



# COMMUNITY DEVELOPMENT DEPARTMENT

Council Meeting Date: April 17, 2012  
Staff Report #: 12-063

Agenda Item #: F2

**REGULAR BUSINESS:** Consider the Term Sheet for the Development Agreement for the Facebook East Campus Project Located at 1601 Willow Road

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## RECOMMENDATION

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

- May 7: Planning Commission public hearing and recommendation on all aspects of the project;
- May 29: City Council public hearing and first step of actions on all aspects of the project; and
- June 5: City Council second (and final) step of actions on all aspects of the project.

## BACKGROUND

The City is currently conducting the environmental review and processing the development applications for the Facebook Campus project located at the intersection of Willow Road and Bayfront Expressway. Facebook, the Project Sponsor seeks to amend the existing Conditional Development Permit (CDP) for the East Campus located at 1601 Willow Road by converting the existing employee cap of 3,600 people into a vehicular trip cap. The proposed trip cap includes a maximum of 2,600 trips during the AM Peak Period from 7:00 a.m. to 9:00 a.m., 2,600 trips during the PM Peak Period from 4:00 p.m. to 6:00 p.m., and 15,000 daily trips. The trip cap would allow approximately 6,600 employees to occupy the East Campus. This action will not affect any future development of Facebook's West Campus.

In concert with the requested CDP Amendment, the Project Sponsor is requesting a legally binding Development Agreement. The Development Agreement would define the long-term land use intentions, specific terms and conditions for the development, and public benefits that would apply, should the East Campus component of the Project be approved. Under State law (California Government Code Sections 6584-65869.5), development agreements enable the City to grant a longer-term approval in exchange for demonstrable public benefits.

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](http://www.menlopark.org/projects/comdev_fb.htm)

On February 14, 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 for as long as the land use entitlement to exceed 3,600 employees is in place.
2. Provide one-time items in the form of public improvements or studies that would benefit the surrounding area.
3. Provide a mechanism for funding programs and services that meet on-going community needs.
4. Pursue a commitment to fund housing opportunities in the City and surrounding region.
5. Pursue a trip cap penalty amount that is severe enough to ensure compliance with the project description.

In addition, the collective Council direction was accompanied by individual Council members' comments, which were informed by public comment obtained through a series of meetings. A summary of the Council comments, which are part of the minutes from the February 14, 2012 meeting, is included as Attachment B.

## **ANALYSIS**

### **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 Attorney, Public Works Director, Development Services Manager, and David Boesch acting as a consultant to the City, 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 Mayor Keith and Council Member 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 reflects the “last, best and final” offer from the Project Sponsor. As explained by the Project Sponsor, this offer is a “stretch” for them as it relates to real estate decisions and is in addition to the required mitigation measures. The City negotiating team pushed hard on the Project Sponsor to put everything on table and not hold back something that could be offered during the remaining public meetings. The Council Subcommittee has reviewed the proposed Term Sheet and supports it.

The Term Sheet covers five main topics, each 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 Term Sheet balances a number of interests including the City of Menlo Park, the City of East Palo Alto, the Menlo Park Fire Protection District and various community groups. The proposed Term Sheet can be summarized as follows.

#### ***Topic 1: City Benefits***

Items 1 through 5 of the Term Sheet cover topics that provide benefit directly to the City. Items 1, 4 and 5 call for Facebook to make annual payments to the City of Menlo Park based on the following schedule so long as the increased intensity of use above 3,600 employees is in place:

- \$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

These annual payments are in lieu of sales tax or other revenues that might otherwise accrue to the City if the site was occupied by a sales tax producer. The first 10 years are guaranteed. After 10 years, Facebook has the right to revert to the previous use limitation of 3,600 employees or to reduce the entitlement as measured in trips and reduce the payment by a corresponding amount. Subsequent elections by Facebook to adjust the entitlements and therefore the corresponding annual payment could occur on

five-year intervals and must be made not less than 180 days before the start of City's fiscal year to provide adequate notice to the City for budget planning purposes.

Items 2 and 3 relate to one time payments to the City. Item 2 is a guaranteed payment of \$1.1 million for the City's unrestricted use toward capital improvement projects. Item 3 is a conditional payment if the City is able to secure other funds to pay for mitigations that Facebook is otherwise obligated to perform, such as transportation improvements.

### ***Topic 2: Community Benefits***

Items 6 through 17 of the Term Sheet cover a range of topics that can be categorized as Community Benefits. The Community extends beyond the jurisdictional boundaries of the City and the items have the potential to provide benefits to the City of East Palo Alto and other community groups. These topics range from one-time or annual financial commitments and commitments of Facebook staff and consultant resources through sponsoring programs or hosting events. The following summarizes the items covered under this topic:

- Creation of a Local Community Fund with a contribution of \$500,000
- Creation of a High School Internship Program
- Sponsoring job training programs and events
- Housing assistance through potential investments in low income housing tax credits and potential contributions to a housing development project
- Cooperate to underground electrical transmission lines
- Working to help close the Bay Trail Gap
- Participating in the Caltrans Adopt-a-Highway program for 5 years
- Continuing the "Facebucks" program for 3 years and other efforts to patronize Menlo Park businesses
- Promote local volunteer opportunities for Facebook employees
- Enhance proposed improvements to the undercrossing of Bayfront Expressway
- Explore the creation of Willow Road business improvement district and contribute seed funding up to \$50,000
- Perform ecologically sensitive improvements to the existing public trails around the perimeter of the East Campus

### ***Topic 3: Environmental Commitments***

Items 18 through 24 of the Term Sheet cover a range of topics that can be categorized as Environmental Commitments. Items 18, 19 and 20 are related to the East Campus' location adjacent near the San Francisco Bay and more particularly to the adjacent Don Edwards San Francisco Bay National Wildlife Refuge. The items address the need to be sensitive to endangered species and other wildlife when considering landscaping, window treatments, lighting, levee maintenance, and storm water treatment measures. Item 21 re-iterates Facebook's commitment to the vehicle trip cap and a willingness to share best practices related to its Transportation Demand Management (TDM) program. Finally, item 22 outlines Facebook's commitment to pursue Leadership in Energy and Environmental Design (LEED) certification.

### ***Topic 4: Pedestrian and Bicycle Circulation Enhancements***

Items 23 and 24 of the Term Sheet focus on bicycle and pedestrian improvements. Item 23 focuses on restriping to improve bicycle and pedestrian circulation in the City and East Palo Alto. Item 24 focuses specifically on pedestrian improvements to the U.S. 101 and Willow Road interchange.

### ***Topic 5: Mutual Commitments***

Items 25 through 31 cover a range of topics that can be categorized as Mutual Commitments. In general, these are items for which Facebook is requesting assurances and certainty from the City. These topics cover permit processing, changes to City ordinances, protection from new City fees, and the ability to pursue project modifications. In addition, item 29 references the fact that Facebook and the Menlo Park Fire Protection District have entered into an agreement related to the project. Staff understands that this agreement relates to the installation of emergency vehicle preemption devices (Opticom) on traffic signals in the vicinity of the project site. Item 30 clarifies that Facebook's obligations in the Term Sheet are contingent upon the absence or resolution of any potential legal challenges. Finally, Item 31 states that certain aspects of Facebook's offer are contingent upon an amicable resolution of issues with the City of East Palo Alto.

### **Evaluation of Terms Compared to Parameters and Council Comments**

Staff believes that a majority of the parameters have been achieved in the proposed Term Sheet as discussed below. In addition, the negotiating team and the Project Sponsor did discuss all of the individual Council member comments contained in Attachment B, and explored certain items in greater depth that eventually did not appear on the Term Sheet.

***Parameter 1: Provide a source of on-going revenue for as long as the land use entitlement to exceed 3,600 employees is in place.***

The Term Sheet achieves this parameter. The Project Sponsor would be obligated to make an annual payment to the City so long as the increased land use entitlement remains in place. The Term Sheet includes a minimum payment to the city of \$8.5 million over the next 10 years. If the Project Sponsor elects to stay at the site at the same land use intensity, then the City would receive a total of \$5 million for years 11 through 15.

***Parameter 2: Provide one-time items in the form of public improvements or studies that would benefit the surrounding area.***

The Term Sheet achieves this parameter. The Project Sponsor has committed to make a one-time payment to the City of \$1.1 million with the potential for an additional payment if the City is successful in leveraging other funds. In addition, the Term Sheet includes a number of other one-time improvements that the Project Sponsor will be pursuing, primarily related to bicycle and pedestrian circulation improvements in the vicinity of the project site.

***Parameter 3: Provide a mechanism for funding programs and services that meet on-going community needs.***

The Term Sheet achieves this parameter. The Project Sponsor has committed to create a Local Community Fund to provide support for local community needs. The board of the fund will include representation from the City and from East Palo Alto.

***Parameter 4: Pursue a commitment to fund housing opportunities in the City and surrounding region.***

The Term Sheet includes a provision to consider funding housing opportunities. One potential avenue would be through the investment in low income housing tax credits for affordable housing projects in the City and in East Palo Alto. The other potential avenue would be through the investment of capital in a housing project in the City. In addition, the City has committed to adopting an update to its Housing Element.

***Parameter 5: Pursue a trip cap penalty amount that is severe enough to ensure compliance with the project description.***

The trip cap penalty is not intended to be a revenue generator. It is intended to be a deterrent to violate the trip cap, which is part of the project description. Although not articulated in the Term Sheet, the Project Sponsor has agreed to dollar amounts associated with the violations of the trip cap. The penalty amount would be \$50 per trip per day for violations in the AM peak period, PM peak period, or daily trips. The penalty would double if the threshold was exceeded in two consecutive months or for four months within any six month period. The penalty would double again if the threshold

was exceeded for six consecutive months. The following table provides examples of potential daily penalties based on three hypothetical violations.

<b>Vehicles over Trip Cap</b>	<b>Tier 1 (\$50/trip)</b>	<b>Tier 2 (\$100/trip)</b>	<b>Tier 3 (\$200/trip)</b>
100	\$5,000	\$10,000	\$20,000
300	\$15,000	\$30,000	\$60,000
500	\$25,000	\$50,000	\$100,000

### **Consideration of East Palo Alto Concerns**

As mentioned previously, the Term Sheet reflects a balancing of interests, and not just interests of the City and Facebook. The Term Sheet also considers the interests of the City of East Palo Alto. A number of the items in the Term Sheet would be applicable and/or beneficial to the City of East Palo Alto, as well as the City of Menlo Park. Furthermore, the Council Subcommittee and the City Attorney met with the East Palo Alto Council Subcommittee and the East Palo Alto City Attorney early in the process to ensure that the lines of communication were open. Subsequent to the meeting, the respective City Attorneys conducted multiple follow up conversations to discuss various topics. One topic of conversation was the trip cap penalty. Given the unique circumstances of this particular project, the City of East Palo requested, and City staff acknowledged that it may be appropriate, to share a portion of the trip cap penalties with the City of East Palo Alto. The percentage splits for the sharing has yet to be finally determined, however, it is anticipated that the City would agree to a percentage split of any trip cap penalties with the City of East Palo Alto as part of the final project approvals. Another topic of conversation involved the incorporation of some material terms from a potential agreement that may be reached between the City of East Palo and Facebook into the City's Development Agreement. This would be comparable to what Palo Alto did with Menlo Park's memorandum of understanding related to the Stanford University Medical Center project.

### **IMPACT ON CITY RESOURCES**

The Project Sponsor is required to pay planning permit fees, based on the City's Master Fee Schedule, and to fully cover the cost of staff time spent on the review of the Project. The Project Sponsor is also required to bear the cost of the associated environmental review and FIA. For the environmental review and FIA, the Project Sponsor deposits money with the City and the City pays the consultants.

The FIA itself provides projections of the potential changes in fiscal revenues and service costs directly associated with development of the proposed project, for both the City and associated special districts. The Draft FIA was released on December 8, 2011 for a public comment period that ended on January 23, 2012. The Final FIA, prepared in response to comments on the Draft FIA, is scheduled to be released on April 23,

2012. Comments on the Final FIA would be due on or before the Planning Commission public hearing scheduled for May 7, 2012.

## **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 request to exceed the current employee cap of 3,600 people on the East Campus.

## **ENVIRONMENTAL REVIEW**

Action on the Term Sheet is not subject to environmental review. Action on the Conditional Development Permit Amendment and the Development Agreement are subject to environmental review. A Draft EIR was released for public review on December 8, 2011 through January 30, 2012. The Final EIR, prepared in response to comments on the Draft, is scheduled to be released on April 23, 2012. Comments on the Final EIR would be due on or before the Planning Commission public hearing scheduled for May 7, 2012.

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## **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](http://www.menlopark.org/s/comdev_fb.htm)

## **ATTACHMENTS**

- A. [Letter from John Tenanes, dated April 10, 2012 with proposed Development Agreement Term Sheet](#)
- B. [Excerpt of the Minutes from the February 14, 2012 Council Meeting](#)