EMISSIONS OFFSET AGREEMENT
(FACEBOOK CAMPUS EXPANSION PROJECT)

THIS EMISSIONS OFFSET AGREEMENT ("Agreement") is made and entered into on this 30th day of May, 2018, by and between the CITY OF MENLO PARK, a municipal corporation ("City"), and HIBISCUS PROPERTIES, LLC, a Delaware limited liability company ("Facebook").

RECITALS

A. Prior to the approval of the Facebook project that included two new office buildings (commonly known as Building 21 and Building 22) and a hotel, located at 301-309 Constitution Drive ("Project"), the City examined the environmental effects of the Project in an Environmental Impact Report ("EIR") prepared pursuant to the California Environmental Quality Act ("CEQA"). On November 1, 2016, the City Council reviewed and certified the EIR, and approved the Project.

B. In February 2017, Facebook applied for a conditional development permit amendment to modify the approved Project to shift the parking program from surface parking beneath Building 22 into a stand-alone parking structure, to reduce the footprint of Building 22, to create additional landscape reserve and to install new recharging facilities for Facebook's fleet of shuttle buses and trams. These modifications altered the phasing for construction and operation of the Project and created an interim phase that would allow the construction and operation of Building 22 to occur while the existing building at 305 Constitution Drive ("Building 305") remained on-site and operational. Together these modifications comprise the "Campus Expansion Project."

C. In compliance with CEQA, the City prepared an addendum to the certified EIR finding that the Campus Expansion Project did not involve any new significant environmental impacts or any substantial increase in the severity of any previously identified significant impacts. On November 7, 2017, the City approved the addendum and the modifications to the conditional development permit for the Campus Expansion Project.

D. The certified EIR and the addendum both disclose a potentially significant air quality impact associated with construction and operational emissions. Specifically, the analysis concluded that the Campus Expansion Project's average daily construction and operational emissions of NOx would exceed the Bay Area Air Quality Management District ("BAAQMD") thresholds in multiple years (approximately 2019-2026).

E. To mitigate this air quality impact, the Campus Expansion Project is subject to mitigation measure AQ-2.2 which requires Facebook, prior to occupancy of the first building, to enter into an agreement with the City to develop an alternative or complementary offsite mitigation program to offset construction and operational NOx emissions to the level established by the BAAQMD thresholds for the years in which the Campus Expansion Project's emissions exceed the BAAQMD threshold.
NOW THEREFORE, in consideration of the mutual covenants and promises of the parties herein contained, the parties agree as follows:

1. **COMPLIANCE WITH MITIGATION MEASURE; CALCULATION OF PAYMENT AMOUNT.** Mitigation Measure AQ-2.2 requires that Facebook make a one-time payment to the City to establish a program to fund emissions reduction projects through grants and similar mechanisms within the City of Menlo Park. The amount of the payment shall be calculated based on the BAAQMD Carl Moyer Program cost-effectiveness limit ("Carl Moyer fee") multiplied by emissions that exceed BAAQMD’s average daily threshold for each year that emissions exceed the threshold plus a five percent administrative fee to fund procurement of offsite emissions reductions for the Campus Expansion Project’s construction and operational emissions (in total, the "Payment"). As identified in the EIR and addendum, the applicable average daily threshold for NOx emissions is 54 lbs/day, which is equivalent to approximately 10 tons/year. The emissions that exceed the BAAQMD average daily threshold are identified in Table 3.5-3 of the addendum to the certified EIR. The addendum identifies that the Carl Moyer fee is Thirty-Three Thousand Dollars ($33,000) per weighted ton of pollutants and that the Payment, not including the administrative fee, is Three Hundred Thirty-Three Thousand Four Hundred Fifty-One Dollars ($333,451).

2. **MODIFICATION OF PAYMENT AMOUNT BASED ON REFINED EMISSIONS ANALYSIS.** Notwithstanding the foregoing, per Stone v. Bd. of Supervisors of Tuolumne County (1988) 205 Cal.App.3d 927, an agency’s interpretation of what constitutes compliance with its conditions of approval will be upheld if the interpretation is reasonable and will not result in new or adverse environmental impacts. The City and Facebook agree that compliance with Mitigation Measure AQ-2.2 may include a reduction or elimination of the Payment if there is substantial evidence that the Campus Expansion Project will not result in actual NOx emissions in excess of the BAAQMD average daily threshold. To that end, prior to January 1, 2019, Facebook may submit a report by a professional air quality consultant for consideration by the City to establish whether actual construction and operational NOx emissions associated with construction and operation of the Campus Expansion Project exceed BAAQMD’s thresholds. The City shall hire an environmental consultant, at Facebook’s expense, to peer review the report and determine its accuracy.

If the report provides substantial evidence that the first year emissions of NOx will exceed the BAAQMD threshold is later than 2020 (e.g. 2021 or 2022), the bond, as described in Section 4, below, will remain in place, and the Payment (as modified based on the updated emissions calculations) will be due and payable July 1, six months before the first year in which the NOx emissions are projected to exceed the BAAQMD threshold. If the report provides substantial evidence that the construction and operational emissions of the Campus Expansion Project do not exceed BAAQMD thresholds in 2020-2026, there would be no need for any Payment and the bond would be released. Any modification to the Payment shall be documented in a written letter agreement executed by Facebook and by the City Manager on behalf of the City and approved as to form by the City Attorney. If Facebook does not provide an updated emissions inventory prior to
January 1, 2019, that is determined to be accurate by the City, then the Payment amount shall be as set forth in Section 1, above.

3. PAYMENT OF MITIGATION FEES. Unless it is determined that actual emissions would not result in an exceedance of BAAQMD’s thresholds pursuant to Section 2, above, Facebook shall make the Payment to the City six months prior to the first year in which emissions will exceed the BAAQMD threshold (currently anticipated to be July 1, 2019). Payment is required at such time to give the City, with Facebook’s assistance, time to develop an offset program that will be in effect within a reasonable time in order to offset excess emissions in the first year in which emissions are projected to exceed BAAQMD’s thresholds.

4. BOND. Within six months of the effective date, Facebook shall provide a bond to the City for the full amount of the Payment as security for performance of the mitigation obligations set forth in this Agreement. In the event that no adjustments to the amount of the Payment occur pursuant to Section 2, above, and Facebook makes the Payment in full, then the bond will be released. In the event that adjustments to the Payment amount occur pursuant to Section 2, above, and the Campus Expansion Project is found to produce fewer emissions than anticipated, then the bond shall be partially released to reflect the adjusted Payment amount. Finally, if the Campus Expansion Project is found not to create emissions that exceed BAAQMD’s thresholds pursuant to Section 2, above, then the bond shall be released in its entirety.

5. EMISSIONS REDUCTIONS PROPOSALS. If the Payment is required, the City will use the Payment to establish a program to fund offsite emissions reductions projects. At the time the Payment is made, Facebook shall engage a qualified air quality expert to work with the City to identify a list of potential emissions reductions projects that would be eligible for funding ("Emission Reduction Proposals"). Emission Reduction Proposals shall be limited to those projects that will reduce emissions each year in which the Campus Expansions Project’s NOx emissions exceed the BAAQMD threshold. Facebook’s qualified air quality expert, working with the City, shall estimate the quantities of emissions that are anticipated to be achieved by the Emissions Reduction Proposals. Emissions Reduction Proposals for funding shall be selected by the Community Development Director or his/her designee and may include, but are not limited to: (a) alternative-fuel, low-emissions school buses, transit buses, and other vehicles; (b) diesel engine retrofits and repowers; (c) bike-sharing programs; and (d) electric vehicle charging stations and plug-ins. All offsite reductions must be quantifiable, verifiable, and enforceable.

6. CITY OBLIGATIONS. Upon receipt of the Payment, the City shall use diligent efforts to enter into the necessary agreements to implement the Emissions Reduction Proposals or other proposals identified by the City to offset the amount of maximum anticipated average daily emissions from any given year from the Campus Expansion Project that exceed BAAQMD’s thresholds within 150 days. City shall notify Facebook in writing of any agreements entered into to reduce emissions. In addition, the City shall exercise oversight over the owners or operators of any equipment subject to funding agreements, ensure that such owners or operators perform all obligations to be
performed under such funding agreements, and document and keep adequate records on any emissions reductions brought about as a result of this Agreement.

If a sufficient number of emissions reduction projects are not identified within the City of Menlo Park to reduce the Campus Expansion Project's emissions below the BAAQMD threshold, Facebook shall consult with a qualified air quality expert to ensure conformity is met through some other means of achieving the performance standard of net zero operational emissions in excess of BAAQMD's average daily thresholds, including, but not limited to, the City providing any remaining portion of the Payment directly to BAAQMD's Strategic Incentives Division, Bay Area Clean Air Foundation or similar program, to fund one or more emissions reduction projects within the San Francisco Bay Area Air Basin. If BAAQMD requires any additional administrative fees as a condition of accepting the Payment or requires any additional payment to achieve adequate emissions reductions, Facebook will provide such additional funding.

Prior to any such payment to BAAQMD, Facebook and the City shall enter into a written agreement signed by both parties acknowledging that the appropriate action is to submit the remaining portion of the Payment directly to BAAQMD. Facebook shall deliver proof of payment to BAAQMD together with a memorandum of understanding or similar instrument that includes details regarding the funds to be paid, the administrative fee, and the timing of the emissions reductions project(s) to be funded by BAAQMD. Under this scenario, acceptance of the Payment by BAAQMD shall serve as acknowledgement and a commitment to implement emissions reductions project(s) sufficient to reduce exceedances from the Campus Expansion Project.

7. ANNUAL REPORTING. Within one year of occupancy of the first building within the Campus Expansion Project (anticipated to be Building 21) and annually thereafter until such time as the Campus Expansion Project is fully built-out and occupied and operational emissions are determined not to exceed BAAQMD's thresholds, Facebook shall provide the City a report detailing compliance with Mitigation Measure AQ-2.2. The report shall include (i) a discussion of the construction and operational NOx emissions from the Campus Expansion Project for the prior year, and (ii) what, if any, offset projects have been undertaken and an analysis of their efficacy or whether a payment to BAAQMD was made to discharge Facebook's obligations under Mitigation Measure AQ-2.2. Reporting for any emissions reduction projects outside the City of Menlo Park (e.g., pursuant to a MOU with BAAQMD) shall be included in the annual reporting.

8. PENALTY. If the annual report indicates that emissions reductions do not adequately reduce Campus Expansion Project emissions to a level below the BAAQMD threshold for any year or if construction or occupancy of any of the buildings were accelerated such that actual emissions are determined to be higher than originally projected, then Facebook shall be required to obtain an additional year of offsets based on the amount of emissions by which the Campus Expansion Project's emissions exceed the BAAQMD threshold for the following year multiplied by 200 percent (e.g., if, after implementation of any required emissions reductions programs, 2019 emissions are determined to exceed the threshold by an additional 5 tons, then 10 tons of emissions offsets must be provided by 2020).
9. TERM. This Agreement, and the obligations set forth herein, shall become effective and shall commence on the date first set forth above. This Agreement shall terminate at such time as the Project is fully built out and operational and there are no exceedances of the BAAQMD NOx threshold or December 31, 2026, whichever is earlier.

10. NOTICES. Any notice to either party shall be in writing and given by delivering the notice in person or by sending the notice by registered or certified mail or express mail, return receipt requested with postage prepaid, to the party’s mailing address. The respective mailing addresses of the parties are, until changed, the following:

   The City: Community Development Director
              City of Menlo Park
              701 Laurel Street
              Menlo Park, CA 94025

   With a Copy to: City Attorney
                 City of Menlo Park
                 1100 Alma Street, Suite 210
                 Menlo Park, CA 94025

   Facebook Hibiscus Properties, LLC
         1601 Willow Road
         Menlo Park, CA 94025
         Attention: Director of Facilities

   With a Copy to: Facebook, Inc.
                  1 Hacker Way
                  Menlo Park, California 94025
                  Attention: Real Estate Counsel

Either party may change its mailing address at any time by giving 10 days notice of such change in the manner proved in this paragraph. All notices shall be deemed given, received, made or communicated on the date personal delivery is made or, if mailed, on the delivery date or attempted delivery date shown on the return receipt.

11. SEVERABILITY. In the event any one or more of the provisions of this Agreement shall be held by a court of competent jurisdiction to be invalid, illegal or unenforceable, the remaining provisions of the Agreement shall remain in effect and the Agreement shall be read as though the offending provision had not been written or as the provision shall be determined by such court to be read.

12. FURTHER ASSURANCES. City and Facebook agree to execute and deliver any documents and perform any acts which are reasonably necessary in order to carry out the intent of the parties to this Agreement.
13. **WARRANTY OF AUTHORITY TO EXECUTE AGREEMENT.** Each Party to this Agreement represents and warrants that each person whose signature appears hereon is authorized and has the full authority to execute this Agreement on behalf of the entity that is a Party to this Agreement.

14. **RELATIONSHIP OF THE PARTIES.** It is understood that this is an Agreement by and between independent contractors and does not create the relationship of agent, servant, employee, partnership, joint venture, or association, or any other relationship other than that of independent contractor.

15. **COUNTERPARTS.** This Agreement may be executed in counterparts.

16. **GOVERNING LAW.** This Agreement is made under, shall be governed by and construed in accordance with the City’s Municipal Code and the laws and regulations of the State of California.

17. **ENTIRE AGREEMENT.** This Agreement represents the entire agreement of the parties. This Agreement may be changed only upon mutual written agreement of the parties.

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

**FACEBOOK:**
Hibiscus Properties, LLC, a Delaware limited liability company

[Signature]

Date: 5/24/2018

Dave Kling, Vice President

**CITY:**
City of Menlo Park
A municipal corporation

[Signature]

Date: 5/30/18

Alex D. McIntyre
Name

City Manager
Title

*See attached acknowledgment*
CALIFORNIA CERTIFICATE OF ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of San Mateo

On May 24, 2018 before me, ELLIE ELSO, Notary Public, personally appeared Dave Kling

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

(Optional Information)

Although the information in this section is not required by law, it could prevent fraudulent removal and reattachment of this acknowledgment to an unauthorized document and may prove useful to persons relying on the attached document.

Description of Attached Document

The preceding Certificate of Acknowledgment is attached to a document titled/for the purpose of

containing ______ pages, and dated _________.

The signer(s) capacity or authority is/are as:

☐ Individual(s)
☐ Attorney-in-Fact
☐ Corporate Officer(s)
☐ Guardian/Conservator
☐ Partner - Limited/General
☐ Trustee(s)
☐ Other:

representing: Name(s) of Person(s) or Entity(ies) Signer is Representing

Alternative Information

Method of Signer Identification

Proved to me on the basis of satisfactory evidence:
☐ form(s) of identification ☐ credible witness(es)

Notarial event is detailed in notary journal on:
Page # _______ Entry # _______

Notary contact:

Other

☐ Additional Signer(s) ☐ Signer(s) Thumbprint(s)

□
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California  
County of SAN MATEO  

On MAY 30, 2018 before me, JELENA HARADA, NOTARY PUBLIC, 
Date  

personally appeared ALEX D. MCINTYRE  

Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature  
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document  
Title or Type of Document: ___________________  Document Date: ___________________  
Number of Pages: _______ Signer(s) Other Than Named Above: ___________________  

Capacity(ies) Claimed by Signer(s)  
Signer's Name:  
☐ Corporate Officer — Title(s): ___________________  ☐ Corporate Officer — Title(s): ___________________  
☐ Partner — ☐ Limited ☐ General  
☐ Individual  ☐ Limited  ☐ General  
☐ Individual ☐ Attorney in Fact  
☐ Trustee ☐ Attorney in Fact  
☐ Guardian or Conservator  
☐ Trustee ☐ Guardian or Conservator  
☐ Other: ___________________  
☐ Other: ___________________  
Signer Is Representing: ___________________  
Signer Is Representing: ___________________  

©2014 National Notary Association • www.NationalNotary.org • 1-800-US NOTARY (1-800-876-6827) Item #5907
APPROVED AS TO FORM:

William L. McClure, City Attorney

ATTEST:

City Clerk, City of Menlo Park

Date

6/5/18

5/30/18