

AGENDA ITEM #: _____

DATE: July 13, 2020

CAR #: 2019-6994



CITY COUNCIL ACTION REPORT

SUBJECT: First Amendment to the Infrastructure Development Agreement for PHX 10-11

STAFF PRESENTER(S): Sarah Chilton, Deputy City Attorney

OTHER PRESENTER(S): None

Summary: This First Amendment to the Infrastructure Development Agreement for PHX 10-11 eliminates the requirement that the Broadway Road Improvements be completed prior to the issuance of any certificate of completion and/or certificate of occupancy for development within PHX 10-11 and provides terms for the construction of the Broadway Road Improvements after the city has completed the installation of the raw water line.

Recommendation:

ADOPT RESOLUTION NO. 2020-2077 APPROVING THE FIRST AMENDMENT TO THE INFRASTRUCTURE DEVELOPMENT AGREEMENT FOR PHX 10-11; DIRECTING THE CITY MANAGER TO EXECUTE THE AMENDMENT DOCUMENT; AUTHORIZING AND DIRECTING ACTIONS; AND PROVIDING FOR AN EFFECTIVE DATE.

Fiscal Impact: The Infrastructure Development Agreement for Phoenix 10-11 does not create any new fiscal impact in terms of expenditures required of the City.

Background and Previous Actions

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 is currently developing the property under the name PHX 10-11. Microsoft is developing the property in phases. The first phase of the development of the Property will consist of the construction of one building that is approximately 290,000 square feet (the "First Phase Development").

On June 27, 2019, Microsoft and the city entered into a certain Infrastructure Development Agreement for Project 10-11 recorded in the official records of Maricopa County, Arizona at recording number 2019-0486224 (hereinafter referred to as the "PHX 10-11 IDA"). The PHX 10-11 IDA identified infrastructure improvements that had to be installed before any certificate of completion or certificate of occupancy would be issued for the First Phase Development, which included the completion of improvements to the section of Broadway Road along the frontage of the PHX 10-11 site (the "Broadway Road Improvements").

The city is undertaking a capital improvement project to expand its water treatment facilities, which includes the installation of a raw water line under the section of Broadway Road that Microsoft is required to construct. The raw water line with the section of Broadway Road that Microsoft is to construct is nearing completion. To avoid having to remove the section of Broadway Road constructed by Microsoft to complete the installation of the raw water line, the city requested that Microsoft delay the construction of the Broadway Road Improvements. Microsoft is interested in delaying the construction of the Broadway Road Improvements to avoid the disruption that would occur if the improvements were completed and then removed by the city to install the raw water line. Microsoft is willing to delay the construction of the Broadway Road Improvements provided that the delay in constructing the Broadway Road Improvements would not delay the issuance of a certificate of completion and/or occupancy for the First Phase Development.

Staff Analysis

The proposed First Amendment would amend the PHX 10-11 IDA to eliminate the requirement that the Broadway Road Improvements be completed prior to the issuance of any certificate of completion and/or certificate of occupancy for the First Phase Development. It delays Microsoft's obligation to construct the Broadway Road Improvements until the section of the city's raw water line being installed within Broadway Road has been completed. Under the terms of the amendment, Microsoft is required to commence construction of the Broadway Road Improvements as soon as practicable after being notified that the raw water line has been completed but no later than the 90 days from the date the city notifies Microsoft the raw water line has been completed or 90 days from the effective date of the First Amendment, whichever is earlier. The raw water line will be considered completed when it has been installed and successfully pressure tested.

Staff recommends the adoption of Resolution 2020-2077 approving the First Amendment to Infrastructure Development Agreement for PHX 10-11 for a number of reasons. First, it avoids unnecessary costs to the city of reinstalling improvements to Broadway Road if Microsoft were required to install them before the raw water line was completed so Microsoft could obtain a certificate of completion and/or certificate of occupancy for the First Phase Development. Second, it avoids disruptions to the continued development of the PHX 10-11 site. Third, there is still required access to the site even if the Broadway Road Improvements are not completed prior to the issuance of a certificate of completion and/or certificate of occupancy for the First Phase Development.

Attachments

Resolution No. 2020-2077

- Exhibit 1 – First Amendment to Infrastructure Development Agreement for PHX 10-11