

REPORT



FROM CITY ATTORNEY

February 3, 2005

PLANNING AND TRANSPORTATION COMMISSION
Palo Alto, California

RE: Development Agreement Between City and Stanford;
Ground Lease For the Stanford/Palo Alto Community
Playing Fields

Dear Members of the Commission:

This report reviews some of the important terms of the proposed Development Agreement ("DA") between the City and Stanford, and the proposed Ground Lease of the Mayfield site for use as athletic fields.

PROPOSED DEVELOPMENT AGREEMENT

The principal features of the proposed Development Agreement are as follows:

- Stanford will lease to the City, for fifty-one years, the six acre Mayfield Site at the corner of Page Mill Road and El Camino Real, for use as the "Stanford/Palo Alto Community Playing Fields."
- Stanford must construct 250 dwelling units, including below-market-rate units ("BMR Units") - a minimum of 50 units, and at Stanford's option up to 70 - at sites on El Camino Real and California Avenue. The El Camino Site is 1.8 to 2.5 acres and the California Avenue Site is 17 acres.
- In turn, the City grants Stanford the right to relocate 300,000 square feet of existing office development currently on these sites to other locations in the Stanford Research Park. This 300,000

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- square feet is referred to as "Replacement Square Footage" in the Agreement.
- Stanford is guaranteed the right to develop the housing and the Replacement Square Footage under the rules in effect on June 10, 2003 ("the 2003 Rules"), as modified by the DA. (June 10, 2003 was in effect the date on which the negotiation of the DA commenced.).
- While the total square footage available for non-residential development in the Research Park will not be increased by the Replacement Square Footage, Stanford would be permitted to exceed the floor area ratio ("FAR") currently allowed on the relocation sites by up to twenty five percent.
- The City also agrees not to reduce the floor area ratio of the Stanford Research Park until 2011, the year in which the City plans to review its Comprehensive Plan. This means that the City agrees not to "downzone," in terms of the square footage allowed on a site, before 2011.
- The City agrees to accept the lease of the Mayfield Site as mitigation for any community service impacts on the City resulting from the 2000 units of student housing, 350 units of postgraduate housing, and 668 units of faculty/staff housing at Stanford that was authorized by the General Use Permit approved by the County of Santa Clara in December 2000. (The General Use Permit does not require any community service impact mitigation for the 2,000,000+ square feet of new academic and academic support spaces.)

Some of the terminology defined in Section 1 of the DA is important in understanding the document. As noted above, the "2003 Rules" are the City's ordinances, resolutions, rules, regulations and official policies, including the Comprehensive Plan, in effect on June 10, 2003. The "Modified 2003 Rules"

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simply refer to the fact that the DA may modify some of the 2003 Rules. The Agreement preserves the City's authority to apply certain other rules subsequently enacted - so-called "Subsequent Applicable Rules" (§ 6.8) - and Stanford may choose to have them applied in some instances.

THE PROPOSED LEASE OF THE MAYFIELD SITE

The terms of the proposed Mayfield Lease are described more fully below. Under the DA, Stanford is required to begin the construction of the playing fields (described in Exhibit C to the Lease) within 100 days of the City's approval of the DA. The DA specifies that no construction shall commence during the period from October 1 to April 15, unless the parties otherwise agree.

The City receives possession of the playing fields upon its inspection and approval of the construction. §§ 5.1, 5.2. Because the site is underlain with contaminated groundwater, risk assessments were conducted by the City and the Regional Water Quality Control Board, and each determined that the site is suitable for use as playing fields. The DA provides that the entire agreement may be terminated in the unlikely event that Stanford discovers that it is infeasible to construct the playing fields on the site. § 20.18.

THE HOUSING STANFORD IS REQUIRED TO BUILD

Stanford is required to build, and the City is required to approve, 250 dwelling units of housing at the El Camino and California Avenue sites. § 5.4. If either of these sites proves infeasible, Stanford is required to build on a substitute site within the Research Park. § 6.4.2. Application for 185 units is required by December 31, 2013, and the remaining units by December 31, 2020. § 5.4. There can be no discrimination against households with children or on the basis of the age of renters or buyers. § 6.4.4. At least 50 units must be below BMR Units, under standards set forth in Exhibit C. Stanford has the option to build up to the 70 BMR units at the El Camino Sites. Special procedures are established for review of the quality of

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the BMR units if Stanford assigns their development to a third party. § 5.5.

Housing Development Standards

The development standards for the 250 units of housing are set forth in § 6.4.4. For each of the housing sites, Stanford may choose to proceed under (a) the RM-15 for California Sites and RM-40 for the El Camino Sites, as those districts existed in 2003, (b) the zoning in effect when it makes application, so long as the densities do not exceed 15 units per acre for the California Sites and 40 units per acre for the El Camino Sites, (c) alternative zoning districts tailored to the sites specially crafted set of alternative development standards with a density of 15 units per acre at the California Sites and 50 units per acre at the El Camino Site, or (d) a PC zoning district approved by the Council at some time in the future (covered by § 6.4.11 and Exhibit D).

City Design Review of Housing

If Stanford proposes housing which complies with the special development standards in Exhibit D (or similar standards developed for a substitute site), the DA limits the City's "design review" to approval of "lighting, noise levels, landscaping and of the exterior materials and finishes." For the California Sites and any such substitute sites, the design review also includes approval of "massing, roof forms, and the site plan." These latter factors may not be reviewed at El Camino Sites and are limited for the California Sites. Approval of massing, roof forms and the site plan on the California Sites is limited to "the California Avenue edge of the California Sites, and then only to the extent that the projects submitted for approval do not already approximate the horizontal rhythm of building-to-sidyard setback and façade areas of California Avenue residential properties located across the street from, or in the vicinity of the California Sites."

If Stanford proposes to develop housing under any standards other than those in Exhibit D, the above-described limitations on architectural review do not apply. If Stanford's housing

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proposal otherwise complies with the Agreement, the City cannot reduce or increase the number of units proposed. § 6.4.10.

Alternative Methods to Satisfy Below Market Rate Housing Requirement

The City's Below Market Rate (BMR) housing program requires that 20% of new housing units in a project of 5 acres or more be part of the City's affordable housing program. Under the DA, Stanford may either provide 50 market rate units under the City's basic BMR program as it exists when Stanford builds its market rate housing, or take a different approach and provide 70 family BMR rental units, all located at the El Camino Sites. These units would be eligible for state or federal housing subsidies, but not for city grants; because the project would be 100% affordable, it would not be required to pay community services impact fees otherwise payable on BMR units. All BMR units must be open to persons of any age, including children; Stanford may give preference to households with Stanford (county) workers for up to 30% of the units. §5.5, Exhibit C.

THE COMMERCIAL REPLACEMENT SQUARE FOOTAGE

The Two Phases for this Development

As described above, 300,000 square feet of existing commercial uses on the proposed housing sites may be rebuilt elsewhere in the Research Park.¹ Stanford can rebuild the first 100,000 square feet - the "Phase 1 Square Footage" - any time after the execution of the DA. § 6.1.1. However, Stanford cannot rebuild any of the remaining 200,000 square feet of commercial space - the "Phase 2 Square Footage" - until the housing to be constructed on the site vacated by that commercial square footage has been approved (or certain time periods for processing the housing approval have passed). § 6.1.5.

¹ The California Sites, which are in the Research Park, currently have about 312,000 square feet of development. The El Camino Sites are not in the Research Park; Stanford retains a limited right for retail/personal services/restaurant space in conjunction with housing on the El Camino Sites.

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The Process for Designating Building Sites and Projects

In order to rebuild any part of the 300,000 square feet, Stanford must first identify one or more sites for that development - "Designated Sites" - and then propose individual projects for that site - "Designated Projects." §§ 6.3.1 & 6.3.2. These designations may be withdrawn or surrendered by Stanford any time prior to construction, but not thereafter. In two respects, the DA allows Stanford to increase the size of individual projects it rebuilds, as described next.

The Scope of Individual Projects

Stanford may use its 300,000 square feet of Replacement Square Footage to construct new buildings, to enlarge existing buildings, or to construct enlarged buildings to replace existing buildings in the Research Park. § 6.1.1. When Stanford proposes to enlarge or replace an existing building, the DA contemplates that the entire building will be subject to a single set of standards (the Modified 2003 Rules). §§ 1.8 & 6.1.2. For this purpose, Stanford is required to identify the rest of the building as "Associated Square Footage." The DA allows Stanford to designate a total of 1.2 million square feet as Associated Square Footage in connection with its use of Replacement Square Footage.

Increase in Floor Area Ratio and Site Coverage Allowed

The DA allows Stanford to use its Replacement Square Footage to increase the floor area ratio on Designated Sites up to 25 percent over what would otherwise be allowed by the zoning. § 6.3.3. This provision does not give Stanford the right to increase the overall commercial square footage allowed in the Research Park, and the FAR may not be increased on any site fronting on California Avenue. Stanford may also apply this "FAR bonus" to another development that is not otherwise subject to the DA, if it has unused Replacement Square Footage that it wants to devote to that purpose. Stanford may increase the permitted site coverage on Designated Sites in the LM(5) districts from 15% to 25%.

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City Design Review of Stanford Commercial Projects

The Designated Projects proposed by Stanford are required to comply with the 2003 Rules as modified by the Agreement, and they are subject to design review. However, the proposed DA states that the City may not reduce the size of a proposed project except as dictated by the Modified 2003 Rules, including requirements for setbacks from roads, creeks, and residential areas; the City's engineering review of ingress and egress to a site and of parking, pedestrian, bicycle, and motor vehicle circulation on it; the required preservation of trees; and the location of utilities. § 6.3.9. With limitations, the City may also require underground parking if necessary to accommodate the FAR, consistent with creek protection policies. § 6.3.9. (The creek protection policies are set forth in § 8.3.). The City may not require materials or building techniques that are significantly more expensive than those used in the Research Park during the previous ten years. § 6.3.9.

GENERAL PROVISIONS RELATING TO STANFORD DEVELOPMENT

A variety of provisions in the DA grant additional rights to Stanford or preserve City authority in certain respects. They apply to both the housing and commercial development and may be summarized as follows:

- Utility and Storm Drain Connections. Unless prohibited by a moratorium, the City would agree to connect Stanford development under the DA to the City's sanitary sewers, storm drains, water service, gas service and electrical service under the rules in effect at the time of application for service. §§ 6.3.4 & 6.4.5. In addition, Stanford's housing and commercial space are granted priority for sanitary sewer treatment capacity and use of storm drains over unbuilt residential development and commercial space respectively. Stanford would not have priority over any residential, utility, governmental (including schools), or community service uses such as private hospitals and day care facilities. §§ 6.3.5, 6.3.6,

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6.4.6, 6.4.7. However, when development is proposed upstream of a storm drain system handling flows already at capacity, Stanford is required to either (1) design the development to maintain or reduce the current peak flow rate, or (2) upgrade the appropriate downstream City storm drain lines as part of the development. § 8.2. In addition, the Agreement would not affect Stanford's obligation to pay for or construct needed improvements in the sewer collection system in connection with proposed developments. § 8.1.

- Limitations on the Expense of Design Conditions. The City may not require landscaping, design, materials, finishes, or building methods which are substantially more expensive (after adjusting for inflation) than those generally used in the Research Park in the ten year period prior to the determination. Stanford has the burden of establishing the greater expense. §§ 6.3.9 & 6.4.10.
- No Dedications. Except as may be required by state or federal law, the City agrees not to require any dedications for park, recreation, or open space. §§ 6.3.7 & 6.4.8. However, the DA does require the onsite implementation of Policy L-43 and Program L-44 of the Comprehensive Plan regarding the provision of sidewalks, pedestrian paths and connections to the city-wide bikeway system in Employment Districts.
- General Reservation of City Authority. The DA expressly preserves the City's authority to adopt, modify, and apply to Stanford development under the DA (1) building, plumbing, electrical, fire, and other uniform codes under § 8.7, (2) rules and procedures for the provisions and use of utility services under § 8.8, and (3) future city-wide regulations concerning the disposition of construction and demolition materials under § 8.11. It also preserves the City's general police power to the extent its exercise does not conflict with the agreement. § 8.11.

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MITIGATION OF THE IMPACTS OF STANFORD DEVELOPMENT

The impacts of the Stanford Development (housing and commercial) are mitigated by provisions in the DA, by future design review, and by mitigation measures in the Environmental Impact Report ("EIR") on the DA. The DA also contains some limitations on mitigation. Some of the more important provisions dealing with mitigation are summarized briefly below.

Mitigation Provided for in the DA

- The EIR Mitigation. The EIR accompanying the DA evaluates the impacts of both the housing and the replacement square footage that will be built by Stanford, and provides for mitigation where required by CEQA. Stanford has committed to the implementation of these mitigation measures. § 8.10.
- Mitigation of Traffic Impacts. The EIR includes measures to mitigate traffic impacts for the Stanford development under the DA including a shuttle. The DA specifically provides for a Transportation Demand Management ("TDM") Program (a half-time TDM Coordinator) and the continuation of the Hanover Shuttle after Stanford commences any commercial rebuilding under the DA and until it has demolished 100,000 square feet of existing commercial buildings to make way for housing. § 5.6.
- Further Buildout of the Research Park. For development beyond that vested in the DA, the EIR includes a long-term TDM Program for application to individual proposed developments in the context of full Research Park buildout. § 5.6.2.
- Development Impact Fees. The City's authority to impose these fees is preserved by the DA for the housing (§§ 8.5, 8.6), but not for the Replacement Square Footage since it all involves the rebuilding of existing development (§ 6.3.10).

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Limitations on Future Mitigation

- No Further Traffic Mitigation. Beyond the traffic mitigation measures described above, the DA provides that the City cannot impose any additional measures to mitigate the traffic impacts of the housing or the commercial Replacement Square Footage. However, these limitations do not apply to any Stanford proposal for a substitute Housing site selected pursuant to section 6.4.2., or to Stanford's continued commercial use or rebuilding on a site determined infeasible for housing (an "Infeasible Site").
- No Further CEQA Mitigation. Section 8.10 of the DA states that the Agreement and the EIR are intended to mitigate all impacts which can feasibly be mitigated, and therefore commits the City not to impose any additional mitigation measures under CEQA, except measures that the City is required to impose by other state, regional or federal law or authorized to impose by the Agreement. This provision also requires that the City not undertake additional environmental review under CEQA unless required to do so by CEQA. Again, this limitation does not apply to substitute housing or an "Infeasible Site."
- No Reduction in Research Park FAR. Section 6.5 provides that prior to 2011 (when the Comprehensive Plan is scheduled for revision), the City cannot reduce the maximum permitted floor area ratio for any portion of the Research Park from that set forth in the 2003 Rules. The City does retain the right to reduce the square footage of any individual additional development proposed in the Research Park (beyond that for which vested rights have been granted under this Agreement).
- Full Mitigation of GUP Community Service Impacts. The DA provides that the Mayfield Lease constitutes full satisfaction of Condition of Approval P.8 of the

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County's General Use Permit. The City further waives any right it may have to require other mitigation of impacts of development in the County under the General Use Permit on community services in Palo Alto, including park and recreation, cultural arts, child care, and library facilities and programs, but excluding police, fire, or emergency medical services. § 6.6.

ADMINISTRATION OF THE DA

The DA contains procedures for the City's periodic review of Stanford's compliance with the DA, and remedies for defaults by either Stanford or the City, which include binding arbitration. See §§ 10-14.

Stanford has a right to assign its rights and obligations under the DA to third parties in general without obtaining the City's consent. § 18. However, the City's consent is required for any assignment of Stanford's obligations to build Below Market Rate housing. § 18.2.2. Most importantly, none of Stanford's assignments will release it from any obligations under the DA unless the City gives Stanford a written release. § 18.3.

TERMINATION OF THE DA

The term of the DA is 25 years from the adoption of an ordinance approving the DA. § 17.1. That term may be extended for the period of moratoria or defaults (§ 17.2), and a party's performance under the DA is excused for events beyond a party's control (§ 17.3). Various events could lead to a termination of the DA and the Lease. Stanford may terminate the DA if a challenge to the DA is filed either by referendum or litigation. § 20.17. In turn, the City has a right to terminate the DA in the event of defaults by Stanford of its obligations under the DA (§ 11.2), or if the City is deprived of the use of playing fields on the Mayfield Site by reason of title problems. § 20.18. Also, if insurmountable problems are encountered by Stanford in constructing the fields, the City may terminate the DA by agreeing to pay one-half of the costs incurred by Stanford

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for the development of the fields prior to encountering the problem. § 20.18. If the DA is terminated by the City, Stanford has a right to terminate the Lease. § 20.18.

PROPOSED GROUND LEASE

Stanford will lease the Mayfield site to the City for 51 years at a nominal rent (\$1 per year) for the operation of community athletic fields and "other related public recreation uses." Art.1. The site will be identified solely as "The Stanford/Palo Alto Community Playing Fields." § 11.1.

Within 100 days of adoption of the Development Agreement, the playing field ("the Initial Improvements") will be constructed by Stanford according to the plans attached as Exhibit C to the Lease. § 11.1. After inspection and approval by the City, the City will take possession of the premises. § 5.1.

Under the Lease, the City accepts the premises "as is." § 4.1. Stanford is not responsible for fixing any problems with the playing fields after their acceptance by the City. § 11.1. See also Art. 10 and § 13.2. There is a broad assumption of risk and waivers by the City. § 20.2. The City has the right to self-insure in order to meet the insurance requirements spelled out in the Lease.

The City may enter into Use and Occupancy Agreements with others (e.g., food concessionaires). § 23.1. Stanford's consent for any such agreements or subleases is required only if they exceed 5 years or include the City's transfer of obligations for operation or maintenance of the premises or the payment of rent based on the market rental value per square foot of the premises. § 23.1.

The City may also make future "Alterations" to the premises without Stanford's approval as long as they cost no more than \$30,000. Art. 11. However, "Alterations" is defined to exclude "replacement or restoration of any of the Initial Improvements consistent with their original design and function." Art. 2. Thus, Stanford's approval is not required for such items as replacement of turf or light fixtures. There are elaborate

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provisions for review and approval of Alterations when Stanford's consent is required. Art. 11.

As previously noted, the groundwater under the site is contaminated and is the subject of ongoing remediation under the supervision of regulatory agencies. Under the Lease, the City has no responsibility for this "Pre-existing Environmental Condition,"² but only for an "Exacerbation" of this condition arising out of the City's activities on the site ("Lessee, Environmental Activity"). Art. 1 (definitions). The City is obligated to remediate and indemnify Stanford against any contamination the City causes (§§ 18.6, 18.7, 20.1), and there are limitations on the City's use of hazardous substances on the property. § 18.5.

There are also limitation on Stanford's responsibilities and indemnities for this pre-existing environmental condition. The Lease provides that Stanford will indemnify the City only against "reasonable out of pocket investigation and remediation costs" that arise out of the "Pre-existing Environmental Condition." § 18.12. Stanford is not responsible for any investigation and remediation costs (or damages) that are caused by a third party (e.g., another of its tenants) that are not part of the "Pre-existing Environmental Condition"; any liability for tort claims arising out of the use of the playing fields; or any consequential damages of any kind.

The City has the absolute right to terminate the Lease at any time. § 5.4. There is no automatic right of renewal of the Lease, but it provides for an opportunity to discuss renewal 10 years before its expiration. Market rate rentals are specified in the event of a "holding over," unless the parties agree to some other rental. Art. 36. The Lease also specifies how the proceeds of any condemnation of the premises by another government agency, or from damage or destruction of the property, are to be shared between the parties, and the extent to which the Lease would survive. Art. 21.

² Schedule 1 of the Lease lists all reports identifying the existing hazardous substances on or adjacent to the premises.

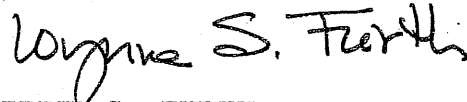
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Finally, the Lease contains procedures and remedies for any defaults under the Lease. Art. 25. It incorporates the dispute resolution mechanisms, including arbitration procedures, from the Development Agreement. Art. 38. The Lease provides for attorneys fees if a party prevails in the unlikely event litigation ensued. §39.7.

Respectfully submitted,



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