RESOLUTION NO. 76564

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE APPROVING THE PARAMETERS OF A NON-BINDING TERM SHEET WITH WILLIAMS/DAME ASSOCIATES FOR THE PURCHASE OF THE CITY'S FORMER CORPORATION YARD AND DIRECTING STAFF TO CONTINUE NON-BINDING AND NON-EXCLUSIVE DISCUSSIONS WITH THE DEVELOPER FOR THE PURPOSES OF PREPARING A PURCHASE AND SALE AGREEMENT FOR CITY COUNCIL'S CONSIDERATION

WHEREAS, until 2006 the City of San José ("City") operated a municipal Corporation Yard on City-owned property bounded by Sixth, Seventh, Jackson and Taylor Streets in Japantown ("Property"); and

WHEREAS, development of the now vacant Property is considered key to the economic vitality of Japantown, a former Redevelopment Agency area, since the empty site poses a drain on the adjacent neighborhood commercial district and depresses nearby residential property values; and

WHEREAS, since 2006, the City Council and the Redevelopment Agency Board have contemplated mixed-use development of the Property, which development would include retail, community amenity space and housing; and

WHEREAS, in February 2007, after a public process that included extensive outreach with the Japantown community, the City Council and Redevelopment Agency Board selected Williams/Dame Associates to develop the Property; and

WHEREAS, in January 2008, Williams/Dame Associates determined the company could not proceed with the project due to the global economic crisis; and

WHEREAS, in the last 12-18 months, the economy in San José/Silicon Valley has strengthened regional job growth and has spurred the apartment home market; and

WHEREAS, in 2012 the City reached out to Williams/Dame Associates and determined that the firm was interested in re-engaging in development of the Property; and

WHEREAS, Williams/Dame Associates has developed a new proposal for the Property that includes approximately 600 rental units, between 6,000 and 8,000 square feet of retail, an amphitheater, and green space that will provide a home for the Japantown Farmer's Market; and

WHEREAS, the proposal also includes dedicating approximately .75 acres of the Property to the City for the development of a space for the Creative Center for the Arts; and

WHEREAS, Chapter 4.20 of the Municipal Code allows the negotiated sale of property for economic development purposes, and Williams/Dame Associates has presented the City with the non-binding Term Sheet attached hereto as Exhibit A which sets forth the proposed terms for acquisition and development of the Property; and

WHEREAS, Williams/Dame Associates has requested the City Council to approve the Term Sheet and authorize City staff to further discuss the terms presented in connection with the developer's efforts to secure a financing partner for the project; and

WHEREAS, the City Council is prepared to approve the parameters of the Term Sheet and authorize City staff to continue such discussions with Williams/Dame Associates for the purpose of preparing a Purchase and Sale Agreement for consideration by the City Council, but only on the basis that such discussions are non-binding and non-exclusive and that the present action does not obligate the City in any manner with respect to the sale of the Property;

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SAN JOSE THAT:

The parameters of the non-binding Term Sheet presented by Williams/Dame Associates for the purchase of City's former Corporation Yard are hereby approved, and City staff is directed to continue non-binding and non-exclusive discussions with Williams/Dame Associates for the purposes of preparing a Purchase and Sale Agreement for Council's consideration.

ADOPTED this 26TH day of February, 2013, by the following vote:

AYES:	CAMPOS, CHU, CONSTANT, HERRERA, KALRA, KHAMIS, LICCARDO, NGUYEN, OLIVERIO, ROCHA; REED.
NOES:	NONE.
ABSENT:	NONE.
DISQUALIFIED:	NONE.

CHUCK REED
Mayor

ATTEST:

TONI J. TABER, CMC
Acting City Clerk

EXHIBIT A
TERM SHEET

76564

WILLIAMS/DAME & ASSOCIATES, INC.

February 13, 2013

Via Email and U.S. Mail

Nanci Klein
City of San Jose
Division Manager
200 East Santa Clara Street, 17th Floor
San Jose, CA 95113

RE: Term Sheet for Japantown, San Jose, California

This non-binding Term Sheet provides an outline of the terms and conditions under which Williams / Dame & Associates, Inc., an Oregon corporation ("**Developer**"), or another entity managed by Developer or any affiliate of Developer (collectively, "**Buyer**") is willing to purchase from City of San Jose (the "**City**") the real property commonly referred to as the "Corporation Yard". The Corporation Yard is bounded by 6th, 7th, Jackson and Taylor Streets and is located in San Jose, California (the "**Property**"). The project ("Project") to be developed on the Property will incorporate up to 600 apartment units, up to 18,000 square feet of retail, and a public park . The Project will also dedicate .75 acres for the development of community serving space including a permanent home for such community organizations as Taiko and the Creative Center for the Arts.

This Term Sheet is delivered for the sole purpose of City Council's consideration thereof in connection with the Council's decision of whether or not to authorize City staff to undertake further direct negotiations with Developer concerning sale of the Property. Such further negotiations may result in the preparation and execution of a Purchase and Sale Agreement ("PSA") specifying the parties' responsibilities.

By its delivery of this Term Sheet to City for City Council's consideration or approval of the same, Developer understands that, the City is making no commitment or agreement to undertake (a) any disposition of land to Developer; or (b) any other acts requiring the subsequent independent exercise of discretion by the City or their departments. It is further understood that this Term Sheet or City's acceptance, consideration or approval of the same does not imply any obligation on the part of the City to negotiate only with Developer, to negotiate to any given standard or for any given period, or to enter into any agreement that may result from the negotiations contemplated herein, all terms and conditions that may become binding upon the City being subject to the further consideration and approval of City Council in its sole and absolute discretion.

With the understandings that all Project parameters or principles concerning purchased terms set forth in this term sheet are conceptual guidelines only, and that the final components may only be developed during the process of negotiation, it is the present intent of Developer to incorporate the following general terms of this term sheet into a PSA.

1. **Land Price:** Developer will pay $24,000,000 for the Property (the "**Purchase Price**").

2. **Closing:** Closing may be phased.

   a. At the first closing, Developer will take down the land area required to support the first phase of development, as mutually agreed. The purchase price shall not be less than $10,300,000. The first closing will occur on or before the date that the construction loan closes for the Project, or the date that is four (4) months after the expiration of the Contingency Period, whichever occurs first. At the Developer's sole discretion, the Closing Date may be extended by up to 90 days, in 30 day increments. For each 30 day increment, the Developer shall provide an extension payment of $100,000 which fee will be nonrefundable when made but applicable to the purchase price.

   b. Developer anticipates that the remaining rental units will be developed on the remaining portion of the Property in one (1) additional phase. As such, the closing for the remainder of the Property will occur not later than two years after the first closing; provided, however, that the second closing may be extended up to 90 days on the same basis as extensions of the first closing, as described above . The purchase price for the second phase shall be the difference between $24,000,000 and the Phase I purchase price.

3. Earnest Money:

   a. Within ten (10) days of mutual execution of the PSA, Developer will deposit earnest money in the amount of $250,000 in an escrow account at a title company to be selected by the Developer. The earnest money will be nonrefundable (except in the event of a default by the City) at the expiration of the Contingency Period, and applicable to the Land Price paid at the first closing.

   b. The Contingency Period will expire on the earlier of (a) eight (8) calendar months from the execution of the PSA, or (b) 3 business days from the recordation, (or other applicable evidence of approval) of the necessary entitlements required to develop the Property subject to a general design, including site density, retail components, public space and parking, as mutually agreed between City and Developer. Such approval shall contain no extraordinary requirements or conditions, except as determined by Developer in its sole discretion, and shall not be subject to further appeal. The full Contingency Period will be limited to Developer's confirmation of financing and entitlements; Developer will complete all other due diligence related to the purchase within 90 days of execution of the PSA, and shall endeavor to complete as much due diligence as is reasonably possible prior to execution of the PSA .

   c. At the first closing, Developer will deposit an additional $500,000 in earnest money with escrow, which amount will be nonrefundable when made but applicable to the balance of the Land Price. Neither earnest money deposit will limit City's remedies in the event of Buyer's default.

4. **PSA Stipulations:**

   a. The Property will be sold to Developer on an "as-is" basis.

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b. Prior to entering into the PSA, the Developer will submit to the City or the City's staff, and/or its consultants (a) a development concept (consisting of a preliminary development program and conceptual land use plan); and (b) a detailed preliminary development proposal (including a financial pro forma and site, massing, and phasing plans, and a description of the anticipated sources of funding for the first phase of the project); and (c) a financing plan.

c. The development concept will incorporate into the first phase of the Project the dedication to the City of .75 acres intended to serve such community organizations as Taiko and the Creative Center for the Arts and provide a benefit to the public . This dedication of public benefit space would be in addition to any entitlement-related requirements of the Project. The Developer will use best efforts to coordinate with City in its efforts to incorporate the community organizations into the public benefit space in order to achieve efficient development that benefits the overall Project.

d. During the Contingency Period, in addition to obtaining approval of necessary entitlements, Developer shall develop a program of financing to provide the City with reasonably satisfactory evidence that financing will be available for the acquisition and development of the project. Developer understands that, as a condition to the City's obligation to proceed to closing, the City may require certain assurances that the Project will be developed following transfer of the Property. The Purchase Price assumes a development of up to 600 units and a project return-on-cost of 7.0% which Developer has determined to be the prevailing capital market return requirement for market-rate financing; provided, that Developer's sole remedy in regard to this assumption shall be to terminate the PSA prior to the expiration of the Contingency Period.

e. Except as may otherwise be agreed between the parties, Developer expressly acknowledges that any and all expenses and costs associated with its performance under the PSA, or any other such agreement, are its sole obligation and responsibility.

f. The Property will be sold at fair market value to and developed solely by the Developer, or its assigned single purpose entity controlled and managed by Developer. As such, Developer expects that it will be considered a private development, and not a project of the Public or the City, and will not be subject to any prevailing wage requirements or other City procurement rules.

g. Developer has received from City a letter of "No Further Action" certifying the environmental condition of the Property. Developer shall satisfy itself prior to entering into the PSA as to potential obligations associated with the monitoring, removal or remediation of environmentally contaminated soils or site conditions;

h. Developer will satisfy itself prior to entering into the PSA as to potential obligations for offsite utilities other than in the right-of-ways adjacent to the site;

i. Developer will satisfy itself prior to entering into the PSA as to potential obligations in collecting, recovering, preserving and mitigating archeological resources uncovered in the course of developing the Property

j. Developer will satisfy itself prior to entering into the PSA as to potential obligations for any fees, charges or assessments levied for the undergrounding of power lines around the Property (it is contemplated that PG&E will complete such undergrounding work at its cost);

k. Developer expects that, to the maximum extent feasible, all Park fees will be spent on Site, which might be used to design and build any public benefit space, and that Developer would have no further financial obligation with respect to any such public benefit space.

l. Developer expects that, to the extent applicable thereto, the Property would be included in the Downtown High Rise Incentives initiative, including Permit Expediting, reduction in Building and Structure Construction Tax, Commercial-Residential Building Tax, Park Fees, Inclusionary Requirements, Minimum Parking Requirements and all other eligible Incentives.

m. Developer would be responsible for traffic mitigation fees related to the 101/Oakland interchange in an amount up to $800,000. Developer will satisfy itself prior to entering into PSA as to potential obligations for any other traffic mitigation fees related to the project.

n. The Developer expects that there will be no inclusionary housing, or public art requirement applicable to the Project.

o. Developer understands that, to the extent any of the foregoing requires the granting of vested rights (such as, by way of example, exemption from affordable housing requirements which may be enacted at a later date), the Project may need to be the subject of a development agreement which would require the development of both phases of housing within a specified timeline in order to preserve such vesting.

Sincerely,

WILLIAMS/ DAME & ASSOCIATES, INC., an Oregon corporation

By: _____
Print Name: T B DAME
Its: PRESIDENT

cc: