

**REPORT/RECOMMENDATION TO THE BOARD OF SUPERVISORS  
OF THE COUNTY OF SAN BERNARDINO  
AND RECORD OF ACTION**

February 11, 2020

**FROM**

**LARRY AINSWORTH, Interim Chief Information Officer, Information Services Department**

**SUBJECT**

Microsoft Store for Business and Education Services Agreement

**RECOMMENDATION(S)**

Approve non-financial Microsoft Store for Business and Education Services **Agreement No. 20-80** with Microsoft Corporation, effective upon acceptance of the online Agreement, continuing perpetually, and terminating only when the Microsoft Store for Business and Education Services is no longer in use by the County.

(Presenter: Jake Cordova, Division Chief, 388-0503)

**COUNTY AND CHIEF EXECUTIVE OFFICER GOALS & OBJECTIVES**

**Operate in a Fiscally-Responsible and Business-Like Manner.**

**FINANCIAL IMPACT**

Approval of the Microsoft Store for Business and Education Services (Microsoft Store) Agreement will not result in the use of Discretionary General Funding (Net County Cost) as the Agreement is non-financial in nature. However, after approval, the terms within the Agreement will be used to accompany future purchase orders to be approved, as necessary per County Policy 11-04. County departments that may require future purchases through the Microsoft Store are responsible for ensuring adequate funding in their respective budgets.

**BACKGROUND INFORMATION**

The Microsoft Store is a free internet-based service that will allow the Information Services Department (ISD) to acquire, manage and distribute Microsoft applications, such as Microsoft Teams and Microsoft Office, to other County departments. The Microsoft Store will be a central portal for products and services that are covered under the Microsoft Enterprise Agreement. The use of the Microsoft Store will allow ISD to monitor and restrict the downloading of Microsoft applications and software, which may reduce licensing compliance risks.

The Microsoft Store is governed by the Microsoft Store for Business and Education Services Agreement (Agreement). The Agreement contains non-standard terms that differ from the standard County contract terms. The non-standard terms include the following:

1. The County provides the Microsoft Store on an “as is” basis “with all faults” and “as available.” The County bears the entire risk of using the Microsoft Store.
  - There is no warranty requirement in the County standard contract.
  - Potential Impact: The County will be liable for claims that may arise from use of the Microsoft Store.

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2. Microsoft's aggregate liability is limited to no more than \$1,000 and only for foreseeable damages typical for this type of contract arising from Microsoft's simple negligence if Microsoft violates material obligations of the Agreement, excluding any statutory no-fault liability, statutory liability for breach of warranty, and liability for fraud, willful misconduct, gross negligence or liability resulting in personal injury or death.
  - The County standard contract does not include a limitation of liability.
  - Potential Impact: Microsoft's maximum financial liability to the County for claims arising under the contract is \$1,000. Claims could exceed the liability cap and the contract amount leaving the County financially liable for the excess. In addition, the County's liability under the contract is not similarly limited.
3. The County is required to indemnify Microsoft to the maximum extent permitted by law for liabilities related to the use of the Microsoft Store and any products or services by County or County end users, County's breach of the agreement, violation of any third party right, including right of privacy, publicity rights and intellectual property rights, violation of law, failure to obtain required end user agreement or consent and any other claims brought by end users arising out of acts or omissions on County's behalf.
  - The County standard contract does not include any indemnification or defense by the County of a Contractor.
  - Potential Impact: By agreeing to indemnify Microsoft, the County could be contractually waiving the protection of sovereign immunity. Claims that may otherwise be barred against the County, time limited, or expense limited could be brought against Microsoft without such limitations and the County would be responsible to defend and reimburse Microsoft for costs, expenses, and damages, which could exceed the total contract amount.
4. Microsoft can assign the contract to an affiliate or one of its subsidiaries without notice to or consent of the County.
  - The County must approve any assignment of the contract.
  - Potential Impact: Microsoft may assign the contract to a third party without notice to the County and without the County's approval. This could allow the contract to be assigned to a business with which the County is legally prohibited from doing business with due to issues of Federal debarment or suspension and conflict of interest, without the County's knowledge.
5. Microsoft may amend the terms at any time and County's continued use of the Microsoft Store constitutes acceptance of the new terms.
  - The County standard contract requires that any changes to the contract be reduced to writing, executed and attached to the original Contract and approved by the person(s) authorized to do so on behalf of Contractor and County.
  - Potential Impact: Microsoft may change the agreement without notice at any time. The County could be agreeing to new terms without review by anyone, including County Counsel, and without the approval of the new terms by the Board.

ISD recommends approval of this Agreement, including the non-standard terms, in order to allow ISD and County departments to have a central portal for products and services that are covered under the Microsoft Enterprise Agreement and allow ISD to monitor and restrict the downloading of applications and software, which may reduce licensing compliance risks.

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**PROCUREMENT**

The Agreement is non-financial in nature and the terms will be used to accompany future purchase orders to be approved, as necessary, per County Policy.

**REVIEW BY OTHERS**

This item has been reviewed by County Counsel (Bonnie Uphold, Deputy County Counsel, 387-5455) on January 3, 2020; Purchasing Department (Leo Gomez, Purchasing Manager, 387-2063) on December 23, 2019; Finance (Joon Cho, Administrative Analyst, 387-5402) on January 22, 2020; and County Finance and Administration (Kelly Welty, Deputy Executive Officer, 387-5423) on January 23, 2020.

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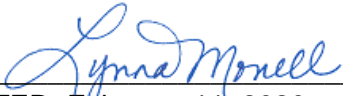
Record of Action of the Board of Supervisors  
County of San Bernardino

**APPROVED (CONSENT CALENDAR)**

Moved: Robert A. Lovingood Seconded: Josie Gonzales

Ayes: Robert A. Lovingood, Janice Rutherford, Dawn Rowe, Curt Hagman, Josie Gonzales

Lynna Monell, CLERK OF THE BOARD

BY   
DATED: February 11, 2020



cc: ISD- Mancebo w/agree  
Contractor- C/O ISD w/agree  
File- w/agree  
la 02/20/2020