



City Council Agenda Item

City Council Meeting Date: July 16, 2019

TO: Mayor and Members of the City Council

FROM: Jim Throop, City Manager
j_throop@ci.lompoc.ca.us

Jeff Malawy, City Attorney
jmalawy@awattorneys.com

SUBJECT: Approval of a Memorandum of Understanding with Pale Blue Dot Ventures, LLC, for Potential Sale of Approximately 82 acres of City-owned Property, Including and Adjacent to Ken Adam Park, for Development of a Space Center

Recommendation:

Staff recommends the City Council approve the Memorandum of Understanding (MOU) with Pale Blue Dot Ventures, LLC (PBDV) to explore the potential sale of the approximately 82 acres of City-owned property next to and including Ken Adam Park (Project Site), for the development of space center facilities.

Background and Discussion:

At the City Council meeting of March 5, 2019, Steve Franck of PBDV, joined by Bob Allen, David Exline, and Kelly Pounds, gave a presentation proposing a space-themed project and related visitor's center comprised of entertaining and educationally sound attractions and related experiences, parkland, museum, education facility, convention hall, research business park, and possible amphitheater, hotel, restaurants, theater, retail and associated parking and aesthetic improvements (Proposed Project). PBDV asked the City Council to consider an exclusive agreement to pursue the Proposed Project. The City Council directed staff to return at a later date with a staff report allowing the City Council to discuss and possibly take action regarding the Proposed Project on the Project Site.

Subsequent to the City Council meeting and direction, the City Manager and City Attorney have had several discussions with PBDV and closed sessions with the City Council to determine if the parties could negotiate a possible path for sale of the Project Site to move forward with the Proposed Project. Those discussions have resulted in development of an 18-month MOU to guide PBDV and the City with future negotiations for the property

sale for the Proposed Project. The MOU being presented to the City Council has been agreed to by PBDV and is being recommended for approval by the City Manager and City Attorney.

A summary of some of the MOU provisions follows:

1. The term of the MOU would be 545 days from its effective date, which is the date it has been signed on behalf of City.
2. During the term the City will not negotiate with any other party for sale or development of the Project Site, nor consider any land use decisions for the Project Site.
3. Within 365 days after the effective date of the MOU, PBDV would provide deliverables of (i) completing seed funding in an amount of not less than \$750,000, with at least \$500,000 in cash and the remainder in third party services, soft costs and professional fees, as approved by the City Manager, (ii) submitting a Concept & Feasibility Study and Experience Design Plan (CFSEDP). The CFSEDP will be reviewed by the City Council at a public meeting.
4. Within 60 days after receipt of the CFSEDP, the City will provide comment.
5. Within 30 days after the effective date of the MOU, the City will provide PBDV (i) an estimate for a preliminary title report regarding the property, and then, as soon as possible, provide that report to PBDV, (ii) information regarding prior or pending lawsuits or claims pertaining to the Project Site, if any, and (iii) any CEQA or NEPA environmental studies performed on the Project Site, or abutting it, which are in City's possession (e.g. Allan Hancock College, Police & Fire Training Academy, etc.).
6. PBDV and the City will work in good faith to negotiate an exclusive negotiation agreement (ENA) and/or a disposition and development agreement (DDA), ultimately to convey ownership of the subject property to PBDV for the Proposed Project.
7. The parties would work together to seek obtaining the likely required federal legislation to modify the current land use restrictions applicable to the site to allow the Proposed Project
8. PBDV will be responsible for paying all the City's staff and third-party costs related to negotiations of ENA and DDA and submit a \$25,000 deposit toward payment of those costs. If that deposit is reduced to \$5,000 or less, then another deposit to bring the amount back to \$25,000 will be required. The maximum of those costs covered by PBDV would be \$50,000, unless otherwise agreed to by the parties. That limit does not apply to City costs that may be incurred during the MOU period related to CEQA/NEPA or land use regulations changes that may be needed. During the first week of each calendar month the MOU is effective, the

City must provide an accounting to PBDV of the City's withdrawal, if any, from that deposit for the immediately preceding calendar month. The City shall obtain PBDV'S approval before incurring more than \$3,000 in costs, other than City staff time and City Attorney fees, for any activity for which PBDV is responsible to pay.

9. PBDV will defend the City from legal costs resulting from any legal action(s) regarding the MOU or its approval, as well as third-party legal costs if such are awarded by a court or agreed to in settlement of that litigation; provided, that obligation is limited to \$50,000, unless the parties agree to increase that amount.
10. The parties are releasing each other from any damages arising to each from the MOU.
11. The City may terminate the MOU if (i) within 30 days after receiving notice from the City PBDV fails to replenish the deposit it made to cover the City's costs, (ii) within 30 days after receiving notice from City, PBDV does not agree to increase the City's review cost cap, (iii) or within 15 days after receiving notice from City, PBDV does not agree to increase the litigation fee cap to cover additional amounts necessary due to the ligation or claim.
12. PBDV may terminate the MOU (i) without cause, upon 20-days' notice, (ii) 5-days' notice, if the City adopts Land Use Regulations that will prohibit or make infeasible the Proposed Project or the use of the Project Site for such purposes, (iii) if after the filing of any claim/lawsuit by a third party, PBDV provides City 5-days' notice, PBDV has determined it is in its best interest to terminate the MOU or (iv) upon 5-days' notice, if any hazardous materials are discovered on the Project Site and PBDV reasonably determines that makes the Proposed Project financially infeasible.

If the parties decide to negotiate an ENA, then a summary of some of the terms it must include are:

1. The term will be for 365 days.
2. During the term the City will not negotiate with any other party nor consider any land use decisions for the site.
3. Provisions for the timing, type and amount of guarantee PBDV must provide to ensure it pays for the City's costs related to the ENA with a new cost cap.
4. Timing for submittal of a master plan, *pro forma*, necessary financing, community outreach.
5. Provisions similar to the MOU regarding liability indemnity and defense, with changes that may be needed due to the nature of the ENA.

If the parties decide to negotiate a DDA, then a summary of some of the terms it must include are:

1. Milestones which must be met for submission of Schematic Drawings, Design Drawings and Construction Plans, finalization of funding and commencement and completion of the Proposed Project, and each phase, if more than one.
2. Conveyance of all and any portion the Proposed Project site would not occur before PBDV had obtained all necessary land use permits and all necessary financing commitments and building permits are ready to be issued by the City. There would also be a provision whereby the City could take ownership back if certain milestones are not met by PBDV.
3. Performance guarantees, amount of liquidated damages and good faith deposit to cover City's costs for implementing the DDA. The DDA shall require PBDV to pay when due all taxes, assessments, and special taxes levied on the portion of the Project Site being conveyed to PBDV and all debt service on all bonds outstanding from time to time, which have a lien or encumbrance on the portion of the Project Site being conveyed to PBDV.
4. A schedule of performance encompassing appropriate and necessary legal, administrative, financial and construction benchmarks to be met by the appropriate party.
5. Timing for submittal of a master plan, pro forma, necessary financing, community outreach.
6. Provisions to allow, subject to City's approval, PBDV to grant (on a for profit and/or non-profit basis) concessions, franchises and leases/sublease upon the Project Site for purposes consistent with uses specified in the DDA.
7. A complete financing plan to totally fund the Proposed Project, including financial participation, if any, by one or more other public agencies or private entities.
8. Provisions similar to the MOU regarding liability indemnity and defense, with changes that may be needed due to the nature of the DDA.

PBDV understands the City cannot commit to conveying the site for the Proposed Project until, among other legal requirements and as applicable, (i) CEQA/NEPA requirements are met and (ii) the DDA is executed by PBDV, approved by the City Council, after all required duly noticed public hearings, and executed by City. Based on that, the MOU does not commit, nor would the ENA commit, the City to convey the subject site nor approve the Proposed Project or any other project.

The City's financial real estate consultant (Kathe Head of Keyser Martson Associates, Inc.) has reviewed the MOU and agrees it provides a reasonable framework for the City at this stage.

Fiscal Impact:

It is anticipated development of space center facilities in the City would add significantly to the economics of the City's General Fund, as well as the community's businesses. The actual projections for such economic benefits would be part of the *pro forma* provided by PBDV.

Conclusion:

For the above reasons, staff recommends the City Council approve the limited term MOU with PBDV.

Respectfully submitted,

Jim Throop, City Manager



Jeff Malawy, Assistant City Attorney

Attachment: MOU signed on behalf of PBDV