

RESOLUTION NO. 2024-2417

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF GOODYEAR, MARICOPA COUNTY, ARIZONA, APPROVING THE FIFTH AMENDMENT TO INFRASTRUCTURE DEVELOPMENT AGREEMENT FOR PROJECT 10-11; AUTHORIZING THE TERMINATION OF DRAINAGE EASEMENTS; PROVIDING DIRECTION, AUTHORIZATION, AND AN EFFECTIVE DATE.

WHEREAS, Microsoft Corporation, a Washington corporation ("Microsoft") and the City of Goodyear (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, and that certain First Amendment to Infrastructure Development Agreement for Project 10-11 recorded on July 14, 2020, in the official records of Maricopa County, Arizona at recording number 20200625939 (hereinafter referred to as the "First Amendment"), which addressed the timing of certain portions of the Phase One Improvements by Microsoft and the completion of the Raw Water Line by the City, and that certain Second Amendment to Infrastructure Development Agreement for Project 10-11 recorded on April 27, 2021, in the official records of Maricopa County, Arizona at recording number 20210468656 (hereinafter referred to as the "Second Amendment"), and that certain Third Amendment to Infrastructure Development Agreement for Project 10-11 recorded on March 8, 2023, in the official records of Maricopa County, Arizona at recording number 20230116402 (hereinafter referred to as the "Third Amendment"), and that certain Fourth Amendment to Infrastructure Development Agreement for Project 10-11 recorded on June 28, 2023, in the official records of Maricopa County, Arizona at recording number 20230337588 (hereinafter referred to as the "Fourth Amendment"), which addressed the Necessary Public Infrastructure required pursuant to the Updated Corrolo Study for the Full Build Out of the of the Property and acquisition of the Booster Station Site by Owner; and

WHEREAS, the Fourth Amendment included terms, and conditions, for Microsoft's acquisition of the City's Booster Station Site, which is surrounded by Microsoft's property; and

WHEREAS, under the terms of the Fourth Amendment, Microsoft was entitled to acquire the Booster Station subject to Microsoft remitting the costs associated with the City's development of replacement facilities at a different location; and

WHEREAS, Microsoft and the City subsequently determined that the Booster Station Site needed to remain in operation until the replacement facilities have been completed because the public infrastructure improvements on the Booster Station Site are needed to provide the fire flow necessary to support Owner's existing development, and the City and Owner have agreed to modify the terms of the Agreement as set forth herein; and

WHEREAS, the Fifth Amendment to the Infrastructure Development Agreement for Project 10-11 revises terms related to Microsoft's acquisition of the Booster Station Site; and

WHEREAS, the Fifth Amendment to the Infrastructure Development Agreement for Project 10-11 is in the best interests of the health, safety, and welfare of the City of Goodyear; and

WHEREAS, the Fifth Amendment to the Infrastructure Development Agreement for Project 10-11 touches and concerns Microsoft's Property and is intended 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 Fifth Amendment to the Infrastructure Development Agreement for Project 10-11 by and between Microsoft Corporation, a Washington corporation and the City of Goodyear, 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 said agreement.

SECTION 2. The City Manager or her designee is hereby authorized and directed to execute the Fifth Amendment to the Infrastructure Development Agreement for Project 10-11 by and between Microsoft Corporation, a Washington corporation and the City of Goodyear.

SECTION 3. The Mayor and Council of the City of Goodyear authorize the termination of drainage easement(s) identified in Final Plat for PHX 10-11 Phase 1 recorded on August 30, 2019 in the official records of the Maricopa County Recorder at Book 1481 Page 12 (Instrument 2019-0682117) upon a determination of the City Engineer or his designee that the easement(s) being terminated are not needed to take storm water run-off from adjacent roadways.

SECTION 4. 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 Fifth Amendment to Infrastructure Development Agreement for Project 10-11 by and between Microsoft Corporation, a Washington corporation and the City of Goodyear.

SECTION 5. Following its execution by all parties, the Fifth Amendment to Infrastructure Development Agreement for Project 10-11 by and between Microsoft Corporation, a Washington corporation and the City of Goodyear shall be recorded with the Maricopa County Recorder's Office.

SECTION 6. Unless referred to the voter as provided by law, Resolution 2024-2417 shall be effective thirty (30) days after its adoption by the Mayor and Council of the City of Goodyear

PASSED AND ADOPTED by the Mayor and Council of the City of Goodyear, Maricopa County, Arizona, by a _____ vote, this _____ day of _____, 2024.

Joe Pizzillo, Mayor

Date: _____

ATTEST:

APPROVED AS TO FORM:

Darcie McCracken, City Clerk

Roric Massey, City Attorney

EXHIBIT "1"

FIFTH AMENDMENT TO INFRASTRUCTURE DEVELOPMENT AGREEMENT
FOR PROJECT 10-11

WHEN RECORDED, RETURN TO:

City of Goodyear, Arizona
Office of the City Clerk
190 N. Litchfield Road
Goodyear, Arizona 85338

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

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

RECITALS

A. WHEREAS, Owner is developing its Property under the name PHX 10-11, and is responsible for the design and construction of all 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.

B. WHEREAS, Owner 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, and that certain First Amendment to Infrastructure Development Agreement for Project 10-11 recorded on July 14, 2020, in the official records of Maricopa County, Arizona at recording number 20200625939 (hereinafter referred to as the “First Amendment”), which addressed the timing of certain portions of the Phase One Improvements by Owner and the completion of the Raw Water Line by the City, and that certain Second Amendment to Infrastructure Development Agreement for Project 10-11 recorded on April 27, 2021, in the official records of Maricopa County, Arizona at recording number 20210468656 (hereinafter referred to as the “Second Amendment”), and that certain Third Amendment to Infrastructure Development Agreement for Project 10-11 recorded on March 8, 2023, in the official records of Maricopa County, Arizona at recording number 20230116402 (hereinafter referred to as the “Third Amendment”), and that certain Fourth Amendment to Infrastructure Development Agreement for Project 10-11 recorded on June 28, 2023, in the official records of Maricopa County, Arizona at recording number 20230337588 (hereinafter referred to as the “Fourth Amendment”), which addressed the Necessary Public Infrastructure required pursuant to the Updated Corrolo Study for the Full Build Out of the of the Property and acquisition of the Booster Station Site by Owner. Together, the PHX 10-11 IDA, the First Amendment, the Second Amendment, the Third Amendment, and the Fourth Amendment are referred to herein as the “Agreement.”

C. WHEREAS, the Fourth Amendment included terms, conditions, for the City's conveyance of the Booster Station Site to Owner, pursuant to which Owner was entitled to acquire the Booster Station Site upon Owner's request subject to Owner remitting the costs associated with the City's development of replacement facilities at a different location.

D. WHEREAS, the Parties subsequently determined that the Booster Station Site needed to remain in operation until the replacement facilities have been completed because the public infrastructure improvements on the Booster Station Site are needed to provide the fire flow necessary to support Owner's existing development, and the City and Owner have agreed to modify the terms of the Agreement as set forth herein.

E. WHEREAS, under the terms of this Fifth Amendment, the City will continue operating the Remainder Booster Station Site, while the City designs and construct a replacement booster station site.

F. WHEREAS, Owner remains responsible and will fund through an escrow account the costs of the design and construction of the Replacement Water Facilities (defined below), but the City intends to increase the size of the storage tank.

G. WHEREAS, based on the Basis of Estimate Report PHX 15 Utility Relocation Design prepared by Brown and Caldwell on behalf of Owner, a copy of which is attached hereto as Exhibit A and included herein by this reference the cost of constructing the Replacement Water Facilities is estimated to cost \$3,165,589 (the "Estimated Construction Costs").

H. WHEREAS, the design costs of the Replacement Water Facilities is estimated to be \$379,870, which represents 12% of the Estimated Construction Costs (the "Estimated Design Costs").

I. WHEREAS, the City is responsible for all costs in excess of the Replacement Water Facilities Cost (defined below)

J. WHEREAS, to accommodate Owner's continued development of the Property, the Fifth Amendment includes additional terms allowing for the

K. WHEREAS, prior to the negotiation of the terms of this Fifth Amendment, Owner asked the City to convey a small portion of the Booster Station Site to facilitate the development of the Property.

L. WHEREAS, because the conveyance of the portion of the Booster Station Site Owner asked the City to convey to it did not house any of the Booster Station Site improvements and was not needed for the operation of the Booster Station Site and pursuant to the authority granted in the resolution adopted by the Goodyear City Council in which it approved the Fourth Amendment, City conveyed to Owner 7,339 square feet of the Booster Station Site by quit claim deed the small section of the Booster Station Site in exchange for the fair market value of the property conveyed to Owner (the "Initial Acquisition").

M. WHEREAS, once the replacement booster station site is completed and in operation and the City has been fully reimbursed for the costs incurred in the design and construction of the Replacement Water Facilities, the City will convey the Remainder Booster Station Site on an AS IS BASIS by Quit Claim Deed upon receipt of \$173,454, which represents the difference between the appraised value of the Booster Station Site of \$259,414 and amount (\$85,960) Owner paid the City for portion of the Booster Station Site the City conveyed to Owner.

N. WHEREAS, following the conveyance of the Remainder Booster Station Site, Owner shall be responsible for removing all improvements conveyed in the Quit Claim Deed for the Remainder Booster Station Site and all public infrastructure improvements located within any easement granted to the City that is to be terminated under the terms of this Fifth Amendment.

O. WHEREAS, in addition to modifying the terms and conditions related to Owner's acquisition of the Booster Station Site, the City and Owner have identified additional easements that each needs to grant to the other and certain easements that need to be terminated to allow Owner to continue development of the Property while still allowing the City to operate the Remainder Booster Station Site until the Replacement Water Facilities have been constructed and put into operation.

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

Q. WHEREAS, Owner and the City intend this Fifth Amendment to be a Development Agreement within the meaning of A.R.S. § 9-500.05 that binds Owner 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 Fifth Amendment shall have the meanings ascribed to such terms in the Agreement.

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

4. AMENDMENT TO SECTION 2. Section 2 of the Agreement is hereby amended to amend and add definitions to Section 2 of the Agreement as follows:

The section number for the definition of “Water Production In-Lieu Payment” is amended from 2.35 to 2.36.

The following definition in Section 2 of the Agreement is amended to read as follows:

2.34 “Booster Station Site” means that certain real property legal described as Tract A of the Final Plat for PHX 10-11 Phase 1 according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, recorded in Book 1481 of Maps, Page 17 and all infrastructure improvements thereon except for the GYTR Monitoring Well.

The following definitions are hereby added to Section 2 of the Agreement:

2.37 “Remainder Booster Station Property” means the real property legally described in Exhibit B attached hereto and incorporated herein by this reference.

2.38 “Remainder Booster Station Site” means that Remainder Booster Stations Property and all infrastructure improvements thereon except for the GYTR Monitoring Well.

2.39 “Replacement Water Facilities” means a replacement water campus located on City property within the same pressure zone as the Booster Station Site consisting of a potable water storage reservoir capable of storing at least 750,000 gallons, booster pump(s), hydropneumatics tank, water lines connecting the replacement facilities to the City’s existing water lines, and ancillary equipment as needed to for the replacement water facility to function, which includes the work and materials set forth in Basis of Estimate Report PHX 15 Utility Relocation Design prepared by Brown and Caldwell on behalf of Owner, a copy of which is attached hereto as Exhibit A and included herein by this reference.

2.40 “Replacement Water Facilities Cost” means the combined total of the Estimated Construction Costs of \$3,165,589 and the Estimated Design Costs of \$379,870, which amount is \$3,545,459.

2.41 “Upgraded Water Facilities” means a replacement booster station site that meets the minimum requirements of the Replacement Water Facilities that includes upgrades as required by the City.

5. AMENDMENT TO SECTION 8. Section 8 and all subsections therein (8.1 through 8.5 inclusive) of the Fourth Amendment to the Agreement are hereby deleted in their entirety and replaced with the following:

8. REMAINDER BOOSTER STATION SITE. Owner has elected to acquire the Remainder Booster Station Site from the City subject to the terms and conditions set forth herein

8.1. The City shall continue to operate the Remainder Booster Station Site until the Replacement Water Facilities as may be upgraded by the City have been completed and are in operation. The City is responsible for the construction of the Replacement Water Facilities as may be upgraded by the City and Owner agrees to reimburse the City in the amount of \$3,545,459 (the Replacement Water Facilities Cost) as set forth herein.

8.2. Within thirty (30) days following the Effective Date, City and Owner shall establish an escrow account with First American Title Insurance Company (the "Facilities Escrow Account") by the City and Owner delivering an executed escrow agreement in the form set forth in Exhibit C attached hereto and incorporated herein by this reference (the "Improvements Escrow Agreement"), and Owner depositing funds equal to the Replacement Water Facilities Cost and the estimated costs of the escrow into the Facilities Escrow Account.

8.3. Following Owner's deposit of the Replacement Water Facilities Cost and the estimated costs of the escrow into the Facilities Escrow Account, the City shall proceed to design and construct Replacement Water Facilities as may be upgraded by the City pursuant to section 8.3.1 below. Subject to the Improvements Escrow Agreement, the City shall have the right to draw upon the Facilities Escrow Account to fund the design and construction of the Replacement Water Facilities as may be upgraded by the City as set forth below. The Replacement Water Facilities as may be upgraded by the City shall be completed no later than five years from the Effective Date of Improvements Escrow Agreement. The Replacement Water Facilities as may be upgraded by the City shall be deemed completed when they have been completed and are operational. The City shall deliver written notice to Owner upon completion of the Replacement Water Facilities as may be upgraded by the City (the "Completion Notice").

8.3.1. The City intends to increase the size of the water storage reservoir to allow storage in excess of 750,000 gallons, and the larger water storage reservoir shall be part of the Replacement Water Facilities. Accordingly, the Parties agree that Owner's obligation for the costs of the Replacement Water Facilities is limited to the Replacement Water Facilities Costs. The City shall be entitled to draw from the Facilities Escrow Account to pay invoices for the design and construction of the Replacement Water Facilities. The City's draws from the Facilities Escrow Account to pay progress payments for the design and construction of the Replacement Water Facilities shall be based on the percentage the Owner's obligation to pay the City the Replacement Water Facilities Cost of \$3,545,459 bears to the total contracts entered for the design and construction of the Replacement Water Facilities as may be upgraded by the City. For example, if the City enters into a design and construction contract for a combined total of \$5,000,000, the City would be able to draw 71% of the amount of progress payment invoices for the design and construction of the Replacement Water Facilities as may be upgraded by the City ($\$3,545,459 \div \$5,000,000 = .709$). The City's final draw request shall be for the difference between the amount of disbursements made from the Escrow Account to the City and the Replacement Water Facilities Cost of \$3,545,459 for which the Owner is to reimburse the City. Owner is responsible for 100% of the costs of the escrow and, if the

estimated escrow fees Owner deposits with the Escrow Agent are not sufficient, Owner shall remit to the Escrow Agent all additional fees requested.

8.4 Once Owner has deposited funds equal to the Replacement Water Facilities Cost and the estimated costs of the escrow with the Escrow Agent, Owner shall grant the City a temporary water line and access easement connecting the facilities on the Remainder Booster Station Site to an existing water line in South La Cometa in the form attached hereto as Exhibit D (the "Replacement Water Line Easement"). The location of the easement shall be agreed upon by the City and shall be a minimum of 20' wide, and Owner shall provide the legal description for said easement. Owner, at Owner's sole cost and expense, shall, subject to plans approved by the Director of the Water Department and the City Engineer or his designee, install a water line and access facilities within the easement granted for said water line and access facilities (the "Replacement Water Line Improvements").

8.5 Once the Replacement Line Improvements have been completed and are in operation, the City shall terminate the 20' Ingress and Egress Easement and P.U.E. located between the S. 143rd Avenue alignment and the Booster Station Site that was granted to the City in that was granted to the City in the subdivision plat titled Airport Commerce Center Subdivision No. 2 recorded in the Official Records of Maricopa County, Arizona in Book 259, page 44 (Instrument 1983 0492562). Owner shall provide the legal description for the easement being terminated and Owner shall be responsible, at Owner's sole cost and expense, for disconnecting and abandoning, pursuant to City's requirements for abandoning existing water lines, all water lines within the easement being terminating and removing all other improvements located within the easement being terminated.

8.6 Upon completion of the Replacement Water Facilities, the City shall terminate the Replacement Water Line Easement and Owner shall be responsible, at Owner's sole cost and expense, for disconnecting and abandoning, pursuant to City's requirements for abandoning existing water lines, all water lines within the easement being terminating and removing all other improvements located within the easement being terminated.

8.7 Upon completion of the Replacement Water Facilities, Owner shall pay the City \$173,454, which represents the appraised value of the Booster Station Site of \$259,414 less \$85,960, the amount Owner paid for the Initial Acquisition, and the City shall convey, on an AS IS BASIS by Quit Claim Deed, the Remainder Booster Station Site. The Quit Claim Deed shall expressly exclude the GYTR Monitoring Well. Following the City's conveyance of the Remainder Booster Station Site, Owner shall, at Owner's sole cost and expense: (i) disconnect and abandon, pursuant to the City's requirements for abandoning existing water lines, all City owned water lines located on the Remainder Booster Station Site from any other City owned water lines; and (ii) remove and dispose of all of the other improvements on the Remainder Booster Station Site acquired by Owner.

8.8. Owner on behalf of itself and its Successor's and Assigns hereby expressly agrees to waive, release, and discharge, and agrees to indemnify, defend, and hold harmless the City from and against any and all claims, costs, expenses, damages, lawsuits, arbitration proceedings, judgements, arbitration awards, losses, or liabilities (including reasonable attorneys' fees and costs) (collectively, "Claims") whether now existing or hereafter arising from or related to or alleged to arise from or related to the conveyance of the Booster Station Site to Owner by the City in an "As-Is" condition, including, but not limited to Claims arising from or related to or alleged to arise from or related to the condition of the Booster Station Site, the disconnecting and abandonment of existing water lines located on the Booster Station Site, the removal and disposal of all of the improvements on the Booster Station Site acquired by Owner, and/or the existence of the GYTR monitor well on the Booster Station Site. The terms of this Section 8.8 shall survive the expiration or earlier termination of the Agreement

8.11 Owner shall have the right to request that the City grant and convey to Owner temporary easements over the Remainder Booster Station Site for Owner's brine pipelines and over existing right-of-way owned by the City (the "Brine Easements"), which notice shall include a survey and legal description of the area needed for such temporary easements. Provided the requested Brine Easement(s) do not interfere with the City's operation of the Remainder Booster Station Site and do not interfere with the City's operation of any other public infrastructure improvements, the City shall, subject to approval of the legal descriptions for the locations of the Brine Easements, execute the Brine Easements to Owner in a form acceptable to both Owner and the City.

GENERAL TERMS

6. **ENTIRE AGREEMENT.** This Fifth Amendment and the exhibit(s) referred to herein and attached hereto, along with the unchanged provisions in the Agreement 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 Fifth Amendment shall be deemed to amend and supersede the Agreement with respect to all terms, provisions and changes set forth in this Fifth Amendment. To the extent of any conflict between this Fifth Amendment and the Agreement, this Fifth Amendment shall control. Except as amended by this Fifth Amendment, all terms, provisions and conditions of the Agreement shall remain in full force and effect.

7. **AMENDMENTS.** The Agreement and this Fifth 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 Fifth Amendment are for convenience in reference only and are not intended to define or limit the scope of any provision of this Fifth Amendment.

9. FAIR INTERPRETATION. The terms and provisions of this Fifth 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 Fifth 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 Fifth Amendment, Owner represents and warrants the following:

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

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

10.3. **DUE DILIGENCE.** Owner reviewed this Fifth 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 Fifth Amendment.

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

11.1. **APPROVAL.** City has approved this Fifth 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 Fifth Amendment on behalf of City have been duly authorized to do so, and City is not prohibited from executing this Fifth Amendment by any law, rule, regulation, instrument, agreement, order or judgment.

12. COUNTERPARTS. This Fifth 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 Fifth Amendment may be executed and delivered by electronic transmission. A manually signed copy of this Fifth 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 Fifth Amendment provided however, Owner shall deliver an original to the City for recordation by the City in the Official Records of Maricopa County.

13. PAGE NUMBERING. The page numbering of this document is exclusive of the Exhibits attached hereto.

IN WITNESS WHEREOF and agreeing to be bound by the terms of this Fifth Amendment to Infrastructure Development Agreement for PHX 10-11 the City and Owner have caused this Fifth Amendment to Infrastructure Development Agreement for PHX 10-11, to be executed by their duly appointed representatives.

Signatures, Acknowledgments and Exhibits on Following Pages

Microsoft Corporation,
a Washington corporation

State of _____)
_____) ss.
County of _____)

Notary Public

Page 10 of 11

CITY:

CITY OF GOODYEAR, an Arizona municipal corporation

By: _____
Wynette Reed
Its: City Manager

STATE OF ARIZONA)
) ss.
County of Maricopa)

The Fifth 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 _____, 2024, by Wynette Reed, 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 “A”

BASIS OF ESTIMATE REPORT PHX 15 UTILITY RELOCATION DESIGN

On the Following Pages

Basis of Estimate Report

PHX 15 Utility Relocation Design

Introduction

Brown and Caldwell (BC) is pleased to present this opinion of probable construction cost (estimate) prepared for the Lightspeed's PHX 15 Utility Relocation Design, Goodyear, AZ.

Estimated Project Costs

Based on the typical accuracy of a Class 5 estimate, the expected range of costs is:

Upper Range	Estimated Cost	Lower Range
+100%		-50%
\$6,331,178	\$3,165,589	\$1,582,795

Summary

This Basis of Estimate contains the following information:

- Scope of work
- Background of this estimate
- Class of estimate
- Estimating methodology
- Direct cost development
- Indirect cost development
- Bidding assumptions
- Estimating assumptions
- Estimating exclusions
- Allowances for known but undefined work
- Contractor and other estimate markups

Scope of Work

A new water storage tank to replace the existing 750,000-gallon storage tank. This will be based on the replacement of a tank of same size, shape, and material based on as-builts provided by the City.

Background of this Estimate

The attached estimate of probable construction cost is based on available as-builts, received by the Estimating and Scheduling Group (ESG). These documents are described as preliminary/conceptual complete based on the current project progression, additional or updated scope and/or quantities, and ongoing discussions with the project team. Further information can be found in the detailed estimate reports.

Class of Estimate

Class 5: 0 to 2 Percent Conceptual Design Completion

In accordance with the Association for the Advancement of Cost Engineering International (AACE) criteria, this is a Class 5 estimate. A Class 5 estimate is defined as a Conceptual Level or Project Viability Estimate. Typically, engineering is from 0 to 2 percent complete. Class 5 estimates are used to prepare planning level cost scopes or evaluation of alternative schemes, long range capital outlay planning, and can also form the base work for the Class 4 Planning Level or Design Technical Feasibility Estimate.

Expected accuracy for Class 5 estimates typically ranges from -50 to +100 percent, depending on the technological complexity of the project, appropriate reference information and the inclusion of an appropriate contingency determination. In unusual circumstances, ranges could exceed those shown.

Estimating Methodology

This estimate was prepared using quantity take-offs, vendor quotes and equipment pricing furnished either by the project team or by the estimator. The estimate includes direct labor costs and anticipated productivity adjustments to labor and equipment. Where possible, estimates for work anticipated to be performed by specialty subcontractors have been identified.

Construction labor crew and equipment hours were calculated from production rates contained in documents and electronic databases published by R.S. Means, Mechanical Contractors Association (MCA), National Electrical Contractors Association (NECA), and Rental Rate Blue Book for Construction Equipment (Blue Book).

This estimate was prepared using BC's estimating system, which consists of Sage Construction and Real Estate 300 estimating software engine (formerly Timberline) using RS Means database, historical project data, the latest vendor and material cost information, and other costs specific to the project location.

Direct Cost Development

Costs associated with the General Provisions and the Special Provisions of the construction documents, which are collectively referred to as Contractor General Conditions (CGC), were based on the estimator's interpretation of the contract documents. The estimates for CGCs are divided into two groups: a time-related group (e.g., field personnel) and non-time-related group (e.g., bonds and insurance). Labor burdens such as health and welfare, vacation, union benefits, payroll taxes, and worker's compensation insurance are included in the labor rates. No trade discounts were considered.

Indirect Cost Development

Local sales tax has been applied to material and equipment rentals. A percentage allowance for contractor's home office expense has been included in the overall rate markups. The rate is standard for this type of heavy construction and is based on typical percentages outlined in Means Heavy Construction Cost Data.

The contractor's cost for builder's risk, general liability and vehicle insurance has been included in this estimate. Based on historical data, this is typically two to four percent of the overall construction contract amount. These indirect costs have been included in this estimate as a percentage of the gross cost and are added after the net markups have been applied to the appropriate items.

Bidding Assumptions

The following bidding assumptions were considered in the development of this estimate.

1. Bidders must hold a valid, current Contractor's credentials, applicable to the type of project.
2. Bidders will develop estimates with a competitive approach to material pricing and labor productivity, and will not include allowances for changes, extra work, unforeseen conditions, or any other unplanned costs.
3. Estimated costs are based on a minimum of four bidders. Actual bid prices may increase for fewer bidders or decrease for a greater number of bidders.
4. Bidders will account for General Provisions and Special Provisions of the contract documents and will perform all work except that which will be performed by traditional specialty subcontractors as identified here:
 - Electrical

Estimating Assumptions

As the design progresses through different completion stages, it is customary for the estimator to make assumptions to account for details that may not be evident from the documents. The following assumptions were used in the development of this estimate.

1. The cost for demolition of the storage tank and associated components is not included in the cost estimate.
2. Contractor performs the work during normal daylight hours, nominally 7 a.m. to 5 p.m., Monday through Friday, in an 8-hour shift. No allowance has been made for additional shift work or weekend work.
3. Contractor has complete access for lay-down areas and mobile equipment.
4. Equipment rental rates are based on verifiable pricing from the local project area rental yards, Blue Book rates, and/or rates contained in the estimating database.
5. Contractor markup is based on conventionally accepted values that have been adjusted for project-area economic factors.
6. Major equipment costs are based on historical pricing of like equipment.
7. Bulk material quantities are based on manual quantity take-offs.
8. There is enough electrical power to feed the specified equipment. The local power company will supply power and transformers suitable for this facility.
9. Soils are of adequate nature to support the structures. No piles have been included in this estimate.

Estimating Exclusions

The following estimating exclusions were assumed in the development of this estimate.

1. Hazardous materials remediation and/or disposal.
2. O&M costs for the project except for the vendor supplied O&M manuals.
3. Utility agency costs for incoming power modifications.
4. Permits beyond those normally needed for the type of project and project conditions.
5. Land costs
6. Cost for connections to existing system

Allowances for Known but Undefined Work

The following allowances were made in the development of this estimate.

1. Electrical - \$200,000

Contractor and Other Estimate Markups

Contractor markup is based on conventionally accepted values which have been adjusted for project-area economic factors. Estimate markups are shown in Table 1.

Table 1. Estimate Markups	
Item	Rate (%)
Net Cost Markups	
Labor markup	15
Materials and process equipment	15
Subcontractor	15
Other - Process Equipment	8
Sales Tax (State and local for materials, process equipment and construction equipment rentals, etc.)	8.8
Material Shipping and Handling	2
Gross Cost Markups	
Contractor General Conditions	15
Start-up, Training and O&M	2
Construction Contingency	20
Builders Risk, Liability and Auto Insurance	2
Performance and Payment Bonds	1.5
Escalation to Midpoint of Construction	2

Labor Markup

The labor rates used in the estimate were derived from RS Means latest national average wage rate tables and city cost indexes. These include base rate paid to the laborer plus fringes. A labor burden factor is applied to these such that the final rates include all employer paid taxes. These taxes are FICA (which covers social security plus Medicare), Workers Comp (which varies based on state, employer experience and history) and unemployment insurance. The result is fully loaded labor rates. In addition to the fully loaded labor rate, an overhead and profit markup is applied at the back end of the estimate. This covers payroll and accounting, estimator's wages, home office rent, advertising, and owner profit.

Materials and Process Equipment Markup

This markup consists of the additional cost to the contractor beyond the raw dollar amount for material and process equipment. This includes shop drawing preparation, submittal and/or re-submittal cost, purchasing and scheduling materials and equipment, accounting charges including invoicing and payment, inspection of received goods, receiving, storage, overhead and profit.

Equipment (Construction) Markup

This markup consists of the costs associated with operating the construction equipment used in the project. Most GCs will rent rather than own the equipment and then charge each project for its equipment cost. The equipment rental cost does not include fuel, delivery and pick-up charges, additional insurance requirements on rental equipment, accounting costs related to home office receiving invoices and payment.

However, the crew rates used in the estimate do account for the equipment rental cost. Occasionally, larger contractors will have some or all the equipment needed for the job, but to recoup their initial purchasing cost they will charge the project an internal rate for equipment use which is like the rental cost of equipment. The GC will apply an overhead and profit percentage to each individual piece of equipment whether rented or owned.

Subcontractor Markup

This markup consists of the GC's costs for subcontractors who perform work on the site. This includes costs associated with shop drawings, review of subcontractor's submittals, scheduling of subcontractor work, inspections, processing of payment requests, home office accounting, and overhead and profit on subcontracts.

Sales Tax (Materials, Process Equipment and Construction Equipment)

This is the tax that the contractor must pay according to state and local tax laws. The percentage is applied to both the material and equipment the GC purchases as well as the cost for rental equipment. The percentage is based on the local rates in place at the time the estimate was prepared.

Contractor Startup, Training, and O&M Manuals

This cost markup is often confused with either vendor startup or owner startup. It is the cost the GC incurs on the project beyond the vendor startup and owner startup costs. The GC generally will have project personnel assigned to facilitate the installation, testing, startup, and O&M manual preparation for equipment that is put into operation by either the vendor or owner. These project personnel often include an electrician, pipe fitter or millwright, and/or I&E technician. These personnel are not included in the basic crew makeup to install the equipment but are there to assist and troubleshoot the startup and proper running of the equipment. The GC also incurs a cost for startup for such things as consumables (oil, fuel, filters, etc.), startup drawings and schedules, startup meetings and coordination with the plant personnel in other areas of the plant operation.

Builders Risk, Liability, and Vehicle Insurance

This percentage comprises all three items. There are many factors which make up this percentage, including the contractor's track record for claims in each of the categories. Another factor affecting insurance rates has been a dramatic price increase across the country over the past several years due to domestic and foreign influences. Consequently, in the construction industry we have observed a range of 0.5 to 1 percent for Builders Risk Insurance, 1 to 1.25 percent for General Liability Insurance, and 0.85 to 1 percent for Vehicle Insurance. Many factors affect each area of insurance, including project complexity and contractor's requirements and history. Instead of using numbers from a select few contractors, we believe it is more prudent to use a combined 2 percent to better reflect the general costs across the country. Consequently, the actual cost could be higher or lower based on the bidder, region, insurance climate, and the contractor's insurability at the time the project is bid.

Material Shipping and Handling

This can range from 2 to 6 percent, and is based on the type of project, material makeup of the project, and the region and location of the project. Material shipping and handling covers delivery costs from vendors, unloading costs (and in some instances loading and shipment back to vendors for rebuilt equipment), site paperwork, and inspection of materials prior to unloading at the project site. BC typically adjusts this percentage by the value of materials and whether vendors have included shipping costs in the quotes that were used to prepare the estimate. This cost also includes the GC's cost to obtain local supplies, e.g., oil, gaskets and bolts that may be missing from the equipment or materials shipped.

Escalation to Midpoint for Labor, Materials and Subcontractors

In addition to contingency, it is customary for projects that will be built over several years to include an escalation to midpoint of anticipated construction to account for the future escalation of labor, material, and equipment costs beyond values at the time the estimate is prepared. For this project, the anticipated rate of escalation is 4 percent per annum.

The estimated construction duration for this project is 12 months, exclusive of unusual weather or site conditions delays. Construction is anticipated to start April 2024 and be completed by April 2025. The escalation factors used in this estimate are calculated from the date of this estimate to the anticipated midpoint of construction which is approximately 5 months from the date of this estimate.

Undesigned/Undeveloped Contingency

The contingency factor covers unforeseen conditions, area economic factors, and general project complexity. This contingency is used to account for those factors that cannot be addressed in each of the labor and/or material installation costs. Based on industry standards, completeness of the project documents, project complexity, the current design stage and area factors, construction contingency can range from 10 to 50 percent.

Performance and Payment Bonds

Based on historical and industry data, this can range from 0.75 to 3 percent of the project total. There are several contributing factors including such items as size of the project, regional costs, contractor's historical record on similar projects, complexity, and current bonding limits. BC uses 1.5 percent for bonds, which we have determined to be reasonable for most heavy construction projects.



Estimate Summary Report

5/22/2024

BC Project Number: 190709
Lead Estimator: Nitesh Poladia

PHX 15 UTILITY RELOCATION DESIGN

LIGHTSPEED

PHX 15 UTILITY RELOCATION DESIGN

CLASS 5: PLELIMINARY/CONCEPTUAL

Estimator	Nitesh Poladia
BC Project Manager	Phil Walker
BC Office	Phoenix
BC Project Number	190709



Estimate Summary Report

5/22/2024

BC Project Number: 190709
Lead Estimator: Nitesh Poladia

PHX 15 UTILITY RELOCATION DESIGN

Phase	Description	Gross Total Cost with Markups
01 PHX 15 UTILITY RELOCATION DESIGN		
02 Site/Civil		260,291
03 Concrete		61,803
05 Metals		7,363
09 Finishes		93,061
11 Process Equipment		2,134,570
15 Mechanical		259,247
16 Electrical		349,255
01 PHX 15 UTILITY RELOCATION DESIGN		3,165,589



Estimate Detail Report

5/22/2024

BC Project Number: 190709

Lead Estimator: Nitesh Poladia

PHX 15 UTILITY RELOCATION DESIGN

Phase	Description	Takeoff Quantity	Labor Cost/Unit	Material Cost/Unit	Equip Cost/Unit	Sub Cost/Unit	Other Cost/Unit	Total Cost/Unit	Total Amount
01 PHX 15 UTILITY RELOCATION DESIGN									
02 Site/Civil									
04220 Cement Block Wall - 500' x 8' high									
04-22-10.28	Concret block,high strngt,hollow,3500 psi,6"8"16",includes mortar and horzntl joint rnfrng every other course,excludes scffldn,grout and verticl rnfrng	4,000.00 sf	6.14	2.86	-	-	-	9.00	36,015
04-22-10.18	Concret block,col pilastr,2 piece unit,2000 psi,20"x20",includes mortar,verticl rnfrng (4-#4 bars) and grout,excludes scffldn and horzntl reinforcing	500.00 vlf	43.46	43.85	-	-	-	87.31	43,654
04-05-19.26	Masonry reinforcing bars, truss type steel joint reinforcing, mill standard galvanized, to 6" wide	30.00 clf	18.65	25.96	-	-	-	44.61	1,338
	Cement Block Wall - 500' x 8' high	4,000.00 sf	11.72	8.54				20.25	81,007
31290 Structure Excavation - Storage Tank 74' dia.									
31-23-16.42	Excavating, bulk bank measure, in sheeting or cofferdam, with all other equipment, minimum	809.54 bcy	8.72	-	8.61	-	-	17.33	14,025
31-23-23.23	Compaction, around structures and trenches, 2 passes, 18" wide, 6" lifts, walk behind, vibrating plate	109.80 bcy	3.16	-	0.66	-	-	3.82	419
31-23-23.16	Fill by borrow and utility bedding, for pipe and conduit, crushed stone, 3/4" to 1/2", excludes compaction	255.34 lcy	13.10	40.50	1.93	-	-	55.54	14,181
31-23-23.23	Compaction, around structures and trenches, 2 passes, 18" wide, 6" lifts, walk behind, vibrating plate	219.59 bcy	3.16	-	0.66	-	-	3.82	839
31-23-23.14	Backfill, structural, common earth, 200 HP dozer, 300' haul, from existing stockpile, excludes compaction	199.27 lcy	1.42	-	1.96	-	-	3.38	673
31-23-23.23	Compaction, around structures and trenches, 2 passes, 18" wide, 6" lifts, walk behind, vibrating plate	173.28 bcy	3.16	-	0.66	-	-	3.82	662
31-23-23.19	Loading trucks, 2.5 C.Y. bucket, front end loader, wheel mounted	636.26 bcy	0.66	-	0.52	-	-	1.18	751
31-23-23.18	Hauling,excavated borrow material,loose cubic yards,20 mile round trip,0.4 load/hr,base wide rate,12 cy truck,highway haulers,excludes loading	795.32 lcy	16.43	-	25.22	-	-	41.65	33,125
	Structure Excavation - Storage Tank 74' dia.	809.54 cy	31.82	12.77	35.29			79.89	64,675
02 Site/Civil		1.00 LS	72,629.30	44,482.70	28,570.42			145,682.42	145,682
03 Concrete									
03370 Equipment Pad - Pump (3' x 3' x 12" thick)									
03-11-13.65	C.I.P. concrete forms, slab on grade, edge, wood, 7" to 12" high, 4 use, includes erecting, bracing, stripping and cleaning	24.00 sfca	4.72	1.47	-	-	-	6.19	149



Estimate Detail Report

5/22/2024

BC Project Number: 190709

Lead Estimator: Nitesh Poladia

PHX 15 UTILITY RELOCATION DESIGN

Phase	Description	Takeoff Quantity	Labor Cost/Unit	Material Cost/Unit	Equip Cost/Unit	Sub Cost/Unit	Other Cost/Unit	Total Cost/Unit	Total Amount
03370 Equipment Pad - Pump (3' x 3' x 12" thick)									
03-15-05.12	Chamfer strip, wood, 3/4" wide	24.00 lf	1.01	0.16	-	-	-	1.17	28
03-21-10.60	Reinforcing steel, in place, slab on grade, #3 to #7, A615, grade 60, incl labor for accessories, excl material for accessories	0.03 ton	1,191.30	1,435.00	-	-	-	2,626.33	79
03-21-10.60	Reinforcing steel, in place, dowels, deformed, 2' long, #5, A615, grade 60	24.00 ea	3.15	1.65	-	-	-	4.80	115
03-21-10.60	Reinforcing in place, unloading & sorting, add to above - slabs	0.05 ton	45.00	-	17.00	-	-	62.10	3
03-31-05.35	Structural concrete, ready mix, normal weight, 4000 psi, includes local aggregate, sand, portland cement and water, excludes all additives and treatments	0.67 cy	-	135.11	-	-	-	135.11	90
03-31-05.35	Structural concrete, ready mix, for short load (less than 4 C.Y.), add per load	2.00 ea	-	104.25	-	-	-	104.25	209
03-31-05.70	Structural concrete, placing, slab on grade, pumped, up to 6" thick, includes vibrating, excludes material	0.67 cy	29.61	-	5.20	-	-	34.81	23
03-62-13.50	Grout, non-shrink, for column and machine bases, non-metallic, 1" deep	15.13 sf	14.46	8.33	-	-	-	22.79	345
03-15-19.45	Machinery anchor, heavy duty, 1" dia stud & bolt, incl sleeve, floating base nut, lower stud & coupling nut, fiber plug, connecting stud, washer & nut	8.00 ea	69.81	156.16	5.98	-	-	231.95	1,856
	Equipment Pad - Pump (3' x 3' x 12" thick)	0.67 cy	1,571.32	2,692.14	78.17			4,341.63	2,896
31999 Aggregate Base for Storage Tank									
32-11-23.23	Aggregate base - 18" compacted	491.00 sy	7.87	50.00	4.89	-	-	62.75	30,813
	Aggregate Base for Storage Tank	491.00 sy	7.87	50.00	4.89			62.75	30,813
03 Concrete									
		1.00 LS	4,910.88	26,345.66	2,451.95			33,708.49	33,708
05 Metals									
05999 Steel Ladder									
05-51-33.13	Ladder, shop fabricated, steel, 20" W, bolted to concrete, incl cage	20.00 vlf	54.43	145.00	2.36	-	-	201.79	4,036
	Steel Ladder	20.00 vlf	54.43	145.00	2.36			201.79	4,036
05 Metals									
		1.00 LS	1,088.68	2,900.00	47.13			4,035.81	4,036
09 Finishes									
01695 Scaffolding									
01-54-23.70	Scaffolding, steel tubular, heavy duty shoring, frame, rent/mo, 5' high x 2' & 4' wide	152.00 ea	-	10.34	-	-	-	10.34	1,572



Estimate Detail Report

5/22/2024

BC Project Number: 190709

Lead Estimator: Nitesh Poladia

PHX 15 UTILITY RELOCATION DESIGN

Phase	Description	Takeoff Quantity	Labor Cost/Unit	Material Cost/Unit	Equip Cost/Unit	Sub Cost/Unit	Other Cost/Unit	Total Cost/Unit	Total Amount
01695 Scaffolding									
01-54-23.70	Scaffolding, steel tubular, heavy duty shoring, accessory, base plate, rent/mo, 8" x 8"	76.00 ea	-	1.11	-	-	-	1.11	85
01-54-23.70	Scaffolding, steel tubular, heavy duty shoring, accessory, leveling jack, rent/mo	76.00 ea	-	3.02	-	-	-	3.02	230
01-54-23.70	Scaffolding, steel tubular, regular, accessory, plank, rent/mo, 2" x 10" x 16' long	56.00 ea	-	12.15	-	-	-	12.15	680
01-54-23.70	Scaffolding, steel tubular, regular, accessory, cross brace, rent/mo	304.00 ea	-	3.01	-	-	-	3.01	916
01-54-23.70	Scaffolding, steel tubular, regular, accessory, guardrail post, rent/mo	78.00 ea	-	3.61	-	-	-	3.61	282
01-54-23.70	Scaffolding, steel tubular, regular, accessory, guardrail section, rent/mo, 7' long	152.00 ea	-	13.60	-	-	-	13.60	2,068
01-54-23.70	Scaffolding, planks, labor only to install & remove, 2"x10"x16', up to 50' high	224.00 ea	22.76	-	-	-	-	22.76	5,098
	Scaffolding	5,640.00 sfca	0.90	1.03				1.94	10,930
09900 Coating									
09-91-13.60	Paints & coatings, exterior, paint 2 coats, spray	11,200.00 sf	1.49	2.00	-	-	-	3.49	39,138
09-91-03.30	Surface preparation, exterior, siding, stucco, pressure wash, based on 2500 lb operating pressure	11,200.00 sf	0.12	-	0.02	-	-	0.13	1,474
	Coating	11,200.00 sf	1.61	2.00	0.02			3.63	40,612
09 Finishes									
		1.00 LS	23,129.16	28,231.80	180.21			51,541.17	51,541
11 Process Equipment									
46999 Pumps									
46-06-00.00	Unload pumps	2.00 ea	12,257.14	0.00	8,279.35	-	-	20,536.48	41,073
46-06-00.00	Install new pumps (200 hp) - Aurora model 411	2.00 ea	13,954.08	90,000.00	4,553.59	-	-	108,507.67	217,015
	Pumps	2.00 ea	26,211.22	90,000.00	12,832.94			129,044.15	258,088
46999 Welded Carbon Steel - 74' dia									
33-16-13.16	Tanks, aboveground water utility storage tanks, 750,000 gallons	1.00 ea	71,270.46	750,000.00	38,762.45	-	-	860,032.91	860,033
	Welded Carbon Steel - 74' dia	2.00 ea	35,635.23	375,000.00	19,381.22			430,016.46	860,033
46999 Steel Tank - 5,000 gal									
23-13-23.16	Tanks, aboveground water utility storage tanks, 5,000 gallons, includes supports	1.00 ea	1,100.70	41,641.60	-	-	-	42,742.30	42,742



Estimate Detail Report

5/22/2024

BC Project Number: 190709

Lead Estimator: Nitesh Poladia

PHX 15 UTILITY RELOCATION DESIGN

Phase	Description	Takeoff Quantity	Labor Cost/Unit	Material Cost/Unit	Equip Cost/Unit	Sub Cost/Unit	Other Cost/Unit	Total Cost/Unit	Total Amount
	Steel Tank - 5,000 gal	1.00 ea	1,100.70	41,641.60				42,742.30	42,742
	11 Process Equipment	1.00 LS	124,793.59	971,641.60	64,428.32			1,160,863.51	1,160,864

15 Mechanical

40110 Steel Pipe - 12" Pipe

40-05-19.10	Pipe Plain End-Cast Iron--Class C 12 Inch (300mm)	50.00 lf	-	87.54	-	-	-	87.54	4,377
40-05-19.10	Fitting Flanged & Bolted-Cast Iron-El90-Cls 125 12 Inch (300mm)	1.00 ea	-	880.98	-	-	-	880.98	881
40-05-19.10	Fitting Flanged & Bolted-Cast Iron-Flange Thr-Cls 125 12 Inch (300mm)	4.00 ea	-	120.98	-	-	-	120.98	484
40-05-05.00	Pipe Erection-Handle Fittings-Metal-Std 12 Inch (300mm)	1.00 ea	103.82	-	-	-	-	103.82	104
09-91-06.41	Coatings & paints, B & C coating system E-1 (Epoxy, metal pipe)	157.08 sqft	0.61	0.90	-	-	-	1.50	236
40-05-19.10	Shop Fabrication-Cast Iron-Shop Cut & Thread & Attach Flange-Class C 12 Inch (300mm)	4.00 ea	-	48.45	-	-	-	48.45	194
40-05-19.10	Pipe Erection-Straight Run-Cast Iron-Non-Specific 12 Inch (300mm)	50.00 lf	40.96	-	23.46	-	-	64.43	3,221
40-05-05.00	Make Up Bolted Joint incl B-7 Nuts, Bolts, 1/16 Inch Rubber Gasket-Cls 150 (PN20) 12 Inch (300mm)	2.00 ea	50.70	131.70	-	-	-	182.40	365
40-05-07.00	Pipe Support 12 Inch (300mm)	3.00 ea	97.50	27.65	-	-	-	125.15	375
40-05-07.00	Hanger Rod 12 Inch (300mm)	3.00 ea	31.20	331.74	-	-	-	362.94	1,089
40-05-07.00	Hilti-Chemical Anchor - Pipe Support Size 12 Inch (300mm)	20.00 ea	23.40	38.70	-	-	-	62.10	1,242
40-05-05.00	Field Testing-Hydrotest-Non-Specific 12 Inch (300mm)	50.00 lf	4.68	-	-	-	-	4.68	234
	Steel Pipe - 12" Pipe	50.00 lf	68.73	163.85	23.46			256.04	12,802

40110 Steel Pipe - 10" Pipe

40-05-19.10	Pipe Plain End-Cast Iron--Class C 10 Inch (250mm)	200.00 lf	-	67.11	-	-	-	67.11	13,422
40-05-19.10	Fitting Flanged & Bolted-Cast Iron-El90-Cls 125 10 Inch (250mm)	4.00 ea	-	645.44	-	-	-	645.44	2,582
40-05-19.10	Fitting Flanged & Bolted-Cast Iron-Flange Thr-Cls 125 10 Inch (250mm)	16.00 ea	-	81.28	-	-	-	81.28	1,301
40-05-05.00	Pipe Erection-Handle Fittings-Metal-Std 10 Inch (250mm)	4.00 ea	89.70	-	-	-	-	89.70	359
09-91-06.41	Coatings & paints, B & C coating system E-1 (Epoxy, metal pipe)	523.60 sqft	0.61	0.90	-	-	-	1.50	788
40-05-19.10	Shop Fabrication-Cast Iron-Shop Cut & Thread & Attach Flange-Class C 10 Inch (250mm)	16.00 ea	-	39.17	-	-	-	39.17	627
40-05-19.10	Pipe Erection-Straight Run-Cast Iron-Non-Specific 10 Inch (250mm)	200.00 lf	33.25	-	19.04	-	-	52.29	10,458
40-05-05.00	Make Up Bolted Joint incl B-7 Nuts, Bolts, 1/16 Inch Rubber Gasket-Cls 150 (PN20) 10 Inch (250mm)	8.00 ea	39.00	119.27	-	-	-	158.27	1,266
40-05-07.00	Pipe Support 10 Inch (250mm)	10.00 ea	78.00	27.65	-	-	-	105.65	1,056
40-05-07.00	Hanger Rod 10 Inch (250mm)	10.00 ea	31.20	304.10	-	-	-	335.30	3,353
40-05-07.00	Hilti-Chemical Anchor - Pipe Support Size 10 Inch (250mm)	80.00 ea	23.40	33.17	-	-	-	56.57	4,526
40-05-05.00	Field Testing-Hydrotest-Non-Specific 10 Inch (250mm)	200.00 lf	3.90	-	-	-	-	3.90	780



Estimate Detail Report

5/22/2024

BC Project Number: 190709

Lead Estimator: Nitesh Poladia

PHX 15 UTILITY RELOCATION DESIGN

Phase	Description	Takeoff Quantity	Labor Cost/Unit	Material Cost/Unit	Equip Cost/Unit	Sub Cost/Unit	Other Cost/Unit	Total Cost/Unit	Total Amount
Steel Pipe - 10" Pipe		200.00 lf	56.91	126.64	19.04			202.59	40,517
40110 Steel Pipe - 6" Pipe									
40-05-19.10	Pipe Plain End-Cast Iron--Class C 6 Inch (150mm)	50.00 lf	-	33.75	-	-	-	33.75	1,687
40-05-19.10	Fitting Flanged & Bolted-Cast Iron-El90-Non-Specific 6 Inch (150mm)	1.00 ea	-	209.48	-	-	-	209.48	209
40-05-19.10	Fitting Flanged & Bolted-Cast Iron-Flange Thr-Cls 125 6 Inch (150mm)	4.00 ea	-	36.86	-	-	-	36.86	147
40-05-05.00	Pipe Erection-Handle Fittings-Metal-Std 6 Inch (150mm)	1.00 ea	50.78	-	-	-	-	50.78	51
09-91-06.41	Coatings & paints, B & C coating system E-1 (Epoxy, metal pipe)	78.54 sqft	0.61	0.90	-	-	-	1.50	118
40-05-19.10	Shop Fabrication-Cast Iron-Shop Cut & Thread & Attach Flange-Class C 6 Inch (150mm)	4.00 ea	-	23.77	-	-	-	23.77	95
40-05-19.10	Pipe Erection-Straight Run-Cast Iron-Non-Specific 6 Inch (150mm)	50.00 lf	20.78	-	11.90	-	-	32.68	1,634
40-05-05.00	Make Up Bolted Joint incl B-7 Nuts, Bolts, 1/16 Inch Rubber Gasket-Cls 150 (PN20) 6 Inch (150mm)	2.00 ea	39.00	50.38	-	-	-	89.38	179
40-05-07.00	Pipe Support 6 Inch (150mm)	3.00 ea	78.00	16.59	-	-	-	94.59	284
40-05-07.00	Hanger Rod 6 Inch (150mm)	3.00 ea	23.40	82.94	-	-	-	106.34	319
40-05-07.00	Hilti-Chemical Anchor - Pipe Support Size 6 Inch (150mm)	20.00 ea	15.60	27.65	-	-	-	43.25	865
40-05-05.00	Field Testing-Hydrotest-Non-Specific 6 Inch (150mm)	50.00 lf	2.34	-	-	-	-	2.34	117
Steel Pipe - 6" Pipe		50.00 lf	38.97	63.25	11.90			114.12	5,706
40700 Valves									
22-05-23.30	Valves, swing check , 6"	3.00 ea	646.42	2,352.35	-	-	-	2,998.77	8,996
22-05-23.30	Valves, swing check , 12"	3.00 ea	1,140.75	12,612.60	-	-	-	13,753.35	41,260
22-05-23.70	Valves, plug valve, 10"	2.00 ea	881.49	3,803.80	-	-	-	4,685.29	9,371
22-05-23.80	Valves, swing check , 10"	2.00 ea	923.46	10,510.50	-	-	-	11,433.96	22,868
Valves		1.00 ls	8,971.40	73,523.45				82,494.85	82,495
15 Mechanical									
15 Mechanical		1.00 LS	25,737.51	110,205.63	5,577.10			141,520.24	141,520
16 Electrical									
26999 Electrical and Instrumentation									
26-99-99.99	Electrical and Instrumentation	1.00 ls	-	-	-	200,000.00	-	200,000.00	200,000
Electrical and Instrumentation		1.00 ls				200,000.00		200,000.00	200,000
16 Electrical									
16 Electrical		1.00 LS				200,000.00		200,000.00	200,000
01 PHX 15 UTILITY RELOCATION DESIGN									1,737,352



Estimate Detail Report

5/22/2024

BC Project Number: 190709

Lead Estimator: Nitesh Poladia

PHX 15 UTILITY RELOCATION DESIGN

Estimate Totals

Description	Rate	Hours	Amount	Totals
Labor		3,803 hrs	252,289	
Material			1,183,807	
Subcontract			200,000	
Equipment		1,121 hrs	101,255	
Other				
			1,737,351	1,737,351
Labor Mark-up	15.00 %		37,843	
Material Mark-up	15.00 %		177,571	
Subcontractor Mark-up	15.00 %		30,000	
Construction Equipment Mark-up	10.00 %		10,126	
			255,540	1,992,891
Material Shipping & Handling	2.00 %		23,676	
Material Sales Tax	8.80 %		113,086	
Net Markups			136,762	2,129,653
Contractor General Conditions	15.00 %		319,448	
			319,448	2,449,101
Start-Up, Training, O&M	2.00 %		48,982	
			48,982	2,498,083
Undesign/Undevelop Contingency	20.00 %		499,617	
			499,617	2,997,700
Bldg Risk, Liability Auto Ins	2.00 %		59,954	
			59,954	3,057,654
Payment and Performance Bonds	1.50 %		45,865	
			45,865	3,103,519
Escalation to Midpoint	2.00 %		62,070	
Gross Markups			62,070	3,165,589
Total				3,165,589

EXHIBIT “B”

**REMAINDER BOOSTER STATION PROPERTY
LEGAL DESCRIPTION**

On the Following Pages

EXHIBIT 'B'
FOR PARCEL A2

A PORTION OF TRACT A OF THE FINAL PLAT OF "PHX 10-11 PHASE 1", ACCORDING TO BOOK 1481 OF MAPS, PAGE 17, RECORDS OF MARICOPA COUNTY, ARIZONA, LOCATED IN THE NORTHWEST QUARTER OF SECTION 21, TOWNSHIP 1 NORTH, RANGE 1 WEST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTH QUARTER CORNER OF SAID SECTION FROM WHICH THE NORTHWEST CORNER OF SAID SECTION BEARS NORTH 89°13'00" WEST, 2627.31 FEET;

THENCE NORTH 89°13'00" WEST, 619.29 FEET ALONG THE NORTH LINE OF THE NORTHWEST QUARTER OF SAID SECTION;

THENCE SOUTH 00°47'00" WEST, 1872.68 FEET, DEPARTING FROM SAID SECTION LINE TO THE NORTHWEST CORNER OF SAID TRACT A, SAID POINT BEING THE **POINT OF BEGINNING**;

THENCE NORTH 89°07'49" EAST, 217.05 FEET;

THENCE SOUTH 24°30'46" EAST, 34.99 FEET TO THE BEGINNING OF NON-TANGENT CURVE, CONCAVE TO THE SOUTHEAST, WHOSE CENTER RADIUS BEARS SOUTH 24°30'48" EAST, 381.97 FEET;

THENCE SOUTHWESTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 31°32'34", AN ARC LENGTH OF 210.28 FEET;

THENCE NORTH 56°06'09" WEST, 63.99 FEET;

THENCE SOUTH 89°31'59" WEST, 19.00 FEET;

THENCE NORTH 00°28'01" WEST, 127.27 FEET TO THE POINT OF **BEGINNING**.

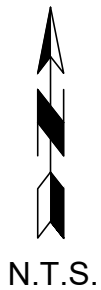
THE DESCRIBED AREA CONTAINS 23,512 SQUARE FEET OR 0.540 ACRES MORE OR LESS.

RYAN D. GILBERT, RLS
GILBERT LAND SURVEYING
4361 S SQUIRES LANE
GILBERT, AZ 85297
480-275-8020
PROJECT NO. 24-0301-A2



EXHIBIT 'B' FOR PARCEL A2

N 1/4 CORNER
SECTION 21,
T1N, R1W
POINT OF
COMMENCEMENT



NW CORNER
SECTION 21,
T1N, R1W

(BASIS OF BEARING)
N89°13'00"W 2627.31'

2008.02'

619.29'

POINT OF
BEGINNING

S0°47'00"W
1872.68'

LOT 3
BK 1481, PG 17, MCR

N89°07'49"E 217.05'

PARCEL A2

N0°28'01"W
127.27'

L3

L2

C1

LINE TABLE

LINE	LENGTH	BEARING
L1	34.99'	S24° 30' 46"E
L2	63.99'	N56° 06' 09"W
L3	19.00'	S89° 31' 59"W

TRACT A
BK 1481, PG 17,
MCR

LOT 1
BK 1481, PG 17,
MCR



Curve Table

CURVE	LENGTH	RADIUS	DELTA	CHORD	CHORD LENGTH
C1	210.28'	381.97'	31°32'34"	S49° 42' 55"W	207.64'

NOTE: THIS EXHIBIT IS
MEANT SOLELY AS A
REFERENCE TO THE
LEGAL DESCRIPTION TO
WHICH IT IS ATTACHED.



GILBERT LAND SURVEYING, PLC
4361 S. Squires Lane, Gilbert, Arizona 85297
Phone: (480) 275-8020 - info@gilbertsurvey.com

PROJ. NO.: 24-0301-A2

PAGE: 1 OF 1 PAGES

DATE: 4-11-24

EXHIBIT “C”

IMPROVEMENTS ESCROW AGREEMENT

On the Following Pages

IMPROVEMENTS ESCROW AGREEMENT

This Improvements Escrow Agreement (this “Agreement”) is made and entered into as of _____, 2024, by and among First American Title Insurance Company (“Escrow Agent”), Microsoft, Inc., a Washington corporation, (“Microsoft”) and the CITY OF GOODYEAR, ARIZONA, a municipal corporation under the laws of the State of Arizona (“City”). Escrow Agent, City and Microsoft are sometimes hereinafter referred to collectively as the “Parties” and individually as a “Party.”

RECITALS

A. 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, and that certain First Amendment to Infrastructure Development Agreement for Project 10-11 recorded on July 14, 2020, in the official records of Maricopa County, Arizona at recording number 20200625939 (hereinafter referred to as the “First Amendment”), which addressed the timing of certain portions of the Phase One Improvements by Microsoft and the completion of the Raw Water Line by the City, and that certain Second Amendment to Infrastructure Development Agreement for Project 10-11 recorded on April 27, 2021, in the official records of Maricopa County, Arizona at recording number 20210468656 (hereinafter referred to as the “Second Amendment”), and that certain Third Amendment to Infrastructure Development Agreement for Project 10-11 recorded on March 8, 2023, in the official records of Maricopa County, Arizona at recording number 20230116402 (hereinafter referred to as the “Third Amendment”), and that certain Fourth Amendment to Infrastructure Development Agreement for Project 10-11 recorded on June 28, 2023, in the official records of Maricopa County, Arizona at recording number 20230337588 (hereinafter referred to as the “Fourth Amendment”), which addressed the Necessary Public Infrastructure required pursuant to the Updated Carolo Study for the Full Build Out of the of the Property and acquisition of the Booster Station Site by Microsoft, and that Fifth Amendment to Infrastructure Development Agreement for Project 10-11 recorded on _____ in the Office of the County Recorder of Maricopa County, Arizona, at document number _____, a copy of which is attached hereto as Exhibit “1” and incorporated herein by reference, (the “Fifth Amendment”), which amends the terms and conditions for the City’s conveyance of the Booster Station Site to Microsoft in phases. Together, the PHX 10-11 IDA, the First Amendment, the Second Amendment, the Third Amendment, the Fourth Amendment, and the Fifth Amendment are referred to herein as the “Development Agreement.”

B. The Fifth Amendment requires that Microsoft and the City must establish the Facilities Escrow Account by entering into this Agreement within thirty (30) days following recordation of the Fifth Amendment, and for Microsoft to deposit the Replacement Water Facilities Cost in the amount of \$3,545,459 and the estimated costs of the escrow, with the Escrow Agent after approval pursuant to the Development Agreement, which amounts will be disbursed in accordance with the terms of this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and legal sufficiency of which is hereby acknowledged, the Parties hereto, intending to be legally bound hereby, mutually agree as follows:

1. Incorporation of Recitals. The Parties hereby acknowledge and agree to the Recitals set forth above, which are incorporated herein by this reference.

2. Definitions. Capitalized terms not defined in the foregoing Recitals or elsewhere in this Agreement shall have the meanings as set forth in the Development Agreement. As used in this Agreement the following terms shall have the respective meanings as set forth below.

2.1 “Bank” means a federally insured commercial bank having an office in the State of Arizona.

2.2 “Complete” or “Completion” means that City has delivered all of the following to Escrow Agent and the other Parties:

(a) A certification signed City, stating (1) that the improvements plans for the Replacement Water Facilities as may be upgraded by the City have been fully designed and approved; (2) that the Replacement Water Facilities as may be upgraded by the City have been completed in accordance with the applicable improvements plans as may be modified by the City; and (3) the Replacement Water Facilities as may be upgraded by the City have been accepted by the City Engineer or his designee subject to completion of the two-year warranty period. Because the Replacement Water Facilities as may be upgraded by the City will be constructed on property owned by the City, the City shall not be required to submit any statement signed by City naming each contractor, subcontractor, and materialman that has supplied labor or materials in connection with the Replacement Water Facilities, and certifying that each contractor, subcontractor and materialman named therein has executed a full, final and unconditional mechanics lien waiver in connection therewith or copies of all final unconditional mechanics lien waivers for each contractor, subcontractor, and materialman that has supplied labor or materials in connection with the Replacement Water Facilities as may be upgraded by the City.

(b) A Final Draw Request, which shall be for the difference between the amount of disbursements made from the Escrow Account and the Replacement Water Facilities Cost of \$3,545,459 for which Owner is to reimburse the City. The maximum amount to be remitted to the City for the design and construction of the Replacement Water Facilities is \$3,545,459.

2.3 “Default Condition” means City has not completed all of the Replacement Water Facilities within five (5) years after the Effective Date.

2.4 “Deposit” means all of the following, collectively: (i) the Initial Deposit that is paid to the Escrow Agent pursuant to *Section 2.8* for the purpose of funding the Facilities Escrow Account, (ii) any additional amounts requested by the Escrow Agent to manage the escrow; and (iii) and interest earned on any of the foregoing while invested as provided in *Section 4.4*.

2.5 “Draw Request” means a written demand for disbursement of the Deposit, which satisfies all of the following requirements:

(a) It is signed by the City pursuant to the terms of this Agreement;

(b) For Draw Requests for payment of costs incurred by the City in connection with the design and construction of the Replacement Water Facilities as may be upgraded by the City, the Draw Requests shall contain a certification by the City which (i) states the amount of costs and expenses incurred by the City in connection with the design and/or construction of the Replacement Water Facilities for which payment is being sought; and (ii) for payments for costs and expenses incurred for the construction of the Replacement Water Facilities as may be upgraded by the City shows the percentage of value of the total work on the Replacement Water Facilities as may be upgraded by the City that have been completed through the date of the current demand (the “Completion Percentage”). Until the final Draw Request, the Escrow Agent is to remit to the City the percentage the Owner’s obligation to pay the City the Replacement Water Facilities Cost of \$3,545,459 bears to the total contracts entered for the design and construction of the Replacement Water Facilities as may be upgraded by the City. For example, if the City enters into a design and construction contract for a combined total of \$5,000,000, the City would be able to draw 71% of the amount of progress payment invoices for the design and construction of the Replacement Water Facilities as may be upgraded by the City ($\$3,545,459 \div \$5,000,000 = .709$). The City’s final Draw Request shall be for the difference between the amount of disbursements made from the Escrow Account and the Replacement Water Facilities Cost of \$3,545,459 for which Owner is to reimburse the City. The maximum amount to be remitted to the City for the design and construction of the Replacement Water Facilities is \$3,545,459.

(c) For Draw Requests for payment of costs incurred by the City in connection with the construction of the Replacement Water Facilities shall be accompanied by copies of invoices, paid receipts, applications for payment, or other reasonable supporting evidence of the costs and expenses for which payment is sought. Because the Replacement Water Facilities as may be upgraded by the City will be constructed on property owned by the City, the City shall not be required to submit executed conditional lien waivers from all contractors and suppliers identified in the invoice or executed unconditional lien waivers from all contractors/suppliers identified in previous invoices.

2.6 Reserved.

2.7 Reserved.

2.8 “Initial Deposit” means the Replacement Water Facilities Cost in the amount of \$3,545,459 and the amount required by the Escrow Agent to establish the Escrow as set forth in Recital B above.

2.9 Reserved.

2.10 Reserved.

2.11 “Uncontrollable Events” means delays in the progress of construction and/or Completion of the Improvements due to strikes, riots, acts of war, acts of violence, unseasonable and intemperate weather that is not reasonably expected in the geographic location of the property on which the Improvements are located, material shortages, employee shortages resulting from measures taken to combat COVID-19, acts of God, delays by utility companies or any governmental agencies having jurisdiction over the Improvements. Notwithstanding the foregoing, Uncontrollable Events do not include: financial inability; delays or failures to perform resulting from lack of funds or which can be cured with the payment of money; delays in obtaining goods, materials or equipment due to failure to adequately plan for purchases or deliveries; economic hardship; design errors; or equipment failure.

3. Design and Construction of the Improvements.

3.1 The City shall be responsible to design and engineer the Replacement Water Facilities in accordance with the Fifth Amendment and this Agreement.

3.2 Following the City’s completion and approval of the construction plans for the Replacement Water Facilities (the “Approved Plans”), the City shall solicit and obtain bids from a qualified contractor for the construction of the Replacement Water Facilities in accordance with Approved Plans, and shall deliver a copy of the final bid (the “Construction Bid”) to Microsoft and Escrow Agent within ten (10) business days after acceptance by the City.

3.3 The City shall be responsible for the construction and Completion of the Replacement Water Facilities in accordance with the Approved Plans, the Fifth Amendment, and this Agreement.

4. Escrow of the Deposit.

4.1 Initial Deposit. Microsoft shall pay the Initial Deposit to Escrow Agent in cash or other immediately available funds within three business days of the effective date of this Agreement.

4.2 Refund of Excess Deposit. Any funds remaining in the Escrow, following the completion of Replacement Water Facilities as may be upgraded by the City and after the City has been reimbursed the Replacement Water Facilities Cost of \$3,545,459 shall be refunded to Microsoft.

4.3 Investment by Escrow Agent. Escrow Agent shall invest the Deposit in an insured (subject to dollar-amount limitations from time to time), money market, interest-bearing

demand deposit account with a Bank, which account shall be established for the joint benefit of Microsoft, Escrow Agent and the City. The Parties acknowledge that any interest or other income payable with respect to the Deposit account may be variable and subject to change from time to time due to fluctuations in the money market or other factors. Escrow Agent shall file at the appropriate time(s) any required report with the United States Internal Revenue Service in connection with the payment of such interest. Upon execution of this Agreement, Microsoft shall provide its federal tax identification number to Escrow Agent for purposes of investing the Deposit.

4.4 Disbursement by Escrow Agent. This Agreement shall constitute an escrow agreement and instructions to Escrow Agent. The Deposit shall be disbursed and otherwise dealt with by Escrow Agent only in strict accordance with the terms of this Agreement.

5. Draws Upon the Deposit.

5.1 By the City. The City shall have the right to draw upon the Deposit from time to time, on a monthly basis, in payment of the Completion Costs incurred by the City. The foregoing draws shall be paid by Escrow Agent to the City upon presentation to Escrow Agent and Microsoft of a Draw Request that complies with the requirements for Draw Requests set forth in Section 2.5 above. If City fully complies with the procedure set forth in this Agreement Escrow Agent shall make payment to the City in accordance with the Draw Request no later than ten (10) business days after Escrow Agent's receipt of the Draw Request, which disbursement shall be in the amount set forth in the Draw Request.

5.2 Default Condition. If a Default Condition occurs, Microsoft shall have the right to cancel its acquisition of the Booster Station Site by delivery of written notice to the City and Escrow Agent, and Escrow Agent shall release all funds in the Facilities Escrow Account to Microsoft, and upon such release, this Agreement and any Booster Station Purchase Agreement shall be automatically terminated, and the parties shall have no further obligations to each other.

5.3 Disbursement of Remaining Funds. Following the payment of the reconciled Replacement Water Facilities Cost and Land Payment Amount to the City, any and all funds remaining in the Facilities Escrow Account shall be released to Microsoft.

6. Escrow Agent Provisions – Standard Conditions.

6.1 Third Parties. This Agreement is made and executed for the sole benefit of the Parties to this Agreement, including Escrow Agent. It is the intention of the Parties hereto that no materialman or supplier concerned with the design and/or construction of any improvements described herein shall be or shall be considered to be a third-party beneficiary, either incidentally or directly, of this Agreement.

6.2 Limited Role. The Parties hereto understand that the extent of the obligation of Escrow Agent hereunder is to receive and disburse monies in the manner set forth in this Agreement, and Escrow Agent shall have no other obligations whatsoever hereunder to the parties hereto.

6.3 Not Bound by Other Agreements. Notwithstanding anything in this Agreement to the contrary, neither Escrow Agent nor the City shall be bound by any term or provision in an agreement to which they are not a party.

6.4 Disbursements. Escrow Agent shall disburse funds, subject to the terms of this Agreement, in accordance with the express terms of this Agreement or as otherwise authorized pursuant to a written authorization executed by Microsoft and the City or their respective designated agent as identified by a Party pursuant to *Section 6.8* (a “Designated Agent”).

6.5 Requests of Accounting. Upon request of any Party hereto, a copy of Escrow Agent’s record of accounting for funds received and disbursed, on Escrow Agent’s form, shall be furnished to the Parties hereto.

6.6 Indemnification. The Parties hereto hereby indemnify and promise to hold harmless Escrow Agent against but not limited to all costs, damages, attorneys’ fees, expenses and liabilities which Escrow Agent may incur or sustain in connection with this Agreement, or any court action arising therefrom, and will pay the same upon demand, except claims arising out of Escrow Agent’s negligence, bad faith, recklessness, intentional misconduct or breach of this Agreement.

6.7 Conflicting Demands. If conflicting demands are made upon Escrow Agent, Escrow Agent may hold any money or documents subject to such conflicting demands until the rights of the Parties making such conflicting demands be determined by court action. Escrow Agent may interplead said money or documents, whereupon Escrow Agent shall be fully relieved of any and all liability in regard to such demands and the Parties hereunder.

6.8 Specimen Signatures. Each of the Parties hereto shall furnish to Escrow Agent such information as may be required by Escrow Agent setting for the names and specimen signatures of its Designated Agent whose signature Escrow Agent may accept.

6.9 Instruction to Escrow Agent. This Agreement shall constitute joint instructions to Escrow Agent from the Parties and the amounts deposited shall be disbursed and dealt with by Escrow Agent in strict accordance with the following:

(a) Interest. Interest on monies earned on the investment of the Deposit pursuant to *Section 4.4* on such money market account(s) will be added to the Escrow Account funds to be utilized for costs and fees related to this Agreement. It is understood by the Parties that the Escrow Agent is not providing management nor oversight functions with respect to a payment made on behalf of another, nor has significant economic interest in connection with the payment; and therefore, would not be responsible for issuing information returns to the IRS under IRC section 6041 and/or Rev. Rul. 73-90.

(b) Limitation of Liability. Notwithstanding any other provisions of this Agreement, Escrow Agent has no responsibility nor liability for completion of any improvements described in this Agreement; or to guarantee that the funds deposited into the Escrow Account are sufficient to complete any improvements described in this Agreement; or for any mechanic’s or materialmens’ liens that may be filed except to the extent that Escrow Agent fails to properly

disburse monies pursuant to this Agreement. Escrow Agent shall not be liable for any action taken or omitted by it, except for its own negligence, bad faith or willful misconduct; nor shall it be liable or responsible for the validity, enforceability or sufficiency of any document furnished to it pursuant to any provision thereof; nor shall it be responsible for any representation or statements made in any of those documents. Any disbursement by Escrow Agent of any advance shall not be deemed to be approved by Escrow Agent of any work performed or any materials furnished with respect thereto or a representation by Escrow Agent that the unused portion of the total cumulative sum is sufficient to pay any remaining design and/or construction costs.

(c) Advice of Counsel. Escrow Agent shall be entitled to rely upon advice of counsel concerning legal matters and upon any document or notice delivered to it hereunder which it believes to be genuine or to have been presented by a proper person.

(d) Compensation. Escrow Agent shall be entitled to receive compensation for its services hereunder in accordance with the rate schedule attached hereto as Exhibit "2" and is incorporated herein by this reference. Escrow Agent is hereby authorized to deduct from first monies available its fees. Microsoft shall each be responsible for payment of one hundred percent (100%) of each such fee, as and when it is due and payable to Escrow Agent. Note: A reasonable charge will be made for extraordinary services rendered.

6.10 Cancellation. This Agreement may be canceled only upon written approval of all Parties hereto except as otherwise provided in this Agreement. The Escrow Agent's action upon cancellation shall consist of final disbursement of funds upon written direction of the Parties or by court action, whichever is applicable.

6.11 Agreement Controls. To the extent of any conflicts between the provisions of this *Section 6* and any other provision of this Agreement concerning the obligations of the Escrow Agent, the provisions of this *Section 6* shall control.

6.12 Resignation. Escrow Agent has the right to resign upon written notice thereof mailed to the Parties thirty (30) days prior to the effective date of such resignation. If such right is exercised, all funds and documents shall be delivered to a mutually appointed successor Escrow Agent or as otherwise directed in writing by the Parties hereto. In the event that a successor Escrow Agent is not appointed within thirty (30) days after Escrow Agent's notice of resignation or the Parties have not provided written directions as to the distribution of the Deposit and documents within thirty (30) days after Escrow Agent's notice of resignation, Escrow Agent may petition a court of competent jurisdiction to name a successor Escrow Agent and Escrow Agent herein shall be fully relieved of all liability under this Agreement to any and all Parties arising from actions occurring after the transfer of the Deposit and documents to the successor Escrow Agent either designated by the Parties or appointed by the court.

6.13 Party. Whenever the context of this instrument so requires words used in the masculine gender include the feminine and neuter; the singular number includes the plural, and the plural the singular; the word person includes a corporation, company, partnership or association, or society as well as a natural person. Every reference to any Party or to the Parties

collectively shall be deemed to constitute a reference to all successors in interest or assigns of the Party referred to.

7. Notices. All notices, demands, or other communications of any type given one Party to any other Party to this Agreement, whether required by this Agreement or in any way related to this Agreement or the Purchase Agreement, shall be null, void and of no effect unless given in accordance with the provisions of this *Section 7*. All notices shall be in writing and delivered to the person to whom the notice is directed, either in person, by national overnight delivery service, by facsimile transmission accompanied by a simultaneous deposit of such notice with a national overnight delivery service (in which event delivery shall be deemed to have been made when the facsimile was transmitted and confirmed by sender's equipment), or by United States mail, as a registered or certified item, return receipt requested. All notices shall be addressed as follows (or to such other address as may be designated by a Party by written notice to the other Parties given in accordance with this *Section 7*):

If to Escrow Agent:

First American Title Insurance Company
Attention: Trust Department
PO Box 52023
Phoenix, Arizona 85072
9000 East Pima Center Parkway
Scottsdale, Arizona 85258
Phone: (602) 685-7000
Fax: (602) 685-7029
Email: JDA-HB-AZ@firstam.com

If to Microsoft:

Microsoft Corporation
One Microsoft Way
Redmond, WA 98052
Attn: MSFT Engineering

Microsoft Corporation
One Microsoft Way
Redmond, WA 98052
Attn: DCS Global Real Estate

Microsoft Corporation
One Microsoft Way
Redmond, WA 98052
Attn: Corporate, External, and Legal Affairs

With a copy to:

Rose Law Group pc
Attn: Cameron Carter
7144 E. Stetson Drive, Suite 300
Scottsdale, AZ 85251
Telephone: (480) 240-5639

If to the City:

City of Goodyear
195 N. 145th Avenue
Goodyear, AZ 85338
Attn: City Engineer
Telephone: (623) 882-7954
Fax: (623) 882-7230

With a copy to:

City of Goodyear
190 N. Litchfield Road
Goodyear, AZ 85338
Attn: City Attorney
Telephone: (623) 882-7227
Fax: (623) 882-7230

8. Miscellaneous.

8.1 Binding Agreement. This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective heirs, legal representatives, successors and assigns.

8.2 Interpretation and Applicable Law. THIS AGREEMENT SHALL BE CONSTRUED AND INTERPRETED IN ACCORDANCE WITH THE LAWS OF THE STATE OF ARIZONA, AND ALL OBLIGATIONS OF THE PARTIES CREATED HEREUNDER ARE PERFORMABLE IN MARICOPA COUNTY, ARIZONA. The Parties agree that the proper venue for any legal proceedings arising out of this Agreement shall be Maricopa County, Arizona, and the parties hereby consent to the jurisdiction of the state and federal courts within such County. Where required for proper interpretation, words in the singular shall include the plural; and words of any gender shall include all genders. The descriptive headings of the articles, sections, and paragraphs in this Agreement are for convenience only and shall not control or affect the meaning or construction of any of the provisions hereof.

8.3 Amendment. This Agreement may not be amended except by an agreement in writing signed by all Parties.

8.4 Attorneys' Fees. If a Party institutes an action in connection with this Agreement, including an arbitration proceeding, the Party that prevails in such action shall be entitled to recover from the non-prevailing Party, in addition to all other remedies or damages as limited herein, reasonable attorneys' fees and costs of court incurred in such lawsuit. The provisions of this *Section 8.4* shall survive the termination of this Agreement.

8.5 Limitations on Liability. In no event shall any officer, director, shareholder, partner, member, employee, agent or affiliate of any Party have any personal liability hereunder, nor shall any of them be named personally in any suit, action or proceeding concerning any matter hereunder, nor shall any of their assets be attached, liened or levied upon or in any other way held liable for any of the obligations of such Party, respectively. Notwithstanding anything to the contrary contained in this Agreement, in no event shall any Party be entitled to recover monetary damages from any other Party in connection with any claim arising out of or relating to this Agreement or any representation made herein, except for the actual out-of-pocket damages, including attorneys' fees and costs, sustained by the claiming party, each Party hereby waiving and covenanting not to assert any right to seek or obtain any other damages (including, but not limited to, special, punitive, incidental or consequential damages).

8.6 Land Use Compliance. Subject to the City's obligations to follow its own standards and procedures and so long as such action is not arbitrary and capricious, nothing in this Agreement is intended to nor does it prevent the City from taking any administrative action requested of the City that is subject to the City's review and/or approval, including: (a) the withholding of permits and/or certificates of occupancy, provided for in the City of Goodyear Engineer Design Standards and Guidelines; (b) the Zoning Ordinance of the City of Goodyear; (c) the Goodyear City Code, including but not limited to the provisions of Chapter 9 regulating Buildings and Chapter 15 regulating subdivisions; (d) the ordinance(s) including, but not limited to, the conditions and stipulations thereto, applicable to the zoning of the lots platted in the MLD; and (e) the MLD, including, but not limited to, the conditions and stipulations thereto.

8.7 Entire Agreement. Except for the incorporation of or reference to certain provisions of the Development Agreement as provided herein, this Agreement constitutes the entire agreement between the Parties pertaining to the subject matter hereof and supersedes all prior and contemporaneous agreements and understandings of the Parties, either written or oral, in connection therewith. To the extent that the terms of this Agreement are inconsistent with the terms of the Development Agreement, the terms of this Agreement shall control.

8.8 Multiple Counterparts. This Agreement may be executed in duplicate counterparts, and the counterparts together shall constitute the single binding agreement of the Parties. Facsimile transmission of a counterpart signed by a Party shall be deemed as signed by such Party for purposes hereof.

8.9 Effective Date; Dates. The effective date of this Agreement shall be the date on which a fully executed copy of this Agreement has been executed by all Parties to this Agreement. Any act performable on an official United States holiday or a Saturday or Sunday shall be extended so that it shall fall on and be performable on the next business day following such date.

8.10 Construction. The Parties acknowledge that they have had the opportunity to be represented by counsel in connection with this transaction and that this Agreement shall be interpreted according to its fair construction and shall not be construed against any Party.

8.11 Invalidity. If any provision in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

8.12 Time is of the Essence; Waiver. Time is of the essence with respect to every provision of this Agreement. No waiver by any Party of any of its rights or remedies hereunder or otherwise shall be considered a waiver of any other subsequent right or remedy.

8.13 PAGE NUMBERING. The page numbering of this document is exclusive of the Exhibits attached hereto.

[NO FURTHER TEXT ON THIS PAGE - SIGNATURES FOLLOW]

ESCROW AGENT:

By:_____

Name:_____

Title:_____

STATE OF ARIZONA)
) ss.
County of Maricopa)

The Improvements Escrow Agreement by and between Microsoft Corporation, a Washington corporation, the City of Goodyear, an Arizona municipal corporation and First American Title Company was acknowledged before me this _____ day of _____, 2024, by _____, the _____ of First American Title Company, for and on behalf thereof.

Notary Public

CITY:

CITY OF GOODYEAR, an Arizona municipal corporation

By: _____
Wynette Reed
Its: City Manager

STATE OF ARIZONA)
) ss.
County of Maricopa)

The Improvements Escrow Agreement by and between Microsoft Corporation, a Washington corporation, the City of Goodyear, an Arizona municipal corporation and First American Title Company was acknowledged before me this _____ day of _____, 2024, by Wynette Reed, 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

EXHIBIT 1

Fifth Amendment to PHX 10-11 IDA

EXHIBIT 2

Escrow Agent Fee Schedule

EXHIBIT “D”

REPLACEMENT WATER LINE EASEMENT

On the Following Pages

When Recorded Return to:

City of Goodyear
City Clerk /
1900 N. Civic Square
Goodyear, Arizona 85395
QS-

EXEMPT UNDER A.R.S. § 11-1134(A)(2)

TEMPORARY WATER LINE AND ACCESS EASEMENT

This Temporary Water Line and Access Easement is being granted pursuant to the terms of the Fifth Amendment of the Infrastructure Development Agreement for Project 10-11 by and between Microsoft Corporation, a Washington corporation and the City of Goodyear, an Arizona municipal corporation, recorded in the Official Records of the Maricopa County, Arizona Recorder on _____, 2024 at Instrument No. _____ (the "Fifth Amendment"). For the consideration of One Dollar (\$1.00), and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, **MICROSOFT CORPORATION, a Washington corporation** and its successors and assigns, (collectively "GRANTOR") does hereby grant and convey to **CITY OF GOODYEAR, an Arizona municipal corporation** ("GRANTEE") a Temporary Water Line and Access Easement within, upon, over and under the real property described in Exhibit "A" attached hereto and incorporated herein (the "Easement Area") for the purposes described herein. This Temporary Water Line and Access Easement shall be a temporary easement for use by the GRANTEE, its employees and Permittees for the following purposes: (i) providing ingress and egress between S. La Cometa and the property legally described in Exhibit "B" attached hereto (the "Remainder Booster Station Site"); and (ii) for entering upon the Easement Area and operating, maintaining, inspecting, repairing, and/or replacing: (i) water lines, appurtenances thereto, and access facilities ("the Facilities") to be constructed by GRANTOR pursuant to the terms of the Fifth Amendment. For the purposes of this Easement, Permittees shall include persons and entities (including their respective employees, agents, representatives, contractors, and sub-contractors) authorized by GRANTEE to work within the Easement Area for the purposes described herein.

GRANTEE shall have all rights and privileges necessary or convenient for the full use and enjoyment of the easement, servitude, and privileges herein granted for the purposes herein described. GRANTOR reserves for itself the right to use the Easement Area for purposes that are not inconsistent with GRANTEE's rights under this Temporary Water Line and Access Easement, do not interfere with or endanger any of the Facilities constructed within the Easement Area, and do not interfere with GRANTEE'S access to the Facilities and/or to the Remainder Booster Station Site.

GRANTEE shall terminate this Temporary Water Line and Access Easement upon GRANTOR'S satisfaction of the requirements for such termination as set forth in the Fifth Amendment.

