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LISA SMITH, COUNTY RECORDER
MADISON COUNTY IOWA

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Type of Document: First Amendment to the Development Agreement between
the City of West Des Moines and Microsoft Corporation
(Osmium Project)

E/Return To: Ryan Jacobson, City Clerk
City of West Des Moines
4200 Mills Civic Parkway, Suite 2B
West Des Moines, IA 50265

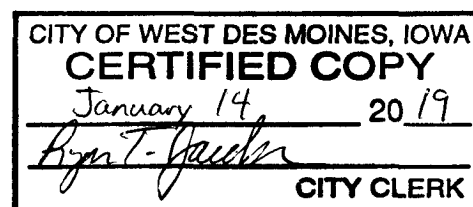
Prepared by: John Danos, Dorsey & Whitney LLP, 801 Grand Avenue, Ste. 4100, Des
Moines, IA 50309, 515-699-3275

Taxpayer Information: Not Applicable

Grantors: Not Applicable

Grantees: Not Applicable

Original Agreement Recorded in Madison County (Book 2016, Page 3961)



**FIRST AMENDMENT TO THE DEVELOPMENT AGREEMENT BY AND BETWEEN THE
CITY OF WEST DES MOINES, IOWA AND MICROSOFT CORPORATION**

(Osmium Project)

THIS FIRST AMENDMENT TO THE DEVELOPMENT AGREEMENT

("Amendment") is made and entered into on or as of the 26th day of December 2018 (the "Effective Date"), by and between CITY OF WEST DES MOINES, IOWA, a municipality ("City"), and MICROSOFT CORPORATION, a Washington corporation ("Developer");

WITNESSETH:

RECITALS

WHEREAS, City and Developer entered into that certain Agreement for Private Development dated November 14, 2016 (the "Original Agreement"); and

WHEREAS, City and Developer desire to amend the Original Agreement as set forth herein.

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth herein and in the Original Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Recitals. The Recitals set forth above are incorporated by this reference.
2. Section 1.1. of the Original Agreement, "Definitions." is amended as follows:
 - a) "Phase 1 Minimum Improvements" is deleted in its entirety and the following is hereby inserted in lieu thereof:

"Phase 1 Minimum Improvements" means the value of the land, the construction of a regional data center and associated support infrastructure to house servers and computer equipment to operate large scale web portal services of approximately 216,000 square feet on the Development Property to be constructed in accordance with the individual site plan for the Phase 1 Minimum Improvements and the Construction Plans as further described in Exhibit C and depicted in Exhibit B. The completion date is expected to be on or about July 1, 2021."

- b) "Phase 2 Minimum Improvements" is deleted in its entirety and the following is hereby inserted in lieu thereof:

"Phase 2 Minimum Improvements" means the value of the land, the construction of a regional data center and associated support infrastructure to house servers and computer equipment to operate large scale web portal services of approximately 216,000 square feet on the Development Property to be constructed in accordance with the individual site plan for the Phase 2 Minimum Improvements and the Construction Plans as further

described in Exhibit C and depicted in Exhibit B. The completion date is expected to be on or about December 30, 2022.”

- c) “Phase 3 Minimum Improvements” is deleted in its entirety and the following is hereby inserted in lieu thereof:

“Phase 3 Minimum Improvements means the value of the land, the construction of a regional data center and associated support infrastructure to house servers and computer equipment to operate large scale web portal services of approximately 216,000 square feet on the Development Property to be constructed in accordance with the individual site plan for the Phase 3 Minimum Improvements and the Construction Plans as further described in Exhibit C and depicted in Exhibit B. The completion date is expected to be on or about June 30, 2024.”

- d) “Phase 4 Minimum Improvements” is deleted in its entirety and the following is hereby inserted in lieu thereof:

“Phase 4 Minimum Improvements means the value of the land, construction of a regional data center and associated support infrastructure to house servers and computer equipment to operate large scale web portal services of approximately 216,000 square feet on the Development Property to be constructed in accordance with the individual site plan for the Phase 4 Minimum Improvements and the Construction Plans as further described in Exhibit C and depicted in Exhibit B. The completion date is expected to be on or about December 30, 2025.

- e) The following definition of “Phase 5 Minimum Improvements” is added to Section 1.1 of the Original Agreement:

“Phase 5 Minimum Improvements” means the value of the land, construction of a regional data center and associated support infrastructure to house servers and computer equipment to operate large scale web portal services of approximately 216,000 feet on the Development Property to be constructed in accordance with the revised site plan for the Phase 5 Minimum Improvements and the Construction Plans as further described in Exhibit C and depicted in Exhibit B. The completion date is expected to be on or about June 30, 2027.”

- f) The description of the Minimum Improvements set forth in Exhibit “C” of the Original Agreement is hereby deleted and the description of the Minimum Improvements set forth in Amended Exhibit “C” attached hereto and incorporated herein by this reference is hereby inserted in lieu thereof.

3. Section 3.4(a) of the Original Agreement, “Commencement and Completion of Construction” is hereby deleted in its entirety and the following is hereby inserted in lieu thereof:

“Subject to Unavoidable Delays, the Developer shall cause construction of the Minimum Improvements with expected completion dates of July 1, 2021 for Phase 1 Minimum Improvements (minimum of 216,000 square feet); December 30, 2022 for Phase 2 Minimum Improvements (minimum of 216,000 additional square feet); June 30, 2024 for

Phase 3 Minimum Improvements (minimum of 216,000 additional square feet); and December 30, 2025 for Phase 4 Minimum Improvements (minimum of 216,000 additional square feet); and June 30, 2027 for Phase 5 Minimum Improvements (minimum 216,000 square feet) or (ii) by such other date(s) as the parties shall mutually agree upon in writing. Time lost as a result of Unavoidable Delays shall be added to extend this date by a number of days equal to the number of days lost as a result of Unavoidable Delays. However, regardless of the actual completion date of each Phase, the Minimum Improvements shall have an assessed valuation in the amounts and dates as listed below in subsection 3.4(b), which are the same as the dates and amounts in the Minimum Assessment Agreement (Exhibit D). All work with respect to the Minimum Improvements to be constructed or provided by the Developer shall be in conformity with the individual site plans for the Minimum Improvements on the Development Property and the Construction Plans.

4. Section 5.1(c) of the Original Agreement, “Completion Date of Public Use Improvements” is hereby deleted in its entirety and the following is hereby inserted in lieu thereof:

“The City agrees to use its best efforts, consistent with its obligations under Chapter 26 of the Code of Iowa, to cause all of the Public Use Improvements related to roads to be substantially functional and/or substantially open to traffic by December 30, 2019, subject to Unavoidable Delays.”

5. Section 6.1 of the Original Agreement, “Covenants of the Developer” is amended as follows:

- a) Section 6.1(g) is hereby deleted in its entirety and the following is hereby inserted in lieu thereof:

“The Developer shall employ a Monthly Average (as defined in Exhibit H) of at least the following number of Full Time Equivalent Jobs at the Minimum Improvements as of October 1 of the indicated years:

Reference year	Monthly Average
2016 - 2020	N/A
2021-2022	57
2023	65
2024-2025	76
2026 through Termination Date	97

- b) Section 6.1(h) is hereby deleted in its entirety and the following is hereby inserted in lieu thereof:

“A duly authorized representative of the Developer shall certify to the City, on an annual basis, (i) proof of payment of all ad valorem taxes due on the Development Property; (ii) the total assessed valuation of the Development Property and the Minimum Improvements as of the preceding January 1, as determined by the Assessor(s) of the County where the Minimum Improvements are located; and (iii) the number of Full Time Equivalent Jobs employed at the Minimum Improvements

as of the date of the certification and as the first day of each of the preceding eleven (11) months. The first such certification shall be provided by October 15, 2021, with subsequent certifications being provided by October 15 of each year until the Termination Date. Developer shall provide an annual certification by October 15 of each year on the Annual Certification Form attached as Exhibit H. A "Full Time Equivalent Job" shall meet the definition in the 2016 IEDA Contract."

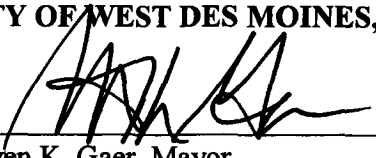
6. No Other Modifications. The terms and provisions of the Original Agreement not otherwise modified or amended by this Amendment remain in full force and effect. To the extent that there are any conflicts between the Original Agreement and this Amendment, this Amendment shall govern. The parties do hereby ratify and affirm the Original Agreement as amended by this Amendment.

7. Counterparts, Electronic Delivery. This Amendment may be executed in two or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same agreement. A signed copy of this 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 Amendment.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be duly executed on or as of the Effective Date.

CITY OF WEST DES MOINES, IOWA


Steven K. Gaer, Mayor

ATTEST:

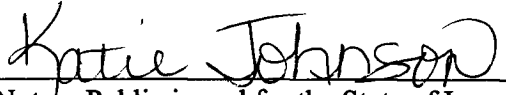

Ryan T. Jacobson, City Clerk

STATE OF IOWA)

) SS

COUNTY OF POLK)

On this 20th day of December, 2018, before me a Notary Public in and for said State, personally appeared Steven K. Gaer and Ryan T. Jacobson, to me personally known, who being duly sworn, did say that they are the Mayor and City Clerk, respectively, of the City of West Des Moines, Iowa, a Municipality created and existing under the laws of the State of Iowa, and that the seal affixed to the foregoing instrument is the seal of said Municipality, and that said instrument was signed and sealed on behalf of said Municipality by authority and resolution of its City Council, and said Mayor and City Clerk acknowledged said instrument to be the free act and deed of said Municipality by it voluntarily executed.


Notary Public in and for the State of Iowa



MICROSOFT CORPORATION

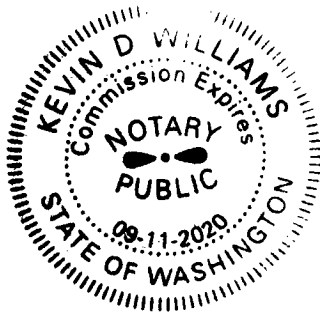
By: Maureen Simington
Maureen Simington
General Manager, Cloud Operations & Innovation

STATE OF WASHINGTON)

) SS

COUNTY OF KING)

On this 7th day of DECEMBER, 2018 before me the undersigned, a Notary Public in and for said State, personally appeared Maureen Simington, to me personally known, who, being by me duly sworn, did say that she is the General Manager, Cloud Operations and Innovation of Microsoft Corporation, and that said instrument was signed on behalf of said corporation; and that the said Maureen Simington, General Manager, as such representative acknowledged the execution of said instrument to be the voluntary act and deed of said corporation, by them voluntarily executed.



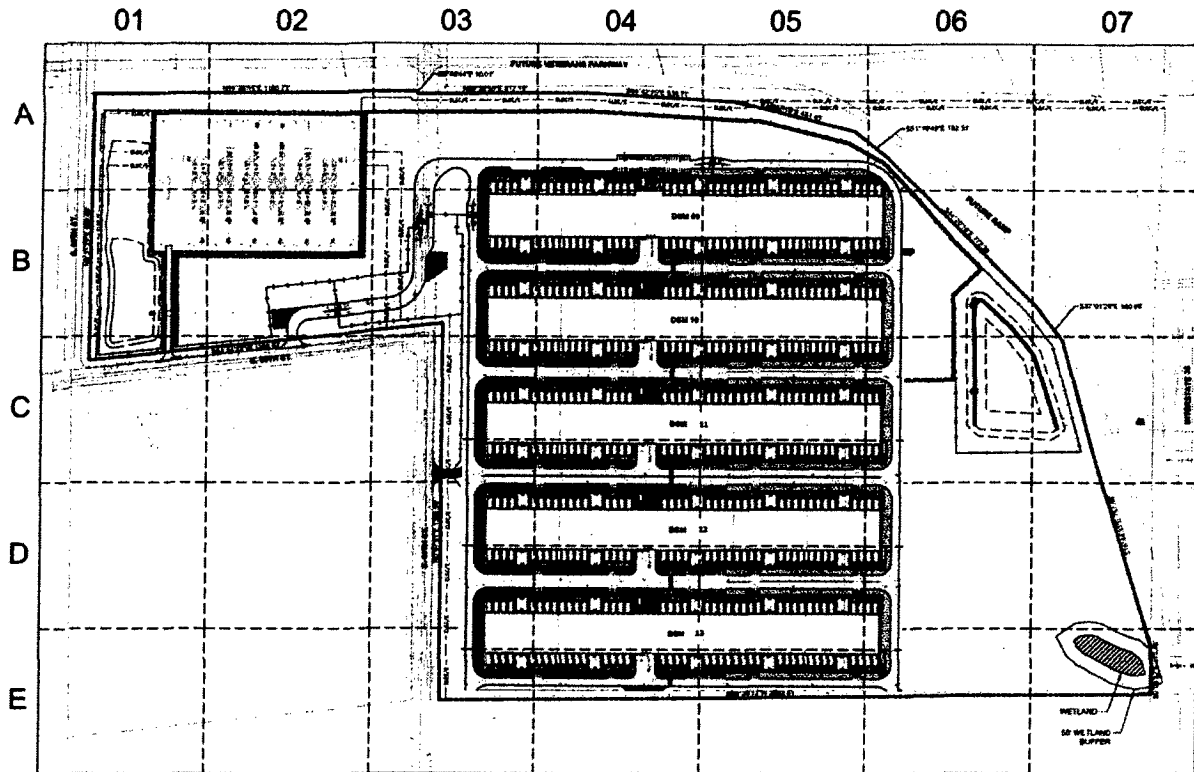
[Signature]
Notary Public in and for the State of
Washington

Attachments:

Amended Exhibit "B" to Original Agreement – Conceptual Site Plan

Amended Exhibit "C" to Original Agreement – Description of Minimum Improvements

AMENDED EXHIBIT "B" TO ORIGINAL AGREEMENT
CONCEPTUAL SITE PLAN



**AMENDED EXHIBIT "C" TO ORIGINAL AGREEMENT
DESCRIPTION OF MINIMUM IMPROVEMENTS**

The Minimum Improvements shall consist of a regional data center and associated support infrastructure to house servers and computer equipment to operate large scale web portal services, with an expected investment of approximately \$981,240,000, with 97 jobs created within 9 (nine) years of the 2016 IEDA Contract award date as set forth in Section 6.1(g) of the Original Agreement.

Generally, the Minimum Improvements are intended to be constructed in phases, with the following square footage of Minimum Improvements completed on the following schedule:

<u>Phase</u>	<u>Approximate square footage per Phase (minimum)</u>	<u>Cumulative square footage (minimum)</u>	<u>Estimated Completion Date</u>
Phase 1 Minimum Improvements	216,000	216,000	July 1, 2021
Phase 2 Minimum Improvements	216,000	432,000	December 30, 2022
Phase 3 Minimum Improvements	216,000	648,000	June 30, 2024
Phase 4 Minimum Improvements	216,000	864,000	December 30, 2025
Phase 5 Minimum Improvements	216,000	1,080,000	June 30, 2027