

Memorandum of Understanding

Between

Digital Promise

And

Santa Barbara Unified School District

This Memorandum of Understanding (“MOU”) sets forth the terms and understanding between Digital Promise Global (“Digital Promise”) and Santa Barbara Unified School District (“Santa Barbara USD”) (collectively, the “Parties”) regarding Digital Promise’s provision of Digital Design and Challenge Based Learning professional services to Santa Barbara USD (“the Project”). The MOU terms are set forth below and in the attached Schedule A (Statement of Work) which is incorporated by reference herein and made a part of this MOU.

1. Background & Purpose

Digital Promise provide Santa Barbara USD with an evaluation of their Distance Learning Plan, professional development program, and learning management system, and to provide consultation and recommendations for improvements to each.

2. Statement of Work

Digital Promise shall provide to Santa Barbara USD the professional services described in the Statement of Work attached hereto as Schedule A (“Services”). The Statement of Work shall be subject to the terms and conditions of this MOU. In the event of any conflict between the terms of this MOU and the Statement of Work, the terms of this MOU shall govern, unless the Statement of Work expressly references the conflicting provision in this MOU and provides that the provision in the Statement of Work shall govern.

3. Duration

This MOU is at-will and may be modified by mutual consent of authorized officials from Digital Promise and Santa Barbara USD. This MOU shall become effective upon signature by the authorized officials from Digital Promise and Santa Barbara USD and will remain in effect until modified or terminated by any one of the parties by mutual consent. In the absence of mutual agreement by the authorized officials from Digital Promise and Santa Barbara USD, this MOU shall end on the date set forth in Schedule A.

The timeline of deliverables may be set forth in Schedule A. Significant deviations from this timeline must be mutually approved by Digital Promise and Santa Barbara USD.

4. Payment

Digital Promise shall be paid in accordance with the payment terms set forth in Schedule A.

5. Independent Contractor

In performing the Services pursuant to this MOU, each party is an independent contractor, is not an agent or employee of the other, and is not authorized to act on behalf of the other. In no event shall Digital Promise or its subcontractors who work on the Project be eligible for any fringe benefits or insurance provided to employees of Santa Barbara USD.

6. Taxes

Digital Promise agrees that Digital Promise or its contractors, as applicable, will collect and timely remit to the appropriate taxing authority all taxes due under this MOU for Services.

7. Intellectual Property

Conditioned on and subject to the terms of this MOU, Santa Barbara USD will own all content and materials provided to Santa Barbara USD as part of the Services described in Schedule A.

8. Facilities; Equipment; Personnel

In connection with any Services being performed at a [Client] facility, Santa Barbara USD shall provide Digital Promise employees and contractors with access to reasonable workspace and computer and phone equipment, as necessary, unless otherwise specified in a Statement of Work.

9. Confidentiality

At all times during the term of this MOU and for a period of five (5) years following termination or expiration of this MOU, Digital Promise and Santa Barbara USD shall, and shall cause their respective officers, directors, and other employees and agents to, keep confidential and not publish or otherwise disclose and not use, directly or indirectly, for any purpose, any Confidential Information (as defined in this Section 9), except to the extent such disclosure or use is expressly permitted by the terms of this MOU. The obligations of confidentiality in this Section 9 shall not extend to any Confidential Information that: (i) is or comes into the public domain without breach of this MOU by the party receiving such Confidential Information, (ii) is received by the receiving party from a third party without any obligation of confidentiality and without breach of this MOU by the receiving party, or (iii) the receiving party can demonstrate by competent evidence was already in its possession without any limitation on use or disclosure prior to the effective date of this MOU. This MOU shall not restrict Digital Promise or Santa Barbara USD from complying with a lawfully issued governmental order or legal requirement to produce or disclose Confidential Information; provided, however, that Digital Promise and Santa Barbara USD shall promptly notify the other party to enable that party to oppose the order or obtain a protective order and each party shall cooperate fully with the other party in any such proceeding. If Digital Promise or Santa Barbara USD is thereafter required to disclose Confidential Information, both parties will endeavor to agree to a mutually satisfactory means to disclose such information. "Confidential Information" means all non-public, confidential, or proprietary information, in any form, furnished or made available directly or indirectly by one party to the other party, whether or not designated "Confidential Information."

10. Termination

In the event of termination or expiration of this MOU under Section 3, Santa Barbara USD agrees to pay Digital Promise for the work it has completed and provided to Santa Barbara USD up to the date of termination or expiration. All payments will be made according to the payment schedule(s) outline in Schedule (A). Advance payment made to Digital Promise and not applicable to completed work as of the date of termination or expiration will be promptly refunded to Santa Barbara USD.

11. Conflict

Each attached Schedule shall be subject to the terms and conditions of this MOU. In the event of any conflict between the terms of this MOU and a Schedule, the terms of this MOU shall govern, unless the Schedule expressly references the conflicting provision in this MOU and provides that the provision in the Schedule shall govern.

12. Assignment

A party shall not assign this MOU, or assign, subcontract or delegate any of its rights or obligations pursuant to this MOU, without the prior written consent of the other party, and any attempted assignment, subcontract or delegation without such prior written consent shall be of no force or effect.

13. Limitation of Liability

EXCEPT WITH RESPECT TO BREACHES OF A PARTY'S OBLIGATIONS UNDER SECTIONS 7 OR 9, NEITHER PARTY WILL BE LIABLE TO THE OTHER PARTY FOR ANY LOST PROFITS, LOST DATA, OR LOST BUSINESS, COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, OR FOR ANY OTHER INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS CONTRACT, HOWEVER CAUSED, AND UNDER WHATEVER CAUSE OF ACTION OR THEORY OF LIABILITY BROUGHT (INCLUDING, WITHOUT LIMITATION, UNDER ANY CONTRACT, NEGLIGENCE, OR OTHER TORT THEORY OF LIABILITY) EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EACH PARTY'S TOTAL AGGREGATE LIABILITY ARISING OUT OF THIS CONTRACT WILL NOT EXCEED THE FACE AMOUNT OF THIS CONTRACT [SET FORTH IN SECTION [III.A.1 OF SCHEDULE A]. EACH PARTY ACKNOWLEDGES THAT THIS SECTION HAS BEEN INCLUDED AS A MATERIAL INDUCEMENT FOR THE OTHER PARTY TO ENTER INTO THIS CONTRACT AND THAT SUCH PARTY WOULD NOT HAVE ENTERED INTO THIS CONTRACT BUT FOR THE LIMITATIONS OF LIABILITY AS SET FORTH HEREIN. THE PARTIES AGREE THAT THE LIMITATION OF LIABILITY SET FORTH HEREIN WILL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE.

14. Publicity and Use of Trademarks

A party shall not make any public statements or announcements relating to this MOU without the prior written consent of the other party. A party shall not display or use, in advertising or otherwise, any of the other party's trade names, logos, trademarks, service marks or other indicia of origin without the other party's prior written consent (which consent may be revoked at any time).

15. Governing Law

This MOU and the rights of the Parties hereunder shall be governed by and construed in accordance with the laws of the District of Columbia, exclusive of conflict or choice of law rules. The venue for any claim shall be in the District of Columbia, in accordance with the laws of the District of Columbia.

16. Compliance with Applicable Laws

Digital Promise will comply with (a) all federal and state laws, rules and regulations applicable to its performance of the Services under this MOU.

17. Severability

In the event any provision of this MOU is found to be legally unenforceable, such unenforceability shall not prevent enforcement of any other provision of this MOU.

18. Authority

Each party represents, warrants and covenants to the other party that it has the authority to enter into this MOU and to perform all of its obligations hereunder.

19. Counterparts

This MOU may be executed in any number of counterparts, each of which shall be deemed an original, but all such counterparts together shall constitute one and the same instrument.

20. Notice

Any notice required or permitted by this MOU must be in writing and shall be deemed to have been given if sent by first class mail (postage prepaid), overnight carrier, telecopy, or personal delivery, addressed: (i) if to Santa Barbara USD, to the attention of Meg Jetté, Assistant Superintendent of Business, 720 Santa Barbara Street, CA 93101 with a copy to the attention of Shawn Carey, Assistant Superintendent of Secondary Education, same as above (ii) if to Digital Promise, to the attention of Kathryn Petrillo-Smith, Chief Operating Officer, 1001 Connecticut Avenue, NW, Suite 935, Washington, DC 20036, or (iii) at such other addresses the party to be notified has designated upon reasonable notice. Notices sent by telecopy, overnight carrier or personal delivery shall be deemed to be effective upon receipt, and notices sent by first class mail shall be deemed to be effective no later than the fifth business day following the mailing of such notice.

21. Survival

The terms and conditions of this MOU that would, by their nature, survive the expiration or termination of this MOU, including without limitation, Section 5 (Independent Contractor), Section 6 (Tax), Section 7 (Intellectual Property), Section 9 (Confidentiality), Section 10 (Termination), Section 13 (Limitation of Liability), Section 14 (Publicity and Use of Trademarks), Section 15 (Governing Law), and Section 21, shall so survive the expiration or termination of this MOU for any reason.


22. Waiver

Waiver by any party of performance of any provision of this MOU must be in writing and signed by the party adversely affected thereby. Such waiver shall not be a waiver, or prejudice the party's right to require performance, of the same provision in the future, or of any other provision.

23. Entire Agreement

This MOU and associated schedules (all of which are incorporated herein by this reference) constitute the entire agreement between the Parties and supersede any and all prior agreements and understandings between the Parties, written or oral, not incorporated herein with respect to the subject matter of this MOU. This MOU and any associated schedules may not be changed unless mutually agreed upon by the Parties in writing.

Signed,

DocuSigned by:

751B72698FD546E... Date: 8/4/2020 | 12:06 PM PDT

Margaret Jetté
Santa Barbara Unified School District
Assistant Superintendent Business Services, CBO

DocuSigned by:

DE7144E98A03425... Date: 8/4/2020 | 3:32 PM EDT

Kathryn Petrillo-Smith
Digital Promise
Chief Operating Officer

SCHEDULE A

STATEMENT OF WORK

I. TERM

Unless terminated earlier pursuant to Section 3 of the MOU, the MOU shall begin on July 23, 2020 and terminate on June 30, 2021.

II. SCOPE OF WORK

Digital Promise will:

- Provide a project manager to coordinate work, including contracting and billing, and make available various Digital Promise staff with relevant expertise to support the following:
- Design and implement an evaluation of the Distance Learning Plan and provide recommendations based on input from:
 - Internal stakeholders including principals, teachers' union, instructional leaders, and teacher leaders;
 - School board and community members;
 - External experts and researchers.
- Support the distribution and implementation of the district's Distance Learning Plan as needed.
- Evaluation of Professional Learning to support Distance Learning Plan based on the TPACK Framework:
 - Technological Knowledge: NEO as LMS for adult learning;
 - Pedagogical Knowledge: leveraging LINC to enhance practice;
 - Content Knowledge delivery via various technological tools.
- Support redesign and/or delivery of professional learning as needed.
- Evaluation and consultation on learning management system:
 - Recommend and support implementation of LMS features in relation to the DLP;
 - Recommend and support shift to other tools as needed.

Santa Barbara USD will:

- Identify a project lead to coordinate work with Digital Promise.
- Have ultimate responsibility for the vision and creation of plans and professional learning materials.
- Arrange educator and other stakeholder participation as needed and manage any personnel logistics.

III. COMPENSATION & PAYMENT TERMS

Digital Promise will bill Santa Barbara USD hourly at the rates listed below. Total amount billed is not to exceed \$20,000 without prior written approval from Santa Barbara USD. Digital Promise will invoice monthly.

Hourly rates:

- Dr. Judith Fusco - \$125/hour
- Dr. Pati Ruiz - \$100/hour

Additional staff will bill according to the following rate bands:

- Directors and Senior Researchers: \$125/hr
- Program/Project Directors, and all others: \$100/hr
- Project or Program Manager: \$80/hr

Margaret Jetté
Santa Barbara Unified School District

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8/4/2020 | 12:06 PM PDT

(Initial and date)

Kathryn Petrillo-Smith
Digital Promise

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8/4/2020 | 3:32 PM EDT

(Initial and date)