

**FUNDING AND IMPROVEMENT AGREEMENT FOR THE MENLO PARK COMMUNITY CAMPUS**

This Funding and Improvement Agreement for the Menlo Park Community Campus (this “**Agreement**”), is entered into as of 3/29/2021, (the “**Effective Date**”), by and between Facebook, Inc., a Delaware corporation (“**Facebook**”), and the City of Menlo Park, a municipal corporation of the State of California (the “**City**”) (each sometimes referred to as a “**Party**” and collectively referred to as the “**Parties**”).

RECITALS

WHEREAS, the City currently owns and operates the Onetta Harris Community Center, Menlo Park Senior Center, and Belle Haven Youth Center (collectively, the “**Existing Community Center**”), which provides approximately 35,000 square feet of multi-purpose, community, and recreational space located at 100-110 Terminal Avenue, Menlo Park, CA 94025 (the “**Property**”). The Existing Community Center offers residents of Menlo Park, including the adjacent Belle Haven neighborhood, a range of facilities for events, classes, recreation programs, fitness, and sports.

WHEREAS, the City also owns and operates the Belle Haven Pool (the “**Existing Belle Haven Pool**”), which includes a 25-meter outdoor swimming pool and a small children’s wading pool, that is open to the public and located adjacent to the Existing Community Center on the Property.

WHEREAS, the City currently operates the Belle Haven Branch Library as a joint use facility, consisting of approximately 3,500 square feet, located at 413 Ivy Drive at the Belle Haven School, which is owned by the Ravenswood City School District.

WHEREAS, in 2018, the City and its architect, Noll & Tom Architects, evaluated the Existing Community Center and the Existing Belle Haven Pool and determined that both facilities were at the end of their useful lives.

WHEREAS, in December of 2019, as part of Facebook’s ongoing efforts to collaborate with the City on important initiatives that improve the quality of life for the surrounding community, Facebook submitted a proposal to the City to explore funding and development of a new multi-generational community center and library (the “**New Community Campus**”) located in Menlo Park’s Belle Haven neighborhood, which would replace the Existing Community Center with a new facility of substantially the same size.

WHEREAS, on January 28, 2020, the City adopted Resolution No. 6537, accepting Facebook’s proposal and committing to collaborate with Facebook as the developer the New Community Campus and to prioritize its implementation.

WHEREAS, the City and Facebook have subsequently engaged in an extensive community outreach process, and received input from the local community and other stakeholders.

WHEREAS, on October 13, 2020, the City Council identified ten additional improvements related to the New Community Campus which the City desires to fund, including but not limited to a new swimming pool to replace the Existing Belle Haven Pool, as well as certain enhancements to the New Community Campus which have been incorporated into the design of the New Community Campus as further described below.

WHEREAS, a portion of the site for the New Community Campus is owned in fee by PG&E and the Parties acknowledge that as a condition precedent to developing the Project, the City must secure approval from PG&E to access, and cause Facebook’s design consultants and general contractor to perform work and services within, the portion of the site owned by PG&E.



WHEREAS, on November 10, 2020, the City Council approved the final interim services plan for continuing some of the services currently provided at the Onetta Harris Community Center.

WHEREAS, on December 14, 2020, the Planning Commission held a public hearing and provided a recommendation to the City Council to approve architectural control for the New Community Campus project and a use permit for the use and storage of hazardous materials including diesel for a backup generator and pool chemicals.

WHEREAS, on January 12, 2021, the City approved the plans and project specifications for the New Community Campus described on Exhibit A (the "**Base Project**"), and approved an initial maximum design budget for the Project Enhancements in the amount of \$1,184,900, and an initial maximum construction budget for the Project Enhancements of \$9,415,900. The improvements described on Exhibit A, together with any Approved Project Enhancements which the City determines to proceed with pursuant to Section 4.1 and as further described on Exhibit B, any Facebook Modifications approved pursuant to Section 4.2, and any City Modifications approved pursuant to Section 4.3, are collectively referred to as the "**Project**." The Parties acknowledge that by virtue of Facebook's offer to fund and develop the New Community Campus, and because it would be unduly burdensome and practically infeasible for the Project to be constructed pursuant to multiple construction contracts with significant overlap given the nature of the Project Enhancements, the only practical way to develop the Project is pursuant to a single construction contract with Facebook paying for all construction costs (including advancing payment for those costs associated with the Project Enhancements), and the City subsequently reimbursing Facebook for the costs of the Approved Project Enhancements (defined below) as provided for in Section 4.1.4 and Section 5 of this Agreement.

WHEREAS, the Parties intend to enter into a lease agreement whereby the City, as landlord, will lease the Property to Facebook, as tenant, to provide Facebook with access to the Property during the lease term.

WHEREAS, the Parties now desire to set forth their respective rights, duties, obligations, and procedures to facilitate cooperation concerning the development and funding for the Project.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

SECTION 1: FACEBOOK'S OBLIGATIONS

1.1 Facebook's Obligations. Facebook will do the following:

- 1.1.1 Engage a licensed general contractor to demolish the Existing Community Center and the Existing Belle Haven Pool and construct the Base Project in accordance with the plans and project specifications described on Exhibit A, any Approved Project Enhancements (as defined below) which the City requests be constructed at the City's expense pursuant to Section 4.1, any Facebook Modifications (as defined below) approved pursuant to Section 4.2, and any City Modifications (as defined below) approved pursuant to Section 4.3. Facebook will have sole discretion over selection and engagement of the architect, engineers, and design consultants (collectively, the "**Design Team**"), and the general contractor.
- 1.1.2 Prepare a budget for the Project, including a budget for any Project Enhancements or modifications approved pursuant to Section 4.
- 1.1.3 Obtain from the Design Team and submit to the City Manager or her designee for review and comment, plans and specifications for the Project at 50% and 100% of design development.
- 1.1.4 Cause its general contractor to pay prevailing wages for work performed on the Project.



- 1.1.5 Engage with the City and community members to reasonably minimize construction related impacts on the neighborhood.
 - 1.1.6 Assist the City's efforts to pursue approvals within PG&E's property to accommodate the Project.
 - 1.1.7 Request and obtain from its general contractor fixed bids and pricing for the Project Enhancements identified on Exhibit B to assist the City in determining whether to proceed with any Project Enhancements.
 - 1.1.8 In developing the Project, comply with all applicable federal, state, and local laws and regulations applicable to the Project.
 - 1.1.9 If the general contractor that Facebook engages for the Project holds a reseller permit issued by the California State Board of Equalization ("**BOE**"), and the contract with the general contractor exceeds Five Million Dollars (\$5,000,000), Facebook will use diligent, good faith efforts, to negotiate and include a provision in the contract to require such general contractor to obtain sub-permits from the BOE to book and record construction materials purchases/sales as sales originating within the City; if a sub-permit is required, the City's designated representative shall provide assistance to Facebook or its general contractor, the general contractor's subcontractors, or material suppliers to obtain the sub-permit from the BOE.
 - 1.1.10 Cause its general contractor to use good faith efforts to engage with and utilize JobTrain as a first referral source for qualified entry-level construction positions, including offering first priority job postings to Belle Haven and Menlo Park residents, provided that nothing in this Agreement shall be construed as requiring Facebook to (i) obligate the general contractor to hire any particular applicant or (ii) prohibit the general contractor from considering applicants referred or recruited through other sources.
 - 1.1.11 Enter into a Development Lease Agreement with the City as described in Section 2.1.1 of this Agreement.
 - 1.1.12 Be solely responsible for funding the design and construction costs for the Base Project, excluding costs incurred by Facebook associated with the Approved Project Enhancements or any approved City Modification.
- 1.2 Project Schedule. The schedule for the Base Project is attached as Exhibit C to this Agreement (the "**Project Schedule**"). Facebook will use good faith efforts to adhere to the Project Schedule and require its general contractor to complete the construction of the Project within 24 months of demolition of the Existing Community Center; however, the Project Schedule is provided for informational purposes only and Facebook will not be liable to the City in case of delays in meeting any milestone, regardless of their cause or duration. Facebook will provide the City with monthly updates to the Project Schedule. The monthly updates will include, (a) an explanation of the status of all design and construction activities, (b) the current critical path construction schedule prepared by the general contractor, and (c) a narrative that explains all modifications to the Project Schedule and issues that may impact substantial completion.



SECTION 2: THE CITY'S OBLIGATIONS

2.1 The City's Obligations. The City will do the following:

- 2.1.1 Enter into a Development Lease Agreement in the form attached hereto as Exhibit D (the "**Development Lease**") to provide Facebook, its agents, consultants, Design Team, general contractor, and the general contractor's subcontractors and suppliers the right to use the Property to develop the Project pursuant to this Agreement during the term of the Development Lease.
- 2.1.2 Timely review and provide comments on the progress of design development plans and timely process all building permit applications. The City shall make a good faith effort to expedite the plan check process and issuance of building permits, with the goal of issuing building permits within two months after Facebook or its general contractor submits complete building permit applications.
- 2.1.3 Waive all costs in connection with processing Project approvals and building permits, including, but not limited to, staff time, permits, plan check, and inspections.
- 2.1.4 Waive all applicable mitigation fees, impact fees, connection fees, or similar one-time charges or costs typically imposed on new development.
- 2.1.5 Upon request, make a good faith effort to assist Facebook with outreach to public agencies, utilities, and neighboring property owners in order to resolve permitting issues.
- 2.1.6 Subject to Section 4, reimburse Facebook for all approved design and construction costs that Facebook incurs as developer in connection with the Approved Project Enhancements or any approved City Modifications, including, without limitation, costs associated with change orders arising therefrom.
- 2.1.7 Work with the community to develop and implement a plan to accommodate interim community programs to temporarily replace the programs that utilized the Existing Community Center, including, without limitation, providing temporary facilities to accommodate the programs. The interim community programs will not have access to the Property, and Facebook will not be obligated to provide any interim facilities or programming.
- 2.1.8 At its sole cost and expense, (i) perform all work and provide all programming, furniture, fixtures, and equipment (such as electronic equipment, data cabling, and similar equipment) that the City wants or requires and that are not included in the Project and (ii) operate and maintain the Project after completion. Facebook's sole obligation is to complete development of the Project (i.e., the work described on Exhibit A, and any Approved Project Enhancements, Facebook Modifications, or City Modifications approved pursuant to Section 4).
- 2.1.9 During construction, (i) close the Property to the public except that vehicular and pedestrian access will be maintained to Beechwood School, to the facilities housing interim services, and to the sports field located at Kelly Park and (ii) cooperate with Facebook on other reasonable road closures and traffic diversions that Facebook or its general contractor requests.
- 2.1.10 Secure approval from PG&E, if necessary, in order to allow work to occur within PG&E's property.
- 2.1.11 Prior to undertaking any decommissioning activities, including but not limited to removal of furniture and fixtures within the Existing Community Center, provide written notice to Facebook at least ten (10) days prior to commencement of any decommissioning activities and maintain



records of all out-of-pocket expenses incurred in connection with such decommissioning of the Existing Community Center prior to demolition.

- 2.1.12 Ensure that all bidding and other requirements of the California Uniform Public Construction Cost Accounting Act, the California Public Contract Code, and the Menlo Park Municipal Code Requirements for Public Projects are fulfilled to the extent any work to be performed pursuant to this Agreement is subject to such requirements.

SECTION 3: TERM

The term of this Agreement will commence on the Effective Date and conclude upon the earlier of (a) Final Completion (as defined below) or (b) termination of this Agreement under any of the provisions of Section 8.

SECTION 4: CITY REQUESTED PROJECT ENHANCEMENTS AND MODIFICATIONS

4.1 City Requested Project Enhancements.

- 4.1.1 The City has identified additional improvements beyond those initially proposed by Facebook that it would like to incorporate into the Project. Those improvements and their estimated costs are shown on Exhibit B, attached hereto (the “**Project Enhancements**”).
- 4.1.2 The City shall be solely responsible for funding the design costs for the Project Enhancements and the Approved Project Enhancements (as defined below) and will reimburse Facebook for all out of pocket costs actually incurred by Facebook, as developer, for the design of the Project Enhancements and the Approved Project Enhancements, with an initial maximum design budget of \$1,184,900. Facebook will not incur design costs in excess of this amount without the City’s written approval.
- 4.1.3 Facebook will request and obtain fixed bids and pricing from its general contractor for the construction of the Project Enhancements to assist the City in determining whether to proceed with any Project Enhancements. Within thirty (30) days of receipt of such information from Facebook, the City shall provide Facebook with a written notice to Facebook indicating (i) whether it desires to proceed with the proposed Project Enhancement, (ii) the specific scope of work being approved, (iii) the fixed price to construct the proposed Project Enhancement being approved, and (iv) confirmation that the City has sufficient funds to pay for the Approved Project Enhancements. If the City fails to provide timely notice of its election for any proposed Project Enhancement as set forth above, then the City shall be deemed to have elected not to proceed with the proposed Project Enhancement. The Project Enhancements approved by the City pursuant to this Section 4.1.3 are each referred to as an “**Approved Project Enhancement**” and are collectively referred to as the “**Approved Project Enhancements.**” The sum of the fixed prices approved by the City for the Approved Project Enhancements pursuant to this Section 4.1.3 is collectively referred to as the “**Approved Project Enhancements Fixed Price.**”
- 4.1.4 The City shall be solely responsible for funding the cost to construct the Approved Project Enhancements and will reimburse Facebook in Facebook’s capacity as developer, pursuant to the provisions of Section 5, for all out of pocket costs Facebook incurs, including but not limited to construction and third-party project management costs, actually incurred by Facebook for the Approved Project Enhancements. Notwithstanding the preceding, the costs to construct the Approved Project Enhancements (exclusive of third-party project management costs paid to parties other than the general contractor) may not exceed the Approved Project Enhancements Fixed Price without the City’s prior written approval. The cost for third-party project management paid to parties other than the general contractor will be in addition to the Approved Project Enhancements Fixed Price, and may be subject to a separate cap to be agreed to by the City and Facebook. The City acknowledges that unforeseen circumstances or conditions may necessitate changes to the



Approved Project Enhancements that warrant an increase to the Approved Project Enhancements Fixed Price. If there are unforeseen circumstances or conditions that result in a change order request that requires an increase to the Approved Project Enhancements Fixed Price, Facebook will promptly provide the general contractor's change order request to the City for approval. Within thirty (30) days of receipt of such information from Facebook, the City shall provide Facebook with a written notice indicating whether it approves the change order request. If the City does not timely approve the change order request, the Parties shall meet and confer in good faith at a mutually agreeable time and location to determine how to address the change order request, which may include modifying the scope of the applicable Approved Project Enhancement in order to facilitate completion of the Approved Project Enhancement without incurring additional costs. If a mutually agreeable solution is not reached, then Facebook may exclude from its scope of development responsibilities the applicable Approved Project Enhancement and shall not be responsible for completion of such Approved Project Enhancement.

4.2 Facebook Modifications. A modification to the Project requested by Facebook (if any) is referred to as a "**Facebook Modification.**" Facebook may make the following Facebook Modifications without the City's prior approval: (i) modifications required to comply with applicable laws or regulations, (ii) modifications required to comply with the requirements of applicable utility providers, and (iii) modifications to address unforeseen conditions. Any other Facebook Modification shall be subject to the City's prior written approval, which approval shall not be unreasonably withheld, conditioned, or delayed. For purposes of this Section 4.2, the City agrees that whether a Facebook Modification is reasonable depends solely on whether it would materially increase the City's maintenance and operational costs or have a material adverse effect on the New Community Campus's appearance or functionality. If there is a disagreement as to whether a Facebook Modification materially increases the City's maintenance and operational costs or has a material adverse effect on the New Community Campus's appearance or functionality, the City and Facebook shall meet and confer in good faith at a mutually agreeable time and location in order to attempt to resolve the matter. Facebook Modifications to the New Community Campus will be at Facebook's sole cost and expense.

4.3 City Modifications. The City may request that Facebook perform additional work not shown on Exhibit A or Exhibit B (each, a "**City Modification**"). Facebook is not obligated to include in its scope of development responsibilities any City Modifications, and may refuse to undertake, as developer, any or all City Modifications in its sole and absolute discretion. Within ten (10) business days of its receipt of a proposed City Modification, Facebook will notify the City whether it conceptually approves of the City Modification. If Facebook conceptually approves of the City Modification, it will promptly cause its general contractor or other consultant to prepare an estimate of the costs to perform that City Modification and deliver that estimate to the City. Within five (5) business days after receipt of the cost estimate for the City Modification, the City must provide written notice to Facebook indicating whether it desires to proceed with the proposed City Modification and confirmation that the City has sufficient funds to pay for the City Modification. If the City elects to proceed with a City Modification, the City will be responsible for all costs, including but not limited to design, construction, and third-party project management costs, associated with the City Modification. The City will reimburse Facebook for all such costs incurred by Facebook for a City Modification pursuant to Section 5 of this Agreement. If Facebook notifies the City that it does not approve any proposed City Modification, Facebook shall state its reasons for such disapproval and the Parties shall meet and confer in good faith to determine if they can resolve any Facebook objections to such proposed City Modification. If the City fails to timely notify Facebook of the City's election to proceed with the proposed City Modification, then the City shall be deemed to have elected not to proceed with the City Modification.



SECTION 5: FUNDING AND PAYMENT

5.1 City Funds. Upon Facebook's request, the City must demonstrate through the delivery of supporting documents and other evidence that it has sufficient funds to reimburse Facebook for any Approved Project Enhancements or City Modifications, including any change orders approved pursuant to Section 4.1.4. The City may satisfy this requirement by providing evidence that the City Council has approved funding for the Approved Project Enhancements and City Modifications (as applicable) and deposited the funds in a dedicated or restricted fund. If the City fails to demonstrate that it has sufficient funds to pay for the Approved Project Enhancements or City Modifications, then Facebook may suspend its Design Team's and general contractor's work and services on the Project, without responsibility or liability for the resulting delay, until the City reasonably demonstrates that it has sufficient funds. In addition, and without limitation to the preceding or any other remedies that Facebook may be entitled to, subject to Section 8 of this Agreement, Facebook may terminate its obligation to develop the Approved Project Enhancements or any City Modifications if the City is unable to reasonably demonstrate that it has sufficient funds available to cover the anticipated cost of the Approved Project Enhancements or the City Modifications (as applicable).

5.2 Project Enhancements / City Modification Costs. Following commencement of design of any Project Enhancements or component thereof or any City Modification (whichever occurs first), Facebook may provide the City with written requests for reimbursement of its costs incurred with respect to its Design Team's design of the Project Enhancements, the general contractor's construction of the Approved Project Enhancements and/or their design and construction of the City Modifications, including any change orders approved pursuant to Section 4.1.4 (each a "**Request for Reimbursement**"). Facebook may not provide more than one Request for Reimbursement per calendar month. Each Request for Reimbursement must include the following: (a) the requested amount to be reimbursed and (b) a list of all invoices to be reimbursed under the current Request for Reimbursement. The City must pay Facebook the amount requested in a Request for Reimbursement within thirty (30) days of its receipt of that Request for Reimbursement. If the City disputes an amount stated in a Request for Reimbursement, the City must notify Facebook in writing of the dispute and the basis therefor prior to the deadline for paying the amount requested under that Request for Reimbursement. All undisputed amounts must be paid on a timely basis. The Parties agree to work together in good faith to informally resolve any disputes. Interest will accrue on any unpaid or overdue balance from the date payment was originally due at a rate of one percent (1%) per month.

SECTION 6: SUBSTANTIAL COMPLETION; FINAL COMPLETION; ACCEPTANCE OF THE PROJECT

6.1 Substantial Completion; Punch List. "**Substantial Completion**" is the stage in the progress of the Project when (a) the Project is sufficiently complete in accordance with this Agreement so that the City can occupy or utilize it for its intended use and (b) a certificate of occupancy (or an equivalent sign-off) has been issued for all improvements that make up the Project. When Facebook believes that Substantial Completion has been achieved, Facebook will submit to the City a draft punch list prepared by its general contractor for the City's review and approval. Upon receipt of the draft punch list, the City will inspect the Project and give Facebook written notice either (i) approving the draft punch list or (ii) specifying additional items to be inserted in the punch list and/or correcting errors in Facebook's draft punch list. The draft punch list approved by the City will become the "**Punch List**." Any damage to the Project by the City upon the City's occupancy, will be the sole responsibility of the City.

6.2. Final Completion. Final completion ("**Final Completion**") is the stage when all work for the Project has been completed in accordance with the contract with Facebook's general contractor, consistent with this Agreement. Facebook will notify the City in writing when Facebook believes that its general contractor has achieved Final Completion. The City will conduct such final inspections and tests necessary to satisfy the City that Final Completion has been achieved. If, in the City's reasonable opinion, the Project fails to conform to the requirements of the contract with Facebook's general contractor, consistent with this Agreement, the City will promptly notify Facebook in writing, adding any such non-conforming work to the Punch List.



6.3 As-Is; Release. Upon Final Completion, the City will accept the Project in its then “as-is” condition (with all faults) and, at Facebook’s request, provide a written acceptance and waiver of liability (including a waiver of its rights under California Civil Code Section 1542, or its equivalent). The City acknowledges and agrees that Facebook is not making any representation or warranty, express or implied, as to the value, uses, habitability, condition, design, operation, utility, or fitness for purpose or use of the Project or the Property (or any part thereof) or any other guarantee, representation, or warranty whatsoever, express or implied, with respect to any portion of the Project or the Property. Further, Facebook will have no liability for any latent, hidden, or patent defect as to the Project or the Property or the failure of either (or any part thereof) to comply with any applicable laws or regulations. Notwithstanding anything to the contrary set forth in this Section 6.3, the City does not waive any claim against any architect, engineer, and/or contractor relating to the plan, design, and/or construction of the Project. The City hereby releases Facebook from all responsibility and liability regarding the value, usability, habitability, condition, design, operation, or utility of the Project or the Property, or its or their suitability for any purpose whatsoever, and to the enforcement of any warranties given or delivered by the general contractor, subcontractors and suppliers.

6.4 Post-Delivery Responsibility. Upon Final Completion, Facebook will not be responsible for any repairs, improvements, replacements, or maintenance of the Project, all of which will be the City’s sole responsibility at its sole cost and expense. Without limitation, Facebook will not be liable for any claims for design or construction defects and is not providing the City with any warranties. Upon Final Completion, Facebook will assign to the City all rights it has to architectural, contractor, and supplier warranties or guaranties against defects in materials or workmanship with respect to the Project, and will cooperate in any and all efforts to enforce the warranties or guaranties. Facebook agrees not to enter into any design or construction agreements that will limit or waive any rights the City might have to pursue warranty or defect claims against third parties engaged in design or construction of the Project, without the City’s prior approval.

SECTION 7: NAMING RIGHTS

The City shall have the sole discretion to name the Project in accordance with its internal policies; provided, however, that prior to selecting the name, the City must meet and confer with Facebook. The City shall not license, sell, or otherwise commercialize the naming rights for the Project, or provide naming rights to a donor. Facebook shall have the non-exclusive right to use the appearance and image of the Project and refer to the Project’s name in its marketing or any other published materials.

SECTION 8: TERMINATION; REMEDIES; LIABILITY

8.1 Termination Prior to Commencement of Demolition.

8.1.1 Facebook may, in its sole and absolute discretion, terminate this Agreement for convenience prior to its general contractor’s commencement of demolition by giving the City written notice. If Facebook terminates this Agreement for convenience prior to its general contractor’s commencement of demolition, the City shall have no claims against Facebook except for (i) the reasonable out of pocket costs associated with processing the Project and (ii) reasonable out of pocket costs actually incurred by the City in connection with the decommissioning of the Existing Community Center and restoring the Existing Community Center to its condition prior to decommissioning, provided that the City has provided written notice to Facebook and Facebook has approved such decommissioning work in its sole discretion. For the purposes of this Agreement, “commencement of demolition” shall mean the demolition of any portion of the Existing Community Center by Facebook.

8.1.2 Facebook may terminate this Agreement for cause prior to its general contractor’s commencement of demolition if the City fails to perform any of its obligations under this Agreement and does not timely cure such failure. If Facebook terminates this Agreement for cause prior to its general contractor’s commencement of demolition, in addition to all other rights and remedies available to Facebook, this Agreement shall terminate and have no further force



and effect and Facebook shall have no further obligations to the City and will not be liable for any costs incurred or damages sustained by the City.

- 8.1.3 The City may terminate this Agreement for cause prior to commencement by Facebook's general contractor of demolition if Facebook fails to perform any of its material obligations under this Agreement and does not timely cure such failure. If the City terminates this Agreement for cause prior to the commencement by Facebook's general contractor of demolition, the City shall have no claims against Facebook except for the reasonable out of pocket costs associated with processing the Project.

8.2 Termination After Commencement of Demolition.

- 8.2.1 Facebook may terminate this Agreement for cause after the commencement by Facebook's general contractor of demolition if the City fails to perform any of its obligations under this Agreement and does not timely cure such failure. If Facebook terminates this Agreement for cause after the commencement by Facebook's general contractor of demolition, Facebook will have no further obligations to the City with respect to the Project and will not be liable for any damages to the City, and the City shall determine whether and how to complete the Project at its sole cost and expense.

- 8.2.2 The City may terminate this Agreement for cause after commencement by Facebook's general contractor of demolition if Facebook fails to perform any of its material obligations under this Agreement and does not timely cure such failure. If the City terminates this Agreement for cause, or Facebook terminates this agreement without cause, after the commencement by Facebook's general contractor of demolition, the City may complete the Project and Facebook shall be responsible for the cost to complete the Project, as well as all damages sustained by the City as a result of delays in completing the Project resulting from the termination of this Agreement.

8.3 Notice of Default. Before terminating this Agreement for cause under Section 8.1 or Section 8.2, the non-defaulting Party must give the other Party written notice of the alleged default. The defaulting Party will then have thirty (30) days to cure such default; provided, however, that if the nature of the default is such that despite a Party's commercially reasonable efforts it cannot be cured within thirty (30) days, then the defaulting Party will have such additional time as is reasonable under the circumstances to cure the default if it commences the cure within thirty (30) days and thereafter reasonably pursues the cure to completion.

8.4 Outside Termination Date. If by September 1, 2021, the City has not issued all permits necessary for Facebook's general contractor to commence demolition and construct the Project, then Facebook shall have the right to terminate this Agreement. If this Agreement is terminated pursuant to this Section 8.4, Facebook will have no further obligations to the City with respect to the development of the Project and will not be liable for any damages to the City.

8.5 Assignment. Notwithstanding Section 11.3, upon termination of this Agreement, with or without cause, Facebook will use commercially reasonable efforts to assign all Project related contracts, including, but not limited to, all design and construction contracts, to the City.



SECTION 9: INDEMNIFICATION AND INSURANCE

9.1 Indemnity by Facebook. Facebook agrees to cause its general contractor to indemnify, defend, and save harmless the City, its officers, representatives, and employees from and against any and all third party claims for loss, injury, or damage resulting solely from the construction of the Project, except to the extent any claim arises out of the negligence or willful misconduct of the City.

9.2 Indemnity by City. The City agrees to indemnify, defend, and save harmless Facebook, its officers, representatives, and employees from and against any and all third party claims for loss, injury, or damage, in any way related to the Project and attributable to the City's negligence or willful misconduct.

9.3 Insurance.

9.3.1 Each Party agrees to maintain comprehensive commercial general liability insurance naming the other Party, its officers, agents, and employees as additional insureds in a combined single limit of not less than \$3,000,000 for the death and injury of any persons in any one occurrence, and for property damage in any one occurrence. The City shall maintain separate casualty insurance for the Project during the course of construction in an amount sufficient to protect against loss or damage in full until Final Completion. Every policy shall be endorsed to state that it shall not be assigned, canceled, or reduced in coverage without thirty (30) days prior written notice to the other Party.

9.3.2 Facebook shall require its general contractor to carry the following insurance:

9.3.2.1 Worker's Compensation and Employer's Liability Insurance providing full statutory coverage. Facebook's contract with its general contractor shall include the following certification by the general contractor, as required by Section 18161 of the California Labor Code: "I am aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of the Code, and I will comply with such provisions before commencing the performance of the work of this Contract."

9.3.2.2. Bodily Injury Liability and Property Damage Liability Insurance (Commercial General Liability Insurance) on an occurrence basis for protection from any and all claims for damages for bodily injury, including accidental death, as well as claims for property damage which may arise from the general contractor's operations whether such operations be by the general contractor or by any sub-contractor or by anyone directly or indirectly employed by either of them. The amounts of such insurance shall be not less than two million dollars (\$2,000,000) per occurrence and four million dollars (\$4,000,000) in aggregate, or four million dollars (\$4,000,000) combined single limit bodily injury and property damage for each occurrence. The general contractor shall provide the City with acceptable evidence of coverage, including a copy of all declarations of coverage exclusions, and shall name the City as an additional insured in the Commercial General Liability Insurance policy.

9.3.2.3. Automobile Liability Insurance in an amount of not less than one million dollars (\$1,000,000) for each accident combined single limit or not less than one million dollars (\$1,000,000) for any one (1) person, and one million dollars (\$1,000,000) for any one (1) accident, and Three Hundred Thousand Dollars, (\$300,000) property damage.

9.3.3 The City may require Facebook to provide proof of required insurance from Facebook and/or its general contractor before the general contractor commences construction.



9.4 Waiver of Subrogation. Notwithstanding anything in this Agreement to the contrary, in the event that either the City or Facebook sustains a loss by fire or other casualty and such loss is caused in whole, or in part, by acts or omissions of the other party, its agents, employees, contractors, or servants, then the party sustaining the loss agrees that, to the extent that the party sustaining such loss is compensated for such loss by insurance, such party shall waive all rights of recovery against the other party, or the agents, employees, contractors, or servants of the other party; and no third party shall have any right of recovery, by way of subrogation or assignment or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, even though that person or entity did not pay the insurance premium directly or indirectly, and regardless of whether the person or entity had an insurable interest in the property damaged.=

SECTION 10: ACCESS TO RECORDS AND RECORD RETENTION

At all reasonable times, Facebook will permit the City, upon request, to access and use all reports, designs, drawings, plans, specifications, schedules, and other materials prepared by Facebook or any contractor or consultant of Facebook related to Facebook's obligations under this Agreement. Facebook will provide to the City upon request copies of any documents and Autocad drawings described in this Section, and the City may use them for construction of the Project if this Agreement terminates prior to completion of the Project. Facebook and the City will retain all records pertaining to their performance under this Agreement for at least two years after Final Completion.

SECTION 11: MISCELLANEOUS

11.1 Notices. All notices required or permitted to be given under this Agreement must be in writing and mailed postage prepaid by certified or registered mail, return receipt requested, by personal delivery, or overnight courier to the appropriate address indicated below or at such other place(s) that either Party may designate in written notice to the other. Notices are deemed received upon delivery if personally served, one day after mailing if delivered via overnight courier, or two days after mailing if mailed as provided above.

To City: City of Menlo Park
 Attn: Public Works Director
 701 Laurel Street
 Menlo Park, California 94025-3409

Cc: City Attorney
 City of Menlo Park
 1110 Alma Street, Suite 210
 Menlo Park, California 94025

To Facebook: Facebook, Inc.
 Attn: Facilities
 1 Hacker Way
 Menlo Park, California 94025

Cc: Facebook, Inc.
 Attn: Real Estate Counsel
 1 Hacker Way
 Menlo Park, California 94025

11.2 No Waiver. No waiver of any default or breach of any covenant of this Agreement by either Party will be implied from any omission by either Party to take action on account of such default if such default persists or is repeated. Express waivers are limited in scope and duration to their express provisions. Consent to one action does not imply consent to any future action.



11.3 Assignment. The Parties are prohibited from assigning, transferring, or otherwise substituting their interests or obligations under this Agreement without the written consent of the other Party, provided however, Facebook shall have the right to assign this Agreement to an affiliated entity of Facebook without the prior approval or consent of the City.

11.4 Governing Law. This Agreement is governed by the laws of the State of California as applied to contracts that are made and performed entirely in California.

11.5 Compliance with Laws. In performance of this Agreement, the Parties must comply with all applicable Federal, State, and local laws, regulations, and ordinances.

11.6 Modifications. This Agreement may only be modified in a writing executed by both Parties.

11.7 Attorneys' Fees. In the event legal proceedings are instituted to enforce any provision of this Agreement, the prevailing Party in said proceedings is entitled to its costs, including reasonable attorneys' fees.

11.8 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.

11.9 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.

11.10 Severability. If any portion of this Agreement, or the application thereof is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining portions of this Agreement, or the application thereof, will remain in full force and effect.

11.11 Counterparts. This Agreement may be executed in counterparts.

11.12 Entire Agreement. This Agreement constitutes the entire agreement between the Parties pertaining to its subject matter and supersedes any prior or contemporaneous written or oral agreement between the parties on the same subject.

11.13 Press Release. The Parties agree to reasonably cooperate with each other regarding any press release(s) concerning this Agreement and/or the Project.

11.14 Veterans. The Parties agree to abide by the requirements of 41 CFR 60-300.5(a). This regulation prohibits discrimination against qualified protected veterans and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans. The Parties will abide by the requirements of 41 CFR 60-741.5(a). This regulation prohibits discrimination against qualified individuals on the basis of disability and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified individuals with disabilities.

11.15 Anti-Bribery.

11.15.1. In connection with the performance of this Agreement and development of the Project, the Parties, on behalf of themselves, their agents, consultants, contractors, and subcontractors, represent and warrant that they have used and will use only legitimate and ethical business practices and will refrain from offering, giving, promising, paying, authorizing the paying or giving of, soliciting, or accepting money or Anything of Value, directly or indirectly, to or from (a) any Government Official to (i) influence a Government Official in his or her official capacity, (ii) induce a Government Official to use his or her influence with a government or instrumentality thereof, or (iii) otherwise secure any improper



advantage or (b) any person in any manner that would constitute bribery or an illegal kickback, or would otherwise violate applicable anti-corruption law. For the purposes of this Section, "Anything of Value" includes, but is not limited to, cash or a cash equivalent (including "grease," "expediting," or facilitation payments), discounts, rebates, gifts, use of materials, facilities, or equipment, entertainment, drinks, meals, transportation, lodging, or promise of future employment. "Government Official" means any official or employee of any national, state, regional, provincial, city, local, tribal, or foreign government; any official or employee of any government department, agency, commission, or division; any official or employee of any state-owned or state-controlled enterprise; any official or employee of a public educational, scientific, or research institution; any political party or any official or employee of a political party; any candidate for public office; any official or employee of a public international organization; and any person acting on behalf of or any relatives or close family/household members of any of those listed above.

11.15.2. The Parties will ensure that the contractors and subcontractors they retain in connection with the performance of this Agreement expressly agree to anti-bribery undertakings, representations, and warranties substantially similar to the provisions herein.

11.15.3. If either Party becomes aware that any violation of the terms of this Section 11.15 has occurred, is threatened, or has been requested by any person or entity, including by an employee or representative of the other Party, the Party will provide prompt notice to the other Party of the facts and circumstances associated with such violation or request.

11.16 Non-Discrimination. For any performance required under this Agreement (a) between two business entities based in the United States of America and (b) being performed in the United States of America and/or its territories, the Parties agree that, unless otherwise specifically exempted, this Agreement will be performed in full compliance with all applicable laws, including applicable equal opportunity/affirmative action requirements, Title VII of the Civil Rights Act of 1964, Executive Orders No. 11141 and 11246, as amended, sections (1) and (3) of Executive Order No. 11625 relating to the promotion of Minority Business Enterprises, Americans with Disabilities Act, Age Discrimination in Employment Act, Fair Labor Standards Act, Family Medical Leave Act, the Vietnam Era Veterans' Readjustment Assistance Act of 1974, Rehabilitation Act of 1973, and all corresponding implementing rules and regulations, all of which, including the contract clauses required and regulations promulgated thereunder, are incorporated herein by reference.

[Signatures on Following Page]



IN WITNESS WHEREOF, the Parties have hereunder subscribed their names the day and year indicated below.

FACEBOOK:

Facebook, Inc.
a Delaware corporation

DocuSigned by:
John Tenanes
FC32F148D90EB4E5...
Name: John Tenanes
Title: VP Real Estate

3/29/2021
Date

CITY:

City of Menlo Park

DocuSigned by:
Starla Jerome-Robinson
6BD907BD261744C...
Starla Jerome-Robinson, City Manager

3/29/2021
Date

APPROVED AS TO FORM:

DocuSigned by:
Cara E. Silver
CD6C53C794F6491...
Cara Silver, Legal Counsel

3/29/2021
Date

ATTEST:

DocuSigned by:
Judi A. Herren
39280A20D0BE491...
Judi A. Herren, City Clerk

3/30/2021
Date



EXHIBIT A

PLANS AND SPECIFICATIONS

The New Community Center Project consists of a new multigenerational community campus all as more particularly described in Staff Report No. 20-055-PC for the Planning Commission meeting of December 14, 2020, including all attachments to the Staff Report.



EXHIBIT B

PROJECT ENHANCEMENTS

1. New swimming pool to replace the Existing Belle Haven Pool:

Following the recommendations in the Belle Haven master plan, the new pool facility would feature two separate swimming areas with differing water temperatures. A lap swim / competition pool would support water polo, synchronized swimming, and other performance and training activities. An adjacent instructional pool with warmer water temperature would serve swim lessons, exercise classes, wellness and recreational activities. The pool facility would also feature a water play area that could be separate from, or integrated as part of a shallow entry area into the instructional pool. The project would utilize the locker rooms and check in at the new Community Campus building, but would also include a stand-alone pool mechanical building to house pool equipment and chemical systems.

Design Estimate: \$783,000

Construction Estimate: \$6,617,000

2. Red Cross evacuation center:

This Project Enhancement would include modifications to the structural and mechanical systems required by building code to allow the facility to be designated and utilized as a Red Cross Evacuation Center.

Design Estimate: \$48,000

Construction Estimate: \$702,000

3. Emergency backup power (diesel generator):

This Project Enhancement proposes to purchase a mobile 200 kilowatt emergency generator to either power the facility directly or recharge an emergency battery backup system. The mobile generator could either be stored on-site or at another location (to be determined) and only brought to the site when necessary.

Design Estimate: \$8,500

Construction Estimate: \$141,500

4. Solar carports:

This Project Enhancement would construct parking lot canopied solar panel installations in two potential locations on-site. The first location would be within the newly constructed parking area covering roughly 50 parking spaces capable of hosting a 160 kilowatt solar array. The second location would be the existing parking serving Kelly Park also covering approximately 50 parking spaces with similar energy generation. As an alternative Project Enhancement, the City could elect to 'prewire' either location with empty conduit and the building systems made ready to accept future solar panel arrays. Facebook will be responsible for its pro rata share of the costs for not more than 5 kilowatts of the total solar panel installations (i.e., the costs that would otherwise be incurred as part of the Project if the City elects not to proceed with this Project Enhancement).

Design Estimate: \$24,000

Construction Estimate: \$1,476,000*

5. LEED platinum upgrade:

This Project Enhancement would propose to upgrade the facility from a LEED gold certified facility to a LEED platinum certified facility.

Design Estimate: \$97,000

Construction Estimate: \$503,000*



6. Renewable energy microgrid:

This Project Enhancement would propose to include a renewable energy microgrid system to both maximize the benefits of on-site solar energy production and also provide emergency power for varying times depending on the system selected.

Design Estimate: \$94,000

Construction Estimate: \$1,106,000*

7. Building deconstruction versus demolition:

This Project Enhancement would propose to deconstruct the facility as an enhancement above and beyond normal demolition. While the demolition of the facility is expected to achieve 70-80 percent diversion of material from landfill via recycling, deconstruction would go above and beyond, identifying materials that could be salvaged and donated to be re-used on other projects.

Design Estimate: \$18,000

Construction Estimate: \$382,000

8. Water main replacement:

This Project Enhancement would replace the existing water main that crosses through the Property from Terminal Avenue to and across the railroad tracks to the North. The existing water main on-site is near the end of its useful life and could potentially be impacted by demolition efforts due to its proximity to the buildings being removed.

Design Estimate: \$45,000

Construction Estimate: \$755,000

9. Recycled water connection from Chilco Street:

This Project Enhancement would propose to install a recycled water service line (for future recycled water service) from Chilco Street to the Property crossing the railroad tracks. Utilization of recycled water would be incumbent upon the completion of a wastewater treatment facility by West Bay Sanitary District near Bedwell Bayfront Park and system buildout. The Property would be plumbed ready to accommodate recycled water usage when available.

Design Estimate: \$59,000

Construction Estimate: \$355,000

10. Utility undergrounding:

This Project Enhancement would propose to underground certain overhead utilities on the Property. Data and telecom lines beginning at the entry to the facility at Terminal Avenue that enter the Property and then cross the Property to the Beechwood School entrance would be placed underground. Electrical distribution lines that cross through the front parking lot to the Beechwood School would also be placed underground. Existing overhead electrical transmission that cross the Property would remain.

Design Estimate: \$84,000

Construction Estimate: \$166,000

*Representative construction estimate only. Portions of or full amount of construction value to be funded/contracted separately by City

Note: These cost estimates are only estimates. Because actual costs for a given line item may be below the estimated costs, City staff may take into account whether the cost for a given line item is under budget for



purpose of determining whether a change order for a different line item exceeds the maximum design budget or maximum construction budget in the aggregate.



EXHIBIT C

PROJECT SCHEDULE



MPCC Master Schedule

ID	Task Name	Start	Finish	S	N	M	M	S	N	M	M	S	N	M	M	S	N	M
1	City of Menlo Park Milestones	Tue 1/12/21	Mon 6/28/21															
2	City Council Public Hearing For Project Approval	Tue 1/12/21	Tue 1/12/21															
3	Close Existing Facilities	Fri 6/11/21	Fri 6/11/21															
4	City Move out of Onetta Harris and Senior Center	Mon 6/14/21	Fri 6/25/21															
5	City Hand-Over of Existing Buildings and Pool	Mon 6/28/21	Mon 6/28/21															
6	Design	Wed 10/7/20	Tue 6/8/21															
10	City Review of 50% DD	Mon 2/1/21	Thu 2/18/21															
11	City Review of 100% DD	Mon 3/15/21	Thu 4/1/21															
12	Permitting	Tue 4/6/21	Wed 9/1/21															
13	Demolition Permit Plan Check	Tue 4/6/21	Wed 7/14/21															
16	Demolition Permit Issuance	Thu 7/15/21	Thu 7/15/21															
17	Early Utility and Grading Permit Plan Check	Mon 4/12/21	Mon 6/7/21															
20	Early Utility and Grading Permit Issuance	Tue 6/8/21	Tue 6/8/21															
21	Building Permit Plan Check	Wed 6/9/21	Tue 8/31/21															
24	Building Permit Issued	Wed 9/1/21	Wed 9/1/21															
25	Utility Easement Coordination	Mon 12/7/20	Tue 8/31/21															
46	Utility Easement Coordination Complete	Wed 9/1/21	Wed 9/1/21															
47	Construction	Tue 6/29/21	Mon 1/2/23															
53	City Fit Up	Tue 1/3/23	Mon 2/27/23															
55	Grand Opening	Tue 2/28/23	Tue 2/28/23															

Project: MPCC Master Schedule
 Date: Thu 1/7/21

Legend:

- Task
- Split
- Milestone
- Summary
- Project Summary
- Inactive task
- Inactive Milestone
- Inactive Summary
- Manual Task
- Duration-only
- Manual Summary Rollup
- Manual Summary
- Start-only
- Finish-only
- External Tasks
- External Milestone
- Deadline
- Progress
- Manual Progress



EXHIBIT D TO THE FUNDING AGREEMENT

DEVELOPMENT LEASE AGREEMENT

THIS DEVELOPMENT LEASE AGREEMENT (this “**Lease**”) is entered into this ____ day of _____, 20__ (the “**Effective Date**”), by and between the **CITY OF MENLO PARK**, a municipal corporation of the State of California (“**Landlord**”) and **FACEBOOK, INC.**, a Delaware corporation (“**Tenant**”) (each sometimes referred to as a “**Party**” and collectively as the “**Parties**”). In consideration of the terms and promises made herein, the Parties agree as follows:

1. **DEFINED TERMS.** Each capitalized term used in this Lease shall have the same meaning ascribed to it in the separate Funding and Improvement Agreement for the Menlo Park Community Campus entered into by and between the Parties (“**Funding Agreement**”), unless specifically defined in this Lease.
2. **PREMISES.** Landlord does hereby demise and lease unto Tenant, and Tenant does hereby take and lease from Landlord, the property commonly known as 100-110 Terminal Avenue, Menlo Park, California 94025, described on **Exhibit A** attached hereto, consisting of approximately 3.75 acres, together with the existing improvements commonly known as the Onetta Harris Community Center, Menlo Park Senior Center, and Belle Haven Youth Center located thereon (collectively, the “**Existing Community Center**”), and all easements, rights-of-way, and other rights appurtenant thereto (collectively, the “**Premises**”) upon the following terms and conditions.
3. **TERM.** The term of this Lease (the “**Term**”) shall commence, and Landlord shall deliver the Land to Tenant, on the date which immediately precedes demolition of the Existing Community Center (the “**Commencement Date**”). Upon execution of this Lease, the Parties agree to identify a mutually agreeable date for such demolition. When the date for demolition is identified, Landlord shall provide Tenant with a written notice setting forth the Commencement Date, which Tenant shall sign and acknowledge. The Term shall end and expire upon the earlier of (i) the date of Final Completion, or (ii) the day preceding the fifth anniversary of the Commencement Date (the “**Expiration Date**”). In the event Final Completion does not occur prior to the fifth anniversary of the Commencement Date, the Parties will work in good faith to extend the Term.
4. **RENT; SECURITY DEPOSIT.** Tenant shall pay to Landlord as rent, a total of One Dollar (\$1.00) per year payable in advance on the Commencement Date and each anniversary thereof.
5. **TAXES; ASSESSMENTS.** Landlord shall pay all real and personal property taxes (if any), general and special assessments (if any), and other charges of every description levied on or assessed against the Premises or the improvements currently located, and to be constructed, on the Premises, including any possessory use tax imposed upon Tenant.



6. **PERMITTED USE.** Subject to the provisions of this Lease, Tenant shall only use the Premises to develop the New Community Campus, consisting of a new public multi-generational community center for the benefit of the City of Menlo Park and its residents, and additional public facilities as further specified in the Funding Agreement (the “**Project**”). For the purposes of this Lease, Landlord does not consider noise associated with construction to be a nuisance so long as Tenant’s contractor complies with the City’s noise ordinance. Tenant’s rights to use the Premises shall be exclusive, subject to (i) the rights of PG&E to access its facilities/utility lines, etc., and (ii) vehicular and pedestrian access to Beechwood School, to facilities housing interim services and to the sports fields located at Kelly Park.
7. **IMPROVEMENTS.**
- a. Landlord hereby consents to development of the Project on the Premises pursuant to the terms of the Funding Agreement.
 - b. Tenant shall have no authority to cause or permit a mechanic’s, construction or other lien to arise or be perfected with respect to the Premises or any part thereof. Landlord shall have a right to require Tenant to post, maintain and serve notices of non-liability to contractors and subcontractors as a condition to permitting Tenant to make alterations or additions. If any mechanic’s, construction or other lien is filed against the Premises, or any part thereof, by reason of Tenant’s acts or omissions or because of a claim against Tenant, then Tenant shall cause such lien to be canceled and discharged of record or bonded over within the earlier of thirty (30) days after written request by Landlord or such shorter period as may be required to prevent an adverse judgment against Landlord.
8. **MAINTENANCE; REPAIRS.** Throughout the term of this Lease, Tenant shall, at Tenant’s sole cost and expense, maintain the Premises in good condition and repair, and in accordance with all applicable laws, rules, ordinances, orders, and regulations of government agencies having or claiming jurisdiction over the Premises. Nothing in this provision shall be construed as limiting any of Tenant’s right under this Lease to cause its contractor to alter, modify, demolish, remove, or replace any improvement.
9. **OWNERSHIP OF IMPROVEMENTS.**
- a. All Improvements and Other Improvements on the Premises that Tenant causes to be constructed as permitted by this Lease shall be owned by Tenant until expiration of the term or sooner termination of this Lease. At the expiration of the term or earlier termination of the Lease, such Improvements and Other Improvements shall become the property of Landlord.
 - b. All equipment, machinery, trade fixtures, and all appurtenances thereto, and other property of every description used, or caused by Tenant to be installed or placed by



Tenant's contractor on the Premises which can be removed without material physical damage to Landlord's real property shall be owned by Tenant and deemed Tenant's personal property ("**Personal Property**"). Tenant may remove its Personal Property upon expiration or earlier termination of this Lease, provided that Tenant repairs any material physical damage to the Premises caused by such removal.

10. **ASSIGNMENT; SUBLETTING.** Tenant may not assign, sublease, or otherwise transfer Tenant's interest in this Lease to any person or entity without Landlord's prior written consent, which Landlord may withhold in its sole discretion.

11. **UTILITIES.** Landlord shall be solely responsible for: (A) making arrangements for any utility services Tenant requires at the Premises; (B) paying all charges or bills incurred for utility service at the Premises or used in connection with Tenant's use conducted thereon.

12. **INSURANCE.**

a. Landlord and Tenant shall, at all times during the Term, obtain and maintain the insurance required by the Funding Agreement.

b. Landlord and Tenant each hereby agree to a mutual waiver of subrogation in accordance with the terms of Section 9.4 of the Funding Agreement.

13. **CASUALTY; CONDEMNATION.** If the Premises shall be damaged or destroyed by fire or other casualty, or shall be subject to full or partial condemnation during the term of this Lease, Tenant shall have no obligation to repair or restore the same unless it shall so elect in its sole and absolute discretion. If Tenant elects to repair or restore the Premises, Landlord shall provide Tenant with any insurance proceeds received, and Tenant shall commence restoration promptly. If Tenant shall not elect to repair or restore the Premises, this Lease shall terminate as of the date of the casualty or date of taking, without further liability of either party to the other except for obligations previously accrued, but unpaid or unperformed as provided herein, and any insurance proceeds shall be paid to Landlord.

14. **ENVIRONMENTAL PROVISIONS.**

a. Landlord warrants to Tenant that to the best of Landlord's knowledge as of the Commencement Date of this Lease, the Premises are free and clear of any Hazardous Substances and is in strict compliance with all applicable Environmental Laws. Landlord agrees to be responsible for, and without limiting any other indemnification obligations of Landlord contained herein, Landlord hereby agrees to protect, indemnify, defend (with counsel acceptable to Tenant) and hold harmless Tenant from and against any and all Claims including, without limitation, reasonable attorneys' fees, fines, penalties and/or assessments levied or raised by any governmental authority or court, and any remediation and mitigation costs and expenses, arising out of, resulting from, or connected with any Hazardous



Substances (defined below) that are caused by Landlord's use or possession of the Premises prior to the Commencement Date of this Lease.

- b. **Definitions.** For purposes of this Lease, the term "**Hazardous Substances**" shall mean all toxic or hazardous substances, materials or waste, asbestos, petroleum or petroleum products, petroleum additives or constituents or any other waste, contaminant or pollutant regulated under or for which liability may be imposed by any Environmental Laws. "Environmental Laws" shall mean all federal, provincial, state and local environmental laws (including common law) regulating or imposing standards of care with respect to the handling, storage, use, emitting, discharge, disposal or other release of Hazardous Substances, including, but not limited to, the Resource Conservation and Recovery Act of 1976, 42 U.S.C. §6901, et seq., the Clean Air Act, 42 U.S.C. §7401, et seq., the Clean Air Act, 42 U.S.C. §7401, et seq., the Federal Water Pollution Control Act, 33 U.S.C. §1251, et seq., the Emergency Planning and Community Right to Know Act, 42 U.S.C. §1101, et seq., the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §9601, et seq., the Toxic Substances Control Act, 15 U.S.C. §2601, et seq., the Oil Pollution Control Act, 33 U.S.C. §2701, et seq., any successor statutes to the foregoing, or any other comparable local, state or federal statute or ordinance pertaining to protection of human health, the environment or natural resources, including without limitation the preservation of wetlands, and all regulations pertaining thereto, as well as applicable judicial or administrative decrees, orders or decisions, authorizations or permits.
15. **DEFAULT BY TENANT.** Should Tenant default in the performance, fulfillment or observance of any of Tenant's other covenants, conditions or agreements herein contained, and such default shall continue for thirty (30) days after written notice thereof from Landlord to Tenant, then Landlord may thereafter, terminate this Lease as of the date of specified in the notice and may demand and recover possession of the Premises from Tenant; provided, however, that if the nature of the default is such that it cannot be cured within thirty (30) days, Tenant shall not be deemed in default so long as Tenant has promptly commenced the cure and diligently pursues the cure to completion thereafter. Upon receipt of any termination notice, Tenant shall immediately surrender possession of the Premises to Landlord. In surrendering possession, Tenant shall be entitled to remove and retain all of their removable Personal Property located on the Premises, so long as the removal is completed with reasonable promptness after the notice is given. In the event of termination under this provision, the terms of Section 8.2.2 of the Funding Agreement shall apply.
16. **DEFAULT BY LANDLORD.** Tenant shall give Landlord written notice of any default by Landlord in the performance of any covenant or obligation to be kept or performed hereunder, and if such default continues for a period of thirty (30) days after receipt by Landlord of a written notice from Tenant specifying such default, then and in such event, Tenant, at its election, may (a) terminate this Lease, or (b) spend such money as is reasonably necessary to cure such default and, in such event, Landlord shall then pay to Tenant, within 30 days after written demand, all sums paid and costs and expenses reasonably incurred by Tenant in connection with the making of any such payment or the



taking of any such action, including reasonable attorneys' fees; provided, however, that if the nature of the default is such that it cannot be cured within thirty (30) business days, Landlord shall not be deemed in default so long as Landlord has promptly commenced the cure and diligently pursues the cure to completion thereafter and cures same within a total of ninety (90) days from issuance of default notice by Tenant. In the event of termination under this provision, the terms of Section 8.2.1 of the Funding Agreement shall apply.

17. **NOTICE**. All notices required or permitted to be given under this Lease must be in writing and mailed postage prepaid by certified or registered mail, return receipt requested, by personal delivery, or overnight courier to the appropriate address indicated below or at such other place(s) that either Party may designate in written notice to the other. Notices are deemed received upon delivery if personally served, one day after mailing if delivered via overnight courier, or two days after mailing if mailed as provided above.

To Landlord: City of Menlo Park
Attn: Public Works Director
701 Laurel Street
Menlo Park, California 94025-3409

With copy to: City Attorney
City of Menlo Park
1110 Alma Street, Suite 210
Menlo Park, California 94025

To Tenant: Facebook, Inc.
Attn: Facilities
1 Hacker Way
Menlo Park, California 94025

With copy to: Facebook, Inc.
Attn: Real Estate Counsel
1 Hacker Way
Menlo Park, California 94025

18. **MISCELLANEOUS**.

- a. **Entire Agreement**. This Lease constitutes the entire agreement between the Parties pertaining to its subject matter and supersedes any prior or contemporaneous written or oral agreement between the Parties on the same subject.
- b. **Severability**. If any portion of this Lease, or the application thereof is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining portions of this Lease, or the application thereof, will remain in full force and effect.
- c. **Time**. Time is of the essence in this Lease, and all provisions of this Lease relating to the time of performance of any obligation under this Lease shall be strictly construed.



- d. Attorney's Fees. If either party brings any action or proceeding to enforce, protect, or establish any right or remedy, the prevailing party shall be entitled to recover reasonable attorneys' fees.
- e. Governing Law. This Lease shall be governed and construed according to the laws of California and shall bind and inure to the benefit of the successors and assigns of the undersigned.
- f. Compliance with Laws. In performance of this Lease, the Parties must comply with all applicable Federal, State, and local laws, regulations, and ordinances.
- g. Modifications. This Lease may only be modified in a writing executed by both Parties.
- h. Counterparts. This Lease may be executed in several counterparts and shall be valid and binding with the same force and effect as if all parties executed the same Lease. The Parties hereto consent and agree that this Lease be signed and/or transmitted by facsimile, e-mail of a .pdf document or using electronic signature technology (e.g., via DocuSign or similar electronic signature technology) acceptable to Landlord, and that such signed electronic record shall be valid and as effective to bind the party so signing as a paper copy bearing such party's handwritten signature. To the extent a party signs this Lease using electronic signature technology, by clicking "SIGN", such party is signing this Lease electronically, and the electronic signatures appearing on this Lease shall be treated, for purposes of validity, enforceability and admissibility, the same as handwritten signatures.

[Signature Page Follows]



IN WITNESS WHEREOF, the Parties have duly executed this Lease as of the date first above written.

LANDLORD

CITY OF MENLO PARK

By: _____
Starla Jerome-Robinson, City Manager

Approved As To Form:

By: _____
Cara Silver, Interim City Attorney

Attest:

By: _____
Judi A. Herren, City Clerk

TENANT

FACEBOOK, INC.,
a Delaware corporation

By: _____
Name: _____
Title: _____



EXHIBIT A

[PREMISES]