



SAN FRANCISCO PLANNING DEPARTMENT

DATE: October 24, 2019

TO: Members of the San Francisco Board of Supervisors
Members of the San Francisco Planning Commission

FROM: John Rahaim, Planning Director

RE: Academy of Art University Development Agreement
Summary of the draft agreement and negotiations

Project Address: 43 Properties Owned or Leased by the Academy of Art
University (Academy)

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Chapter 56 of the San Francisco Administrative Code sets forth the procedure by which any request for a Development Agreement (DA) will be processed and approved by the City and County of San Francisco. Administrative Code Section 56.10(a) describes a Planning Director report on DA negotiations between the applicant and the City, to be disclosed to the Planning Commission and the Board of Supervisors. In the present case, the Department and the City Attorneys' Office propose legislation that will waive certain provisions of Section 56, including strict compliance with the formatting and content requirements of the Directors' Report, for the reasons described below.

This Development Agreement was negotiated in the context of judicially supervised settlement efforts related to litigation initiated by the City Attorney, on behalf of the City and County of San Francisco (the City), and People of the State of California, against the Stephens Institute dba Academy of Art University (the Academy) and the LLC Parties in *People v. Stephens Institute, et. Al*, San Francisco Superior Court Number CGC-16-551-832 (the Lawsuit). Before the City filed the Lawsuit, the City and the Academy had been in a long-standing and complex set of disputes over a significant number of open enforcement actions and entitlement applications relating to Academy properties that were out of compliance with the Planning Code. On November 15, 2016, the Academy and the City entered into a judicially supervised non-binding Term Sheet for Global Resolution (the "Initial Term Sheet"). The Initial Term Sheet, which was made public, contemplated settlement of the Lawsuit through a set of agreements including a DA. As such, the Academy submitted a DA application on December 19, 2017¹ and thereafter the Academy and the City commenced a series of meetings to develop the terms of the DA, along with other terms related to the settlement of the Lawsuit. The parties, again in the context of judicially supervised settlement efforts, modified the Initial Term Sheet through a Supplement to the Term Sheet dated July 10, 2019, which was also made public. The parties met to conform the terms of the DA and related documents to the Supplement and finalize their proposed terms.

¹ For record keeping purposes, the case number used by the Planning Department for the DA is 2008.0586; however, no portion of the current DA was negotiated prior to the judicially supervised Initial Term Sheet. For ease of public access to DA documents, these records are also associated with Case No. 2019-012970DVA, which shares the parent record number with the Academy's Institutional Master Plan, Master Conditional Use Authorization, Master Permit to Alter and Master Certificate of Appropriateness applications that will be acted upon by the Planning Commission and Historic Preservation Commission; in this way, all parts of the Project are consolidated under a single record number.

Under the Development Agreement, the Academy agrees to withdraw from, and cease any operation at, nine (9) of the Academy's current properties, shrinking the Academy's current footprint within the City. The Academy will also bring the thirty-four (34) properties used by the Academy or intended for future Academy use, located throughout San Francisco, into compliance with the Planning Code. Compliance of the Academy Properties with the Planning Code requires the City's approval of a variety of permits and authorizations, including (i) legislation approving the DA and implementing limited amendments to the Planning Code, (ii) approval of a master conditional use authorization by the Planning Commission to reflect the approval of the use of thirty-four (34) buildings and to grant certain exceptions to the Planning Code, (iii) the approval of master permits to alter, and master certificates of appropriateness, by the Historic Preservation Commission, and (iv) a variety of other building alterations and street improvements including without limitation the removal and installation of signage, removal and repair of nonconforming awnings and exterior alterations, the installation Class 1 and Class 2 bike racks, the removal of curb cuts, and the replacement of certain windows. In addition, the project includes removing the Hotel Conversion Ordinance Residential Guestroom designation (Administrative Code Chapter 41) from certain guest rooms in 1060 Bush and 1153 Bush Street, and relocating that designation to rooms located in 860 Sutter, along with the net addition of 8 new Chapter 41 Residential Guestrooms to be added to the City's affordable housing stock. This transfer of Chapter 41 designations will be permanent, resulting in the entirety of 860 Sutter becoming a Chapter 41 building.

The DA being presented to the Planning Commission and Board of Supervisors reflects the negotiations that occurred at those meetings. These include the details of public benefits to the City, including a significant affordable housing public benefit, the process and specific approvals required to bring the Academy's properties and uses into compliance with the Planning Code, plan sets detailing work required by the Planning Department for each property, the terms and conditions for student enrollment and housing metering, requirements for institutional master plan updates, requirements for future projects, a prohibition on conversion of existing housing, and other terms including but not limited to a schedule of performance, limited temporary vesting, and the Administrative Code Chapter 41 exchange described in the preceding paragraph. The Planning Department believes that both parties negotiated in good faith and the end result is a project that will benefit the City.

Key parties involved with the negotiation of the DA include:

Representing the City	Representing the Academy
Dennis J. Herrera (CAO)	Dr. Elisa Stephens (Academy)
Jesse Capin Smith (CAO)	Martha Weeck (Academy)
Ron Flynn (CAO)	Gordon North (Academy)
Kristen A. Jensen (CAO)	Michael Petricca (Academy)
Tom Lakritz (CAO)	Jim Abrams (J. Abrams Law, P.C.)
Michelle Sexton (CAO)	Nick Roosevelt (J. Abrams Law, P.C.)
Olsen Lee (MOHCD)	Seth Pritchard (J. Abrams Law, P.C.)
Kate Hartley (MOHCD)	David Millstein (Millstein & Associates)
Dan Adams (MOHCD)	Gerald Richelson (Millstein & Associates)

Caroline McCormack (MOHCD)	Joe Veronese (Alioto Law Group)
John Rahaim (CPC)	Paul Cooper (TEF Design)
Dan Sider (CPC)	Carla Dal Mas (TEF Design)
Andrew Perry (CPC)	Justin Tang (TEF Design)
Liz Watty (CPC)	Kate McGee (KM Planning Strategy)
Jeff Joslin (CPC)	Amy Lee (Consultant)
Mary Woods (CPC)	Ed Conlon (Hathaway Dinwiddie)
Tina Chang (CPC)	Leilani Moisa (Hathaway Dinwiddie)
Scott Sanchez (CPC)	James J. Brosnahan (Morrison Foerster)
Claudine Asbagh (CPC)	Zane O. Gresham (Morrison Foerster)
Elizabeth Gordon-Jonckheer (CPC)	George C. Harris (Morrison Foerster)
Alex Westoff (CPC)	Corinne N. Quigley (Morrison Foerster)
Rich Sucre (CPC)	Lucia X. Roibal (Morrison Foerster)
Kathrine Wilborn (CPC)	Tim Kline (Morrison Foerster)
Shelley Caltagirone (CPC)	Jennifer R. Jeffers (Morrison Foerster)
Alexandra Kirby (CPC)	Dustin Charle Elliot (Morrison Foerster)
Tim Frye (CPC)	Claudia M. Vetesi (Morrison Foerster)
Rick Cooper (CPC)	David Noyola (consultant)
Chris Thomas (CPC)	
Manoj Madhavan (CPC)	
Wade Wietgreffe (CPC)	
Ryan Shum (CPC)	
Chelsea Fordham (CPC)	
Lisa Gibson (CPC)	

While not all of these negotiation meetings occurred in the presence of a judge, each negotiation meeting was held and conducted pursuant to agreements reached at judicially supervised settlement meetings and involved settlement communications subject to certain disclosure privileges. As such, and pursuant to judicially supervised settlement discussions, the Academy and City propose that legislation approving the DA include waivers of any otherwise applicable provisions of Administrative Code Section 56.10.

This summary is prepared for information purposes only, and is not intended to change, supplant, or be used in the interpretation of, any provision of the Development Agreement. For any specific question or interpretation, or for any additional detail, reference should be made to the Development Agreement itself.

If you have any questions or concerns, please contact the City Attorney's Office, Jesse Capin Smith, at (415) 554-4709.