

AGENDA ITEM #: _____

DATE: April 22, 2019

CAR #: 2019-6634



CITY COUNCIL ACTION REPORT

SUBJECT: Approval of Amended and Restated Development Agreement and Resolution related to the accelerated construction schedule for Microsoft.

STAFF PRESENTER(S): Rebecca Zook, Engineering Director

OTHER PRESENTER(S): Christopher Baker, Development Services Director

Summary: Staff is recommending the adoption of a Resolution and the approval of a Development Agreement regarding 279 acres of property located south of MC 85 and north of Broadway Road, owned by Microsoft within the City of Goodyear.

Recommendation:

ADOPT RESOLUTION NO. 2019-1957 APPROVING THE AMENDED AND RESTATED DEVELOPMENT AGREEMENT FOR MICROSOFT; DIRECTING THE CITY MANAGER TO EXECUTE THE DEVELOPMENT AGREEMENT FOR MICROSOFT; AUTHORIZING AND DIRECTING ACTIONS; AND PROVIDING FOR AN EFFECTIVE DATE.

Fiscal Impact: Although a fiscal impact analysis has not been conducted on the self-certification process, the city would not be collecting fees for plan review or permitting work for which they are not performing. The city will generate one-time revenues for the issuance of the building permit(s) and will be conducting the associated inspections. The future development will have an ongoing fiscal impact on the city. Future development is responsible for construction of all public infrastructure necessary to serve the site and will generate one-time revenue for the city through payment of plan review and permits, construction sales tax and development impact fees. Longer term fiscal impacts include increased demands for municipal services, the costs of which may or may not be offset by increased property values/tax levies, city sales tax, state shared revenues and the increased demand for commercial and retail development.

Background and Previous Actions

This request is related to the development of approximately 279 acres of real property generally located south of MC 85 and north of Broadway Road, extending east of Bullard Avenue to west of Litchfield Road (the "Property") owned by Microsoft within the City of Goodyear. The Property was rezoned from Final Planned Area Development with underlying C-2 (General Commercial) (I-1 (Light Industrial Park) and I-2) General Industrial) to the I-1 Light Industrial Park with a PAD overlay by Ordinance 2018-1418, which was adopted on December 17, 2018. In

furtherance of the planned consolidation of various lots within the Property, the City Council adopted Resolution 2019-1931 on January 14, 2019 conditionally approving, pending such consolidation, the abandonment of certain undeveloped rights-of-way that run through the Property. And on February 11, 2019, the City Council adopted Resolution 2019-1937 authorizing the issuance of at-risk construction permits to allow the grading and compaction, including excavation and to allow the installation of utility pipes and a foundation. Finally, and most recently, the City Council approved a Development Agreement on Feb. 25, 2019 to support the accelerated construction schedule required by Microsoft.

Staff Analysis

As previously discussed, Microsoft has an accelerated construction schedule and sought an agreement allowing for an accelerated schedule for the construction of its first two buildings and associated on-site engineering work under a self-certification process. Council approved this agreement at the end of February and work commenced on the site. As Microsoft and its team moves forward with the design work and into construction, certain aspects of the agreement are in need of modification. Those changes are as follows:

- The possibility that plans will be prepared by professionals who do not fall within the requirements for Professional Registrants as currently defined;
- The possibility that there may be changes over the course of the development of the Property in Professional Registrants and Qualified Professional Registrants who prepare and/or self-certify plans;
- Terms related to on-site inspectors to avoid having inspectors on site when they are not needed;
- Responsibility for providing technical interpretations of applicable Development Regulations;
- The possibility that there may be City approved deviations from applicable Development Regulations.

Similar to the original development agreement related to the accelerated construction schedule, the Property owner has been advised of the risks in proceeding in this manner. However, the Property owner is extremely sophisticated in terms of the construction of its facilities and has the financial resources available to handle such additional costs should they occur and is thus willing to undertake such risks. In addition, the Property owner will be indemnifying the City from all claims from third parties and agrees to waive any claims it might have against the City related to this process.

Attachments

Resolution No. 2019-1957
Microsoft Amended and Restated Development Agreement
Exhibit 1 – Legal Description
Exhibit 2 – Owner Certification Statement
Exhibit 3 – Professional Record of Statement
Exhibit 4 – Structural Peer Review Certificate

Exhibit 5 – Electrical Peer Review Certificate

Exhibit 6 – Engineering Inspection List

Exhibit 7 – Inspection & Testing Agreement

Exhibit 8 – Application for Alternative Professional Registrant