

AGREEMENT

This Agreement (“Agreement”) is entered into between Hibiscus Properties, LLC, a Delaware limited liability company (“Facebook”), and the Menlo Park Fire Protection District, a special district organized under the laws of the State of California (“Fire District”), (collectively the “Parties”) as of the last date executed below (the “Effective Date”), with respect to the following facts and objectives.

RECITALS

WHEREAS, Facebook has applied to the City of Menlo Park (“City”) for certain entitlements related to the expansion of its corporate campus on property located at 301-309 Constitution Drive (“Property”) as specifically described in the Facebook Campus Expansion Project Draft Environmental Impact Report (“EIR”) dated May 2016 (herein defined as the “Project” or “Project as proposed”); and

WHEREAS, the Project is located within the jurisdictional boundaries of the Fire District, and, therefore, the Fire District will provide essential emergency and fire services to the Project and persons working at or visiting the Project sites; and

WHEREAS, the City prepared an EIR under the California Environmental Quality Act (“CEQA”) and a Fiscal Impact Analysis (“FIA”) analyzing the impacts of the Project on the Fire District; and

WHEREAS, the Fire District has informed the City and Facebook that the Project may have impacts to the Fire District due to the increased number of employees and residents within the Fire District area, the Project’s construction of new larger and taller buildings, and the increase in roadway congestion along primary emergency response routes, among other things; and

WHEREAS, on February 16, 2016, the Fire District Board of Directors adopted a Fire Services Impact Fee Program under Resolution 1840-2016 (“District Impact Fee Program”). The District Impact Fee Program was based on an Emergency Services and Fire Protection Impact Fee Nexus Study dated February 16, 2106 (“Nexus Study”). Facebook and others were consulted with on the Nexus Study methodology, fee amount and content. Facebook provided input on the Nexus Study; and

WHEREAS, the Fire District and Facebook have discussed programs that Facebook can help fund to address possible impacts on the Fire District and provide enhanced fire and emergency services to Facebook and the community; and

WHEREAS, Facebook and the Fire District have reached mutually agreeable terms for the resolution of said matters. Through this Agreement, Facebook has satisfied the concerns of

FINAL. 10/31/2016

the Fire District regarding the Project's possible impacts and the Fire District supports the Project as proposed; and

WHEREAS, Facebook and the Fire District also desire to establish a framework for streamlining future plan check and inspection services provided by the Fire District for Facebook's projects in the vicinity of its campus in Menlo Park.

NOW, THEREFORE, in consideration of the mutual covenants and conditions hereafter set forth, and other good and valuable consideration the receipt and adequacy of which is hereby acknowledged, the Parties agree to the following:

A. FACEBOOK PAYMENT OF FIRE SERVICES IMPACT FEE

Facebook and the Fire District agree to the following terms:

1. **MPK 21.** At the time of the issuance of the first building permit for the MPK 21 Building of the Project ("MPK 21"), Facebook (or one of its affiliates) shall pay either of the following amounts:

(a) If a Fire Services Impact Fee adopted by the City ("City Impact Fee") is not in effect at the time of the issuance of the first building permit for the MPK 21, Facebook shall pay \$173 per employee under the District Impact Fee Program based on the estimated number of seats at MPK 21 (3,250) ("MPK 21 in-lieu fee"). Facebook will be entitled to a credit of 1,000 employees in recognition of the workers that were historically employed at the Property. The credit for 1,000 employees represents 50% of the employees historically employed at the Property. Therefore, the MPK 21 in-lieu fee shall equal \$389,250 (3,250 workers minus 1,000 former worker credit times \$173).

(b) If a City Impact Fee is in effect at the time of issuance of the first building permit for MPK 21, then Facebook shall pay the greater of the following amounts at the time of the issuance of the first building permit for MPK 21: (1) \$389,250 based on the calculation under subparagraph (a) above directly to the Fire District in full satisfaction of the City Impact Fee, or (2) the applicable amount of the City Impact Fee which would be payable in accordance with the fee resolution adopted by City.

2. **MPK 22.** At the time of the issuance of the first building permit for the MPK 22 Building of the Project ("MPK 22"), Facebook (or one of its affiliates) shall pay either of the following amounts:

(a) If a City Impact Fee is not in effect at the time of the issuance of the first building permit for the MPK 22, Facebook shall pay \$173 per employee under the District Impact Fee Program based on the estimated number of seats at MPK 22 (3,000) ("MPK 22 in-lieu fee"). Facebook will be entitled to a credit of 1,000 employees in recognition of the workers

FINAL. 10/31/2016

that were historically employed at the Property against the MPK 22 in-lieu fee. The credit for 1,000 employees represents the remaining 50% of the employees historically employed at the Property. Therefore the MPK 22 in lieu fee shall equal \$346,000 (3,000 workers minus 1,000 former worker credit times \$173).

(b) If a City Impact Fee is in effect at the time of issuance of the first building permit for MPK 22, then Facebook shall pay the greater of the following amounts at the time of the issuance of the first building permit for MPK 22: (1) \$346,000 based on the calculation under subparagraph (a) above directly to the Fire District in full satisfaction of the City Impact Fee, or (2) the applicable amount of the City Impact Fee which would be payable in accordance with the fee resolution adopted by City.

3. **Hotel.** At the time of the issuance of the first building permit for the Hotel Building of the Project ("Hotel"), Facebook (or one of its affiliates) shall pay either of the following amounts:

(a) If a City Impact Fee is not in effect at the time of the issuance of the first building permit for the Hotel, the Hotel developer shall pay the fee amount applicable to a hotel use under the District Impact Fee Program based on the gross square foot of the Hotel (\$347 per 1,000 gross square feet) ("Hotel in-lieu fee"). Facebook will be not entitled to any credit for the Hotel in-lieu fee.

(b) If a City Impact Fee is in effect at the time of issuance of the first building permit for the Hotel, then Facebook shall pay the greater of the following amounts at the time of the issuance of the first building permit for Hotel: (1) The amount calculated based on the District Impact Fee Program based on the calculation under subparagraph (a) above directly to the Fire District in full satisfaction of the City Impact Fee, or (2) the applicable amount of the City Impact Fee which would be payable in accordance with the fee resolution adopted by City.

4. All Fees paid under this Section A will be placed in a separate account at the Fire District, specifically used to pay for facilities, equipment and apparatus identified in the Nexus Study.

5. The Fees under this Section A only relate to a fire services impact fee pursuant to State Law (Govt Code § 66000 et.seq.). The parties agree that nothing in this Agreement shall apply to or limit Facebook's required payment of any other fees that are adopted by the Fire District in accordance with applicable laws, except as otherwise specified in this Agreement.

6. Facebook may choose to provide capital improvements (facilities, equipment or apparatus) to the Fire District in lieu of any Fees required to be paid under this Section A. The capital improvements would have to be mutually agreed upon by Facebook and the Fire District. Facebook would receive a credit against any Fees owed under this Section A in the amount equal to the costs of the capital improvement in accordance with the terms of the District Impact Fee

Program.

7. The Fee payment under this section is intended to be Facebook's contribution to Fire District facilities, apparatus and equipment associated with the development of MPK 21, MPK 22 and the Hotel, including the rebuild and expansion of Fire Station 77. The fifty percent (50%) of the costs of the expansion and rebuild of Fire Station 77 is included as a capital improvement under the Nexus Study. Facebook also agrees to provide non-monetary support for the Fire District's effort to build infrastructure to support the additional development in the City east of Highway 101, including the rebuild and expansion of Fire Station 77.

B. FUTURE PROLOGIS SITE DEVELOPMENT BY FACEBOOK

Facebook owns the property located in Menlo Park as shown in Exhibit A which is commonly known as the Prologis Site. Facebook is in the early stages of planning the Prologis Site which is dependent on the outcome of the City's General Plan Update process (also known as ConnectMenlo). While it is premature to tie future redevelopment of the Prologis Site to this Agreement for the Project, Facebook and the Fire District have had detailed discussions about plans to meet the future emergency services needs of the proposed Prologis Site development. As part of those discussions, Facebook and the Fire District have discussed the possibility of including an emergency operations center as part of any future redevelopment application, which could include a coordinated security, medical, fire and policing center. The Fire District acknowledges that Facebook cannot commit at this time to including an emergency operations facility and related items as part of any application for the redevelopment of the Prologis Site. However, Facebook agrees that in developing its proposed project application for the Prologis site, Facebook will coordinate with the Fire District as part of its planning efforts, which could include cooperating on the design of an emergency operations facility. The discussions to-date between Facebook and the Fire District show the intent of the parties to cooperate to address the essential emergency services needs for future development by Facebook within the Fire District's jurisdiction. This commitment of the Parties to work together in the future is an important part of the consideration for the Parties in entering into this agreement.

C. FEMA WAREHOUSE ON PROLOGIS SITE

The FEMA Urban Search and Rescue Office and Warehouse facility, located within the Prologis Site, is a critical facility for local, State and Federal emergency operations. Facebook has been leasing the FEMA Warehouse to the Fire District on a base rent free basis with capped operating expenses since April 1, 2015. Facebook shall continue to allow the Fire District to use the FEMA Warehouse per the terms in the existing lease agreement between Facebook and the Fire District until such time as Facebook determines that it needs the facility for its own use or desires to proceed with the redevelopment of the Prologis Site, which Facebook anticipates will occur in two years. Given the critical nature and purpose of the FEMA Warehouse to Fire District's operations and emergency response commitment to the Nation, Facebook agrees to provide the Fire District a minimum of one year's notice to vacate the facility. Upon notice to the Fire

District to vacate the FEMA Warehouse, Facebook shall provide non-monetary assistance to the Fire District in locating a new facility and site, and facilitating the relocation.

D. COSTS OF FIRE DISTRICT INSPECTION AND PLAN CHECK SERVICES FOR PROJECT

The Fire District reserves the right to charge Facebook fees for inspection and plan check services in accordance with the fee schedule adopted by the Fire District in effect at the time the services are provided; provided, however, Facebook shall be entitled to a credit for the portion of the fees allocated to the staff time for plan checkers and safety inspectors.

The existing Facebook development in Menlo Park has increased the scope of work for the Fire District due to inspection and plan check activities for various Facebook projects. The Project is expected to further increase these impacts. In order to address this demand and provide a more streamlined and efficient process for inspection and plan check activities, Facebook shall annually pay to the Fire District funds equal to 100% of the fully burdened cost of a Safety Fire Inspector (100% of \$172,000) and 50% of the fully burdened cost of a Plan Checker (50% of \$171,000) for an initial term of two years. Facebook's first annual payment shall be due to the Fire District within fifteen (15) days of the Effective Date of this Agreement. The second annual payment shall be due on the first anniversary of the Effective Date. Facebook shall have three one year options to extend the initial term of this Section D. The fully burdened cost of said Plan Checker and Inspector shall be subject to an annual increase in accordance with the actual labor agreement contracts for the positions. In addition, if the actual costs incurred by the Fire District for inspection and plan check activities for Facebook's projects in a given year exceed 100% of the fully burdened cost of a Safety Fire Inspector or 50% of the fully burdened cost of a Plan Checker (collectively, the "Base Costs"), Facebook agrees to pay the Fire District the positive difference, if any, between the actual costs incurred and the Base Costs. This annual reconciliation shall take place within sixty days of each anniversary of the Effective Date of this Agreement, or in a reasonable manner that is mutually agreed upon by the Parties. In consideration of Facebook's payments under this Section D, the Fire District agrees to ensure adequate Fire District staffing to meet the below goals for priority processing of plans and inspections Buildings 1-20 and 23 located on Facebook's East and West Campus existing at the time of the Effective Date of this Agreement, MPK 21, MPK 22 and the Hotel as proposed by the Project, as well as any additional plans and inspections required for facilities owned or controlled by Facebook in the vicinity of its existing campus site:

- Provide requested inspection within 24 hours of the request to the Fire District including off hours/days requests
- Plan review - Provide turnaround of minor Tenant Improvement Plans within 1 week of submittal to the Fire District
- Plan review - Provide turnaround of non-minor Tenant Improvement Plans and major

FINAL. 10/31/2016

projects within 3 weeks or less of submittal to the Fire District.

E. PROPERTY TAXES FROM THE PROJECT SITE

Facebook believes that the Fire District will receive incremental tax revenues of \$920,000 per year from the Project. However, Facebook provides no guarantee of property tax revenue to the Fire District for the Project property.

F. FIRE DISTRICT SUPPORT OF FACEBOOK PROJECT

The Fire District agrees that through this Agreement, Facebook has addressed the possible impacts of the Project on the Fire District. Therefore, the Fire District supports the Project as proposed, and agrees not to challenge any approval of the Project, including but not limited to the zoning amendments, CDP, the Final EIR, and any Development Agreement (whether by litigation or otherwise), and further agrees not to challenge any future discretionary approval for the Project that may be required, such as design review for MPK 22 or any modifications to the Project provided such modifications do not materially increase the scope of potential impacts on the Fire District.

Nothing in the foregoing shall affect the requirement that the plans for the Project comply with the District Fire Prevention Code, California Fire Code and other adopted fire and life safety regulations applicable to the Project and the Fire District's right to enforce compliance with said regulations.

G. ENFORCEMENT

The Parties covenant and agree that, if either party determines the other is in violation of one or more terms of this Agreement, they shall provide notice to the other in writing of what actions or inactions they deem to be in violation. Within thirty (30) days of receipt of such notice, the party receiving the notice shall respond to the notice in writing. If the Parties still dispute compliance with the Agreement, within an additional sixty (60) days, the Parties will meet and confer in a good faith attempt to resolve their dispute. If the Parties cannot informally resolve the dispute, they will enter into binding arbitration, conducted by an arbitrator agreed to by the Parties. Either party may request that the presiding Judge of the San Mateo County Superior Court select an arbitrator if the parties cannot reach agreement. The arbitration shall be binding and not subject to appeal. The arbitration shall be conducted in accordance with the arbitration rules and procedures of JAMS/ENDISPUTE or other conventional rules agreed to by the parties. The arbitrator shall be empowered to determine a prevailing party and award payment of reasonable attorneys' fees and costs to that party. To the extent there are multiple issues with a different prevailing party for one or more issues, the arbitrator may take those facts into account in terms of an award for fees and costs.

If Facebook asserts the Fire District is in violation of this Agreement and the Fire District corrects the action or inaction within sixty (60) days of notice from Facebook, no further enforcement action under the terms of this Agreement shall be taken by Facebook with respect to

such violation. To the extent an alleged violation cannot be reasonably cured within the sixty-day period, and the Fire District undertakes all reasonable efforts to commence the cure of such alleged violation within that period, no further enforcement action under the terms of this Agreement shall be taken by Facebook.

If the Fire District asserts that Facebook is in violation of this Agreement and Facebook corrects the action or inaction within sixty (60) days of notice from the Fire District, no further enforcement action under the terms of this Agreement shall be taken by the Fire District with respect to such violation. To the extent an alleged violation cannot be reasonably cured within the sixty-day period, and Facebook undertakes all reasonable efforts to commence the cure of such alleged violation within that period, no further enforcement action under the terms of this Agreement shall be taken by the Fire District.

H. NOTICE

Unless otherwise provided herein or until the Parties otherwise agree in writing, all communications and notice between the Parties regarding this Agreement shall be through the following addresses:

For Fire District:

Menlo Park Fire Protection District
170 Middlefield Road
Menlo Park, CA 95448
Attn: Fire Chief

With a Copy to:

District Counsel
Menlo Park Fire Protection District
Meyers Nave
555 12th Street, Suite 1500
Oakland, CA 94607

For Facebook:

Facebook
1 Hacker Way
Menlo Park, CA 94025
Attn: Campus Facilities Director

With a copy to:

Facebook
1 Hacker Way
Menlo Park, CA 94025
Attn: Real Estate Counsel

I. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between the Parties. It is expressly understood and agreed that this Agreement may not be altered, amended, modified or otherwise changed in any respect whatsoever except by a writing duly executed by authorized representatives of the Parties hereto. The Parties hereby agree and acknowledge that they will make no claim at any time or place that this Agreement has been orally altered or modified or otherwise changed by oral communication of any kind or character. This Agreement shall supersede all previous agreements whether written or oral, that may have been reached between

FINAL. 10/31/2016

the Parties in connection with this matter and provides the sole remedy from any party to any other party regarding this matter.

J. ADVICE OF ATTORNEYS

This Agreement is entered into by each party freely and voluntarily. Each of the parties has had the benefit of advice of counsel of their choice in the negotiating, drafting and executing of this Agreement, and the language in all parts of this Agreement is the product of the efforts of all counsel. Accordingly, neither the entire Agreement nor any provision in it shall be deemed to have been proposed or drafted by a party or construed against any Party.

K. GOVERNING LAW/CONSTRUCTION OF AGREEMENT

This Agreement shall be governed, interpreted, construed and enforced in accordance with the laws of the State of California applicable to agreements executed and wholly performed within said State, without regard to principles of conflicts of laws. Should any provision of this Agreement be held invalid or illegal, such illegality shall not invalidate the whole of this Agreement, but rather, this Agreement shall be construed as if it did not contain the illegal part, and the rights and obligations of the Parties shall be construed and enforced accordingly.

L. AUTHORITY OF REPRESENTATION

Each party respectively represents and warrants to each other party that the undersigned representative for such party has full and complete authority to execute this Agreement and bind said party to the terms hereof.

M. COUNTERPARTS

This Agreement may be executed in counterparts with each counterpart being interpreted as an original, and all of which, taken together shall constitute one and the same instrument.

N. NO THIRD PARTY BENEFICIARIES

This Agreement is not intended to confer any rights or obligations on any third party or parties, and no third party or parties shall have any right of action under this Agreement for any cause whatsoever.

O. CONFIDENTIALITY

The Fire District is a public agency subject to the California Public Records Act (Government Code § 6250 et. seq. ("CPRA")). The Fire District agrees not to (a) issue any public announcements or press releases regarding this Agreement or the terms hereof without Facebook's prior written consent or as required by CPRA, (b) disclose this Agreement or the terms hereof unless a request therefor is made in accordance with the Fire District's then

FINAL. 10/31/2016

applicable procedures or applicable law (including, without limitation, CPRA), and (c) disclose the financial terms of this Agreement unless approved by Facebook in writing or such disclosure is required by applicable law (including, without limitation, CPRA). The Fire District further agrees that if the Fire District receives any media inquiries concerning this Agreement, the Fire District will coordinate with Facebook on any statements in response to such inquiries and obtain Facebook's approval of any statements released to the media.

SO AGREED:

Dated: _____

MENLO PARK FIRE PROTECTION DISTRICT

By: _____
Harold Schapelhouman, Fire Chief

Dated: _____

FACEBOOK

By: _____
Fergus O'Shea

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