

SITE WORKS AGREEMENT
(Valley Water Visitor Center)

THIS SITE WORKS AGREEMENT (the “**Agreement**”) is entered into as of the date of the last signature below (the “**Effective Date**”), by and between the CITY OF SAN JOSÉ, a municipal corporation of the State of California (“**City**”), SANTA CLARA VALLEY WATER DISTRICT, a special district of the State of California (“**Valley Water**”), and MICROSOFT CORPORATION, a Washington corporation (“**Microsoft**”). City, Valley Water and Microsoft are each individually referred to herein as a “**Party**” and collectively referred to as the “**Parties**”.

RECITALS

A. City and the City of Santa Clara (“**Santa Clara**”) are co-owners of that certain real property and improvements located at the east side of Zanker Road, north of State Route 237 in the City of San José, County of Santa Clara, State of California (the “**Property**”) and City is the administering agency for the San Jose/Santa Clara Water Pollution Control Plant (more commonly known as Regional Wastewater Facility or RWF) which encompasses the wastewater treatment facility and the Property;

B. City and Valley Water previously executed a Ground Lease and Property Use Agreement dated March 2, 2010, and effective July 1, 2010 (the “**Ground Lease**”), for Valley Water to lease the portion of the Property depicted on **Exhibit A** attached hereto (“**VW Property**”). Pursuant to the Ground Lease, Valley Water has constructed and currently operates the Advanced Water Treatment Facility (“**AWTF**”) now known as the Silicon Valley Advanced Water Purification Center (SVAWPC) on the VW Property and a visitor center, which is comprised of a small portable modular building measuring approximately one thousand four hundred forty (1,440) square feet (“**Visitor Center**”), a related parking lot comprised of nine (9) parking spaces (“**Existing Parking Lot**”), and related infrastructure and utility connections (collectively, the “**VW Facilities**”).

C. Microsoft owns approximately 64.5 acres of real property at 1657 Alviso Milpitas Road in the City of San José, County of Santa Clara, State of California (the “**Microsoft Property**”), on which Microsoft may develop, construct and/or operate a data center campus together with related improvements, as described more fully in the application materials submitted to and subsequently approved by City on April 9, 2025 (collectively, the “**Project**”).

D. The Project includes, among other things, the construction of a new, two-lane driveway to the Microsoft Property’s primary access point for use by Valley Water, City, and Microsoft’s employees, vendors, and visitors and such other users as may be permitted by City and Microsoft. This new driveway would run east from the eastern boundary of the McCarthy Connector (as defined below) to, and then south along, the western boundary of the Microsoft Property, as depicted in detail in **Exhibit B** hereto (the “**Microsoft Driveway**”). The Microsoft Driveway will serve as a private driveway for the Project until the City permits public access to

the driveway and requests Microsoft dedicate the portion of the Microsoft Driveway on the Microsoft Property, as further addressed below.

E. The Project also includes, among other things, the construction of a new two-lane public road which will connect the east end of existing McCarthy Lane to the west end of the Microsoft Driveway, as depicted in detail in Exhibit C hereto (the “**McCarthy Connector**”) and the installation of certain infrastructure improvements for the benefit of Valley Water within the Zanker Improvements Area, as such area is depicted in Exhibit D hereto (the “**Zanker Improvements Area**”).

F. The California Energy Commission prepared and certified the Final Environmental Impact Report (“**FEIR**”) for the Project in accordance with the California Environmental Quality Act, as amended (“**CEQA**”). On April 9, 2025, City certified an Addendum to the FEIR and adopted the related Mitigation Monitoring and Reporting Plan, as a responsible agency, in accordance with CEQA.

G. To enable the construction of the McCarthy Connector and the Microsoft Driveway while also ensuring that Valley Water’s operations on the VW Property are not impaired, the Visitor Center would be relocated to a new location adjacent to the VW Property and a new parking lot comprised of forty-two (42) car parking spaces and three (3) bus parking spaces (“**New Parking Lot**”) would be installed adjacent to the VW Property to replace the Existing Parking Lot and to offset the loss of areas currently used for parking on and along existing McCarthy Lane. The area adjacent to the VW Property upon which the relocated Visitor Center and the New Parking Lot would be installed (collectively, the “**Additional VW Area**”) is owned by City and Santa Clara. The Additional VW Area is not currently a part of the Ground Lease, but is currently expected to become a part of the Ground Lease in the future. The Additional VW Area is depicted on Exhibit E attached hereto.

H. Concurrent herewith, City and Microsoft are entering into that certain Master Utility Easement Agreement, dated as of [____], 2026 (the “**MUEA**”), pursuant to which the City is granting certain construction and utility easements to Microsoft. As part of the MUEA, City and Microsoft have agreed to enter into the form of Temporary Construction Easement depicted as Exhibit O to the MUEA (“**TCE**”) and be bound by related Exhibit P to the MUEA (which depicts areas subject to access under the TCE) in advance of Microsoft’s performance of the works contemplated by the MUEA and the Works (as defined below) contemplated by this Agreement. Valley Water acknowledges that even though Valley Water will not be a party to the TCE, the TCE will apply to the Site Works to be performed by Microsoft on the VW Property.

I. City and Valley Water have executed that certain Option Agreement, dated [____], 2026 granting Valley Water the option to amend the Ground Lease (the “**Lease Amendment**”) to construct and operate a proposed direct potable reuse demonstration facility (“**DPR Project**”). Under the Lease Amendment, City and Valley Water shall endeavor to amend the lease footprint of the Ground Lease to reflect (i) the deletion of certain area needed for the McCarthy Connector and (ii) the addition of the Additional VW Area. Collectively, the VW Property and the Additional

VW Area shall be referred to herein as the “**VW Site**”, which shall be the subject lands reflected in the Lease Amendment. If Valley Water constructs the DPR Project, the City intends to grant Valley Water a temporary construction easement over the Property that will include portions of the McCarthy Connector as generally depicted in Exhibit C. Such Lease Amendment shall be completed at the discretion of the City and Valley Water; provided, however, City and Valley Water each agree that any delay in the execution of the Lease Amendment shall not delay or otherwise hinder the start or completion of the Works by Microsoft contemplated herein, including, without limitation, the issuance of any approvals or permits or the completion of any inspections by City or Valley Water required therefor.

J. The Parties desire to proceed with the Works on the terms and conditions set forth in this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth below, and other good and valuable consideration, the receipt of which is hereby acknowledged, the Parties agree as follows:

1. **Incorporation of Recitals**. The recitals set forth above are hereby incorporated into and made a part of this Agreement as if fully set forth herein. The Parties acknowledge and agree that the recitals are true and correct and form an integral part of the understanding and intent of this Agreement.

2. **Works**.

a. **Site Works**. Subject to Microsoft having obtained all approvals necessary or desirable to construct the Project, Microsoft shall have the right (but not the obligation) to perform the work described in Exhibit F attached hereto (collectively, the “**Site Works**”) on the VW Site and the Zanker Improvements Area, as such Site Works may be refined to reflect any and all changes thereto required by City as part of (i) City’s discretionary approval process for the Project and (ii) City’s review of any required building or other permit applications. Once Microsoft provides the Start Notice as defined in and pursuant to Section 5 below, it shall be obligated to complete the Site Works, and obtain and fulfill any permit requirements associated with the Site Works, as may be applicable, in accordance with the terms of this Agreement.

b. **Connector Works**. Once Microsoft provides the Start Notice, as defined in and pursuant to Section 5 below, it shall be obligated to perform and complete the work described in Exhibit G attached hereto (collectively, the “**Connector Works**”, and together with the Site Works, the “**Works**”) on the area of the McCarthy Connector in accordance with the terms of this Agreement, as such Connector Works may be refined to reflect any and all changes thereto required by City as part of (i) City’s discretionary approval process for the Project and (ii) City’s review of any required building or other permit applications.

3. Works Standards.

a. **Applicable Standards; Necessary Approvals.** If Microsoft performs the Works pursuant to Section 2 hereof, such Works shall be completed in compliance with all applicable laws and regulations (collectively, the “***Applicable Standards***”). Microsoft shall be responsible for obtaining all necessary or desirable permits, licenses, entitlements and approvals from the relevant public agencies for the construction and installation of the Works (collectively, the “***Works Permits***”), including, but not limited to, obtaining a conditional use permit, building permits, grading permits, and other construction-related permits and conducting all necessary environmental review under the California Environmental Quality Act and complying with all applicable requirements thereunder. For the avoidance of doubt, pursuant to Section 2.2.2.D. of Valley Water’s Water Resources Protection Ordinance, Microsoft shall not be required to obtain any permits, including, without limitation, any encroachment permits, from Valley Water for the Works as all rights and responsibilities of Valley Water and Microsoft with respect to the Works are fully addressed in this Agreement. Without limiting the foregoing, subject to limitations on their authority in their governmental and regulatory capacities, City and Valley Water, as respective owners of the underlying property and the possessory rights thereof, shall cooperate in good faith with respect to Microsoft’s pursuit of the Works Permits (including, without limitation, providing signatures on applications as requested by Microsoft). Microsoft shall provide City and Valley Water with copies of all final Works Permits. Microsoft shall undertake the Works in a safe and professional manner consistent with industry standards and in accordance with the additional standards and requirements described in **Exhibit H** hereto.

b. **Repairs to VW Facilities.** In connection with its performance of the Site Works, Microsoft shall have the sole right to replace, repair or reimburse Valley Water, at Valley Water’s election (such election to be exercised within ten business days of receipt of notice), for the reasonable, actual cost of replacement or repair of damage to any Valley Water property, including, but not limited to, the VW Facilities and any personal property located thereupon, but only to the extent any such damage is caused by Microsoft’s construction, reconstruction, use, operation, maintenance, repair, inspection, patrol, replacement, upgrading, or removal of the Site Works during the Term (as defined below). For sixty days after Substantial Completion, Microsoft shall have designated personnel available to assist Valley Water with remedying any problems related to any damage or loss caused by Microsoft or its contractors to the relocated Visitor Center or any personal property located therein. Nothing contained herein, however, shall require Microsoft to remediate, treat, encapsulate, remove, transport or otherwise handle any Hazardous Materials (as defined in **Exhibit I** hereto) not first placed on the VW Site, the McCarthy Connector or the Zanker Improvements Area by Microsoft.

4. **Cost of Construction.** Subject to the terms and conditions of this Agreement, Microsoft shall be responsible for the costs of designing, permitting, constructing and installing, and warranting the Works. The costs of such work shall include all labor, materials, equipment,

and other expenses necessary to complete the Works in accordance with the Applicable Standards.

5. **Coordination of Site Works.** If Microsoft performs the Works pursuant to Section 2 hereof, Microsoft, Valley Water and City shall reasonably and in good faith coordinate and cooperate regarding Microsoft's performance of the Works as follows:

a. **Election to Proceed; Start Notice.** Microsoft shall endeavor to provide no less than 90 days' written notice, and shall, in any event, provide no less than 60 days' written notice, to Valley Water and City ("**Start Notice**") of the date on which it expects to start construction on the Works; provided, however, that following Microsoft's delivery of the Start Notice, Valley Water and Microsoft may mutually agree a start date for construction of the Works that is less than 60 days after the date of the Start Notice. Prior to issuance of the first City permit for any aspect of the Works or the date 60 days after the Start Notice is provided, whichever occurs earlier, Microsoft shall (i) furnish a surety bond for the Works to City in accordance with the requirements of the SECI permit for the Works and the related construction agreement to be entered into by City and Microsoft and (ii) furnish a surety bond for the Works to Valley Water for value of the Works, as reasonably allocated by Microsoft's contractor based on the cost of the Site Works and the Connector Works as a portion of the overall amount of the applicable construction contract (which allocation shall not exceed eight million dollars (\$8,000,000) in any event). Prior to undertaking any of the Works, including any Works performed pursuant to rights granted under the MUEA, Microsoft must first issue the Start Notice to Valley Water and City in accordance with the terms of this Agreement.

b. **Review of Plans and Specifications; Regulatory Approval.** Prior to finalizing any required Site Works Permits, Microsoft shall prepare the plans and specifications for the Site Works in accordance with Valley Water's standard construction standards as described exclusively in Valley Water's Water Resources Protection Manual (a current copy of which was provided to Microsoft prior to the date hereof) and the supplemental requirements provided to Microsoft and as set forth in **Exhibit J** hereto (the "**VW Standards**"). Microsoft shall provide Valley Water with copies of the 50% and 90% plans and specifications for the Site Works. Valley Water shall review all such plans and specifications to ensure consistency with the VW Standards and shall provide written comments describing any revisions reasonably required to ensure that the Site Works are consistent with the VW Standards). Valley Water shall provide any written comments thereto within ten (10) business days of request therefor. So long as Valley Water provides written comments that are consistent with the VW Standards within such ten (10) days period, Microsoft shall work with Valley Water to incorporate and resolve such comments in good faith; provided, however, (i) nothing contained herein shall require Microsoft to address any such comments if such comment(s) are not consistent with the VW Standards and (ii) Valley Water shall not be entitled to provide comments regarding the Zanker Road acceleration lane and the new sidewalk and landscaping adjacent to the Zanker Road, as such improvements are required to be installed by Microsoft exclusively in accordance with applicable City standards. Microsoft

shall also notify Valley Water of, and provide Valley Water with, any material changes Microsoft makes (i.e., not initiated by Valley Water) to the plans and specifications between the 90% plans and specifications and the final plans and specifications. Valley Water and Microsoft shall work together in good faith to resolve and incorporate such comments into the final plans and specifications. The final plans and specifications for the Site Works approved by City, Valley Water, and other relevant agencies, in the respective agencies' sole discretion as regulatory agencies, (as such plans and specifications may thereafter be amended from time to time in accordance with this Agreement) in connection with the issuance of required permits are referred to herein as the "Final Plans and Specifications." Microsoft shall provide the Parties with copies of the Final Plans and Specifications and relevant construction documents. In the event of a conflict between the Final Plans and Specifications and the VW Standards, the Final Plans and Specifications shall supersede the VW Standards. Subject to City's obligations hereunder and under applicable law regarding the processing of ministerial permits, it is Microsoft's obligation to obtain any and all necessary permits, rights, or other such approvals as may be necessary to complete the proposed Site Works. Microsoft shall not be required to provide the Start Notice prior to the Final Plans and Specifications being approved.

c. **Kickoff Meeting and Status Updates.** Prior to beginning construction, Microsoft shall arrange one or more meetings among Microsoft, Valley Water, the general contractor and Valley Water's other construction professionals and consultants as Valley Water shall reasonably request be included to discuss construction matters, including construction hours, truck access, dust abatement, marshalling and storage areas, coordination of construction with the DPR Project, and any other matters that may be of concern to Valley Water or which may be of concern to neighbors. In particular, Microsoft or its general contractor shall provide Valley Water with progress reports with such information as Valley Water reasonably requests, at least every two weeks. Valley Water shall designate the Valley Water recipients for such progress reports in writing to Microsoft's general contractor within thirty (30) days of Valley Water's receipt of the Start Notice.

d. **Schedule for Works.** Following any Start Notice, Microsoft will use commercially reasonable efforts to construct the Works in a manner that minimizes downtime and disruptions to the operations of the SVAWPC and any public outreach tour and activities related thereto, in each case to the extent feasible; provided, however, Microsoft and Valley Water acknowledge that Microsoft currently expects that Microsoft will require at least approximately six (6) months to complete the Works; provided further that once the physical relocation of the Visitor Center begins and Valley Water's use thereof is disrupted, Microsoft shall use commercially reasonable efforts to ensure that Substantial Completion of the Connector Works and the Site Works outside of the Zanker Improvements Area are achieved as promptly as reasonably possible thereafter. To ensure close coordination with Valley Water regarding the schedule for and timing of the relocation of the Visitor Center, Microsoft shall ensure that the Works Schedule (as defined below) includes a day by day projection of the expected construction timetable for the Visitor Center relocation starting on the date the Visitor Center is first moved and ending on the

expected date for Substantial Completion. Microsoft, City and Valley Water shall document: (i) the start date for the Works, consistent with the Start Notice, and (ii) the anticipated timing to complete the installation thereof; provided however, the foregoing schedule (the “**Works Schedule**”) may be extended by Microsoft for up to sixty (60) days at its sole discretion. The Works Schedule shall be updated by Microsoft’s general contractor from time to time as it is revised. The following tasks shall be noted on the Works Schedule: the estimated timing for the relocation of the manhole from Zanker Road, road works in and otherwise impeding or redirecting traffic flows on Zanker Road and McCarthy Lane, trailer relocation timing, utility hook-ups timing, and timing of paving activities, and work within the AWTF. The Works Schedule and any updates shall be delivered to those parties designated by Valley Water pursuant to Section 5.c. above, and City and RWF in 15(c), below. The Works Schedule shall also be extended for any delays arising from or caused by any Force Majeure Events (as defined below) or other unanticipated site conditions. Further, the Works Schedule may be modified, from time to time, by mutual consent of Valley Water, City and Microsoft, acting reasonably in good faith.

e. **Construction Site Access; Compliance.** Prior to Substantial Completion of the Site Works, Microsoft shall provide Valley Water with reasonable access to the construction site for the Site Works (“**Construction Site**”) for purposes of monitoring Microsoft’s compliance with this Agreement, provided Valley Water complies with Microsoft’s and its contractor’s safety and security requirements applicable to the Construction Site. Without reducing or relieving Microsoft of its responsibilities as stated herein, Valley Water may periodically have an inspector at the Construction Site to monitor compliance with this Agreement. Valley Water’s inspector shall only be responsible for reporting to Microsoft’s authorized representative any inconsistencies that the inspector observes. Without limitation on any authority reserved for Valley Water pursuant to this Agreement, Valley Water shall not direct or otherwise hinder or interfere with the performance of the Works by Microsoft’s contractor(s). Microsoft assumes all costs and risks for removing and reconstructing any completed work that is inconsistent with the Final Plans and Specifications or with the conditions of any other necessary regulatory permit or approval.

f. **Changes to Final Plans and Specifications.** Microsoft shall provide advance written notice to Valley Water of any material modifications to the Final Plans and Specifications in accordance with the standard notice provisions of this Agreement, which Valley Water shall review and reasonably consider as promptly as practicable. If Valley Water approves requested modifications to the Final Plans and Specifications, Microsoft shall be responsible for obtaining any and all applicable regulatory and public agency approvals required as a result of such modifications to the Final Plans and Specifications. If Valley Water or another regulatory agency reasonably disapproves or rejects the modifications, then Microsoft shall not implement the proposed modifications until such time as the parties agree to alternative modifications.

6. **Lease Amendment or Termination; Further Assurances.** As it is not known if the Lease Amendment will be effective prior to the Start Date, City and Valley Water each acknowledge that the primary purpose of this Agreement is to enable Microsoft to construct the Site Works within the Zanker Improvements Area and the VW Site, which may include

additional premises when the Ground Lease is amended, and the Connector Works within the McCarthy Connector, in each case in accordance with the terms and conditions hereof (regardless of Valley Water and City's respective property rights in the VW Site, the Zanker Improvements Area or the McCarthy Connector at any given time) and that any failure by Valley Water and City to execute the Lease Amendment prior to the Start Date or any termination of the Ground Lease at any time shall not in any way impede Microsoft's rights hereunder. If the Lease Amendment is not executed or if the Ground Lease is terminated at any time, City and Valley Water agree to take all actions necessary to allow Microsoft to complete the Works in accordance with the Works Schedule and the other terms of this Agreement.

7. **Temporary Construction Easement.** If Microsoft delivers a Start Notice to Valley Water and City, then Microsoft and City shall each execute and deliver the TCE no later than forty-five (45) days after the date the Start Notice is delivered to City and Valley Water. To minimize delays to the Works, Microsoft may request preparation of the TCE at any time following execution of this Agreement. The TCE shall be recorded and shall cover those areas described and depicted therein, including the Zanker Improvements Area, the VW Site and the McCarthy Connector.

8. **Substantial Completion of Works; Handover.**

a. **Site Works.** Within twenty (20) business days of Substantial Completion (as defined below) of the Site Works, City shall accept the handover of the Site Works from Microsoft, whereupon Valley Water and/or the City shall assume all responsibility for the maintenance, repair and operation thereof based on their respective obligations under the Ground Lease (and, if effective as of such time, the Lease Amendment) and Microsoft shall have no ongoing liability for the same except for warranty obligations as provided in the Agreement. As used herein, "***Substantial Completion***" means the completion of the Site Works by Microsoft and the successful final inspection thereof by City and Valley Water. Microsoft represents and warrants that upon handover to Valley Water by Microsoft the Site Works shall be free and clear of all claims for mechanics' liens, stop notices, security interests, or other encumbrances related to the work performed for the Site Works. In the event that all Site Works to be performed outside of the Zanker Improvements Area achieve Substantial Completion more than 30 days prior to the expected date of Substantial Completion for the Site Works located within the Zanker Improvements Area (as reasonably determined by Microsoft's general contractor), Microsoft, City and Valley Water agree that City shall accept the handover of the Site Works in two phases, with the first phase being comprised of all Site Works outside of the Zanker Improvements Area (subject to compliance with the requirements of Section 8.b. below regarding the concurrent handover of the Connector Works as part of such first phase) and the second and final phase being comprised of all Site Works within the Zanker Improvements Area. Microsoft shall designate a person available to assist Valley Water and the City with exercising warranty coverage for the Site Works.

Once the Works have been accepted by City, all costs relating to any relocation or other changes to the Works, made at the discretion of Valley Water (which may be made

pursuant the relocation rights of City under the MUEA) shall be the sole responsibility of Valley Water through the termination or extinguishment of the underlying Ground Lease; provided, however, that Valley Water shall have no responsibility for any costs, expenses, delays, claims, losses, liabilities, investigation costs, design costs, permitting costs, construction costs, restoration costs, or other damages arising out of or relating to any Works, or portion thereof, that were not accurately and completely disclosed in all material respects in the Final Plans and Specifications, as-built drawings, CADD files, or other handover documents required to be provided by Microsoft under this Agreement. For purposes of this Section 8.a., “not accurately and completely disclosed in all material respects” means if the applicable documents fail to show, or inaccurately depict, the location, alignment, elevation, depth, dimension, size, material, capacity, configuration, tie-ins, appurtenances, clearances, or other material characteristics of such Works. If any Works, or portion thereof, are not accurately and completely disclosed in all material respects, Microsoft shall, at its sole cost and expense, promptly relocate, modify, remove, reconstruct, repair, or otherwise correct such Works as is reasonably necessary to conform, as applicable, to the Final Plans and Specifications, the required as-built drawings, CADD files, and/or other handover documents, but only if, and then only to the extent, reasonably necessary to avoid interference with Valley Water’s facilities, operations, maintenance, future improvements approved as of the date hereof in Valley Water’s Capital Improvement Program, including, if applicable, the DPR Project, or use of the VW Site consistent with past practice. Microsoft shall not have any obligations or other liability for Works not accurately and completely disclosed in all material respects if Microsoft is not notified in writing regarding any such purported inaccurate or incomplete disclosures within three years of the expiration or termination of this Agreement.

b. **Connector Works.** Within twenty (20) business days of CW Substantial Completion (as defined below), but subject to the prior or concurrent Substantial Completion of the Site Works, City shall accept the handover of the Connector Works from Microsoft, whereupon City shall assume all responsibility for the maintenance, repair and operation thereof and Microsoft shall have no ongoing liability for the same except for warranty obligations as provided in the Agreement. As used herein, “**CW Substantial Completion**” means the completion of the Connector Works by Microsoft and the successful final inspection thereof by City. Notwithstanding any other provision of this Agreement, and for the avoidance of doubt, the Parties agree that the Connector Works and all Site Works located outside of the Zanker Improvements Area shall be handed over to City concurrently, unless otherwise agreed in writing by the Parties. Microsoft represents and warrants that upon handover of the Connector Works to City by Microsoft the Connector Works shall be free and clear of all claims for mechanics’ liens, stop notices, security interests, or other encumbrances related to the work performed for the Connector Works.

9. **Term.** The term of this Agreement shall begin upon the Effective Date and expire ninety (90) days after the later of Substantial Completion or CW Substantial Completion, unless extended in writing by the Parties, which extension shall not be unreasonably withheld, conditioned or denied by City and Valley Water (as may be extended by the Parties, the “**Term**”). At the end of the Term, City and Valley Water shall each release Contractor’s applicable surety

bonds and all provisions of this Agreement shall terminate automatically, unless expressly stated to survive termination as set forth herein. Notwithstanding the foregoing, if Microsoft has not delivered a Start Notice to City and Valley Water on or before December 31, 2028, then this Agreement shall automatically terminate, unless extended in writing by the Parties.

10. Indemnification; Release; Limitation of Liability.

a. Microsoft agrees to indemnify, defend, and hold harmless Valley Water and City, their respective officials, officers, directors, employees, and agents (each an “**Indemnified VWC Party**” and, collectively, the “**Indemnified VWC Parties**”) from and against any and all claims, demands and losses, including but not limited to liabilities, obligations, costs (including but not limited to court costs, defense costs, interest, penalties, and fines), reasonable expenses (including but not limited to associated investigation and administrative expenses, reasonable attorneys', consultants', and expert fees, and costs of any alternate dispute resolution), fines, levies, imposts, assessments, demands, damages, or judgments of any kind or nature, whether in law or equity (including without limitation, death or injury to any person, property damage, administrative and judicial orders or consents, or any other loss) (collectively, “**Indemnified Claims**”) arising out of, pertaining to, resulting from, or relating to (i) any and all liens filed in connection with performance of the Site Works under this Agreement; and/or (ii) any injury to or the death of any person or physical damage to property, real or personal (including personal property located inside the Visitor Center), of any kind wherever located and by whomever owned caused in whole or in part by any act or omission of Microsoft or any of its employees or agents, except to the extent that any such Indemnified Claims are caused by the active negligence or willful misconduct of any of the Indemnified VWC Parties. Notwithstanding anything to the contrary contained herein, in no event shall Microsoft have any liability hereunder for any Hazardous Materials (as defined in Exhibit 3 to the TCE) not first placed on the VW Site, the McCarthy Connector or the Zanker Improvements Area by Microsoft. For the avoidance of doubt, to the extent the Site Works include the relocation of any existing improvements (e.g., the Visitor Center) and any Hazardous Materials were previously incorporated therein, then the relocation of the improvements shall not constitute the placement of such Hazardous Materials on the VW Site, the McCarthy Connector or the Zanker Improvements Area by Microsoft.

b. Valley Water and City each agree to indemnify, defend, and hold harmless Microsoft, and its officers, directors, employees, contractors and agents (each an “**Indemnified MS Party**” and, collectively, the “**Indemnified MS Parties**”) from and against any and all Indemnified Claims to the extent resulting from any injury to or the death of any person or physical damage to property, real or personal, of any kind wherever located and by whomever owned caused by the active negligence or willful misconduct of Valley Water or City, as the case may be, or any of their respective employees or agents. The obligations of Valley Water and City under this Section 10.b. shall be several and not joint.

c. Valley Water and/or City, as applicable, shall give prompt written notice to Microsoft, at the address for notices set forth herein, with respect to any Indemnified Claims initiated or threatened against Valley Water or City, as applicable, which Valley Water and/or

City, as applicable, has reason to believe are likely to give rise to an obligation to indemnify, defend and hold harmless Valley Water and/or City, as applicable, pursuant to this Section and Valley Water and/or City, as applicable, shall thereafter cooperate with Microsoft in the defense of such Indemnified Claims. Microsoft shall give prompt written notice to Valley Water and/or City, as the case may be, at the addresses for notices set forth herein, with respect to any Indemnified Claims initiated or threatened against Microsoft which Microsoft has reason to believe are likely to give rise to an obligation to indemnify, defend and hold harmless Microsoft pursuant to this Section and Microsoft shall thereafter cooperate with Valley Water and/or City, as the case may be, in the defense of such Indemnified Claims.

d. Each Party 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 any other Party shall each be entitled to participate in such defense, compromise, or settlement at its own expense.

e. Microsoft and, to the fullest extent permitted by law, for itself and its agents, affiliates, successors and assigns, hereby agrees that Microsoft releases and forever discharges City and Valley Water, and their agents, affiliates, successors and assigns from any and all liabilities, penalties, costs, damages, expenses, causes of action, claims, demands, losses, injury, liability for personal injury or property damages or judgments (including, without limitation, reasonable attorney's fees or expenses), or judgments (collectively, "Claims"), including, without limitation, rights, claims and demands at law or in equity, whether known or unknown at the time of this Agreement, which Microsoft had, has or may have in the future, arising out of the Works performed under this Agreement and the physical, environmental, economic or legal condition of the VW Site, the McCarthy Connector and the Zanker Improvements Area, including, without limitation, any claim for indemnification or contribution arising under the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. Section 9601, et. seq.) or any similar federal, state or local statute, rule or ordinance relating to liability of property owners for environmental matters.

For the foregoing purposes, Microsoft hereby specifically waives the provisions of Section 1542 of the California Civil Code and any similar law of any other state, territory or jurisdiction. Section 1542 provides:

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.

Microsoft's Initials: _____

Having been so apprised, to the fullest extent permitted by law, Microsoft elects to assume all risk for claims heretofore or hereafter, known or unknown, arising from the subject of this

release, and Microsoft knowingly and voluntarily expressly releases City and Valley Water, and their respective officers, agents or employees from all Claims, unknown or unsuspected, arising out of the physical, environmental, economic or legal condition of the Property. Notwithstanding the foregoing, the foregoing waivers and releases are not intended to and do not cover (i) any breach by City or Valley Water of any of their obligations or covenants under this Agreement; (ii) any breach by City or Valley Water of any of their representations and warranties set forth herein; and (iii) any Claims arising from willful misconduct or active negligence of City or Valley Water.

f. Upon expiration of the provisions of Section 10(a) through 10(e) of this Agreement Valley Water shall hereby waive and release City, and its officers, directors, employees and agents from any and all liability to Valley Water, its officers, employees or agents for any loss, damage, 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 use of the Work performed under this Agreement by Microsoft, its officers, directors, employees or agents, except such loss or damage as is caused by or arises out of the active negligence or willful misconduct of City, its officers, employees or agents.

g. The provisions of Sections 10(a) through 10 (e) of this Agreement shall survive the expiration or other termination of this Agreement three (3) years. The provisions of Section 10(f) of this Agreement shall survive the expiration or other termination of this Agreement until the termination, extinguishment, or amendment (which shall include a substantively similar waiver and release of the Works) of the Ground Lease, as it may be amended and restated from time to time.

11. **Insurance.** Microsoft shall comply with the insurance requirements set forth in **Exhibit K** for the Agreement term. Microsoft may meet the insurance requirements in part or in whole through the provision of a letter of self-insurance to Valley Water and City.

12. **Transfers.** No Party may assign, mortgage, pledge, hypothecate or otherwise transfer (collectively, "**Transfer**") its interests in this Agreement to any person other than an affiliate of such person without the prior written consent of the other Parties hereto, which consent shall not be unreasonably delayed, conditioned or withheld; provided, however, Microsoft may Transfer its interests in this Agreement without the consent of the other Parties hereto in connection with the sale by Microsoft of all or substantially all of its interests in the Microsoft Property if Microsoft's assignee agrees in writing pursuant to an assignment and assumption agreement to perform all of Microsoft's obligations hereunder.

13. **Representations, Warranties and Covenants.**

a. Valley Water represents and warrants that (i) Valley Water is the sole lessee of the VW Property, and following the execution of the Lease Amendment, proposes to be the sole lessee of the VW Site, (ii) the Ground Lease is in full force and effect without current default by Valley Water and to Valley Water's knowledge no event has occurred and no condition exists which, with the giving of notice or the passage of time, or both, will constitute a default under

the Ground Lease; (iii) Valley Water has the full right and authority to enter into this Agreement and to perform its obligations under this Agreement, (iv) the person(s) signing this Agreement on its behalf is authorized to do so, and no consent from any third party is required for this Agreement that has not heretofore been obtained.

b. Microsoft represents and warrants that (i) Microsoft has the full right and authority to enter into this Agreement and to perform its obligations under this Agreement, and (ii) the person(s) signing this Agreement on its behalf is authorized to do so, and (iii) no consent from any lender or other third party is required for this Agreement or the TCE that has not heretofore been obtained.

c. City represents and warrants that (i) City and Santa Clara are the sole fee title owners of the VW Site; (ii) the Ground Lease is in full force and effect without current default by either City, Santa Clara or Valley Water and no event has occurred and no condition exists which, with the giving of notice or the passage of time, or both, will constitute a default under the Ground Lease; (iii) City has the full right and authority to enter into this Agreement on behalf of itself and Santa Clara and to perform its obligations under this Agreement, (iv) the person(s) signing this Agreement on its behalf is authorized to do so, and no consent from any third party is required for this Agreement that has not heretofore been obtained, (v) the VW Property is not subject to, and following the execution of the Lease Amendment, the VW Site shall not be subject to, any deeds of trust, mortgages, or similar liens or any covenants, conditions, restrictions, reservations, contracts, leases and licenses or easements that would preclude or otherwise impair Valley Water from performing its obligations under this Agreement, (vi) the terms of this Agreement do not conflict with the terms of the Ground Lease or the Lease Amendment; (vii) there are no adverse parties in possession of the Zanker Improvements Area or the VW Site, or of any part thereof and no parties in possession thereof except City and Valley Water under the Ground Lease, and no party has been granted any license, lease, or other right relating to the use or possession of the VW Site or the Zanker Improvements Area that would adversely impact the rights or obligations of the Parties to this Agreement, except Valley Water under the Ground Lease; (viii) there are no known underground storage tanks or other below-grade improvements under the Additional VW Area or, except as previously disclosed in writing to Microsoft, the Zanker Improvements Area; and (ix) so long as this Agreement remains in effect, the City will not voluntarily terminate the Ground Lease or amend the Ground Lease in any manner that will have an adverse impact on Microsoft's rights and obligations hereunder, without prior written direction from City Council.

14. **Default.** A Party's failure to perform any material covenant or obligation of such Party hereunder and to cure such non-performance within thirty (30) days of receipt of written notice thereof by the non-breaching Party shall constitute a default hereunder, provided that if more than thirty (30) days are reasonably required for such cure, no event of default shall occur if the breaching Party commences such cure within such initial thirty (30) day period and diligently prosecutes such cure to completion. Upon such event of default, the non-breaching Party shall, subject to the terms and conditions of this Agreement, be entitled to all remedies and means to cure or correct such default, both legal and equitable, allowed by operation of law.

15. **Miscellaneous Provisions.**

a. **Covenants Run with Land.** The easements, covenants, restrictions, rights, duties, benefits and burdens contained herein constitute covenants running with the land under California Civil Code Section 1468 and equitable servitudes under common law that burden and bind the VW Site and successive owners and lessors thereof and benefit and bind the MS Property and successive owners and lessors thereof. Each Party shall be liable under this Agreement only for acts or omissions committed during the period during which such Party held an ownership, leasehold or other property interest in the VW Property, and subsequent to the Lease Amendment, the VW Site. No Party shall be liable for actions or omissions by any predecessor or successor owner or lessee unless assumed in signed writing. Within ten (10) days of the execution of this Agreement, the Parties shall execute and City shall record with the Santa Clara County recorder a Memorandum of Agreement summarizing the Agreement. Within ten (10) business days of Microsoft's receipt of notice of the termination of this Agreement, Microsoft shall execute and deliver to City a quitclaim deed relinquishing any interest in the VW Property and acknowledging that the Memorandum of Agreement is of no further force and effect.

b. **Force Majeure.** If any Party is prevented from performing any of its obligations under this Agreement due to a force majeure event, including acts of God, war, terrorism, governmental regulations or directives, labor strikes, supply chain disruptions and/or labor shortages, pandemics, epidemics, or any other cause beyond its control (each an "***Force Majeure Event***"), then such Party shall not be deemed to be in breach of this Agreement, and its performance of this Agreement shall be excused during the period of the Force Majeure Event. The Party affected by the force majeure event shall endeavor to promptly notify the other Parties in writing of the nature and expected duration of the force majeure event and the anticipated effect on its performance under this Agreement. The Parties shall use their commercially reasonable efforts to minimize the impact of the force majeure event and to resume full performance of their respective obligations under this Agreement as soon as practicable.

c. **Notices.** Any notice, request, demand, or other communication required or permitted under this Agreement shall be in writing and shall be deemed to have been duly given if sent by a recognized overnight courier service or electronic mail. Notice shall be deemed to have been received by the addressee as follows: (a) upon receipt by the addressee or delivery to the address of the addressee if sent by recognized overnight courier; (b) if the addressee rejects or otherwise refuses to accept the notice, or if the notice cannot be delivered because of a change in address for which no notice was given, then upon the rejection, refusal, or inability to deliver the notice; and (c) if provided by email, then receipt shall be deemed to have occurred as of the time said email was sent; provided, however, that any email sent after 5:00 p.m. on a business day or any time on a non-business day shall not be deemed sent until the next business day and; provided, further, that no notice of default shall be sent via email. Notices shall be sent to the Parties at the following addresses (or to such other address as the Parties may from time to time designate in writing):

If to the City:	City of San José 200 East Santa Clara Street, 16 th Floor San José, CA 95113 Attention: Director of Real Estate
With a copy to:	City of San José 200 East Santa Clara Street, 10 th Floor San José, CA 95113 Attention: Assistant Director of Environmental Services
	San José-Santa Clara Regional Wastewater Facility 700 Los Esteros Road San José, CA 95134 Attention: General Manager
	City of San José Office of the City Attorney 200 East Santa Clara Street, 16 th Floor San José, CA 95113 Attention: Real Estate Attorney
If to Valley Water:	Santa Clara Valley Water District 5750 Almaden Expressway San José, CA 95118 Attention: Chief Executive Officer
With a copy to:	Santa Clara Valley Water District Office of the District Counsel 5750 Almaden Expressway San José, CA 95118
If to Microsoft:	Microsoft Corporation AMERS Land One Microsoft Way Redmond, WA 98054 Attn: AMERS Land Email: amersland@microsoft.com

d. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of California.

e. **Exhibits; Entire Agreement.** All exhibits attached hereto are incorporated herein. This Agreement constitutes the entire agreement between the Parties with respect to the subject

matter hereof and supersedes all prior negotiations, understandings, and agreements between the Parties, whether oral or written. In particular, this Agreement supersedes any other agreements related to the Site Works, and in the event of a conflict between this Agreement and any other agreement regarding the Site Works, including the Ground Lease or any Lease Amendment, this Agreement shall prevail.

f. **Counterparts**. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Any electronic signature to this Agreement or to any other certificate, agreement, document or notice related to this transaction, shall have the same legal validity and enforceability as a manually executed signature or use of a paper-based record-keeping system to the fullest extent permitted by applicable law, including the federal Electronic Signatures in Global and National Commerce Act, any state electronic signatures and/or records act, or any similar state law based on the Uniform Electronic Transactions Act. The parties hereto waive any objection to the contrary. "Electronic signature" as used herein includes (a) any electronic symbol or process attached to, or associated with, a contract or other record and adopted by a person with the intent to sign, authenticate or accept such contract or record (including any signature affixed by Adobe Sign), and (b) any facsimile or .pdf signature.

g. **Modifications; Waiver**. No waiver, modification, amendment, discharge or change of this Agreement shall be valid unless the same is in writing and signed by the Party against which the enforcement of such modification, waiver, amendment, discharge or change is sought.

h. **Time**. Subject to the terms and conditions of this Agreement, time is of the essence of this Agreement and each and every part thereof.

i. **Exclusive Benefit of Parties**. The provisions of this Agreement are for the exclusive benefit of City, Valley Water and Microsoft and their successors and assigns, subject to the provisions hereof, and not for the benefit of nor give rise to any claim or cause of action by any other person; and this Agreement shall not be deemed to have conferred any rights upon any person except City, Valley Water and Microsoft. Nothing herein shall be deemed a dedication of any portion of the VW Site to or for the benefit of the general public.

j. **Survival**. Except as otherwise expressly set forth above, all representations, warranties, waivers, and indemnities given or made hereunder shall survive termination of this Agreement for a period of three (3) years.

k. **Rules of Construction**. Wherever in this Agreement the context requires, reference to the singular shall be deemed to include the plural. The captions in this Agreement are inserted for convenience of reference and in no way define, describe or limit the scope or intent of this Agreement or any of the provisions hereof. All references to "Sections" without reference to a document other than this Agreement, designate sections of this Agreement. The words "herein," "hereof," "hereunder," and other words of similar import refer to this

Agreement as a whole and not to any particular Section, unless specifically designated otherwise. The use of the term “including” shall mean “including but not limited to.” No determination by a court of competent jurisdiction that any term or provision of this Agreement is invalid or otherwise unenforceable shall invalidate or render unenforceable any other term or provision of this Agreement and all remaining provisions shall be enforced in accordance with their terms. No rules of construction against the drafter of this Agreement shall apply in any interpretation or enforcement of this Agreement or any documents or certificates executed pursuant hereto. Any deletion of language from this Agreement prior to its execution by the Parties shall not be construed to raise any presumption, canon of construction or implication, including, without limitation, any implication that the Parties intended thereby to state the converse of the deleted language.

l. **Liability.** The Parties each acknowledge and agree that this Agreement is entered into by each of them as a legal entity and, therefore, agree that no individual official, officer, director, shareholder, member, employee, representative or agent of either of them shall have any personal liability under this Agreement.

m. **Computation of Time.** In the computation of any period of time hereunder, the day of the act or event from which the period of time runs shall be excluded and the last day of such period shall be included. All references to “days” hereunder shall mean calendar days unless otherwise expressly stated herein. Notwithstanding the foregoing, if any deadline hereunder falls on a day that is not a business day, then the deadline will be deemed extended to the next following business day. For purposes hereof, a “business day” shall mean any day other than a Saturday, Sunday or day when banks are closed in the State of California. All times stated herein are by reference to Pacific time.

n. **Distinction from Regulatory Approval.** City enters into this Agreement in its proprietary capacity as a property owner, and not in its regulatory capacity. Notwithstanding the foregoing, City’s approval of this Agreement shall not diminish its authority or obligation, or that of any of its officials, to act in its capacity as a public agency, including its authority and obligation to regulate Microsoft.

o. **Further Assurances.** The Parties hereto agree to promptly execute, acknowledge (if necessary) and deliver all such further other documents and instruments and take all such further action as any Party hereto may reasonably request from time to time in order to effectuate the terms, purposes and intent of this Agreement.

[Signatures on the following page]

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

CITY OF SAN JOSÉ, a municipal corporation of the State of California:

Approved as to form:

By: _____

Name: Cameron Day

Title: Senior Deputy City Attorney

Authorized Signer:

By: _____

Name: Emily Lam

Title: Director, Office of Administration, Policy and
Intergovernmental Relations

Date: _____

SANTA CLARA VALLEY WATER DISTRICT, a California special district:

Approved as to form:

By: _____

Name: E. Ray Ruiz

Title: Assistant District Counsel

Authorized Signer:

By: _____

Name:

Title:

Date: _____

MICROSOFT CORPORATION, a Washington corporation:

Authorized Signer:

By: _____

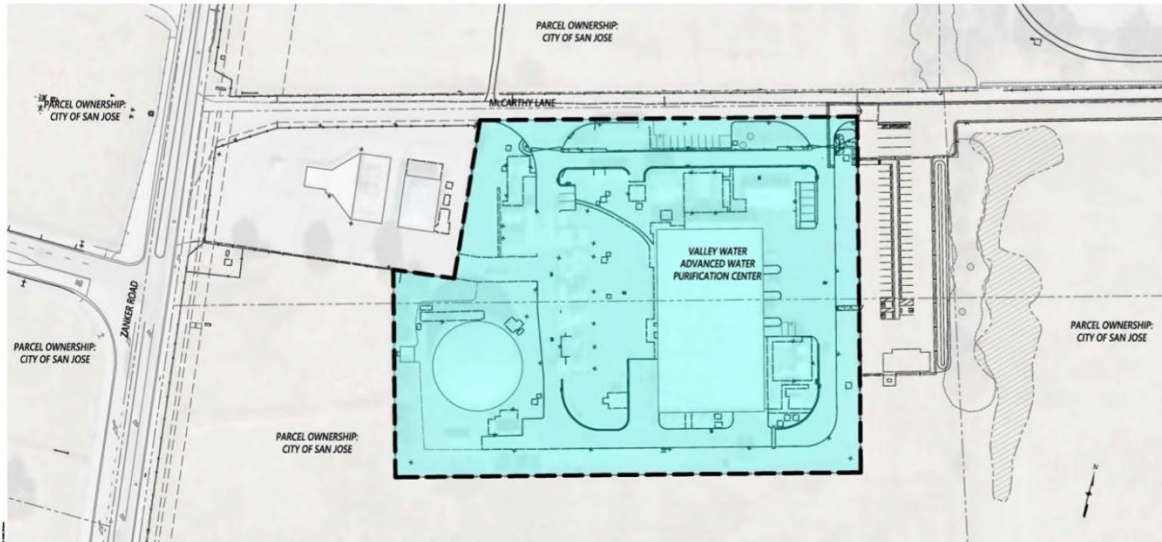
Name:

Title:

Date: _____

Exhibit A

Depiction of the VW Property



LEGEND

 AREA OF VW PROPERTY

EXHIBIT A
DEPICTION OF VW PROPERTY

Exhibit B

Depiction of Microsoft Driveway

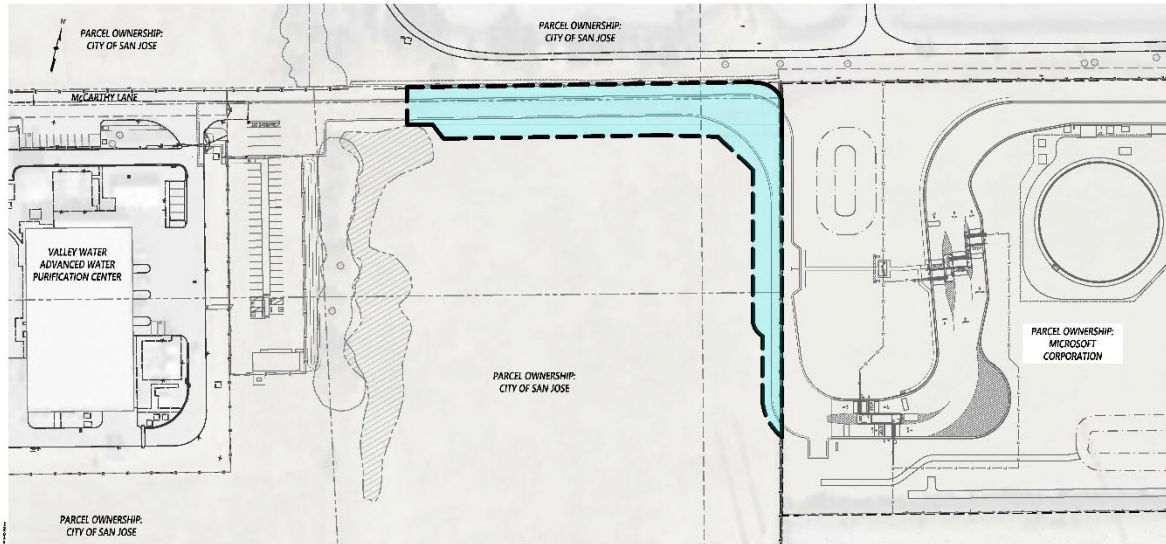


EXHIBIT B
DEPICTION OF MICROSOFT DRIVEWAY

Exhibit C

Depiction of McCarthy Connector

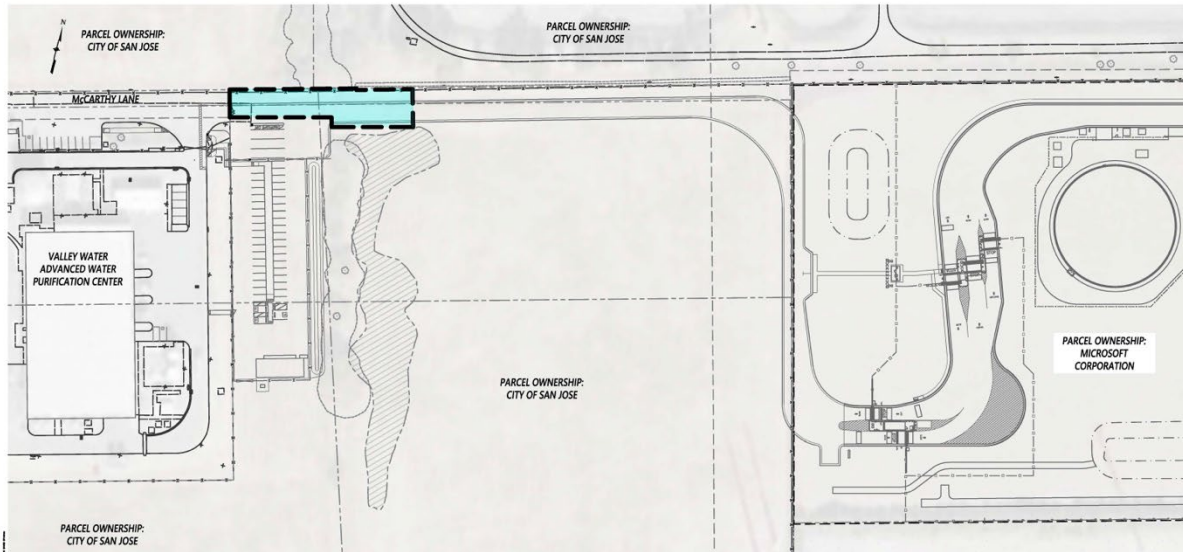


EXHIBIT C
DEPICTION OF MCCARTHY CONNECTOR

Exhibit D

Depiction of Zanker Improvements Area

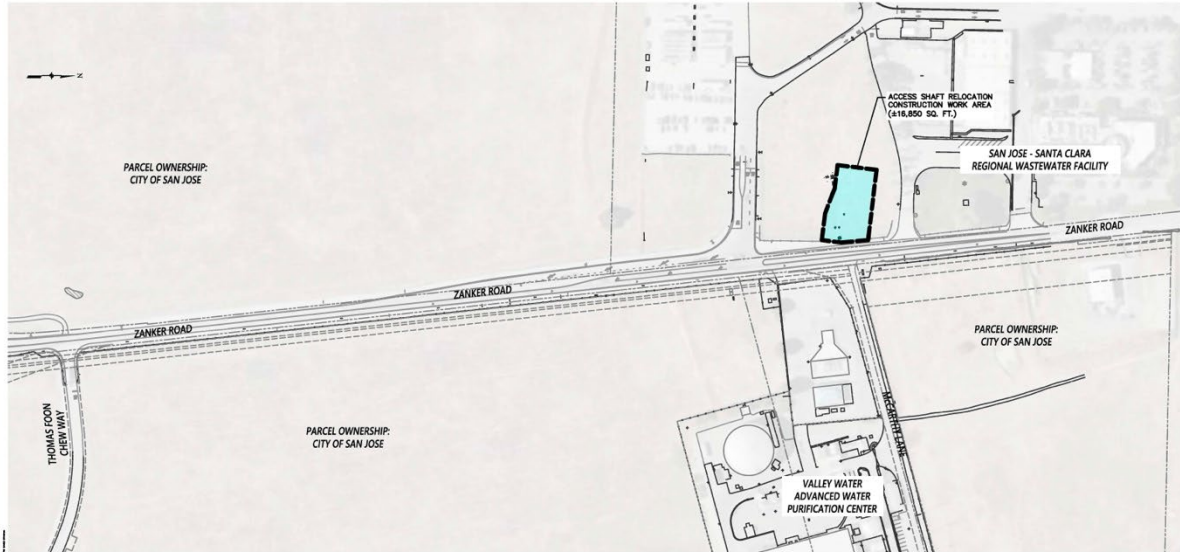
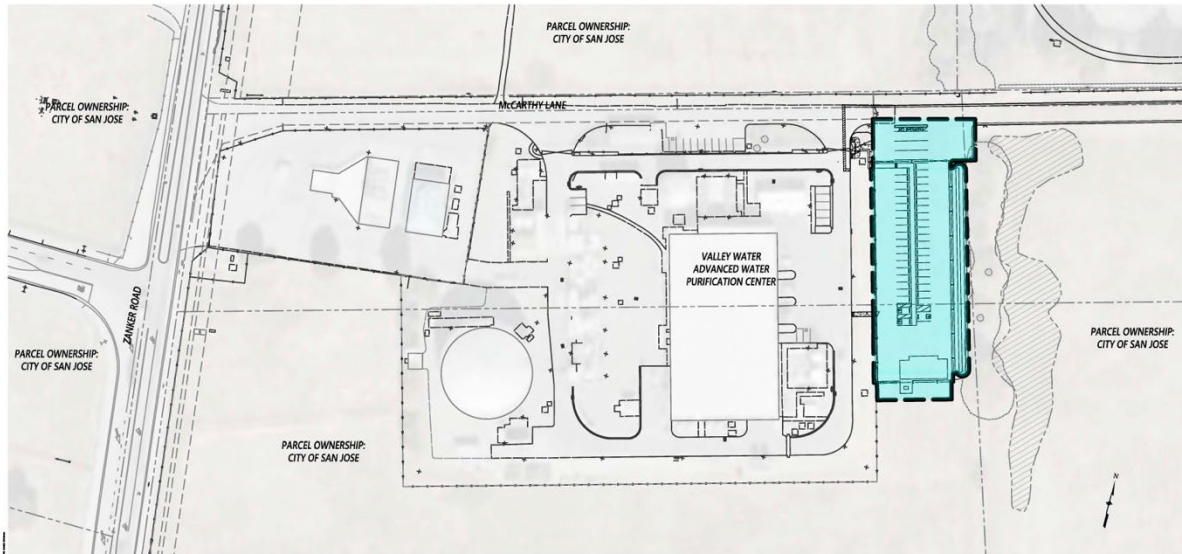


EXHIBIT D
DEPICTION OF ZANKER IMPROVEMENTS AREA

Exhibit E

Depiction of Additional VW Area



LEGEND



EXHIBIT E
DEPICTION OF ADDITIONAL VW AREA

Exhibit F
Description of Site Works

Subject to such changes as may be required by City pursuant to Section 2 of the Agreement, the Site Works shall consist of the following:

1. Conducting any and all other necessary activities to relocate the Visitor Center and construct the New Parking Lot within the VW Site, including, but not limited to, (i) disassembling, transporting, and reassembling the Visitor Center in accordance with the manufacturer's standard requirements, and (ii) packing, securely storing, and relocating all Valley Water personal property (e.g., files, furnishing, equipment, and other contents) from the Visitor Center to the Additional VW Area which shall include unpacking any boxed or stored items from the Visitor Center (if requested by Valley Water following its relocation);
2. Preparing the Additional VW Area in accordance with the Final Plans and Specifications, including fill, compaction, drainage, paving and any other necessary activities to raise the Additional VW Area to the same elevation as the SVAWPC, consistent with the Final Plans and Specifications;
3. Installing, extending or relocating all required electrical, water, sewer, communication, and other utility connections required for the relocated Visitor Center and the New Parking Lot within the VW Site in accordance with the Final Plans and Specifications;
4. In accordance with the Final Plans and Specifications, constructing the New Parking Lot and striping forty-eight (48) parking spaces for standard sized automobiles and three (3) parking spaces for regular sized school buses within the Additional VW Area;
5. Appropriately relocating, installing and replacing, as needed, the following Valley Water utilities and infrastructure located within the VW Property and the Zanker Improvements Area consistent with the Final Plans and Specifications: (i) the storm drain system and drainage grading (which shall be constructed to adequately collect and drain stormwater and other drainage away from the New Parking Lot, SVAWPC, and adjacent areas within the VW Site and successfully discharge it to the stormwater conveyance system with no flooding or ponding on the VW Site), and (ii), within the Zanker Improvements Area, an access manway and three air release valves west of the expanded Zanker Road vehicle path of travel, bike lane and sidewalk;
6. Appropriately installing and/or replacing, as needed, the following within the Zanker Improvements Area consistent with the Final Plans and Specifications: (i) the Zanker Road acceleration lane; (ii) new sidewalk and landscaping adjacent to the Zanker Road; (iii) the Regional Wastewater Facility property sign monument subject to City approval; and (iv) those areas of the curb, pavement and striping at the Environmental Services Building parking lot affected by the relocation of the Valley Water Visitor Center trailer, all of which shall be restored up to modern operational standards.
7. Relocating or replacing Valley Water-designated monuments and signage to locations within the VW Site designated by Valley Water in writing prior the start of construction works within the VW Site;

8. In accordance with the Final Plans and Specifications, ensuring that access to the relocated Visitor Center complies with the Americans with Disability Act and related state and federal laws;
9. In accordance with the Final Plans and Specifications and within the VW Site, installing all necessary security, lighting including lights placed on McCarthy Lane (within the McCarthy Connector) on either side of the entry to the New Parking Lot, fencing, landscaping and irrigation, sidewalks and curbs, ingress, and egress, including sufficient turning radius, and proper traffic flow in compliance with Valley Water Standards, state and local laws or regulations;
10. Install security fencing around the Additional VW Area and any other required areas within the VW Site and the Zanker Improvements Area, maintain such security fencing for the duration of Microsoft's work in such areas, and remove it upon completion of such works. Upon at least 14 days' written notice to Microsoft following Microsoft's completion of the Site Works, Valley Water may request an extension for removal of such security fencing of up to 45 days.

Exhibit G

Description of Connector Works

Subject to such changes as may be required by City pursuant to Section 2 of the Agreement, the Connector Works shall consist of the following:

Subject to such changes as may be required by City pursuant to Section 2 of the Agreement, the Connector Works shall mean, within the McCarthy Connector area depicted in Exhibit C, the extension of the roadway, stormwater line and water line and the preservation of the stormwater culvert, all as described in the plans and specifications for such works prepared by Microsoft and approved by City as part of the SECI.

Exhibit H**Additional Standards and Requirements**

Microsoft shall undertake the Site Works in accordance with the following additional standards and requirements:

1. Assume sole responsibility for constructing the Site Works in accordance with the Final Plans and Specifications, and for all persons or entities engaged by Microsoft in such work, including, but not limited to, contractors, subcontractors, suppliers, and service providers.
2. Require its design professional signing and stamping the construction documents to (1) perform to the applicable professional standard of care and prepare documents without any known errors or omissions, and (2) carry reasonable professional liability insurance for claims related to professional liability.
3. Ensure construction fully complies with the appropriate local, state, federal laws, and ordinances, including full compliance with regulatory permits.
4. Require its contractor performing the Site Works to provide at least a three-year warranty on all Site Works and include Valley Water as a third-party beneficiary to all construction contracts entered into for the Site Works so that all warranties will extend to Valley Water.
5. Require its contractor performing the Site Works to comply with all applicable California Prevailing Wage Laws pursuant California Labor Code section 1720, et. seq. and the applicable implementing regulations.
6. Prior to commencement of construction, Microsoft's construction contractor performing the Site Works will secure and maintain in full force and effect, at all times during construction of the Site Works, a commercial general liability policy with limits of no less than \$1,000,000 per occurrence/\$2,000,000 in the aggregate. Valley Water and City shall be named as additional insureds under such policy.
7. Resolve any and all disputes with contractor(s) and/or design professional(s) retained by Microsoft arising out of or related to Microsoft's contract(s) for construction and design of the Site Works, including, but not limited to, disputes relating to bids, payment, performance, workmanship, wages, negligent construction or design, or delay claims.
8. Upon completion of the Site Works, Microsoft shall provide Valley Water two (2) completed sets of as-built drawings in hardcopy and CADD files.

Exhibit I**Definition of Hazardous Materials**

For the purpose of this 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 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.

Exhibit J

VW Standards

1. Landscape – approved plant drought tolerant plant list.
2. Fiber optics cabling standards
3. Security requirements provided by our security staff – discusses fencing, gates, signage, video surveillance systems, access control and lighting requirements.
4. Chain linked Fence and Pedestrian Gate details/requirements
5. Motorized existing gate specifications – new motorized gates to match these requirements.
6. Card Reader and Camera requirements – model and make provided by our security staff.
7. Power Study (SKM) model and 30-day load recording data – Microsoft to consider these in their design.
8. Visitor Center as-builts. Microsoft to incorporate utility connections (fiber, electrical, potable water and septic system) to the relocated trailer location
9. Appropriate turning radius for chemical delivery trucks
10. Number of vehicle and bus parking spaces at the new parking lots.
11. Relocation of manway and air release valves out of the proposed Zanker path of travel.

Exhibit K**Insurance Requirements**

Microsoft, at Microsoft's sole cost and expense, shall procure and maintain for the duration of this Agreement insurance against claims for injuries to persons or damages to property which may arise from, or in connection with, the performance of the services hereunder by Microsoft, its agents, representatives, employees or subcontractors.

A. Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. The coverage provided by Insurance Services Office Commercial General Liability coverage ("occurrence") Form Number CG 0001; and
2. The coverage provided by Insurance Services Office Form Number CA 0001 covering Automobile Liability. Coverage shall be included for all owned, non-owned and hired automobiles; and
3. Workers' Compensation insurance as required by the California Labor Code and Employers Liability insurance; and
4. Professional Liability Errors and Omissions insurance for all Professional Services rendered; and
5. Microsoft's Pollution Liability insurance including coverage for all operations. Policy shall at a minimum cover on-site and off-site liability including third-party injury and property damage claims, transportation, clean-up costs, as a result of pollution conditions; and
6. Builder's Risk insurance covering property in the course of construction on an "all risk" basis including flood and excluding earthquake.

There shall be no endorsement reducing the scope of coverage required above unless approved by City's Risk Manager.

B. Minimum Limits of Insurance

Microsoft shall maintain limits no less than:

1. Commercial General Liability: \$5,000,000 per occurrence for bodily injury, personal injury and property damage and \$5,000,000 general aggregate; and
2. Automobile Liability: \$2,000,000 combined single limit per accident for bodily injury and property damage; and
3. Workers' Compensation and Employers Liability: Workers' Compensation limits as required by the California Labor Code and Employers Liability limits of \$1,000,000 per accident; and

4. Professional Liability Errors and Omissions: \$2,000,000 per claim and \$2,000,000 aggregate; and
5. Microsoft's Pollution Liability Insurance: \$5,000,000 per contamination incident; and
6. Builder's Risk Insurance: Full cost (with the exception of flood coverage with minimum limits of \$5,000,000).

Any limits requirement may be met with any combination of primary and excess coverage so long as the excess coverage is written on a "follow form" or umbrella basis.

C. Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to, and approved by City's Risk Manager.

D. Other Insurance Provisions

The policies are to contain, or be endorsed to contain, the following provisions:

1. Commercial General Liability

Coverage shall contain five (5) years products and completed operations extension.

2. Commercial General Liability and Automobile Liability Coverages

- a. City, its officers, employees and agents are to be covered as additional insureds as respects: Liability arising out of activities performed by or on behalf of, Microsoft; products and completed operations of Microsoft; premises owned, leased or used by Microsoft; and automobiles owned, leased, hired or borrowed by Microsoft. The coverage shall contain no special limitations on the scope of protection afforded to City, its officers, employees.
- b. Valley Water, its officers, agents, and employees are to be covered as additional insureds as respects: Liability arising out of activities performed by or on behalf of, Microsoft; products and completed operations of Microsoft; premises owned, leased or used by Microsoft; and automobiles owned, leased, hired or borrowed by Microsoft. The coverage shall contain no special limitations on the scope of protection afforded to Valley Water, its officers, employees.
- c. Microsoft's insurance coverage shall be primary insurance as respects City, its officers, employees, agents and contractors. Any insurance or self-insurance maintained by City, its officers, employees, or agents shall be excess of Microsoft's insurance and shall not contribute with it.
- d. Any failure to comply with reporting provisions of the policies by Microsoft shall not affect coverage provided to City, its officers, employees, or agents.

- e. Coverage shall state that Microsoft's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- f. Coverage shall contain a waiver of subrogation in favor of City, its officers, employees, and agents.
- g. Coverage shall contain a waiver of subrogation in favor of Valley Water.

2. Workers' Compensation and Employers' Liability

Coverage shall contain waiver of subrogation in favor of City, its officers, employees, and agents.

Coverage shall contain a waiver of subrogation in favor of Valley Water, its officers, employees, and agents.

3. Builder's Risk

Coverage shall provide a loss payable clause in favor of City as its interest may appear.

Coverage shall provide a loss payable clause in favor of Valley Water as its interest may appear.

Coverage shall contain a waiver of subrogation in favor of City, its officials, employees and agents.

Coverage shall contain a waiver of subrogation in favor of Valley Water, its officials, employees and agents.

3. Claims Made Coverages

If coverage is obtained on a "claims made" policy form, the retroactive date shall precede the date services were initiated with City and the coverage shall be maintained for a period of three (3) years after termination of services under this Agreement.

4. All Coverages

Each insurance policy required by this Agreement shall be endorsed to state that coverage shall not be suspended, voided, cancelled, or reduced in limits except after thirty (30) days' prior written notice has been given to City, except that ten (10) days' prior written notice shall apply in the event of cancellation for nonpayment of premium.

E. Acceptability of Insurers

Any deductibles or self-insured retentions must be declared to, and approved by City's Risk Manager.

F. Verification of Coverage

Microsoft shall furnish City and Valley Water with certificates of insurance and endorsements affecting coverage or evidence of self-insurance required by this Agreement. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

Proof of insurance shall be emailed in pdf format to: Riskmgmt@sanjoseca.gov:

Certificate Holder

City of San José—Finance
Risk Management & Insurance
200 East Santa Clara Street, 14th Floor Tower
San Jose, CA 95113-1905

Proof of insurance shall be emailed in pdf format to: shiga@valleywater.org:

Certificate Holder

Santa Clara Valley Water District
5750 Almaden Expressway
San José, CA 95118
Attention: Risk Manager

G. Subcontractors

Microsoft shall include all subcontractors or subconsultants as insureds under its policies or shall obtain separate certificates and endorsements for each subcontractor.

H. Authority to Self-Insure

City and Valley Water acknowledge that insurance requirements contained in this Agreement may be fulfilled by self-insurance of Microsoft. However, this shall not in any way limit liabilities assumed by Microsoft under this Agreement. Microsoft's obligations hereunder may be satisfied in whole or in part by adequately funded self-insurance programs or self-insurance retentions.

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