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OFFICE OF THE CITY CLERK
OAKLAND

2009 APR 30 PM 6:46

**REDEVELOPMENT AGENCY
OF THE CITY OF OAKLAND
AGENDA REPORT**

TO: Office of the Agency Administrator
ATTN: Dan Lindheim
FROM: Community and Economic Development Agency
DATE: May 12, 2009

RE: Report and Redevelopment Agency Resolution Regarding the Fox Theater Project Recommending Amending Resolution No. 2008-0077 C.M.S. to: (1) Allow the Agency to Reduce the Loan Amount for Tenant Improvements to Fox Theater Master Tenant, LLC from \$2,700,000 to an Amount not to exceed \$1,400,000 and (2) Authorize Redirecting the Remaining \$1,300,000 of the Original Loan Amount to a Loan Agreement with Friends of the Oakland Fox to Fund Needed Tenant Improvements in the Fox Theater

SUMMARY

In July 2008, the Agency passed Resolution No. 2008-0077 authorizing the Agency Administrator to enter into a Loan Agreement with Fox Theater Master Tenant, LLC (FTMT) in an amount not to exceed \$2.7 million for the purpose of funding needed tenant improvements in the Fox Theater. FTMT is an entity created by the Agency to obtain Historic Tax Credit equity funding for the Project. Under the original resolution, FTMT would loan GASS Entertainment (GASS) \$1.3 million of the total loan amount to complete the tenant improvements in the Fox Theater. The remainder of the loan, \$1.4 million, would be used by FTMT to build out the unimproved restaurant space located on the corner of 18th Street and Telegraph Avenue in the Fox Building.

Since the original resolution on the loan, further negotiations with GASS over tenant improvements and lease issues took place. GASS and FTMT agreed to restructure the loan to have the loan go through the Friends of the Oakland Fox ("FOOF") with GASS and its parent, Another Planet Entertainment ("APE"), guaranteeing the loan. At its April 13, 2009 Board of Directors meeting FTMT unanimously recommended that the loan to GASS be redirected to FOOF to be used for needed tenant improvements in the Fox Theater and that the balance of the \$2.7 million loan, in an amount not to exceed \$1.4 million, be made to FTMT for the purpose of improving the restaurant space at the corner of 18th Street and Telegraph Avenue in the Fox Building. This new structure for the loan allows FOOF to fund raise to pay for some of the additional costs on the project and gives the Agency additional security on the loan. Specifically, FOOF fund raising would be added to theater cash flow from GASS and the guarantee from APE as additional security on the loan.

Item: _____
CED Committee
May 12, 2009

This report recommends amending Resolution No. 2008-0077 to: (1) allow the Agency to reduce the loan amount to FTMT from \$2.7 million to an amount not to exceed \$1.4 million and (2) allow the Agency to enter into a Loan Agreement between the Agency and FOOF in an amount not to exceed \$1,300,000 to fund needed tenant improvements in the Fox Theater. The amendment does not increase the total amount, or change the terms and conditions of the original loan.

FISCAL IMPACT

The original resolution authorized the use of \$2.7 million by FTMT to fund needed tenant improvements in the Fox Theater. An amendment to the prior resolution will not change the total amount of funds, but will instead authorize the Agency to make two loans; one to FTMT for \$1.4 million and another separate loan to FOOF in the amount of \$1.3 million. Both loans will still be used to fund the needed tenant improvements in the Fox. The amendment will have the following impact on the Agency:

Term Loan to Fox Theater Master Tenant, LLC: The Agency loan to FTMT would be a term loan in the amount of \$1.4 million needed to help pay for the building-out of the restaurant space at the corner of 18th and Telegraph Avenue in the Fox Theater Building.

Term Loan to Friends of the Oakland Fox: The Agency loan to FOOF would be a term loan in the amount of \$1.3 million to fund additional tenant improvements beyond what the FT Master Tenant and per the lease agreement with GASS Entertainment.

The funds would be allocated from City Center Land Sales (Fund 9511); Fox-GASS TI Loan (Project P131122), Loan Expenditures (Account 58312).

BACKGROUND

At its April 13, 2009 Board of Directors meeting, Fox Theater Manager, on behalf of FTMT recommended, that the \$1.3 million loan intended for GASS be redirected to FOOF and used for needed tenant improvements in the Fox Theater and that the balance of the \$2.7 million, loan in an amount not to exceed \$1.4 million, be made to FTMT for the purpose of improving the restaurant space at the corner of 18th Street and Telegraph Avenue in the Fox Building.

FOOF Loan

FOOF is a non-profit organization established in 2000 to advocate and support the historic preservation of the Fox Theater and its use as a live entertainment venue. Starting in the fall of 2005, FOOF embarked on a campaign to raise \$500,000 for the restoration of the theater and wrap-around building. To date, FOOF has raised approximately \$300,000. As the cost of the theater renovation and especially the Furniture Fixtures and Equipment (FF&E) has increased, they have pledged to raise more money beyond the original amount to: (1) finish the theater, (2)

pay back the loan, (3) help pay for future operations and, (4) participate in funding a future endowment for the theater. They are actively pursuing donations toward these goals.

The \$1.3 million loan to FOOF will enable them to complete the above mentioned goals. They will continue to fund raise to pay the loan amount back to the Agency. In addition, payment for the loan will come from naming rights to the theater granted by FTMT and GASS. The loan will be at market-rate (prime plus two points or seven percent interest) amortized over a 15-year term with a balloon payment after 10 years. The loan will be secured by the revenue that GASS will get from theater operations.

FTMT Loan

The loan amount remaining with FTMT and the use of the funds has **not changed** from the original resolution. The \$1.4 million loan will be used to complete tenant improvements for spaces that haven't been leased, including the restaurant space located in the Fox Building on the corner of 18th and Telegraph. The original budget from 2006 did not have sufficient funds to cover tenant improvement costs for this space. Negotiations with various potential tenants have indicated that the FT Master Tenant will need to provide at least \$200 per square foot for the tenant improvements to turn this space into a restaurant. The tenants will need to spend at least another \$100 per square foot or about \$300 per square foot for a minimum restaurant design. FT Master Tenant has proposed to use \$1.1 million from the Agency loan to cover the landlord's portion of the tenant improvements for the restaurant.

SUSTAINABLE OPPORTUNITIES

Economic

The proposed Project will contribute significantly to the elimination of blight in the Uptown District of Downtown Oakland. The private sector and the Agency are investing millions of dollars in the area to create an arts and entertainment district. A revitalized Fox Theater will help support and complement the many projects in the area including the Forest City residential development, new housing at 24th Street and Broadway, new parking structures, and the streetscape improvements on Telegraph Avenue. In addition, the Project will stimulate new investment in the food and entertainment sectors, and will benefit the local labor force by providing Living Wage employment.

Environmental

The Project will preserve a historically significant structure and improve upon the physical environment in the Downtown. The Project will remove dangerous and hazardous materials from an existing building and replace them with recycled content materials and other environmentally sensitive materials. Because it is located by a BART station, the rehabilitated Project will encourage the use of mass transit and help to reduce the reliance on automobiles and the harmful emissions that they produce.

Social Equity

The Project will exceed City local hiring goals by seeking to employ 50% local and small local business enterprises. In addition, the Project will house the Oakland School for the Arts, which will train and educate students and provide them with opportunities for future employment. The Project will also promote pedestrian activity, street vitality and public safety to an area that is currently void of pedestrian activity and that has a high incidence of crime.

DISABILITY AND SENIOR CITIZEN ACCESS

The Project will comply with all applicable State and Federal accessibility laws and regulations.

RECOMMENDATIONS AND RATIONALE

Staff recommends that the amendment to the resolution be adopted in order to close out the Project. The Fox Project is part of the wider Uptown Redevelopment Activity Area and is helping to anchor the Uptown retail and entertainment district. The Uptown Project Phase I has been completed and the Telegraph Streetscape Improvements Phase I are partially completed. Together with the Uptown Project and various smaller Façade and Tenant Improvement Program projects, the Fox Theater will contribute to a complete rejuvenation of the area.

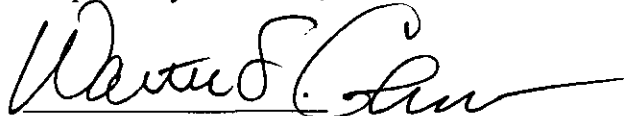
In the event that this amendment is not approved, the project will not be able to operate in the most economical and efficient manner. It will lack certain tenant improvements, such as an adequate sound system needed to create the best possible environment for live entertainment.

ACTIONS REQUESTED OF THE REDEVELOPMENT AGENCY

It is recommended that the Agency approve the resolution to amend Resolution No. 2008-0077 regarding the Fox Theater Project to:

1. Allow the Agency to reduce the loan amount for tenant improvements to Fox Theater Master Tenant, LLC from \$2,700,000 to an amount not to exceed \$1,400,000 and
2. Authorize redirecting the remaining \$1,300,000 of the original loan amount to a Loan Agreement with Friends of the Oakland Fox in an amount not to exceed \$1,300,000 to fund needed tenant improvements in the Fox Theater

Respectfully submitted,

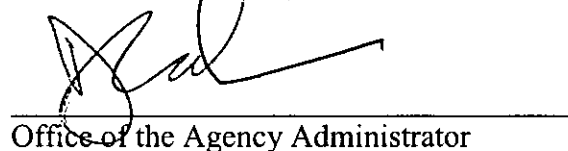


Walter S. Cohen, Director
Community and Economic Development Agency

Reviewed by:
Gregory D. Hunter, Deputy Director
Economic Development and Redevelopment

Prepared by: Jeffrey Chew
Redevelopment Agency

APPROVED AND FORWARDED
TO THE COMMUNITY AND ECONOMIC
DEVELOPMENT COMMITTEE:


Office of the Agency Administrator

Item: _____
CED Committee
May 12, 2009

FILED
OFFICE OF THE CITY CLERK
OAKLAND

2009 APR 30 PM 6:47

APPROVED AS TO FORM AND LEGALITY

AGENCY COUNSEL

REDEVELOPMENT AGENCY
OF THE CITY OF OAKLAND

RESOLUTION No. _____ C.M.S.

AUTHORIZING THE AGENCY ADMINISTRATOR TO AMEND RESOLUTION NO. 2008-0077 C.M.S. TO: (1) ALLOW THE AGENCY TO REDUCE THE LOAN AMOUNT FOR TENANT IMPROVEMENTS TO FOX THEATER MASTER TENANT, LLC FROM \$2,700,000 TO AN AMOUNT NOT TO EXCEED \$1,400,000 AND (2) AUTHORIZE REDIRECTING THE REMAINING \$1,300,000 OF THE ORIGINAL LOAN AMOUNT TO A LOAN AGREEMENT WITH FRIENDS OF THE OAKLAND FOX TO FUND NEEDED TENANT IMPROVEMENTS IN THE FOX THEATER

WHEREAS, the Agency adopted Resolution No. 2008-0077 on July 15, 2008 authorizing the Agency Administrator to enter into a Loan Agreement with Fox Theater Master Tenant, LLC (FTMT) in an amount not to exceed \$2,700,000 to fund needed tenant improvements in the Fox Theater; and

WHEREAS, under the original resolution GASS Entertainment would borrow \$1.3 million from the Fox Theater Master Tenant and fully amortize the loan from theater revenue if the Agency agrees to grant them an additional \$2.0 million to complete the tenant improvements; and

WHEREAS, under the original resolution, GASS would borrow the \$1.3 million at market rate (prime plus 2% or 7% at the current rate) and fully amortize the loan over the 15 year term of the lease, portions of which may be deferred for 3 to 5 years; and

WHEREAS, under the original resolution, a portion of the Fox Theater on 18th Street and Telegraph Avenue will be leased as a restaurant (the "Restaurant Space"); and

WHEREAS, under the original resolution, the project never had funds to complete tenant improvements for the Fox Theater's "Restaurant Space" on 18th Street and Telegraph of which the landlord's contributions (Fox Theater Master Tenant) are currently estimated to be approximately \$1.4 million; and

WHEREAS, since the original resolution regarding the loan, further negotiations with GASS over tenant improvements and lease issues took place and GASS and FTMT agreed to restructure the loan to have \$1.3 million of the \$2.7 million loan intended to be loaned to GASS go instead to Friends of the Oakland Fox (FOOF), and the remaining \$1.4 million of the total loan remain with FTMT; GASS and its parent, Another Planet Entertainment (APE), would guarantee the loan to FOOF.

WHEREAS, at its April 13, 2009 Board of Directors meeting, FTMT recommended that the loan to GASS be redirected to FOOF to be used for needed tenant improvements in the Fox Theater and that the balance of the \$2.7 million loan in an amount not to exceed \$1.4 million remain going to FTMT for the purpose of improving the restaurant space at the corner of 18th Street and Telegraph Avenue in the Fox Building; and

WHEREAS, the interest and repayment terms and conditions of the original loan will remain the same; and

WHEREAS, the \$1.3 million loan to FOOF will be secured by GASS, with security including, but not limited to, from revenue from theater operations, and also by APE; 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 Agency loan to Fox Theater Master Tenant and Friends of the Oakland Fox 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 reaffirms the loan to Fox Theater Master Tenant in the reduced amount of \$1,400,000 under the terms and conditions set forth in this resolution; and be it further

RESOLVED: That the Agency hereby approves the loan to Friends of the Oakland Fox in the amount of \$1,300,000 under the terms and conditions set forth in this resolution; and be it further

RESOLVED: That funds totaling \$2,700,000 shall be allocated in accordance with the Agency resolution from City Center Land Sales (Fund 9511); Fox- GASS TI Loan Project P131122), Loan Expenditures (Account 58312); and be it further

RESOLVED: That the Agency Administrator is authorized to negotiate, approve, and execute appropriate loan documents; 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, _____, 2009

PASSED BY THE FOLLOWING VOTE:

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

NOES-

ABSENT-

ABSTENTION-

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