

FIRST AMENDMENT TO EXCLUSIVE NEGOTIATION AGREEMENT

This FIRST AMENDMENT TO EXCLUSIVE NEGOTIATION AGREEMENT (“First Amendment”), entered into this _____ day of March, 2025, by and between the CITY OF ALAMEDA, a municipal corporation (“City”), and Radium Presents Inc, a California non-profit public benefit corporation (“Developer”) (collectively, the “Parties”) is made with reference to the following:

RECITALS

A. The City and Developer entered into that certain Exclusive Negotiating Agreement (ENA) with Little Opera House, Inc. dated as of December 19, 2023 (the “Agreement”) for an approximately 2.13 acre site located on Pan Am Way between the new waterfront park and the NAS Alameda Museum at Alameda Point within the Waterfront and Town Center Precise Plan area, the Site A Development Plan area, and the NAS Alameda Historic District, to construct and operate a performing arts center.

B. Pursuant to Sections 1 and 2 of the Agreement, the City Manager has exercised both of the three-month term extension options. With these extensions, the current Term of the agreement expires on June 18, 2025.

C. The Parties desire to amend the Agreement to further extend the Term, and make other changes to assist the Parties’ negotiations, as set forth below.

NOW, THEREFORE, in consideration of the foregoing, which are incorporated herein by reference, and the mutual promises of the Parties hereto, and of other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Parties agree as follows:

1. Recital E of the Agreement is modified to read as follows:

“City and Developer seek to negotiate a ground lease with an option to purchase the Property. The Parties intend to negotiate a Lease with an option to purchase, along with any other agreements necessary, collectively referred to as (“Agreement”).”
2. Section 1 of the Agreement is deleted in its entirety and replaced with the following:

“Term. The term of this Agreement shall commence on December 19, 2023 (the Effective Date) and shall continue until December 31, 2025, unless sooner terminated or extended by the City as herein provided (the “Initial Term”).”
3. Sections 2, 3, 4 and Exhibit B of the Agreement are deleted in their entirety.
4. Section 6.1 of the Agreement is amended to read as follows:

“Exclusive Negotiations. City shall negotiate exclusively with Developer regarding

the Project, the Property, and the terms the Agreement and shall not solicit, market to or negotiate with any other person or entity regarding the Project or the Property or solicit or entertain bids or proposals to do so.”

5. Section 6.2 of the Agreement is amended to read as follows:

“Retention of Discretionary Authority. City shall negotiate in good faith with Developer during the Term with respect to the Agreement. Developer understands and agrees that by entering into this ENA City is making no commitment that it will approve an Agreement, including a Development Plan, Financing Plan, Phasing Plan and/or Milestone Schedule, for the Project with Developer. City specifically retains the right to approve or deny a proposed Agreement, including a Development Plan, Phasing Plan and/or Milestone Schedule and/or Financing Plan and/or to approve an alternative(s) and/or to impose any conditions or mitigation measures upon the Project in its sole discretion.”

6. Section 7.1 of the Agreement is amended to read as follows:

“Non-Refundable Deposit to Offset City Expenses. Within five (5) business days of the last of the Parties to execute this Agreement, Developer shall wire transfer to City a non-refundable deposit of \$10,000. If payment is not received by City within that time period, this ENA shall immediately terminate. The deposit will assist City in offsetting City staff and outside legal and consultant expenses associated with this ENA and negotiation of the Agreement; however, Developer understands and agrees that the deposit is non-refundable.”

7. Section 7.3 of the Agreement is amended to read as follows:

“Due Diligence. Developer shall conduct any and all investigations it deems necessary to negotiate the terms of the Agreement regarding the physical condition of the Property and the condition of title to the Property at the time of transfer. If Developer's due diligence requires rights to the property beyond those provided in the Developer's current License Agreement, as amended, Developer will be required to sign a separate Right of Entry with City in a form provided by City, which shall include City's standard indemnification and insurance requirements.”

8. Section 7.6 of the Agreement is amended to read as follows:

“Developer shall dedicate its Project Team to work with the City during negotiation and implementation of the Agreement. Additionally, to the extent not previously provided by Developer, Developer shall provide City with a list of its intended consultants including but not limited to, architectural, engineering, legal, financial and construction.”

9. Section 8 of the Agreement is amended to read as follows:

“Meetings. Developer and City staff, as needed, shall meet or hold a conference

call on average every two (2) weeks during the Term to negotiate the Agreement and discuss the status of activities and tasks related to the negotiations and the Project, the accomplishment of such activities and tasks and other such matters as City requests.”

10. Section 9.1 of the Agreement is amended to read as follows:

“Developer represents and warrants that Radium Presents, Inc., a California non-profit public benefit corporation, is duly formed and validly existing under the laws of the State of California. If not previously delivered to City and if requested by City, Developer shall deliver to City satisfactory evidence to support the above representations.”

11. Section 9.2 of the Agreement is amended to read as follows:

“Developer Authority. Developer represents and warrants that the person executing this ENA and the Agreement on behalf of Developer has or will have the full right, power and authority to execute this ENA and to bind Developer hereunder. Developer agrees to provide City with evidence of this authority prior to execution of this ENA and the Agreement.”

12. Section 11 of the Agreement is amended to read as follows:

“Notices to Developer:
Christopher Siewald,
Radium Presents, Inc.
1201 Sherman Street, Alameda, CA 94501
Email: christopher@seiwald.com

With copies to:
Tara Pilbrow, Vice President, Radium Presents, Inc.
413 Cola Ballena Street, Alameda, CA 94501
Email: tarapilbrow@gmail.com”

13. Section 12.1 of the Agreement is amended to read as follows:

“Limitations of City’s Commitment. City is not, by entering this ENA, committing itself to or agreeing to undertake any other acts or activities requiring the subsequent independent exercise of discretion by City or any agency or department thereof. This ENA is merely an agreement to enter exclusive negotiations with respect to the Property according to the terms hereof, with all final discretion and approval remaining with City Council as to any Agreement, including Phasing Plan and Milestone Schedule, and Financing Plan and all proceedings and decisions in connection therewith and Planning Board as to the Development Plan. If negotiations under this ENA result in a proposed Agreement, City Council approval thereof may occur only after compliance, as may be required, with all applicable laws and ordinances including, without limitation, CEQA.”

14. Section 12.2 of the Agreement is amended to read as follows:

“Effect of Expiration or Termination. If the Agreement has not been approved by City Council by the date this ENA expires under Section 2 or is terminated under Section 7.1 of the Agreement, neither Party shall have any further rights, obligations, or liability to the other Party under this ENA.”

15. Section 13.4 of the Agreement is amended to read as follows:

“Limitation on Remedies. In any action or other legal or administrative proceeding to enforce this ENA, or that otherwise may arise out of this ENA, neither City nor Developer shall be entitled to any damages or monetary relief. It is understood and agreed by the Parties that this ENA is only to enable the Parties to negotiate the terms of a proposed Agreement, including Development Plan, Phasing Plan, Milestone Schedule and Financing Plan, on an exclusive basis for the Term. There is no commitment that any Agreement, including Development Plan, Phasing Plan and Milestone Schedule, will be approved and no damages, monetary relief or specific performance shall be available to Developer if an Agreement, including Development Plan, Phasing Plan and Milestone Schedule is not approved during the Term.”

16. Section 13.6 of the Agreement is amended to read as follows:

“Commissions. Neither Party shall be liable for any real estate commissions or brokerage fees that may arise from this ENA or any Agreement resulting from this ENA. The Parties represent and warrant that they have not engaged any brokers, agents or finders in connection with this transaction. Developer shall defend (with counsel acceptable to City) and hold City harmless from any claims by any broker, agent or finder retained by Developer. City shall defend and hold Developer harmless from any claims by any broker, agent or finder retained by City.”

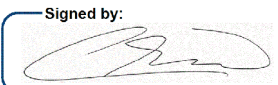
17. Except as expressly modified herein, all other terms and covenants set forth in the Agreement shall remain the same and shall be in full force in effect.

[Signatures on following page]

IN WITNESS WHEREOF, this First Amendment is entered into by and between City and Developer as of the date and year first above written.

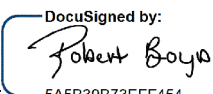
RADIUM PRESENTS INC, a California
non-profit corporation

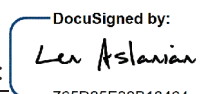
CITY OF ALAMEDA

Signed by:
By: 
EB80220698D1439...
Christopher Seiwald
Founding Director

By: _____
Jennifer Ott
City Manager

Approved as to form:

DocuSigned by:
By: 
5A5B39B73EFF454...
Robert Boyd
Secretary

DocuSigned by:
By: 
765D25E39B18464...
Len Aslanian
Assistant City Attorney

Recommended for approval:

Signed by:
By: 
2E1D71136B954F6...
Abigail Thorne-Lyman
Base Reuse & Economic Development
Director