

GA 0130-20

**INTERIM OWNERSHIP, OPERATION AND MAINTENANCE AGREEMENT FOR
THE NORTHEAST 40TH STREET PEDESTRIAN UNDERPASS
BETWEEN
CITY OF REDMOND, MICROSOFT CORPORATION, AND CENTRAL PUGET
SOUND REGIONAL TRANSIT AUTHORITY**

This Interim Ownership, Operation and Maintenance Agreement for the NE 40th Pedestrian Underpass ("Agreement") is made by and between the City of Redmond, a municipal corporation ("City"), Microsoft Corporation ("Microsoft"), and the Central Puget Sound Regional Transit Authority, a regional transit authority of the State of Washington ("Sound Transit"). The City, Microsoft and Sound Transit shall hereinafter each be identified as a "Party," and shall be jointly called the "Parties."

RECITALS

- A. The Downtown Redmond Link Extension Project ("DRLE Project" or the "Project") is an approximately 3.4-mile light rail extension of East Link from the Redmond Technology Station to downtown Redmond with two stations: Southeast Redmond and Downtown Redmond. The Project includes the construction of a multi-level parking garage at the Southeast Redmond Station with approximately 1,400 spaces.
- B. Sound Transit has determined that the Project will be constructed using a design-build procurement methodology. Sound Transit is responsible for the implementation of the Project including management, design, construction, and Project start-up by 2024.
- C. Microsoft has requested Sound Transit add a public pedestrian and bicycle underpass under NE 40th Street parallel to the light rail guideway, leading from an area near the southwest corner of the Microsoft North Campus to the Redmond Technology Station north plaza ("Underpass"). The Underpass is not a necessary element of the Project and is therefore considered a project betterment.
- D. Sound Transit will build the Underpass as part of the DRLE design-build contract and Microsoft will provide funding for the design and construction of the Underpass, as memorialized in the Agreement between Microsoft and Sound Transit for the Funding of the 40th Street Pedestrian Underpass (GA 0202-19, executed November 22, 2019, "Microsoft Funding Agreement").
- E. The City agreed to participate in the design of the Underpass and negotiations of the ownership, operation, and maintenance of the Underpass, as memorialized in the Agreement between City Of Redmond And The Central Puget Sound Regional Transit Authority For The Funding, Design, And Construction Of Downtown Redmond Link Extension Betterments (GA 0143-19, executed October 18, 2019, "City Betterment Agreement").

- F. The Parties entered into a non-binding Term Sheet (GA-0059-20, executed May 1, 2020) which described the then common understanding with regard to roles and responsibilities related to the ownership, operations and maintenance of the Underpass, and the strategy the Parties intended to undertake with regard to future agreements related to the operations and maintenance (“O&M”) of the Underpass..
- G. The Parties have identified design refinements to the Underpass to accommodate safe and efficient O&M, which can be pursued as change orders through the processes outlined in the City Betterment Agreement and the Microsoft Funding Agreement.
- H. The Parties agree that the permanent ownership, operation, and maintenance responsibilities for the Underpass and the related facilities being constructed as part of the Project can be delineated through a combination of the Redmond Transit Way Agreement between the City and Sound Transit (GA 0202-18, executed September 27, 2019) (“Transit Way Agreement”) and future permanent easements from Microsoft to the City.
- I. The Parties desire to memorialize the procedures necessary to implement ownership, operation, and maintenance responsibilities through those other agreements and to assign operation and maintenance responsibilities that may arise between completion of the Underpass and the effective date of those future agreements.

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

1.0 PURPOSE

The Purpose of this Agreement is to establish roles and responsibilities related to the ownership, operations, inspections and maintenance of the Underpass, including the public plazas and walkways connecting to the Underpass. This Agreement also describes the process and timeline for transferring the needed property rights to support long-term public use of the connecting walkways and the City’s maintenance of the water line on Microsoft property.

2.0 DESCRIPTION OF THE UNDERPASS

2.1 The Underpass is a grade-separated shared use pedestrian and bicycle path under NE 40th Street generally parallel to the light rail guideway. The Underpass will provide a pedestrian and bicycle connection from the Redmond Technology Station north plaza to the north side of NE 40th Street following City of Redmond’s code, specifications, and standards.

2.2 On the north side of NE 40th Street, a new pedestrian path southwest of Microsoft Building 50 will be built with an ADA-compliant connection to the 40th Street sidewalk. This walkway will be open to general public use through a public access easement granted from Microsoft to the City.

- 2.3** To accommodate the Underpass, an existing City water line and master meter in a vault will be relocated onto Microsoft property. Microsoft will grant the City a permanent utility easement for the water line, meter vault, and appurtenances.
- 2.4** The various components of the Underpass, which include the relocated water line, are depicted in **Exhibit A**, attached hereto and incorporated herein by this reference. The Parties acknowledge that the location and configuration of the various components of the Underpass as constructed may vary from that shown on **Exhibit A**.

3.0 OWNERSHIP, OPERATION, INSPECTIONS AND MAINTENANCE OF THE UNDERPASS

3.1 Parties agree that the Underpass should be opened to the public as soon as possible, allowing that all of the following four conditions are met, unless the parties mutually agree otherwise :

1. There are no outstanding payment disputes among the Parties related to the Underpass.
2. The Underpass has been inspected and accepted by the City, Sound Transit and Microsoft.
3. Relevant permits have been closed out and the asset has been transferred to the City and Microsoft.
4. The property rights described in Section 4.0 have been transferred from Microsoft to the City.

3.2 Parties agree to the ownership and maintenance boundaries depicted in **Exhibit A** (“Ownership and Maintenance Boundaries of 40th Underpass with Property Rights”).

3.3 Parties agree to divide ownership, operations, inspections and maintenance responsibilities as depicted in **Exhibit B** (“Ownership, Operation, Inspections and Maintenance Responsibility Matrix”). Nothing in this Agreement prevents the Parties from deciding at a future date to modify these responsibilities by mutual agreement.

3.4 Sound Transit’s design builder will be responsible for operation and maintenance costs of the Underpass until owner acceptance. Each Party’s obligations to perform operations, inspections, and maintenance in accordance with this Agreement will commence on the date the Underpass and associated facilities are accepted from Sound Transit’s DRLE Project design builder in accordance with the procedure as set forth in Section 5.1 of the City Betterment Agreement.

3.5 Microsoft will be responsible for all improvements within the public access easement area shown in **Exhibit A** (page 2), including routine and preventative maintenance, structural repair and safety and security. This commitment will be formalized in the language of the public access easement to be granted by Microsoft to the City, described in Section 2.2 and 4.2. This responsibility does not include the city water

utility covered under the separate permanent utility easement described in Section 2.3 and 4.1.

- 3.6** Following City acceptance of the Underpass, Sound Transit will coordinate inspections inside the Underpass with the City, including the need to bring in any special equipment, in accordance with the Transit Way Agreement.
- 3.7** The City and Sound Transit will apply their agency's respective standards to maintenance and security activities they are responsible for per this Agreement.
- 3.8** Sound Transit will assign any and all warranties relating to the Underpass to the City in order to enable the City to address directly with the design builder any defects in workmanship or materials in accordance with Section 5.1 of the City Betterment Agreement.
- 3.9** A Party, at its sole cost and expense, may enter into separate agreements with third parties for the performance of that Party's operation and maintenance responsibilities under this Agreement. Notwithstanding any such agreements, the Party to this Agreement shall remain responsible for such operation and maintenance responsibilities.

4.0 PROPERTY RIGHTS

- 4.1** Construction of the Underpass requires the relocation of a city water line and master meter vault onto Microsoft property. Microsoft will convey a permanent utility easement to the City at no cost for the operation and maintenance of the water line. Additionally, Microsoft will convey a 20-foot wide easement to the City at no cost for the placement and maintenance of an irrigation meter and the water service line. Microsoft will convey the permanent utility easement for the meter vault, irrigation meter and water line in substantially the form and approximate location attached hereto as **Exhibit C**.
- 4.2** The Underpass betterment includes a pedestrian connection between the north portal of the Underpass to the public sidewalk on the north side of NE 40th St. Microsoft will convey a permanent public access easement to the City at no cost for the sidewalks, walkways, stairs and ramps connecting the Underpass to the public sidewalk on the north side of NE 40th St in substantially the form and approximate location attached hereto as **Exhibit D**.
- 4.3** The City will need to access the Underpass from Microsoft property for maintenance activities. Microsoft will convey the City a maintenance access easement at no cost granting a right to access for maintenance purposes in substantially the form and approximate location attached hereto as **Exhibit E**.
- 4.4** The City and Microsoft agree to finalize **Exhibits C, D, and E** and record the permanent easements described in this Section 4.0 in the Real Property Records of King County no later than 60 days after Sound Transit provides the City and Microsoft with notice of the first acceptance walk-through inspection, as described in the City Betterment Agreement, Section 5.1, and the data set forth below in this

Section 4.5. Sound Transit agrees to provide the City and Microsoft with the data necessary to prepare and record the easements described in Sections 4.1, 4.2, and 4.3 no later than the first acceptance walk-through inspection. Microsoft agrees to be responsible for preparing recordable legal descriptions and the City agrees to be responsible for reviewing the legal descriptions..

4.5 The City and Sound Transit agree that the Underpass exists in the Light Rail Transit Way, as defined by the Transit Way Agreement. The terms and conditions defined in the Transit Way Agreement will apply to the Underpass. In the event there is conflict between this Agreement and the Transit Way Agreement, the Transit Way Agreement will control.

4.5.1 Sound Transit and the City will work collaboratively to make certain the Final Construction Plans and Final Right-of-Way Plans, as those terms are defined in the Transit Way Agreement, accurately reflect the division of the Public Right-of-Way and Light Rail Transit Facilities necessary to effect the ownership, operation, and maintenance responsibilities described in **Exhibits A and B**.

4.6 The City acknowledges that Sound Transit will need to construct the permanent public facilities described in Section 2 on Microsoft property in temporary construction easements. The City agrees that it has the authority to issue and will not withhold any City permits Sound Transit needs to construct the facilities because permanent rights have not been transferred to the City.

5.0 DESIGNATED REPRESENTATIVES

5.1 The Parties have identified the following individuals as Designated Representatives who will be responsible for communication and coordination between the Parties and who will act as the point of contact for each Party:

SOUND TRANSIT

Becca Aue, Light Rail
Development Manager
401 S. Jackson St.
Seattle, WA 98104
206-398-5358
Becca.aue@soundtransit.org

CITY OF REDMOND

Jeff Churchill, Transportation
Strategic Advisor
PO Box 97010; MS 4SPL
Redmond, WA 98073-9710
425-556-2492
jchurchill@redmond.gov

MICROSOFT

Mike Behn, Senior Real Estate
and Land Use Manager
One Microsoft Way, Bldg. 21
Redmond, WA 98052
425-703-6420
Mike.behn@microsoft.com

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.

6.0 ALLOCATION OF COSTS.

The Parties agree that the cost to perform the Parties' respective responsibilities under this Agreement shall be borne by that Party.

7.0 TERM AND TERMINATION

7.1 This Agreement will remain in effect against Microsoft from the date of execution until Microsoft has transferred all permanent property rights identified in Section 4 to the City.

7.2 This Agreement will remain in effect against the City and Sound Transit from the date of execution until both (1) Microsoft's involvement in this Agreement has terminated, pursuant to Section 7.1 and (2) Sound Transit provides written certification to the City the Final Construction Plans and Final Right-of-Way Plans attached to the Transit Way Agreement comply with Section X.

8.0 RECORDS MAINTENANCE

8.1 The Parties to this Agreement shall each maintain electronic books, records, work orders, documents and other evidence which sufficiently and properly reflect all direct and indirect costs expended by the Parties in the performance of the work described herein. These records shall be subject to inspection, review or audit by personnel of the Parties, other personnel duly authorized by either party, the Office of the State Auditor, and federal officials so authorized by law. All books, records, documents, and other material relevant to this Agreement will be retained for six (6) years after expiration of this Agreement and the Office of the State Auditor, federal auditors, and any persons duly authorized by the parties shall have full access and the right to examine any of these materials during this period. Provided, that if any litigation, claim or audit is started before the expiration of the six (6) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.

9.0 LEGAL RELATIONS

9.1 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.

9.2 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.**

9.2.1 The indemnification provisions in this paragraph shall survive the expiration or termination of this Agreement.

10.0 DISPUTE RESOLUTION

10.1 The Parties agree to use their best efforts to resolve disputes arising out of or related to this Agreement, and the Designated Representatives will use their best efforts to resolve any conflicts before initiating the dispute escalation process. The dispute resolution may be utilized for a dispute among all Parties or between two Parties only. If the Designated Representatives are unable to resolve the issue, the Parties will undertake good faith negotiations by engaging in the following dispute escalation process should any such disputes arise:

10.1.1 Level One - Sound Transit's DRLE Executive Project Director, the City's Light Rail Project Director, and/or Microsoft's Director of Development will 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.

10.1.2 Level Two - Sound Transit's Executive Director of Design, Engineering and Construction Management, the City's Public Works Director, and/or Microsoft's Regional Director of Puget Sound will 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.

10.1.3 Level Three - Sound Transit's Deputy Chief Executive Officer or Designee, the City Chief Operating Officer or Designee, and/or Microsoft's General

Manager of Real Estate and Security will meet to discuss and attempt to resolve the dispute in a timely manner.

- 10.2** This Dispute Resolution process will be exhausted prior to initiating legal action, but shall not be considered the exclusive opportunity or tool to resolve any issues prior to initiating legal action.

11.0 GENERAL

- 11.1** Recitals, Exhibits and Attachments. The recitals of this Agreement are hereby incorporated into this Agreement. All exhibits, attachments, and documents referenced in this Agreement are hereby incorporated into this Agreement.
- 11.2** Notice. Unless otherwise provided herein, all notices will 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 party's Designated Representative as listed herein.
- 11.3** Assurances. The parties agree that all activity pursuant to this Agreement shall be in accordance with all applicable federal, State and local laws, rules, and regulations as they currently exist or as amended.
- 11.4** Financing. Each party shall be responsible for the financing of its contractual obligations under its normal budgetary process.
- 11.5** Headings. The titles to paragraphs and sections of this Agreement are for convenience only and shall have no effect on the construction or interpretation of any part hereof.
- 11.6** Amendments. This Agreement may be amended only by the mutual written agreement of the parties executed by personnel authorized to bind each of the Parties.
- 11.7** Waiver. A failure by a Party to exercise its rights under this Agreement shall not preclude that Party from subsequent exercise of such rights and shall not constitute a waiver of any other rights under this Agreement unless stated to be such in writing signed by an authorized representative of the waiving party and attached to the original Agreement.
- 11.8** Entire Agreement. 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. However, the Parties will negotiate and execute such ancillary agreements as may be required to implement this Agreement.
- 11.9** Governing Law and Venue. This Agreement will be interpreted, construed and enforced in accordance with the laws of the State of Washington. Venue for any action under this Agreement will be King County, Washington.

11.10 Severability. If any term or condition of this Agreement is held invalid, such invalidity shall not affect the validity of the other terms or conditions of this Agreement.

11.11 Counterparts and Electronic Signatures. This Agreement may be executed in counterparts or in duplicate originals. Each counterpart or each duplicate shall be deemed an original copy of this Agreement signed by each party, for all purposes. Facsimile and electronic signatures (e.g. DocuSign or similar electronic signature technology) may be used in place of original signatures on this Agreement. The Parties to this Agreement intend to be bound by the signatures on the faxed, electronic or e-mailed document, are aware that the other Party or Parties will rely on the faxed, electronic or e-mailed signatures, and hereby waive any defenses to the enforcement of the terms of this Agreement based on the form of signature. The Parties further agree that after execution this Agreement, it may be maintained in electronic form and that such electronic record shall be equally valid and effective to bind the party as a paper copy bearing such party's hand-written signature.

11.12 Authority to Bind. The signatories to this Agreement represent that they have the authority to bind their respective organizations to this Agreement.

The Parties hereto have executed this Agreement as the Party's date last signed below.

CITY OF REDMOND

Authorized by City Council motion on [DATE]

By: _____
Angela Birney, Mayor

Date: _____

CENTRAL PUGET SOUND REGIONAL TRANSIT AUTHORITY

By: _____
Kimberly Farley, Deputy CEO

Date: _____

MICROSOFT CORPORATION

By: _____
Rob Towne, Regional Director RE+S

Date: _____

Approved as to form for City of Redmond:

By: _____
James E. Haney, City Attorney

Date: _____

Approved as to form for Central Puget Sound Regional Transit Authority:

By: _____
Mattelyn L. Tharpe, Legal Counsel 1

Date: _____

EXHIBITS:

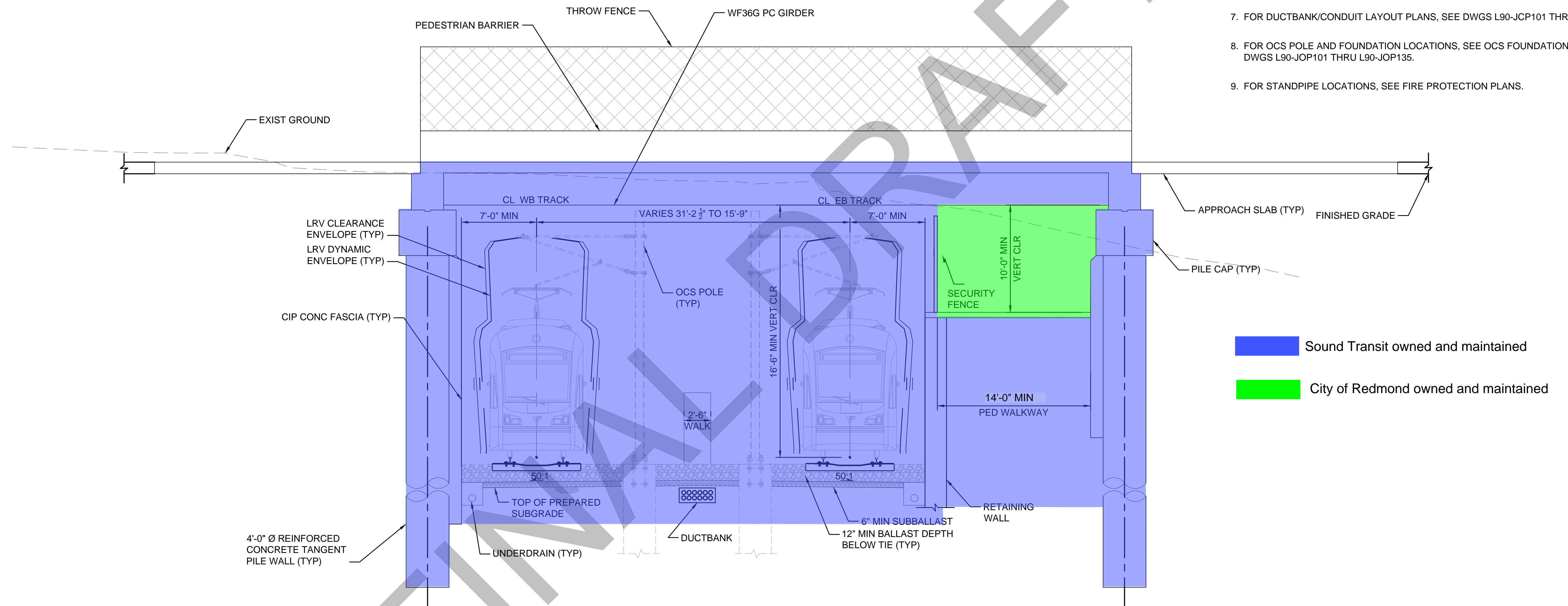
- Exhibit A:** Ownership and Maintenance Boundaries of 40th Underpass with Property Rights
- Exhibit B:** Ownership, Operation, Inspections and Maintenance Responsibility Matrix
- Exhibit C:** Permanent Utility Easement
- Exhibit D:** Permanent Public Access Easement
- Exhibit E:** Maintenance Access Easement

EXHIBIT A

Ownership and Maintenance Boundaries of 40th Underpass with Property Rights

FINAL DRAFT

1. TRACK SECTIONS ARE SHOWN FOR GENERAL LAYOUT AND CONFIGURATION.
2. FOR TRACK TYPE, RAIL TYPE, AND EMERGENCY GUARD RAIL LIMITS, SEE TRACK CHARTS, DWGS L90-KTC100 THRU L90-KTC107.
3. FOR STORM DRAIN, UNDERDRAIN AND GUTTER LOCATIONS, SEE DRAINAGE PLANS, DWGS L90-CDP101 THRU L90-CDP135.
4. FOR UTILITY PLANS, SEE DWGS L90-UWP102 THRU L90-UWP135 AND L90-UCP103 THRU L90-UCP135.
5. FOR ROADWAY PLANS, SEE DWGS L90-CRP101 THRU L90-CRP135.
6. FOR STRUCTURES AND WALL LIMITS, SEE STRUCTURAL GENERAL LAYOUT PLANS, DWGS L90-SEP001 THRU L90-SEP018.
7. FOR DUCTBANK/CONDUIT LAYOUT PLANS, SEE DWGS L90-JCP101 THRU L90-JCP135.
8. FOR OCS POLE AND FOUNDATION LOCATIONS, SEE OCS FOUNDATION PLANS, DWGS L90-JOP101 THRU L90-JOP135.
9. FOR STANDPIPE LOCATIONS, SEE FIRE PROTECTION PLANS.



AT-GRADE - BALLASTED TRACK WIDENED TRACK CENTERS

30% SUBMITTAL

NOT FOR CONSTRUCTION

DESIGNED BY:	J. SERA
DRAWN BY:	M. REN
CHECKED BY:	D. CERNEY
APPROVED BY	J. SERA



JACOBS'

REVIEWED BY:
J. SCHETTLER



SUBMITTED BY:
A. TISCAREÑO



LINE IS 1" AT FULL SCALE

SCALE:	NTS
FILENAME:	R200-L90-KYX101
CONTRACT No.:	RTA/CN 0148-18
DATE:	12/20/2019

DESIGN PACKAGE:	
PERMIT INFORMATION:	

DOWNTOWN REDMOND LINK EXTENSION CONTRACT R200

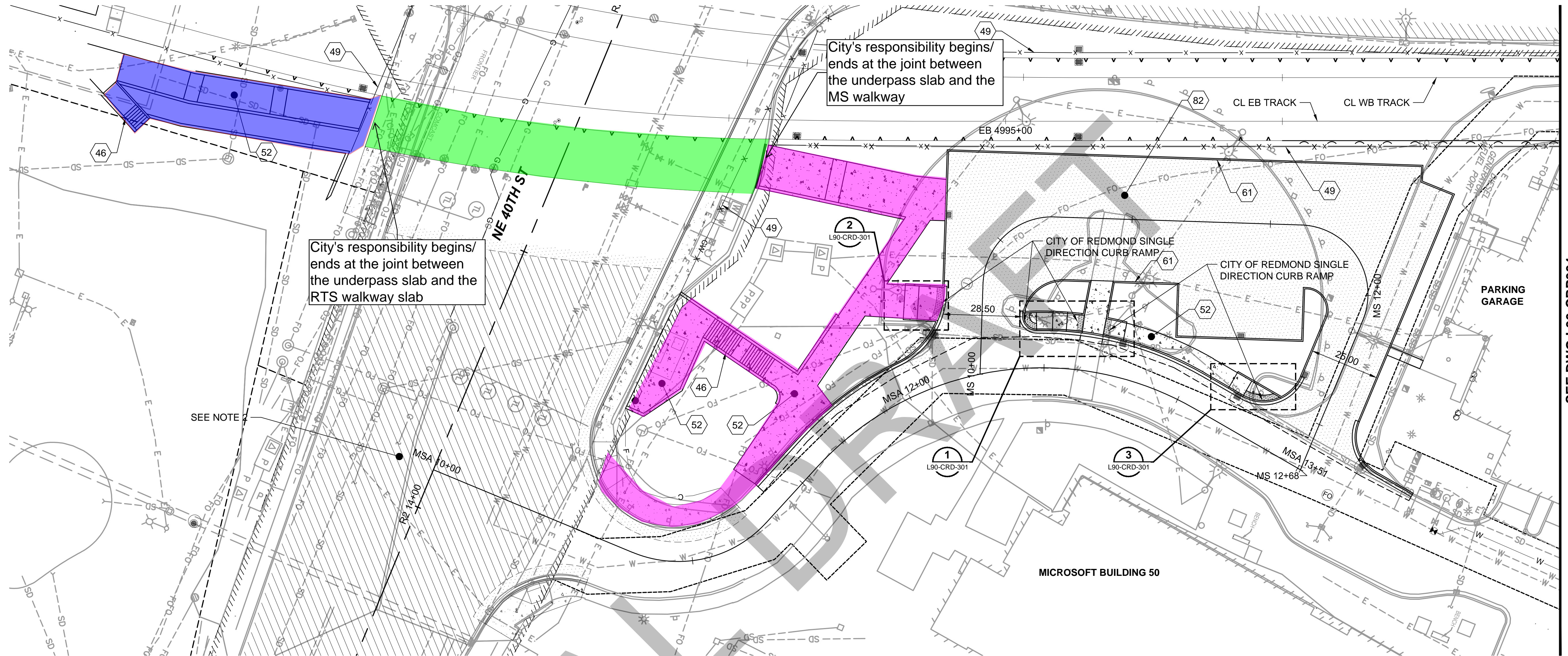
REDMOND TECH CENTER TO DOWNTOWN REDMOND

TRACKWORK TYPICAL SECTIONS

A

DRAWING No.:
L90-KYX101
FACILITY ID:
E28
SHEET No.: REV:
50

xrefs:
xR200-L90-CAP100
xR200-L90-CPD100
xR200-L90-CPD100
xR200-L90-CPD100
xR200-L90-CPD201
xR200-L90-GZK020
xR200-L90-KAP100
xR200-L90-SEP110
xR200-L90-SWP100
xR200-L90-UCP100
xR200-L90-UWP100
xDRLE-GS-VSF
xDRLE-GS-VUT
xDRLE-L90-VRX
xDRLE-L90-VSF
xDRLE-L90-VUT
xDRLE-L95-VSF
xDRLE-L95-VUT
xDRLE-STREET-NAMES
xR200-L90-CRN201
xR200-TB22x34
GB-SEAL-RCL40847
xR200-L90-CAP200



NOTES:

1. FOR GENERAL NOTES SEE SHEET L90-CRNXXX.
2. FOR NE 40TH ST IMPROVEMENTS, SEE DRAWINGS XXXXX THRU XXXXX.

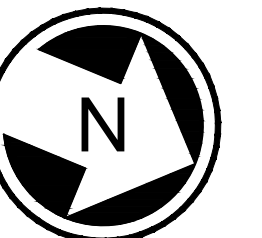
NOTES CONT'D:

KEY NOTES:

- 46. CONSTRUCT STAIRWAY, SEE DRAWING L90-CPDXXX FOR DETAILS
- 49. INSTALL 8' CHAIN LINK SECURITY FENCE, SEE SWP SERIES
- 52. CONSTRUCT CEMENT CONCRETE SIDEWALK PER CITY OF REDMOND DETAIL 303
- 61. CONSTRUCT CEMENT CONCRETE EXTRUDED CURB PER CITY OF REDMOND DETAIL 304A
- 82. CONSTRUCT PARKING LOT HMA PAVEMENT, SEE DETAIL X/L90-CPDXXX

KEY NOTES CONT'D:

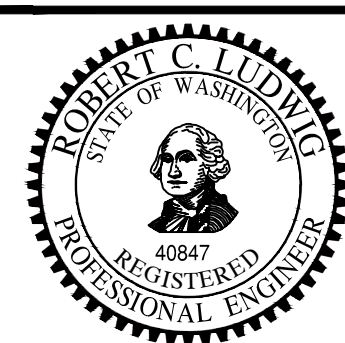
- Sound Transit owned and Maintain
- City of Redmond owned and Maintain
- Microsoft owned and Maintain



30% SUBMITTAL

NOT FOR CONSTRUCTION

DESIGNED BY:
Q. AL ALI
DRAWN BY:
Q. AL ALI
CHECKED BY:
S. KITTERMAN
APPROVED BY:
R. LUDWIG



JACOBS

REVIEWED BY:
J. SCHETTLER

SWK
Stacy and Witbeck / Kuney

SUBMITTED BY:
A. TISCAREÑO



LINE IS 1" AT FULL SCALE

SCALE:
1" = 20'
FILENAME:
R200-L90-CRP303
CONTRACT No.:
RTA/CN 0148-18
DATE:
12/20/2019

DESIGN PACKAGE:
PERMIT INFORMATION:

**DOWNTOWN REDMOND LINK EXTENSION
CONTRACT R200**

REDMOND TECH CENTER TO DOWNTOWN REDMOND

CIVIL - SITE
ROADWAY/SITE
MICROSOFT PARKING 1 OF 2

DRAWING No.:
L90-CRP303
FACILITY ID:
E28
SHEET No.:
264
REV:

EXHIBIT B

Ownership, Operation, Inspection and Maintenance Responsibility Matrix

Ownership, Operation and Maintenance Activities	AGENCY		
	ST	City	MS
Wall opposite light rail trackway side	X		
Foundation and overhead structure	X		
Security fence between underpass and light rail trackway	X		
Pedestrian underpass (including slab, lighting, security cameras, fixtures, and all elements inside of underpass)		X	
Routine and Preventative Maintenance			
Foundation and overhead structure	X		
Security fence between underpass and light rail track	X		
Pedestrian underpass (including slab, lighting, graffiti removal, security cameras, electrical systems, fixtures, wall opposite light rail trackway inside wall of underpass, and all elements inside of underpass)		X	
Connecting walkways and stairways on MS property			X
Drainage system immediately south of Underpass	X		
Drainage system immediately north of Underpass			X
Structural Repair			
Wall opposite light rail trackway side (not caused by public access in Underpass)	X		
Funding for wall or security fence repair when caused by public access in Underpass		X	
Foundation and overhead structure	X		
Security fence between underpass and light rail trackway	X		
Pedestrian underpass (including slab, lighting, security cameras, fixtures and all elements inside of underpass)		X	
Connecting walkways and stairways on MS property			X
Safety and Security			
Light rail guideway side of fence	X		
Inside underpass		X	
Connecting walkways and stairways on MS property			X
Inspections			
Light rail guideway side of fence	X		
Inside underpass	X	X	
Connecting walkways and stairways on MS property			X

EXHIBIT C

Please Return To:
City of Redmond – MS: 3NFN
Finance Dept – Real Property
P.O. Box 97010
Redmond, WA 98073-9710

WASHINGTON STATE COUNTY AUDITOR/RECORDER INDEXING FORM

Document Title(s) <i>(or transactions contained therein):</i> EASEMENT (UTILITY)	
Reference Number(s) of Documents assigned or released: Additional reference numbers on page ____ of document	
Grantor: <i>(Last name first, then first name and initials)</i> 1. Microsoft Corporation	
Grantee(s): <i>(Last name first, then first name and initials)</i> 1. REDMOND, CITY OF <input type="checkbox"/> Additional names on page __ of document	
Legal Description: <i>(abbreviated form i.e. lot, block, plat name, section-township-range)</i> <input type="checkbox"/> Additional legal is on Exhibit A of document	
Assessor's Property Tax Parcel Account Number(s):	
City of Redmond Reference:	
Project Number:	Permit Number:
The Auditor/Recorder will rely on the information provided on the form. The staff will not read the document to verify the accuracy or completeness of the indexing information provided herein.	

UTILITY EASEMENT

THE GRANTOR, MICROSOFT CORPORATION, a Washington Corporation, for and in consideration of a sum or other valuable consideration in hand paid, receipt of which is hereby acknowledged, conveys and grants to the Grantee, the CITY OF REDMOND, a municipal corporation of the State of Washington, its successors and assigns, a permanent, non-exclusive easement, over, under, in, along, across and upon, certain land ("easement area") legally described as:

See Exhibit "A" attached hereto and incorporated herein by reference,

and as graphically depicted on Exhibit "B", for the purposes of constructing, reconstructing, installing, repairing, replacing, operating and maintaining public utilities, including but not limited to water line and public fire hydrant, sanitary sewer pipeline and storm drainage, with ordinary and necessary appurtenances over, upon, under, through and across the described easement area, together with the right to keep said easement area free of obstructions, along with the right of ingress and egress thereto to enable Grantee to exercise its rights hereunder. This easement is granted subject to the following terms and conditions:

1. When in the process of performing any work in the easement area, Grantee shall use construction procedures so that Grantor's access to its property is not blocked.
2. The Grantee shall, upon completion of any work within the property covered by the easement, restore the easement area, and any private improvements disturbed, damaged or destroyed, during execution of the work, as nearly as practical to the condition as existed immediately before the commencement of the work or entry by the Grantee.
3. Grantor shall retain the right to use the easement area as long as such use does not interfere with the easement rights granted to the Grantee. Grantor shall not, however, have the right to:
 - (a) Erect or maintain any buildings or structures within the easement area; or
 - (b) Plant trees, shrubs or vegetation having root patterns, which may cause damage to or interfere with the utilities placed within the easement area by the Grantee, or
 - (c) Plant trees, shrubs or other vegetation with vertical growth patterns within a ten (10) foot radius from the installed above ground hydrant improvements which would hinder or prohibit access to the hydrant facilities; or
 - (d) Develop, landscape, or beautify the easement area in any way, which would unreasonably increase the cost to the Grantee of constructing in, maintaining or restoring the easement area and any private improvements therein.

This Easement is granted for the mutual benefit of both named parties. In the event that both the Grantee and Grantor of this easement concurrently declare the rights granted herein to be surplus to the original conveyance, Grantee shall terminate, relinquish and release its rights by way of quit claim deed and without further consideration.

This easement shall be recorded with the King County Recorder, shall run with the land described herein, and shall be binding upon the parties, their heirs, successors in interest and assigns.

EXHIBIT “A”

FINAL DRAFT

EXHIBIT “B”

FINAL DRAFT

EXHIBIT D

After recording, please return to:

City of Redmond – MS: 3NFN
Attn: Real Property
15670 NE 85th St
P.O. Box 97010
Redmond, WA 98073-9710

WASHINGTON STATE COUNTY AUDITOR/RECORDER INDEXING FORM

Document Title(s) <i>(or transactions contained therein):</i> PUBLIC PEDESTRIAN ACCESS EASEMENT	
Reference Number(s) of Documents assigned or released: Additional reference numbers on page ____ of document	
Grantor(s): <i>(Last name first, then first name and initials)</i> Additional names on page ____ of document MICROSOFT CORPORATION	
Grantee(s): <i>(Last name first, then first name and initials)</i> Additional names on page ____ of document CITY OF REDMOND, A MUNICIPAL CORPORATION	
Legal Description: <i>(abbreviated form i.e. lot, block, plat name, section-township-range)</i> Additional information provided in Exhibit A and Exhibit B.	
Assessor's Property Tax Parcel Account Number(s):	
City of Redmond Reference: Project Number: Permit Number: <i>The Auditor/Recorder will rely on the information provided on the form. The staff will not read the document to verify the accuracy or completeness of the indexing information provided herein.</i>	

PUBLIC PEDESTRIAN ACCESS EASEMENT

THIS PUBLIC PEDESTRIAN ACCESS EASEMENT (hereinafter referred to as “Easement”) is hereby executed by and between the **City of Redmond**, Washington municipal corporation organized under Title 35A RCW, (“Grantee”) and Microsoft Corporation, a Washington Corporation (“Grantor”).

RECITALS

WHEREAS, the Grantor has developed real property (“Property”), legally described in Exhibit A and depicted in Exhibit B, attached hereto and incorporated herein by reference, generally consisting of a hard surface pathway, ramp, and stairs connecting the north portal of a pedestrian and bicycle underpass of NE 40th Street to the public sidewalk on the north side of NE 40th Street, hereinafter referred to as the “Easement Area”; and

WHEREAS, the Grantor desires to grant to the Grantee this Easement for the benefit of the general public and to establish maintenance and other obligations pertaining to the Easement;

NOW THEREFORE, in consideration of the foregoing and the covenants set forth herein, and in consideration of the mutual benefits accruing, the receipt and sufficiency of which are hereby acknowledged, the Grantor and Grantee agree as follows:

1. Grant of Easement. The Grantor does hereby grant to the Grantee, for the use and benefit of the general public for pedestrian and non-motorized access, a non-exclusive, irrevocable, and perpetual easement, legally described in Exhibit A and depicted in Exhibit B, over, across, along, in, and upon the Property. This Easement is dedicated to the use of the public forever.
2. Use of Easement Area. The Grantor retains the right to use the Easement Area for any purpose not inconsistent or interfering with the easement rights granted to the Grantee. Use of the Easement Area does not include the authority to plant or maintain landscaping in or abutting the Easement Area not in compliance with Grantee municipal code or which may have root patterns that could cause damage to or interfere with pedestrian improvements or to erect or maintain any structures, fences, gates, or any other physical feature which will act as a barrier to pedestrian access.
3. Covenant Running with the Land. The Easement is perpetual, intended as a covenant running with the land, and shall inure to the benefit of the general public and be recorded with the King County Recorder’s Office.
4. Maintenance of the Easement. The Grantor shall be responsible for inspection, maintenance, and repair of the Easement Area. The Grantor shall be required to maintain the Easement Area in a reasonably safe condition for pedestrians, including promptly making repairs as hazardous conditions are reported either to the Grantee or to the Grantor directly by the traveling public. The Grantor shall also be required to perform an inspection of the Easement Area at least annually. Any hazardous conditions discovered during the inspection shall also be promptly repaired at the cost of and by the Grantor. Should the Grantee receive any reports from the public regarding hazardous conditions on the Easement Area, the Grantee shall promptly notify the Grantor of such report. Notwithstanding the indemnification provisions of Paragraph 5 below, the Grantor specifically agrees to protect, defend, indemnify, and hold harmless the Grantee, its officers, employees, and agents, from any and all costs, claims, demands, judgments, damages, or liability of any kind, including injuries to persons or damages to property, arising out of or in any way resulting from any negligent acts or omissions relating to inspection, maintenance, or repair of the Easement Area.

5. Indemnity. The Grantor agrees on its behalf and that of any successor or assign to protect, defend, indemnify, and hold harmless the Grantee, its officers, employees, and agents, from and against any and all actions, claims, costs, damages, demands, expenses, fines, injuries, judgments, liabilities, losses, penalties, or suits including, without limitation, attorneys' fees and costs (collectively, "claims") of any kind allegedly arising directly or indirectly from the Grantor's performance of the obligations contained in this Easement, provided, however, where such actions, claims, costs, damages, or suits result from the concurrent negligence of the Parties, the Grantor's indemnity provisions provided herein shall be valid and enforceable only to the extent of the Grantor's own negligence. The provisions of this Paragraph shall apply to claims by the Grantor's own employees and the employees of the Grantor's agents, representatives, contractors, and subcontractors to which the Grantor might otherwise be immune under Title 51 RCW. This waiver of immunity under Title 51 RCW has been mutually negotiated by the parties hereto, and the Grantor acknowledges that the Grantee would not enter into this Easement agreement without the Grantor's waiver thereof.
6. Relocation/Termination. If Grantor redevelops the Property at some time in the future, Grantee and Grantor shall agree upon a relocation of the Easement Area so that it will continue to provide the necessary and reasonably direct pedestrian and bicycle access between the public sidewalk on the north side of NE 40th St. and the north portal of the pedestrian and bicycle tunnel under NE 40th Street but will also not interfere with the Grantor's plans for the redeveloped Property. This relocation shall be agreed upon by Grantor and Grantee during the land use entitlement process for the redevelopment of the Property. If the Grantor and Grantee cannot reach agreement on a relocation that satisfies both parties, the Easement Area and Easement shall remain unchanged. If the pedestrian and bicycle tunnel under NE 40th Street is permanently closed or deconstructed, this Easement shall terminate and Grantee shall relinquish its rights as provided in Section 9 below.
7. Insurance. Grantor shall maintain and shall cause its agents to maintain commercial general liability insurance against any loss, liability or damage on, about or relating to Grantor's activities involving the Easement or Easement Area with limits of not less than \$3,000,000 combined single limit, per occurrence and in the aggregate, and containing a deductible or self-insured retention of not more than \$10,000. The insurance shall name the Grantee as an additional insured. The insurance shall (a) be written by a company having a financial rating of at least "VIII" and a general policy holder's rating of "A," as rated in the most current Best's Key Rating Guide Property – Casualty, (b) have attached thereto an endorsement that such policy shall not be cancelled or materially changed without thirty (30) days prior written notice to the other party, (c) provide for severability of interests, and (d) provide that any act or omission of one of the insureds or additional insureds which would void or otherwise reduce coverage shall not reduce or void the coverage as to the additional insured. The Grantor shall deliver a certificate of insurance for the insurance policy required under this paragraph to the Grantee within 30 days following execution of this Easement. In addition, the Grantor shall maintain Workers Compensation and Employers' Liability insurance as required by Washington State. The Grantor may self-insure in lieu thereof, so long as the self-insurance provides the same coverage as the coverage stated above, and furnishes the Grantee proof of self-insurance within 30 days following execution of this Easement.
8. Recovery of Litigation Costs. If either party brings suit against the other in order to enforce the provisions of this Easement or to redress any breach thereof, the prevailing party in such action shall be entitled to recover its reasonable costs and reasonable attorney's fees incurred in such

action from the non-prevailing party, in addition to any other relief to which the prevailing party may be entitled.

9. Notices. Notices under this Easement shall be provided to the following:

City of Redmond
Attn: Real Property
P.O. Box 97010
Redmond, WA 98073-9710

Microsoft Corporation
Attn: General Manager, Real Estate and Security
One Microsoft Way
Redmond, WA 98052

10. This Easement is granted for the mutual benefit of both named parties. In the event that both the Grantee and Grantor of this easement concurrently declare the rights granted herein to be surplus to the original conveyance, Grantee shall terminate, relinquish and release its rights by way of quit claim deed and without further consideration.

11. Miscellaneous. This Easement constitutes the entire agreement between the parties concerning its subject matter and supersedes any previous agreements or negotiations. This Easement may only be amended in writing, signed by both parties. Any disputes regarding this Easement shall be governed by the laws of the State of Washington and venue shall be properly in King County Superior Court.

IN WITNESS WHEREOF, the parties have executed this easement as of the last date set forth below.

CITY OF REDMOND

MICROSOFT CORPORATION

By: **Rob Towne**

Mayor Angela Birney

Date:

Rob Towne, Regional Director RE+S

Date:

ATTEST/AUTHENTICATED:

City Clerk Cheryl Xanthos

STATE OF WASHINGTON)
) §
COUNTY OF KING)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that they signed this instrument, on oath stated that they were authorized to execute the instrument, and acknowledged it as the authorized signatory of _____, to be the free and voluntary act of such entity for the uses and purposes mentioned in the instrument.

Dated this _____ day of _____, 20____.

Notary Seal

Please stay within block

Notary Signature:

Notary Print Name:

Notary Public in and for the State of Washington

Residing at:

My Appointment Expires:

Exhibit A
Legal Description of Easement

FINAL DRAFT

Exhibit B
Map Depiction of Easement Area

FINAL DRAFT

EXHIBIT E

Please Return To:
City of Redmond, Real Property
MS: 3NFN
P.O. Box 97010
Redmond, WA 98073-9710

WASHINGTON STATE COUNTY AUDITOR/RECORDER INDEXING FORM

Document Title(s) *(or transactions contained therein):*

EASEMENT (ACCESS)

Reference Number(s) of Documents assigned or released:

Additional reference numbers on page ____ of document

Grantor(s): *(Last name first, then first name and initials)*

1. MICROSOFT CORPORATION

Grantee(s): *(Last name first, then first name and initials)*

1. CITY OF REDMOND, A MUNICIPAL CORPORATION

Legal Description: *(abbreviated form i.e. lot, block, plat name, section-township-range)*

Assessor's Property Tax Parcel Account Number(s):

City of Redmond Reference: _____

Project Number: _____ Permit Number: _____

The Auditor/Recorder will rely on the information provided on the form. The staff will not read the document to verify the accuracy or completeness of the indexing information provided herein.

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EASEMENT INGRESS AND EGRESS

This Easement Agreement for ingress and egress (the Easement) is granted this _____ of 20____, by and between Microsoft Corporation, a Washington corporation (“Grantor”), and CITY OF REDMOND, a Washington municipal corporation (“City”) with reference to the following facts:

RECITALS:

A. Grantor is the owner of certain real property legally described in Exhibit A attached hereto and by this reference incorporated herein (“Property”).

B. City owns and maintains a pedestrian and bicycle underpass to be accessed for maintenance and repair from the Property.

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which is hereby acknowledged the parties hereto agree as follows:

1. Grant of Easement: Grantor hereby declares, transfers, conveys, and warrants to City a perpetual non-exclusive easement for the purpose of pedestrian and vehicular ingress and egress for the purpose of maintaining the pedestrian and bicycle underpass at NE 40th Street at any and all times through, under and over the Property as more particularly described in the attached Exhibit B and depicted in the attached Exhibit C. The easement granted in this Paragraph 1 shall be referred to as the “Easement”. The area encumbered by the Easement shall be referred to as the “Easement Area”.

2. No Obstruction. Grantor, and its vendees, grantees, successors and assigns, respective employees, agents, and licensees, will not place, erect, construct, permit or allow the location of any temporary or permanent structures, vehicle, equipment, debris, personal property, wall or other property or devise that would interfere with the use of the Easement herein granted.

3. Maintenance of the Easement Area. Grantor shall be responsible for performing necessary and reasonable maintenance of the Easement Area, including pavement, any drainage system, pavement markings and accessible crossing within and upon the Easement Area.

4. Relocation/Termination. If Grantor redevelops the Property at some time in the future, City and Grantor shall agree upon a relocation of the Easement Area so that it will continue to provide the necessary maintenance access to the north portal of the pedestrian and bicycle tunnel under NE 40th Street but will also not interfere with the Grantor’s plans for the redeveloped Property. This relocation shall be agreed upon by Grantor and City during the land use entitlement process for the redevelopment of the Property. If the Grantor and Grantee cannot reach agreement on a relocation that

satisfies both parties, the Easement Area and Easement shall remain unchanged. If the pedestrian and bicycle tunnel under NE 40th Street is permanently closed or deconstructed, this Easement shall terminate and City shall relinquish its rights as provided in Section 5 below.

5. Mutual Benefit. This Easement is granted for the mutual benefit of both named parties. In the event that both the City and Grantor of this easement concurrently declare the rights granted herein to be surplus to the original conveyance, City shall terminate, relinquish and release its rights by way of quit claim deed and without further consideration.

6. No Dedication to the Public. Nothing contained herein shall be deemed to be a gift or dedication of any portion of the Property to the general public or for the general public or for any public uses whatsoever other than those specifically granted and herein expressed.

7. Binding Effect. The understandings set forth in this Easement shall be covenants running with the lands, and such covenants shall be binding upon, and inure for the benefit of the parties hereto and their respective successors and assigns.

8. Costs and Attorneys' Fees. In any action to enforce or interpret any of the provisions of this Easement, the prevailing party shall be entitled to recover its costs and reasonable attorneys' and court costs in connection with such action at trial and on appeal.

9. Notices. Any notice required or permitted to be given under this Easement shall be in writing and shall be deemed to be an adequate and sufficient notice if given in writing and service is made by i) personal delivery with acceptance signature, (ii) facsimile transmission with date and time stamp, (iii) electronic delivery with replay acknowledging receipt, or (iv) tracked local or national courier service.

City of Redmond
Attn: Real Property
P.O. Box 97010
Redmond, WA 98073-9710

Microsoft Corporation
Attn: General Manager, Real Estate and Security
One Microsoft Way
Redmond, WA 98052

10. Severability. The provisions of this Easement Agreement shall be independent and severable. The unenforceability or invalidity of any one provision shall not affect the enforceability of any other provision.

11. Amendment. This Easement may not be modified, amended or terminated without the prior written approval of the then owner of the land which is benefited or burdened by the provisions of any amendment to this Easement and duly recorded in the records of King County.

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

EXHIBIT A

FINAL DRAFT

EXHIBIT B

FINAL DRAFT

EXHIBIT C

FINAL DRAFT