

**MEMORANDUM OF UNDERSTANDING
BETWEEN
CITY OF DORAL
AND
SOUTH FLORIDA DIGITAL ALLIANCE**

This Memorandum of Understanding (the "MOU") is made and entered into this 13th day of January, 2016 by and between the City of Doral, a municipality in the State of Florida (hereinafter referred to as the "City"), and the South Florida Digital Alliance, a Florida not-for-profit corporation (hereinafter referred to as "SFDA"). The City and the SFDA may be referred to individually as a "Party" or collectively as the "Parties."

Recitals

WHEREAS, the SFDA is a Not for-Profit 501(c)(3) charitable foundation, the mission of which is to expand digital literacy and provide connectivity to all citizens regardless of income level, throughout South Florida; and

WHEREAS, the City recognizes that, in today's global society, the development of technology skills has become a necessity for individuals seeking to excel in education, communications and economic activities and is a critical tool for future generations; and

WHEREAS, the City regularly disposes itself of computer and other electronic equipment as such equipment reaches end-of-life or end of usefulness, is replaced with modern or updated technology, and/or become too costly or inefficient to maintain ("Surplus Stock Equipment"); and

WHEREAS, Surplus Stock Equipment are typically sold at public auction for minimal value given that the Surplus Stock Equipment are released in "as is" condition, are typically in antiquated condition, and are cleared of all means of operating the computer; and

WHEREAS, it has become known to the City Council that Parent Teacher Association Boards in the City have expressed an on-going need for additional computers within their respective schools; and

WHEREAS, the SFDA operates a community program, through which the SFDA receives donations of Surplus Stock Equipment from businesses, municipalities, and organizations, refurbishes said Surplus Stock Equipment via volunteers, and distributes the now-functioning Surplus Stock Equipment to community schools, parks, senior/adult centers, and non-for-profit organizations; and

WHEREAS, in order to ensure that City schools have the opportunity to access additional equipment needed to educate the children of the community, the City desires to partner with the SFDA, so that the City's Surplus Stock Equipment may be reinvested into the community.

Juo

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the receipt and sufficiency of which is acknowledged by the City and SFDA, it is hereby agreed as follows:

1. **Recitals.** The recitals above are true and correct and are incorporated herein as if set forth in full.

2. **Term.** The City and SFDA agree to enter into this MOU for a term of two (2) years. The MOU may be renewed for 3 additional 1 year terms, by written agreement of the terms and conditions on which both parties agree. This agreement may be terminated by either party for any reason upon 30 days written notice to the other. Service of written notice shall be made by certified first class US Mail return receipt requested. Service shall be effective upon mailing.

3. **Obligations.** The City shall provide and transfer to SFDA, at no cost, the Surplus Stock Equipment as may become available, from time to time. All Surplus Stock Equipment is donated in accordance with Florida Statutes Section 672.316, "as-is," "where is," and "with all faults." It is understood that any computers provided to SFDA shall be provided with reformatted hard drives and without any software. No manuals or instructions shall be provided for the Surplus Stock Equipment. The Parties acknowledge, understand, and agree that the City is not obligated to provide a specific amount of Surplus Stock Equipment at any time; the City shall provide Surplus Stock Equipment as it reaches end-of-life or end of usefulness, is replaced with modern or updated technology, and/or become too costly or inefficient to maintain, in the City's sole discretion.

The Parties acknowledge, understand, and agree that, to be eligible to receive donated Surplus Stock Equipment from SFDA, the recipient(s) must be a school or non-profit organization, located within the City, which shall use the Surplus Stock Equipment with the primary purpose of educating the youth of the community.

SFDA agrees to take possession of the Surplus Stock Equipment and to provide notice to the City of the recipient(s). SFDA does not require the consent of the City prior to the transfer any of the Surplus Stock Equipment. Depending on the needs of the recipient(s), SFDA shall either provide the Surplus Stock Equipment in the condition provided by the City or, to the extent such equipment includes computers, each computer will be donated with a functioning Windows operating system—the most updated version commercial practicable.

SFDA's performance of the above-stated obligations are subject to the continued funding of the SFDA through charitable donations. In the event that the SFDA becomes insolvent or the SFDA is otherwise unable to sustain the donation program, the SFDA will be excused from performing any of the covenants and obligations of this agreement. The SFDA shall use its best efforts to sustain charitable funding through the course of performing this agreement.

A handwritten signature in blue ink, appearing to be 'Jho'.

4. **Inventory; Disposition of Property upon Termination.** The City shall maintain an inventory of all Surplus Stock Equipment provided to SFDA by the City. Provided that needs within the City have been met, Provider may distribute the excess Surplus Stock Equipment.

5. **Promotion.** The City and SFDA shall work collaboratively to promote the donation of Surplus Stock Equipment to schools and non-profit organizations in the City.

6. **Limited Software Licensing and Restrictions to Use.** The City acknowledges that pursuant to a third party agreement between Microsoft and SFDA, certain Microsoft software, including, but not limited to, Microsoft Office Suite and other Microsoft owned software, are being used by SFDA under limited licensing rights. All rights, title, and interest in the materials are and will continue to be the exclusive property of Microsoft. Nothing in the Terms of this MOU shall be construed to confer any license or right, by implication, estoppel or otherwise, which is contrary to or exceeds the rights conferred to SFDA by Microsoft. The City shall be prohibited from assigning any license for use thereof or manipulating the software.

7. **Donor Recognition Signage.** The SFDA will recognize the support/contribution of the City with the establishment of donor recognition decal/sticker which shall accompany all donated Surplus Stock Equipment, with all signage meeting regulatory, statutory, or other lawful requirements for display. Provider shall not be responsible for assuring the permanence of the sticker/decal once delivery of the Surplus Stock Equipment once delivery occurs.

8. **Authority to Contract.** The undersigned agent claiming authority for the City below hereby represents and warrants to the SFDA, and the SFDA agent signing below hereby represent and warrant to the other, that each of them and the persons executing this Agreement on their behalf are authorized to enter into this Agreement and be bound by its terms.

9. **Entire Agreement; No Modifications.** This Agreement constitutes the sole agreement between the parties with respect to the subject matter. Each party to this Agreement acknowledges that no representations, inducements, promises, or agreements, oral or otherwise, have been made by any party or by anyone acting on behalf of any party which are not embodied herein, and that any agreement, statement or promise not contained in this Agreement will not be valid or binding or of any force or effect whatsoever. No change or modification of this Agreement shall be valid or binding upon the parties hereto unless such change or modification is in writing and is signed by the parties hereto with the same formality as this present Agreement.

10. **Severability.** In the event that any one or more of the provisions (or portions thereof) contained in this Agreement shall be held by a court of competent jurisdiction to be invalid, illegal or unenforceable in any respect for any reason, that invalidity, illegality or unenforceability shall not affect any other portion hereof, and this Agreement shall be construed as if that invalid, illegal or unenforceable provision (or portion thereof) had never been contained herein.

11. **Binding Effect.** The terms, promises, covenants and agreements contained in this Agreement shall apply to, be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors and assign

JW

12. **Applicable Law/Venue.** This Agreement and the rights and obligations of the parties hereunder shall be construed, interpreted and enforced in accordance with and governed by the laws of the State of Florida. The parties agree that venue for any action brought by either party to enforce or interpret this Agreement shall lie in the courts of Miami-Dade County, Florida.

13. **Waiver of Jury Trial.** EACH PARTY HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES (TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW) ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY OF ANY DISPUTE DIRECTLY OR INDIRECTLY ARISING UNDER OR RELATING TO THIS AGREEMENT OR THE CONFIRMATIONS OR ANY TRANSACTION CONTEMPLATED HEREBY OR THEREBY AND AGREES THAT ANY SUCH DISPUTE SHALL BE TRIED BEFORE A JUDGE SITTING WITHOUT A JURY.

14. **Joint Drafting and Neutral Construction.** This Agreement is a negotiated document and shall be deemed to have been drafted jointly by the parties, and no rule of construction or interpretation shall apply against any particular party based on a contention that the Agreement was drafted by one of the parties. This Agreement shall be construed and interpreted in a neutral manner.

15. **No Waiver.** This Agreement may be amended, cancelled, renewed or extended, and the terms hereof may be waived, only by a written agreement signed by the City and SFDA. No delay on the part of any party in exercising any right, power or privilege hereunder shall operate as waiver thereof, nor shall any waiver on the part of any party of any such right, power or privilege, nor any single or partial exercise of any such right, power or privilege, preclude any further exercise thereof or the exercise of any other such right, power or privilege.

16. **Indemnification.** The Parties shall defend, indemnify, and hold harmless the each others, their corresponding officers, agents and employees, from and against any and all demands, claims, losses, suits, liabilities, causes of action, judgment or damages, arising out of, related to, or any way connected with each Parties' performance or non-performance of any provision of this Agreement including, but not limited to, intentional, reckless, and/or negligent acts or omission and/or liabilities arising from contracts between any of the Parties and third parties made pursuant to this Agreement. This section shall be interpreted and construed in a manner to comply with any applicable Florida Statutes, including without limitation Sections 725.06 and 725.08, Fla. Stat., if applicable. The provisions of this section shall survive termination of this Agreement. This indemnification provision is a material part of the consideration inducing the parties to enter into the agreement.

17. **Notices/Authorized Representatives.** Any notices required by this Agreement shall be in writing and shall be deemed to have been properly given if transmitted by hand-delivery, by registered or certified mail with postage prepaid return receipt requested, or by a private postal service, addressed to the parties (or their successors) at the following addresses:

Q 40

For the City: Edward Rojas, City Manager
City of Doral, Florida
8401 NW 53rd Terrace
Doral, Florida 33166

With a Copy to: Daniel A. Espino, Esq.
Weiss Serota Helfman Cole & Bierman, PL
City Attorneys
2525 Ponce de Leon Blvd., Ste 700
Coral Gables, FL 33134

For SFDA: Jim Osteen
South Florida Digital Alliance
100 South Biscayne Blvd. suite 915
Miami, FL 33131

18. **Ownership and Access to Records and Audits.**

18.1 All records, books, documents, maps, data, deliverables, papers and financial information (the "Records") that result from the Consultant providing services to the City under this Agreement shall be the property of the City.

18.2 In accordance with Chapter 119, Florida Statutes, Consultant shall:

18.2.1 keep and maintain public records that ordinarily and necessarily would be required by the City in order to perform the Services;

18.2.2 provide the public with access to public records on the same terms and conditions that the City would provide the records and at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law;

18.2.3 ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law; and

18.2.4 meet all requirements for retaining public records and transfer, at no cost, to the City all public records in possession of the Consultant upon termination of the contract and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the City in a format that is compatible with the information technology systems of the public agency.

18.3 The City Manager or his designee shall, during the term of this Agreement and for a period of three (3) years from the date of termination of this Agreement,

A handwritten signature in blue ink, appearing to be 'Jko', is located in the bottom right corner of the page.

have access to and the right to examine and audit any Records of the Consultant involving transactions related to this Agreement.

18.4 The City may cancel this Agreement for refusal by the Consultant to maintain any Records pertaining to work performed under this Agreement that are subject to the provisions of Chapter 119, Florida Statutes.

19. **Nonassignability.** This Agreement shall not be assignable by SFDA unless such assignment is first approved by the City Manager. The City is relying upon the qualities, attributes, and past practices of SFDA.

20. **Headings and Captions.** The titles or captions of paragraphs and subparagraphs contained in this Agreement are provided for convenience or reference only, and they shall not be considered a part of this Agreement.

21. **Acknowledgment.** Execution of this Agreement by the parties constitutes an acknowledgment of having been given reasonable opportunity to examine the contents of this Agreement, with the assistance of legal counsel, if desired, so as to completely understand the meaning of the Agreement.

22. **Counterparts.** This Agreement may be executed in any number of counterparts and by the different parties hereto by separate counterparts, each of which when so executed shall be an original, and all of which shall constitute one in the same instrument. Complete sets of counterparts shall be lodged with the City and SFDA.

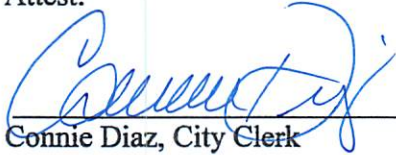
23. **Facsimile Signatures.** Electronically transmitted facsimile signatures on this Agreement shall serve as originals for all purposes.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK. SIGNATURES TO FOLLOW.]

g⁴⁰

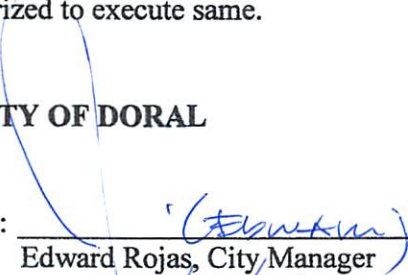
IN WITNESS WHEREOF, the parties execute this Agreement on the respective dates under each signature: The City, signing by and through its City Manager, attested to by its City Clerk, duly authorized to execute same and by Consultant by and through Patrick M. Franklin, whose representative has been duly authorized to execute same.

Attest:



Connie Diaz, City Clerk

CITY OF DORAL

By: 

Edward Rojas, City Manager


Date: 2/11/16

Approved As To Form and Legal Sufficiency for the Use
And Reliance of the City of Doral Only:



Weiss Serota Helfman Cole & Bierman, PL
City Attorneys

SOUTH FLORIDA DIGITAL
ALLIANCE

By: 
Name: JAMES E OSTER JR
Title: EXECUTIVE DIRECTOR
Date: 02/02/2016

RESOLUTION No.15-242

A RESOLUTION OF THE MAYOR AND THE CITY COUNCIL OF THE CITY OF DORAL, FLORIDA, APPROVING A RELATIONSHIP WITH DIGITAL ALLIANCE TO DONATE SURPLUS AND/OR OUT-OF-DATE COMPUTER EQUIPMENT TO SCHOOLS AND NON-PROFIT ORGANIZATIONS WITHIN THE CITY; AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT WITH DIGITAL ALLIANCE, SUBJECT TO APPROVAL BY THE CITY ATTORNEY AS TO FORM AND LEGAL SUFFICIENCY, AND TO DONATE SURPLUS EQUIPMENT IN FURTHERANCE HEREOF; PROVIDING FOR IMPLEMENTATION; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the City of Doral (the "City") regularly dispossesses itself of computer and other electronic equipment as such equipment reaches end-of-life or end of usefulness, is replaced with modern or updated technology, and/or become too costly or inefficient to maintain ("Surplus Stock Assets"); and

WHEREAS, Surplus Stock Assets are typically sold at public auction for minimal value given that the Surplus Stock Assets are released in "as is" condition, are typically in antiquated condition, and are cleared of all means of operating the computer; and

WHEREAS, it has become known to the City Council that Parent Teacher Association Boards have expressed an on-going need for additional computers within their respective schools; and

WHEREAS, research by the City's Information Technology Department revealed that a non-profit organization, the South Florida Digital Alliance ("SFDA"), operates a community program, through which the SFDA receives donations of Surplus Stock Assets from businesses, municipalities, and organizations, refurbishes said Surplus

Stock Assets via volunteers, and distributes the now-functioning Surplus Stock Assets to community schools, parks, senior/adult centers, and non-for-profit organizations; and

WHEREAS, in order to ensure that Doral schools have the opportunity to access additional equipment needed to educate the children of the community, the City Council desires to partner with the SFDA, so that the City's Surplus Stock Assets may be reinvested into the community; and

WHEREAS, the City Council believes that such a relationship and the ensuing donations to schools and community organizations will be in the best interest of the City.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DORAL, FLORIDA, AS FOLLOWS:

Section 1. Recitals. The above recitals are confirmed, adopted, and incorporated herein and made a part hereof by this reference.

Section 2. Approval. A relationship with the South Florida Digital Alliance, as specified herein, and as further explained in the attached memorandum found in Exhibit "A", to donate surplus and/or out- of-date computer equipment to schools and non-profit organizations within the City is hereby approved, subject to the formalizing of the relationship by the City Manager.

Section 3. Authorization. The City Manager is hereby authorized to enter into an agreement and other contractual documents, subject to approval as to form and legal sufficiency by the City Attorney, as may be necessary to formalize the City's relationship with the SFDA, on the conditions specified herein and may be deemed necessary to protect and further the interests of the City. The City Manager is further authorized to donate Surplus Stock Assets to the SFDA.

Section 4. Implementation. The City Manager and City Attorney are hereby authorized to take such further action as may be necessary to implement the purpose and provisions of this Resolution.

Section 5. Effective Date. This Resolution shall take effect immediately upon adoption.

The foregoing Resolution was offered by Mayor Boria who moved its adoption. The motion was seconded by Councilman Cabrera and upon being put to a vote, the vote was as follows:

Mayor Luigi Boria	Yes
Vice Mayor Christi Fraga	Yes
Councilman Pete Cabrera	Yes
Councilwoman Ana Maria Rodriguez	Yes
Councilwoman Sandra Ruiz	Yes

PASSED and ADOPTED this 2 day of December, 2015.



LUIGI BORIA, MAYOR

ATTEST:



CONNIE DIAZ, CITY CLERK

APPROVED AS TO FORM AND LEGAL SUFFIENCY
FOR THE USE AND RELIANCE OF THE CITY OF DORAL ONLY:



WEISS, SEROTA, HELFMAN, COLE & BIERMAN, P.L.
CITY ATTORNEY