

May 20, 2018

Alex McIntyre
City Manager
City of Menlo Park
701 Laurel St.
Menlo Park, CA 94025

RECEIVED

MAY 24 2018

CITY OF MENLO PARK
PLANNING

Re: Facebook Campus Expansion Project (MPK 21) – Condition Compliance Update and Time Extensions

Dear Alex:

On behalf of Hibiscus Properties, LLC (Facebook), I would like to express our appreciation for all of City staff's assistance during the construction phase for Building 21. As we approach substantial completion and temporary occupancy of Building 21 later this month, our team has been diligently working together with City staff to satisfy certain obligations set forth in the Second Amended and Restated Conditional Development Permit, Mitigation Monitoring and Reporting Program, and Development Agreement for the Facebook Campus Expansion Project.

Although the vast majority of those conditions have already been satisfied or will be satisfied prior to temporary occupancy, there are four specific items which staff has agreed warrant a reasonable extension of time to perform. Those items are (i) sidewalk improvements along Constitution Drive, (ii) street frontage improvements along Chilco that implicate SamTrans' jurisdiction, (iii) permitting and related requirements for the the recycled water treatment facility in Building 21, and (iv) LEED Gold equivalency.

The purpose of this letter is to memorialize our understanding with City staff and the City Attorney's office regarding these extensions and provide an update of where each of the three items currently stand.

1. **Constitution Sidewalk Improvements**

Mitigation measure TRA-4.1a requires the construction of sidewalks along one side of Constitution Drive between Chilco Street and Chrysler Drive, as well as pedestrian crosswalks and curb ramps at Chilco Street and Constitution Drive and Jefferson and Constitution Drive. In June 2017, Facebook provided the City with a bond to secure performance of the work. Since then, a variety of challenges have surfaced including the need to coordinate with other property owners, the need to define the appropriate scope of work to limit impacts on other property owners, and other issues which Facebook has diligently been working through together with City staff.

All of this work took significantly longer than expected, and Facebook has therefore requested a modification to provide more time to complete the work. We understand that the City is willing to provide a reasonable extension of time for completion of the improvements, targeting completion prior to final inspection of the building (i.e., issuance of a final certificate of occupancy or completion) which is anticipated to occur around August/September 2018. That would allow Facebook sufficient time to complete the work and any additional outreach and coordination with affected third-party property owners. Under the circumstances, we think this is an appropriate modification especially since a performance bond is already in place. In the event that other unforeseen conditions arise that could impact timing, we will continue to coordinate closely with City staff, but we believe that it will be feasible to complete the work prior to issuance of a final certificate of occupancy or completion.

facebook

Address: 1 Hacker Way
Menlo Park, CA 94025

2. Chilco Streetscape Improvements

As part of the Development Agreement, Facebook committed to various improvements along Chilco Drive. Section 7.1.6 of the Development Agreement specifically requires completion of “Phases 3a and 3b” of the Chilco Streetscape Improvements (for bike, pedestrian, and crossing facilities in the vicinity of the Dumbarton Rail Corridor and the southwest corner of Building 21) prior to final building inspection of Building 21. Our team met with City staff earlier this year to propose a preliminary design concept, and since then Facebook has been working with SamTrans to obtain their preliminary approval of the plans prior to proceeding further since SamTrans’ approval is required for this particular stretch of improvements along Chilco Drive.

We contemplated that this portion of the Chilco Streetscape Improvements could take time, and the Development Agreement therefore permits automatic time extensions to complete the improvements if (i) permits or approvals are required from outside agencies which cause delays or (ii) construction is delayed for reasons beyond our reasonable control. (The Development Agreement does not specify a specific duration for an extension, but instead says that Facebook “shall have such additional time to complete such capital improvements as may be reasonably necessary resulting from delays beyond Facebook’s reasonable control.”)

We continue to diligently pursue SamTrans’ feedback regarding the conceptual designs; however, it’s unclear when SamTrans will provide a formal response. We will, of course, continue to diligently pursue approval of this stretch of improvements and will continue to apprise City staff as we make progress.

3. Onsite Water Treatment System

As part of the Project, we also proposed an onsite water treatment facility as part of our sustainability commitments. At the time of Project approval, the precise procedural and permitting requirements were not entirely known due to the complexity and novelty of creating a private recycled water facility.

As staff is aware, construction of the recycled water system is progressing and we are working to obtain the state’s approval to operate the system. In terms of timing, the state will not allow us to operate the system until we have completed a formal startup/commissioning process under Title 22. Unfortunately, the state’s process conflicts with the CDP requirement that we construct the system and obtain all required approvals prior to building permit final for the Tenant Improvements phase, as it will take approximately 4 – 6 months after the building has been occupied before the San Francisco Bay Regional Water Quality Control Board will issue a permit. There is nothing that can be done to accelerate the process since it is a state requirement. As a consequence, City staff has agreed that an extension is appropriate provided that Facebook continues to provide status updates to City staff.

The current plan is to start the “clean water commissioning” of the system; i.e., fill the treated water storage tank with water via potable supply make-up lines. The potable make-up water lines supply water to the treated water storage tank, via air gap. Once the water is in the tank, it is then considered non-potable water. Facebook then intends to run the non-potable water from the treated water storage tank through the non-potable piping system (i.e., purple pipe) which serves the entire building and site, while the building is still under construction. This will allow Facebook to complete the City, State and County required cross-connection testing of the potable and non-potable piping systems, program the control system, calibrate the pump systems and test critical alarm points, as well as start training the certified wastewater plant operators.

Once the building receives TCO from the City and is occupied, the “dirty water commissioning” phase will commence. This phase requires an adequate sewage load generated by building occupants prior to starting. That stated, while the dirty water commissioning of the system is ongoing, the potable water make-up line

(supplying the treated water storage tank via air gap) will be the primary source of water for toilet/ urinal flushing and landscaping irrigation for the entire building and site. All water generated by the “dirty water commissioning” process will be diverted to the District sewer system in Chilco Street and not be re-used by the treatment system until the San Francisco Regional Water Quality Control Board issues a Permit to Operate. Once we complete that process, the San Francisco Bay Regional Water Quality Control Board will issue a permit with operational parameters the system must satisfy. These parameters will then be included in the maintenance and operations agreement to complete that requirement.

These sequencing details were unknown during the entitlement process, and conflict with the CDP’s requirement to construct the onsite water treatment system, obtain “all required approvals and inspections from the City and other agencies,” and enter into a maintenance and operations agreement prior to building permit final for the Tenant Improvements phase. Similar to the Chilco Streetscape Improvements, we contemplated this contingency and included a provision in the CDP (Section 13.6) that allows for “reasonable extensions of time” for performance (subject to City Manager approval) if Facebook was delayed in obtaining these approvals and performing these obligations due to no fault or lack of diligence of Facebook.

Additionally, as requested, Facebook will provide a status letter regarding the water treatment facility prior to occupancy, together with a schedule. Facebook also agrees to include a requirement in the maintenance and operations agreement that states that in the event that the system is never licensed, permanently loses its license, or is decommissioned, then Facebook would undertake all necessary steps to convert the system to an “all potable” water system.

4. LEED Equivalency

Section 9.32 of the CDP requires Facebook to design the buildings to perform to LEED 2009 Building Design and Construction (BD+C) equivalency, and contemplates that reports would be submitted prior to temporary occupancy to document compliance with this condition. On May 1, 2018, Facebook submitted a report prepared by its LEED consultant which included a LEED Scorecard documenting the specific LEED credits under pursuit, and identifies that Building 21 is currently on track to meet the standard for LEED Platinum. Although not required, Facebook is also currently pursuing LEED certification (as opposed to equivalency), and certification is currently anticipated to occur by late 2018. Per staff’s request, we have also attached as Exhibit A a letter prepared by our LEED consultant identifying the various timing milestones which also commits Facebook to provide notice and updates to City staff as certain milestones are reached (e.g., submissions to GBCI, etc.).

City staff has indicated that more documentation would be required to substantiate the conclusions in the LEED consultant’s report, including review by the City’s Building Official and potentially third-party verification. Because the certification process that Facebook is pursuing would relieve both City staff and Facebook’s consultant of the need to provide that documentation and review, City staff has indicated that it would be more efficient to defer compliance with the LEED equivalency condition until later this year. If Facebook ultimately elects not to pursue LEED certification, then we will provide additional documentation showing that Building 21 has indeed been designed to LEED Gold or better equivalency.

Conclusion

As indicated above, we have expended considerable time and effort to comply with all of the requirements in a timely manner consistent with the Project approvals. We also sincerely appreciate all of the hard work and dedication from City staff in working together with our team to address the issues outlined above and provide reasonable extensions of time to perform.

We therefore request that you confirm the City's grant of the following extensions of time:

- **Constitution Sidewalk Improvements (MM TRA-4.1a):** Extend the time for completion of the improvements until final inspection of the building (i.e., issuance of a final certificate of occupancy or completion), which is anticipated to occur around August/September 2018, unless unforeseen conditions arise beyond Facebook's control in which case further reasonable extensions of time will be granted subject to periodic reporting and "check-ins" with City staff;
- **Phases 3a and 3b of the Chilco Streetscape Improvements (DA Section 7.1.6):** Extend the time for completion for a reasonable period of time, subject to periodic reporting requirements and "check-ins" with City staff; and
- **Recycled Water System (CDP Sections 13.4 and 13.5):** Extend the time for performance for a reasonable period of time, on the condition that we provide written reports prior to issuance of a temporary certificate of occupancy outlining the current status and prior to issuance of a final certificate of occupancy.
- **LEED Equivalency:** Extend the time for compliance until Facebook receives LEED Gold or better certification for Building 21; in the event that Facebook elects not to pursue formal certification, Facebook agrees to provide additional documentation to confirm that Building 21 has been designed to at least LEED Gold equivalency prior to issuance of a final certificate of occupancy, with periodic reporting and "check-ins" with City staff.

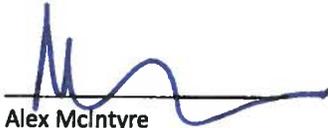
Thank you for your time and attention to this matter. Again we appreciate the efforts of City staff and the City Attorney's office to resolve these issues, and would be happy to answer any questions regarding the contents of this letter.

With appreciation,

Dave Kling



Acknowledged and Agreed:



Alex McIntyre
City Manager

Acknowledged and Agreed:



William L. McClure
City Attorney

**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 Elson, Notary Public,
(here insert name and title of the officer)

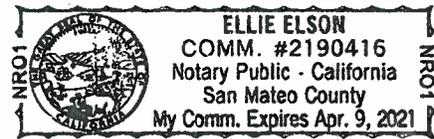
personally appeared Dave Kling

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 _____



(Seal)

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) _____ Title(s)

- Guardian/Conservator
- Partner - Limited/General
- Trustee(s)
- Other: _____

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

Additional 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)
- _____

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

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 Here Insert Name and Title of the Officer

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 *Jelena Harada*
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): _____
 Partner — Limited General
 Individual Attorney in Fact
 Trustee Guardian or Conservator
 Other: _____
Signer Is Representing: _____

Signer's Name: _____
 Corporate Officer — Title(s): _____
 Partner — Limited General
 Individual Attorney in Fact
 Trustee Guardian or Conservator
 Other: _____
Signer Is Representing: _____

Exhibit A

LEED Milestones – Stok Letter

Katie Bachman
stok
945 Front Street, Unit B
San Francisco, CA 94111

May 1, 2018

City of Menlo Park
Community Development Department
701 Laurel Street
Menlo Park, CA 94025

To Whom It May Concern:

This letter is in reference to Facebook MPK 21, located at 1 Facebook Way in Menlo Park, California.

stok is the LEED Consultant on the project and as such, I am writing to confirm this project will be certified LEED Platinum under the LEED for New Construction v2009 rating system.

The project is registered with the US Green Building Council (USGBC) and Green Building Certification Institute (GBCI), project ID number 1000065796. The project is currently tracking 86 confirmed points (the minimum for LEED Platinum is 80 points). Please reference the enclosed LEED Scorecard which details the specific LEED credits under pursuit.

This project's LEED Certification process is broken into two phases: LEED Design Credit submission/approval and LEED Construction Credit submission/approval to the GBCI. The credits associated with each of these phases are indicated on the scorecard included herein.

stok will notify the appropriate MPK 21 project team members (General Contractor and Owner) as the project's LEED milestones are completed. The General Contractor, Level 10, will then inform the City of the project's LEED Progress. The City will be informed when the project has been submitted to the GBCI for Design Credit Review and again when Design Credits have been awarded. The same notification process will be followed for the Construction Credit Review milestones.

The timeline for MPK 21's LEED Certification process is summarized below:

TARGET LEED SUBMISSION MILESTONE:	TARGET DATE OF COMPLETION:
Design Credit Submission:	May 2018
Design Credit Review Phase:	May 2018 – July 2018
• 25 business days required by GBCI	
Design Credits Approved By GBCI:	July 2018
Construction Credit Submission:	July 2018
• Upon completion of all sitework, as required by LEED	
Construction Credit Review Phase:	August 2018



- 25 business days required by GBCI
- Construction Credits Approved By GBCI: September 2018
LEED Platinum Certification Received By GBCI/USGBC: September 2018

Please don't hesitate to reach out with any questions or concerns.

Sincerely,

Katie Bachman

LEED Project Administrator, LEED AP ID+C
GBCI Accreditation Reference Number: 10805304
(415)505-4297
katie@stok.com

Enclosures: Facebook MPK 21 LEED for New Construction v2009 Scorecard

