

Attachment A: Assessor's Parcel Site Map

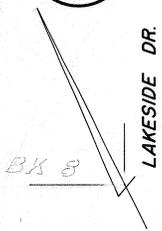
ASSESSOR'S MAP 2

Code Area Nos. 17-031

91

Scale: 1" = 50'

OAKLAND (KELLERSBERGER'S) (Bk. 7 Pg. 3)

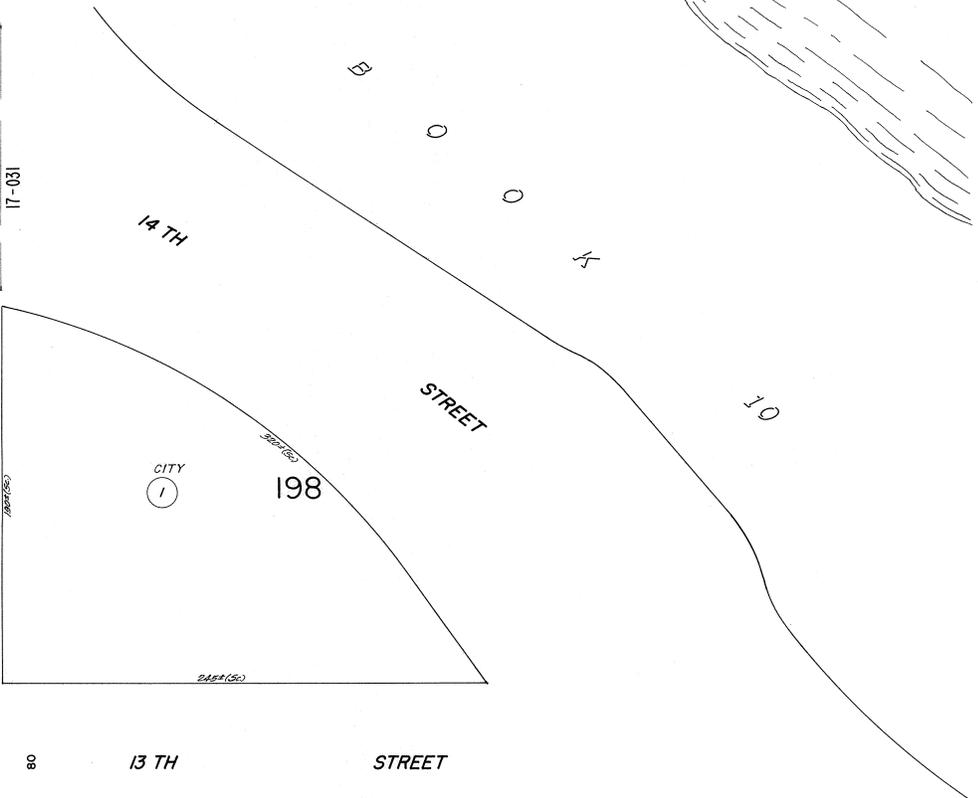


11-09-10 L.L.

Drawn: 10-67 S.Y. Revised: 4-4-73 H.N.
 10-9-85 P.B.
 5-26-87 B.V.
 11-23-93 P.B.
 4-08-96 S.L.
 8-29-00 P.B.

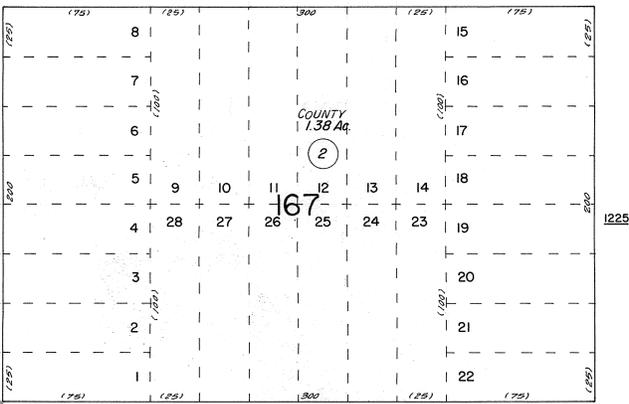
89

STREET



87

OAK



FALLON STREET

Formerly: Bk. 167, 198, 10-67

REF. R.S. 2361 36/61-62

A.C.M.

AZZ & ART

OAKLAND, CA
Fed Tax Id# 46-4715331
501 (C)(3) Non Profit Public Benefit Corporation

for
development

Quwa Plaza
Oakland, CA 94612

Re: 1310 Oak Street Proposal Letter (APN# 002-0091-001-00) ("Fire Alarm Building Site" or "Property")

Preserving Jazz History and Connecting Cultures through Music while Benefiting the City of Oakland and the Public Good- The Museum of Jazz and Art

Dear Director Sawicki:

This letter is a request by the Board of Directors of the Museum of Jazz and Art ("MoJA"), a 501(c)(3) Non-Profit Public Benefit Corporation, that the City review and consider the proposed terms herein for the acquisition or ground lease of the Fire Alarm Building Site for development of the Museum of Jazz and Art facility ("Project"), and thereafter, enter into an Exclusive Negotiation Agreement ("ENA") with MoJA. The ENA will allow MoJA to complete its Property due diligence, secure financing, and negotiate a detailed term sheet for final disposition of the Property. The proposed term of the ENA, including an initial due diligence period, is set forth below. Thank you for considering this proposal.

The City of Oakland owns the Property, which consists of an existing 1-story building with a basement, built around 1911. Our preliminary site analysis has identified title and physical/structural uncertainties as follows:

1. Discrepancy between the parcel map and property description in the Title Report, which requires a site survey to resolve;
2. We believe that the one-story building on the site is an unreinforced masonry building ("UMB"). MoJA will need to obtain a structural study to identify the expected major building retrofit requirements to bring the building up to modern Code and safety requirements; and
3. Records show that the site appears to have a potential liquefaction condition that requires a major geotechnical study and associated design recommendations.

Without investigating these major unknown conditions, it is not possible to determine the Property's value. The ENA period will allow both parties to conduct additional due diligence prior to establishing the sale or lease price and other key terms. This letter outlines the proposed basic terms and conditions under which MoJA would consider entering into an agreement to purchase or lease the Property, to be further negotiated and detailed during the ENA period.

Attachment B: Oakland Museum of Jazz and Art Proposal

MUSEUM OF JAZZ & ART
WWW.MOJA-US.ORG

OAKLAND, CA
Fed Tax Id# 46-4715331
501 (C)(3) Non Profit Public Benefit Corporation

MoJA'S PROPOSED PROJECT AND PUBLIC BENEFITS

MoJA's mission and vision is to raise awareness regarding the importance of preserving jazz history to America and the world, while building and connecting cultures through music. Acquisition or ground lease of the Property will allow MoJA to fulfill this vision by developing a new museum on the Property. As shown in **Exhibit A** (Proposed Conceptual Design), some key features of MoJA include: 3 stories of gallery space, an approximately 400 seat performance space for music, film, theater and dance, and a street level gallery & café and rooftop restaurant overlooking Lake Merritt. In addition, MoJA's History, Hope & Heritage Center (HHHC), located within the existing Fire Alarm Building, will provide substantial community benefits through its learning center, which will teach STEM curriculum by incorporating music and arts.

Key existing and proposed strategic Project partners include Frank Gehry, Allen Consulting Group, Michael Ghielmetti of Signature Properties, Economic Planning Systems, and Equity Community Builders. David Resnicow of Resnicow + Associates is MoJA's principal Museum Consultant.

Use these benefits?
Exhibit B provides an overview of the major public benefits that the Project will provide. In addition to the public benefits that MoJA will deliver through its program of preserving jazz history and connecting cultures, the Project will generate substantial jobs and revenue. Projected is about 540 jobs and \$90 million in economic contributions during the construction phase, and about 90 permanent jobs and an annual contribution of about \$200,000 to the City's General Fund, plus other annual economic output of about \$10 million. In addition, MoJA's HHHC will be open to the public and provide tutoring access to kids while incorporating music and arts into STEM learning activities.

ENA/DUE DILIGENCE TERMS

Existing Property Owner: City of Oakland / Real Estate Division
250 Frank Ogawa Plaza 5th Floor
Oakland, CA 94612

Project Owner: Museum of Jazz & Art
Developer: Museum of Jazz & Art or an affiliated entity

Property and Current Use: 1310 Oak Street, Oakland CA 94612 (APN # 002-0091-001-00)
Parcel size to be determined through site survey. Existing improvements include a one-story building with a basement, which appears to be a UMB, and surface parking spaces, a few of which are used by Lake Chalet Restaurant.

Property Conditions: Potential UMB requiring structural study and building retrofit; apparent liquefaction condition that requires a major geotechnical study and associated design recommendations.

ENA/Due Diligence Period: One and a half years, with one additional one year administrative extension. The ENA will specify an initial six month due diligence period and the terms under which the parties may elect thereafter

Attachment B: Oakland Museum of Jazz and Art Proposal

MUSEUM OF JAZZ & ART
WWW.MOJA-US.ORG

OAKLAND, CA
Fed Tax Id# 46-4715331
501 (C)(3) Non Profit Public Benefit Corporation

to terminate the ENA or continue negotiations. The ENA will include due diligence and Project milestones, including application for entitlements during the ENA period.

Good Faith Deposit:

No later than seven (7) days after final execution of the ENA by City and Developer, Developer will deliver a Ten Thousand Dollar (\$10,000.00) good faith deposit to the Title Company noted below. Such deposit will be refunded to MoJA if it negotiates in good faith but fails to reach agreement with the City, or otherwise elects to terminate the ENA during the ENA period.

Title Insurance & Escrow :

Chicago Title, Laurie Edwards
1 Kaiser Plaza, Suite # 1305
Oakland CA 94612

Due Diligence Costs

1. Site survey to define property, costs of compiling and providing to MoJA documents regarding the Property in City's possession: **City of Oakland**

2. Other due diligence materials and reports: **MoJA**

Due Diligence Material/
Right of Entry:

1. The ENA will require the City of Oakland to deliver to MoJA within a reasonable period following execution of the ENA all documents in its possession related to the physical and environmental conditions of the Property, and to obtain a site survey for the Property.

2. The ENA will also include reasonable terms under which MoJA will be permitted to enter the Property for purposes of due diligence and otherwise during the ENA period.

TERM SHEET; PURCHASE OR GROUND LEASE TERMS

During the ENA period, and based on information obtained during the due diligence period, the parties will confirm the form of transaction (acquisition or ground lease) and negotiate a Term Sheet that will serve as the basis for the associated transactional document (purchase agreement/Disposition and Development Agreement or ground lease). The Term Sheet will include the following, in addition to other key terms mutually agreed to by the parties:

Purchase Price or Rent:

To be agreed upon, taking into consideration due diligence information regarding property conditions, and Project public benefits.

Ground Lease Term, if applicable: Ninety Nine (99) years

Option to Purchase:

If a ground lease structure is selected, the ground lease will include an Option to Purchase and Right of First Refusal in favor of MoJA.

Attachment B: Oakland Museum of Jazz and Art Proposal

MUSEUM OF JAZZ & ART
WWW.MOJA-US.ORG

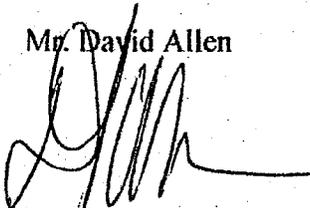
OAKLAND, CA
Fed Tax Id# 46-4715331
501 (C)(3) Non Profit Public Benefit Corporation

SUMMARY OF REQUEST. It is our goal to develop MoJA as a community benefit project-- a world class international destination that enhances the present and future sustainable environment, financial and social. We believe in this mission and look forwarding to partnering with the City of Oakland to achieve it. Accordingly, we request that City staff complete its review of this proposal by March 21, and calendar for City Council consideration by April 5 a Resolution authorizing the City Administrator or designee to negotiate and execute an ENA with MoJA. Thank you for your consideration.

Moving Forward in the Spirit of Swing.

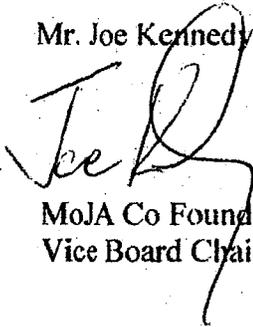
Sincerely,

Mr. David Allen



MoJA Founder
Visionary Board Chair

Mr. Joe Kennedy



MoJA Co Founder/Advisor
Vice Board Chair

Ms. Kat Taylor



MoJA Founding Principal Funding
Champion

Cc: Mr. Patrick Lane, EWD Manager

Exhibit A: Preliminary Conceptual Design

Exhibit B: Public Benefit Study, prepared by Economic Planning Systems

EXHIBIT A

PRELIMINARY CONCEPTUAL DESIGN

Attachment B: Oakland Museum of Jazz and Art Proposal

BASIC PRELIMINARY PROJECT DESCRIPTION:

DEVELOPMENT OF EARLY CONCEPT DESIGNS FOR THE MUSEUM OF JAZZ AND ART DEVELOPMENT- NOTING PERMITTED CIVIC ACTIVITIES AND USES

ZONING D-LM-4
 ADDRESS: 1301 OAK STREET
 PARCEL # 002-0091-00
 GENERAL PLAN: LAKE MERRITT STATION AREA, COMMERCIAL ZONE 4
 LAKE MERRITT STATION AREA PLAN

AREA TABULATIONS:

GROUND LEVEL 28,379 SF
 -MEZZANINE 1 N/A SF
 LEVEL 2 24,474 SF
 LEVEL 3 17,752 SF
 TOTAL FLOOR AREA= 70,605 SF

HEIGHT

LM-45 CENTRAL BUSINESS

BUT THIS IS AN OPPORTUNITY SITE TIED INTO DOWNTOWN PLAN = HT FLEXIBLE

LOCAL HISTORIC PROPERTY CATEGORY: LOCAL REGISTER; OCHR RATING B-a+
 LOCAL LAND MARK- NO
 NATURAL HISTORIC LANDMARK- NO
 HERITAGE PROPERTY - NO
 MILLS ACT- NO (BUT POSSIBILITY)

LIQUEFACTION HAZARD ZONE: YES

EXIST'G BLDG BUILT AROUND 1911-1912, 10K+ SF
 OCCUPANCY CLASSIFICATION (NON-SEPARATED OCCUPANCY)

MUSEUM	GROUP A3
HISTORY, HOPE & HERRITAGE CENTER	GROUP A3
AUDITORIUM	GROUP A1, A2
MUSEUM STORE	GROUP M
CAFE/ RESTAURANT (125+/- PEOPLE)	GROUP A2
MUSEUM OFFICES	GROUP B

CBC 2016 (TABLE 504.3)

FIRE SPRINKLERS (NFPA 13)

TYPE OF CONSTRUCTION TYPE 2, 3 OR TYPE 5
 TYPE 5A- HT= 70FT (3 STORIES / 34,500 SF)
 TYPE 5B- HT= 600FT (2 STORIES/ 16,500 SF)

TYPE 3A- HT= 85FT (4 STORIES/ 42,500 SF)
 TYPE 3B- HT= 75FT (3 STORIES/ 25,500 SF)

TYPE 2A- HT= 85FT (4 STORIES/ 46,500 SF)
 TYPE 2B- HT= 75FT (3 STORIES/ 25,500 SF)

LOT AREA 0.713 AC, 31,071 SF (TO BE VERIFIED)

LOT COVERAGE 28,379/ 31,071= 91.0 %

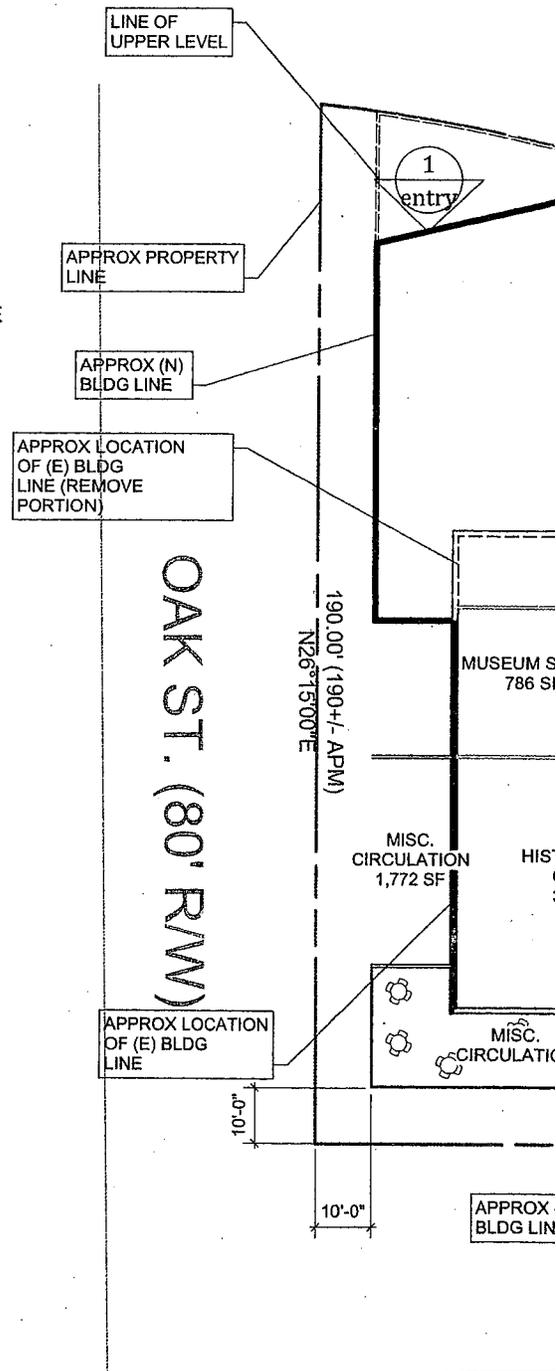
PARKING NOT APPLICABLE (TRANSIT AREA); USE FOR STAFF ONLY

DESIGN SHALL INCORPORATE ADEQUATE BIKE RACK CAPACITY

EMPLOYEE & VIP PARKING

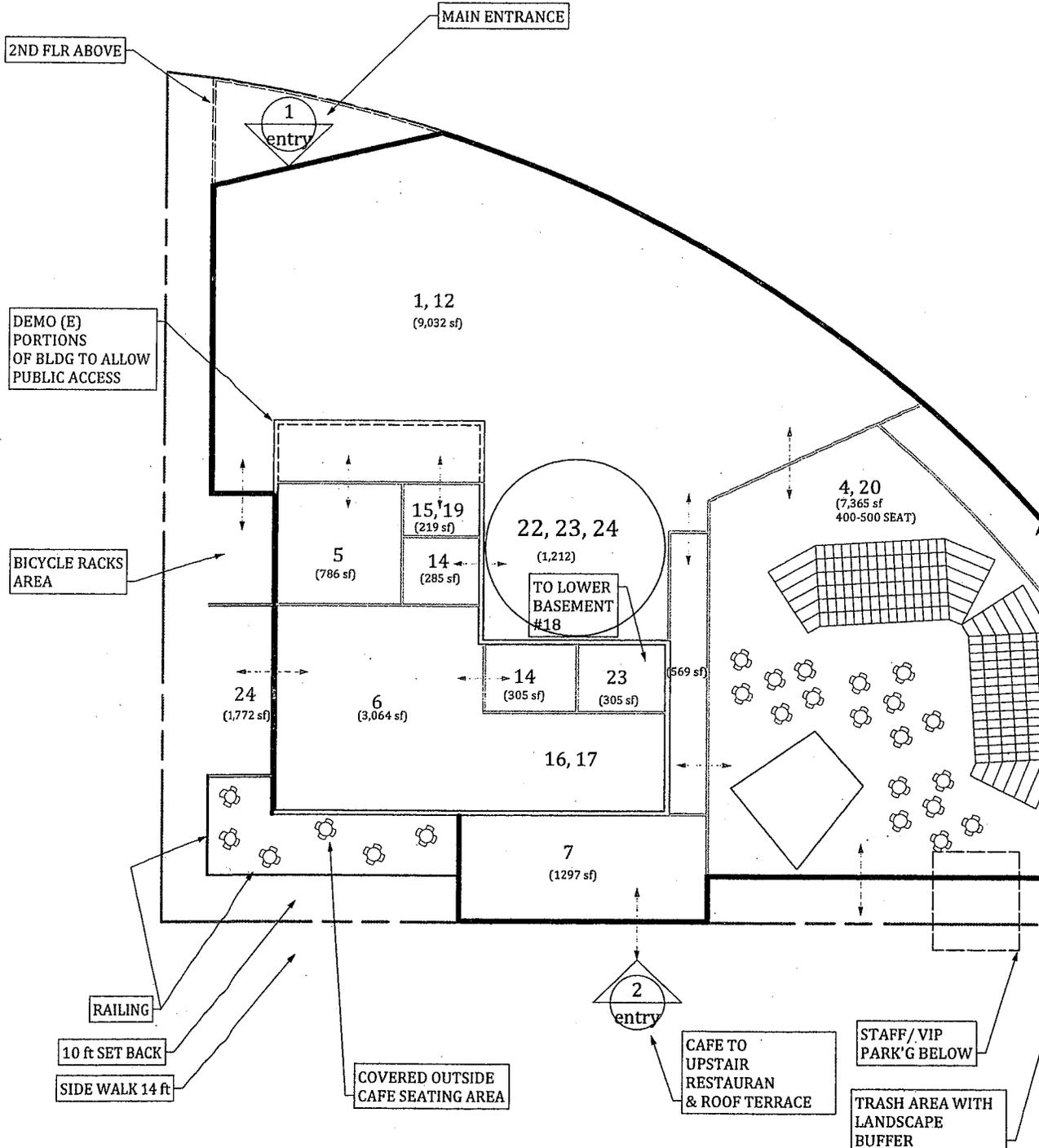
ALL GALLERIES TO HAVE (UNCONCENTRATED CHAIRS & ETC.)

14TH S

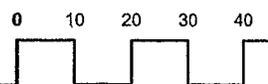


Attachment B: Oakland Museum of Jazz and Art Proposal

A
B
C
D



A
A2.1 GROUND FLOOR PLAN
1/16"=1'-0"



A

B

C

D

PROPERTY LINE

8 FT WIDE
WALK-WAYS
AROUND OPEN
ATRIUM

1
(6,873 sf)

OPEN TO
BELOW

8
(1,223 sf)

22,23,24
(1,212 sf)

EXTERIOR
RAILING

EXTERIOR
PATIO

9
(1,630 sf)

10
(100 sf)

Conf
(300 sf)

1
(2,700 sf)

PROPERTY LINE

ROOF
BELOW



A
A2.2 2nd - FLOOR PLAN
1/16"=1'-0"

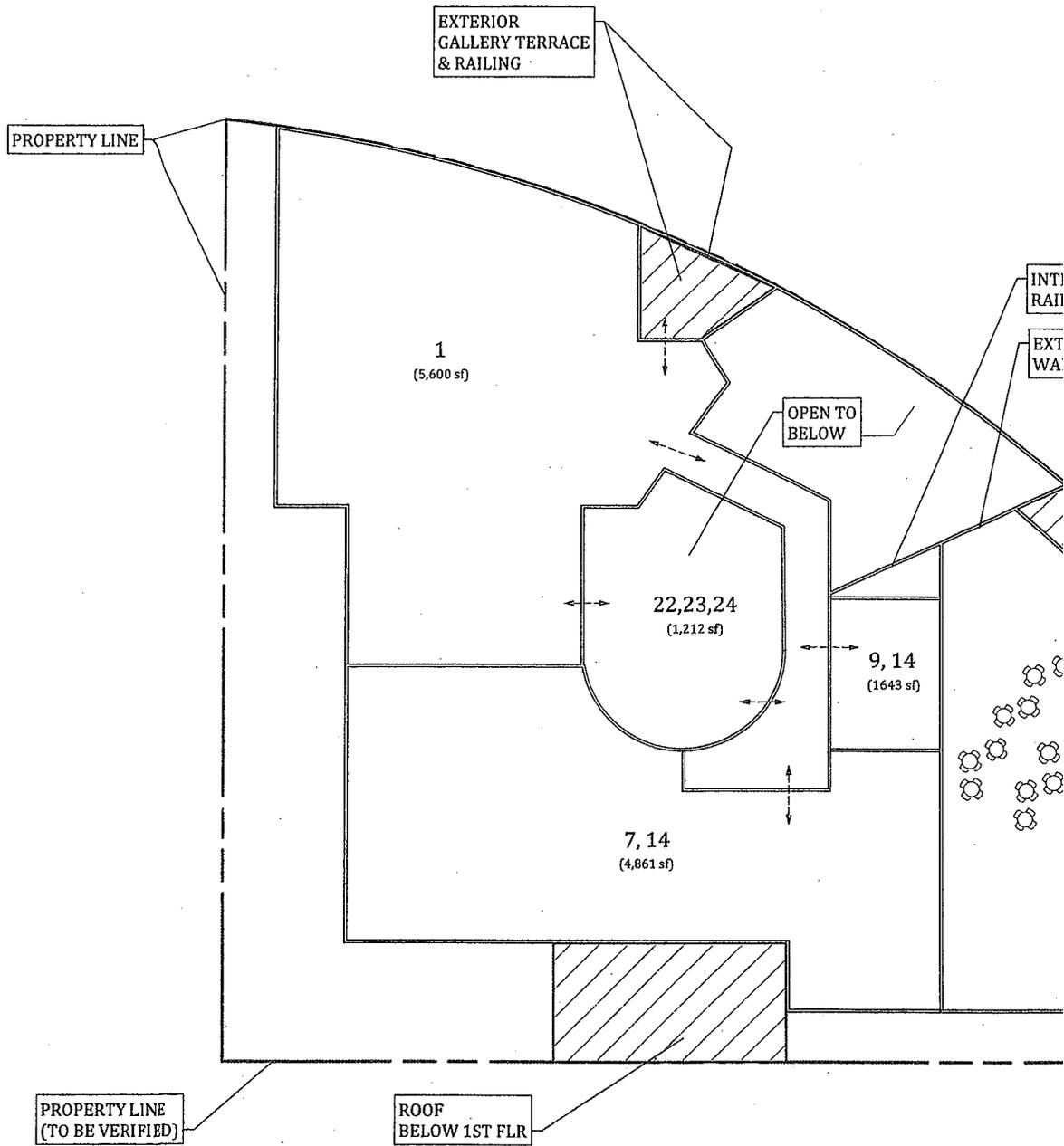
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A

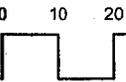
B

C

D



A
A2.3 3rd - FLOOR PLAN
1/16"=1'-0"

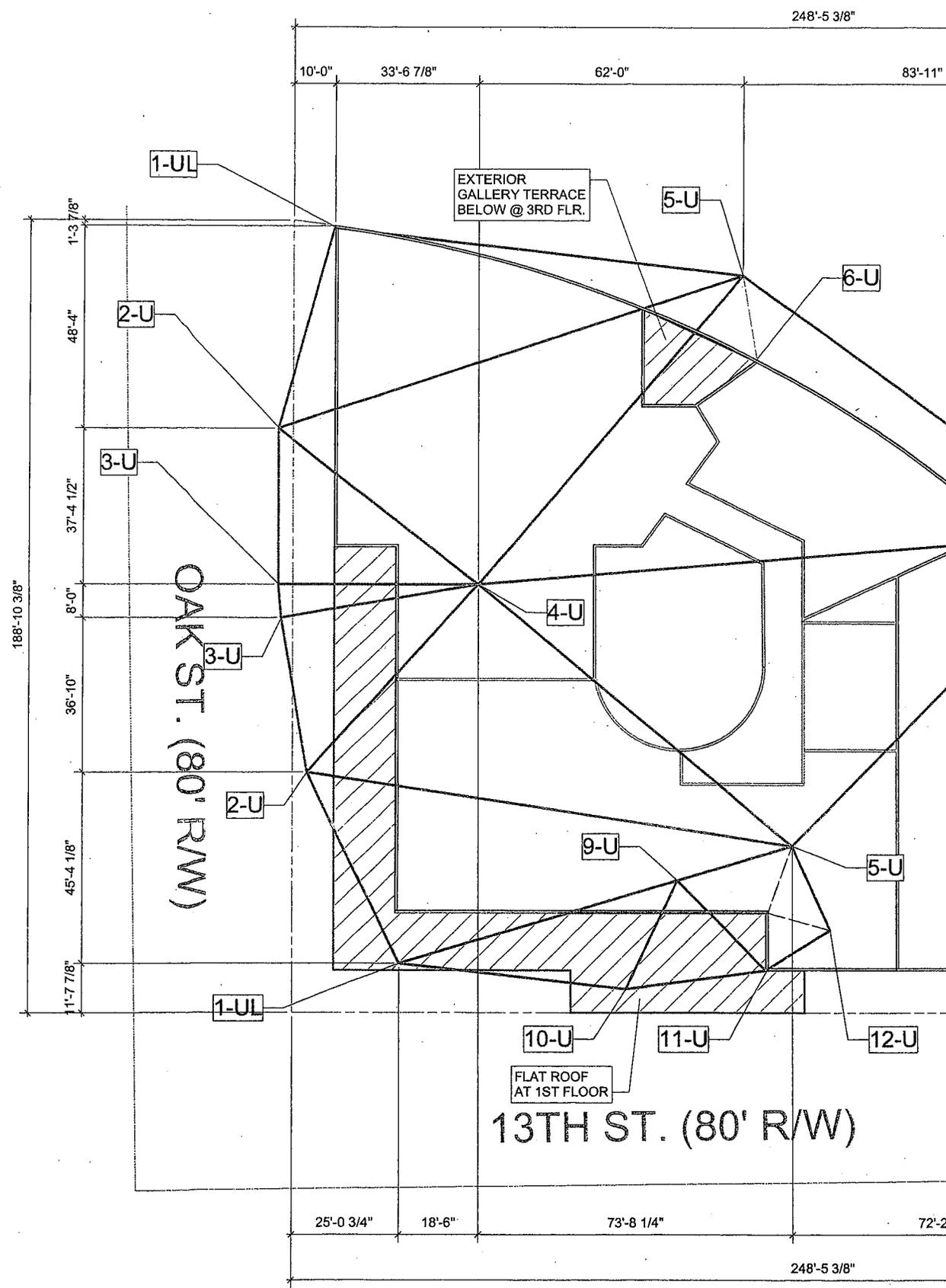


A

B

C

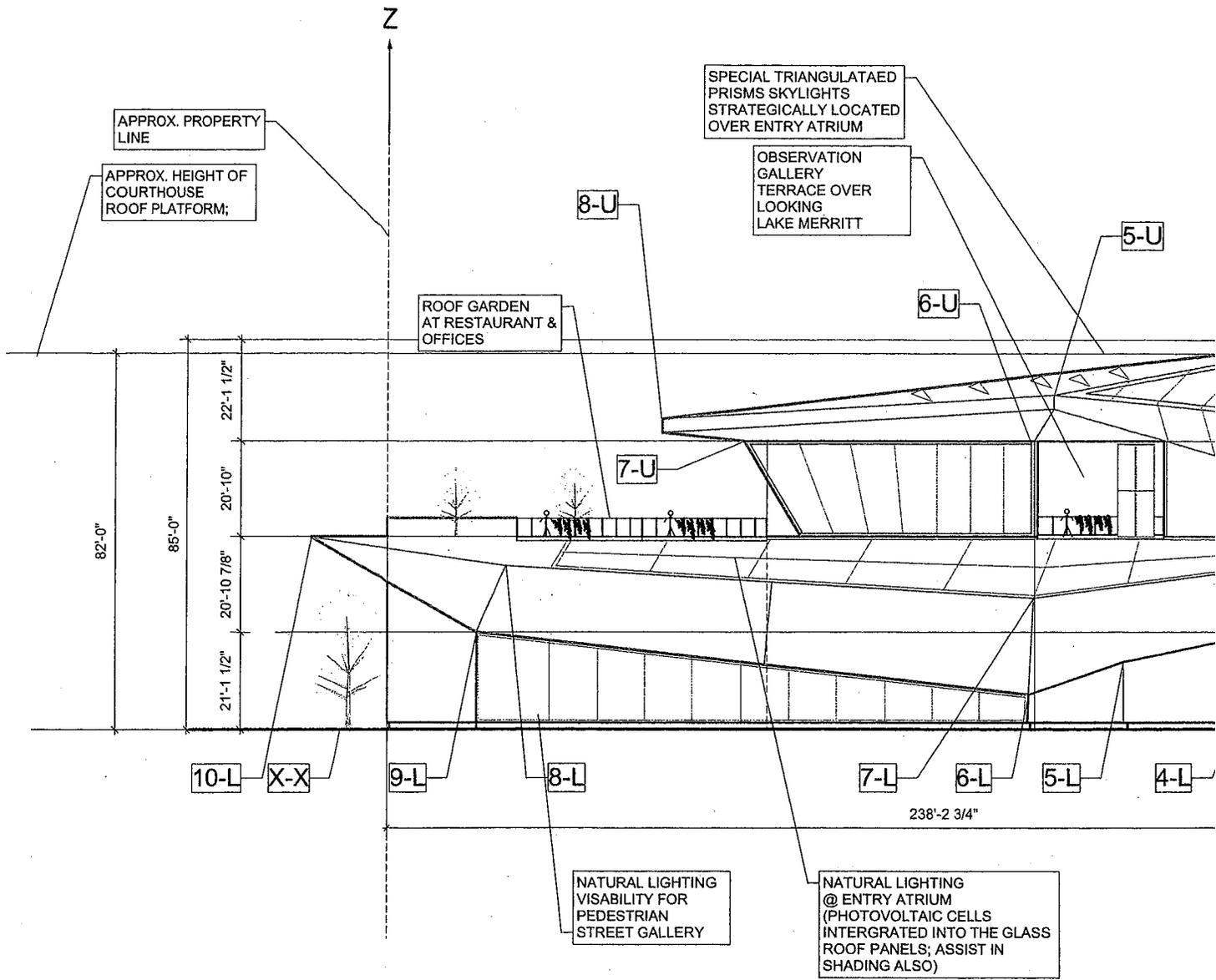
D



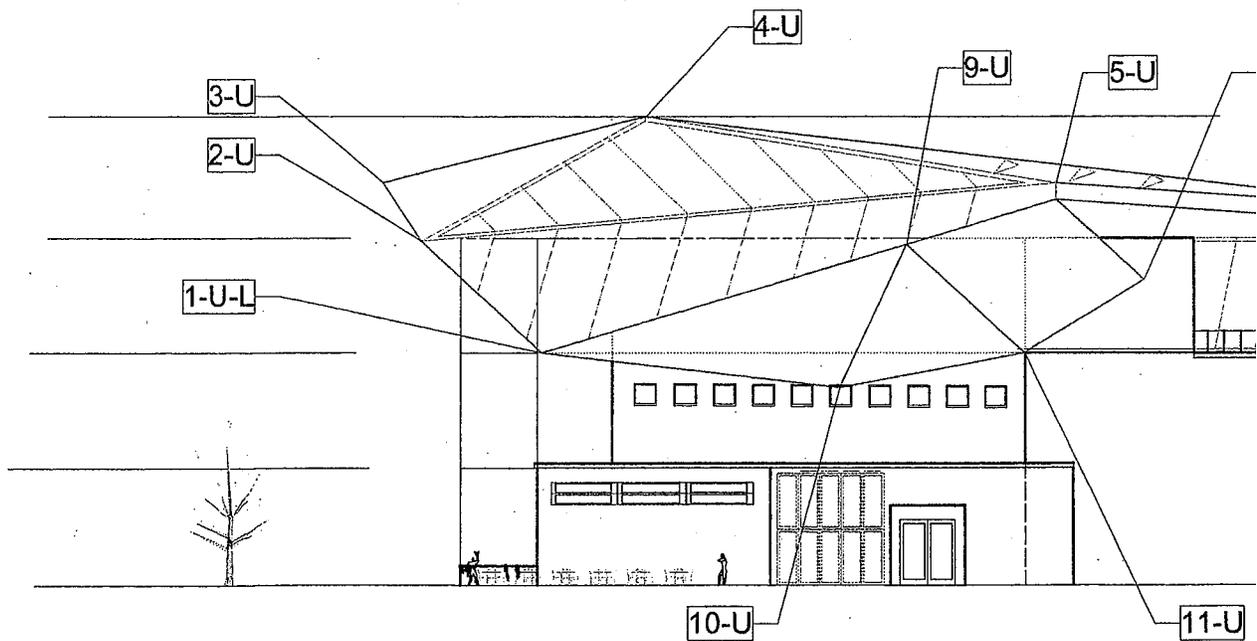
A
A2.4 UPPER PARTIAL ROOF PLAN
1/16"=1'-0"

0

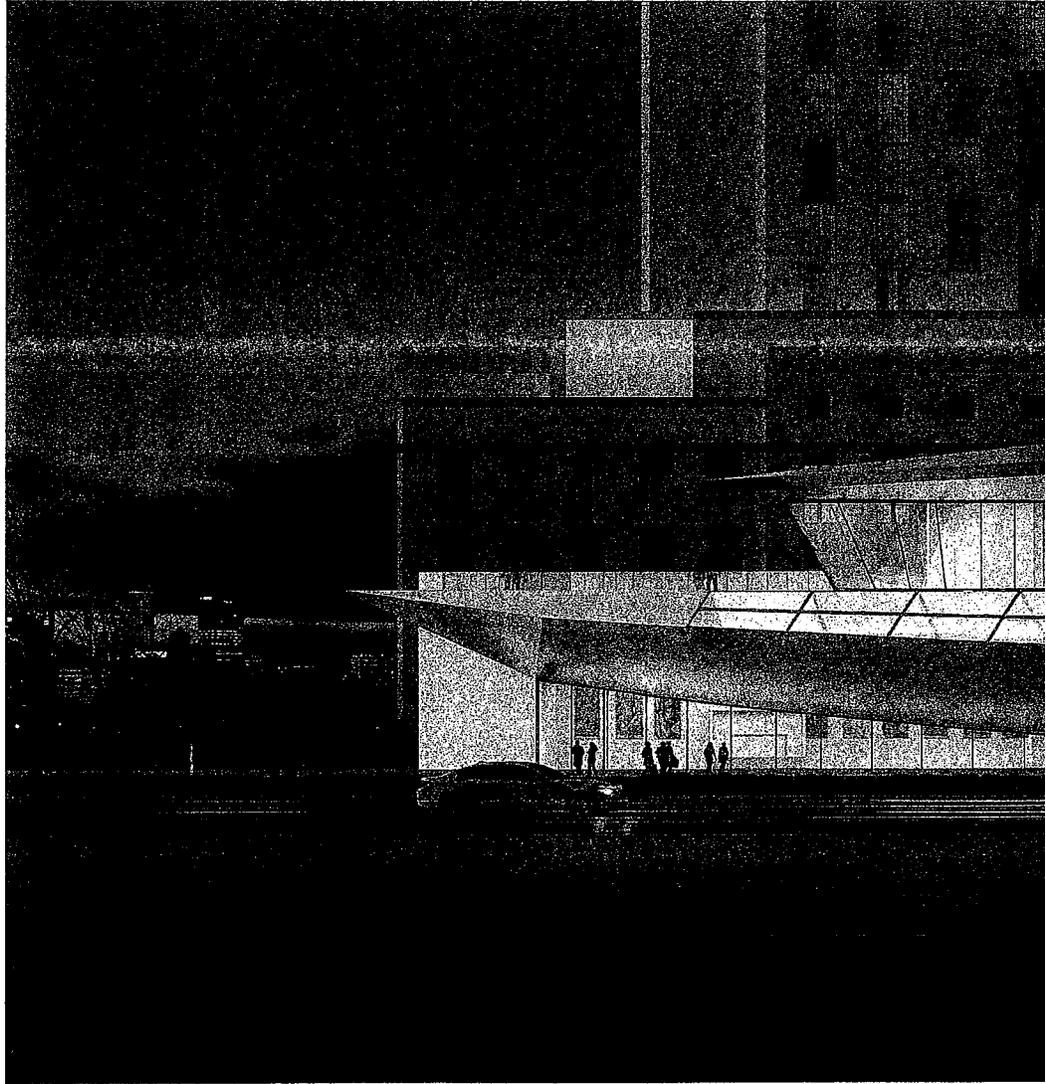
Attachment B: Oakland Museum of Jazz and Art Proposal



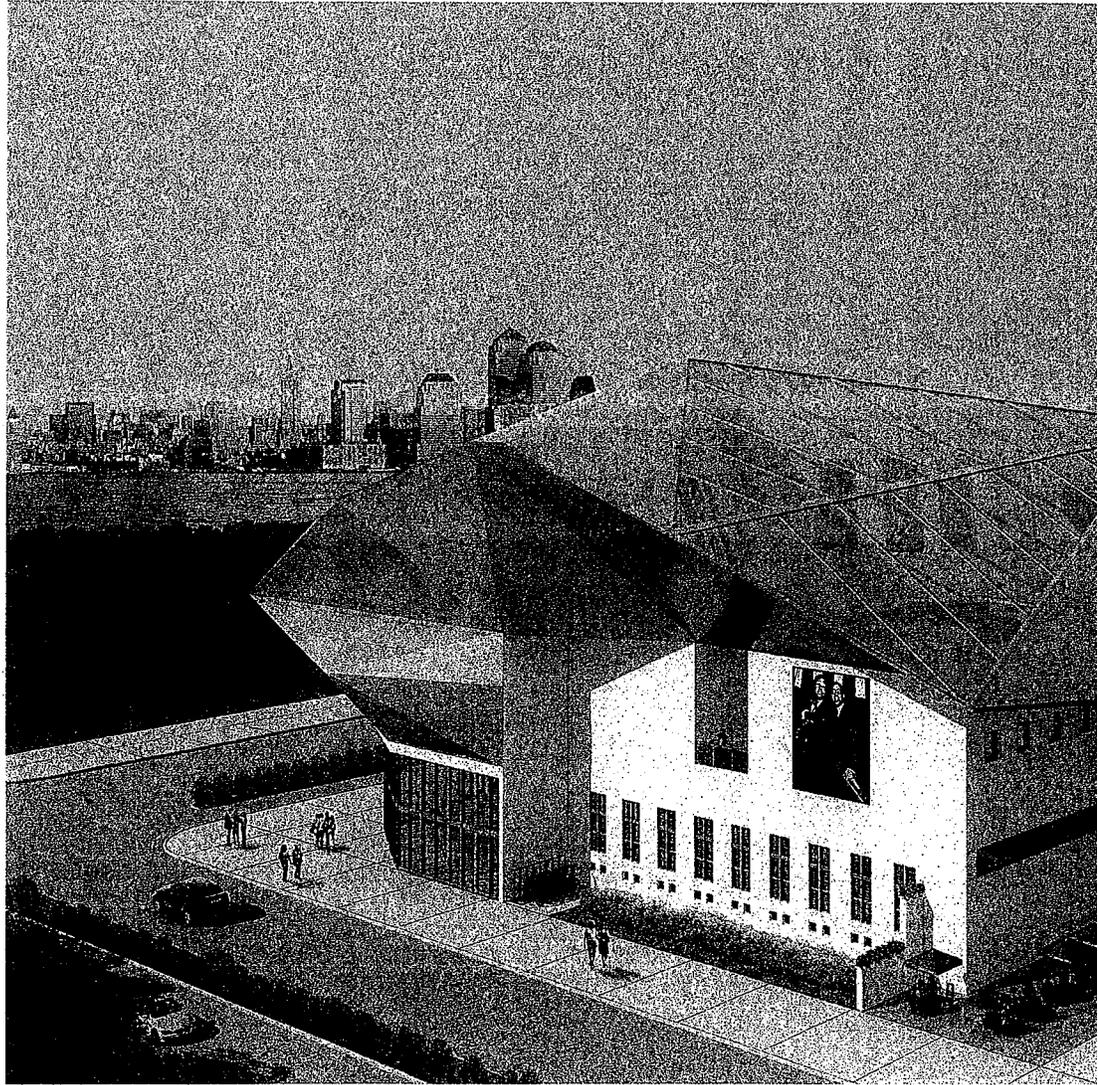
A FRONT ELEV. CONCEPT (FACING LAKE MERRITT)
 A3.1 1/16"=1'-0"



A REAR ELEV. CONCEPT (FACING COURT HOUSE)
A3.2 1/16"=1'-0"



A FRONT ELEV. CONCEPT (FACING LAKE)
A3.1.4 NO SCALE



A REAR ELEV. CONCEPT (FACING COURTYARD)
A3.1.5 NO SCALE

Final Report

The Economics of Local Life



Fiscal and Economic Impact Analysis of the Proposed Museum of Jazz & Art

Prepared for:

Museum of Jazz & Art

Prepared by:

Economic & Planning Systems, Inc.

February 14, 2018

Economic & Planning Systems, Inc.
One Kaiser Plaza, Suite 1410
Oakland, CA 94612-3604
510.841.9190 tel
510.740.2080 fax

Oakland
Sacramento
Denver
Los Angeles

www.epsys.com

EPS #161029

Table of Contents

1.	INTRODUCTION AND FINDINGS.....	1
	Summary of Findings	1
2.	BACKGROUND CONTEXT AND PROJECT DESCRIPTION.....	4
	Project Context.....	4
	Project Description.....	4
	Project Service Population.....	6
	Project Assessed Value	6
3.	GENERAL FUND FISCAL REVENUE ANALYSIS.....	8
	Analytical Approach.....	8
	General Fund Revenues	8
4.	ECONOMIC IMPACT METHODOLOGY.....	15
	Framework and Approach	15

1. INTRODUCTION AND FINDINGS

The Museum of Jazz & Art (MoJA) retained Economic & Planning Systems, Inc. (EPS) to prepare a fiscal and economic impact analysis of the proposed jazz and art Museum (Project) in Oakland, California (City).

The analysis assesses the effects of the proposed development on the City of Oakland's General Fund and the local economy. This includes quantifying the proposed Project's General Fund revenues associated with standard Museum operations, including the impacts generated by visitors and Museum employees. The analysis evaluates the fiscal impact of the proposed project at buildout and is based on the City's 2017/19 Adopted General Fund budget. In addition, EPS evaluates the potential one-time construction impacts and annual economic impacts of the Project in the local economy through metrics of employment, employee compensation and total economic output. Findings are presented in constant 2018 dollars.

It is important to note that actual fiscal and economic impacts will depend on a number of factors that cannot be predicted with certainty, including the market performance of the project, future changes in City or State budgeting practices, and the efficiency of various City departments in providing services. Key analytical inputs and assumptions used in this analysis are from the development applicant, City and County documents, and EPS industry knowledge. Benefits to the City in the form of catalyzed development or place-making are not calculated herein, although it should be noted that a Project of this scope could have spill-over development effects and other positive impacts on the development potential of sites in the vicinity.

Summary of Findings

- The proposed project is likely to result in an annual fiscal benefit to the City's General Fund in the range of \$164,000 to \$248,000, depending on attendance.***

Table 1 summarizes the findings of the fiscal benefit analysis ranging from a low scenario of 200,000 annual visitors and a resulting \$164,000 in annual revenues to a high scenario of 350,000 annual visitors and \$248,000 in annual General Fund revenues. In all scenarios, transient occupancy tax (TOT) is likely to generate the largest share of annual General Fund revenues, followed by sales tax revenues, then possessory interest tax revenues.

Table 1 Fiscal Benefit Analysis

General Fund Revenue Category	Total (Rounded)		
	Low	Average	High
Possessory Interest Tax	\$18,900	\$18,900	\$18,900
Property Tax in Lieu of VLF	\$5,000	\$5,000	\$5,000
Sales Tax	\$44,300	\$53,000	\$58,700
Transient Occupancy Tax	\$91,900	\$133,200	\$160,700
Other Revenues	\$4,200	\$4,200	\$4,200
Total	\$164,200	\$214,200	\$247,500

Sources: Museum of Jazz & Art, Oakland; City of Oakland; and Economic & Planning Systems, Inc.

2. One-time construction activities are estimated to support a total of 540 jobs and generate \$91.8 million in economic output to Alameda County.

Based on the estimated hard construction costs, the Project is expected to generate 540 total jobs, including 340 direct jobs, as shown in **Table 2**. More specifically, the number of jobs associated with the construction activity of the project depends on the construction timeline. If the entire project were developed in one year, there would be support for 340 direct jobs in that year. If the project were to develop over a 2-year period, for example, the project would support an average of 170 direct jobs for each of the two years of construction activity.

Table 2 One-Time Economic Impacts of Construction in Alameda County

Impact Type	Employment (Rounded)	Labor Income (\$) (Rounded)	Output (\$) (Rounded)
Direct Effect	340	\$27,428,100	\$58,806,000
Indirect Effect	60	\$4,393,300	\$10,937,600
Induced Effect	140	\$7,962,800	\$22,015,000
Total Effect	540	\$39,784,200	\$91,758,600

*Accounts for impacts of direct employee spending.

Sources: Museum of Jazz & Art, Oakland; City of Oakland; Minnesota Group IMPLAN; and Economic & Planning Systems, Inc.

3. The Project is estimated to support 88 to 101 jobs, with an associated \$4.2 to \$4.6 million in labor income, annually.

At buildout, the Project is expected to provide opportunities for new employment at the Museum, on-site café, restaurant, and gift shop. The Project is also expected to generate jobs for those local firms who will sell goods and services to the Project's retailers (indirect impacts), as well as jobs supported by the spending on goods and services by the households of the employees of the new retail and supplier firms (induced impacts). Total employment is estimated to range from 88 to 101 with accumulated income estimated between \$4.2 million and \$4.6 million annually, as shown in **Table 3**.

Table 3 Annual Economic Impact of MoJA

Impact Type	Jobs (Not Rounded)			Labor Income (Rounded)		
	Low	Avg.	High	Low	Avg.	High
Direct Effect	60	66	70	\$2,502,100	\$2,661,200	\$2,767,200
Indirect Effect	13	14	15	\$841,300	\$896,900	\$933,900
Induced Effect	15	16	17	\$840,200	\$893,600	\$929,200
Total Effect	88	96	101	\$4,183,700	\$4,451,700	\$4,630,300

Sources: Museum of Jazz & Art, Oakland; City of Oakland; Minnesota Group IMPLAN; Economic & Planning Systems, Inc.

4. During its operation, the Project is estimated to generate \$9.9 million to \$11.0 million in total annual economic output.

At buildout, the Project is expected to generate economic output through operations of the Museum, café, and retail portions of the site. In addition to direct impacts, the Project is expected to generate economic output as a result of inter-industry economic impacts (indirect impacts) and by the jobs supported by the spending on goods and services by the households of the employees (induced impacts). Total economic output is estimated to range from \$9.9 million to \$11.0 million annually, as shown in **Table 4**.

Table 4 Annual Economic Impact of MoJA (Economic Output)¹

Impact Type	Economic Output (Rounded)		
	Low	Average	High
Direct Effect	\$5,076,000	\$5,470,700	\$5,733,800
Indirect Effect	\$2,460,800	\$2,601,700	\$2,695,600
Induced Effect	<u>\$2,322,700</u>	<u>\$2,470,400</u>	<u>\$2,568,800</u>
Total Effect	\$9,859,000	\$10,543,000	\$10,998,000

Sources: Museum of Jazz & Art, Oakland; City of Oakland; Minnesota Group IMPLAN; Economic & Planning Systems, Inc.

¹ Economic Output is a measure of the value of economic activity generated by the project. For the purpose of this analysis is it a sum of the direct, indirect and induced impacts. See **Chapter 4** for further detail and methodology.

2. BACKGROUND CONTEXT AND PROJECT DESCRIPTION

This chapter provides the background on the City of Oakland's existing demographic profile and a description of the proposed Project.

Project Context

The proposed development is located in the City of Oakland, Alameda County. The City has over 426,000 residents and approximately 180,160 jobs, as shown in **Table 5**. The City of Oakland sits in the heart of the East Bay and is home to several large employers including Kaiser Permanente and Southwest Airlines.

Table 5 Oakland Population, Employment, and Service Population

Item	Amount	Sources ^[1]
Housing Units	171,636	DOF 2017
Occupied Households	161,791	DOF 2017
City Population	426,074	DOF 2017
Persons/Household	2.59	DOF 2017
City Employment	180,156	LEHD 2015
Current Service Population ^[2]	516,152	DOF 2017/ LEHD 2015

[1] See the following:

DOF: California Department of Finance

LEHD: Longitudinal Employer-Household Dynamics Study, US Census

[2] Service population is calculated by adding total residential population and half of total employment. It represents a measure of public service demand in which employees are given 50 percent the weight of residents because of more modest demands for public service.

Sources: CA Department of Finance; US Census Bureau, LEHD OntheMap; and Economic & Planning Systems, Inc.

Project Description

The Project will be located adjacent to Downtown Oakland at 1310 Oak Street on the west bank of Lake Merritt. The site is currently owned by the City of Oakland and occupied by a 10,000-square foot, 2-story structure that is used for City of Oakland operations. MoJA plans to adaptively reuse the existing building as a History Hope Heritage Center that will be publicly accessible and primarily used for educational services, public lectures, and exhibit storage and preparation. In addition, MoJA is proposing to newly construct a Museum totaling 70,000 square feet, including exhibit space, an art gallery, educational space, a film/theater/performance venue, administrative office, and on-site retail (see **Table 6**). MoJA expects a low attendance rate of 200,000 annual visitors, an average attendance rate of 290,000 annual visitors, and a

high attendance rate of 350,000 annual visitors.² For both the fiscal and economic analyses, EPS has estimated a range of impacts to reflect the range of estimated annual Museum attendees.

The site has been included in the City's Lake Merritt Station Area Plan and designated as an "Opportunity Site for Adaptive Reuse". This site possesses strategic locational advantages in that it is situated within a cluster of existing civic buildings including the Oakland Public Library, the Alameda County Courthouse, the Oakland Museum of California, and the Kaiser Convention Center. In addition, the Lake Merritt BART Station is approximately 0.2 miles away, or just a 5-minute walk.

Table 6 Development Program and Estimated Annual Visitors

Item	Sq.Ft.	% of Program
Space Programming		
Atrium / Gallery	4,850	6.9%
Gift Store	1,450	2.1%
Theater / Auditorium	7,921	11.3%
Café	1,844	2.6%
Restaurant	4,131	5.9%
B. History, Hope and Heritage Center	3,370	4.8%
Exhibit Galleries	20,685	29.6%
Preparation Area / Storage / MEP	4,225	6.0%
Office / Meeting / Administration	3,330	4.8%
Community / Conference Room	350	0.5%
P. Music Studio	900	1.3%
Corridor Circulation & Stairs	9,985	14.3%
Restrooms and Dressing Rooms	2,000	2.9%
Other	<u>4,834</u>	<u>6.9%</u>
Total	69,875	100%
Estimated Range of Visitors ^[1]		
Low		200,000
Average		290,000
High		350,000

[1] Estimated range of visitors provided by MoJA as part of a collaborative effort with outside consultants.

Sources: Museum of Jazz & Art, Oakland; Economic & Planning Systems, Inc.

² Attendance estimates are provided by MoJA and are estimated in collaboration with outside consultants.

Project Service Population

For purposes of estimating certain fiscal revenues, a service population is estimated. "Service population" is a term of art used in fiscal impact analyses that accounts for the relative demand for public services and General Fund revenue generation from the new residents and the new employees supported by new development. Service population is estimated by adding the total number of new residents and one-half of the new employees, which effectively reduces the demand from employees relative to the demand from residents.

Specific to MoJA, there are no residents attributed to the Project. However, as shown in **Table 7**, the proposed Project will have regularly staffed employees for the 70,000 square feet of new Museum space, including a gift store, café, and restaurant space.

Table 7 Estimated Project Service Population

Item	Assumptions	Total
Total Sq.Ft.	See Table 6	69,875
Number of Employees	1,500 Sq.Ft/ Employee	47
Service Population ^[1]	Employees are weighted at 50%	23

[1] Service population is calculated by adding total residential population (which is zero for this project) and half of total employment. It represents a measure of public service demand in which employees are given 50 percent the weight of residents because of more modest demands for public service.

Source: Economic & Planning Systems, Inc.

Project Assessed Value

Although the Project will be property tax exempt due to its nonprofit status, the commercial portions will be subject to possessory interest tax. The possessory interest tax is based on one percent of the assessed value for areas rented out to private interests. These areas include the café, restaurant, and gift shop totaling approximately 7,425 square feet. Estimated values are based on overall construction costs and capitalized lease rates show in **Table 8**. (Further discussion of estimated possessory interest tax revenues is provided in the subsequent chapter).

Table 8 Estimated Value of Possessory Interest Tax Generating Spaces

Item	Sq.Ft.	Est. Value / Sq.Ft. ^[1]	Est. Total Value
Possessory Interest Tax Generators ^[2]			
Café	1,844	\$900	\$1,659,600
Restaurant	4,131	\$900	\$3,717,900
Gift Shop	<u>1,450</u>	\$900	<u>\$1,305,000</u>
Total	7,425		\$6,682,500

[1] Based on overall construction costs and capitalized lease rates of comparable developments.

[2] A Taxable Possessory Interest is imposed when a private party uses property owned by a non-taxable entity for revenue-generating purposes. This real estate is then taxed as a privately-held property, based on its Assessed Value, as estimated above.

Sources: Museum of Jazz & Art, Oakland; CoStar; and Economic & Planning Systems, Inc.

3. GENERAL FUND FISCAL REVENUE ANALYSIS

Analytical Approach

This chapter describes the methodology and key assumptions used in calculating the annual revenue impacts of the proposed Project on the City of Oakland's General Fund. The forecasting approach is shown in **Table 9**. For each revenue item, EPS used the most appropriate forecasting methodology available:

- **Per Service Population.** The relative impacts of employment and population are compared and used to estimate total daytime population. An employee is only likely to access services during daytime hours and therefore has a significantly lower impact (positive or negative) than the residential population. For departments affected by daytime population, EPS assumes that the cost to provide services to one worker is equivalent to half of the cost of providing the same service to one resident.
- **Not Estimated.** Some budget items are not estimated because certain City revenues are not affected by new development associated with this Project.
- **Other.** A case study approach is used to calculate budget items for which none of the above approaches is deemed appropriate, such as property and sales taxes.

General Fund Revenues

New General Fund proceeds attributable to the Project will primarily include possessory interest tax, property tax in lieu of vehicle license fee (VLF), transient occupancy tax, and sales tax.

Table 9 provides a summary of the Oakland FY 2017-2019 revenue budget and a description of the forecasting method relied upon for each relevant revenue source.

Table 9 General Fund Revenues and Estimating Methodology

Item	FY2017/2018 Budget Allocations	Percent Variability ^[1]	Estimating Methodology ^[2]
Revenues			
Property Tax	\$139,567,223	100%	28.0% of the 1% Property Tax
Property Tax In Lieu of Vehicle License Fee	\$40,814,237	100%	0.1% of Citywide Assessed Value
Sales Tax	\$55,998,537	100%	1.0% of Taxable Sales
Transient Occupancy Tax	\$20,969,980	100%	11.0% of Hotel Revenues
Other Taxes			
Parking Tax	\$10,832,713	100%	\$20.99 per Service Population
Utility Consumption Tax	\$51,000,000	100%	\$98.81 per Service Population
Real Estate Transfer Tax	\$75,822,812		- Not Estimated
Business License Tax	\$79,580,950		- Not Estimated
Local Tax	\$5,900,000		- Not Estimated
Fines, Penalties, Licenses, and Permits	\$24,013,670	100%	\$46.52 per Service Population
Service Charges			
Franchise Fees			
Refuse	\$5,636,020	100%	\$10.92 per Service Population
Sewer	\$6,025,870	100%	\$11.67 per Service Population
Gas and Electric	\$2,889,391	100%	\$5.60 per Service Population
Other Franchises ^[3]	\$2,755,663		- Not Estimated
Parking Meter Revenue	\$15,252,611	50%	\$14.78 per Service Population
Other Service Charges ^[4]	\$2,750,000	25%	\$1.33 per Service Population
Other ^[5]	\$23,806,377		- Not Estimated
Other Sources ^[6]	\$2,948,774		- Not Estimated
Interfund Transfers	\$3,984,207		- Not Estimated
Total Annual Revenues	\$570,529,035		

[1] Percentage of revenues that increase with growth, as opposed to fixed costs.

[2] The estimating factors are the methods used to project the fiscal impact of each item (e.g., a "per capita" basis using the City budget/population), or based on a formula or State statute (e.g., sales tax is 1% of taxable sales multiplied by taxable sales generated by the Project).

[3] Includes cable, pipeline, and railroad franchise fees.

[4] Includes public works fees, field check inspections, and fire inspection fees.

[5] Other includes Port revenue, rental income, and other Public Works fees.

[6] Includes Grants & Subsidies, Interest Income, and Miscellaneous

Sources: City of Oakland FY2017-19 Adopted Policy Budget, and Economic & Planning Systems, Inc.

Property Tax-Related Revenue

Possessory Interest Tax

A Possessory Interest Tax is collected at the same rate as property tax and imposed on the estimated value of the commercial operations of the Project. The Museum portion of the Project is exempt from paying property taxes due to its nonprofit status. The gift shop, café, and restaurant, however, are subject to possessory interest taxes since they will be leased out to private operations. As mentioned in **Chapter 2**, EPS estimated a total assessed value of \$6.7 million for the 7,400 square feet of possessory interest tax-generating space. For this given TRA, the City will capture 28.2 percent of the total one percent property tax levied on these uses, or roughly \$18,900, as seen in **Table 10**.

Property Tax In-Lieu of VLF

This Fiscal Analysis uses a formula provided by the California State Controller's Office to forecast Property Tax in Lieu of Vehicle License Fee (In-Lieu VLF) revenue. In-Lieu VLF, or Motor Vehicle In-Lieu, is calculated by taking the percentage increase in the City's assessed value resulting from the Project and applying that percentage increase to the City's current State allocation of In-Lieu VLF revenue. The proposed Project will add about 0.01 percent to the current assessed value in Oakland (assuming no other assessed value growth for simplification purposes) and will generate the same increased percentage in in-lieu VLF revenues, or about \$5,000 annually (see **Table 10**).

Table 10 Property Tax-Related Revenues

Item	Assumptions	Total
Possessory Interest Tax		
Project Assessed Value	See Table 8	\$6,682,500
Existing Site Assessed Value ^[1]		\$0
Net New Assessed Value		\$6,682,500
City Share of Possessory Interest Tax	1.0% of assessed value	\$66,825
Total Net General Fund Revenue (post-ERAF) ^[2]	28.2% of property tax revenue	\$18,852
Property Tax in-lieu of VLF ^[3]		
2017-2018 Citywide Assessed Value (Base Value)		\$55,095,742,425
Project Assessed Value		\$6,682,500
Growth in Citywide AV due to Project		0.01%
2017-2018 Citywide Property Tax in-lieu of VLF (Base Value)		\$40,814,237
Total Net New Property Tax In-Lieu of VLF		\$4,950
Total Property Tax-Related Revenues		\$23,802

[1] Site is publically owned and tax exempt.

[2] Post ERAF; adjusted by the ERAF factor. The Project is located in 17-031 TRA.

ERAF (Educational Revenue Audmentation Funds) is a fund that collects a share of property tax in each county that are shifted from cities, the county, and special districts as a result of past CA-wide legislation.

[3] Property Tax in-lieu of Vehicle License Fee (VLF) is an additional property tax revenue going to the General Fund as a result of a 2004 swap of City and County VLF revenues for additional property tax share as part of a state-local budget agreement.

Sources: City of Oakland Fiscal Year 2017-2019 Adopted Policy Budget; County of Alameda Annual Assessors Roll 2017-2018; Economic & Planning Systems, Inc.

Retail Sales Tax Revenue

The proposed project is expected to generate retail sales tax revenue accruing to the City of Oakland, from retail sales onsite, additional employee spending, and visitor spending. This local sales tax revenue is one percent of total retail sales. **Table 11** outlines sales tax revenue projections at buildout.

Project employees

On-site employees of the Project will spend money in the local economy that will in turn generate increased sales tax revenues to the City. It is assumed that this spending is all net new to the City, or in other words, that these employees were not displaced from elsewhere in Oakland. While industry data suggests that employees spend roughly \$25 per day, this analysis assumes that just half of that spending is captured in Oakland (reflective of the daytime hours most employees will spend around their place of work). EPS estimates that Project employees will spend approximately \$139,800 annually on taxable goods in the City of Oakland, as seen in **Table 11**.

On-site Sales

The Project includes a gift shop that generates sales tax revenues to the City. Annual sales projections have been provided by MoJA and are estimated at roughly \$2.4 million or \$400 per square foot. EPS has made adjustments to account for some amount of sales that are foregone elsewhere in the City as a result of spending at MoJA, although this is likely to be negligible given the un-substitutable nature of goods offered at cultural center gift shops. EPS estimates that roughly \$2.4 million in net new taxable sales will come as a result of spending at the Museum's gift shop, as detailed in **Table 11**.

Off-site Spending by Non-local Visitors

EPS estimates that roughly 21.0 percent of total MoJA visitors will come from outside of Alameda County. Research suggests that non-local visitors will spend more in the surrounding economy than the average visitor. Using standard per-day spending estimates, EPS concludes that non-local visitors will spend between \$1.9 million and \$3.4 million on off-site taxable items (aside from Museum admission and on-site spending), as seen in **Table 11**.

In sum, the analysis estimates that taxable retail sales will total between \$4.4 million and \$5.9 million annually. The City's sales tax rate of 1.0 percent generates an estimated \$44,300 to \$58,700 to the General Fund annually, as shown below in **Table 11**.

Table 11 Retail Sales Tax Revenue

Item	Assumptions	Annual Total at Buildout		
		Low	Average	High
Project Employee Retail Purchases in Oakland				
Daily Worker Taxable Spending ^[1]	\$25.00 per Workday			
Annual Worker Taxable Spending	240 Workdays/Year	\$6,000	\$6,000	\$6,000
Oakland Spending Capture	50.0% of Taxable Spending	\$3,000	\$3,000	\$3,000
Museum Employees		47	47	47
Net New Worker Taxable Spending		\$139,750	\$139,750	\$139,750
On-Site Gift Store Sales				
New Retail Space (Sq.Ft.)		7,425	7,425	7,425
Gross Taxable Retail Sales	\$400 per Sq.Ft.	\$2,970,000	\$2,970,000	\$2,970,000
Sales Net of Redistributed Sales in City ^[2]	80.0% of Taxable Sales	\$2,376,000	\$2,376,000	\$2,376,000
Non-Local Visitor Spending				
Total Number of Visitors	See Table 2	200,000	290,000	350,000
Out of County Visitors ^[3]	20.8% of Total Visitors	41,666	60,416	72,916
Out of City Visitors ^[4]	74.1% of Out of County Visitors	30,875	44,768	54,031
Average Visitor Off-Site Spending ^[5]	\$69.00 per Day	\$2,130,363	\$3,089,026	\$3,728,135
Sales Net of Museum Spending ^[6]	90.0% of Taxable Sales	\$1,917,327	\$2,780,123	\$3,355,321
Net New Taxable Retail Sales		\$4,433,077	\$5,295,873	\$5,871,071
Total Sales Tax Revenue	1.0% of taxable sales	\$44,331	\$52,959	\$58,711

[1] ICSC: International Council of Shopping Centers

[2] Assumes some sales shift from existing retailers in the City.

[3] Figure based on Los Angeles County Museum of Art (LACMA) Economic Impact Study.

[4] Based on Oakland's total population and Alameda County's total population.

[5] Based on 2017 GSA per Diem Rates for Alameda County; covers meals and incidentals.

[6] Assumes some retail sales have been made on-site in the museum.

Sources: State Board of Equalization, ICSC Research Survey, U.S. Bureau of Labor Statistics, Alameda County GSA, and Economic & Planning Systems

Transient Occupancy Tax

A TOT is levied on a citywide basis at the total rate of 14 percent of the nightly room rate. Oakland’s General Fund receives 11 percent, with the remaining 3 percent accruing to other Oakland public entities (Oakland Zoo, Oakland Museum, Chabot Space Center) as well as the City’s Visitor’s Bureau. The Project is likely to attract between 42,000 and 73,000 non-local (out-of-county) visitors per year, some of whom will stay overnight in the City. EPS estimates that hotel room revenues associated with these stays will range between \$835,100 and \$1.5 million annually, which would generate between \$91,900 and \$160,800 in TOT revenues to the City’s General Fund, as seen in **Table 12**.

Table 12 Transient Occupancy Tax (TOT) Revenues

Item	Assumption	Total		
		Low	Average	High
Out of County Visitors	See Table 8	41,666	60,416	72,916
Out-of-Town Overnight Visitors	25.0% of non-local visitors	10,417	15,104	18,229
No. of Hotel Groups	2.0 Persons/Hotel Group	5,208	7,552	9,115
Nightly Room Rate ^[1]		\$160	\$160	\$160
Annual Hotel Room Revenues		\$835,065	\$1,210,844	\$1,461,363
General Fund TOT Revenue	11.0% of revenue	\$91,857	\$133,193	\$160,750
TOT Surcharge ^[2]	3.0% of revenue	\$25,052	\$36,325	\$43,841

[1] Based on 2017 GSA average lodging rates from January to December in Alameda County.

[2] A 3 percent surcharge is appropriated to the Oakland Convention and Visitors Bureau, the Oakland Zoo, the Oakland Museum of California, the Chabot Space and Science Center, and the Cultural Arts Programs and Festivals.

Sources: Museum of Jazz & Art, Oakland; Alameda County GSA; and Economic & Planning Systems, Inc.

Other Revenue Items

Other revenue items that will likely see a positive impact as a result of the Project include parking taxes, utility consumption taxes, fines, penalties, licenses, and permits, parking meter revenues, and other service charges. For more detail, see **Table 9**.

4. ECONOMIC IMPACT METHODOLOGY

While this report predominantly focuses on MoJA's impact on the City of Oakland's General Fund, EPS also examined the economic impacts associated with the Project in the County of Alameda. As a major cultural facility in the City of Oakland, one of the economic benefits of the Project will be its contribution to regional employment and economic activity. This section evaluates the proposed project's one time (construction) and ongoing (Museum operation) economic impacts in the City of Oakland using the IMPLAN "Input/Output" model of the local economy.³ The economic impacts calculated here are those that can be directly linked to hard construction costs and gross taxable retail sales.

Framework and Approach

To measure these effects, this economic analysis relies on IMPLAN (Impact Analysis for Planning) software, an input-output (I/O) model that draws upon data collected by the IMPLAN Group from several state and federal sources, including the Bureau of Economic Analysis, Bureau of Labor Statistics, and the Census Bureau.

Input-Output Analysis

I/O analysis is premised on the concept that industries in a geographic region are interdependent and thus the total contribution of any one establishment's activity is larger than its individual (direct) output and/or employment. Consequently, an establishment's economic activity has a "multiplier" effect that generates successive rounds of spending and output in other economic sectors within a particular region. For example, consider the implications of operating expenditures by a hotel or retail establishment. Hotels and retail establishments purchase goods from producers, who in turn purchase raw materials from suppliers. Thus, an increase/decrease in the demand for hotel services will stimulate an increase/decrease in output and employment in the interdependent secondary industries.

Regional economic impact analysis and, I/O models in particular, provide a means to quantify economic effects stemming from a particular industry or economic activity. Specifically, I/O models produce quantitative estimates of the magnitude of regional economic activity resulting from some initial activity (e.g., hotel or retail operations). I/O models rely on economic multipliers that mathematically represent the relationship between the initial change in one sector of the economy and the effect of that change on economic output, employment, and income in other industries. These economic data provide a quantitative estimate of the magnitude of shifts in jobs and revenues within a regional or state economy.

Initial revenue injections from the project are referred to as the direct effect. Next the I/O model quantifies the impacts associated with the ripple or multiplier effects that result from project's initial injections. The ripple effects are categorized as indirect or induced effects.

³ IMPLAN is an Input-Output modeling system (software and data) developed by the Minnesota IMPLAN Group, and is widely used in the U.S. for estimating economic impacts across a wide array of industries and economic settings.

Attachment C: Economic and Planning Systems, Inc. - Fiscal and Economic Impact Report

Indirect effects represent economic impacts on suppliers while induced effects represent economic impacts on household income and spending. In this report, direct, indirect, and induced effects are defined as follows:

- The **Direct Effect** is a measure of the economic value of the initial injection of spending into the economy.
- The **Indirect Effect** is a measure of the economic value of "upstream" industry-to-industry transactions that supply inputs to the production of goods and services consumed by the new project.
- The **Induced Effect** is a measure of the economic value of labor income that re-circulates in the economy as a result of the initial revenue made by the project.
- The **Total Impact** is the sum of the direct, indirect, and induced effects. The total impact measures the overall impact of the project's activities on the economy.

This report measures economic significance using common economic metrics, including employment, employee compensation, output, and value added, as defined below.

- **Employment** is equivalent to jobs, a headcount that includes part-time and full-time workers.
- **Employee Compensation** represents payments to labor in the form of both income and fringe benefits paid by the employer (e.g., health, retirement), as well as proprietor income.
- **Economic Output** represents a measure of economic activity, calculated as production value including intermediate inputs (i.e., the goods and services used in the production of final products). Output includes spending on employee compensation as well as the production value of each intermediate input, such as equipment, supplies, insurance, rents, utilities, communication

Economic Impacts of Construction (One-Time Impacts)

The Project will generate one-time economic impacts as a result of construction activities. These include direct on-site jobs and spending (direct impacts), and the jobs and economic activity supported by firms supplying goods and services during construction (indirect impacts) as well as the spending from households of new employees (induced impacts). EPS estimates that construction of MoJA will support 540 temporary jobs, \$39.8 million in labor income, and \$91.8 million in economic output on a one-time basis, as seen in **Table 13**.

Table 13 One-Time Economic Impacts of Construction in Alameda County

Impact Type	Employment (Rounded)	Labor Income (\$) (Rounded)	Output (\$) (Rounded)
Direct Effect	340	\$27,428,100	\$58,806,000
Indirect Effect	60	\$4,393,300	\$10,937,600
Induced Effect	<u>140</u>	<u>\$7,962,800</u>	<u>\$22,015,000</u>
Total Effect	540	\$39,784,200	\$91,758,600

*Accounts for impacts of direct employee spending.

Sources: Museum of Jazz & Art, Oakland; City of Oakland; Minnesota Group IMPLAN; and Economic & Planning Systems, Inc.

Ongoing Economic Impacts (Annual Impacts)

At buildout, the Project is expected to generate 60 to 70 direct jobs (individuals employed on-site) in Oakland and throughout Alameda County. In addition to the on-site direct jobs, firms supplying goods and services to the Project as well as spending from the households of new direct employees will generate multiplier effects that will support additional indirect and induced jobs within Alameda County. EPS estimates that 13 to 15 indirect jobs (employment at firms providing inputs (materials, supplies, and services) to the Project) and 15 to 17 induced jobs (jobs supported by household spending on goods and services by households of employees in the direct and indirect categories) will be supported in Alameda County through the Project's economic activities.

In addition to employment effects, the Project will generate \$5.1 million to \$5.7 million in direct economic output (from on-site activities). In addition to the direct economic output from the Museum, the Project will generate \$2.5 million to \$2.7 million in indirect impacts accruing from the buying of goods and services from other local industries that support the Project. Lastly, the Project is estimated to generate \$2.3 million to \$2.6 million in induced impacts resulting from household spending of the employees generated by the Project.

In sum, the Project is expected to generate 88 to 101 direct, indirect, and induced jobs, and \$9.9 million to \$11.0 million in direct, indirect, and induced economic output, as shown in **Tables 14 through 16.**⁴

⁴ EPS used industry multipliers from the Minnesota Implan Group input-output modeling system.

**Table 14 Annual Economic Impacts of MoJA Operations in Alameda County
(Low Scenario)**

Impact Type	Employment (Not Rounded)	Labor Income (\$) (Rounded)	Output (\$) (Rounded)
Direct Effect	60	\$2,502,100	\$5,076,000
Indirect Effect	13	\$841,300	\$2,460,800
Induced Effect	<u>15</u>	<u>\$840,200</u>	<u>\$2,322,700</u>
Total Effect	88	\$4,183,700	\$9,859,400

*Accounts for total visitor spend on beverage/food, general merchandise, and transit.

Sources: Museum of Jazz & Art, Oakland; City of Oakland; Minnesota Group IMPLAN;
and Economic & Planning Systems, Inc.

**Table 15 Annual Economic Impacts of MoJA Operations in Alameda County
(Average Scenario)**

Impact Type	Employment (Not Rounded)	Labor Income (\$) (Rounded)	Output (\$) (Rounded)
Direct Effect	66	\$2,661,200	\$5,470,700
Indirect Effect	14	\$896,900	\$2,601,700
Induced Effect	<u>16</u>	<u>\$893,600</u>	<u>\$2,470,400</u>
Total Effect	96	\$4,451,700	\$10,542,800

*Accounts for total visitor spend on beverage/food, general merchandise, and transit.

Sources: Museum of Jazz & Art, Oakland; City of Oakland; Minnesota Group IMPLAN;
and Economic & Planning Systems, Inc.

**Table 16 Annual Economic Impacts of MoJA Operations in Alameda County
(High Scenario)**

Impact Type	Employment (Not Rounded)	Labor Income (\$) (Rounded)	Output (\$) (Rounded)
Direct Effect	70	\$2,767,200	\$5,733,800
Indirect Effect	15	\$933,900	\$2,695,600
Induced Effect	<u>17</u>	<u>\$929,200</u>	<u>\$2,568,800</u>
Total Effect	101	\$4,630,300	\$10,998,300

*Accounts for total visitor spend on beverage/food, general merchandise, and transit.

Sources: Museum of Jazz & Art, Oakland; City of Oakland; Minnesota Group IMPLAN;
and Economic & Planning Systems, Inc.

Attachment D: TomKat Funding Letter & Charter Authorization



05/21/2018

Dear Sir or Madam:

I am writing to share my continued and enthusiastic support for the Museum of Jazz and Art project in Oakland. I can think of no better way to honor the history and culture of this great city and its relationship to jazz than converting the Fire Alarm Building and Site into the proposed place for celebration, memory and learning. All the better that this project is sure to spur major economic regeneration in Oakland and is promised to be designed and engineered to the highest environmental standards.

With the success of the SF Jazz Center, the Bay Area has the opportunity to become a center for the celebration of jazz. We could solidify the draw of jazz to the entire region, while also extending the related benefits of social empowerment and economic revival to a highly deserving community, by adding the Museum of Jazz and Art in the heart of Oakland.

Because I believe so strongly in the importance of this project, my husband, Tom Steyer, and I have committed funds through our foundation to help pay for some of the initial soft costs related to the project's development. I am confident that other funders, including possibly the City of Oakland itself, will feel as I do and help to make this project a reality by generously donating time, energy and money to its execution.

As I have said, I am an enthusiastic champion of the Museum of Jazz and Art and hope you will be too!

Most sincerely,

A handwritten signature in black ink that reads "Kat Taylor".

Kat Taylor

MOJA Funding Champion

111 Sutter Street, Floor 10
San Francisco, CA 94014

Funding Charter Authorization

The Funding Charter Authorization documents:

- Acknowledgement that TomKat Foundation has provided Grants to the Museum of Jazz and Art
- Board authorization for Museum of Jazz and Art to use TomKat Foundation funding for soft costs related to project pre-development, site acquisition, and fundraising
- Current estimate of additional MoJA project funding needs (*Attachment A: Use & Source of Funds Model*)

1. General Information:

Project Title:	Museum of Jazz & Art: Pre-Development, Site Acquisition and Fundraising	Project ID:	P11001
Funding Organization:	TomKat Foundation	Funding Organization Representative:	Kat Taylor
Prepared by:	David Allen, Raymond Young	Account Code(s):	1300, 4400, 6160, 6200, 7000

2. Project Stakeholders:

List all applicable project stakeholders.

Title	Name/Organization	Phone	E-mail
Funding Organization Representative & MoJA Champion	Kat Taylor/TomKat Foundation		
President/CEO Founder Project Manager	David Allen/ Museum of Jazz and Art		
Vice President	Joe Kennedy/ Museum of Jazz and Art		
Treasurer	Raymond Young/ Museum of Jazz and Art		
Secondary Funding Organization Representative	Erin Wirpsa Eisenberg/ TomKat Foundation		

3. **Executive Summary:**

Provide a brief overview of this funding use.

TomKat Foundation has provided unrestricted grants to the Museum of Jazz and Art. The TomKat Foundation funding needs to be released by the Museum of Jazz and Art board in order to:

- Continue to pursue acquisition of the Fire Alarm Building site from the City of Oakland,
- Be responsive to the City's questions and process during the Exclusive Negotiation Agreement (ENA) period,
- Continue development of the Museum of Jazz and Art project plan, and
- Develop a sophisticated fundraising plan for the entire Museum of Jazz and Art project.

Attachment A: Use of Funds Model details the sources and uses for all project soft costs, for which a more sophisticated fundraising plan will be developed during the ENA phase. The Soft Cost Work Breakdown Structure (WBS) Allocation is as follows:

- 1.0 Pre-Design Phase (Feasibility, Architectural, Insurance, Land/Escrow, appraisals/ studies, developer fee, Legal, Accounting Administration, etc.)
- 2.0 Programming Phase (Museum Strategies/Studies, Sustainability Strategy, Exhibit Studies, etc.)
- 3.0 Design Phase (Schematic, Design Development, Construction Documents, etc.)
- 4.0 Bidding/Pricing & Construction (**Not Applicable for this Charter Approval**)
- 5.0 Permit Phase (Planning and Discretionary Approvals Only)

4. **Funding Purpose:**

Explain the reason(s) for doing this funding.

1. ***Funding business as required during the Exclusive Negotiation Agreement (ENA) period***

Funds are needed for the following activities: to provide continuous financial support to the organization while it looks to meet the City of Oakland's ENA requirements to acquire the Fire Alarm Building (FAB) site and existing building; to assist in early museum project soft costs as per MoJA's Board resolution #11-9-5.3_8a on 8/31/2017, referenced in the organization's financial statements; and to develop Museum of Jazz and Art fiscal funding allocations and fundraising plan.

2. ***Funding business objectives laid out in the Strategic Plan***

Define the specific Business Objectives of the funding that correlate to the strategic initiatives or issues identified in the Strategic Plan. Every Business Objective must relate to at least one strategic initiative or issue and every initiative or issue cited must relate to at least one project business objective.

It is critical to the Vision, Mission and Goals of the Museum of Jazz and Art that the doors it opens to the public be located IN OAKLAND, as laid out in its founding strategic documents. The use of this funding allows the organization to continue to pursue that most critical part of its strategic initiatives.

3. Constraints

Constraints are boundary conditions that the funding must stay within. List and describe the constraints applicable to this project.

This formal Funding Charter Authorization approves release of TomKat Foundation funding for pre-development soft costs, including project strategy and plans, fundraising plans, and site acquisition discussions, as described above. This Funding Charter Authorization does not cover the entirety of *Attachment A: Use of Funds Model*, which includes the additional funding needs for the remaining balance of soft costs, all hard costs for construction, & any needed reserves.

Attachment A: Use of Funds Model is for the complete development of the Museum of Jazz and Art project. The MoJA board will be kept apprised of any additional FAB site and existing building information discovered throughout the duration of the project.

As previously noted, this Charter does not approve any funding for hard costs, interest reserves, or project contingency.

5. Project-Funding Requirements/ Deliverables

An example of a Project Management Milestone is the Project Plan Completed.

<i>Milestone / Deliverable</i>	<i>Estimated Date</i>	<i>Responsible Individual</i>
Complete ENA	By Year 2018	Development Team
Site Control	By Year 2019	Development Team
Project Plan	By Year 2018	Development Team

6. Costs / Budget

Identify the initial and/or total funding required by the project (if any) and/or committed to this project by the project sponsor. Additional funding may be requested / committed upon completion of the detailed project plan.

<i>Purpose</i>	<i>Acct Chart #</i>	<i>Amount</i>	<i>Responsible Source</i>
1.0 Pre Design Phase	1300, 6160, 6200, 7000	\$11 M	<i>See Attachment A: Use of Funds Model</i>
2.0 Programming Phase	6100	\$0.30 M	<i>See Attachment A: Use of Funds Model</i>
3.0 Design Phase	6160	\$6.5 M	<i>See Attachment A: Use of Funds Model</i>
4.0 Bidding/Pricing and Construction (Hard Cost)	-	-	Not Applicable
5.0 Permit Phase Discretionary Approvals	1300	\$0.90 M	<i>See Attachment A: Use of Funds Model</i>

7. Project Funding Risks

Funding Risks are statements of issues or problems that have the potential to arise but have not yet occurred. List and describe the initial risks for this project.

Site control is critical and at the discretion of the City of Oakland. It is possible they could deny our request.

The site and existing building have been studied, but unexpected issues could arise upon further review.

8. Approval Signatures

These signatories approve the Funding Charter Authorization as described above, and in accordance with any grant agreements entered into with the Funding Organization.

<i>Position/Title</i>	<i>Signature/Printed Name/Title</i>	<i>Date</i>
<i>MoJA President/CEO/ Founder/Project Manager</i>	David Allen 	5/11/18
<i>MoJA Vice President</i>	Joe Kennedy 	5/15/2018 12:05:34 PM PDT
<i>MoJA Treasurer</i>	Raymond Young 	5/14/2018 12:57:24 PM PDT

Attachment A: Use of Funds Model

Attachment D: TomKat Funding Letter & Charter Authorization

KU JK

Museum of Jazz & Art -Oakland		USE OF FUNDS CATEGORIES				
	LAND/ SITE CONTINGENCY	SOFT COST Contingency Included \$3,613,900	CONSTRUCTION (HARD COST) \$5,346,000 Included	BUILDING VALUE	ENDOWMENT	MUSEUM OPERATIONS/ FOUNDATION
COMPLIANCE						
SOURCE A						
A1 (Clear'g) (1)	\$9,000,000		9,000,000		0	9,000,000
A2 (NCCLF) (1)	\$7,500,000		7,500,000		0	7,500,000
A3 (NPEF) (1)	\$5,000,000		5,000,000		0	5,000,000
A4 (TBD-GDFI)	\$0				0	0
COMPLIANCE						
SOURCE C						
C1 (Corp /fnd)	\$15,000,000	1,740,000	3,111,551	3,361,050	6,287,399	(3) 15,000,000
C2 (Corp Spont)	\$12,000,000	3,116,399	2,464,450	2,006,550	3,912,601	12,000,000
C3 (Donors-Community)	\$3,000,000		3,000,000	0	0	3,000,000
LEVERAGE						
SOURCE B. (2)						
B1 (debt inst)	\$15,000,000	4,900,000	8,000,000	1,500,000	0	15,000,000
B2 (debt inst)	\$7,000,000	2,900,000	3,500,000	0	0	7,000,000
B3 (private Inv)	\$7,500,000	425,000	5,729,999	0	0	7,500,000
B4 (Corp/Privt)	\$20,000,000	5,000,000	13,200,000	0	1,800,000	20,000,000
B5 (Equity)	\$1,000,000	500,000	500,000		0	1,000,000
sum	102,000,000	19,501,400	61,006,000	\$6,867,600	\$12,000,000	102,000,000
Accum. Sum	2,625,000	22,126,400	83,132,400	\$90,000,000	\$102,000,000	(3), (5)
NOTES:						
(1) Assume-(NMTC) New Market Tax Credits or debt Instruments; legal & NMTC Consultant to assist in defining these restrictions & Use of Funds						
(2) Assume debt service estimate = (Source B-Principal Reduction) = \$44.5 MM						
Feasibility Study debt service was based on \$41.6MM with an NOI estimated between 6% to 8%						
(3) Endowment portion of \$12,000,000 used for on-going operational cost						
(4) Project Cost/Value at Transfer to Non Profit based upon a 5% Cap Rate for Special Use Structures; NOI for Value do not include Jazz Hall of Fame Revenue (Use for Conservative Analysis)						
(5) The Endowment Return on Investment Demand to Pay 50% annual Debt Service, requires around 16% Return on Investment						
(6) B3 & B5 Funds Scheduled Pay Back around 10 years @ 10-12% (Paid by portion of NOI and Building Value)						
Mola Use of Funds						
Hard Cost	\$61,006,000	60%	\$102,000,000			
Soft Cost	\$19,501,400	19%				
Site/Land Cost	\$2,625,000	3%				
Building Value	\$6,867,600	7%				
Endowment	\$12,000,000	12%				



May 25, 2013\8

Mr. David Allen
President and CEO
Museum of Jazz and Art
Oakland, CA 94612

Re: Oakland Museum of Jazz and Art

Mr. Allen:

Congratulations on your team's successful efforts to date in developing the vision of the Museum of Jazz and Art here in Oakland. Oakland has a rich Jazz & Blues history dating back to the 1920's, and upon its completion the Museum will make a positive and lasting impact on our community.

I have been provided with a preliminary funding model that calls for a structure that includes debt mortgage financing. As a community bank headquartered here in Oakland we are excited by the opportunities this project provides for our City and our institution.

While our analysis so far has been preliminary in nature, Community Bank of the Bay is very interested in participating in the mortgage financing component for the Museum. At this time, and subject to final underwriting and due-diligence, we anticipate participating at the \$5 million level.

As your project advances I will ask that you work directly with our Chief Lending Officer (a serious jazz fan himself!) to ascertain the appropriate amount and structure of any credit commitments that may ultimately be made available.

We appreciate the opportunity to assist you with this exciting project and look forward to a time when Oakland is home to the ultimate Museum of Jazz and Art. Please do not hesitate to contact me directly with any questions or comments at 925-367-6835.

Sincerely,

Community Bank of the Bay

A handwritten signature in blue ink, appearing to read "William Keller", is written over the typed name.

William Keller
President & CEO

Attachment F: Form of Exclusive Negotiation Agreement

EXCLUSIVE NEGOTIATION AGREEMENT (1310 Oak Street – Fire Alarm Building)

This Exclusive Negotiation Agreement (1310 Oak Street – Fire Alarm Building) (the “**ENA**” or “**Agreement**”), is made and entered into as of _____, 2020 (the “**Effective Date**”), by and between the City of Oakland, a municipal corporation (“**City**”), and Museum of Jazz & Art, a California nonprofit public benefit corporation (“**Developer**”). City and Developer shall be referred to herein sometimes as the “**Parties**” and each individually as a “**Party**.”

RECITALS

This ENA is entered into upon the following facts, understandings, and intentions of the Parties:

A. The City owns certain real property located across the street from Lake Merritt, commonly known as 1310 Oak Street, located in the City of Oakland, California, as more particularly described on Exhibit A, attached hereto, and depicted on the site map, attached hereto as Exhibit B and incorporated herein by this reference (the “**Property**”).

B. The Property consists of an approximately 0.75-acre lot that contains the single-story Fire Alarm Building constructed in 1911 as a Beaux Arts derivative, which is approximately 4,500 square feet in gross building area and is a key junction point for fiber-optic cables for City and County of Alameda (the “**County**”) communication networks, which are routed through the building.

C. The Fire Alarm Building has been identified as eligible for the National Register of Historic Places and is a contributor to Oakland’s historic Lake Merritt District and the City intends to preserve the historic building on the site.

D. The Property includes a surface parking lot with forty-five (45) spaces, of which ten (10) spaces are leased, pursuant to a long-term lease (the “**Lake Chalet Lease**”), to the Lake Chalet Restaurant for exclusive use for overflow parking during evenings (after 6:00 p.m. Monday through Friday) and all day on weekends and City holidays. Twenty (20) spaces are reserved for the Oakland Public Library, fourteen (14) spaces are reserved for Oakland Public Works, and one (1) space is set aside for the County District Attorney. All as shown on Exhibit E-2 to the Lake Chalet Lease attached hereto as Exhibit C.

E. The City designated the 14th Street corridor on or within four blocks of 14th Street from Oak Street to Frontage Road as the “Black Arts Movement and Business District” to highlight, celebrate, preserve and support the contributions of Oakland’s Black artists and business owners and the corridor as a place central both historically and currently to Oakland’s Black artists and Black owned businesses (Oakland City Council Resolution No. 85958 C.M.S.).

F. The Lake Merritt Station Area Plan (December 2014) describes the Plan Vision (page 3-8) as “The Fire Alarm Building site (located between Oak Street, 13th Street, and Lakeside Drive), could be reused as a community amenity and/or commercial

Attachment F: Form of Exclusive Negotiation Agreement

use open to the public, with some public open space that preserves views to Lake Merritt and creates a clear connection to the Lake and its trails.” and also describes “Land Use Policies for the 14th Street Corridor District” (page 4-30) including “as a center for educational, public service, and cultural uses [...] Complement existing government and institutional uses – including the Oakland Museum of California, Kaiser Auditorium, County Courthouse, Main Public Library – with new residential uses and by promoting active ground floor commercial uses in new development [...] Contribute to the entertainment, educational and cultural activity hub [...] Promote the reuse of the Fire Alarm Building site (located between Oak Street, 13th Street, and Lakeside Drive) as a public amenity.”

G. Belonging in Oakland: A Cultural Development Plan (Spring 2018) describes its guiding vision as “Equity is the driving force. Culture is the frame. Belonging is the goal.” and defines a new cultural equity vision as including “An understanding that the health of cultural life is inextricably tied to the existence and quality of cultural spaces (spaces intended for production, enactment, and/or sharing of culture, whether non-profit, for-profit, or something in between), neighborhood places (places people find to exercise their cultural expression and build identity), and the civic cultural commons (public areas and structures where people gather, connect, celebrate, learn, and build community).”

H. On July 19, 2019, Developer submitted an unsolicited proposal to the City to ground lease the Property for development of a museum for preserving jazz history and connecting cultures, including related parking and other improvements and uses (collectively, the “**Project**”) on the Property.

I. Pursuant to Resolution No. 87903 C.M.S. the City issued noticing and took all other actions consistent with the Surplus Land Act for development of the Property and no other responsive proposals were received.

J. Resolution No. 87903 C.M.S. authorized the City Administrator to commence negotiations with Developer if no other proposals pursuant to the Surplus Land Act notice of offer.

K. The purposes of this ENA are to (1) define the adaptive reuse of the Fire Alarm Building and entitlement of the Project, (2) provide a framework for the negotiation of the terms of a lease disposition and development agreement (the “**LDDA**”) for the lease of the Property and the development of the Project, and (3) establish timeframes for, and to set forth the process by which, the Parties shall negotiate and execute the LDDA and the Transaction Documents (as defined in Section 1(a) below).

L. In furtherance of the foregoing, City and Developer wish to enter into this ENA to allow the City and the Developer to enter into a period of environmental review and exclusive negotiations with respect to the LDDA, with each Party understanding that this ENA does not constitute a binding commitment on the part of City to permit the development and/or leasing of the Project or Property, or of Developer to lease or develop the Property or Project.

Attachment F: Form of Exclusive Negotiation Agreement

M. This Agreement is entered into with the understanding that the final terms and conditions of the LDDA negotiated during the Term (as defined in Section 2(a)) of this ENA will be subject to approval by the City Council.

N. On _____, 2020, pursuant to Resolution No. _____ C.M.S., the City Council authorized the City to enter into this ENA.

NOW, THEREFORE, for and in consideration of the foregoing recitals, which are incorporated herein by reference, and the mutual promises contained herein, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties hereby agree as follows:

1. NEGOTIATIONS.

a. Agreement to Negotiate. Subject to the terms and conditions of this ENA, the Parties, acknowledging that time is of the essence and agree to negotiate diligently and in good faith with each other to enter into a final disposition agreement in the form of an LDDA, including any necessary associated agreements leading to the leasing of the Property and development of the Project (collectively, the LDDA and such other agreements shall be referred to as the “**Transaction Documents**”). City grants Developer an exclusive right to negotiate the Transaction Documents (the “**Exclusive Right**”) on the terms set forth herein and agrees not to solicit or consider, during the Term, any other proposals or negotiate with any other developers with respect to the subject of the negotiations set forth herein without the prior written consent of Developer, to be granted or withheld by Developer in its reasonable discretion.

b. No City Commitment. Developer acknowledges and agrees that under this ENA, City is not committing itself or agreeing to enter into the Transaction Documents or undertake (i) any exchange or transfer of real property, (ii) any disposition or leasing of any real property interests to Developer, (iii) approval of any land use entitlements, or (iv) any other acts or activities relating to the subsequent independent exercise of discretion by City. This ENA does not constitute the disposition of property or exercise of control by City over property, and Developer acknowledges and agrees it is proceeding at its own risk and expense.

c. Environmental Review. Nothing in this ENA shall be construed to commit City to any definite course of action with respect to any Project subject to review under the California Environmental Quality Act (“**CEQA**”). Any project that results from the exchange, transfer, disposition of property, grant of land use entitlements or other discretionary actions considered by the City under this ENA shall be subject to environmental review under CEQA at the “earliest feasible time” prior to “approval” consistent with CEQA Guidelines Sections 15004 and 15352. Furthermore, City will not decide whether to enter into the Transaction Documents for use of the Property before complying with CEQA. In order to comply with CEQA and give the public the opportunity to be aware of the environmental consequences of the Project, the City retains the absolute discretion to (i) approve or not approve the transaction and the Project as may be necessary to comply with CEQA; (ii) select other alternatives to avoid significant

Attachment F: Form of Exclusive Negotiation Agreement

environmental impacts; (iii) balance the benefits of the Project against any significant environmental impacts prior to taking final action, if such significant impacts cannot otherwise be avoided; and/or (iv) determine not to proceed with approval of the Project.

2. TERM, TERMINATION AND EXTENSION.

a. Term. The term of this ENA (the “**Term**”) commenced on the Effective Date and will expire on the earlier to occur of (i) the mutual execution of the Transaction Documents approved by City Council, or (ii) on the date that is eighteen (18) calendar months from the Effective Date, unless earlier terminated pursuant to Section 2(b), or extended pursuant to Section 2(c).

b. Early Termination. This ENA may terminate, prior to the expiration of the Term, upon the occurrence of any of the following events:

i. Upon notice from Developer that it desires to cease negotiations, which shall not be deemed a Developer Event of Default (as defined in Section 13(a)); provided, however, that City shall not be required to return the Negotiation Payment (as defined in Section 3) and Exclusive Negotiating Payment (as defined in Section 4), and the provisions of this ENA that are intended to survive termination shall remain in effect;

ii. In the event of an impasse on material terms during the Term of this ENA, any Party may provide written notice to the other Party of the impasse. After written notice is given, the Parties agree to work diligently and in good faith to resolve the impasse. If the Parties are unable to resolve the impasse within sixty (60) days after written notice, any Party may, in its sole discretion, terminate this ENA upon written notice to the other Party and no Party shall have any further rights or obligations to the others under this ENA; provided, however, that City shall not be required to return the Negotiation Payment and the Exclusive Negotiating Payment, and the provisions of this ENA that are intended to survive termination shall remain in effect; or

iii. In the event of a Developer Event of Default pursuant to Section 13(a), City may terminate this ENA upon written notice to Developer and no Party shall have any further rights or obligations to the other under this ENA, except as provided herein; provided, however, that City shall not be required to return the Negotiation Payment and the Exclusive Negotiating Payment, and the provisions of this ENA that are intended to survive termination shall remain in effect.

c. Extension. The City Administrator or his or her designee, in his or her sole and absolute discretion, may extend the Term for one (1) additional period of up to six (6) calendar months (an “**Extension Term**”), upon sending written notice to Developer. The Extension Term shall become effective upon written acknowledgement of Developer; provided that if Developer fails to so acknowledge the Extension Term, such Extension Term shall commence three (3) business days from the date of the notice of the Extension Term from City to Developer.

3. **NEGOTIATION PAYMENT**. Developer shall pay to the City a negotiation payment (the “**Negotiation Payment**”) in the amount of Twenty-Five Thousand Dollars

Attachment F: Form of Exclusive Negotiation Agreement

(\$25,000) for purposes of negotiating this ENA, within three (3) days of the Effective Date. Developer shall, upon request of City, increase the amount of the Negotiation Payment associated with the extended Term.

4. EXCLUSIVE NEGOTIATING PAYMENT. Developer shall pay a fee to the City in the amount of Ten Thousand Dollars (\$10,000) (the “**Exclusive Negotiating Payment**”) in exchange for the exclusive negotiating rights granted to the Developer under this ENA. Subject to Section 14(b) below, the Exclusive Negotiating Payment shall be nonrefundable.

5. TERM SHEET. By the date set forth in the Performance Milestones (defined in Section 6(a)), the Parties will negotiate a term sheet representing the Parties’ consensus on the scope, financial terms and other terms and responsibilities related to the Project (the “**Term Sheet**”), which will be attached hereto as Exhibit D and incorporated herein. The Term Sheet shall serve as a non-binding guide in the negotiation of the Transaction Documents, although the Parties acknowledge that review of additional information and further discussion may lead to refinement and revision of the Term Sheet and changes in the Project. Such changes in the Project may result in changes to the Term Sheet if the Parties agree that the changes are necessary to support Project feasibility.

6. SCHEDULE OF PERFORMANCE.

a. Satisfaction of Performance Milestones. During the Term of this ENA, all Parties shall, in good faith, work expeditiously on, and diligently pursue to completion, each of the performance milestones described on Exhibit E (the “**Performance Milestones**”) in the manner and within the times set forth therein, in addition to any additional Performance Milestones mutually agreed upon in writing by the Parties. Developer and City shall consider in good faith during the Term of this ENA, any additional Performance Milestones proposed by the other Party that are feasible and do not materially increase the obligations, burdens or risks of a Party. Developer’s compliance with the Performance Milestones shall not alter or reduce its obligations to comply with any other provision of this ENA. Any additional Performance Milestones agreed on by the Parties shall be documented in writing and shall thereafter be deemed part of and incorporated into the Performance Milestones. Any failure of Developer to meet the Performance Milestones for reasons beyond its control, as determined by City, shall not be a Developer Event of Default (as defined below).

b. Waiver or Extension of Performance Milestones. At the discretion of the City Administrator or his/her designee, City may extend the date for the performance of any item set forth in the Performance Milestones required to be completed by Developer, from time to time, without the necessity for further City Council action, so long as the cumulative extensions of a particular Performance Milestone do not exceed a total aggregate of three (3) months from the originally established date. Any such extension shall not release any of Developer’s respective obligations nor constitute a waiver of City’s rights with respect to any other term, covenant or condition of this ENA. Notwithstanding the foregoing, the City Administrator or his/her designee shall have the discretion to waive

Attachment F: Form of Exclusive Negotiation Agreement

or extend the date for the performance of any item set forth in the Performance Milestones required to be completed by City, without the necessity for further City Council action.

7. RIGHT OF ENTRY.

a. Grant of Entry. Developer and Developer's officers, directors, members, agents, employees, affiliates, contractors and representatives (collectively, "**Developer Parties**") may enter upon the Property at any time during the Term to conduct investigations, tests, topographical surveys, appraisals, and studies, including geotechnical studies, soils tests and environmental site assessments, subject to the following terms:

i. Developer shall give at least three (3) business days' advanced written notice to City prior to entering the Property and shall take steps to minimize any disruption to the operations of any existing tenants or occupants of the Property. In response to Developer's written notice, City will advise Developer of any concerns regarding the entry promptly thereafter;

ii. Developer shall not conduct any invasive testing at the Property without the advance written consent by City of Developer's proposed sampling plan.

iii. Developer and the Developer Parties shall not alter the Property, except as reasonably necessary to conduct testing and other activities thereon, as authorized by this ENA. Developer agrees upon completion of any testing or other activity under this ENA to remove all debris, litter, equipment, and other materials placed on the Property by Developer and any Developer Parties, and to restore the Property to its original condition; and

iv. Notwithstanding any other provision of this ENA, this right of entry shall not relieve Developer from the obligation to obtain all applicable governmental approvals or permits necessary to perform such tests or conduct other activities on the Property.

b. Indemnification/Insurance. Without limitation, the indemnification provisions of Section 10 shall apply with respect to any entry by Developer or any of the Developer Parties onto the Property. Prior to any entry by Developer or any of the Developer Parties onto the Property, Developer shall provide to City satisfactory evidence of compliance with the insurance requirements required in Section 11 below.

c. Hazardous Materials.

i. In connection with any entry on the Property, neither Developer, nor any of the Developer Parties, shall cause or permit a Release of any Hazardous Substance (as defined in Section 7(c)(ii)) and shall not cause or permit the Incidental Migration (as defined in Section 7(c)(v)) of any Hazardous Substance, except for any Release or Incidental Migration that is directly caused by investigations conducted by

Attachment F: Form of Exclusive Negotiation Agreement

Developer or the Developer Parties pursuant to an approved written sampling plan by City and procurement of requisite permits by Developer.

ii. For purposes of this Section 8, the term “**Hazardous Substance**” shall have the meaning set forth in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended as of the date of this ENA, 42 U.S.C. §9601(14), and in addition shall include, without limitation, petroleum (including crude oil or any fraction thereof) and petroleum products, asbestos, asbestos-containing materials, polychlorinated biphenyls (“**PCBs**”), PCB-containing materials, all hazardous substances identified in the California Health & Safety Code §§25316 and 25281(d), all chemicals listed pursuant to the California Health & Safety Code §25249.8, and any substance deemed a hazardous substance, hazardous material, hazardous waste, or contaminant under Environmental Law.

iii. The term “**Environmental Law**” shall include all federal, state and local laws, regulations and ordinances governing hazardous waste, wastewater discharges, drinking water, air emissions, Hazardous Substance releases or reporting requirements, Hazardous Substance use or storage, and employee or community right-to-know requirements related to the work being performed under this ENA.

iv. For purposes of this Section, the term “**Release**” shall mean any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment (including the abandonment or discharging of barrels, containers, and other closed receptacles containing any Hazardous Substance).

v. For purposes of this Section, the term “**Incidental Migration**” shall mean any activation, migration, mobilization, movement, relocation, settlement, stirring, passive migration, passive movement, and/or other incidental transport of any Hazardous Substance existing at, on or under the Property.

d. City Rights/License Agreements. Notwithstanding the rights of Developer described in this ENA, including, without limitation, the right of Developer to access the Property during the Term, as described in this Section 7, City shall have the right throughout the Term to grant to other parties licenses to use all or a portion of the Property; provided that such licenses granted by City do not materially and negatively interfere with Developer’s activities permitted under this ENA. Such uses within the license area may include, but are not limited to, parking office trailers; placing debris boxes; parking heavy equipment or trucks; storing containers or other materials; construction laydown, and parking licensee’s employees contractors and agents.

8. NEGOTIATION OF TRANSACTION DOCUMENT.

a. Negotiation of Transaction Documents. The Parties shall diligently meet, negotiate in good faith and seek to complete the Transaction Documents in a form that is approved by legal counsel for each Party, incorporating specific terms, including, without

Attachment F: Form of Exclusive Negotiation Agreement

limitation, the responsibilities of each Party, the economic parameters, development standards and requirements and a performance schedule. Developer agrees and acknowledges that the obligation to “negotiate in good faith” is limited to the actions of City staff and that the foregoing obligation does not apply to, or bind, any other department or body of the City nor the City Council. The Transaction Documents are subject to City Council approval in compliance with applicable law. The Transaction Documents shall provide for mutually agreed-upon closing conditions, including, without limitation, title insurance, closing date, closing costs, receipt of final approval of all regulatory approvals required for the Project upon terms and conditions reasonably acceptable to all Parties, and the ability of Developer to obtain financing on commercially reasonable terms and conditions.

b. Basis for Negotiations. Developer will submit a description of the proposed Project to City in accordance with date specified in the Performance Milestones (the “**Project Description**”). The Project Description shall serve as the basis for negotiations under this ENA. By entering into this ENA, Developer represents and warrants that it shall work in good faith to advance the Project as shall be reflected in the Project Description and that any redesign of the Project shall be pursuant to agreement of City.

9. DEVELOPER’S OBLIGATIONS. During the Term of this ENA, Developer shall be responsible for meeting or causing to be met, all obligations related to the Project. Accordingly, Developer agrees that during the Term of this ENA:

a. Developer shall diligently, and in good faith, pursue obtaining all regulatory approvals for the Project;

b. As between Developer and City, Developer shall be solely responsible for all of its own costs and expenses, including, but not limited to, fees which it incurs for its attorneys, architects, engineers, consultants and other professionals, related to or arising from this ENA or the negotiation and execution of any of the Transaction Documents. Developer shall not have any claim against City for reimbursement for any such costs and expenses irrespective of whether any of the Transaction Documents are approved by City Council, or whether regulatory approvals are secured;

c. Developer shall bear all costs associated with or complying with all permit and processing fees related to the Project and any necessary regulatory approval granted to Developer;

d. Developer shall pay and discharge any fines or penalties imposed as a result of its failure to comply with the terms and conditions of any regulatory approval granted to Developer, and City shall have no liability, monetary or otherwise, for such fines and penalties;

e. Developer, in accordance with the ENA, shall undertake and complete its “due diligence” review of the Property and, if requested by City, provide to City (at no cost to City) copies of all non-privileged, non-proprietary reports regarding the Property, and shall prepare financial projections and complete concept plans and schematic design

Attachment F: Form of Exclusive Negotiation Agreement

plans for the Project, including, but not limited to, floor plans, elevations and renderings, as set forth in the Performance Milestones, copies of which shall be provided to the City (at no cost to City) without representation or warranty of any kind; and

f. Developer shall submit in a timely manner to any regulatory body having approval over the Project, all specifications, descriptive information, studies, reports, disclosures and any other information required to satisfy the application filing requirements of those agencies;

g. Developer shall diligently pursue completion of all Performance Milestones and additional Performance Milestones, if any, in a timely fashion;

h. Developer shall not pay, or agree to pay, any fee or commission, or any other thing of value that is contingent on the entering of this ENA, any other Transaction Document, or any other agreement with City related to the Project, to any City employee or official or to any contracting consultant hired by City for purposes of the Project. By entering into this ENA, Developer certifies to City that it has not paid, nor agreed to pay, any fee or commission, or any other thing of value contingent on the entering of this ENA, any other Transaction Document, or any other agreement with City related to the Project, to any City employee or official or to any contracting consultant hired by City for purposes of the Project;

i. During the Term of this ENA, Developer shall comply with, in all respects, the requirements of all applicable laws, including City ordinances, resolutions, regulations, plans, development controls, or other regulatory approvals in all aspects (planning, design, construction, management and occupancy) of developing the Property; and

j. Developer shall commit sufficient financial and personnel resources required to undertake and to fulfill its obligations under this ENA in an expeditious fashion.

10. INDEMNITY. Developer shall indemnify, defend (with counsel acceptable to City) and hold harmless City and its Council members, commissioners, officers, agents, contractors and employees (collectively, the “**Indemnatee Parties**” or individually, an “**Indemnified Party**”) from and against any and all losses, costs, claims, damages, liabilities and causes of action (including Attorneys’ Fees and Costs) arising out of or relating to (a) this ENA, including, without limitation, with respect to any challenge or any filing of any kind related to any regulatory approvals, or (b) in any way connected with the death of or injury to any person or damage to any property occurring on, at, under or adjacent to the Property and directly or indirectly caused by any acts done thereon or any acts or omissions of Developer or any of the Developer Parties; provided, however, that the foregoing indemnity shall not apply to any losses, costs, claims, damages, liabilities or causes of action (including Attorneys’ Fees and Costs) (i) due solely to the gross negligence or willful misconduct of the Indemnified Party seeking to be indemnified, or its respective agents, employees or contractors, or (ii) arising out of any default under this ENA of any Indemnified Party seeking to be indemnified, or its respective agents, employees or

Attachment F: Form of Exclusive Negotiation Agreement

contractors (collectively “**Indemnity Exclusions**”); but further provided that City may (if it elects in its sole discretion) require that Developer defend the Indemnitee Parties and/or any Indemnified Party against claims pursuant to this Section until it is established that such claims are Indemnity Exclusions. Developer’s obligations under this Section shall survive the termination of this ENA.

11. INSURANCE.

a. Requirement to Maintain Insurance. Without in any way limiting Developer’s indemnification obligations under this ENA, and subject to approval by City of the insurers, policy forms and all other coverage specifics, Developer shall obtain and maintain, or cause to be obtained and maintained at no cost to City, during the Term, the insurance requirements set forth on City’s Schedule Q, attached hereto as **Exhibit F**.

b. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions over Fifty Thousand Dollars (\$50,000) must be disclosed to City in writing and approved in advance, in writing by City. In the event such deductibles or self-insured retentions are in excess of Fifty Thousand Dollars (\$50,000), City shall have the right to elect that: (i) the insurer reduce such deductibles or self-insured retentions as such impacts City and its commissioners, Council members, officers, contractors, agents and employees to \$50,000 or less, or (ii) Developer procure a financial guarantee satisfactory to City assuring payment of any claims, losses, investigations, claim administration and defense costs and expenses.

c. Verification of Coverage. Developer must furnish City with, and City must approve in writing, certificates of insurance and additional endorsements effecting coverage required by this Section 11 prior to any commencement of work at or access to the Property by Developer. The certificates and endorsements for each insurance policy shall be signed by a person authorized by each insurer to bind coverage on its behalf. City reserves the right to request complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications at any time, which copies shall be delivered by Developer to City within five (5) business days of the date of such request.

12. **NON-ASSIGNMENT.** The Parties acknowledge and agree that City is entering into this ENA and granting the Exclusive Right to Developer on the basis of the particular experience, financial capacity, skills and capabilities of Developer. This ENA is personal to Developer and is non-assignable without the prior written consent of City, which may be withheld in City’s sole and absolute discretion.

13. DEFAULT.

a. Developers’ Event of Default. The occurrence of any of the following (each, a “**Developer Event of Default**”) shall constitute a default by Developer after City gives notice of the default specifying in reasonable detail the basis for the determination of the default and after the expiration of the applicable cure period, if any:

Attachment F: Form of Exclusive Negotiation Agreement

i. Failure to pay any sums due under this ENA within ten (10) days after written notice has been given by City.

ii. Failure to perform or abide by any provision of this ENA, including the Performance Milestones (other than any failures to meet the Performance Milestones that are outside the control of Developer, as determined by City), as such are waived or extended in accordance with Section 6, if such failure is not cured within thirty (30) days after notice has been given by City.

iii. Either (A) the filing by Developer of a petition to have itself adjudicated insolvent and unable to pay its debts as they mature or a petition for reorganization or arrangement under any bankruptcy or insolvency law, or a general assignment by Developer for the benefit of creditors; or (B) the filing by or against Developer of any action seeking reorganization, arrangement, liquidation, or other relief under any law relating to bankruptcy, insolvency, or reorganization or seeking appointment of a trustee, receiver, or liquidator of itself or any substantial part of the its assets.

iv. Any breach of any representation and warranty contained in Section 16(a), or any other provision of this ENA, unless Developer notifies City within ten (10) business days after it becomes aware of the breach and commences to cure such inaccuracy within thirty (30) days from the date on which it was obligated to notify City (or if such inaccuracy cannot reasonably be cured within such thirty (30) days, Developer shall not be in default of this ENA if it commences to cure such inaccuracy within the thirty (30) day period and diligently and in good faith continues to seek to cure such inaccuracy until completion).

v. The debarment or prohibition of Developer from doing business with any federal, state or local governmental agency, or any debarment or prohibition of any affiliate of Developer from doing business with any federal, state or local governmental agency to the extent such debarment or prohibition of the affiliate could affect the development of the Project as contemplated hereby.

vi. Failure to procure or maintain any of the insurance coverage required hereunder so that there is a lapse in required coverage.

If a Developer Event of Default cannot reasonably be cured within the applicable time period set forth in this Section 13(a), Developer shall not be in default of this ENA if it commences to cure the Developer Event of Default within the applicable time period and diligently and in good faith continues to seek to cure the Developer Event of Default until completion.

b. City's Event of Default.

i. Failure to perform or abide by any material provision of this ENA, if such failure is not cured within thirty (30) days after written notice (which shall specify

Attachment F: Form of Exclusive Negotiation Agreement

in reasonable detail the basis for the determination of the default) has been given to City, shall constitute an event of default by City (“**City Event of Default**”); provided, however, that if the City Event of Default cannot reasonably be cured within sixty (60) days, City shall not be in default of this ENA if City commences to cure the City Event of Default within the thirty (30) day period and diligently and in good faith continues to seek to cure the City Event of Default to completion.

ii. Any material breach of any City representation and warranty contained in Section 16(c), or any other provision of this ENA, unless City notifies Developer within ten (10) business days after it becomes aware of the material breach and commences to cure such inaccuracy within thirty (30) days from the date on which City was obligated to notify Developer (or if such inaccuracy cannot reasonably be cured within such thirty (30) days, City shall not be in default of this ENA if City commences to cure such inaccuracy within the thirty (30) day period and diligently and in good faith continues to seek to cure such inaccuracy to completion).

14. REMEDIES.

a. City’s Remedies. If a Developer Event of Default remains uncured or is deemed by City to be an incurable default, City shall have the option, as its sole and exclusive remedy at law or in equity, to (i) terminate this ENA upon written notice to Developer, sent in accordance with Section 22, and retain any payments, including, without limitation the Negotiation Payment and Exclusive Negotiating Payment, previously paid to City as Liquidated Damages in accordance with Section 15; (ii) seek to recover any funds due and owing to City under this ENA; and (iii) seek to enforce Developer’s indemnity obligations. City hereby waives any and all rights it may now or hereafter have to pursue any other remedy or recover any other damages on account of any breach or default by Developer, including, without limitation, loss of bargain, special, punitive, compensatory or consequential damages.

b. Developer’s Remedies. If a City Event of Default remains uncured or is deemed to be an incurable default, Developer shall have the right, as its sole and exclusive remedy at law or in equity, to terminate this ENA by delivery of written notice of termination to City, whereupon the Exclusive Negotiating Payment shall be returned by City to Developer, and all Parties shall each be released from all liability under this ENA (except for those provisions which recite that they survive termination). The foregoing are the exclusive rights and remedies available to Developer at law or in equity in the event of City’s default under or breach of this ENA. Developer hereby waives any and all rights it may now or hereafter have to pursue any other remedy or recover any other damages on account of any such breach or default by City, including, without limitation, loss of bargain, loss of profits, special, punitive, compensatory or consequential damages.

c. Developer’s Risk. Subject to the foregoing provisions of this Section 14, Developer acknowledges and agrees that it is proceeding at its own risk and expense

Attachment F: Form of Exclusive Negotiation Agreement

until such time as the Transaction Documents are approved by City Council and without any assurance that the Transaction Documents will be approved.

15. DAMAGES. The Parties have agreed that City's actual damages in the event of a failure to approve, execute and deliver the Transaction Documents due to a default by Developer would be extremely difficult or impracticable to determine. After negotiation, the Parties have agreed that, considering all the circumstances existing on the date of this ENA, the amount of any Negotiation Payment (including any increases), Exclusive Negotiating Payment, and other payments previously paid by Developer, as herein provided, is a reasonable estimate of the damages that City would incur in such event.

IF THE PARTIES DO NOT REACH AGREEMENT ON THE TRANSACTION DOCUMENTS OR THE TRANSACTION DOCUMENTS ARE NOT APPROVED, EXECUTED AND DELIVERED AS CONTEMPLATED HEREBY DUE TO ANY DEVELOPER DEFAULT UNDER THIS ENA, THEN CITY SHALL BE ENTITLED TO RETAIN ANY NEGOTIATION PAYMENT (INCLUDING ANY INCREASES), EXCLUSIVE NEGOTIATING PAYMENT, AND OTHER PAYMENTS PREVIOUSLY PAID BY DEVELOPER TO CITY AS LIQUIDATED DAMAGES. **NOTHING IN THIS ENA WILL, HOWEVER, BE DEEMED TO LIMIT DEVELOPER'S LIABILITY TO CITY FOR DAMAGES OR INJUNCTIVE RELIEF FOR BREACH OF DEVELOPER'S INDEMNITY OBLIGATIONS UNDER SECTION 10 OR FOR ANY DEVELOPER FRAUD AND/OR MISREPRESENTATION IN THE MAKING OF THIS ENA.** BY PLACING THEIR RESPECTIVE INITIALS BELOW, EACH PARTY SPECIFICALLY CONFIRMS THE ACCURACY OF THE STATEMENTS MADE ABOVE AND THE FACT THAT EACH PARTY WAS REPRESENTED BY COUNSEL WHO EXPLAINED, AT THE TIME THIS ENA WAS MADE, THE CONSEQUENCES OF THIS LIQUIDATED DAMAGES PROVISION. THIS PROVISION SURVIVES TERMINATION OF THIS ENA.

INITIALS: City _____ Developer _____

16. REPRESENTATIONS AND WARRANTIES.

a. Developer's Representations and Warranties. Developer represents, warrants and covenants, as of the Effective Date as follows:

i. Valid Existence; Good Standing; Joint Venture Relationships. Developer and any of its entities and affiliates, if applicable, are duly organized and validly existing entities under the laws of the states of their incorporation. Developer has all requisite power and authority to own its property and conduct its business as presently conducted. Developer has made all legally required filings and is in good standing in the jurisdiction of the State of California.

ii. Authority. Developer has all requisite power and authority to execute and deliver this ENA and the Transaction Documents and to carry out and perform all of the terms and covenants of this ENA.

Attachment F: Form of Exclusive Negotiation Agreement

iii. No Limitation on Ability to Perform. Neither Developer's articles of incorporation and bylaws nor any other agreement, document or law in any way prohibits, limits or otherwise affects the right or power of Developer to enter into and perform all of the terms and covenants of this ENA. Developer is not a party to or bound by any contract, agreement, indenture, trust agreement, note, obligation or other instrument, which could prohibit, limit or otherwise affect the same. No consent, authorization or approval of, or other action by, and no notice to or filing with, any governmental authority, regulatory body or any other person or entity is required for the due execution, delivery and performance by Developer of this ENA or any of the terms and covenants contained in this ENA. There are no pending or threatened suits or proceedings or undischarged judgments affecting Developer before any court, governmental agency, or arbitrator which might affect the enforceability of this ENA, the ability of Developer to perform the transactions contemplated by this ENA or the business, operations, assets or condition of Developer.

iv. Valid Execution. The execution and delivery of this ENA by Developer has been duly and validly authorized by all necessary action. This ENA will be a legal, valid and binding obligation of Developer, enforceable in accordance with its terms, subject to usual qualifications related to the effects of laws relating to bankruptcy, insolvency and the limitations imposed by equitable considerations.

v. Defaults. The execution, delivery and performance of this ENA do not and will not violate or result in a violation of, contravene or conflict with, or constitute a default under (A) any agreement, document or instrument to which either Developer may be bound or affected, (B) any law, statute, ordinance, regulation, or (C) the articles of incorporation or the bylaws of Developer.

vi. Meeting Financial Obligations; Material Adverse Change. Developer and the Developer Parties are meeting their current liabilities as they mature; no federal or state tax liens have been filed against them; and Developer and the Developer Parties are not in default or claimed default under any agreement for borrowed money. Developer shall during the Term of this ENA immediately notify City of any material, adverse change in the financial condition of itself or any Developer Parties, and such material, adverse change shall constitute a default under this ENA if the material, adverse change in the financial condition of itself or any Developer Parties materially affects Developer's ability to meet its obligations under this ENA

vii. Conflicts of Interest. Developer is familiar with (A) Section 87100 et seq. of the California Government Code, which provides that no member, official or employee of City, may have any personal interest, direct or indirect, in this ENA nor shall any member, official or employee participate in any decision relating to this ENA which affects her or his personal interest or the interests of any corporation, partnership or association in which she or he is interested directly or indirectly; (B) Oakland Municipal Code Section 2.25.050, which prohibits former City employees and consultants from working on behalf of another party on a matter in which they have participated personally and substantially for one (1) year after separation from City unless City of Oakland Public Ethics Commission consents to such scope of work; and (C) Section 1090 of the California Government Code, which provides that no member, official or employee of City shall be

Attachment F: Form of Exclusive Negotiation Agreement

financially interested in any contract made by them in their official capacity. As to the provisions referred to in clause (A), Developer does not know of any facts that constitute a violation of such provisions.

viii. Skill and Capacity. Developer has the skill, resources and financial capacity to acquire, manage and fully develop the Project consistent with the provisions of this ENA.

ix. Not Prohibited from Doing Business. Developer nor any of its officers, directors or affiliates have been debarred or otherwise prohibited from doing business with any local, state or federal governmental agency.

x. Business Licenses. Developer has obtained all licenses required to conduct its business in City and is not in default of any fees or taxes due to City.

xi. No Claims. Developer has no claim, and shall not make any claim, against City (other than potential claims arising from any default by City), or against the Project, or any present or future interest of City therein, directly or indirectly, by reason of: (A) the entry into this ENA or the termination of this ENA; (B) any statements, representations, acts or omissions made by City or any of its officers, Council members, commissioners, employees, contractors or agents with regard to the Project or any aspect of the negotiations under this ENA; and (C) City's exercise of discretion, decision and judgment set forth in this ENA.

b. Representation and Warranties of Developer's Signatory. If Developer signs as a corporation, limited liability company or a partnership, each of the persons executing this ENA on behalf of Developer does hereby represent and warrant that Developer is a duly authorized and existing entity, that it has and is qualified to do business in the State of California, that Developer has full right and authority to enter into this ENA, and that each and all of the persons signing on Developer's behalf is authorized to do so. Upon City's request, Developer shall provide City with evidence reasonably satisfactory to City confirming the foregoing representations and warranties.

c. City's Representations and Warranties. City represents, warrants and covenants as follows:

i. Authority. City has all requisite power and authority to execute and deliver this ENA and to carry out and perform all of the terms and covenants of this ENA.

ii. Valid Execution. The execution and delivery of this ENA by City have been duly and validly authorized by all necessary action. This ENA will be a legal, valid and binding obligation of City. City has provided to Developer a written resolution of City Council authorizing the execution of this ENA.

17. COOPERATION WITH CITY ON DESIGN. Developer agrees to work in good faith and collaboratively with City with respect to the design of the Project.

Attachment F: Form of Exclusive Negotiation Agreement

18. PRESS CONFERENCE; PRESS RELEASE. During the Term of this ENA, each Party hereby covenants and agrees that it shall not issue any press release or hold any press conference with respect to the Project or this ENA, except to the extent required by applicable law, without the prior written consent of the other Party, which approval shall not be unreasonably withheld, conditioned or delayed. If any Party is required by applicable law to issue such a release, such Party shall, at least five (5) business days prior to the issuance of the same, deliver a copy of the proposed release to the other Party for review.

19. CAMPAIGN CONTRIBUTION RESTRICTIONS. The Developer and its officers, directors and affiliates are aware of and shall abide by the prohibition on campaign contributions from contractors doing business with the City between commencement of contract negotiations and either (a) one-hundred eighty (180) days from completion of contract negotiations, or (b) termination of contract negotiations, as set forth in the Oakland Campaign Reform Act. The Developer acknowledges that it has executed and submitted to the City a Contractor Acknowledgement of City of Oakland Campaign Contribution Limits.

20. POLITICAL ACTIVITY. None of the funds, materials, property, or services contributed by the Developer under this ENA may be used for any political activity or the election or defeat of any candidate for public office.

21. BALLOT MEASURES. Developer expressly agrees and acknowledges that it shall not initiate, promote, support or pursue, or authorize any other person or Party to initiate, promote, support or pursue, any ballot measure relating to the Project without the prior consent of City by resolution.

22. NOTICES. Any notice given under this ENA shall be in writing and given by delivering the notice in person, by commercial courier, express delivery service, or by sending it by registered or certified mail, or express mail, return receipt requested, with postage prepaid, to the mailing address listed below or any other address, notice of which is given.

Any mailing address may be changed at any time by giving written notice of such change in the manner provided above at least ten (10) days prior to the effective date of the change. All notices under this ENA shall be deemed given, received, made or communicated on the date personal receipt actually occurs or, if mailed, on the delivery date or attempted delivery date shown on the return receipt. A Party may not give official or binding notice by facsimile or email. The effective time of a notice shall not be affected by the receipt of the original or mailed copy of the notice.

CITY: City of Oakland
One Frank H. Ogawa Plaza, 3rd Floor
Oakland, CA 94612
Attn: OAB Project Manager

Copy to: Office of the City Attorney

Attachment F: Form of Exclusive Negotiation Agreement

Frank Ogawa Plaza, 6th Floor
Oakland, CA 94612
Attn: Supervising City Attorney for Real Estate

DEVELOPER: Museum of Jazz & Art
6114 La Salle Avenue, #583
Oakland, CA 94611
Attn: David Allen

If mailed, the written notice shall be deemed received and shall be effective three (3) business days after deposit in the United States mail in the State of California or upon actual receipt by the addressee if earlier.

23. MISCELLANEOUS PROVISIONS.

a. Governing Law. This ENA shall be governed by and construed in accordance with the laws of the State of California, without regard to any choice of law principles. As part of the consideration for City entering into this ENA, Developer agrees that all actions or proceedings arising directly or indirectly under this ENA may, at the sole option of City, be litigated in courts located within the County of Alameda, State of California, and Developer expressly consents to the jurisdiction of any such local, state or federal court, and consents that any service of process in such action or proceeding may be made by personal service upon itself wherever it may then be located, or by certified or registered mail directed to the address set forth in this ENA.

b. Interpretation of ENA.

i. Exhibits. Whenever an “Exhibit” is referenced, it means an exhibit to this ENA unless otherwise specifically identified.

ii. Captions. Whenever a section, article or paragraph is referenced, it refers to this ENA unless otherwise specifically identified. The captions preceding the articles and sections of this ENA have been inserted for convenience of reference only. Such captions shall not define or limit the scope or intent of any provision of this ENA.

iii. Words of Inclusion. The use of the term “including,” “such as”, or words of similar import when following any general term, statement or matter shall not be construed to limit such term, statement or matter to the specific items or matters, whether or not language of non-limitation is used with reference thereto. Rather, such terms shall be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such statement, term or matter.

iv. References. Wherever reference is made to any provision, term or matter “in this ENA,” “herein” or “hereof” or words of similar import, the reference shall be deemed to refer to any and all provisions of this ENA reasonably related thereto in the context of such reference, unless such reference refers solely to a specific numbered or lettered, section or paragraph of this ENA or any specific subdivision thereof.

Attachment F: Form of Exclusive Negotiation Agreement

v. Recitals. In the event of any conflict or inconsistency between the recitals and any of the remaining provisions of this ENA, the remaining provisions of this ENA shall prevail.

vi. No Presumption Against Drafter. This ENA has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with herein. In addition, each Party has been represented by experienced and knowledgeable legal counsel. Accordingly, any rule of law (including California Civil Code Section 1654) or legal decision that would require interpretation of any ambiguities in this ENA against the Party that has drafted it is not applicable and is waived. The provisions of this ENA shall be construed as a whole according to their common meaning and not strictly for or against any Party in order to achieve the objectives and purposes of the Parties. The provisions of this ENA shall be interpreted in a reasonable manner to effect the purposes of the Parties and this ENA.

c. Entire ENA; Conflict. This EN A contains all of the representations and the entire agreement between the Parties with respect to the subject matter of this ENA. Any prior correspondence, memoranda, agreements, warranties, or written or oral representations relating to such subject matter are superseded in total by this ENA. No prior drafts of this ENA or changes from those drafts to the executed version of this ENA shall be introduced as evidence in any litigation or other dispute resolution proceeding by any Party or other person, and no court or other body should consider those drafts in interpreting this ENA.

d. Non-Liability. No Council member, commissioner, official, agent or employee of City will be personally liable to Developer, or any successor in interest (if and to the extent permitted under this ENA), in an event of default by City or for any amount that may become due to Developer or successors or on any obligations under the terms of this ENA. No director, officer, agent or employee of Developer will be personally liable to City in an event of default by Developer or for any amount that may become due to City or on any obligations under the terms of this ENA.

e. Amendments. No amendment of this ENA or any part thereof shall be valid unless it is in writing and signed by a person or persons having authority to do so, on behalf of all Parties.

f. Severability.

i. If any provision of this ENA, or its application to any person or circumstance, is held invalid by a court of competent jurisdiction, the invalidity or inapplicability of such provision shall not affect any other provision of this ENA or the application of such provision to any other person or circumstance, and the remaining portions of this ENA shall continue in full force and effect, unless enforcement of this ENA as so modified by and in response to such invalidation would be unreasonable or grossly

Attachment F: Form of Exclusive Negotiation Agreement

inequitable under all of the circumstances or would frustrate the fundamental purposes of this ENA.

ii. Without limiting the foregoing Section 23(f)(i), in the event that any applicable federal or state law prevents or precludes compliance with any material term of this ENA, the Parties shall promptly modify, amend or suspend this ENA, or any portion of this ENA, to the extent necessary to comply with such provisions in a manner which preserves to the greatest extent possible the benefits to each of the Parties to this ENA before such conflict with federal or state law.

(A) However, if such amendment, modification or suspension would deprive any of the Parties of the substantial benefits derived from this ENA or make performance unreasonably difficult or expensive, then the affected Party may terminate this ENA upon written notice to the other Party.

(B) In the event of such termination, none of the Parties shall have any further rights or obligations under this ENA, except as otherwise provided herein.

g. Singular, Plural, Gender. Whenever required by the context, the singular shall include the plural and vice versa, and the masculine gender shall include the feminine or neuter genders, and vice versa.

h. Approvals and Consents.

i. Unless this ENA otherwise expressly provides or unless applicable law requires, all approvals, consents or determinations to be made by or on behalf of (A) City under this ENA shall be made by the City Administrator or his or her designee, and (B) Developer under this ENA shall be made by the _____ or such other employee or agent of Developer as it may designate to act as Developer's representative for a particular matter.

ii. Unless otherwise herein provided, whenever approval, consent or satisfaction is required of a Party pursuant to this ENA, it shall not be unreasonably withheld, conditioned or delayed. The reasons for disapproval shall be stated in reasonable detail in writing.

iii. Approval by any of the Parties to or of any act or request by the other in accordance with this Section 23(h) shall not be deemed to waive or render unnecessary approval to or of any similar or subsequent acts or requests.

i. Waiver.

i. No failure by any Party to insist upon the strict performance of any obligation of the other Party under this ENA or to exercise any right, power or remedy arising out of a breach thereof, irrespective of the length of time for which such failure continues, and no acceptance of any full or partial payment during the continuance of any

Attachment F: Form of Exclusive Negotiation Agreement

such breach shall constitute a waiver of such breach or of such Party's rights to demand strict compliance with such term, covenant or condition.

ii. Any Party's consent to, or approval of, any act by another Party requiring the consenting Party's consent or approval shall not be deemed to waive or render unnecessary the consenting Party's consent to or approval of any subsequent act by the other Party.

iii. Any waiver by any Party of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this ENA.

j. Time for Performance.

i. Expiration. All performance dates, including cure dates, expire at 5:00 p.m., Pacific Time, on the performance or cure date.

ii. Weekends and Holidays. A performance date which falls on a Saturday, Sunday, or national, state or City holiday is deemed extended to the next working day.

iii. Days for Performance. All periods for performance specified in this ENA in terms of days shall be calendar days, and not business days, unless otherwise expressly provided in this ENA.

iv. Time of the Essence. Time is of the essence with respect to each provision of this ENA, except that each Performance Milestone set forth in the attached Schedule of Performance is advisory, as further described in Section 6 above.

k. Successors and Assigns. This ENA shall inure to the benefit of, and bind, the respective successors and assigns of City and Developer, subject to the limitations on assignment by Developer set forth in Section 12. This ENA is for the exclusive benefit of the Parties hereto and not for the benefit of any other person and shall not be deemed to have conferred any rights, express or implied, upon any other person.

l. Force Majeure. Whenever performance is required of a Party hereunder, that Party shall use all due diligence and take all necessary measures in good faith to perform, but if completion of performance is delayed by reasons of floods, earthquakes or other acts of nature, war, civil commotion, riots, strikes, picketing, or other labor disputes, damage to work in progress by casualty, any administrative, judicial, or referenda challenges or proceedings, or by other cause without fault and beyond the reasonable control of the Party, then the specified time for performance shall be extended by the amount of the delay actually so caused; provided, however, that the foregoing shall not impact or extend any obligation by Developer to meet a monetary duty under this ENA.

Attachment F: Form of Exclusive Negotiation Agreement

m. Broker. Developer represents and warrant that no person or selling agency has been employed or retained to solicit or secure this Agreement or the transactions contemplated hereunder, upon an agreement or understanding for a commission, percentage, brokerage or contingent fee. Developer shall defend and hold the City harmless from all damages resulting from any claims that may be asserted against the City by any broker, finder or other person with whom Developer has or purportedly has dealt. The provisions of this Section 23(m) shall survive any termination of this Agreement.

n. Attorneys' Fees and Costs.

i. If any action arising out of a dispute relating to the meaning or interpretation of any provision of this ENA or the performance of a Party of its obligations under this ENA, the Party determined to be in default or the Party not prevailing in such dispute, as the case may be, shall pay any and all costs and expenses incurred by the other Party or Parties on account of such default or in enforcing or establishing its rights under this ENA, including, without limitation, court costs and reasonable Attorneys' Fees and Costs (as defined below).

ii. Any such Attorneys' Fees and Costs incurred by any Party in enforcing a judgment in its favor under this ENA shall be recoverable separately from, and in addition to, any other amount included in such judgment, and such Attorneys' Fees and Costs obligation is intended to be severable from the other provisions of this ENA and to survive and not be merged into any such judgment.

iii. For purposes of this ENA, the reasonable fees of attorneys shall be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the subject matter area of the law for which services were rendered who practice in the City of Oakland, California, in law firms with approximately the same number of attorneys as employed by the City Attorney's Office.

iv. **"Attorneys' Fees and Costs"** means any and all reasonable attorneys' fees, costs, expenses and disbursements, including, but not limited to, expert witness fees and costs, travel time and associated costs, transcript preparation fees and costs, document copying, attachment preparation, courier, postage, facsimile, long-distance and communications expenses, court costs and the costs and fees associated with any other legal, administrative or alternative dispute resolution proceeding, fees and costs associated with execution upon any judgment or order, and costs on appeal.

o. Survival. Notwithstanding anything to the contrary in this ENA, the indemnification obligations and those other obligations that specifically survive and that arise and were not satisfied before termination shall survive any termination of this ENA. In addition, the representations and warranties in Section 16 shall survive any termination of this ENA for a period of one (1) year.

p. Rights Reserved. If negotiations with Developer under this ENA are unsuccessful and do not lead to approval of the Transaction Documents within the Term of

Attachment F: Form of Exclusive Negotiation Agreement

this ENA, City reserves and shall have the right, after the expiration or termination of this ENA, to negotiate with another developer for the long-term development of the Project or to undertake other efforts, including, but not limited to, issuing a request for proposals.

q. Relationship of the Parties. The subject of this ENA is a private development with none of the Parties acting as the agent of the other in any respect. None of the provisions in this ENA shall be deemed to render City a partner in Developer's business or a joint venture partner or member in any joint enterprise with Developer.

r. Cooperation. In connection with this ENA, the Parties shall reasonably cooperate with one another to achieve the objectives and purposes of this ENA. In so doing, the Parties shall each refrain from doing anything that would render its performance under this ENA impossible and shall each use commercially reasonable efforts to do everything that this ENA contemplates each Party will do to accomplish the objectives and purposes of this ENA.

s. Joint and Several. In the event that Developer is composed of more than one person or entity, the obligations imposed herein shall be joint and several.

t. Disclosure of Confidential Information. The Parties acknowledge that City is subject to the California Public Records Act (the "CPRA") and the City's "**Sunshine Ordinance**" (City of Oakland Municipal Code, Chapter 2.20). The Sunshine Ordinance generally provides that written documents retained by City are subject to disclosure upon the request of any third party except for specific limited exceptions provided for in the CPRA and Sunshine Ordinance. Notwithstanding the preceding, City acknowledges that certain financial and other proprietary information provided by Developer may be protected from disclosure pursuant to applicable law, including, but not limited to, California Government Code Section 6254.15 of the CPRA.

u. Counterparts. This ENA may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

[Remainder of Page Intentionally Blank

Signatures Appear on Following Pages]

Attachment F: Form of Exclusive Negotiation Agreement

IN WITNESS WHEREOF, the Parties have executed this Exclusive Negotiation Agreement as of the Effective Date hereof.

CITY:

City of Oakland,
a municipal corporation

By: _____
Name: _____
Title: _____

Approved as to form and legality:

By: _____
Name: _____
Title: _____

*[Remainder of Page Intentionally Blank
Additional Signatures Appear on Following Page]*

Attachment F: Form of Exclusive Negotiation Agreement

DEVELOPER:

Museum of Jazz & Art,
a California nonprofit public benefit corporation

By: _____
Name: _____
Title: _____

Exhibit A

Legal Description of the Property

[Attached]

Exhibit B

Depiction of Property

[Attached]

Attachment F: Form of Exclusive Negotiation Agreement

Exhibit C

Exhibit E-2 to Lake Chalet Lease

[Attached]

Attachment F: Form of Exclusive Negotiation Agreement

Exhibit D

Term Sheet

[To be added]

Exhibit E

Performance Milestones

[To be added]

Exhibit F

City Insurance Requirements

Schedule Q

INSURANCE REQUIREMENTS

(Revised 04/18/17)

a. General Liability, Automobile, Workers' Compensation and Professional Liability

Developer shall procure, prior to the Effective Date, and keep in force for the Term of this Agreement, at Developer's own cost and expense, the following policies of insurance or certificates or binders as necessary to represent that coverage as specified below is in place with companies doing business in California and acceptable to the City. If requested, Developer shall provide the City with copies of all insurance policies. The insurance shall at a minimum include:

- i. **Commercial General Liability insurance** shall cover bodily injury, property damage and personal injury liability for premises operations, independent contractors, products-completed operations personal & advertising injury and contractual liability. Coverage shall be at least as broad as Insurance Services Office Commercial General Liability coverage (occurrence Form CG 00 01)

Limits of liability: Developer shall maintain commercial general liability (CGL) and, if necessary, commercial umbrella insurance with a limit of not less than \$2,000,000 each occurrence. If such CGL insurance contains a general aggregate limit, either the general aggregate limit shall apply separately to this Project or the general aggregate limit shall be twice the required occurrence limit.

- ii. **Automobile Liability Insurance.** Developer shall maintain automobile liability insurance for bodily injury and property damage liability with a limit of not less than \$1,000,000 each accident. Such insurance shall cover liability arising out of any auto (including owned, hired, and non-owned autos). Coverage shall be at least as broad as Insurance Services Office Form Number CA 0001.
- iii. **Worker's Compensation insurance** as required by the laws of the State of California, with statutory limits, and statutory coverage may include Employers' Liability coverage, with limits not less than \$1,000,000 each accident, \$1,000,000 policy limit bodily injury by disease, and \$1,000,000 each employee bodily injury by disease. The Developer certifies that he/she is aware of the provisions of Section 3700 of the California Labor Code, which requires every employer to provide Workers' Compensation coverage,

Attachment F: Form of Exclusive Negotiation Agreement

or to undertake self-insurance in accordance with the provisions of that Code. The Developer shall comply with the provisions of Section 3700 of the California Labor Code before commencing performance of the work under this Agreement and thereafter as required by that code.

- iv. **Professional Liability/Errors and Omissions insurance**, appropriate to the Developer's profession with limits not less than \$1,000,000 each claim and \$2,000,000 aggregate. Developer's architects, engineers and surveyors shall also maintain professional liability insurance with similar limits, covering all professional negligent acts, errors and omissions. If the professional liability/errors and omissions insurance is written on a claims made form:
 - a. The retroactive date must be shown and must be before the date of the contract or the beginning of work.
 - b. Insurance must be maintained and evidence of insurance must be provided for at least three (3) years after completion of the contract work.
 - c. If coverage is cancelled or non-renewed and not replaced with another claims made policy form with a retroactive date prior to the contract effective date, the contractor must purchase extended period coverage for a minimum of three (3) years after completion of work.
- b. Terms Conditions and Endorsements

The aforementioned insurance shall be endorsed and have all the following conditions:

- i. Insured Status (Additional Insured): Developer shall provide insured status naming the City of Oakland, its Councilmembers, directors, officers, agents, employees and volunteers as insured's under the Commercial General Liability policy. General Liability coverage can be provided in the form of an endorsement to the Developer's insurance (at least as broad as ISO Form CG 20 10 (11/85) or both CG 20 10 and CG 20 37 forms, if later revisions used). If Developer submits the ACORD Insurance Certificate, the insured status endorsement must be set forth on an ISO form CG 20 10 (or equivalent). A STATEMENT OF ADDITIONAL INSURED STATUS ON THE ACORD INSURANCE CERTIFICATE FORM IS INSUFFICIENT AND WILL BE REJECTED AS PROOF OF MEETING THIS REQUIREMENT; and
- ii. Coverage afforded on behalf of the City, Councilmembers, directors, officers, agents, employees and volunteers shall be primary insurance. Any other insurance available to the City Councilmembers, directors,

Attachment F: Form of Exclusive Negotiation Agreement

officers, agents, employees and volunteers under any other policies shall be excess insurance (over the insurance required by this Agreement); and

- iii. Cancellation Notice: Each insurance policy required by this clause shall provide that coverage shall not be canceled, except with notice to the City of not less than thirty (30) days; and
- iv. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Developer, its employees, agents and subcontractors; and
- v. Certificate holder is to be the same person and address as indicated in the "Notices" section of this Agreement; and
- vi. Insurer shall carry insurance from admitted companies with an A.M. Best Rating of A VII, or better.

c. Replacement of Coverage

In the case of the breach of any of the insurance provisions of this Agreement, the City may, at the City's option, take out and maintain at the expense of Developer, such insurance in the name of Developer as is required pursuant to this Agreement, and may deduct the cost of taking out and maintaining such insurance from any sums which may be found or become due to Developer under this Agreement.

d. Insurance Interpretation

All endorsements, certificates, forms, coverage and limits of liability referred to herein shall have the meaning given such terms by the Insurance Services Office as of the date of this Agreement.

e. Proof of Insurance

Developer will be required to provide proof of all insurance required for the work prior to execution of the contract, including copies of Developer's insurance policies if and when requested. Failure to provide the insurance proof requested or failure to do so in a timely manner shall constitute ground for rescission of the contract award.

Attachment F: Form of Exclusive Negotiation Agreement

f. Subcontractors

Should the Developer subcontract out the work required under this agreement, it shall include all subcontractors as insured's under its policies or shall maintain separate certificates and endorsements for each subcontractor. As an alternative, the Developer may require all subcontractors to provide at their own expense evidence of all the required coverages listed in this Schedule. If this option is exercised, both the City of Oakland and the Developer shall be named as additional insured under the subcontractor's General Liability policy. All coverages for subcontractors shall be subject to all the requirements stated herein. The City reserves the right to perform an insurance audit during the course of the project to verify compliance with requirements.

g. Deductibles and Self-Insured Retentions

Any deductible or self-insured retention must be declared to and approved by the City. At the option of the City, either: the insurer shall reduce or eliminate such deductible or self-insured retentions as respects the City, its Councilmembers, directors, officers, agents, employees and volunteers; or the Developer shall provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claim administration and defense expenses.

h. Waiver of Subrogation

Developer waives all rights against the City of Oakland and its Councilmembers, officers, directors, employees and volunteers for recovery of damages to the extent these damages are covered by the forms of insurance coverage required above.

i. Evaluation of Adequacy of Coverage

The City of Oakland maintains the right to modify, delete, alter or change these requirements, with reasonable notice, upon not less than ninety (90) days prior written notice.

j. Higher Limits of Insurance

If the Developer maintains higher limits than the minimums shown above, the City shall be entitled to coverage for the higher limits maintained by the Developer.