

COMMUNITY DEVELOPMENT DEPARTMENT

Council Meeting Date: January 22, 2013
Staff Report #: 13-013

Agenda Item #: F-3

REGULAR BUSINESS: Consider the Term Sheet for the Development Agreement for the Facebook West Campus Project Located at the Intersection of Bayfront Expressway and Willow Road

RECOMMENDATION

Staff recommends that the City Council approve the proposed Term Sheet for the Facebook West Campus Development Agreement (Attachment A) and proceed with the project review process according to the following schedule:

- February 6: Housing Commission recommendation on the Below Market Rate Housing Agreement;
- February 25: Planning Commission public hearing and recommendation on all aspects of the project;
- March 19: City Council public hearing and first step of actions on all aspects of the project; and
- April 2: City Council second (and final) step of actions on all aspects of the project.

BACKGROUND

Proposed Project

The City is currently processing land use entitlements associated with the Facebook West Campus proposal, which is the second phase of the Facebook Campus Project. The approximately 22-acre West Campus is located at the intersection of Willow Road and Bayfront Expressway. The site is currently addressed 312 and 313 Constitution Drive, with the anticipation that the address will be updated in the near future. The project site currently includes two legal parcels. The existing development on the western portion of the site includes two vacant office buildings totaling 127,246 square feet, a surface parking lot, landscape features, a basketball court and a guard house. The eastern portion of the site includes no improvements and minimal vegetation.

This second phase of the Project proposes demolition of the existing two buildings and associated site improvements. Subsequently, the applicant seeks to construct an approximately 433,555-square-foot building on top of surface parking that would include approximately 1,501 parking spaces. As designed, the project would accommodate

approximately 2,800 employees to occupy the West Campus. The entitlement process for the West Campus includes the following review and permit approvals:

- **Rezone from M-2 (General Industrial District) to M-2-X (General Industrial District, Conditional Development) and Conditional Development Permit:** to permit the proposal to diverge from standard M-2 zone requirements related to building height and lot coverage. In addition, in the M-2 zone, the construction of a new structure to house a permitted use requires use permit approval. In this case, the CDP takes the place of the required use permit;
- **Heritage Tree Removal Permits:** to permit the removal of heritage trees associated with the proposed project;
- **Below Market Rate Housing Agreement:** per the requirements of the City's Municipal Code, a Below Market Rate (BMR) Housing Agreement is required, which would help increase the affordable housing supply by requiring the applicant to provide monies for the BMR fund;
- **Lot Line Adjustment:** to modify the location of two legal lots that make up the project site;
- **Development Agreement:** which results in the provision of overall benefits to the City and adequate development controls in exchange for vested rights in West Campus Project approvals;
- **Environmental Review:** an Environmental Impact Report (EIR) was prepared and certified by the City Council on May 29, 2012 that analyzed the potential environmental impacts associated with both the East Campus and West Campus components of the project. Given that there have been refinements to the project design since the environmental review was completed, additional environmental review is being conducted to confirm that the proposed project does not result in environmental impacts that were not already identified in the EIR. An addendum to the previously certified EIR is being prepared as part of the project review process; and
- **Adopt the Statement of Overriding Considerations and Mitigation Monitoring and Reporting Program:** which includes specific findings that the West Campus Project includes substantial benefits that outweigh its significant, and adverse environmental impacts, and establishes responsibility and timing for implementation of all required mitigation measures.

The previous staff reports, which provide more detailed background information, plus the Draft Environmental Impact Report (EIR) and Draft Fiscal Impact Analysis (FIA) are available for review on the City-maintained project page accessible through the following link:

http://www.menlopark.org/projects/comdev_fb.htm

ANALYSIS

Council Direction

On October 30, 2012, the City Council provided direction to the City negotiating team to enter into good faith negotiations on the Development Agreement with the Project Sponsor. The Council direction was framed by the following parameters:

1. Provide a source of on-going revenue.
2. Provide one-time items in the form of funding, public improvements, studies or services that would benefit the surrounding area or greater community.
3. Consider inclusion of some of the requirements contained within the Facebook East Campus Development Agreement in the event that the East Campus Development Agreement is terminated.
4. Pursue a trip cap penalty amount that is comparable to the East Campus trip cap penalty.

Development Agreement Negotiation Process

A Development Agreement is a contract between the City of Menlo Park and a project sponsor that delineates the terms and conditions of a proposed development project. A Development Agreement allows a project sponsor to secure vested rights, and it allows the City to secure certain benefits. The City Council is not obligated to approve a Development Agreement, but if the City Council does want to approve a Development Agreement, the terms of the Development Agreement need to be acceptable to both parties; one party cannot impose terms on the other party.

The City's negotiating team, comprised of the City Manager, City Attorney, Public Works Director, and Development Services Manager met multiple times over the past 10 weeks. The negotiating team met internally to discuss strategy and specifics and held negotiating sessions with the applicant team. The City Attorney and the City Manager consulted with the Council Subcommittee, comprised of Council Members Keith and Cline, at key junctures in the negotiation process.

Development Agreement Term Sheet

The proposed Term Sheet, along with a cover letter from the Project Sponsor, is included as Attachment A. The Term Sheet covers 10 topics, many with multiple items that will get fleshed out as part of the full Development Agreement. Some of the topics crossover into mitigation measures from the EIR and potential conditions of approval that would appear in the Conditional Development Permit. When considering the terms of the Development Agreement, it is important to remember that it reflects a negotiated package and any one aspect cannot be viewed in isolation.

The proposed Term Sheet includes the following:

- A public benefit payment totaling \$1.5 million payable at \$150,000 per year for 10 years following final building permit sign-off for occupancy of West Campus.
- A clause in the construction contract for the West Campus to require qualifying subcontractors (i.e., subcontracts for \$5 million or larger with subcontractors that have reseller sales tax permits) to get a sub-permit to designate Menlo Park as point of sale so that sales/use tax on materials is allocated to the City. The estimated benefit to Menlo Park is between \$100,000 and \$300,000 total.
- Cooperation with Menlo Park to seek to have use taxes for large purchase orders (i.e., orders over \$500,000) for initial occupancy of West Campus to have use taxes allocated to the City. This is not likely to generate much, if any revenue, but it could result in some revenue to the City.
- Guaranteed minimum property tax revenue to the City based on an assessed value of the greater of \$230 million and the actual initial reassessed value following completion of construction (estimated to be closer to \$300 million) for period of 10 years following reassessment.
- Public access to the landscaped area in the vicinity of the undercrossing near Willow Road.
- Cooperation to allow limited pedestrian/bicycle access from the TE Connectivity property to Willow Road if a future transit hub is built there and there are no convenient public transit stops for the TE Connectivity property.
- \$100,000 additional to the Community Fund that was established as part of the East Campus Development Agreement.
- Use of Recology for recycling services, which helps minimize costs across all Recology customers in the service area due to the volume of material.
- \$100,000 to the City to fund improvements to in the surrounding area with the use of funds to be determined by City.
- Incorporation of the following provisions from East Campus Development Agreement if Facebook were to vacate the East Campus and remain in the West Campus:
 - Housing (Section 9),
 - Local Community Fund (Section 10),
 - Bay Trail Gap (Section 11),
 - Utility Undergrounding (Section 12),
 - Jobs (Section 13),
 - Environmental Education (Section 16),
 - Local Purchasing (Section 18),

- Transportation Demand Management Information Sharing (Section 19), and
- Volunteerism (Section 20).
- Commitment to use Gehry Partners, LLP for the construction drawings.
- Inclusion of a green roof.
- Commitment to Leadership in LEED Gold equivalency.
- A vehicle trip cap of 1,100 trips in the AM and PM peak periods and 6,350 daily trips plus the same penalties as the East Campus of \$50 per trip per day with escalators.

Conclusion

Staff believes that the parameters listed above have been achieved in the proposed Term Sheet. Staff also believes that the package of terms is appropriate given the specifics of this particular project. In considering the West Campus Term Sheet, it is important to consider the commitments contained in the East Campus Development Agreement, especially the one-time payment of \$1.1 million and the recurring annual payments as follows:

- \$800,000 per year for years 1-5
- \$900,000 per year for years 6-10
- \$1,000,000 per year for years 11-15
- Adjusted annually above \$1,000,000 based on changes in the Consumer Price Index (CPI) for the remaining years

IMPACT ON CITY RESOURCES

As part of the review of the Facebook Campus Project, a Fiscal Impact Analysis (FIA) was prepared, which projected the potential changes in fiscal revenues and service costs directly associated with development of the proposed Project, inclusive of both the East Campus and West Campus. The FIA also explores a number of related topics, including indirect revenues/costs from potential induced housing demand, as well as one-time/non-recurring revenues (such as impact fees), and potential additional opportunities for fiscal benefits.

The applicant is required to pay planning permit fees, based on the City's Master Fee Schedule, to fully cover the cost of staff time spent on the review of the project. The applicant is also required to bear the cost of the associated environmental review. For the environmental review, the applicant deposits money with the City and the City pays the consultants. In addition, public benefits negotiated as part of the Development Agreement would serve to help offset any potential impacts of the Project.

POLICY ISSUES

The Project does not require an amendment to the City's General Plan. The primary policy issues for the City Council to consider while reviewing the Development Agreement Term Sheet relate to the appropriate level of public benefit based on the proposed land use entitlements for the West Campus.

ENVIRONMENTAL REVIEW

Action on the Term Sheet is not subject to environmental review. Action on the Development Agreement and other land use entitlements for the West Campus are subject to environmental review.

On May 29, 2012, the City Council certified an Environmental Impact Report (EIR) that analyzed the potential environmental impacts associated with both the East Campus and West Campus components of the project. The EIR determined that the project would result in significant and unavoidable impacts related to Air Quality, Noise, and Transportation. Given that there have been refinements to the project design since the environmental review was completed, an Addendum to this EIR is currently being prepared to document that there are no new environmental impacts that were not already identified. The Planning Commission and City Council will consider the Addendum as well as the Statement of Overriding Considerations and a Mitigation Monitoring and Reporting Program for the West Campus at upcoming meetings on the land use entitlements.

Signature on file
Justin Murphy
Development Services Manager

Signature on file
William McClure
City Attorney

Signature on file
Charles Taylor
Public Works Director

Signature on file
Alex D. McIntyre
City Manager

PUBLIC NOTICE: Public notification was achieved by posting the agenda, at least 72 hours prior to the meeting, with this agenda item being listed. In addition, the City sent an email update to subscribers to the project page for the proposal, which is available at the following address: http://www.menlopark.org/s/comdev_fb.htm

ATTACHMENTS:

- A. Letter from John Tenanes, dated January 16, 2013 with proposed Development Agreement Term Sheet

BACKGROUND MATERIAL AVAILABLE AT CITY OFFICES

[Draft and Final Environmental Impact Report](#)

[Draft and Final Fiscal Impact Analysis](#)

[1601 Willow Road \(East Campus\) Development Agreement](#)



January 16, 2013

The Honorable Peter Ohtaki
 Mayor of the City of Menlo Park
 And Members of the City Council
 701 Laurel Street
 Menlo Park, CA 94025



RE: Facebook West Campus Project – Development Agreement Term Sheet

On behalf of Giant Properties, LLC (Facebook), we are privileged to present you the Term Sheet for the Facebook West Campus, which sets forth the negotiated terms between Facebook and the City of Menlo Park's (City) Negotiating Team for the West Campus Development Agreement (DA).

The terms outlined in the Term Sheet are the result of a careful, constructive and comprehensive process which included many hours of collaborative, creative negotiations between the City and Facebook. These terms represent another significant Facebook investment in the City.

The West Campus project will:

- redevelop a long idle site through the construction of a truly iconic, cutting edge, sustainable building, designed by world famous architect, Frank Gehry;
- voluntarily remediate additional toxic soils that otherwise would have remained in place;
- create a visible symbol of the City as a community of entrepreneurship and innovation;
- and
- secure Facebook's commitment to the City.

The West Campus project will comply with the City's General Plan and M-2 zoning except for a very limited zoning modification permitting additional height for a small portion of the proposed building. We do not believe this limited modification will have any impact on the City's environment or infrastructure.

Due to the extraordinary benefits that already have arisen from Facebook's relocation to the City, and since the West Campus project is essentially a code-compliant project* giving rise to only relatively minor, incremental impacts, Facebook believes that the proposed West Campus DA terms confer appropriate public benefits. The City's Negotiating Team concurs.

* City fees payable by Facebook for the West Campus include approximately (1) \$4.5 million for the Below Market Rate Housing Fee (or an equivalent number of BMR units); (2) \$1.3 million for a Traffic Impact Fee; (3) \$1.1 million for a Street Repair Fee; and (4) \$1.4 million for Plan Check and permit Fees.

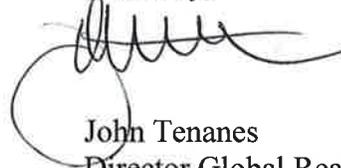
The Term Sheet provides:

- A ten year recurring public benefit payment of \$150,000 per year;
- A commitment to work with the City so that eligible portions of the sales taxes paid by certain qualifying contractors, subcontractors and material suppliers with respect to the construction of the West Campus project are allocated to the City;
- A commitment to work with the City to maximize the City's capture of use tax arising from the purchase of furnishings, equipment and personal property for the initial occupancy of the new building on the West Campus;
- A \$100,000 payment to fund improvements to the Belle Haven neighborhood as determined by the City Council;
- A Property Tax Guarantee ensuring the City that the assessed value of the West Campus will be significantly increased upon completion of construction;
- A commitment to utilize Frank O. Gehry Partners for the West Campus design;
- A commitment to the West Campus living roof and a LEED Gold equivalency;
- Public Access to West Campus landscaped areas adjacent to the Bayfront Expressway undercrossing easements; and
- A commitment to extend certain benefits which otherwise would terminate with the early termination of the East Campus Development Agreement, such as the Local Community Fund, Bay Trail Gap commitments and environment education commitments.

While Facebook's obligations under the DA will be considerable, they build upon the most significant aspect of Facebook's relocation to the City – its commitment to building a stronger community and being a good neighbor. As many in your community can attest, Facebook already has invested significant resources to support local programs and create long term relationships. These benefits are not part of the DA because they do not need to be. They arise organically from Facebook's culture. Facebook considers its connection and engagement with the community a significant and long term priority.

We thank you for your consideration of this matter. We welcome your questions and further dialogue and look forward to our upcoming public hearing on January 22, 2013.

Sincerely,



John Tenanes
Director Global Real Estate





FACEBOOK
DRAFT WEST CAMPUS DEVELOPMENT AGREEMENT TERM SHEET

1. Recurring Financial Benefits

- Recurring Public Benefit Payment
 - Facebook will pay the City \$150,000 per year (the “Recurring Public Benefit Payment”) for ten years.
 - The first payment of the Recurring Public Benefit Payment will be on July 1 of the City’s fiscal year (i.e. July 1 to June 30) following the City’s fiscal year in which the City issues final building permit sign-off for occupancy of the West Campus. The succeeding nine payments of the Recurring Public Benefit Payment will be paid on each anniversary of the initial Recurring Public Benefit Payment.
 - The Recurring Public Benefit Payment will not be payable unless the City issues a certificate of occupancy for the West Campus.
- Sales and Use Taxes
 - For all construction work performed as part of the West Campus project, Facebook agrees to make diligent, good faith efforts with the assistance of City’s designated representative to include a provision in all construction contracts with all qualifying contractors, subcontractors and material suppliers (i.e. contracts of \$5 million or more), requiring such contractors, subcontractors and material suppliers holding reseller’s permits to obtain a sub-permit from the California State Board of Equalization to book and record construction materials purchases/sales as sales originating within the City. Upon the request of the City Manager or the City’s designated representative, Facebook shall make available copies of such contracts or other documentation demonstrating compliance with these requirements. Facebook shall have the right to redact unrelated portions of such contracts.
 - For all purchases of furnishings, equipment and personal property for the initial occupancy of the new building on the West Campus, Facebook shall cooperate with the City and its designated representative and if the City or its designated representative identifies commercially reasonable strategies to maximize use taxes to be received by the City, to then use diligent, good faith efforts to maximize use taxes to be received by the City with respect to the purchase and use of such furnishings, equipment and personal property by acting in accordance with the strategies identified by the City or its designated representative (to the extent allowed by law). Notwithstanding the preceding, Facebook shall not be obligated to establish a California Sales and Use Tax permit and/or a Use Tax Direct Payment Permit identifying the City as the point of sale or the point of use for allocation purposes, but shall provide City’s designated representative with such documents as are necessary to assist such representative in ensuring the appropriate allocation of use taxes to the West Campus location.
 - To the extent sales and/or use taxes are not separately reported for the West Campus and the East Campus, and provided that Facebook occupies both the West Campus and the East Campus, there shall be an equitable apportionment of the sales and use

taxes to each campus based on location of employees, square footage of buildings, point of sale or such other equitable apportionment as the parties may determine.

- **Property Taxes**

- The current assessed value for the West Campus is \$20,935,500. The FIA estimated that the assessed value for the West Campus at build-out would be \$230,085,000. An increase of \$209,149,500 in the assessed value of the West Campus will create new tax revenues for the City in the amount of \$175,476.44 according to the FIA. Facebook believes this number is conservative and that the assessed value of the West Campus at build-out will be greater.
- Facebook will provide the City assurance it will receive these anticipated new tax revenues based on the initial reassessment of the property following completion of the West Campus project. If Facebook obtains final building permit sign-off for occupancy of the West Campus, Facebook agrees to pay the City the positive difference (if any) between (x) the property tax revenues the City would receive in a given year assuming the assessed value of the West Campus is the greater of \$230,085,000 or the initial reassessment of the property following completion of the West Campus project and (y) the property tax revenues paid or payable to the City (such amount, the “Property Tax Guaranty”). In any year during which the Property Tax Guaranty applies, no funds will be payable to the City under the Property Tax Guaranty if the assessed value of the West Campus in that year is greater than or equal to the greater of \$230,085,000 or the amount of the initial reassessment of the property following completion of the West Campus project. The Property Tax Guaranty will apply beginning in the first tax year following the initial reassessment of the West Campus following its substantial completion and will continue for ten years.
- The Property Tax Guaranty will not limit Facebook’s right to challenge the assessed value of the West Campus or the taxes payable with respect to the West Campus.

2. Other Public Benefits

- **On Going Public Benefits**

- **Public Access**

- Facebook will allow public access to the landscaped area on the West Campus that is adjacent to the undercrossing (note this public access is in addition to the dedicated access easement to the undercrossing and does not modify or alter the requirement that Facebook improve and dedicate a public access easement from Willow Road, under Bayfront Expressway and connecting to the Bay Trail). This area is adjacent to the dedicated easement that will connect the segment of the Bay Trail that is adjacent to Bayfront Expressway with Willow Road and the segment of the Bay Trail that is east of Willow Road, making it a gateway to Menlo Park for pedestrians and bicyclists. The public access right to the landscaped area will be a right to pass by permission and Facebook will have the right to implement rules and regulations governing such access.

- Facebook agrees that (a) if a public transit agency begins operating service (whether by train or bus) on the rail spur adjacent to the West Campus and locates a transit stop at or near the intersection of Willow Road and the rail spur (the “Willow Stop”), (b) if there is not an alternative stop that would conveniently serve people that occupy the properties located immediately adjacent to Bayfront Expressway and between Chilco Street and the West Campus (collectively, the “Tyco Properties”), and (c) if the City wishes to provide a pedestrian/bicycle route between the Willow Stop and the Tyco Properties, then, upon the City’s request, Facebook will reasonably cooperate with the City and explore whether a pedestrian/bicycle route between the Willow Stop and the Tyco Properties could be placed on the West Campus. In addition, Facebook agrees that if, following the City’s request, Facebook determines that a pedestrian/bicycle route can be placed on the West Campus without negatively impacting Facebook’s operations there, Facebook will allow the City and/or its designee to construct such a pedestrian/bicycle access route in a location determined by Facebook (in its reasonable discretion) in consultation with City and the then owner/occupant of the Tyco Properties.
- Community Support
 - Facebook will contribute an additional \$100,000 to the Local Community Fund within one year of the City’s final building permit sign-off for occupancy of the West Campus; provided, however, that if the Community Fund is depleted at the time Facebook receives building permits for the West Campus, Facebook will make the contribution within six months of its receipt of the building permits. This contribution will not be payable unless Facebook submits a building permit for the West Campus.
- Recycling
 - Facebook agrees to use the City’s franchisee (presently Recology) for recycling services, provided that the rates charged to Facebook for recycling and trash removal services are the same as those charged to other commercial users in the City.
- One Time Payments and Public Benefits
 - Facebook will contribute a total of \$100,000 to fund improvements that benefit the adjacent neighborhood such as (but not limited to) the following: (a) the planting of street trees by the City in Belle Haven, (b) payment of design costs incurred by the City with respect to extending the sidewalks at Newbridge Street and Willow Road and Bayfront Expressway and Willow Road, and (c) any other purposes or uses as determined by the Menlo Park City Council. The City will have the right to determine how the \$100,000 commitment is allocated. Facebook will make this contribution by the later of (i) 60 days after the City’s issuance of final building permit sign-off for occupancy of the West Campus and (ii) 60 days after Facebook’s receipt of the City’s request for payment of the contribution. This contribution will not be payable unless the City issues final building permit sign-off for occupancy of the West Campus.

3. East Campus Benefits

- If the commitments and obligations under the Housing (Section 9), Local Community Fund (Section 10), Bay Trail Gap (Section 11), Utility Undergrounding (Section 12), Jobs (Section 13), Environmental Education (Section 16), Local Purchasing (Section 18), Transportation Demand Management Information Sharing (Section 19) and Volunteerism (Section 20) sections of the East Campus Development Agreement terminate due to (a) Facebook vacating the East Campus or (b) the early termination of the Lease for the East Campus, then Facebook will agree to continue to satisfy such commitments and obligations until the earlier of (i) Facebook vacating the West Campus or (ii) February 6, 2026.

4. Design & Environment

- Facebook has entered into a contract with Frank O. Gehry Partners for design of the West Campus, and Facebook anticipates that Frank O. Gehry Partners will be the registered architect.
- Facebook will design the West Campus so that the roof includes living elements including trees, plant elements and other green features.
- Facebook will design the building located at the West Campus to perform to LEED Building Design and Construction (BD+C) Gold equivalency. Facebook may satisfy this obligation by delivering a report from its LEED consultant. That report will be subject to approval by the City (not to be unreasonably withheld or conditioned).

5. Vehicle Trip Reduction

- Facebook will adhere to a vehicle trip cap which limits am/pm peak period trips as set forth in the Final EIR. To ensure compliance, the trip cap will include monitoring with periodic reporting consistent with those for the East Campus.
- Penalties for violations of the trip cap will be consistent with those for the East Campus.

6. Permit Processing

- The City will use its best efforts to expeditiously process permits and approvals required for development, use and occupancy of the project and give the West Campus project priority status.

7. Vesting

- Facebook will have the vested right to occupy the West Campus consistent with the various project approvals and subject to the terms and conditions of the West Campus Development Agreement. Generally, the City laws applicable to the project will be those in force and effect on the effective date of the West Campus Development Agreement.

8. Fees

- Generally, there will be a fixed cap at current rates on the effective date of the West Campus Development Agreement for City fees and exactions, except for fees scheduled to rise by

way of indexing and/or the imposition of new City-wide or area-wide (e.g. the M-2 district) fees/taxes.

9. Project Modifications

- Project modifications that are substantially consistent with the initial project approvals may be approved by the City Manager or his/her designee.

10. Term

- The term of the West Campus Development Agreement will be for five years (subject to reasonable extension for force majeure including construction delays), provided that if Facebook submits a building permit application for the West Campus within such five year period and the City subsequently issues a final building permit sign-off for occupancy of the West Campus, then the term of the West Campus Development Agreement will continue until the later of (a) the earlier of (i) Facebook vacating the West Campus or (ii) February 6, 2026, (b) the expiration of the Recurring Public Benefit obligation or (c) the expiration of the Property Tax Guaranty.