



**DATE:** December 15, 2020  
**TO:** Mayor and Members of the City Council  
**FROM:** Gillian Hayes, Interim Deputy City Manager and Paul Kelley, Economic Development Director  
**SUBJECT:** **NORTH MARE ISLAND TERM SHEET UPDATE AND ENA 5th AMENDMENT**

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**RECOMMENDATION**

Approve the new Term Sheet for the North Mare Island Disposition and Development Agreement or Purchase Sale Agreement with The Nimitz Group, LLC, and authorize the City Manager to execute the Fifth Amended and Restated Exclusive Negotiation Agreement (ENA) with the Nimitz Group, LLC for North Mare Island.

**REASONS FOR RECOMMENDATION**

Approval of the new Term Sheet (Attachment 1) will provide The Nimitz Group (Nimitz), Southern Land Company and the City the necessary framework to further negotiate, draft and present to City Council for consideration a Disposition and Development Agreement or Purchase Sale Agreement (DDA/PSA) for City's sale of North Mare Island (NMI) to Nimitz for development. The new Term Sheet outlines a realistic plan that Southern Land Company, as Nimitz's developer, can implement, it shifts to Nimitz at closing the ongoing costs of ownership, operation and maintenance, and creates a viable opportunity for the development of NMI under a new more robust Specific Plan.

Since the approval of the initial Term Sheet in October 2019, Nimitz has hired Southern Land Company (SLC), a well-known and successful developer, to oversee the development of Mare Island. As part of SLC's initial review of NMI, they identified that, based on the unit costs provided in a 2018 geotechnical report ENGENEO prepared for the City, the proposed importing of soils necessary for the development of NMI would cost approximately \$20M. These soil costs are in addition to the \$30 Million of site development costs and \$3.3 Million of demolition costs identified in the 2018 draft appraisal prepared for the City which concluded the "As Is" market value of NMI as of that date was equal to negative (-\$20.9M).

Given the fact that extremely challenging soil conditions are greater than what was originally anticipated, the parties' original economic assumptions during the prior Term Sheet negotiations are no longer viable and Nimitz with Southern Land as their developer is unable to implement the terms of the prior 2019 Term Sheet.

The new Term Sheet contemplates the City's sale to Nimitz of the approximately 125 acres of NMI presently owned by City within approximately 120 days following DDA/PSA execution. Nimitz would pay the City a purchase price of \$3 Million at closing notwithstanding the City's determination that the NMI land in its present condition has a negative value. Payment of the \$3M purchase price will enable the City to pay off the HUD loan in full. Concurrently with the closing for conveyance of the City-owned land, Nimitz would also sublease the Navy-owned portion of NMI from the City and assume all operational and security responsibilities. Nimitz would be obligated to accept conveyance of fee title to those Navy-owned NMI lands from the City immediately following Navy's conveyance of such land to the City.

The New Term Sheet also requires Nimitz to commence and complete demolition of the ten remaining non-utilized structures on NMI promptly following the initial closing, and to prepare and submit to City for consideration of approval a new Mare Island Specific Plan. This new Plan would replace the existing Specific Plan, the original version of which was prepared more than 21 years ago. Nimitz would be responsible for paying all costs of preparing an appropriate CEQA document to guide City's consideration of the new Specific Plan as well as an accompanying Backbone Infrastructure Plan necessary for the new Specific Plan implementation. Assuming a new Specific Plan is ultimately approved by the City, that plan would enable Nimitz / SLC to move forward with a bigger vision of a higher and better use and development of NMI as well as South Mare Island. That development will ultimately benefit City and other taxing entities through generations of additional tax dollars, including property, sales and use taxes, as well as business license fees and potentially transient occupancy taxes. The City will also benefit since upon closing City will be relieved of the burden of paying ongoing NMI carrying costs including the CFD, HUD Loan, security and maintenance costs. Nimitz has already agreed to assume the costs to secure the NMI site per the Security License Agreement approved November 2020.

The prior Term Sheet approved by Council in October 2019 required Nimitz to meet certain vertical development milestones regardless of whether the market conditions supported the need for such development. In recognition of the uncertainty as to when market conditions will support vertical development and given the length of time it will take to import fill to raise the elevation of NMI and complete surcharging, the new Term Sheet omits specific horizontal or vertical development milestones. In lieu of those milestones, and as an incentive for Nimitz to move forward with development sooner rather than later (and to make it less attractive to land bank property for an extended period of time), the new Term Sheet obligates Nimitz to pay to the City and the Vallejo Unified School District beginning in year 5 and continuing each year thereafter a "payment in lieu of property taxes" (PILOT) equal to what City and the School District would have received if Nimitz had moved forward with at least \$26 Million (in 2020/21 dollars) of private development on the portions of Mare Island owned by Nimitz. The payment in lieu of taxes would cease at such time as Nimitz has completed development with an assessed value of at least \$26 Million (in 2020/21 dollars).

Approval of this new Term Sheet will enable City and Nimitz's negotiating teams to move forward with negotiation and drafting of a comprehensive DDA/PSA consistent with the Term Sheet. Staff anticipates a proposed comprehensive DDA/PSA can be completed and presented to City Council for consideration of approval within 4-6 months of the approved term sheet. Assuming City Council approves a DDA/PSA, Nimitz would immediately begin undertaking master planning and pre-development work which will enable Nimitz and its vertical developer partners to invest in the property and move forward with site preparation and the future development of buildings and related improvements.

## **BACKGROUND AND DISCUSSION**

### **History and Timeline**

In early 2018, the City of Vallejo issued a Request for Qualifications (RFQ) for the development of the City's 157-acres on North Mare Island (NMI). This RFQ included ENGEO's geotech report that was prepared for the City. (Attachment 2). This report provided an overview of geologic hazards and geotechnical engineering land development considerations for NMI. ENGEO had concluded that the main geologic hazards concerns

for future land development were compressible soils, undocumented fills, slope stability, flooding and sea level rise and seismic hazards. To address these hazards for future land development, it was determined that soil importation would be needed to raise the NMI site grades. Typical construction costs for acquiring and transporting suitable import fill material vary significantly depending on borrow location, source and availability. ENGeo estimated a unit rate of \$10 per cubic yard, based on local sources of suitable import fill material, such as available on Mare Island, or from other nearby borrow sources.

On May 15, 2018, Council directed staff to negotiate an Exclusive Negotiating Agreement (ENA) with The Nimitz Group (Nimitz) with respect to the 157 acre North Mare Island property. On July 24, 2018, Council authorized the City Manager to execute the ENA with Nimitz under which the parties would negotiate a proposed Disposition and Development Agreement providing for City's conveyance of the NMI land to Nimitz for development.

In addition to the NMI negotiations, Nimitz was working with Lennar Mare Island, LLC (LMI) on a proposed Purchase and Sale Agreement for LMI's holdings on Mare Island, referred to as "South Island."

On July 31, 2019, Council approved a Consent Agreement to the Transfer of LMI's holdings to Nimitz. Concurrently, the Council approved a Fourth Amended and Restated ENA for NMI which identified the negotiation and execution of an initial ground lease and a Purchase Option Agreement as the goal of the City/Nimitz negotiations.

On October 22, 2019, Council approved an initial Term Sheet for NMI and directed staff and Nimitz to continue to work diligently toward finalizing comprehensive legal agreements consistent with the initial term sheet.

On November 2019, Nimitz closed escrow for the acquisition of South Island from LMI and assumed the role of Mare Island Master Developer.

In Early 2020, Nimitz brought aboard Southern Land Company (SLC) as its lead development partner/manager for Mare Island.

## **New Considerations**

### Updated Soil and site Preparation Costs

With a focus on NMI, SLC performed a detailed review of the suitability of NMI soil conditions and potential risks associated with rising sea levels and other environmental events, including future flooding, inundation, and liquefaction. Based on the soils analysis in the 2018 ENGeo report prepared for City, SLC engaged ENGeo to estimate the cost to prepare the soils for a potential expanded range of land uses. In May 2020, ENGeo provided SLC a Technical Memo updating the soil import costs and detailing the surcharging costs to address sea level rise. As portions of the site are below the 100-year flood zone and below the sea level rise estimates for year 2100, the grades on NMI need to be raised for development to Elevation +16 feet throughout the site to mitigate risks associated with sea level rise. In order to accomplish this, and stabilize compressible soils, ENGeo reported that SLC would need to bring approximately 2 Million cubic yards of soil to NMI. This soil importation, based on the \$10 per cubic yard in ENGeo's original report, is estimated to cost approximately \$20 Million. These soil import costs are in addition to the \$30 Million of site development costs

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and \$3.3 Million of demolition costs identified in the 2018 draft appraisal prepared for the City which concluded the “As Is” market value of NMI was equal to a negative (\$20.9 Million).

Nimitz and SLC also engaged Carlson, Barbee & Gibson, Inc. (“CBG”), a civil engineering firm, to prepare a report pertaining to the proposed development of NMI. CBG’s report, which incorporated the \$20 million in soil import costs identified by ENGE0, estimated the combined costs of completing the soil import, surcharging, compaction, footings, and foundation work to prepare the Property for development at between \$19-48 million. (Attachment 3) The range in these cost estimates is due to the unknown cost of obtaining clean fill.

Overall, these additional development costs were significant enough to warrant additional reductions in the value of the Property below the already negative (\$20.9) Million As-Is market value indicated by the City’s 2018 appraisal report.

#### Expanded Use of NMI

Nimitz has commenced planning and visioning efforts that could potentially expand the range of permitted uses currently contemplated for NMI under the existing Specific Plan. As part of the updated Term Sheet, Nimitz has committed to submit a new proposed Mare Island Specific Plan for both South and North Island within 24 months of the Disposition and Development Agreement or Purchase Sale Agreement (DDA/PSA) execution. The new proposed uses are anticipated to require even greater investments in terms of soil preparation and backbone infrastructure than the current estimates. For example, soil remediation for residential uses are far greater than requirements for light industrial storage buildings.

#### COVID-19

The COVID-19 global pandemic has disrupted the financing markets and created greater uncertainty about near and medium term market demand for mixed-use development which have negatively affected the shared economic assumptions underlying the parties’ negotiations in 2019.

The substantial increase in estimated soil importation and preparation costs, combined with Nimitz’s anticipated expanded development of NMI and the investment challenges presented by the COVID-19 pandemic have caused Nimitz to call into question the parties’ economic assumptions during the prior Term Sheet negotiations. Based on these concerns, Nimitz is unable to implement the terms of the prior 2019 Term Sheet. 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 planning and development activities will occur following City’s transfer of fee title to Nimitz.

#### **New Term Sheet Economic Benefits**

As with the prior deal structure, the new terms outlined in the 2020 Term Sheet include substantial economic benefits to City including the following: As with the prior deal structure, the new terms outlined in the 2020 Term Sheet include substantial economic benefits to City including the following:

- Accelerating master land planning and backbone infrastructure planning.
- Relieving City of ongoing obligation to address nuisance and property maintenance issues on NMI.
- Shifting to Nimitz, and relieving City from, the obligation to make CFD payments.
- Providing a purchase price payment to City that will enable City to fully payoff the approximately \$3M HUD loan, relieving the City general fund of all future HUD payments.
- Enhancing attractiveness of key entry point for Mare Island.
- Requiring demolition of non-utilized existing buildings onsite funded by Nimitz, not the City.
- Committing Nimitz to import clean fill to the site when such fill is reasonably available at economically viable rates.

Because the new Term Sheet commits Nimitz to prepare updated land and infrastructure plans on an expedited basis and includes disincentives for long term land banking, City staff believe quality development is more likely to happen sooner rather than later. Such development, when it does occur, will provide substantial benefits to City including the following:

- **Additional Tax Benefits** - The current Specific Plan allows for development of 1.2 million square feet of building space on NMI, 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's new Specific Plan proposes additional permitted land uses and development capacity, provided 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 which would be expected to be even greater under a new Specific Plan.

### **Nimitz, SLC Progress to Date**

Nimitz has already implemented some of the key terms of the original Term Sheet. The City and Nimitz are currently executing the following agreements.

- Security License Agreement. This agreement, approved by Council on November 10, 2020, will allow Nimitz to provide security and install security improvements over the 157 acres of NMI, thereby immediately relieving City of ~\$50K of annual security costs, and substantially reducing the City's ongoing police and maintenance costs.
- Laydown Lease Agreement. This Lease, approved by Council on November 10, 2020, covers one of the NMI parcels totaling approximately 27 acres. The potential revenue from Nimitz's subleasing of this area to private third party sublessees will generate revenue to offset costs Nimitz will incur implementing the Security License Agreement. This lease also allows Nimitz to support the expansion of a key employer on the Island.
- Right of Entry Agreement. This license agreement will enable Nimitz to perform weed abatement in the storm water ditch located behind the residential sites. Although the weed abatement work is not currently contractually required, Nimitz has agreed to take on those obligations at its expense.

Nimitz/ SLC has also implemented the following:

- Hiring of key SLC staff including VP Marketing, VP Construction & Development, Environmental Manager

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- Improved security at Mare Island Dry Dock, allowing for increase in government contracts and local hiring
  - Factory OS 100,000 square foot building expansion

### **Term Sheet Summary**

Since Southern Land Company (SLC) started on the Mare Island project in early 2020, City staff and SLC, representing Nimitz, have diligently worked on reviewing and negotiating the key terms for the future Disposition and Development Agreement or Purchase Sale Agreement. Attached is a summary comparing the key terms in the 2019 Term Sheet with the updated 2020 Term Sheet. (Attachment 2), and below is a summary of the items shared by both term sheets and the new terms added to the 2020 Term Sheet.

*The following terms were carried over into the new Term Sheet:*

- Beautification and Security Plan
- Backbone Infrastructure planning
- Security and Maintenance
- HUD Loan payoff
- Assumption of CFD obligations
- Sublease of Navy Property until Navy transfer
- Local Sales/Use Tax Permit for constructed related contracts in excess of \$5 Million
- Local Economic Benefits

*The new Term Sheet includes the following new terms:*

- Purchase price of \$3M – which is greater than current \$2.5M HUD loan balance
- Nimitz to demolish remaining non-utilized buildings (estimated at \$2M+) rather than City. Updated demo costs based on demolition of the remaining 10 buildings.
- Nimitz to test, and, subject to confirmation of clean condition, relocate existing soil stockpiles to Mare Island development sites within 48 months following confirmation.
- Soil preparation following importation of clean fill.
- Submission of a new Specific Plan within 24 months of DDA/PSA approval.
- Minimum Assessed Value/ Property Tax Covenant
- City repurchase rights
- Expanded list of prohibited uses that are not currently prohibited by the existing specific plan.

### *Change from Milestones to Payment in Lieu of Property Taxes*

The prior Term Sheet approved by Council in October 2019 required Nimitz to meet certain vertical development milestones equal to 100,000 square feet every 3 years, regardless of whether the market conditions supported the need for such development. In recognition of the uncertainty as to when market conditions will support vertical development and given the length of time it will take to import fill to raise the elevation of NMI and complete surcharging, the new Term Sheet omits specific horizontal or vertical development milestones.

In lieu of those milestones and as an incentive for Nimitz to move forward with development sooner rather

than later, the new Term Sheet obligates Nimitz to pay to the City and the Vallejo Unified School District beginning in year 5 and continuing each year thereafter a “payment in lieu of property taxes” (PILOT) equal to what City and the School District would have received if Nimitz had moved forward with at least \$26 Million (in 2020/21 dollars) of private development on the portions of Mare Island owned by Nimitz (including both South and North Island). The payment in lieu of taxes would cease at such time as Nimitz has completed development with an assessed value of at least \$26 Million island-wide (in 2020/21 dollars).

By increasing property holding costs the PILOT provision will provide Nimitz an incentive to move forward with development and make it unappealing from a financial perspective for Nimitz to land bank property for an extended period of time.

### **Change in City Obligation**

Unlike the 2019 Term Sheet, the new Term Sheet transfers the obligation to demolish the remaining non-utilized buildings on NMI from the City to Nimitz. To date, the City has completed the demolition of twelve buildings on Mare Island at a total cost of approximately \$3M. Prior to the 2018 appraisal, the City had demolished 6 buildings. The appraisal estimated demolition of the remaining buildings at \$3.3M. Since then, the City demolished another 6 buildings. The remaining ten (10) non-utilized buildings to be demolished by Nimitz per the new Term Sheet include 499, 503, 517, 589, 593, 601, 653, 663, 673 & 993. The City estimated the cost to demolish these remaining facilities at approximately \$2M+ not including staff time and costs.

### **Future Items for Negotiation**

Before any DDA/PSA is brought before City Council for consideration, the City and Nimitz will continue to negotiate the following items:

- Potential infrastructure reimbursements and/or impact fee credits and/or deferrals
- Details of Local Hire and Local Business Preferences
- Details of Additional Payments for Added Development beyond Specific Plan densities

### **Fifth Amended and Restated Exclusive Negotiation Agreement (ENA)**

As part of the new Term Sheet, the City and Nimitz need to amend and restate the ENA to conform to the new Term Sheet. The proposed 5th Amended and Restated ENA (Attachment 5) includes the following key updates:

1. Parties to continue negotiations with goal of reaching agreement on a mutually acceptable Development and Disposition Agreement or Purchase Sale Agreement rather than a ground lease with a purchase option.
2. Exhibit B (list of terms) is no longer needed. This exhibit was included in the ENA 4th Amendment as it was executed prior to the development of a term sheet. The new Term Sheet now includes a more detailed list of terms to be incorporated into a comprehensive proposed DDA/PSA that will be presented to Council for consideration in 2021.

**Next Steps**

Upon Council approval, City staff will execute the Fifth Amended and Restated Exclusive Negotiation Agreement and continue negotiating with the Nimitz Group/ SLC a comprehensive DDA/PSA consistent with the new key terms. Staff anticipates bringing a complete DDA/PSA to City Council for its consideration within 4-6 months after the signed DDA/PSA.

The initial transfer of the City-owned 125 acres is anticipated to occur approximately 120 days following the execution of the DDA, allowing Nimitz and Southern Land to move forward quickly on the next phase of land and infrastructure planning and soil preparation.

**FISCAL IMPACT**

The costs the City incurred for outside legal counsel to assist in the negotiation and drafting of this Term Sheet have been borne entirely by Nimitz through a Developer Deposit Agreement and their deposit of funds. Nimitz will continue to cover additional outside legal costs required to negotiate and draft the proposed Disposition and Development Agreement, with no impact to the General Fund.

Should the Term Sheet (Attachment 1) key terms be incorporated into a Disposition and Development Agreement or Purchase Sale Agreement (DDA/PSA) approved by Council, the City 's General Fund will be relieved of the approximately \$336,000 annual costs for CFD taxes and \$2.5 million in HUD 108 debt servicing effective upon the first closing which would occur within 120 days following the DDA/PSA effective date.

**ENVIRONMENTAL REVIEW**

This action is exempt from the California Environmental Quality Act (CEQA) because the non-binding term sheet it is not a project which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, pursuant to CEQA Guideline section 15378.

**ATTACHMENTS**

1.	Nimitz DDA Term Sheet 09-2020
2.	2018 ENGEO NMI Geologic Overview
3.	2020 CBG Report
4.	Term Sheet Comparison final
5.	Fifth Amended Restated Exclusive Negotiating Agreement stamped

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