

RESOLUTION NO. 2020-2077

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

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 (the "Property"); and

WHEREAS, Microsoft is developing the Property under the name PHX 10-11; and

WHEREAS, Microsoft is responsible for the design and construction of all public infrastructure, within the boundaries of the Property and outside the boundaries of the Property as reasonably determined by the city to be both in accordance with the duly-adopted Development Regulations and needed to support the development of the Property and to allow the city to provide city services to the Property; and

WHEREAS, Microsoft intends to develop the Property in phases, and anticipates that when fully developed the Property could consist of five (5) buildings; and

WHEREAS, 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"); and

WHEREAS, Microsoft and the city entered into that certain Infrastructure Development Agreement for Project 10-11 recorded on June 27, 2019 in the official records of Maricopa County, Arizona at recording number 2019-0486224 (hereinafter referred to as the "PHX 10-11 IDA"), which addressed certain requirements regarding the development of the Property, including requirements for infrastructure that was to be completed before any certificate of completion and/or certificate of occupancy would be issued for the First Phase Development being constructed on the Property (the "Phase One Improvements"); and

WHEREAS, improvements to the section of Broadway Road along the frontage of the Property (the "Broadway Road Improvements") are part of the Phase One Improvements that had to be completed before any certificate of completion and/or certificate of occupancy would be issued for the First Phase Development; and

WHEREAS, 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; and

WHEREAS, the raw water line with the section of Broadway Road that Microsoft is to construct is nearing completion.

WHEREAS, 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; and

WHEREAS, 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; and

WHEREAS, 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; and

WHEREAS, the proposed First Amendment would 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 and impose new terms for the timing of the construction of the Broadway Road improvements; and

WHEREAS, the proposed First Amendment is in the best interests of the city in that 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 and it avoids disruptions to the continued development of the PHX 10-11 site; and

WHEREAS, the city acknowledges the development of the Property is consistent with the city's general plan; and

WHEREAS, Microsoft and the city intend this First Amendment to be a Development Agreement within the meaning of A.R.S. § 9-500.05 that binds Microsoft and all future owners of all or any portion of the Property.

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 First Amendment to the Infrastructure Development Agreement for PHX 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 1 and incorporated herein by this reference to be in the best interest of the City of Goodyear, and hereby approve the First Amendment to the Infrastructure Development Agreement for PHX 10-11; and

SECTION 2. The City Manager or her designee is hereby authorized and directed to execute the First Amendment to the Infrastructure Development Agreement for PHX 10-11; and

SECTION 3. The City Manager or her designee is hereby authorized and directed to take any and all actions and to execute all the documents necessary to carry out the intent of this Resolution and the terms of the First Amendment of the Infrastructure Development Agreement for PHX 10-11; 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. 2020-2077 is a true, correct and accurate copy of Resolution No. 2020-2077, 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 “1”

First Amendment to Infrastructure Development Agreement
For Project 10-11

(on the following pages)

WHEN RECORDED, RETURN TO:

City of Goodyear, Arizona
Office of the City Clerk
190 North Litchfield Rd.
Goodyear, Arizona 85338

**FIRST AMENDMENT TO
INFRASTRUCTURE DEVELOPMENT AGREEMENT
FOR PROJECT 10-11**

This First Amendment to Infrastructure Development Agreement for PHX 10-11 (the “First Amendment”) is entered into by and between Microsoft Corporation, a Washington corporation (“Microsoft”) and the City of Goodyear, an Arizona municipal corporation (the “City”).

RECITALS

A. 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, as legally described in Exhibit 1 attached hereto and incorporated herein by this reference.

B. WHEREAS, Microsoft is developing the Property under the name PHX 10-11.

C. WHEREAS, Microsoft is responsible for the design and construction of all public infrastructure, within the boundaries of the Property and outside the boundaries of the Property as reasonably determined by the City to be both in accordance with the duly-adopted Development Regulations and needed to support the development of the Property and to allow the City to provide City services to the Property.

D. WHEREAS, Microsoft intends to develop the Property in phases, and anticipates that when fully developed the Property could consist of five (5) buildings.

E. WHEREAS, the first phase of the development of the Property will consist of the construction of one building that is approximately 290,000 square feet.

F. WHEREAS, Microsoft and the City entered into that certain Infrastructure Development Agreement for Project 10-11 recorded on June 27, 2019 in the official records of Maricopa County, Arizona at recording number 2019 0486224 (hereinafter referred to as the “PHX 10-11 IDA”), which addressed certain requirements regarding the development of the Property, including requirements for infrastructure that was to be completed before any certificate of completion and/or certificate of occupancy would be issued for the first building being constructed on the Property.

G. WHEREAS, under the terms of the PHX 10-11 IDA, all of the Phase One Improvements described in Sections 6 through 11 of the PHX 10-11 IDA and all of the subsections therein are to be completed before any certificate of completion and/or certificate of occupancy would be issued for the first building being constructed on the Property, which includes the Broadway Road Improvements as described in section 11 of the PHX 10-11 IDA.

H. WHEREAS, 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 as part of the Phase One Improvements under the PHX 10-11 IDA, which raw water line installation is at or near completion.

I. WHEREAS, to avoid having to remove the section of Broadway Road constructed by Microsoft to install the raw water line, the City is desirous of delaying the construction of the Broadway Road Improvements Microsoft is required to construct, and has requested that Microsoft delay such construction.

J. WHEREAS, to avoid the disruption that will occur were the City to remove the section of Broadway Road installed by Microsoft in order for the City to install the raw water line, Microsoft is desirous of delaying and has delayed its obligation to complete the Broadway Road Improvements until the City has completed the installation of the raw water line.

K. WHEREAS, the intent of this First Amendment is to amend the PHX 10-11 IDA to provide for the delayed construction of the Broadway Road Improvements.

L. WHEREAS, the City acknowledges the development of the Property is consistent with the City's general plan.

M. WHEREAS, Microsoft and the City intend this First Amendment to be a Development Agreement within the meaning of A.R.S. § 9-500.05 that binds Microsoft and all future owners of all or any portion of the Property.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual obligations contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. INCORPORATION OF RECITALS. The Parties hereby adopt and incorporate, as if fully set forth herein, the Recitals stated above.

2. DEFINED TERMS. All capitalized terms used but not defined in this First Amendment shall have the meanings ascribed to such terms in the PHX 10-11 IDA.

3. DEFINITIONS: Capitalized terms not defined in the foregoing Recitals are defined as follows:

3.1. “Raw Water Line” means the 24 inch raw water line that the City will be installing within the section of the Broadway Road adjacent to the Property as part of the City’s capital improvement project to expand its water treatment facility.

4. EFFECTIVE DATE. The execution of this First Amendment by the Parties and approval of this First Amendment by Resolution of the Goodyear City Council are conditions precedent to this First Amendment becoming effective. This First Amendment shall take effect upon the later of dates each of the following conditions precedent have occurred: (i) the full execution of this First Amendment by the Parties and (ii) the date the Resolution approving this First Amendment becomes effective, such later date hereafter defined as the “First Amendment Effective Date”.

5. Amendment to Section 14. Section 14 of the PHX 10-11 IDA is hereby deleted in its entirety and replaced with the following:

14. CERTIFICATES OF OCCUPANCY REQUIREMENTS FOR PHASE ONE. Except as provided below, no certificates of completion and/or certificates of occupancy shall be issued for the building being constructed in the Phase One Development until the Owner’s Phase One Improvements described in Sections 6 through 11 above and all subsections therein have been completed. Upon the City Engineer’s affirmative determination of the foregoing and upon satisfaction of all other requirements necessary for the issuance of a certificate of completion and/or certificate of occupancy in accordance with applicable Development Regulations, the City shall promptly issue to Owner the applicable certificate of completion and/or certificate of occupancy. The Phase One Improvements will be dedicated to the City and accepted by the City upon completion, and shall be considered complete when the City Engineer has accepted the Phase One Improvements. Owner shall warrant the Phase One Improvements for two (2) years following the City’s acceptance, as set forth in the City’s Engineering Design Standards and Policies Manual.

14.1 Notwithstanding the foregoing, Owner shall delay the construction of the Broadway Road Improvements until the City has completed the construction of the Raw Water Line. Owner shall commence construction of the Broadway Road Improvements as soon as practicable after being notified, in writing, by the City Engineer that the Raw Water Line has been completed (the “City Completion Notice”), but in no event later than 90 days from the later of the following dates: (a) the date of the City Completion Notice, or (b) the First Amendment Effective Date. For purposes of this First Amendment, the Raw Water Line will be considered completed when it has been installed and successfully pressure tested.

14.2 If the Broadway Road Improvements have not been completed before the building being constructed in the Phase One Development is completed because of such delay, the City shall nonetheless issue a certificate of completion and/or certificates of occupancy provided all other requirements set forth in the PHX 10-11 IDA and this First Amendment have been satisfied.

14.3 The Broadway Road Improvements shall be completed as soon as practicable after construction of such improvements has commenced. Following the completion of the Raw Water Line, no certificates of completion and/or occupancy shall be issued for any building other than the first building being constructed in the Phase One Development until the Broadway Road Improvements are completed.

GENERAL TERMS

6. ENTIRE AGREEMENT. This First Amendment and the exhibit(s) referred to herein and attached hereto, along with the unchanged provisions in the PHX 10-11 IDA constitute the sole and entire agreement between the Parties with respect to the matters covered herein and supersede any prior or contemporaneous agreements, understandings or undertakings, written or oral, by or between the Parties, and/or by or between any of the Parties and any third parties. This First Amendment shall be deemed to amend and supersede the PHX 10-11 IDA with respect to all terms, provisions and changes set forth in this First Amendment. To the extent of any conflict between this First Amendment and the PHX 10-11 IDA, this First Amendment shall control. Except as amended by this First Amendment, all terms, provisions and conditions of the PHX 10-11 IDA shall remain in full force and effect.

7. AMENDMENTS. The PHX 10-11 IDA and this First Amendment thereto, may not be changed modified or rescinded except in writing as agreed to and signed by the Parties hereto and approved by a Resolution of the Mayor and Council of the City of Goodyear.

8. SECTION HEADINGS. The section headings contained in this First Amendment are for convenience in reference only and are not intended to define or limit the scope of any provision of this First Amendment.

9. FAIR INTERPRETATION. The terms and provisions of this First Amendment represent the result of negotiations between the Parties, each of which has had the opportunity to consult with counsel of their own choosing and/or has been represented by counsel of their own choosing, and none of whom has acted under any duress or compulsion, whether economic or otherwise. Consequently, the Parties agree the terms and provisions of this First Amendment shall be construed according to their usual and customary meanings, and the Parties each hereby waive the application of any rule of law (common law or otherwise) that ambiguous or conflicting terms be resolved against the Party who prepared, or whose attorney prepared, the executed Agreement or any earlier draft of same. The terms of this Section 9 shall survive the expiration or earlier termination of the Agreement.

10. REPRESENTATIONS AND WARRANTIES OF OWNER. As of the date of the execution of this First Amendment, Owner represents and warrants the following:

10.1 **OWNERSHIP.** Microsoft Corporation, a Washington corporation is the owner of the Property and has the full right and authority to submit its interest in the Property to the obligations hereunder. Microsoft holds title free and clear of all monetary liens other than liens for taxes not yet due and payable.

10.2 AUTHORIZATION. Microsoft is a Washington corporation qualified to do business in Arizona and in good standing; Microsoft (including the person signing for Microsoft) has the authority and the right to enter into this First Amendment as authorized by Microsoft, and Microsoft is not prohibited from executing this First Amendment by any law, rule, regulation, instrument, agreement, order or judgment.

10.3 DUE DILIGENCE. Microsoft reviewed this First Amendment and reached its own conclusions as to the binding and enforceable nature thereof and all of the provisions contained therein, and has not relied on any representations or warranties of City other than those expressly provided in this First Amendment.

11. REPRESENTATIONS AND WARRANTIES OF CITY. As of the First Amendment Effective Date of this Agreement, the City represents and warrants the following:

11.1 APPROVAL. City has approved this First Amendment at a duly held and noticed public meeting by its Mayor and City Council, at which a quorum was duly present, and has authorized the execution hereof.

11.2 AUTHORIZATION. City agrees that the persons executing this First Amendment on behalf of City have been duly authorized to do so, and City is not prohibited from executing this First Amendment by any law, rule, regulation, instrument, agreement, order or judgment.

12. COUNTERPARTS. This First Amendment may be executed in two or more counterparts, each of which shall be deemed an original and all of which, taken together, shall constitute one agreement, binding on the Parties. Further this First Amendment may be executed and delivered by electronic transmission. A manually signed copy of this First Amendment delivered by facsimile, email, or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this First Amendment provided however, Owner shall deliver an original to the City for recordation by the City in the Official Records of Maricopa County.

CITY:

CITY OF GOODYEAR, an Arizona municipal corporation

By: _____

Julie Arendall

Its: City Manager

STATE OF ARIZONA)

) ss.

County of Maricopa)

The First Amendment to Infrastructure Development Agreement for PHX 10-11 by and between Microsoft Corporation, a Washington corporation and the City of Goodyear, an Arizona municipal corporation was acknowledged before me this ____ day of _____, 2019, by Julie Arendall, the City Manager of the CITY OF GOODYEAR, an Arizona municipal corporation, for and on behalf thereof.

Notary Public

Attest:

Darcie McCracken, City Clerk

Approved as to Form:

Roric Massey, City Attorney

Exhibits on Following Pages

EXHIBIT “1”
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 $55^{\circ}57'22''$ EAST, 10.29 FEET TO THE BEGINNING OF A NON-TANGENT CURVE WHOSE CENTER RADIUS BEARS SOUTH $69^{\circ}22'44''$ WEST, 560.00 FEET;

THENCE NORTHWESTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF $13^{\circ}25'22''$, AN ARC LENGTH OF 131.19 FEET;

THENCE NORTH $34^{\circ}02'38''$ WEST, 80.00 FEET TO THE NORTHWEST CORNER OF AFOREMENTIONED SUBDIVISION LOCATED ON THE SOUTHEASTERLY RIGHT OF WAY LINE OF MC 85;

THENCE NORTH $55^{\circ}57'22''$ EAST, 2389.65 FEET ALONG SAID SOUTHEASTERLY LINE TO THE MOST NORTHERLY LINE OF AFOREMENTIONED SUBDIVISION;

THENCE SOUTH $89^{\circ}10'28''$ 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 $25^{\circ}26'44''$ 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 $24^{\circ}37'12''$, AN ARC LENGTH OF 189.07 FEET;

THENCE SOUTH $89^{\circ}10'28''$ 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 $88^{\circ}18'17''$, 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 $00^{\circ}52'11''$ 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 $48^{\circ}11'23''$, 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 $138^{\circ}11'23''$, AN ARC LENGTH OF 144.71 FEET TO THE EAST LINE OF AFOREMENTIONED SUBDIVISION.

THENCE SOUTH $00^{\circ}52'11''$ 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.