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**BOARD OF PORT COMMISSIONERS
CITY OF OAKLAND**

**RESOLUTION APPROVING AND AUTHORIZING 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.**

WHEREAS, the Board of Port Commissioners ("Board") has reviewed and evaluated the Agenda Report for Agenda Item No. 6.2, dated April 25, 2019 and related agenda materials ("Agenda Report"), has received the expert testimony of Port of Oakland ("Port") staff, and has provided opportunities for and taken public comment; and

WHEREAS, that in acting upon this matter, the Board has exercised its independent judgment based on substantial evidence in the record and adopts and relies upon the facts, data, analysis, and findings set forth in the Agenda Report, and in related agenda materials and in testimony received;

NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:

Section 1. Based upon the information contained in the Agenda Report and in testimony received, the Board finds and determines the following:

A. The Port owns an approximately 3.86 acre property located at 9532-9636 Earhart Road, Oakland, also known as Port buildings L105 and L107, and adjacent vehicular parking lots (the "Proposed Premises"), which is not currently leased.

B. The Port commissioned a study that determined that the highest and best use of the Proposed Premises is for the development of a select-service hotel.

C. S3D Partners, LLC ("S3D") operates as a private real estate investment trust whose principal partners have been active in the hospitality industry since 1982, owns approximately 25 hotels in the Southwest United States, and wishes to complete due diligence and environmental review to determine the suitability of the Proposed Premises for development of a nationally-branded hotel of at least Upper Midscale Class and full-service restaurant.

D. Port staff now propose entering into an Exclusive Negotiating Agreement ("ENA") with S3D under the following key terms and conditions:

- a. Term of ENA: Earlier of execution of a Lease or 24 months after the effective date of the ENA, subject to early termination.
- b. Proposed Premises: Approximately 3.86 acres of Port property located at 9532-9636 Earhart Road, Oakland, also known as Port buildings L105 and L107.
- c. Permitted Uses: Negotiations of Lease terms and performance of necessary environmental review.
- d. Consideration: Initial deposit of \$100,000 that may be used to pay for Port staff time and the Port's reasonable third-party costs for undertaking and managing the environmental review process, to be replenished as necessary.
- e. Site Control: Port retains possession of and right to continue leasing Proposed Premises to tenants for a term not to exceed 18 months following the effective date of the ENA.

E. The requested action is exempt from the California Environmental Quality Act ("CEQA") under the general rule exclusion under Section 15061(b)(3) of the CEQA Guidelines because it can be seen with certainty that entering into the requested agreement will not have a significant effect on the environment and therefore is not a "Project" under CEQA, as defined by Section 15378(2) of the CEQA Guidelines.

Section 2. The Board hereby:

A. Approves the proposed ENA with **S3D Partners, LLC** as described herein and in the Agenda Report; and

B. Authorizes the Executive Director to (i) execute the ENA, subject to approval as to form and legality by the Port Attorney, and (ii) make such minor additions, modifications, or corrections as necessary to implement the ENA or to correct errors, subject to the limitations set forth herein and provided that any such addition, modification, or correction does not materially differ from the terms and conditions set forth herein and in the Agenda Report.

Section 3. This resolution is not evidence of and does not create or constitute (a) a contract, or the grant of any right, entitlement, or property interest; or (b) any obligation or liability on the part of the Board or any officer or employee of the Board. This resolution approves and authorizes the execution of a contract in accordance with the terms of this resolution. Unless and until a separate written contract is duly executed on behalf of the Board as authorized by this resolution, is signed as approved as to form and legality by the Port Attorney, and is delivered to other contracting party, there shall be no valid or effective contract.

Section 4. This resolution shall be effective immediately upon adoption by the Board.

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