

AGENDA REPORT

Resolution: Approve and Authorize the Executive Director to Execute an Exclusive Negotiating Agreement with S3D Partners, LLC, for a Term of Twenty-four (24) Months for Property Located at 9532-9636 Earhart Road, Oakland (**Aviation**)

MEETING DATE: 4/25/2019

AMOUNT: \$100,000 (One-time Revenue to Off-Set Environmental Review Expenses)

PARTIES INVOLVED: S3D Partners, LLC, Los Angeles, California
Jayesh Kumar, Managing Member

SUBMITTED BY: Bryant L. Francis C.M., Director of Aviation

APPROVED BY: J. Christopher Lytle, Executive Director

ACTION TYPE: Resolution

EXECUTIVE SUMMARY

This matter is a request for approval of an Exclusive Negotiating Agreement (“ENA”) with S3D Partners, LLC, a California Limited Liability Company (“S3D”) for property located at 9532-9636 Earhart Road. The purpose of the ENA is to allow S3D an opportunity to negotiate the potential terms of a Lease and conduct its due diligence and environmental review process to allow S3D to develop the property as a nationally branded hotel of at least Upper Midscale class plus a full-service restaurant and for related beneficial and ancillary uses. The term of the ENA is twenty-four (24) months and includes an initial deposit of \$100,000 to be used to reimburse Port staff time and environmental consultant fees related to analysis required by the California Environmental Quality Act (“CEQA”) and National Environmental Policy Act (“NEPA”).

BACKGROUND

The Port owns an approximately 3.86 acre property located at 9532-9363 Earhart Road, also known as Port buildings L105 and L107, and adjacent vehicular parking lots (“Subject Property”). An illustrative site plan of the Subject Property is attached as Exhibit A to this report for reference. Building L105 is single story classroom and administration building of approximately 8,300 square feet which was built in 1964 and was most recently occupied by the Aviation Institute of Maintenance until they vacated the property and relocated to Hayward in August 2018. Building L107 is a two-story office building totaling approximately 18,000 square feet which was built in 1967 and was most recently occupied by Aviation staff who relocated to the renovated Terminal 1 (M102) in September 2017.

In 2014, Aviation Properties commissioned a study by Jones Lang LaSalle which determined that the Subject Property's highest and best use is for the development of a select-service hotel. This study further determined that such a development was economically feasible and desirable. This study indicated the need for a minimum of 280 additional hotel rooms in the airport hotel market by 2019. No additional rooms have yet opened since the study was completed. However, a 140 room Springhill Suites is scheduled to open in May 2019.

On April 27, 2018, Aviation Properties issued a Request for Proposals for a hotel and restaurant concession opportunity for the Subject Property. No responsive proposals were received by the proposal due date of August 15, 2018. Staff then requested and received from the Board permission to attempt to negotiate directly with prospective developers who had previously expressed interest in developing the hotel and restaurant but failed to submit proposals. Staff is recommending S3D as the hotel and restaurant developer because it is amenable to all of the Port's standard terms and conditions for long term ground leases, plus a Labor Peace Agreement obligation.

ANALYSIS

After contacting more than a dozen prospective developers, staff secured qualified interest in the Subject Property from S3D. The principal partners of S3D have been active in the hospitality industry since 1982. The company owns approximately 25 hotels in the Southwest United States, operating as a private REIT and utilizing Interstate Hotels, one of the largest hotel management companies in the world, as its third-party manager. S3D has begun expanding into Northern California, having secured a development site at mixed-use project underway in Monterey County. S3D has not selected a hotel brand yet for the Subject Property, but is currently developing under the Cambria (Choice), Marriott, and Hilton flags. The Lease requires a hotel of at least Upper Midscale Class. Some examples of this class are Holiday Inn, Home2 Suites by Hilton, and Doubletree Club.

S3D has expressed a desire to enter into an ENA with the Port for the Subject Property in order to allow them time to complete due diligence and environmental review to determine its suitability for the development of a nationally-branded hotel of at least Upper Midscale Class and full-service restaurant. This ENA would also allow S3D to prepare a site plan and description of all proposed uses for the Subject Property, prepare a schedule of performance for the development of the proposed uses, meet with key regulatory agencies and community stakeholders, and confirm its acceptance of key Lease terms, among other matters.

The proposed ENA has been executed by S3D and they have provided the Port with a \$100,000 cash deposit that the Port may use to pay for Port staff time and reasonable third-party costs (i.e., the Port's on-call environmental consultant) incurred by the Port for the purpose of undertaking and managing the environmental review process. The proposed Lease form is an attachment to the ENA and, although its negotiation is not complete, there remain very few outstanding issues. The proposed key business terms of the Lease are attached as Exhibit B for reference. Also included in the Lease is a Labor Peace Rule which requires the Concessionaire to enter into a Labor Peace Agreement preventing labor interruptions from interfering with the operation of the proposed uses.

A summary of some of the key terms of the ENA are provided below.

Parties to the ENA	Port of Oakland and S3D Partners LLC, a California Limited Liability Company.
Premises	Approximately 3.86 acres located at 9532-9636 Earhart Road, also known as Port buildings L105 and L107.
Term of the ENA	The earlier of execution of the Lease or 24 months after the ENA Effective Date, subject to early termination for failure to meet certain milestones.
ENA Deposit	Initial deposit of \$100,000 that the Port may use to pay for Port staff time and reasonable third-party costs incurred by the Port for undertaking and managing the environmental review process. If the deposit is at least 85% expended, S3D must replenish the deposit in an amount reasonably estimated by the Port to complete environmental review. In no event will the Port be required to pay for any of the environmental review and compliance costs.
Interim Leasing and Possession of Premises	Port retains possession of the premises and the right to continue leasing the premises to tenants for a term not to exceed 18 months following the Effective Date of the ENA.
Assignment of the ENA	The ENA may not be assigned without Port consent.

The execution of the proposed ENA is in no way intended to bind or commit either party to a definitive course of future action. Any proposal to authorize execution of a Lease, or other property agreement would require subsequent consideration by the Board at a future public meeting if such negotiations are successful during the course of the ENA.

BUDGET & STAFFING

There is no budgeting or staffing impact resulting from the proposed ENA. The proposed ENA includes an initial deposit of \$100,000, subject to increases if at least 85% of the deposit is expended, which may be used to pay for Port staff time and reasonable third-party costs incurred by the Port. There are no staffing impacts.

MARITIME AVIATION PROJECT LABOR AGREEMENT (MAPLA)

The matters included in this Agenda Report do not fall within the scope of the Port of Oakland Maritime and Aviation Project Labor Agreement (MAPLA) and the provisions of the MAPLA do not apply.

STRATEGIC PLAN

The action described herein would help the Port achieve the following goals and objectives in the Port's Strategic Business Plan (2018-2022).

<https://www.portofoakland.com/wp-content/uploads/Port-of-Oakland-Strategic-Plan.pdf>

- Goal: Grow Net Revenues
- Goal: Improve Customer Service

LIVING WAGE

Living wage requirements, in accordance with the Port's Rules and Regulations for the Implementation and Enforcement of the Port of Oakland Living Wage Requirements (the "Living Wage Regulations"), do not apply because the requested action is not an agreement, contract, lease, or request to provide financial assistance within the meaning of the Living Wage Regulations.

SUSTAINABILITY

Port staff has reviewed the Port's 2000 Sustainability Policy and did not complete the Sustainability Opportunities Assessment Form. There are no sustainability opportunities related to this proposed action because it does not involve a development project, purchasing of equipment, or operations that present sustainability opportunities.

ENVIRONMENTAL

CEQA Guidelines Section 15378(2) states that "Project" means the whole of an action that has a potential for resulting in either direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment. The general rule in Section 15061(b)(3) of the Guidelines additionally states that CEQA applies only to activities that have a potential for causing a significant effect on the environment. Because it can be seen with certainty that there is no possibility that entering into an ENA with S3D may have a significant effect on the environment, this action is not a "Project" under CEQA, and is not subject to CEQA under the General Rule Exclusion.

Following Board approval of the ENA with S3D, the Port, as the CEQA lead agency and NEPA responsible agency, will commence the environmental review process for the proposed hotel development pursuant to CEQA Guidelines (California Code of Regulations, Title 14, Division 6, Chapter 3, Sections 15000-15387) and FAA Orders 5050.4B and 1050.1F for NEPA.

GENERAL PLAN

Entering into an ENA with S3D does not change the use of any existing facility, make alterations to an existing facility, or create a new facility; therefore, a General Plan conformity determination pursuant to Section 727 of the City of Oakland Charter is not required.

If it is determined after the ENA contract period that S3D would like to move forward with developing a hotel at the Subject Property, Port staff will present the Lease agreement, proposed project, and environmental review for Board determination, at which time a General Plan conformity determination will be made.

OWNER-CONTROLLED INSURANCE PROGRAM (OCIP)

This action is not subject to the Port's Owner Controlled Insurance Program (OCIP) as it is not a capital improvement construction project.

OPTIONS

1. Pass a resolution authorizing the Executive Director to execute an Exclusive Negotiating Agreement with S3D Partners LLC, a California Limited Liability Company, subject to the terms and conditions described within this agenda report. This is the recommended option.
2. Do not pass a resolution authorizing the Executive Director to execute an Exclusive Negotiating Agreement with S3D Partners LLC, a California Limited Liability Company, for the subject property.
3. Pass a resolution authorizing the Executive Director to execute an Exclusive Negotiating Agreement with S3D Partners LLC, a California Limited Liability Company, subject to terms and conditions different than those described in this agenda report, which depending on the nature of those changes to terms and conditions, may not be acceptable to S3D.

RECOMMENDATION

It is recommended that the Board pass a resolution to approve and authorize the Executive Director to execute an Exclusive Negotiating Agreement with S3D Partners LLC, a California Limited Liability Company, for a term of twenty-four (24) months for property located at 9532-9636 Earhart Road, as further described in this agenda report and subject to approval as to form and legality by the Port Attorney.

Attachments: Exhibit A – Illustrative Site Map of Subject Property
Exhibit B – Key Business Points of Proposed Form Lease

Exhibit A
Illustrative Site Map of Subject Property

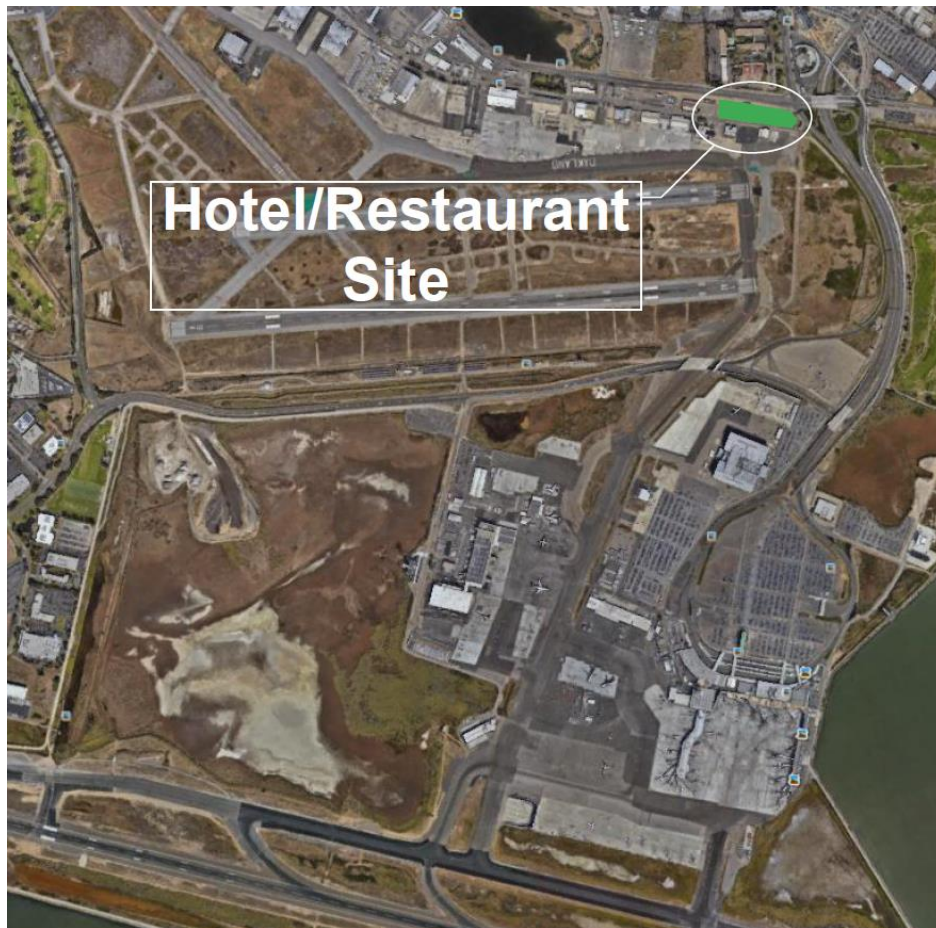
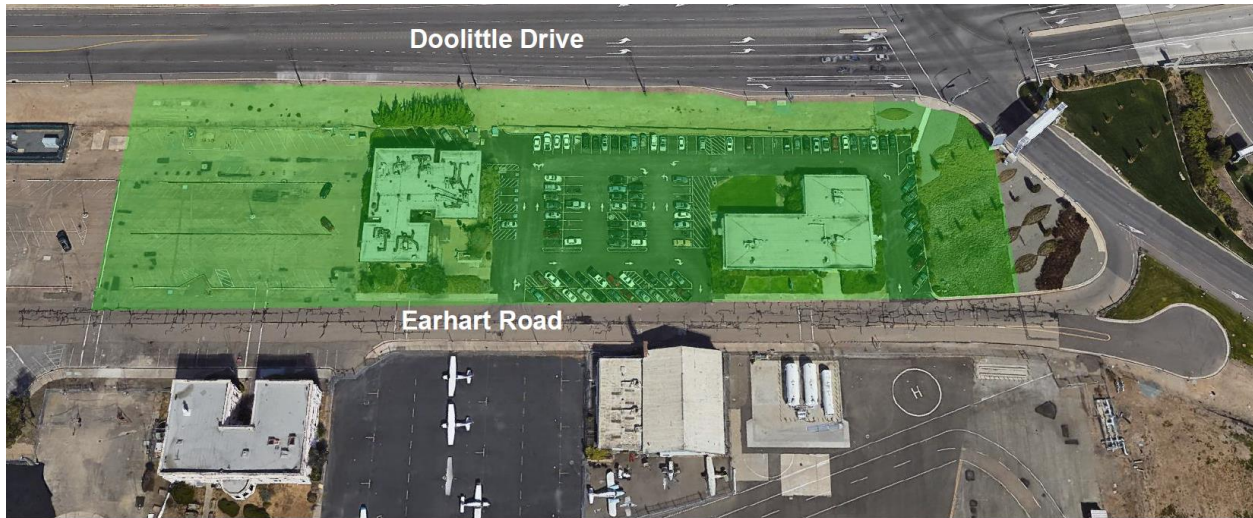


Exhibit B

Key Business Points of Proposed Form Lease

Premises. Approximately 3.86 acres of land located at the southwest corner of Doolittle Drive and Hegenberger Road, as more particularly described in Exhibit A.

Use. The Premises shall be used solely for the operation of a nationally branded Upper Midscale Class (or above) hotel, a full-service restaurant, and such other uses commonly associated with such hotel and restaurant.

Term. Initial term of fifty (50) years with two (2) mutual options to extend the term, each for an additional eight (8) years.

Commencement Date. Lease shall commence upon the effective date of the resolution authorizing the Lease and upon execution of all signatures. Rent shall commence upon the earliest to occur of (i) recordation of a notice of completion; (ii) issuance of a certificate of occupancy for any part of the Premises; and (iii) thirty (30) months following the Effective Date of the Lease.

Rent.

Base Rent shall be two hundred fifty thousand dollars (\$250,000) per year, paid monthly, NNN. At the beginning of every 6th lease year, the Base Rent shall be increased by ten (10%) and will further adjust to Fair Market Value at the beginning of Lease Year 26.

Percentage Rent shall be in addition to Base Rent and shall be at a rate of eight and one-half percent (8.5%) above the natural breakpoint. By way of example only, if the Base Rent is \$250,000, the natural breakpoint shall be $\$250,000 / 0.85 = \$2,941,000$, above which Tenant would pay 8.5% of all revenue less certain deductible revenue as is customary in a NNN hotel and restaurant ground lease.

Taxes, Insurance, and Common Area Cost. Tenant shall self-maintain the Premises, pay its taxes directly to the applicable county assessor, and obtain its own insurance, as evidenced to the Port.

Condition of Premises. Port shall provide the Premises "as-is".