

REDMOND TECHNOLOGY STATION
OPERATION AND MAINTENANCE AGREEMENT

GA 0029-24

THIS OPERATION AND MAINTENANCE AGREEMENT (this “Agreement”) is entered into by and between the CITY OF REDMOND, a Washington municipal corporation (the “City”), the CENTRAL PUGET SOUND REGIONAL TRANSIT AUTHORITY a regional transit authority organized under the laws of the State of Washington (“Sound Transit”), collectively “Parties” and individually “Party.”

RECITALS

- A. Sound Transit is constructing the East Link light rail project to extend light rail service between downtown Seattle and the Overlake area of Redmond. The East Link project includes a light rail station, a bus transit center, and parking garage, referred to as the Redmond Technology Station (“RTS”), a public transit facility owned by Sound Transit.
- B. Pursuant to that certain “Agreement between the City of Redmond, the Central Puget Sound Regional Transit Authority, and Microsoft Corporation for the Overlake Transit Center Component of the East Link Extension” effective February 27, 2014, as amended (the “Funding Agreement”), Microsoft constructed a pedestrian and bicycle bridge crossing from one side of the SR-520 corridor to the other, and the Direct Access Ramp (DAR) connecting RTS to the main structure and Microsoft’s east and west campus, Northeast 40th Street and 156th Avenue Northeast in Redmond, and a regional pedestrian and bicycle trail (the “Pedestrian Bridge”).
- C. Microsoft and Sound Transit determined that the Pedestrian Bridge element of the Agreement and other changes were required to be removed from the Agreement due to Microsoft’s desire to change the size and location of the Pedestrian Bridge. The Parties executed that certain Second Amendment dated June 13, 2019. The Original Agreement as modified by the First and Second Amendment is referred to herein as the “Funding Agreement.”
- D. As described in the Funding Agreement, the Parties believe that the Pedestrian Bridge serves an important function to provide a safer and more convenient way for pedestrians and cyclists to access public transit and the surrounding businesses and communities and desire to enter into this Agreement to establish clear roles and responsibilities for each Party for the ongoing maintenance, operations and repair of the Pedestrian Bridge, approach ramps, or other infrastructure; and
- E. The Pedestrian Bridge is no longer an Overlake Transit Center (“OTC”) Element as defined in Second Amendment of the Funding Agreement and Sound Transit shall not construct the Bridge as part of the OTC Redesign. Instead, Microsoft has constructed the Bridge

pursuant to a separate construction services agreement between Microsoft and the Washington State Department of Transportation (“WSDOT”) and a Construction Agreement between Microsoft and the City.

- F. The Agreement provides that, subject to the City’s final written acceptance and transfer of the completed Pedestrian Bridge from Microsoft, and other city owned infrastructure at the RTS, the City shall own and have primary responsibility for the operation and maintenance of the infrastructure as shown in Exhibit A.
- G. Pursuant to the Funding Agreement, it is necessary for the Parties to enter into a separate agreement to establish responsibilities for operating and maintaining the following, but not limited to, the Pedestrian Bridge, stormwater treatment facility, public utilities or other infrastructure as appropriate;

NOW THEREFORE, in consideration of the recitals, terms, and conditions, and covenants contained herein, the Parties agree as follows:

1. PURPOSE

The Purpose of this Agreement is to establish roles and responsibilities related to the ownership, operations, inspections and maintenance of infrastructure components (see Exhibit A).

2. PARTY RESPONSIBILITIES

- 2.1. The City shall operate and maintain the entirety of the city owned infrastructure at the City’s sole expense except for those areas described below and shown on Exhibit A as maintained by Sound Transit. The City shall maintain the infrastructure in a state of good repair, as defined in 49 CFR 625 as the condition in which a capital asset is able to operate at a full level of performance, including, without limitation, performing custodial activities, routine maintenance and repair.
- 2.2. The City shall operate and maintain the structure and foundation of the Pedestrian Bridge and Direct Access Ramp (“DAR”) and conduct periodic physical inspections of the Pedestrian Bridge and DAR structures on a twenty-four (24) month cycle, or more frequently, as determined by the City and review of the Pedestrian Bridge structure and all pier foundations. The City shall be responsible for all costs, labor, and materials relating to the maintenance, operation, and control of all infrastructure owned by the city, or identified below and shown on Exhibit A:
 - 2.2.1. Within City’s street and sidewalk easements adjacent and connected to City right-of-way
Street, curbs, concrete sidewalk, asphalt sidewalks, curb ramps, tactile warnings, street trees & landscaping, utility infrastructure (water & drainage), striping, signing, lighting,

2.2.2. On Sound Transit station property

Within the Stormwater Easement - all elements of the water quality facility including, but not limited to, maintenance holes and pipes, the water quality structure and components, other drainage facilities in stormwater easement, curbs, pavement and gates for maintenance access, electrical utilities serving City infrastructure, irrigation system components serving City landscape areas. These are contained with the easement no. 20201116002509.

Drainage catch basins and pipes serving the Pedestrian Bridge near the street end of NE 36th Street.

Water mains, hydrants, services and associate infrastructure which are included within the easements no's 20201216001444 and 20201216001445.

2.2.3. Pedestrian Bridge and DAR Easement

Pedestrian Bridge, ramp and all supporting elements including, pavement, curb, railings, handrails, lighting, signing and striping, utilities and drainage that serve the pedestrian bridge and ramp. Specific responsibilities for the DAR are delineated in Exhibit A.

- 2.3. Sound Transit shall be responsible for maintaining and repairing the walls and elements that are part of the flyer stop structure the DAR connects to, as shown in Exhibit A. Sound Transit is not responsible for maintaining any portion of the Pedestrian Bridge or DAR structure.

2.4. Cooperation, Good Faith Efforts and Responsibility for Quality of Work

The Parties understand and agree that the successful performance of this Agreement depends upon timely and open communication and cooperation between the Parties. Each Party shall be responsible for the quality, technical accuracy, timelines, and coordination of all services performed by such Party, its employees and contractors pursuant to this Agreement.

2.5. Pedestrian Bridge and DAR Hours of Operation

The Pedestrian Bridge will be open to the public seven (7) days per week, twenty four (24) hours per day as required in the WSDOT Trail Lease except for periods when maintenance or repair of the Bridge requires its closure. The Parties agree that routine maintenance typically will not result in closure of the Pedestrian Bridge and DAR. Routine maintenance, such as sweeping, cleaning, graffiti removal, and normal trash collection, may require restricting use to portions of the Pedestrian Bridge and DAR in the immediate area of the work, but should allow for passage of pedestrians and bicyclists across the length of the Pedestrian Bridge and DAR. Sound Transit will close access to the RTS during non-revenue hours, generally 1:00 AM to 5:00 AM daily. During that time access to the Pedestrian Bridge and DAR will be available along the SR 520 NE 40th Street Eastbound off ramp sidewalk.

2.6. Access and Notification of Work

Each Party shall allow reasonable access by the other Parties to those portions of its property necessary to operate and maintain facilities and systems and to carry out the terms of this Agreement.

2.6.1 The Parties shall provide each other with prior written or electronic notice a minimum of 2 business days in advance of any maintenance activities or activities that require performing work on the other Party's property and facilities.

All work near Sound Transit's trackway will need to follow the current ST Track Access Permit Process. This procedure is followed to ensure safe working conditions for all work performed on, near or adjacent to the trackway and may take up to 14 days to complete prior to permit approval.

If any Party's maintenance or repair activities will result in the need to close the Pedestrian Bridge or DAR, such Party will provide at least seven (7) days prior written or electronic notice of such maintenance or repair work to the other Parties. The Parties agree to notify each other by phone or email as soon as is reasonably possible for emergency maintenance and operations activities that require immediate action or where snow and ice removal is necessary for safety reasons. The Parties shall conduct or direct their work so as not to unreasonably interfere with, obstruct, or endanger the operations of each Party's properties.

2.6.2 The primary point of contacts at each agency are:

ST: LCC (Link Control Center) OMF, Seattle 206-205-8177

Redmond: City Maintenance and Operations Center, 425-556-2800

2.7. Signage

The City shall be responsible at its sole expense for installing, cleaning, maintaining, repairing, and replacing, in whole or in part, all signage within the public right of way and public easements that apply to the City's operations.

2.8. Future Cameras

The City may install cameras on the Pedestrian Bridge and DAR in the future. Any installation within the easement area and the track operational area will be reviewed and coordinated with Sound Transit. The City will be responsible for obtaining any permits and approvals for the installation in advance.

3. **DESIGNATED REPRESENTATIVES.**

3.1. Each Party shall designate a representative who shall be responsible for coordination of communications between the parties regarding the matters set forth in this Agreement and who shall act as the primary point of contact for each Party. The Designated Representatives shall communicate as necessary to discuss the status of the tasks to be performed, identify upcoming decisions and provide any information or input necessary

to inform those decisions, and to identify and resolve disputes related to the operation and maintenance of the Bridge, Vault or other infrastructure in a timely manner. The name and contact information of a Designated Representative may be updated by a Party in writing by electronic mail to the other Parties. A change in the name and/or contact information of a Designated Representative shall not be considered an amendment to this Agreement.

SOUND TRANSIT
Director Operations Facility
Maintenance
401 S. Jackson St.
Seattle, WA 98104-2826
206-370-5521

CITY OF REDMOND
Deputy Director Public
Works
15670 NE 85th Street
Redmond, WA 98073-7910
425-403-5510

4. LEGAL RELATIONS

- 4.1. It is understood and agreed that this Agreement is solely for the benefit of the Parties hereto and gives no right to any other party. No joint venture or partnership is formed as a result of this Agreement. The employees or agents of each Party who are engaged in the performance of this Agreement shall continue to be employees or agents of that Party and shall not be considered for any purpose to be employees or agents of the other Party.
- 4.2. Each Party to this Agreement will defend, indemnify and save harmless any other Party, its officers, officials, employees, and agents, while acting within the scope of their employment as such, from any and all costs, claims, judgments, and/or awards of damages (both to persons and property), arising out of, or in any way resulting from, each Party's negligent acts or omissions. No Party will be required to defend, indemnify or save harmless any other Party if the claim, suit, or action for injuries, death, or damages (both to persons and property) is caused by the sole negligence of another Party. Where such claims, suits, or actions result from concurrent negligence of the Parties, or involve those actions covered by RCW 4.24.115, the indemnity provisions provided herein will be valid and enforceable only to the extent of the Party's own negligence. Each Party agrees that its obligations under this subparagraph extend to any claim, demand, and/or cause of action brought by, or on behalf of, any of its employees or agents. **For this purpose, each Party, by mutual negotiation, hereby waives, with respect to the other party only, any immunity that would otherwise be available against such claims under the Industrial Insurance provisions of Title 51 RCW.**
- 4.3. The indemnification provisions in this paragraph shall survive the expiration or termination of this Agreement.

5. DISPUTE RESOLUTION

- 5.1 The Parties agree that no Party shall take or join any action in any judicial or administrative forum to challenge actions of another Party associated with this Agreement or the Project, except as set forth herein. Neither Party will be required to complete the dispute resolution process if a Party may lose or forego a right, remedy, or cause of action that may be time barred before the dispute resolution process can be completed.
- 5.2 Any disputes or questions of interpretation of this Agreement that may arise between the Parties shall be governed under the dispute resolution provisions in this Section. The Parties agree that cooperation and communication are essential to resolving issues efficiently. The Parties agree to exercise their best efforts to resolve any disputes that may arise through this dispute resolution process.
- 5.3 The Parties agree to use their best efforts to prevent and resolve potential sources of conflict at the lowest level.
- 5.4 The Parties agree to use their best efforts to resolve disputes arising out of or related to this Agreement using good faith negotiations by engaging in the following dispute escalation process should any such disputes arise:
- A. Level One - Sound Transit's Designated Representative and the City's Designated Representative shall meet to discuss and attempt to resolve the dispute in a timely manner. If they cannot resolve the dispute within fourteen (14) days after referral of that dispute to Level One, any Party may refer the dispute to Level Two.
 - B. Level Two - Sound Transit's Executive Director of Operations and the City's Public Works Director, shall meet to discuss and attempt to resolve the dispute, in a timely manner. If they cannot resolve the dispute within fourteen (14) days after referral of that dispute to Level Two, any Party may refer the dispute to Level Three.
 - C. Level Three - Sound Transit's Chief Executive Officer or Designee and the City Mayor or Designee, shall meet to discuss and attempt to resolve the dispute in a timely manner.
- 5.5 Except as otherwise specified in this Agreement, in the event the dispute is not resolved at Level Three within twenty-one (21) days after referral of that dispute to Level Three, the Parties are free to file suit, seek any available legal remedy, or agree to alternative dispute resolution methods such as mediation or arbitration. At all times prior to resolution of the dispute, the Parties shall continue to perform any undisputed obligations in the same manner and under the same terms as existed prior to the dispute. Notwithstanding anything in this Agreement to the contrary, no Party has an obligation to agree to refer the dispute to mediation, arbitration, or other form of dispute resolution following completion of Level Three of the process described herein. Such agreement may be withheld for any reason or no reason.

6. NOTICES

- 6.1 Unless otherwise provided herein, all notices and communications concerning this Agreement shall be in writing and addressed to the Designated Representatives.
- 6.2 Unless otherwise provided herein, all notices shall be either: (i) delivered in person, (ii) deposited postage prepaid in the certified mails of the United States, return receipt requested, (iii) delivered by a nationally recognized overnight or same-day courier service that obtains receipts, or (iv) delivered electronically to the other Designated Representatives as listed herein, followed by delivery by methods (i) – (iii) above unless the recipient acknowledges receipt of the electronic communication.

7. GENERAL PROVISIONS

- 7.1 The Parties shall not unreasonably withhold requests for information, approvals or consents provided for in this Agreement; provided, however, that approvals or consents required to be given by vote of the Sound Transit Board or Redmond City Council are recognized to be legislative actions. The Parties agree to take further actions and execute further documents, either jointly or within their respective powers and authority, to implement the intent of this Agreement provided, however, that where such actions or documents required must be first approved by vote of the Sound Transit Board or Redmond City Council, such actions are recognized to be legislative actions.
- 7.2 This Agreement shall be interpreted, construed and enforced in accordance with the laws of the State of Washington. Venue for any action under this Agreement shall be King County, Washington.
- 7.3 This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the City and Sound Transit.
- 7.4 This Agreement is made and entered into for the sole protection and benefit of the Parties hereto and their successors and assigns. No other person shall have any right of action based upon any provision of this Agreement.
- 7.5 No joint venture or partnership is formed as a result of this Agreement. No employees, agents or subcontractors of one Party shall be deemed, or represent themselves to be, employees of any other Party.
- 7.6 This Agreement has been reviewed and revised by legal counsel for all Parties and no presumption or rule that ambiguity shall be construed against the Party drafting the document shall apply to the interpretation or enforcement of this Agreement. The Parties intend this Agreement to be interpreted to the full extent authorized by applicable law.

- 7.7 Each Party shall be responsible for all its own costs, including legal fees, incurred in negotiating or finalizing this Agreement, unless otherwise agreed in writing by the Parties.
- 7.8 The Parties shall not be deemed in default with provisions of this Agreement where performance was rendered impossible or impracticable by war or riots, civil disturbances, floods or other natural catastrophes beyond its control; the unforeseeable unavailability of labor or materials; or labor stoppages or slowdowns, or power outages exceeding available back-up power supplies; or other events beyond the control of the Parties. This Agreement shall not be revoked or a party penalized for such noncompliance, provided that such party takes immediate and diligent steps to bring itself back into compliance and to comply as soon as practicable under the circumstances without unduly endangering the health, safety, and integrity of all parties' employees or property, or the health, safety, and integrity of the public, public right-of-way, or public or private property.
- 7.9 This Agreement may be amended only by a written instrument executed by each of the Parties hereto. Except that Exhibits may be modified by mutual agreement of the Parties and documented by signed dated revisions.
- 7.10 This Agreement constitutes the entire agreement of the Parties with respect to the subject matters of this Agreement, and supersedes any and all prior negotiations (oral and written), understandings and agreements with respect hereto.
- 7.11 In construction of this Agreement, words used in the singular shall include the plural and the plural the singular, and "or" is used in the inclusive sense, in all cases where such meanings would be appropriate.
- 7.12 All exhibits attached to this Agreement are hereby incorporated into this Agreement.
- 7.13 This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all counterparts together shall constitute but one and the same instrument.
- 7.14 This Agreement may not be assigned by any of the Parties nor the obligations transferred without the consent of the other Parties in their sole discretion.

8. TERM

This Agreement shall take effect as of the date Microsoft Corporation transfers the Pedestrian Bridge to the City and all permanent easements are recorded and remain in effect until such date as the Pedestrian Bridge and other infrastructure may be permanently decommissioned or removed from service by separate written agreement of the Parties, or by mutual agreement of the Parties.

{Signature Page to follow}

CENTRAL PUGET SOUND REGIONAL THE CITY OF REDMOND
TRANSIT AUTHORITY
(SOUND TRANSIT)

By: _____
Name:
Title: Deputy Chief Executive Officer

Date: _____

Authorized by Motion No. _____

Approved as to form:

By: _____
Mattelyn Tharpe, Legal Counsel

By: _____
Name: Angela Birney
Title: Mayor

Date: _____

Authorized by Ordinance _____

Approved as to form:

By: _____
Daniel P. Kenny, City Attorney

Exhibit List:

Exhibit A – Infrastructure Components