CITY OF WEST DES MOINES
CITY COUNCIL MEETING COMMUNICATION

ITEM: Approval to execute a Development Agreement between Microsoft and the City of West Des Moines

DATE: April 6, 2015

RESOLUTION: Approval of Development Agreement

FINANCIAL IMPACT: Based on the attached development agreement, the City anticipates building approximately $8.5 million in infrastructure in the area of the existing Microsoft data center (South 88th St and Grand Avenue). These improvements will serve as the City's required match for the incentives offered to Microsoft by IEDA. These costs will be funded by incremental property tax revenues generated by property within the Mills Parkway Urban Renewal Plan.

BACKGROUND: In 2011, Microsoft Corporation built Phase I of a data center at South 88th Street and Grand Avenue. They have since completed Phase II of the data center, and Phase III is under construction. In 2008, the City and Microsoft entered into a development agreement regarding the Phase I improvements on the property. In 2010, this agreement was amended to include further improvements on the property. This third development agreement describes and clarifies what has been completed, and also adds additional infrastructure projects tied to Phase III improvements to total the $8.35 million required by the IEDA match, namely the construction of South 88th Street, from Sugar Creek Drive to Grand Avenue, and then potentially bridge and channel improvements to improve drainage and or South Jordan Creek Parkway from Grand Avenue to Raccoon River Drive. Microsoft has agreed to a Minimum Assessment Agreement, which varies between approximately $44 -$48 million over the remaining 16 years of the Urban Renewal Plan.

OUTSTANDING ISSUES: There are no outstanding issues.

RECOMMENDATION: Adopt the resolution approving the Development Agreement and authorizing the Mayor to sign the Agreement on behalf of the City.

Lead Staff Member: Naomi Hamlett, AICP, Planner

STAFF REVIEWS

Department Director	Clyde Evans, Community and Economic Development Director CEE
Appropriations/Finance	
Legal	
Agenda Acceptance	RTG

PUBLICATION(S) (if applicable)

Published In	Des Moines Register	
Date(s) Published	April 2, 2015	
Letter sent to surrounding property owners	N/A	

SUBCOMMITTEE REVIEW (if applicable)

Committee	N/A		
Date Reviewed	N/A		
Recommendation	Yes ☐	No ☐	Split ☐

ATTACHMENTS:

Exhibit I - Development Agreement
Exhibit II - Resolution

EXHIBIT I

MEMORANDUM OF UNDERSTANDING
(DM-1, DM-2 and DM-3 Minimum Improvements)

This Memorandum of Understanding ("2015 Memorandum" or "Memorandum") is made as of the _____ day of _____, 2015, by and between the City of West Des Moines, Iowa (the "City"), a municipal corporation, with its principal offices located at 4200 Mills Civic Parkway, West Des Moines, Iowa 50265, and Microsoft Corporation (the "Developer"), a Washington corporation, with its principal offices located at One Microsoft Way, Redmond, Washington. The parties are the City and Developer.

This 2015 Memorandum terminates and replaces the previous Memorandums of Understanding made by the parties on June 14, 2010 and on August 25, 2008 (the "Previous Memorandums") and by execution of this 2015 Memorandum, the parties agree that the Previous Memorandums (and the Prior Minimum Assessment Agreement which was part of the June 14, 2010 Memorandum of Understanding), shall be of no force or effect whatsoever. This 2015 Memorandum is the only existing applicable Memorandum of Agreement (and Minimum Assessment Agreement) governing development activities between the parties related to the Development Property.

The capitalized terms in this introduction and the "Whereas" clauses below are defined in Section I.

WITNESSETH:

WHEREAS, in furtherance of the objectives of Chapter 403 and Chapter 15A of the Code of Iowa, as amended, the City is engaged in carrying out urban renewal project activities in an area known as the Mills Parkway Urban Renewal Area (Subdistrict No. 7); and

WHEREAS, the City and Developer intend that this 2015 Memorandum describe and/or clarify (1) that the DM-1 Minimum Improvements obligation was satisfied by the DM-1 Bond issued to finance the DM-1 Public Use Improvements already constructed; (2) the DM-3 Public Use Improvements to be constructed by the City associated with the Developer's construction of DM-3 Minimum Improvements; and (3) the replacement Minimum Assessment Agreement necessary to set minimum assessment amounts for the City's public improvements funded by the proceeds of the DM-1 2010 Bonds (related to the DM-1 Public Use Improvements) and the DM-3 Bonds (related to the DM-3 Public Use Improvements); and

WHEREAS, the Developer has constructed DM-1 and DM-2 Minimum Improvements on the Development Property (defined and depicted in Exhibits A and A-1), and such Minimum Improvements were assessed as of January 1, 2014, and the City has correspondingly completed the DM-1 Public Use Improvements associated with the DM-1 Minimum Improvements; and

WHEREAS, the Developer is in the process of completing DM-3 Minimum Improvements and the City is correspondingly planning to complete the DM-3 Public Use Improvements associated with the DM-3 Minimum Improvements; and

WHEREAS, City believes that the development of the DM-1, DM-2 and DM-3 Minimum Improvements on the Development Property are in the vital and best interests of the City and in accordance with the public purposes and provisions of the applicable State and local laws and requirements under which the project has been undertaken and is being assisted; and

WHEREAS, the State of Iowa ("State"), the Developer and the City have entered into Economic Development Assistance Contracts that are described below and collectively referred to as "IEDA Contracts", which contracts collectively provide for State assistance/incentives; and the DM-1 and DM-3 Public Use Improvements defined in this Memorandum shall serve as the "local match" for the IEDA Contracts, in whole or in part.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein, and other valuable consideration the receipt and sufficiency of which are hereby acknowledged, it is agreed as follows:

I. DEFINITIONS.

In addition to other definitions set forth in this 2015 Memorandum, all capitalized terms used and not otherwise defined herein shall have the following meanings unless a different meaning clearly appears from the context:

Annual Certification Form is the annual form submitted by Developer to document the Monthly Average of Full Time Equivalent Jobs in the form of Exhibit E.

Assessor means the assessor of Dallas County, Iowa.

Assessment Agreement or Minimum Assessment Agreement means the minimum assessment agreement in the form of Exhibit B attached hereto.

Bonds means DM-1 2010 Bonds and DM-3 Bonds. The DM-1 2010 Bonds are general obligation bonds previously issued by the City for the purpose of funding the DM-1 Public Use Improvements. The DM-3 Bonds mean the general obligation bonds to be issued in an aggregate principal amount estimated to be approximately $8,500,000, subject to satisfaction of the conditions precedent set forth in this Agreement, and also may be used to pay capitalized interest and costs of issuance of the DM-3 Bonds. Such aggregate principal amount may change depending on a variety of factors, such as the costs of projects, actual Bond sale terms, tax rates and levies, the timing of the sale, inclusion of capitalized interest, as necessary, and other factors. Developer recognizes and agrees that the City will use the Tax Increment generated by the construction of the DM-1, DM-2 and DM-3 Minimum Improvements to pay all of the Debt Service coming due on the Bonds. The estimated repayment schedule(s) for the Bonds will be attached hereto as Exhibit C and incorporated herein by reference. The current version of Exhibit C proposes one series of DM-3 Bonds (also referred to as "2016 GO Bonds" in Exhibit C); however, the number of series of DM-3 Bonds and amounts of such Bonds will necessarily change according to the City's borrowing decisions and other factors. Following each issuance

of the DM-3 Bonds, the City shall deliver a copy of the final debt service schedule to the Developer, and such debt service schedule thereafter shall be substituted for and become part of Exhibit C to this Memorandum. In addition, the parties acknowledge that if the Bonds are refinanced in the future to effectuate debt service savings, Exhibit C shall be updated and such debt service schedule thereafter shall be substituted for and become Exhibit C to this Memorandum.

City means West Des Moines, Iowa.

Code means the Code of Iowa, 2013, as amended.

County means Dallas County, Iowa.

Debt Service for the DM-1 Public Use Improvements and the DM-3 Public Use Improvements or Debt Service means the scheduled principal and interest payments (including capitalized interest) related to the DM-1 2010 Bonds and the DM-3 Bonds.

Developer means Microsoft Corporation.

Development Property means the property defined by legal description in Exhibit A and depicted in Exhibits A-1 and A-2.

DM-1 2010 Bonds means the general obligation bonds, proceeds of which were used to fund the DM-1 Public Use Improvements, specifically "Series 2010D," issue date 8-11-2010.

DM-1, DM-2 and DM-3 Urban Renewal Tax Increment Revenue Fund(s) means the special funds of the City created under the authority of Section 403.19(2) of the Code and the Ordinances, which funds were created in order to pay the principal of and interest on loans, monies advanced or indebtedness, whether funded, refunded, assumed or otherwise, including bonds or other obligations issued under the authority of Section 403.9 or 403.12 of the Code, incurred by the City to finance or refinance in whole or in part projects undertaken pursuant to the Urban Renewal Plan for the Urban Renewal Area.

DM-1 Minimum Improvements or DM-1 consists of a data center, service spine, service connector, and administration building of approximately 71,000 square feet on the Development Property legally described in Exhibit A and depicted in the diagrams in Exhibits A-1 and A-2.

DM-1 Public Use Improvements are the public improvements constructed by the City associated with the DM-1 Minimum Improvements consisting of (1) 900 feet of Grand Avenue west of S. 88th Street; (2) approximately 2,844 feet of S. 88th Street from Raccoon River Drive north through the intersection with Booneville Road; (3) a water main from Jordan Creek Parkway to S. 88th Street; and (4) sanitary sewer connection fee district payment.

DM-2 Minimum Improvements or DM-2 consists of a data center of approximately

110,000 square feet on the Development Property legally described in Exhibit A and depicted in the diagrams in Exhibits A-1 and A-2.

DM-3 Bonds means the general obligation bonds, proceeds of which are used to fund the construction of the DM-3 Public Use Improvements, with anticipated issuance dates for said bonds beginning in 2016.

DM-3 Minimum Improvements or DM-3 consists of a data center of approximately 114,000 square feet on the Development Property legally described in Exhibit A and depicted in the diagrams in Exhibits A-1 and A-2.

DM-3 Public Use Improvements means public improvements constructed by the City to meet the local match requirement under the IEDA Contract(s), estimated to be $8,500,000, and as further defined in Section III D.

Drainage Improvements means drainage improvements related to Sugar Creek and/or Johnson Creek basins.

Events of Default means the actions described in Section VI.A.

Full Time Equivalent Jobs shall have the same meaning as defined in the 2014 IEDA Contract 14-TC-026.

IEDA means Iowa Economic Development Authority.

IEDA Contracts means the contracts among the State of Iowa, Developer and City as follows: Contract 09-HQJC-008 ("2009 IEDA Contract"); Contract 10-IVF-080 ("2010 Iowa Vision Fund Contract"); Contract 12-TC-025 ("2012 IEDA Contract"); (Contract No. 13-TC-060) ("2013 IEDA Contract"); and RISE Grant IA DOT 2009-R-005 ("RISE Contract").

Indemnified Parties mean the persons described in Section VII.

Minimum Actual Value means the minimum actual value of the DM-1, DM-2 and DM-3 Minimum Improvements on the Development Property as set forth in the Minimum Assessment Agreement (Exhibit B).

Monthly Average means the average Full Time Equivalent Jobs as stated in the Annual Certification Form. (Exhibit E).

Mortgage means any mortgage or security agreement in which the Developer has granted a mortgage or other security interest in the Development Property, or any portion or parcel thereof, or any improvements constructed thereon.

Ordinance(s) means the respective ordinances of the City, under which the taxes levied on the taxable property in the Urban Renewal Area shall be divided and a portion paid into the DM-1, DM-2 and DM-3 Urban Renewal Tax Increment Revenue Fund.

Previous Memorandums of Understanding means the June 14, 2010 and August 25, 2008 Memorandums of Understanding.

Prime Rate means the interest rate quoted by the Wall Street Journal as the prime rate for the banking industry.

Prior Minimum Assessment Agreement means the minimum assessment agreement that was part of the June 14, 2010 Memorandum of Understanding.

Shortfall Payment means the payment(s) defined in Section IV.A of this Memorandum.

South 88th Street Project means construction of South 88th Street from Sugar Creek Drive southerly to Booneville Road.

South Jordan Creek Parkway Project means construction of South Jordan Creek Parkway from Grand Avenue southerly to Raccoon River Drive.

Tax Increment means the tax increment revenues received by the City from the County pursuant to Iowa Code Section 403.19, and the City's Ordinance(s) implementing the division of taxes under Iowa Code Section 403.19, as it may be amended, generated by the construction of the DM-1, DM-2, and DM-3 Minimum Improvements on the Development Property within the Mills Parkway Urban Renewal Area (Subdistrict 7). See also Section IV.A.

Termination Date means the termination date as defined in the Minimum Assessment Agreement, Exhibit B Section 1.

Urban Renewal Area means the property within the Mills Parkway Urban Renewal Area (Subdistrict 7) as described by the Mills Parkway Urban Renewal Plan, as amended.

Urban Renewal Plan means the Urban Renewal Plan for the Mills Parkway Urban Renewal Area (Subdistrict 7).

2015 Memorandum or Memorandum means this Memorandum of Understanding and all exhibits attached hereto.

II. DM-1 MINIMUM IMPROVEMENTS AND DM-1 PUBLIC USE IMPROVEMENTS--COMPLETED.

A. DM-1 Minimum Improvements are completed. Developer has constructed a data center, service spine, service connector, and administration building of approximately 71,000

square feet on the Development Property legally described in Exhibit A and depicted in the diagram in Exhibits A-1 and A-2. ("DM-1 Minimum Improvements.") Developer's obligations to construct the DM-1 Minimum Improvements have been satisfied.

B. Minimum Assessment Agreement on Development Property for DM-1 and DM-2 is in compliance. The City, Developer and County Assessor previously entered into a minimum assessment agreement, which set the minimum actual value of the Development Property and completed DM-1 and DM-2 Minimum Improvements to be made on the Development Property at no less than $15,000,000 (Minimum Actual Value). As of January 1, 2014, the fully assessed valuation of the DM-1 and DM-2 Minimum Improvements totals more than $38,000,000. Therefore the assessed value of the Development Property for DM-1 and DM-2 has been met and exceeded. The Prior Minimum Assessment Agreement shall be substituted and replaced by the Minimum Assessment Agreement incorporated into this 2015 Memorandum as Exhibit B. Therefore, upon the recording of the Minimum Assessment Agreement incorporated as Exhibit B, this 2015 Memorandum terminates the Prior Minimum Assessment Agreement.

C. The Public Use Improvements related to DM-1 Minimum Improvements have been completed. The City completed certain public improvements ("DM-1 Public Use Improvements") for Developer associated with the construction of DM-1 Minimum Improvements consisting of (1) 900 feet of Grand Avenue west of S. 88th Street; (2) approximately 2,844 feet of S. 88th Street from Raccoon River Drive north through the intersection with Booneville Road; (3) a water main from Jordan Creek Parkway to S. 88th Street; and (4) a sanitary sewer connection fee district payment. All such DM-1 Public Use Improvements were funded by the DM-1 2010 Bonds. The DM-1 2010 Bonds shall be paid, along with the DM-3 Bonds, per the estimated schedule set out in Exhibit C, which schedule will be revised when the sale costs and other factors related to the DM-3 Bonds are determined, and again if the DM-1 2010 Bonds or the DM-3 Bonds are refinanced.

III. CITY PUBLIC USE IMPROVEMENTS FOR DM-3 MINIMUM IMPROVEMENTS

A. DM-2 Minimum Improvements are completed. Developer has constructed a data center of approximately 110,000 square feet on the Development Property legally described in Exhibit A and depicted in the diagrams in Exhibits A-1 and A-2 ("DM-2 Minimum Improvements"). Developer's obligations to construct the DM-2 Minimum Improvements have been satisfied.

B. DM-3 Minimum Improvements. Developer shall complete a data center of approximately 114,000 square feet on the Development Property legally described in Exhibit A and depicted in the diagrams in Exhibits A-1 and A-2 ("DM-3 Minimum Improvements"). DM-1, DM-2 and DM-3 Minimum Improvements shall have a total actual valuation as of January 1, 2015 of at least $47,500,000, and subsequent valuations, as defined below in Section III.C. Upon completion, and at the request of Developer, City will execute a certification of completion, indicating that Developer's obligations to construct the DM-3 Minimum Improvements have been satisfied.

C. Minimum Assessment Agreement on Development Property for DM-3 Minimum Improvements. Simultaneously with this 2015 Memorandum, the City, Developer and Dallas County Assessor shall enter into a minimum assessment agreement in the form of Exhibit "B" attached hereto (the "Assessment Agreement" or "Minimum Assessment Agreement"), which sets forth the minimum actual value of the Development Property and the DM-1, DM-2, and DM-3 Minimum Improvements, as of January 1, 2015, until the Termination Date defined in the Assessment Agreement. The Assessment Agreement provides that as of January 1, 2015, the Development Property and the DM-1, DM-2 and DM-3 Minimum Improvements constructed by Developer shall have an agreed actual valuation of at least $47,500,000, and at least the assessed values in the following chart set forth below until the Termination Date (the "Minimum Actual Value") (land and buildings).

Assessment Date (January 1)	Minimum Actual Value (land and buildings)
1/1/2015	47,500,000
1/1/2016	47,593,200
1/1/2017	48,108,096
1/1/2018	48,178,843
1/1/2019	48,233,177
1/1/2020	48,270,413
1/1/2021	48,289,845
1/1/2022	47,808,297
1/1/2023	47,780,270
1/1/2024	47,731,997
1/1/2025	47,150,704
1/1/2026	46,527,067
1/1/2027	46,392,285
1/1/2028	45,690,186
1/1/2029	44,941,447
1/1/2030	44,144,481

The Minimum Actual Value is the value before commercial rollback.

The term of the Minimum Assessment Agreement shall continue as described in the Assessment Agreement until the Termination Date defined in Exhibit B, Section 1. For further information, see Minimum Assessment Agreement, Exhibit B.

D. DM-3 Public Use Improvements. The City's obligation under the IEDA Contract(s) to provide a local match is $8,500,000 (estimate). Consequently, the City shall issue the DM-3 Bonds in an amount necessary to generate net proceeds equal to the local match, which shall be used to construct the DM-3 Public Use Improvements, to the extent set out below:

The City shall design and construct South 88th Street from Sugar Creek Drive southerly to Booneville Road, approximately $6,000,000 (plus financing costs) ("South 88th Street

Project"), anticipated to be substantially completed and opened to traffic by December 31, 2016.

To fulfill the local match by the IEDA Contract(s) deadline of December 31, 2017, the City will, in its sole discretion, expend the balance of the net proceeds (the total net proceeds not to exceed $8,500,000) of the DM-3 Bonds on some or all of the following projects in the following order of priority:

1. Design and/or construction of drainage improvements related to Sugar Creek and/or Johnson Creek basins, approximately $2,500,000 ("Drainage Improvements Project").

2. Design and/or construction of South Jordan Creek Parkway from Grand Avenue southerly to Raccoon River Drive, approximately $3,500,000 ("South Jordan Creek Parkway Project").

As indicated above, the estimated total costs of the available projects identified above exceed the IEDA local match. Only $8,500,000 plus financing costs has been included in Exhibit C. Exhibit C, incorporated herein, represents the parties' understanding of the estimated schedule for the retirement of the DM-1 2010 Bonds and DM-3 Bonds, as secured by the Minimum Assessment Agreement. The schedule in Exhibit C will be revised when the sale costs and other factors related to the DM-3 Bonds are determined, and again if the DM-1 2010 Bonds or the DM-3 Bonds are refinanced.

(a) Other Improvements. The City may determine to construct additional infrastructure improvements, in its sole discretion, when undertaking the construction of any of the DM-3 Public Use Improvements, provided the additional infrastructure improvements do not materially adversely affect the development of the DM-3 Minimum Improvements or the completion of the DM-3 Public Use Improvements.

(b) Authority to Design, Engineer and Construct. The City shall design, engineer and construct the DM-3 Public Use Improvements in accordance with current City standards and design guidelines, other applicable design standards, the terms of this 2015 Memorandum, and in accordance with the provisions of the Iowa Code, including required public notice and hearing on the proposed public improvements.

(c) Right of Way and Easements. Except as set forth below, the City shall obtain, through condemnation if necessary and available, all required property and rights of way (including, without limitation, grading easements) necessary for construction of the DM-3 Public Use Improvements, as determined by final engineering design. Such costs will be part of the DM-3 Public Use Improvement costs. The City shall be responsible, at its sole cost and expense, for the vacation of any existing roadway or rights of way that will no longer be

required as the result of construction of the DM-3 Public Use Improvements.

Developer shall convey, at no cost to the City, such easements as may be necessary for the construction and operation of all DM-3 Public Use Improvements and cooperate with the City in the construction and operation of the DM-3 Public Use Improvements. Developer shall assist the City in obtaining easements on the property Developer owns.

(d) Non-responsibility of Developer. The City acknowledges and agrees that Developer has no obligation or responsibility or liability whatsoever with respect to the DM-3 Public Use Improvements.

(e) No Special Assessment. The Development Property shall not be specially assessed for any of the DM-3 Public Use Improvements to be constructed by City pursuant to this 2015 Memorandum, but nothing in this Section III D(5)(g) shall preclude the City from specially assessing such property for improvements other than the DM-3 Public Use Improvements constructed by the City after the completion of the DM-3 Public Use Improvements.

(f) No Special Legal Entitlements. Developer recognizes and agrees that all of the DM-3 Public Use Improvements shall be owned and maintained by the City for the benefit of the general public; that all use thereof by Developer and its employees, customers and suppliers shall be on the same basis as the general public; and that Developer shall have no special legal entitlements or other rights not held by members of the general public with respect to ownership, maintenance or use of the DM-3 Public Use Improvements.

(g) If the City does not issue the DM-3 Bonds described in Section III.D for the DM-3 Minimum Improvements, Exhibit C will be revised, due to the lowered Debt Service required. Accordingly, the Minimum Assessment Agreement, and this Memorandum, will naturally terminate earlier than anticipated.

IV. OTHER DEVELOPER COVENANTS.

A. Shortfall Payments Required. In the event that for any reason whatsoever, including but not limited to, a change in the tax laws of the State of Iowa (for example, a change in rollback to determine taxable value or a change in the manner in which incremental taxes are calculated under Iowa Code Section 403.19), the Tax Increment forecast to be received by the City from the County in each upcoming fiscal year generated from the Development Property and the DM-1, DM-2 and DM-3 Minimum Improvements, pursuant to Iowa Code Section 403.19, is not sufficient to fully pay the upcoming fiscal year's annual Debt Service for the Bonds issued to construct the DM-1 Public Use Improvements and the DM-3 Public Use Improvements, Developer agrees to promptly make a payment to the City equal to the difference between the amount of the available Tax Increment and the upcoming fiscal year's annual Debt

Service for the Bonds issued to construct the DM-1 Public Use Improvements and the DM-3 Public Use Improvements" (the "Shortfall Payment"). The intent of this provision is to ensure if, for any reason, the Tax Increment is not sufficient to make the annual Debt Service payments on the DM-1 2010 Bonds and DM-3 Bonds, the Developer shall promptly make a Shortfall Payment to the City so that it can make all Debt Service payments when due. Further:

(1) "Debt Service for the DM-1 Public Use Improvements and the DM-3 Public Use Improvements" or "Debt Service" means the scheduled principal and interest payments (including capitalized interest) related to the DM-1 2010 Bonds and the DM-3 Bonds.

(2) The City shall give reasonable notice of Developer's obligation to pay a Shortfall Payment, in which case Developer shall pay the Shortfall Payment to the City no later than thirty days after the City's written request. If the Shortfall Payment is not made when due, interest at a rate of Prime Rate plus 1% per annum shall accrue from the due date of the Shortfall Payment. The City shall notify the Developer by March 31 before the fiscal year in which the City forecasts that a Shortfall Payment may become due. The City shall send a written request for payment 90 days before the date the City's semi-annual Debt Service payment is due. Such notice by the City shall be deemed reasonable notice.

For example, assume the City's Debt Service payments are due December 1, 2015 and June 1, 2016 (semi-annually). If the City forecasts that the Tax Increment will be insufficient to fully fund the Debt Service schedule, the City shall notify the Developer no later than March 31, 2015 of the amount of the Shortfall Payment. In this case, for the Debt Service payment due December 1, 2015, the City shall send a written request for the Shortfall Payment by September 1, 2015 and Developer shall make the Shortfall Payment no later than October 1, 2015. Likewise, for the Debt Service Payment due June 1, 2016, the City shall send a written request for a Shortfall Payment by March 1, 2016 and Developer shall make the payment no later than April 1, 2016.

(3) Microsoft's Credit Rating. The City has issued debt for the DM-1 2010 Public Use Improvements and, subject to the terms of this 2015 Memorandum, the City will issue debt for the DM-3 Public Use Improvements. The City is relying on the provisions of this Memorandum, including but not limited to, the Minimum Assessment Agreement and the Shortfall Payment to provide the funds necessary to make all Debt Service Payments for the DM-1 2010 Bonds and the DM-3 Bonds. Microsoft hereby represents its current credit rating for long-term debt is "AAA", as determined by Standard & Poors Financial Services, LLC (S&P). Annually and continuing until the Bonds are paid off, Microsoft shall re-certify to the City its credit rating on Exhibit E. Additionally, Microsoft covenants to notify the City within 30 days of any future rating change. As long as Microsoft Corporation retains a credit rating of at least "AA-" (the lowest rating for long-term debt that is classified as "High Grade") as determined by Standard & Poors Financial Services, LLC (S&P) (or the equivalent rating schedule if an alternative rating agency is utilized in the future), no further security is required to secure

the Shortfall Payment. However, if at any time before the Bonds are paid off, Microsoft Corporation's credit rating falls below "AA-", Microsoft Corporation will, within 30 days of written demand by the City, contribute an amount equivalent to the next fiscal year's Debt Service into a City fund. Such City fund will be treated as an escrow account held solely to secure the payment of the Debt Service on the Bonds. Once the Bonds are paid off, any remaining balance, plus interest earned, in the Debt Service Escrow Account ("Debt Service Escrow Account"), will be returned to Microsoft Corporation. As an alternative to contribution of a cash amount to the City in the foregoing sentences, if Developer's credit rating drops below AA- during the term of this Agreement under the conditions specified above, Developer can elect to issue a bond ("Surety Bond") in the City's favor, in order to secure Shortfall Payments, in an amount equivalent to the aggregate remaining Debt Service of the Bonds, including interest, contingent on the City's prior review and approval of the terms and conditions of such Surety Bond.

(4) Debt Service Escrow Account. If Microsoft contributes money into the Debt Service Escrow Account under paragraph IV.A(3), such a contribution by Microsoft shall not relieve Microsoft of its independent obligation to make Shortfall Payments described in Section IV.A. Rather, Microsoft's obligation to make a Shortfall Payment shall continue until the Termination Date defined in Section 1 of the Minimum Assessment Agreement (Exhibit B). If, however, Microsoft fails to timely make a Shortfall Payment, then in addition to any other remedies available to the City, the City may use any funds in the Debt Service Escrow Account to pay Debt Service when due. The City will provide Microsoft with written notice of any withdrawal from the Escrow Account (and the amount of said draw). Within 30 calendar days of written notice of such withdrawal by the City, Microsoft shall replenish the Debt Service Escrow Account so that the Account contains the equivalent of the next fiscal year's Debt Service.

(5) Exhibit C contains a proposed schedule for the payment of the DM-1 2010 Bonds and DM-3 Bonds, but such schedule will vary based on actual sale costs, refinancing, if applicable, and other factors. Exhibit C shall be updated with actual debt service for DM-3 Bonds and if any refinancing for DM-1 2010 Bonds or DM-3 Bonds occurs. When updated, such updated Exhibit C shall be substituted for and become Exhibit C to this Memorandum.

(6) The Developer's obligation to make a Shortfall Payment shall continue until the Termination Date defined in Section 1 of the Minimum Assessment Agreement (Exhibit B).

(7) The City will provide an annual report to Developer of the status of the DM-1 2010 Bonds and DM-3 Bonds.

B. Employment. Developer agrees to maintain a Monthly Average (as defined in Exhibit E) of at least 64 "Full Time Equivalent Jobs" by October 1, 2014 and continuing until the

Termination Date. Developer shall provide an annual certification by October 15 of each year on the Annual Certification Form attached as Exhibit E. A "Full Time Equivalent Job" shall meet the definition in the 2014 IEDA Contract (14-TC-026). For greater certainty, any jobs created by the Developer (regardless of whether Developer staffs its operations through direct hire by Developer or vendor resource) shall be considered as Full Time Equivalent Jobs as long as the definition of "Full Time Equivalent Jobs" definition is met. The 64 Full Time Equivalent Jobs shall include the combined jobs at DM-1, DM-2, and DM-3 Minimum Improvements.

C. Insurance. Developer shall keep the DM-1, DM-2, and DM-3 Minimum Improvements insured in a commercially reasonable manner. For so long as the Developer is Microsoft Corporation, or an entity owned 50% or more by Microsoft Corporation, the requirements of this Section IV.C shall be satisfied by the inclusion of the Development Property in the self-insurance program of Microsoft Corporation. Upon any damage, Developer shall complete the repair, reconstruction, and restoration of the DM-1, DM-2, and DM-3 Minimum Improvements, whether or not the net proceeds of insurance received by Developer for such purposes are sufficient.

V. OTHER PROVISIONS.

A. The parties agree that the Assessor's Minimum Actual Value takes into account the expectation that Developer will avail itself of the property tax exemptions provided by the State of Iowa's web search portal exemption (Iowa Code Sections 423.3(92) and 427.1(35)). In order to allow Developer to do so, Developer agrees not to claim the exemption provided by Section 1.10A-3 of the Municipal Code of the City (regarding Industrial Tax Abatement). The Minimum Assessment Agreement shall govern the assessment of the Development Property until the Termination Date.

B. An Iowa Vision Fund grant was approved by IEDA, contingent upon installation of certain infrastructure improvements by Developer related to the DM-1 and DM-2 Minimum Improvements ("2010 Iowa Vision Fund Contract"). Developer shall provide all relevant documentation to the City and/or IEDA to address and resolve payment of the Iowa Vision Fund grant, and acknowledges and agrees that pursuant to the terms and conditions imposed by IEDA, payment of the grant by IEDA to the City or Developer may not occur. If the City receives the $500,000 grant under the 2010 Iowa Vision Fund Contract from IEDA, the City shall use such monies to reduce the Debt Service unless such action is not allowed by the State of Iowa.

C. Iowa Economic Development Authority Contracts. The Developer has been awarded IEDA Contracts from the Iowa Economic Development Authority through the High Quality Jobs Program and other programs. The IEDA Contracts are described in the definition of IEDA Contracts on page 4. The public use improvements provided under this Memorandum are intended to constitute the local community match described in the IEDA Contracts. The Parties agree that the public use improvements provided under this Memorandum satisfy all City obligations for all IEDA Contracts (existing or future) related to any and all projects or development (existing or future) on the Development Property. Should the City fail to perform under the IEDA Contracts due to the Developer's non-compliance with this Memorandum, the

Developer shall pay the City any amounts the City is required to pay the State from any loss, including repayment of any grant monies, arising out of or related to the City's failure to fulfill the terms of the IEDA Contracts.

D. The Developer will maintain its existence as a corporation and will not wind up or otherwise dispose of all or substantially all of the Development Property, or assign, participate, or otherwise act in such manner as to convey to any third party any interest in this Memorandum to any other party unless: (a) the transferee, partnership, corporation, limited liability company or individual assumes in writing all of the obligations of the Developer under this Memorandum arising after the transfer of this Memorandum; and (b) the City consents thereto in writing in advance, such consent shall not to be unreasonably withheld.

VI. DEFAULTS AND REMEDIES.

A. Events of Default Defined. The following shall be Events of Default under this Memorandum and the term Event of Default shall mean, whenever it is used in this Memorandum, any one or more of the following events:

1. Failure by the Developer to cause the construction of the DM-3 Minimum Improvements to be commenced and completed pursuant to the terms, conditions and limitations of this Memorandum;

2. Transfer of any controlling interest (either directly or indirectly) in this Memorandum or the Development Property and DM-1, DM-2 or DM-3 Minimum Improvements in violation of Section V.D;

3. Failure by the Developer to timely pay (before delinquency) any ad valorem taxes levied on the Development Property and DM-1, DM-2 or DM-3 Minimum Improvements;

4. The holder of any Mortgage on the Development Property, or any improvements thereon, or any portion thereof, commences foreclosure proceedings as a result of any default by Developer under the applicable Mortgage documents and such foreclosure proceedings are not dismissed within sixty (60) days of filing;

5. Failure by the Developer to substantially observe or perform any covenant, condition, obligation or agreement on its part to be observed or performed under this Memorandum;

6. The Developer shall:

(a) file any petition in bankruptcy or for any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under the United States Bankruptcy Act of 1978, as amended, or under any similar federal or state law; or

(b) make an assignment for the benefit of its creditors; or

(c) admit in writing its inability to pay its debts generally as they become due; or

(d) be adjudicated a bankrupt or insolvent; or if a petition or answer proposing the adjudication of the Developer as a bankrupt or its reorganization under any present or future federal bankruptcy act or any similar federal or state law shall be filed in any court and such petition or answer shall not be discharged or denied within ninety (90) days after the filing thereof; or a receiver, trustee or liquidator of the Developer or part thereof, shall be appointed in any proceedings brought against the Developer and shall not be discharged within ninety (90) days after such appointment, or if the Developer shall consent to or acquiesce in such appointment;

7. Any representation or warranty made by the Developer in this Memorandum, or made by the Developer in any written statement or certificate furnished by the Developer pursuant to this Memorandum, shall prove to have been incorrect, incomplete or misleading in any material respect on or as of the date of the issuance or making thereof; or

8. The City fails to construct any required DM-3 Public Use Improvements pursuant to the terms of this Memorandum.

B. City's Remedies on Default. Whenever any Event of Default referred to in Paragraphs 1-7 of Section VI.A of this Memorandum occurs and is continuing, the City, as specified below, may take any one or more of the following actions after (except in the case of an Event of Default under subsection 6 of said Section VI.A) the giving of thirty (30) days written notice by the City to the Developer and the holder of the Mortgage (but only to the extent the City has been informed in writing of the existence of a Mortgage and been provided with the address of the holder thereof) of the Event of Default, but only if the Event of Default has not been cured within said thirty (30) days, or if the Event of Default cannot reasonably be cured within thirty (30) days and the Developer does not provide assurances reasonably satisfactory to the City that the Event of Default will be cured as soon as reasonably possible:

1. The City may suspend its performance under this Memorandum until it receives assurances from the Developer, deemed adequate by the City, that the Developer will cure its default and continue its performance under this Memorandum;

2. The City may terminate this Memorandum;

3. The City shall be entitled to recover, and the Developer shall pay to the City, an amount equal to the present value of the remaining principal and interest payments due on the DM-1 2010 Bonds and DM-3 Bonds as of the date of the City's notice to Developer of the Event of Default (as reasonably determined by the City), and

the City may take any action, including any legal action, it considers necessary or desirable to recover such amount from the Developer; or

4. The City may take any other action, including legal, equitable or administrative action, which may appear necessary or desirable to enforce performance and observance of any obligation, agreement, or covenant of the Developer under this Memorandum.

C. No Remedy Exclusive. No remedy herein conferred upon or reserved to the City or Developer is intended to be exclusive of any other available remedy or remedies, but each and every remedy shall be cumulative and shall be in addition to every other remedy given under this Memorandum or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient.

D. Developer's Remedies on Default. Whenever any Event of Default occurs by the City, the Developer may terminate this Agreement, and the Developer may take any legal action it considers necessary to recover damages from the City or to enforce this Memorandum, subject to a 120 day written notice to the City with an opportunity for the City to cure the Event of Default.

E. No Implied Waiver. In the event any provision contained in this Memorandum should be breached by the Developer and thereafter waived by the City, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other concurrent, previous or subsequent breach hereunder.

F. Agreement to Pay Attorneys' Fees and Expenses. Whenever any Event of Default occurs and either party employs attorneys or incurs other expenses for the collection of payments due or to become due or for the enforcement or performance or observance of any obligation or agreement on the part of the other party, the non-prevailing party shall pay to the prevailing party its attorneys' fees and costs.

VII. INDEMNIFICATION.

A. Release and Indemnification Covenants.

1. The Developer releases the City and the governing body members, officers, agents, servants and employees thereof (hereinafter, for purposes of this Section, the "Indemnified Parties") from, covenants and agrees that the Indemnified Parties shall not be liable for, and agrees to indemnify, defend and hold harmless the Indemnified Parties against, any loss or damage to property or any injury to or death of any person occurring at or about or resulting from any defect in the DM-1, DM-2 or DM-3 Minimum Improvements on the Development Property. Notwithstanding the foregoing, the Developer shall not provide such indemnification if the damage or injuries are caused by the negligence of the Indemnified Parties.

2. Except for any willful misrepresentation or any willful or wanton misconduct or any unlawful act of the Indemnified Parties, the Developer agrees to protect and defend the Indemnified Parties, now or forever, and further agrees to hold the Indemnified Parties harmless, from any claim, demand, suit, action or other proceedings whatsoever by any person or entity whatsoever arising or purportedly arising from (i) the acquisition and condition of the Development Property and the construction, installation, ownership and operation of the DM-1, DM-2 or DM-3 Minimum Improvements or (ii) any hazardous substance or environmental contamination in or on the Development Property

3. All covenants, stipulations, promises, agreements and obligations of the City contained herein shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the City, and not of any governing body member, officer, agent, servant or employee of the City in the individual capacity thereof.

4. The provisions of this Section shall survive the termination of this Memorandum.

VIII. NOTICES.

Any notice, demand, or other communication under this Memorandum by either party to the other shall be effective upon receipt or refusal of receipt to the following addresses:

A. In the case of Developer, is addressed or delivered personally to Developer at:

Microsoft Corporation
One Microsoft Way
Redmond, WA 99052
Attention: General Manager, Data Center Services

with a copy to:
Microsoft Corporation
One Microsoft Way
Redmond, WA 99052
Attention: General Manager, Datacenter Strategy, Planning and Development, MCIO

with a copy to:
Microsoft Corporation
Legal and Corporate Affairs
One Microsoft Way
Redmond, WA 98052
Attention: MCIO LCA

B. In the case of the City, is addressed to or delivered personally to the City at:

City of West Des Moines, Iowa
4200 Mills Civic Parkway
P.O. Box 65320
West Des Moines, Iowa 50265-0320
Attn: City Clerk

Either party may change the address for notices to be delivered to it, and copies thereof to any address other than a post office box by serving not less than ten (10) days prior written notice to the other party in accordance with the provisions contained in this paragraph.

IX. CONFLICT OF INTEREST.

Developer represents and warrants that, to its best knowledge and belief after due inquiry, no officer or employee of the City, or their designees or agents, nor any consultant or member of the governing body of the City, and no other public official of the City who exercises or has exercised any functions or responsibilities with respect to the Development Property during his or her tenure, or who is in a position to participate in a decision-making process or gain insider information with regard to the Development Property, has had or shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work or services to be performed in connection with the Development Property, or in any activity, or benefit therefrom, which is part of the Development Property at any time during or after such person's tenure.

X. COUNTERPARTS.

This Memorandum may be executed in any number of counterparts, each of which shall constitute one and the same instrument.

XI. GOVERNING LAW; JURISDICTION.

This Memorandum shall be governed by and interpreted in accordance with the laws of the State of Iowa. Lawsuits brought by either party in connection with this Memorandum shall be heard and tried in Dallas County District Court, Adel, Iowa.

XII. NO THIRD-PARTY BENEFICIARIES.

No rights or privileges of either party hereto shall inure to the benefit of any landowner, contractor, subcontractor, material supplier, or any other person or entity, and no such contractor, landowner, subcontractor, material supplier, or any other person or entity shall be deemed to be a third-party beneficiary of any of the provisions contained in this Memorandum.

XIII. ENTIRE AGREEMENT.

This Memorandum and exhibits attached constitute the entire agreement of the parties and supersedes all prior offers, agreements, arrangements and contracts, whether oral or written, concerning the subject matter hereof. This Memorandum may not be amended except by a subsequent writing signed by all parties hereto.

XIV. SEVERABILITY.

If any provision of this Memorandum or the application of such provision to any person or circumstance shall be held invalid, then the remainder of this Memorandum or the application of such provision to persons or circumstances other than those to which it is held invalid shall not be affected thereby and the parties shall thereupon amend this Memorandum to legally and most closely embody the spirit and intent of the invalid provisions.

XV. PERFORMANCE BY CITY.

Developer and the City acknowledge and agree that all of the obligations of the City under this Memorandum shall be subject to, and performed by the City in accordance with, all applicable statutory, common law or constitutional provisions and procedures consistent with the City's lawful authority.

XVI. SUCCESSORS AND ASSIGNS.

This 2015 Memorandum shall be binding upon and inure to the benefit of (i) the City and (ii) Developer and its successors and permitted assigns as owner of the Development Property. No assignment of rights or obligations under this 2015 Memorandum shall be made by any party without the prior written consent of the other party.

XVII. TERMINATION DATE.

This 2015 Memorandum shall terminate no earlier than the Termination Date defined in Section 1 of the Minimum Assessment Agreement.

XVIII. COUNTERPARTS.

This Agreement may be executed in any number of counterparts, each of which shall constitute one and the same instrument.

XIX. MEMORANDUM OF AGREEMENT.

The parties agree to execute and record a Memorandum of Agreement for Private Development, in substantially the form attached as Exhibit D, to serve as notice to the public of the existence and provisions of this Memorandum, and the rights and interests held by the City by virtue hereof. The City shall pay for all costs of recording.

IN WITNESS WHEREOF, the parties have set their hands and seals the day and year above first written.

[The remainder of this page was intentionally left blank. Signatures begin on next page]

CITY OF WEST DES MOINES, IOWA

By: _____
Steven K. Gaer, Mayor

ATTEST:

By: _____
Ryan T. Jacobson, City Clerk

STATE OF IOWA)
) ss.
COUNTY OF POLK)

On this _____ day of _____, 2015, 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
a Washington corporation

By: _____
Scott Guthrie
EVP, Cloud and Enterprise

By: _____
Suresh Kumar
Corporate VP, Cloud Infrastructure & Operations

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

On this 25th day of MARCH, 2015, before me the undersigned, a Notary Public in and for said State, personally appeared Suresh Kumar, who being duly sworn, did say that he is the Corporate VP, Cloud Infrastructure & Operations of Microsoft Corporation, executing the within and foregoing instrument; that said instrument was signed on behalf of said corporation by authority of its Board of Directors; and that the said Suresh Kumar, Corporate VP, as such officer acknowledged the execution of said instrument by it and by him voluntarily executed.

KEVIN D. WILLIAMS NOTARY PUBLIC COMMISSION EXPIRES 9-11-16 STATE OF WASHINGTON

_____
Notary Public in and for the State of Washington

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

On this 26th day of MARCH, 2015, before me the undersigned, a Notary Public in and for said State, personally appeared Scott Guthrie, who being duly sworn, did say that he is the EVP, Cloud and Enterprise of Microsoft Corporation, executing the within and foregoing instrument; that said instrument was signed on behalf of said corporation by authority of its Board of Directors; and that the said Scott Guthrie, EVP, as such officer acknowledged the execution of said instrument by it and by him voluntarily executed.

KEVIN D. WILLIAMS NOTARY PUBLIC COMMISSION EXPIRES 9-11-16 STATE OF WASHINGTON

_____
Notary Public in and for the State of Washington

EXHIBIT "A"

Legal Description of Development Property

Lot 1, Raccoon River Plat 1, an Official Plat in the City of West Des Moines, Dallas County, Iowa.

Parcel #16-23-351-001

EXHIBIT "A-1"

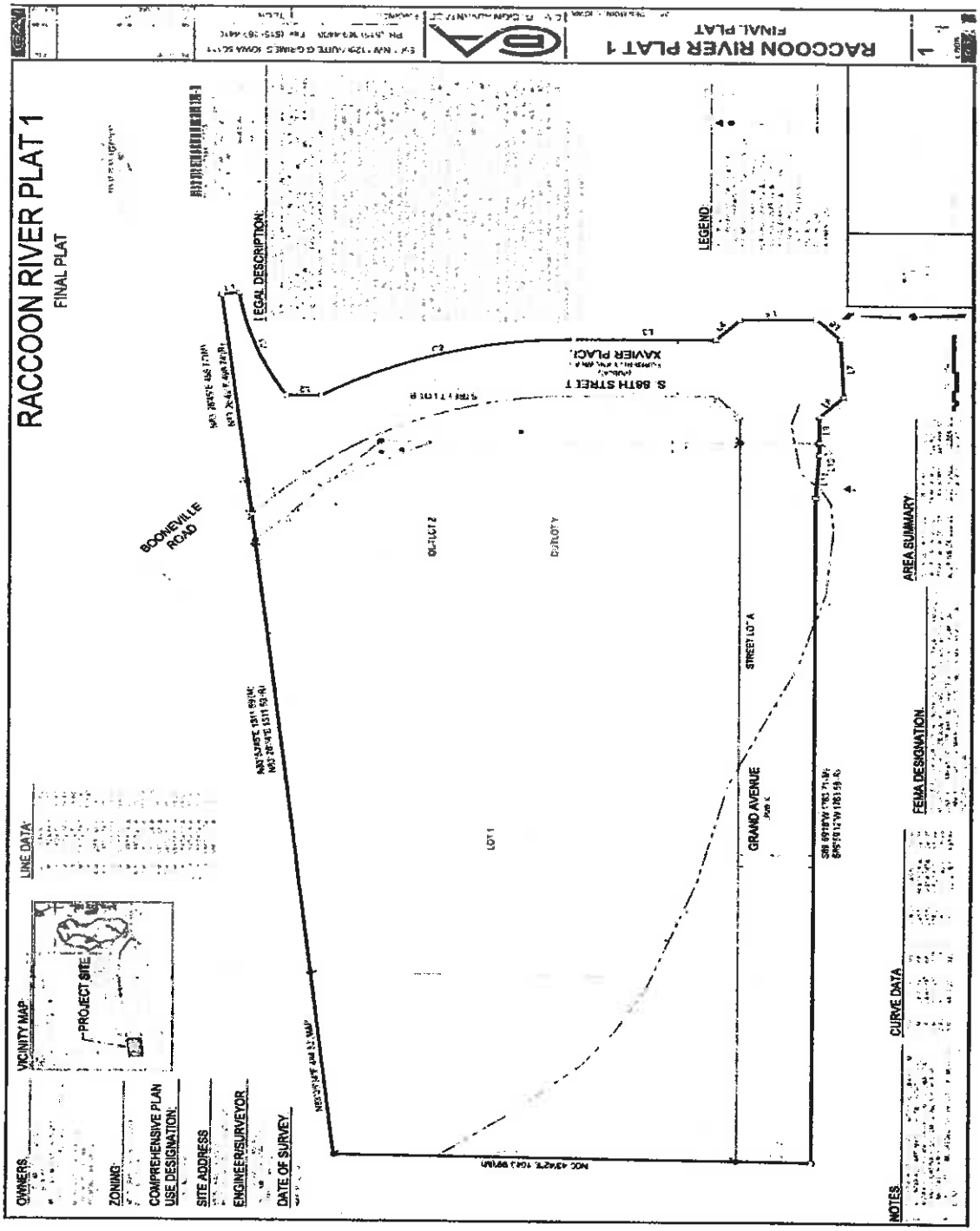
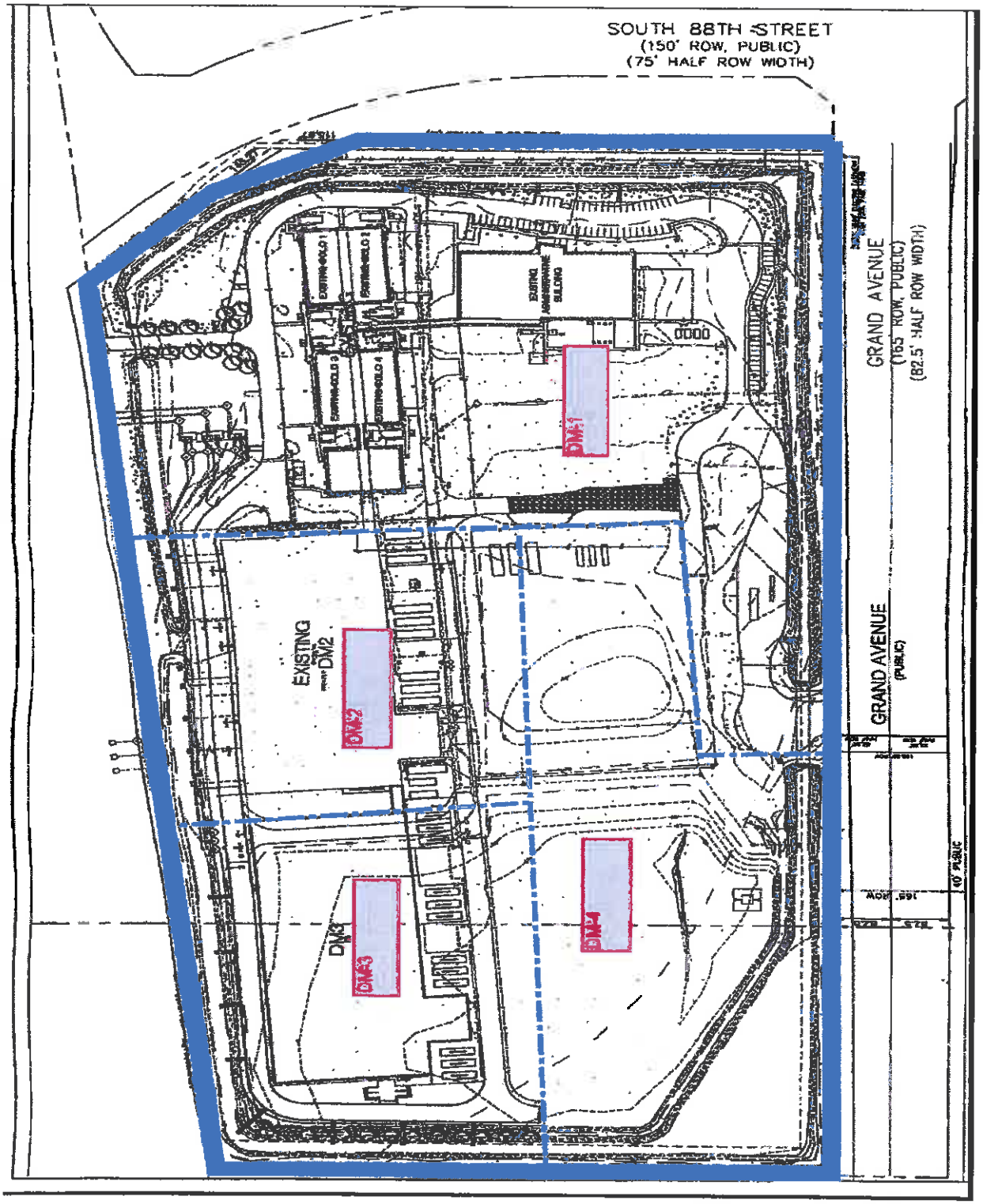

RACCOON RIVER PLAT 1
FINAL PLAT
OWNERS:
VICINITY MAP
PROJECT SITE
ZONING:
COMPREHENSIVE PLAN USE DESIGNATION:
SITE ADDRESS
ENGINEER/SURVEYOR
DATE OF SURVEY
LINE DATA
BOONEVILLE ROAD
LEGAL DESCRIPTION:
S 86TH STREET
XAVIER PLACE
LOT 1
LOT 2
LOT 3
STREET LOT A
GRAND AVENUE
LEGEND
AREA SUMMARY
FEMA DESIGNATION
CURVE DATA
NOTES
RACCOON RIVER PLAT 1
FINAL PLAT

EXHIBIT "A-2"


SOUTH 88TH STREET
(150' ROW, PUBLIC)
(75' HALF ROW WIDTH)
GRAND AVENUE
(165' ROW, PUBLIC)
(82.5' HALF ROW WIDTH)
GRAND AVENUE
(PUBLIC)
EXISTING
DM2
DM1
DM2
DM3
DM4
DM5
40' PUBLIC

Prepared By:
Return To:

EXHIBIT "B"

Minimum Assessment Agreement between the City of West Des Moines and Microsoft Corporation (Lot 1, Raccoon River Plat 1, WDM)

THIS MINIMUM ASSESSMENT AGREEMENT ("Minimum Assessment Agreement" or "Assessment Agreement"), is dated as of _____, 2015, by and between the CITY OF WEST DES MOINES, IOWA (the "City"), an Iowa municipal corporation, acting under the authorization of Chapter 403 of the Code of Iowa, 2013, as amended, and MICROSOFT CORPORATION, a Washington corporation, having an office for the transaction of business at One Microsoft Way, Redmond, Washington ("Developer").

RECITALS

WHEREAS, the City and Developer have entered into a Memorandum of Understanding dated as of _____, 2015 ("2015 Memorandum" or "Memorandum") regarding certain real property located in the City, which is legally described as follows:

Lot 1, Raccoon River Plat 1, an Official Plat in the City of West Des Moines, Dallas County, Iowa. (Parcel # 16-23-351-001)

(the "Development Property");

WHEREAS, the defined terms in the 2015 Memorandum will also apply to this Minimum Assessment Agreement; and

WHEREAS, the City, the Developer and the Dallas County Assessor ("Assessor") entered into a Prior Minimum Assessment Agreement dated June 23, 2010. This Minimum Assessment Agreement terminates and replaces the Prior Minimum Assessment Agreement; and

WHEREAS, Developer has constructed DM-1 Minimum Improvements and DM-2 Minimum Improvements, and will construct DM-3 Minimum Improvements (as defined in the Memorandum) (referred collectively in this Assessment Agreement as "Minimum Improvements") on the Development Property, as provided in the 2015 Memorandum; and

WHEREAS, pursuant to Section 403.6(19) of the Code of Iowa, as amended, the City and Developer desire to establish a minimum actual value for the Minimum Improvements already constructed or to be constructed on the Development Property by Developer pursuant to the 2015 Memorandum; and

WHEREAS, the City and the Assessor have reviewed the preliminary plans and specifications for the Minimum Improvements that are contemplated to be constructed.

WHEREAS, the City has authorized the issuance of general obligation bonds (the "DM-1 2010 Bonds") related to the construction of DM-1 Public Use Improvements and expects to issue general obligation bonds ("DM-3 Bonds") related to the construction of DM-3 Public Use Improvements; the principal and interest on which Bonds are expected to be paid from the real property taxes paid with respect to the Development Property and the DM-1, DM-2 and DM-3 Minimum Improvements located thereon.

NOW, THEREFORE, the parties to this Minimum Assessment Agreement, in consideration of the promises, covenants and agreements made by each other, do hereby agree as follows:

1. Upon substantial completion of construction of the above-referenced Minimum Improvements but no later than the dates set forth below, the minimum actual value, which shall be fixed for assessment purposes for the Minimum Improvements on the Development Property (building and land), shall be not less than the following:

Assessment Date (January 1)	Minimum Actual Value (land and buildings)
1/1/2015	47,500,000
1/1/2016	47,593,200
1/1/2017	48,108,096
1/1/2018	48,178,843
1/1/2019	48,233,177
1/1/2020	48,270,413
1/1/2021	48,289,845
1/1/2022	47,808,297
1/1/2023	47,780,270
1/1/2024	47,731,997
1/1/2025	47,150,704
1/1/2026	46,527,067
1/1/2027	46,392,285
1/1/2028	45,690,186
1/1/2029	44,941,447
1/1/2030	44,144,481

(Herein referred to as the "Minimum Actual Value.") The Minimum Actual Value is the value before rollback.

This Assessment Agreement shall continue from the date of this Assessment Agreement and shall terminate and be of no further force or effect upon the earlier of (i) the end of the last fiscal year the City can legally collect incremental taxes from the Mills Parkway Urban Renewal Area (Subdistrict No. 7) (to be clear, this terminating event shall not occur so long as the City can collect incremental taxes from any portion of the Mills Parkway Urban Renewal Area); and (ii) the date that the City has received tax increment reimbursement of all remaining Debt Service for the Bonds issued to construct the DM-1 Public Use Improvements and the DM-3 Public Use Improvements ("Termination Date"). Upon the occurrence of the Termination Date, the City shall certify to the Assessor and to the Developer that the Termination Date has occurred and this Minimum Assessment Agreement shall no longer control the assessment of the Development Property.

The Minimum Actual Value shall be maintained until the Termination Date regardless of (a) any failure to complete the DM-3 Minimum Improvements; (b) destruction of all or any portion of the DM-1, DM-2 or DM-3 Minimum Improvements; (c) diminution in value of the Development Property or the DM-1, DM-2 or DM-3 Minimum Improvements; or (d) any other circumstance, whether known or unknown and whether now existing or hereafter occurring.

2. Developer shall pay or cause to be paid when due all real property taxes and assessments payable with respect to all and any parts of the Development Property and the DM-1, DM-2 and DM-3 Minimum Improvements pursuant to the provisions of this Minimum Assessment Agreement and the 2015 Memorandum. Such tax payments shall be made without regard to any loss, complete or partial, to the Development Property or the DM-1, DM-2 and DM-3 Minimum Improvements, any interruption in, or discontinuance of, the use, occupancy, ownership or operation of the DM-1, DM-2 and DM-3 Minimum Improvements by Developer, or any other matter or thing which for any reason interferes with, prevents or renders burdensome the use or occupancy of the Development Property or the DM-1, DM-2 and DM-3 Minimum Improvements.

3. Developer agrees that its obligations to make the tax payments required hereby, to pay the other sums provided for herein, and to perform and observe its other agreements contained in this Minimum Assessment Agreement shall be absolute and unconditional obligations of Developer (not limited to the statutory remedies for unpaid taxes) and that Developer shall not be entitled to any abatement or diminution thereof, or set off therefrom, nor to any early termination of this Minimum Assessment Agreement for any reason whatsoever.

4. Developer agrees that, prior to the termination of this Assessment Agreement governed by Section 1 above, it will not:

(a) seek administrative review or judicial review of the applicability or constitutionality of any Iowa tax statute relating to the taxation of property contained as a part of the Development Property or the DM-1, DM-2 and DM-3 Minimum

Improvements determined by any tax official to be applicable to the Development Property or the DM-1, DM-2 and DM-3 Minimum Improvements, or raise the inapplicability or constitutionality of any such tax statute as a defense in any proceedings, including delinquent tax proceedings; or

(b) seek any tax deferral or abatement, either presently or prospectively authorized under Iowa Code Chapter 403 or 404, or any other local, City, or State law or regulation, of the taxation of real property, including improvements and fixtures thereon, contained on the Development Property or the DM-1, DM-2 and DM-3 Minimum Improvements; or

(c) request the Assessor to reduce the Minimum Actual Value; or

(d) appeal to the board of review of the County, State, District Court, or to the Director of Revenue of the State to reduce the Minimum Actual Value; or

(e) cause a reduction in the actual value or the Minimum Actual Value through any other proceedings.

5. This Minimum Assessment Agreement shall be promptly recorded by the City with the Recorder of Dallas County, Iowa. Such filing shall constitute notice to any subsequent encumbrancer of the Development Property (or part thereof), whether voluntary or involuntary, and this Minimum Assessment Agreement shall be binding and enforceable in its entirety against any such subsequent encumbrancer, including the holder of any mortgage. The City shall pay all costs of recording.

6. This Minimum Assessment Agreement shall not be assignable without the written consent of the City and shall be binding upon and inure to the benefit of and be enforceable by the parties hereto and their respective successors and permitted assigns.

7. Nothing herein shall be deemed to waive the rights of Developer under Iowa Code Section 403.6(19) to contest that portion of any actual value assignment made by the Assessor in excess of the Minimum Actual Values established herein. In no event, however, shall Developer seek to reduce the actual value to an amount below the Minimum Actual Values established herein during the term of this Agreement. This Minimum Assessment Agreement may be amended or modified and any of its terms, covenants, representations, warranties or conditions waived, only by a written instrument executed by the parties hereto, or in the case of a waiver, by the party waiving compliance.

8. If any term, condition or provision of this Minimum Assessment Agreement is for any reason held to be illegal, invalid or inoperable, such illegality, invalidity or inoperability shall not affect the remainder hereof, which shall at the time be construed and enforced as if such illegal or invalid or inoperable portion were not contained herein.

9. The Minimum Actual Values herein established shall be of no further force and effect and this Minimum Assessment Agreement shall terminate on the Termination Date set forth in Section 1 above.

10. Developer has provided a title opinion or lien or title search/certificate to City listing all lienholders of record as of the date of this Assessment Agreement and all such lienholders have signed a consent to this Assessment Agreement substantially in the form of the Lienholder Consent set forth in this Exhibit B, which consents are attached hereto and made a part hereof.

[The remainder of this page was intentionally left blank. Signatures begin on next page]

CITY OF WEST DES MOINES, IOWA

_____
Steven K. Gaer, Mayor

ATTEST:

_____
Ryan T. Jacobson, City Clerk

(SEAL)

STATE OF IOWA)
) SS
COUNTY OF POLK)

On this _____ day of _____, 2015, 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, and that the seal affixed to the foregoing instrument is the seal of the City of West Des Moines, Iowa, and that said instrument was signed and sealed on behalf of said City of West Des Moines, Iowa 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 City of West Des Moines, Iowa, by it and by them voluntarily executed.

_____
Notary Public in and for the State of Iowa

MICROSOFT CORPORATION,
a Washington corporation

By: _____
Scott Guthrie
EVP, Cloud and Enterprise

By: _____
Suresh Kumar
Corporate V.P. Cloud Infrastructure & Operations

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

On this 25th day of MARCH, 2015, before me the undersigned, a Notary Public in and for said State, personally appeared Suresh Kumar, who being duly sworn, did say that he is the Corp. V.P. Cloud Infrastructure & Operations, of Microsoft Corporation, executing the within and foregoing instrument; that said instrument was signed on behalf of said corporation by authority of its Board of Directors; and that the said Suresh Kumar, Corporate V.P., as such officer acknowledged the execution of said instrument by it and by him voluntarily executed.

KEVIN D. WILLIAMS NOTARY PUBLIC STATE OF WASHINGTON COMMISSION EXPIRES 9-11-16

_____
Notary Public in and for the State of Washington

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

On this 26th day of MARCH, 2015, before me the undersigned, a Notary Public in and for said State, personally appeared Scott Guthrie, who being duly sworn, did say that he is the EVP, Cloud and Enterprise of Microsoft Corporation, executing the within and foregoing instrument; that said instrument was signed on behalf of said corporation by authority of its Board of Directors; and that the said Scott Guthrie, EVP, as such officer acknowledged the execution of said instrument by it and by him voluntarily executed.

_____
Notary Public in and for the State of Washington

EXHIBIT B (Cont.)
LIENHOLDER CONSENT

In consideration of one dollar and other valuable consideration, the receipt of which is hereby acknowledged, and notwithstanding anything in any loan or security agreement to the contrary, the undersigned ratifies, approves, consents to and confirms the Minimum Assessment Agreement entered into between the parties, and agrees to be bound by its terms and subordinates any previously acquired mortgage, lien or other interest in the Development Property to the City of West Des Moines, Iowa. This provision shall be binding on the parties and their respective successors and assigns.

_____
Name of Lienholder

By: _____
Signature

By: _____
Signature

_____
Date

STATE OF IOWA)
) SS
COUNTY OF _____)

On this _____ day of _____, 2015, before me the undersigned, a Notary Public in and for said County, in said State, personally appeared _____ and _____, to me personally known, who, being by me duly sworn, did say that they are the _____ and _____ of _____ and that said instrument was signed on behalf of said company, and that the said acknowledged the execution of said instrument to be the voluntary act and deed of said domestic company, by them voluntarily executed.

_____
Notary Public in and for the State of Iowa

[add additional pages for each lienholder]

NOTE: If there are no lienholders, this page shall have no signatures.

EXHIBIT B (Cont.)
CERTIFICATION OF ASSESSOR

The undersigned, having reviewed the plans and specifications for the Minimum Improvements already constructed or to be constructed and the market value assigned to the land upon which the Minimum Improvements are constructed, and being of the opinion that the minimum market value contained in the foregoing Minimum Assessment Agreement appears reasonable, hereby certifies as follows: The undersigned Assessor, being legally responsible for the assessment of the Development Property described in the foregoing Minimum Assessment Agreement, certifies that the actual value assigned to the land and improvements upon completion, but no later than the effective dates set forth below, shall be at least as follows until the Termination Date contained in Section 1 of the Assessment Agreement:

Assessment Date (January 1)	Minimum Actual Value (land and buildings)
1/1/2015	47,500,000
1/1/2016	47,593,200
1/1/2017	48,108,096
1/1/2018	48,178,843
1/1/2019	48,233,177
1/1/2020	48,270,413
1/1/2021	48,289,845
1/1/2022	47,808,297
1/1/2023	47,780,270
1/1/2024	47,731,997
1/1/2025	47,150,704
1/1/2026	46,527,067
1/1/2027	46,392,285
1/1/2028	45,690,186
1/1/2029	44,941,447
1/1/2030	44,144,481

The Minimum Actual Value is before rollback.

Assessor for the County of Dallas, Iowa

3/31/2015
Date

STATE OF IOWA)
) SS
COUNTY OF DALLAS)

Subscribed and sworn to before me by Steve C Helm, Assessor for the County of Dallas, Iowa on this 31 day of March, 2015.

MELODY A. MARSHALL
Commission Number 765824
My Commission Expires
December 10, 2016

Notary Public for the State of Iowa

Execution Version 3/19/15

Exhibit C

City of West Des Moines

Microsoft – Project Mountain (DM-1 thru DM-3)

		Assessed Valuation Date	Payment Year	Assessed Valuation Amount	Final Increment Taxable Valuation	Net TIF Tax Rate	Total TIF Revenue	Existing 2010 GO Bonds / Sewer Pmt	Proposed 2016 GO Bonds	Estimated FIP	Annual Fund Surplus/ (Deficit)	Year-End Fund Balance
Actual		1/1/2008	FY 09-10	-	-	20.0000	0	(199,595)			(199,595)	(199,595)
		1/1/2009	FY 10-11	-	-	20.0000	0	-			0	(199,595)
		1/1/2010	FY 11-12	-	-	20.0000	0	(196,731)			(196,731)	(396,326)
	1	1/1/2011	FY 12-13	5,463,316	5,463,316	27.0000	152,883	(206,731)			(53,848)	(450,174)
	2	1/1/2012	FY 13-14	15,220,752	15,220,752	25.0000	387,931	(400,731)			(12,800)	(462,974)
	3	1/1/2013	FY 14-15	30,110,210	28,604,700	26.0000	754,543	(400,831)			353,818	(109,156)
Estimated	4	1/1/2014	FY 15-16	38,804,200	34,923,780	26.0000	921,339	(400,831)			520,528	411,334
	5	1/1/2015	FY 16-17	47,500,000	42,750,000	26.0000	1,127,681	(400,731)	[illegible]		[illegible]	425,138
	6	1/1/2016	FY 17-18	47,393,200	42,833,880	26.0000	1,130,043	(400,231)	[illegible]		(26,652)	398,486
	7	1/1/2017	FY 18-19	48,108,096	43,297,286	26.0000	1,142,799	(401,816)	[illegible]		(9,829)	388,657
	8	1/1/2018	FY 19-20	48,178,843	43,360,959	26.0000	1,143,949	(403,586)	[illegible]		(11,333)	377,324
	9	1/1/2019	FY 20-21	48,293,177	43,409,859	26.0000	1,145,239	(405,006)	[illegible]		(11,306)	365,988
	10	1/1/2020	FY 21-22	48,270,413	43,443,372	26.0000	1,146,123	(406,156)	[illegible]		(9,794)	356,194
	11	1/1/2021	FY 22-23	48,283,045	43,454,841	26.0000	1,146,424	(412,006)	[illegible]		(16,613)	339,581
	12	1/1/2022	FY 23-24	47,808,297	43,027,467	26.0000	1,135,351	(411,806)	[illegible]		(27,168)	312,393
	13	1/1/2023	FY 24-25	47,780,270	43,002,243	26.0000	1,134,485	(415,469)	[illegible]		(29,595)	282,798
	14	1/1/2024	FY 25-26	47,731,097	42,958,797	26.0000	1,133,339	(413,839)	[illegible]		(30,507)	251,891
	15	1/1/2025	FY 26-27	47,150,704	42,435,634	26.0000	1,119,537	(416,400)	[illegible]		(47,864)	204,027
	16	1/1/2026	FY 27-28	46,527,067	41,874,360	26.0000	1,104,725	(416,600)	[illegible]		(61,884)	142,443
	17	1/1/2027	FY 28-29	46,392,285	41,753,057	26.0000	1,101,529	(421,200)	[illegible]		(72,882)	69,561
	18	1/1/2028	FY 29-30	45,690,186	41,121,167	26.0000	1,084,859	-	[illegible]		335,954	405,217
	19	1/1/2029	FY 30-31	44,841,447	40,447,362	26.0000	1,067,081				1,067,081	1,472,298
	20	1/1/2030	FY 31-32	44,144,481	39,730,033	26.0000	1,048,158	-	-		1,048,158	2,520,456
								(7,094,052)	[illegible]			
								Note 4	Note 5			

Calculation of Local Match		
Based on Max Valuation		
Year	%	$ 48,460,861
Year 1	35.0%	950,978
Year 2	50.0%	497,301
Year 3	45.0%	515,353
Year 4	30.0%	343,175
Year 5	35.0%	172,988
Total Match		2,479,815

Note 1 Note 1 Note 2 Note 3

Note 1: Per current State of Iowa law, actual valuation is adjusted to 95% assessed valuation for FY 14-15 and 90% assessed valuation for FY 15-16 and beyond. Values beyond 1/1/16 are based on Minimum Assessment Agreement (Exhibit B).

Note 2: Net TIF Tax Rate reflects anticipated rate for FY 15-16 (per $1,000 valuation). Future tax rates are unknown but remain level for purposes of this projection.

Note 3: Calculated by multiplying assessed tax rate by taxable valuation.

Note 4: Represents actual payments due for 2010 Bonds related to City's construction of public improvements, as well as sewer payment made by City in 2010.

Note 5: Represents payments needed to repay issuance of (net proceeds) 55.5 million GO DM-3 Bonds in June 2016. Bond payment term may be shortened depending better than anticipated cash flow. Total cost includes issuance costs as well as principal or interest payable over the term.

Total TIF Tax collected will change due to a variety of factors, including but not limited to, changes in tax levies or rates, changes in tax laws, changes in assessed values, and other factors. Bond issuance costs will change due to a variety of factors, including but not limited to, actual project costs, interest rates and other changes associated with the actual sales terms of the Bonds. Per the Memorandum, this projection shall be updated based on the issuance or refinancing of Bonds. See definition of Bonds.

EXHIBIT D

MEMORANDUM OF AGREEMENT

WHEREAS, the City of West Des Moines, Iowa (the "City") and Microsoft Corporation, a Washington corporation ("Developer"), did on or about the _____ day of _____, 2015, make, execute and deliver, each to the other, a 2015 Memorandum of Understanding (the "2015 Memorandum" or "Memorandum"), wherein and whereby Developer agreed, in accordance with the terms of the Memorandum and the Mills Parkway Urban Renewal Plan (the "Plan"), to develop and operate certain real property located within the City and within the Mills Parkway Urban Renewal Area (Subdistrict 7).

The Development Property is described as follows:

Lot 1, Raccoon River Plat 1, an Official Plat in the City of West Des Moines, Dallas County, Iowa.

Parcel #16-23-351-001

(the "Development Property"); and

WHEREAS, the 2015 Memorandum contains a Minimum Assessment Agreement at Exhibit "B", wherein the term of the Development Agreement is identified as effective from the date of the Minimum Assessment Agreement and will terminate upon the earlier of (i) the end of the last fiscal year the City can legally collect incremental taxes from the Mills Parkway Urban Renewal Area (Subdistrict 7); and (ii) the date that the City has received tax increment reimbursement of all remaining Debt Service for the Bonds issued to construct the DM-1 and DM-3 Public Use Improvements; and

WHEREAS, the City and Developer desire to record a Memorandum of Agreement referring to the Development Property and their respective interests therein.

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

1. That the recording of this Memorandum of Agreement shall serve as notice to the public that the 2015 Memorandum contains provisions restricting development and use of the Development Property and the improvements located and operated on such Development Property.

2. That all of the provisions of the 2015 Memorandum and any subsequent amendments thereto, if any, even though not set forth herein, are by the filing of this Memorandum of Agreement made a part hereof by reference, and that anyone making any claim against any of said Development Property in any manner whatsoever shall be fully advised as to

all of the terms and conditions of the 2015 Memorandum, and any amendments thereto, as if the same were fully set forth herein.

3. That a copy of the 2015 Memorandum and any subsequent amendments thereto, if any, shall be maintained on file for public inspection during ordinary business hours in the office of the City Clerk, West Des Moines, Iowa.

IN WITNESS WHEREOF, the City and Developer have executed this Memorandum of Agreement on the _____ day of _____, 2015.

[The remainder of this page was intentionally left blank. Signatures begin on next page]

CITY OF WEST DES MOINES, IOWA

_____
Steven K. Gaer, Mayor

ATTEST:

_____
Ryan T. Jacobson, City Clerk

(SEAL)

STATE OF IOWA)
) SS
COUNTY OF POLK)

On this _____ day of _____, 2015, 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, and that the seal affixed to the foregoing instrument is the seal of the City of West Des Moines, Iowa, and that said instrument was signed and sealed on behalf of said City of West Des Moines, Iowa 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 City of West Des Moines, Iowa, by it and by them voluntarily executed.

_____
Notary Public in and for the State of Iowa

MICROSOFT CORPORATION,
a Washington corporation

By: _____
Scott Guthrie
EVP, Cloud and Enterprise

By: _____
Suresh Kumar
Corporate VP, Cloud Infrastructure & Operations

STATE OF WASHINGTON)
) SS
COUNTY OF KING)

On this 25th day of MARCH, 2015, before me the undersigned, a Notary Public in and for said State, personally appeared Suresh Kumar, who, being by me duly sworn, did say that he is the Corporate VP, Cloud Infrastructure & Operations of Microsoft Corporation, and that said instrument was signed on behalf of said corporation; and that the said Suresh Kumar, Corporate VP, as such officer acknowledged the execution of said instrument to be the voluntary act and deed of said corporation, by him voluntarily executed.

KEVIN D. WILLIAMS NOTARY PUBLIC STATE OF WASHINGTON COMMISSION EXPIRES 9-11-16

_____
Notary Public in and for the State of Washington

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

On this 26th day of MARCH, 2015, before me the undersigned, a Notary Public in and for said State, personally appeared Scott Guthrie, who being duly sworn, did say that he is the EVP, Cloud and Enterprise of Microsoft Corporation, executing the within and foregoing instrument; that said instrument was signed on behalf of said corporation by authority of its Board of Directors; and that the said Scott Guthrie, EVP, as such officer acknowledged the execution of said instrument by it and by him voluntarily executed.

KEVIN D. WILLIAMS NOTARY PUBLIC STATE OF WASHINGTON COMMISSION EXPIRES 9-11-16

_____
Notary Public in and for the State of Washington

EXHIBIT E

DEVELOPER ANNUAL CERTIFICATION

(due annually before October 15th, beginning October 15, 2014 or date of this Memorandum, as required under terms of 2015 Memorandum)

The Developer certifies the following (as of October 1):

During the time period covered by this Certification, the Developer is and was in compliance with the 2015 Memorandum as follows:

(i) all ad valorem taxes on the Development Property then owned by the Developer in the Urban Renewal Area have been paid for the prior fiscal year (and for the current year, if due) and attached to this Annual Certification are proof of payment of said taxes;

(ii) The DM-1, DM-2 and DM-3 Minimum Improvements (building and land) were assessed on January 1, 20 14 (most recent January 1st), at an assessment value of $ 35,804,200

(iii) The number of Full-Time Equivalent Jobs employed at the Minimum Improvements as of October 1, 20 14 and as of the first day of each of the preceding eleven (11) months were are follows:

October 1, 2014 104	April 1, 20__:
September 1, 20__:	March 1, 2015 104
August 1, 20__:	February 1, 2015: 104
July 1, 20__:	January 1, 2015 104
June 1, 20__:	December 1, 2014 104
May 1, 20__:	November 1, 2014 104

The "Monthly Average" means the total of the Full-Time Equivalent Jobs as of the 1st of each of the ~~12~~ 6 months divided by ~~12~~ 6. The Monthly Average as of the date of this Certificate is 104 (NOTE: "Monthly Average" can be provided by an alternative calculation if allowed in writing by the City); and

(iv) the undersigned employee of Developer has re-examined the terms and provisions of this Memorandum and that at the date of such certificate, and during the preceding twelve (12) months (but only to the extent the Memorandum was in effect during the last 12 months), certifies that the Developer is not, or was not, in default in the fulfillment of any of the terms and conditions of this Memorandum and that no Event of Default is occurring or has occurred as of the date of such certificate or during such period, or if the signer is aware of any such default, event or Event of Default, said employee shall disclose in such statement the nature thereof, its period of existence and what action, if any, has been taken or is proposed to be taken with respect thereto.

(v) Microsoft's current credit rating is at least "AA-" ("High Grade") as determined by Standard & Poors Financial Services, LLC. (or the equivalent rating schedule if an alternative rating agency is utilized in the future). Yes X No ____

Signed this 30th day of MARCH, 2015

MICROSOFT CORPORATION

By: C Rel

CHRISTIAN RELADT

GEN. MGR.

STATE OF WASHINGTON)
) SS
COUNTY OF KING)

On this 30th day of MARCH, 2015, before me the undersigned, a Notary Public in and for said State, personally appeared CHRISTIAN RELADT, to me personally known, who, being by me duly sworn, did say that he/she is the GEN MGR, of Microsoft Corporation, and that said instrument was signed on behalf of said corporation; and that the said CHRISTIAN RELADT, as an authorized employee, acknowledged the execution of said instrument to be the voluntary act and deed of said corporation, by him/her voluntarily executed.

Notary Public in and for the State of Washington

00963096-1\11333-247

KEVIN D. WILLIAMS
NOTARY PUBLIC
STATE OF WASHINGTON
COMMISSION EXPIRES
SEPTEMBER 11, 2016

Attachments: (a) Proof of payment of taxes

KEVIN D. WILLIAMS NOTARY PUBLIC STATE OF WASHINGTON COMMISSION EXPIRES 9-11-16

Notarization Version 3/19/15

EXHIBIT II

April 6, 2015

The City Council of the City of West Des Moines in the State of Iowa, met in _____ session, in the Council Chambers, City Hall, 4200 Mills Civic Parkway, West Des Moines, Iowa, at 5:35 o'clock P.M., on the above date. There were present Mayor _____, in the chair, and the following named Council Members:

_____

_____

Absent: _____

* * * * * * *

The Mayor announced that this was the time and place for the public hearing and meeting on the matter of the proposal to approve and authorize execution of a 2015 Memorandum of Understanding by and between the City of West Des Moines and Microsoft Corporation, and that notice of the proposed action by the Council to enter into said 2015 Memorandum had been published pursuant to the provisions of Section 364.6 of the City Code of Iowa.

The Mayor then asked the Clerk whether any written objections had been filed by any City resident or property owner to the proposed action. The Clerk advised the Mayor and the Council that _____ written objections had been filed. The Mayor then called for oral objections and _____ were made. Whereupon, the Mayor declared the time for receiving oral and written objections to be closed.

(Attach here a summary of objections received or made, if any)

The Council then considered the proposed action and the extent of objections thereto.

Whereupon, Council Member _____ introduced and delivered to the Clerk the Resolution hereinafter set out entitled "RESOLUTION APPROVING AND AUTHORIZING EXECUTION OF A 2015 MEMORANDUM OF UNDERSTANDING BY AND BETWEEN THE CITY OF WEST DES MOINES AND MICROSOFT CORPORATION", and moved:

☐ that the Resolution be adopted.

☐ to ADJOURN and defer action on the Resolution and the proposal to the meeting to be held at _____ o'clock __.M. on the _____ day of _____, 2015, at this place.

Council Member _____ seconded the motion. The roll was called and the vote was,

AYES: _____

_____

NAYS: _____

Whereupon, the Mayor declared the measure duly adopted.

RESOLUTION NO. _____

RESOLUTION APPROVING AND AUTHORIZING EXECUTION OF A 2015 MEMORANDUM OF UNDERSTANDING BY AND BETWEEN THE CITY OF WEST DES MOINES AND MICROSOFT CORPORATION

WHEREAS, by Resolution No. 99-06-14-05, adopted July 26, 1999, this Council found and determined that certain areas located within the City are eligible and should be designated as an urban renewal area under Iowa law, and approved and adopted the Mills Parkway Urban Renewal Plan (the "Plan") for the Mills Parkway Urban Renewal Area (the "Mills Parkway Urban Renewal Area" or "Area"") described therein, which Plan, as amended, is on file in the offices of the Recorder of Polk and Dallas County; and

WHEREAS, it is desirable that properties within the Area be redeveloped as part of the overall redevelopment area covered by said Plan; and

WHEREAS, the City has received a proposal from Microsoft Corporation (the "Developer"), in the form of a proposed 2015 Memorandum of Understanding (the "2015 Memorandum"), which 2015 Memorandum terminates and replaces previous Memorandums of Understanding between the City and Developer related to Developer's construction of facilities near South 88th Street and Grand Avenue in the City; such agreements originated in 2008 and relate to various buildings; and

WHEREAS, Developer has constructed or agrees to construct certain Minimum Improvements (as defined in the 2015 Memorandum) on certain real property located within the Mills Parkway Urban Renewal Area as defined and legally described in the 2015 Memorandum and consisting of the construction of a data center, service spine, service connector, and administration building of approximately 71,000 square feet ("DM-1 Minimum Improvements"), a data center of approximately 110,000 square feet ("DM-2 Minimum Improvements") and a data center of approximately 114,000 square feet ("DM-3 Minimum Improvements"), together with all related site improvements, as outlined in the proposed 2015 Memorandum; and

WHEREAS, the 2015 Memorandum would further obligate the City to provide a local match of $8,500,000 (estimate) under certain Iowa Economic Development Authority Contract(s) and the City shall issue bonds in an amount necessary to generate net proceeds equal to the local match, which shall be used to construct DM-3 Public Use Improvements (roads, drainage improvements); and

WHEREAS, the 2015 Memorandum also proposes that Developer will enter into a Minimum Assessment Agreement with the City and the County setting the minimum actual value of the Minimum Improvements for tax purposes at not less than $47,500,000 on January 1, 2015 and subsequent valuations as shown in the 2015 Memorandum; and

WHEREAS, one of the obligations of Developer relates to employment retention and/or creation; and

WHEREAS, Iowa Code Chapters 15A and 403 authorize cities to make loans and grants for economic development in furtherance of the objectives of an urban renewal project and to appropriate such funds and make such expenditures as may be necessary to carry out the purposes of said Chapters, and to levy taxes and assessments for such purposes; and

WHEREAS, the Council has determined that the 2015 Memorandum is in the best interests of the City and the residents thereof and that the performance by the City of its obligations thereunder is a public undertaking and purpose and in furtherance of the Plan and the Urban Renewal Law and, further, that the 2015 Memorandum and the City's performance thereunder is in furtherance of appropriate economic development activities and objectives of the City within the meaning of Chapters 15A and 403 of the Iowa Code taking into account any or all of the factors set forth in Chapter 15A, to wit:

a. Businesses that add diversity to or generate new opportunities for the Iowa economy should be favored over those that do not.

b. Development policies in the dispensing of the funds should attract, retain, or expand businesses that produce exports or import substitutes or which generate tourism-related activities.

c. Development policies in the dispensing or use of the funds should be targeted toward businesses that generate public gains and benefits, which gains and benefits are warranted in comparison to the amount of the funds dispensed.

d. Development policies in dispensing the funds should not be used to attract a business presently located within the state to relocate to another portion of the state unless the business is considering in good faith to relocate outside the state or unless the relocation is related to an expansion which will generate significant new job creation. Jobs created as a result of other jobs in similar Iowa businesses being displaced shall not be considered direct jobs for the purpose of dispensing funds; and

WHEREAS, pursuant to notice published as required by law, this Council has held a public meeting and hearing upon the proposal to approve and authorize execution of the 2015 Memorandum and has considered the extent of objections received from residents or property owners as to said proposed 2015 Memorandum; and, accordingly the following action is now considered to be in the best interests of the City and residents thereof.

NOW THEREFORE, BE IT RESOLVED, BY THE CITY COUNCIL OF THE CITY OF WEST DES MOINES IN THE STATE OF IOWA:

Section 1. That the performance by the City of its obligations under the 2015 Memorandum, including but not limited to making of loans and grants to the Developer in connection with the development of the Development Property under the terms set forth in the 2015 Memorandum, be and is hereby declared to be a public undertaking and purpose and in

furtherance of the Plan and the Urban Renewal Law and, further, that the 2015 Memorandum and the City's performance thereunder is in furtherance of appropriate economic development activities and objectives of the City within the meaning of Chapters 15A and 403 of the Iowa Code, taking into account the factors set forth therein.

Section 2. That the form and content of the 2015 Memorandum, the provisions of which are incorporated herein by reference, be and the same hereby are in all respects authorized, approved and confirmed, and the Mayor and the City Clerk be and they hereby are authorized, empowered and directed to execute, attest, seal and deliver the 2015 Memorandum for and on behalf of the City in substantially the form and content now before this meeting, but with such changes, modifications, additions or deletions therein as shall be approved by such officers, and that from and after the execution and delivery of the 2015 Memorandum, the Mayor and the City Clerk are hereby authorized, empowered and directed to do all such acts and things and to execute all such documents as may be necessary to carry out and comply with the provisions of the 2015 Memorandum as executed.

PASSED AND APPROVED this 6th day of April, 2015.

_____
Mayor

ATTEST:

_____
City Clerk