

REDMOND TECHNOLOGY STATION PEDESTRIAN/BICYCLE BRIDGE
OPERATION AND MAINTENANCE AGREEMENT

THIS OPERATION AND MAINTENANCE AGREEMENT (this “Agreement”) is entered into as of _____, 20__ (the “Effective Date”) by and between the CITY OF REDMOND, a Washington municipal corporation (the “City”), and MICROSOFT CORPORATION, a Washington corporation (“Microsoft”), 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 at Redmond Technology Station (“RTS”), a public transit facility owned by Sound Transit;
- B. The Parties have entered into the Agreement for Construction of Redmond Technology Station Pedestrian/Bicycle Bridge dated as of June 3, 2019 (the “Bridge Agreement”) which provides for the design and construction of a pedestrian/bicycle bridge (the “Bridge”) as shown on Exhibit A attached hereto and incorporated herein by this reference;
- C. The Bridge will be connected to the RTS by a direct access ramp that allows pedestrians and bicyclists to access public transit from the Bridge;
- D. The Bridge transitions at the east end of the Bridge to a route across Microsoft real property to NE 36th Street and 156th Avenue NE (the “East Campus Route”) and at the west end of the bridge to a route across Microsoft real property to the SR 520 Bike Trail (the “West Campus Route”). Each of these routes are shown on Exhibit A;
- E. The Bridge Agreement provides for the Parties to enter into a separate agreement to establish ownership and responsibilities for operating and maintaining the Bridge and approaches;
- F. As described in the Bridge Agreement, the Parties believe that the Bridge serves an important function to provide pedestrians and bicyclists safe, convenient access to public transit, the SR 520 bike trail, surrounding businesses and neighborhoods, 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 Bridge; and
- G. The Bridge Agreement provides that, subject to the City’s final written acceptance of the completed Bridge, the City shall own and have primary responsibility for the operation and maintenance of the Bridge. Microsoft shall provide certain assistance in such operation and maintenance, as further described in this Agreement.

THEREFORE, for good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties therefore agree as follows:

AGREEMENT

1.0 OWNERSHIP

The Bridge spans real property owned by four separate entities: Microsoft, the City, Sound Transit, and the Washington State Department of Transportation (“WSDOT”). Exhibit A shows the location of City right-of-way, easements, and leases that support the ownership, operation, and maintenance of the Bridge and provide for public access.

1.1 City Ownership

The City owns 156th Ave NE and NE 36th Street and the air rights above those streets. By separate instrument, and upon final written acceptance by the City, Microsoft will transfer and convey to the City the completed Bridge along with any easements necessary for the City to perform its obligations under this Agreement, Microsoft will retain ownership of specific facilities located on the Bridge as shown in Exhibit B and described in Section 1.2 of this Agreement.

By separate instrument, the City will obtain a permanent easement from Sound Transit for the construction, reconstruction, operation, and maintenance of those portions of the Bridge located on Sound Transit’s RTS property. Microsoft will provide easement exhibits and legal descriptions and pay for any and all costs associated with easement acquisition.

The City has entered into a trail lease with WSDOT for construction, reconstruction, operation, and maintenance of those portions of the Bridge located in the WSDOT right-of-way.

1.2 Microsoft Ownership

Microsoft owns the real property on which the east and west termini of the Bridge landings and approaches are located. By separate instrument, Microsoft will convey permanent easements to the City for the following purposes:

- A. Construction, reconstruction, operation, and maintenance of those portions of the Bridge and appurtenances located on or over Microsoft’s real property.
- B. Public, emergency vehicle, and maintenance vehicle access from the bridge terminus on Microsoft’s West Campus to the SR 520 Bike Trail.
- C. Public, emergency vehicle, and maintenance vehicle access from the bridge terminus on Microsoft’s East Campus to the NE 36th St public right of way.
- D. The right to connect the drainage system for the Bridge to the drainage system on the Microsoft Campus and to discharge drainage from the Bridge into the Microsoft drainage system. The City will not be obligated to pay Microsoft for discharge of the drainage from the Bridge or to share in any maintenance or other costs related to Microsoft’s drainage

system; provided, however, the City is obligated to repair any damage to Microsoft's drainage system caused by Bridge drainage.

E. Microsoft will own certain facilities located on the Bridge as described below and shown in Exhibit B, subject to the requirements of this Agreement and the latest version of the Telecommunications Right of Way Use Agreement or Telecommunications Master Permit Agreement between the City and Microsoft.

- A. Six Microsoft communications conduits, hanger systems, and appurtenances located under the bridge deck.
- B. The right to use vacant conduit pathways (4 blockouts) unused by PSE to install conduits at a future date and secure them as necessary.
- C. Microsoft wayfinding signage (see Section 2.6) placed on the Bridge.

2.0 RESPONSIBILITIES

The Parties have agreed to allocate responsibilities for the operation and maintenance of the Bridge in accordance with the O&M Matrix attached as Exhibit B and the following provisions:

2.1 City Responsibilities

The City shall maintain, repair, and replace those elements of the Bridge designated as being the City's maintenance responsibility in the "maintenance responsibility" column on Exhibit B attached hereto and incorporated herein by this reference. Such maintenance, repair, and replacement shall be at the City's sole expense except for those elements and locations designated as Microsoft's funding responsibility in the "funding responsibility" column on Exhibit B. The City shall maintain those elements of the Bridge in good condition and repair in accordance with generally accepted public infrastructure management. The City shall also maintain and repair the structure and foundation of the Bridge and conduct periodic physical inspections of the Bridge structure. City responsibilities may be conducted by City staff, another delegated public agency, or a hired third-party contractor at the City's discretion

For those elements designated on Exhibit B as the City's maintenance responsibility and Microsoft's funding responsibility, Microsoft shall reimburse the City for the City's actual cost of maintenance, repair, and replacement. For periodic routine maintenance, the City may invoice Microsoft no more frequently than once per month and Microsoft shall make payment in full within 30 days of the date of the invoice and supporting paid invoices. For repair and replacement, the City shall invoice Microsoft upon completion of the repair or replacement and Microsoft shall make payment within 30 days of the date of the invoice.

When hiring third-party contractors to perform annual maintenance, repair, replacement, or operation of the Bridge, whether for City responsibilities or for Microsoft responsibilities, the City shall afford Microsoft the opportunity to propose certain bidder qualifications prior to issuing a

request for proposals or other call for bids to perform the work. Prior to finalizing any contract with such a third-party contractor, the City shall provide the contract to Microsoft for its review. Microsoft shall review the contract(s) and scope of work and provide comments within ten (10) business days after delivery of the contract to Microsoft. The City shall consider in good faith Microsoft's requested bidder qualifications and contract comments to the extent reasonable and practical, but the final decision as to bidder qualifications and the terms of the contract shall be within the City's sole discretion. The City will notify Microsoft of the City's decision to modify or not modify the contract documents based on Microsoft's comments and provide Microsoft with the City's reasoning. If the proposed scope of work changes the design of the Bridge in such a way as to significantly increase any costs that are Microsoft's responsibility, the City will consult with Microsoft prior to making such change. If the design change would increase Microsoft's costs and Microsoft does not agree with the change, the City retains the authority to approve the change but shall be responsible for any increased cost.

When entering into a contract with third-party contractors to provide non-routine repairs of the Bridge, the City is not required to seek Microsoft input, but the City shall provide notice of such repair work in accordance with Section 2.5 below.

2.2 Microsoft Responsibilities

Microsoft shall inspect, maintain, repair, and replace those elements of the Bridge designated as being Microsoft's responsibility in the "maintenance responsibility" column on Exhibit B. Such maintenance, repair, and replacement shall be at Microsoft's sole expense. Microsoft may perform its maintenance, repair and replacement responsibilities by using its own personnel or by contracting with a third-party contractor approved by the City. Microsoft shall be required to maintain the elements designated as Microsoft's maintenance responsibility on Exhibit B in a reasonably safe ADA-compliant condition, including making repairs as hazardous conditions are reported either to the City or to Microsoft directly by the traveling public. Microsoft shall also be required to perform an inspection of the elements designated as Microsoft's maintenance responsibility on Exhibit B at least annually. Any hazardous conditions discovered during the inspection shall also be repaired at the cost of and by Microsoft and contractors hired by Microsoft. Should the City receive any reports from the public regarding hazardous conditions related to the elements designated as Microsoft's maintenance responsibility on Exhibit B, the City will notify Microsoft of such report.

Microsoft shall provide "as built" drawings, permanent easements, construction records, and other project closeout documents to the City prior to the City's acceptance of the Bridge.

Microsoft may perform snow and ice removal on the City-owned portion of the Bridge when conditions warrant. All such snow and ice removal shall be at Microsoft's sole cost and expense. Microsoft shall notify the City when such snow and ice removal will be performed by Microsoft.

2.3 Cooperation, Good Faith Efforts and Responsibility for Quality of Work

The Parties understand and agree that the successful execution 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. The Bridge shall be maintained and operated to the level of service (LOS) specified in Exhibit C or to a standard as good or better than comparable public facilities of the City if no standard is specified. If Microsoft believes the City is not maintaining the Bridge in accordance with the terms of this Agreement, Microsoft may notify the City of Microsoft's concerns. If the City disagrees with Microsoft, either party may invoke the dispute resolution process set forth in Section 6.0. If the City agrees with Microsoft, the City will notify Microsoft of the City's intention to bring performance of its maintenance activities into compliance and shall do so within such period as the City deems reasonable and practical; provided, however, if Microsoft deems it imperative to immediately provide maintenance or repairs it deems necessary, it may do so at Microsoft's expense. In such situations Microsoft shall notify the City when such maintenance or repairs will be performed by Microsoft.

If Microsoft desires to enhance the LOS provided for in Exhibit C, Microsoft shall notify the City and the Parties shall meet within thirty (30) days after delivery of the notice, The City and Microsoft will discuss and determine what needs to be done to elevate the standard of maintenance and operation and how any additional costs for enhanced LOS will be allocated. The parties shall attempt in good faith to resolve disagreements between Microsoft and the City over whether to provide an enhanced level of service or regarding the allocation of costs for such an enhanced level of service by following the dispute escalation process in Section 6.4. The final decision regarding whether an enhanced level of service will be provided or whether the City will pay any of the costs for such an enhanced level of service shall, however, be within the City's sole discretion and the City's decision shall not be subject to suit or other remedy by Microsoft under Section 6.5.

The LOS provided for in Exhibit C may be modified by mutual agreement of the parties. Modification shall not require approval by the Redmond City Council as long as the cost of the modified LOS is within approved budget limitations.

2.4 Bridge Hours of Operation

The Bridge will be open to the public seven (7) days per week, twenty-four (24) hours per day per the requirement in the WSDOT trail lease except for periods when maintenance or repair of the Bridge or a police or emergency medical response requires its closure.

2.5 Access and Notification of Work

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

The City shall prepare in December of each year an annual schedule of routine maintenance. The City shall provide the schedule to Microsoft for review and comment, but the final decision on the routine maintenance schedule shall be within the City's sole discretion. No notice of routine maintenance other than the annual schedule is required.

The Parties agree that routine maintenance typically will not result in closure of the Bridge. Routine maintenance, such as sweeping, cleaning, graffiti removal, and normal trash collection, may require cordoning off portions of the Bridge in the immediate area of the work, but should allow for passage of pedestrians and bicyclists across the length of the Bridge. 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. 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.

Major maintenance or repair work is any work that requires closure of the Bridge. If either Party intends to perform major maintenance or repair work requiring closure of the Bridge, whether the work is on the Bridge itself or on other facilities of the Parties located in the vicinity of the Bridge, such Party shall provide at least forty-five (45) days prior written or electronic notice of such major maintenance or repair work to the other Party. A shorter notification period may be provided in the event of emergency repair, with the Party doing the work providing notice to the other Party as soon as is reasonably practicable under the circumstances.

The City shall prepare plans and a construction schedule for any major maintenance or repair of the Bridge, and Microsoft shall be provided an opportunity to review the documents and provide comments prior to the work being performed. Microsoft shall provide comments within fifteen (15) business days of receiving the documents. The City shall consider Microsoft's comments in good faith to the extent reasonable and practical, but the final decision on the plans and construction schedule shall be within the sole discretion of the City. To the extent reasonably practical, the City will perform its operations in a manner that minimizes disruption to transit operations at RTS.

The City will coordinate any scheduled closures of the Bridge with Microsoft to avoid closures during planned major events on Microsoft's campus.

2.6 Signage

The City shall be responsible at its sole expense for installing, cleaning, maintaining, repairing, and replacing, in whole or in part, all regulatory signage and other City signage on the Bridge. Microsoft shall have the right to place any wayfinding signage on the Bridge consistent with the style and content on the Microsoft Campus provided that the same meets any requirements of the City's sign regulations. Microsoft shall be responsible at its sole expense for installing, cleaning, maintaining, repairing, and replacing, in whole or in part, wayfinding signage on the Bridge for Microsoft and its facilities. Advertising signage shall not be installed on the Bridge, by Microsoft or others.

2.7 Security

The City shall be responsible for providing police services related to a 911 emergency response due to an incident on the Bridge, provided that nothing in this subsection is intended to create any duty on the part of the City to any individual or class of individuals or to create any special relationship between the City and Microsoft, or any other person or entity regarding such police

services. The City makes no representations or warranties as to the safety or security of any person by entering into this Agreement and the parties agree that the City has no greater or lesser duty to provide police services to persons on the Bridge than it does with regard to the general public in providing police services throughout the City. Microsoft may, periodically and at its discretion, deploy security patrols of the Bridge by its private security personnel. Such personnel shall at all times be considered the sole agents of Microsoft and not the City, and the City shall have no responsibility for the actions of such personnel.

2.8 Reimbursement by Microsoft

The City shall initially pay for any work that is to be performed by the City but paid for by Microsoft. Microsoft shall reimburse the City for such payment within thirty (30) days after receipt of evidence from the City that the work has been paid for.

2.9 Reimbursement by the City

If Microsoft undertakes any work on the Bridge at the City's request, the City shall reimburse Microsoft for the cost of such work within thirty (30) days after receipt of evidence from Microsoft that the work has been paid for.

3.0 INSURANCE

The Parties acknowledge that the City insures its operations under its General Liability program. Liability associated with the operation and maintenance of the Bridge pursuant to this Agreement will also be covered by that program. The City shall also purchase or maintain property insurance insuring the full replacement value of the Bridge for fire and extended perils including earthquake coverage. The City shall cause its insurer to name or list Microsoft as an additional insured under the City's General Liability program for claims related to the City's operation and maintenance of the Bridge. The City shall deliver to Microsoft a certificate of insurance confirming that the City has the insurance required by this Section 3.0. Any notice of cancellation of such insurance received by the City shall be delivered promptly to Microsoft. Microsoft shall be solely responsible for obtaining any insurance deemed necessary by Microsoft for claims related to the maintenance and operations responsibilities of Microsoft under this Agreement.

Microsoft shall purchase and maintain general commercial liability insurance covering those elements of the Bridge or its approaches that are owned or maintained by Microsoft. Such general liability insurance shall have coverage limits of no less than \$5,000,000 per occurrence/aggregate. In addition, Microsoft shall purchase and maintain property insurance insuring the full replacement value of those elements of the Bridge or its approaches that are owned or maintained by Microsoft. Microsoft shall cause its insurer to name or list the City as an additional insured on Microsoft's general commercial liability insurance for claims related to Microsoft's operation and maintenance of those elements of the Bridge or its approaches owned or maintained by Microsoft. Microsoft shall deliver to the City a certificate of insurance confirming that Microsoft has the insurance required by this Section 3.0. Any notice of cancellation of such insurance received by Microsoft shall be delivered promptly to the City. The City shall be solely responsible for obtaining any insurance deemed necessary by City for claims related to the maintenance and operations responsibilities of the City under this Agreement.

Microsoft may, at its option, meet the above insurance requirements via commercial insurance, self-insurance, alternative risk financing solutions, or a combination of these options.

4.0 REPAIR, REPLACEMENT, OR TRANSFER OF BRIDGE

If the City should determine at some future time that it no longer wishes to own the Bridge and desires to transfer ownership of the Bridge, the City shall provide written notice of such facts to Microsoft. Microsoft shall have one hundred eighty (180) days to determine whether it desires to assume ownership of the Bridge. If Microsoft elects to assume ownership of the Bridge, the City shall transfer ownership of the Bridge, without cost or any warranty except for unencumbered title, along with all maintenance and operational records, equipment, and supplies, to Microsoft. The City shall also assign to Microsoft the trail lease and air rights with the Washington State Department of Transportation (“WSDOT”) if the same is assignable by its terms and shall grant to Microsoft the right to occupy the air space above NE 156th Street. If the WSDOT trail lease is not assignable, then Microsoft shall be solely responsible for obtaining such rights from WSDOT as are necessary for the Bridge to occupy air space above SR 520. If the City is unable to assign the trail lease and Microsoft is unable to obtain a lease from WSDOT, the Bridge shall not be transferred to Microsoft. If the Bridge is transferred to Microsoft, then Upon completion of the transfer, Microsoft shall assume the City’s obligations under this Agreement and the City will have no further obligations or responsibilities thereafter with respect to the Bridge. This assignment shall not relieve the City of obligations or liabilities incurred prior to the transfer of ownership.

If Microsoft does not elect to assume ownership of the Bridge or if the rights cannot be obtained from WSDOT for Microsoft, the City may approach other public agencies on assuming ownership of the Bridge provided that: the City, WSDOT, and Microsoft consent to the transfer. If the above conditions are met, the Parties shall follow the procedures in this Section 4.1 to transfer the City’s interest to said public agency.

If neither Microsoft nor a public agency desire or is able to assume ownership of the Bridge, the Parties shall endeavor to find a third party to assume ownership of the Bridge. If a third party cannot be located within one (1) year after Microsoft has determined that neither it nor any other public agency wishes to assume ownership of the Bridge, the City shall have the right to have the Bridge dismantled at the City’s expense. If this option is exercised, the City shall complete at its expense all work necessary to leave the RTS property in a safe and operational condition.

Notwithstanding the foregoing, the City shall not transfer ownership of the Bridge during the initial term of the WSDOT trail lease.

5.0 LIABILITY, INDEMNIFICATION

5.1 To the extent permitted by law, each of the Parties to this Agreement shall protect, defend, indemnify, and hold harmless the other Parties, and their officers, officials, employees, and agents, while acting within the scope of their employment, from any and all costs, claims, demands, judgment, damages or liability of any kind including injuries to persons or damages to property, if and to the extent they arise out of, or in any way result from, or are connected to, or are due to any negligent acts or omissions or intentional misconduct of the indemnifying Party. No Party will be

required to indemnify, defend, or hold harmless another Party if the claim, suit, or action for injuries, death, or damages is caused by the sole negligence or intentional misconduct of the Party seeking indemnification. Where such claims, suits, or actions result from the concurrent negligence of the Parties, the indemnity provisions provided herein shall be valid and enforceable only to the extent of any Party's own negligence.

Each of the Parties agrees that its obligations under this paragraph 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 of the Parties hereby waives with respect to the other Parties only, any immunity that would otherwise be available under the industrial insurance provisions of Title 51 RCW against the claims to which the indemnity extends. **The Parties agree that this section has been specifically and mutually negotiated by each of the Parties.**

In the event of any claims, demands, actions and lawsuits, the indemnifying Party upon prompt notice from the other Party, shall assume all costs of defense thereof, including legal fees incurred by the other Party, and of all resulting judgments that may be obtained against the other Party. In the event that any Party incurs attorneys' fees, costs or other legal expenses to enforce the provisions of this section, all such reasonable fees, costs and expenses shall be recoverable by the prevailing Party.

5.2 Each Party shall bear full responsibility for any and all tax liabilities owed by that Party that may arise in relation to this Agreement, and each Party shall fully indemnify and hold the other Party, its officers, agents and employees harmless from any tax liability owed by other Parties arising from or related to the transactions set forth herein, including, but not limited to, any taxes, penalties, fines, and/or interest that are assessed by any tax authority against the indemnifying Party and further including all attorneys' fees and costs incurred in response to any claims or assessments by any tax authority against the indemnifying Party, its officers, agents and employees.

5.3 Consistent with the Parties' indemnification obligations herein, the Parties shall give each other, as applicable, prompt notice of any claims directly affecting any Party about which the other Parties have received formal notification. The Parties, as applicable, shall promptly assume responsibility for the claim or undertake the defense of any litigation on behalf of the other Parties. The Parties shall cooperate fully with any Party, as applicable, in the defense of any claim associated with this Agreement. The Parties shall not settle any claim associated with this agreement directly affecting any other Party, as applicable, without the prior written consent of such party, which consent shall not be unreasonably withheld.

5.4 Third Party Contract Clauses. All consultant and construction contracts entered into by a Party for work related to the Bridge shall include both Parties as third-party beneficiaries indemnified by the contractor or consultant to the same extent as the Party to the third-party contract is indemnified and named as additional insureds on any policies required under the third party contract.

5.5 The indemnification obligations provided in this Section shall survive termination of this Agreement for any claim or liability arising out of an event or occurrence that took place prior to such termination.

6.0 DISPUTE RESOLUTION

6.1 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.

6.2 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.

6.3 The Parties agree to use their best efforts to prevent and resolve potential sources of conflict at the lowest level.

6.4 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 - The City's Designated Representative, and Microsoft'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 - The City's Public Works Director, and Microsoft's Senior Director for Puget Sound Real Estate and Facilities 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 - The City Mayor or Designee, and Microsoft's General Manager for Real Estate and Facilities shall meet to discuss and attempt to resolve the dispute in a timely manner.

6.5 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.

7.0 DEFAULT

No Party shall be in default under this Agreement unless it has failed to perform under this Agreement for a period of thirty (30) days after written notice of default from the other Party. Each notice of default shall specify the nature of the alleged default and the manner in which the default may be cured satisfactorily. If the nature of the alleged default is such that it cannot be reasonably cured within the thirty (30) day period, then commencement of the cure within such time period and the diligent prosecution to completion of the cure shall be deemed a cure; provided that in no event shall a cure take longer than ninety (90) days to complete without mutual written consent. Any dispute regarding the existence of a default or appropriate cure shall be handled through the dispute resolution process described in Section 6.

8.0 REMEDIES; ENFORCEMENT

8.1 The Parties reserve the right to exercise any and all remedies available at law or in equity, singly or in combination, and subject to and consistent with the dispute resolution and default Sections of this Agreement, in the event of a breach of this Agreement, including, but not limited to:

- A. Commencing an action at law for monetary damages;
- B. Commencing an action for equitable or other relief; and
- C. Seeking specific performance of any provision that reasonably lends itself to such remedy.

8.2 Remedies are cumulative; the exercise of one shall not foreclose the exercise of others.

8.3 No Party shall be relieved of any of its obligations to comply promptly with any provision of this Agreement by reason of any failure by another Party to enforce prompt compliance, and such failure to enforce shall not constitute a waiver of rights or acquiescence in another Party's conduct.

9.0 DESIGNATED REPRESENTATIVES.

9.1 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 in a timely manner.

The Designated Representatives are as follows:

Microsoft:

Mohan Reddy
Director, Puget Sound Facilities - GWS
(425)-706-3721
mohand.redd@microsoft.com

City of Redmond:

Chris Stenger
Deputy Director of Public Works
City of Redmond
15670 NE 85th Street
P.O. Box 97010
Mail Stop MOC PW
Redmond, WA 98073-9710
(425) 556-2870
cstenger@redmond.gov

9.2 Communication of issues, changes, or problems that may arise with any aspect of the operation or maintenance of the Bridge should occur as early as possible. The Designated Representatives shall use reasonable efforts to provide up-to-date and best available information to the other party promptly after such information is obtained or developed.

9.3 Each Designated Representative is also responsible for coordinating the input and work of its agency, consultants, and staff as it relates to the objectives of this Agreement. The Parties reserve the right to change Designated Representatives by written notice to the other Parties during the term of this Agreement.

10.0 NOTICES

10.1 Unless otherwise provided herein, all notices and communications concerning this Agreement shall be in writing and addressed to the Designated Representatives.

10.2 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.

11.0 ANNUAL REVIEW

An oversight committee that shall consist of the City's Public Works Director and Fire Marshal and Microsoft's Director of Real Estate and Facilities, or their designees (the "Oversight Committee"), shall meet on the third Tuesday in January 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.

12.0 GENERAL PROVISIONS

12.1 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 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 Redmond City Council, such actions are recognized to be legislative actions.

12.2 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.

12.3 This Agreement shall be binding upon and inure to the benefit of the successors and assigns of Microsoft and the City.

12.4 Time is of the essence in every provision of this Agreement. Unless otherwise set forth in this Agreement, the reference to “days” shall mean calendar days. If any time for action occurs on a weekend or legal holiday, then the time period shall be extended automatically to the next business day.

12.5 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.

12.6 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.

12.7 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.

12.8 Each Party shall be responsible for its own costs, including legal fees, incurred in negotiating or finalizing this Agreement, unless otherwise agreed in writing by the Parties.

12.9 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; government mandated shut downs due to pandemics or other causes, 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.

12.10 This Agreement may be amended only by a written instrument executed by each of the Parties hereto.

12.11 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.

12.12 Section headings are intended as information only, and shall not be construed with the substance of the section they caption.

12.13 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.

12.14 All exhibits attached to this Agreement are hereby incorporated into this Agreement.

12.15 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.

12.16 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.

12.17 To the extent the plans for the Bridge change subsequent to the Effective Date, Exhibit A shall be updated to reflect the as-built condition of the Bridge when construction of the Bridge is complete.

12. TERM

This Agreement shall take effect as of the date Microsoft transfers the Bridge to the City by bill of sale or other instrument and remain in effect until such date as the Bridge may be permanently decommissioned or removed from service, or by mutual agreement of the Parties.

[Signatures on following page.]

THE CITY OF REDMOND

By: _____
Angela Birney, Mayor

Date: _____

Authorized by Ordinance _____

Approved as to form:

By: _____
James Haney, City Attorney

MICROSOFT CORPORATION

By: _____
Michael Ford, VP, Global Workplace Services

Date: _____

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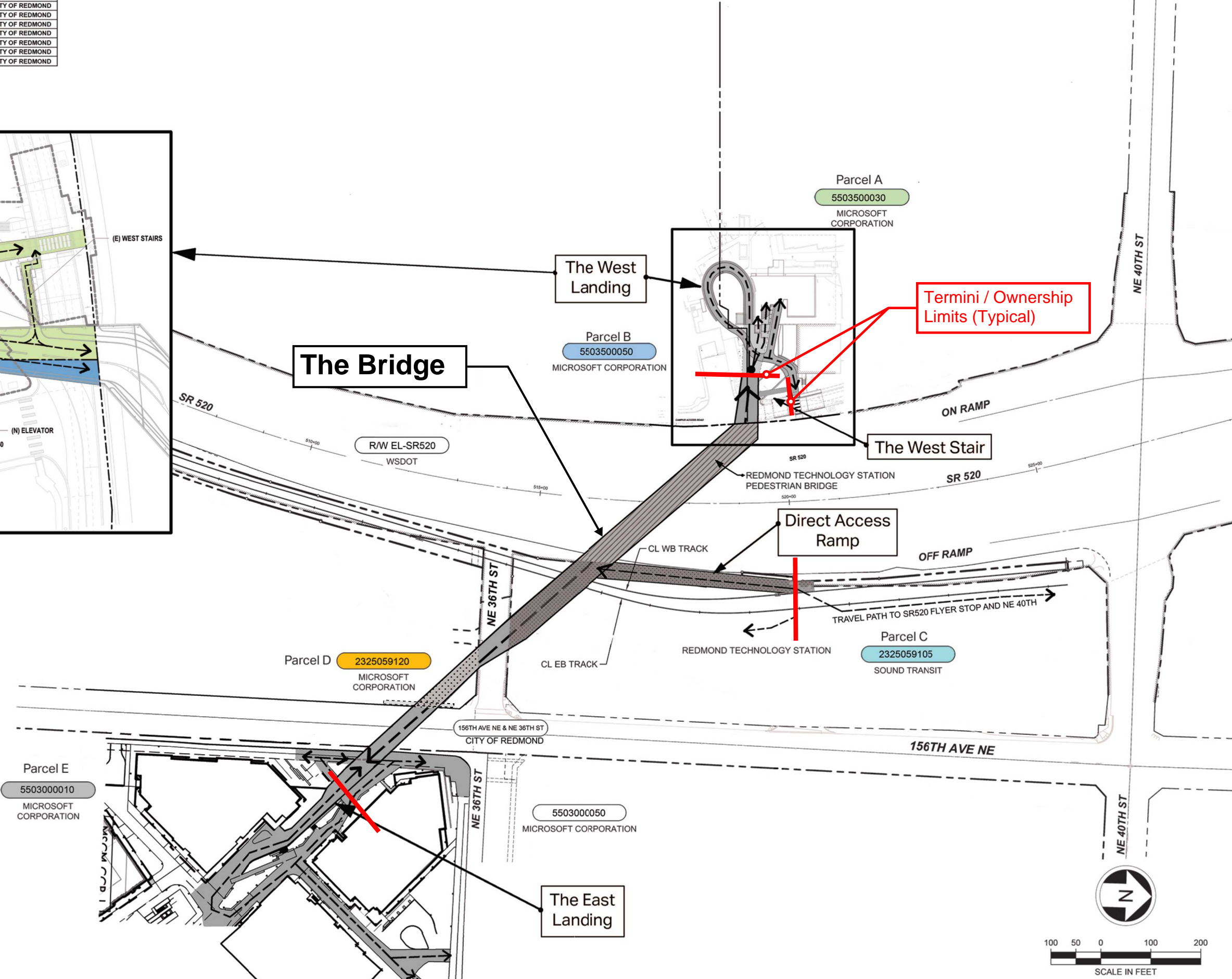
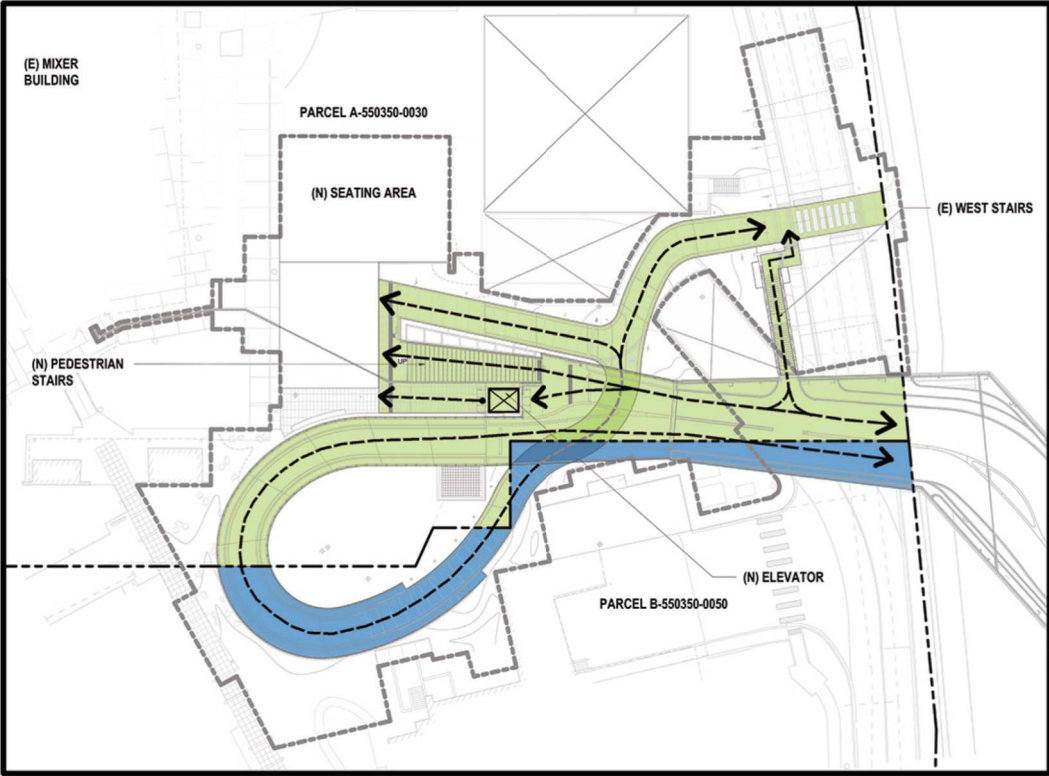
EXHIBIT A

BRIDGE OWNERSHIP, LIMITS, AND EASEMENT MAP

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KEY	PARCEL	PARCEL NO. (King Co. Assessor ID)	KEY	PROPERTY RIGHTS	GRANTOR	GRANTEE
A	5503500030			EASEMENT (ACCESS)	MICROSOFT CORP	CITY OF REDMOND
A	5503500030			EASEMENT (RIGHT OF WAY)	MICROSOFT CORP	CITY OF REDMOND
B	5503500050			EASEMENT (ACCESS)	MICROSOFT CORP	CITY OF REDMOND
B	5503500050			EASEMENT (RIGHT OF WAY)	MICROSOFT CORP	CITY OF REDMOND
C	2325059105			EASEMENT (ACCESS/UTILITIES)	SOUND TRANSIT	CITY OF REDMOND
C	2325059105			EASEMENT (DRAINAGE)	SOUND TRANSIT	CITY OF REDMOND
D	2325059120			EASEMENT (RIGHT OF WAY)	MICROSOFT CORP	CITY OF REDMOND
D	2325059120			EASEMENT (SIDEWALK/STREETLIGHT)	MICROSOFT CORP	CITY OF REDMOND
E	5503000010			EASEMENT (ACCESS)	MICROSOFT CORP	CITY OF REDMOND
E	5503000010			EASEMENT (RIGHT OF WAY)	MICROSOFT CORP	CITY OF REDMOND
	N/A (R/W EL-SR520)			TRAIL LEASE #TR-1-13382	WSDOT	CITY OF REDMOND

EXTEND OF BRIDGE LIMITS
PATH OF PUBLIC ACCESS ON BRIDGE AND DIRECT ACCESS RAMP



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EXHIBIT B

OWNERSHIP, MAINTENANCE, AND FUNDING RESPONSIBILITIES

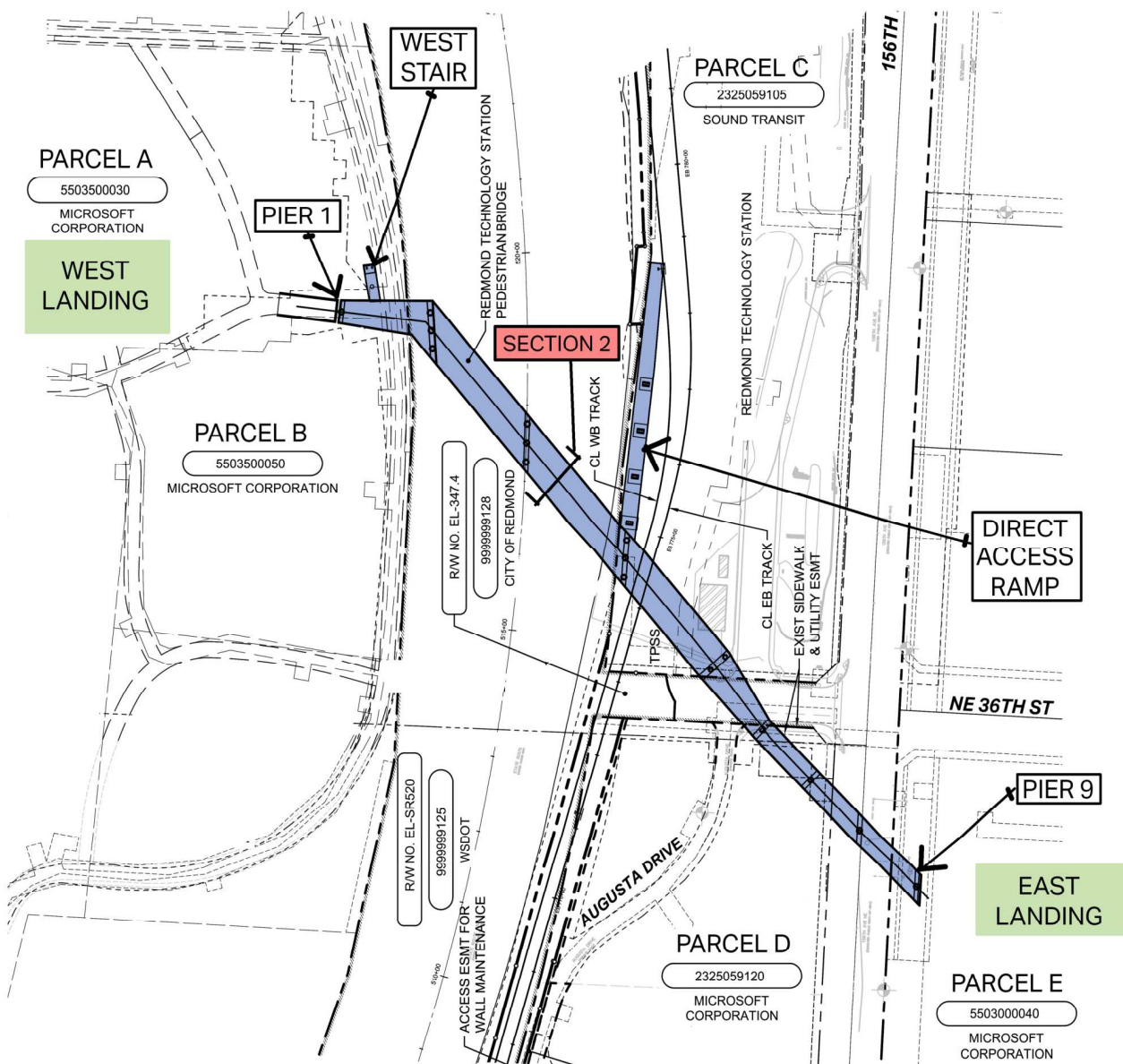
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EXHIBIT B-1

RTS Pedestrian Bridge and Direct Access Ramp Ownership, Maintenance and Funding Responsibilities	Ownership		Maintenance Responsibility		Funding Responsibility		Notes
Description of Elements	City	Microsoft	City	MS	City	Microsoft	
Foundations	X		X		X		
Columns, Caps, and Bearings	X		X		X		
I-Girders and Box Girders	X		X		X		
Deck Surface	X		X		X	X	City funds basic LOS, Msft funds enhanced LOS
Structural Deck, Barriers, Median Walls, and Curbs	X		X		X		Integral with the structural deck
Expansion Joints	X		X		X		
Landscaping Planters - All Components	X		X			X	Includes precast concrete planter walls, waterproofing systems, soil, mulch, rain gardens, and other components not integral with the structural deck
Landscaping Plantings	X		X			X	
Storm Drainage System - Drains and Pipes	X		X		X	X	All components EXCEPT canopy downspouts, gutters, and helical downspout assemblies. Funding responsibility split 50/50 between the City and Microsoft
Canopy - Structural Support Elements	X		X		X		Concrete pedestals, painted steel frames and masts
Canopy - Painting of Structural Support Elements	N/A		X		X		
Canopy - Tensile Fabric, Fastening Systems, and Other Components	X		X			X	Work performed by Fabritech
Canopy - Downspouts, Gutters, and Helical Downspout Assemblies	X		X			X	
Canopy - Cleaning and Bird Control	N/A	N/A	X			X	
West Stairs	X		X		X		
Railings	X		X		X		Steel and aluminum railing on the DAR, West Stairs, and top of concrete barrier
East Campus Approach - Pier 9 to City ROW		X		X		X	Outside limits of City ownership and maintenance contract
West Campus Approach - Pier 1 to SR520 bike trail		X		X		X	Outside limits of City ownership and maintenance contract
Fiber Optic Conduits - Microsoft		X		X		X	Outside scope of City manitenance contract
Conduits - City	X		X		X		
Illumination System	X		X		X		City pays for power
Irrigation and Domestic Water Supply Systems	X		X			X	All components behind the meter. Microsoft pays for water
Security - Cameras, conduits, junction boxes	X		X		X		Conduits and junction boxes installed during construction for possible future camera installation.
Snow and Ice Removal	N/A	N/A	X		X	X	City funds basic LOS within limits of City ownership, Msft funds enhanced LOS and areas outside City ownership
Grafitti and Vandalism - On maintenance items funded by Microsoft	N/A	N/A	X			X	
Grafitti and Vandalism - On maintenance items funded by City	N/A	N/A	X		X		
Garbage Pick-Up	N/A			X		X	Garbage receptacles at east and west Bridge ends; no receptacles on Bridge nor Direct Access Ramp. Microsoft maintains as part of Microsoft Campus maintenance.
Signage - Wayfinding Signage		X		X		X	Microsoft maintains as part of Microsoft Campus maintenance.
Signage - Regulatory Signage	X		X		X		City signage maintained by City Sign Shop
Precast concrete planters and benches	X		X			X	Precast concrete planters including concrete units and fasteners, waterproofing system, irrigation, soil, plants, etc.
Precast concrete planters and benches	X		X		X		Wood bench components (including wood seat, backrest, arms, metal framing, fasteners, etc.), electrical, and lighting
Direct Access Ramp	X		X		X		

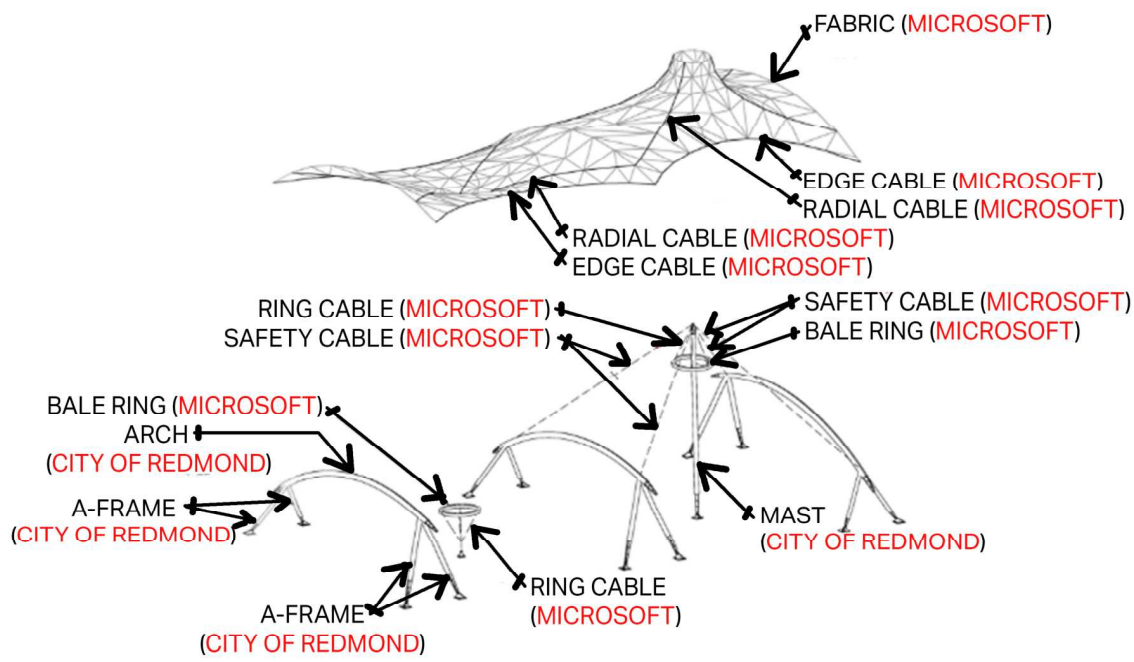
= Enhanced LOS funded by Microsoft
= Microsoft funded, owned, or maintained

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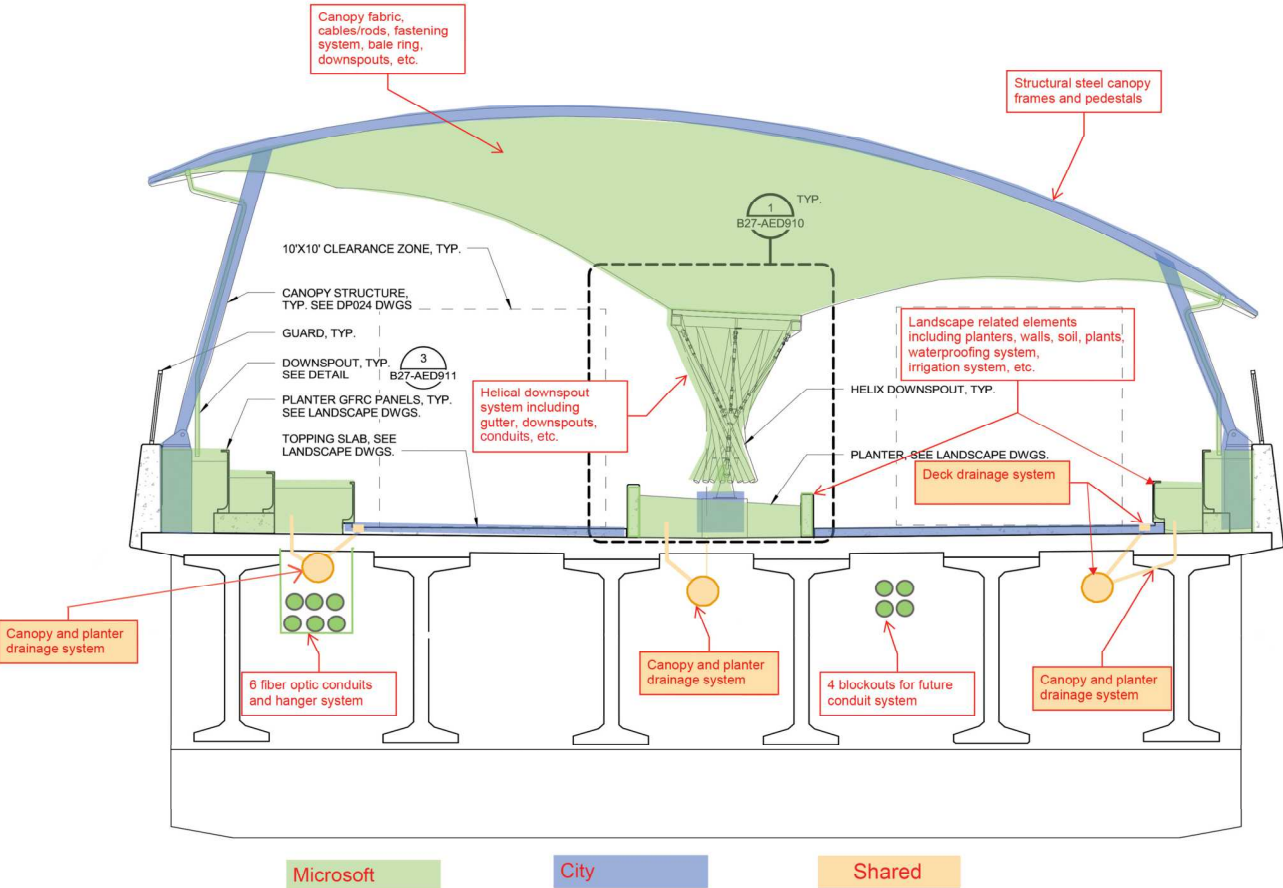
PLAN VIEW OF RTS BRIDGE

EXHIBIT B-2: OWNERSHIP & MAINTENANCE FUNDING RESPONSIBILITY



SECTION 1

CANOPY ISOMETRIC



Microsoft City Shared

SECTION 2

O & M FUNDING RESPONSIBILITIES RTS BRIDGE AND CANOPY

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EXHIBIT C

O&M Level of Service

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RTS Pedestrian Bridge Level of Service

Scheduled Tasks

Task	System	Frequency/interval
Steel - touch up paint	Canopy	1 year*
Inspect/clean gutters and downspout connections	Canopy	1 year
Downspouts - touch up paint	Canopy	1 year
Fabric - inspect	Canopy	1 years*
Fabric - inspect/re-tension cables/hardware	Canopy	1 years*
Structural bridge inspection	Concrete Structure	2 years
Inspect underdeck utilities, DAR, West Stairs	Concrete Structure	2 years
Inspect/clean drains	Drainage	1 year
Sweeping/Blowing	Hardscape	<i>[See Landscape Maintenance Table]</i>
Inspect	Illumination	6 months
Spring Activation	Irrigation	<i>[See Landscape Maintenance Table]</i>
Winterization	Irrigation	<i>[See Landscape Maintenance Table]</i>
Maintain plants and planter beds	Landscaping	<i>[See Landscape Maintenance Table]</i>
Replace dead plants	Landscaping	1 year

*Warranty work

Landscape Maintenance Table													
Frequency by Month													
	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total Times
Weeding		1	2	2	2	2	2	2	2	1	1	1	18
Pruning/Trimming			1	1		1		1	1	1			6
Mulch application		1											1
Sweep/blow hardscape	1	1	2	2	2	2	2	2	2	1	1	1	19
Irrigation – Spring Activation				1									1
Winterize Irrigation										1			1

Reactive Maintenance Tasks

Note: Response times for reactive tasks will vary based on severity of issue and availability of resources such as replacement parts. Situations that present unsafe circumstances to bridge users will be addressed immediately.

Task	System	Typical Response Time
Response to Customer Requests	ALL	Customer requests responded to within 2 business days (resolution to reported issue make take longer)
Repairs	Bridge guardrail	Area secured with temporary barricades within 2 hours of notification; repairs within 4 months.
Fabric - repair	Canopy	Small temporary repairs made within 14 days, permanent repairs within 2 months
Fabric - clean	Canopy	1 year
Fabric - Replace edge diverters	Canopy	1 year
Clear clogged drains	Drainage	7 working days; less if surface flooding is occurring
Pressure wash (response to spills)	Hardscape	7 working days; less if slipping hazard or pollutant is present
Replace bulbs	Illumination	1 month
Repair/replace fixtures	Illumination	1 month
Repairs	Irrigation	7 working days
Graffiti removal	Other	7 working days; less if graffiti is offensive/obscene
Snow and Ice	Other	24 hours – may vary depending on severity of event
Repair	Waterproofing	1-6 months, depending on severity and location.

Expected Service Intervals

Based on manufacturer recommendations and expected service life of components.

Task	System	Planning level frequency/interval
Steel - clean frames/supports	Canopy	10 years
Downspouts – clean helical assembly	Canopy	10 years
Steel - recoat	Canopy	25 years
Fabric - replace	Canopy	25 years
Fabric - Replace edge diverters	Canopy	25 years
Clean pier caps and bearings	Concrete Structure	15 years
Clean expansion joints	Concrete Structure	1 year
Seal deck cracks	Hardscape	5 years
Seal deck surface	Hardscape	25 years
Steel - touch up paint	West Stairs	5 years
Steel - recoat	West Stairs	25 years
Steel - clean	West Stairs	10 years

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