CITY OF WEST DES MOINES
CITY COUNCIL MEETING COMMUNICATION

DATE: **November 18, 2024**

ITEM: Resolution - Approval of Agreement with Microsoft Corporation to lease City property for staging purposes for the Microsoft Ginger West Project at 11100 Booneville Road

FINANCIAL IMPACT: None

BACKGROUND: The City owns property located at the west edge of 11100 Booneville which is planned to be future 115th Street right-of-way. Microsoft Corporation and the City have reached an Agreement to lease the property for staging purposes for the Microsoft Ginger West Project at 11100 Booneville Road.

OUTSTANDING ISSUES (if any): None

RECOMMENDATION:

Approve the Agreement with Microsoft Corporation.

Lead Staff Member: Jessica Grove, Deputy City Attorney

STAFF REVIEWS

Department Director	Greta Truman, City Attorney
Appropriations/Finance	
Legal	
Agenda Acceptance	

PUBLICATION(S) (if applicable)

Published In	
Dates(s) Published	

SUBCOMMITTEE REVIEW (if applicable)

Committee			
Date Reviewed			
Recommendation	Yes	No	Split

RESOLUTION NO._____

APPROVAL OF AGREEMENT BETWEEN THE CITY OF WEST DES MOINES AND MICROSOFT CORPORATION FOR THE LEASE OF CITY PROPERTY

WHEREAS, on April 19, 2021, the City Council of the City of West Des Moines approved a Development Agreement between the City and Microsoft Corporation for the financing and construction of Project Microsoft Ginger West located at 11100 Booneville Road; and

WHEREAS, in conjunction with the development and construction of the Project, the parties have negotiated a separate agreement for the lease of City property located to the west of 11100 Booneville Road for staging purposes for Microsoft Corporation's development at 11100 Booneville Road.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WEST DES MOINES, IOWA THAT:

1. The Agreement between Microsoft Corporation and the City of West Des Moines for the lease of property is approved.

2. The Mayor is authorized to sign the Agreement and the City Clerk is authorized to attest to the Mayor's signature.

3. City staff is directed to take all steps necessary to facilitate completion of the Agreement.

PASSED AND ADOPTED this 18th day of November, 2024.

_____
Russ Trimble, Mayor

ATTEST:

_____
Ryan T. Jacobson
City Clerk

CONSTRUCTION STAGING LEASE AGREEMENT

THIS LEASE AGREEMENT ("Agreement"), is made and entered into on _____, 2024, by and between the City of West Des Moines, Iowa, a municipal corporation, ("City"), and Microsoft Corporation, a Washington corporation ("Lessee").

WHEREAS, City is the titleholder of certain real estate adjoining the property at 11100 Booneville Road, and legally described as follows:

Future 115th Street Right-of-Way

("Leased Premises"), and shown on Exhibit "A" attached hereto;

and

WHEREAS, the exclusive use of the Leased Premises is not presently required by the City for municipal purposes; and

WHEREAS, Lessee wishes to lease the Leased Premises to use for construction staging and delivery access, including but not limited to constructing an entrance into the Lessee's property as shown on Exhibit "B" for the development project located at 11100 Booneville Road ("Development Project") as set forth in this Agreement; and

WHEREAS, the lease of the Leased Premises for the purposes described herein will not adversely affect the use of adjoining City property.

WHEREAS, the parties have agreed that the temporary roadway on the City owned property would be an efficient and effective use of the City property and would be in the best interests of Microsoft and the City.

NOW, THEREFORE, in consideration of the mutual covenants, promises, and agreements hereinafter set forth, the City and Lessee agree as follows:

1. **TERM OF LEASE.** Use of the Leased Premises shall be allowed from 9/1/2024 until 3/1/2027("Lease Term"). An extension of the Lease Term may be approved based on reasonable need or delay in the completion of the Development Project.

2. **APPROVAL OF THE CITY.** This Agreement shall not be binding until it has received the final approval and acceptance by the City of West Des Moines, Iowa, which approval and acceptance shall be noted on this Agreement either by City staff or by the City Clerk.

3. **USE OF LEASED PREMISES**. Lessee has inspected the Leased Premises and leases same "as is." Lessee agrees to use the Leased Premises for purposes of parking, storing, placing construction vehicles, equipment, materials, and related items only during the Period of Use Term. Lessee also plans to construct a new temporary roadway with 3" of compacted subsurface and 3" of asphalt topping, along with a ditch on the west side of the

road to contain runoff and additional site lighting to ensure safe passage of traffic as well as directional signage into the construction site for construction of DSM40-45 (Ginger West) located at 11100 Booneville Road, West Des Moines, Iowa ("Improvements"). The City may, in its sole discretion, prohibit certain construction equipment, vehicle types, fuel tanks, or any item that is likely to cause significant damage to the Leased Premises. Lessee shall not store any hazardous material on the Leased Premises. Lessee shall use flaggers and spotters when moving any large equipment or vehicle(s) to ensure the safety of any vehicle(s) and passengers nearby. Lessee shall remove any and all items and Improvements at the end of the Lease Term, unless otherwise allowed by the City to remain. Lessee shall maintain insurance coverages, limits and endorsements set forth in Exhibit C. Lessee agrees to comply at all times during the term of this Agreement, and at Lessee's own cost and expense, with all ordinances and regulations of the City of West Des Moines, Iowa, and all county, state and federal laws and regulations. Lessee shall not allow any nuisances or illegal activity to be conducted, operated, or to occur on the Leased Premises.

4. **MAINTENANCE.** Microsoft shall keep the Property in a good and clean condition at all times. Microsoft shall be responsible for any and all maintenance to the Improvements. Upon relinquishment of possession of the Property, Microsoft shall remove all Improvements from the Property and restore the Property to the condition in which the Property was in at the time Microsoft took possession.

5. **CONSIDERATION.** Lessee shall pay to City a one-time lease payment of $1.00 Dollar(s) and other good and valuable consideration, which sum shall be paid by Lessee prior to the City's execution of this Agreement. Any extension of the Lease Term may require additional consideration to be paid to the City. Said payment shall be delivered in person or mailed to the following address: City of West Des Moines, Finance Department, 4200 Mills Civic Parkway, West Des Moines, Iowa 50265. Past due amounts, if any, must be paid in full prior to the execution of this Agreement.

6. **RESTORATION.** In the event that Lessee fails to restore the Leased Premises to a condition substantially similar to its condition at the beginning of the lease term per Paragraph 10 below, the City shall have the ability to withhold any Occupancy Permit for the Development Project.

7. **ADDITIONAL CONSIDERATION.** In addition to payment of the consideration as described above, Lessee agrees to provide the following as additional consideration throughout the entire Lease Term of this Agreement:
   A. Regularly cut or mow any grass growing on the Leased Premises;
   B. Cut and remove any weeds growing on the Leased Premises;
   C. Keep the premises free from nuisances and debris;
   D. Maintain the premises in a clean, safe and orderly condition; and
   E. Remove snow and ice promptly from any public sidewalk abutting the Leased Premises. Snow and ice must be completely removed within twenty-four (24) hours from the end of a snow event.

8. **ENVIRONMENTAL.** Microsoft expressly represents and agrees:

During the term of this Agreement, use of the Property by Microsoft will not include the use or storage of any hazardous substance. However, if a hazardous substance is used or stored, Microsoft shall obtain the written consent of the City prior to its use. Microsoft acknowledges and agrees that the City's consent is at the City's sole option and discretion and that such consent may be withheld or may be granted with any conditions or requirements that the City deems appropriate.

During the term of this Agreement, Microsoft shall be fully liable for all costs and expenses related to the use, storage, removal and disposal of hazardous substances used or kept on the Property, and Microsoft shall give immediate notice to the City of any violation or any potential violation of any environmental regulation, rule, statute or ordinance relating to the use, storage or disposal of any hazardous substance.

Microsoft, at its sole cost and expense, agrees to remediate, correct or remove from the Property any contamination of the Property caused by any hazardous substances which have been used or permitted by Microsoft, its subcontractors, agents or assigns during the term of this Agreement. Remediation, correction or removal shall be done in a safe and reasonable manner, and in conformance with all applicable laws, rules and regulations. Microsoft reserves all rights allowed by law to seek indemnity or contribution from any person or entity other than the City, who is or may be liable for any such cost and expense.

Microsoft agrees to indemnify, defend, and hold the City harmless from and against all claims, causes of action, damages, loss, costs, expense, penalties, fines, lawsuits, liabilities, attorney fees and engineering and consulting fees arising out of or in any manner connected with hazardous substances which are caused or created by Microsoft on or after the date of this Agreement, including but not limited to injury or death to persons or damage to property, and including any diminution in the value of the Property which may result from the foregoing. This indemnity shall survive the cessation, termination, abandonment or expiration of this Agreement.

Microsoft agrees to follow all City and state fire codes and make the Property open to all reasonable requests from the City for inspection to verify compliance.

9. **COVENANT OF QUIET ENJOYMENT.** Lessee shall at all times during the term of this Agreement and during any extension thereof peaceably and quietly enjoy the Leased Premises without any unreasonable disturbance from City, its agents or employees. However, City and franchised utilities, and their officers, employees and agents may order the immediate removal of all improvements and personal property from the Leased Premises and temporarily take possession and occupy the Leased Premises when and to the extent reasonably necessary for the maintenance, repair or replacement of any public utilities located under, over, through or within the Leased Premises. Upon completion of any such maintenance, repair or replacement activities, the City or franchised utility shall promptly restore the improvements and surface of the Leased Premises to substantially the same condition it was in prior to such activities. During such temporary possession, the City shall not be responsible for damages resulting from business interruption.

10. **SECURITY.** The Lessee agrees that it will provide any and all security measures necessary at the Leased Premises. The Lessee agrees that the City shall not be responsible, or be in any way liable, for any damages sustained as a result of the Lessee's use of the Leased Premises.

11. **FORCE MAJEURE.** No party shall be responsible for events that are unforeseeable and/or beyond its reasonable control, such as Acts of God, weather delays, governmental restrictions or unforeseen commercial delays.

12. **TERMINATION OF LEASE**. This Agreement shall remain in effect for the term herein provided unless otherwise terminated by either party under the terms of this Agreement. If Lessee shall fail to meet any of the terms included in this Agreement, as determined by City, expand use of city-owned property beyond that approved in this Agreement, or assigns this Agreement or sublets the Leased Premises or any part thereof without the written consent of the City, then the City shall give ten (10) business days' written notice to Lessee of its intent to terminate and may give the Lessee an opportunity to remedy the reason for the termination. In addition, either party may terminate this Agreement prior to the end of the Lease Term without cause upon thirty (30) days' written notice to the other party in the manner provided below for notice to said party. The City shall have the right to immediately terminate this Agreement if the use of the Leased Premises results in criminal activity, property damage, or other similar significant negative impact to the Leased Premises or surrounding area. In the event of termination by either party prior to the end of the Lease Term, Lessee shall be entitled only to a proration of any prepaid consideration. However, in no event shall the City be responsible for payment of lost business profits or reimbursement for any other costs. Upon termination of this Agreement, any and all items shall either be removed by Lessee, shall be removed by the City at the Lessee's expense, or shall become the property of City, as decided by City in its sole discretion. If damage is caused to the Leased Premises as a result of this Agreement, Lessee shall be responsible for the cost of any damage.

13. **TAXES**. All real estate taxes levied or assessed by lawful authority by reason of the fact of this Agreement and of the Lessee's use of the Leased Premises shall be timely paid by Lessee. The Lessee further agrees to pay all tax assessments or other public charges levied or assessed by lawful authority (but reasonably reserving Lessee's right of appeal) against personal property on the premises.

14. **POSSESSION AND CONDITION AT END OF TERM**. At the expiration of the Lease Term of this Agreement and/or upon termination of the Agreement, Lessee will deliver possession of the Leased Premises to City. Prior to the time of such delivery, Lessee will restore the Leased Premises to a condition substantially similar to its condition at the beginning of the lease term and shall remove all items and Improvements placed upon the Leased Premises. If Lessee has not removed all items PRIOR to termination of this Agreement, said items shall be considered abandoned and may be removed and disposed of at the discretion of the City, without any compensation or liability incurred on the part of the City. Lessee shall be responsible for any costs incurred by the City due to the

removal and disposal of any items left on the Leased Premises. In addition, there will be a penalty in the amount of $750.00 per day for each day any item remains on the Leased Premises past the Lease Term. In the event the Lessee has not removed all items from the Leased Premises, the City shall have the ability to withhold any Occupancy Permit for the Development Project.

15. **NO ASSIGNMENT OR SUBLETTING**. Lessee shall not sell, assign, sublet or relinquish the Leased Premises without prior written approval of City. Any and all approved subsequent purchasers, assignees or sublessees shall be bound and obligated by the terms of this Agreement.

16. **ACCESS AND EASEMENTS**. During the term of this Agreement, the Lessee shall not interfere with or in any way prohibit the City or its authorized agents from use of the Leased Premises. The City and its authorized agents shall have the right to reasonably enter upon and inspect the Leased Premises. This Agreement is subject to any and all easements for existing utilities, restrictions and covenants of record on the Leased Premises.

17. **GOVERNING LAW, ATTORNEY FEES AND COURT COSTS**. This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Iowa and any judicial action under the terms of this Agreement and shall be exclusively within the jurisdiction of the district court for Dallas County, Iowa. Lessee agrees to pay and discharge all costs and attorney fees or any expense that shall arise from enforcing any of the terms of this Agreement by City.

18. **CHANGES IN LEASE TERMS**. No act of either party, or both parties, shall be construed as an extension of this Agreement, or any change in the terms and provisions, unless accepted and approved by West Des Moines City Council.

19. **INDEMNIFICATION AND INSURANCE.** Lessee shall defend, indemnify and hold harmless the City, its elected officials, employees, officers, agents, representatives, contractors, and assigns from and against any and all claims or demands for liability, loss, damage, costs, expenses, or attorney's fees of any kind for actions or omissions of the Lessee arising out of or in connection with any undertaking arising out of or otherwise related to this Agreement. Lessee shall obtain and maintain in continuous effect during the term of this Agreement and while any of its obligations remain unsatisfied, the insurance coverages, limits and endorsements set forth in Exhibit "C". The City reserves the right to require and enforce future revisions to the insurance requirements in Exhibit "C", and Lessee agrees to abide by such future revisions upon notice thereof. Lessee shall require that any of its agents or sublessees who perform work and/or services pursuant to this Agreement meet the same insurance requirements as are required of Lessee. A Certificate of Insurance citing such coverages, limits and endorsements shall be provided to City on an annual basis.

20. **NOTICES.** Notices to City pursuant to this Agreement shall be sent to City of West Des Moines, Attn: City Clerk, 4200 Mills Civic Parkway, West Des Moines, Iowa 50265. Notices to the Lessee under this Agreement shall be sent to Microsoft Corporation, c/o

Travis Todd, One Microsoft Way, Redmond, WA 98052.

21. RESERVATION OF RIGHTS. Any and all rights and privileges not granted to Lessee by this Agreement are reserved for and to City.

22. ADDITIONAL PROVISIONS.

(1) Mechanics' Lien(s). Neither the Lessee nor anyone claiming by, through or under Lessee shall have the right to file or place any mechanics' lien or other lien of any kind upon any improvements made within the Leased Premises, and Lessee shall give prior actual notice of this restriction to any and all contractors and/or subcontractors who may furnish or agree to furnish any material, service or labor for the Leased Premises.

(2) Priority. Lessee understands and agrees that this Agreement gives Lessee no priority or right of claim upon the Leased Premises in the event that the Leased Premises is offered for sale by the City.

(3) Utilities. Lessee shall furnish and pay, at its sole expense, all charges and connection costs relating to all water, sewer, gas, heating, air conditioning, electricity, steam, telephone or television, and any other utilities of every kind and nature as required for the intended purpose of this Agreement. City shall not be responsible for furnishing such utilities in connection with the Leased Premises unless otherwise specifically designated in this Agreement and shall not be liable for any interruption of such utilities. Lessee shall further be responsible for payment of any utility bills that accrue during Lessee's use of the Leased Premises prior to termination of this Agreement that are billed following such termination.

(4) Limitation of Liability. The City shall not be liable for claims, losses, costs, expenses, or damages of any nature whatsoever to the Leased Premises unless attributable to the willful misconduct of the City, its elected officials, agents, employees, officers, contractors, successors and assigns.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement, on the day and year first above written.

MICROSOFT CORPORATION
a Washington corporation

_____
Chris Sander, General Manager
Microsoft Corporation

STATE OF WASHINGTON)
) SS
COUNTY OF KING)

On this ____ day of _____, 2024, before me, the undersigned a Notary Public in and for the State of Washington personally appeared Chris Sander, who, being by me duly sworn, did say that he is the General Manager at Microsoft Corporation, a Washington corporation, and that he executed this instrument on behalf of Microsoft Corporation.

_____
Notary Public in and for the State of Washington

CITY OF WEST DES MOINES, IOWA

_____
Russ Trimble, Mayor

ATTEST:

_____
Ryan T. Jacobson, City Clerk

STATE OF IOWA)
) SS
COUNTY OF POLK)

On this _____ day of November, 2024, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared Russ Trimble and Ryan T. Jacobson, to me known to be the Mayor and City Clerk, respectively, of the City of West Des Moines, Iowa; that this record was signed on behalf of the City, by authority of its City Council as contained in Resolution No. _____ approved on the ____ day of _____, 2024 by the City Council of the City of West Des Moines, Iowa, and that the Mayor and City Clerk acknowledged the execution of the instrument to be their voluntary act and deed and the voluntary act and deed of the City, by it voluntarily executed.

_____
Notary Public

Exhibit "A"

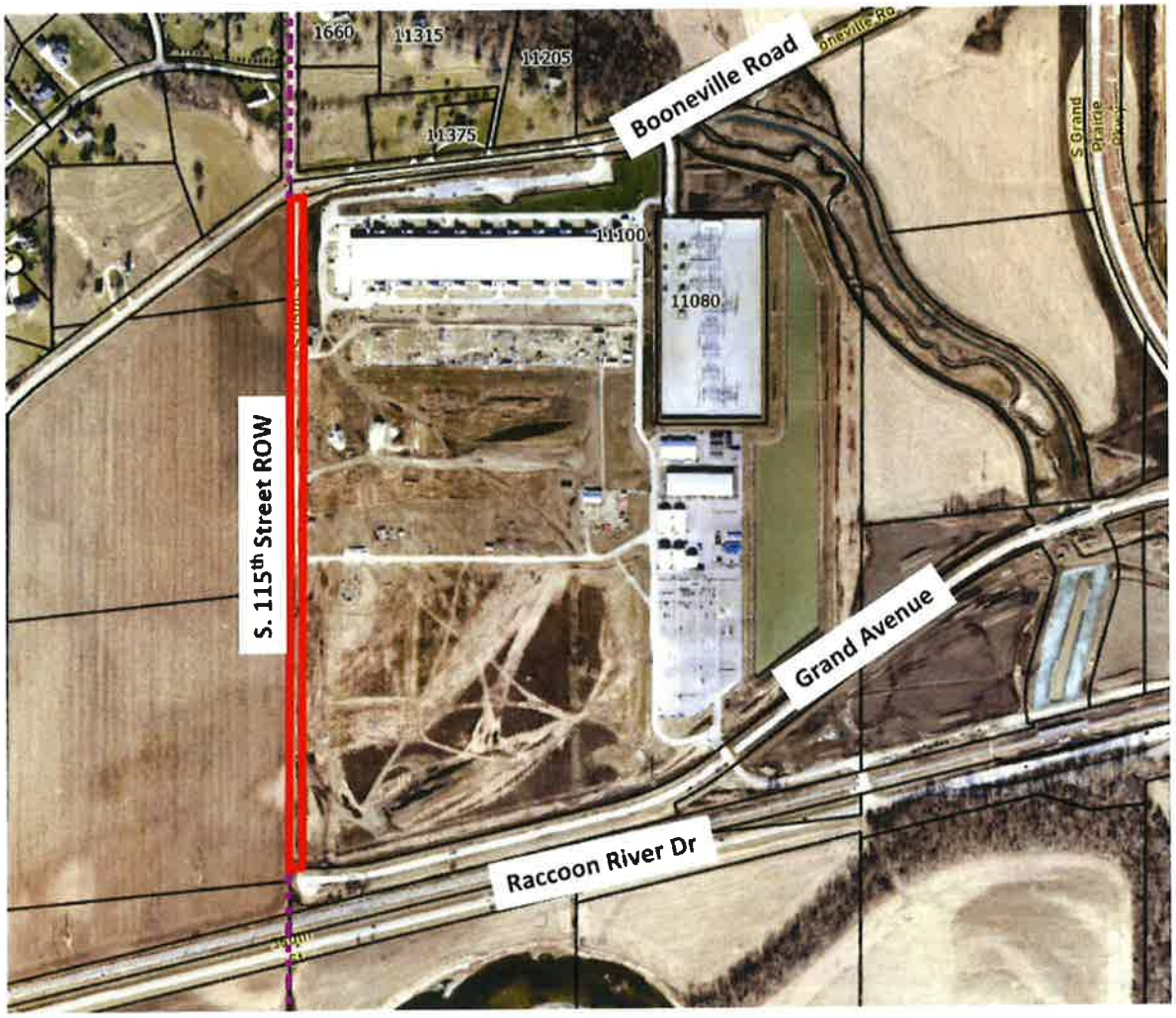
1660
11315
11205
11375
11100
11080
Booneville Road
S. 115th Street ROW
Grand Avenue
Raccoon River Dr
S Grand
Prairie

Exhibit "B"

[Insert drawing of construction staging items]

Exhibit "C"

Insurance Requirements

The Lessee shall obtain and maintain through the Period of Use Term of this Agreement, or unless otherwise required by the City pursuant to Section 3, insurance with terms and limits of coverage equal to or in excess of those set forth in the specifications governing the agreement, but in no event, are such terms and limits to be less than those set forth below. The limits of liability under insurance policies required by this Agreement shall in no-way limit the Lessee's actual liability.

(1) Commercial General Liability:

Including coverage for premises and operations, independent contractors, products & completed operations, contractual liability, explosion, collapse and underground hazards (XCU), personal injury/advertising injury. The City shall be named as additional insured on a primary and non-contributing basis for on-going and completed operations, waiver of subrogation and provide 30 days' notice of cancellation to the City.

Bodily Injury & Property Damage - Each Occurrence	$1,000,000
Personal Injury & Advertising Injury - Per Person	$1,000,000
General Aggregate on the Above	$2,000,000
Products & Completed Operations General Aggregate	$2,000,000
Fire Damage Limit	$100,000
Medical Expense Limit	$5,000

(2) Business Automobile Liability Insurance:

Including coverage for all owned, non-owned and hired automobiles with limits of liability not less than the following. The City shall be added as an additional insured on a primary and non-contributing basis, waiver of subrogation and provide 30 days' notice of cancellation to the City.

Bodily Injury & Property Damage – Each Accident	$1,000,000

(3) Workers Compensation and Employers Liability:

As required by any applicable law or regulation. The policy will include waiver of subrogation endorsement in favor of the City.

Part 1- Workers Compensation Benefits	Statutory

(4) Employers Liability:

Bodily Injury Each Accident	$500,000
Bodily Injury by Disease Policy Limit	$500,000

Bodily Injury by Disease Each Employee	$500,000

(5) Umbrella Liability:

Maintain umbrella liability insurance in excess of the general liability, automobile liability and employer's liability (if applicable) insurance described above which is at least as broad as all underlying policies including but not limited to additional insured applying on a primary and non-contributing basis, waiver of subrogation and 30 days' notice of cancellation to the City.

Each Occurrence Limit	City to Determine
Aggregate Limit	City to Determine

CONSTRUCTION STAGING LEASE AGREEMENT

THIS LEASE AGREEMENT ("Agreement"), is made and entered into on _____, 2024, by and between the City of West Des Moines, Iowa, a municipal corporation, ("City"), and Microsoft Corporation, a Washington corporation ("Lessee").

WHEREAS, City is the titleholder of certain real estate adjoining the property at 11100 Booneville Road, and legally described as follows:

Future 115th Street Right-of-Way

("Leased Premises"), and shown on Exhibit "A" attached hereto;

and

WHEREAS, the exclusive use of the Leased Premises is not presently required by the City for municipal purposes; and

WHEREAS, Lessee wishes to lease the Leased Premises to use for construction staging and delivery access, including but not limited to constructing an entrance into the Lessee's property as shown on Exhibit "B" for the development project located at 11100 Booneville Road ("Development Project") as set forth in this Agreement; and

WHEREAS, the lease of the Leased Premises for the purposes described herein will not adversely affect the use of adjoining City property.

WHEREAS, the parties have agreed that the temporary roadway on the City owned property would be an efficient and effective use of the City property and would be in the best interests of Microsoft and the City.

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   A. Regularly cut or mow any grass growing on the Leased Premises;
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   C. Keep the premises free from nuisances and debris;
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12. **TERMINATION OF LEASE**. This Agreement shall remain in effect for the term herein provided unless otherwise terminated by either party under the terms of this Agreement. If Lessee shall fail to meet any of the terms included in this Agreement, as determined by City, expand use of city-owned property beyond that approved in this Agreement, or assigns this Agreement or sublets the Leased Premises or any part thereof without the written consent of the City, then the City shall give ten (10) business days' written notice to Lessee of its intent to terminate and may give the Lessee an opportunity to remedy the reason for the termination. In addition, either party may terminate this Agreement prior to the end of the Lease Term without cause upon thirty (30) days' written notice to the other party in the manner provided below for notice to said party. The City shall have the right to immediately terminate this Agreement if the use of the Leased Premises results in criminal activity, property damage, or other similar significant negative impact to the Leased Premises or surrounding area. In the event of termination by either party prior to the end of the Lease Term, Lessee shall be entitled only to a proration of any prepaid consideration. However, in no event shall the City be responsible for payment of lost business profits or reimbursement for any other costs. Upon termination of this Agreement, any and all items shall either be removed by Lessee, shall be removed by the City at the Lessee's expense, or shall become the property of City, as decided by City in its sole discretion. If damage is caused to the Leased Premises as a result of this Agreement, Lessee shall be responsible for the cost of any damage.

13. **TAXES**. All real estate taxes levied or assessed by lawful authority by reason of the fact of this Agreement and of the Lessee's use of the Leased Premises shall be timely paid by Lessee. The Lessee further agrees to pay all tax assessments or other public charges levied or assessed by lawful authority (but reasonably reserving Lessee's right of appeal) against personal property on the premises.

14. **POSSESSION AND CONDITION AT END OF TERM**. At the expiration of the Lease Term of this Agreement and/or upon termination of the Agreement, Lessee will deliver possession of the Leased Premises to City. Prior to the time of such delivery, Lessee will restore the Leased Premises to a condition substantially similar to its condition at the beginning of the lease term and shall remove all items and Improvements placed upon the Leased Premises. If Lessee has not removed all items PRIOR to termination of this Agreement, said items shall be considered abandoned and may be removed and disposed of at the discretion of the City, without any compensation or liability incurred on the part of the City. Lessee shall be responsible for any costs incurred by the City due to the

removal and disposal of any items left on the Leased Premises. In addition, there will be a penalty in the amount of $750.00 per day for each day any item remains on the Leased Premises past the Lease Term. In the event the Lessee has not removed all items from the Leased Premises, the City shall have the ability to withhold any Occupancy Permit for the Development Project.

15. **NO ASSIGNMENT OR SUBLETTING**. Lessee shall not sell, assign, sublet or relinquish the Leased Premises without prior written approval of City. Any and all approved subsequent purchasers, assignees or sublessees shall be bound and obligated by the terms of this Agreement.

16. **ACCESS AND EASEMENTS**. During the term of this Agreement, the Lessee shall not interfere with or in any way prohibit the City or its authorized agents from use of the Leased Premises. The City and its authorized agents shall have the right to reasonably enter upon and inspect the Leased Premises. This Agreement is subject to any and all easements for existing utilities, restrictions and covenants of record on the Leased Premises.

17. **GOVERNING LAW, ATTORNEY FEES AND COURT COSTS**. This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Iowa and any judicial action under the terms of this Agreement and shall be exclusively within the jurisdiction of the district court for Dallas County, Iowa. Lessee agrees to pay and discharge all costs and attorney fees or any expense that shall arise from enforcing any of the terms of this Agreement by City.

18. **CHANGES IN LEASE TERMS**. No act of either party, or both parties, shall be construed as an extension of this Agreement, or any change in the terms and provisions, unless accepted and approved by West Des Moines City Council.

19. **INDEMNIFICATION AND INSURANCE.** Lessee shall defend, indemnify and hold harmless the City, its elected officials, employees, officers, agents, representatives, contractors, and assigns from and against any and all claims or demands for liability, loss, damage, costs, expenses, or attorney's fees of any kind for actions or omissions of the Lessee arising out of or in connection with any undertaking arising out of or otherwise related to this Agreement. Lessee shall obtain and maintain in continuous effect during the term of this Agreement and while any of its obligations remain unsatisfied, the insurance coverages, limits and endorsements set forth in Exhibit "C". The City reserves the right to require and enforce future revisions to the insurance requirements in Exhibit "C", and Lessee agrees to abide by such future revisions upon notice thereof. Lessee shall require that any of its agents or sublessees who perform work and/or services pursuant to this Agreement meet the same insurance requirements as are required of Lessee. A Certificate of Insurance citing such coverages, limits and endorsements shall be provided to City on an annual basis.

20. **NOTICES.** Notices to City pursuant to this Agreement shall be sent to City of West Des Moines, Attn: City Clerk, 4200 Mills Civic Parkway, West Des Moines, Iowa 50265. Notices to the Lessee under this Agreement shall be sent to Microsoft Corporation, c/o

Travis Todd, One Microsoft Way, Redmond, WA 98052.

21. RESERVATION OF RIGHTS. Any and all rights and privileges not granted to Lessee by this Agreement are reserved for and to City.

22. ADDITIONAL PROVISIONS.

(1) Mechanics' Lien(s). Neither the Lessee nor anyone claiming by, through or under Lessee shall have the right to file or place any mechanics' lien or other lien of any kind upon any improvements made within the Leased Premises, and Lessee shall give prior actual notice of this restriction to any and all contractors and/or subcontractors who may furnish or agree to furnish any material, service or labor for the Leased Premises.

(2) Priority. Lessee understands and agrees that this Agreement gives Lessee no priority or right of claim upon the Leased Premises in the event that the Leased Premises is offered for sale by the City.

(3) Utilities. Lessee shall furnish and pay, at its sole expense, all charges and connection costs relating to all water, sewer, gas, heating, air conditioning, electricity, steam, telephone or television, and any other utilities of every kind and nature as required for the intended purpose of this Agreement. City shall not be responsible for furnishing such utilities in connection with the Leased Premises unless otherwise specifically designated in this Agreement and shall not be liable for any interruption of such utilities. Lessee shall further be responsible for payment of any utility bills that accrue during Lessee's use of the Leased Premises prior to termination of this Agreement that are billed following such termination.

(4) Limitation of Liability. The City shall not be liable for claims, losses, costs, expenses, or damages of any nature whatsoever to the Leased Premises unless attributable to the willful misconduct of the City, its elected officials, agents, employees, officers, contractors, successors and assigns.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement, on the day and year first above written.

MICROSOFT CORPORATION
a Washington corporation

_____
Chris Sander, General Manager
Microsoft Corporation

STATE OF WASHINGTON)
) SS
COUNTY OF KING)

On this ____ day of _____, 2024, before me, the undersigned a Notary Public in and for the State of Washington personally appeared Chris Sander, who, being by me duly sworn, did say that he is the General Manager at Microsoft Corporation, a Washington corporation, and that he executed this instrument on behalf of Microsoft Corporation.

_____
Notary Public in and for the State of Washington

CITY OF WEST DES MOINES, IOWA

_____

Russ Trimble, Mayor

ATTEST:

_____

Ryan T. Jacobson, City Clerk

STATE OF IOWA)
) SS
COUNTY OF POLK)

On this _____ day of November, 2024, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared Russ Trimble and Ryan T. Jacobson, to me known to be the Mayor and City Clerk, respectively, of the City of West Des Moines, Iowa; that this record was signed on behalf of the City, by authority of its City Council as contained in Resolution No. _____ approved on the ____ day of _____, 2024 by the City Council of the City of West Des Moines, Iowa, and that the Mayor and City Clerk acknowledged the execution of the instrument to be their voluntary act and deed and the voluntary act and deed of the City, by it voluntarily executed.

_____

Notary Public