

**SPECIAL JOINT MEETING OF THE
WOOD VILLAGE CITY COUNCIL AND URBAN RENEWAL AGENCY
January 30, 2019
AGENDA**

5:30 P.M. PLEDGE OF ALLEGIANCE

1. [Resolution 8-2019/ URA 2-2019: Amendment to the Disposition and Development Agreement with Williams Dame LLC](#)

ADJOURN

The meeting location is wheelchair accessible. This information is available in large print upon request. To request large-print documents or for accommodations such as assistive listening device, sign language, and/or oral interpreter, please call 503-667-6211 at least two working days in advance of this meeting. (TDD 1-800-735-2900).



City Council Agenda Item Staff Report

Meeting Date: January 30, 2019

TO: Mayor and Councilors

FROM: Bill Peterson: City Manager

Authored by: Greg Dirks: HR/Records Manager

DATE: January 25, 2019

SUBJECT: Amendment Number 6 to the Development and Disposition Agreement; City Hall Properties

Requested Council Action

Adopt Resolution 8-2019, and URA2-2019 authorizing the City Manager to sign Amendment number 6 to the Development and Disposition Agreement (DDA) between the City of Wood Village and Williams/Dame & Associates, INC. (WDA). This amendment provides an additional extension to the due diligence period to the earlier of three (3) Business Days after the City delivers the BOLI Determination Letter to WDA or February 28, 2019.

The amendment also restructures the earnest money from \$200,000 to \$100,000, recognizing the 3,000 yards of pipe trench spoils that were left on the property by the contractor performing the utility relocation work on the City's behalf. These spoils now have to be treated with concrete to become stable at a cost of \$50,000. In addition, the Buyer will now contribute \$50,000 towards the closing costs of the sale. The final sales price and closing date are not impacted by either action.

Background

In the Fifth Amendment, both the City and WDA provided for an extension of the due diligence deadline in order to provide the City with additional time to obtain a revised BOLI Determination Letter reflecting the final costs of the utility relocation work. The City is now in a position to send out a revised BOLI determination letter request, but the deadline extension expires on January 31, 2019. Additional time is needed to send out the letter and receive a response back from BOLI. The amendment provides an extension to the earlier of three (3) Business Days after the City delivers the BOLI determination letter, or February 28, 2019. This action does not impact the final closing date which is stated in this amendment as June 28, 2019. No further extension requests are anticipated.

At the time the DDA was originally signed, WDA deposited \$100,000 into escrow as part of the down payment. The agreement then required an additional \$100,000 payment at the close of the due diligence period. The down payment money is applicable to the final purchase price, and is not on top of the purchase price. The due diligence period has been extended in order to receive

an updated BOLI determination letter. During this same period, there have been unanticipated cost increases to some of the items that the City was required to complete. This included additional costs over the original estimate to secure an emergency vehicle access easement, and to relocate the utilities. In recognition of the upfront costs paid by the City, the buyer will now pay \$50,000 of the closing costs. Also, the 3,000 yards of pipe trench spoils that were left on the property by the contractor performing the utility relocation work requires \$50,000 worth of work to stabilize, which the buyer is paying. The City and buyer now desire to amend the DDA to provide for a reduction in the required earnest money to the \$100,000 that is already deposited. The reduction in earnest money does not alter or change the final purchase price, or the overall incentive package to WDA.

Alternatives

The Council can take alternative actions including the following:

- Request a meeting with representatives from WDA prior to taking any further actions, or
- Elect not to authorize an amendment to the agreement, or
- Approve the resolution.

Fiscal Impact

The purpose and intent of an earnest money payment is to provide assurances that the buyer has a serious intent on following through on the purchase of property. In this case, the buyer has already deposited \$100,000 in earnest money, and is spending \$50,000 to treat soil that is currently on site. In addition, the buyer will be bringing in thousands of yards of fill material at their expense. If the sale fails, the City will be the beneficiary of these improvements. The reduction in earnest money does not alter the final sales price or the incentive package. This action has essentially a net zero impact, and recognizes the unanticipated additional costs to the City as well as to the buyer to treat the soil.

City Goal

The completion of the first phase of the work on the City Hall replacement will further City Council GOAL 4: Long-term financial stability, economic vitality and growth.

Recommendation and Suggested Motions

It is recommended the Resolution be Adopted.

“I move to adopt City Resolution Number 8-2019, and URA Resolution Number URA2-2019, enabling the City Manager to sign Amendment #6 to the Development and Disposition Agreement between the City of Wood Village and Williams/Dame & Associates, INC.”

**JOINT RESOLUTION 8-2098
CITY OF WOOD VILLAGE
URA2-2019
WOOD VILLAGE URBAN RENEWAL AGENCY**

WHEREAS:

1. The City of Wood Village and the Wood Village Urban Renewal Agency have entered into a Disposition and Development Agreement (DDA) jointly with Williams/Dame and Associates, INC. (WDA), and
2. The due diligence period was extended in order to receive an updated BOLI determination letter, and
3. The work to receive an updated BOLI letter has been completed, and additional time is needed to receive the new letter, and
4. The earnest money terms have been revised in order to reflect unanticipated costs by both the buyer and the seller, and
5. The proposed amendment does not alter the final sales price or closing date.

NOW, THEREFORE, BE IT RESOLVED, by the Common Council of the City of Wood Village, and by the Board of Directors of the Wood Village Urban Renewal Agency, that the City Manager is delegated the specific authority to sign the proposed Amendment #6 to the Disposition and Development Agreement, a copy of which is attached as Exhibit A to these Resolutions, between the City of Wood Village, the Wood Village Urban Renewal Agency, and Williams/Dame Associates, INC.

Motion for Adoption by Councilor _____ and seconded by Councilor _____.

Aye _____ Nay _____

Motion for Adoption by Agency Board Member _____ seconded by Agency Board Member _____.

Aye _____ Nay _____

Adopted on this 30th day of January, 2019, by the City of Wood Village and the Wood Village Urban Renewal Agency.

T. Scott Harden
Mayor, City of Wood Village
Chair of Wood Village Urban Renewal Agency

ATTEST:

Greg Dirks
Human Resources/Records Manager

SIXTH AMENDMENT OF DISPOSITION AND DEVELOPMENT AGREEMENT

This SIXTH AMENDMENT OF DISPOSITION AND DEVELOPMENT AGREEMENT (this "Amendment"), effective as of January ___, 2019 (the "Effective Date"), is between the CITY OF WOOD VILLAGE, a municipal corporation of the State of Oregon (the "City"); the WOOD VILLAGE URBAN RENEWAL AGENCY, the City's urban renewal agency duly formed under ORS Chapter 457 (the "Agency"); and WILLIAMS/DAME & ASSOCIATES, INC., an Oregon corporation, or its assignee ("Buyer").

RECITALS

A. This Amendment amends the Disposition and Development Agreement (as amended, the "DDA") between City, Agency, and Buyer, dated as of November 16, 2017, as amended by that certain Amendment of Disposition and Development Agreement dated as of January 25, 2018; by that certain Second Amendment of Disposition and Development Agreement dated as of May 15, 2018; by that certain Third Amendment of Disposition and Development Agreement dated as of June 25, 2018; by that certain Fourth Amendment of Disposition and Development Agreement dated as of August 22, 2018; and by that certain Fifth Amendment of Disposition and Development Agreement dated as of November 30, 2018 (the "Fifth Amendment").

B. In the Fifth Amendment, the Parties provided for an extension of the DD Deadline in order to afford the City additional time to obtain a revised BOLI Determination Letter reflecting the final costs of the Utility Relocation Work. Pursuant to Section 1 of the Fifth Amendment, Buyer must give notice that it is satisfied with its Inspections and the Due Diligence Materials (the "DD Notice") on or before the expiration of the Due Diligence Period on January 31, 2019 (the "DD Deadline"). Concurrently with Buyer's delivery of the DD Notice, Buyer is obligated by Section 2.1 of the DDA to convert the Earnest Money Note to cash and increase the Earnest Money to \$200,000. The City has not yet obtained and delivered to Buyer the BOLI Determination Letter.

C. The City has now completed the Utility Relocation Work. However, 3,000 yards of pipe trench spoils (the "Material") were left on the Property by the contractor performing the Utility Relocation Work on the City's behalf. Because the contractor left the Material on the Property, Buyer will incur unanticipated costs in the approximate amount of \$50,000 to load, haul onsite, place, and cement treat the Material (the "Additional Site Work Costs"). The Material and Additional Site Work Costs are New Matters under Section 6 of the DDA, but neither the City nor Buyer wish to terminate the DDA at this time.

D. As provided in Section 23.1 of the DDA, the City is responsible for paying a commission to certain brokers through escrow at Closing, now calculated to be in the amount of \$187,500.00. Buyer will be responsible for \$50,000 of that brokerage fee (the "Brokerage Fee Contribution") at Closing in exchange for a reduced increase in Earnest Money at the time of the DD Notice.

E. The Parties now desire to amend the DDA to provide for a reduction in the required Earnest Money at the time of the DD Notice to account for the Additional Site Work Costs and the Brokerage Fee Contribution, and to extend the DD Deadline to allow time for issuance of the BOLI Determination Letter, all on the terms and conditions of this Amendment.

AGREEMENT

NOW, THEREFORE, for and in consideration of the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, City, Agency,

and Buyer hereby agree as follows:

1. **Earnest Money.** Section 2.1 of the DDA is hereby amended to delete the words “shall be increased to \$200,000 and”.

2. **Brokerage Fee.** Section 23.1 of the DDA is hereby deleted in its entirety and replaced with the following language:

23.1 Brokerage Fees. At Closing through escrow, Buyer will pay \$50,000 towards, and the City shall be solely responsible to pay the remainder of, a commission to Dennis O’Neil and Key Boyko of Colliers International, licensed brokers who represent the City. Other than the \$50,000 provided for in the foregoing sentence, Buyer shall have no obligation to pay the City’s broker(s) or any other brokerage fee or real estate commission resulting from this Agreement.

3. **Additional Site Work Costs.** Buyer agrees to be responsible for any and all loading, hauling, placing, and treating of the Material necessary for Buyer’s development of the Project and to be responsible for all Additional Site Work Costs that may result from the Material. Buyer accepts the Material in its as-is condition as part of the Property under the terms of Section 7.5 of the DDA.

4. **Due Diligence Extension.** The Parties agree to extend the DD Deadline to the earlier of (a) three (3) Business Days after the City delivers the BOLI Determination Letter to Buyer or (b) February 28, 2019. The extension of the DD Deadline also automatically extends all dates in the DDA that run from the DD Deadline, provided, however, that (a) the Closing Date shall be calculated as provided in Section 2 of the Fifth Amendment and (b) the Closing date shall not be later than June 28, 2019.

5. **Miscellaneous.**

5.1. **Capitalized Terms.** Capitalized terms used but not defined in this Amendment have the meanings set forth in the DDA.

5.2. **Effect of Amendment.** Except as specifically set forth in this Amendment, the DDA is unmodified and is hereby ratified and remains in full force and effect. In the event of any conflict between the terms and provisions of this Amendment and the terms and provisions of the DDA, the terms and provisions of this Amendment shall control. This Amendment constitutes the entire agreement of the Parties with respect to the subject matter hereof, and once executed and delivered, shall not be modified or altered in any respect except by a written instrument signed by the Parties hereto.

5.3. **Counterparts; Delivery.** This Amendment may be signed in counterparts, each of which shall be deemed an original, and when taken together, shall constitute one and the same instrument. The Parties may execute facsimile or email copies of this Amendment, and delivery of such execution copies by facsimile or email shall be deemed to be delivery of an original signature and shall be binding on the Parties hereto.

5.4. **Successors and Assigns.** This Amendment is binding upon, and shall inure to the benefit of, the Parties hereto and their respective successors and permitted assigns.

5.5. **Governing Law.** This Amendment shall be governed by and construed in accordance with the laws of the State of Oregon.

The Parties have executed this Amendment in multiple counterparts as of the Effective Date.

CITY: **CITY OF WOOD VILLAGE**, a municipal corporation of the State of Oregon

By: _____
William A. Peterson, Jr., City Manager

APPROVED AS TO FORM:

Jeffrey G. Condit, City Attorney

AGENCY: **WOOD VILLAGE URBAN RENEWAL AGENCY**, the City's urban renewal agency under ORS Chapter 457

By: _____
William A. Peterson, Jr., City Manager

APPROVED AS TO FORM:

Jeffrey G. Condit, City Attorney

BUYER: **WILLIAMS/DAME & ASSOCIATES, INC.**, an Oregon corporation

By: _____
T.B. Dame, President