

Exhibit 1

**EXCLUSIVE NEGOTIATION AGREEMENT
BY AND BETWEEN
THE CITY OF ALAMEDA
AND
LITTLE OPERA HOUSE, INC.**

This EXCLUSIVE NEGOTIATION AGREEMENT ("**ENA**") is entered into by and between the City of Alameda, a municipal corporation ("**City**"), and Little Opera House, Inc. a California 501(c)(3) organization ("**Developer**"), as of the Effective Date (defined in Section 1). City and Developer sometimes are referred to collectively as the "**Parties**" and either individually as a "**Party**."

RECITALS

A. City is the owner of certain real property located within the City of Alameda, State of California commonly referred to as the former Alameda Naval Air Station, now known as Alameda Point. The property that is the subject of this ENA is Blocks 12 & 13 in the Transit Village Center planning subarea of the Waterfront and Town Center Precise Plan, an approximately 2.13 acres property, which is depicted for convenience in Exhibit A ("**Property**").

B. In 2014, the Alameda City Council approved a Master Infrastructure Plan, General Plan Amendment, Zoning Ordinance Amendment, Waterfront and Town Center Precise Plan and certified an Environmental Impact Report. In 2022, City Council approved the amended Site A Development Plan, and Disposition and Development Agreement. These documents (collectively, "**Planning Documents**") all relate to potential development of the Property. Developer understands that any proposed Project (as described below) must be consistent with the Planning Documents.

C. Developer has demonstrated to City its experience with successfully developing properties similar to the Property, as shown by its statement of qualifications ("**Statement**") submitted to City on August 7, 2023.

D. Developer seeks to develop the Property with a performing arts center approximately as described in that Statement. ("**Project**").

D. Concurrently with development of the Project, the Developer shall be granted license to utilize the Property as an outdoor performing arts and exhibition space and to conduct any investigations it deems necessary for Due Diligence.

E. City and Developer seek to negotiate a ground lease with an option to purchase the Property. The Parties intend to negotiate mutually acceptable terms and conditions for the lease and development of the Project by first negotiating a "**Term Sheet**" and thereafter negotiating a Lease with an option to purchase, along with any other agreements necessary, collectively referred to as ("**Agreement**").

NOW, THEREFORE, in consideration of the foregoing, which are incorporated herein by reference, and the promises, covenants, and provisions set forth below, the receipt and adequacy of which consideration is acknowledged, Developer and City agree as follows.

EXCLUSIVE NEGOTIATION AGREEMENT

1. Term. The term of this ENA shall commence on the date City Council approves this ENA (the “**Effective Date**”) and shall extend for twelve (12) months thereafter unless sooner terminated or extended as herein provided (“**Initial Term**”).
2. Extended Term. The Initial Term plus any and all extensions of the Initial Term under this Section 2 are referred to collectively as the “**Term.**” The Initial Term may be extended two (2) times for up to three (3) months each time at the sole discretion of the City Manager or designee.
3. Termination. If Developer fails to deposit with City the amount required by Section 7.1 within five (5) business days of the Effective Date, this ENA shall immediately terminate with no further action required by either Party.
4. Negotiation of Term Sheet.
 - 4.1 During the initial nine (9) months of the Term, the Parties shall negotiate a proposed Term Sheet for submittal to City Council for its consideration. The Term Sheet will establish all material and essential business terms, timing and framework for the lease and development of the Property, and will define the financial, legal, operational, and administrative mechanisms to implement such lease and development. A summary of non-binding key terms to be included in the Term Sheet (and subsequently incorporated into the Agreement) is attached as **Exhibit B**. The Term Sheet shall also include (a) requirements and conditions for a proposed Development Plan, as more fully described in Alameda Municipal Code Section 30-4.13(j) (“Development Plan”), (b) a “Project Funding and Operations Plan,” and (c) a “Milestone Schedule” for each phase of construction for the Project. Developer understands and agrees that the City Manager shall have the right to determine in his/her reasonable discretion if the proposed Term Sheet is complete and sufficiently consistent with the intent described in this Section 4 to be placed on a City Council agenda. At the end of the initial nine (9) months of the Term (unless extended in the sole discretion of the City Manager or designee), if (a) a proposed Term Sheet is not placed on a City Council agenda; (b) City Council does not approve a proposed Term Sheet; or (c) City Council does not conditionally approve a proposed Term Sheet with direction being given to staff as to required modifications where such modifications are made and a Term Sheet executed thereafter within a reasonable period of time, then this ENA shall expire and the

Parties shall have no further rights and obligations one to another pursuant to this ENA.

5. Negotiation of the Agreement. During the Term, the Parties shall negotiate the proposed terms of the Agreement for submittal to City Council for its consideration. The Agreement will document the material and essential business terms and framework for the timing and development of the Property, and will define the financial, legal, operational and administrative mechanisms to implement any future transfer of the property. The Agreement shall include the final (a) Development Plan approved by the Planning Board, (b) Phasing Plan, (c) Milestone Schedule, and (d) Financing Plan. Developer understands and agrees that the City Manager shall have the right to determine in his/her reasonable discretion if the proposed Agreement is complete and sufficiently consistent with the intent described in this Section 5 to be placed on a City Council agenda. At the end of the Term, if (a) a proposed Agreement, including a Development Plan approved by the Planning Board, Phasing Plan, Milestone Schedule and Financing Plan, is not placed on a City Council agenda; or (b) City Council does not approve a proposed Agreement, including a Development Plan approved by the Planning Board, Phasing Plan, Milestone Schedule, and Financing Plan, then this ENA shall expire and the Parties shall have no further rights and obligations one to another pursuant to this ENA.

6. City Responsibilities. During the Term, City shall do the following to further the negotiation process:

- 6.1 Exclusive Negotiations. City shall negotiate exclusively with Developer regarding the Project, the Property, and the terms of the Term Sheet and 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.
- 6.2 Retention of Discretionary Authority. City shall negotiate in good faith with Developer during the Term with respect to the Term Sheet and Agreement. Developer understands and agrees that by entering into this ENA City is making no commitment that it will approve a Term Sheet or 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 Term Sheet and/or 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.

7. Developer Responsibilities. During the Term, Developer shall do the following, at its sole expense, to further the negotiation process:

- 7.1 Non-Refundable Deposit to Offset City Expenses. Within five (5) business days of the Effective Date, 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 Term Sheet and Agreement; however, Developer understands and agrees that the deposit is non-refundable.

- 7.2 Further Entitlements and Public Meetings. Developer shall seek further entitlements, as needed, for development of the Project, including but not limited to, preparation of a proposed Development Plan and Architectural Concepts for review by the City of Alameda Planning Board and Historical Advisory Board. Developer shall present the project plans before the Planning Board and the Historical Advisory Board at least once during the ENA period.
- 7.3 Due Diligence. Developer shall conduct any and all investigations it deems necessary to negotiate the terms of the Term Sheet and 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.
- 7.4 Master Infrastructure Obligations. The Developer will coordinate with Alameda Point Partners ("APP") to ensure that APP will finance the construction of the Phase 2.3 Backbone Infrastructure related to Block 12 and 13, as described in Section 8/4(d) of the Sixth Amendment to the Disposition and Development Agreement for Alameda Point – Site A or, alternatively, to reimburse the Developer for funds expended to finance the same.
- 7.5 Financing and Project Pro Forma. Developer shall provide evidence, satisfactory to City, of the development team's financial ability to undertake and successfully complete the proposed Project.
- 7.6 Project Team. Developer shall identify key individuals on its Project Team who will be dedicated to working with City during negotiation of the Term Sheet and negotiation and implementation of the Agreement. Additionally, Developer shall provide City with a list of its intended consultants, including but not limited to, architectural, engineering, legal, financial and construction.
- 7.7 Reports. At any time requested by City, but not more frequently than monthly, Developer shall make oral and summary form written progress

reports advising City on all progress being made on the responsibilities listed in this Section 7.

8. 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 Term Sheet and 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.

9. Representations and Warranties.

9.1 Duly Formed and Validly Existing. Developer represents and warrants that Little Opera House, Inc. a California 501(c)(3) organization, is duly formed and validly existing under the laws of the State of California. Developer shall deliver to City satisfactory evidence to support the above representations.

9.2 Developer Authority. Developer represents and warrants that the person executing this ENA, the Term Sheet 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, the Term Sheet and the Agreement.

9.3 City Authority. City represents and warrants that the person executing this ENA on behalf of City has the full right, power, and authority to execute this ENA and to bind City hereunder.

10. No Assignment. City is entering into this ENA with Developer based on Developer's development experience and track record with similar developments. Developer may not sell, assign, or transfer any of its rights or obligations under this ENA, without prior consent of the City Manager or his or her designee, which shall not be unreasonably withheld.

11. Notices. All notices required or permitted under this ENA shall be delivered in person; email or overnight courier with written confirmation of receipt, or by registered or certified mail, postage prepaid, return receipt requested, to such Party at its address shown below, or to such other address designated in writing by such Party:

Notices to the City:

City of Alameda
2263 Santa Clara Avenue
Alameda, CA 94501
Attn: Jennifer Ott, City Manager and
Telephone: 510.747.7449
Email: Jott@alamedaca.gov

With copies to:
City of Alameda
2263 Santa Clara Avenue
Alameda, CA 94501
Attn: Yibin Shen, City Attorney and
Abby Thorne-Lyman, Base Reuse and Economic Development Department
Director
Telephone: 510.747.4750
Email: athornlyman@alamedaca.gov

Notices to Developer:

Christopher Seiwald
1201 Sherman Street, Alameda, CA 94501
Email: christopher@seiwald.com

With copies to:
Tara Pilbrow, Vice President, Little Opera House, Inc.
413 Cola Ballena Street, Alameda, CA, 94501
Email: tarapilbrow@gmail.com.

Notice shall be deemed received and effective on delivery, if delivered personally or upon receipt of confirmation if by facsimile, email or overnight courier; or three (3) days after deposit into the United States mail if delivered by registered or certified mail.

12. Limitations of this ENA.

- 12.1 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 Term Sheet or 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 Term Sheet and/or Agreement, City Council approval thereof may occur only after compliance, as may be required, with all applicable laws and ordinances including, without limitation, CEQA.
- 12.2 Effect of Expiration or Termination. If the Term Sheet has not been approved by City Council within nine (9) months of the Effective Date or the Agreement has not been approved by City Council by the date this ENA expires under Section 2 or is terminated under Section 3, neither

Party shall have any further rights, obligations, or liability to the other Party under this ENA.

13. Miscellaneous Provisions.

- 13.1 Entire Agreement. This ENA is the entire agreement as understood by the Parties with respect to the matters set forth herein.
- 13.2 Amendments. This ENA may be amended only in a writing signed by all Parties and approved by City Council.
- 13.3 Governing Law. This ENA shall be governed by and interpreted in accordance with the laws of the State of California. Any action to enforce or interpret this ENA shall be brought in a court of competent jurisdiction in Alameda County or, in the case of any federal claims, in federal court for the Northern District of California.
- 13.4 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 Term Sheet and 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 Term Sheet and/or 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 a Term Sheet and/or Agreement, including Development Plan, Phasing Plan and Milestone Schedule is not approved during the Term.
- 13.5 Waiver of Lis Pendens. It is expressly understood and agreed by the Parties that no lis pendens shall be filed against any portion of the Property with respect to this ENA or any dispute or act arising from it.
- 13.6 Commissions. Neither Party shall be liable for any real estate commissions or brokerage fees that may arise from this ENA or any Term Sheet or 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.
- 13.7 Attorneys' Fees. In the event of any litigation, including administrative proceedings, relating to this Agreement, including but not limited to any action or suit by any party, assignee or beneficiary against any other party,

beneficiary or assignee, to enforce, interpret or seek relief from any provision or obligation arising out of this Agreement, the parties and litigants shall bear their own attorney's fees and costs. No party or litigant shall be entitled to recover any attorneys' fees or costs from any other party or litigant, regardless of which party or litigant might prevail.

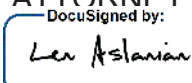
- 13.8 Headings. The section headings in this ENA are for convenience only; they do not explain, modify, or add to the meaning of this ENA.
- 13.9 Interpretation. This ENA is the result of the combined efforts of the Parties. If any provision is found ambiguous, the ambiguity will not be resolved by construing this ENA in favor of or against either Party, but by construing the terms according to their generally accepted meaning.
- 13.10 Time Periods. Any time period to be computed under this ENA shall be computed by excluding the first day and including the last day. If the last day falls on a Saturday, Sunday or legal holiday, the last day will be extended until the next day City is open for business. All references to days in this ENA shall mean calendar days unless otherwise expressly specified. City offices are closed on Fridays and therefore any reference to business days shall mean Monday through Thursday, unless one of those days is a holiday observed by City.
- 13.11 Severability. The provisions of this ENA are severable. The invalidity or unenforceability of any provision in this Agreement will not affect the other provisions.
- 13.12 Successors and Assigns. This ENA is binding on and will inure to the benefit of the Parties and their respective successors.
- 13.13 Independent Capacity. Nothing in this ENA is intended to or does establish the Parties as partners, co-venturers or principal and agent with each another.
- 13.14 Conflict of Interest. No officer or employee of City shall hold any financial interest in this ENA (California Government Code § 1090).
- 13.15 Counterparts. This ENA may be executed in counterparts, each of which will be deemed an original, but all of which together will constitute one and the same agreement.
- 13.16 Exhibits. The following exhibits are attached to this ENA and incorporated herein as though set forth in full for all purposes:

CITY:

CITY OF ALAMEDA,
a California municipal corporation


By: _____
Jennifer Ott
City Manager

APPROVED AS TO FORM:
CITY ATTORNEY

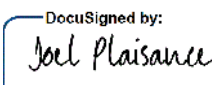
By:  _____
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Assistant City Attorney

DEVELOPER:

Little Opera House, Inc.
A California 501(c)(3) organization

By:  _____
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Name: Christopher Seiwald
Title: Chief Executive Officer

By:  _____
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Name: Joel Plaisance
Title: Chief Financial Officer

Exhibit A

Diagram of the Property



Exhibit B

Summary of Non-Binding Key Terms for the Agreement

1. Project Description
2. Developer Responsibilities
3. City Responsibilities
4. Property Description and Condition
5. Term of Agreement
6. Milestone Schedule
7. Rent
8. Land Purchase Option
9. Project Labor Agreement
10. City Cost Reimbursement
11. Insurance
12. Indemnity
13. Assignment and Transfer
14. Hazardous Materials