

# CONDITIONAL DEVELOPMENT PERMIT

## 312 and 313 Constitution Drive

### 1. GENERAL INFORMATION:

- 1.1 Applicant: Giant Properties, LLC (and its successors and assigns)
- 1.2 Nature of Project: Rezoning, Conditional Development Permit, 312 and 313 Constitution Drive Development Agreement, Below Market Rate Housing Agreement, Lot Line Adjustment, Heritage Tree Removal Permits and Environmental Impact Report (EIR) Addendum for the demolition of two buildings totaling approximately 127,246 square feet and the subsequent redevelopment of the Project Site with one building totaling no more than 433,656 square feet over approximately 1,499 parking spaces (Project). For purposes of determining the Floor Area Ratio, building coverage and building setbacks for the Project, the two parcels comprising the Project Site shall be considered to be one parcel.
- 1.3 Project Location (Project Site and/or West Campus): 312 and 313 Constitution Drive
- 1.4 Assessor's Parcel Numbers: 055-260-210 and 055-260-220
- 1.5 Area of Project Site: Two parcels totaling 22.12 acres (963,682 square feet)
- 1.6 Zoning: M-2(X) (General Industrial, Conditional Development)
- 1.7 Conditions Precedent: Applicant's obligations as set forth herein are expressly conditioned on the resolution of all legal challenges, if any, to the EIR Addendum and/or the Project. If no litigation or referendum is commenced challenging the EIR Addendum and/or the Project, Applicant's obligations will vest on the passing of all applicable statutes of limitation.

### 2. DEVELOPMENT STANDARDS:

- 2.1 Floor Area Ratio (FAR) shall not exceed **45 percent** of the Project Site.
- 2.2 Building coverage shall not exceed **55 percent** of the Project Site.
- 2.3 Building setbacks shall be in accordance with the approved plans, and in no case shall the minimum setback be less than **40 feet** from each property line.
- 2.4 Building height, inclusive of temporary structures, shall not exceed **73 feet**. All heights shall be measured from the average level of the highest and lowest point of the finished grade of that portion of the lot covered by the structure (height excludes elevator equipment rooms, ventilating and air conditioning equipment and associated screening).

- 2.5 The on-site circulation and parking spaces shall be maintained consistent with the approved plans, and in no case inclusive of less than of **1,446** parking spaces, installed in a manner that is substantially in compliance with the Project Plans (defined below).
- 2.6 All rooftop equipment shall be fully screened and integrated into the design of the building. Roof-top equipment shall comply with noise requirements in Chapter 8.06, Noise, of the Municipal Code.

### 3. USES:

- 3.1 The development is comprised of one building totaling no more than 433,656 square feet of gross floor area on top of surface parking, with a roof garden that is accessible to occupants of the building. Permitted uses on the Project Site shall include the following:
  - 3.1.1 Administrative and professional offices, excluding medical/dental offices serving the general population;
  - 3.1.2 Medical and dental uses to serve on-site employees and contractors is permissible;
  - 3.1.3 General industrial uses including but not limited to warehousing, manufacturing, printing and assembling;
  - 3.1.4 Amenities and related uses intended to serve employees, contractors, and visitors, such as neighborhood-serving convenience retail, banks, community facility space, fitness facilities and restaurants, including those that serve alcoholic beverages;
  - 3.1.5 Outdoor seating and tables (including those intended to be used for the consumption of food and beverages), temporary structures, and events associated with those uses listed above on the Project Site including on the roof, subject to approved building permits and Fire District permits, as applicable;
  - 3.1.6 Activities involving the use of hazardous materials, such as emergency power generators, incidental to those uses listed above and subject to an approved Hazardous Materials Business Plan, Building Permit, San Mateo County Health Permit, and Menlo Park Fire Protection District permit; and
  - 3.1.7 Cellular telecommunications facilities if fully screened or integrated into the design of the building.
- 3.2 Conditional uses listed in the M-2 zoning district may be conditionally permitted through a use permit process, unless otherwise allowed in Section 3.1.

### 4 SIGNS:

The maximum permissible sign area for the Project Site is 300 square feet. Vehicular directional signage and signage not visible from the public right-of-way shall not count against the maximum sign areas and is only subject to building permit review. The square footage, location and materials for all

signage that counts towards the maximum permissible sign area shall be subject to review and approval by the Planning Division through the Sign Permit process, with an application and applicable filing fees.

5. RECORDATION:

- 5.1 Concurrently with the recordation of the 312 and 313 Constitution Drive Development Agreement, the City shall record the Conditional Development Permit in the Official Records of the County of San Mateo, State of California.
- 5.2 The Conditional Development Permit shall be in full force and effect on the Effective Date of the 312 and 313 Constitution Drive Development Agreement.

6. MODIFICATIONS:

- 6.1 Modifications to the approved Project may be considered according to the following four tier review process:
  - 6.1.1 Substantially Consistent Modifications are made at the staff level. Substantially Consistent Modifications are changes to or modifications of the Project that are in substantial compliance with and/or substantially consistent with the Project Plans and the Project Approvals. Substantially Consistent Modifications are generally not visible to the public and do not affect permitted uses, density or intensity of use, restrictions and requirements relating to subsequent discretionary actions, monetary obligations, conditions or covenants limiting or restricting the use of the Property or similar material elements based on the determination that the proposed modification(s) is consistent with other building and design elements of the approved Conditional Development Permit, and will not have an adverse impact on the character and aesthetics of the Property. In addition, changes to the sequencing of construction permits related to the Project will be considered a Substantially Consistent Modification. The determination as to whether a requested change is a Substantially Consistent modification will be made by the Community Development Director (in his/her reasonable discretion).
  - 6.1.2 Minor Modifications are made at the staff level, but the Planning Commission is provided information regarding these modifications. The determination as to whether a requested change is a Minor Modification is determined by the Community Development Director (in his/her reasonable discretion). A Minor Modification is similar in nature to a Substantially Consistent Modification, except that Minor Modifications generally are visible to the public and result in minor exterior changes to the Project aesthetics. Any member of the Commission may request within seven (7) days of receipt of the informational notice that the item(s) be reviewed by the Planning Commission.

- 6.1.3 Major Modifications are reviewed by the Planning Commission as a Regular Business item, and publicly noticed. Major Modifications are changes or modifications to the Project that are not in substantial compliance with and/or substantially consistent with the Project Plans and Project Approvals. Major modifications include, but are not limited to, significant changes to the exterior appearance of the buildings or appearance of the Property, and changes to the Project Plans, which are determined by the Community Development Director (in his/her reasonable discretion) to not be in substantial compliance with and/or substantially consistent with the Project Plans and Project Approvals. The Planning Commission's decision shall be based on the determination that the proposed modification is compatible with other building and design elements or onsite/offsite improvements of the Conditional Development Permit and would not have an adverse impact on safety and/or the character and aesthetics of the site. Planning Commission decisions on Major Modifications may be appealed to the City Council. City Council shall have final authority to approve Major Modifications. Major Modifications that also require Conditional Development Permit Amendments (see Section 6.14 below) shall be considered in accordance with Section 6.1.4.
- 6.1.4 Conditional Development Permit Amendments are reviewed by the Planning Commission and the City Council. Conditional Development Permit Amendments are required where the Applicant seeks revisions to the Project which involve (a) the relaxation of the development standards identified in Section 2, (b) material changes to the uses identified in Section 3, (c) exceedance of the maximum permissible signage area identified in Section 4, or (d) material modifications to the conditions of approval identified in Sections 7, 9, 10, 11, and 12. Such revisions may also require modifications to 312 and 313 Constitution Drive Development Agreement. If the Applicant wishes to make a change that requires an amendment to this Conditional Development Permit, it shall apply, in writing, to the Planning Division for review and recommendation to the Planning Commission. The Planning Commission shall then forward its recommendation to the City Council for revision(s) to the Conditional Development Permit.

For purposes of clarification, Substantially Consistent Modifications, Minor Modifications and Major Modifications will not constitute Conditional Development Permit amendments or require modifications to the 312 and 313 Constitution Drive Development Agreement.

## 7. TRIP CAP:

- 7.1 To minimize environmental and community impacts resulting from utilization of the Project Site, Applicant shall enforce a trip cap.

- 7.1.1. Trip Cap: The trip cap sets the maximum number of morning and evening peak period trips and daily trips (Trip Cap). The parameters and requirements of the Trip Cap are specified in the West Campus Trip Cap Monitoring and Enforcement Policy, which is included as Exhibit A and incorporated herein.
- 7.1.2. Implementation: The Trip Cap count equipment shall be installed and in good working order prior to occupancy of the West Campus, unless otherwise approved, to the satisfaction of the Public Works Director.

## 8. CONSTRUCTION PERMITS SEQUENCING:

- 8.1 The following outlines the basic sequencing of construction permits related to the Project. Completion of each phase (e.g., the Voluntary Remediation Work, the Make Ready Work, etc.) is required to proceed to the next phase, with the exception of the access improvements and, to the limited extent set forth below, the address change. Application for any given permit must be accompanied by all required documentation and complete plan sets. Changes to the sequencing of construction permits related to the Project will be considered a Substantially Consistent Modification and be subject to the procedure outlined in Section 6.1.1.

- 8.1.1 **Voluntary Remediation Work**: The Applicant shall comply with one of the following two options (the Applicant shall have the option of proceeding with either of these options):

- 8.1.1.1 The Building Permit (BLD2012-01125) for voluntary remediation work shall be finalized. This requires the provision of appropriate documentation from the Department of Toxic Substance Control (DTSC) indicating that DTSC has accepted and approved the voluntary remediation work.

- 8.1.1.2 The Applicant may complete the voluntary remediation work in phases. In this case, the Applicant shall:

- 8.1.1.2.1 Prepare a remediation phasing plan to the satisfaction of DTSC and the Building Official. This plan will provide a procedure for completing the voluntary remediation in phases and for obtaining DTSC's approval of phases on a sequential basis;

- 8.1.1.2.2 Receive approval from DTSC and the Building Official to complete the voluntary remediation work in phases; and

- 8.1.1.2.3 Provide appropriate documents from DTSC (such as a letter on DTSC letterhead) indicating that DTSC has accepted and provided conditional approval of the phases that the City reasonably requires be completed before the Applicant may proceed with the Make Ready Work (as discussed in section 8.1.3 below) and the remainder of the Project. Portions of the Make Ready Work and Demolition Work may be completed if that phase of the remediation work has been given conditional approval by DTSC and completed to the satisfaction of the Building Official.

- 8.1.2 **Address Change:** The site address change shall be completed prior to submittal of any building permits associated with the Main Construction Phase. Among other things, this means that the lot line adjustment affecting the re-parcelization of the Project Site and described in Section 11 of this Conditional Development Permit must be complete. The address change phase may be processed simultaneously with the Voluntary Remediation Work and the Make Ready Work.
- 8.1.3 **Make Ready Work:** All Make Ready Work permits can be applied for sequentially, alternatively, they can also be applied for simultaneously, subject to the approval of the Building Official. One permit is not required to proceed to another; however, the Project cannot proceed to the Main Construction Phase until all Make Ready Work permits have been finalized.
- 8.1.3.1 Demolition:
- 8.1.3.1.1 Apply for demolition permits including, but not limited to work related to removal of on-site structures, removal of hardscape and removal and capping of utilities;
  - 8.1.3.1.2 Complete utility separation; and
  - 8.1.3.1.3 Complete demolition of existing on-site structures and receive building permit finals for the demolition permits.
- 8.1.3.2 Grading and Utility Work:
- 8.1.3.2.1 Apply for grading and utility installation permit;
  - 8.1.3.2.2 Complete all grading and utility work and receive building permit final; and
  - 8.1.3.2.3 Per Fire District requirements, no combustible building materials are allowed on the Project Site until fire water is available and fire access is provided.
- 8.1.4 **Access Improvements:**
- 8.1.4.1 Undercrossing Improvements:
- 8.1.4.1.1 Continue work on the undercrossing improvements required under the 1601 Willow Road Amended and Restated Conditional Development Permit (East Campus Undercrossing Improvements) and resubmit plans for the portion of the Undercrossing Improvements located on the Project Site (West Campus Undercrossing Improvements) prior to the expiration of the building permit application for the West Campus Undercrossing Improvements.
  - 8.1.4.1.2 Permit issued for the West Campus Undercrossing Improvements;
  - 8.1.4.1.3 Enter into a maintenance agreement for the Undercrossing Improvements (East and West Campus) to the satisfaction of the Public Works Director. The maintenance agreement shall define maintenance obligations and access rights for public use; and

8.1.4.1.4 Permits for the Undercrossing Improvements (East and West Campus) shall be finalized prior to Temporary Certificate of Occupancy (TCO) for the Interior Build-out of the Main Construction Phase

8.1.4.2 Public Right-of-Way Encroachment Permit:

8.1.4.2.1 Submit improvement plans to the City for approval for those portions of the Project that require offsite improvements in the Caltrans right-of-way (Public ROW Improvements). This includes all work in the Caltrans right-of-way, including, but not limited to, water line improvements, the multiuse trail on Willow Road, and curb cuts;

8.1.4.2.2 Receive City approvals for such improvement plans;

8.1.4.2.3 Submit the improvement plans to Caltrans and request encroachment permit approvals; and

8.1.4.2.4 Complete the Public ROW Improvements (inclusive of installation of new traffic signal on Bayfront Expressway) prior to TCO for the Main Construction Phase.

8.1.5 **Main Construction Phase:** All Main Construction Phase Permits can be applied for simultaneously; however, the permits shall be issued sequentially and a succeeding permit cannot be issued until the preceding permit is finalized, unless otherwise approved by the Building Official. At a minimum, complete architectural, structural, mechanical, electrical, plumbing, green building plans and supporting documentation associated with cold shell (no interior improvements, heating or cooling) or shell and core (no interior improvements other than restroom facilitation, heating, and cooling) and plans for the Public ROW Improvements shall be submitted simultaneously.

8.1.5.1 Foundation Only Permit:

8.1.5.1.1 Apply for foundation only permit. This permit will not be issued until the following requirements are satisfied:

8.1.5.1.1.1 Structural Drawings for the entire building have received preliminary approval (the Applicant's design team will resubmit substantially consistent structural drawings with the cold shell or shell and core permit application);

8.1.5.1.1.2 Applicant to provide pad certifications documenting that pads are constructed to elevations required by approved FEMA CLOMR-F; and

8.1.5.1.1.3 Caltrans approval of the location for a signalized intersection location on Bayfront Expressway, which may be pursuant to a no further comment letter or similar transmission to the City, to the satisfaction of the Public Works Director.

8.1.5.1.2 Complete foundation and receive building permit final.

8.1.5.2 Cold Shell or Shell and Core Permit: If elements of the interior build-out or HVAC system are still being developed, then an application for cold shell or shell and core permit can be made

- 8.1.5.2.1 Complete cold shell or shell and core permit and receive building permit final.
- 8.1.5.3 Interior Build-out Permit: Apply for interior build-out (tenant improvement) permit
  - 8.1.5.3.1 Complete interior build-out permit and receive building permit final.
  - 8.1.5.3.2 Occupancy of the office building shall not be granted until the interior build-out permit passes final inspection

## 9. PROJECT SPECIFIC CONDITIONS - GENERAL:

- 9.1 Project Plans: Development of the Project shall be substantially in conformance with the plans submitted by Gehry Partners, LLC dated February 1, 2013 consisting of 73 plan sheets, recommended for approval to the City Council by the Planning Commission on February 25, 2013 (Project Plans), and approved by the City Council on March 19, 2013, except as modified by the conditions contained herein and in accordance with Section 6 (Modifications) of this document.
- 9.2 Below Market Rate Housing Agreement: Concurrently with the recordation of the 312 and 313 Constitution Drive Development Agreement and Conditional Development Permit, the Applicant shall record the Below Market Rate (BMR) Housing Agreement. The BMR Housing Agreement requires that the Applicant satisfy its obligations under the BMR Ordinance and Guidelines by one of the following methods:
  - a. Paying the in lieu fee;
  - b. Delivering off-site units; or
  - c. Paying a portion of the in lieu fee and delivering off-site units.

Based upon the current fee per square foot, the BMR fee for the subject project would be **\$4,507,291**. The required number of units for the subject project would be 15. If the Applicant proceeds with a combined in lieu fee payment and provision of off-site units, each unit shall equate to 20,427 square feet of gross floor area.

- 9.5 Construction Fencing: The Applicant shall submit a plan for construction safety fences around the periphery of the construction area concurrent with the building permit for each stage of construction. The fences shall be installed according to the plan prior to commencing construction. The plan shall be reviewed and approved by the Building and Planning Divisions prior to issuance of a demolition permit.
- 9.6 Truck Route Plan: The Applicant shall submit a truck route plan concurrent with the building permit application for each stage of construction based on the City's municipal code requirements, for review and approval by the Transportation Division. The Applicant shall also submit a permit application and pay applicable fees relating to the truck route plan, to the satisfaction of the Public Works Director

- 9.7 Salvaging and Recycling of Construction and Demolition Debris: The Applicant shall comply with the requirements of Chapter 12.48 (Salvaging and Recycling of Construction and Demolition Debris) of the City of Menlo Park Municipal Code, which compliance shall be subject to review and approval by the Public Works Department.
- 9.8 Utility Improvements: Concurrent with submittal of the Grading and Utility Building Permit application, the Applicant shall submit a plan for any new utility installations or upgrades for review and approval of the Planning, Engineering and Building Divisions prior to building permit issuance. Landscaping shall properly screen all utility equipment that is installed outside of a building and cannot be placed underground; subject, however, to the requirements of the Menlo Park Fire Protection District, the West Bay Sanitary District, PG&E and any other applicable agencies regarding utility clearances and screening. The plan for new utility installations/upgrades shall show exact locations of all meters, back flow prevention devices, transformers, junction boxes, relay boxes and other equipment boxes. The screening shall be compatible and unobtrusive and subject to the review and approval of the Planning Division which approval will be required prior to the City's approval of the final building permit inspection for the building shell.
- 9.9 Grading and Drainage Plan, Inclusive of Erosion and Sedimentation Control Plan: Concurrent with submittal of the Grading and Utility Building Permit application, the Applicant shall submit a Grading and Drainage Plan, including an Erosion and Sedimentation Control Plan, for review and approval by the Engineering Division prior to building permit issuance. The Grading and Drainage Plan shall be prepared based on the City's Grading and Drainage Plan Guidelines and Checklist, the City approved Hydrology Report for the Project, and the Project Applicant Checklist for the National Pollution Discharge Elimination System (NPDES) Permit Requirements.
- 9.10 Landscape Plan: During the Main Construction Phase (8.1.5), the Applicant shall submit a detailed on-site landscape plan, including the size, species, and location, and an irrigation plan shall be submitted for review and approval by the Planning, Engineering, and Transportation Divisions, prior to building permit issuance. The landscape plan shall illustrate the retention of the maximum number of trees feasible, with the potential retention of approximately 30 trees previously indicated to be removed on plan sheet WL.1, to the satisfaction of the Planning Division and City Arborist. The landscape plan shall include all onsite landscaping, adequate sight distance visibility, screening for outside utilities with labels for the utility boxes sizes and heights, and documentation confirming compliance with the Water Efficient Landscaping Ordinance (Municipal Code Chapter 12.44). The landscape plan shall include an appropriate mix of native and adapted species to complement the nearby Don Edwards San Francisco Bay National Wildlife Refuge and shall be reviewed and approved by the Community Development Director and Public Works Director prior to building permit issuance.

- 9.11 Heritage Tree Protection: The Applicant shall comply with the tree protection guidelines contained within the *Facebook West Campus Tree Preservation Feasibility and Protection Guidelines*, dated March 20, 2013. Concurrent with grading permit submittal, the Applicant shall submit a heritage tree preservation plan, detailing the location of and methods for all tree protection measures, as described in the *Facebook West Campus Tree Preservation Feasibility and Protection Guidelines*. The project arborist shall submit a letter confirming adequate installation of the tree protection measures. The Applicant shall retain an arborist throughout the term of the project, and the project arborist shall submit periodic inspection reports to the Building Division. The heritage tree preservation plan shall be subject to review and approval by the Planning Division and City Arborist prior to grading permit issuance.
- 9.12 Landscape Maintenance: Site landscaping, inclusive of landscaping on the living roof, shall be maintained to the satisfaction of the Community Development Director so long as the building constructed as part of the Project is located on the Project Site. Significant revisions to site landscaping (inclusive of roof landscaping) shall require review by the Building Official, Public Works Director and Community Development Director to confirm the proposed changes comply with accessibility and exiting requirements, stormwater requirements and are substantially consistent with the Conditional Development Permit approval consistent with the procedure outline in Section 6, Modifications.
- 9.13 Stationary Noise Source Compliance Data: Concurrent with the Main Construction Phase (8.1.5) building permit submittal, the applicant shall provide a plan that details that all on-site stationary noise sources comply with the standards listed in Section 08.06.030 of the City's Noise Ordinance. This plan shall be subject to review and approval by the Planning and Building Divisions prior to each building permit issuance.
- 9.14 Compliance with City Requirements: The Applicant shall comply with all requirements of the Building Division, Engineering Division, and Transportation Division that are directly applicable to the Project to the satisfaction of the Community Development Director.
- 9.15 Building Construction Street Impact Fee: Prior to issuance of each building permit, the Applicant shall pay the applicable Building Construction Street Impact Fee in effect at the time of payment, to the satisfaction of the Public Works Director.
- 9.16 School Impact Fee: Prior to issuance of the building permit for the Main Construction Phase, the Applicant shall pay the applicable School Impact Fee for the Project in effect at the time of payment, to the satisfaction of the Building Official.

- 9.17 West Bay Sanitary District Requirements: The Applicant shall comply with all regulations of the West Bay Sanitary District that are directly applicable to the Project to the satisfaction of the Building Official.
- 9.18 Menlo Park Fire Protection District Requirements: The Applicant shall comply with all Menlo Park Fire Protection District regulations governing site improvements, Fire Code compliance, and access verification that are directly applicable to the Project to the satisfaction of the Building Official.
- 9.19 Power and Communications Requirements: The Applicant shall comply with all regulations of PG&E and other applicable communication providers (i.e., AT&T and Comcast) that are directly applicable to the Project to the satisfaction of the Building Official.
- 9.20 Stormwater Operations and Maintenance Agreement: Prior to building permit final for the Main Construction Phase (8.1.5), the Applicant shall enter into an Operations and Maintenance Agreement with the City. The Operations and Maintenance Agreement shall establish a self-perpetuating drainage system maintenance program (to be managed by the Applicant) that includes annual inspections of any infiltration features and stormwater detention devices (if any), and drainage inlets, flow through planters, and other Best Management Practices (BMP). Any accumulation of sediment or other debris shall be promptly removed. Funding for long-term maintenance of all BMPs must be specified in the Operations and Maintenance Agreement. The Operation and Maintenance Agreement shall be subject to review and approval of the City Attorney and the Public Works Director and shall be recorded prior to building permit final inspection. An annual report documenting the inspection and any remedial action conducted shall be submitted to the Public Works Department for review. This condition shall be in effect for the life of the Project.
- 9.21 Department of Toxic Substance Control Approval: Prior to issuance of the building permit for the Make Ready Work (8.1.3), the applicant shall comply with one of the two options identified in Section 8.1.1 of this Conditional Development Permit.
- 9.22 Caltrans Approval: Prior to issuance of the building permit for the foundation (part of the Main Construction Phase 8.1.5), the Applicant shall provide verification of Caltrans approval of the signalized intersection location as set forth in Section 8.1.5.1.3.
- 9.23 Improvements in the Caltrans Right-of Way: Prior to issuance of TCO for the interior build-out component of the Main Construction Phase (8.1.5.3), the Applicant shall complete all Public ROW improvements (inclusive of installation of the new traffic signal on Bayfront Expressway) and provide verification that Caltrans has accepted the improvements, to the satisfaction of the Public Works Director.

- 9.24 Access and Improvements: Access points and all improvement on Bayfront Expressway and Willow Road are subject to the review and approval of Caltrans. Prior to submitting improvement plans to Caltrans, the applicant shall submit plans to the Public Works Director for his/her review and approval prior to submittal to Caltrans
- 9.25 Accessibility: All pedestrian pathways shall comply with applicable Federal and State accessibility requirements, to the satisfaction of the Public Works Director and Building Official.
- 9.26 On-site Pedestrian Deterrents: The on-site pedestrian deterrent materials and color identified in the Project Plans are subject to further review and modification at the building permit stage. The revised proposal shall meet the satisfaction of the Public Works Director, Building Official and Menlo Park Fire Protection District.
- 9.27 Willow Road Sidewalk: The alignment of the crosswalk at the Willow Road driveway as shown in the Project Plans is subject to further review and potential modifications. Concurrent with complete plan set submittal for the Main Construction Phase (8.1.5) the applicant shall provide a proposed alignment for the crosswalk to the satisfaction of the Public Works Director, Building Official and Menlo Park Fire Protection District.
- 9.28 Generator Screening: Consistent with Project Plans, the Applicant shall screen all generators prior to building permit final inspection for interior improvements, to the satisfaction of the Community Development Director.
- 9.29 Refuse and Recyclables: All garbage bins and carts shall be located within a trash enclosure that meets the requirements of the solid waste disposal provider (Recology), and the City Public Works Department and Planning Division for the lifetime of the project. If additional trash enclosures are required to address the on-site trash bin and cart storage requirements of the Applicant, a complete building permit submittal shall be submitted inclusive of detailed plans, already approved by Recology, for review and approval of the Planning Division and the Public Works Department prior to each building permit issuance.
- 9.30 Special Event Tents: The Applicant shall obtain required building and Fire District permits for erection of special event tents requiring such permits, to the satisfaction of the Building Official.
- 9.31 Special Events Tents, Roof: Use of a special event tent on the roof level is limited to single day events a maximum of eight times per calendar year, with the events occurring between the hours of 9 a.m. and 11 p.m. The set-up and break down of the tent shall not occur more than three days in advance of an event and shall be completed within three days of completion of said event .The tent shall be a maximum size of approximately 80 feet by 180 feet with a maximum vertical peak of 28 feet above the main roof level, for a maximum height of 73 feet above average

natural grade to the satisfaction of the Building Official. Menlo Park Fire Protection District approval is required each time the tent is erected.

- 9.32 Alcoholic and Beverage Control: The Applicant shall ensure that all on-site suppliers of alcoholic beverages apply for and receive approval of the appropriate Alcoholic and Beverage Control (ABC) license prior to any on-site alcohol sales and/or service, to the satisfaction of the Community Development Director.
- 9.33 Leadership in Energy and Environmental Design: The Applicant will design the building to perform to LEED Building Design and Construction (BD+C) Gold equivalency. The Applicant may satisfy this obligation by delivering a report from its LEED consultant. That report shall be submitted prior to or concurrent with the Main Construction Phase (Section 8.1.5) and is subject to approval by the Community Development Director (not to be unreasonably withheld or conditioned).
- 9.34 Roof Insulation: In order to achieve compliance with energy savings as modeled in the Energy Analysis prepared by KEMA dated, January 13, 2013, the roof shall achieve an insulation with a minimum combined insulation product value of a minimum of R-25 or the requirement of the California Energy Code in effect at the time of shell permit application, whichever is greater. Compliance with this requirement shall be documented as part of the building permit submittal for the Main Construction Phase (8.1.5) to the satisfaction of the Building Official.
- 9.35 Lighting: Concurrent with building permit submittal for the Main Construction Phase (8.1.5), the Applicant shall submit a lighting plan, including photometric contours, manufacturer's specifications on the fixtures, and mounting heights to ensure safe access and to illustrate the light and glare do not spillover to neighboring properties, to the satisfaction of the Community Development Director and Public Works Director.
- 9.36 Transportation Demand Management Program: The Applicant shall implement a commercially reasonable Transportation Demand Management (TDM) Program to the satisfaction of the Public Works Director.
- 9.37 Parking Intrusion: The Applicant shall actively work to prevent the parking of employee and visitor vehicles (whose occupant(s)' final destination is the Project Site) in adjacent neighborhoods, including, but not limited to, the Belle Haven neighborhood, on other public streets in the City, and on public streets in the City of East Palo Alto to the satisfaction of the Public Works Director. The City reserves the right to require monitoring of neighborhood parking intrusions consistent with the specifications of the West Campus Trip Cap Monitoring and Enforcement Policy, attached hereto as Exhibit A and incorporated herein.

- 9.38 Primary Entrance Designation: The Applicant shall designate the proposed Bayfront Expressway entries as the primary entrance point to the Project Site. The use of the Willow Road entrance primarily shall be used by Facebook shuttles, delivery and service vehicles, and emergency responders, with minimal access for single occupancy vehicles, to the satisfaction of the Public Works Director.
- 9.39 Transportation Impact Fee: Prior to building permit issuance for the foundation only permit (8.1.5.1), the applicant shall pay the Transportation Impact Fee per the direction of the Transportation Division in compliance with Chapter 13.26 of the Municipal Code. The current estimated transportation impact fee is \$1,265,056.17, although the final fee shall be the fee in effect at the time of payment. The Transportation Impact Fee escalates annually on July 1.

## 10. PROJECT SPECIFIC CONDITIONS – UNDERCROSSING IMPROVEMENTS

- 10.1 Sequencing Undercrossing Improvements: The following outlines the basic sequencing of required permits related to the West Campus Undercrossing Improvements, as illustrated on plan sheet WL.3.3 Undercrossing Section Undercrossing.
- i. Bonding: The Applicant shall post a bond to complete the Conceptual West Campus Undercrossing Improvements depicted on page EL.2, Conceptual Undercrossing Plans, of the Facebook East Campus plans dated April 20, 2012 to be drawn on if the Project is not developed as anticipated.
    - 1. A cost estimate for the construction of the Conceptual West Campus Undercrossing Improvements shall be provided to the City on the Effective Date of the CDP as defined in section 5.2.
    - 2. A bond for 200% of the approved cost estimate shall be posted within 30 days of the Effective Date of the CDP as defined in section 5.2.
  - ii. City Approval: The Applicant shall apply for City approval of the West Campus Undercrossing Improvements as follows:
    - 1. Submit complete set of West Campus Undercrossing Improvement plans to the City concurrent with the Main Construction Phase, in no case later than the Main Construction Phase specified in 8.1.5.2.
    - 2. Outside Agency Approval: Submit applications to applicable outside agencies within 30 days of City approval of the West Campus Undercrossing Improvement plans and diligently pursue approvals from those outside agencies. Applicable agencies with permitting authority for the West Campus Undercrossing Improvements include:
      - a. Caltrans;
      - b. California Public Utilities Commission (CPUC);

- c. SamTrans/Joint Powers Board (JPB); and
  - d. Other Agencies with Jurisdiction
- iii. Construction: Construct the West Campus Undercrossing Improvements prior to TCO for interior build-out; provided, however, that if the Applicant does not commence the Project within 365 days of the effective date of the CDP or commences the Project and subsequently abandons work for more than 6 months (Early Construction Trigger), then the Applicant shall construct the Conceptual West Campus Undercrossing Improvements by the later of (a) 180 days after approval of the plans for the Conceptual West Campus Undercrossing Improvements by the City and all applicable agencies with permitting authority and (b) 180 days after the occurrence of the Early Construction Trigger, subject to acceptable delays, including, but not limited to, weather, the presence of nesting birds during nesting season and the presence of burrowing owls, to the satisfaction of the Public Works Director.
- 10.2 Caltrans Approval: Prior to building permit issuance for the West Campus Undercrossing Improvements, the Applicant shall submit all necessary improvement plans and documents required by Caltrans for work associated with the Project and under their jurisdiction. The plans shall be subject to review and approval of the Public Works Director prior to submittal to Caltrans. The Applicant shall diligently pursue permitting approval to the satisfaction of the Public Works Director. Upon Caltrans approval, the Applicant shall install the improvements and enter into a long-term maintenance agreement with the City for these improvements (as set forth in Section 8.1.4.1.3) prior to TCO for Interior Build-out of the Main Construction Phase (8.1.5).
- 10.3 SamTrans/Joint Powers Board (JPB): Prior to building permit issuance for the West Campus Undercrossing Improvements, the Applicant shall submit all necessary improvement plans to SamTrans/JPB for work associated with the project and under their jurisdiction, including, but not limited to design and installation of a safe at-grade pedestrian crossing of the existing railroad. The plans shall be submitted to the Public Works Director for review and approval prior to submittal to SamTrans/JPB. The Applicant shall diligently pursue permitting approval to the satisfaction of the Public Works Director. The improvements shall be installed to the satisfaction of SamTrans/JPB subsequent to applicant obtaining approval from all applicable agencies with jurisdiction.
- 10.4 California Public Utilities Commission (CPUC): Prior to building permit issuance for the West Campus Undercrossing Improvements, the Applicant shall submit all necessary improvement plans and documents required by California Public Utilities Commission (CPUC) for work associated with the Project and under CPUCs' jurisdiction, including, but not limited to design and installation of a safe at-grade pedestrian crossing of the existing railroad. The plans shall be submitted to the Public Works

Director for review and approval prior to submittal to CPUC. The Applicant shall diligently pursue permitting approval to the satisfaction of the Public Works Director. The improvements shall be installed to the satisfaction of CPUC subsequent to applicant obtaining approval from all applicable agencies with jurisdiction.

- 10.5 Bay Trail Project Coordination: Prior to building permit issuance, the Applicant shall work cooperatively with the Bay Trail Project on the design of the West Campus Undercrossing Improvements to ensure that the undercrossing is compliant with the Bay Trail requirements to the maximum extent practicable, all to the satisfaction of the Public Works Director.
- 10.6 Public Access Easements: Concurrent with complete plan set submittal for construction of the West Campus Undercrossing Improvements, the Applicant shall submit a plat and legal description for a public access easement(s) for utilization of the undercrossing to the satisfaction of the Public Works Director. The acceptance of the deed or dedication requires Menlo Park City Council approval prior to TCO for Interior Build-out of the Main Construction Phase (8.1.5).
- 10.7 Utility Improvements: Concurrent with building permit submittal for the West Campus Undercrossing Improvements, the Applicant shall submit a plan for any new utility installations or upgrades for review and approval of the Community Development Director and Public Works Director prior to building permit issuance. Landscaping shall properly screen all utility equipment that is installed outside of a building and cannot be placed underground; subject, however, to the requirements of the Menlo Park Fire Protection District, the West Bay Sanitary District, PG&E and any other applicable agencies regarding utility clearances and screening. The plan for new utility installations/upgrades shall show exact locations of all meters, back flow prevention devices, transformers, junction boxes, relay boxes and other equipment boxes. The screening shall be compatible and unobtrusive and subject to the review and approval of the Community Development Director prior to building permit issuance.
- 10.8 Grading and Drainage: Concurrent with building permit submittal for the West Campus Undercrossing Improvements, the applicant shall submit a Grading and Drainage Plan, including an Erosion and Sedimentation Control Plan, for review and approval by the Engineering Division prior to building permit issuance. The Grading and Drainage Plan shall be prepared based on the City's Grading and Drainage Plan Guidelines and Checklist, the City approved Hydrology Report for the Project, and the Project Applicant Checklist for the National Pollution Discharge Elimination System (NPDES) Permit Requirements to the satisfaction of the Public Works Director.
- 10.9 Landscape Plan: Concurrent with building permit submittal for the West Campus Undercrossing Improvements, the Applicant shall submit a

detailed on-site landscape plan, including the size, species, and location, and an irrigation plan for review and approval by the Community Development Director and Public Works Director, prior to building permit issuance. The landscape plan shall include all onsite landscaping, adequate sight distance visibility, screening for outside utilities with labels for the utility boxes sizes and heights, fencing inclusive of fence height and materials, and documentation confirming compliance with the Water Efficient Landscaping Ordinance (Municipal Code Chapter 12.44), if applicable. The landscape plan shall include an appropriate mix of native and adapted species to complement the nearby Don Edwards San Francisco Bay National Wildlife Refuge and shall be reviewed and approved by the Community Development Director and Public Works Director prior to building permit issuance.

- 10.10 Lighting: Concurrent with building permit submittal for the West Campus Undercrossing Improvements, the Applicant shall submit a lighting plan, including photometric contours, manufacturer's specifications on the fixtures, and mounting heights to ensure safe access and to illustrate the light and glare do not spillover to neighboring properties, to the satisfaction of the Community Development Director and Public Works Director.
- 10.11 Comply with Applicable Requirements: The Applicant shall comply with all requirements of the Building Division, Engineering Division, and Transportation Division that are directly applicable to the project, to the satisfaction of the Community Development Director.
- 10.12 Building Construction Street Impact Fee: Prior to issuance of the building permit for the West Campus Undercrossing Improvements, the Applicant shall pay the applicable building construction street impact fee in effect at the time of payment to the satisfaction of the Public Works Director.
- 10.13 Utility and Communication Provider Requirements: The Applicant must comply with all regulations of Pacific Gas and Electric, West Bay Sanitary District and other applicable communication providers (i.e., AT&T and Comcast) that are directly applicable to the Project, to the satisfaction of the Community Development Director.
- 10.14 Stormwater Operations and Maintenance Agreement: Prior to building permit final for the West Campus Undercrossing Improvements, the Applicant shall enter into an Operations and Maintenance Agreement with the City. The Operations and Maintenance Agreement shall establish a self-perpetuating drainage system maintenance program (to be managed by the property owner or property manager) that includes annual inspections of any infiltration features and stormwater detention devices (if any), and drainage inlets, flow through planters, and other BMPs. Any accumulation of sediment or other debris shall be promptly removed. Funding for long-term maintenance of all BMPs must be specified in the Operations and Maintenance Agreement. The Operation and Maintenance Agreement shall be subject to review and approval of the City Attorney

and the Public Works Director and shall be recorded prior to building permit final inspection. An annual report documenting the inspection and any remedial action conducted shall be submitted to the Public Works Director for review.

- 10.15 Construction and Demolition Debris: The Applicant shall comply with the requirements of Chapter 12.48 (Salvaging and Recycling of Construction and Demolition Debris) of the City of Menlo Park Municipal Code, subject to review and approval by the Building Official.
- 10.16 Erosion and Sedimentation Control: Concurrent with building permit submittal for the West Campus Undercrossing Improvements, the Applicant shall submit a plan for construction of safety fences around the periphery of the construction area and a demolition Erosion and Sedimentation Control Plan. The fences and erosion and sedimentation control measures shall be installed according to the plan prior to commencing construction. The plans shall be reviewed and approved by the Building Official prior to issuance of a demolition permit.
- 10.17 Landscape Installation: Prior to building permit final inspection for the West Campus Undercrossing Improvements, landscaping shall be installed per the approved landscape plan, subject to review and approval by the Community Development Director and Public Works Director.
- 10.18 Building Permit Final: All building permits associated with the Undercrossing Improvements shall be finalized prior to issuance of TCO for the Interior Build-out of the Main Construction Phase (8.1.5) to the satisfaction of the Public Works Director.

## 11. PROJECT SPECIFIC CONDITIONS – LOT LINE ADJUSTMENT

- 11.1 Recordation: The Lot Line Adjustment establishing an Access Parcel and a Main Parcel, including the private road name for the Project Site, shall be recorded promptly following the recordation of this Conditional Development Permit, to the satisfaction of the Public Works Director and the Community Development Director.
- 11.2 Common Ownership: The Access Parcel and the Main Parcel shall remain in common ownership in perpetuity, to the satisfaction of the Public Works Director.
- 11.3 Road Naming: The name of the private road shall be established with recordation of the lot line adjustment. Future changes to the road name shall require the applicant to submit a plat map and legal description specifying the new road name for the review of the Public Works Director, and said document shall be recorded, or the applicant shall comply with such other procedures as the Public Works Director determines in his/her reasonable discretion. The provided documentation shall be subject to review of the

Building Official, Public Works Director and Menlo Park Fire Protection District.

- 11.4 Access Parcel Use: The Access Parcel shall be solely for road purposes and provision of vehicular, bicycle and pedestrian access, and shall be an unbuildable parcel. No permanent or temporary structures are permitted to encroach into the access parcel, in perpetuity, to the satisfaction of the Public Works Director and Building Official.
- 11.5 Access Parcel Size and Location: The Access Parcel shall be located immediately adjacent to Bayfront Expressway to provide access from Bayfront Expressway to the Main Parcel. If revisions to the size and location of the Access Parcel and associated Main Parcel are required subsequent to recordation to meet Caltrans requirements pertinent to the required new intersection on Bayfront Expressway, the applicant shall apply for a lot line adjustment amendment or comply with such other procedure that the Public Works Director establishes in his/her discretion, and the revisions shall be subject to the review and approval of the Public Works Director. The Public Works Director shall be the final decision maker for any lot line adjustment amendment or other revision requested specifically to comply with Caltrans requirements pertinent to the required new intersection on Bayfront Expressway and such amendment/revision shall not be subject to the appeal procedures identified in the City's Subdivision Ordinance.

## 12 PROJECT SPECIFIC CONDITIONS - MITIGATION MEASURES

Mitigation measures that are associated with both the East Campus and the West Campus only need to be satisfied once. For example, if Facebook performs the mitigation measure identified in Section 12.2 of this Conditional Development Permit pursuant to the East Campus Project, the Applicant's obligation under Section 12.2 of this Conditional Development Permit will also be deemed satisfied.

- 12.1 West Campus Vehicle Trip Cap: This mitigation measure would reduce AM and PM peak trips, and thus reduce trips at impacted intersections, and involves the imposition of a trip cap on the West Campus comparable to the Trip Cap that is part of the Project for the East Campus.

The 1,100 peak hour vehicle trip cap has been calculated in a similar fashion to the East Campus trip cap and is based on a comparative ratio between the East and West Campus employee totals in the following manner:

- $2,800 \text{ West Campus Employees} \times (2,600 \text{ East Campus Peak Period Trip Cap} / 6,600 \text{ East Campus Employees}) = 1,100 \text{ West Campus Peak Period Trip Cap}$

The West Campus vehicle trip cap mitigation shall comply with the West Campus Trip Cap Monitoring and Enforcement Policy. A peak period trip cap of 1,100 trips for the West Campus does not, in and of itself, fully mitigate the impacts in either the AM peak or PM peak for any of the impacted

intersections. Because the proposed mitigation would not fully mitigate the impact, it remains significant and unavoidable unless the impact is fully mitigated through a specific intersection improvement as outlined below (MM-TR-6.1).

- 12.2 Willow Road and Bayfront Expressway Improvement<sup>1</sup>: The proposed partial mitigation measures for the intersection of Willow Road and Bayfront Expressway include an additional eastbound right turn lane with a right turn overlap phase from Willow Road to Bayfront Expressway, a new Class I bikeway between the railroad tracks and the existing Bay Trail, closing the outbound direction of the driveway at Building 10 to simplify maneuvering through the stop-controlled intersection (inbound access would still be provided), lengthening the existing right-turn pocket at the westbound approach to a full lane between Bayfront Expressway and the stop-controlled intersection, and ensuring the crosswalk at the stop-controlled intersection is accommodated safely.

Prior to the 1601 Willow Road Development Agreement approval, the Applicant shall prepare a construction cost estimate for the proposed mitigation measures at the intersection of Willow Road and Bayfront Expressway for review and approval of the Public Works Director. Within 90 days of the effective date of the 1601 Willow Road Development Agreement, the Applicant shall provide a bond for improvements in the amount equal to the estimated construction cost for the intersection improvements plus a 30 percent contingency. Within 180 days of the effective date of the 1601 Willow Road Development Agreement, the Applicant shall submit complete plans to construct the intersection improvements.

Complete plans shall include all necessary requirements to construct the improvements in the public right-of-way and on the egress approach, including but not limited to, grading and drainage improvements, utility relocations, traffic signal relocations/modifications, tree protection requirements, signage and striping modifications further west on Willow Road, and the design of the eastbound direction Class I bikeway from the railroad tracks to the intersection of Willow Road and Bayfront Expressway. The plans shall be subject to review and approval of the Public Works Department prior to submittal to Caltrans. The Applicant shall complete and submit an encroachment permit for approval by the City and Caltrans prior to construction of the intersection improvements. The Applicant shall construct the on-site improvements within 180 days of City approval of the plans. The Applicant shall construct the off-site improvements within 180 days of receiving approval from Caltrans.

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<sup>1</sup> Even though this mitigation measure is associated with both the East Campus and West Campus components of the Project, its implementation was triggered by the East Campus approvals. Consequently, to satisfy the requirements of the East Campus MMRP, the Project Sponsor has already posted a bond for the required improvements and submitted improvement plans to the City for review.

If Caltrans does not approve the intersection improvements proposed within five years from the 1601 Willow Road Development Agreement effective date, and the Applicant demonstrates that it has worked diligently to pursue Caltrans approval to the satisfaction of the Public Works Director, in his/her sole discretion, then the Applicant shall be relieved of responsibility to construct the improvement and the bond shall be released by the City. Construction of this improvement by the Applicant shall count as a future credit toward payment of the Transportation Impact Fee (TIF) payable by the Applicant pursuant to the TIF Ordinance. In the event any portion of the intersection improvements is eligible for funding in whole or in part by the City/County Association of Governments (C/CAG) such improvements may be deferred by the City in its sole discretion to pursue such funding and the Applicant may be relieved of its responsibility to construct such portion of the intersection improvements as may be funded by C/CAG, or such responsibility may be deferred until eligibility for funding is determined. (MM-TR-1.1.a)

- 12.3 Willow Road and Middlefield Road Improvement<sup>2</sup>: The proposed mitigation measure for the intersection of Willow Road and Middlefield Road includes restriping an existing northbound through lane to a shared through and right-turn lane. Implementing this improvement would require traffic signal modifications, removal of the existing triangular median on the southeast corner of the intersection, along with realignment of the crosswalks on the south and east side of the intersection.

Prior to the 1601 Willow Road Development Agreement approval, the Applicant shall prepare a construction cost estimate for the proposed mitigation measure at the intersection of Willow Road and Middlefield Road for review and approval of the Public Works Director. Within 90 days of the effective date of the 1601 Willow Road Development Agreement, the Applicant shall provide a bond for improvements in the amount equal to the estimated construction cost for the intersection improvements plus a 30 percent contingency. Within 180 days of the effective date of the 1601 Willow Road Development Agreement, the Applicant shall submit complete plans to construct the intersection improvements.

Complete plans shall include all necessary requirements to construct the improvements in the public right-of-way, including but not limited to, grading and drainage improvements, utility relocations, traffic signal relocations/modifications, tree protection requirements, and signage and striping modifications. The plans shall be subject to review and approval of the Public Works Director. Upon obtaining approval from the City, the Applicant shall construct the improvements within 180 days of the encroachment permit

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<sup>2</sup> Even though this mitigation measure is associated with both the East Campus and West Campus components of the Project, its implementation was triggered by the East Campus approvals. Consequently, to satisfy the requirements of the East Campus MMRP, the Project Sponsor has already posted a bond for the required improvements and submitted improvement plans to the City for review.

approval date by the City. Construction of these improvements is not eligible for a Transportation Impact Fee (TIF) credit. (MM-TR-1.1.b)

- 12.4 University Avenue and Bayfront Expressway Improvement<sup>3</sup>: The proposed mitigation measure for the intersection of University Avenue and Bayfront Expressway includes an additional southbound through lane and receiving lane. A revised signal timing plan would also be needed. The additional southbound through lane and southbound receiving lane are not feasible due to the right-of-way acquisition from multiple property owners, potential wetlands, relocation of the Bay Trail, and significant intersection modifications, which are under Caltrans jurisdiction. However, the installation of a Class I bikeway (portion of the Bay Trail from west of the railroad tracks to the intersection of University Avenue and Bayfront Expressway) is a feasible, partial mitigation measure for the impact. This partial mitigation measure would require paving, grading, drainage and signing and striping improvements.

Prior to the 1601 Willow Road Development Agreement approval, the Applicant shall prepare a construction cost estimate for the proposed partial mitigation measure along University Avenue between Bayfront Expressway and the railroad tracks for review and approval of the Public Works Director. Within 90 days of the effective date of the 1601 Willow Road Development Agreement, the Applicant shall provide a bond for improvements in the amount equal to the estimated construction cost for the improvements plus a 30 percent contingency. Within 180 days of the effective date of the 1601 Willow Road Development Agreement, the Applicant shall submit complete plans to construct the improvements.

Complete plans shall include all necessary requirements to construct the improvements in the public right-of-way, including but not limited to, grading and drainage improvements, utility relocations, and signage and striping modifications. The plans shall be subject to review and approval by the City and coordination with the City of East Palo Alto Public Works Departments prior to submittal to Caltrans. The Applicant shall complete and submit an encroachment permit for approval by the cities of Menlo Park and East Palo Alto, if required, and Caltrans prior to construction of the improvements. The Applicant shall construct the improvements within 180 days of receiving approval from Caltrans.

If Caltrans does not approve the proposed improvements within five years from the 1601 Willow Road Development Agreement effective date, and the Applicant demonstrates that it has worked diligently to pursue Caltrans approval to the satisfaction of the Public Works Director, in his/her sole discretion, then the Applicant shall be relieved of responsibility to construct

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<sup>3</sup> Even though this mitigation measure is associated with both the East Campus and West Campus components of the Project, its implementation was triggered by the East Campus approvals. Consequently, to satisfy the requirements of the East Campus MMRP, the Project Sponsor has already posted a bond for the required improvements and submitted improvement plans to the City for review.

the improvement and the bond shall be released by the City after the Applicant submits funds equal to the updated estimated construction cost to the City. The City may use the funds for other transportation improvements, including, but not limited to, bicycle, pedestrian, and transit improvements, and TDM programs throughout the City, with priority given to portions of the City east of US 101. Construction of these improvements is not eligible for a Transportation Impact Fee (TIF) credit. (MM-TR-1.1.c)

- 12.5 Bayfront Expressway and Chrysler Drive Improvements<sup>4</sup>: The proposed mitigation measures for the intersection of Bayfront Expressway and Chrysler Drive include restriping the existing eastbound right turn lane to a shared left-right-turn lane.

Prior to the 1601 Willow Road Development Agreement approval, the Applicant shall prepare a construction cost estimate for the proposed mitigation measures at the intersection of Bayfront Expressway and Chrysler Drive for review and approval of the Public Works Director. Within 90 days of the effective date of the 1601 Willow Road Development Agreement, the Applicant shall provide a bond for improvements in the amount equal to the estimated construction cost for the intersection improvements plus a 30 percent contingency. Within 180 days of the effective date of the 1601 Willow Road Development Agreement, the Applicant shall submit complete plans to construct the intersection improvements.

The plans shall be subject to review and approval of the Public Works Director prior to submittal to Caltrans. The Applicant shall complete and submit an encroachment permit for approval by the City and Caltrans prior to construction of the intersection improvements. The Applicant shall construct the improvements within 180 days of receiving approval from Caltrans.

If Caltrans does not approve the intersection improvements proposed within five years from the 1601 Willow Road Development Agreement effective date, and the Applicant demonstrates that it has worked diligently to pursue Caltrans approval to the satisfaction of the Public Works Director, in his/her sole discretion, then the Applicant shall be relieved of responsibility to construct the improvement and the bond shall be released by the City after the Applicant submits funds equal to the updated estimated construction cost to the City. The City may use the funds for other transportation improvements, including, but not limited to, bicycle, pedestrian, and transit improvements and TDM programs, throughout the City with priority given to portions of the City east of US 101. Construction of these improvements is not eligible for a Transportation Impact Fee (TIF) credit. (MM-TR-1.1.d)

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<sup>4</sup> Even though this mitigation measure is associated with both the East Campus and West Campus components of the Project, its implementation was triggered by the East Campus approvals. Consequently, to satisfy the requirements of the East Campus MMRP, the Project Sponsor has already posted a bond for the required improvements and submitted improvement plans to the City for review.

- 12.6 Marsh Road and Bayfront Expressway<sup>5</sup>: The proposed mitigation measures for the intersection of Marsh Road and Bayfront Expressway include restriping the westbound approach from a shared left-through-right lane to a shared left-through lane and a shared through-right lane.

Prior to the 1601 Willow Road Development Agreement approval, the Applicant shall prepare a construction cost estimate for the proposed mitigation measure at the intersection of Marsh Road and Bayfront Expressway for review and approval of the Public Works Director. Within 90 days of the effective date of the 1601 Willow Road Development Agreement, the Applicant shall provide a bond for improvements in the amount equal to the estimated construction cost for the intersection improvements plus a 30 percent contingency. Within 180 days of the effective date of the 1601 Willow Road Development Agreement, the Applicant shall submit complete plans to construct the intersection improvements.

Complete plans shall include all necessary requirements to construct the improvements in the public right-of-way, including but not limited to, grading and drainage improvements, utility relocations, traffic signal relocations/modifications, tree protection requirements, and signage and striping modifications. The plans shall be subject to review and approval of the Public Works Director prior to submittal to Caltrans. The Applicant shall complete and submit an encroachment permit for approval by the City and Caltrans prior to construction of the intersection improvements. The Applicant shall construct the improvements within 180 days of receiving approval from Caltrans.

If Caltrans does not approve the intersection improvements proposed within five years from the 1601 Willow Road Development Agreement effective date, and the Applicant demonstrates that it has worked diligently to pursue Caltrans approval to the satisfaction of the Public Works Director, in his/her sole discretion, then the Applicant shall be relieved of responsibility to construct the improvement and the bond shall be released by the City after the Applicant submits funds equal to the updated estimated construction cost to the City. The City may use the funds for other transportation improvements, including, but not limited to, bicycle, pedestrian, transit improvements, and TDM programs, throughout the City, with priority given to those portions of the City east of US 101. Construction of these improvements is not eligible for a Transportation Impact Fee (TIF) credit. (MM-TR-6.2.a)

- 12.7 Marsh Road and US 101 NB Ramps<sup>6</sup>: The proposed mitigation measures for the intersection of Marsh Road and US 101 Northbound off-ramp include

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<sup>5</sup> Even though this mitigation measure is associated with both the East Campus and West Campus components of the Project, its implementation was triggered by the East Campus approvals. Consequently, to satisfy the requirements of the East Campus MMRP, the Project Sponsor has already posted a bond for the required improvements and submitted improvement plans to the City for review.

<sup>6</sup> Even though this mitigation measure is associated with both the East Campus and West Campus components of the Project, its implementation was triggered by the East Campus approvals. Consequently, to satisfy the requirements of the East Campus MMRP, the Project Sponsor has already posted a bond for the required improvements and submitted improvement plans to the City for review.

widening the northbound off-ramp on the western side of the approach and adding an additional left-turn lane along with adding a second right-turn lane by restriping one of the existing left-turn lanes. This improvement will require relocation of existing traffic signal poles, utility relocation and reconstruction of the curb ramp on the southwest corner of the intersection.

Prior to the 1601 Willow Road Development Agreement approval, the Applicant shall prepare a construction cost estimate for the proposed mitigation measures at the intersection of Marsh Road and US 101 Northbound off-ramp for review and approval of the Public Works Director. Within 90 days of the effective date of the 1601 Willow Road Development Agreement, the Applicant shall provide a bond for improvements in the amount equal to the estimated construction cost for the intersection improvements plus a 30 percent contingency. Within 180 days of the effective date of the 1601 Willow Road Development Agreement, the Applicant shall submit complete plans to construct the intersection improvements.

Complete plans shall include all necessary requirements to construct the improvements in the public right-of-way, including but not limited to, grading and drainage improvements, utility relocations, traffic signal relocations/modifications, tree protection requirements, and signage and striping modifications. The plans shall be subject to review and approval of the Public Works Director prior to submittal to Caltrans. The Applicant shall complete and submit an encroachment permit for approval by the City and Caltrans prior to construction of the intersection improvements. The Applicant shall construct the improvements within 180 days of receiving approval from Caltrans.

If Caltrans does not approve the intersection improvements proposed within five years from the 1601 Willow Road Development Agreement effective date, and the Applicant demonstrates that it has worked diligently to pursue Caltrans approval to the satisfaction of the Public Works Director, in his/her sole discretion, then the Applicant shall be relieved of responsibility to construct the improvement and the bond shall be released by the City after the Applicant submits funds equal to the updated estimated construction cost to the City. The City may use the funds for other transportation improvements, including, but not limited to, bicycle, pedestrian, transit improvements, and TDM programs, throughout the City, with priority given to those portions of the City east of US 101. Construction of these improvements is not eligible for a Transportation Impact Fee (TIF) credit. (MM-TR-6.2.b)

- 12.8 Marsh Road and Middlefield Road: Memorandum of Agreement by and Between the Town of Atherton and Facebook, Inc. Regarding the Menlo Park Facebook Campus Project. The Applicant shall comply with the Memorandum of Agreement by and Between the Town of Atherton and Facebook, Inc. Regarding the Menlo Park Facebook Campus Project dated July 2, 2012 (MM-TR-6.2.c).

- 12.9 Willow Road and Newbridge Street<sup>7</sup>: The potential mitigation measure for the intersection of Willow Road and Newbridge Street includes an additional eastbound left-turn lane, an additional northbound receiving lane for the eastbound left turning traffic, an additional westbound through/right-turn lane, and an additional receiving lane for the westbound through traffic. The additional eastbound left-turn lane and northbound receiving lane are not feasible due to the right-of-way acquisition and property impacts required along Newbridge Street and at the southwest quadrant of the intersection, which is in the City of East Palo Alto. However, the additional westbound through/right-turn lane and westbound receiving lane is a feasible, partial mitigation measure for the impact. This partial mitigation measure would require traffic signal modifications, the removal of at least one heritage tree in front of 1157 Willow Road in order to accommodate the receiving lane, and the removal and relocation of a portion of the concrete masonry wall and landscaping near 1221 Willow Road.

Prior to the 1601 Willow Road Development Agreement approval, the Applicant shall prepare a construction cost estimate for the feasible mitigation measure at the intersection of Willow Road and Newbridge Street for review and approval of the Public Works Director. Within 90 days of the effective date of the 1601 Willow Road Development Agreement, the Applicant shall provide a performance bond for improvements in the amount equal to the estimated construction cost for the intersection improvements plus a 30 percent contingency. Within 180 days of the 1601 Willow Road Development Agreement effective date, the Applicant shall submit complete plans to construct a westbound through/right turn lane approximately 300 feet in length, and a westbound through receiving lane, from the Willow Road and Newbridge Street intersection to the beginning of the northbound US 101 on-ramp, based on impacts to the intersections of Willow Road and Newbridge Street.

Complete plans shall include all necessary requirements to construct the improvements in the public right-of-way, including, but not limited to, grading and drainage improvements, utility relocations, traffic signal relocations/modifications, tree protection requirements, and striping modifications. The plans shall be subject to review and approval by the City and coordination with the City of East Palo Alto Public Works Departments prior to submittal to Caltrans. The Applicant shall complete and submit an encroachment permit for approval by the cities of Menlo Park and East Palo Alto, if required, and Caltrans prior to construction of the intersection improvements. The Applicant shall construct the improvements within 180 days of receiving approval from Caltrans.

If Caltrans does not approve the intersection improvements proposed within five years from the 1601 Willow Road Development Agreement effective date,

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<sup>7</sup> Even though this mitigation measure is associated with both the East Campus and West Campus components of the Project, its implementation was triggered by the East Campus approvals. Consequently, to satisfy the requirements of the East Campus MMRP, the Project Sponsor has already posted a bond for the required improvements and submitted improvement plans to the City for review.

and the Applicant demonstrates that it has worked diligently to pursue Caltrans approval to the satisfaction of the Public Works Director, in his/her sole discretion, then the Applicant shall be relieved of responsibility to construct the improvement and the bond shall be released by the City after the Applicant submits funds equal to the updated estimated construction cost to the City. The City may use the funds for other transportation improvements, including, but not limited to, bicycle, pedestrian, transit improvements, and TDM programs, throughout the City, with priority given to those portions of the City east of US 101. The partial mitigation improvements are not eligible for a Transportation Impact Fee (TIF) credit. (MM-TR-6.2.d)

- 12.10 University Avenue and Donohoe Street: The proposed mitigation measures for the intersection of University Avenue and Donohoe Street include restriping the westbound approach of the intersection to add a right turn lane and modify the traffic signal to add a right turn overlap phase.

Prior to the approval of the West Campus Development Agreement, the Applicant shall prepare a construction cost estimate for the feasible mitigation measure at the intersection of University Avenue and Donohoe Street for review and approval of the Public Works Director. Within 90 days of the effective date of the West Campus Development Agreement, the Applicant shall provide a performance bond for improvements in the amount equal to the estimated construction cost for the intersection improvements plus a 30 percent contingency. Within 180 days of the West Campus Development Agreement effective date, the Applicant shall submit complete plans to construct the improvement.

Complete plans shall include all necessary requirements to construct the improvements in the public right-of-way, including, but not limited to, grading and drainage improvements, utility relocations, traffic signal relocations/modifications, tree protection requirements, and striping modifications. The plans shall be subject to review and approval by the City and coordination with the City of East Palo Alto Public Works Departments prior to submittal to Caltrans. The Applicant shall complete and submit an encroachment permit for approval by the cities of East Palo Alto, if required, and Caltrans prior to construction of the intersection improvements. The Applicant shall construct the improvements within 180 days of receiving approval from Caltrans.

If Caltrans does not approve the intersection improvements proposed within five years from the West Campus Development Agreement effective date, and the Applicant demonstrates that it has worked diligently to pursue Caltrans approval to the satisfaction of the Public Works Director, in his/her sole discretion, then the Applicant shall be relieved of responsibility to construct the improvement and the bond shall be released. (MM-TR-11.3.h).

- 12.11 Identify and protect roosting and breeding bats and provide alternative roosting habitat: The Applicant shall implement the following measures to

protect roosting and breeding bats found in a tree or structure to be removed with implementation of the Project:

- Prior to tree removal or demolition activities on the West Campus site, the Applicant shall retain a qualified biologist to conduct a focused survey for bats and potential roosting sites within buildings to be demolished or trees to be removed. The surveys can be conducted by visual identification and can assume presence of hoary bats or the bats can be identified to a species-level with the use of a bat echolocation detector such as an “Anabat” unit. If no roosting sites or bats are found, a letter report confirming absence shall be sent to the California Department of Fish and Game and no further mitigation is required. If roosting sites or hoary bats are found, then the following monitoring, exclusion, and habitat replacement measures shall be implemented. The letter or surveys and supplemental documents shall be provided to the City prior to demolition permit issuance.
- If bats are found roosting outside of nursery season (May 1st through October 1st), then they shall be evicted as described under the bullet-point immediately below. If bats are found roosting during the nursery season, then they shall be monitored to determine if the roost site is a maternal roost. This could occur by either visual inspection of the roost bat pups, if possible, or monitoring the roost after the adults leave for the night to listen for bat pups. If the roost is determined to not be a maternal roost, then the bats shall be evicted as described under the bullet-point immediately below. Because bat pups cannot leave the roost until they are mature enough, eviction of a maternal roost cannot occur during the nursery season. A 250-foot (or as determined in consultation with the Department of Fish and Game) buffer zone shall be established around the roosting site within which no construction or tree removal shall occur.
- Eviction of bats shall be conducted using bat exclusion techniques, developed by Bat Conservation International (BCI) and in consultation with the Department of Fish and Game that allow the bats to exit the roosting site but prevent re-entry to the site. This would include, but not be limited to, the installation of one way exclusion devices. The devices shall remain in place for seven days and then the exclusion points and any other potential entrances shall be sealed. This work shall be completed by a BCI recommended exclusion professional. The exclusion of bats shall be timed and carried concurrently with any scheduled bird exclusion activities.
- The loss of each roost (if any) will be replaced in consultation with the Department of Fish and Game and may include construction and installation of BCI-approved bat boxes suitable to the bat species and colony size excluded from the original roosting site. Roost replacement will be implemented before bats are excluded from the original roost sites. Once the replacement roosts are constructed and it is confirmed that bats are not present in the original roost site, the structures may be removed or sealed (MM-BR-1.1).

- 12.12 Conduct preconstruction surveys for burrowing owls: No more than 30 days prior to the commencement of ground disturbing activities in the area of potentially suitable burrowing owl habitat on the West Campus, a preconstruction burrowing owl survey in compliance with California Burrowing Owl Consortium protocols shall be conducted to ensure that no owls have moved onto the West Campus. If owls are detected during the survey, additional measures are required. These measures include the following: 1) occupied burrows should not be disturbed during the burrowing owl breeding season, defined as February 1 through August 31, unless a qualified biologist approved by CDFG verifies through non-invasive methods that either the birds have not begun egg-laying and incubation, or that juveniles from the occupied burrows are foraging independently and are capable of independent survival; 2) owls on the site are passively relocated (MM-BR.1.2).
- 12.13 Landscaping Restrictions and Installation of Bird Perching Deterrents on all New Buildings and Other Elevated Structures on the West Campus: The Applicant shall implement the following measures to reduce impacts to special-status marsh species:
- For all new buildings to be constructed on the West Campus, the Applicant shall install bird deterrents along suitable perching sites that would allow raptors or other predatory birds a vantage point from which to prey on western snowy plover, salt marsh harvest mouse, or other special-status species potentially inhabiting the adjacent salt marshes. Such deterrents may include one or more of the following deterrent devices as appropriate for the individual situation: bird spikes, bird netting, electric shock track, sound deterrents, or other devices approved by CDFG and/or USFWS.
  - Trees used for landscaping on the West Campus shall consist of species that generally do not reach heights of greater than 30 feet or shall be spaced at appropriate distances to reduce potential lines of sight and limit the distance perching birds could see into the adjacent salt marshes to the north. The landscaping trees may include native or non-invasive ornamental species. Species with broad canopies would be preferred, as tall narrow canopies (e.g., palms or conifers) generally provide better hunting perches for raptors (MM-BR-2.1).
- 12.14 Nesting Migratory Bird Protection: The Applicant shall implement the following measures to reduce impacts to nesting migratory birds:
- To facilitate compliance with State and federal law (Fish and Game Code and the Migratory Bird Treaty Act (MBTA)) and prevent impacts to nesting birds, the Applicant or the Property Owner (as applicable) shall avoid the removal of trees, shrubs, or weedy vegetation February 1 through August 31 during the bird nesting period. If no vegetation or tree removal is proposed during the nesting period, no surveys are required. If it is not feasible to avoid the nesting period, a survey for nesting birds shall be conducted by a qualified wildlife biologist no earlier than seven days prior to the removal of trees, shrubs, weedy vegetation, buildings, or other construction activity. (MM-BR-4.1.a)

- Survey results shall be valid for the tree removals for 21 days following the survey. If the trees are not removed within the 21-day period, then a new survey shall be conducted. The area surveyed shall include all construction areas as well as areas within 150 feet outside the boundaries of the areas to be cleared or as otherwise determined by the biologist. In the event that an active nest for a protected species of bird is discovered in the areas to be cleared, or in other habitats within 150 feet of construction boundaries, clearing and construction shall be postponed for at least two weeks or until the biologist has determined that the young have fledged (left the nest), the nest is vacated, and there is no evidence of second nesting attempts. (MM-BR-4.1.b)

12.15 Implement Bird-Safe Design Standards into West Campus Building and Lighting Design: All new buildings and lighting features constructed or installed at the West Campus shall be implemented to at least a level of "Select Bird-Safe Building" standards as defined in the City of San Francisco Planning Department's "Standards for Bird-Safe Buildings," adopted July 14, 2011. These design features shall include minimization of bird hazards as defined in the standards. With respect to lighting, the West Campus shall:

- Be designed to minimize light pollution including light trespass, over-illumination, glare, light clutter, and skyglow while using bird-friendly lighting colors when possible.
- Avoid uplighting, light spillage, event search lights, and use green and blue lights when possible.
- Turn off unneeded interior and exterior lighting from dusk to dawn during migrations: February 15 through May 31 and August 15 through November 30.
- Include window coverings on rooms where interior lighting is used at night that adequately block light transmission and motion sensors or controls to extinguish lights in unoccupied spaces (MM-BR-4.2).

12.16 Prepare and Obtain a Conditional Letter of Map Revision – Fill (CLOMR-F) from Federal Emergency Management Agency (FEMA) Prior to Issuance of a Grading or Building Permit: Prior to or concurrent with the first building permit submittal for the West Campus, the Applicant shall submit a FEMA CLOMR-F application to the Public Works Department for review and approval. In accordance with the National Flood Insurance Program (NFIP) (Code of Federal Regulations (CFR) 44 Part 65), Section 65.6 (Revision of base flood elevation determinations), the Applicant shall prepare supporting data, including relevant hydraulic and hydrologic analyses, delineation of floodplain boundaries and all other information required by FEMA to review and evaluate the request for a CLOMR-F. The analyses shall clearly show revised and new floodplain boundaries, for the Project area and adjacent areas not affected by the revision, taking into account San Francisco Bay coastal floodplain maps being prepared by the U.S. Army Corps of Engineers for the San Francisquito Creek JPA-sponsored project, if such maps have been adopted by FEMA. Upon receiving City approval, the Applicant shall submit the CLOMR-F application to FEMA. Prior to issuance of any grading or building permit on each site, the applicant shall obtain a CLOMR-F from

FEMA. The applicant shall submit an elevation certificate prior to final signoff of the foundation inspection for each structure (MM-HY-2.1).

- 12.17 Floodproofing of West Campus Underground Infrastructure: Prior to, or at a minimum concurrent with, the issuance of the first construction permit at the West Campus and in connection with applicable FEMA requirements, the City shall ensure that the Project incorporates design features to flood-proof below-ground infrastructure, including storm drains, sewers, equipment facilities, to withstand hydrostatic forces and buoyancy from sea level rise changes in groundwater levels (MM-HY-4.1).
- 12.18 Provide Adequate Storm Flow Conveyance Capacity for Sea Level Rise Conditions at the West Campus: Prior to, or at a minimum concurrent with, the issuance of the first construction permit at the West Campus, the City shall ensure that the Project incorporates design features to ensure that the storm drain system conveyance capacity is not constricted by sea level rise at the outlets, including the Caltrans pump station (MM-HY-4.2).
- 12.19 Update Operation, Maintenance, and Monitoring Plan (OMMP) for the West Campus: Prior to commencement of site grading on the West Campus, the Applicant shall retain a qualified professional to update the OMMP to incorporate site development considerations for the West Campus to ensure continued implementation of Article IV, Section 4.2 (Soil Management) of the Land Use Covenant (LUC).

The update to the OMMP<sup>8</sup> shall include, at a minimum, requirements for soil sampling and laboratory analysis, action levels triggering the need for special handling, as well as stormwater runoff controls (Mitigation Measure HM-2.7), on-site soil movement associated with excavation and fill placement, off-site soil transport (if necessary), and contingency measures in the event activities encounter soil that is odorous, stained, visibly discolored, or is questionable. The Applicant shall submit the updated OMMP to the Department of Toxic Substance Control (DTSC) as required under Article IV Section 4.2 of the LUC, and in accordance with the applicable terms of the Voluntary Cleanup Agreement (VCA). The updated OMMP shall ensure that any human health risk evaluation or assessment used to support approval of soil or groundwater disturbance evaluates the proposed duration and extent of the Project activities, considers the potential for groundwater dermal exposure, and is based on the most current applicable risk evaluation methodologies. The updated OMMP shall also identify how deep foundation design and installation will be managed to reduce the potential for downward migration of contaminants in soil or groundwater.

The City shall not authorize any activity on the West Campus that has the potential to disturb soil until approved by DTSC and all necessary permits

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<sup>8</sup> The update to the OMMP may be accomplished pursuant to the Site Management Plan that the applicant intends to create for the Project Site, subject to review and approval of DTSC.

- and/or approvals have been obtained, including but not limited to any permits for wells and/or borings from San Mateo County and BAAQMD (MM-HM-2.1).
- 12.20 Health and Safety Plan for the West Campus. Prior to commencement of site grading on the West Campus, the Applicant shall retain a qualified professional to prepare an updated Health and Safety Plan to implement Article IV, Section 4.2 (Soil Management) of the LUC: The Applicant shall submit the Health and Safety Plan to DTSC as required under Article IV Section 4.2 of the LUC, and in accordance with the applicable terms of the VCA. The City shall not authorize any activity on the West Campus that has the potential to disturb soil until DTSC has approved the updated Health and Safety Plan and all necessary permits have been obtained (MM-HM-2.2).
- 12.21 West Campus Construction Activity Dust Control Plan (DCP) and Asbestos Dust Management Plan (ADMP): Prior to commencement of site grading on the West Campus, the Applicant shall retain a qualified professional to prepare a DCP/ADMP. The DCP shall incorporate the applicable BAAQMD pertaining to fugitive dust control. The ADMP shall be submitted to and approved by the BAAQMD prior to the beginning of construction, and the Applicant must ensure the implementation of all specified dust control measures throughout the construction of the Project. The ADMP shall require compliance with specific control measures to the extent deemed necessary by the BAAQMD to meet its standard (MM-HM-2.3).
- 12.22 West Campus Construction Activity Groundwater Management Plan: Prior to site grading on the West Campus, the Applicant shall retain a qualified professional to prepare a Groundwater Management Plan that describes how any groundwater extracted to accommodate site preparation will be tested and disposed of in accordance with existing regulations. The City shall not authorize any activity on the West Campus that would involve dewatering until DTSC has approved the Groundwater Management Plan and all necessary permits or approvals have been obtained, particularly if groundwater requires additional treatment and/or disposal at a permitted facility (MM-HM-2.4).
- 12.23 Soil Vapor Intrusion Barrier at the West Campus: Prior to the issuance of the first building permit for the first occupied structure at the West Campus, the Applicant shall retain a qualified professional to design a vapor intrusion barrier system consistent with the recommendations set forth in "Phase I Environmental Site Assessment, 312-314 Constitution Drive, Menlo Park, California" dated November 19, 2010 prepared by Cornerstone Earth Group. The City shall not issue a building permit until the vapor intrusion barrier design has been reviewed and approved by DTSC and the City Engineer has reviewed the final design plans to ensure the necessary features have been incorporated into the Project. Such measures could include, but would not be limited to, gas-impermeable membranes.

Appropriate measures shall also be incorporated into Project design to reduce vapor and groundwater migration through trench backfill and utility conduits.

Such measures could include placement of low-permeability backfill plugs (MM-HM-2.5).

- 12.24 Corrosion-Resistant Utility Pipeline Design for the West Campus: Prior to, or at a minimum concurrent with the issuance of utility improvement plan permits, the Applicant shall retain a qualified licensed professional engineer to determine protective measures for utilities. The City shall not issue any permit for utility construction until the City Engineer has reviewed the final design plans to ensure the necessary corrosion-resistant features have been incorporated into the Project (MM-HM-2.6).
- 12.25 Stormwater Quality BMPs: The Applicant shall ensure on-site detention/retention basins are lined to prevent groundwater interaction with stormwater and to prevent downward migration of stormwater into groundwater (MM-HM-2.7).
- 12.26 Construction Stormwater Pollution Prevention Plan for the West Campus: The City shall not issue any permit for grading until a Stormwater Pollution Prevention Plan (SWPPP) has been completed to the satisfaction of the City and necessary construction BMPs have been incorporated into the Project (MM-HM-2.8).
- 12.27 Record Additional Restrictions: The Applicant shall ensure that the updated OMMP (Mitigation Measure HM-2.1) includes provisions for disclosing information in DTSC-approved remediation reports along with any other requirements pertaining to post-construction, long-term operation and maintenance of subsurface utilities or maintenance or repair of foundations. Any such documentation shall be recorded in the Office of the County Recorder and a copy shall be provided to the City (MM-HM-5.1).
- 12.28 Sanitary Sewer System Improvements<sup>9</sup>: The Applicant shall upsize 114 linear feet of the existing 12-inch diameter pipeline that runs north along Hamilton Avenue, beginning at the Hamilton Avenue/Willow Road intersection, to a 15-inch diameter pipe. To ensure that this work is completed, as part of the 1601 Willow Road Development Agreement, the Applicant is agreeing to conduct these improvements and post a bond equal to 200 percent of the estimated cost of the work. In addition, the Applicant shall purchase a third wastewater pump to be placed into reserve in case of pump failure at Hamilton Henderson Pump Station (HHPS). To ensure this work is completed, as part of the 1601 Willow Road Development Agreement, the Applicant is agreeing to purchase the pump and post a bond equal to 120 percent of the cost of the wastewater pump. (MM-UT-3.1)

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<sup>9</sup> Even though this mitigation measure is associated with both the East Campus and West Campus components of the Project, its implementation was triggered by the East Campus approvals. Consequently, to satisfy the requirements of the East Campus MMRP, the Project Sponsor has already posted a bond for the required pipeline upsizing and has purchased the reserve pump.

12.29 Design Lighting at the West Campus to Meet Minimum Safety and Security Standards: Concurrent with the building permit submittal, the Applicant shall incorporate lighting design specifications to meet minimum safety and security standards. The comprehensive site lighting plans shall be subject to review and approval by the Planning Division prior to building permit issuance of the first building on that site. The following measures shall be included in all lighting plans:

- Luminaries shall be designed with cutoff-type fixtures or features that cast low-angle illumination to minimize incidental spillover of light onto adjacent private properties. Fixtures that shine light upward or horizontally shall not spill any light onto adjacent private properties.
- Luminaries shall provide accurate color rendering and natural light qualities. Low-pressure sodium and high-pressure sodium fixtures that are not color-corrected shall not be used, except as part of an approved sign or landscape plan.
- Luminary mountings shall be downcast and pole heights minimized to reduce potential for back scatter into the nighttime sky and incidental spillover light onto adjacent properties and undeveloped open space. Light poles shall be no higher than 20 feet. Luminary mountings shall be treated with non-glare finishes (MM-AE-3.1).

12.30 Treat Reflective Surfaces at the West Campus: The Applicant shall ensure application of low-emissivity coating on exterior glass surfaces of the proposed structures. The low-emissivity coating shall reduce visible light reflection of the visible light that strikes the glass exterior and prevent interior light from being emitted brightly through the glass (MM-AE-3.2).

12.31 Dust Control: Concurrent with each demolition, grading and drainage, and building permit submittal, the Applicant shall prepare a dust control plan. The plan shall be reviewed and approved by the Building Official prior to demolition permit issuance. To reduce possible fugitive particulate matter emissions during project demolition, excavation and construction phases, the project contractor(s) shall comply with the dust control strategies developed by the Bay Area Air Quality Management District (BAAQMD). The Applicant shall include in all construction contracts the following requirements, or measures shown to be equally effective. These requirements shall be implemented during the demolition, grading, and construction phases to the satisfaction of the Building Official.

- All exposed surfaces (e.g., parking areas, staging areas, soil piles, graded areas, and unpaved access roads) shall be watered two times per day.
- All haul trucks transporting soil, sand, or other loose material off-site shall be covered.

- All visible mud or dirt track-out onto adjacent public roads shall be removed using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.
- All vehicle speeds on unpaved roads shall be limited to 15 mph.
- All roadways, driveways, and sidewalks to be paved shall be completed as soon as possible. Building pads shall be laid as soon as possible after grading unless seeding or soil binders are used.
- Idling times shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to 5 minutes (as required by the California airborne toxics control measure Title 13, Section 2485 of California Code of Regulations [CCR]). Clear signage shall be provided for construction workers at all access points.
- All construction equipment shall be maintained and properly tuned in accordance with manufacturer's specifications. All equipment shall be checked by a certified visible emissions evaluator.
- Post a publicly visible sign with the telephone number and person to contact at the lead agency regarding dust complaints. This person shall respond and take corrective action within 48 hours. The Air District's phone number shall also be visible to ensure compliance with applicable regulations (MM-AQ-3.1).

12.32 Reduce Fleet-Wide Average Diesel Particulate Matter (DPM) Emissions. The Project shall develop a plan that is approved by the City prior to issuance of building permits for the Make Ready Work demonstrating that the off-road equipment (more than 50 horsepower) to be used for the West Campus construction (i.e., owned, leased, and subcontractor vehicles) would achieve a Project wide fleet-average 35 percent Particulate Matter reduction compared to the most recent California Air Resources Board (CARB) fleet average. Acceptable options for reducing emissions include the use of late model engines, low-emission diesel products, alternative fuels, engine retrofit technology, after-treatment products, add-on devices such as particulate filters, and/or other options as such become available (MM-AQ-5.1).

12.33 Install Sound Enclosures Around Emergency Generators on the West Campus: The Applicant shall reduce the sound level from the operating generators to a maximum sound level of 88 dBA at 23 feet (7 meters) from the enclosure. Measures that could accomplish this standard include, but are not limited to, installing sound enclosures around all emergency generators, or purchasing equipment that meets this standard (MM-NO-1.1).

12.34 Limit Generator Testing to Daytime Hours on the West Campus: The Applicant shall limit generator testing to between the hours of 8:00 a.m. and 6:00 p.m (MM-NO-1.2).

12.35 Notify Nearby Businesses of Construction Activities on the West Campus that Could Affect Vibration-Sensitive Equipment: The Applicant shall provide notification to property owners and occupants of vibration-sensitive buildings within 225 feet of general construction activities and 900 feet of pile-driving

activities, prior to the start of construction at the West Campus, informing them of the estimated start date and duration of vibration-generating construction activities, such as would occur during site preparation, grading, and pile driving. This notification shall include information warning about potential for impacts related to vibration-sensitive equipment. The Applicant shall provide a phone number for the property owners and occupants to call if they have vibration-sensitive equipment on their sites. A copy of the notification and any responses shall be provided to the Planning Division prior to building permit issuance for any building permits that have the potential to result in vibration, to the satisfaction of the Building Official (MM-NO-2.1).

12.36 Construction Best Management Practices to Reduce Construction Vibration: If vibration-sensitive equipment is identified within 225 feet of general construction activities, including internal road construction or 900 feet of pile-driving activities on the West Campus, the Applicant shall implement the following measures during construction:

- To the extent feasible, construction activities that could generate high vibration levels at identified vibration-sensitive locations shall be scheduled during times that would have the least impact on nearby land uses. This could include restricting construction activities in the areas of potential impact to the early and late hours of the work day, such as from 8:00 am to 10:00 a.m. or 4:00 p.m. to 6:00 p.m. Monday to Friday.
- Stationary sources, such as construction staging areas and temporary generators, shall be located as far from nearby vibration-sensitive receptors as possible.
- Trucks shall be prohibited from idling along streets serving the construction site where vibration-sensitive equipment is located (MM-NO-2.2).

12.37 Construction Noise Plan: The Applicant shall submit a Construction Noise Plan for review and approval by the Planning and Building Divisions prior to the issuance of the demolition permit. The Applicant shall implement the following measures during demolition and construction of the Project:

- To the extent feasible, the noisiest construction activities shall be scheduled during times that would have the least impact on nearby residential land uses. This would include restricting typical demolition and exterior construction activities to the hours of 8:00 a.m. to 6:00 p.m. Monday to Friday.
- Equipment and trucks used for Project construction shall use the best available noise control techniques (e.g., improved mufflers, equipment redesign, use of intake silencers, ducts, engine enclosures and acoustically attenuating shields or shrouds) wherever feasible.
- Impact tools (e.g., jack hammers, pavement breakers, and rock drills) used for Project construction shall be hydraulically or electrically powered wherever possible to avoid noise associated with compressed air exhaust

from pneumatically powered tools. However, where use of pneumatic tools is unavoidable, an exhaust muffler on the compressed air exhaust shall be used; this muffler can lower noise levels from the exhaust by up to about 10 dBA. External jackets on the tools themselves shall be used where feasible, and this could achieve a reduction of 5 dBA. Quieter procedures shall be used, such as drills rather than impact equipment, whenever feasible.

- Prior to any pile-driving activities, notification shall be sent to all surrounding property owners and occupants within 300 feet of the Project site informing them of the estimated start date and duration.
- Construction contractors, to the maximum extent feasible, shall be required to use “quiet” gasoline-powered compressors or other electric-powered compressors, and use electric rather than gasoline or diesel powered forklifts for small lifting.
- Stationary noise sources, such as temporary generators, shall be located as far from nearby receptors as possible, and they shall be muffled and enclosed within temporary sheds, incorporate insulation barriers, or other measures to the extent feasible.
- Install temporary plywood noise barriers eight feet in height around the construction site to minimize construction noise to 90 dBA as measured at the applicable property lines of the adjacent uses, unless an acoustical engineer submits documentation that confirms that the barriers are not necessary to achieve the attenuation levels.
- Trucks shall be prohibited from idling along streets serving the construction site.
- Implement “quiet” pile driving technology (e.g., vibratory pile driving or pre-drilled pile holes), where feasible, in consideration of geotechnical and structural requirements and conditions.
- Monitor the effectiveness of noise attenuation measures by taking noise measurements during pile driving activities (MM-NO-4.1).

12.38 Perform Construction Monitoring, Evaluate Uncovered Archaeological Features, and Mitigate Potential Disturbance for Identified Significant Resources at the West Campus: Prior to demolition, excavation, grading, or other construction-related activities on the West Campus, the applicant shall hire a qualified professional archaeologist (i.e., one who meets the Secretary of the Interior’s professional qualifications for archaeology or one under the supervision of such a professional) to monitor, to the extent determined necessary by the archaeologist, Project-related earth-disturbing activities (e.g. grading, excavation, trenching). In the event that any prehistoric or historic-period subsurface archaeological features or deposits, including locally darkened soil (“midden”), that could conceal cultural deposits, animal bone, obsidian, and/or mortar are discovered during demolition/ construction-related earth-moving activities, all ground-disturbing activity within 100 feet of the discovery shall be halted immediately, and the Planning and Building Divisions shall be notified within 24 hours. City staff shall consult with the Project archeologist to assess the significance of the find. Impacts on any significant resources shall be mitigated to a less-than-significant level through

data recovery or other methods determined adequate by the City and that are consistent with the Secretary of the Interior's Standards for Archaeological Documentation. If Native American archaeological, ethnographic, or spiritual resources are discovered, all identification and treatment of the resources shall be conducted by a qualified archaeologist and Native American representatives who are approved by the local Native American community as scholars of the cultural traditions. In the event that no such Native American is available, persons who represent tribal governments and/or organizations in the locale in which resources could be affected shall be consulted. When historic archaeological sites or historic architectural features are involved, all identification and treatment is to be carried out by historical archaeologists or architectural historians who meet the Secretary of the Interior's professional qualifications for archaeology and/or architectural history (MM-CR-2.1).

- 12.39 Conduct Protocol and Procedures for Encountering Paleontological Resources at the West Campus: Prior to the start of any subsurface excavations that would extend beyond previously disturbed soils, all construction forepersons and field supervisors shall receive training by a qualified professional paleontologist, as defined by the Society of Vertebrate Paleontology (SVP), who is experienced in teaching non-specialists, to ensure they can recognize fossil materials and will follow proper notification procedures in the event any are uncovered during construction. Procedures to be conveyed to workers include halting construction within 50 feet of any potential fossil find and notifying a qualified paleontologist, who will evaluate its significance.

If a fossil is determined to be significant and avoidance is not feasible, the paleontologist will develop and implement an excavation and salvage plan in accordance with SVP standards. Construction work in these areas shall be halted or diverted to allow recovery of fossil remains in a timely manner. Fossil remains collected during the monitoring and salvage portion of the mitigation program shall be cleaned, repaired, sorted, and cataloged. Prepared fossils, along with copies of all pertinent field notes, photos, and maps, shall then be deposited in a scientific institution with paleontological collections. A final Paleontological Mitigation Plan Report shall be prepared that outlines the results of the mitigation program. The City shall be responsible for ensuring that monitor's recommendations regarding treatment and reporting are implemented (MM-CR-3.1).

- 12.40 Comply with State Regulations Regarding the Discovery of Human Remains at the West Campus: If human remains are discovered during any construction activities, all ground-disturbing activity within 50 feet of the remains shall be halted immediately, and the County Coroner shall be notified immediately, according to Section 5097.98 of the State Public Resources Code and Section 7050.5 of California's Health and Safety Code. Additionally, the Building Division shall be notified. If the remains are determined by the County Coroner to be Native American, the Native American Heritage Commission (NAHC) shall be notified within 24 hours, and the guidelines of

the NAHC shall be adhered to in the treatment and disposition of the remains. The Applicant shall also retain a professional archaeologist with Native American burial experience to conduct a field investigation of the specific site and consult with the Most Likely Descendant, if any, identified by the NAHC. As necessary, the archaeologist may provide professional assistance to the Most Likely Descendant, including the excavation and removal of the human remains. The Planning Division shall be responsible for approval of recommended mitigation as it deems appropriate, taking account of the provisions of state law, as set forth in CEQA Guidelines Section 15064.5(e) and Public Resources Code Section 5097.98. The applicant shall implement approved mitigation, to be verified by the Planning Division, before the resumption of ground-disturbing activities within 50 feet of where the remains were discovered (MM-CR-4.1).

### 13 GENERAL CONDITIONS:

- 13.1 Indemnity By Applicant: Applicant shall indemnify, defend and hold harmless the City, and its elective and appointive boards, commissions, officers, agents, contractors, and employees (collectively, City Indemnified Parties) from any and all claims, causes of action, damages, costs or expenses (including reasonable attorneys' fees) arising out of or in connection with, or caused on account of, the development and occupancy of the Project, any Approval with respect thereto, or claims for injury or death to persons, or damage to property, as a result of the operations of Applicant or its employees, agents, contractors, representatives or tenants with respect to the Project (collectively, Applicant Claims); provided, however, that the Applicant shall have no liability under this Section for Applicant Claims that (a) arise from the gross negligence or willful misconduct of any City Indemnified Party, or (b) arise from, or are alleged to arise from, the repair or maintenance by the City of any improvements that have been offered for dedication by the Applicant and accepted by the City.
- 13.2 Covenants Run with the Land. All of the conditions contained in this Conditional Development Permit shall run with the land comprising the Property and shall be binding upon, and shall inure to the benefit of the Applicant and its heirs, successors, assigns, devisees, administrators, representatives and lessees, except as otherwise expressly provided in this Conditional Development Permit.
- 13.3 Severability: If any condition of this Conditional Development Permit, or any part hereof, is held by a court of competent jurisdiction in a final judicial action to be void, voidable or enforceable, such condition, or part hereof, shall be deemed severable from the remaining conditions of this Conditional Development Permit and shall in no way affect the validity of the remaining conditions hereof.
- 13.4 Exhibits: The exhibits referred to herein are deemed incorporated into this Conditional Development Permit in their entirety.

## WEST CAMPUS TRIP CAP MONITORING AND ENFORCEMENT POLICY<sup>1</sup>

The Facebook project includes both an East Campus and a West Campus. Entitlements are currently being sought for the West Campus. Therefore, this West Campus Trip Cap Monitoring and Enforcement Policy is specific to the West Campus.

### DEFINITIONS

**Trip** – A single vehicle (car, truck, van, shuttle, etc.) arriving at a location in Menlo Park, whose occupant(s)' final destination is the West Campus, or a single vehicle departing from a location in Menlo Park, whose occupant(s)' origin is the West Campus. Therefore, for example, a roundtrip by a single vehicle arriving at a location in Menlo Park and departing from a location in Menlo Park whose occupant(s)' destination and origin is the West Campus equals two trips. A vehicle transiting from the East Campus to the West Campus or from the West Campus to the East Campus (except for a shuttle using the undercrossing) is a trip. Trips do not include bicycles or other self-powered modes of travel.

**Peak Period** – Roadway morning and evening commuter peak travel times:

- AM Peak Period - 7:00 AM to 9:00 AM
- PM Peak Period - 4:00 PM to 6:00 PM

**Peak Period Trip Cap** – The maximum number of trips in the AM Peak Period or the PM Peak Period.

**Daily Trip Cap** – The maximum number of trips per day.

**Trip Cap** – Generally refers to the AM Peak Period Trip Cap, the PM Peak Period Trip Cap and the Daily Trip Cap.

### TRIP CAP

The Trip Cap is included in the Conditional Development Permit (CDP) for the project. Therefore, one way to think about the Trip Cap is in terms of building square footage. A CDP typically defines the maximum building square footage. Increases in building square footage that exceed the maximum permitted building square footage are not allowed without an application for and approval of a change to the CDP. Any increase in building square footage without the appropriate approval violates the CDP. The same is true for the Trip Cap. Facebook must comply with the Trip Cap and may not exceed the Trip Cap without an application for and approval of a change to the CDP. If the Trip Cap is exceeded without the appropriate approval, Facebook is in violation of the CDP.

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<sup>1</sup> This Trip Cap Monitoring and Enforcement Policy was prepared by the City of Menlo Park in consultation with Facebook.

The Trip Cap proposed as part of Facebook's West Campus project definition is as follows:

- AM Peak Period Trip Cap: 1,100 trips
- PM Peak Period Trip Cap: 1,100 trips
- Daily Trip Cap: 6,350 trips

## MONITORING

To monitor compliance with the Trip Cap, traffic counts shall be taken at the West Campus. The monitoring shall be done through automated means (e.g., imbedded loop detectors in the pavement in each travel lane or video detection) approved by the City.<sup>2</sup> All vehicular entrances to the West Campus shall be included in the monitoring. Facebook shall be solely responsible for paying all costs related to monitoring, including, but not limited to, development, installation, maintenance and repair of all monitoring equipment.

The City reserves the option to require Facebook to monitor neighborhood parking intrusion in the Belle Haven neighborhood, parking on other public streets in the City, or parking at any off-site parking lot(s) in Menlo Park (other than the East Campus) if it is observed or suspected that vehicles whose occupant(s)' final destination is the West Campus are parking at any of these locations. If the City requires monitoring of these off-site locations and, after investigation, it is confirmed that vehicle occupant(s) are parking vehicles at these off-site locations (other than the East Campus) to access the West Campus, the trips to these locations will be counted toward the Trip Cap.

Monitoring program details are as follows:

- **Monitoring Days/Times** – The AM Peak Period, the PM Peak Period and total daily trips will be monitored on all non-holiday weekdays. Holidays are those days identified as State holidays in California Government Code Section 6700. This is the condition evaluated in the certified Environmental Impact Report for the Facebook project.
- **Exclusions** – Two types of exclusions from the Trip Cap shall be permissible as discussed below:
  - **Special Events:** To account for special events and their effect on trips, Facebook may have up to 12 special event exclusions per year or 12 days on which one or more of the AM Peak Period Trip Cap, PM Peak Period Trip Cap or Daily Trip Cap are exceeded, but are not considered violations of the Trip Cap. These special events do not represent typical operating conditions at the West Campus. A special event will be defined as an activity that is not typical of the normal operations of the West Campus and will likely involve more than West Campus employees. If the Trip Cap has been violated as a result of a special event, Facebook shall provide documentation to the City that a special

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<sup>2</sup> City approvals related to monitoring equipment will be through the Director of Public Works or his/her designee.

event took place. Upon City review and approval, in the City's sole and reasonable discretion, an exclusion for a special event shall apply.

- **Non-event exclusions:** For non-special events, Facebook will be allowed three days on which one or more of the AM Peak Period Trip Cap, PM Peak Period Trip Cap or Daily Trip Cap are exceeded within a 180 day period without incurring penalties. These non-event exclusion days are intended to allow Facebook time to correct the Trip Cap violation. If Facebook exceeds the Trip Cap on more than three days within a 180 day period, then the non-event exclusion is eliminated and penalties are imposed for violations of the Trip Cap until compliance is reached for a consecutive 180 day period. Additional violations, if any, within the 180 day compliance period, will re-set the 180 day compliance period. If after a consecutive 180 day period, Facebook remains in full compliance with the Trip Cap, then the three day exclusion is available again.
- **Count Equipment** – Automated count equipment will be designed and constructed at Facebook's sole expense to collect data on the number of trips at the three West Campus driveways and send the data back to the City offices. The type of count equipment (initial and any future changes) shall be approved by the City, in consultation with Facebook and considering the latest technologies for detection, counting and reporting. The City shall not unreasonably withhold approval of initial count equipment or any future equipment which achieves the result envisioned in this document. The City shall also approve the count equipment that will be used to monitor off-site locations, if the City exercises the option to require such monitoring. The City shall not unreasonably withhold approval of such additional count equipment.
- **Initial Calibration Process** – Once the count equipment has been established, a calibration process will be undertaken to determine the reliability and accuracy of the count equipment. Depending on the type of equipment, the count accuracy can be affected by a number of environmental factors which will need to be confirmed. This calibration process would be conducted prior to final building permit sign-off for occupancy of the West Campus.
- **Determination of Reliability (Sensitivity) Factor** – Based on the calibration analysis, the City and Facebook will agree to a reliability factor for the count stations which will be used to evaluate the count results. The reliability factor would represent the margin of error inherent in the vehicle counting equipment, and would address the exclusion of trips whose final destination is not the West Campus (i.e. wrong turns, uninvited guests, etc).
- **Periodic Count Equipment Testing/Recalibration** – The vehicle detection system will be periodically tested to ensure the accuracy of the monitoring counts. During the first two years of operation, testing will be conducted at six month intervals. If these tests show that the system is operating reliably, then testing can be reduced to once a year. If the equipment is thought to be out of calibration, Facebook will work with the City to test and calibrate the equipment if necessary. The City will have final approval, which approval shall be granted or withheld in a reasonable manner, on all testing and calibration.

- **Installation and Repairs** – The count equipment shall be installed and in good working order prior to final building permit sign-off for occupancy of the West Campus. The City shall have final approval, which approval shall be granted or withheld in a reasonable manner, of the contractor completing the installation and the maintenance contractor completing any repairs. Non-emergency repairs and maintenance of the monitoring equipment shall occur only on evenings and weekends, unless otherwise approved by the City. The Transportation Division shall be notified at least 48 hours in advance of any non-emergency repairs or maintenance work. The City Transportation Division shall be notified within 24 hours of any emergency repairs. City inspection and approval of any repairs or maintenance is required. Failure to keep monitoring equipment operational in good working order will be considered a violation of the Trip Cap after two working days, unless the repairs/maintenance require additional time as approved by the City and Facebook is diligently pursuing such repairs/maintenance. The Trip Cap penalty will not be enforced during the repair/maintenance of the monitoring equipment. If the City, in its sole and reasonable discretion, determines that Facebook is not diligently pursuing the repairs/maintenance, the City may elect to perform the repairs/maintenance and charge the cost of the repair/maintenance, staff time, and 15 percent penalty fee to Facebook.
- **Access to Count Equipment/Reporting** – The City shall have the ability to access the count equipment at any time after reasonable prior notice to Facebook. Facebook will not have access to the count equipment, unless approved by the City or in case of the need for emergency repairs. The City shall not unreasonably withhold approval of access for repair/maintenance contractors. Facebook shall have “read-only” access to the reporting data, but shall have the ability to record such data and run history reports in order to track trends. Reporting data shall be provided to Facebook and the City in real time. Real time data will provide Facebook the opportunity to take immediate action, if necessary, to avoid violating the Trip Cap.

## **ENFORCEMENT**

Facebook shall be responsible not only for monitoring, but also for achieving compliance with the Trip Cap, which includes, by definition, all three trip cap measurements on a daily basis (the AM Peak Period Trip Cap, the PM Peak Period Trip Cap and the Daily Trip Cap). The City shall enforce compliance with the Trip Cap.

If, on a given day, the results of the monitoring indicate that the number of trips is at or below the Trip Cap, considering the reliability factor, then Facebook is considered in compliance. If, however, the monitoring, considering the reliability factor, reveals that the AM Peak Period Trip Cap or the PM Peak Period Trip Cap or the Daily Trip Cap has been exceeded, Facebook is in violation of its CDP and the City may take steps to enforce the Trip Cap.

The specifics for enforcement are as follows:

- **Threshold** – If there are AM Peak Period Trip Cap, PM Peak Period Trip Cap or Daily Trip Cap violations that do not qualify for an exclusion as discussed above, then penalties will be imposed.
- **Penalties** – Monetary penalties will be imposed for violations of the Trip Cap in excess of the threshold. Penalties are calculated on a per trip basis and progressively increasing penalties will be imposed for subsequent violation(s) of the Trip Cap based on a tiered system described in the table below. Penalties will be applied for each violation including the AM Peak Period, PM Peak Period and the Daily Period. If the AM Peak Period Trip Cap, and/or PM Peak Period Trip Cap and Daily Trip Cap are exceeded on the same day, the penalty paid shall be the greater of the sum of the penalties for the AM Peak Period and PM Peak Period or the Daily penalty. The penalty payment schedule is shown in the table below (in 2012 dollars). The base penalties shall be adjusted annually as set forth below (the intent is for the same penalty rate to apply to both the East and West Campuses):

<b>Penalty Tier<sub>1</sub></b>	<b>Applicability</b>	<b>Penalty Amount</b>
Tier 1	Tier 1 is the default tier and applies for the month unless one of the other tiers is applicable.	\$50 per trip per day
Tier 2	Tier 2 applies for the month if either (a) penalties were imposed in both of the 2 months immediately preceding that month or (b) penalties were imposed in any 4 of the 6 months immediately preceding that month. Tier 2 will not apply if Tier 3 applies.	\$100 per trip per day
Tier 3	Tier 3 applies for the month if penalties were imposed in each of the 6 months immediately preceding that month.	\$200 per trip per day

<sup>1</sup> Only one tier is applicable for any given violation

An example table showing the penalty amounts:

Penalty Cost Per Day			
Vehicles over Trip cap	Tier 1	Tier 2	Tier 3
100	\$5,000	\$10,000	\$20,000
500	\$25,000	\$50,000	\$100,000
1000	\$50,000	\$100,000	\$200,000
2000	\$100,000	\$200,000	\$400,000

Example calculations

**Daily penalty greater:**

AM Peak Period exceeds the AM Peak Period Trip Cap by 100 trips

PM Peak Period exceeds the PM Peak Period Trip Cap by 50 trips

Daily trips exceed the Daily Trip Cap by 400 trips

The payment would be:

AM Peak Period penalty = 100 trips x \$50/trip = \$5,000

PM Peak Period penalty = 50 trips x \$50/trip = \$2,500

Total Peak Period penalty = \$7,500

Daily penalty = 400 trips x \$50/trip = \$20,000

**Penalty Paid = \$20,000**

**AM Peak Period and PM Peak Period penalty greater:**

AM Peak Period exceeds the AM Peak Period Trip Cap by 100 trips

PM Peak Period exceeds the PM Peak Period Trip Cap by 50 trips

Daily trips exceed the Daily Trip Cap by 100 trips

The payment would be:

AM Peak Period penalty = 100 trips x \$50/trip = \$5,000

PM Peak Period penalty = 50 trips x \$50/trip = \$2,500

Total Peak Period penalty = \$7,500

Daily penalty = 100 trips x \$50/trip = \$5,000

**Penalty Paid = \$7,500**

The base penalties are stated in 2012 dollars and shall be adjusted annually per the Consumer Price Index for All Urban Consumers All Items in the San Francisco-Oakland-San Jose Metropolitan Area [1982-84=100] (the intent is for the same penalty rate to apply to both the East and West Campuses). Penalties are due and payable to the City within 30 days of the issuance of an invoice, which the City shall issue on a monthly basis. The City shall use the penalties collected for programs or projects designed to reduce trips or traffic congestion within Menlo Park and the City shall share 25 percent of the penalties collected with the City of East Palo Alto for use on transportation systems and solutions that help reduce traffic in the City of East Palo Alto around the East and West Campuses. In addition to monetary penalties, failure to comply with the Trip Cap is considered a violation of the CDP and could result in revocation of the CDP.

Violations of the Trip Cap for the East Campus are independent of violations of the West Campus Trip Cap. This means, for instance, that if there are violations of the Trip Cap at the East Campus for the six months immediately preceding a particular month, but there are no violations of the Trip Cap at the West Campus during that same period, Tier 3 would be applicable to the East Campus and Tier 1 would be applicable to the West Campus.

- **Interim Measure** – If Facebook determines that it needs to secure parking in another location as an interim measure to maintain compliance with the Trip Cap, Facebook may, through the City's entitlement process, obtain approval for the use of another private property in Menlo Park (not the East or West Campus) that includes both a building and associated parking. Trips to such an off-site location will not count toward the Trip Cap only if there will be no more trips to that off-site location than is allowed under the then current use of that property.
- **Compliance** – If after non-compliance, Facebook comes back into compliance with the Trip Cap and maintains compliance for 180 consecutive days, the scale of penalties will revert to the base level and the relevant threshold would once again apply before there is non-conformance and the onset of penalties.