

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (“MOU”) is entered into as of July 28, 2020 (“Effective Date”), by and between the **SANTA BARBARA UNIFIED SCHOOL DISTRICT**, a school district organized and existing under the laws of the State of California (the “District”), and **COX COMMUNICATIONS CALIFORNIA, LLC**, a Delaware limited liability company (“Cox”). The District and Cox are collectively referred to herein as the “Parties” or individually, as a “Party.”

RECITALS

WHEREAS, due to the impacts of the recent Covid-19 pandemic, the District’s staff and students may be required by state and local officials to utilize distance learning at least for portions of the 2020-2021 school year.

WHEREAS, the District and Cox are mutually interested in and concerned with the temporary provision of home internet services for District staff and students during this time period, so that they may adequately perform their work and/or their educational programs.

WHEREAS, Cox is currently providing affordable home internet services for qualified families under its Connect2Compete Program as further described on Cox’s website at <https://www.cox.com/residential/internet/connect2compete.html> (the “C2C Program”).

WHEREAS, due to the widespread economic hardships being experienced by the District’s staff and students due to the impacts of the Covid-19 pandemic, the District desires to offer funding for certain students and District staff selected by the District (collectively, the “Participants”) which funding will offset the cost of the Participant’s Cox home internet services (the “District Reimbursement Program”);

WHEREAS, Cox has agreed to participate with the District in administering the District Reimbursement Program as it applies to Cox home internet services, in accordance with the terms and conditions of this MOU;

NOW, THEREFORE, in consideration of the Recitals and the terms and conditions set forth in this MOU, the Parties hereby agree and mutually understand as follows:

TERMS

1. **Term.** The Term of this MOU shall begin on the Effective Date and will continue until terminated by either Party in accordance with Section 8 below.
2. **Reimbursement Program Requirements.**
 - (a) The District shall have the sole discretion and obligation to determine which students and staff members will be designated as Participants, and therefore eligible to participate in the District Reimbursement Program.

- (b) The District shall have the sole responsibility and obligation to communicate the following to all Participants:
- The details and the availability of the District Reimbursement Program,
 - All information regarding how the Participants can subscribe to Cox home internet services and/or apply for the Cox C2C Program,
 - Any subsequent changes to the District Reimbursement Program including but not limited to any change in material terms, changes in credits applicable to such Participants, and any termination of the District Reimbursement Program.
 - Immediate notification to any Participant that the District removes from its Participant list at any time during the Term of this MOU that such Participant will be required to pay all service fees directly to Cox in full if such Participant does not terminate its service agreement with Cox.

The Parties acknowledge that Cox shall have no obligation whatsoever with respect to communicating with any Participant, or potential Participant, in connection with any of the foregoing.

- (c) The District expressly acknowledges that Participants must subscribe to Cox home internet services in order to be eligible for the District Reimbursement Program as outlined under this MOU. The District further acknowledges that qualification for the C2C Program shall be determined solely by Cox, in its sole and absolute discretion, upon receipt of a proper application for such qualification as required on the C2C website. Cox cannot, and does not, guaranty that any individual applicant will be eligible for the C2C Program, and the District waives any claims against Cox in connection with Cox's acceptance or rejection, or failure of acceptance or rejection, of any such application, or the revocation of eligibility for any C2C Program participant at any time.
- (d) The District shall determine the date upon which it desires to commence the District Reimbursement Program by sending Cox written notice of the commencement date along with the names, addresses and, if available, the Cox account numbers of all Participants in the District Reimbursement Program (collectively, the "Required Participant Information") for the applicable month. Upon receipt of the Courtesy Payment Request, the District shall pay the Participant Credit Payment (both as defined below) applicable for that month. If requested by Cox, the District shall provide any follow-up information that may be necessary and/or any needed information verification. Upon receipt of both the Required Participant Information the Participant Credit Payment, Cox shall apply the Participant Credit Payment for the applicable month to each Participant for whom Cox was given the Required Participant Information, and such application shall take place in the manner set out in Section 3(a) below. The District acknowledges that some Cox accounts may be under a family name and District shall provide the correct family name to Cox, as applicable. Cox shall have no liability in connection with failure to apply, or incorrect application of, Participant Credit Payments as a result of any incomplete or incorrect information provided by the District.

- (e) For each successive month during the Term of this MOU, the District shall deliver to Cox, on or before the 1st of each calendar month, the updated Required Participant Information for such month and the applicable Participant Credit Payment, which shall be applied as set forth herein.

3. Information Sharing

The Parties will cooperate to identify families who do not currently have access to high-speed internet service so that they can be contacted about obtaining such service. The District may share with Cox limited pupil record information consisting only of District household addresses (the "List") for the limited purpose of determining whether a household has current access to high-speed internet service. Pursuant to Cal. Educ. Code § 49073.1, the following conditions apply:

- (a) Any information shared by the District to Cox continues to be the property of and under the control of the District.
- (b) The District shall transmit physical records using appropriate security methods and ensure that transmission of digital records of such information is password protected and only shared with necessary individuals.
- (c) Cox shall be prohibited from using any information shared pursuant to this agreement for any purpose other than to effect the purposes of this agreement.
- (d) A parent, legal guardian, or eligible pupil may review any information shared pursuant to this agreement and correct erroneous information. Such an individual should send any such request to support@sbunified.org, and the District will coordinate with Cox to fulfill the request.
- (e) Cox shall instruct any and all of its staff, representatives, agents, or contractors who may have access to information shared pursuant to this agreement, that such information is confidential and may only be used to affect the purpose of this agreement. Cox shall further ensure any physical record of such information is stored, and that digital records of such information is password protected and only shared with necessary individuals.
- (f) In the event of an unauthorized disclosure of the information shared pursuant to this agreement, Cox shall immediately notify the District of the disclosure so that the District may contact affected households and individuals.
- (g) Upon sole determination by the District that Cox has identified and shared with it the households that do not currently receive Cox service, Cox shall immediately destroy the List shared pursuant to this Agreement and supply certification to the District that such information has been destroyed.

(h) The District and Cox shall cooperate to jointly ensure compliance with the Family Educational Rights and Privacy Act (20 U.S.C. § 1232g). For purposes of this agreement only, information shall be shared with Cox so that it can assist in providing an institutional service that would normally be provided by the District. The Parties would consider Cox a “school official” under 34 CFR § 99.31(a)(1)(i)(B) for the limited purpose of effecting the purposes of this section. The Parties agree:

- i. Cox will be performing an institutional service or function in delivering access to instruction;
 - ii. Cox will be under the direct control of the District with respect to the use and maintenance of the education records at issue in this agreement;
 - iii. Cox is subject to the requirements of 34 CFR § 99.33(a) governing the use and redisclosure of personally identifiable information from education records.
- (i) Cox shall be prohibited from using information obtained pursuant to this agreement to engage in targeted advertising.

4. **Payments and Credits.**

- (a) **Participant Credit Payment.** District shall deliver to Cox on or before the first of each month, certain funds to be divided and distributed equally to each Participant listed in the Required Participant Information delivered to Cox during the corresponding month (the “Participant Credit Payment”). Each Participant Credit Payment shall be directly deposited into Cox’s bank account pursuant to instructions to be delivered to District promptly following the execution of this MOU. Within thirty (30) days after receipt and verification of the Participant Credit Payment, Cox shall apply to each Participant’s account, an equal amount of the Participant Credit Payment received from the District. The District shall promptly respond to any request from Cox for assistance in working through any issues or problems in reconciling that Participant Credit Payment with the related Required Participant Information.
- (b) **Free Services Period.** In the event Cox publishes offers that include free or discounted services, the District shall be responsible for determining which Participants shall be eligible for the Participant Credit Payment during any such free services periods.

5. **Current Cox Customers.** For clarification purposes, any designated Participants who already have an account with Cox for the purchase of home internet services, shall, so long as the District has provided Cox with the Required Participant Information, receive such Participant’s portion of the Participant Credit Payment as set forth above.

6. **Internet Speed.** The Internet Speed provided to the Participants may vary and will be determined in accordance with the terms and conditions of the C2C Program and/or the applicable residential service package purchased by the Participant.
7. **Internet Equipment/Terms of Internet Service.** The District acknowledges that each Participant shall be subject to all applicable terms and conditions of the C2C Program and/or the home internet plan to which such Participant subscribes. Furthermore, in accordance with such terms and conditions, the Participants may be charged for lost or damaged equipment, and the Participant's service(s) may be terminated as a result of the failure to abide by any of the terms and conditions for such services. Participation in the District Reimbursement Program shall not constitute a waiver of any of the foregoing by Cox.
8. **Termination.** This MOU may be terminated for any reason by either Party by giving at least thirty (30) day's written notice to the other Party. Any Participant Credit Payment made prior to such termination shall be non-refundable and shall be applied to Participant accounts as set forth above. Cox agrees not to charge the District any termination fees in connection with the termination of this MOU. Immediately upon the receipt (or giving) of a termination notice hereunder, District shall promptly inform all Participants in writing of the pending termination of this MOU, the date of such termination, notification that the Participant will continue to receive Cox services **at the Participant's sole cost** upon such termination, and instruction that payment obligations will continue to accrue unless the Participant terminate the services directly through Cox. Participants will have the option to continue to receive Cox services under the C2C Program or as a regular purchase of home internet services, as applicable. If a Participant does not cancel its Cox services, then upon the expiration of the District Reimbursement Program, the Participant will be charged for the full amount of its home internet subscription for as long as the subscription remains in effect.
9. **Indemnification.** Subject to Section 16 below, each Party shall indemnify, defend, and hold the other Party, and its respective directors, officials, officers, employees, agents, consultants and contractors (collectively, the "**Indemnified Parties**") free and harmless from any and all third party claims, demands, causes of action, costs, expenses, liabilities, losses, damages or injuries for tangible property damages or personal injury including wrongful death (collectively, "**Claims**"), arising out of the gross negligence or willful misconduct of the Party providing the Indemnity. The foregoing indemnification shall exclude any Claims to the extent caused by the negligence or willful misconduct of any of the Indemnified Parties. Furthermore, in no event shall Cox be liable for and District hereby waives any Claims against Cox arising from (i) District's failure to pay all or any portion of the Participant Credit Payment; (ii) District's failure to designate any student or staff member as a Participant in the District Reimbursement Program or its election to remove such designation; (iii) Cox's termination of any Participant's services as a result of the breach by such Participant of the applicable service agreement; (iv) any interruption of the Cox home internet services for any reason; (v) the District's provision of any incorrect or incomplete Required Participant Information or its failure to respond to Cox's request for updated or additional information; or (vi) the District's violation of any applicable laws, rules or regulations, including without limitation, any claims arising under Title VII of the

Civil Rights Act of 1964, 42 U.S.C. § 1981, or The Americans With Disabilities Act of 1990, as amended and District hereby indemnifies and holds Cox harmless from any Claims arising from the foregoing.

10. **Notices.** All written notices to be given under this MOU shall be given by first class mail, personal delivery, nationally recognized overnight courier or by email to the other Party at its address set forth below, or at such address as the Party may provide to the other Party in writing from time to time. Notice shall be deemed given upon actual delivery or refusal of same, or in the case of email, upon acknowledgement by the recipient of receipt of such notice. The Parties may, by written notice to the other Parties, from time to time modify the address or number to which communications are to be given hereunder.

If to the District:

Santa Barbara Unified School District
720 Santa Barbara St
Santa Barbara, CA 93101
Attn: Meg Jetté
Email: mjette@sbunified.org

If to Cox:

Cox Communications California, LLC

Attn: _____

Email: _____

11. **Amendment.** No modification, waiver, amendment, discharge or change of this MOU shall be valid unless the same is in writing and signed by the Party against which the enforcement of such modification, waiver, amendment, discharge or change is or may be sought.
12. **Binding Effect.** This MOU shall be binding upon and inure to the benefit of the Parties and their respective heirs, administrators, representatives, successors and assigns.
13. **Governing Law.** This MOU shall be governed by and construed with the laws of the State of California.
14. **Validity of MOU.** The invalidity in whole or in part of any provision of this MOU shall not void or affect the validity of any other provision of this MOU.
15. **Counterparts.** This MOU may be executed in multiple counterparts and by electronic signature, each of which shall be deemed an original and together which shall constitute one and the same instrument.
16. **Entire Agreement.** This MOU constitutes the entire agreement between the Parties and supersedes all prior written or oral agreements.
17. **LIMITATION OF LIABILITY.** IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR CONSEQUENTIAL, SPECIAL, INDIRECT OR PUNITIVE DAMAGES IN CONNECTION WITH THIS MOU. EXCEPT AS PROVIDED IN THE AGREEMENT, THERE ARE NO AGREEMENTS, WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, EITHER IN FACT OR BY OPERATION OF LAW, STATUTORY OR OTHERWISE, INCLUDING

WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, RELATING TO COX'S SERVICES. SERVICES PROVIDED ARE A BEST EFFORTS SERVICE AND COX DOES NOT WARRANT THAT ANY SERVICES, EQUIPMENT OR SOFTWARE SHALL BE ERROR-FREE OR WITHOUT INTERRUPTION. COX DOES NOT GUARANTEE THAT SERVICE CAN BE PROVISIONED TO PARTICIPANT'S LOCATION, OR THAT INSTALLATION OF SERVICE WILL OCCUR IN A SPECIFIED TIMEFRAME. COX DOES NOT WARRANT THAT ANY SERVICE OR EQUIPMENT WILL MEET PARTICIPANT'S NEEDS, PERFORM AT A PARTICULAR SPEED, BANDWIDTH OR THROUGHPUT RATE, OR WILL BE UNINTERRUPTED, ERROR-FREE, SECURE, OR FREE OF VIRUSES, WORMS, DISABLING CODE OR THE LIKE. INTERNET AND WIFI SPEEDS WILL VARY. COX MAKES NO WARRANTY AS TO TRANSMISSION OR UPSTREAM OR DOWNSTREAM SPEEDS OF THE NETWORK.

IN WITNESS WHEREOF, the Parties hereto have executed this MOU on the date first herein above written.

Santa Barbara Unified School District

By:



(Authorized Representative)

Printed Name: Meg Jette

Title: Asst. Supt., Business Svcs.

Dated: July 28, 2020

Cox Communications California, LLC

By:

(Authorized Representative)

Printed Name: _____

Title: _____

Dated: _____

