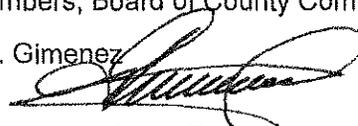


Date: February 4, 2014

To: Honorable Chairwoman Rebeca Sosa
and Members, Board of County Commissioners

From: Carlos A. Gimenez
Mayor 

Subject: Resolution Authorizing Execution of Memorandum of Understanding between Microsoft Corporation and Miami-Dade County

Agenda Item No. 14(A)(2)

Resolution No. R-151-14

Recommendation

It is recommended that the Board of County Commissioners (Board) authorize the County Mayor or County Mayor's designee to execute the attached Memorandum of Understanding (MOU) between the Microsoft Corporation and Miami-Dade County through the Information Technology Department (ITD).

This MOU will allow Miami-Dade County to negotiate future agreements with the Microsoft Corporation for the purpose of providing educational resources for Miami-Dade County residents and economic development through job creation for Miami-Dade County. Any agreements negotiated between the parties will need to be approved by the Board at its sole and absolute discretion.

Scope

The impact of this MOU is countywide.

Delegated Authority

If approved, this MOU will allow the County Mayor or County Mayor's designee to enter into discussions with the Microsoft Corporation for long term development deals. Any negotiated agreement reached between the Microsoft Corporation and Miami-Dade County will need to be approved by the Board in accordance with State and County law and in its sole and absolute discretion.

Fiscal Impact/Funding Source

There is no fiscal impact to the County to execute this MOU.

Track Record/Monitor

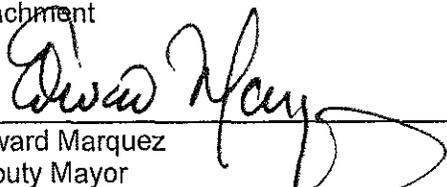
This MOU will be monitored by the Director of ITD, Angel Petisco, to ensure compliance with the requirements.

Background

The purpose of this MOU is to provide a proposed framework for developing an alliance relationship between the Microsoft Corporation and Miami-Dade County. The goal of the alliance relationship is to explore how Microsoft and Miami-Dade County can work together to respond to Miami-Dade County priorities, challenges, and initiatives through: educational resources for Miami-Dade County residents of all ages (students, parents, and seniors); economic development through workforce development and job creation; and innovation to establish Miami-Dade County as a Microsoft Corporation showcase city.

Microsoft Corporation and Miami-Dade County will discuss the above initiatives that may or may not become part of a binding contractual arrangement(s) between the parties. Both entities would need to discuss and reach an agreement on the details of any initiative on which they intend to move forward. Any subsequent agreement would be brought back to the Board for approval.

Attachment


Edward Marquez
Deputy Mayor



MEMORANDUM

(Revised)

TO: Honorable Chairwoman Rebeca Sosa
and Members, Board of County Commissioners

DATE: February 4, 2014

FROM: 
R. A. Cuevas, Jr.
County Attorney

SUBJECT: Agenda Item No. 14(A)(2).

Please note any items checked.

- "3-Day Rule" for committees applicable if raised
- 6 weeks required between first reading and public hearing
- 4 weeks notification to municipal officials required prior to public hearing
- Decreases revenues or increases expenditures without balancing budget
- Budget required
- Statement of fiscal impact required
- Ordinance creating a new board requires detailed County Mayor's report for public hearing
- No committee review
- Applicable legislation requires more than a majority vote (i.e., 2/3's ____, 3/5's ____, unanimous ____) to approve
- Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 14(A)(2)
2-4-14

RESOLUTION NO. R-151-14

RESOLUTION AUTHORIZING MEMORANDUM OF
UNDERSTANDING BETWEEN MICROSOFT
CORPORATION AND MIAMI-DADE COUNTY

WHEREAS, the Microsoft Corporation and Miami-Dade County desires to enter into a Memorandum of Understanding to facilitate the negotiation of a long-term strategic relationship; and

WHEREAS, any agreements negotiated between the Microsoft Corporation and Miami-Dade County will need to be presented to this Board for approval; and

WHEREAS, this Board desires to accomplish the purposes outlined in the accompanying Memorandum, a copy of which is incorporated herein by reference,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board authorizes the attached Memorandum of Understanding between Microsoft Corporation and Miami-Dade County in substantially the form attached hereto and made part hereof, and authorizes the County Mayor or County Mayor's designee to execute such Memorandum of Understanding on behalf of the County. Any agreement negotiated pursuant to this Memorandum of Understanding shall be submitted to the Board of County Commissioners for approval at its sole and absolute discretion.

The foregoing resolution was offered by Commissioner **Audrey M. Edmonson**, who moved its adoption. The motion was seconded by Commissioner **Sally A. Heyman** and upon being put to a vote, the vote was as follows:

	Rebeca Sosa, Chairwoman	aye	
	Lynda Bell, Vice Chair	aye	
Bruno A. Barreiro	aye	Esteban L. Bovo, Jr.	aye
Jose "Pepe" Diaz	aye	Audrey M. Edmonson	aye
Sally A. Heyman	aye	Barbara J. Jordan	aye
Jean Monestime	aye	Dennis C. Moss	aye
Sen. Javier D. Souto	aye	Xavier L. Suarez	aye
Juan C. Zapata	aye		

The Chairperson thereupon declared the resolution duly passed and adopted this 4th day of February, 2014. This resolution shall become effective ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.



MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF COUNTY
COMMISSIONERS

HARVEY RUVIN, CLERK

Approved by County Attorney as
to form and legal sufficiency.

By: Christopher Agrippa
Deputy Clerk

Oren Rosenthal

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (“MOU”) is entered into as of the date of the later signature below, by and between Microsoft Corporation (“Microsoft”) and Miami-Dade County (“Miami-Dade County”) (collectively, “the Parties”, and singly, a “Party”).

1) Purpose/Goal/Commitment.

- a) The purpose of this MOU is to provide a proposed framework for developing an alliance relationship between Microsoft and Miami-Dade County. The initiatives discussed in the MOU may or may not become part of a binding contractual arrangement(s) between the Parties. Microsoft and Miami-Dade County would need to discuss and reach agreement on the details of any initiative on which they intend to move forward.
- b) The goal of the alliance relationship is to explore how Microsoft and Miami-Dade County, can work together to respond to the following Miami-Dade priorities, challenges, and initiatives:
 - i) Education Resources for Miami-Dade County residents of all ages (students, parents, seniors)
 - ii) Economic Development through Workforce Development and Job Creation
 - iii) Innovation to establish Miami-Dade County as a Microsoft showcase city
- c) The parties commit to, from the date of this MOU to November 30, 2014, the expiration of this MOU, endeavor to discuss and agree to a long-term strategic relationship to further the goals set forth in Section (b) above. Microsoft will provide Miami-Dade County with a “Digital Alliance Agreement” as a basis to begin the discussions.

2) Terms and Conditions.

- a) **Confidentiality and Public Disclosure.** To the extent permitted by applicable law, neither Party will disclose the existence or content of this MOU or discussions between the Parties relating to the activities and transactions contemplated herein unless both parties mutually agree in writing.
- b) **Relationship of the Parties.** Neither this MOU, nor any activities described herein, shall be construed as creating a joint venture, franchise, agency, or other such relationship. Neither Party shall have the right, power, or authority to obligate or bind the other Party in any manner whatsoever, without the other Party’s prior written consent.
- c) **Potential Investments from Microsoft.** Any investments provided in subsequent definitive agreements would be provided for the sole use and benefit of Miami-Dade County and for County Government purposes only, and would not be provided for use by or personal benefit of any specific government employee. It is the intent of Microsoft that any potential investments by Microsoft be in compliance with all applicable laws, regulations and ethics rules regarding gifts

and donations. Microsoft would make these investments without seeking promises or favoritism for Microsoft in any bidding arrangements.

- d) **Non-Exclusivity.** The relationship between the Parties is non-exclusive. Neither Party will be precluded from entering into similar agreements with other parties. Nothing in this MOU, including any exhibits, requires either Party to refrain from offering, acquiring, selling, licensing, promoting, or developing other services, platforms or products that compete with the services, platforms, or products that are subject of the relationship contemplated by this MOU.
- e) **Expenses.** Microsoft and Miami-Dade County agree that each Party shall pay its own fees, costs and expenses, and those of its agents, independent contractors, and consultants, in connection with this MOU, including without limitation any legal fees, except as expressly specified herein or otherwise agreed upon in writing by both Parties.
- f) **Disclaimer of Warranties/Limitation of Liability.** Except as may be set forth in any separate written definitive agreement(s) binding on the Parties, (a) all materials, information, or other items provided by one Party to the other are provided “as is” without warranty of any kind, and each Party disclaims all warranties, express or implied, with respect to any materials, information, or other items provided to the other in connection with this MOU; and (b) in no event will either Party be liable to the other for any direct, consequential, indirect, special, punitive, or other damages arising out of or related to this MOU, except with respect to violation of its confidentiality obligations or the other Party’s intellectual property rights.
- g) **Intellectual Property.** All copyrights, patents, trade secrets, trademarks, or any other intellectual property (“Intellectual Property”) owned by one Party prior to the date of this MOU will continue to be owned by that Party. Neither Party will gain, by virtue of this MOU, any Intellectual Property rights owned by the other.
- h) **Governing Law.** This MOU shall be governed by the laws of Miami-Dade County, without giving effect to its conflict of law provisions.
- i) **Termination.** Either Party may terminate this MOU without cause upon thirty-day (30) prior written notice. Either Party may terminate this MOU immediately in the event of breach of any provision of this Section 2 by the other Party.
- j) **Notices.** Any notices required or permitted to be given under this MOU will be given in writing and delivered by hand or fax, addressed to Legal and Corporate Affairs Re: US Public Sector LCA Contact in the case of Microsoft Kevin F. Hartley, Esq. Microsoft Corporation 5404 Wisconsin Ave Suite 600 Chevy Chase, MD, 20815 and Miami-Dade County, Office of Mayor Carlos Gimenez, 111 NW 1st Street, Suite 2900, Miami, FL 33128 in the case of Miami-Dade County. Any such notice will be deemed to have been received in the case of deliveries by hand, at the time of delivery, and in the case of telefaxes at the time of dispatch.

- k) **Entire Agreement.** This MOU constitutes the entire agreement between the Parties with respect to its subject matter and merges all prior and contemporaneous communications, both written and oral. This MOU shall not be modified except by a written agreement signed by both Parties.

- l) **Offer Not Binding.** The provisions in Section 1(c) and of Section 2 of this MOU are binding on the Parties. Otherwise, this MOU does not represent a binding offer, nor does it create any obligation on the part of either party to enter into any definitive agreement or to include any particular offering, term or condition in any future definitive agreement.

- m) **Anti-Deficiency Act.** Microsoft acknowledges that Miami-Dade County is not entering into any financial obligations as part of this MOU and that Miami-Dade County cannot enter into any financial obligations under this MOU, or otherwise, without the lawful availability of funds. Microsoft acknowledges and agrees that the obligation of Miami-Dade County to fulfill financial obligations of any kind are and will remain subject to the provisions of state and local statute.

ACCEPTED AND AGREED:

By: _____

Miami-Dade County

Name: Honorable Carlos A. Gimenez

Title: Miami-Dade County Mayor

Date: _____

By:  _____

Microsoft Corporation

Name: Jeff Tozzi

Title: General Manager, State and Local Government, East Region

Date: 11/12/13