CITY OF WEST DES MOINES
CITY COUNCIL MEETING COMMUNICATION

DATE: **December 27, 2017**

ITEM: Resolution - Approval of Agreement with Microsoft Corporation to lease City property for staging purposes for the Microsoft DMO4 Project at 8855 Grand Avenue

FINANCIAL IMPACT: None

BACKGROUND: The City owns property located at the southwest corner of South 88th Street and Grand Avenue. Microsoft Corporation and the City have reached an Agreement to lease the property for staging purposes for the Microsoft DM04 Project at 8855 Grand Avenue.

OUTSTANDING ISSUES (if any): None

RECOMMENDATION:

Approve the Agreement with Microsoft Corporation.

Lead Staff Member: Richard J. Scieszinski, City Attorney

STAFF REVIEWS

Department Director	Richard J. Scieszinski, City Attorney
Appropriations/Finance	
Legal	
Agenda Acceptance	

PUBLICATION(S) (if applicable)

Published In	
Dates(s) Published	

SUBCOMMITTEE REVIEW (if applicable)

Committee			
Date Reviewed			
Recommendation	Yes	No	Split

RESOLUTION NO._____

APPROVAL OF AGREEMENT BETWEEN THE CITY OF WEST DES MOINES AND MICROSOFT CORPORATION FOR THE LEASE OF CITY PROPERTY

WHEREAS, on April 6, 2015, the City Council of the City of West Des Moines approved a Development Agreement between the City and Microsoft Corporation for the financing and construction of Project Microsoft DM04 located at 8855 Grand Avenue; and

WHEREAS, in conjunction with the development and construction of the Project, the parties have negotiated a separate agreement for the lease of City property at the southwest corner of South 88th Street and Grand Avenue for staging purposes for Microsoft Corporation's development at 8855 Grand Avenue.

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

1. The Agreement between Microsoft Corporation and the City of West Des Moines for the lease of property is approved.

2. The Mayor is authorized to sign the Agreement and the City Clerk is authorized to attest to the Mayor's signature.

3. City staff is directed to take all steps necessary to facilitate completion of the Agreement.

PASSED AND ADOPTED this 27th day of December, 2017.

_____
Steven K. Gaer, Mayor

ATTEST:

_____
Ryan T. Jacobson
City Clerk

AGREEMENT BETWEEN THE CITY OF WEST DES MOINES, IOWA AND MICROSOFT CORPORATION. FOR THE USE OF CITY PROPERTY LOCATED NEAR SOUTH 88TH STREET AND GRAND AVENUE, WEST DES MOINES, IOWA

This Agreement is entered into by and between the City of West Des Moines, an Iowa municipal corporation (hereinafter "City") and Microsoft Corporation., a Washington corporation (hereinafter "Microsoft").

The parties hereby state that the City owns property that Microsoft has identified as being favorable for temporarily siting a staging area for the development of its project at 8855 Grand Avenue in the City.

The parties have agreed that temporarily locating the staging area on the City owned property would be an efficient and effective use of the City property and would be in the best interests of Microsoft and the City.

The City of West Des Moines and Microsoft (hereinafter referred to collectively as "the Parties") do hereby agree as follows:

1. THE PROPERTY. The City is the owner of property located at the southwest corner of South 88th Street and Grand Avenue in West Des Moines, shown as the gray shaded area on the attached Exhibit "A." Located in that gray shaded area is a gravel parking area (Property) outlined in red on Exhibit A. The parties agree that Microsoft shall pay the City $1 (one dollar) and other good and valuable consideration., for the lease of the Property for the period set forth in Paragraph 2, the total payment of which shall be made by Microsoft to the City on or before Microsoft takes possession of the Property as set forth in Paragraph 2.

   In consideration of the payment made by Microsoft to the City, the City agrees to provide the Property to Microsoft to allow Microsoft to do any and all things reasonably related to staging operations for construction of the Phase 4 addition to the Microsoft property located at 8855 Grand Avenue in the City of West Des Moines, Iowa. No other uses of the Property by Microsoft shall be permitted unless approved by the City.

2. DURATION. Microsoft shall be entitled to take possession of the Property on or after November 1, 2017 and use and possess the Property for the reasons set forth in this Agreement until November 1, 2019. This Agreement may be renewed upon 30 days notice and mutual agreement of Microsoft and the City.

3. UTILITIES. Microsoft shall be responsible for and pay all utilities and other expenses related to use of the Property for the purposes set forth in this Agreement.

4. MAINTENANCE. Microsoft shall keep the Property in a good and clean condition at all times. Upon relinquishment of possession of the Property, Microsoft shall remove all equipment from the Property and restore the Property to the condition in which the Property was in at the time Microsoft took possession.

5. SIGNAGE. Signage of the Property shall be limited to Microsoft identification signage in conformance with the West Des Moines Code of Ordinances.

6. TAXES. No real property taxes shall be assessed against or payable by Microsoft for the Property.

7. INSURANCE.

Property Insurance. Microsoft shall be solely responsible for providing insurance on any and all personal property and improvements Microsoft constructs and/or installs on the Property. The City shall have no liability whatsoever or be responsible for the personal property of Microsoft.

Liability Insurance. Microsoft shall maintain at all times during the term of this Agreement general liability insurance in the amount of one million dollars for each occurrence and in the amount of three million dollars aggregate for the Property. The liability policy shall include liability arising from premises operations, independent contractors and personal injury. The policy shall be endorsed to include the City as an additional insured. At Microsoft's option, Microsoft may undertake to maintain deductibles under its Commercial General Liability insurance policy and may meet the above insurance requirements via commercial insurance, self insurance, alternative risk financing solutions or a combination of these options. Any undertaking by Microsoft to assume deductibles or self-insure with respect to some or all of its Commercial General Liability insurance shall not serve to adversely affect the City, and the City shall be protected against loss or damage in the same manner as if Microsoft had obtained separate Commercial General Liability insurance as provided herein.

8. INDEMNIFICATION. Microsoft shall protect, defend and indemnify the City from and against all loss, costs, damage and expenses arising from or due to any accident or other occurrence, causing or inflicting injury or damage to any person or property, happening or done in, upon or about the Property, or due directly to the tenancy, use or occupancy of the Property, or any part thereof by Microsoft or any person or entity claiming through or under Microsoft.

9. ENVIRONMENTAL. Microsoft expressly represents and agrees:

During the term of this Agreement, use of the Property by Microsoft will not include the use or storage of any hazardous substance. However, if a hazardous substance is used or stored, Microsoft shall obtain the written consent of the City prior to its use. Microsoft acknowledges and agrees that the City's consent is at the City's sole option and discretion and that such consent may be withheld or may be granted with any conditions or requirements that the City deems appropriate.

During the term of this Agreement, Microsoft shall be fully liable for all costs and expenses related to the use, storage, removal and disposal of hazardous substances used or kept on the Property, and Microsoft shall give immediate notice to the City of any violation or any potential violation of any environmental regulation, rule, statute or ordinance relating to the use, storage or disposal of any hazardous substance.

Microsoft, at its sole cost and expense, agrees to remediate, correct or remove from the Property any contamination of the Property caused by any hazardous substances which have been used or permitted by Microsoft, its subcontractors, agents or assigns during the term of this Agreement. Remediation, correction or removal shall be done in a safe and reasonable manner, and in conformance with all applicable laws, rules and regulations. Microsoft reserves all rights allowed by law to seek indemnity or contribution from any person or entity other than the City, who is or may be liable for any such cost and expense.

Microsoft agrees to indemnify and hold the City harmless from and against all claims, causes of action, damages, loss, costs, expense, penalties, fines, lawsuits, liabilities, attorney fees and engineering and consulting fees arising out of or in any manner connected with hazardous substances which are caused or created by Microsoft on or after the date of this Agreement, including but not limited to injury or death to persons or damage to property, and including any diminution in the value of the Property which may result from the foregoing. This indemnity shall survive the cessation, termination, abandonment or expiration of this Agreement.

Microsoft agrees to follow all City and state fire codes and make the Property open to all reasonable requests from the City for inspection to verify compliance.

10. NOTICES. All notices or invoices which the Parties are authorized or required to give one another pursuant to this Agreement shall be in writing and may be personally delivered or sent by ordinary mail to the addresses hereafter provided. Mailed notices or invoices shall be deemed to be received by the Party to whom directed when they are postmarked. Such notices and invoices shall be delivered or mailed to the following persons at the addresses listed:

Notices to MICROSOFT:
Microsoft Corporation
c/o Chris Sander
One Microsoft Way
Redmond, WA 98052
Email: mcioCELA@microsoft.com

Notices to West Des Moines:
Brian Hemesath, Interim City Engineer
City of West Des Moines
4200 Mills Civic Parkway
West Des Moines, IA 50265
brian.hemesath@wdm-iowa.gov

11. AMENDMENT OF AGREEMENT. This Agreement may be amended only by written agreement signed by both Parties.

12. ASSIGNMENT OF AGREEMENT. Neither Party may assign this Agreement to a third party without the written consent of the other Party.

13. NO THIRD PARTY BENEFICIARIES. Nothing in this Agreement shall be construed to create in any third party, or in favor of any third party, any right(s), license(s), power(s) or privilege(s).

14. SEVERABILITY. If any section, provision or part of this Agreement shall be found to be invalid or unconstitutional, such finding shall not affect the validity of the Agreement as a whole or any section, provision or part thereof not found to be invalid or unconstitutional.

15. GOVERNING LAW; JURISDICTION. This Agreement 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 Agreement shall be heard and tried in Polk County District Court, Des Moines, Iowa.

16. ENTIRE AGREEMENT. This Agreement represents the entire agreement between the Parties. Any subsequent change or modification to the terms of this Agreement shall be in the form of a duly executed addendum to this Agreement.

17. EXECUTION OF AGREEMENT. This Agreement shall be executed in two counterparts, each of which so executed shall be deemed to be an original.

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 _____ day of _____, 2017, before a Notary Public in and for the City of West Des Moines, 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

Christian Belady, General Manager
Microsoft Corporation

STATE OF WASHINGTON)
) SS
COUNTY OF KING)

On this 4th day of DECEMBER, 2017, before me, the undersigned, a Notary Public in and for the State of Washington personally appeared Christian Belady, who, being by me duly sworn, did say that he is the General Manager of CIDA at Microsoft Corporation, a Washington corporation, and that he executed this instrument on behalf of Microsoft Corporation.

KEVIN D WILLIAMS
Commission Expires
NOTARY PUBLIC
09-11-2020
STATE OF WASHINGTON

Notary Public in and for the ~~State of Iowa~~ WASHINGTON

KEVIN D WILLIAMS
Notary Public
State of Washington
My Commission Expires
September 11, 2020