

FUNDING AGREEMENT

BETWEEN THE CITY OF SAN JOSE AND MICROSOFT CORPORATION, A WASHINGTON CORPORATION, FOR THE PAYMENT OF COSTS RELATED TO CONSTRUCTION OF REGIONAL NON-VEHICULAR ACCESS TO THE GUADALUPE RIVER TRAIL

This Agreement (“**Agreement**”) is entered into by and between the CITY OF SAN JOSE, a charter city and municipal corporation, organized and existing under the Constitution and laws of the State of California (“**City**”), and MICROSOFT CORPORATION, a Washington corporation (“**Microsoft**”). City and Microsoft are hereinafter collectively referred to as the “**Parties**” and individually as a “**Party**”.

RECITALS

A. Microsoft is in the process of filing the necessary entitlement applications with the City, including its application for a conditional use permit (File No. CP23-008), and other permitting agencies to develop an approximately 22.29-acre site located at 2515 Orchard Parkway (Assessor Parcel Numbers: 101-02-019 and 101-02-020) in San José, California (the “**Property**”) with a data center facility and related improvements (collectively, the “**Project**”).

B. The Property is bounded by Orchard Parkway to the northeast and lands owned by the Santa Clara Valley Water District (“**Valley Water**”) to the southwest, which is in turn adjacent to the Guadalupe River Trail and the Guadalupe River.

C. Valley Water owns the land underlying the Guadalupe River Trail and plans and operates the Guadalupe River Trail as part of the regional trail network in service of the broad Bay Area community.

D. The Project includes, as a project design feature, a commitment by Microsoft to: (1) pay an in-lieu fee for a Class IV bicycle lane along the Orchard Parkway Property frontage, (2) pay an in-lieu fee for a signal modification for bicycle crossings in the southbound and eastbound directions at the intersection of Orchard Parkway and Component Drive, and (3) construct the Class I bike trail improvements along Component Drive from the intersection of Component Drive and Orchard Parkway towards the existing Guadalupe River Trail (the “**Component Drive Trail Improvements**”).

E. The City, in coordination with Valley Water, requested that Microsoft construct improvements and connect the Component Drive Trail Improvements including the construction of a ramp to the existing regional Guadalupe River Trail upon the levee owned by Valley Water (“**Regional Trail Connector**”).

F. The City and Microsoft agree that the City shall construct the Regional Trail Connector on the condition that Microsoft shall: (1) offer to dedicate to the City a public access easement and grant a temporary construction-related staging, storage, and access easement(s) across that portion of the Property that the Parties ultimately determine to be necessary to construct the Regional Trail Connector and connect the Component Drive Trail Improvements to the Guadalupe River Trail, subject to the terms hereof, and (2) provide funding to the City in the amount of One Million Dollars (\$1,000,000.00) (the “**Payment**”) to be used only for the City’s

expenses related to designing, entitling, developing, and constructing the Regional Trail Connector pursuant to the terms and conditions set forth herein, including any restoration of the Component Drive Trail Improvements and the temporary construction staging area and any change in permitting, design, and/or construction of the Regional Trail Connector necessitated by Valley Water's changes to the levee, including but not limited to a change in height of the levee.

G. The Parties acknowledge and agree that the Project and any potential future work by the City on the Regional Trail Connector, including, without limitation, the Services (as that term is defined below), constitute separate projects, each of which has independent utility and is subject to their own respective environmental review and entitlement processes.

H. The Parties also acknowledge that the City is responsible for obtaining any and all necessary permits, approvals and entitlements from various other governmental agencies, as well as other quasi-governmental agencies and/or other entities (such as PG&E) that hold easement interests, if necessary, to allow for the construction of the Regional Trail Connector adjacent to the Guadalupe River; to perform any necessary evaluation of the Regional Trail Connector project under the California Environmental Quality Act (CEQA) and any other applicable environmental law(s), and to implement any and all identified mitigation measures imposed thereunder as a result of the environmental clearance; to obtain permission from Valley Water to link the Regional Trail Connector to the levee owned by Valley Water; to potentially re-design the connection to accommodate any re-design of the levee by Valley Water; and to pay for any and all expenses related to the Regional Trail Connector above and beyond the Payment provided for herein by Microsoft to the City.

I. The City and Microsoft now desire to enter into this Agreement to provide for, among other things, the purpose for and process by which Microsoft would provide the Payment towards the City's efforts to construct the Regional Trail Connector and other terms and conditions related thereto.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises and covenants herein contained, and having determined that the foregoing recitals are true and correct and should be, and hereby are, incorporated into this Agreement, the Parties agree as follows:

Section 1. Incorporation of Recitals. The Recitals above are incorporated herein as terms of this Agreement.

Section 2. Funding of Regional Trail Connector.

A. Microsoft agrees to provide the Payment to contribute towards the City's costs and expenses related to the Services (as that term is defined in Section 2 below) in the manner set forth in Section 5 and subject to the terms and conditions set forth below.

B. The City shall have the right, but not the obligation, to plan, design, entitle, and construct the Regional Trail Connector; provided, however, that if the City does not obtain permits for the construction of the Regional Trail Connector within twenty-five (25) years of the date of the City's acceptance of the Component Drive Trail Improvements, the City shall, upon Microsoft's request, within ninety (90) days following said twenty-five-year anniversary return any unused portion of the Payment to Microsoft. The City's obligations under this Section 2(B) shall survive termination of this Agreement.

C. If the City completes the Regional Trail Connector and any portion of the Payment thereafter remains unspent, the City shall, upon Microsoft's request, return any unused portion of the Payment to Microsoft. In the event that Microsoft fails to request the return of any unused portion of its Payment within one (1) year of the Regional Trail Connector being completed and opened to the general public, the City shall have no refund obligation to Microsoft and may transfer any remaining funds into an account utilized for bicycle trail construction and maintenance projects in the City of San Jose at the City's sole discretion. The City's obligation to refund any unused portion of the payment to Microsoft upon Microsoft's timely request under this Section 2(C) shall survive termination of this Agreement.

D. In no event shall Microsoft be obligated pursuant to this Agreement or otherwise to provide funds in excess of the Payment. If the total costs to complete the Regional Trail Connector exceed or are estimated to exceed the Payment, the City shall either: (1) Take sole responsibility for paying any and all such amounts in excess of the Payment necessary to complete the Regional Trail Connector, or (2) Return any remaining portion of the Payment to Microsoft and terminate this Agreement. Microsoft shall have no liability or responsibility whatsoever for any costs in excess of the Payment.

Section 3. Scope of Services. The Parties acknowledge and agree that various tasks will be involved to plan, design, entitle, and construct the Regional Trail Connector, including but not limited to: (1) Any change in permitting, design, and/or construction of the Regional Trail Connector necessitated by Valley Water's changes to the levee, including but not limited to a change in height of the levee, occurring during the Term (as defined below) of this Agreement; and (2) Any restoration of the Component Drive Trail Improvements and the temporary construction staging area, which will involve work by City personnel, other non-City agency staff, as well as technical and legal consultants (collectively, the "Services").

A. All City staff that provide Services shall be paid by the City in accordance with the then-current adopted staff billing rate schedule.

B. All consultants (including, without limitation, attorneys, environmental, specialists, planners, and engineers), contractors, and materialmen used by the City, as necessary and appropriate for City to plan, design, entitle, and construct the Regional Trail Connector shall be billed at their agreed upon rates with the City.

Microsoft agrees and acknowledges that the City may contract with Valley Water for the performance of any or all of the tasks required for the completion of the Regional Trail Connector.

Section 4. Existing Restrictions on the Property.

A. The Parties acknowledge that the Property is encumbered, as of the Effective Date (as that term is defined below), by a number of easements, including the following: (1) an easement granted to Pacific Gas and Electric Company, a California corporation ("**PG&E**") in a document recorded on March 16, 1960, as Document Number 1784760, Book 4730, Page 297 of the Official Records of Santa Clara County (the "**Official Records**") (the "**1960 PG&E Easement**"); (2) an easement granted to PG&E in a document recorded on June 18, 1975, as Document Number 5034083, Book 469, Page 648 of the Official Records (the "**1975 PG&E Easement**"); and (3) a Grant of Pipeline Easement to Wickland Pipelines LLC, a California limited liability company ("**Wickland**"), recorded on July 8, 2010, as Document Number 20767181 of the Official Records, as amended by that certain Easement Amendment recorded February 17, 2011, as Document Number 21086359 of the Official Records (as amended, the "**Wickland Easement**",

and together with the 1960 PG&E Easement and the 1975 PG&E Easement, the “**Existing Easements**”). The Parties further acknowledge that Microsoft disclosed copies of the Existing Easements and a copy of that certain ALTA/NSPS Land Title Survey prepared by HMH and dated as of April 2023 (the “**Survey**”), to the City prior to the Effective Date.

- (1) The Parties further acknowledge and agree that the terms of the Existing Easements would not allow the Regional Trail Connector to be constructed on the Property, and that nothing in this Agreement constitutes a representation or warranty by Microsoft to the contrary. The City shall not construct or maintain the Regional Trail Connector in a manner that violates any of the Existing Easements.
- (2) Microsoft shall, with diligence and good faith, utilize commercially reasonable efforts to endeavor to amend the Existing Easements in a manner that would allow Microsoft to grant to the City a public access easement and temporary construction staging and access easement across that portion of the Property the Parties ultimately determine to be necessary to allow for the construction of the Regional Trail Connector and connect the Component Drive Trail Improvements to the Guadalupe River Trail, subject to the terms hereof. For purposes of the foregoing, the Parties agree that commercially reasonable efforts are limited to engaging in outreach and negotiation with Wickland and PG&E for a period not to exceed one (1) year from the date of the City’s approval of the application for conditional use permit File No. CP23-008. The Parties further agree that it would not be commercially reasonable to allow major work to relocate any existing facilities within the Existing Easements. If Wickland and/or PG&E require any payments related to amending the Existing Easements, including for costs associated with minor work on their existing improvements in connection with the amendments, the City shall be notified by Microsoft of such costs. No funds from the Payment shall be used for the amendment of any existing easements that are required for Microsoft to complete its obligation to construct the Component Drive Trail Improvements as described in Recital D(3) above. Upon receipt of written notification of easement amendment costs by Microsoft, the City may: (1) Agree to the payment of such costs and the deduction of the costs from the Payment before it is deposited with the City as provided in Section 5(A) of this Agreement, or (2) Terminate this Agreement. Notwithstanding the foregoing, the Parties acknowledge and agree that PG&E and/or Wickland (and their respective successors in interest) may be unwilling or unable to amend any or all of the Existing Easements. If, after making a commercially reasonable effort, Microsoft reasonably determines that it is unable to amend the Existing Easement(s) as necessary to so allow Regional Trail Connector construction, Microsoft shall notify the City and the City may at its sole option proceed with the Regional Trail Connector project in any manner feasible and utilize the Payment pursuant to this Agreement for the same. In the event that the City determines in its sole judgment not to proceed with the Regional Trail Connector project because it is infeasible, this Agreement shall terminate pursuant to Section 4(C) below.

B. As of the Effective Date, the Parties further acknowledge and agree that the portion of the Property where the ultimate Regional Trail Connector would likely be constructed is subject

to several additional restraints including (i) public water, sewer, and public service easements dedicated to the City in two parcel maps recorded on October 6, 1976, in Book 381 of Maps, at Pages 19-23 in the Official Records, (ii) a private utility easement identified upon the parcel map recorded March 28, 1978, in Book 415 of Maps, at Pages 40 and 41 in the Official Records, and (iii) a mandatory 100-foot riparian setback to the extent required by the City (together (i), (ii) and (iii), the “**Additional Property Restraints**”), all as shown on the Survey. The City shall neither construct nor maintain the Regional Trail Connector in a manner that violates or otherwise impairs any of the Additional Property Restraints without first (i) obtaining any and all necessary easement amendment(s) extinguishing or relocating any applicable Additional Property Restraint, or (ii) otherwise lawfully authorizing the location of the Regional Trail Connector where such location may conflict with any of the Additional Property Restraints. The City’s obligations under this Section 4(B) shall survive termination of this Agreement, but shall terminate if the City discontinues its use of the Regional Trail Connector Easement (as defined below) and extinguishes the grant of easement therefor from Microsoft referred to in Section 6.A hereto.

C. If the City determines that either the Existing Easements or Additional Property Restraints make the Regional Trail Connector infeasible, it shall notify Microsoft accordingly and shall thereafter terminate this Agreement and return any received and unused portion of the Payment to Microsoft within ninety (90) days of said termination.

D. Upon the Effective Date, Microsoft agrees that it will not construct any permanent improvements, other than the Component Drive Trail Improvements (as the same are ultimately approved by the City), within those portions of the Property covered by the Existing Easements and Additional Property Restraints.

Section 5. Process for Payment.

A. Microsoft shall deposit the Payment (as the same may be reduced by any amounts expended in connection with amending the Existing Easements, as described in Section 4(A)(2) of this Agreement) with the City within thirty (30) days following the later to occur of: (1) finalizing amendments to all Existing Easements in a manner that allows the Regional Trail Connector to occur on the Property as contemplated herein; or (2) Issuance by the City of the building permit for vertical construction of the Project.

B. The Payment shall be held by the City in a manner that the Payment will be used only for the costs of the Services (“**Account**”).

C. City acknowledges and agrees that it may seek Services in advance of receiving the Payment, at risk that this Agreement may be terminated before the Payment is made, as well as that there may be a significant period of time between the City incurring related expenses and Microsoft providing the Payment.

Section 6. Easements to Accommodate Construction of the Regional Trail Connector.

Subject to Section 10 below, upon the later to occur of (A) the date that is thirty (30) days following Microsoft’s Payment to the City, or (B) the date the Parties agree on both (i) the boundaries of the proposed Regional Trail Connector and (ii) the portion of the Property necessary for construction staging and access to construct and operate the Regional Trail Connector, neither of which shall be located as to create conflicts with Project construction or operations or otherwise in any way impede or impair any Existing Easements, Additional Property Restraints, or easements later required for Project construction or operations and security, Microsoft shall execute and deliver to the City:

A. If necessary, a non-exclusive public access easement for that portion of the Regional Trail Connector that the Parties together ultimately determine must be located on the Property in the form specified in Exhibit A hereto (the “**Trail Connector Easement**”). Subject to the constraints described above, Microsoft shall not unreasonably deny the location of the Trail Connector Easement; and

B. A temporary construction staging and access easement(s) (the “**Temporary Construction and Staging Easement**” in the form specified in Exhibit B hereto and together with the Trail Connector Easement, the “**Easements**”) in the location ultimately determined by the Parties and reasonably sized to allow for construction of the Regional Trail Connector.

The Easements shall contain appropriate disclosures related to hazardous materials and environmental laws. The Parties agree that the definitions related to hazardous materials and environmental laws specified in Exhibit B to the Trail Connector Easement and Exhibit C to the Temporary Construction and Staging Easement are appropriate.

Section 7. Third Party Approvals.

A. Microsoft shall not unreasonably refuse to provide and execute any required consent to the issuance of any necessary permit or approval for the Regional Trail Connector.

B. If the City determines at any time that it will not be able to successfully obtain all necessary permits, approvals, and entitlements from those governmental and quasi-governmental agency(ies) or other entities that have jurisdiction over, or a property interest in, aspects of the Regional Trail Connector to so construct, it shall notify Microsoft accordingly and thereafter terminate this Agreement and return any unused portion of the Payment to Microsoft within ninety (90) days.

Section 8. No Guarantee of Approval. Microsoft acknowledges that agreement to make the Payment to the City and grant to the City the Easements, as described herein does not mean that the City will approve the Project, nor that City staff will make a recommendation in favor of the Project.

Section 9. Independence of Consultants. Microsoft hereby acknowledges and agrees as follows:

A. The City has sole discretion to select which of its employees and/or independent contractors and/or public agencies are assigned to provide the Services.

B. As between the City and Microsoft, the City has sole discretion to direct the work and evaluate the performance of the agencies and/or consultants whom the City hires to provide Services. The City retains the right to terminate or replace at any time any agency and/or consultant who is assigned to provide Services.

C. The City has sole discretion to determine the amount of compensation paid to any agency and/or consultants hired by the City to provide the Services.

D. The City, not Microsoft, shall pay any agency and/or consultants hired or assigned by the City to provide the Services from the Account funded by Microsoft as set forth in this Agreement.

E. Except for those disclosures required by law, including, without limitation, the Public Records Act, all conversations, notes, memoranda, correspondence, and other forms of communication by and between the City and its consultants shall be, to the extent permissible by law, privileged and confidential and not subject to disclosure to Microsoft.

F. Microsoft shall have no claim to, nor shall Microsoft assert any right in any reports, correspondence, plans, maps, drawings, news releases or any and all other documents or work product produced by the consultants in connection with the Services.

Section 10. Termination. Microsoft shall be entitled to terminate this Agreement in its sole discretion as described herein, in which case Microsoft shall have no obligations hereunder from the date of termination. City may terminate this Agreement as described herein and shall thereafter timely refund the Payment or any remaining portion of the Payment to Microsoft as provided for herein. Upon termination, all rights and obligations hereunder shall terminate except for those expressly provided for herein to survive.

Section 11. Term. The Term of this Agreement shall commence upon the Effective Date and shall terminate on the earliest to occur of: (a) termination by Microsoft, the City, or both Parties by agreement in accordance with the terms of this Agreement; (b) the completion of the Regional Trail Connector; (c) the date of the City's final determination denying Microsoft's application for conditional use permit File No. CP23-008; or (d) the date Microsoft formally withdraws its application for conditional use permit File No. CP23-008.

Section 12. Default. Should a Party fail to perform any of its obligations under this Agreement, then the non-defaulting Party may, at its option, pursue any or all of the remedies available to it under this Agreement, at law or in equity.

A. Without limiting any other remedy which may be available to it, if Microsoft fails to perform any of its obligations under this Agreement, the City may cease performing its obligations under this Agreement.

B. Without limiting any other remedy which may be available to it, if the City fails to perform any of its obligations under this Agreement, Microsoft may cease performing its obligations under this Agreement.

Section 13. Compliance with Law. The Parties will, at their respective sole cost and expense, comply with all applicable requirements of all federal, state, and local laws now in force, or which may hereafter be in force, pertaining to satisfaction of their respective obligations under this Agreement.

Section 14. Waiver of Breach. Any express or implied waiver of a breach of any term of this Agreement shall not constitute a waiver of any further breach of the same or any other term of this Agreement.

Section 15. Notices. Except as otherwise expressly provided by law, all notices or other communications required or permitted by this Agreement or by law to be served on or given to either Party to this Agreement by the other Party shall be in writing and shall be deemed received on: (1) the day of delivery if delivered by hand, e-mail (with confirmation of receiving Party), or overnight courier service, during regular business hours; or (2) on the fifth (5th) business day following deposit, with postage prepaid, in the United States Postal Service and addressed to the

contracting Party. Name, address, telephone numbers, and e-mail addresses of the Parties are as follows:

- City: City of San Jose
Department of Public Works, Development Services Division
Attention: Joe Provenzano
200 E. Santa Clara St., 3rd Floor
San Jose, CA 95113-1905
Telephone: (408) 535-8466
E-mail: joe.provenzano@sanjoseca.gov
- and City of San Jose
Department of Parks, Recreation, and Neighborhood Services
Attention: Liz Sewell
200 E. Santa Clara St., 9th Floor
San Jose, CA 95113-1905
Telephone: (408) 535-3570

E-mail: elizabeth.sewell@sanjoseca.gov
- A copy to: City Attorney
City of San Jose
200 E. Santa Clara St., 16th Floor
San Jose, CA 95113-1905
Telephone: (408) 535-1900

E-mail: cao@sanjoseca.gov
- Microsoft: Microsoft Corporation
One Microsoft Way
Redmond, WA 98052-6399
Attn: Cloud Infrastructure Sourcing and Acquisitions (CISA)

E-mail: AMERSLAND@microsoft.com
- A copy to: Microsoft Corporation
CELA – CO+I
One Microsoft Way
Redmond, WA 98054
Attn: Corporate, External & Legal Affairs

E-mail: MCIOCELA@microsoft.com

Either Party may change its address for the purpose of this Section by giving written notice of the change to the other Party.

Section 16. Interpretation. This Agreement is deemed to have been prepared by both of the Parties, and any uncertainty or ambiguity herein shall not be interpreted against the drafter, but rather, if such ambiguity or uncertainty exists, shall be interpreted according to the applicable rules of interpretation of contracts under the law of the State of California.

Section 17. Business Day. For purposes of this Agreement, “Business Day” means any day other than a Saturday, Sunday, a federal holiday, or a day on which City Hall for the City of San Jose is closed for the conduct of regular business.

Section 18. Successors. This Agreement shall be binding on and inure to the benefit of the successors and assigns of the respective Parties. However, this Agreement shall not be assigned by Microsoft in whole or in part without the prior written consent of City.. **Governing Law.** This Agreement has been made in and shall be construed in accordance with the laws of the State of California, and exclusive venue for any action involving or arising out of this Agreement will be in Santa Clara County. **Severability.** Should any provision of this Agreement be held by a court of competent jurisdiction to be either invalid or unenforceable, the remaining provisions of this Agreement shall remain in effect, unimpaired by the holding.

Section 21. Integration. This instrument constitutes the sole agreement between the City and Microsoft respecting the above matters, and correctly sets forth the obligations of the City and Microsoft.

Section 22. Construction. The language of each part of this Agreement shall be construed simply and according to its fair meaning, and this Agreement shall never be construed either for or against either Party, whether or not that Party drafted all or a portion hereof.

Section 23. No Prior Agreements and No Oral Modifications. This Agreement represents the entire understanding of the City and Microsoft with respect to the subject matter hereof and supersedes all other prior or contemporaneous written or oral agreements pertaining to the subject matter of this Agreement. This Agreement may be modified, only in writing signed by the authorized representatives of City and Microsoft.

Section 24. No Partnership or Joint Entity. This Agreement is not intended to and does not create a partnership or any other form of single or joint entity or any sort comprised of the Parties and/or their respective attorneys.

Section 25. Authority/Modification. Each Party represents and warrants that all necessary action has been taken by such Party to authorize the undersigned to execute this Agreement on behalf of such Party and to engage in the actions of such Party described herein. This Agreement may be modified solely by written amendment signed by both City and Microsoft.

Section 26. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one instrument executed on the same date.

Section 27. Effective Date. This Agreement shall take effect upon the date of execution by all Parties to the Agreement.

Section 28. Exhibits. The following exhibits are attached hereto and incorporated herein:

Exhibit A – Form of Grant of Trail Connector Easement (including the following exhibits thereto: (i) Exhibit A – Legal Description of and Map Depicting the Trail Connector Easement; and (ii) Exhibit B – Definition of Hazardous Materials).

Exhibit B – Form of Grant of Temporary Construction and Staging Easement (including the following exhibits thereto: (i) Exhibit A – Description of Grantor Property; (ii) Exhibit B – Legal

Description of and Map Depicting the Temporary Construction and Staging Easement Area; and
(iii) Exhibit C – Definition of Hazardous Materials).

[SIGNATURES APPEAR ON NEXT PAGE]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the Effective Date.

“MICROSOFT”

MICROSOFT CORPORATION,
a Washington corporation

By: _____

Name: _____

Its: _____

Date: _____

“CITY”

APPROVED AS TO
FORM:

CITY OF SAN JOSE,
a California municipal corporation

VERA M. I. TODOROV
Sr. Deputy City Attorney

MATTHEW LOESCH
Director of Public Works

Date: _____

EXHIBIT A
TO FUNDING AGREEMENT

Form of Grant of Trail Connector Easement

[Begins on Next Page]

RECORDED WITHOUT FEE UNDER
SECTIONS 27383 and 6103
GOVERNMENT CODE OF THE
STATE OF CALIFORNIA

**RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:
AND MAIL TAX STATEMENT TO:**

City of San Jose – Public Works
200 East Santa Clara Street, 3rd Floor
San Jose, CA 95113-1905

File No: CP23-008
APNs: 101-02-019 and 101-02-020

Space above this line for Recorder's use

The Undersigned Grantee(s) Declare(s): DOCUMENTARY TRANSFER TAX **\$0**; CITY TRANSFER TAX **\$0**; Recorded for the benefit of the City of San Jose and is exempt from fee per Government Code Sections 27383 and 6103.

computed on the consideration or full value of property conveyed, OR

computed on the consideration or full value less value of liens and/or encumbrances remaining at time of sale,

unincorporated area;

City of San Jose, and

Signature of Declarant

GRANT OF TRAIL CONNECTOR EASEMENT

Microsoft Corporation, a Washington corporation, GRANTOR, does hereby GRANT to the CITY OF SAN JOSE, a municipal corporation of the State of California, GRANTEE, a perpetual right and non-exclusive easement to construct, install, use, maintain, and replace a public trail connector of reasonable size or material, in, over, through, and across the real property situated in the City of San Jose, County of Santa Clara, State of California, described and depicted as follows:

See Exhibit "A" attached hereto and made a part hereof (hereinafter "TRAIL CONNECTOR EASEMENT"). **[NOTE TO DRAFTER: LEGAL DESCRIPTION OF AND MAP DEPICTING TRAIL CONNECTOR EASEMENT TO BE CONFIRMED AND REMAIN SUBJECT TO GRANTOR'S AND GRANTEE'S REVIEW.]**

This TRAIL CONNECTOR EASEMENT is granted by GRANTOR to GRANTEE solely to connect the bicycle trail along Component Drive that is required to be improved by GRANTOR in compliance with the conditions of approval of Conditional Use Permit No. CP23-008 for GRANTOR'S project and the associated Improvement Agreement between the Parties dated **[NOTE TO DRAFTER: ADD DATE OF CONDITIONAL USE PERMIT APPROVAL AND IMPROVEMENT AGREEMENT FILE NUMBER HERE]** which require the GRANTOR to construct a bicycle trail along Component Drive in accordance with GRANTEE'S requirements for a bicycle trail and to dedicate to the GRANTEE an easement for the bicycle trail upon completion and

acceptance of the bicycle trail improvements by the GRANTEE. The purpose and use of this TRAIL CONNECTOR EASEMENT is solely for the GRANTEE to construct, install, maintain, and replace a ramp for public use to connect the public bicycle trail constructed by the GRANTOR to the public Guadalupe River Trail owned by the Santa Clara Valley Water District that is located adjacent to the GRANTOR'S project site (the PERMITTED USE). This TRAIL CONNECTOR EASEMENT is subject to the following terms and conditions:

1. The above-mentioned TRAIL CONNECTOR EASEMENT shall be kept open and free from all buildings and structures of any kind; provided, however, that GRANTOR reserves the right to use the TRAIL CONNECTOR EASEMENT for any purpose that does not materially interfere with the GRANTEE'S rights and the PERMITTED USE authorized hereunder. Furthermore, GRANTOR reserves the right to install improvements upon and within the TRAIL CONNECTOR EASEMENT, including, without limitation, utility facilities, fencing, security equipment, and lighting equipment; provided, however, that in no event shall any such improvements unreasonably obstruct or interfere with the PERMITTED USE or result in noncompliance with the GRANTEE'S standards for public bicycle trails in effect at the time of the GRANTOR'S improvement.

2. GRANTEE and its employees, agents, contractors, consultants and invitees, and the public (collectively, the PERMITTED USERS), shall have the right to use the TRAIL CONNECTOR EASEMENT solely for the PERMITTED USE. The term PERMITTED USERS does not include any person or entity with an easement, covenant, or any other matter that may affect the TRAIL CONNECTOR EASEMENT. The PERMITTED USERS' use of the TRAIL CONNECTOR EASEMENT shall be subject to and in accordance with: (a) all applicable laws including, without limitation, those relating to the use, storage, transportation, release, and handling of HAZARDOUS MATERIALS as defined in Exhibit "B" hereto; (b) any easements, covenants, and other matters that may affect the TRAIL CONNECTOR EASEMENT, including those that may be ascertained by an inspection or survey of the TRAIL CONNECTOR EASEMENT; (c) during GRANTEE'S construction, maintenance, repair, or replacement of the above-referenced ramp (the RAMP) within the TRAIL CONNECTOR EASEMENT, in the event that the GRANTEE'S construction, maintenance, repair, or replacement work requires GRANTEE to enter upon GRANTOR'S property that is not subject to the TRAIL CONNECTOR EASEMENT or the bicycle trail easement that has been dedicated to the GRANTEE by the GRANTOR as a condition of approval of the Conditional Use Permit and the Improvement Agreement, the GRANTOR and GRANTEE shall utilize the format for the Grant of Temporary Construction and Staging Easement attached as Exhibit "B" to that certain Funding Agreement dated December [____], 2024 between GRANTOR and GRANTEE and incorporated herein by reference for reasonable storage, staging, security, health and safety requirements, including procedures for entry onto the TRAIL CONNECTOR EASEMENT, which consent shall be timely and shall not be unreasonably withheld by Grantor; and (d) reasonable construction industry standards. PERMITTED USERS shall not use, deposit, release, discharge, or dispose of any HAZARDOUS MATERIALS on or about the TRAIL CONNECTOR EASEMENT, other than those materials that are customarily associated with the PERMITTED USE and used in accordance with applicable legal requirements, including environmental laws. GRANTEE shall promptly notify GRANTOR of any release of HAZARDOUS MATERIALS on, at, under, from, or adjacent to the TRAIL CONNECTOR EASEMENT by any PERMITTED USERS. GRANTOR shall promptly notify GRANTEE of any release of HAZARDOUS MATERIALS on, at, under, from, or adjacent to the TRAIL CONNECTOR EASEMENT by any GRANTOR PARTIES (as defined below).

a. GRANTEE shall obtain any permits, approvals, and authorizations (collectively, PERMITS) necessary for the PERMITTED USE, and provide GRANTOR with copies of any

PERMITS. GRANTOR will reasonably cooperate with GRANTEE in obtaining any PERMITS. GRANTOR shall not be required to incur any third-party expenses or other liability in connection with such cooperation.

b. GRANTOR has no obligation to improve or alter the TRAIL CONNECTOR EASEMENT in preparation of GRANTEE'S use and occupancy thereof. Without limiting the foregoing, GRANTEE agrees to accept the TRAIL CONNECTOR EASEMENT AS-IS and WITH ALL FAULTS, without any representation or warranty, express or implied, statutory, or otherwise, concerning the TRAIL CONNECTOR EASEMENT or its suitability for the uses described above. GRANTEE hereby assumes all risk of damage and injury arising from any use, occupancy, or possession of the TRAIL CONNECTOR EASEMENT by any PERMITTED USER, including the public. GRANTEE hereby releases the GRANTOR PARTIES from (and waives any claim GRANTEE has or may have, or which could be asserted against any GRANTOR PARTIES, now or hereafter, with respect to) any known and unknown liability, loss, damage, injury, claim, lien, cost and/or expense, fines, and penalties arising from any use, occupancy, or possession of the TRAIL CONNECTOR EASEMENT and/or the condition of the TRAIL CONNECTOR EASEMENT (e.g., environmental condition). In connection with such release, GRANTEE acknowledges that GRANTEE has either been advised by legal counsel or has made itself familiar with the provisions of Section 1542 of the Civil Code of the State of California, which provides as follows: **"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY."** Without limiting the foregoing, GRANTEE specifically waives any and all rights and/or benefits it has, or may have under Section 1542 of the Civil Code of the State of California, or any other statutes or common law principles of similar substance and effect, and further represents, acknowledges and agrees that its knowing and voluntary waiver of the provisions of Section 1542 of the Civil Code of the State of California is an essential and material term of this Agreement without which the consideration set forth herein and relating hereto would not have been delivered. The provisions of this Section 2 shall survive termination of this Agreement with respect to any and all liability, loss, damage, injury, claim, lien, cost and/or expense, fines, and penalties arising from any use, occupancy, or possession of the TRAIL CONNECTOR EASEMENT by the Permitted Users prior to any such termination of this Agreement and the related extinguishment by GRANTEE of the TRAIL CONNECTOR EASEMENT.

3. GRANTEE, at its sole cost and expense, shall maintain the TRAIL CONNECTOR EASEMENT to the extent needed for use by the PERMITTED USERS. If any portion the TRAIL CONNECTOR EASEMENT (including any improvements constructed thereon by or on behalf of GRANTEE) is damaged by any PERMITTED USERS in a manner that creates health and safety concerns for PERMITTED USERS, then GRANTEE shall promptly repair such damage at its sole cost and expense or prevent PERMITTED USERS from accessing the TRAIL CONNECTOR EASEMENT until repairs are made. If GRANTEE fails to either repair such damage or prevent public access to the TRAIL CONNECTOR EASEMENT within thirty (30) days following GRANTOR's notice therefor (which Grantor's notice shall include an attachment of, or reference to, this Grant of Trail Connector Easement with related recordation information), then GRANTOR may, at GRANTEE's cost and expense, repair the damage or secure the Trail Connector Easement to prevent public access thereto. In that case, GRANTEE shall reimburse GRANTOR for all reasonable costs and expenses incurred by GRANTOR in repairing the damage within one hundred twenty (120) days following GRANTOR's demand therefor, which shall also include an

attachment of, or reference to, this Grant of Trail Connector Easement with relevant recordation information.

4. GRANTEE is self-insured and will provide GRANTOR with a letter of self-insurance upon request.

5. GRANTEE shall indemnify, defend and hold harmless GRANTOR, its affiliates, and their respective officers, directors, employees, and agents (collectively, GRANTOR PARTIES), from any liability, loss, damage, claim, lien, cost and expense (including reasonable attorneys' fees and costs), that any GRANTOR PARTIES may incur as a result of any third party claim arising from (a) the use of the TRAIL CONNECTOR EASEMENT by GRANTEE or its partners, managers, members, directors, officers, employees, contractors, consultants, and agents (collectively, GRANTEE PARTIES) or any PERMITTED USERS; (b) any negligence or willful misconduct of GRANTEE PARTIES or any PERMITTED USERS; (c) GRANTEE's breach of any term or condition of this Agreement; and (d) any use, deposit, release, discharge or disposal of any HAZARDOUS MATERIALS on or about the TRAIL CONNECTOR EASEMENT by any GRANTEE PARTIES or any PERMITTED USERS. The indemnity obligations hereunder do not apply if and to the extent such loss or damage is caused by or arises out of the sole active negligence or willful misconduct of any GRANTOR PARTIES. In no event shall GRANTOR be liable to GRANTEE for any consequential, punitive, or special damages. The provisions of this Section 5 shall survive termination of this Agreement with respect to any third-party claim arising from any of the circumstances described in this Section 5 (a), (b), (c) and (d) prior to any such termination and the related extinguishment by GRANTEE of the TRAIL CONNECTOR EASEMENT.

6. All notices, demands, requests, consents and approvals that may, or are required to, be given by any party to any other party hereunder shall be in writing and shall be deemed to have been duly given if (a) sent by a nationally recognized overnight delivery service, (b) electronically transmitted via email with receipt confirmed, or (c) mailed or deposited in the United States mail and sent by registered or certified mail, return receipt requested, postage prepaid to:

If to GRANTOR: Microsoft Corporation
 One Microsoft Way
 Redmond, WA 98052-6399
 Attn: Cloud Infrastructure Sourcing and Acquisitions (CISA)
 E-mail: AMERSLAND@microsoft.com

With copies to: Microsoft Corporation
 CELA – CO+I
 One Microsoft Way
 Redmond, WA 98054
 Attn: Corporate, External & Legal Affairs
 E-mail: MCIOCELA@microsoft.com

If to GRANTEE: City of San Jose
 Department of Public Works, Development Services Division
 Attention: Joe Provenzano
 200 E. Santa Clara St., 3rd Floor
 San Jose, CA 95113-1905
 Telephone: (408) 535-8466
 E-mail: joe.provenzano@sanjoseca.gov

And Parks, Recreation, and Neighborhood Services Department
Attention: Liz Sewell
200 E. Santa Clara St., 9th Floor
San Jose, CA 95113-1905
Telephone: (408) 535-3570
E-mail: elizabeth.sewell@sanjoseca.gov

With copies to: City Attorney
City of San Jose
200 E. Santa Clara St., 16th Floor
San Jose, CA 95113-1905
Telephone: (408) 535-1900
E-mail: cao@sanjoseca.gov

Either party may change such address from time to time by giving notice in writing to the other of such change.

7. This Agreement shall run with the land and be binding upon the parties' successors and assigns. This Agreement shall be recorded in the official real property records of the county in which the property is located at GRANTEE's sole cost and expense, if any. This Agreement may be executed in counterparts with the same effect as if the parties had executed one instrument, and each such counterpart shall constitute an original of this Agreement.

8. Exhibits. All Exhibits and addenda referred to herein, and any exhibits or schedules which may from time to time be referred to in any duly executed amendment hereto, are by such reference incorporated herein and shall be deemed a part of this Agreement as if set forth fully herein. The Exhibits to this Agreement are:

Exhibit A – Legal Description of and Map Depicting Trail Connector Easement
Exhibit B – Definition of Hazardous Materials

[Signature pages follow]

GRANTOR:

**MICROSOFT CORPORATION,
a Washington corporation**

Dated _____, 20__

By _____

Name _____

Its _____

Grant of Easement
APN: - - (complete yellow sections)

CERTIFICATE OF ACCEPTANCE

This is to certify that the interest in real property conveyed by Grant of Trail Connection Easement, dated _____, 20____, from Microsoft Corporation, a Washington corporation, to the City of San Jose, a municipal corporation of the State of California, is hereby accepted by the undersigned officer of said City pursuant to authority conferred by the Council of the City of San Jose in Resolution No. ____ dated _____, 20__, and that GRANTEE agrees to be bound by all of the terms and conditions set forth above. The GRANTEE consents to recordation thereof by its duly authorized officer.

CITY OF SAN JOSE, A Municipal Corporation
of the State of California

Dated

[Name]
Director of Public Works

EXHIBIT A
TO TRAIL CONNECTOR EASEMENT

Legal Description of and Map Depicting Trail Connector Easement

[TO BE ATTACHED BY DRAFTERS]

EXHIBIT B
TO TRAIL CONNECTOR EASEMENT

Definition of Hazardous Materials

For the purpose of this Grant of Trail Connector Easement, “Hazardous Materials” shall mean any and all: (a) substances, products, by-products, waste, or other materials of any nature or kind whatsoever which is or becomes listed, regulated or addressed under any Environmental Laws; (b) materials, substances, products, by-products, waste, or other materials of any nature or kind whatsoever whose presence in and of itself or in combination with other materials, substances, products, by-products, or waste may give rise to liability under any Environmental Law or any statutory or common law theory based on negligence, trespass, intentional tort, nuisance, strict or absolute liability or under any reported decisions of any state or federal court; and, (c) substances, products, by-products, wastes or other materials which may be hazardous or harmful to the air, water, soil, environment or affect industrial hygiene, occupational, health, safety and/or general welfare conditions, including without limitation, petroleum and/or asbestos materials, products, by-products, or waste.

For the purposes of this Grant of Trail Connector Easement, “Environmental Laws” shall mean and include all federal, state, and local laws, statutes, ordinances, regulations, resolutions, decrees, and/or rules now or hereinafter in effect, as may be amended from time to time, and all implementing regulations, directives, orders, guidelines, and federal or state court decisions, interpreting, relating to, regulating or imposing liability (including, but not limited to, response, removal, remediation and damage costs) or standards of conduct or performance relating to industrial hygiene, occupational, health, and/or safety conditions, environmental conditions, or exposure to, contamination by, or clean-up of, any and all Hazardous Materials, including without limitation, all federal or state super-lien or environmental clean-up.

EXHIBIT B
TO FUNDING AGREEMENT

Form of Grant of Temporary Construction and Staging Easement

[BEGINS ON NEXT PAGE]

RECORDED WITHOUT FEE
UNDER SECTION 6103
GOVERNMENT CODE OF THE
STATE OF CALIFORNIA

RECORDING REQUESTED BY:

City of San Jose

MAIL TAX STATEMENT TO:

City of San José

Office of Economic Development

Real Estate Services

200 East Santa Clara Street, 12th
Floor

San José, CA 95113-1905

File/Doc. No:

APNs: 101-02-019 and 101-02-020

Space above this line for Recorder's Use

TEMPORARY CONSTRUCTION AND STAGING EASEMENT AGREEMENT

BY AND BETWEEN

THE CITY OF SAN JOSE AND

MICROSOFT CORPORATION

(2515 Orchard Parkway)

The Undersigned Grantor Declares: DOCUMENTARY TRANSFER TAX \$0; CITY TRANSFER TAX \$0; Recorded for the benefit of the City of San Jose and is exempt from transfer tax per Revenue and Taxation Code Section 11922 and exempt from recording fee per Government Code Section 6103.

THIS TEMPORARY CONSTRUCTION AND STAGING EASEMENT AGREEMENT (the "**Agreement**") is made by and between MICROSOFT CORPORATION, a Washington corporation, ("**Grantor**"), and the CITY OF SAN JOSE, a municipal corporation of the State of California, (hereinafter referred to as "**City**" or "**Grantee**", and together with Grantor, the "**Parties**"), effective upon and as of the last date of execution by both parties (the "**Effective Date**"). Grantor and Grantee and hereinafter collectively referred to as the "**Parties**" and individually as a "**Party**".

RECITALS

- A. Grantor is the owner of that certain property consisting of approximately 22.24 acres located at 2515 Orchard Parkway (Assessor Parcel Numbers 101-02-019 and 101-02-020) in San José, California, as described in **Exhibit A**, attached hereto and incorporated herein ("**Grantor Property**"); and

- B. Grantor Property is bounded by Orchard Parkway to the northeast and lands owned by the Santa Clara Valley Water District ("**Valley Water**") to the southwest, which is in turn adjacent to the Guadalupe River Trail and the Guadalupe River; and
- C. Valley Water owns the land underlying the Guadalupe River Trail and plans and operates the Guadalupe River Trail as part of the regional trail network in service of the broad Bay Area community; and
- D. Grantor is committed: (1) to paying a fee in-lieu of constructing a Class IV bicycle lane along the Orchard Parkway Property frontage, (2) to paying a fee in lieu of construction a signal modification for bicycle crossings in the southbound and eastbound directions at the intersection of Orchard Parkway and Component Drive, and (3) to constructing (rather than payment of a fee in lieu thereof) Class I bike trail improvements along Component Drive from the intersection of Component Drive and Orchard Parkway towards the existing Guadalupe River Trail (the "**Component Drive Trail Improvements**"); and
- E. Grantee, in coordination with Valley Water, is committed to constructing improvements to connect the Component Drive Trail Improvements to the existing regional Guadalupe River Trail upon the levee owned by Valley Water ("**Regional Trail Connector**"); and
- F. Grantee desires to temporarily enter upon a portion or portions of the Grantor Property as described in the legal description and depicted in the map at **Exhibit B**, attached hereto and incorporated herein ("**Easement Area**"), in order to complete the Regional Trail Connector; and
- G. Grantor is amenable to permitting a temporary right to enter the Easement Area to Grantee for the purposes described herein; and
- H. The Parties shall, pursuant to Section 21.7(a) of Title 49, Code of Federal Regulations, comply with all elements of Title VI of the Civil Rights Act of 1964. This requirement under Title VI and the Code of Federal Regulations is to complete the USDOT-Non-Discrimination Assurance requiring compliance with Title VI of the Civil Rights Act of 1964, 49 C.F.R Section 50.3; and
- I. No person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity that is the subject of this contract.

NOW THEREFORE, in consideration of the mutual covenants herein contained, the Parties hereto agree as follows:

1. Temporary Construction Easement. Grantor hereby grants to Grantee, its officers, employees, agents and contractors, a temporary, non-exclusive

construction easement ("Easement") on, under, over, and through the Easement Area for the purposes hereinafter described, subject to all licenses, easements, leases, encumbrances and claims of title affecting the Grantor Property for the Term (as defined below).

2. Purpose. Subject to the limits herein stated, the Easement granted herein is for the sole purpose of construction-related materials and equipment storage, staging, and access to allow for construction of the Regional Trail Connector.
3. Term. The term of the Easement shall begin upon the Effective Date and expire at midnight thirty-six (36) months from the Effective Date ("Term") unless extended in writing by the Parties, which extension shall not be unreasonably withheld by the Grantor.
4. As-Is Condition and Assumption of Risk. Grantee accepts the condition of the Easement Area AS-IS and acknowledges that Grantor is under no obligation to provide any additional preparations or improvements to the Easement Area prior to or during the use by Grantee. The Parties acknowledge that Grantor provided Grantee with each of: (a) that certain Phase I Environmental Site Assessment (Project No. 127712) prepared by Burns & McDonnell on December 14, 2020 (the "Phase I") and (b) that certain Phase II Environmental Site Assessment (Project No. 127712, Revision 1) prepared by Burns & McDonnell on February 10, 2021 (the "Phase II"). The Phase I and the Phase II provide information about Hazardous Materials as defined in attached Exhibit C, on or under Grantor Property.
5. Release and Waiver
 - a. Grantee waives and releases Grantor and its officers, agents, employees, directors, affiliates, members, managers, mortgagees, successors and assigns (each a "Grantor Party" and, collectively, the "Grantor Parties") from any and all liability for any loss, damage, claim, cost, expense, liability, or liability for damages, whether for loss of or damage to property, or injury to or death of persons, which may arise out of Grantee's use of the Easement in accordance with the purpose stated in Section 2 herein, except such loss or damage as is caused by or arises out of the sole active negligence or willful misconduct of any Grantor Party (each, an "Indemnified Claim"). The foregoing shall include any loss, damage, claim, or liability for damages or injury caused by or resulting from Hazardous Materials on or under the Easement Area caused by the Grantee and Grantee's officers, employees, agents and contractors. In no event shall Grantor be liable to Grantee for any consequential, punitive or special damages. The provisions of this Section 5(a) shall survive termination of this Agreement with respect to any loss, damage, claim, cost, expense, liability, or liability for damages, whether for loss of or damage to property, or injury to or death of persons (including any loss, damage, claim, or liability for damages or injury caused by or resulting

from Hazardous Materials) that arises prior to any such termination and the related extinguishment by Grantee of the Easement.

- b. Grantor shall give prompt notice to Grantee, at the address for notices set forth herein, with respect to any Indemnified Claim initiated or threatened against Grantor, which Grantor has reason to believe is likely to give rise to an obligation to indemnify, defend and hold harmless pursuant to this Section and thereafter shall cooperate with Grantee in the defense of such Indemnified Claim.
 - c. Grantee shall be entitled to control the defense, compromise or settlement of any matter for which it is to provide defense hereunder through counsel of its own choice; provided, however, that in all cases Grantor shall be entitled to participate in such defense, compromise, or settlement at its own expense.
6. Insurance. Grantee is self-insured and will provide Grantor with a letter of self-insurance upon request.
 7. Grantor Access to Easement Area. Grantee's possession of the Easement Area is non-exclusive. Grantor shall continue to have the right to use and access the Easement Area in its entirety and grant such use and access rights to third parties, so long as such access and use does not unreasonably interfere with Grantee's free use and enjoyment of the Easement Area on a non-exclusive basis during the Term. Grantor shall refrain from interfering with Grantee's work within the Easement Area.
 8. No Admission of Liability. Nothing herein shall be construed as an admission of liability by Grantor or Grantee of its respective responsibility as to any Hazardous Materials which may be found on or under the Easement Area.
 9. Authority. Grantor represents and warrants that its signatory(ies) to this Agreement is/are authorized to execute this Agreement on Grantor's behalf.
 10. Entire Agreement. This Agreement represents the entire understanding of the Parties as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder.
 11. Notices. Except as otherwise expressly provided by law, all notices or other communications required or permitted by this Agreement or by law to be served on or given to either Party to this Agreement by the other Party shall be in writing and shall be deemed received on: (i) the day of delivery if delivered by hand, e-mail (with confirmation of receiving Party), or overnight courier service, during regular business hours; or (ii) on the fifth (5th) business day following deposit, with postage prepaid, in the United States Postal Service and addressed to the contracting Party. Name, address, telephone numbers, and e-mail addresses of the Parties are as follows:

Grantee: City of San Jose
Department of Public Works, Development Services
Division
Attention: Joe Provenzano
200 E. Santa Clara St., 3rd Floor
San Jose, CA 95113-1905
Telephone: (408) 535-8466
E-mail: Joe.Provenzano@sanjoseca.gov

City of San Jose
Department of Parks, Recreation, and Neighborhood
Services
Attention: Liz Sewell
200 E. Santa Clara St., 9th Floor
San Jose, CA 95113-1905
Telephone: (408) 535-3570
E-mail: Elizabeth.Sewell@sanjoseca.gov

A copy to: City Attorney
City of San Jose
200 E. Santa Clara St., 16th Floor
San Jose, CA 95113-1905
Telephone: (408) 535-1900
E-mail: cao@sanjoseca.gov

Grantor: Microsoft Corporation
One Microsoft Way
Redmond, WA 98052-6399
Attn: Cloud Infrastructure Sourcing and Acquisitions
(CISA)
Email: AMERSLAND@microsoft.com

A copy to: Microsoft Corporation
CELA – CO+I
One Microsoft Way
Redmond, WA 98054
Attn: Corporate, External & Legal Affairs
Email: MCIOCELA@microsoft.com

Either Party may change its address for the purpose of this Section by giving written notice of the change to the other Party.

12. Exhibits. All Exhibits and addenda referred to herein, and any exhibits or schedules which may from time to time be referred to in any duly executed amendment hereto, are by such reference incorporated herein and shall be deemed a part of this Agreement as if set forth fully herein. The Exhibits to this Agreement are:

Exhibit A – Description of Grantor Property

Exhibit B – Legal Description of and Map Depicting the Temporary Construction and Staging Easement Area

Exhibit C – Definition of Hazardous Materials

IN WITNESS WHEREOF, the Parties hereto have executed this instrument as of the Effective Date.

“Grantor”

MICROSOFT CORPORATION,
a Washington corporation

By: _____

Name: _____

Its: _____

Date: _____

“Grantee”

APPROVED AS TO
FORM:

CITY OF SAN JOSE,
a California municipal corporation

[print name below
signature]
Deputy City Attorney

[print name below signature]
Director of Public Works

Date: _____

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of _____)

On _____ before me, _____,
Date Here Insert Name and Title of the Officer

personally appeared _____
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: _____ Document Date: _____

Number of Pages: _____ Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

Signer's Name: _____

Corporate Officer – Title(s): _____

Corporate Officer – Title(s): _____

Partner – Limited General

Partner – Limited General

Individual Attorney in Fact

Individual Attorney in Fact

Trustee Guardian or Conservator

Trustee Guardian or Conservator

Other: _____

Other: _____

Signer Is Representing: _____

Signer Is Representing: _____

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of _____)

On _____ before me, _____,
Date Here Insert Name and Title of the Officer

personally appeared _____
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: _____ Document Date: _____

Number of Pages: _____ Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

Corporate Officer -- Title(s): _____

Partner -- Limited General

Individual Attorney in Fact

Trustee Guardian or Conservator

Other: _____

Signer Is Representing: _____

Signer's Name: _____

Corporate Officer -- Title(s): _____

Partner -- Limited General

Individual Attorney in Fact

Trustee Guardian or Conservator

Other: _____

Signer Is Representing: _____

EXHIBIT A
TO THE
TEMPORARY CONSTRUCTION AND STAGING EASEMENT

**Description of Grantor Property
(APNs: 101-02-019 and 101-02-020)**

[TO BE ATTACHED]

EXHIBIT B
TO THE
TEMPORARY CONSTRUCTION AND STAGING EASEMENT

**Legal Description of and Map Depicting the
Temporary Construction and Staging Easement Area**

[TO BE DETERMINED AND ATTACHED]

EXHIBIT C
TO THE
TEMPORARY CONSTRUCTION AND STAGING EASEMENT

Definition of Hazardous Materials

For the purpose of this Temporary Construction and Staging Easement Agreement, “**Hazardous Materials**” shall mean any and all: (a) substances, products, by-products, waste, or other materials of any nature or kind whatsoever which is or becomes listed, regulated or addressed under any Environmental Laws; (b) materials, substances, products, by-products, waste, or other materials of any nature or kind whatsoever whose presence in and of itself or in combination with other materials, substances, products, by-products, or waste may give rise to liability under any Environmental Law or any statutory or common law theory based on negligence, trespass, intentional tort, nuisance, strict or absolute liability or under any reported decisions of any state or federal court; and, (c) substances, products, by-products, wastes or other materials which may be hazardous or harmful to the air, water, soil, environment or affect industrial hygiene, occupational, health, safety and/or general welfare conditions, including without limitation, petroleum and/or asbestos materials, products, by-products, or waste.

For the purposes of this Temporary Construction Easement and Staging Agreement, “**Environmental Laws**” shall mean and include all federal, state, and local laws, statutes, ordinances, regulations, resolutions, decrees, and/or rules now or hereinafter in effect, as may be amended from time to time, and all implementing regulations, directives, orders, guidelines, and federal or state court decisions, interpreting, relating to, regulating or imposing liability (including, but not limited to, response, removal, remediation and damage costs) or standards of conduct or performance relating to industrial hygiene, occupational, health, and/or safety conditions, environmental conditions, or exposure to, contamination by, or clean-up of, any and all Hazardous Materials, including without limitation, all federal or state super-lien or environmental clean-up.