

City of Vallejo
Proposed Key Business Terms
The Nimitz Group – Purchase of North Mare Island
NMI Term Sheet December 2020

1. Parties.

City of Vallejo (“City”) and The Nimitz Group, LLC, a California limited liability company operating as a Qualified Opportunity Zone Business in Vallejo, CA (“Nimitz”).

2. Property.

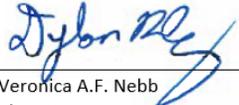
Approximately 157 acres in the area known as North Mare Island Industrial Park, and Re-use Area 1a, consisting of approximately 191 acres, of which 34 acres are to be reserved in City ownership as a conservation area. The net developable area of 157 acres as depicted in the diagram attached as Exhibit A consists of 125.3 acres previously conveyed by the United States Navy to the City (“City-Owned Property”), and approximately 31.8 acres owned by the Navy (“Navy-Owned Property” and together with the City-Owned Property, the “Property”) to be conveyed to City following the issuance of a Finding of Suitability for Transfer (FOST) and a determination by the State of California Department of Toxic Substances Control that no further remediation related action is required.

3. History and Context.

In early 2018, the City issued an RFQ seeking a master developer for the Property. City received a number of proposals and selected Nimitz as its preferred master developer. In July 2018, City and Nimitz entered into an exclusive negotiating agreement (as previously amended from time to time, the “ENA”) setting forth the terms under which Nimitz and City would negotiate a potential Disposition and Development Agreement (“DDA”) under which City would convey the Property to Nimitz for development. Since entering into the ENA, Nimitz and City have negotiated in good faith various potential structures for conveyance and development of the Property. While those negotiations were taking place, Nimitz, in 2019, completed acquisition of approximately 500 acres of South Mare Island property from Lennar Mare Island, which had been the owner and master developer of that property since approximately 2002.

By the end of 2019, City and Nimitz had completed a preliminary proposed term sheet that contemplated Nimitz undertaking substantial planning and infrastructure work under a lease/option to purchase agreement. Since that time, Nimitz and City have undertaken further review of the suitability of North Mare Island soils conditions and of potential risks associated with rising sea levels and other environmental events, including future flooding, inundation, and liquefaction. Nimitz has also commenced planning and visioning efforts that could potentially expand the range of potential uses contemplated for North Mare Island. The ongoing COVID-19 global pandemic has also disrupted financing markets and called into question the parties’ economic assumptions during the prior term sheet negotiations.

Approved as to form:

By:  for
Veronica A.F. Nebb
City Attorney

Since 2019, Nimitz has explored various options to facilitate development of the Property, including use of enhanced structural foundations and site elevation and soil compaction options. Nimitz has also brought on an experienced development company, Southern Land Company (“**SLC**”), to act as master developer for Mare Island, and together they have been looking at ways to accomplish the North Mare Island project.

For example, based on the soils report ENGEO prepared for the City as part of the original RFQ, Nimitz and SLC engaged ENGEO to estimate the cost to prepare the soils for the potential expanded uses. The report identified a need to elevate, compact and improve the Property to facilitate economically viable development and mitigate risks associated with sea level rise. The ENGEO report estimated that the costs of importing clean fill to elevate the developable portions of the Property (approximately two million cubic yards of soil) will cost more than \$20 million and take more than two years to complete.

Nimitz and SLC also engaged Carlson, Barbee & Gibson, Inc. (“**CBG**”), a civil engineering firm, to prepare a report pertaining to the proposed development of North Mare Island. CBG’s report indicated that, in addition to the \$20 million in soil importing costs identified by ENGEO, it will cost approximately \$19-48 million to complete surcharging, compaction, footings, and foundation work to get the Property “shovel ready” for vertical development. In sum, the added development costs associated with these options are significant enough to warrant additional reductions in the value of the Property below the already negative value indicated by the City’s draft appraisal report.

Because Nimitz and SLC are looking at the whole of Mare Island, the transaction outlined in the 2019 term sheet could create a situation making it challenging to invest and then compete against existing properties currently owned by Nimitz and available for lease. In light of the new information gleaned from the additional due diligence and planning and visioning work and in recognition of the economic challenges presented by the COVID-19 pandemic, the City and Nimitz’s negotiating teams have mutually concluded an updated term sheet is warranted whereby the substantial private investment in the Property will occur following City’s transfer of fee title to Nimitz.

4. Economic Benefits.

As with the prior deal structure, the new terms outlined in this term sheet include substantial economic benefits to City including the following:

- Increased property, possessory interest, sales and use taxes, CFD special tax payments, construction and equipment taxes.
- Business opportunity zone and other community benefits.
- Accelerating master land planning and backbone infrastructure planning.
- Relieving City of ongoing obligation to address nuisance and property maintenance issues on North Mare Island.
- Relieving City of obligation of repaying an approximately \$3,000,000.00 HUD loan.
- Enhancing attractiveness of key entry point for Mare Island.
- Demolition of non-utilized, existing buildings onsite.

- The existing Specific Plan allows for development of 1.2 million square feet of building space, which, if developed by Nimitz, would produce significant tax revenue for the City. The growth in property tax revenue would be even greater if Nimitz were to propose a new Specific Plan with additional permitted land uses and development capacity, such plan is approved by City, and Nimitz builds out such uses.
- Development activity by Nimitz will generate construction jobs in the near term and also increase permanent employment opportunities. Employment opportunities would be expected to be even greater under a new Specific Plan.

5. Disposition and Development.

The parties will enter into a DDA whereby the City will transfer its interest in the Property to Nimitz for purposes of undertaking master planning, site preparation and pre-development work, the precise scope of which will be set forth in the DDA, which will enable Nimitz and its vertical developer partners to quickly move forward with development of buildings and related improvements and facilities at such time as market conditions allow. The closings will occur in phases, with the first closing for sale of the City-Owned Property (“**First Closing**”) to occur within 30 days following satisfaction of conditions precedent to closing, but in any event by no later than 90 days after effective date of DDA approval, or such later date as the parties may agree each in its sole discretion (“**Outside Date**”). If the First Closing has not occurred by the Outside Date, then the DDA shall terminate. Concurrently with the First Closing of the City-Owned Property, City and Nimitz will enter into a Sub-Lease in Furtherance of Conveyance (“**Sub-LIFOC**”) pursuant to which City will sublease to Nimitz on a NNN basis all of the Navy-Owned Property. A form of Sub-LIFOC will be included as an exhibit to the DDA. Following the First Closing, Nimitz will have a “must-take obligation” to accept from City a conveyance of fee title to the Navy-Owned Property immediately following City’s acceptance of such property from Navy. The closing(s) for City’s conveyance of the Navy-Owned Property to Nimitz shall occur immediately following City’s acceptance of the Navy-Owned Property from Navy through one or more back-to-back escrows.

6. Deposit; Purchase Price.

Pursuant to sections 7.2 and 7.3 of the Exclusive Negotiating Agreement between City and Nimitz, City is currently holding Nimitz’s negotiation deposit in the amount of \$50,000 (“**Negotiating Deposit**”). As contemplated by the ENA, the Negotiating Deposit will be transferred into the escrow to be established for the DDA transaction and will be applied towards the purchase price payable by Nimitz at the First Closing. The purchase price for the Property will be \$3 Million, which exceeds the amount needed to fully payoff the outstanding principal and interest balance of the City’s HUD 108 loan including any HUD-related closing costs. Concurrent with the conveyance of the City-Owned Property, the City will pay off the HUD 108 loan in full.

7. Due Diligence; Work Product.

Nimitz will be responsible for the design, construction and financing of all development on the Property, including required on- and off-site public improvements and Backbone Infrastructure (defined below). Accordingly, Nimitz will be responsible to determine if the

condition of the Property is adequate for its intended development. Within 90 days following the effective date of the DDA (“**Inspection Period**”), Nimitz will complete its investigation of the Property, including the investigation of hazardous materials in the soil or groundwater and condition of title, and notify City that either (i) Nimitz has determined that the entirety of the Property, including Navy-Owned Property, is inadequate for its planned development and use, and therefore Nimitz terminates the DDA, or (ii) Nimitz has determined that the entirety of the Property is adequate for its intended development and therefore accepts the Property in its As-Is Condition. To facilitate timely completion of its due diligence investigations, Nimitz will commence preliminary investigation work, including ordering of a Phase I environmental site assessment, promptly following the parties’ approval of this term sheet.

If by the Outside Date Nimitz has not acquired from City fee title to the entirety of the City-Owned Property then Nimitz shall provide City with full and complete copies of all investigation reports and studies applicable to the Property within Nimitz’ possession or direct control, including boring logs, sample or laboratory test results, or other technical data and backup, including in digital formats that can be accessed across similar platforms used by Nimitz, produced by Nimitz or its contractors or subcontractors in connection with Nimitz’ due diligence and pre-development activities (collectively, “**Work Product**”) within sixty (60) days following the expiration or termination of the DDA and concurrently with City delivery to Nimitz of any remaining City entitlement processing security deposit funds. The DDA shall include appropriate carve-outs addressing such excluded items as attorney/client communications and work product; confidential or proprietary information; internal memoranda, reports and assessments regarding valuation or interpretation of any agreements, contracts or third party reports; and architectural design concepts and plans including the work of HOK or other architects. Once delivered, each of Nimitz and City shall own equal right, title and interest in and to such Work Product. All such Work Product shall be provided solely on an “AS IS” basis for use by City or any of its assigns or contractors at their own respective risk.

8. Pre-Closing Obligations; Mare Island Beautification.

Nimitz will prepare a “**Beautification Plan**” addressing Nimitz’s plans for installing landscaping and adding fencing, lighting and improving security on Mare Island with particular emphasis on the Mare Island Causeway Bridge and Highway 37 entry points and the historic core area of Mare Island. Nimitz shall complete implementation of phase 1 of the Beautification Plan, consisting of installation of security fencing and lighting around the Property in accordance with the Non-Exclusive License Agreement, by no later than March 31, 2021. The DDA shall include milestones for Nimitz to complete preparation and obtain City approval of a comprehensive Beautification Plan consistent with the preliminary conceptual plan, and following City approval thereof, for Nimitz’s ongoing implementation of such plan.

9. Property Transfer Conditions.

Nimitz shall satisfy the following conditions precedent before escrow closes on the sale and transfer of the City-Owned Property:

- a. Nimitz shall have completed and/or demonstrated the following with regard to

Buildings 499, 503, 517, 589, 593, 601, 653, 663, 673 & 993 (“**Non-Utilized Structures**”):

- i. Nimitz has submitted applications for, and subject to payment of applicable fees, City is prepared to issue demolition permits with respect to all of the Non-Utilized Structures;
 - ii. Nimitz has pre-negotiated a form of demolition agreement with a contractor of its choosing for demolition of the Non-Utilized Structures and provided a copy of such agreement to City;
 - iii. Nimitz has obtained, or is ready to obtain currently with the First Closing, performance or completion bonds in forms reasonably acceptable to City to guaranty completion of the demolition work within the times provided below.
- b. Nimitz shall have submitted applications for, and subject to payment of applicable fees, City is prepared to issue grading permits with respect to the Property.
 - c. The Non-Exclusive License Agreement between City and Nimitz dated November ___, 2020, pertaining to North Mare Island interim beautification and security, remains in full force and effect. Nimitz is not in default under such agreement and Nimitz has timely completed installation of the security fencing and lighting around the Property as contemplated by such agreement.
 - d. Nimitz shall have executed and acknowledged and delivered into escrow original counterparts of all closing documents including quitclaim deed(s) for conveyance of fee title to the applicable portion of the City-Owned Property, and, in the case of the first conveyance, a Sub-LIFO for the entirety of the Navy-Owned Property.

Nimitz shall satisfy the following conditions precedent before escrow closes on the sale and transfer of the Navy-Owned Property:

- i. With respect to the Navy-Owned Property or applicable portion thereof, Nimitz shall have submitted initial petitions and taken other preliminary actions necessary to cause annexation of the Navy-Owned Property, or applicable portion thereof, into the Mare Island CFD. The annexation shall be completed promptly following the closing and the costs of such CFD annexation shall be paid by Nimitz. The DDA shall include requirements for alternative property owner funding arrangements in the event the annexation is not completed promptly following the closing for conveyance of such property.
- ii. Nimitz shall have executed and acknowledged and delivered into escrow original counterparts of all closing documents including quitclaim deed(s) for conveyance of fee title to the applicable portion of the Navy-Owned Property.

10. Post-Closing Covenants.

- a. Nimitz will complete demolition of Non-Utilized Structures and request building demolition permit final inspection within 24 months following the First Closing.
- b. Within 12 months following the First Closing, Nimitz will cause a consultant selected by Nimitz to sample and test soil previously stockpiled by Lennar Mare Island so that a determination can be made as to whether such soil is suitable for importation as clean fill for Nimitz's intended development on Mare Island. If such soil is determined to be suitable for use as clean fill, then within 48 months following such determination, and subject to receipt of any required governmental approvals, Nimitz will re-locate such soil to the Property or other development sites on Mare Island as Nimitz may select in its sole discretion.
- c. As soon as practicable following the First Closing, Nimitz will use commercially reasonable and diligent efforts to commence and complete importation of clean fill in quantities sufficient to raise the elevation of the Property to a level necessary to support Nimitz's intended development and in accordance with all applicable governmental approvals, which is estimated to be approximately two million cubic yards. The parties recognize that the timing of completion of the fill importation work will depend upon the pace of development in the Bay Area, in particular the extent to which other development projects are required to find locations for disposing of excavated soil, and the resulting market demand for and pricing for importation of clean fill. Nimitz shall report to City on an annual basis regarding Nimitz's progress in obtaining such clean fill and the current pricing for clean fill in the local market.
- d. Within 24 months following the First Closing, Nimitz will submit to City for review and consideration of approval a comprehensive new Specific Plan for all portions of Mare Island owned or controlled by Nimitz or its affiliates, including the Property and the South Mare Island properties which Nimitz or its affiliates have acquired or are under contract to acquire from Lennar Mare Island, which Specific Plan shall include a plan for phased installation and construction of new backbone infrastructure ("**Backbone Infrastructure**") to serve all new development and redevelopment contemplated by the Specific Plan. The Specific Plan will address, among other items, the following: a range of permitted land uses which are potential to include commercial, retail, residential, office, hotel, industrial, community/civic and recreational uses, and the timing for construction and installation of Backbone Infrastructure.

11. Conveyance of Property; Closing Costs.

Title will be conveyed by quitclaim deed in a form to be attached to the DDA, in recognition that the Navy conveyed title to the City-Owned Property by quitclaim. All closing costs, recording fees, transfer taxes etc. will be paid by Nimitz. City agrees to reasonably cooperate with Nimitz, including execution of reasonable instruments requested by Nimitz's chosen title company, so that Nimitz is able to obtain a commercially reasonable owners' policy of

title insurance for the City-Owned Property and a commercially reasonable leasehold policy of title insurance for the Navy-Owned Property.

12. Property Condition.

Property to be conveyed to Nimitz AS-IS, WITH ALL FAULTS, subject to any covenants set forth in Navy quitclaim deeds to City (“**Navy Covenants**”). City will cooperate with Nimitz in Nimitz’s efforts to cause the Navy to comply with such Navy Covenants. In addition, to the extent there are remaining monies in the “Settlement Funded Conditions” subaccount established under the 4th Amendment to Environmental Services Cooperative Agreement dated October 16, 2017, between City and Navy, City, if and to the extent Navy authorizes the expenditure of those funds for such purpose, agrees to make those funds available to pay the costs of such “Navy Retained Condition” remediation efforts in accordance with the terms of the Environmental Services Cooperative Agreement, as amended (“**ESCA**”), and requirements of applicable laws. Nimitz acknowledges and agrees that City has made no representations or warranties as to whether any Settlement Funded Conditions sub-account monies will be available for such purpose. Nimitz shall be fully responsible for remediation of any and all hazardous materials contamination, including remediation of Navy Retained Conditions, if and to the extent not satisfied by the Navy.

13. Items for Further Negotiation.

City and Nimitz will continue to negotiate potential infrastructure reimbursements and/or impact fee credits and/or deferrals. The parties will also continue to negotiate the potential for Nimitz and its successors and assigns to make additional deferred purchase price payments to City if, following City approval of a new Specific Plan, Nimitz or its successors or assigns seeks to obtain entitlements under SB 35, State Density Bonus Law or any other provision of State law allowing for development of residential or other uses at greater heights, densities or intensities than those permitted under a city-approved specific plan or applicable zoning. To the extent the parties reach mutual agreement on one or more of such items, those term will be set forth in the DDA.

14. Local Hire and Local Business Preferences. The DDA shall include goals for hiring Vallejo (and secondarily Solano County) resident construction workers for buildout of the Backbone Infrastructure and development of the Property. The DDA shall also require Nimitz and its successors to give preference, whenever possible, to local Vallejo and Solano County based businesses in the purchasing of materials and supplies needed for build out of the Backbone Infrastructure and development of the Property, including women and minority owned local businesses

15. Other Post-Closing Covenants. Nimitz shall have the following obligations post-closing:

- a. Minimum Assessed Value/Property Tax Covenant. The parties acknowledge and agree that the assessed value (“**AV**”) of Nimitz’s South Mare Island Property as of the 2020/2021 tax year is \$_____ [*parties to insert applicable amount as of DDA date*]. The parties further acknowledge that based on the purchase price, the AV of the Property for the tax year in which the closing occurs will be approximately equal to the \$3,000,000. The Property, together with Nimitz’s South Mare Island

Property, is collectively referred to herein as the “Nimitz Property”. Nimitz will agree by contract that the AV of the Nimitz Property on the Minimum Tax Revenue Date (defined below) will equal or exceed the Minimum Nimitz Property AV (defined below) and if not, then Nimitz or its successor will pay City and the Vallejo Unified School District (“VUSD”) beginning on July 1st of the year following the Minimum Tax Revenue Date and each year thereafter, per a recorded payment in lieu of taxes (PILOT) agreement (“PILOT”), an amount equal to the difference between the property taxes actually received by City and VUSD based on the AV of the Property for the tax year in question and the property taxes that City and VUSD would have received (i.e. 19% and 24% of the total property taxes, respectively) if the total AV of the Nimitz Property was equal to the Minimum Nimitz Property AV. The “**Minimum Nimitz Property AV**” on July 1 of the first year following the Minimum Tax Revenue Date shall be the amount of \$_____ [Note: This amount, to be calculated as of the DDA date, will equal the sum of the South Mare Island 2020/21 AV + the Property AV of \$3M + \$26,000,000 as increased by the Proposition 13 2% annual escalator for the period between the DDA date and the Minimum Tax Revenue Date]. The Minimum Nimitz Property AV amount shall be increased annually by 2% per year each year following the Minimum Tax Revenue Date. The “**Minimum Tax Revenue Date**” shall be the date that is 5 years after the effective date of the DDA; provided however the Minimum Tax Revenue Date shall be extended by the period of any Recession occurring during such 5 year period. A “**Recession**” means any period of two or more quarters of negative GDP growth as determined by the United States Department of Labor, Bureau of Labor Statistics. .

- b. Local Use Tax Permit. Consistent with State Board of Equalization rules, Nimitz will commit to require contractors and subcontractors with contracts valued at \$5 million or more to designate the Property as the place of use of material used in project construction in order to have the local portion of the sales and use tax distributed directly to City instead of through the County-wide pool.
- c. Restrictions on Transfer. With the exception of certain specified permitted transfers (i.e., transfers to affiliates, transfers of security interests to Nimitz lenders, admission of third-party equity and/or mezzanine participants, grants of easements, licenses and right of ways) to be set forth in the DDA, Nimitz will be prohibited from assigning the DDA or any interest in the Property, or any portion thereof, until such time as Nimitz has submitted to City and obtained City Council approval of a new Specific Plan, including Backbone Infrastructure plan. Following City’s approval of a new Specific Plan, Nimitz will have the right to transfer individual parcels to one or more vertical developers for development purposes; provided however any proposed transfer that, together with any prior or concurrent transfers, would result in conveyance of more than 20% of the Property to a single transferee (or affiliates of a single transferee) shall be subject to City Council approval not to be unreasonably withheld, conditioned or delayed and which approval shall be granted provided the proposed transferee meets certain criteria, including net worth and development experience requirements to be specified in the DDA.

d. Prohibited Uses. Until such time as Nimitz obtains approval of a new Specific Plan, Nimitz on behalf of itself and its successors may pursue development of uses allowed under the existing Specific Plan, provided however Nimitz will agree not to pursue development of certain specified prohibited uses, including: LNG facilities, cement batch plants, dumps and heavy recycling facilities, refineries, and heavy industrial uses. Additionally, Nimitz on behalf of itself and its successors will agree not to develop more than 370,000 square feet of warehouse use which is the maximum amount allowed under the existing Specific Plan.

16. Remedies. Subject to written notice of breach and opportunity to cure and any applicable extension(s) for force majeure delay(s), City would have the right, at its option, to repurchase, reenter and take possession of the entire Property if after conveyance of title to the Property, Nimitz fails to commence and complete each of the post-closing obligations set forth in Section 10 above within the times set forth above. To exercise its right to repurchase, reenter and take possession with respect to the Property, City or its designee would pay to Nimitz or its permitted successor in interest in cash an amount equal to (i) the purchase price paid by Nimitz for the Property, plus (ii) verified out-of-pocket hard costs paid by Nimitz to unaffiliated third parties in connection with demolition of the Non-Utilized Structures, importation of clean fill, surcharging, grading and construction of permitted improvements, if any, on the Property; not to exceed a maximum of \$10,000,000.00.

17. Limitations of Term Sheet.

This term sheet is not intended to be legally binding, and neither the City nor Nimitz will be legally bound unless and until a DDA is approved by the parties and signed in the future.