

**FMC/City of San Jose
Terms Sheet for Coleman Avenue Purchase**

1. Seller. FMC Corporation, a Delaware corporation
2. Buyer. City of San Jose, a municipal corporation
3. Property. The property consists of approximately 74.876 acres located on the western side of Coleman Avenue across from the Mineta San Jose International Airport and is more particularly shown on the map attached hereto as Exhibit A (“Property”). A small portion of the Property is located in the City of Santa Clara; the balance of the Property is located in the City of San Jose. The Property consists of three separate legal parcels: Area 1 (approximately 26.713 acres), Area 2 (approximately 24.933 acres) and Area 3 (approximately 23.230 acres). For purposes of the sale, the Property shall be divided into two phases: Areas 1 and 2 shall be referred to as “Phase 1”; Area 3 shall be referred to as Phase 2.
4. PD Zoning. The City of San Jose approved Planned Development Zoning Ordinance No. 26958 on September 2, 2003 (“PD Zoning Ordinance”) for the Property and adjacent property owned by Arcadia Development Co., et al (“Arcadia Parcel”). The PD Zoning Ordinance allows a maximum intensity of development of three million square feet of office/research and development uses and/or an undetermined amount of hotel, commercial and retail use.
5. Purchase Price. The purchase price for the Property shall be Twenty-five (\$25.00) per square foot (“Purchase Price”). The Purchase Price shall be allocated between Phase 1 and Phase 2 on a gross square footage basis. FMC understands that the City’s source of funds to pay the Purchase Price shall be (i) lease revenue bonds issued by the City of San Jose Financing Authority (“Bond Financing”), (ii) U.S. Department of Housing and Urban Development Section 108 funds (“Section 108 Financing”) and (iii) possibly, a Brownfields Economic Development Initiative Grant.
6. Transaction Schedule. Upon City Council authorization to staff to begin negotiating a purchase and sale agreement in accord with this Terms Sheet (“Terms Sheet”), City staff and FMC shall negotiate the purchase and sale agreement (“Purchase Agreement”) and other documents related to the transaction (collectively, “Purchase Agreement Documents”) consistent with this Terms Sheet. Simultaneously, City staff shall undertake the preparation of documents required for City Council approval of the Bond Financing, Section 108 Financing and a Brownfields Economic Development Initiative Grant. The parties anticipate that City staff shall submit the Purchase Agreement Documents to the City Council for approval in early August, 2004. Upon City Council approval of the Purchase Agreement Documents, City and FMC shall promptly execute the Purchase Agreement. Thereafter, the City shall diligently process the Bond Financing and applications for Section 108 Financing and a Brownfields Economic Development Initiative Grant so as to allow the financing to be secured for a projected Phase 1 Close of Escrow of December 15, 2004. The parties anticipate submitting a request for City Council approval of the issuance of the bonds for the Bond Financing in November, 2004.

7. Close of Escrow. The sale of the Property shall occur in two phases. Phase 1 shall close simultaneously with the City's sale of the lease revenue bonds and procurement of the Section 108 Financing on or about December 15, 2004. The Purchase Agreement shall provide that the City is required to purchase, and FMC shall have the right to require the City to purchase, Phase 2 or those portions of Phase 2 for which the California Department of Toxic Substances Control ("DTSC") has approved FMC's RCRA Facility Investigation or Corrective Measures Study recommending no further remedial action for soil in the form to be more particularly described in the Purchase Agreement ("No Further Action Approval") The parties acknowledge that the No Further Action Approval may be given at different times as to one or more portions of Phase 2. City shall be required to purchase each such portion of Phase 2 within thirty (30) days after FMC has delivered to the City a copy of the No Further Action Approval as to such portion of Phase 2. Prior to any conveyance of only a portion of Phase 2, the City and FMC shall adjust the legal descriptions of the portion of Phase 2 to be conveyed to the City and the portion of Phase 2 to be retained by FMC so that each parcel is of commercially reasonable size and configuration with access to public streets and otherwise meets all requirements for a legal parcel. Notwithstanding the foregoing, FMC may not require the City to purchase, and the City shall have no right to purchase, any portion of Phase 2 that has not received the No Further Action Approval within two years after the Phase 1 Close of Escrow. FMC's obligation to sell the Property to the City shall be conditioned upon City securing both the Bond Financing and the Section 108 Financing prior to the Phase 1 Close of Escrow and, with respect to the sale of Phase 2, the availability of the Section 108 Financing to purchase Phase 2 at all times prior to the Phase 2 Close of Escrow. The purchase agreement shall include the City's covenant to FMC to maintain at all times prior to the Phase II close of escrow, adequate credit in the City's Section 108 allocation and/or any other source of funds, sufficient to complete the acquisition of the Phase II portion of the property.

8. Escrow. The consummation of the purchase and sale of the Property for both Phase 1 and Phase 2 shall be through an escrow established with First American Title Guaranty Company, 1737 North First Street, San Jose, California 95112 ("Escrow Holder"), unless otherwise directed by mutual agreement of the parties.

9. Deposits. Upon the City's execution of the Purchase Agreement, the City shall deposit an amount equal to one percent (1%) of the portion of the Purchase Price applicable to Phase 1 with Escrow Holder ("Phase 1 Deposit"). The Phase 1 Deposit shall be refundable only upon Seller's default or as otherwise specified in the Purchase Agreement, and shall be applicable to the Phase 1 Purchase Price. The Phase 1 Deposit shall constitute liquidated damages if the close of escrow for Phase 1 fails to occur due to the default of the City. At the Phase 1 Close of Escrow, the City shall deposit with Escrow Holder an amount equal to one percent (1%) of the portion of the Purchase Price applicable to Phase 2 ("Phase 2 Deposit"). The Phase 2 Deposit shall be refundable only upon Seller's default or as otherwise specified in the Purchase Agreement and shall be applicable to the Phase 2 Purchase Price. If the Phase 2 Close of Escrow fails to occur with respect to any portion of Phase 2 that has received the No Further Action Approval due to the default of the City, then at FMC's option, FMC shall be entitled to receive the Phase 2 Deposit as liquidated damages or exercise any other right or remedy available under applicable law or in equity.

10. Due Diligence Agreement. Promptly after the parties reach agreement on this Terms Sheet, FMC and the City shall enter into a Due Diligence Agreement (“Due Diligence Agreement”). Under the Due Diligence Agreement, FMC shall grant the City the right, during the period commencing with the date of mutual execution of the Due Diligence Agreement and terminating on the date that is five (5) days after City Council approval of the Purchase Agreement Documents (“Due Diligence Period”), to perform its due diligence review of the Property prior to execution of the Purchase Agreement. The Due Diligence Agreement shall address the City’s review of environmental reports and other documents in FMC’s possession regarding the physical condition of the Property, and set out the terms on which the City may perform physical inspections and environmental investigations of the Property. The City shall also investigate and satisfy itself as to the condition of title to the Property during the Due Diligence Period. The Due Diligence Agreement shall provide for the City to complete its due diligence review of the Property and either to approve or disapprove such due diligence not later than the date that is five (5) days after City Council approval of the Purchase Agreement Documents.

11. Environmental Disclosures. The Purchase Agreement shall describe the current known environmental status of Phases 1 and 2, including any soil and groundwater contamination, all regulatory orders imposed on FMC and the Property by applicable environmental agencies, the remedial work performed to date by FMC, and all approvals and/or determinations by applicable environmental agencies that no further remedial work is required for soil contamination. FMC shall continue to have the obligation to perform remedial work required by the DTSC or an environmental agency with respect to contamination on the Property attributable to FMC. City understands and acknowledges that notwithstanding the completion of soil remedial work prior to each of the Phase 1 and Phase 2 Close of Escrow, groundwater remediation will continue on both Phase 1 and 2 after the close of escrow for such phases and FMC shall remain responsible for performing such groundwater remediation, including the cost of operation and maintenance of FMC’s groundwater remediation systems located on such phases. FMC will have access to both Phase 1 and 2 after the respective close of escrow for such parcels for operation and maintenance of groundwater remediation equipment and sampling of monitoring wells.

12. Development Agreement. The sale of the Property shall be subject to that certain Amended and Restated Development Agreement dated as of October 1, 2001 between FMC and Arcadia Development Co., et al (“Arcadia”), the owner of the Arcadia Parcel. The Development Agreement governed the process by which FMC and Arcadia jointly processed an application for planned development zoning for the Property and the Arcadia Parcel. The Development Agreement allocates the density and traffic capacity granted to the Property and the Arcadia Parcel by the PD Zoning Ordinance and also allocates responsibility for the construction and cost of certain traffic mitigation improvements that FMC and Arcadia anticipated would be required as a condition of approval of the PD Zoning Ordinance. The Development Agreement further provides for Arcadia to receive a credit against its proportionate share of certain shared traffic mitigation costs for each square foot of the Arcadia Parcel required to be dedicated for the “Minimum Traffic Mitigation Improvements” described in the Development Agreement (such credit is hereafter referred to as the “Arcadia Credit”). Since the Development Agreement was executed, the City of San Jose has approved the PD Zoning Ordinance for the Property and the Arcadia Parcel. In addition, FMC, Arcadia, the City and Valley Transportation Authority

(“VTA”) have entered into that certain Coleman Avenue/Interstate 880 Interchange Cooperation Agreement (“Cooperation Agreement”). Under the Cooperation Agreement, VTA has agreed to construct a significant portion of the Minimum Traffic Mitigation Improvements at no cost to FMC and Arcadia, subject to Arcadia’s dedication of portions of the Arcadia Parcel necessary for the construction of such improvements. FMC shall retain the obligation to pay any Arcadia Credit to which Arcadia is entitled under the Development Agreement as a result of dedications made by Arcadia to VTA for the Minimum Traffic Mitigation Improvements. Except for such obligation, at the close of escrow for each of Phase 1 and Phase 2 or portion thereof, FMC shall assign its rights and obligations under the Development Agreement with respect to such Phase or portion thereof to the City and the City shall assume such obligations. FMC shall also assign its rights and obligations under the Cooperation Agreement to the City at the close of escrow for each Phase or portion thereof, and City shall assume such rights and obligations.

13. Title. A portion of Phase 1 of the Property is subject to that certain Covenant to Restrict Use executed by FMC in favor of the California Regional Water Quality Control Board and recorded on October 1, 1996 in the Official Records of Santa Clara County (“328 Use Restriction”). The balance of Phase 1 is subject to that certain Covenant to Restrict Use of Property Environmental Restriction executed by FMC in favor of the DTSC and recorded on February 21, 2002 in the Official Records of Santa Clara County (“Test Track Use Restriction”). The Test Track Use Restriction limits the use on the Property to commercial and industrial uses, and prohibits residential, hospital or school use. FMC anticipates that the DTSC will require that a similar covenant restricting use be recorded against Phase 2 (“Phase 2 Use Restriction”) and may also impose a requirement to incorporate measures to mitigate possible vapor intrusion into new buildings constructed on portions of Phase 2. The City shall accept conveyance of Phase 2 subject to the Phase 2 Use Restriction required by the DTSC. FMC shall submit to the DTSC for approval a Phase 2 Use Restriction substantially similar to the Test Track Deed Restriction. The Purchase Agreement shall set forth the terms and conditions on which FMC shall notify City of any material changes in the Phase 2 Use Restriction. In addition, the Property is subject to that certain Declaration of Covenants, Conditions and Restrictions recorded June 25, 1999 encumbering both the Property and the Arcadia Parcel (“Existing CC&R’s”). The Existing CC&R’s impose certain use restrictions upon the Property and the Arcadia Parcel and establish certain development standards for any new improvements constructed thereon. At the Phase 1 Close of Escrow, the City and FMC shall enter into a declaration of Covenants, Conditions and Restrictions in a form to be attached to the Purchase Agreement, that will restrict the property adjacent to the remaining FMC-owned property to the uses currently permissible under the PD Zoning for an additional period of time.

14. Leasing. The City acknowledges that FMC has entered into several short-term leases of portions of the Property. The City shall have the right to review these leases during the Due Diligence Period. Prior to close of escrow for each of Phase 1 and 2, FMC shall have the right to continue leasing portions of such Phases; provided, however, that after the City has executed the Purchase Agreement, FMC shall not enter into any new lease of the Property that would extend beyond the Phase 1 or Phase 2 Close of Escrow, as applicable, without the prior written approval of the City, which approval shall not be unreasonably withheld and shall be given or denied within ten (10) days after FMC’s request. To the extent such leases are in effect at the Phase 1 or Phase 2 Close of Escrow, as applicable, FMC shall assign such leases to the City and the City shall assume the rights and obligations of FMC under such leases.

15. Post-Closing Right of Entry Agreement. At the Close of Escrow for each Phase, the parties shall enter into a Post-Closing Right of Entry Agreement and Easement (“Right of Entry Agreement”). The Right of Entry Agreement shall provide for the following:

(a) Disclosure by FMC, and acknowledgment of such disclosure by the City, of any soil and/or groundwater contamination on the Property, all regulatory orders and agreements affecting the Property, the soil and/or groundwater remediation implemented by FMC to date, any determination from environmental agencies that no further action is required with respect to soil remediation and the covenants to restrict use of property affecting the Property.

(b) FMC’s obligation to perform remedial work required by the DTSC or an environmental agency with respect to contamination on the Property attributable to FMC. The agreement shall govern FMC’s right to enter the Property to perform such remedial work and set out the terms and conditions on which FMC may locate, install, maintain and remove any remediation facilities on the Property necessary to perform such remedial work.

(c) FMC’s exclusive right to negotiate and fulfill any remedial work obligation imposed on FMC and the Property with respect to contamination attributable to FMC by the DTSC or other environmental agency.

(d) The City’s grant of an easement to FMC for the location, maintenance, repair and removal of any remediation facilities on the Property. (e) A prohibition on the City’s right to perform any remedial work obligation on the Property so long as FMC is performing such remedial work obligation in accordance with the requirements imposed by the DTSC or other environmental agency imposing the same

(f) FMC’s indemnity of the City for the obligations described on Exhibit B attached hereto. The City shall indemnify FMC from liability arising from the City’s introduction of hazardous materials onto the Property (g) The terms and conditions under which the City may transfer FMC’s indemnity to transferees of City’s fee ownership in the Property.

(h) The term of the Right of Entry Agreement.

16. As-Is Acquisition. Except as otherwise set forth herein, the City shall acquire the Property in its “as-is” condition and release FMC from all claims against FMC arising out of the condition of the Property. The City shall be responsible for demolition of all existing improvements on the Property.

17. No Assignment. The Purchase Agreement shall prohibit the City and the City Finance Authority from assigning their rights under the Purchase Agreement.

18. Brokers. FMC and the City acknowledge that neither party has dealt with any brokers in this transaction, except Cushman & Wakefield, who is acting on behalf of FMC. FMC shall be responsible for any brokerage fee due to Cushman & Wakefield in this transaction. The Purchase Agreement shall provide for each party to indemnify, defend and hold harmless the

other party from any claims for brokerage commissions or fees arising out of such party's contact with a broker in this transaction.

EXHIBIT A
MAP OF PROPERTY

EXHIBIT B

INDEMNITY PROVISIONS

Indemnity. FMC shall indemnify, defend, and hold harmless City from any loss, cost, damage, liability, judgment, or expense, including consultants and attorneys' fees, actually incurred or sustained by City in connection with any of the following:

(a) Compliance by City with the Consent Agreement or any Remedial Work obligation imposed by the DTSC or other Environmental Agency with respect to the Contamination; provided (i) enforcement of the Consent Agreement or Remedial Work obligation has not been stayed by an order of a reviewing administrative agency or a court of competent jurisdiction or FMC has not instituted proceedings seeking such stay of enforcement and such proceedings are not pending, (ii) City is required by the DTSC or such Environmental Agency to perform such Remedial Work obligation, (iii) City has given FMC written notice of its intent to perform such Remedial Work obligation, and (iv) FMC has failed to perform or to commence to perform such Remedial Work obligation within the applicable time period after receipt of written notice from City of intent to do so;

(b) Any claim by the DTSC or another Environmental Agency to recover costs incurred by such Agency relative to the performance of Remedial Work;

(c) Claims for personal injury or property damage arising out of the negligence or willful misconduct of FMC or its consultants, contractors, or agents during the performance of Remedial Work or the activities permitted under the Right of Entry Agreement;

(d) Claims from third-party property owners for costs of Remedial Work required by the DTSC or another Environmental Agency resulting from the migration of the Contamination from the Property to such third-party's property; and

(e) Fines or penalties imposed by any Environmental Agency on City as a result of the presence of the Contamination on the Property.

The foregoing indemnity expressly excludes, and FMC shall have no obligation to City or its successors and assigns for, any loss, cost, damage, expense, liability, or claim suffered or incurred by City arising out of (i) any Hazardous Materials which are released or disposed on the Property by City or its successors and assigns, agents, tenants, employees, and contractors, (ii) the migration onto the Property of Hazardous Materials from property not owned or formerly owned by FMC or from a release of Hazardous Materials not attributable to FMC (responsibility for commingled plumes will be addressed in the Purchase Agreement), (iii) costs of Remedial Work voluntarily undertaken by City at a time when FMC is in compliance with the Consent Agreement or any other Remedial Work obligation required by an Environmental Agency, (v) claims from third-party property owners for the cost of Remedial Work voluntarily undertaken by such third-party owner and not required by the DTSC or other Environmental Agency resulting from the migration of the Contamination from the Property to such third party's property, and (vi) third-party claims for personal injury or property damage to such extent as such claims arise out of exposure to the Contamination occurring from and after the date of the

close of escrow of each phase, or portion thereof, as applicable, including any claims by such third parties for consequential damages. In no event shall FMC have any liability to City or its successors and assigns for any consequential damages, loss of profits, perceived loss of profits, reduction in value or perceived loss of value of the Property, inability to sell, lease or finance the Property or any part thereof or inability to use the Property for any purposes due to (i) the mere existence of the Contamination, (ii) any Remedial Work obligation now or hereafter imposed on the Property by the DTSC or any other Environmental Agency, or (iii) any of the matters subject to the foregoing indemnity. In addition, in no event shall FMC be liable to City or any party claiming by or through City for any claim, loss, cost, damage or expense, including consequential damages, incurred by City or such party as a result of construction delays caused by the performance of any Remedial Work required to comply with the Consent Agreement or any other Remedial Work obligation imposed on FMC by an Environmental Agency.

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