

**CITY OF OAKLAND
SUPPLEMENTAL AGENDA REPORT**

OFFICE OF THE CITY ADMINISTRATOR
2006 JUL -9 11 6:15

TO: Office of the City Administrator/Agency Administrator
ATTN: Deborah Edgerly
FROM: Community and Economic Development Agency
DATE: July 18, 2006

RE: Supplemental Report And Revised Redevelopment Agency And City Resolutions Regarding The Fox Theater Including:

(1) Authorizing The Agency Administrator To Enter Into An Amended And Restated Disposition And Development Agreement (DDA) Between The Agency And Oakland Renaissance NMTC, Inc. (ORNMTIC), A Non-Profit Entity, And Authorizing The Assignment Of The DDA And Transfer Of The Fox Theater Property To The Fox Oakland Theater, Inc. (FOT), A Non-Profit Entity, By Sale For \$6,500,000 Or Long Term Lease Based On A Transfer Value Of \$6,500,000, And Development Of The Property As A Mixed Use Entertainment, Office And School Facility, Which DDA Will Include The Following Provisions:

(A) Authorizing Subsequent Transfer From FOT By Sale, Or Long Term Lease Of The Fox Theater Property To A For Profit Development Entity Created By FOT In Order To Take Advantage Of Tax Credits;

(B) Authorizing A Loan Not To Exceed \$32,000,000 To FOT To Partially Fund The Project To Be Comprised Of The Following: i) A Site Acquisition Loan Of \$6,500,000 To Finance The Purchase Of The Property From The Agency, ii) The \$3,000,000 Predevelopment Loan Previously Authorized In The DDA, iii) An Additional Predevelopment Loan Not To Exceed \$1,050,000 To Be Used Prior To Transfer Of The Fox Theater, And iv) An Additional Development Loan Not To Exceed \$21,450,000 To Be Used To Complete Construction Of The Project;

(C) Approving Essential Terms For The Oakland School For The Arts Lease For Use Of A Portion Of The Fox Commercial Space As A Charter School;

(D) Approving Essential Terms For The Another Planet Entertainment, LLC, Lease For Operation Of The Fox Theater;

(E) Authorizing The Developer To Waive Competitive Bidding And Request For Proposal Requirements For All Professional Services, Procurement And Construction Contracts;

(F) Authorizing A Loan Repayment Guarantee From The Agency To A Conventional Lender Not To Exceed \$6,500,000;

(G) Authorizing A Contingent Loan Not To Exceed \$3,530,000 From The Central District Fund Balance To Be Used For Costs Associated With Obtaining Historic And New Markets Tax Credits, Which Includes Annual Return And Buyout Costs To Tax Credit Investors; And

(H) Authorizing The Agency To Accept And Appropriate The Amount Of Any Recovery From Insurance Proceeds From Fire Damage At The Fox Theater, Which Amount Is Expected To Be In Excess Of \$1,500,000;

(2) Authorizing The City And Agency To Reimburse ORNMTC For All Costs Covered By Grants The City And Agency Receive For The Project Including (A) The California Cultural And Historical Endowment (Proposition 40) Grant In The Amount Of \$2,887,500; (B) The State Office Of Historic Preservation Grant In The Amount Of \$375,000; And (C) The Department Of Housing And Urban Development (HUD) Economic Development Initiative (EDI) Special Projects Grant In The Amount Of \$600,000;

(3) Ratification Of The Prior DDA Between The Agency And ORNMTC Entered Into On August 30, 2005; And

A Supplement Report On Construction Subcontracting And Local Hiring On The Fox Theater Project

SUMMARY

This supplemental report presents an update to the sources of funds identified for the Fox Theater Project, which is required as a result of an increase in Project construction costs, and includes revised Agency and City resolutions for the Project. The resolutions have been revised to include (1) authorization for a contingent loan not to exceed \$3,530,000 to be used for costs associated with obtaining Historic and New Markets Tax Credits (HTCs and NMTCs), which includes an annual return and buyout costs that must be paid to the tax credit investors in the Project, and (2) authorization for the Agency to accept and appropriate the amount of any recovery from insurance proceeds from fire damage at the Fox Theater, which is expected to be in excess of \$1,500,000.

This report also provides an update to the Project cost estimates and construction subcontracting and local hiring information received from the Project's June 15, 2006 bid, and four requests from the Community and Economic Development Committee:

1. Provide the draft and/or Amended and Restated DDA.
2. Discuss how the project will meet green building requirements;
3. Provide the terms for the \$32,000,000 Agency loan; and
4. Discuss regaining the property as a community asset after the tax credit investors' interest have been bought out.

Disposition and Development Agreement

Per CED Committee request, the Amended and Restated DDA has been sent to the Council but is too large to include in the Agenda package; copies are available in the City Clerk's Office. In addition, a weblink to the Disposition and Development Agreement between the Agency and ORNMTC, which was executed on August 30, 2005 – a complete copy of the original DDA is

also available at the City Clerk's Office and online (see link under Fox Theater on the Central District Redevelopment web page at <http://www.business2oakland.com/main/centraldistrict.htm>)

Green Building Requirements

At the Community and Economic Development Committee meeting of June 27, 2006 staff was requested to address green building requirements as they apply to this project. Because the Fox Project involves the construction of substantial new floor area it is possible to incorporate features for new construction that would attain LEED (Leadership in Energy and Environmental Design) points. It is much more difficult to attain LEED points in the historic portion of the building because of the sometimes conflicting requirements with historic preservation standards. Since the project is located adjacent to a mass transportation station and reuses an existing building, it already has in place some the critical elements for an environmentally responsible project. Natural cooling of the historic portion of the wraparound building and low water landscaping will also contribute to the green requirements needed to obtain LEED certification. *It cannot be determined at this time if the building will be LEED certified because this occurs at the completion of construction.* However, DDA requires best efforts to attain LEED Certification within the approved project budget.

Staff will work closely with the Turner Construction and their sub-contractors, using the LEED Project Checklist to ensure that the materials used in the building, including indoor materials and equipment are environmentally responsible, such as using low VOC paint, recycled and local materials, etc..

Terms of the Agency Loan

The Agency loan of \$32,000,000 to the project is a 30 year loan at 8% interest secured by the property. The exact details of the loan would be coordinated with the requirements of the tax credit investors and lenders. When title to the property is transferred back to FOT from the tax credit investors at the end of the tax credit period, the Agency will then have the option to purchase back the Fox Theater for the higher of the fair market value, determined by the income approach with an eight percent (8%) discount rate, or the outstanding loan balance of principal and accrued interest. This repurchase provision is structured to meet federal tax code requirements for New Markets and Historic Tax Credits. This would occur approximately 7 years after completion of construction. This reversionary ownership provision is also incorporated into the DDA.

Tax Credit Period and Public Control of the Fox

To generate equity from the Historic and New Markets Tax Credits, ownership of the Fox Theater must be transferred to for-profit investors, usually a bank or other financial institution. After the tax credit period expires (approximately seven years after completion) the title of the Fox will be transferred back to the Agency, City, or another designee. The terms of the Agency loan and DDA will include this option, ensuring that ownership of the property will return to the public as soon as tax law allows.

FISCAL IMPACT

As per the June 27, 2006 staff report prepared for CED Committee, the \$25,500,000 Agency loan has not changed, although these same funds will be used to leverage a greater amount of tax credits. Based on the increase in project costs, from \$47,862,500 to \$57,244,500, discussed in detail in the Key Findings section below, the Project is eligible to receive \$14,500,000 in HTC's and NMTC's for the construction of the Project. This is \$4,200,000 greater than the \$10,300,000 in HTC's and NMTC's previously stated in the June 27 staff report.

Contingent Loan

There are costs associated with receiving tax credits: an annual return to the tax credit investors and a buy out of the investors at the end of the tax credit benefit period. Originally, the Agency would have paid for the tax credit costs by setting aside a portion of the tax credit allocation and paying for the construction costs with the remainder of that allocation. However, because Project costs have increased, the Agency is recommending utilizing a greater tax credit allocation sufficient to cover much of the increase in Project construction costs, and providing a contingent loan not to exceed \$3,530,000 to cover the costs associated with receiving the tax credits, to be appropriated from the Central District Operations Fund balance (9510). Specifically, these tax credit costs include: (1) a 2% annual return that the tax credit equity investors require over the seven year investment period, which is equal to \$319,000 per year or \$2,230,000; and (2) a buyout equal to 15% of the total HTC allocation at year 7, and a buyout equal to 1% of the total NMTC allocation at year 7, the sum of which is equal to approximately \$1,300,000. The Agency will loan Fox Oakland Theater, Inc. (FOT), a newly-created non-profit entity that will succeed Oakland Renaissance NMTC, Inc. (ORNMTC), any funds necessary to meet the investor return and buyout that are in excess of the net operating income from the Project.

Insurance Proceeds

In addition, the Agency must accept and appropriate an amount expected to be in excess of \$1,500,000 for recovery of insurance proceeds from fire damage incurred at the Fox Theater in November 2004. These proceeds will be accepted and appropriated into the 1986 Bond Fund (9504), Capital Improvement Project Economic Development Organization (94800). The amount of this insurance claim has not been finalized yet through settlement with the insurer or litigation. The Agency will appropriate \$1,500,000 from Central District Operating Fund (9510) fund balance to the project until the insurance proceeds become available. When the insurance proceeds are received, they will be used to reimburse the Central District Operating Fund.

KEY FINDINGS

Update of Sources and Uses of Funds and Project Costs

The CED Committee staff report dated June 27, 2006 was prepared prior to the June 15, 2006 deadline for receipt of all bids for the Fox Theater Project from Turner Construction (Turner), the consultant and general contractor for the Project. Turner's 50% construction cost estimate

presented in the initial staff report was \$42,190,000 for hard costs and contingency; the bid received on June 15th estimated these costs to be approximately \$56,250,000. Staff subsequently worked with Turner Construction to reduce these costs through bid negotiation, value engineering and scope changes in the amount of \$4,880,000; in addition, \$3,682,000 in tenant improvements for the new OSA building was removed from the scope (OSA would need to complete a capital fund raising effort before signing a contract and proceeding with these improvements). All of the cost reductions totaled approximately \$8,400,000 resulting in Project construction costs of \$47,890,000, which includes both hard costs and a revised contingency. As it stands, Project costs are now \$5,500,000 above the 50% Construction Drawings (CD's) estimate. In order to fund this increase in Project cost, the Agency will need to (1) increase the amount of tax credit it will receive and (2) include the insurance proceeds from fire damage incurred at the Fox (an item not included in the original staff report because of its uncertainty).

Table 1 below provides an update to the Sources and Uses table shown in the initial report. Detailed explanation of the totals that have changed follow:

Table 1.
Sources and Uses of Funds (Updated)

| Sources | 6/27/06 Report | Updated Totals | Change |
|---|---------------------------|---------------------------|------------------|
| Agency Loan | 25,500,000 | 25,500,000 | |
| California Cultural & Historical Endowment Grant | 2,887,500 | 2,887,500 | |
| California Heritage Preservation Fund Grant | 375,000 | 375,000 | |
| Federal Charter School Facility Grant | 1,200,000 | 1,200,000 | |
| Historic Tax Credits | 5,000,000 | 6,000,000 | 1,000,000 |
| New Markets Tax Credits | 5,300,000 | 8,500,000 | 3,200,000 |
| Conventional loan paid by OSA revenue stream and secured by Agency | 6,500,000 | 6,500,000 | |
| Friends of the Oakland Fox Campaign | 500,000 | 500,000 | |
| HUD funding | 600,000 | 600,000 | |
| Potential Insurance proceeds (likely minimum) | | 1,500,000 | 1,500,000 |
| OSA capital | | 3,682,000 | 3,682,000 |
| Total Sources | 47,862,500 | 57,244,500 | 9,382,000 |
| | 6/27/06 Report | Updated Totals | |
| Uses | | | |
| Soft costs total | 5,672,500 | 5,672,500 | |
| Hard cost total | 38,340,000 | 45,190,000 | 6,850,000 |
| Contingency | 3,850,000 | 2,700,000 | (1,150,000) |
| OSA tenant improvements | | 3,682,000 | 3,682,000 |
| Total Uses | 47,862,500 | 57,244,500 | 9,382,000 |

Updated Explanation of Sources

- **Historic Tax Credits \$6,000,000:** An increase of \$1,000,000 is based on increased project costs and a higher tax credit basis.
- **New Markets Tax Credits \$8,500,000:** An increase of \$3,200,000 is based on increased project costs and a higher tax credit basis.
- **Insurance proceeds in excess of \$1,500,000:** The Agency expects to receive an amount in excess of \$1,500,000 for recovery of insurance proceeds from fire damage incurred at the Fox Theater.
- **OSA capital \$3,682,000:** The scope of the Project was reduced to eliminate \$3,682,000 in tenant improvements from the new 3-story addition to the wrap-around buildings. OSA must raise capital before proceeding with these tenant improvements.

Updated Explanation of Uses

- **Hard costs and contingency \$47,890,000:** The construction bids after value engineering and negotiations were \$5,800,000 over the cost estimates based on the 50% CDs. At the same time the contingency was reduced by \$1,350,000 as the construction costs became more certain.
- **OSA tenant improvements \$3,682,000:** The scope of the Project was reduced to eliminate \$3,682,000 in tenant improvements from the new 3-story addition to the wrap-around buildings. OSA must raise capital before proceeding with these tenant improvements.

Table 2 presents a summary of the Agency’s contribution to the Project to date:

**Table 2.
 Agency Contribution**

| Item | Amount |
|--|-------------------------------|
| Agency purchase | 3,000,000 ¹ |
| Agency capital | 3,500,000 ¹ |
| \$25,500,000 Agency loan | |
| Predevelopment | 3,000,000 ¹ |
| Construction | 22,500,000 |
| Anticipated Agency contribution | 32,000,000² |
| Contingent liabilities | |
| Guarantee for loan secured by CBS Outdoor revenue | 6,500,000 ³ |
| Tax credit annual return and buyout costs | 3,530,000 ³ |
| Agency contribution with maximum contingent liabilities | 42,030,000 |

¹ The Agency has already expended \$9,500,000 for purchase of the property, capital improvements, and predevelopment costs.

- ² The Agency contribution of \$32,000,000 is a loan to the project that is secured by the property. The loan could terminate or be assigned at the end of the tax benefit period (approximately 7 years) when title to the property is transferred back to the Agency, or its designee, per the DDA between the Agency and FOT.
- ³ The Agency would be responsible for these costs should the CBS Outdoor revenue and operating revenue for the Project be insufficient. The Agency does not anticipate paying any portion of the loan secured by CBS Outdoor revenue. It is difficult to estimate the revenue but the Agency anticipates paying only a small portion of the approximately \$320,000 in annual costs and the majority of the \$1,300,000 in buyout costs.

Subcontractor Bid Information

Between April and June 2006, 62 bid packages were sent out. A total of 832 subcontractors were contacted for the Project, including 384 LBEs, 123 SLBEs, 129 MBEs, and 11 WBEs. One hundred thirteen (113) bids were received.

Results from Outreach on Local Hiring

To increase local business participation and resident hiring on the Project, California Commercial Group (CCG) and Turner are making efforts to increase Local Business Enterprise (LBE) participation to fifty percent (50%) and Small Local Business Enterprise (SLBE) participation to twenty percent (20%) (SLBE participation is included in LBE participation). These goals significantly exceed the City of Oakland's current local contracting and hiring goals of 20% LBE and 10% SLBE. CCG also hired Mecca Management and Insurance Agency Inc. to open and operate a Fox Assistance Center (FAC) to assist S/LBE firms to prepare and bid on the Fox Project.

The local hiring information, as compiled from the bids received from the Project's June 15, 2006 bid, follows. It is important to note that the information presented only compiles results from the outreach that was conducted; actual local hiring results regarding the types of subs, who successfully secured bids, and the final bid amounts, cannot be presented because negotiations with subcontractors are still underway. Also included (for tracking purposes) are results from Minority and Women-owned Business Enterprises (MBEs and WBEs):

Workforce Development

| Subcontractors | Numbers contacted | Numbers that bid | % that bid |
|--------------------|-------------------|------------------|------------|
| LBEs | 384 | 43 | 11% |
| SLBEs ¹ | 123 | 30 | 24% |
| MBEs | 129 | 28 | 22% |
| WBEs | 11 | 5 | 45% |

¹ An SLBE subcontractor is also an LBE subcontractor.

Mecca Management (Utilization of Services)

- 70 Number of subs contacted by FAC
- 27 Number of subs that checked out plans and specs
- 10 Number of subs contacted by FAC and did not bid
- 24 Number of subs contacted by FAC who did submit bid

The pre-bid goal for this project is to attain 50% LBE and 20% SLBE for contracts for the project. A summary of the bids shows that out of the 113 bids received, 39% were from LBE firms and 27% from SLBE firms. Acceptance of only the low bidders will result in 43% LBE and 12% SLBE participation. This exceeds the City of Oakland’s S/LBE requirements by over 100%, but is lower than the 50% goal. The authorization to waive competitive bidding will allow ORNMTC/FOT to negotiate with the sub-contractors to maximize S/LBE participation

Bid Results

| | | | | |
|-----------------|-----|------|-------|------|
| Out of 113 bids | LBE | SLBE | MBE | WBE |
| Pre-bid Goals | 50% | 20% | | |
| Bids | 39% | 27% | 25.5% | 4.5% |

Bid Results- Potential Contract Holders (Estimated)

| | | | | |
|---------------------|-----|------|-----|-----|
| Out of 113 bids | LBE | SLBE | MBE | WBE |
| Prime Tier Low Bids | 43% | 12% | 25% | 7% |

RECOMMENDATION(S) AND RATIONALE

It is recommended that the Agency and the City authorize approval and execution of an Amendment to the DDA and related documents with ORNMTC for the sale and development of the Fox Theater as a mixed use entertainment, office and school development and approve and appropriate the needed financial assistance to ORNMTC for development of the Project. The proposed Project meets the following objectives of the Central District Redevelopment Project Five Year Implementation Plan:

- The Project will establish the Project Area as an important cultural and entertainment center.
- The Project will provide employment and other economic benefits to disadvantaged persons living within or near the Project Area.
- The Project will restore an historically significant structure in the Project Area.
- The Project will improve environmental design in the Project Area, including creation of a definite sense of place and emphatic focal points.

ACTIONS REQUESTED OF THE AGENCY/CITY

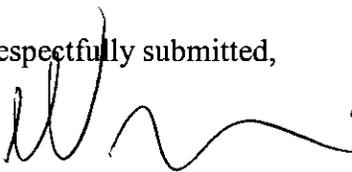
It is recommended that the Agency and City approve the resolutions regarding the Fox Theater Project, which have been revised to include the following items:

Authorizing a contingent loan not to exceed \$3,530,000 to be used for costs associated with obtaining historic and new markets tax credits, which includes annual return and buyout costs to tax credit investors; and

Authorizing the Agency to accept and appropriate the amount of any recovery from insurance proceeds from fire damage at the Fox Theater, and appropriate \$1,500,000 from Central District Operating Fund (9510) fund balance to the project until the insurance proceeds become available;

Authorizing the Agency to fund the Fox Theater Project.

Respectfully submitted,



Dan Vanderpriem, Director of Redevelopment,
Economic Development and Housing

Prepared by:
Jeffrey Chew
Project Manager

APPROVED AND FORWARDED TO
THE CITY COUNCIL AND
REDEVELOPMENT AGENCY



OFFICE OF THE CITY ADMINISTRATOR

Attachments: 1 List of Subcontractors

ATTACHMENT 1
List of Subcontractors

Turner

REHABILITATION OF THE FOX THEATER

| |
|------------------------------|
| BUSINESS REQUIREMENTS |
| # of MBE subs called |
| # of MBE subs that bid |
| # of LBE subs called |
| # of LBE subs that bid |
| # of SLBE subs called |
| # of SLBE subs that bid |
| # of WBE subs called |
| # of WBE subs that bid |

| Pack. # | 129 | 28 | 384 | 43 | 123 | 30 | 11 | 5 | |
|----------------------|------|----|-----|-----|-----|-----|----|---|---|
| GR | 1.0 | 4 | 2 | 14 | 2 | 2 | 2 | 0 | 0 |
| Alarcon Bohm | | X | | X | | X | | | |
| DC Construction | | X | | X | | X | | | |
| DEMO | 2.0 | 4 | 2 | 14 | 4 | 5 | 3 | 1 | 1 |
| Alarcon Bohm | | X | | X/X | | X/X | | | |
| Asbestos Mgmt. Group | | X | | X/X | | X | | X | |
| LVI Services | | | | | | | | | |
| Allied Environmental | | | | | | | | | |
| MICROPILES | 4.0 | 3 | 0 | 5 | 1 | 3 | 1 | 0 | 0 |
| Malcolm Drilling | | | | | | | | | |
| Schnabel | | | | | | | | | |
| DrillTech Drilling | | | | X | | X | | | |
| CONC.1 | 5.1 | 9 | 0 | 17 | 0 | 5 | 0 | 0 | 0 |
| William P. Young | | | | | | | | | |
| Joseph J. Albanese | | | | | | | | | |
| McClone Construction | | | | | | | | | |
| CONC.2 | 5.2 | 2 | 0 | 5 | 0 | 1 | 0 | 0 | 0 |
| William P. Young | | | | | | | | | |
| Joseph J. Albanese | | | | | | | | | |
| McClone Construction | | | | | | | | | |
| CONC.3 | 5.3 | 2 | 0 | 5 | 0 | 1 | 0 | 0 | 0 |
| William P. Young | | | | | | | | | |
| Joseph J. Albanese | | | | | | | | | |
| McClone Construction | | | | | | | | | |
| MISC IRON 1 | 6.1 | 4 | 3 | 9 | 2 | 4 | 2 | 1 | 0 |
| Gilmore Steel Inc. | | X | | X | | X | | | |
| Olson & Co. Steel | | | | | | | | | |
| Kwan Wo Ironworks | | X | | | | | | | |
| Creative Iron | | X | | X | | X | | | |
| William P. Young | | | | | | | | | |
| EARTHWORK | 3.0 | 5 | 1 | 10 | 1 | 2 | 0 | 0 | 0 |
| A & B Construction | | | | | | | | | |
| Peak Engineering | | X | | X | | | | | |
| SITE/UTILITY | 3.0 | 5 | 1 | 10 | 1 | 2 | 0 | 0 | 0 |
| A & B Construction | | | | | | | | | |
| Peak Engineering | | X | | X | | | | | |
| DEMO 2 | 2.1 | 2 | | 10 | 0 | 3 | 0 | 0 | 0 |
| ROUGH CARP. 1 | 8.1 | 2 | 1 | 3 | 0 | 1 | 0 | 0 | 0 |
| Pacific Construction | | X | | | | | | | |
| Timber Construction | | | | | | | | | |
| ROUGH CARP. 2 | 8.2 | 2 | 1 | 3 | 0 | 1 | 0 | 0 | 0 |
| Pacific Construction | | X | | | | | | | |
| Timber Construction | | | | | | | | | |
| MISC IRON 2 | 6.2 | 5 | 2 | 9 | 2 | 4 | 2 | 0 | 0 |
| Gilmore Steel Inc. | | X | | X | | X | | | |
| Olson & Co. Steel | | | | | | | | | |
| Kwan Wo Ironworks | | X | | | | | | | |
| Glazier Iron Works | | | | | | | | | |
| Eandi Metal Works | | | | X | | X | | | |
| MISC IRON 3 | 6.3 | 5 | 1 | 9 | 1 | 4 | 1 | 0 | 0 |
| Olson & Co. Steel | | | | | | | | | |
| Kwan Wo Ironworks | | X | | | | | | | |
| Glazier Iron Works | | | | | | | | | |
| Eandi Metal Works | | | | X | | X | | | |
| SHEET METAL | 14.0 | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 0 |
| N. V. Heathorn | | | | | | | | | |

BUSINESS REQUIREMENTS

of MBE subs called

of MBE subs that bid

of LBE subs called

of LBE subs that bid

of SLBE subs called

of SLBE subs that bid

of WBE subs called

of WBE subs that bid

| Pack. # | 129 | 28 | 384 | 43 | 123 | 30 | 11 | 5 |
|------------------------------|------|----|-----|----|-----|----|----|---|
| Valley Sheet Metal | | | | | | | | |
| CURTAINWALL/ GLAZING | 15.1 | 1 | 0 | 5 | 0 | 2 | 0 | 0 |
| Guarantee Glass | | | | | | | | |
| HISTORIC FAÇADE | 15.2 | 0 | 1 | 3 | 2 | 2 | 1 | 1 |
| DC Construction | | | X | | X | | X | |
| Giampolini | | | | | | | | |
| Guarantee Glass | | | | | | | | |
| Sullivan Thompson | | | | X | | X | | X |
| PLASTER 1 | 19.1 | 1 | 0 | 7 | 1 | 4 | 1 | 0 |
| Freas Plastering | | | | | | | | |
| Frederick Meiswinkle | | | | | | | | |
| James Island Plastering | | | | X | | X | | |
| PLASTER 2 | 19.2 | 1 | 0 | 7 | 0 | 4 | 0 | 0 |
| not put out to bid | | | | | | | | |
| SCAFFOLD | 21.0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Brand | | | | | | | | |
| Interstate | | | | | | | | |
| Patent | | | | | | | | |
| Safway | | | | | | | | |
| Misc. Specialties | | 0 | 0 | 2 | 2 | 0 | 0 | 0 |
| Global Steel Products | | | | | X | | | |
| ISEC | | | | | X | | | |
| Service Metal Products | | | | | | | | |
| TERRAZZO | 18.0 | 1 | 0 | 4 | 0 | 2 | 0 | 0 |
| All American Tile & Terrazzo | | | | | | | | |
| American Terrazzo Co. | | | | | | | | |
| DRYWALL 1 | 20.1 | 3 | 0 | 13 | 0 | 7 | 1 | 0 |
| Frederick Meiswinkel | | | | | | | | |
| Sheperd & Son Inc. | | | | | | | | |
| DRYWALL 2 | 20.2 | 3 | 0 | 13 | 0 | 7 | 1 | 0 |
| Frederick Meiswinkel | | | | | | | | |
| Sheperd & Son Inc. | | | | | | | | |

| |
|------------------------------|
| BUSINESS REQUIREMENTS |
| # of MBE subs called |
| # of MBE subs that bid |
| # of LBE subs called |
| # of LBE subs that bid |
| # of SLBE subs called |
| # of SLBE subs that bid |
| # of WBE subs called |
| # of WBE subs that bid |

| | Pack. # | 129 | 28 | 384 | 43 | 123 | 30 | 11 | 5 |
|------------------------|---------|-----|----|-----|----|-----|----|----|---|
| DRYWALL 3 | 20.3 | 3 | 0 | 13 | 0 | 7 | 1 | 0 | 0 |
| Frederick Meiswinkel | | | | | | | | | |
| Sheperd & Son Inc. | | | | | | | | | |
| ROOFING 1 | 11.1 | 2 | 1 | 15 | 2 | 3 | 1 | 2 | 1 |
| IMR Contractor Corp. | | | | | | | | | |
| JG Roofing | | | X | | X | | | | X |
| Westco Roofing | | | | | X | | X | | |
| ROOFING 2 | 11.2 | 2 | 1 | 15 | 2 | 3 | 1 | 2 | 1 |
| IMR Contractor Corp. | | | | | | | | | |
| JG Roofing | | | X | | X | | | | X |
| Westco Roofing | | | | | X | | X | | |
| ROOFING 3 | 11.3 | 2 | 1 | 15 | 2 | 3 | 1 | 2 | 1 |
| IMR Contractor Corp. | | | | | | | | | |
| JG Roofing | | | X | | X | | | | X |
| Westco Roofing | | | | | X | | X | | |
| D/F/H 1 | 22.1 | 3 | 0 | 4 | 0 | 3 | 0 | 0 | 0 |
| ISEC, Inc. | | | | | | | | | |
| D/F/H 2 | 22.2 | 3 | 0 | 4 | 0 | 3 | 0 | 0 | 0 |
| ISEC, Inc. | | | | | | | | | |
| FLOORS 1 | 24.1 | 1 | 0 | 7 | 1 | 3 | 0 | 0 | 0 |
| Anderson Carpet | | | | | X | | | | |
| FLOORS 2 | 24.2 | 1 | 0 | 7 | 1 | 3 | 0 | 0 | 0 |
| Anderson Carpet | | | | | X | | | | |
| FLOORS 3 | 24.3 | 1 | 0 | 7 | 1 | 3 | 0 | 0 | 0 |
| Anderson Carpet | | | | | X | | | | |
| RAISED FLOOR | 25.0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Pugliese Interiors | | | | | | | | | |
| ACOUSTIC CEILING | 26.0 | 4 | 0 | 4 | 0 | 0 | 0 | 0 | 0 |
| George Family | | | | | | | | | |
| CERAMIC TILE 1 | 27.1 | 2 | 2 | 6 | 1 | 2 | 1 | 0 | 0 |
| KZ Tile | | | X | | | | | | |
| Jones Tile & Marble | | | X | | X | | | | |
| Tileworks | | | | | | | | | |
| CERAMIC TILE 2 | 27.2 | 2 | 2 | 6 | 1 | 2 | 2 | 0 | 0 |
| KZ Tile | | | X | | | | | | |
| Jones Tile & Marble | | | X | | X | | | | |
| Tileworks | | | | | | | | | |
| CERAMIC TILE 3 | 27.3 | 2 | 2 | 6 | 1 | 2 | 2 | 0 | 0 |
| KZ Tile | | | X | | | | | | |
| Jones Tile & Marble | | | X | | X | | | | |
| Tileworks | | | | | | | | | |
| PAINTING 1 | 28.1 | 7 | 1 | 14 | 2 | 1 | 1 | 0 | 0 |
| George Masker | | | | | X | | | | |
| Jerry Thompson & Sons | | | | | | | | | |
| Masterpiece Painting | | | X | | X | | X | | |
| PAINTING 2 | 28.2 | 7 | 1 | 14 | 2 | 1 | 1 | 0 | 0 |
| George Masker | | | | | X | | | | |
| Jerry Thompson & Sons | | | | | | | | | |
| Masterpiece Painting | | | X | | X | | X | | |
| PAINTING 3 | 28.3 | 7 | 1 | 14 | 2 | 1 | 1 | 0 | 0 |
| George Masker | | | | | X | | | | |
| Jerry Thompson & Sons | | | | | | | | | |
| Masterpiece Painting | | | X | | X | | X | | |
| FINISH CARP. 1 | 29.1 | 1 | 0 | 8 | 0 | 3 | 0 | 1 | 0 |
| ISEC Inc. | | | | | | | | | |
| FINISH CARP. 2 | 29.2 | 1 | 0 | 8 | 0 | 3 | 0 | 1 | 0 |
| ISEC Inc. | | | | | | | | | |
| TOILET PART. / ACCESS. | 30.0 | 0 | 0 | 2 | 2 | 0 | 0 | 0 | 0 |
| Global Steel Products | | | | | X | | | | |
| Service Metal Products | | | | | X | | | | |

BUSINESS REQUIREMENTS

of MBE subs called

of MBE subs that bid

of LBE subs called

of LBE subs that bid

of SLBE subs called

of SLBE subs that bid

of WBE subs called

of WBE subs that bid

| | Pack. # | 129 | 28 | 384 | 43 | 123 | 30 | 11 | 5 |
|-----------------------|---------|------------|-----------|------------|-----------|------------|-----------|-----------|----------|
| ELEVATORS 1 | 31.1 | 1 | 0 | 2 | 1 | 0 | 1 | 0 | 0 |
| ThyssenKrupp Elevator | | | | | /X | | /X | | |
| Schindler | | | | | | | | | |
| ELEVATORS 2 | 31.2 | 1 | 0 | 2 | 1 | 0 | 1 | 0 | 0 |
| ThyssenKrupp Elevator | | | | | /X | | /X | | |
| Schindler | | | | | | | | | |
| HVAC 1 | 33.1 | 1 | 1 | 5 | 1 | 0 | 0 | 0 | 0 |
| Kent M Lim & Co. Inc. | | | X | | X | | | | |
| PLUMBING | 34.1 | 5 | 0 | 10 | 0 | 4 | 0 | 0 | 0 |
| FIRE PROTECTION | 35.1 | 0 | 0 | 2 | 0 | 1 | 0 | 0 | 0 |
| ELECTRICAL | 36.1 | 4 | 0 | 12 | 1 | 6 | 0 | 0 | 0 |
| Morrow Meadows | | | | | X | | | | |
| OTHER SERVICES | 37.0 | 1 | 0 | 3 | 0 | 0 | 0 | 0 | 0 |
| THEATER SEATING | 33.0 | 1 | 0 | 1 | 0 | 0 | 0 | 0 | 0 |
| TOTAL | | 129 | 28 | 384 | 43 | 123 | 30 | 11 | 5 |

X = Requirement was met by subcontractor
 /X = Requirement was met by a subtier contractor
 X/X = Requirement was met by both subcontractor and subtier contractor

OFFICE OF THE CITY CLERK
OAKLAND

2006 JUL -6 PM 6:15

APPROVED AS TO FORM AND LEGALITY

CITY ATTORNEY

REVISED

OAKLAND CITY COUNCIL

RESOLUTION No. _____ C.M.S.

A RESOLUTION AUTHORIZING:

(1) THE OAKLAND REDEVELOPMENT AGENCY TO DISPOSE OF THE FOX THEATER PROPERTY TO FOX OAKLAND THEATER, INC., A NON-PROFIT CORPORATION, PURSUANT TO A DISPOSITION AND DEVELOPMENT AGREEMENT (DDA) THAT WILL INITIALLY BE BETWEEN THE AGENCY AND OAKLAND RENAISSANCE NMTG, INC. (ORNMTG), A NON-PROFIT ENTITY, AND AUTHORIZING THE ASSIGNMENT OF THE DDA AND TRANSFER OF THE FOX THEATER PROPERTY TO THE FOX OAKLAND THEATER, INC. (FOT), A SEPARATE NON-PROFIT ENTITY, BY SALE FOR \$6,500,000 OR LONG TERM LEASE BASED ON A TRANSFER VALUE OF \$6,500,000, AND DEVELOPMENT OF THE PROPERTY AS A MIXED USE ENTERTAINMENT, OFFICE AND SCHOOL FACILITY, AND THE DDA WILL INCLUDE THE FOLLOWING PROVISIONS:

(a) AUTHORIZING SUBSEQUENT TRANSFER FROM FOT BY SALE, OR LONG TERM LEASE OF THE FOX THEATER PROPERTY TO A FOR PROFIT DEVELOPMENT ENTITY CREATED BY FOT IN ORDER TO TAKE ADVANTAGE OF TAX CREDITS;

(b) AUTHORIZING A LOAN NOT TO EXCEED \$32,000,000 TO FOT TO PARTIALLY FUND THE PROJECT TO BE COMPRISED OF THE FOLLOWING: i) A SITE ACQUISITION LOAN OF \$6,500,000 TO FINANCE THE PURCHASE OF THE PROPERTY FROM THE AGENCY, ii) THE \$3,000,000 PREDEVELOPMENT LOAN PREVIOUSLY AUTHORIZED IN THE DDA, iii) AN ADDITIONAL PREDEVELOPMENT LOAN NOT TO EXCEED \$1,050,000 TO BE USED PRIOR TO TRANSFER OF THE FOX THEATER, AND iv) AN ADDITIONAL DEVELOPMENT LOAN NOT TO EXCEED \$21,450,000 TO BE USED TO COMPLETE CONSTRUCTION OF THE PROJECT;

(c) APPROVING ESSENTIAL TERMS FOR THE OAKLAND SCHOOL OF THE ARTS LEASE FOR USE OF A PORTION OF THE FOX COMMERCIAL SPACE AS A CHARTER SCHOOL;

(d) APPROVING ESSENTIAL TERMS FOR THE ANOTHER PLANET ENTERTAINMENT, LLC LEASE FOR OPERATION OF THE FOX THEATER;

(e) AUTHORIZING THE DEVELOPER TO WAIVE COMPETITIVE BIDDING AND REQUEST FOR PROPOSAL REQUIREMENTS FOR ALL PROFESSIONAL SERVICES, PROCUREMENT AND CONSTRUCTION CONTRACTS;

(f) AUTHORIZING A LOAN REPAYMENT GUARANTEE FROM THE AGENCY TO A CONVENTIONAL LENDER NOT TO EXCEED \$6,500,000;

(g) AUTHORIZING A CONTINGENT LOAN NOT TO EXCEED \$3,530,000 TO BE USED FOR COSTS ASSOCIATED WITH OBTAINING HISTORIC AND NEW MARKETS TAX CREDITS SHOULD OPERATING REVENUES BE INSUFFICIENT, WHICH COSTS INCLUDE ANNUAL RETURN AND BUYOUT COSTS TO TAX CREDIT INVESTORS;

(h) AUTHORIZING THE AGENCY TO ACCEPT AND APPROPRIATE THE AMOUNT OF ANY RECOVERY FROM INSURANCE PROCEEDS FROM FIRE DAMAGE AT THE FOX THEATER, WHICH AMOUNT IS EXPECTED TO BE IN EXCESS OF \$1,500,000; AND

(i) PROVIDING THE AGENCY OR ITS DESIGNEE WITH THE OPTION TO PURCHASE THE FOX THEATER PROPERTY AFTER THE TAX CREDIT PERIOD HAS EXPIRED; AND

(2) THE CITY TO ACCEPT, APPROPRIATE AND REIMBURSE FOT OR SUCCESSOR FOR ALL COSTS COVERED BY THE \$600,000 DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT (HUD) ECONOMIC DEVELOPMENT INITIATIVE (EDI) SPECIAL PROJECTS GRANT FOR THE FOX THEATER RESTORATION.

WHEREAS, the California Community Redevelopment Law, Health and Safety Code Section 33430, authorizes a redevelopment agency within a survey (project) area or for purposes of redevelopment to sell or lease real property, Section 33432 requires that any sale or lease of real property by a redevelopment agency in a project area must be conditioned on redevelopment and use of the property in conformity with the redevelopment plan, and Section 33439 provides that a redevelopment agency must retain controls and establish restrictions or covenants running with the land for property sold or leased for private use as provided in the redevelopment plan; and

WHEREAS, the Central District Urban Renewal Plan adopted on June 12, 1969, as subsequently amended, as well as the Five-Year Implementation Plan for the Central District (1999-2004) (together, the "Central District Redevelopment Plan" or "Redevelopment Plan"), authorizes the Redevelopment Agency of the City of Oakland

("Agency") to sell or lease land in the Central District Redevelopment Project Area (the "Central District"); and

WHEREAS, the Redevelopment Plan authorizes the Agency to pursue redevelopment, including increased entertainment and retail in the Uptown Retail and Entertainment Area ("Uptown Activity Area"); and

WHEREAS, the Fox Theater, as shown generally on Exhibit A hereto, has sat vacant for over twenty-five years in the Uptown District of downtown Oakland and has been a blighting influence on the neighborhood; and

WHEREAS, a renovated and restored Fox Theater would remove a significant blight, save an important historical and cultural resource, spur other economic development, provide an educational facility, add an entertainment venue, and be a benefit to the Central District, Uptown Activity Area, and the surrounding neighborhood; and

WHEREAS, renovation and restoring the Fox Theater is not financially feasible without the Agency's assistance and there is no other reasonable means of providing the financing available to acquire, renovate, and restore the Fox Theater; and

WHEREAS, the Agency's funding of the Fox Theater Project will assist in the elimination of blight in the Central District and the Fox Theater Project is consistent with the Redevelopment Plan; and

WHEREAS, the Redevelopment Agency purchased the Fox Theater in 1996 with the intention of restoring and re-opening the theater and the attached wrap-around buildings and stimulating new investment opportunities in the Uptown District; and

WHEREAS, on July 15, 2005, the Agency authorized the Agency Administrator to enter into a Disposition and Development Agreement ("DDA") with Oakland Renaissance NMTC, Inc. ("ORNMTC") a California non-profit corporation which DDA provided a \$13,000,000 loan for the acquisition and renovation of the Fox Theater and permitted \$3,000,000 of the loan to be used for predevelopment purposes; and

WHEREAS, ORNMTC assumed the consultant contract with California Capital Group to prepare construction plans and drawings, locate financing, and obtain construction bids for the Fox Theater renovation; and

WHEREAS, because ORNMTC was originally organized for the purpose of applying for and using New Markets Tax Credits and other tax credit programs needed to renovate historic structures such as the Fox Theater and the Agency may wish ORNMTC to be awarded tax credits in the future, the Agency has determined that a non-profit corporation, Fox Oakland Theater, Inc., ("FOT" or "Developer") formed specially to develop the Fox Theater Project, should develop the Fox Theater rather than ORNMTC and authorizes the DDA and all financing provided for in the DDA to be transferred from

ORNMTC to FOT as soon as FOT is formed, but, in any event, before the Fox Theater property is transferred, and that ORNMTC continue predevelopment activities until FOT is ready to receive assignment of the DDA; and

WHEREAS, the Agency evaluated the costs of renovating the Fox Theater and determined that in order to complete the project a variety of financing sources are needed, including: state and federal grants, private fund raising, New Markets Tax Credits, Historic Tax Credits, and financing from the Agency; and

WHEREAS, the Agency determined that a loan to FOT in the amount of \$32,000,000 at six percent (6%) per annum interest with payments deferred for 30 years is needed to finance the Fox Theater renovation; and

WHEREAS, in order for the Project to take advantage of federal Historic and New Markets Tax Credits, FOT will need to syndicate the Project by forming a for profit entity and a partnership with a Community Development Entity to which the Project will be transferred or leased; and

WHEREAS, ORNMTC, using California Capital Group, as prime development consultant, has completed working drawings and plans, prepared cost estimates, located multiple funding sources, is negotiating leases with the Oakland School for the Arts ("OSA") and Another Planet Entertainment ("APE"), and developed a financial plan; and

WHEREAS, the financing for the Fox Theater Project includes a \$600,000 Department Of Housing And Urban Development (HUD) Economic Development Initiative (EDI) Special Projects Grant to the City for the Fox Theater Restoration; and

WHEREAS, the financing for the Fox Theater Project includes a commercial loan of \$6,500,000 whose payments will be primarily secured by a guaranteed income stream donation to OSA and ORNMTC from CBS Outdoor's (formerly Viacom Outdoor) income from a billboard on Port of Oakland property, but will likely require additional security from the Agency because of unlikely but possible interruptions in the income stream should the billboard lease be terminated by the Port or actions of the California Transportation Agency; and

WHEREAS, the Fox Theater Property may need to be transferred to Developer by either a long term lease or by transferring the fee depending on the best ownership vehicle for purposes of the various funding agencies and tax credit entities, but in either case, the transfer value will be \$6,500,000; and

WHEREAS, as a result of fire damage to the Fox Theater Property, the Agency has a claim with the Agency's property insurer to recover the loss caused by the fire, and the claim is pending and unresolved as of the date the report accompanying this resolution was issued, but which claim is expected to be in excess of \$1,500,000; and

WHEREAS, \$1,500,000 is available from Central District Operating Fund (9510) fund balance to finance the project until the insurance proceeds become available; and

WHEREAS, the financing for the Fox Theater Project includes a contingent loan of \$3,530,000 to FOT to be used to meet the annual return and buyout costs associated with obtaining Historic and New Markets Tax Credits to the extent such costs are not covered by revenue from the net operating income from the Project; and

WHEREAS, the City desires to ensure that the Fox Theater remains a community asset and not controlled on a for-profit basis and therefore the DDA will provide that the after the tax credit investors have been bought out after the tax credits have expired, the Agency will have the option of transferring Fox Theater Property to the Agency or its designee; and

WHEREAS, the Agency wishes to amend and restate the Disposition and Development Agreement ("DDA") previously entered into with ORNMTC on August 30, 2005 with the intent that the DDA be transferred to FOT or its affiliates, transferees or designees, including without limitation, for-profit entities created to take advantage of federal tax credits to develop the Fox Theater Project all as generally set forth in the agenda report for this item; and

WHEREAS, Agency Resolution 2005-0046 authorizing the initial DDA the Agency entered into with ORNMTC on August 30, 2005 required the Agency governing body to ratify the final terms of that DDA; and

WHEREAS, the DDA will set forth the terms and conditions of the Agency's transfer of the Fox Theater to FOT for the development of the Fox Theater Project; and

WHEREAS, a copy of the proposed DDA terms is on file with the Agency Secretary; and

WHEREAS, the DDA will condition the sale of the Property on the redevelopment and use of the Property in conformity with the Central District Redevelopment Plan, and such documents prohibit discrimination in any aspect of the Project as required under the Central District Redevelopment Plan and the California Community Redevelopment Law; and

WHEREAS, the Project uses are in conformity with the Central District Redevelopment Plan, the Project will assist in the elimination of blight in the Central District Redevelopment Area, and the Project will help meet the objectives of the Central District Redevelopment Plan; and

WHEREAS, the California Community Redevelopment Law (Health & Safety Code Section 33433) requires that before any property of a redevelopment agency that is acquired in whole or in part with tax increment moneys is sold or leased for development

pursuant to a redevelopment plan, the disposition must first be approved by the legislative body, i.e., the City Council, by resolution after public hearing; and

WHEREAS, as required by the California Community Redevelopment Law, the Agency has made available to the public for inspection, no later than the first date of publication of the notice for the hearing, a report that contained a copy of the DDA terms and a summary of the cost of the agreement to the Agency, the estimated fair market value of the Property at its highest and best use permitted under the Redevelopment Plan, and an explanation of why the sale of the Property and development of the Project will assist in the elimination of blight, with supporting facts and material; and

WHEREAS, a joint public hearing between the Agency and the City Council of the City of Oakland was held to hear public comments on the sale of the Property for the Project; and

WHEREAS, notice of the sale of the Property and the public hearing was given by publication at least once a week for not less than two weeks prior to the public hearing in a newspaper of general circulation in Alameda County; and

WHEREAS, the Agency has approved the disposition of the Property by resolution after the public hearing; and

WHEREAS, the City is considered a "Responsible Agency" under the California Environmental Quality Act (CEQA); and

WHEREAS, on July 19, 2005 the Agency adopted a Mitigated Negative Declaration for the Project; and

WHEREAS, the Agency hereby finds and determines on the basis of substantial evidence in the record that the Initial Study and Mitigated Negative Declaration fully analyzes the potential environmental effects of the project and incorporates mitigation measures to substantially lessen or avoid any potentially significant impacts in accordance with CEQA. None of the circumstances necessitating preparation of additional environmental review as specified in CEQA and the CEQA Guidelines, including without limitation Public Resources Code Section 21166 and CEQA Guidelines Section 15162, are present in that (1) there are no substantial changes proposed in the project or the circumstances under which the project is undertaken that would require major revisions of the Initial Study/Mitigated Negative Declaration due to the involvement of new environmental effects or a substantial increase in the severity of previously identified significant effects; and (2) there is no "new information of substantial importance" as described in CEQA Guidelines Section 15162(a)(3); now, therefore be it

RESOLVED: That the City of Oakland hereby finds and determines that the sale of the Property by the Agency to FOT for the Project furthers the purposes of the California Community Redevelopment Law, contributes to the elimination of blight in the Central

District Redevelopment Project Area, conforms to the Central District Redevelopment Plan, including its Implementation Plan, and furthers the goals and objectives of said Redevelopment Plan in that: (1) the Project will increase entertainment opportunities in the Central District; (2) the Project will provide necessary neighborhood-serving retail facilities lacking in the Central District; (3) the Project, once developed, will create permanent jobs for low and moderate income people, including jobs for area residents; (4) the Project will help create a stable 24-hour community which will enhance the viability of retail businesses in the area; (5) the Project will redevelop a key underutilized site in the Central District; (6) the Project will improve environmental design within the Central District; and (7) the Project, once developed, will enhance depreciated and stagnant property values in the surrounding areas, and will encourage efforts to alleviate economic and physical blight conditions in the area; and be it further

RESOLVED: That the City hereby approves the Agency's disposition of the Property to FOT, subject to and on the terms and conditions of the amended and restated DDA; and be it further

RESOLVED: That the City finds and determines that the consideration that the Agency will receive under the DDA equals or exceeds the reuse value of the Fox Theater taking into account the uses, covenants, conditions, and development costs required by the DDA; and be it further

RESOLVED: That the City finds that Fox Theater Project is of a benefit to the Central District and Uptown Activity Area, there are no other reasonable means of financing the Fox Theater Project except by using Agency funds, the Agency funds will assist in the removal of the blight created by the Fox Theater's present condition and the City therefore authorizes the use of Agency funds for the Fox Theater Project as a publicly-owned facility; and be it further

RESOLVED: That the City Administrator or her designee is hereby authorized to accept, appropriate and reimburse FOT or successor for all costs covered by the \$600,000 HUD-EDI Special Projects Grant for the Fox Theater Restoration in the HUD-EDI Grant Fund (2105); and be it further

RESOLVED: That the City Administrator or her designee is hereby authorized to negotiate and execute such documents as necessary or appropriate, in consultation with the City Attorney, to facilitate the Agency's sale and development of the Fox Theater for the Project in order to consummate the transaction under the DDA in accordance with this Resolution, or to otherwise effectuate the purpose and intent of this Resolution and its basic purpose; and be it further

RESOLVED: That the City has independently reviewed and considered this environmental determination, and the City finds and determines that this action complies with CEQA because this action on the part of the Agency does not necessitate preparation

of a subsequent or supplemental EIR Section 15162 (subsequent EIRs and negative declarations); and be it further

RESOLVED: That the City Administrator or her designee shall cause to be filed with the County of Alameda a Notice of Exemption for this action; and be it further

RESOLVED: That all documents related to this transaction shall be reviewed and approved by City Attorney prior to execution, and copies will be placed on file with the City Clerk; and be it further

RESOLVED: That the custodians and locations of the documents or other materials which constitute the record of proceedings upon which the City and Agency's decision is based are respectively: (a) the Community & Economic Development Agency, Projects Division, 250 Frank H. Ogawa Plaza, 5th Floor, Oakland CA; (b) the Community & Economic Development Agency, Planning Division, 250 Frank H. Ogawa Plaza, 3rd Floor, Oakland CA; and (c) the Office of the City Clerk, 1 Frank H. Ogawa Plaza, 1st Floor, Oakland, CA.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 2006

PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, BRUNNER, CHANG, KERNIGHAN, NADEL, QUAN, REID
AND PRESIDENT DE LA FUENTE,

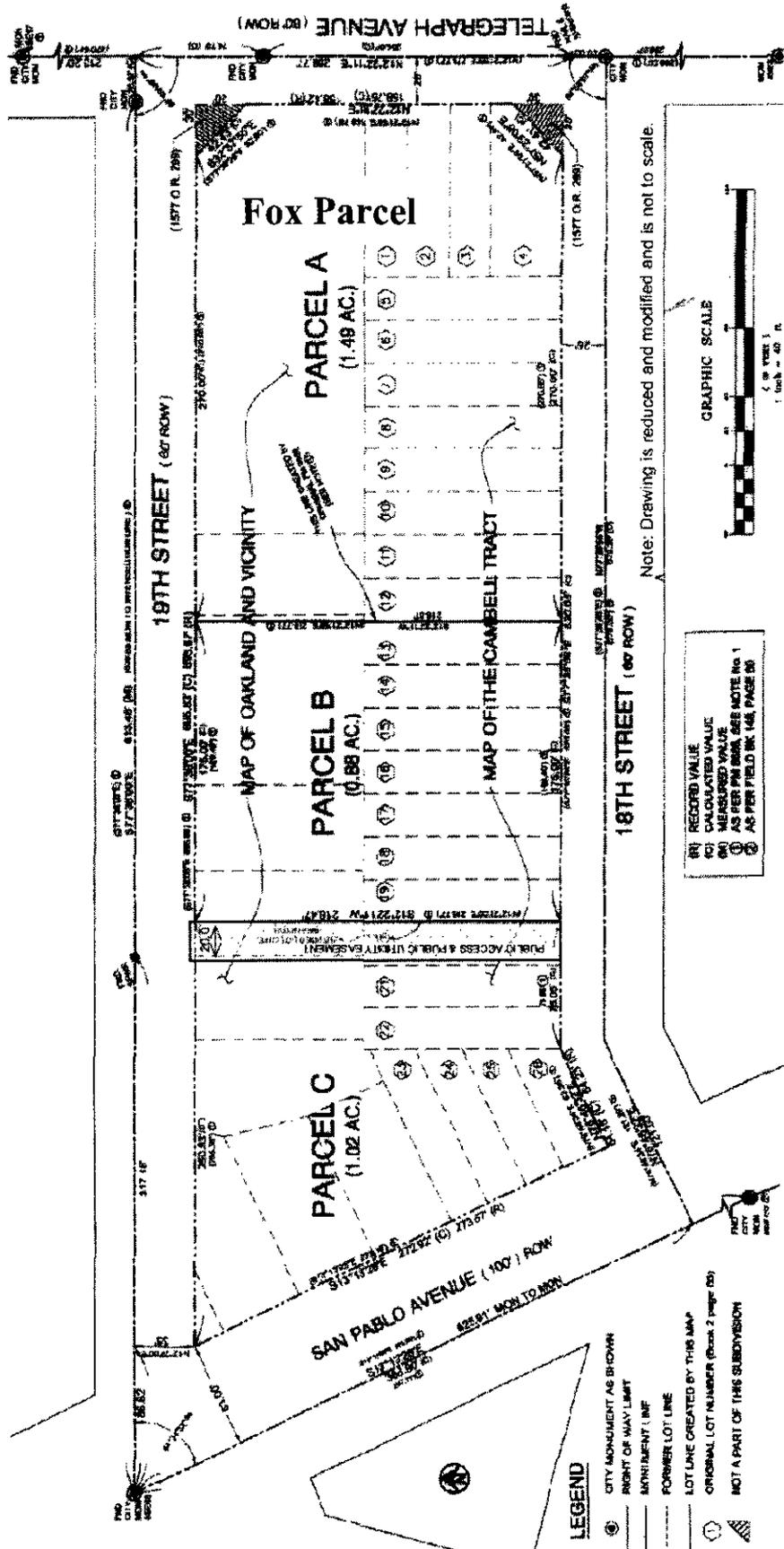
NOES-

ABSENT-

ABSTENTION-

ATTEST: _____
LATONDA SIMMONS
City Clerk and Clerk of the Council
of the City of Oakland

EXHIBIT A
PARCEL MAP



OFFICE OF THE CITY CLERK
CITY OF OAKLAND

2006 JUL -6 PM 6:16

APPROVED AS TO FORM AND LEGALITY

AGENCY COUNSEL

REVISED

REDEVELOPMENT AGENCY
OF THE CITY OF OAKLAND

RESOLUTION No. _____ C.M.S.

A RESOLUTION REGARDING THE FOX THEATER INCLUDING:

(1) AUTHORIZING THE AGENCY ADMINISTRATOR TO ENTER INTO AN AMENDED AND RESTATED DISPOSITION AND DEVELOPMENT AGREEMENT (DDA) BETWEEN THE AGENCY AND OAKLAND RENAISSANCE NMTC, INC. (ORNMTC), A NON-PROFIT ENTITY, AND AUTHORIZING THE ASSIGNMENT OF THE DDA AND TRANSFER OF THE FOX THEATER PROPERTY TO THE FOX OAKLAND THEATER, INC. (FOT), A NON-PROFIT ENTITY, BY SALE FOR \$6,500,000 OR LONG TERM LEASE BASED ON A TRANSFER VALUE OF \$6,500,000, AND DEVELOPMENT OF THE PROPERTY AS A MIXED USE ENTERTAINMENT, OFFICE AND SCHOOL FACILITY, WHICH DDA WILL INCLUDE THE FOLLOWING PROVISIONS:

(a) AUTHORIZING SUBSEQUENT TRANSFER FROM FOT BY SALE, OR LONG TERM LEASE OF THE FOX THEATER PROPERTY TO A FOR PROFIT DEVELOPMENT ENTITY CREATED BY FOT IN ORDER TO TAKE ADVANTAGE OF TAX CREDITS;

(b) AUTHORIZING A LOAN NOT TO EXCEED \$32,000,000 TO FOT TO PARTIALLY FUND THE PROJECT TO BE COMPRISED OF THE FOLLOWING: i) A SITE ACQUISITION LOAN OF \$6,500,000 TO FINANCE THE PURCHASE OF THE PROPERTY FROM THE AGENCY, ii) THE \$3,000,000 PREDEVELOPMENT LOAN PREVIOUSLY AUTHORIZED IN THE DDA, iii) AN ADDITIONAL PREDEVELOPMENT LOAN NOT TO EXCEED \$1,050,000 TO BE USED PRIOR TO TRANSFER OF THE FOX THEATER, AND iv) AN ADDITIONAL DEVELOPMENT LOAN NOT TO EXCEED \$21,450,000 TO BE USED TO COMPLETE CONSTRUCTION OF THE PROJECT;

(c) APPROVING ESSENTIAL TERMS FOR THE OAKLAND SCHOOL OF THE ARTS LEASE FOR USE OF A PORTION OF THE FOX COMMERCIAL SPACE AS A CHARTER SCHOOL;

(d) APPROVING ESSENTIAL TERMS FOR THE ANOTHER PLANET ENTERTAINMENT LEASE FOR OPERATION OF THE FOX THEATER;

(e) AUTHORIZING THE DEVELOPER TO WAIVE COMPETITIVE BIDDING AND REQUEST FOR PROPOSAL REQUIREMENTS FOR ALL PROFESSIONAL SERVICES, PROCUREMENT AND CONSTRUCTION CONTRACTS;

(f) AUTHORIZING A LOAN REPAYMENT GUARANTEE FROM THE AGENCY TO A CONVENTIONAL LENDER NOT TO EXCEED \$6,500,000;

(g) AUTHORIZING A CONTINGENT LOAN NOT TO EXCEED \$3,530,000 TO BE USED FOR COSTS ASSOCIATED WITH OBTAINING HISTORIC AND NEW MARKETS TAX CREDITS SHOULD OPERATING REVENUES BE INSUFFICIENT, WHICH COSTS INCLUDE ANNUAL RETURN AND BUYOUT COSTS TO TAX CREDIT INVESTORS;

(h) AUTHORIZING THE AGENCY TO ACCEPT AND APPROPRIATE THE AMOUNT OF ANY RECOVERY FROM INSURANCE PROCEEDS FROM FIRE DAMAGE AT THE FOX THEATER, WHICH AMOUNT IS EXPECTED TO BE IN EXCESS OF \$1,500,000; AND

(i) PROVIDING THE AGENCY OR ITS DESIGNEE WITH THE OPTION TO PURCHASE THE FOX THEATER PROPERTY AFTER THE TAX CREDIT PERIOD HAS EXPIRED;

(2) AUTHORIZING THE AGENCY TO REIMBURSE ORNMTC FOR ALL COSTS COVERED BY GRANTS THE AGENCY RECEIVES FOR THE PROJECT INCLUDING (A) THE CALIFORNIA CULTURAL AND HISTORICAL ENDOWMENT GRANT IN THE AMOUNT OF \$2,887,500; AND (B) THE STATE HISTORIC PRESERVATION OFFICE GRANT IN THE AMOUNT OF \$375,000; AND

(3) RATIFICATION OF THE PRIOR DDA BETWEEN THE AGENCY AND ORNMTC ENTERED INTO ON AUGUST 30, 2005

WHEREAS, the California Community Redevelopment Law, Health and Safety Code Section 33430, authorizes a redevelopment agency within a survey (project) area or for purposes of redevelopment to sell or lease real property, Section 33432 requires that any sale or lease of real property by a redevelopment agency in a project area must be conditioned on redevelopment and use of the property in conformity with the redevelopment plan, and Section 33439 provides that a redevelopment agency must retain controls and establish restrictions or covenants running with the land for property sold or leased for private use as provided in the redevelopment plan; and

WHEREAS, the Central District Urban Renewal Plan adopted on June 12, 1969, as subsequently amended, as well as the Five-Year Implementation Plan for the Central District (1999-2004) (together, the "Central District Redevelopment Plan" or "Redevelopment Plan"), authorizes the Redevelopment Agency to sell or lease land in the Central District Redevelopment Project Area (the "Central District"); and

WHEREAS, the Redevelopment Plan authorizes the Agency to pursue redevelopment, including increased entertainment and retail in the Uptown Retail and Entertainment Area ("Uptown Activity Area"); and

WHEREAS, the Fox Theater, as shown generally on Exhibit A hereto, has sat vacant for over twenty-five years in the Uptown District of downtown Oakland and has been a blighting influence on the neighborhood; and

WHEREAS, the Redevelopment Agency purchased the Fox Theater in 1996 with the intention of restoring and re-opening the theater and the attached wrap-around buildings and stimulating new investment opportunities in the Uptown District; and

WHEREAS, on July 15, 2005, the Agency authorized the Agency Administrator to enter into a Disposition and Development Agreement ("DDA") with Oakland Renaissance NMTC, Inc. ("ORNMTC") a California non-profit corporation which DDA provided a \$13,000,000 loan for the acquisition and renovation of the Fox Theater and permitted \$3,000,000 of the loan to be used for predevelopment purposes; and

WHEREAS, ORNMTC assumed the Agency's consultant contract with California Capital Group to prepare construction plans and drawings, locate financing, and obtain construction bids for the Fox Theater renovation; and

WHEREAS, because ORNMTC was originally organized for the purpose of applying for and using New Markets Tax Credits and other tax credit programs needed to renovate historic structures such as the Fox Theater and the Agency may wish ORNMTC to be awarded tax credits in the future, the Agency has determined that a non-profit corporation, Fox Oakland Theater, Inc., ("FOT" or "Developer") formed specially to develop the Fox Theater Project, should develop the Fox Theater rather than ORNMTC and authorizes the DDA and all financing provided for in the DDA to be transferred from ORNMTC to FOT as soon as FOT is formed, but, in any event, before the Fox Theater property is transferred, and that ORNMTC continue predevelopment activities until FOT is ready to receive assignment of the DDA; and

WHEREAS, the Agency evaluated the costs of renovating the Fox Theater and determined that in order to complete the project a variety of financing sources are needed, including: state and federal grants, private fund raising, New Markets Tax Credits, Historic Tax Credits, and financing from the Agency; and

WHEREAS, the Agency determined that a loan to FOT in the amount of \$32,000,000 at six percent per annum interest with payments deferred for 30 years is needed to finance the Fox Theater renovation; and

WHEREAS, in order for the Project to take advantage of federal Historic and New Markets Tax Credits, FOT will need to syndicate the Project by forming a for profit entity and a partnership with a Community Development Entity to which the Project will be transferred or leased; and

WHEREAS, in addition to the \$3,000,000 previously advanced to ORNMTC for predevelopment activities an additional \$1,050,000 is needed to complete predevelopment activities and will be advanced as part of the \$32,000,000 Agency loan for the Project; and

WHEREAS, ORNMTC, using California Capital Group as prime development consultant, has completed working drawings and plans, prepared cost estimates, located multiple funding sources, is negotiating leases with the Oakland School for the Arts ("OSA") and Another Planet Entertainment ("APE"), and developed a financial plan; and

WHEREAS, ORNMTC has negotiated the essential terms of the proposed leases between the Developer and OSA and APE and those terms are attached as Exhibits B and C to this resolution, but such essential terms may be amended as needed to obtain financing or grants; and

WHEREAS, in order to better enable the Developer to maintain strict project schedules with respect to project deadlines and flexibility to increase local and small business participation and attempt to attain the goal of fifty percent (50%) Local Business Enterprise (LBE) and twenty percent (20%) Small Local Business Enterprise (SLBE) participation that the Agency desires, it is recommended that the Agency authorize the Developer to waive competitive bidding and request for proposal requirements for all professional services, procurement and construction contracts needed to complete construction of the Fox Theater Project, and to employ non-competitive means for selection of contractors and award of such contracts; and

WHEREAS, the financing for the Fox Theater Project includes a commercial loan of \$6,500,000 whose payments will be primarily secured by a guaranteed income stream donation to OSA and ORNMTC from CBS Outdoor's (formerly Viacom Outdoor) income from a billboard on Port of Oakland property, but will likely require additional security from the Agency because of unlikely but possible interruptions in the income stream should the billboard lease be terminated by the Port or actions of the California Transportation Agency; and

WHEREAS, the Fox Theater Property may need to be transferred to Developer by either a long term lease or by transferring the fee depending on the best ownership vehicle for purposes of the various funding agencies and tax credit entities, but in either case, the transfer value will be \$6,500,000; and

WHEREAS, the financing for the Fox Theater Project includes a contingent loan of \$3,530,000 to FOT to be used to meet the annual return and buyout costs associated with obtaining Historic and New Markets Tax Credits, which costs are not covered by revenue from the net operating income from the Project; and

WHEREAS, \$3,530,000 is available from Central District Operating Fund (9510) fund balance to finance the contingent loan; and

WHEREAS, the Agency anticipates receiving funds from insurance coverage to compensate the Agency for fire damage to the Fox Theater that occurred in November 2004, but the amount of such compensation, expected to be in excess of \$1,500,000,

has not been finally determined through settlement or litigation with the Agency's property insurer and such funds should be allocated to the renovation of the Fox Theater; and

WHEREAS, \$1,500,000 is available from Central District Operating Fund (9510) fund balance to finance the project until the insurance proceeds become available; and

WHEREAS, the Agency wishes to amend and restate the Disposition and Development Agreement ("DDA") it previously entered into with ORNMTC on August 30, 2005 with the intent that the DDA be transferred to FOT or its affiliates, transferees or designees, including without limitation, for-profit entities created to take advantage of federal tax credits to develop the Fox Theater Project all as generally set forth in the agenda report for this item; and

WHEREAS, the City desires to ensure that the Fox Theater remains a community asset and not controlled on a for-profit basis and therefore the DDA will provide that after after the tax credit period has expired, the Agency or its designee will have the option of purchasing the Fox Theater Property ; and

WHEREAS, Agency Resolution 2005-0046 authorizing the initial DDA the Agency entered into with ORNMTC on August 30, 2005 required the Agency governing body to ratify the final terms of that DDA; and

WHEREAS, the DDA will set forth the terms and conditions of the Agency's transfer of the Fox Theater to FOT for the development of the Fox Theater Project; and

WHEREAS, the DDA will require the Agency to provide ORNMTC or FOT with financial assistance as follows: (1) a loan in the amount of \$32,000,000, including (a) \$22,500,00 in new Central District capital and operating funds, (b) \$3,000,000 already expended under the predevelopment loan with ORNMTC and (c) \$6,500,000 in previously expended acquisition and capital improvement costs that ORNMTC will assume upon transfer of the property; (2) provide a guarantee to secure a \$6,500,000 commercial loan, for construction and long-term financing; and (3) authorize reimbursement to ORNMTC for the following sums: (A) the California Cultural and Historical Endowment (Proposition 40) Grant in the amount of \$2,887,500; and (B) the State Office of Historic Preservation Grant in the amount of \$375,000; and

WHEREAS, the financing for the Fox Theater Project includes a \$600,000 Department Of Housing And Urban Development (HUD) Economic Development Initiative (EDI) Special Projects Grant to the City for the Fox Theater Restoration to reimburse FOT or successor for development costs; and

WHEREAS, a copy of the proposed DDA terms is on file with the Agency Secretary; and

WHEREAS, the DDA will condition the sale of the Property on the redevelopment and use of the Property in conformity with the Central District Redevelopment Plan, and

such documents prohibit discrimination in any aspect of the Project as required under the Central District Redevelopment Plan and the California Community Redevelopment Law; and

WHEREAS, the Project uses are in conformity with the Central District Redevelopment Plan, the Project will assist in the elimination of blight in the Central District Redevelopment Area, and the Project will help meet the objectives of the Central District Redevelopment Plan; and

WHEREAS, the California Community Redevelopment Law (Health & Safety Code Section 33433) requires that before any property of a redevelopment agency that is acquired in whole or in part with tax increment moneys is sold or leased for development pursuant to a redevelopment plan, the disposition must first be approved by the legislative body, i.e., the City Council, by resolution after public hearing; and

WHEREAS, as required by the California Community Redevelopment Law, the Agency has made available to the public for inspection, no later than the first date of publication of the notice for the hearing, a report that contained a copy of the DDA terms and a summary of the cost of the agreement to the Agency, the estimated fair market value of the Property at its highest and best use permitted under the Redevelopment Plan, and an explanation of why the sale of the Property and development of the Project will assist in the elimination of blight, with supporting facts and material; and

WHEREAS, a joint public hearing between the Agency and the City Council of the City of Oakland was held to hear public comments on the sale of the Property for the Project; and

WHEREAS, notice of the sale of the Property and the public hearing was given by publication at least once a week for not less than two weeks prior to the public hearing in a newspaper of general circulation in Alameda County; and

WHEREAS, the City Council has approved the disposition of the Property by resolution after the public hearing; and

WHEREAS, the Agency is considered a "Responsible Agency" under the California Environmental Quality Act (CEQA); and

WHEREAS, on July 19, 2005 the Agency adopted a Mitigated Negative Declaration for the Project; and

WHEREAS, the Agency hereby finds and determines on the basis of substantial evidence in the record that the Initial Study and Mitigated Negative Declaration fully analyzes the potential environmental effects of the project and incorporates mitigation measures to substantially lessen or avoid any potentially significant impacts in accordance with CEQA. None of the circumstances necessitating preparation of additional environmental review as specified in CEQA and the CEQA Guidelines, including without limitation Public Resources Code Section 21166 and CEQA

Guidelines Section 15162, are present in that (1) there are no substantial changes proposed in the project or the circumstances under which the project is undertaken that would require major revisions of the Initial Study/Mitigated Negative Declaration due to the involvement of new environmental effects or a substantial increase in the severity of previously identified significant effects; and (2) there is no "new information of substantial importance" as described in CEQA Guidelines Section 15162(a)(3); now, therefore be it

RESOLVED: That the Agency has independently reviewed and considered this environmental determination, and the Agency finds and determines that this action complies with CEQA because this action on the part of the Agency does not necessitate preparation of a subsequent or supplemental EIR Section 15162 (subsequent EIRs and negative declarations); and be it further

RESOLVED: That the Agency Administrator or her designee shall cause to be filed with the County of Alameda a Notice of Exemption for this action; and be it further

RESOLVED: That the Agency hereby finds and determines that the disposition of the Fox Theater Property by the Agency to FOT for the Project furthers the purposes of the California Community Redevelopment Law, contributes to the elimination of blight in the Central District Redevelopment Project Area, conforms to the Central District Redevelopment Plan, including its Implementation Plan, and furthers the goals and objectives of said Redevelopment Plan in that: (1) the Project will increase entertainment opportunities in the Central District; (2) the Project will provide necessary neighborhood-serving retail facilities lacking in the Central District; (3) the Project, once developed, will create permanent jobs for low and moderate income people, including jobs for area residents; (4) the Project will help create a stable 24-hour community which will enhance the viability of retail businesses in the area; (5) the Project will redevelop a key underutilized site in the Central District; (6) the Project will improve environmental design within the Central District; and (7) the Project, once developed, will enhance depreciated and stagnant property values in the surrounding areas, and will encourage efforts to alleviate economic and physical blight conditions in the area; and be it further

RESOLVED: That the Agency hereby authorizes the Agency Administrator or her designee to dispose of the Property to FOT, subject to and on the terms and conditions of the DDA; and be it further

RESOLVED: That the Agency hereby allocates and appropriates and grants to the Developer the entire compensation paid for fire damage resulting from the November 2004 fire in the Fox Theater when the final amount of such compensation has been determined and paid by the insurer of the damage; and be it further

RESOLVED: That the Agency hereby allocates and appropriates and grants to the Developer \$1,500,000 from Central District Operating Fund (9510) fund balance until the insurance proceeds become available; and be it further

RESOLVED: That when the insurance proceeds are received, they will be used to

reimburse the Central District Operating Fund; and be it further

RESOLVED: That the Agency hereby authorizes the Agency Administrator or her designee to (1) authorize funding in the amount of \$32,000,000, including (a) appropriating \$22,500,00 in new Central District capital and operating funds, (b) \$3,000,000 already expended under the predevelopment loan with ORNMTC and (c) \$6,500,000 in previously expended acquisition and capital improvement costs that ORNMTC will assume upon transfer of the property; (2) provide a guarantee to secure a \$6,500,000 commercial loan, for construction and long-term financing; (3) provide a contingent loan of \$3,530,000 from the Central District Operating Fund balance (9510) to be used to for costs associated with obtaining Historic and New Markets Tax Credits, which includes annual return and buyout costs to tax credit investors; and (4) accept, appropriate and reimburse ORNMTC for the following sums from the Central District Grant Fund (9215): (A) the California Cultural and Historical Endowment (Proposition 40) Grant in the amount of \$2,887,500; and (B) the State Office of Historic Preservation Grant in the amount of \$375,000, under terms and conditions to be set forth in the DDA; and be it further

RESOLVED: That the Agency finds and determines that the consideration that the Agency will receive under the DDA equals or exceeds the reuse value of the Fox Theater taking into account the uses, covenants, conditions, and development costs required by the DDA; and be it further

RESOLVED: That the Agency Administrator or her designee is hereby authorized to negotiate and execute: (1) an amended and restated DDA with ORNMTC with the intent that the DDA be transferred to FOT or its affiliates, transferees or designees including, without limitation for-profit entities created to take advantage of federal tax credits to develop the Fox Theater Project all as generally set forth in the agenda report for this item, (2) dispose of the Fox Theater Property by either long-term lease or transfer of the fee based on a transfer value of not less than \$6,500,000, (3) provide a loan of \$32,000,000, with \$4,050,000 to be advanced before the transfer for predevelopment expenses, and (4) such other additions, amendments or other modifications to the DDA (including, without limitation, preparation and attachment of, or changes to, any or all of the exhibits) that the Agency Administrator, in consultation with the Agency Counsel, determines are in the best interests of the Agency, do not materially increase the obligations or liabilities of the Agency, and are necessary or advisable to complete the transactions which the DDA contemplates to be conclusively evidenced by the execution and delivery by the Agency Administrator of the DDA, and any such amendments thereto; and (5) such other documents as necessary or appropriate, in consultation with the Agency Counsel, to facilitate the sale and development of the Fox Theater for the Project in order to consummate the transaction under the DDA in accordance with this Resolution, or to otherwise effectuate the purpose and intent of this Resolution and its basic purpose; and be it further

RESOLVED: That the Agency determines that it is in the best interests of the Agency and the Fox Theater Project to waive the Agency's competitive bidding and request for proposal processes for the Fox Theater Project, authorizes the Developer to do so and authorizes the Developer to employ non-competitive means to select contractors

and negotiate all professional services, procurement and construction contracts for the Fox Theater Project; and be it further

RESOLVED: That the Agency hereby approves the essential terms to the OSA and APE leases as set out in Exhibits B and C, respectively, permitting the Agency Administrator to approve changes to those terms if needed for obtaining financing or grants; and be it further

RESOLVED: That the Agency governing body hereby ratifies the initial DDA between the Agency and ORNMTC dated August 30, 2005; and be it further

RESOLVED: That all documents related to this transaction shall be reviewed and approved by Agency Counsel prior to execution, and copies will be placed on file with the Agency Secretary; and be it further

RESOLVED: That the custodians and locations of the documents or other materials which constitute the record of proceedings upon which the Agency's decision is based are respectively: (a) the Community & Economic Development Agency, Projects Division, 250 Frank H. Ogawa Plaza, 5th Floor, Oakland CA; (b) the Community & Economic Development Agency, Planning Division, 250 Frank H. Ogawa Plaza, 3rd Floor, Oakland CA; and (c) the Office of the City Clerk, 1 Frank H. Ogawa Plaza, 1st Floor, Oakland, CA

IN AGENCY, OAKLAND, CALIFORNIA, _____, 2006

PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, BRUNNER, CHANG, KERNIGHAN, NADEL, QUAN, REID
AND CHAIRPERSON DE LA FUENTE,

NOES-

ABSENT-

ABSTENTION-

ATTEST: _____
LATONDA SIMMONS
Secretary of the Redevelopment
Agency of the City of Oakland

EXHIBIT A
PARCEL MAP

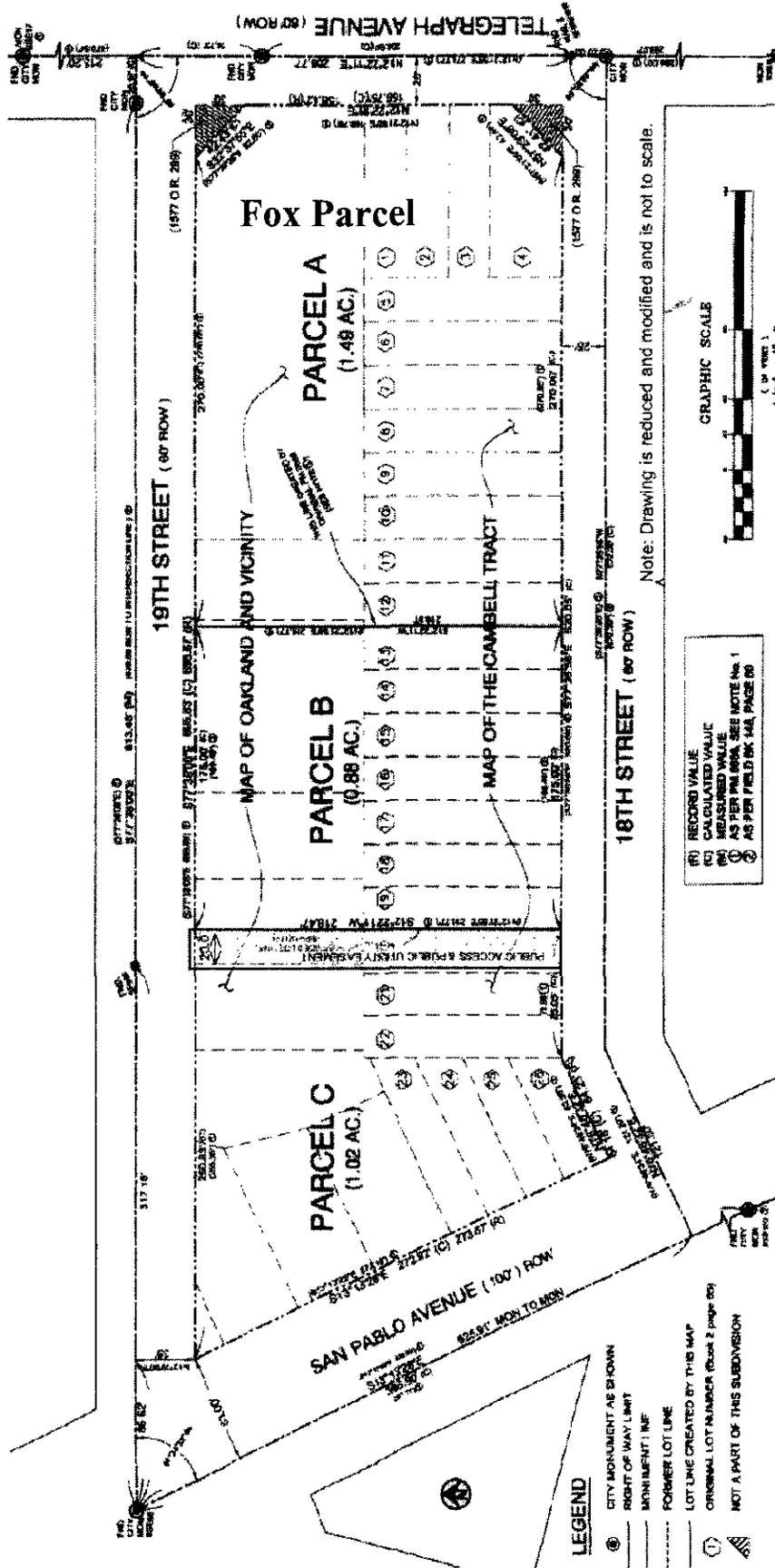


EXHIBIT B

ESSENTIAL TERMS TO THE OSA LEASE

PREMISES

Fox Oakland Theater, approximately 57,000 SF of rentable space.

TENANT

Oakland School for the Arts.

TERM

Seven and one-half years.

COMMENCEMENT

Term begins at substantial completion of construction work.

CONSTRUCTION

Base building improvements the responsibility of Landlord.

Leasehold improvements the responsibility of Landlord and Tenant as specified in Lease.

Furnishings, fixtures and equipment the responsibility of Tenant.

BASE RENT

\$71,250 per month, payable by crediting Tenant for (1) revenue stream from CBS Outdoor pledged to Tenant (present value of \$6.5 million), and (2) \$1.2 million Federal Charter School Facility Grant.

ADDITIONAL RENT

Tenant responsible for paying pro-rata share of property insurance and taxes as additional rent.

MAINTENANCE AND REPAIRS

Tenant to repair and maintain major systems, interior, windows, and courtyard improvements..

Landlord to repair and maintain structural and the exterior.

USE OF PREMISES

Limited to operation of a public charter school for the performing arts.

USE OF THEATER.

Tenant to have right to use the Theater for (a) up to 10 performance events per year free of charge, and (b) up to an additional 30 performance events per year rent free but reimbursing Theater Operator for out of pocket costs.

EXHIBIT C

ESSENTIAL TERMS TO THE APE LEASE

PREMISES

Fox Oakland Theater, approximately 62,315 SF of rentable space.

TENANT

Another Planet Entertainment, LLC

TERM

Ten years, with one five-year option to renew.

PERCENTAGE RENT

Years 1-3:

Average paid full price attendance over the first 3 years:

\$1.25 per paid full price ticket over 100,000

\$2.00 per paid full price ticket over 130,000

Years 4-5:

Paid attendance 100,000-130,000 - \$1.50 per paid full price ticket

Paid attendance 130,001 up - \$2.00 per paid full price ticket

Years 6-10:

Paid attendance 100,000-130,000 - \$1.75 per paid full price ticket

Paid attendance 130,001 up - \$2.25 per paid full price ticket

First option period

Paid attendance 100,000-130,000 - \$2.00 per paid full price ticket

Paid attendance 130,001 up - \$2.50 per paid full price ticket

ADDITIONAL RENT

Tenant responsible for paying property insurance and taxes as additional rent.

CONSTRUCTION

Base building improvements the responsibility of Landlord.

Landlord to provide \$1.5 million allowance to Tenant for non-FF&E tenant improvements, and \$500,000 allowance for approved FF&E items. Tenant improvement work and FF&E not covered by the allowances are the responsibility of Tenant.

MAINTENANCE AND REPAIRS

Tenant to repair and maintain major systems, interior, windows, and courtyard improvements.

Landlord to repair and maintain structural and the exterior.

THEATER OPERATIONS

Starting in the second year, Tenant to promote a minimum of 50 event days per year.

Tenant to sub-lease or self-operate, or approve bar and/or restaurant concessions a minimum of five nights per week in the ground floor storefront space.

Tenant to give Oakland School for the Arts the right to use the Theater for (a) up to 10 performance events per year free of charge, and (b) up to an additional 30 performance events per year rent free but reimbursing Tenant for out of pocket costs.

Tenant to guarantee that Landlord not responsible for operating deficits or operating subsidy.

FACILITY FEE

Tenant to collect \$2 per ticket to supplement operating revenues and fund a future reserve for capital improvements. Tenant to collect and retain \$1 per ticket to help with operations. One dollar per ticket to be collected by Tenant and held by Landlord -- \$.50 to be retained by Landlord as additional rent and \$.50 for deposit into a reserve fund to pay for future improvements to the theater

NAMING RIGHTS

Under negotiation.