

RESOLUTION NO. 2025-2489

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF GOODYEAR, MARICOPA COUNTY, ARIZONA, APPROVING THE SIXTH AMENDMENT TO INFRASTRUCTURE DEVELOPMENT AGREEMENT FOR PHX 10-11.

WHEREAS, Microsoft a Washington corporation ("Microsoft") and the City of Goodyear ("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"), as amended by 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"), 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"), and that certain Fifth Amendment to Infrastructure Development Agreement for PHX 10-11 recorded on July 12, 2024, in the official records of Maricopa County, Arizona at recording number 20240371119 (hereinafter referred to as the "Fifth Amendment 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 "Agreement") ; and

WHEREAS, pursuant to the Third Amendment, Microsoft deposited the Designated Representative Deposit in the amount of \$800,000.00 with the City in order to pay for the City's costs to retain the services of the City's Designated Representative for a two-year period; and

WHEREAS, pursuant to the Fourth Amendment, Microsoft deposited the Financial Assurance Deposit in the amount of \$5,000,000.00 with the City, and the parties were to establish an escrow account allowing Microsoft to draw upon the Financial Assurance Deposit and such other amounts deposited therein to construct the Dedicated Discharge Line, Pump Station, and water lines needed to deliver the maximum peak daily water supply needed for all development within the Property at Full Build-Out; and

WHEREAS, Despite Microsoft having delivered the Financial Assurance Deposit to the City, no escrow account was established and Microsoft constructed the Dedicated Discharge Line, Pump Station and water lines needed to deliver the maximum peak daily water supply needed for all development within the Property at Full Build-Out without drawing upon the Financial Assurance Deposit and the full amount of the deposit remains in the possession of the City; and

WHEREAS, Microsoft remains responsible for funding the costs of the design and construction of the Replacement Water Facilities, as defined in the Agreement, and to deposit the Replacement Water Facilities Cost; and

WHEREAS, pursuant to the Fifth Amendment, Microsoft and City were to establish a Facilities Escrow Account and Microsoft was to deposit the Replacement Water Facilities Costs into the same, however the parties have not yet established the Facilities Escrow Account; and

WHEREAS, the City and Microsoft now desire to enter into this Sixth Amendment to Infrastructure Development Agreement for PHX 10-11 to set forth the terms and conditions for the funding of the Facilities Escrow Account from the Financial Assurance Deposit currently held by the City and the refund of the remainder of the Financial Assurance Deposit to Microsoft; and the continued funding by Microsoft of the costs for the City Designated Representative with funds previously deposited with the City; and

WHEREAS, Microsoft and the City intend this Sixth Amendment to Infrastructure Development Agreement for PHX 10-11 to be a Development Agreement within the meaning of A.R.S. § 9-500.05 that binds Microsoft and all future owners of all or any portion of the Property.

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

SECTION 1. The Mayor and Council of the city of Goodyear find the approval of the Sixth Amendment to Infrastructure Development Agreement for PHX 10-11, a copy of which is attached hereto as Exhibit 1 and incorporated herein by this reference, to be in the best interest of the city of Goodyear and hereby approve the Sixth Amendment to Infrastructure Development Agreement for PHX 10-11.

SECTION 2. The City Manager or designee is hereby authorized and directed to execute the Sixth Amendment to Infrastructure Development Agreement for PHX 10-11 attached hereto as Exhibit 1.

SECTION 3. The City Manager or designee is hereby authorized and directed to take any and all actions and to execute all the documents necessary to carry out the intent of this Resolution and the terms of the Sixth Amendment to Infrastructure Development Agreement for PHX 10-11.

SECTION 4. Following its execution by all parties, the Sixth Amendment to Infrastructure Development Agreement for PHX 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 5. Unless referred to the voter as provided by law, Resolution 2025-2489 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 22nd day of September, 2025.

Joe Pizzillo, Mayor

Date: _____

ATTEST:

APPROVED AS TO FORM:

Jasmine Pernicano, City Clerk

Roric Massey, City Attorney

EXHIBIT 1

WHEN RECORDED, RETURN TO:

City of Goodyear, Arizona
Office of the City Clerk
1900 North Civic Square
Goodyear, Arizona 85395

SIXTH AMENDMENT TO INFRASTRUCTURE DEVELOPMENT AGREEMENT FOR PROJECT 10-11

This Sixth Amendment to Infrastructure Development Agreement for PHX 10-11 (the “Sixth 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 owns certain real property within the City of Goodyear generally located between the north side of Broadway Road and the south side of MC-85 and extending from east of Bullard Avenue to west of Litchfield Road, as legally described in **Exhibit 1** attached hereto and incorporated herein by this reference (the “Property”).

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

C. 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”), as amended by 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”), 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”), and that certain Fifth Amendment to Infrastructure Development Agreement for PHX 10-11 recorded on July 12, 2024, in the official records of Maricopa County, Arizona at recording number 20240371119 (hereinafter referred to as the “Fifth Amendment 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 “Agreement”).

D. WHEREAS, pursuant to the Third Amendment, Owner deposited the Designated Representative Deposit in the amount of \$800,000.00 with the City in order to pay for the City’s costs to retain the services of the City’s Designated Representative for a two-year period.

E. WHEREAS, pursuant to the Fourth Amendment, Owner deposited the Financial Assurance Deposit in the amount of \$5,000,000.00 with the City, and the parties were to establish an escrow account allowing the Owner to draw upon the Financial Assurance Deposit and such other amounts deposited therein to construct the Dedicated Discharge Line, Pump Station, and water lines needed to deliver the maximum peak daily water supply needed for all development within the Property at Full Build-Out.

F. WHEREAS, Despite Owner having delivered the Financial Assurance Deposit to the City, no escrow account was established and Owner constructed the Dedicated Discharge Line, Pump Station and water lines needed to deliver the maximum peak daily water supply needed for all development within the Property at Full Build-Out without drawing upon the Financial Assurance Deposit and the full amount of the deposit remains in the possession of the City.

G. WHEREAS, Owner remains responsible for funding the costs of the design and construction of the Replacement Water Facilities, as defined in the Agreement, and to deposit the Replacement Water Facilities Cost.

H. WHEREAS, pursuant to the Fifth Amendment, the Owner and City were to establish a Facilities Escrow Account and Owner was to deposit the Replacement Water Facilities Costs into the same, however the parties have not yet established the Facilities Escrow Account.

I. WHEREAS, the City and Owner now desire to enter into this Sixth Amendment to set forth the terms and conditions for (1) the funding of the Facilities Escrow Account from the Financial Assurance Deposit currently held by the City and the refund of the remainder of the Financial Assurance Deposit to Owner; and (2) the continued funding by Owner of the costs for the City Designated Representative with funds previously deposited with the City.

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

K. WHEREAS, Owner and the City intend this Sixth 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 Sixth Amendment shall have the meanings ascribed to such terms in the Agreement.

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

4. **AMENDMENT TO SECTION 6.3.** Section 6.3 of the Agreement is amended as follows:

4.1. Section 6.3.4 of the Agreement is deleted in its entirety and replaced with the following:

“6.3.4 Prior to the issuance of a building permit for the Phase Three Development, Owner shall deposit with the City a cash deposit of \$5,000,000 for the estimated costs of the Dedicated Discharge Line, Pump Station, and water lines needed to deliver the maximum peak daily water supply needed for all development within the Property at Full Build-Out (the "Financial Assurance Deposit"). After Owner has completed the Dedicated Discharge Line, subject to the approval of the City Engineer, which approval will not be unreasonably conditioned, delayed, or denied, Owner may use any remaining amounts of the Financial Assurance Deposit to secure Owner’s obligation to deposit funds equal to the Replacement Water Facilities Cost and the estimated costs of establishing the Facilities Escrow Account contemplated in Section 8.2 of the Agreement. If (i) the Dedicated Discharge Line, Pump Station and the water lines needed to deliver the maximum peak daily water supply needed for all development within the Property at Full Build-Out have been completed and approved by the City Engineer, and (ii) the Replacement Water Facilities Cost has been deposited into the Facilities Escrow Account and Owner has paid the costs of establishing the Facilities Escrow Account; then City shall deliver any remaining portion of the Financial Assurance Deposit, which the City possesses, to Owner within thirty (30) days following the written request of Owner.”

4.2. Section 6.3.5 of the Agreement is deleted in its entirety and replaced with the following:

“6.3.5 Prior to the issuance of a building permit for the Phase Three Development, Owner shall deposit with the City a cash deposit of \$800,000 for the estimated costs the City will incur pursuant to contract(s) the City will enter to retain the services of the City Designated Representative for an initial two-year period. The City will use the \$800,000 to pay the costs incurred under such contract(s), and at the end of the two-year period, the City at their sole discretion may extend the services of the City Designated Representative for up to one (1) additional year (the “Extended Designated Representative Term”). During such Extended Designated Representative Term, the City may use any remaining portion of the initial \$800,000 deposit to pay the costs incurred pursuant to the contract(s) the City entered to retain the services of the City Designated Representative. If the \$800,000 deposit is insufficient to pay the costs the City incurs during such Extended Designated Representative Term, Owner will deposit with the City all additional costs the City will incur for the remainder of the Extended Designated Representative Term. Owner agrees to reimburse City for any previously unreimbursed costs and/or expenses incurred with respect to the contract(s) to retain the services of the City Designated Representative during any portion of the Extended Designated Representative Term. Upon written consent of Owner, City may continue to retain the services of the City Designated Representative following the Extended Designated Representative Term. City shall deliver to Owner a time period for retaining the City Designated Representative beyond the Extended Designated Representative Term and a budget for the cost of the services no less than forty-five (45) days prior to the end of the Extended Designated Representative Term. If Owner provides City written consent to the proposed time period and budget for the City Designated Representative, Owner shall deposit such funds with the City within forty-five (45) days after providing City such written approval. If, after the expiration or termination of such contracts for the City Designated Representative, any portion of the funds deposited by Owner for the purpose of retaining the services of the City Designated Representative remain unused, the City shall return such unused funds to the Owner within a reasonable time.”

GENERAL TERMS

5. **ENTIRE AGREEMENT.** This Sixth 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 Sixth Amendment shall be deemed to amend and supersede the Agreement with respect to all terms, provisions and changes set forth in this Sixth Amendment. To the extent of any conflict between this Sixth Amendment and the Agreement, this Sixth Amendment shall control. Except as amended by this Sixth Amendment, all terms, provisions and conditions of the Agreement shall remain in full force and effect.

6. **AMENDMENTS.** The Agreement and this Sixth 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.

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

8. **FAIR INTERPRETATION.** The terms and provisions of this Sixth 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 Sixth 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 8 shall survive the expiration or earlier termination of the Agreement.

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

9.1. **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.

9.2. **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 Sixth Amendment as authorized by Owner, and Owner is not prohibited from executing this Sixth Amendment by any law, rule, regulation, instrument, agreement, order or judgment.

9.3. **DUE DILIGENCE.** Owner reviewed this Sixth 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 Sixth Amendment.

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

10.1. **APPROVAL.** City has approved this Sixth 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.

10.2. **AUTHORIZATION.** City agrees that the persons executing this Sixth Amendment on behalf of City have been duly authorized to do so, and City is not prohibited from

executing this Sixth Amendment by any law, rule, regulation, instrument, agreement, order or judgment.

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

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

Signatures and Acknowledgments on Following Pages

OWNER:

By: _____

Name: _____

Its: _____

Notary Public

Page 7 of 8

CITY:

CITY OF GOODYEAR, an Arizona municipal corporation

By: _____
Wynette Reed
Its: City Manager

STATE OF ARIZONA)
) ss.
County of Maricopa)

The Sixth 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 _____, 2025, by Wynette Reed, the City Manager of the CITY OF GOODYEAR, an Arizona municipal corporation, for and on behalf thereof.

Notary Public

Attest:

Jasmine Pernicano, City Clerk

Approved as to Form:

Roric Massey, City Attorney

Exhibits on Following Pages

Exhibit 1

Legal Description of the Property

On the Following Pages

EXHIBIT 1

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

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

THENCE NORTH $89^{\circ}53'31''$ WEST, 1350.40 FEET ALONG SAID RIGHT-OF-WAY LINE;

THENCE NORTH $89^{\circ}52'29''$ WEST, 1350.12 FEET CONTINUING ALONG SAID RIGHT-OF-WAY LINE;

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

THENCE CONTINUING NORTH $00^{\circ}01'11''$ WEST, 1309.25 FEET ALONG THE WEST LINE OF AFOREMENTIONED SUBDIVISION;

THENCE SOUTH $89^{\circ}35'43''$ EAST, 30.00 FEET TO THE EAST RIGHT-OF-WAY LINE OF LA COMETA;

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

THENCE NORTH $00^{\circ}06'22''$ WEST, 242.70 FEET TO THE BEGINNING OF A TANGENT CURVE TO THE RIGHT HAVING A RADIUS OF 710.00 FEET;

THENCE ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF $26^{\circ}03'44''$, AN ARC LENGTH OF 322.96 FEET;

THENCE NORTH $25^{\circ}57'22''$ EAST, 100.62 FEET TO THE BEGINNING OF A TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 550.00 FEET;

THENCE ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF $46^{\circ}19'41''$, AN ARC LENGTH OF 444.72 FEET;

THENCE NORTH $55^{\circ}55'59''$ EAST, 10.29 FEET TO THE BEGINNING OF A NON-TANGENT CURVE WHOSE CENTER RADIUS BEARS SOUTH $69^{\circ}22'44''$ WEST, 560.00 FEET;

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

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

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

EXHIBIT 1

THENCE SOUTH 89°10'28" EAST, 573.62 FEET ALONG SAID NORTHERLY LINE TO THE NORTHEAST CORNER OF AFOREMENTIONED SUBDIVISION;

THENCE SOUTH 00°52'11" EAST, 2614.19 FEET ALONG THE EAST LINE OF AFOREMENTIONED SUBDIVISION;

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

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

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

DESCRIBED AREA ABOVE CONTAINS 12,216,780 SQUARE FEET OR 281.459 ACRES MORE OR LESS.

RYAN D. GILBERT, RLS
GILBERT LAND SURVEYING
4361 S SQUIRES LANE
GILBERT, AZ 85297
480-275-8020
PROJECT NO. 180201-LX2

