

MEMORANDUM OF UNDERSTANDING BETWEEN
City of Coral Gables
AND
South Florida Digital Alliance, Inc.

This Memorandum of Understanding (“MOU”) is made and entered into this ____ day of _____, 2016, by and between the City of Coral Gables (hereinafter referred to as “the City”) and the Miami-Dade Broadband Coalition, Inc. d/b/a/ South Florida Digital Alliance, Inc. (hereinafter referred to as “SFDA”).

Recitals

Background:

The SFDA is a Not-For-Profit (26 U.S.C. 501 (c)(3)) charitable foundation whose mission is to expand digital literacy and provide connectivity to all citizens regardless of income level, throughout South Florida. The SFDA was recognized as the Organization of the Year by the Great Miami Chamber of Commerce, Technology Committee in 2012 for its philanthropic efforts and ongoing commitment to the community. SFDA believes that digital literacy is the single most critical educational tool for future generations. South Florida has a substantially underserved population, and the opportunity for *free* educational technology access is currently in the hands of Not-For-Profit institutions that are often heavily reliant on donations and refurbished hardware. Their computer labs are typically not maintained due to a lack of experience and/or lack of funding. The SFDA has constructed the “TLC” initiative (Technology Learning Centers) with a delivery model that leverages the expertise of its membership as well as the philanthropic drive of our community and partners. In the TLC model, the SFDA provides hardware, Microsoft Operating System and Microsoft Office licensing, and assistance in outreach to develop curriculum workshops for educational purposes.

The Challenge:

In our global society, the development of technology skills has become a necessity for individuals seeking to excel in education, communications and economic activities. People who lack computer skills and have limited educational opportunities will only have marginal employment prospects. This fundamental economic problem has challenged SFDA to use technology to disrupt the dynamics of poverty and enhance the quality of life for residents of the region. The opportunity to successfully tackle the root causes of poverty, such as limited education, lack of employable skills, and limited access to relevant training, are perhaps greater now because of technology than ever.

Local Market:

In South Florida, we are seeking a tremendous surge in technology investment, with numerous organizations investing in their own visions of how to make South Florida the next great technology hub. Whether it is universities investing in our community (Idea Center at MDC or Talent Development Network www.tdnmiami.com), private entrepreneurs such as Manny Media seeking Latin American investors and talent through the eMERGE AMERICAS initiative, Not-For-Profits, like the Knight Foundation, investing in CityLab 2016 and CODE2040 and Endeavour, CareerSource South Florida looking to invest in continuing education, Incubate Miami, and others – technology in South Florida is booming. Also on the horizon is the expansion of the Panama Canal, which will dramatically impact the ports, the local logistics and freight industry, substantially increasing the opportunity for more jobs and economic opportunity for non-degree based workers. Building the technology skills of this underserved segment of our population allows SFDA to have a direct impact on opportunities in South Florida and, in turn, our community will be able to have a more diversified economy. As a community, we have already begun focusing on the basic skill set required for these types of jobs to ensure that we will develop a variable workforce in the next decade. We sent a technology survey to cover 200 Not-For-Profits in Miami-Dade and Broward Counties. This local market analysis showed a high demand for services, as well as a lack of budget and technical complexity required to achieve our collective goal. Seventy percent of respondents indicated a desire to learn more about our initiative. The existing paradigm must shift. Refurbished hardware distributed to community activists amounts to an unmanageable and financially unpredictable environment. Our strategy and systems will radically change the efficiency and focus of these community centers and make them true centers of learning.

The Solution – TLC:

In response to these issues, the SFDA has launched a comprehensive “digital empowerment” initiative called the TLC. The goal of TLC is to better prepare our community to participate and compete in the new digital society and digital economy by helping our residents become more adept at using new technologies. The TLC program provides access to technology, training, affordable technology packages and sustainable community outreach programs in order to address the education, social and economic realities of our community. The SFDA has developed a strategy to partner with the anchor institutions, such as the City, throughout the South Florida community to create a publically-available digital infrastructure accessible to participants of all ages and to the small businesses of our community through the establishment of local community learning centers; primarily located in neighborhood parks and elder centers.

By partnering with our members, the SFDA has an efficient and effective delivery model to establish and sustain the TLC centers. We will provide the hardware and software licensing to establish the TLC locations. The SFDA was awarded a \$1.1 software grant from Microsoft for

this initiative, as well as a commitment of over 200 PCs per year from members of our organization.

Beyond the infrastructure, the SFDA will encourage other community groups to participate in and leverage this program by offering sustainable community outreach programs/workshops to enhance the quality of the lives of our residents.

The SFDA through this MOU, in the spirit of a public/private collaboration, seeks to partner with the City to establish a pilot project of one (1) TLC site at a location designated by the City with the ability to extend in the future the TLC program to other City locations in a mutually agreed-upon manner and time frame.

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. SFDA is donating use of the hardware identified below (and related equipment) as well as permission to use the Microsoft software which is included for use with the hardware, with no cost to the City.

2. **Term.** The City and SFDA agreed to enter into this MOU for a term of two (2) years. The MOU may be renewed for three (3) additional one (1)-year terms, by written agreement of the terms and condition on which both parties agree. This agreement may be terminated by either party, without cause, upon thirty (30) days written notice to the other. Service of written notice shall be made by certified first class U.S. Mail, return receipt requested. Service shall be effective upon mailing.

3. **Facilities Provided by the City and Obligations Associated therewith:** The City shall provide a suitable venue (the Coral Gables War Memorial Youth Center –“Youth Center”) with the ability to support a minimum of fifteen (15) computer workstations in a classroom environment. The expenses of the following utilities and maintenance items are the responsibility of the City:

- a. Electric Utilities (including providing electricity service and the maintenance of electricity delivery components);
- b. Phone and internet service;
- c. Security & Fire alarms;
- d. Pest control;
- e. Janitorial services;
- f. Emptying of trash bins into dumpsters;

- g. Opening and closing the Youth Center;
- h. Furniture to support typical desktop/monitor computer workstation environments;
- i. Internet connectivity to support a minimum of fifteen (15) concurrent computer sessions on systems provided by SFDA. The City shall provide a minimum bandwidth of 6 MB for download and 512kb for upload.
- j. Securing and maintaining the premises against any known or foreseeable hazardous conditions.

SFDA agrees that the City is not responsible for any loss or damage, for whatever reason and from any cause whatsoever, for the equipment and software and the City is not required to provide any insurance related to either the hardware or software. The City may use the workstations for its own programming, including camps and events.

4. TLC Support Provided by the SFDA:

- a. SFDA will provide a minimum of fifteen (15) desktop computer workstations. Each workstation will be configured with a desktop operating system and full office productivity environment (currently based on Windows 8.1 or later and Office Professional 2013).
- b. Facilitate access to local community partners to locations for sustainable community outreach programs.
- c. Engage various community partners throughout all centers to conduct continuous educational seminars – added benefit of increasing the effectiveness of programs. SFDA personnel will work with City personnel to develop appropriate community training sessions and workshops with final approval/authorization for program content residing with the City’s administrative staff.
- d. Use best efforts to provide replacement equipment for all failed hardware. The SFDA may request assistance in replacing hardware by requesting that the City pick up equipment from SFDA’s home location: 100 S. Biscayne Blvd., Suite 915, Miami, FL 33173 or from community partner, ARC Broward, located at 3300 SW 13 Avenue, Ft. Lauderdale, FL 33315.
- e. The SFDA will provide a fully functional website and marketing campaign that drives attendance and attention to this project.

The 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 operation of any TLC, the SFDA will be excused from performing any of the covenants and obligations of this agreement and SFDA will

transfer ownership of the equipment to the City for its use. The SFDA shall use its best efforts to sustain charitable funding through the course of performing this agreement.

5. **Background Checks:** The City conducts its background checks in accordance with Section 5.8 of the City's Personnel Rules and Regulations. Any SFDA staff that interacts with children must have a background check and drug screening performed at SFDA's expense.

6. **Disposition of Personal Property at TLC upon Termination of Agreement or Closure of TLC.** All hardware provided by SFDA, including, but not limited to, computers, routers, monitors, keyboards, mice and all hardware belonging to the SFDA shall remain the property of SFDA and the SFDA shall retrieve it from the City within thirty (30) days from the closure of the TLC or the termination of this Agreement whether with cause or without cause.

7. **Marketing of TLCs.** The City shall establish and execute a marketing campaign publishing to the local community the TLC's services and programming.

8. **Limited Software Licensing and Restrictions of Use.** The City acknowledges that pursuant to a third party agreement between Microsoft and SFDA, certain Microsoft materials, 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.

9. **Donor Recognition Signage.** The SFDA will provide the City with all hardware and services at no cost to the City. However, for the TLC program to be successful the SFDA will seek outside donors and sponsors to assist in defraying the costs of developing, maintain and servicing the TLC location. The SFDA will recognize the support/contribution of the TLC donors/sponsors with the establishment of donor recognition signage inside of each of the TLC labs provided that all signage meets regulatory, statutory, or other lawful requirements for display. Specifically, signage shall be approved by the City's Parks and Recreation Department Director. All signs and/or displays will only be featured inside the room/area where the workstations are located. Donors and sponsors will have the opportunity for name recognition in the form of signage within the TLC learning centers located at the parks, as well as on the web and in ongoing marketing collateral generated as the TLC gains momentum. Any web or digital recognition will be on SFDA's material and not on the City's website. The SFDA intends to look for grants and subsidies through the philanthropic interest of local entities that want to invest in South Florida, such that the monies are donated to the SFDA to be used exclusively for TLCs. Many of these entities already have some type of budget allocated for CRA requirements.

And uniquely, by having a meaningful way to quantify the utilization and metrics of usage within the TLCs, funders will be able to have direct insight into how their community investments are having an impact.

10. **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 warrants to the City, that each of them and the person executing this Agreement on their behalf are authorized to enter into this Agreement and be bound by its terms.

11. **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.

12. **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.

13. **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 assigns.

14. **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.

15. **Waiver of Trial by Jury.** EACH PARTY HEREBY KNOWINGLY, VOLUNARILY 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 SETTING WITHOUT A JURY.

16. **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 the contention that the Agreement was drafted by one of the parties. This Agreement shall be construed and interpreted in a neutral manner.

17. **No Waiver.** This Agreement may be amended, cancelled, renewed or extended, and the terms hereof may be waived, only by a written communication from the City to 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.

18. **Indemnification and Hold Harmless.** The SFDA will hold harmless, the City of Coral Gables, its appointed and elected officials, attorneys, administrators, officers, consultants, agents, and employees from and against all claims, damages, losses, and expenses direct, indirect, or consequential, arising out of or resulting from the use of SFDA's equipment and services.

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

20. **Acknowledgment.** Execution of this Agreement by the parties constitutes an acknowledgement 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.

21. **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.

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

IN WITNESS OF THIS FOREGOING, the parties have set their hands and seals the day and year first written above.

CITY:

ATTEST:

CITY OF CORAL GABLES, FLORIDA,
a Florida municipal corporation

WALTER FOEMAN
CITY CLERK

CATHY SWANSON-RIVENBARK
CITY MANAGER

APPROVED FOR FORM AND
LEGAL SUFFICIENCY:

CRAIG E. LEEN
CITY ATTORNEY