



City of Palo Alto

City Council Staff Report

(ID # 10730)

Report Type: Consent Calendar

Meeting Date: 10/7/2019

Summary Title: Lease Agreement with PAUSD for Cubberley

Title: Direction to Staff to Negotiate an Agreement With Palo Alto Unified School District to Continue Leasing Cubberley Community Center for an Additional Five Years With Additional Terms as Provided in a Draft Term Sheet Negotiated by the Parties

From: City Manager

Lead Department: Community Services

Recommendation

Staff recommends that City Council direct staff to negotiate an agreement with the Palo Alto Unified School District to continue leasing the Cubberley Community Center for an additional five years, through December 31, 2024, with additional terms as provided in a draft term sheet negotiated by the parties.

Background

On September 1, 1989, the City of Palo Alto (City) and the Palo Alto Unified School District (District) entered into a [Lease and Covenant Not to Develop](#) (Lease) commencing on January 1, 1990. The Lease provided City use of the 35-acre former Cubberley High School site, which closed as a school in 1979. The Lease included a covenant that the District would not develop or sell five neighborhood elementary school sites that were closed due to declining enrollment in exchange for annual payments from the City to the District. In the Lease, the District also agreed to lease space at 11 elementary school sites to the City for City-operated extended day care. The original Lease was for 15 years, ending on December 31, 2004. The Lease included a provision that the City could extend the term of the Lease an additional ten years, and two additional five-year extensions could be allowed upon mutual agreement of the City and District. The City exercised its option to extend the Lease for an additional ten years, which extended the lease through 2014.

There were two amendments during the original Lease term. In 1998, the Lease was amended to remove one school site and add two new school sites to the Covenant Not to Develop. In 2002, the City and the District entered into a Lease Amendment and Land Exchange Agreement whereby the City conveyed to the District the Terman site

and in exchange received 8 acres of the Cubberley site (Cubberley Conveyance Property). As a result, the amount of the Cubberley site leased to the City was reduced to 27 acres.

A third amendment to the Lease was entered into on January 1, 2015 and will expire on December 31, 2019. In this amendment, the Covenant Not to Develop was eliminated from the Lease and instead a requirement was added that the City establish a restricted Property Infrastructure Fund for repairing, renovating, or improving the leased portion of Cubberley and the Cubberley Conveyance Property. The Lease requires that the City deposit \$1,864,248 into the fund annually. Also, the third amendment includes a condition that the City and District jointly develop a master plan for the Cubberley site by December 31, 2019, the termination date of the Lease.

The City currently operates the entire 35-acre site as the Cubberley Community Center by providing below market space to organizations who then offer programs and services to the community. The City subleases space to 27 long term tenants and 23 artists, and rents space to other organizations (classrooms, a theatre, gyms and fields) on an hourly basis.

Discussion

The Cubberley Lease is due to expire on December 31, 2019. Both the City and District have an interest in extending the lease for an additional term to maintain consistency in the programs and services offered at Cubberley, while planning for the future development of the site.

The City Manager and District Superintendent prepared Pre-negotiation Principles (Attachment A) based on the interests of both agencies in extending the lease. Using these Principles as a guide, City and District staff negotiated a draft term sheet (Attachment B) that would extend the term of the lease for an additional five years, beginning January 1, 2020; and cap the lease payment at the current calendar year (2019) amount for the duration of the five year term. The draft terms also identify several milestones to support progress of future development of Cubberley, and ensure that both agencies are informed of the other agency's intent toward development. Other tentative terms include, formation of a new Ad Hoc committee consisting of representatives from both the City and District to coordinate each agency's plans for their respective properties (subject to approval by each agency according to its rules and procedures), and separation of the extended child care sites into a different agreement. The draft term sheet had included a term committing both agencies to participate in a joint study session by December 1, 2019. That term has been removed (shown as strikethrough in Attachment B) because it is not supported by the District.

District Superintendent Dr. Don Austin presented the draft term sheet to the District Board of Education in open session on September 24, 2019.

Timeline

Staff will work with District staff to draft an agreement (either a new lease or an amendment to the existing Lease) with terms acceptable to both parties, and will bring it to Council for approval prior to December 31, 2019. The City and District will also complete a separate agreement for the extended child care sites and bring the agreement to Council for approval prior to December 31, 2019.

Resource Impact

The draft term sheet provides that the City will maintain the current annual lease payment for the full five year term (approximately \$5.1 million), without the annual escalator of 3%. The City will continue to deposit \$1.86 million annually into the Cubberley Property Infrastructure Fund.

Funding for milestones that are the City's responsibility (terms 2.a and 2.b in Attachment B) will be brought to City Council as part of the annual budget process.

It is expected that the payment amount for the City-operated extended child care sites will remain at the current annual payment of approximately \$700,000 plus utilities, which are approximately \$4,000 per month.

Stakeholder Engagement

The City and District will continue to collaborate on development of a new agreement containing these terms. City staff will communicate to its tenants and hourly renters at Cubberley that both the City and District intend to extend the lease term for an additional five years.

Environmental Review

The recommended action is not considered a Project under the California Environmental Quality Act.

Attachments:

- Attachment A: PAUSD City Cubberley Concepts
- Attachment B: Draft Cubberley Lease Terms 10-1-19

Cubberley Lease – Pre-Negotiation Principles

Introduction:

The lease agreement between PAUSD and the City of Palo Alto (City) expires at the end of December, 2019. If the lease agreement expires, it reverts to a month-to-month agreement between the parties.

While the lease and development plans are technically separate, the 2014 lease agreement established a linkage with completion of a master plan. The sense of urgency to settle the development plans at Cubberley is not calibrated between PAUSD and the City.

Purpose:

The purpose of this exercise is to create space for the PAUSD and City staff to advance the lease discussion in an effort to reach a timely and positive resolution for both parties. These principles are intended to serve as the foundation for finalizing a lease extension. The Superintendent and City Manager will confirm governing body alignment with these principles in a manner consistent with each parties' administrative practices, and at that time these principles will be made available to the public. Until then, these draft principles simply represent brainstorming a path forward.

Timeline:

With the expiration date of the lease agreement within sight, the matter would benefit from a swift resolution prior to the end of September.

PAUSD Interests:

- PAUSD has an interest in preserving the long-standing relationship with the City and our shared residents.
- Cubberley has been a hub for Palo Alto for decades and PAUSD would like that to continue in the future.
- PAUSD would like a fast resolution to reduce damage and distractions from our mission of teaching and learning.
- PAUSD utilizes funds to build and maintain facilities serving students in school settings and has no interest or ability to provide funding for buildings not directly constructed for the immediate use of serving students within the charge of our school district mission and purpose.
- PAUSD has a strong interest in exploring dense housing options at 525 San Antonio and no interest in pursuing housing on the Cubberley site.
- PAUSD has an interest in considering the relocation of the District Office, but no interest in demolishing the Cubberley gymnasium or theater.
- PAUSD has an interest in a sustainable lease model that is appropriately tied to a fee structure in line with market rates.
- PAUSD would like to settle the lease and focus our attention to the development of Cubberley with the City.

City Interests:

- The City has an interest in continuing and providing long-term stability to the valued services provided through various community partnerships at Cubberley.
- The City is concerned that facility conditions at Cubberley are unacceptable and continue to deteriorate, and is interested in investing in these facilities in a manner that will have long-term benefit for the community.
- The City believes that the existing lease terms were established to provide financial support to PAUSD, and as financial needs have changed payments should be refocused on supporting the improvement of permanent facilities at Cubberley.
- Given the complexity of issues associated with Cubberley, the City is interested in separating childcare-related provisions into a separate agreement.
- The City is interested in working with PAUSD on exploring options for PAUSD housing, while recognizing the City's regulatory role in the approval of non-educational uses.

Conceptual Proposals:

- The Superintendent and City Manager will engage in discussions to advance the interests described here. Each will keep their governing board informed of progress being made, while jointly agreeing on public communications to the extent possible.
- The Superintendent and City Manager will jointly release the draft master plan for public review, with a transmittal letter that acknowledges ongoing discussions may require revision or additions to the master plan.
- Extend the lease with a term and workplan that will advance the development plan in a meaningful way.
- Consider a structure to reduce lease payments over the term of the lease extension.
- Schedule a joint session meeting to discuss next steps as soon as both parties feel this will be productive to meeting our common interests.

Lease extension terms:

1. Five-year lease term to begin January 1, 2020 and ending December 31, 2024.
2. Milestones to be completed during term of lease:
 - a. By December 2020 City will complete an infrastructure assessment (e.g., water, sewer, electrical, storm drain) and implementation plan for near-term and long-term development of the Cubberley site.
 - b. By December 2021 City to complete conceptual design of first phase newbuilding improvements.
 - c. By December 2021 District will submit an application to develop housing at 525 San Antonio Road or notify the City that District will not pursue housing in the near term in order to allow City to factor in infrastructure needs.
 - d. By December 2021 District will notify City of any planned development of school related facilities on the District's 27-acres as of that date in order to allow City to factor in infrastructure needs.
 - e. By December 2022 City and District will discuss cost sharing of infrastructure improvements identified in 2.a.
 - f. By December 2022 City and District will agree upon a lot line adjustment to accommodate 2.a and 2.b. if needed.
- ~~3. By December 2019 a joint meeting of the City Council and District Board of Education will be held with the intended purpose of acknowledging release of the Draft Cubberley Master Plan to the community and initiating the work described in the lease extension.~~
4. By January 2020 City and District will form an Ad Hoc committee consisting of two City Councilmembers and two District Board Members and City Manager or designee and District Superintendent or designee to coordinate each agency's plans for their respective properties. Issues to be discussed may include:
 - a. Shared use facilities
 - b. Cost sharing of infrastructure improvements
 - c. Facilitating development of housing
 - d. Phasing of site development
5. Lease payment schedule:
 - a. January 1, 2020 through December 31, 2024 City will pay District lease amount of Year 5 of current lease agreement minus amount of childcare sites.
 - b. Remove the escalator clause.
6. Status quo for \$1.8M into Infrastructure fund
7. By January 1, 2020 City and District will negotiate a separate agreement for childcare sites.
8. City Council and District Board of Education will accept Master Plan by June of 2020.