

**FIRST AMENDED AND RESTATED MEMORANDUM OF UNDERSTANDING
REGARDING STAFFING FOR MICROSOFT DEVELOPMENT REVIEW**

THIS FIRST AMENDED AND RESTATED MEMORANDUM OF UNDERSTANDING (the “Agreement”) is entered into this _____ day of _____, 2020 by and between MICROSOFT CORPORATION, a Washington corporation (“Microsoft”), and the CITY OF REDMOND, a Washington municipal corporation (the “City”).

RECITALS

A. WHEREAS, Microsoft is engaged in a significant expansion of its world headquarters in the City;

B. WHEREAS, the City has allowed for the increased development resulting from the Microsoft Refresh project pursuant to its approval of a Development Agreement dated June 25, 2005 (the “Development Agreement”) providing for such expansion;

C. WHEREAS, the City has approved the future expansion of the Microsoft Redwest campus pursuant to its approval of a Development Agreement dated March 6, 2008 providing for such expansion;

D. WHEREAS, the City approved the Memorandum of Understanding for Microsoft Development Review Staffing on July 17, 2018 for the Microsoft Refresh project;

E. WHEREAS, work on this project will need to extend beyond the date that was originally anticipated;

F. WHEREAS, Microsoft wishes to expand the scope of this agreement to include tenant improvement for an office building located at Block 3 of Esterra Park and an expansion to the Redwest Campus;

G. WHEREAS, the review of Microsoft’s permit applications and the inspection of Microsoft’s construction work cannot be accomplished within the time desired by Microsoft unless additional staff persons are hired by the Departments of Planning and Community Development, Public Works, and Fire;

H. WHEREAS, the City is willing to retain the additional personnel hired by the Departments of Planning and Community Development, Public Works, Fire, and other supporting departments as part of the 2018 Memorandum of Understanding between the City and Microsoft to provide dedicated staffing for the Microsoft campus expansion project if Microsoft is willing to contribute to the cost of retaining this additional personnel;

I. WHEREAS, Microsoft is willing to contribute to the cost of retaining additional City personnel to review its permit applications and inspect its construction work;

NOW, THEREFORE, Microsoft and the City agree as follows:

AGREEMENTS

1. City to Retain Additional Staffing. The City shall retain the existing twenty-two (22) additional staff positions in the Departments of Planning and Community Development, Public Works, and Fire whose only job shall be to review and process Microsoft's development permit applications and inspect Microsoft's construction activity as set forth on Exhibit A attached hereto and incorporated herein by this reference; provided, however, the persons assigned for Fire positions will have the review, processing and inspection of Microsoft's development permit applications/projects as their primary, not only, job. Microsoft or the City may mutually agree to include additional permit review and inspection duties for other Microsoft projects related to the activity identified in Exhibit A attached hereto and incorporated by this reference. The costs for each additional staff position are also set forth on Exhibit A. In total, the number of staff positions shall not exceed twenty-two (22) FTE unless authorized pursuant to Section 3 of this Agreement. The review of Microsoft's permit applications and the inspection of its construction work shall be accomplished in accordance with the timelines set forth on Exhibit B attached hereto and incorporated herein by this reference. The schedule for completion of application review and project inspection is set forth on Exhibit C attached hereto and incorporated herein by this reference. The schedule on Exhibit C may be extended if Microsoft does not submit complete plans and applications, does not timely request inspections, or revises its development plans. Microsoft may provide direction to the City on how the City should prioritize its review of Microsoft's development permit applications and the scheduling of Microsoft's inspections provided that reprioritization is requested to the City in writing. For example, Microsoft may direct the City to alter the order, from what which is shown on Exhibit C, in which the buildings permits are reviewed.

2. Payment for Additional Staffing and Waiver of Fees. Microsoft shall pay the City for the additional staffing in accordance with the schedule set forth on Exhibit D, attached hereto and incorporated herein by this reference. The payments set forth on Exhibit D cover a base level of support. If Microsoft requests, and the City agrees, City personnel may work overtime due to off-hour inspections, plan review or other reasons as agreed to by the parties. If so, the City shall invoice Microsoft or its designee against the purchase order number issued for this Agreement for such overtime costs, and Microsoft or its designee shall pay the City for those overtime charges in addition to the payments required by Exhibit D. If Microsoft requests, and the City agrees, City personnel may work on this project beyond the estimated schedule completion date of June 30, 2024 but no longer than the termination date of this MOU agreement. For all work performed after June 30, 2024, the City shall invoice Microsoft or its designee for such work. All fees listed as being waived on Exhibit E, attached hereto and incorporated herein by this reference, shall be waived by the City for those projects listed on Exhibit C. However, no utility connection, capital facilities, or impact fees are waived, and no fees collected for the State Building Code Council at permit issuance are waived. No other payment shall be required by Microsoft unless the staffing is adjusted pursuant to Section 3 below.

3. Adjustment to Staffing Levels. The personnel listed on Exhibit A will be retained so long as those positions are needed in the plan review and inspection processes. Similarly, personnel listed on Exhibit A will be terminated from coverage by this Agreement when the review or inspection work performed by that person is no longer required. In addition, Microsoft may request, and if the City concurs, the City shall increase or decrease staffing pursuant to a plan agreed to by Microsoft and the City to provide more or fewer personnel to review and process Microsoft's permit applications and inspect Microsoft's construction work. Microsoft and the City shall negotiate an adjustment to Exhibit D if any additional personnel are hired pursuant to this Section 3. If staffing is decreased, Microsoft's obligation to compensate the City pursuant to Exhibit D shall be reduced by an amount proportionate to the time the specific reduced staff position is not required relative to the term of this Agreement. Any staffing decrease requested by Microsoft, beyond that contemplated by Exhibit D, shall not become effective until ninety (90) days have elapsed from the date that both parties agree to the decrease.

4. Facilities for Additional Staff. At Microsoft's option, the Building Inspection staff positions created through the 2018 MOU and this Agreement may work in facilities located at Microsoft's world headquarters or City Hall. It is contemplated that the facilities shall consist of a trailer(s) or other temporary structure (the "Facilities") typically used at construction sites. Microsoft shall pay the cost of acquiring and installing the Facilities. The City shall have the right to review and approve the plans and specifications of the Facilities prior to Microsoft acquiring and installing the Facilities. The operational costs of the Facilities shall be shared by Microsoft and the City, with Microsoft paying for: utilities, and the City paying for: all other costs of furnishing, equipping, and operating the Facilities.

5. Site Plan Entitlement Process. The City will process a separate modified land use entitlement for each of the buildings or groups of buildings as designated by Microsoft in the expedited manner set forth in that certain Application Requirements for Microsoft Land Use Entitlements - Modified, as signed by the Development Review Manager, Development Engineering Manager, and Fire Marshal

6. Building Permits. All building permits shall be compliant with all currently adopted codes and standards upon accepted applications of permits including but not limited to the International Codes, Uniform Plumbing Code, Washington Energy Code and National Electrical Code. Upon submittal of a complete application, the application shall vest to the applicable technical codes per the vesting provisions in the Redmond code.

7. Building Permit Process. The City shall review and process all building permits in an expedited manner in accordance with the performance timelines as outlined in Exhibit B of this document. Permits submitted or resubmitted to the City after 12 pm on any given day shall be considered to be submitted on the following business day. City staff shall review the submittal or resubmitted plans and determine if the plans are complete within three (3) business days. Once a Building Permit is deemed to be complete, it shall be subject to the plan review performance timelines. Microsoft, with concurrence from the City, may request in writing a reprioritization of the order of building permit reviews (Exhibit C); however, the performance timelines for plan review shall be maintained.

8. Building Permit Prioritization. At any time (A) building permits in active review exceed six (6); or (B) any permit that has been under review and is reprioritized to stop the review, then Microsoft shall give written notice to the City, identifying which permit will move forward for review and which permit(s) will be placed on hold, and shall waive the performance timelines for those permits on hold. Permits may be removed from the hold status through written notice from Microsoft when review capacity becomes available. Permits placed on hold shall be prioritized and staff shall take the next highest priority permit for review at anytime they have less than two (2) active permits under their review.

9. Schedule. Microsoft shall provide the City with a current permit and construction schedule on a monthly basis. The permit and construction schedule will consist of permit submittal dates, construction start dates, construction complete dates, and final inspection dates.

10. Failure to Perform. If the City does not perform the permit review and inspection services in accordance with the timelines set forth on Exhibit B and the failure to perform is solely attributable to the City's actions, the amount owed by Microsoft to the City pursuant to Section 2 above may be reduced by Five Hundred Dollars (\$500.00) for each day that a reviewing or inspection timeline is not met. In no event, however, shall the City be liable for more than one (1) Five Hundred Dollar (\$500.00) penalty per day. For purposes of determining whether the City has failed to perform the permit review and inspection services in accordance with the timelines as set forth on Exhibit B, the time spent by Microsoft and/or its consultants revising plans and/or changing the designs, or providing additional information requested by the City shall not count for purposes of determining compliance by the City. In addition, if the City determines that plans submitted by Microsoft and/or its consultants are incomplete or if Microsoft and/or its consultants fail to request inspections in a timely or appropriate manner, the timeline for that particular review or inspection shall be deemed not to have started until Microsoft and/or its consultants submits a more complete set of plans or, in the case of an inspection, it is requested in an appropriate manner. Finally, for purposes of assessing whether the City has failed to perform in accordance with Exhibit B, if one of the additional personnel listed on Exhibit A should become disabled (absent from work for ten (10) or more consecutive working days) or quits their employment with the City, the City shall not be deemed to have failed to perform any of the tasks to be completed by the department to which that particular staff member was assigned. The City shall use its best efforts to replace any of the additional personnel listed on Exhibit A as soon as possible after any such person quits or becomes disabled as defined in this Section 10.

11. Bonding. Microsoft's development and construction work contemplated by this Agreement will require the posting of numerous bonds. In recognition of the facts that Microsoft has done substantial development work in the City and has never had to utilize a bond posted by Microsoft, Microsoft shall be permitted to post a single master bond or other financial assurance, agreeable to the City of Redmond, that will cover all required bonds for the development and construction activities contemplated by this Agreement, including but not limited to landscaping (performance and maintenance), utilities, tree retention, and construction. Microsoft and the City shall agree upon the amount, timing and release of the master bond or other financial assurance.

12. Monthly Review. An oversight committee that shall consist of the City's Planning Director, Public Works Director, and Fire Marshal and Microsoft's Director of Real Estate and

Facilities, or their designees (the “Oversight Committee”), shall meet during the last week of each month during the term of this Agreement to report on the status of the implementation of this Agreement and make any operational adjustments deemed necessary. Additional meetings shall occur as necessary.

13. Third Party Review. This Agreement shall not preclude or have any effect upon agreements between the parties to have third parties review applications or plans submitted by Microsoft to the City for its development projects. If mutually agreed upon by the City and Microsoft, the costs of any third party plan reviews (i.e., smoke control systems, temporary shoring) are the responsibility of Microsoft or its designee based on the current market rate.

14. Compliance with City Codes. The City, by entering into this Agreement, is not waiving its authority to fully enforce its applicable plans, policies, codes, and procedures subject to the provisions of the applicable Development Agreement between the City and Microsoft.

15. Term of Agreement. This Agreement shall terminate and be of no further force and effect on June 30, 2025. If, however, the necessary application review and/or the required inspections have not been completed, the term of this Agreement shall be extended although the staffing and required payments by Microsoft may be adjusted to reflect reduced demand for additional staffing. This Agreement may be extended, in part or its entirety, by mutual agreement by a written amendment to the Agreement signed by both parties.

16. Early Termination. Microsoft or the City may terminate this Agreement prior to its expiration. However, no termination prior to this Agreement’s expiration shall be effective until ninety (90) days after Microsoft or the City has provided written notice of the early termination to the City’s Planning Director or Microsoft’s Director of Real Estate and Facilities, respectively. Upon any such early termination, Microsoft shall pay to the City the costs set forth on Exhibit D that accrue during the ninety (90) day period.

17. Attorneys’ Fees. In the event that either party to this Agreement shall commence litigation against the other in order to obtain performance of any term or to address any breach of the Agreement, the substantially prevailing party in any such litigation shall be entitled to recover its cost and reasonable attorneys’ fees at trial, on appeal, and in any alternative dispute resolution proceeding.

18. Assignment. Neither party to this Agreement shall assign its rights or obligations hereunder to any third party.

19. Severability. In the event that any provision of this Agreement is determined to be unenforceable or inconsistent with the laws of the State of Washington, the remaining provisions of this Agreement shall continue to be effective and deemed to be in full force and effect.

20. Entire Agreement. This Agreement constitutes the entire understanding and agreement between the parties regarding the provision of additional City personnel to review Microsoft development permit applications and inspect Microsoft construction work and supersedes any and all prior agreements, oral or otherwise, relating to such subject.

21. Amendment. This Agreement may be amended only by written agreement signed by both parties.

22. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first set forth above.

MICROSOFT CORPORATION,
a Washington corporation

CITY OF REDMOND, a Washington
municipal corporation

By: _____

By: _____

Its: _____

Its: _____

ATTEST/AUTHENTICATED:

APPROVED AS TO FORM:

Office of the City Attorney

Michelle M. Hart, City Clerk

James E. Haney, City Attorney

EXHIBIT A

Payment for Additional Staffing
Additional City of Redmond Personnel Anticipated Under this Agreement

Description		
Position	TOTAL	
	2018 MOU	2020 MOU
Fire		
Assistant Fire Marshal	924,644	448,304
Deputy Fire Marshal	877,918	422,869
Deputy Fire Marshal	843,975	422,869
Deputy Fire Marshal	845,694	413,692
Planning		
Transportation Strategic Advisor (Project Manager)	910,783	441,776
Administrative Assistant	485,643	210,657
Plans Examiner	422,769	324,325
Plans Examiner	352,961	142,170
Permit Technician	330,756	201,085
Planner - Senior	617,076	204,151
Planner - Senior	408,472	400,859
Engineer - Senior (Structural)	514,307	175,189
Engineer - Senior (Structural)	429,063	382,437
Engineer - Senior (Stormwater)	521,963	312,703
Engineer - Senior (Transportation)	726,910	148,332
Engineer - Senior (Water/ Wastewater)	726,910	146,179
Engineering Technician - Senior	641,244	316,279
Construction Inspector	678,920	329,773
Building Inspector - Senior	737,112	360,551
Building Inspector - Senior (Electrical)	735,968	349,808
Building Inspector - Senior (Mechanical/Plumbing)	735,968	361,910
Public Works		
Engineer - Senior (Utilities)	720,971	341,223
Subtotal		
	14,190,025	6,857,142
Other Expenditures		
Overhead	2,984,129	1,647,632
Office Equipment	8,200	
Subtotal		
	2,992,329	1,647,632
Total		
	17,182,354	8,504,774

EXHIBIT B

Performance Timelines for Application Review and Project Inspection

Permit/Inspection Type	Maximum City Review Period (business days)
Demolition Permits	3 days
Site Plan Entitlement	107 days
Master Sign Permit Program	7 days
Civil Coordinated Review/Site Construction Permit*	63 days (w/ Mylar) or 56 days (w/ electronic approval)
Building Permit Commercial Garage	84 days
Building Permit Commercial New*	56 days
Building Permit Tenant Improvement	21 days (new systems) or 14 days (modifications to existing)
Building Permit Exterior Alteration	21 days
Building Permit Trade (E/M/P)	21 days (new systems) or 14 days (modifications to existing)
Fire Permit Trade (A/S/I)*	21 days (new systems) or 14 days (modifications to existing)
Rough Grade Permit (after 1st CCR)	21 days
Inspection	1 day
Miscellaneous Permits	21 days
Revisions	10 days

City review time period begins to run when Microsoft (or another developer representative with Microsoft's written approval) has submitted, and the City of Redmond (COR) has accepted a complete application and submittal package that meets relevant submittal criteria for each permit type identified. Only time spent by the COR is included in the maximum City review period. Time spent by the applicant or consultants in responding to City comments is not included in the maximum City review period. The goal for submittals in response to City comments is two weeks.

Timelines are based on staff levels at time of contract ratification, if staff levels change based on mutual agreement (Per Section 3) timeframes may need to be re-negotiated.

Business days are defined as Monday through Friday, excluding official recognized City holidays, natural disasters such as earthquake or severe weather events where City Hall is closed for a short duration of time and the City cannot perform plan review and/or inspection services. In the case of a longer event, such as a pandemic, and City Hall is closed for a period longer than three (3) days, the City and Microsoft shall negotiate a method to allow the continued review of the project.

Miscellaneous Permits include permits such as retaining walls, wireless antenna, storage racks, vaults, mechanical screens, generator pads, ROW permits.

Revisions to approved plans shall first be submitted to the City Inspector. If the revision requires additional plan review, a signed Revision Application from the inspector will be given to the applicant for resubmittal.

* Third party plan review will be based on actual time of consultants.

Inspection requests shall be filled the next day until such time that the quantity of inspection requests exceeds the amount of staff allocated to the project. When the capacity of inspection staff assigned to the project is exceeded the City will request Microsoft to prioritize their inspection requests

EXHIBIT C

Anticipated Project Schedule

Whatcom Village				
	Building N Shell and Core	Approved	6/15/2020	5/9/2022
	Building N TI	10/19/2020	1/5/2021	5/9/2022
	Building O Shell and Core	Approved	6/26/2020	4/12/2022
	Building O TI	11/23/2020	2/11/2021	4/12/2022
	Building P Shell and Core	Under Review	8/14/2020	10/20/2022
	Building P TI	11/23/2020	3/30/2021	10/20/2022
	Building Q Shell and Core	Under Review	11/3/2020	9/14/2022
	Building Q TI	1/12/2021	6/15/2021	9/14/2022
Building R				
	Shell and Core	7/20/2020	1/29/2021	1/24/2023
	TI	1/12/2021	7/22/2021	1/24/2023
	Retail TI	7/15/2022	10/11/2022	1/24/2023
Esterra				
	TI	10/12/2020	2/1/2021	9/19/2021
RedWest South				
Land Use Entitlement (MLUE) (107 Days)				
	Phase 1 - 550k SF	10/26/2020		
	Phase 2 - 275k SF	4/12/2021		
Civil Permits (56 Days)				
	51st Street Intersection	8/10/2020	11/20/2020	6/1/2021
	Rough Grade	4/12/2021	6/10/2021	7/15/2021
	Excavation CCR	4/12/2021	7/10/2021	11/20/2021
	CCR 1	4/12/2021	8/27/2021	12/10/2023
	CCR revision	12/20/2021	5/6/2022	2/25/2024
	Offsite improvements?			
Building Permits (Garage, S&C = 56 days and TI are 21 days)				
	Garage Phase 1	5/1/2021	9/1/2021	11/15/2022
	Garage Phase 2	7/1/2021	12/1/2021	11/15/2022
	Building 1 S&C	10/1/2021	5/1/2022	2/5/2024
	Building 1 TI	2/1/2022	12/1/2022	2/5/2024
	Building 2 S&C	7/1/2021	12/1/2021	12/15/2023
	Building 2 TI	11/1/2021	7/1/2022	12/15/2023
	Building 3 S&C	10/1/2021	6/1/2022	3/10/2024
	Building 3 TI	2/1/2022	2/1/2023	3/10/2024

		Estimated Permit Submittal	Estimated Construction Start	Estimated Final Inspection
Campus Modernization				
Coordinated Civil Review				
	CCR 1	Approved		5/26/2023
	CCR 2	Under Review	6/25/2020	4/29/2022
	CCR 3	7/6/2020	8/20/2020	8/18/2023
	CCR 4	7/29/2020	10/1/2020	11/14/2023
	CCR 5	8/12/2020	11/23/2020	8/7/2023
	CCR 6	8/31/2020	12/8/2020	8/4/2023
	Offsite Improvements	10/12/2020		
Garage				
	Garage			5/15/2023
	Phase 7	Under Review		
	Kitchen TI permit	Under Review	11/25/2020	5/3/2023
	BOH TI permit	11/20/2020	1/18/2021	7/20/2022
Washington Village				
	Building A Shell & Core	9/21/2020	5/3/2021	3/7/2023
	Building A TI	3/3/2021	6/21/2022	3/7/2023
	Building B Shell & Core	Under Review	7/27/2020	6/2/2022
	Building B TI	1/12/2021	9/13/2021	6/2/2022
	Building C Shell & Core	Under Review	8/31/2020	8/5/2022
	Building C TI	1/12/2021	8/24/2021	8/5/2022
	Building D Shell & Core	9/21/2020	8/31/2021	6/5/2023
	Building D TI	3/3/2021	7/25/2022	6/5/2023
	Building E Shell & Core	11/23/2020	10/4/2021	10/4/2023
	Building E TI	3/3/2021	2/2/2023	10/4/2023
Sammamish Village				
	Central Utility Plant (CUP)	Under Review	7/5/2020	4/27/2022
	Building F Shell & Core	9/21/2020	7/12/2021	4/3/2023
	Building F TI	1/12/2021	4/4/2022	4/3/2023
	Building G Shell & Core	11/23/2020	11/2/2021	12/14/2023
	Building G TI	3/3/2021	8/29/2022	12/14/2023
	Building H Shell & Core	9/21/2020	9/7/2021	6/16/2023
	Building H TI	3/3/2021	7/7/2022	6/16/2023
	Building I Shell & Core	11/23/2020	1/3/2022	10/23/2023
	Building I TI	3/3/2021	10/25/2022	10/23/2023
Chelan Village				
	Building J Shell and Core	Under Review	3/26/2021	5/8/2023
	Building J TI	1/12/2021	9/21/2021	5/8/2023
	Building K	7/20/2020	5/21/2021	6/16/2023

EXHIBIT D**Schedule for Payment for Additional Staffing**

2018 MOU Payment Due Date	Payment Amount
7/25/2018	\$2,322,046.00
1/25/2019	\$1,121,343.00
4/25/2019	\$1,121,343.00
7/25/2019	1,121,343.00
10/25/2019	\$1,121,343.00
1/25/2020	\$1,236,917.50
4/25/2020	\$1,236,917.50
7/25/2020	\$1,236,917.50
10/25/2020	\$1,236,917.50
1/25/2021	\$896,075.00
4/25/2021	\$896,075.00
7/25/2021	\$896,075.00
10/25/2021	\$896,075.00
1/25/2022	\$460,741.50
4/25/2022	\$460,741.50
7/25/2022	\$460,741.50
10/25/2022	\$460,741.50
Total payments (17)	\$17,182,354.00

2020 MOU Extension Payment Due Date	Payment Amount
12/4/2020	496,254.97
3/4/2021	496,254.97
6/4/2021	496,254.97
9/4/2021	496,254.97
12/4/2021	496,254.97
3/4/2022	496,254.97
6/4/2022	496,254.97
9/4/2022	496,254.97
12/4/2022	496,254.97
3/4/2023	496,254.97
6/4/2023	496,254.97
9/4/2023	496,254.97
12/4/2023	496,254.97
3/4/2024	496,254.97
6/4/2024	496,254.97
Total payments (15)	7,443,824.55

Total reflects the credit of \$1,060,949.45

EXHIBIT E

Application Fees Covered by This Agreement and Payment Waived

The parties agree that the payments called for in Exhibit D do include all plan review and permit fees associated with permit applications required to construct the infrastructure and structures that are the subject of this Agreement including, but not limited to, the following: land use, coordinated civil, right-of way use permits, building permits, fire permits, electrical permits, mechanical permits, plumbing permits and fixed fire suppression permits.

The payments in Exhibit D do not include fees associated with the permit applications for the following items: capital facility charges, payments due under latecomer or reimbursement agreements, utility connection fees, impact fees, fees collected for the State Building Code Council, or fees for inspections outside of normal working hours all of which shall be paid for separately. However, Microsoft may apply transportation impact fee credits it holds to offset any required transportation impact fees where allowed by City Code.