

**DRAFT**

**REVISED**

APPROVED AS TO FORM AND LEGALITY:

\_\_\_\_\_  
Deputy City Attorney

**OAKLAND CITY COUNCIL**

RESOLUTION NO. \_\_\_\_\_ C.M.S.

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**A RESOLUTION APPROVING A DISPOSITION AND DEVELOPMENT AGREEMENT AND RELATED DOCUMENTS BETWEEN THE REDEVELOPMENT AGENCY OF THE CITY OF OAKLAND AND OAKLAND RENAISSANCE NMTC, A NON-PROFIT ENTITY (RENAISSANCE), FOR THE SALE AND DEVELOPMENT OF THE FOX THEATER AS A MIXED USE ENTERTAINMENT, OFFICE AND SCHOOL DEVELOPMENT, IN WHICH THE AGENCY APPROPRIATES THE FOLLOWING FINANCIAL ASSISTANCE TO RENAISSANCE FOR DEVELOPMENT OF THE PROJECT: (A) AN AGENCY LOAN OF \$13 MILLION; (B) TRANSFER OF \$4,985,000 OF STATE OF CALIFORNIA PROPOSITION 55 GRANT FUNDS; (C) TRANSFER OF \$2,887,500 OF STATE OF CALIFORNIA PROPOSITION 40 GRANT FUNDS; (D) TRANSFER OF \$1,300,000 INSURANCE PROCEEDS FOR FIRE DAMAGE AT THE FOX THEATER, AND (D) TRANSFER OF A \$375,000 CALIFORNIA HERITAGE GRANT**

**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

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**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**, the Redevelopment Agency has completed certain steps in the restoration of the theater including: replacement of the roof in 1999; completion of façade restoration and store front drawings in 2000; renovation of the historic marquee and vertical sign in 2001; completion of the Fox Master Plan in 2002; and successful recipient of a \$375,000 grant for façade restoration from the California Heritage Fund Program in 2002; and

**WHEREAS**, per Agency Resolution No. 2003-83, the Redevelopment Agency entered into a professional services contract with California Capital Group (CCG) in December 2003 for an amount not to exceed \$432,000 for professional services needed for the pre-development of the Fox Theater and wrap-around buildings into a cabaret-style performing arts center, office, retail, and future home of the Oakland School for the Arts (the "Project"); and

**WHEREAS**, the CCG development team prepared concept drawings and detailed cost estimates for revitalizing the Fox Theater into a cabaret-style performing arts venue that would activate the Fox for an unspecified time period before future funding could be obtained for a full theater restoration; and

**WHEREAS**, the CCG development team has discussed with the Oakland School for the Arts ("OSA") their future expansion plans, and has prepared concept drawings and detailed cost estimates for accommodating their needs in the wrap-around buildings which are attached to the Fox; and

**WHEREAS**: the CCG development team has held discussions with the OSA and the Paramount Theater of the Arts, Inc. ("PTA") regarding possible operating and financing structures necessary to develop the theater and attached wrap-around buildings; and

**WHEREAS**: the Agency staff has reviewed all concept drawings, cost estimates, sources and uses of funds and possible development and operation frameworks and found them to be a realistic and a financially responsible method to revitalizing the theater and attached wrap-around buildings worthy of further analysis and negotiation; and

**WHEREAS:** per Agency Resolution No. 2004-71 C.M.S. the Agency amended the professional services contract with CCG for an amount not to exceed \$1,178,500 to undertake the Design and Development Phase of the project which included: the preparation of Design Development Drawings for the Fox Theater and wrap-around buildings, refined cost estimates for bidding the project for construction, refined sources and uses of funds needed to construct the project, and preparation of an ownership and financing structure needed to carry out the project; and

**WHEREAS:** the CCG development team has assisted the Agency in obtaining grants from the State of California for the Project, including a \$2,887,500 Proposition 40 California Conservation Historic Endowment Grant that will be accepted and deposited into Central District Grant Fund (#9215) (the "Prop 40 Grant") and a \$4,983,922 Proposition 55 School Facilities Grant that will be accepted and deposited into Central District Grant Fund (#9215) (the "Prop 55 Grant"); and

**WHEREAS:** the CCG development team has successfully negotiated a deal with Viacom Outdoor whereby it is anticipated that OSA will receive a guaranteed income stream that will secure a loan of \$6,000,000 to be used toward the construction and operation of the wrap-around buildings for the OSA; and

**WHEREAS:** on August 6, 2004, a nonprofit, public benefit corporation called Oakland Renaissance NMTC, Inc. , was organized for the purpose of applying for and using New Market Tax Credits and other tax credit programs needed to renovate historic structures such as the Fox Theater; and

**WHEREAS:** the Agency wishes to execute a disposition and development agreement ("DDA") with ORNMTC or its affiliates, transferees or designees including, without limitation, Fox I, L.L.C., or similar for-profit entity created to develop the Project ("Renaissance"), all as generally set forth in the agenda report for this item ; and

**WHEREAS:** the DDA will set forth the terms and conditions of the Agency's transfer of the Fox Theatre to Renaissance for the development of the Project; and

**WHEREAS,** the DDA will require the Agency to provide Renaissance with financial assistance as follows: (1) a loan of \$13,000,000 after approval of the FY 2005-2007 budget and appropriated from Central District TA Bond Series 2005 Fund (#9533), Fox Theater Master Plan Project (#P131180) (the "Loan"); (2) transfer to Renaissance of the following sums: (A) the Prop 40 Grant; (B) the Prop 55 Grant; (C) insurance proceeds the Agency received from fire damage to the Fox Theatre in the amount of \$1,300,000 from 1986 Bonds Fund (#9504) (the "Insurance Proceeds"); (D) a California Heritage Fund Grant from the State of California Office of historic Preservation in the amount of \$375,000 to be appropriated from Central District Grant Fund (#9215) (the "SHPO Grant"), all on the terms and conditions to be set forth in the DDA; 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 sale 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 sale of the Property by resolution after the public hearing; and

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

**WHEREAS**: the Planning Department prepared an Initial Study in accordance with CEQA requirements in support of a Mitigated Negative Declaration for the Project and circulated the study for the required review period; and

**WHEREAS**: on June 1, 2005, the City of Oakland Planning Commission, as a lead agency under CEQA, reviewed, considered and analyzed the Initial Study/Mitigated Negative Declaration (IS/MND) and the Project and approved both the Project and the IS/MND, making the appropriate CEQA findings; now, therefore, be it

**RESOLVED:** That the City has independently reviewed, considered and analyzed the IS/MND prior to approving the Project and adopts the June 1, 2005 CEQA findings of the City of Oakland Planning Commission, which are incorporated by reference as if fully set forth herein, and be it further

**RESOLVED:** That the City adopts the Mitigation Monitoring and Reporting Program, attached to this Resolution as Exhibit B, which was also adopted by the City Planning Commission; and be it further

**RESOLVED:** That the City hereby finds and determines that the sale of the Property by the Agency to Renaissance 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 sale of the Property to Renaissance, subject to and on the terms and conditions of the 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 Theatre taking into account the uses, covenants, conditions, and development costs required by the DDA, 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 Theatre 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 Agency staff is to return to the Agency Board for review and ratification of the executed DDA; and that language be included in the loan documents, if consistent with preserving tax credits and required separation between entities, requiring Agency approval of the Lease Agreement between OSA and ORNMTC and Agency approval of the Operating Agreement**

between ORNMTC and the selected operator; and staff shall return to the Council with a report on compliance with City policies, including local hiring and prevailing wage requirements for contracts, including sub-contractors.

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**RESOLVED:** That all documents related to this transaction shall be reviewed and approved by the City Attorney prior to execution; and be it further

**RESOLVED:** That the City shall cause to be filed a Notice of Determination with the County of Alameda; 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, \_\_\_\_\_, 2005

PASSED BY THE FOLLOWING VOTE:

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

NOES-

ABSENT-

ABSTENTION-

ATTEST: \_\_\_\_\_  
LATONDA SIMMONS  
City Clerk and Clerk of the Council  
of the City of Oakland, California

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EXHIBIT A  
MAP OF FOX THEATRE

**EXHIBIT B**

**MITIGATION MONITORING AND REPORTING  
PROGRAM**