



City Council Agenda Item

City Council Meeting Date: May 21, 2024

TO: Honorable Mayor and City Council Members

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

SUBJECT: Approval of a Long-Term Ground Lease and Operating Agreement with Conditional Option for Disposition and Project Development, with Pale Blue Dot Ventures, Inc., Relating to a Proposed Development of a Space Center Project on Approximately 82 Acres of City-Owned Land Including and Adjacent to Ken Adam Park (APN 095-070-008); Approval of a Deposit and Reimbursement Agreement with Pale Blue Dot Ventures, Inc.

Recommendation:

Staff recommends the City Council consider whether to approve the Long-Term Ground Lease and Operating Agreement with Conditional Option for Disposition and Project Development (Attachment 1; "Lease/DDA") and the Deposit and Reimbursement Agreement (Attachment 2) with Pale Blue Dot Ventures, Inc., and authorize the City Attorney to make minor non-substantive changes as needed prior to execution.

Background:

The City entered into a Memorandum of Understanding (MOU) with Pale Blue Dot Ventures, Inc. (Pale Blue Dot or PBD) in July 2019. 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) and sale of the Property to Pale Blue Dot. 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.

The MOU contained certain milestones that Pale Blue Dot must meet. First, Pale Blue Dot had to complete a seed funding round 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., in December 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 a “California Space Project Concept Research Findings & Feasibility” report and an “Experience Design Plan”. The City Council reviewed those documents at its April 18, 2023, meeting, along with a City consultant’s (Keyser Marston) review of the project feasibility study.

The City Council directed a second consultant review of PBD’s feasibility study. Pale Blue Dot requested time to revise its feasibility study before the new City consultant, Pro Forma Advisors, reviewed it. Pale Blue Dot submitted a revised feasibility analysis to the City on August 7, 2023. At the meetings of November 7, and December 6, 2023, the City Council received Pro Forma Advisors’ report reviewing Pale Blue Dot’s feasibility.

The next step under the MOU, which began after submittal of the CFSEDP, is negotiation and drafting of a disposition and development agreement to govern the development and potential eventual sale of the property to Pale Blue Dot. That agreement is before the City Council for approval at this meeting.

The MOU expires on May 21, 2024 – the date of this City Council meeting. Approval of the Lease/DDA would terminate the MOU and the Lease/DDA would become the governing document for the Project. If the City Council does not approve the Lease/DDA at this meeting, the MOU will expire unless the City Council approves an extension of the MOU tonight.

Pale Blue Dot’s Project Concept Summary (current as of the December 6, 2023 City Council meeting) is Attachment 3. Note the Site Plan has changed since. The currently proposed Site Plan is within Exhibit B to the Lease/DDA (Attachment 1).

Discussion

The following is a summary of the proposed “Long-Term Ground Lease and Operating Agreement with Conditional Option for Disposition and Project Development” (Lease/DDA):

- A. PBD will lease the 82-acre Property from the City for a period of up to 55 years. During the lease period, PBD will make no physical changes to the Property, except to place an office trailer in the park area, and the City will continue as the operator of Ken Adam Park.
- B. In order to keep the Lease/DDA alive, PBD must meet all deadlines in Section 4.1 of the Lease/DDA, known as the “Leasehold Continuation Conditions”:

Leasehold Continuation Conditions

<u>EVENT</u>	<u>REQUIRED ACTIONS</u>	<u>DEADLINE (All To Be "No Later Than")</u>
1.	<p>Completion of Project description sufficient for environmental review pursuant to CEQA.</p> <p>Complete and submit to City draft applications(s) for any General Plan amendment(s) needed for Project.</p> <p>Complete and submit to City draft application(s) for any needed zone change applications needed for Project.</p>	One (1) year from Effective Date of the Lease/DDA.
2.	PBD provides City with an initial financing plan (including financing sources and methods), financial statements, pro-forma, and/or other information, documenting to City's reasonable satisfaction, PBD's financial capacity to proceed with the contemplated transaction.	Two (2) years from Effective Date.
3.	Completion of Draft Environmental Impact Report ("DEIR") for proposed Project, completion of all City staff comments thereon, and circulation of DEIR for public review.	Two (2) years from Effective Date.
4.	Response to DEIR public comments prepared, Final Environmental Impact Report (" FEIR ") prepared and presented for final public hearing approval by City.	One (1) year from Event 3.
5.	Approved discontinuance of the Premises as to any public Park use pursuant applicable State laws, including without limitation Government Code § 38440 et seq.	Same as Event 4.
6.	Amendment, release, discharge, or other resolution of Federal Use Restrictions as needed for proposed Project uses on Premises. Alternatively, the City may determine, in the reasonable exercise of its discretion, once further Project information, designs, scope and plans are available, that no amendments, release or discharge of the Federal Use Restrictions are needed should the Project concept be consistent with such Restrictions.	Same as Event 4.

<u>EVENT</u>	<u>REQUIRED ACTIONS</u>	<u>DEADLINE (All To Be "No Later Than")</u>
7.	Completion of all pre-construction application submittals by PBD for all Entitlements and Permits to (i) the City as required pursuant to the Lompoc Municipal Code, and (ii) any other governmental entity requiring Entitlements or Permits applicable to the Project.	Same as Event 4, or in no event more than two (2) years following Event 4.
8.	Final approval of Project Entitlements and Permits by City and any other applicable governmental agency.	One (1) year following Event 7.
9.	PBD provides written commitments for all construction financing sufficient for Project construction and completion and applies for, or provides evidence of complete preparation to obtain Project building permits. Sufficiency of such commitments to financing and building permits shall be determined in the reasonable exercise of City's discretion.	One (1) year following Event 8.

In summary, PBD must secure environmental and all project entitlements and secure construction financing and be ready to pull building permits within approx. 6-7 years after approval of the Lease/DDA. The City can terminate the Lease/DDA upon PBD's failure to meet any of the above deadlines.

The City Council has and will have complete discretion, within the bounds of applicable law as with any other development project, to approve, conditionally approve, or deny the Project entitlements when they come before the City Council. Nothing in the Lease/DDA commits the City to approving the Project or to undertake any activity requiring the exercise of discretion.

- C. **Construction Timeline:** Once all Leasehold Continuation Conditions have been satisfied, PBD must start Project construction within one year and must complete construction within 5 years after starting construction.
- D. **Option to Purchase:** If all Leasehold Continuation Conditions have been satisfied, then PBD may either keep leasing the park for a period of 55 years or may exercise an option to purchase at any time during that same 55-year period.
- E. **Rent:** PBD shall pay rent to the City during the leasehold \$20,000 per year prior to PBD completing construction of the first operational component of the Project. That is based on a fair market appraisal obtained by the parties. After PBD has completed construction of the first operational component (and assuming the

option to purchase has not yet been exercised), then annual rent shall be 1.25% of the Project's annual gross revenue or \$20,000/year, whichever is greater. If \$20,000, it will be increased by CPI.

F. **Purchase Price:** An appraisal obtained by the parties determined current fair market value of the Property, without entitlements and under current zoning of Public Facilities and Open Space, to be \$300,000. Pale Blue Dot has agreed to the following purchase prices, based on when they complete all Leasehold Continuation Conditions and exercise their option to purchase:

1. If the Option to Purchase is exercised within 5 years after execution of the Lease/DDA, the Purchase Price shall be \$1,150,000.
2. If the Option to Purchase is exercised between 5 years and 10 years after execution of the Lease/DDA, the Purchase Price shall be \$3,000,000.
3. If the Option to Purchase is exercised more than 10 years after execution of the Lease/DDA, the Purchase Price shall be determined by appraisal at that time—except that if the appraised value is less than \$3 million, then the Purchase Price shall be \$3 million. Any appraisal shall deduct the value of Project improvements actually constructed by PBD.

G. **TOT Abatement:** In consideration for the substantial improvements to be implemented by PBD and the above-market Purchase Price agreed-to by PBD, the City agrees that PBD's Transient Occupancy Tax obligations shall be temporarily abated. This abatement shall be based on the time period in which PBD exercises its purchase option:

1. Should purchase occur within the first 5 years after execution of the Lease/DDA, then PBD's TOT obligation shall be reduced by twenty percent (20%) of the total TOT amount that would otherwise be due, for a period of 5 years following issuance of a first Certificate of Occupancy on the Project or Closing, whichever is later; except that the TOT amounts abated during the five-year period shall not exceed an aggregate of \$500,000.
2. Should purchase occur more than 5 years after execution of the Lease/DDA, then PBD's TOT obligation shall be reduced by 20% for a period of 10 years following issuance of a first Certificate of Occupancy on the Project or Closing, whichever is later; except that the TOT amounts abated during the ten-year period shall not exceed an aggregate of \$1,500,000.

H. **Continuing Use as the Project:** After construction commences, the Property must continue to be used for the Project during the leasehold. Once PBD has exercised its option to purchase, a use restriction in the recorded grant deed will require the Property to continue to be used for the Project. The recorded grant deed will also incorporate and require continued compliance with specific provisions of the Lease/DDA.

- I. **Remedies:** Should PBD fail to meet any requirement in the Lease/DDA during the leasehold, the City can terminate the leasehold or seek a court order to enforce the agreement. Should PBD fail to meet any requirement of the recorded grant deed after exercising its option to purchase, the City has a “right of reverter” to take back ownership of the Property or can seek a court order to enforce.

In the event the Project is not successful and stops operating, a right of reverter generally requires litigation, and the Property returned to the City would likely be burdened by construction liens or other liens. However, cease of operations is unlikely, according to the City’s consultant with theme park expertise, Mark Dvorchak. Mr. Dvorchak opined in his report that if the Project begins operating and Pale Blue Dot’s revenue and income projections are not met, the Project is still likely to generate more revenue than it costs to operate. Therefore it is probable the Project would continue operating to generate cash flow, whether owned by Pale Blue Dot or by creditors, rather than cease operations.

There are many other provisions and requirements in the Lease/DDA, such as insurance requirements and indemnification, required project maintenance funds and project upgrade funds, provisions regarding contracted planners, environmental consultants, and building official, etc. The above paragraphs give an overview of the main deal points.

Reimbursement Agreement

When the MOU ends upon approval and execution of the Lease/DDA, Pale Blue Dot’s obligation to reimburse the City for all City costs incurred thereafter related to the Project would also end. Therefore, a new reimbursement agreement is needed to obligate Pale Blue Dot to continue reimbursing the City’s costs. The proposed deposit and reimbursement agreement requires Pale Blue Dot to deposit \$30,000 with the City simultaneously with PBD’s first submission to the City of any item in the Leasehold Continuation Conditions. City staff and City Attorney and City-hired consultant time will then be drawn from that deposit to cover City costs of processing Project entitlements and other City costs of implementing the Lease/DDA.

Fiscal Impact:

The City’s staff costs, legal costs, and consultant costs related to the Project, including but not limited to negotiating and preparing the Lease/DDA, and for review of Project entitlements and environmental analysis, and review of Project building plans, are covered by Pale Blue Dot under the terms of the MOU and the new reimbursement agreement, if approved.

Conclusion:

The City Council may consider whether or not to approve the Lease/DDA and continue with the Pale Blue Dot project proposal.

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Pale Blue Dot Lease/DDA
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Respectfully submitted,

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

Jeff Malawy, City Attorney

Attachments: 1) Lease/DDA
2) Deposit and Reimbursement Agreement
3) Project Concept Summary
4) Site Plan