

**FACILITIES USE AGREEMENT BETWEEN  
SAN JOSÉ UNIFIED SCHOOL DISTRICT AND SUNRISE MIDDLE CHARTER SCHOOL  
FOR USE OF CLASSROOM SPACE FOR EDUCATIONAL PURPOSES  
WITHIN THE BOUNDARIES OF THE SAN JOSÉ UNIFIED SCHOOL DISTRICT**

THIS FACILITIES USE AGREEMENT (“Agreement”) is made this 28th day of June 2024 (“Effective Date”), by and between the **SAN JOSÉ UNIFIED SCHOOL DISTRICT**, a California public school district of California (“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**

**WHEREAS**, Charter School is a non-profit public benefit corporation that is operating a charter approved by the Santa Clara County Office of Education under the laws of the Charter Schools Act of 1992 (Education Code §47600, *et seq.*) to serve students in fifth (5<sup>th</sup>) through eighth (8<sup>th</sup>) grades in the 2024-2025 school year; and

**WHEREAS**, the Parties enter into this Agreement pursuant to California Code of Regulations, title 5, §11969.1, subdivision (b), which enables a charter school and a school district to mutually agree to an alternative to specific compliance with any provisions of the Proposition 39 implementing regulations, California Code of Regulations, title 5, §§11969.1-11969.10; and

**WHEREAS**, the Parties agree that commencing on July 1, 2024, for the 2024-25 school year, the Charter School will occupy classrooms and use the facilities described in the attached **Exhibit A** as the “Existing Buildings” (the “Premises”) and primarily located at the San José High School Annex located on 1149 E. Julian Street, San José, California, 95116 (the “School Site”); and

**WHEREAS**, Charter School is currently occupying the Premises through a Lease agreement entered into on March 28, 2019, which will be terminated on the Commencement Date of this Agreement;

**NOW THEREFORE**, in consideration of the covenants and agreements hereinafter set forth, the Parties agree as follows:

**AGREEMENT**

**1. Use of Premises.**

- 1.1. District agrees to allow use of the Premises at the School Site(s) by Charter School for the sole purpose of operating Charter School’s educational program, including summer school and programs procured by Charter School through third party entities, e.g. after-school program providers (collectively referred to herein as Charter School’s “Programs”), in accordance with all applicable federal, state and local regulations relating to the Premises, and to the operation of Charter School’s educational program, including summer school and programs procured by Charter School through third party entities, e.g. after-school program providers (collectively referred to herein as Charter School’s “Programs”). Charter School shall not use the Premises for any purpose other than that

specified in this Agreement without the prior written consent of District.

- 1.2. Charter School shall collaborate and coordinate with District staff and programs to ensure safe use of the Premises. Charter School shall provide appropriate site supervision, including, but not limited to, campus supervisors, administrators and police, at a level no less than what the District provides. Charter School's obligation to ensure safe use of the Premises includes all facilities located on the School Site, including, but not limited to, shared spaces as may be provided under the terms of this Agreement.
- 1.3. Charter School shall not commit, or suffer to be committed, any waste upon the Premises, or allow any sale by auction upon the Premises, or allow the Premises to be used for any unlawful purpose, or place any loads upon the floor, walls or ceiling which endanger the structure, or place any harmful liquids in the plumbing, sewer or storm water drainage system of the Premises. No waste materials or refuse shall be dumped upon or permitted to remain upon any part of the Premises except in trash containers designated for that purpose.
- 1.4. Any uses which involve the serving and/or sale of alcoholic beverages and the conducting of games of chance are prohibited on the Premises. Charter School shall comply with District-wide policy prohibiting the use of tobacco products on the Premises at all times.
- 1.5. Charter School shall not use or permit the use of the Premises or any part thereof for any purpose which is inimical to public morals and welfare or morally objectionable as unsuitable for a public educational facility.
- 1.6. If required, Charter School shall obtain a use permit from the City in which the School Site is located for Charter School's use throughout the Term. Charter School shall require all invitees and guests to use the Premises only in conformance with the permitted use and with applicable governmental laws, regulations, rules and ordinances. During the Term, Charter School shall comply with all District policies and procedures regarding the use and occupation of District facilities, including but not limited to Campus Security and Disruptions. The District's most recent policies and procedures can be accessed at <https://www.sjUSD.org/board-policies>.
- 1.7. Charter School shall not do or permit anything to be done in or about the Premises nor bring or keep anything therein which will in any way increase the District's existing insurance rate or affect any fire or other insurance upon the Premises, or cause a cancellation of any insurance policy covering the Premises or any part thereof or any of the contents of the Premises, nor shall the Charter School sell or permit to be kept, used or sold in or about the Premises any articles which may be prohibited by a standard form policy of fire insurance.
- 1.8. Charter School agrees to comply with the provisions of the Civic Center Act (Education Code §§ 38131, *et seq.*) to make the Premises accessible to members of the community. The Parties understand that the Premises are to be used primarily for educational programs and activities and as such, any use of the Premises by the community shall not interfere with Charter School's Programs. Any request received by Charter School for use of the Premises pursuant to the Civic Center Act shall be promptly forwarded to the District. District shall be responsible for coordinating access to the Premises under the

Civic Center Act, and any fee paid for use of the Premises under the Civic Center Act shall be paid to the District.

**2. Term.**

- 2.1. The term of this Agreement shall be for three (3) years. The commencement date shall be July 1, 2024, (“Commencement Date”), and, unless sooner terminated under any provision hereof, this Agreement shall end on June 30, 2027 (“Term”).
- 2.2. The Parties shall have two one-year options to extend this Agreement, which may only be exercised upon their mutual agreement. Should the Parties agree to exercise an option, the Agreement will be amended to reflect the new termination date. The exercise of any option to extend the Term of the Agreement is contingent upon Charter School’s possession of an operative charter.

**3. Pro-Rata Share Charge.**

- 3.1 For and in consideration of the use of the Premises during the Term, Charter School agrees to pay District \$13.46 annually per square foot multiplied by the square footage of space (“Pro-Rata Share”). Based on Charter School’s anticipated 2024-25 square footage of 17,380 SF, the Pro-Rata Share is two hundred thirty-three thousand nine hundred thirty-four dollars and eighty cents (\$233,934.80) annually or nineteen thousand four hundred ninety-four dollars and fifty-seven cents (\$19,494.57) monthly for each of the twelve (12) calendar months for 2024-25. 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.

3.1.1. Charter School agrees that, in consideration of the District providing ongoing operations and maintenance of the Premises, the District may include facilities costs related to operations and maintenance in the calculation of the Pro-Rata Share.

3.1.2. As used in this Agreement, “In-District Students” shall have the same definition as set forth in California Code of Regulations, Title 5, §11969.1(c).

- 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”): \$23.88 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 2024-25 square footage of 2,917 SF for Out-of-District Students, the lease fee is sixty-nine thousand, six hundred fifty-seven dollars and ninety-six cents (\$69,657.96) annually or five thousand eight hundred ninety-four dollars and eighty-three cents (\$5,894.83) monthly for each of the twelve (12) calendar months for 2024-25.

3.2.1. The lease rate for District school facilities is the per square foot Fair Market Value for the Premises. The annual lease rate for District school facilities is calculated

by taking the prior year's lease rate for the period of July 1 through June 30, and adjusting it by the percentage of the Annual Adjustment to the School Facility Program Grants adopted by the California State Allocation Board for the next fiscal year.

- 3.3 The Pro-Rata Share and FMV Use Fee for each year of the Term shall be calculated utilizing the prior year's enrollment.

**4. Payment of Pro-Rata Share and FMV Use Fee.**

- 4.1. Charter School shall pay both the Pro-Rata Share and the FMV Use Fee monthly (summarized in **Exhibit B**). The provisions of this Agreement relating to Charter School's payment obligations hereunder shall refer to and be the same for payment of the Pro-Rata Share and the FMV Use Fee. For purposes of this section, Pro-Rata Share and FMV Use Fee shall be collectively referred to as ("Fee").
- 4.2. The Fee for the first month shall be due upon the first date of use or occupation of the Premises by Charter School. Thereafter, the Fee shall be due on the first of each month until the expiration or early termination of this Agreement.
- 4.3. Charter School shall promptly pay to District the Fee on the first day of each month in advance during the Term of the Agreement, without deduction, setoff, prior notice or demand.
- 4.4. Charter School acknowledges that late payment by Charter School to District of the Fee and other sums due hereunder will cause District to incur costs not contemplated by the Agreement, the exact amount of which will be extremely difficult to ascertain. Those costs include, but are not limited to, processing and accounting charges. Accordingly, if District does not receive any installment of the Fee or any other sum due from Charter School by 4:00 p.m. within ten (10) calendar days after the Fee is due, Charter School shall pay to District, as additional sums due, a late charge equal to five percent (5%) of the overdue amount or the maximum amount allowed by law, whichever is less. The Parties hereby agree that any late charge assessed to Charter School shall represent a fair and reasonable estimate of the costs District will incur by reason of late payment by Charter School. Acceptance of any late sums by District shall in no event constitute a waiver of Charter School's default with respect to any overdue amount, nor prevent District from exercising any of its other rights and remedies granted hereunder.

**5. Enrollment Review and Allocation Change Request.**

- 5.1. No later than March 15th of each fiscal year during the Term, Charter School shall provide District with its actual In-District and Out-of-District enrollment ("Enrollment Submittal") for that year and specify any allocation change it may request for the following school year based on that enrollment. Not later than thirty (30) days after receiving Charter's Enrollment Submittal and upon District's review and approval of the same:
- 5.1.1. District will notify Charter of its acceptance and confirm no change in allocation is necessary, or;

5.1.2. District will provide an addendum to the Agreement which shall adjust the facility allocations for the following school year, Pro-Rata Share and FMV Use Fee according to the Enrollment Submittal (“Addendum”). Charter shall execute the Addendum not later than April 15th of each calendar year.

**6. Relocation of Charter School.**

6.1. Notwithstanding anything to the contrary in this Agreement, District shall have the right to re-locate Charter to other buildings on the School Site, or to another location, based on District's need to accommodate multiple programs and occupants, among other things, and its ongoing review to identify school sites that will (1) better serve students, (2) positively address enrollment imbalances across schools; and (3) support employee housing projects; and/or if the District’s Governing Board decides to repurpose the School Site ("Relocation") . The need for any Relocation shall be at District's sole discretion. District shall provide Charter School with reasonable notice of any intended Relocation so that Charter may make necessary preparations for Relocation. Any Relocation shall be to reasonably equivalent facilities and at the same Pro-Rata Share and FMV Use Fee then existing, as adjusted to accommodate differences in square footage and any annual escalation then applicable.

**7. Utilities.**

7.1. District shall furnish or cause to be furnished to the Premises necessary utilities. For purposes of this Agreement, utilities include routine maintenance, custodial service, grounds service, security monitoring, natural gas, electricity, water, irrigation, waste removal, hazardous waste compliance, data, sewage fees, and associated insurance fees. The Charter School must provide its own internet and electricity. The District’s failure to furnish or cause to be furnished utilities when the failure is caused by (i) acts beyond the reasonable control of the District; (ii) strikes, lockouts, labor disturbances or labor disputes of any kind; (iii) any laws, rules, orders, ordinances, regulations, requirements or any other action by federal, state, county or municipal authority; or (iv) any other unavoidable delay, shall not cause the District to be in default of this Agreement and shall not result in any liability of the District. Charter School shall comply with all District energy conservation policies relating to use of the Premises.

**8. Furnishings and Equipment for In-District Students.**

8.1. The District shall provide furnishings and equipment at the Premises for Charter School’s In-District enrollment ADA as determined in accordance with the Annual Enrollment Review and Adjustment. These furnishings and equipment shall remain the property of the District. The furnishings and equipment provided shall be equivalent to those furnishings and equipment provided to students attending District-operated schools. The District and the Charter School shall develop a mutually agreeable inventory of furnishings and equipment that will be located at the Premises. District shall only be obligated to replace furnishings and equipment supplied by the District in accordance with District established schedules and practices.

**9. Additional Services.**

9.1. Charter School and District may negotiate additional services or equipment as requested

by Charter School. District shall assess Charter School separately for the cost to provide the additional services, if any.

**10. Shared Program Spaces.**

- 10.1. District and Charter School will collaborate regarding the shared use of science, athletics, cafeteria and other specialized classroom and non-teaching station spaces (“Program Spaces”). District and Charter School will meet to determine the sharing of Program Spaces on the Premises for the upcoming school year, including but not limited to the schedules for District and Charter School use of the Program Spaces. District and Charter School agree to work in good faith to ensure that both the District and the Charter School programs have sufficient, fair, and balanced access to Program Spaces. The Parties will cooperate in reaching amicable arrangements concerning the use, maintenance, and security of the Program Spaces.
- 10.2. Program Space requests shall be submitted by Charter School in accordance with Section 5, Annual Enrollment Review and Adjustment.
- 10.3. Pro-Rata Share will be due for Program Spaces. Accordingly, fees will be calculated and provided to Charter annually in conjunction with the Annual Enrollment Review and Adjustment.

**11. Shared School Site(s) and Recreational Facilities.**

- 11.1. Charter School acknowledges and understands that the Premises are located in an operating public school site. As such, the School Site and the playgrounds, common areas, parking, recreational facilities and other outdoor play areas (collectively “Shared Space”) will be used by other parties, including the District. Charter School shall cooperate with the other parties and the District in reaching amicable arrangements concerning the use, maintenance, and security of the Shared Space.
- 11.2. Pro-Rata Share will be due for Shared Space. Accordingly, fees will be calculated and provided to Charter annually in conjunction with the Annual Enrollment Review and Adjustment.

**12. Parking.**

- 12.1. Charter School shall have non-exclusive use of the parking located on the School Site. Charter School shall abide by District’s policies concerning the use of the parking lot , including the District policy relating to the drop-off and pick-up of students. Charter School shall not abandon any inoperative vehicles or equipment on any portion of the School Site. District shall not be liable for any personal injury suffered by Charter School or Charter School’s visitors, invitees and guests or for any damage to or destruction or loss of any of Charter School’s personal property located or stored in the parking lots, street parking, or the School Site or the personal property of Charter School’s visitors, invitees and guests, except where such damage is caused by the District’s negligence or misconduct. Charter School accepts parking “as is” and Charter School acknowledges that District has not made and is not making any warranties whatsoever with respect to the parking.

**13. Safety of Premises.**

13.1. The School Site, including the Premises, may be monitored by a safety system or protocol implemented, maintained and operated by District (“District’s Safety Measures”). However, Charter School specifically acknowledges, understands, and agrees that District is neither responsible for nor has the obligation to supply, provide, establish, maintain, or operate District’s Safety Measures for either Charter School or the Premises. Charter School further expressly acknowledges and agrees that District shall not be liable for and is hereby released from any and all responsibility for any damage, loss, or injury to Charter School or its personal property resulting or arising out of any criminal activity (including, but not limited to, any damage, loss, or injury resulting from intrusions, petty theft, vandalism, or other similar acts) that may occur on or near the Premises, regardless of whether District was able to, actually did, or failed to provide notice to Charter School of a safety incident or situation occurring on the Premises which led to the damage, loss, or injury. District makes no warranties or representations as to the safety or security of Charter School, the Premises, the School Site, or District’s Safety Measures. Unless expressly agreed to by District and Charter School, Charter School shall be responsible, at its sole cost, for supplying, providing, establishing, maintaining, and operating its own safety measures, protocols, personnel, or systems to encourage and ensure the security of Charter School, its agents, officers, employees, licensees and invitees, and the Premises (“Charter School’s Safety Measures”); provided, however, that Charter School must obtain prior written approval from District prior to employing Charter School’s Safety Measures and provided that all of Charter School’s Safety Measures are compatible with District’s Safety Measures.

**14. Accident/Incident Reporting.**

14.1. Charter School shall submit written accident/incident reports to the District as soon as practicable but not more than twenty-four (24) hours after the occurrence of or Charter School’s receipt of information or notice regarding any accident or incident that occurs on the Premises including related claims, arrest or criminal charges associated with the Charter School’s Services provided at the Premises or Charter School’s staff working on the Premises. Submission of written accident/incident reports shall be made pursuant to the section entitled “Notices” and by email to District’s Property Agreements Department at [propertyagreements@sjUSD.org](mailto:propertyagreements@sjUSD.org). Accident/injury reports shall also be verbally reported to the District’s Maintenance Office during normal business hours and to the District’s Central Station during non-business hours.

**15. Interaction with the Media and Public.**

15.1. Charter School shall promptly refer all inquiries from the news media or public to District and shall not make any statements to the media or the public relating to matters involving the District before first contacting the District Public Information Officer. If Charter School receives a complaint from a citizen or the community related to matters involving the District and/or Charter School’s Program or use of the Premises, Charter School shall promptly inform the District about the complaint.

**16. Condition of Premises.**

- 16.1. District shall not be required to make or construct any alterations including structural changes, additions, or improvements to the Premises except as set forth in this Agreement. District shall, however, remain responsible for compliance with the Americans with Disabilities Act, Fair Employment and Housing Act and other applicable building code standards but only to the extent that would be required of District without regard to Charter School's use of the Premises. By entry and taking possession of the Premises pursuant to this Agreement, Charter School acknowledges and agrees the Premises are "reasonably equivalent".
- 16.2. Charter School acknowledges that neither District nor District's agents have made any representation or warranty as to the suitability of the Premises for Charter School or Charter School's Program. Any agreements, warranties or representations not expressly contained in this Agreement shall in no way bind the District or Charter School, and District and Charter School expressly waive all claims for damages by reason of any statement, representation, warranty, promise or agreement, if any, not contained in this Agreement.
- 16.3. The Parties agree that if the structural elements of the Premises become damaged to a lesser condition than currently exists, and if the structural damage is due to no fault or negligence of Charter School, then District will repair the damage in order to bring it back to a condition which is similar to the condition which exists at the time Charter School takes possession of the Premises. District may, however, terminate this Agreement if the cost to repair the Premises exceeds One Hundred Fifty Thousand Dollars (\$150,000) per incident. District may, in its reasonable discretion, pro-rate the Pro-Rata Share and/or FMV Use Fee during any "repair" period, if the resulting structural damage prohibits Charter School from carrying out its Programs. If District elects not to perform a repair estimated to cost in excess of One Hundred Fifty Thousand Dollars (\$150,000) per incident, Charter School may elect to remain in possession of the Premises and pay the Pro-Rata Share and/or FMV Use Fee, unless revised through mutual agreement of the Parties, or Charter School may elect to terminate this Agreement. If necessary and to the extent practicable, at the District's reasonable discretion, the District may provide the Charter School temporary housing on the School Site, or another school site that is near to the Premises for any part of the Charter School's Program that is displaced by the partial damage and/or the repair work of the same. If this Agreement is terminated pursuant to this section, the District will provide a school facility to the Charter School in accordance with California Code of Regulations, title 5, § 11969.1 as soon as possible so as to avoid any interruption in the Charter School's Programs.
- 16.3.1. As used in this section, the term "structural elements of the building" are defined as and shall be limited to the foundation, footings, floor slab but not flooring, structural walls excluding glass and doors, and the roof excluding skylights. Plumbing, electrical and heating systems shall be considered "structural elements of the building" excluding, however, those repairs and maintenance items which can be completed without wall or floor removal.
- 16.4. Upon execution of this Agreement, Charter School shall deposit with District the sum of Twenty-Five Thousand Dollars (\$25,000) as security for Charter School's full and faithful

performance of all terms and conditions of this Agreement (“Security Deposit”). No later than thirty (30) days after the conclusion of the Term or earlier termination of this Agreement, District shall return the Security Deposit to Charter School after deducting any amounts that are reasonably necessary to return the School Site and Premises to the condition they were in on the date Charter School commenced occupancy, ordinary wear and tear excepted. Any such deductions shall be documented in writing with the return of the Security Deposit. Should the cost to return the School Site and/or Premises to the condition they were in on the date Charter School commenced occupancy exceed the amount of the Security Deposit, Charter School shall be responsible for reimbursement to the District of the difference within thirty (30) days of the date the District provides Charter School with an invoice reflecting the cost of the work.

**17. Title to School Site(s) / Premises.**

17.1. The Parties acknowledge that title to the School Site and Premises is held by District.

**18. District’s Entry and Access to Premises.**

18.1. District and its authorized representatives shall have the right, after two school-days’ prior written notice to Charter School, to enter the Premises during normal business hours for the purpose of inspection (“Inspection”); or to perform deferred maintenance in or on the Premises in a manner so as not to disrupt the normal classroom and school activities; provided, however, that in an emergency situation, no prior notice shall be required. In an emergency, District shall give notice to Charter School at 1149 E. Julian Street San José, San José, California, immediately upon District’s receipt of notification of any emergency. If Charter School is not present to open and permit an entry into the Premises in an emergency situation as reasonably determined by District, District may enter by means of a master key without liability to Charter School.

18.2. If Charter School is violating the use restrictions of the Agreement or is not in material compliance with any applicable law, then all costs and expenses reasonably and actually incurred by District in connection with any Inspection shall become due and payable by Charter School as additional sums due District, within ten (10) calendar days of presentation by District of an invoice for the Inspection.

18.3. If Charter School fails to perform any covenant or condition to be performed by Charter School pursuant to this Agreement, District and its authorized representative shall have the right, after reasonable prior written notice to Charter School, to enter the Premises during normal business hours for the purpose of performing the covenant or condition at District’s option after thirty (30) calendar days’ written notice to and failure to perform by Charter School (provided, no written notice is required in the case of emergencies). All costs incurred by District in shall be reimbursed to District by Charter School within ten (10) calendar days of written demand, together with interest at the interest rate computed from the date incurred by District until paid. Any performance by District of Charter School’s obligations shall not waive or cure the default. All reasonable out-of-pocket costs and expenses actually incurred by District, including reasonable attorneys’ fees (whether or not legal proceedings are instituted), in collecting the fees herein or enforcing the obligations of Charter School under this Agreement shall be paid by Charter School to District within ten (10) calendar days of written demand. District may,

during the progress of such work, keep and store on the Premises all necessary materials, tools, supplies and equipment. District shall not be liable for inconvenience, annoyance, disturbance, loss of business or other damage to Charter School by reason of making the repairs or the performance of any work.

18.4. Notwithstanding the foregoing and without further notice, District shall have the right to enter the Premises to conduct its own operations, to perform any routine or deferred maintenance, custodial services, or conduct inspections of the Premises. District will use reasonable efforts during the course of any access of the Premises under this sub-section to not disrupt Charter School's programs consistent with the District's practices at its school sites. Where practicable, District will provide relevant scheduling information to the Charter School.

18.5. Charter School expressly waives any claim for damages for any inconvenience to or interference with the Charter School's Programs, any loss or use of quiet enjoyment of the Premises related to District's entry into the Premises for the purposes identified in this Section.

**19. Surrender of Premises, Furnishings and Equipment.**

19.1. On the last day of the Term, or on sooner termination of this Agreement, Charter School shall surrender the Premises, and any furnishings and equipment provided by District to District and any existing improvements in good order, condition, and repair, free and clear of all liens, claims and encumbrances, though nothing in this Section shall be construed to authorize Charter School to allow or cause to be placed any liens, claims and/or encumbrances of any kind, unless expressly permitted in this Agreement. The condition of the Premises when surrendered shall be similar to that existing as of the commencement of Charter School's occupancy of the Premises, excepting normal ordinary wear and tear and any structural improvements made by District subsequent to the Commencement Date. This Agreement shall operate as a conveyance and assignment to District of any improvements identified by District to remain on the Premises.

19.2. Charter School shall remove from the Premises all of Charter School's personal property, trade fixtures, and any improvements made by Charter School which Charter School and District agreed would be removed by Charter School and which may be removed without irreparable or material damage to the Premises. Removal of Charter School's property shall be subject to all applicable laws, including any local permits and/or approval by the California Department of General Services, Division of the State Architect.

19.3. All property that is not removed on or before the end of the Term shall be deemed abandoned by Charter School and associated costs to store, remove or dispose of abandoned property shall be the responsibility of the Charter School. If the Premises are not surrendered at the end of the Term or upon earlier termination of this Agreement, Charter School shall indemnify District against loss or liability resulting from delay by Charter School in surrendering the Premises including, without limitation, any claims made by any succeeding Charter School or loss to District due to lost opportunities to timely obtain succeeding charter schools or tenants.

19.4. Holding Over. If Charter School remains in possession of the Premises or any part thereof

after the end of the Term or upon earlier termination of this Agreement without the express written consent of District, Charter School's occupancy shall be a tenancy on a month-to-month basis for a monthly amount that equals one hundred fifty percent (150%) of all monthly sums charged and owing for the previous thirty (30) calendar day period inclusive of any escalation that may become due upon holding over.

- 19.5. No payment of money by Charter School after the termination of the Agreement, or after the giving of notice of termination by the District to the Charter School, shall reinstate, continue or extend the Term.

**20. Taxes and Assessments.**

With the exception of assessments related to any improvements completed by District prior to occupancy, Charter School shall pay a proportional share of any assessment on the Premises, including any improvements which Charter School constructs or causes to be constructed on the Premises, whether real estate, general, special, ordinary or extraordinary, or rental levy or tax, improvement bond, and/or fee imposed upon or levied against the Premises or Charter School's legal or equitable interest created by this Agreement, and the taxes assessed against and levied upon Charter School's alterations and utility installations that may be imposed by any authority having the direct or indirect power to tax and where the funds are generated with reference to the Premises' address and where the proceeds so generated are applied by the city, county or other local taxing authority having jurisdiction. The provisions of this Section shall survive the expiration or earlier termination of this Agreement. Nothing in this provision shall be construed to override the requirement in this Agreement that Charter School obtain the express written consent of the District to perform any improvements on the School Site and Premises.

**21. Maintenance.**

- 21.1. Routine Repair and General Maintenance. District is responsible for the routine repair and general maintenance of the Premises and any furnishings or equipment provided to Charter School. For purposes of the Agreement, "routine repair and general maintenance" shall mean the school facility component work performed on an annual basis each year to keep facilities in proper operating condition. The District shall also be responsible for ongoing operations and maintenance of the facilities on the Premises as defined in California Code of Regulations, Title 5, §11969.4 (b). District shall only be obligated to perform routine repair, cleaning, and general maintenance on the Premises on an equivalent basis as that performed at other comparable District school sites. Although District performs routine, repair, cleaning and general maintenance as well as the custodial services detailed below, Charter School is responsible for keeping the Premises in a clean, safe, and sanitary condition.
- 21.2. Major Maintenance. District shall be responsible for the major maintenance of the Premises. For purposes of this Agreement, "major maintenance" includes, for example, the major repair or replacement of plumbing, heating, ventilation, air conditioning, electrical, roofing, and floor systems, exterior and interior painting, and any other items considered deferred maintenance under Education Code § 17582. The District shall only be obligated to perform deferred maintenance on the Premises on an equivalent basis as

that performed at other comparable District school sites.

- 21.3. Rekeying. The cost of rekeying the Premises, if necessary, shall be the responsibility of Charter School. District reserves the right to key-control and issuance of duplicate keys in order to maintain the integrity of District policy.

**22. Custodial Services.**

- 22.1. The District **will** perform custodial services in the same manner as, and to the standard of care equal to, the custodial services provided in other classrooms on the School Site on District “school days”.

- 22.1.1. For purposes of this Agreement, a “school day” is defined as a day that District schools are in session, and does not include school holidays, Fall recess, New Year recess, Winter recess, Spring recess furlough days, etc. Custodial service will be provided during summer vacation. The District’s approved school year calendars may be found on the District’s website.

- 22.1.2. For purposes of this section, “custodial services” includes but is not limited to routine and scheduled cleaning of all interior spaces and exterior spaces, landscaping and athletic facilities (e.g. daily brooming and trash pick-up of planting areas, athletic hard courts or turf). “Custodial services” includes but is not limited to; daily cleaning of all interior and exterior building components including exterior walkways; providing and replacing lighting lamps (i.e. bulbs, tubes); complete restroom care including cleaning, providing and stocking supplies (e.g. soap, toilet paper, paper towels, etc.); graffiti removal (excluding painting-over or water/media blasting when required); “handyman” minor repairs including providing, repairing, and replacing dispensers and like building systems (e.g. tighten loose screws, installing replacement devices/fixtures); furniture/equipment distribution, moving and minor repairs; debris removal and disposal including recycling; and preventative custodial services including cleaning, waxing, sealing, and caring for floor systems as appropriate.

- 22.2. Performance of custodial services to the standard of care equal to other classrooms on the District School Site includes, but is not limited to, thoroughly cleaning all restroom surfaces and partitions, including all surfaces and partitions with murals painted by, or at the direction of, Charter School. Should District damage any of the murals while cleaning Charter School’s restrooms, District shall be under no obligation to compensate Charter School for any damage caused by the cleaning or to restore the murals to their original condition.

- 22.2.1. Should Charter School’s use of the Premises, or use or storage of materials on the Premises, cause the District to expend additional time, effort, and resources beyond what it reasonably expends performing custodial services in facilities occupied by District operated schools, incur overtime expenses, or require the District to call for waste removal or other non-standard services, Charter School shall reimburse the District for the cost of such additional time or services within thirty (30) days of the date District provides Charter School with an invoice.

22.3 District will perform an annual “deep clean” of the Premises at an agreed upon date each summer of the Term. Charter School will provide District with the access necessary for performance and completion of the deep clean. Should Charter School fail to provide District sufficient time and access to perform the deep clean, or cause District to incur additional charges such as overtime in connection with the deep clean, Charter School shall be responsible for payment of all such additional charges within thirty (30) days of the date District provides Charter School with an invoice.

**23. Title to and Removal of Charter School’s Improvements / Premises; Equipment Requirements.**

23.1. Charter School shall not construct or cause to be constructed on the Premises any improvements (“Charter School’s Improvements”) without express prior written consent from District. For District consent and approval, Charter School’s Improvements must be considered necessary to the operation of its Programs.

23.2. Charter School shall at its expense obtain all necessary environmental and governmental approvals and permits, including, without limitation, the California Environmental Quality Act (“CEQA”), any necessary approvals from any local authority including any Site(s), grading, zoning, design review and other required permits or approvals, if applicable, prior to commencing construction and shall provide District with evidence of approval by all applicable governmental agencies. If the District agrees to assume lead agency status for any “project” under CEQA related to the provision of facilities under this Agreement, Charter School shall reimburse the District for any and all costs and expenses related to achieving compliance with CEQA.

23.3. Any modifications to the Premises, structural or otherwise, must be approved in writing in advance by District. Charter School’s contractor must be approved in advance by District, which approval shall not be unreasonably withheld. All contractors and subcontractors of Charter School, if any, shall be duly licensed in the State of California. Charter School shall be solely responsible for maintaining the Premises and Charter School’s Improvements installed thereon during the Term, including any extensions, and for compliance with all applicable laws or ordinances, rules and regulations.

23.4. Charter School must seek and receive approval from the Division of the State Architect (“DSA”) for any Charter School Improvements that require DSA approval under applicable law.

23.5. Charter School shall not install any ovens, stoves, hot plates, toasters, or similar items (not including microwave ovens) without the prior written consent of the District.

23.6. Not less than fifteen (15) calendar days prior to the construction, major repair, renovation or demolition of any improvements on the Premises, Charter School shall provide District with information regarding the contractor’s financial condition and evidence to District’s satisfaction that adequate funds to complete the improvements are committed and available or that completion has been otherwise adequately assured. Such assurances may include, in District’s discretion, a completion guarantee. No construction shall commence until District has given Charter School written acceptance of such assurances

- 23.7. Not less than fifteen (15) days prior to the construction, major repair, renovation or demolition of any improvement on the Premises, Charter School shall provide District with sufficient evidence that it has obtained all required approvals and permits for the work and that Charter School or Charter School's contractor(s) has in effect, with premiums paid, adequate casualty and liability insurance (including builder's risk) coverage and workers compensation that is satisfactory to District in its sole discretion.
- 23.8. Upon commencement of construction of any Charter School Improvement, Charter School shall cause the work to be diligently pursued to completion in accordance with the schedule for completion approved by District, subject to unavoidable delays caused by weather, supply shortages, strikes or acts of God.
- 23.9. All work or improvements shall be performed in a sound and workmanlike manner, in compliance with all applicable laws and building codes, in conformance with the plans and specifications approved by District and DSA, if applicable, or any modifications thereto which have been approved in writing by District. If Charter School Improvements require the use of DSA-approved Inspector services, Charter School shall reimburse District for the costs related to said services.
- 23.10. District or District's agent shall have a continuing right at all times during the period that improvements are being constructed on the Premises to enter the Premises and to inspect the work provided that such entries and inspections do not unreasonably interfere with the progress of the construction. Charter School shall require its contractors to reasonably cooperate with District or its agent in such inspections.
- 23.11. Within ninety (90) calendar days after completion of construction of any Charter School Improvement, Charter School shall deliver to District two (2) full and complete sets of as-built plans for the work so completed.
- 23.12. Mechanics Lien. Charter School shall: (i) pay for all labor and services performed for, materials used by or furnished to Charter School or any contractor employed by Charter School with respect to the Premises; and, (ii) indemnify, defend and hold District and the Premises harmless and free from the perfection of any liens, claims, demands, encumbrances or judgments created or suffered by reason of any labor or services performed for, or materials used by or furnished to, Charter School or any contractor employed by Charter School with respect to the Premises; and, (iii) give notice to District in writing fifteen (15) calendar days prior to employing any laborer or contractor to perform services related to, or receiving materials for use upon, the Premises; and, (iv) permit District to post a notice of non-responsibility in accordance with the statutory requirements of California Civil Code § 8444 or any amendment thereof. In the event Charter School is required to post an improvement bond with a public agency in connection with the above, Charter agrees to include District as an additional obligee.
- 23.13. Charter School shall at all times indemnify and hold District harmless from all claims for labor or materials in connection with construction, repair, alteration, or installation of structures or improvements within the Premises, and from the cost of defending against such claims, including attorneys' fees. Charter School shall provide District with at least ten (10) days written notice prior to commencement of any work which could give rise to a mechanics' lien or stop payment notice. District has the right to enter upon the

Premises for the purpose of posting notices of non-responsibility. In the event a lien is imposed upon the Premises as a result of such construction, repair, alteration, or installation, Charter School shall either:

23.13.1. Record a valid Release of Lien; or

23.13.2. Deposit sufficient cash with District to cover the amount of the claim on the lien in question and authorize payment to the extent of the deposit to any subsequent judgment holder that may arise as a matter of public record from litigation with regard to the lien-holder claim; or

23.13.3. Procure and record necessary bonds to free the Premises from the claim of the lien from any action brought to foreclose the lien.

23.14. If Charter School fails to accomplish one of the three above optional actions within fifteen (15) calendar days after the filing of any lien or stop payment notice, the Agreement shall be in default and shall be subject to immediate termination.

23.15. On or before the expiration of this Agreement, or within thirty (30) calendar days after any earlier termination of this Agreement, Charter School shall remove Charter School's Improvements, at its sole expense. Charter School shall repair any damage to the School Site and/or the Premises, caused by removal of Charter School's Improvements and restore the School Site and the Premises to good condition, less ordinary wear and tear. In the event that Charter School fails to timely remove Charter School's Improvements, District, upon fifteen (15) calendar days written notice, may either (1) accept ownership of Charter School's Improvements with no cost to District, or (2) remove Charter School's Improvements at Charter School's sole expense. If the District chooses to accept ownership of Charter School's Improvements, Charter School shall execute any necessary documents to effectuate the change in ownership of Charter School's Improvements. If the District removes Charter School's Improvements, Charter School shall pay all invoices for the removal of Charter School's Improvements within thirty (30) calendar days of receipt of an invoice.

**24. Fingerprinting and Criminal Background Verification.**

24.1. Charter School and District shall be responsible for ensuring compliance with all applicable fingerprinting and criminal background investigation requirements described in California Education Code §45125.1, which may be met under the fingerprinting provisions of Title 22 of the California Code of Regulations and applicable provisions of the California Health and Safety Code relevant to community care facility licensing (Health & Safety Code, § 1500 et seq.). Upon request by the District, Charter School shall provide written verification of compliance with the fingerprinting and criminal background investigation requirements to District. The District shall be responsible for ensuring compliance with the applicable statutory fingerprinting and criminal background check requirements for any individual it sends or directs to the Premises.

**25. Health & Safety.**

25.1. Charter School must comply with the policies, safety protocols and practices established

by District, the Health Officer of the County of Santa Clara, the State of California, and OSHA and Cal-OSHA related to required health monitoring, cleaning and sanitization practices (collectively "Health & Safety Policies") in effect as of the Commencement Date and as may be revised during the Term. Charter School, its employees, agents, guests and invitees must always review and implement the Health & Safety Policies in their use of the Premises and School Site and in the performance of the Program.

- 25.2. Charter School shall comply with District policies and practices regarding the maintenance of cleanliness and sanitary conditions on the Premises and at the School Site, including, but not limited to, utilizing enclosed compost bins to deter rodents and other pests. The placement and location of any compost bin is subject to District approval.
- 25.3. Charter School shall comply with District policies and practices regarding the allowance of animals on the Premises and School Site. With the exception of service animals, unless otherwise provided by District policy, rules, and/or procedures, non-service animals shall only be permitted on the Premises and School Site in connection with Charter School's instructional program. Charter School shall take measures to protect student, staff, and animal health, safety, and welfare, including, but not limited to, ensuring that any such animals are appropriately caged or otherwise contained.
26. **Release.** Charter School acknowledges that it is voluntarily and freely entering into this Agreement and deciding to use the Premises for its Program and that Charter School's use of the Premises includes the possible exposure to and illness from infectious disease including, but not limited to, MSRA, influenza and COVID19, or any other similar virus or derivative strain (collectively "**Infectious Disease**"). Charter School further acknowledges the dangers involved and with full knowledge of these dangers, voluntarily agrees to assume all risks of bodily injury, death, or property damage, whether those risks are known or unknown. Charter School hereby releases the District, its agents, representatives, officers, consultants, employees, trustees, and volunteers (the "indemnified parties") from any and all liabilities, causes of action, lawsuits, claims, demands, or damages of any kind whatsoever that Charter School, its staff, participants, relatives, children, spouse, partner, household members, family members, employees, guests, invitees, volunteers, agents, consultants and any other person tracing exposure or illness to Charter School, now have, or may have in the future, for injury, trauma, illness, loss, unwanted contact, harassment, disability, death or property damages related to being exposed to or contracting an Infectious Disease while using the Premises for Charter School's Program.
27. **Default.**
  - 27.1. Charter School's Default. The occurrence of any one of the following events shall be considered a default on the Agreement by Charter School:
    - 27.1.1. The failure of Charter School to promptly pay the Pro-Rata Share, FMV Use Fee, or any other fee or amount required herein when due hereunder, which failure continues for fifteen (15) calendar days after written notice thereof by District to Charter School; provided, however, that any notice shall be in lieu of, and not in addition to, any notice required under Code of Civil Procedure § 1161, and the three (3) day cure period shall run concurrently with any cure period required under California law, including Code of Civil Procedure § 1161;

- 27.1.2. The revocation or non-renewal of the Charter School's charter, upon the exhaustion of any administrative, non-judicial appeals as provided under Education Code §§ 47605 or 47607;
- 27.1.3. The failure of Charter School to observe or perform any of its other covenants or obligations hereunder, which failure continues for thirty (30) calendar days after written notice thereof by District to Charter School (unless the nature of the default is such that more than thirty (30) calendar days are required for its cure and Charter School shall have commenced a cure within the cure period and thereafter diligently prosecute the same to completion; provided, however, in no event shall the default continue for more than ninety (90) calendar days after written notice thereof by District to Charter School); provided, however, that any notice shall be in lieu of, and not in addition to, any notice required under Code of Civil Procedure § 1161, and the thirty (30) calendar day cure period shall run concurrently with any cure period required under California law, including Code of Civil Procedure § 1161;
- 27.1.4. Charter School's abandonment of the Premises for a period of fifteen (15) consecutive days (with or without the payment of fees), it being agreed that the fact that any of Charter School's property remains in the Premises shall not be evidence that Charter School has not vacated or abandoned the Premises; provided, however, any normal holidays or vacation days shall not constitute abandonment of the Premises;
- 27.1.5. The making by Charter School of any general assignment or general arrangement for the benefit of creditors; the filing by or against Charter School or any guarantor of this Agreement of a petition to have Charter School or any guarantor of the Agreement adjudged a bankrupt or a petition for reorganization or arrangement under any law relating to bankruptcy (unless, in the case of a petition filed against Charter School or any guarantor of the Agreement, the same is dismissed within sixty (60) calendar days; the appointment of a trustee or receiver to take possession of substantially all of the Charter School's assets located at the Premises, or of Charter School's interest in the Agreement, where possession is not restored to Charter School within thirty (30) calendar days; or the attachment, execution or other judicial seizure of substantially all of Charter School's assets located at the Premises or of Charter School's interest in this Agreement, where such seizure is not discharged within thirty (30) calendar days.
- 27.1.6. The making or furnishing by Charter School of any warranty, representation, or statement to District in connection with this Agreement, or any other agreement to which Charter School and District are parties; which is false or misleading in any material respect when made or furnished; or
- 27.1.7. The assignment, subletting or other transfer, or any attempted assignment, subletting or other transfer, of this Agreement.
- 27.2. In the event of any default by Charter School, District shall have the right, in addition to all other rights available to District under this Agreement or now or later permitted by law or equity, to terminate this Agreement by providing Charter School with a notice of

termination. Upon termination of this Agreement, District may recover from Charter School the worth at the time of award of the unpaid Pro-Rata Share, FMV Use Fee and any other accrued fees which are due at the time of termination. In addition, upon termination, Charter School shall immediately vacate the Premises.

27.3. The rights and remedies of District set forth herein are not exclusive, and District may exercise any other right or remedy now or later available to it under the Agreement, at law or in equity.

27.4. District's Default. District shall not be in default of any of its obligations hereunder, unless District fails to perform such obligations within a reasonable time, but in no event less than thirty (30) calendar days, after written notice by Charter School to District specifying that District has failed to perform its obligations; provided, however, that if the nature of District's default requires more than thirty (30) calendar days to cure, District shall not be in default if District commences a cure within (30) calendar days and thereafter diligently prosecutes the same to completion.

27.4.1. Charter School shall have no rights as a result of any default by District until Charter School gives thirty (30) calendar days' notice to District specifying the nature of the default. District shall then have the right to cure the default, and District shall not be deemed in default if it cures the default within thirty (30) calendar days after receipt of the notice of the default, or within a longer period of time as may reasonably be necessary to cure the default.

27.4.2. If District does not cure the default as required, Charter School shall have the right to (a) perform the maintenance obligation that District has not performed, if the default pertains to a failure to perform maintenance; (b) seek and obtain injunctive and other equitable relief; or (c) terminate this Agreement.

27.4.3. In the event that Charter School performs District's maintenance obligations in accordance with this section, District will compensate Charter School for Charter School's reasonable costs, which shall be adequately supported with invoices, receipts and other proof of payments as may be reasonably required by the District.

27.4.4. The rights and remedies of District set forth herein are not exclusive, and District may exercise any other right or remedy now or later available to it under the Agreement, at law or in equity.

**28. Mutual Indemnification.**

28.1. To the fullest extent permitted by California law, each Party shall defend, indemnify, and hold harmless the other Party, its respective agents, representatives, officers, consultants, employees, trustees, and volunteers (the "Indemnified Parties") from any and all losses, liabilities, claims, suits, and actions of any kind, nature, and description, including, but not limited to, attorneys' fees and costs (collectively "Claims"), directly or indirectly arising out of, on account of, connected with, or resulting from, the operation, condition, use or occupancy of the Premises, all improvements thereon, and all areas appurtenant thereto, with the exception of any Claims caused by the negligence or willful

misconduct of the Indemnified Parties; and in case any action or proceeding be brought against the Indemnified Parties, the other Party shall defend the Indemnified Parties at that Party's sole expense. Charter School shall keep the Premises and the School Site clear of all liens, encumbrances and/or clouds on District's title to any portion of the Premises and the School Site.

**29. Insurance.**

- 29.1. Insurance is to be placed with insurers with a current A.M. Best Insurance rating of no less than A-minus: VII and subject to the approval of District; insurance through a joint powers authority is deemed acceptable under this Agreement. Charter School shall furnish District with the original certificates and amendatory endorsements effecting coverage required.
- 29.2. Charter School acknowledges that the insurance to be maintained by District on the School Site will not insure any of Charter School's property or improvements made by Charter School.
- 29.3. Charter School shall, at Charter School's expense, obtain and keep in force during the term of this Agreement a policy of commercial general liability insurance and a comprehensive auto liability policy insuring District and Charter School against claims and liabilities arising out of the operation, condition, use, or occupancy of the Premises and all areas appurtenant thereto, including parking areas. Charter School's comprehensive auto liability policy shall insure all vehicle(s), whether hired, owned or non-owned. Charter School's commercial general insurance shall be at least as broad as the Insurance Service Office (ISO) CG 00-01 form and in an amount of not less than One Million Dollars (\$1,000,000) for bodily injury or death and property damage as a result of any one occurrence and Two Million Dollars (\$2,000,000) general aggregate policy limit. In addition, Charter School shall obtain a products/completed operations aggregate policy in the amount of One Million Dollars (\$1,000,000). The insurance carrier, deductibles and/or self-insured retentions shall be approved by District, which approval shall not be unreasonably withheld. Prior to the Commencement Date, Charter School shall deliver to District a certificate of insurance evidencing the existence of the policies required hereunder and copies of endorsements stating that such policies shall:
  - 29.3.1. Not be canceled or altered without thirty (30) calendar days prior written notice to District;
  - 29.3.2. State the coverage is primary and any coverage by District is in excess thereto;
  - 29.3.3. Contain a cross liability endorsement; and
  - 29.3.4. Include a separate endorsement naming District as an additional insured.
- 29.4. At least thirty (30) calendar days prior to the expiration of each certificate, and every subsequent certificate, Charter School shall deliver to District a new certificate of insurance consistent with all of the terms and conditions required in connection with the original certificate of insurance as described above.

29.5. During the Term, District shall maintain at its cost a policy of standard fire and casualty insurance limited to the value of the buildings and improvements located on the School Site as of the Commencement Date. In the event of loss or damage to the School Site, the buildings, the Premises or any contents, each Party, and all persons claiming under the Party, shall look first to any insurance in its favor before making any claim against the other Party, and to the extent possible without adding additional costs, each Party shall obtain for each policy of insurance provisions permitting waiver of any claim against the other Party for loss or damage within the scope of the insurance and each Party, to the extent permitted, for itself and its insurers, waives all such insurance claims against the other Party.

29.5.1. No use shall be made or permitted to be made of the Premises, nor acts done, that will increase the existing rate of insurance upon the building or buildings of the Premises or cause the cancellation of any insurance policy, covering same, or any part thereof, nor shall Charter School sell, or permit to be kept, used, or sold in or about the Premises any article that may be prohibited by the standard form of fire insurance policies. Charter School shall, at its sole cost and expense, comply with any and all requirements pertaining to the Premises, of any insurance organization or company, necessary for the maintenance of reasonable fire and casualty insurance, covering the Premises' buildings, or appurtenances. Fire and casualty insurance premium increases to District due to equipment and/or activities of Charter School shall be charged to Charter School.

29.6. During the Term, Charter School shall comply with all provisions of law applicable to Charter School with respect to obtaining and maintaining workers' compensation insurance. Prior to the Commencement Date and/or Charter School's occupancy of the Premises, Charter School shall provide District, as evidence of this required coverage, a certificate in a form satisfactory to District on or before the Commencement or renewal Date, providing that insurance coverage shall not be canceled or reduced without thirty (30) calendar days prior written notice to District.

**30. Signs, Murals, and Other Decorations.**

30.1. Charter School may, at Charter School's sole cost, place a sign on the Premise to advertise Charter School's Programs provided Charter School obtains the prior written approval and consent of District. District's approval and consent shall not be unreasonably withheld. Any signs shall be at Charter School's cost and in compliance with the local ordinances pertaining thereto and subject to Division of the State Architect approval, if applicable. In connection with the placement of Charter School's signs, District agrees to cooperate with Charter School in obtaining any governmental permits which may be necessary. Throughout the Term, Charter School shall, at its sole cost and expense, maintain the signage and all appurtenances in good condition and repair. At the expiration or earlier termination of the Agreement, Charter School shall remove any signs which it has placed on the Premises and School Site, and shall repair, at its sole expense, any damage caused by the installation or removal of Charter School's sign.

30.2. Charter School shall not have the right to place, construct or maintain any advertisement, awning, banner, mural, or other external decorations on the improvements that are a part of the Premises and School Site without the District's prior written consent, which

shall not be unreasonably withheld. Charter School acknowledges that it painted, or caused to be painted, murals in its restrooms without first obtaining District permission. At the termination of the Agreement, Charter School shall remove any advertisements, awnings, banners, murals, or other external decorations which it has placed on the Premises and School Site, including those that it placed prior to the current Term, and shall repair, at its sole expense, any damage caused by their installation or removal. To the extent that the portions of the Premises and School Site cannot be repaired or restored to their original condition, Charter School shall be responsible for the cost of replacement.

**31. Notice.**

31.1. Any notice required or permitted to be given under this Agreement shall be deemed to have been given, served and received if given in writing and personally delivered or either deposited in the United States mail, registered or certified mail, postage prepaid, return receipt required, or sent by overnight delivery service or facsimile transmission, or sent via e-mail addressed as follows:

**DISTRICT:**

San José Unified School District  
855 Lenzen Avenue  
San José, CA 95126  
ATTN: Director, Procurement  
E-mail: tmorrison@sjusd.org

**CHARTER SCHOOL:**

Sunrise Middle Charter School  
1149 E. Julian Street  
San José, California, 95116  
ATTN: Teresa Robinson, Director  
E-mail: teresa@sunrisemiddle.org

Any notice personally given or sent by facsimile transmission shall be effective upon receipt. Any notice sent by overnight delivery service shall be effective the business day next following delivery thereof to the overnight delivery service. Any notice given by certified or registered mail shall be effective three (3) calendar days after deposit in the United States mail.

**32. Subcontract, Assignment and Sublease.**

32.1. Charter School shall not have the right, voluntarily or involuntarily, to assign, license, transfer or encumber this Agreement or sublet all or part of the Premises. Any purported transfer shall be void and shall, at District's election, constitute a default. No consent to transfer shall constitute a waiver of the provisions of this Section.

**33. Joint and Several Liability.**

33.1. If Charter School is more than one person or entity, each person or entity shall be jointly and severally liable for the obligations of Charter School hereunder.

**34. Independent Contractor Status.**

34.1. This Agreement is by and between two independent entities and is not intended to and shall not be construed to create the relationship of agent, servant, employee, partnership, joint venture, or association.

**35. Entire Agreement of Parties.**

35.1. This Agreement constitutes the entire agreement between the Parties and supersedes all prior discussions, negotiations and agreements, whether oral or written. This Agreement may be amended or modified only by a written document executed by both Parties. The Parties acknowledge that each of them has fully discussed the contents of this Agreement with their chosen representatives and/or legal counsel and has had the benefit of legal counsel in negotiating and drafting the terms of this Agreement. Accordingly, this Agreement shall not be construed as having been drafted by one Party or the other.

**36. California Law.**

36.1. This Agreement shall be governed by and the rights, duties and obligations of the Parties shall be determined and enforced in accordance with the laws of the State of California. The Parties further agree that any action or proceeding brought to enforce the terms and conditions of this Agreement shall be maintained in Santa Clara County.

**37. Compliance with All Laws.**

37.1. Charter School shall at Charter School's expense comply with all requirements of all governmental authorities, in force either now or in the future, affecting the Charter School's use of the Premises or School Site, and shall faithfully observe in Charter School's use of the Premises all laws, regulations and ordinances of these authorities, in force either now or in the future including, without limitation, all applicable federal, state and local laws, regulations, and ordinances pertaining to air and water quality, hazardous material, waste disposal, air emission and other environmental matters (including CEQA and its implementing regulations in its use of the Premises), and all District policies, rules and regulations ("Environmental Laws").

37.2. The judgment of a court of competent jurisdiction, or Charter School's admission in an action or a proceeding against Charter School, whether District be a party to it or not, that Charter School has violated any law or regulation or ordinance in Charter School's use of the Premises shall be considered conclusive evidence of that fact as between District and Charter School. If Charter School fails to comply with any law, regulation or ordinance, District reserves the right to take necessary remedial measures at Charter School's expense, for which Charter School agrees to reimburse District on demand.

37.3. Charter School shall not cause or permit any Hazardous Material to be generated, brought onto, used, stored, or disposed of in or about the Premises and any improvements by Charter School or its agents, employees, contractors, subtenants, or invitees, except for limited quantities of standard office, classroom, and janitorial supplies (which shall be used and stored in strict compliance with Environmental Laws). Charter School shall

comply with all Environmental Laws. As used herein, the term "Hazardous Materials" means any hazardous or toxic substance, material or waste which is or becomes regulated by any local governmental authority, the State of California, or the United States Government. The term "Hazardous Materials" includes, without limitation, petroleum products, asbestos, PCB's, and any material or substance which is (i) defined as hazardous or extremely hazardous pursuant to Title 22 of the California Code of Regulations, Division 4.5, Chapter 11, Article 4, § 66261.30 et seq. (ii) defined as a "hazardous waste" pursuant to § (14) of the federal Resource Conservation and Recovery Act, 42 U.S.C. 6901 et. seq. (42 U.S.C. 6903), or (iii) defined as a "hazardous substance" pursuant to section 10 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601 et. seq. (42 U.S.C. 9601). As used herein, the term "Hazardous Materials Law" shall mean any statute, law, ordinance, or regulation of any governmental body or agency (including the U.S. Environmental Protection Agency, the California Regional Water Quality Control Board, and the California Department of Health Services) which regulates the use, storage, release, or disposal of any Hazardous Material.

- 37.4. Notice. Charter School will promptly notify District in writing if Charter School has or acquires notice or knowledge that any Hazardous Substance has been or is threatened to be, released, discharged, disposed of, transported, or stored on, in, or under or from the Premises or School Site in violation of Environmental Laws. Charter School shall promptly provide copies to District of all written assessments, complaints, claims, citations, demands, fines, inquiries, reports, violations, or notices relating to the conditions of the Premises or compliance with Environmental Laws. Charter School shall promptly supply District with copies of all notices, reports, correspondence, and submissions made by Charter School to the United States Environmental Protection Agency, the United States Occupational Safety and Health Administration, and any other local, state, or federal authority that requires submission of any information concerning environmental matters or Hazardous Substances pursuant to Environmental Laws. Charter School shall promptly notify District of any liens threatened or attached against the Premises pursuant to any Environmental Laws.
- 37.5. Inspection. District and District's agents, servants, and employees including, without limitation, legal counsel and environmental consultants and engineers retained by District, may (but without the obligation or duty to do so), at any time and from time to time, on not less than ten (10) business days' notice to Charter School (except in the event of an emergency, in which case, no notice will be required), inspect the Premises to determine whether Charter School is complying with Charter School's obligations set forth in this Section, and to perform environmental inspections and samplings, during regular business hours (except in the event of an emergency) or during such other hours as District and Charter School may agree.
- 37.6. Charter School's obligations under this Section do not extend to addressing, remedying, or otherwise cleaning up any Hazardous Material not generated, brought onto, used, stored, or disposed of in or about the Premises by Charter School or its agents or invitees.
- 37.7. Indemnification. Charter School's indemnification and defense obligations in this Agreement shall include any and all Claims arising from any breach of Charter School's covenants under this Section. The indemnification obligations of this Section shall survive the expiration or earlier termination of this Agreement.

**38. Attorneys' Fees.**

38.1. If either Party files any action or brings any proceedings against the other arising out of the Agreement, the prevailing party shall be entitled to recover, in addition to its costs of suit and damages, reasonable attorneys' fees to be fixed by the court. The "prevailing party" shall be the Party who is entitled to recover its costs of suit, whether or not suit proceeds to final judgment. No sum for attorneys' fees shall be counted in calculating the amount of a judgment for purposes of determining whether a Party is entitled to its costs or attorneys' fees.

**39. Waiver.**

39.1. The waiver by either Party of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant, condition, or any subsequent breach of the same or any other term, covenant, or condition herein contained.

**40. Successors and Assigns.**

40.1. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, legal representatives, successors, and assigns.

**41. Counterparts.**

41.1. This Agreement and all amendments and supplements to it may be executed in counterparts, and all counterparts together shall be construed as one document.

**42. Electronic Signatures.**

42.1. Each Party agrees that this Agreement and any other documents to be delivered in connection herewith may be electronically signed, and that any electronic signatures appearing on this Agreement or such other documents are the same as handwritten signatures for the purposes of validity, enforceability, and admissibility.

**43. Captions.**

43.1. The captions contained in this Agreement are for convenience only and shall not in any way affect the meaning or interpretation hereof nor serve as evidence of the interpretation hereof, or of the intention of the Parties hereto.

**44. Partial Invalidity.**

44.1. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, such provision shall be severed and the remainder of the Agreement shall continue in full force and effect and will in no way be impaired or invalidated, and the Parties agree to substitute for the invalid or unenforceable provision a valid and enforceable provision that most closely approximates the intent and economic effect of the invalid or unenforceable provision.

45. **Incorporation of Recitals and Exhibits.**

45.1. The Recitals and each Exhibit attached hereto are hereby incorporated herein by reference.

46. **Authorization to Sign Agreement.**

46.1. Each individual executing this Agreement on behalf of a Party represents and warrants that individual is duly authorized to execute and deliver this Agreement on behalf of Party that the individual is executing this Agreement for and that this Agreement is binding upon that Party in accordance with its terms.

47. **Full Satisfaction and Release of Claims.**

47.1. During the Term of this Agreement, Charter School agrees that this Agreement is a negotiated agreement and by executing this Agreement waives any claim regarding the sufficiency of District’s compliance with Proposition 39 and waives any claims regarding the sufficiency or suitability of the Premises under Education Code § 47614 and the Proposition 39 regulations. This waiver does not extend to the District’s obligations set forth in this Agreement.

ACCEPTED AND AGREED on the later date indicated below:

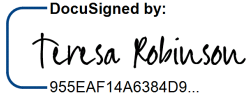
Dated: 6/28/2024

Dated: 6/28/2024

**SAN JOSÉ UNIFIED SCHOOL DISTRICT**

**SUNRISE MIDDLE SCHOOL**

By:  24398E33D9794D1...

By:  955EAF14A6384D9...

Name: Tracy Morrison

Name: Teresa Robinson

Title: Director of Procurement

Title: Director

### EXHIBIT A DESCRIPTION OF PREMISES AND SITE

The Premises that are being allocated to Charter School, including shared space, shall consist of approximately 17,380 square feet of dedicated and shared space located in the room(s) and area(s) as depicted on the map below.



**EXHIBIT B  
PRO-RATA SHARE AND FMV USE FEE**

Sunrise Middle School San José HS Annex 2024-2025			
<b>Total Enrollment (Students)</b>	<b>312</b>	<b>Out-of-district ADA (Students)</b>	<b>48</b>
<b>Total ADA (Students):</b>	<b>286</b>	<b>In-district ADA (Students)</b>	<b>238</b>
<b>[A] Dedicated Spaces (exclusive use)</b>		<b>Square Footage</b>	
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
<b>Total Dedicated Space</b>			<b>15,280</b>
<b>[B] Shared Spaces</b>		<b>Square Footage</b>	
MUB (50% *2,400)			1,200
Gym (10%*9,000)			900
<b>Total shared space</b>			<b>2,100</b>
<b>[A+B] Total Space</b>		<b>Square Footage</b>	
<b>Sum of dedicated and shared spaces</b>			<b>17,380</b>
<b>[C] Shares of total space (out-of-district and in-district students)</b>		<b>Square Footage</b>	
Out-of-district/ADA = 48 out of 286	17%		2,917
In-district students/ADA = 238 out of 286 total	83%		14,463
<b>[D] Pro Rata Share (per square foot per year)</b>	<b>Rate</b>	<b>Square Feet</b>	<b>Subtotal</b>
Routine Maintenance	\$3.44	17,380	\$59,787.20
Custodial	\$3.62	17,380	\$62,915.60
Grounds	\$0.90	17,380	\$15,642.00
Aquatics - Pool	\$0.22	17,380	\$3,823.60
Security Monitoring	\$0.28	17,380	\$4,866.40
Furniture Replacement	\$0.14	17,380	\$2,433.20
Natural Gas and Electricity	\$1.76	17,380	\$30,588.80
Solar	\$1.24	17,380	\$21,551.20
Water	\$0.67	17,380	\$11,644.60
Sewer	\$0.11	17,380	\$1,911.80
Trash	\$0.14	17,380	\$2,433.20
Data Network	\$0.05	17,380	\$869.00
Hazardous Substance	\$0.03	17,380	\$521.40
Insurance Package	\$0.43	17,380	\$7,473.40
Property Self-insured	\$0.38	17,380	\$6,604.40
Safety	\$0.05	17,380	\$869.00
<b>Total</b>	<b>\$13.46</b>	<b>17,380</b>	<b>\$233,934.80</b>
<b>[E] Building Lease (per square foot per year)</b>	<b>Rate</b>	<b>Square Feet</b>	<b>Subtotal</b>
Building Lease (for out-of-district students only)	\$ 23.88	2,917	\$69,657.96
<b>Total</b>		<b>2,917</b>	<b>\$69,657.96</b>
<b>[F] Annual Electric Bill Savings</b>			<b>\$16,135.00</b>
<b>[D+E-F] Total Cost</b>			<b>Amount</b>
Annual (sum of pro rata share and building lease)			\$287,457.76
Monthly (annual divided by 12)			\$23,954.81

**EXHIBIT C  
CERTIFICATIONS**

**THE UNDERSIGNED EXECUTE THIS FORM AND HEREBY CERTIFIES TO THE GOVERNING BOARD OF THE DISTRICT THAT UNDERSIGNED IS:**

- (1) A representative of the Charter School,
- (2) Familiar with the facts herein certified,
- (3) Authorized and qualified to execute this certificate on behalf of Charter School and that by executing this Agreement is certifying the following items.

**Fingerprint and Background Certification.** Charter School shall comply with Education Code section [45125.1](#). Such entities are responsible for ensuring full compliance with the requirements of this statute and should thoroughly review the requirements thereunder.

The Charter School and the Charter School Parties shall at all times comply with the fingerprint and background certification requirements as set forth below. Specifically, by checking an applicable option below, Charter School hereby represents and warrants to District the following:

- Charter School and/or Charter School Parties will not be present on a District site or will not have contact with District students when District students are present during the term of this Agreement.
- The Charter School shall conduct the required criminal background check(s) of all persons who will be providing services to the San José Unified School District on behalf of Charter School, and that none of those persons have been reported by the Department of Justice (“DOJ”) as having been convicted of a serious or violent felony as specified in Penal Code Sections [667.5](#) and/or [1192.7\(c\)](#). I understand that this Certificate is not to be signed and submitted until I have received clearance from DOJ regarding those persons named. Upon request, Charter School will provide a list of the names of the employees who may come in contact with pupils while providing Services under this Agreement. This list shall be regularly maintained and updated by Charter School and shall be available to District upon request or audit.
- Arrange to have a Certificated District Employee continually monitor and supervise the Charter School at all times while services are provided on site such that Charter School will have no interaction with any District student outside the immediate supervision and control of a District employee. As supported by California Education Code Section 45125.1.

Certificated District Employee: N/A, N/A at N/A

Signature: \_\_\_\_\_ Date: \_\_\_\_\_ Principal Initials: \_\_\_\_\_



**Megan’s Law (Sex Offenders).** I have verified and will continue to verify that the employees of the Charter School and the Charter School Parties having contact with District students under this agreement are **not** listed on California’s “Megan’s Law” Website (<http://www.meganslaw.ca.gov/>).

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**Tuberculosis Certification.** The Charter School and the Charter School Parties shall at all times comply with the certification requirements as set forth below. Specifically, by checking the one applicable option below, Charter School hereby represents and warrants to District the following:

- Charter School and/or Charter School Parties will not be present on a District school site and will not have contact with District students when District students are present during the term of this Agreement.
- District has determined that Charter School will not have frequent or prolonged contact with students. District’s determination is in compliance with and supported by California Education Code Section [49406\(m\)](#).
- The following Charter School and/or Charter School Parties shall or may be on a District school site and have contact with District students during the term of this Agreement and, at no cost to District, they have received a tuberculosis risk assessment that complies with the requirements of California Education Code Section [49406](#). In addition, the Charter School shall maintain on file the certificates showing that the Charter School Parties were examined and found free from active tuberculosis. These forms shall be regularly maintained and updated by Charter School and shall be available to District upon request or audit.

Charter School further agrees and acknowledges that all new personnel hired after the effective date of this Agreement are subject to the tuberculosis certification requirements and shall be prohibited from having any contact with District students until the tuberculosis certification requirements have been satisfied and District determines whether any such contact is permissible.

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**Lobbyist Certification.** The Charter School and the Charter School Parties shall at all times comply with the lobbyist certification requirements as set forth below. Specifically, by checking the one applicable option below, Charter School hereby represents and warrants to District the following:

- Charter School and/or Charter School Parties are not a “Lobbying Coalition,” “Lobbying Firm,” “Lobbyist” or “Lobbyist Employer” as those terms are defined in the Political Reform Act of 1974 (Gov. Code §§ 81000) (collectively “Lobbyist”) and are not performing Services hereunder that would require registering as a Lobbyist.
- Charter School and/or Charter School Parties Services hereunder shall or may include lobbying. Charter School and/or Charter School Parties shall comply with all applicable District, local, state and/or federal policies, rules, regulations, statutes and requirements governing Lobbyists. In addition, the Charter School shall maintain on file registering and reporting records for Lobbyists.

These records shall be regularly maintained and updated by Charter School and shall be available to District upon request or audit.

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**Conflict of Interest Certification.** The Charter School and the Charter School Parties shall at all times comply with the conflict of interest certification requirements as set forth below. Specifically, by checking the one applicable option below, Charter School hereby represents and warrants to District the following:

- Charter School and/or Charter School Parties have read and understand the District's Conflict of Interest Code (Board Bylaw 9270) and, to the best of Charter School's knowledge, there are no conflicts of interest that must be disclosed pursuant to the Conflict of Interest Code.
  
  - Charter School and/or Charter School Parties have read and understand the District's Conflict of Interest Code and, Charter School knows or has reason to believe that Charter School has a conflict of interest that requires disclosure and Charter School and/or Charter School Parties shall comply with the applicable disclosure requirements of the District's Conflict of Interest Code. In addition, the Charter School shall maintain on file statements of economic interests in accordance with applicable disclosure requirements. These records shall be regularly maintained and updated by Charter School and shall be available to District upon request or audit.
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I acknowledge and certify under penalty of perjury that I am duly authorized to legally bind the Charter School to all provisions and items included in this certification, that the contents of this certification are true, and that this certification is made under the laws of the State of California.

Date: 6/28/2024

Charter School Name: Sunrise Middle

Signature: 

Name: Teresa Robinson

Title: Director

**END OF DOCUMENT**