
25	42-43	31,156	\$13,848	\$4,560	\$18,408

