



City Council Agenda Item

City Council Meeting Date: April 18, 2023

TO: Honorable Mayor and City Council Members

FROM: Jeff Malawy, City Attorney
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SUBJECT: Review and Comment on Pale Blue Dot's Concept & Feasibility Study and Experience Design Plan for Proposed Development of a Space Center Project on Approximately 82 Acres Including and Adjacent to Ken Adam Park; Consider Approval of a Seventh Amendment to the Memorandum of Understanding to Extend the Exclusive Negotiating Period

Recommendation:

Staff recommends the City Council:

- 1) Review and provide any comments on the "California Space Project Concept Research Findings & Feasibility" and "Experience Design Plan" documents submitted by Pale Blue Dot (Attachments 1 and 2); and
- 2) Decide whether to approve a Seventh Amendment to the Memorandum of Understanding (MOU) with Pale Blue Dot (Seventh Amendment) (Attachment 3) to extend the exclusive negotiating period under the MOU, which currently expires on May 1, 2023. An extended exclusive negotiating period would allow the City and Pale Blue Dot to continue negotiating a Disposition & Development Agreement to govern development of the property and its sale to Pale Blue Dot.

Background:

The City entered into a Memorandum of Understanding (MOU) with Pale Blue Dot Ventures, Inc. (Pale Blue Dot or PBD) in July 2019 (Attachment 4). The purpose of the MOU is to provide a period during which the City will negotiate exclusively with Pale Blue Dot toward a proposed eventual development of a space center project on approximately 82 acres of City-owned property including and adjacent to Ken Adam Park (Property). Until the MOU expires, the City cannot negotiate with any entity other than Pale Blue Dot regarding the Property, and cannot consider approval of any development use for the Property other than Pale Blue Dot's proposed project.

At its meeting on December 6, 2022, the City Council extended the expiration date of the MOU to May 1, 2023.

As a first step, the MOU required Pale Blue Dot to show evidence of amassing seed funding in the amount of at least \$750,000, including at least \$500,000 in cash. After several extensions of time, Pale Blue Dot satisfied that fundraising requirement as determined by City staff and the City's consultant firm, Keyser Marston Associates, Inc. City staff informed Pale Blue Dot of that determination on December 20, 2022.

As a second step, the MOU required Pale Blue Dot to submit a Concept & Feasibility Study and Experience Design Plan (CFSEDP) for the proposed project by December 31, 2022 (a date resulting from several extensions the City granted). On December 29, 2022, Pale Blue Dot submitted two documents: one entitled "California Space Project Concept Research Findings & Feasibility" and the other entitled "Experience Design Plan" (Attachments 1 and 2.)

A brief and general summary of the project described in the CFSEDP is the following mix of uses:

- 1) Traditional theme park uses such as: visitor center, retail space, and food and beverage uses;
- 2) Space-themed attractions including:
 - a. Multi-axis trainers;
 - b. Personal flight simulators;
 - c. A 75-seat domed theater;
 - d. Flying theater ride system;
 - e. Virtual reality microgravity tower – a 140-foot drop tower ride system;
 - f. High G launch system – an electromagnetic catapult ride system that launches guests at 1G down a short test track with a 180-degree return to the launch platform;
 - g. Mars surface rover area;
 - h. Aquatic Space Lab – underwater immersive experience that uses breathing helmets;
- 3) Classroom, laboratory, meeting room, and flex space areas;
- 4) "Mission Prep Academy" training experiences ranging from several hours in duration to multi-day science camps that include onsite overnight lodging in onsite camp "accommodation pods";
- 5) Launch observation plaza including a bandshell and outdoor gathering area; and
- 6) A 75-room overnight lodging facility for park guests who purchase an overnight ticket package, which integrates park educational and recreational experiences into the overnight stay.

Discussion

Review of Feasibility Study and Design Plan

The MOU requires the City to provide a "reasonable response" to the CFSEDP within 60 days after receiving it. At this stage, the City's response is not intended to be detailed or

exact, but rather general, preliminary comments on the feasibility of the proposal, comments on the appeal of the project features/elements, and comments to disclose some currently known, apparent, or anticipated issues with the Property or the proposed project that will need to be worked out during the remainder of the negotiation and development process.

In addition to obtaining comments from City departments, the City hired a consulting firm, Keyser Marston, to prepare a financial evaluation of the CFSEDP and the proposed project. PBD agreed to extend City's deadline to April 29, 2023, so that PBD could compile and provide updated and additional information, which the City requested to assist in the financial evaluation.

Keyser Marston Financial Evaluation

Kathleen Head and Tim Bretz of the Keyser Marston consulting firm prepared a financial evaluation of the conceptual space center project described in the CFSEDP. The purpose of the financial evaluation is to assist the City in evaluating the financial feasibility of the proposed project. A summary of Keyser Marston's financial evaluation is as follows:

- 1) *Development Costs*: Pale Blue Dot's CFSEDP provided dollar amounts of the direct and indirect economic impact of construction of the project. (Attachment 1, page 31.) Pale Blue Dot provided more detailed and updated total estimated development costs to Keyser Marston for the financial evaluation.¹ Keyser Marston's opinion is PBD's estimated development costs are materially lower than would be anticipated for a development of the proposed scope.
 - a. For example, PBD's development cost estimates are based on the assumption that prevailing wage requirements will not apply to project construction, and at the same assume no land acquisition costs. City financial assistance to the project would initiate prevailing wage requirements. Therefore, PBD's development cost estimates must be increased to account for either prevailing wages or fair market value land acquisition cost.
 - b. PBD did not include a direct cost contingency allowance, which is typically included in the direct cost estimates for real estate development projects.
 - c. Governmental permitting fees will exceed PBD's estimates.
 - d. PBD estimated taxes, insurance, legal and accounting costs are half or less than the typical range.
 - e. PBD's estimated marketing costs are significantly lower than the amount that would need to be spent to promote such a pioneering development.
 - f. PBD's estimated development management fee is 1/3 to 1/5 of the typical range.

¹ Pale Blue Dot marked this more detailed and updated estimated development cost information as confidential proprietary information, as well as its more detailed and updated cash flow projections and funding source and investment return information mentioned below. Pursuant to Section 3.F. of the MOU, the City cannot release financial information Pale Blue Dot marked as confidential, including within the Keyser Marston report. The City has provided the Keyser Marston report to Pale Blue Dot.

- g. PBD's total estimated indirect development costs are significantly lower, as a percentage of direct costs, than the typical percentage.
 - h. PBD did not include a soft cost contingency allowance. This type of allowance is typically included in the indirect cost estimates for real estate development projects.
 - i. PBD's estimates did not include construction and absorption period interest costs or loan fees.
- 2) *Revenue and Cash Flow*: Pale Blue Dot's CFSEDP provides a revenue and cash flow analysis. (Attachment 1, pages 28 and 29.) Pale Blue Dot provided more detailed and updated revenue and cash flow projections to Keyser Marston for the financial evaluation. Keyser Marston's opinion is PBD's operating expense estimates are lower than expected.
- a. PBD estimates the project will achieve full stabilization in Year 3 of operations. (Attachment 1, page 28.) This seems aggressive for such a large scale and untested development.
 - b. PBD's estimated Year 3 operating expenses as a percentage of revenue is likely an aggressive assumption as some revenue categories (e.g., food and beverage) will likely require higher operating expense percentages.
 - c. Specifically regarding theme park attraction revenues, Keyser Marston does not have the specific theme park operations experience in order to opine on the attraction revenues included in the Blue Dot estimates.
- 3) *Estimated Funding Sources and Investment Returns*: Pale Blue Dot's CFSEDP provided information on project funding sources and investment returns. (Attachment 1, pages 27, 29.) Pale Blue Dot provided more detailed and updated information to Keyser Marston for the financial evaluation. Keyser Marston's opinion is that, based on PBD's development cost and cash flow estimates, the Project could likely support the debt and equity required to fund the Project costs. However, this is based on what Keyser Marston considers to be aggressive assumptions by PBD. There is significant risk that the development costs will exceed PBD's estimates and that the cash flow and net operating income will be less than PBD's estimates. If more conservative assumptions are applied, it is likely that the Project would be unable to achieve the returns required to attract sufficient capital to develop the Project.

Keyser Marston's ultimate conclusion is the information provided by Pale Blue Dot does not demonstrate that the Project is financially feasible. The City Council should keep in mind that does not necessarily mean the project is financially infeasible. Rather, it just means that in Keyser Marston's opinion, PBD's current financial estimates are not feasible. PBD may be able to revise or rework their financials to allow for a feasible project.

If the City Council wishes to continue pursuing this project with Pale Blue Dot, Keyser Marston recommends:

- 1) PBD should be asked to respond to the issues raised by Keyser Marston;
- 2) An expert in theme park operations should be engaged to evaluate the revenue generating potential of the attractions proposed to be included in the Project;
- 3) PBD should be required to demonstrate that debt and equity investors have evaluated the financial information and determined that the Project can support the necessary amount of total investment; and
- 4) A detailed schedule of performance should be created. This should include defined financing milestones, with clear definitions of acceptable sources and uses of equity contributions.

City Staff Comments

City staff reviewed the CFSEDP submitted by Pale Blue Dot and have the following comments, summarized:

Community Development Department:

- The package is very informative with lots of images/graphics and it's an exciting project for the community.
- Although useful, the conceptual site plan lacks much detail (scale, dimensions, property lines, setback dimensions, topography contours, utilities, etc.) in order for our department to provide detailed and constructive comments at this time.
- Suggest checking with Allan Hancock College on what comments/concerns they may have and the PBD project's consistency with the College's existing and updated Facilities and Utilities Master Plan.
- At the eventual entitlement stage, the applicant should request a "Pre-Application/Conceptual Review" with the Planning Division. Pale Blue Dot can sit down with various City Staff (Planning/Building/Engineering/Fire/Police/Solid Waste) and receive preliminary comments on a more detailed design proposal.

Fire Department:

- Evacuations – The new space project will need to ensure there are two ways out, separated by approved and appropriate distances.
- Fire flow – The project will have a large use of water. We will need to ensure there is plenty of fire flow capacity in addition to the normal daily use.
- Water supply – Elevated water storage tank(s) may be required due to location across the H Street bridge.
- Access roads – All buildings need to have a fire access road so that we are no further than 150 feet from all sides of all buildings.
- Safe assembly area – The project design team should consider a safe refuge area or hardened shelter in place locations.
- Substation – For both Police and Fire, a substation onsite would be beneficial to upstaff and have an engine housed temporarily at the campus. This is for large special events that presumably will occur.
- Basecamp – Agreements with the project and the College to host a large event basecamp would be worthy of discussion.

- City weather station should be included in the project, or City access to the project's weather station.

Any comments made by Council Members at this April 18, 2023, City Council meeting will be included in the City's response provided to PBD. However, Council Members have no obligation to provide any comments.

Disposition and Development Agreement (DDA)

After submission of the CFSEDP, the next step in the MOU is the City and Pale Blue Dot negotiate and attempt in good faith to reach agreement on a Disposition and Development Agreement (DDA) governing the development and eventual sale of the Property to Pale Blue Dot. Provisions contemplated to be negotiated and included in a DDA are on pages 9 to 10 of the MOU (Attachment 4). DDA agreements usually provide that the City will sell the property to the developer when all planning and land use entitlements have been approved by the Planning Commission and City Council, all project construction financing have been secured, and building permits are ready to be issued. The City and Pale Blue Dot are currently in the middle of negotiating a DDA, and have made good progress.

Extension of MOU Exclusive Negotiating Period

If the City Council wishes to continue pursuing the space center project with Pale Blue Dot and thus continue negotiating a DDA, then an extension of the exclusive negotiating period under the MOU will be needed past the current expiration date of May 1, 2023. The extension will permit the City and Pale Blue Dot the time needed to continue negotiating and hopefully complete the DDA document, and bring it to the City Council for approval.

The amount of time needed to complete DDA negotiations is difficult to estimate, as it depends on the complexity of the issues that might still arise during negotiations and the number of issues upon which the parties disagree.

At this time, if the City Council wishes to extend the exclusive negotiating period, an extension to September 6 would be reasonable and hopefully provide sufficient time to complete the document. Thus, the draft MOU extension (Attachment 3) extends the exclusive negotiating period to September 6, 2023. That is only a suggested date – the City Council may choose any length of extension it wishes. Or, the City Council may take no action and simply let the MOU expire on May 1, 2023.

The entire MOU expires when the exclusive negotiating period expires. The City Council is under no obligation to extend the exclusive negotiating period and MOU past the current May 1, 2023 expiration date.

Fiscal Impact:

The City's staff costs, legal costs, and consultant costs for reviewing the CFSEDP are covered by the deposit made by Pale Blue Dot to the City under the MOU, which covers

City costs associated with negotiations of a potential disposition and development agreement for the proposed project, including fiscal analysis of the proposed project.

Conclusion:

Staff recommends the City Council review the Feasibility Study and Design Plan provided by Pale Blue Dot and comment on those documents, if desired, and decide whether to extend the MOU exclusive negotiating period.

Respectfully submitted,



Jeff Malawy, City Attorney

- Attachments:
- 1) California Space Project Concept Research Findings & Feasibility (available for view at cityoflompop.com)
 - 2) Experience Design Plan (available for view at cityoflompop.com)
 - 3) Proposed Seventh Amendment to MOU
 - 4) MOU