

RESOLUTION NO. 2019-1957

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF GOODYEAR, MARICOPA COUNTY, ARIZONA, APPROVING AN 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.

WHEREAS, Microsoft owns approximately 279 acres of real property within the City of Goodyear generally located between the north side of Broadway Road and the south side of MC-85 and extending from east of Bullard Avenue to west of Litchfield Road and which is more legally described in Exhibit A, attached hereto and incorporated herein by this reference (the “Property”); and

WHEREAS, Microsoft has an accelerated construction schedule and is seeking an agreement that will allow it to commence development of the Property prior to the completion of various requirements that would otherwise apply to the development of the Property, including the determination by the City of the on-site and off-site water, wastewater and industrial discharge infrastructure that will be needed to serve the Property and for which Microsoft will be responsible for constructing or cause to be constructed and that will allow the Property to be developed pursuant to a self-certification process; and

WHEREAS, there are inherent risks to Microsoft in proceeding in the manner it desires, including, but not limited to, the risk that work completed may have to be modified or reconstructed following the completion of the study being undertaken by Carollo Engineers that will be used to identify the on-site and off-site water, wastewater and industrial discharge infrastructure that will be needed for the City to serve the Property; and

WHEREAS, Microsoft is extremely sophisticated in terms of the construction of its facilities and has the financial resources to handle any additional costs they incur because of its participation in a self-certification process and because it is commencing construction prior to the completion of various requirements that would otherwise apply to the development of the Property, including any modifications to on-site and off-site water, wastewater and/or industrial discharge infrastructure that might be required after the City has determined the on-site and off-site water, wastewater and industrial discharge infrastructure that will be needed to serve the Property at full build-out; and

WHEREAS, Microsoft was willing to undertake risks inherent to Microsoft proceeding in the manner it desires, including, but not limited to, the risk that work completed may have to be modified or reconstructed; and

WHEREAS, the City was willing to allow Microsoft to move forward with the construction of its first two buildings under a self-certification process and before the completion of various requirements that would otherwise be required to be completed before work on Property

commenced, in exchange for Microsoft waiving any claims Microsoft may have against the City and indemnifying the City for claims by third-parties related to the City allowing Microsoft to proceed in this fashion; and

WHEREAS, because the expedited development of the Property was in the best interests of the City, the City and Microsoft entered into that certain Development Agreement for PHX 10-11, which was recorded in the official records of the Maricopa County Recorder as instrument number 2019-0132077 (the “Initial Development Agreement”), the terms of which allowed Microsoft to develop the Property prior to the Necessary Utility Infrastructure Improvements being determined and mitigated the risks to the City of allowing Microsoft to develop the Property pursuant to a type of self-certification process as set forth in the agreement; and

WHEREAS, since the Parties entered the Initial Development Agreement, the Parties have discovered that the terms of the Initial Development Agreement need to be modified to address: (i) the possibility that plans will be prepared by professionals who do not fall within the requirements for Professional Registrants as currently defined; (ii) 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; (iii) terms related to on-site inspectors to avoid having inspectors on site when they are not needed; (iv) responsibility for providing technical interpretations of applicable Development Regulations and (v) the possibility that there may be City approved deviations from applicable Development Regulations; and

WHEREAS, to address the issues that have arisen since the Initial Development Agreement was approved, the City and Microsoft desire to enter into an Amended and Restated Development Agreement for Project 10-11, which like the Initial Development Agreement, mitigate the risk to the City from allowing Microsoft to commence construction prior to the completion of various requirements that would otherwise apply to the development of the Property and from developing pursuant to a self-certification type process as outlined in the Development Agreement for Microsoft; and

WHEREAS, Microsoft and the City intend this document to be a Development Agreement within the meaning of A.R.S. § 9-500.05;

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GOODYEAR, MARICOPA COUNTY, ARIZONA, AS FOLLOWS:

SECTION 1. The Mayor and Council of the City of Goodyear find the approval of the Amended and Restated Development Agreement for Project 10-11 by and between Microsoft Corporation, a Washington corporation and the City of Goodyear, an Arizona municipal corporation, a copy of which is attached hereto as Exhibit B and incorporated herein by this reference (the “Amended and Restated Development Agreement for Microsoft”) to be in the best interest of the City of Goodyear, and hereby approve the Amended and Restated Development Agreement for Microsoft; and

SECTION 2. The City Manager or her designee is hereby authorized and directed to execute the Amended and Restated Development Agreement for Microsoft; and

SECTION 3. The City Manager or her/his designee is hereby authorized and directed to take any and all actions and to execute all documents necessary to carry out the intent of this Resolution, and the terms of the Amended and Restated Development Agreement for Microsoft; and

SECTION 4. This Resolution shall become effective as provided by law.

PASSED AND ADOPTED by the Mayor and Council of the city of Goodyear, Maricopa County, Arizona, this _____ day of _____, 20_____.

Georgia Lord, Mayor

Date: _____

ATTEST:

APPROVED AS TO FORM:

Darcie McCracken, City Clerk

Roric Massey, City Attorney

CERTIFICATION OF RECORDING OFFICER

STATE OF ARIZONA)
) ss.
County of Maricopa)

I, the undersigned Darcie McCracken, being the duly appointed, qualified City Clerk of the city of Goodyear, Maricopa County, Arizona, certify that the foregoing Resolution No. 2019-1957 is a true, correct and accurate copy of Resolution No. 2019-1957, passed and adopted at a regular meeting of the Council of the city of Goodyear, Maricopa County, Arizona, held on the _____ day of _____, 20____, at which a quorum was present and, by a _____ vote, _____ voted in favor of said resolution.

Given under my hand and sealed this _____ day of _____, 20____.

seal

City Clerk

EXHIBIT "A"
MICROSOFT LEGAL DESCRIPTION

A PORTION OF LAND LOCATED WITHIN THE FINAL PLAT OF "AIRPORT COMMERCENTER SUBDIVISION NO. 4", ACCORDING TO BOOK 286 OF MAPS, PAGE 20, RECORDS OF MARICOPA COUNTY, ARIZONA, TOGETHER WITH ALL THAT PORTION OF LAND LOCATED WITHIN THE FINAL PLAT OF "AIRPORT COMMERCENTER SUBDIVISION NO. 2", ACCORDING TO BOOK 259 OF MAPS, PAGE 44, RECORDS OF MARICOPA COUNTY, ARIZONA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT LOCATED ON THE NORTH RIGHT-OF-WAY LINE OF BROADWAY ROAD ALSO BEING THE SOUTHEAST CORNER OF SAID SUBDIVISION "AIRPORT COMMERCENTER SUBDIVISION NO. 4";

THENCE NORTH 89°53'31" WEST, 1350.40 FEET ALONG SAID RIGHT-OF-WAY LINE;

THENCE NORTH 89°52'29" WEST, 1350.12 FEET CONTINUING ALONG SAID RIGHT-OF-WAY LINE;

THENCE NORTH 00°01'11" WEST, 1270.64 FEET DEPARTING FROM SAID RIGHT-OF-WAY LINE TO THE SOUTHWEST CORNER OF SAID SUBDIVISION "AIRPORT COMMERCENTER SUBDIVISION NO. 2";

THENCE CONTINUING NORTH 00°01'11" WEST, 1309.25 FEET ALONG THE WEST LINE OF AFOREMENTIONED SUBDIVISION;

THENCE SOUTH 89°35'43" EAST, 30.00 FEET TO THE EAST RIGHT-OF-WAY LINE OF LA COMETA;

THENCE ALONG SAID RIGHT-OF-WAY LINE FOR FOLLOWING SEVEN (7) CALLS;

THENCE NORTH 00°06'22" WEST, 242.70 FEET TO THE BEGINNING OF A TANGENT CURVE TO THE RIGHT HAVING A RADIUS OF 710.00 FEET;

THENCE ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 26°03'44", AN ARC LENGTH OF 322.96 FEET;

THENCE NORTH 25°57'22" EAST, 100.62 FEET TO THE BEGINNING OF A TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 550.00 FEET;

THENCE ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 46°19'41", AN ARC LENGTH OF 444.72 FEET;

THENCE NORTH 55°57'22" EAST, 10.29 FEET TO THE BEGINNING OF A NON-TANGENT CURVE WHOSE CENTER RADIUS BEARS SOUTH 69°22'44" WEST, 560.00 FEET;

THENCE NORTHWESTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 13°25'22", AN ARC LENGTH OF 131.19 FEET;

THENCE NORTH 34°02'38" WEST, 80.00 FEET TO THE NORTHWEST CORNER OF AFOREMENTIONED SUBDIVISION LOCATED ON THE SOUTHEASTERLY RIGHT OF WAY LINE OF MC 85;

THENCE NORTH 55°57'22" EAST, 2389.65 FEET ALONG SAID SOUTHEASTERLY LINE TO THE MOST NORTHERLY LINE OF AFOREMENTIONED SUBDIVISION;

THENCE SOUTH 89°10'28" EAST, 279.29 FEET ALONG SAID NORTHERLY LINE TO THE SOUTHERLY RIGHT-OF-WAY LINE OF LOWER BUCKEYE ROAD ALSO BEING THE BEGINNING OF A NON-TANGENT CURVE, CONCAVE NORTHEASTERLY WHOSE CENTER RADIUS BEARS NORTH 25°26'44" EAST, 440.00 FEET;

THENCE ALONG SAID RIGHT-OF-WAY LINE FOR FOLLOWING THREE (3) CALLS;

THENCE SOUTHEASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 24°37'12", AN ARC LENGTH OF 189.07 FEET;

THENCE SOUTH 89°10'28" EAST, 70.55 FEET TO THE BEGINNING OF A TANGENT CURVE TO THE RIGHT HAVING A RADIUS OF 12.00 FEET;

THENCE ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 88°18'17", AN ARC LENGTH OF 18.49 FEET TO THE WESTERLY RIGHT-OF-WAY LINE OF 141ST AVENUE;

THENCE ALONG SAID RIGHT-OF-WAY LINE FOR THE FOLLOWING THREE (3) CALLS;

THENCE SOUTH 00°52'11" EAST, 1287.14 FEET TO THE BEGINNING OF A TANGENT TO THE RIGHT HAVING A RADIUS OF 30.00 FEET;

THENCE ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 48°11'23", AN ARC LENGTH OF 25.23 FEET TO THE BEGINNING OF A REVERSE CURVE TO THE LEFT HAVING A RADIUS OF 60.00 FEET;

THENCE ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 138°11'23", AN ARC LENGTH OF 144.71 FEET TO THE EAST LINE OF AFOREMENTIONED SUBDIVISION.

THENCE SOUTH 00°52'11" EAST, 1149.19 FEET ALONG SAID EAST LINE;

THENCE SOUTH 00°51'06" EAST, 1143.51 FEET CONTINUING ALONG SAID EAST LINE TO THE SOUTHEAST CORNER OF AFOREMENTIONED SUBDIVISION ALSO BEING THE NORTHEAST CORNER OF SAID SUBDIVISION "AIRPORT COMMERCENTER SUBDIVISION NO. 4";

THENCE CONTINUING SOUTH 00°51'06" EAST, 1423.35 FEET ALONG THE EAST LINE OF AFOREMENTIONED SUBDIVISION TO THE **POINT OF BEGINNING**.

EXCEPT "TRACT A" OF SAID SUBDIVISION "AIRPORT COMMERCENTER SUBDIVISION NO. 2".

DESCRIBED AREA ABOVE CONTAINS 12,162,426 SQUARE FEET OR 279.21 ACRES MORE OR LESS.

**EXHIBIT “B”
AMENDED AND RESTATED DEVELOPMENT AGREEMENT
FOR PROJECT 10-11**

On Following Pages