



City Council Agenda Item

City Council Meeting Date: December 19, 2023

TO: Honorable Mayor and City Council Members

FROM: Jeff Malawy, City Attorney
Jmalawy@awattorneys.com

SUBJECT: Approval of a Ninth Amendment to the Memorandum of Understanding with Pale Blue Dot, Inc. to Extend the Exclusive Negotiating Period, for a Proposed Development of a Space Center Project on Approximately 82 Acres Including and Adjacent to Ken Adam Park

Recommendation:

Staff recommends the City Council consider whether to approve a Ninth Amendment to the Memorandum of Understanding (MOU) with Pale Blue Dot (Ninth Amendment) (Attachment 1) to extend the exclusive negotiating period under the MOU, which currently expires on December 31, 2023, to April 2, 2024. 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 2). 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 April 18, 2023, the City Council reviewed findings from Keyser Marston Associates, a City contracted consultant, on Pale Blue Dot's Concept & Feasibility Study and Experience Design Plan (CFSEDP). The City Council extended the exclusive negotiating period under the MOU to September 6, 2023, directed staff to continue negotiating and preparing a Disposition & Development Agreement (DDA) for eventual consideration by the City Council, and directed staff to hire a consultant with revenue estimating experience for theme park attractions to review Pale Blue Dot's Concept & Feasibility Study.

Pale Blue Dot requested time to revise its feasibility study before the new City consultant, Pro Forma Advisors, reviews it. Pale Blue Dot submitted a revised feasibility analysis to the City on August 7, 2023.

On August 15, 2023, the City Council extended the expiration date of the MOU from September 6, 2023, to December 31, 2023, to allow time for Pro Forma Advisors to conduct its review after receiving Pale Blue Dot's updated feasibility study.

At the meetings of November 7, 2023, and December 6, 2023, the City Council received Pro Forma Advisors' report reviewing Pale Blue Dot's feasibility.

Discussion

Simultaneously with all of the above, the City Attorney's Office and Pale Blue Dot have continued negotiating and drafting the DDA so that it can come to City Council for consideration and possible approval, which will govern the development and potential eventual sale of the property to Pale Blue Dot.

The proposed structure of the DDA and the fact that an election is needed to allow for the development on City parkland gave rise to several unique legal issues in negotiating the DDA, which took significant time to resolve. The negotiations are progressing.

An extension of the MOU to April 2, 2024, would allow the City Council to assess the progress made in the next three months on the DDA, and decide at that time whether to continue with the project. Or, if the DDA negotiations are completed before April 2, 2024, then a public hearing can be scheduled for the City Council to consider final approval or disapproval of the DDA.

On the other hand, the City Council may decide right now that due to the feasibility reports on the project, opportunity cost, or other risks, they do not wish to continue with the project and therefore do not wish to extend the MOU.

April 2 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 December 31, 2023.

Fiscal Impact:

The City's staff costs, legal costs, and consultant costs for reviewing the CFSEDP and newly updated financial feasibility analysis, and for negotiating the DDA, are covered by Pale Blue Dot under the terms of the MOU. The proposed Ninth Amendment requires Pale Blue Dot to cover the costs of preparing that amendment.

Conclusion:

The City Council may consider whether or not to extend the MOU and continue with the Pale Blue Dot project proposal.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Jeff Malawy", is positioned above a horizontal line.

Jeff Malawy, City Attorney

Attachments: 1) Ninth Amendment to MOU
2) MOU