

RESOLUTION NO. 2020-2159

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF GOODYEAR, MARICOPA COUNTY, ARIZONA, APPROVING THE FIRST AMENDMENT TO THE 2020 DEVELOPMENT AGREEMENT FOR PHX 70; DIRECTING THE CITY MANAGER TO EXECUTE THE FIRST AMENDMENT DOCUMENT; AUTHORIZING AND DIRECTING ACTIONS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Microsoft owns approximately 145 acres of real property within the City of Goodyear generally located south east corner of Citrus Road and W Indian School Road, which Microsoft intends to develop under the name PHX 70 and is legally described in Exhibit 1 to the First Amendment to the 2020 Development Agreement for PHX 70; and

WHEREAS, Microsoft and the City entered into that Development Agreement for PHX 70 recorded on May 8, 2019 (the “2019 PHX 70 Development Agreement”) pursuant to which the City agreed to issue a building permit for the first building to be constructed within the Property prior to the recordation of a final plat, and that certain 2020 Development Agreement for PHX 70 recorded on April 14, 2020, (hereinafter referred to as the “2020 PHX 70 Development Agreement”), which addressed certain requirements regarding the development of the Property, including requirements for the final plat for the Property, street right of way dedications, and 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, and before building permits would be issued for additional buildings to be constructed on the Property; and

WHEREAS, the 2020 PHX 70 Development Agreement provided that building permits would be issued for the first building before the final plat for the Property has been recorded, before the property interests needed for public infrastructure that is to be constructed pursuant to applicable Development Regulations is dedicated, before the completion of required off-site public infrastructure, and before the completion of other required on-site improvements; and

WHEREAS, the 2020 PHX 70 Development Agreement set forth limitations on building permits for additional buildings on the Property, including recordation of the final plat for the Property, dedication of require street rights of way and easements, completion of require public infrastructure and drainage facilities, payment of in lieu fees, completion of on site improvements, termination of APS easements, and satisfaction of Development Regulations for such permits; and

WHEREAS, Microsoft has continued to experience delays in recording a final plat and designing and constructing required infrastructure improvements because the right-of-way that is to be conveyed to the City upon which public road improvements are to be constructed is encumbered by the Maricopa Water District (MWD) easements that must be removed before the City can accept the dedications; and

WHEREAS, Microsoft is continuing to work with MWD to release the conflicting easements located in the areas that are to be dedicated to the City and for Microsoft to pay for the relocation of MWD’S existing facilities, and Microsoft has deposited the relocation costs into an escrow

account pursuant to the 2020 PHX 70 Development Agreement and the Improvements Escrow Agreement between Microsoft and the City; and

WHEREAS, Microsoft is seeking relief from the obligation in the 2020 PHX 70 Development Agreement that requires that a final plat for the Property be recorded and that all public infrastructure that is to be City owned and maintained and the dedication to the City of all required property interests needed for such public infrastructure be completed before a building permit can be issued for the second building on the Property; and

WHEREAS, because the expedited development of the Property is in the best interests of the City, the City is willing to allow Microsoft to obtain a building permit before the final plat for the Property has been recorded, before the property interests needed for public infrastructure that is to be constructed pursuant to applicable Development Regulations is dedicated, before the completion of required off-site public infrastructure; and

WHEREAS, because the terms and conditions set forth in the 2020 PHX 70 Development Agreement and the First Amendment to the 2020 Development Agreement for PHX 70, mitigate the risks to the City of allowing Microsoft to develop the Property pursuant to the terms and conditions outlined in the 2020 PHX 70 Development Agreement and this First Amendment; and

WHEREAS, the intent of this First Amendment is to amend the 2020 PHX 70 Development Agreement to provide for building permits to be obtained for the second building on the Property; 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 2020 Development Agreement for PHX 70 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 A 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 Development Agreement for PHX 70; and

SECTION 2. The City Manager or her designee is hereby authorized and directed to execute the First Amendment to the 2020 Development Agreement for PHX 70; and

EXHIBIT 'A'

FIRST AMENDMENT TO 2020 DEVELOPMENT AGREEMENT FOR PHX 70

(ON THE FOLLOWING PAGES)