

**CITY OF OAKLAND
AGENDA REPORT**

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OFFICE OF THE CITY CLERK
OAKLAND

2005 JUN 15 PM 2:31

TO: Office of the City Administrator/Agency Administrator
ATTN: Deborah Edgerly
FROM: Community and Economic Development Agency
DATE: June 28, 2005

RE: REDEVELOPMENT AGENCY AND CITY RESOLUTIONS: (1) AUTHORIZING APPROVAL AND EXECUTION OF A DISPOSITION AND DEVELOPMENT AGREEMENT AND RELATED DOCUMENTS WITH OAKLAND RENAISSANCE NMTC (RENAISSANCE), A NON-PROFIT ENTITY, FOR THE SALE AND DEVELOPMENT OF THE FOX THEATER AS A MIXED USE ENTERTAINMENT, OFFICE AND SCHOOL DEVELOPMENT; AND (2) APPROVING AND APPROPRIATING THE FOLLOWING FINANCIAL ASSISTANCE TO RENAISSANCE FOR DEVELOPMENT OF THE PROJECT: (A) AN AGENCY LOAN OF \$13,000,000; (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 (E) TRANSFER OF A \$375,000 CALIFORNIA HERITAGE GRANT

SUMMARY:

This report presents the outcomes of the Design Development Phase of the proposed Fox Theater renovation and requests authorization to proceed with the Construction Document and Construction Phase of the Project. This new phase, if approved, will involve: (1) the completion of all construction documents, (2) the bidding of the project and, (3) the actual construction-renovation of the theater and wrap-around buildings. The total project cost, based on the completion of the Design Development Phase, is estimated at approximately \$33.6 million. The Agency contribution (Central District Tax Increment Funds) to the Project would be a \$13.0 million loan.

In order to proceed with this phase of the project, the Agency's consultant, California Capital Group (CCG), recommends that the Agency enter into a Disposition and Development Agreement (DDA) with Oakland Renaissance NMTC (ORNMTC), a non-profit, public benefit corporation created by the Agency, and managed by city staff. This arrangement would be necessary to take advantage of Historic Tax Credits and possibly New Markets Tax Credits when they become available. To receive New Markets Tax Credits, the ORNMTC must participate in the ownership of the project; consequently, CCG also recommends transfer of ownership of the theater and wrap-around buildings to the ORNMTC so that ORNMTC can, in turn, create a for-profit entity to take advantage of the tax credits, and at the same time limit the Agency's future liability for the property including any claims and long-term maintenance.

All grants that have been secured by the Agency to fund the Fox and wrap-around renovation/ construction including the \$2.9 million State Proposition 40 Grant, the \$5.0 million State Proposition 55 Grant, and the \$375,000 California Heritage Grant would be assigned over to the ORNMTC. The \$1,300,000 insurance settlement from the recent fire damage to the theater would also be transferred to the ORNMTC.

CCG and their consultants, AMS Planning and Research, estimate that the theater, if developed as a 1380 seat cabaret- style venue and operated by the Paramount Theater of the Arts (PTA), and allowing for the Oakland School for the Arts (OSA) to use the theater an average of three days a month, would necessitate approximately a \$300,000 yearly subsidy from the Agency to remain open. If the theater were operated by a contracted operator, the theater might operate at a budget surplus of over \$250,000 a year.

FISCAL IMPACT:

If the Agency authorizes staff to proceed with the DDA, the Agency would be recommending a loan of \$13,000,000 to the Project. This loan would be to ORNMTC. The funds will be available in Central District TA Bond Series 2005 Fund (#9533) Fox Theater Master Plan Project (#P131180) when the FY 2005-2007 proposed budget is approved. In addition, if the PTA were to operate the theater, the Agency would need to budget approximately \$300,000 to \$500,000 a year for an indeterminate amount of time, depending on the success of the theater. Income from the theater would off-set this to some extent, but because the income projections will depend on the eventual users and number of event days, the modified number cannot be determined at this time. These funds would need to be allocated by the Agency on a yearly basis starting with the ORA 2007-2009 budget.

The Proposition 40 Grant and Proposition 55 Grant and the California Heritage Grant will be accepted and appropriated into Fund 9215, Central District Fund. The \$1,300,000 in insurance proceeds will be accepted and appropriated into Fund 9504.

BACKGROUND AND HISTORY:

The 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 in the Uptown District of Oakland. A number of steps have been completed to date and include:

- Replacement of the roof in 1999
- Completion of façade and storefront drawings in 2000
- Renovation of the historic marquee in 2001
- Completion of the Fox Master Plan in 2002
- Completion of hazardous materials initial cleaning in 2004
- Completion of schematic designs, cost estimates and financing options in 2004

To date, the Agency has spent \$ 6,600,000 on the theater. This includes the \$3,000,000 purchase price and all work that is currently underway.

In December 2004, the Agency amended a professional services contract with CCG to begin the Design Development Phase of the Fox Theater Renovation and Construction Project. CCG had already completed the Schematic Phase of the project and has now completed the latest phase. This analysis includes: (1) preparation of the Design Development Drawings; (2) preparation of all Mechanical, Electrical, Plumbing and Fire Protection Drawings; (3) refinement of construction cost estimates suitable for bidding the project; (4) analysis of anticipated operating costs and projected theater incomes; (5) review capacity of OSA and the Paramount Theater to own and operate the Project; (6) follow-up on all grants associated with project funding; (7) refinement of all sources and uses of funds needed to complete the project; (8) preparation of detailed code analysis; (9) secure initial approval of concept design from the Planning Commission and; (9) develop a community outreach program with the Friends of the Oakland Fox (FOOF) to generate \$2.5 million.

KEY OUTCOMES OF THE DESIGN DEVELOPMENT PHASE:

The CCG team composed of The KPA Group, ELS Architecture and Urban Design, StarkWeatherBondy Architecture, Turner Construction, Silverman and Light, AMS Planning and Research, LSA Associates, SJ Engineers and Mark Moss Co., completed their work under the scope of services outlined above. The team's completed results are as follows:

Design Development Drawings

Fox Theater: The Design Development Drawings completed by ELS Architects and dated May 2005 outline the major construction elements of the project. The CCG development teams have prepared two concepts for the Fox Theater. The first is very similar to the "Basics" alternative outlined in the 2001 Fox Master Plan. It consists of a 600 seat cabaret-style theater with platform seating and food and beverage service. The balcony and the basement of the building would not be used in this concept and would be closed to the public. The second concept is also a minimal renovation, but would include the lower section of the balcony and seat as many as 1300 patrons. All additions and modifications to the historic theater would be reversible and/or in compliance with the Secretary of the Interior's Standards for Rehabilitation (**see attachment no.1a**).

Wrap-Around Buildings: The Schematic Drawings completed by StarkWeatherBondy Architects and dated May 2005 are based on programmatic needs and co-curricular goals over the next five to ten years for the Oakland School for the Arts. The concept includes performing and academic space for over 400 high school students. Fifteen classrooms including language labs, creative writing labs, and math/science labs are located on the second and third floors of the existing wrap-around buildings. Music and dance studios located in two new "wing extensions" on the 18th and 19th Street sides of the theater. The historic Fox entrance will serve as the primary school entrance. A ground -floor student center and art galleries will be located behind the historic storefronts along with restaurant and retail space on Telegraph Avenue. The drawings are accompanied with general material specifications. *The design has a flexible floor plan allowing ORNMTC the opportunity to lease the space to other office and commercial users if the OSA was to vacate the space (see attachment no.1a, b, and c).*

In addition to the architectural drawings, The KPA Group provided drawings and notes with regard to structural modifications needed to improve the safety of the theater and wrap-around buildings. These included: (1) temporary bracing of the balcony; (2) permanent bracing of the theater's proscenium stage and, (3) new foundations and steel bracing in the wrap-around buildings as needed. *All modifications have been included in the Design Development Drawings.*

The Design Development Drawings also include limited HVAC, plumbing and electrical improvements needed to accommodate the intended uses. Improvements to the historic facades are briefly noted but will require a thorough field investigation.

The project design was presented to the Landmarks Board on May 9, 2005 and received a positive review. The board did ask that the façade on the new building additions be further refined to better reflect the historic character of the existing wrap-around buildings. The project was referred to the planning commission.

Project Costs

Based on the Design Development Drawings, cost estimates were prepared for the theater (1300 seat configuration) and wrap-around buildings. The estimates included both soft costs (architecture, engineering, project management, etc.) and hard costs (demolition, structural improvements, interior construction, mechanical, electrical, plumbing, etc.). *The total cost of the theater and wrap-around building restoration needed to accommodate the cabaret and the Oakland School for the Arts would be approximately \$33.6 million (approximately \$29.0 million in hard costs and \$4.6 million in soft costs).* This figure includes all funds previously expended and requested for authorization under the CCG contract (**see attachment no.2 for detailed soft/hard cost estimate**).

A further breakout of the construction costs shows that the theater renovation costs is approximately \$7.7 million, the *existing* wrap-around buildings costs is approximately \$9.0 million and the *new addition* to the wrap-around buildings cost is approximately \$9.0 million (**see attachment no.3 for theater and wrap-around cost estimates**).

Financing the Project

The Agency and CCG have identified almost \$34.0 million to fund the Project. This includes \$13.0 million from a 2004 ORA Central District Tax Allocation Bond which would partially fund the Fox restoration under the proposed ORA 2005-2007 budget. The Historic Tax Credits are an estimate and could be somewhat higher than listed below. The New Markets Tax Credits have not been calculated in the following chart because the Agency has not yet been declared eligible by the U.S. Department of the Treasury. This designation could be forthcoming in the next few weeks. A brief discussion of each funding source follows:

Sources	Projected Amount	Uses
Prop 40	\$2,887,500.00	ORA
Prop 55	\$4,983,922.00	OSA
HTC	\$2,500,000.00	TBD
Insurance	\$1,300,000.00	ORA
SHPO	\$750,000.00	ORA
ORA	\$1,500,000.00	ORA
Viacom	\$6,000,000.00	OSA
FOOF	\$1,000,000.00	TBD
ORA-Bond	\$13,000,000.00	ORA
	\$33,921,422.00	

- **Proposition 40:** California Conservation Historic Endowment Grant (CCHE): The focus of this grant is to promote the preservation of California history through art, architecture, historic preservation, etc. In January of 2005, the Agency received an award of \$2,887,500.00 from the California Cultural and Historical Endowment to reimburse expenditures related to the renovation of the theater.
- **Proposition 55:** OSA has secured a School Facilities Grant (Proposition 55) from the State of California in the amount of \$4,983,922.00. This grant will be restricted to the Fox wrap-around buildings and the OSA school facility. CCG and the Mayor’s office are working to obtain the necessary legislative modifications for the project to meet grant requirements.
- **Historic Tax Credits:** CCG has identified approximately \$2.5 million in Historic Tax Credits (HTC) for the project. In order to facilitate the use of the available tax credits and eliminate any liability to the Agency, the Agency needs to transfer ownership of the Fox Theater to a non-profit, public benefit entity (see section of report on ownership).
- **Insurance:** A fire in the Fox Theater wrap-around building took place in the winter of 2004. The insurance settlement for the damage was set at \$1,300,000 and will be used in the renovation of the wrap building for the Oakland School for the Arts.
- **SHPO/California Heritage Fund Grant:** In early 2004 the Agency received a California Heritage Fund Grant from the State Office of Historic Preservation in the amount of \$375,000 that was matched by the Agency dollar for dollar. The time period to use the grant money expires June 30, 2009. This money will be used to restore the historic façade of the theater and wrap-around building to its former beauty and grandeur.

- **ORA:** The Agency has invested approximately \$1,500,000 in the pre-development phase of the Fox Theater. This has included the Concept Phase and the Design Development Phase of the project and the initial hazardous clean-up of the theater.
- **ORA bond:** The Agency and CCG have recommended \$13.0 million from the ORA Central District Redevelopment Area for the project. This funding would come from a portion of 2005 Central District Tax Allocation Bond proceeds and is being proposed in the ORA 2005-2007 Budget. The Agency contribution to the project would be a loan to Oakland Renaissance NMTC Inc. (ORMNMTTC), a non-profit, public benefit corporation that was created by the Agency in late 2004 to take advantage of various tax credit programs.
- **Viacom Funding:** Viacom Outdoor has agreed, as part of a new lease for a billboard on Port property, to gift to the OSA 31.5% of the adjusted gross revenues derived from general advertising for years one through five and 35% for years six through twenty. OSA will assign a significant portion of this funding to ORNMTC as prepaid rent for 20 years. ORNMTC will then use this guaranteed income stream to secure a loan in the amount of \$6,000,000. These funds will be used toward construction costs of the wrap building and additions for OSA. The balance of the Viacom funds will be used to cover operating expenses for OSA.
- **Friends of the Oakland Fox: 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. In the past, it helped raise money for the successful restoration of the Fox marquee. Recently, FOOF has embarked on a campaign to raise \$1,000,000 for the restoration of the theater and wrap-around building. Individual and corporate contributions will be solicited to help fund sidewalk improvements that link the Fox and nearby Paramount Theater in a thematic fashion. The campaign will begin in earnest in the fall of 2005. If the FOOF is unable to reach their stated goal, the existing sources of funds are still sufficient to fund the Fox restoration.

KEY ISSUES AND IMPACTS

Ownership and Financing

To take advantage of both New Markets Tax Credits (NMTC) and Historic Tax Credits (HTC), the ownership structure has been designed to meet the strict requirements of IRS rules. The structure has several elements– which include investors and Agency-related entities. It is essential to note that control remains exclusively with the Agency. The ORNMTC, a non-profit, public-benefit corporation, was created by the Agency in 2004 specifically to take advantage of New Markets Tax Credits. Its board consists entirely of employees of the City of Oakland. In

this structure, ORNMTC will enter into an agreement with a tax credit investor(s) (such as Bank of America, Chevron, City Corp, etc.) for Historic Tax Credits and New Markets Tax Credits.

The Agency will transfer title to the ORNMTC and contribute approximately \$13 million and the grants to the project (as a loan). The tax credit investors will contribute between \$3.0 million and \$6.7 million through ORNMTC to the project in exchange for the use of the tax credits. For the seven-year life of this project, the Investor will “own” at least 99% of the project (necessary for the Investor to take advantage of tax credits). However, ORNMTC will retain control and the Investor will be “bought out” at the end of seven years according to a deal struck at the commencement of the project. The buyout can be structured to be minimal.

The ORNMTC has applied for Community Development Entity (CDE) status from the Department of Interior and the Department of Treasury – necessary to take advantage of NMTC tax credits. The ORNMTC application for 2005 has not yet been awarded. However, we expect that a reapplication later this year may be accepted. If the application is not successful, ORNMTC may enter into an agreement with an outside Investor who has CDE status and will “purchase” the NMTCs as part of their equity contribution.

Fox I, a for-profit entity, will be created to own the Fox. It will contract with a building contractor for the construction and renovation of the theater and wrap-around buildings and provide construction funding. Again, the control of all funds and the control of the project will remain with the Agency (**see attachment no.4 for financing structure**).

Fox Ownership

The Redevelopment Agency will exercise control of the development of the Fox Theater in two ways; through control of the board of ORNMTC, who are all City employees; and through the DDA and Loan Agreement with the ORNMTC. The ORNMTC will take possession of the theater and transfer ownership to a limited liability corporation (LLC) that will be created solely for the development of the Fox Theater. ORNMTC will be the managing partner of the new LLC and have full control over the LLC. The role of the other members of the LLC will be passive investors with limited authority. The Agency will control ORNMTC, and through ORNMTC will control the Fox Theater throughout the development and tax credit compliance period. After the compliance period, the ownership of the Fox will be transferred back to ORNMTC.

Operations

Three approaches to managing and operating the theater were examined by CCG along with AMS Planning and Research. The first option would be for the Paramount Theater of the Arts (PTA) to operate the theater in conjunction with the nearby Paramount Theater; the second would be for the ORNMTC to contract with an outside party to manage and operate the facility and; the last option would be for the ORNMTC to circulate an RFP and solicit proposals to manage and operate the theater.

Operation of the Fox by the PTA

The PTA would operate the facility as a rental house much like the Paramount Theater is today. Beverages would be served at intermission just as they are at the Paramount. The advantages to this arrangement would be: (1) the PTA is a known and experienced operator, (2) it maximizes the PTA's existing strength and staff structure, (3) there would be operating efficiencies between the two venues (4) there would be no need for a cabaret license, (5) PTA's risk is limited and (6) if after an agreed upon period of time, the PTA could not operate the theater in an efficient manner, the ORNMTC could issue a Request for Proposals for an operator.

Although the disadvantages to the Paramount would be minimal, this option has at least two drawbacks: (1) the PTA would need to hire additional staff to assist in theater operations. According to AMS, the cost of the additional personnel would be approximately \$300,000 a year. Other costs associated with maintaining and operating the theater could increase the overall yearly operating budget to \$500,000. If revenues from the theater do not cover the cost of operation, then the Agency would need to fund the difference, and (2) the PTA is not an experienced food and beverage operator so if the theater was to operate as a cabaret, an operator, experienced in food and beverage, would need to be hired. Coordination between the two entities could create problems.

Operation of the Fox by a Commercial Operator

The ORNMTC could contract directly with an independent operator to run the Fox Theater. CCG has received a letter of intent from "Another Planet", a seasoned entertainment operator with direct experience in the operation of theaters that includes food and beverage. The major advantage of having a commercial operator run the theater would be: (1) an independent operator would have an incentive to maximize activity, and would best achieve the City's vision of Uptown as a vibrant arts and entertainment district; (2) this arrangement puts entertainment, and food and beverage services under the direct responsibility of a single theater operator, eliminating possible problems between theater programming and food and beverage service and; and (3) in the long-run, the Agency would receive rent from the operator that could be used to maintain the theater.

The disadvantages of having an outside operator run the theater would be: (1) the Agency might have to provide incentives to the operator such as free rent; (2) the Agency loses some control over programming and the type of events and clientele that frequent the theater and, by extension, the Uptown; (3) the relationship between the OSA and the theater could be strained, (4) the Fox might compete for shows and services with the Paramount resulting in lower income for the Paramount and, (5) there would be a need for a cabaret license.

Request for Proposals to Secure an Operator

The ORNMTC could issue a Request for Proposals (RFP) for the operation of the theater. Although the Agency has issued RFP's in the past, they have always been for the development of the theater, not operations. The advantages of an RFP would be: (1) the broadest range of

potential operators could be interviewed since they would not be required to construct the theater; (2) the Agency could take its time to interview and assess the strengths of various operators qualified and willing to run the flexible cabaret-style theater concept and; (3) the PTA could compete with the private operators to run the theater and comparisons between the public and private operations could be made.

CEQA Review

An Initial Study in support of a Mitigated Negative Declaration was prepared for the rehabilitation and addition of the Fox Theater and wrap-around buildings and concludes that there would be no significant impacts with adoption of certain mitigation measures. The Mitigated Negative Declaration was adopted at the Oakland Planning Commission on June 1, 2005.

Bidding the Project

Pursuant to the DDA, FOX I, L.L.C., will contract with a licensed Construction Manager during the final stages of the design process to perform all professional services related to construction. The DDA will require the Construction Manager to bid the project according to the requirements established by the City. CEDA staff will return to the Agency with a detailed report on compliance with the DDA construction requirements including a list of all sub-contactors, by task and cost of services for the renovation of the Fox and wrap-around buildings, before Fox I L.L.C. enters into the individual construction contracts.

Project Schedule

The schedule for the project is as follows:

Planning Commission Review	June 1,2005
CED Committee Review	June 28,2005
Council Approval	July 19,2005
Development Agreement between Agency and ORNMTC	August 15,2005
Close of Escrow	January 27,2006
Notice to Proceed	March 15, 2006
OSA Occupancy	July 20,2007
Theater Occupancy	September 1, 2007

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 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.

Environmental

The project will remove dangerous and hazardous materials from an existing building and replace them with recycled content materials and other environmentally sensitive materials. The project is located across the street from a BART station which 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 train and educate students in the performing arts, providing 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.

RECOMMENDATION(S) AND RATIONALE

It is recommended that the Agency and the City authorize approval and execution of a Disposition and Development Agreement and related documents with Oakland Renaissance NMTC (ORMNMTTC), a non-profit, public benefit corporation, for the sale and development of the Fox Theater as a mixed use entertainment, office and school development and approve and appropriate the following financial assistance to the ORNMTC for development of the project: (1) an Agency loan of \$13 million, (2) transfer of \$4,985,000 of State of California Proposition 55 Grant funds, (3) transfer of \$2,887,500 of State of California Proposition 40 Grant funds, (4) transfer of \$1,300,000 insurance proceeds for fire damage to the Fox Theater and, (5) transfer of a \$375,000 California Heritage Grant. 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 historic 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 the City authorize approval and execution of a Disposition and Development Agreement and related documents with Oakland Renaissance NMTC (ORMNMC), a non-profit, public benefit corporation, for the sale and development of the Fox Theater as a mixed use entertainment, office and school development and approve and appropriate the following financial assistance to the ORNMTC for development of the project: (1) an Agency loan of \$13 million, (2) transfer of \$4,985,000 of State of California Proposition 55 Grant funds, (3) transfer of \$2,887,500 of State of California Proposition 40 Grant funds, (4) transfer of \$1,300,000 insurance proceeds for fire damage to the Fox Theater and, (5) transfer of a \$375,000 California Heritage Grant.

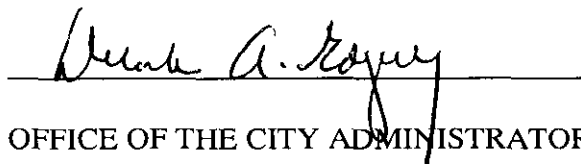
Respectfully submitted



Dan Vanderprie, Director of Redevelopment,
Economic Development and Housing

Prepared by:
Jeffrey Chew
Project Manager

APPROVED AND FORWARDED TO
THE COMMUNITY AND ECONOMIC
DEVELOPMENT COMMITTEE

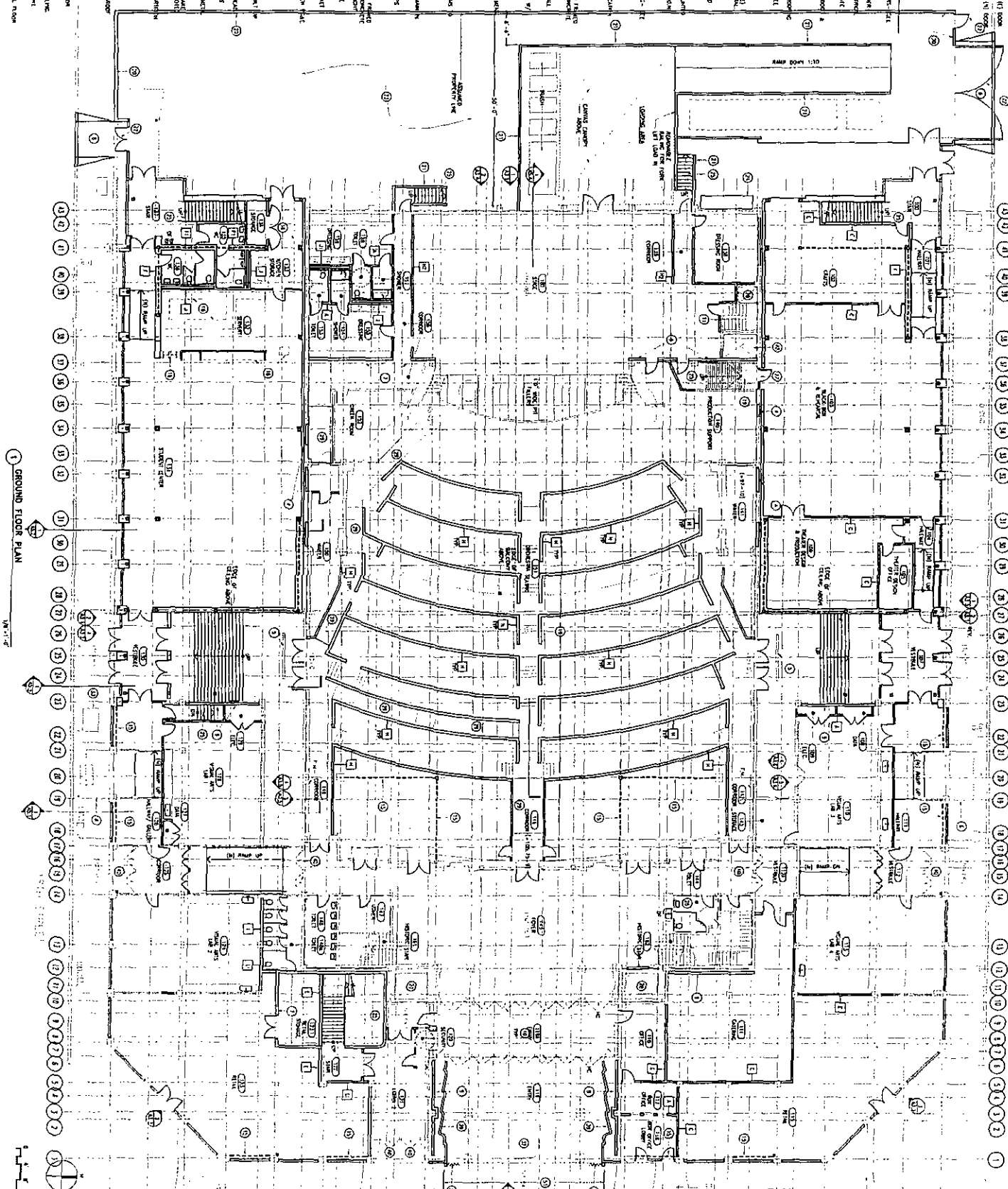


OFFICE OF THE CITY ADMINISTRATOR

- Attachments: 1a. Floor plan Fox Theater 1st floor
1b. Floor plan Fox Theater 2nd floor
1c. Floor plan Fox Theater 3rd floor
2. Detailed soft and hard cost estimates
3. Theater and wrap-around cost estimates
4. Financing structure

LEGEND

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GROUND FLOOR PLAN

KEY NOTES

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ICPA
 INTERNATIONAL CONSTRUCTION PROJECT ASSOCIATION
 1000 17th Street, Suite 1000, San Francisco, CA 94103
 (415) 774-1100
 www.icpa.org

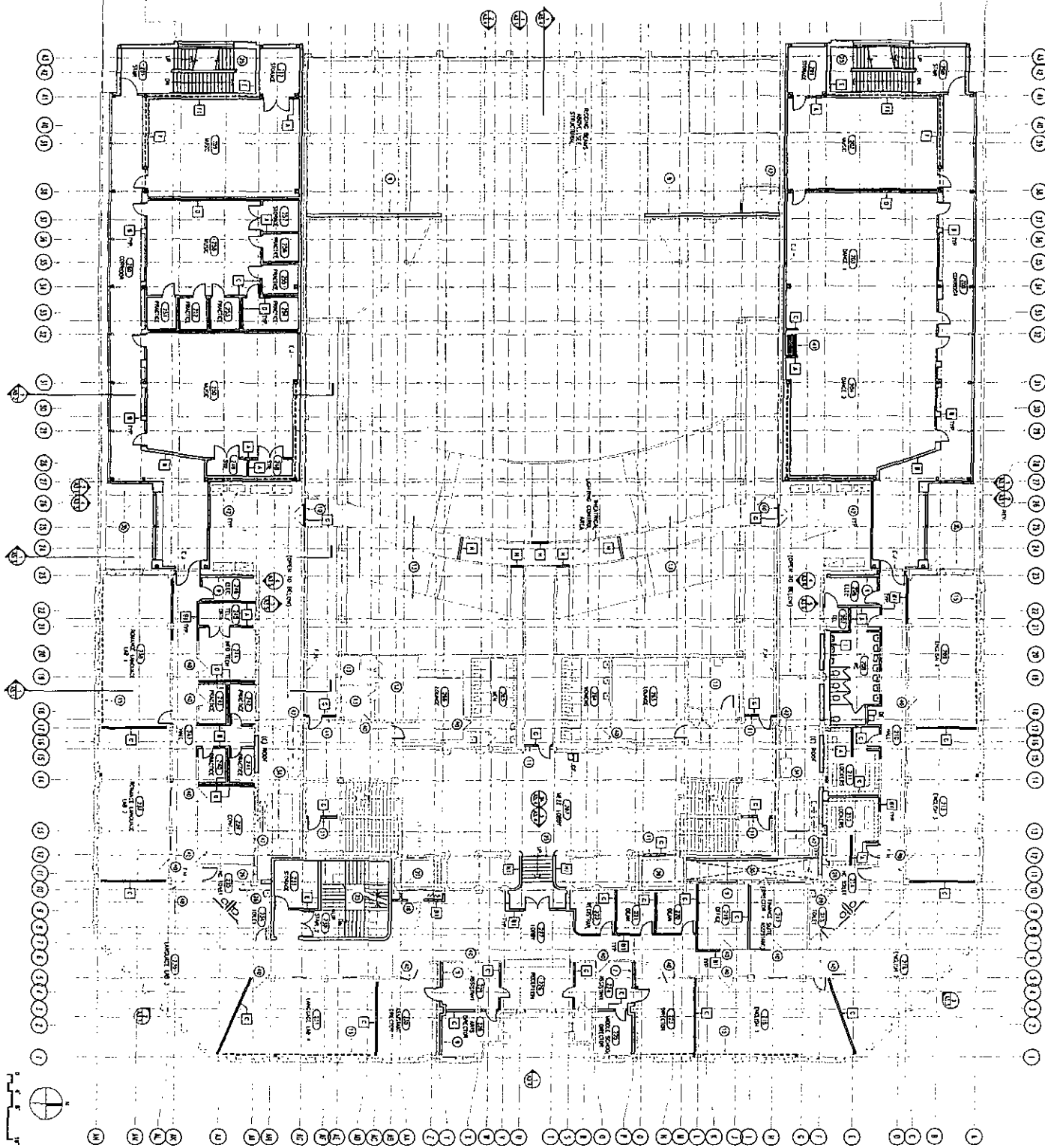
STARWEATHERROD
 ARCHITECTS
 1000 17th Street, Suite 1000, San Francisco, CA 94103
 (415) 774-1100
 www.starweatherrod.com

CAURINA GROUP
 1000 17th Street, Suite 1000, San Francisco, CA 94103
 (415) 774-1100
 www.caurinagroup.com

DESIGN DEVELOPMENT PART 1
 1815 TILDEN AVE
 OAKLAND, CA

A2

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1 SECOND FLOOR PLAN



DATE: 07/27/2010 2:10 PM

STANLEY/ARCHIBONDI
 ARCHITECTS
 215 CALIFORNIA STREET, SUITE 200
 OAKLAND, CA 94612
 TEL: 415.778.8800
 FAX: 415.778.8801
 WWW.STANLEYARCHIBONDI.COM

DESIGNED BY: [Name]
 DRAWN BY: [Name]
 CHECKED BY: [Name]
 DATE: 07/27/2010

PROJECT: REHABILITATION OF THE DARKMAN FOX THEATER
 1815 TELEGRAPH AVE
 OAKLAND, CA

CALIFORNIA
 CAPITAL
 GROUP

DESIGN
 DEVELOPMENT
 PART 1

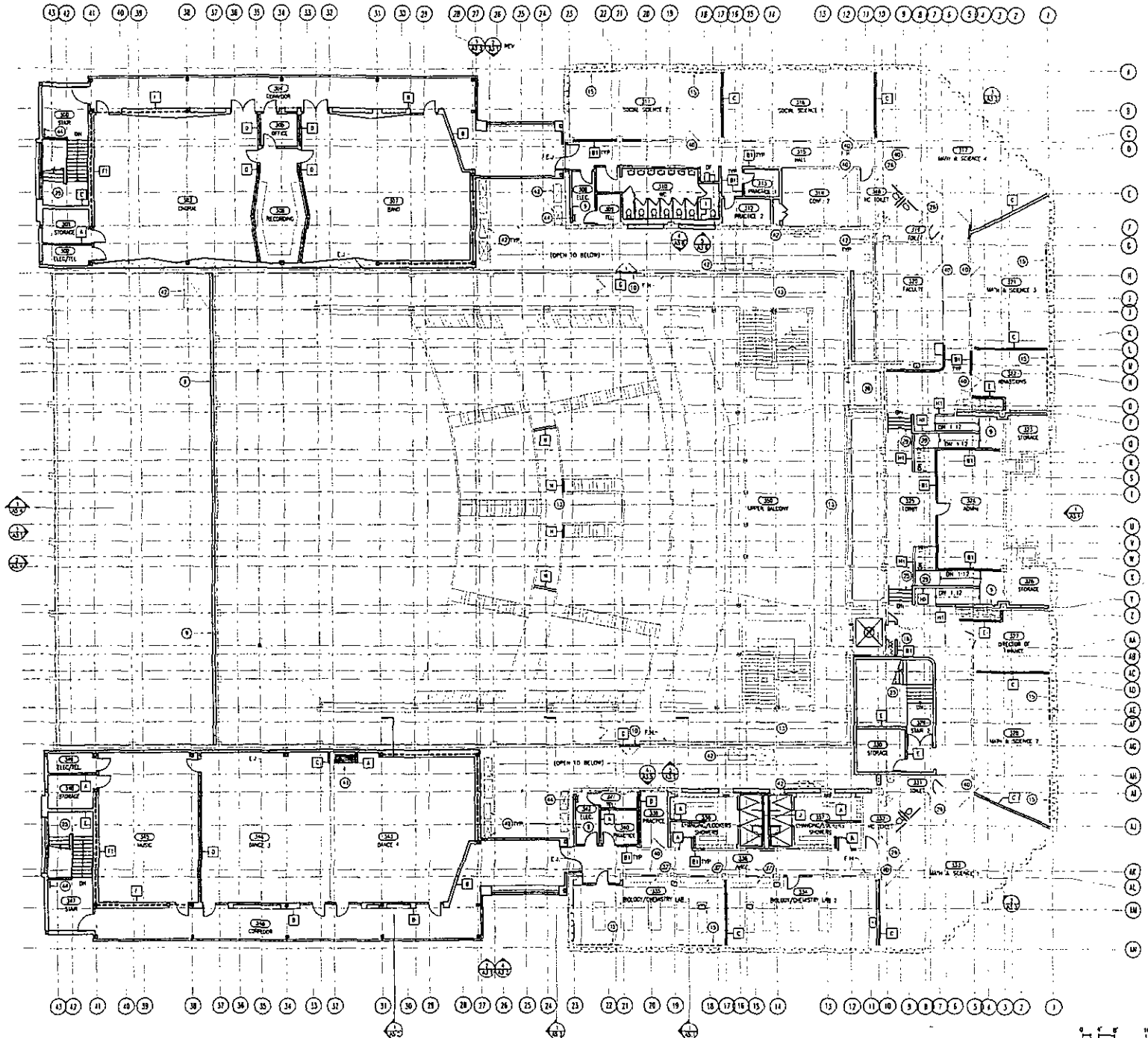
A22

LEGEND

- EXISTING PARTITION TO REMAIN (E) DOOR
- NEW PARTITION/ W/ALL (N) DOOR
- NEW PARTITION/ W/ALL (N) DOOR
- APPROX. F/LR ELEVATION (ELEVATION EXCLUDING STAGE 100 FT)

KEY NOTES

- (1) (N) ELECTRICAL METERS - SEE ELECTRICAL
- (2) (E) ELEC. TRANSFORMER-PIECE VAULT UNDER SLOPEWAY - SEE ELECTRICAL
- (3) (E) PHONE PANEL - SEE ELECTRICAL
- (4) CONG. WALL AT (E) DOOR & WINDOW OPENINGS
- (5) FRENCH DRAIN
- (6) (E) FINISH-REPAIR ROOFING
- (7) (E) CONG. WALLS - SEE STRUCTURAL
- (8) CURB CUT
- (9) (N) SHOWERETTE ON (E) WALL - SEE STRUCTURAL
- (10) BARRICADE (E) EXIT
- (11) BARRICADE ACCESS TO UNOCCUPIED AREAS
- (12) (N) ROOFTOP MECH. EQUIPMENT CURBS MOUNTED
- (13) (E) NOT OCCUPIED U/D
- (14) PATCH ROOF
- (15) (E) EXPOSED BRACING - SEE STRUCTURAL
- (16) H. I.C.
- (17) WOODY SIZE AND LOCATION OF (E) OPENING
- (18) (N) NON-DOOR
- (19) (N) PLYWOOD/ WOOD FRAMED PLATFORM ON (E) CONCRETE SLAB
- (20) (N) RC CONCRETE WALL (8'-0" HIGH)
- (21) (N) RETAINING WALLS W/ GUARD RAILS
- (22) CHAIN-LINK GATES
- (23) ASPHALT CONG. PAVEMENT
- (24) (N) GAS METER AND ENCLOSURE
- (25) (N) STAIRS
- (26) WOODY (E) BATHROOMS TO MAKE ACCESSIBLE
- (27) (N) ELEVATOR
- (28) (E) ELEVATOR TO REMAIN IN "RUNS" STATE
- (29) (N) ACCESSIBLE RAMPS
- (30) WOODY (E) STAIR
- (31) (N) PLYWOOD/ WOOD FRAMED PLATFORMS ON (E) CONCRETE SLAB W/ PARTIAL HEIGHT WOOD PARTITIONS (STAIRS/RAMP WHERE SHOWN)
- (32) REPAIR GLASS IN TICKET BOOTH
- (33) ACCESS PANEL TO NEW PILE VAULT BELOW
- (34) (E) SKYLIGHTS
- (35) (N) ROOF
- (36) (N) SLAB - RAMP BUILT UP ON TOP OF (E)
- (37) (N) CASTWORK OVERHEAD
- (38) (N) ROLLING SCISSORS SECURITY GATE
- (39) REINSTALL GALVANIZED METAL FRAMING
- (40) REPAIR (E) DOORS, MAKE ACCESSIBLE WHERE NOTED "AC"
- (41) FOLDING ACOUSTIC PARTITION
- (42) (N) DUCTWORK, SEE MECHANICAL
- (43) (N) ROOF HATCH
- (44) (N) SHIP LADDER TO ROOF HATCH ABOVE
- (45) (N) FOUNDATION, SEE STRUCTURAL
- (46) (N) SLAB ON GRADE OR STRUCTURAL SLAB
- (47) (N) 2-1/2" MIN. WATER CEILING
- (48) (N) 3-1/2" ROOF SHOVE TRUSS HATCHES
- (49) (E) PENHOUSE, W/ALL FLOOR OPENINGS
- (50) (E) STAIRS TO REMAIN
- (51) REPAIR/REPLACE ALL GLAZING AT SLOPEWAY

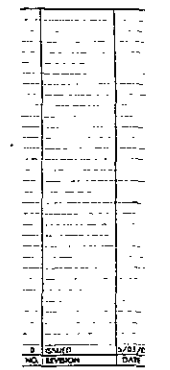


1 THIRD FLOOR PLAN

KPA
KAPLAN PARTNERSHIP ARCHITECTS
1000 BAY STREET, SUITE 200
OAKLAND, CA 94612
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WWW.KAPLANPARTNERSHIP.COM

STARKWEATHERBONDY
STRUCTURAL ENGINEERS
1500 WASHINGTON STREET, SUITE 200
OAKLAND, CA 94612
TEL: 415.778.1000
WWW.STARKWEATHERBONDY.COM

ELS
ELECTRICAL SERVICES
1500 WASHINGTON STREET, SUITE 200
OAKLAND, CA 94612
TEL: 415.778.1000



DESIGN DEVELOPMENT PART 1

CALIFORNIA CAPITAL GROUP
REHABILITATION OF THE OAKLAND FOX THEATER
1815 TELEGRAPH AVE OAKLAND, CA

Scale:	1/4" = 1'-0"
Sheet Number:	A23
Revision:	0
Drawn By:	MCS
Checked By:	SM
Date:	05/01/04

NOTE THE DRAWING IS A REVISION TO SHEET A22

A23

ATTACHMENT 2
FOX PROJECT
Soft Costs

Uses		Schematic Phase	Design Development Phase I	Design Development Phase II	Construction Development Phase	Bid/Permit	Deal Closure Phase	Construction Phase	Total
Soft		Anticipated	Anticipated	Anticipated	Anticipated	Anticipated		Anticipated	
CCG	Developer Fee	\$74,000.00	\$162,200.00	\$ 119,963.00	\$ 119,945.00	\$ 20,000.00		\$ 289,908.00	\$786,016.00
TBD	Project Manager	\$29,000.00	\$49,500.00	\$ 59,982.00	\$ 69,973.00	\$ 20,000.00		\$ 120,000.00	\$348,455.00
CCG	Accounting	\$3,000.00	\$13,900.00	\$ 13,900.00	\$ 30,000.00			\$ 50,000.00	\$110,800.00
KPA	Project Mngmt			\$ 25,000.00	\$ 65,000.00	\$ 15,000.00		\$ 100,000.00	\$205,000.00
KPA	Architecture-Shell/Core	\$57,500.00	\$55,000.00	\$ 70,000.00	\$ 240,000.00	\$ 5,000.00		\$ 150,000.00	\$577,500.00
SBA	Architecture Wrap	\$53,750.00	\$50,000.00	\$ 70,000.00	\$ 155,000.00	\$ 5,000.00		\$ 40,000.00	\$373,750.00
SBA	Addnl		\$10,000.00						\$10,000.00
ELS	Architecture Theater	\$51,940.00	\$40,000.00	\$ 70,000.00	\$ 200,000.00	\$ 5,000.00		\$ 100,000.00	\$466,940.00
KPA	Engineer-Structural	\$52,500.00	\$65,000.00	\$ 105,000.00	\$ 275,000.00	\$ 10,000.00		\$ 100,000.00	\$607,500.00
SJ	Engineer-Mechanical	\$15,000.00	\$25,000.00	\$ 40,000.00	\$ 25,000.00	\$ 2,000.00		\$ 25,000.00	\$132,000.00
SL	Engineer-Electrical	\$4,000.00	\$20,000.00	\$ 40,000.00	\$ 25,000.00	\$ 2,000.00		\$ 25,000.00	\$116,000.00
Reimb Expenses		\$1,500.00		\$ 15,000.00	\$ 40,000.00	\$ 5,000.00		\$ 40,000.00	\$101,500.00
Legal						\$ 40,000.00	\$ 320,000.00		\$360,000.00

WIA	Acoustic Engineer		\$8,650.00		\$ 5,000.00			\$ 5,000.00	\$18,650.00
T-R	Treadwell-Rollo		\$4,000.00		\$ 5,000.00			\$ 5,000.00	\$14,000.00
Civil Engineering					\$ 15,000.00			\$ 5,000.00	\$20,000.00
Arch spec Writer					\$ 40,000.00				\$40,000.00
Painting/Plaster				\$ 10,000.00					\$10,000.00
Bill Blake			\$ 10,000.00						\$10,000.00
Stephen Wuebbens				\$ 20,000.00					\$20,000.00
Tel/ Data Consultant				\$ 15,000.00					\$15,000.00
Kellco	Environmental Hygenist	\$30,000.00	\$5,000.00						\$35,000.00
SSSI			\$4,500.00						\$4,500.00
LFR	Levine-Fricke (Phase I and GeoHaz)		\$10,395.42						\$10,395.42
LFR	Soil Gas		\$14,086.00						\$14,086.00
Alarcon	Exploratory Demo		\$32,900.00						\$32,900.00
Alarcon	Deposit		\$3,500.00						\$3,500.00
LSA	EIR		\$25,000.00						\$25,000.00
Townsend	Funding		\$25,000.00						\$25,000.00
Moss	Funding		\$30,000.00						\$30,000.00
Turner			\$51,971.00						\$51,971.00

	Appraisal for Transfer	\$7,500.00		\$ 3,000.00					\$10,500.00
Miscellaneous			\$24,591.74						\$24,591.74
	Total Soft Costs	\$379,690.00	\$740,194.16	\$ 676,845.00	\$ 1,309,918.00	\$ 89,000.00	\$ 320,000.00	\$ 1,054,908.00	\$4,570,555.16

Fox Theater Project Uses (Hard Costs)

Uses		Schematic Phase	Design Development	Design Development	Construction Development	Bid/Permit	Deal Closure Phase	Construction Phase	Total
Hard									
	Enviro A	\$432,000.00							
Turner Est.	Hazmat							\$ 568,524.00	
	Demo							\$ 1,036,942.00	
	Excavation and Foundation							\$ 943,907.00	
	Structural Frame							\$ 4,385,182.00	
	Roofing and Waterproofing							\$ 340,407.00	
	Exterior Wall							\$ 4,471,231.00	
	Interior Construction							\$ 3,799,554.00	
	Special Requirements							\$ 172,000.00	
	Vertical Transportation							\$ 490,640.00	
	Mechanical							\$ 4,859,155.00	
	Electrical							\$ 3,034,814.00	
	Sitework							\$ 431,462.00	
	Subtotal							\$24,533,818.00	
	Contingency (5%)							\$ 1,226,690.90	
	Subtotal							\$ 25,760,508.90	
	Fee 5%							\$ 1,226,690.90	
	General Conditions							\$ 1,600,000.00	
	Total construction							\$ 28,587,199.80	
	Total Hard Costs	\$432,000.00						\$ 28,587,199.80	\$29,019,199.80
	Total Soft Costs	\$379,690.00	740194.16	\$ 676,845.00	\$ 1,309,918.00	\$ 89,000.00	\$ 320,000.00	\$ 1,054,908.00	\$ 4,570,555.16
	Total Soft & Hard Costs	\$811,690.00	\$740,194.16	\$ 676,845.00	\$ 1,309,918.00	\$ 89,000.00	\$ 320,000.00	\$ 29,642,107.80	\$33,589,754.96

ATTACHMENT 3. PROJECT COSTS

FOX THEATER REHABILITATION

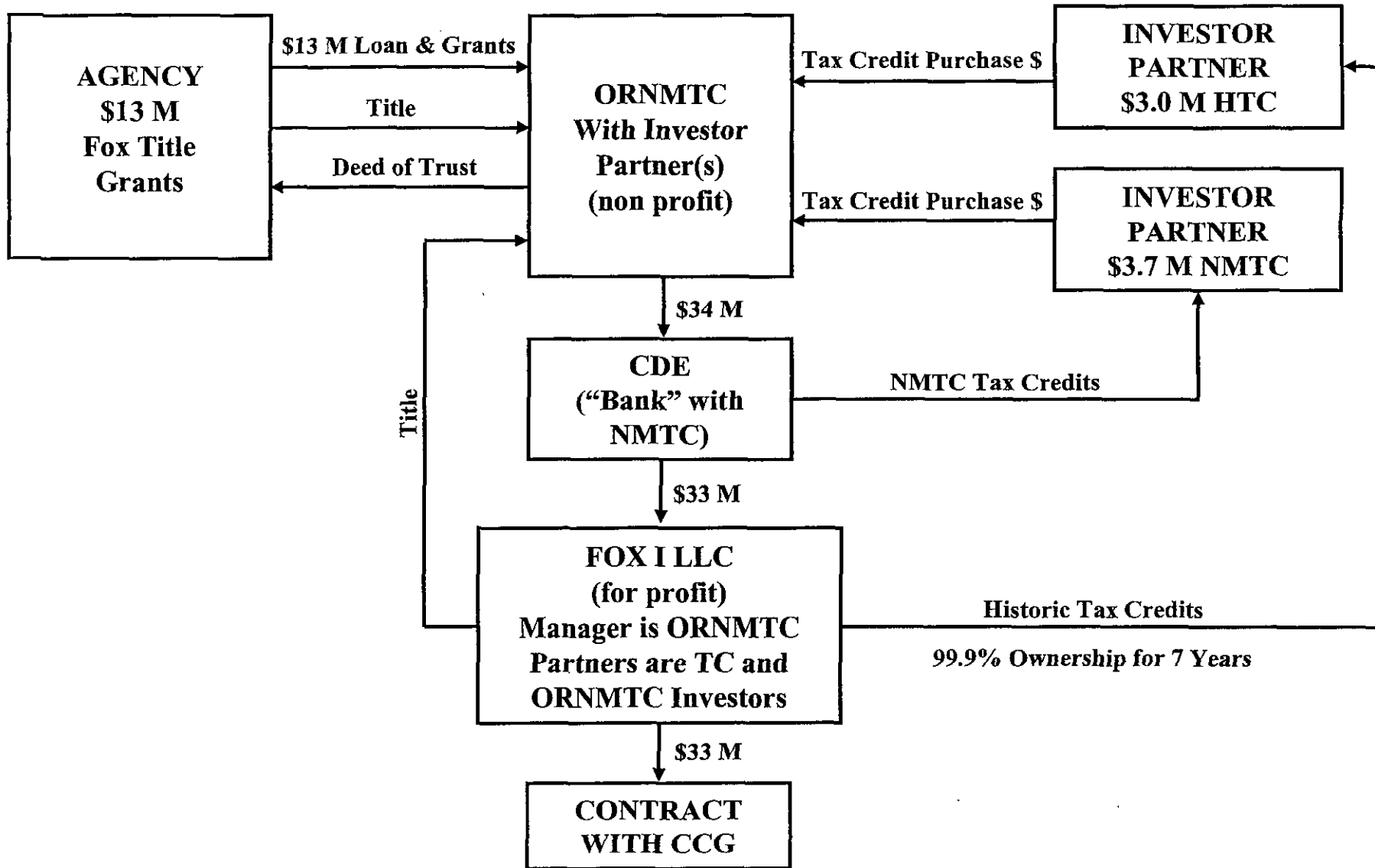
City of Oakland, CA

18-MAY-05

DD ESTIMATE	TOTALS	THEATER	(E) 3 STORY	(N) 3 STORY 18th	(N) 3 STORY 19th	HISTORIC FASCADÉ SITE IMPROVEMENTS
GSF	124,831	50,000	42,000	16,186	16,645	
HAZMAT	768,524	372,000	366,344	15,000	15,180	
DEMOLITION	1,036,942	391,000	424,848	113,777	107,316	
EXCAVATION AND FOUNDATIONS	943,907	250,000	305,925	193,991	193,991	
STRUCTURAL FRAME	4,385,182	1,687,000	1,287,972	701,563	708,647	
ROOFING AND WATERPROOFING	340,407	72,000	104,641	81,883	81,883	
EXTERIOR WALL	4,471,231	114,000	0	790,795	786,039	2,780,397
INTERIOR CONSTRUCTION	3,799,554	766,000	1,556,583	782,155	694,817	
SPECIAL REQUIREMENTS	172,000	172,000	0	0	0	
VERTICAL TRANSPORTATION	490,640	15,000	475,640	0	0	
MECHANICAL	4,859,155	1,707,000	1,968,229	669,935	513,991	
ELECTRICAL	3,034,814	903,000	1,101,778	509,251	520,786	
SITWORK	731,462					731,462
COST OF WORK	25,034,000	6,449,000	7,592,000	3,858,000	3,623,000	3,512,000
CONSTRUCTION MGMT FEE	3,004,000	774,000	911,000	463,000	435,000	421,000
CONTINGENCY w/o ESCALATION	1,953,000	503,000	592,000	301,000	283,000	274,000
TOTAL CONSTRUCTION COSTS	29,991,000	7,726,000	9,095,000	4,622,000	4,341,000	4,207,000

ATTACHMENT 4.

FOX OWNERSHIP / FINANCING STRUCTURE



OFFICE OF THE CITY CLERK
OAKLAND

2005 JUN 15 PM 2:31

APPROVED AS TO FORM AND LEGALITY:



Deputy City Attorney

OAKLAND CITY COUNCIL

RESOLUTION No. _____ C.M.S.

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

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 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

EXHIBIT A

MAP OF FOX THEATRE

ASSESSOR'S MAP 8

642
1999

Scale: 1"=50'

MAP OF OAKLAND AND VICINITY (Bk. 17 Pg. 14)
CAMPBELL TRACT (Bk. 2 Pg. 64)

Code Area Nos. 17-022



2-63 RG
Corrected: 7-2-77 RM
10-9-85 PE
4-06-96 CSL
9-27-92 CSL

THIS MAP SHOULD BE USED FOR REFERENCE PURPOSES ONLY. NO LIABILITY IS ASSUMED FOR THE ACCURACY OF THE DATA SHOWN. PARCELS MAY NOT COMPLY WITH LOCAL SUBDIVISION BUILDING ORDINANCES.

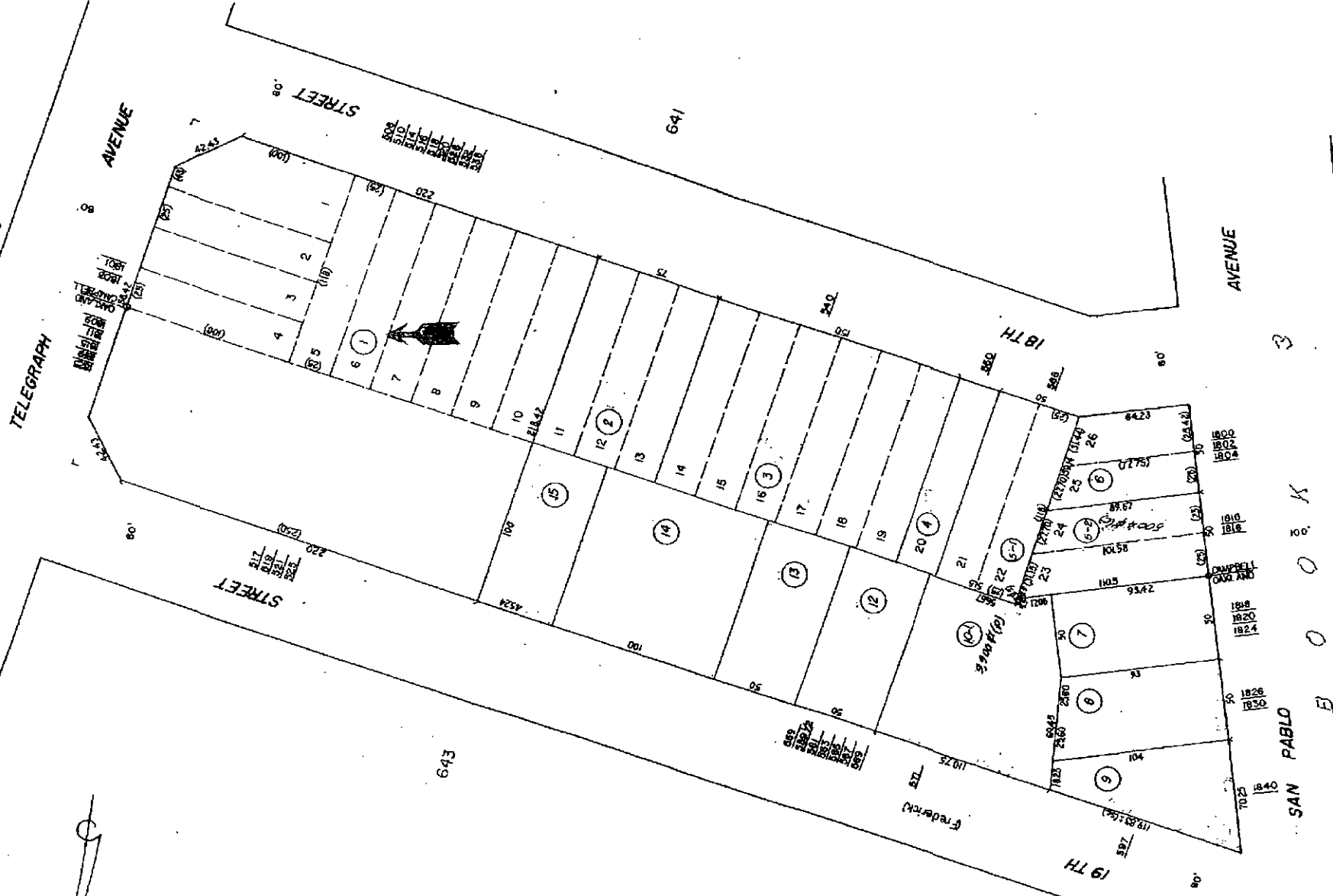


EXHIBIT B

**MITIGATION MONITORING AND REPORTING
PROGRAM**

CONDITIONS OF APPROVAL and MITIGATION MONITORING PLAN

Modifications to the Conditions of Approval are indicated as directed by the Planning Commission at the June 1, 2005 meeting. Revisions are shown in underline for new language, and as strikethrough for deleted language.

STANDARD CONDITIONS:

1. Approved Use.

a. Ongoing.

The project shall be constructed and operated in accordance with the authorized use as described in this letter and the plans dated 3/31/05 and submitted on May 25, 2005 and as amended by the following conditions. Any additional uses or facilities other than those approved with this permit, as described in the project description and the approved plans, will require a separate application and approval. Any deviation from the approved drawings, conditions of approval or use shall required prior written approval from the Zoning Administrator.

2. Effective Date, Expiration, and Extensions

a. Ongoing.

This permit shall become effective upon satisfactory compliance with these conditions. This permit shall expire June 1, 2007 unless actual construction or alteration, or actual commencement of the authorized activities in the case of a permit not involving construction or alteration, has begun under necessary permits by this date. Upon written request and payment of appropriate fees submitted no later than the expiration date of this permit, the Zoning Administrator may grant an extension of this date, with additional extensions subject to approve by the City planning Commission.

3. Scope of This Approval; Major and Minor Changes to Approval

a. Ongoing.

The project is approved pursuant to the Planning Code only and shall comply with all other applicable codes, requirements, regulations and guidelines, including but not limited to those imposed by the City's Building Services Division and the City's Fire Marshal. Minor changes to approved plans may be approved administratively by the Zoning Administrator. Major changes shall be subject to review and approval by the City Planning Commission.

4. Modification of Conditions or Revocation

a. Ongoing.

The City Planning Department reserves the right, after notice and public hearing, to alter Conditions of Approval or revoke this permit if it is found that the

approved facility or use is violating any of the Conditions of Approval, any applicable codes, requirements, regulations or guidelines, or is causing a public nuisance.

5. Recording of Conditions of Approval

a. Prior to issuance of building permit or commencement of activity.

The applicant shall execute and record with the Alameda County Recorder's Office a copy of these conditions of approval on a form approved by the Zoning Administrator. Proof of recordation shall be provided to the Zoning Administrator.

6. Reproduction of Conditions on Building Plans

a. Prior to issuance of building permit.

These conditions of approval shall be reproduced on page one of any plans submitted for a building permit for this project.

7. Defense, Indemnification & Holdharmless

a. Ongoing

The applicant shall defend (with counsel reasonably acceptable to the City), indemnify, and hold harmless the City of Oakland, the City of Oakland, its agents, officers, and employees from any claim, action, or proceeding (including legal costs and attorney's fees) against the City of Oakland, its agents, officers or employees to attack, set aside, void or annul, an approval by the City of Oakland, the Office of Planning and Zoning Division, Planning Commission, or City Council relating to this project. The City shall promptly notify the applicant of any claim, action or proceeding and the City shall cooperate fully in such defense. The City may elect, in its sole discretion, to participate in the defense of said claim, action, or proceeding.

8. Waste Reduction and Recycling

a. Prior to issuance of a building or demolition permit

The applicant may be required to complete and submit a "Waste Reduction and Recycling Plan," and a plan to divert 50 percent of the solid waste generated by the operation of the project, to the Public Works Agency for review and approval, pursuant to City of Oakland Ordinance No. 12253. Contact the City of Oakland Environmental Services Division of Public Works at (510) 238-7073 for information.

PROJECT SPECIFIC CONDITIONS:

1. Seismic Bracing

a. Prior to sign off of the building permit

Prior to sign off of the building permit set of drawings, provide an architectural detail illustrating how the steel cable installation (or other seismic bracing of the auditorium) relates to the building in order to mitigate its appearance, for review and approval by the Development Director.

2. New Mezzanine Opening

a. Prior to sign off of the building permit

Prior to sign off of the building permit set of drawings, provide an architectural detail illustrating how the new mezzanine opening mitigates its appearance, for review and approval by the Development Director.

3. Operable Security Grille

a. Prior to sign off of the building permit

Prior to sign off of the building permit set of drawings, provide an architectural elevation, installation details and catalogue cuts, illustrating the new operable security grille at or near the sidewalk edge, for review and approval by the Development Director.

4. New Ticket Office and Security Booth

a. Prior to sign off of the building permit

Prior to sign off of the building permit set of drawings, provide an architectural elevation, of the new ticket office and security booth at the lobby foyer spaces, for review and approval by the Development Director.

5. Interior elevations at 1928 theater exits

a. Prior to sign off of the building permit

Prior to building permit approval, the applicant shall submit interior elevations at the original recessed 1928 theater exits at 18th and 19th Streets, including all interior finishes for review and approval by the Development Director. As much as possible of the existing interior finishes shall be retained.

6. Inventory Management Plan

a. Prior to sign off of the building permit

Prior to sign off of the building permit, the applicant shall submit an inventory management plan, including a records management system tying the record index to the stored materials' location and the original building location.

7. Addition Building Colors and Materials

a. Prior to sign off of the building permit

Prior to sign off of the building permit, the applicant shall submit proposed addition building colors and materials, for review and approval by the Development Director.

8. Window Replacement

a. Prior to sign off of the building permit

Should it be determined that the windows require replacement, the applicant shall submit architectural details of the proposed window replacement for review and approval by the Development Director.

9. Rooftop Equipment

a. Prior to sign off of the building permit

Prior to sign off of the building permit set of drawings, the applicant shall submit a roof plan and a section through the roof with all proposed roof top equipment, to scale, to determine if rooftop screening is required, for review and approval by the Development Director.

10. Signage

a. Prior to sign off of the building permit

Any proposed new signage shall be submitted under a separate application with appropriate submittals for review and approval.

11. Inclusion of Conditions in State Department of Alcoholic Beverage Control (ABC) License.

a. Prior to signing of State Department of Alcoholic Beverage Control zoning affidavit.

The applicant shall submit a letter to staff signed by the applicant addressed to the State Department of Alcoholic Beverage Control (ABC) stipulating that they wish to include conditions of their ABC license. The City Planning Commission may, after notice and hearing, revoke this Conditional Use Permit if the applicant fails to include the above conditions in the ABC license.

12. Conformance with State Department of Alcoholic Beverage Control (ABC) Regulations.

a. Ongoing.

The approved activity shall conform to all provisions of the State Department of Alcoholic Beverage Control (ABC) license. The state license and state conditions shall be posted along with these Conditional Use Permit conditions in a place visible to the public. This use shall also conform to all State Retail Operating Standards, Section 25612.5 of the Business and Professions Code and local Performance Standards, Section 15210, where applicable including any future changes in the above regulations. The intent of these standards is to reduce nuisance, litter, loitering, and crime associated with alcohol outlets. The City Conditions of Approval shall be forwarded to the Department of Alcoholic Beverage Control.

13. Compliance with City of Oakland Special Regulations for Alcoholic Beverage Sales Commercial Activities.

a. Within 30 days of this approval.

The applicant shall ensure that at least one sign (one square foot minimum with two-inch minimum letters) is posted and maintained in a legible condition at each public entrance to the building prohibiting littering and loitering as specified in these

conditions of approval. Required signage prohibiting open containers and drinking in public shall also be maintained in legible condition near each public entrance to the establishment. The "No Open Container" signs are available from the cashier located on the second floor of 250 Frank H. Ogawa Plaza.

14. ~~Limitations on where alcohol is served at the theater.~~

~~*a. Ongoing*~~

~~Alcohol shall be served during theater performances, within the theater seating area only. If special functions are held at the Fox Theater, alcohol may be served in the foyer areas.~~

15. Storage of Alcohol during non-operating hours and at performances where minors are allowed.

a. Ongoing

During non-operating hours all alcoholic beverages shall be stored in an enclosed, locked secure area.

16. Graffiti Removal

a. Ongoing

Graffiti shall be removed within 72 ours of application. Removal shall follow the Secretary of Interior's Standards.

17. Bicycle Parking

a. Prior to the issuance of building permit

The applicant shall submit for review and approval of the Planning and Zoning Division, plans that show bicycle storage and parking facilities to accommodate long and short-term bicycle parking spaces consistent with the City of Oakland Bicycle Master Plan (July 1999). The plans shall show the design and location of bicycle racks within the secure bicycle storage areas. The applicant shall pay for the cost and installation of any bicycle racks in the public right of way.

18. Special Activities Permit.

a. Prior to commencement of activity.

The applicant shall secure and submit to the Planning and Zoning Division, the required Cabaret Permit from the Office of the City Manager, pursuant to Chapter 5.12 of the Oakland Municipal Code.

19. Recordation of Mitigation Monitoring and Reporting Program and Conditions of Approval.

a. Prior to issuance of demolition, grading or building permit.

The applicant shall execute and record with the Alameda County Recorder's Office a copy of the Mitigation Monitoring and Reporting Program and conditions of approval for the project, on a form approved by the Planning and Zoning Division. Proof of recordation shall be provided to the Planning and Zoning Division.

20. State, Federal, or County Authority Environmental Approval.

a. Prior to issuance of any demolition, grading or building permit.

The applicant shall provide to the Planning and Zoning Division, written verification that the appropriate State, Federal or County authorities have granted all required clearances and confirmed compliance with all applicable conditions imposed by said authorities, for all previous contamination at the site.

21. Hazardous Materials Assessment and Reporting Program.

a. Prior to issuance of any demolition, grading or building permit.

The applicant shall provide evidence from the City's Fire Department, Office of Emergency Services, indicating compliance with the City of Oakland Hazardous Material Assessment and Reporting Program, pursuant to City Ordinance No. 12323.

22. Soil Management Plan.

a. Prior to issuance of any demolition, grading or building permit.

The applicant shall submit all applicable documentation and plans required by the Regional Water Quality Control Board, the Alameda County Public Health Department, and the City's Fire Department, Office of Emergency Services, regarding remediation of the contaminated soil and groundwater identified on the site. These documents and plans shall be submitted to the Planning and Zoning Division, and shall demonstrate to the satisfaction of each agency with jurisdiction that all applicable standards and regulations have been met for the construction and site work to be undertaken pursuant to the permit.

23. Asbestos Removal

a. Prior to issuance of any demolition, grading or building permit.

The applicant shall submit for review and approval by the Planning and Zoning Division, written documentation that any asbestos containing materials (ACMs) have been removed from the project site prior to the start of any demolition activities. A licensed asbestos abatement firm in accordance with the BAAQMD's Regulation 11 shall conduct the removal of ACMs, Rule 2.

24. Lead Investigation and Removal.

a. Prior to issuance of any demolition, grading or building permits.

The applicant shall demonstrate to the satisfaction of the Office of Fire Department, Office of Emergency Services, that the site has been investigated for the presence of lead and does not contain hazardous levels of lead.

25. Lighting Plan.

a. Prior to issuance of building permit.

The applicant shall submit a lighting plan for review and approval by the Planning and Zoning Division, with referral to other City departments as appropriate. The plan shall include the design and location of all lighting fixtures or standards. The plan shall indicate lighting fixtures that are adequately shielded to a point below the light bulb and reflector and that prevent unnecessary glare onto adjacent properties. All lighting shall be architecturally integrated into the site and shall meet the Secretary of Interior's Standards for Rehabilitation.

26. Commercial Lighting.

a. Ongoing.

The applicant shall maintain all on-site lighting to meet the State Business and Professions Code Section 25612, providing enough illumination to identify loiterers standing in the immediate vicinity of the project site. Such illumination shall remain on during all hours of darkness when the business is open, but shall be shielded to a point below the light bulb and reflector and not cast unnecessary glare onto adjacent residential properties.

27. Meter Shielding.

a. Prior to issuance of building permits.

The applicant shall submit for review and approval by the Planning and Zoning Division, plans showing the location of any and all utility meters, transformers, and the like located within a box set within the building, located on a non-street facing elevation, or screened from view from any public right of way.

28. Master Signage Plan.

a. Prior to issuance of sign permit.

The applicant shall submit a Master Signage Plan for review and approval by the Planning and Zoning Division, showing areas of all proposed signage and establishing parameters for each tenant signage.

29. Loitering Prevention.

a. Ongoing.

The owner, manager, and employees of this establishment shall make appropriate efforts to discourage loitering from the premises including calling the police to ask that they remove loiters who refuse to leave. Persons loitering in the vicinity of the exterior of the establishment with no apparent business for more than ten minutes shall be asked to leave. Techniques discussed in the manual entitled "Loitering: Business and Community Based Solutions" may be used and are recommended by the Alcoholic Beverage Action Team.

30. Informational Presentation to the Landmarks Preservation Advisory Board

a. Following review by the State Historic Preservation Office

The applicant shall make an informational status presentation to the Landmarks Preservation Advisory Board regarding the final façade design for the new addition.

31. Conditional Use Permit to authorize Alcoholic Beverage Sales and a Management Plan to address prevention of any adverse effects of co-location of alcoholic beverage sales and high school.

a. Prior to issuance of occupancy permit

The applicant shall submit for review and approval by the ~~Development Director~~ and/or Planning Commission, an application for a Conditional Use Permit to authorize Alcoholic Beverage Sales and a Management Plan to address prevention of any possible adverse effects of co-location of uses for alcoholic beverage sales and for Civic Activities – Community Education.

32. Litter Receptacles

a. Prior to operation

Non-flammable external litter receptacles shall be installed outside of the building in a place accessible to employees and the public. The location shall be reviewed and approved by the Planning and Zoning Division.

33. CEQA Compliance with Mitigation Monitoring and Reporting Program.

a. Ongoing

The applicant shall implement the following Mitigation Monitoring and Reporting Program (MMP) which are the conditions of approval. The applicant shall be responsible for all costs and expenses associated with those conditions of approval and MMP. The MMP identifies the time frame and specific responsible party for implementation and monitoring for each mitigation measure. Overall monitoring and compliance with the mitigation measures will be the responsibility of the Planning and Zoning Division. Unless otherwise stated in the MMP, those Conditions of Approval herein that involve ongoing maintenance or any other ongoing provision shall be monitored and reported on pursuant to the City's Code Compliance procedures.

MITIGATION MONITORING PLAN

AESTHETICS

Mitigation Measure AES-1a: The specific reflective properties of project building materials shall be assessed by the City during Design Review as a part of the project's Development Standards, Procedures and Guidelines. Design Review shall ensure that the use of reflective exterior materials is minimized and that proposed reflective material would not create additional daytime or nighttime glare.

Monitoring Responsibility: City of Oakland, Community and Economic Development Agency (CEDA), Planning and Zoning Division.

Monitoring Timeframe: Prior to obtaining a building permit.

Mitigation Measure AES-1b: Specific lighting proposals shall be reviewed and approved by the City prior to installation. This review shall ensure that any outdoor night lighting for the project is down shielded and would not create additional nighttime glare.

Monitoring Responsibility: City of Oakland, Community and Economic Development Agency (CEDA), Planning and Zoning Division, Building Services Division.

Monitoring Timeframe: Prior to obtaining a building permit.

AIR QUALITY

Mitigation Measure AIR-1: Implementation of the following mitigation measures would reduce this impact to a less-than-significant level:

- The basic and enhanced construction-period pollution control measures listed by the BAAQMD in BAAQMD CEQA Guidelines Assessing the Air Quality Impacts of Projects and Plans shall be implemented during construction of the proposed project.
- Water sprays shall be utilized to control dust when material is being added or removed from a soil stockpile. When a stockpile is undisturbed for more than 1 week, the storage pile shall be treated with a dust suppressant or crusting agent to eliminate wind-blown dust generation.
- All neighboring properties located within 500 feet of property lines shall be provided with the name and phone number of a designated construction dust control coordinator who will respond to complaints within 24 hours by suspending dust-producing activities or providing additional personnel or equipment for dust control as deemed necessary. The phone number of the BAAQMD pollution complaints contact shall also be provided. The dust control coordinator shall be on-call during construction hours.

The coordinator shall keep a log of complaints received and remedial actions taken in response. This log shall be made available to City staff upon its request.

Monitoring Responsibility: City of Oakland, Community and Economic Development Agency (CEDA), Building Services Division.

Monitoring Timeframe: Prior to obtaining a demolition, grading or building permit and during all phases of construction.

CULTURAL RESOURCES

Mitigation Measure CULT-1: The following changes/elements shall be incorporated into the rehabilitation plan for the proposed project:

- (1) Any new terrazzo repair and replacement shall match the historic terrazzo in all visual qualities, including color, aggregate size and surface texture.
- (2) When terra cotta is to be repaired, it shall be repaired or replaced in a manner that matches the historic terra cotta in all visual qualities, including color, size, texture, and surface finish. *Preservation Brief 7 – The Preservation of Historic Glazed Architectural Terra-Cotta* published by the National Park Service shall guide the treatment of the terra cotta.
- (3) The new security grille/gate shall be installed in the least destructive and visually obtrusive manner and shall not destroy significant historic fabric.
- (4) The decorative grille removed from the south side of the lobby shall be conserved, labeled and stored on-site with a description of its original location. The marble removed for the enlarged openings shall be used to patch and repair like marble in other parts of the theater.
- (5) Any seismic safety work shall be accomplished in a manner that is consistent with the Secretary of Interior's Standards, to be completed in a manner that is the least visually obtrusive. Visible structural elements shall be painted a color to blend with the historic ceiling and/or walls.
- (6) The painted ceiling shall be conserved and stabilized. No new in-painting shall be undertaken. Should funds become available; the painting will meet the Secretary of Interior Standards. A plan for any new proposed painting shall be submitted to the City for review and approval by the Development Director.
- (7) The new mezzanine opening that removes a blank wall installed in the 1946 remodeling shall be held to the minimum necessary for the installation of the doors and staircase. The new doors shall be differentiated from the historic doors in the theater and office areas.

Monitoring Responsibility: City of Oakland, Community and Economic Development Agency (CEDA), Planning and Zoning Division, Building Services Division.

Monitoring Timeframe: Prior to obtaining a building permit and during all phases of construction.

Mitigation Measure CULT-2: The following changes/elements shall be incorporated into the rehabilitation plan for the proposed project:

- (1) If the horizontal beam cannot be installed from the ceiling void crawl space, then the historic plaster shall be saw cut, labeled, and curated for future reinstallation. If the beam is attached through the ceiling void and saw cutting takes place, adequate fire safety measures shall be instituted throughout the entire saw cutting process. If the plaster cannot be saw cut, then a mold of the profile shall be made and used for any new plastering when the beam is removed.
- (2) The temporary bracing at the rear of the auditorium shall be screened by a wall not to exceed 42" in height in order to permit the auditorium space to be visually connected. The screen wall shall be located adjacent to the bracing and not in alignment with the aisle.
- (3) If installed as proposed, the temporary ceiling netting shall be as transparent as possible and shall be attached through the ceiling bosses, which shall be retained and conserved for future reinstallation. This provision is provided to the extent, that if the ceiling plaster anchoring system has been tested to meet safety standards, the ceiling netting is not required.
- (4) The temporary steel bracing, if it is not concealed, shall be painted a color to blend with historic theater walls.
- (5) The new plywood flooring shall be installed over the historic wood floor and the cementitious aisle ends as unobtrusively as possible and to minimize damage, to the extent possible.
- (6) The new partial height walls at the sides of the auditorium shall be kept to a minimum height and shall be painted the same color as the historic wall to minimize visual intrusion.
- (7) The new cable lighting system on the underside of the balcony and the light trusses in the auditorium shall use existing openings. If any historic fixtures or plaster elements are removed, they shall be conserved and labeled for re-installation in the future.

- (8) The new plywood flooring and all new walls shall be installed in a manner to permit easy repairs when the walls are removed in the future.

Monitoring Responsibility: City of Oakland, Community and Economic Development Agency (CEDA), Planning and Zoning Division, Building Services Division.

Monitoring Timeframe: Prior to obtaining a building permit and during all phases of construction.

Mitigation Measure CULT-3: The following changes/elements shall be incorporated into the rehabilitation plan for the proposed project:

- (1) Retain and refurbish original 1928 entries at 18th & 19th Streets, including doors and transoms, marble paving and base, metal canopies, painted transom signage, and other features. Secure doors in fixed inoperable position. Interior of 1928 lobbies may be reconfigured as proposed for school use, including removal of interior doors and transoms.
- (2) Retain and refurbish original recessed 1928 theater exits at 18th and 19th Streets, including doors and transoms, paving, and all other exterior and interior finishes with the exception of where the access ramp must be modified to meet circulation requirements. This exception is limited to areas of the wainscoting and terrazzo floor in this area only.
- (3) All steel windows shall be evaluated consistent with criteria and standards of Preservation Brief 13 – *The Repair and Thermal Upgrading of Historic Steel Windows* published by the National Park Service. On the basis of the evaluation, damaged or deteriorated windows will be repaired or replaced in kind. Replacement windows will replicate the size and outward appearance of the original steel sash windows, including the size, shape and profile of the frames and muntins. The glazing and framing materials will be visually compatible with and match the originals in color, finish and all other visual qualities.
- (4) Conduct further inspection and testing of decorative metal spandrel panels to determine physical condition and to verify the need to replace any severely damaged panels. Clean and remove rust using the gentlest means possible. Provide additional specifications for any abrasive cleaning and the design and fabrication of any replacement panels for review and approval by the Development Director prior to undertaking such work.
- (5) Chemical or physical treatments, including cleaning of façade and/or façade elements, shall be conducted in accordance with Preservation Brief 1 – *Assessing Cleaning and Water-Repellent Treatments for Historic Masonry Buildings* and Brief 6 – *Dangers of Abrasive Cleaning in Historic Buildings* published by the National Park Service.

- (6) Steel sash windows proposed for removal at interior light wells and/or on the western (rear) façade shall be salvaged for use as replacements if sizes and/or design are appropriate, for deteriorated windows or window components if they can be repaired. Priority should be given to relocating salvaged windows at more visible street facades, rather than at interior light wells. Where windows are permanently removed, openings shall not be in-filled completely flush with the face of the exterior wall so that the former location is evident.
- (7) Alternatives to the proposed exposed steel seismic bracing at the exterior perimeter walls shall be investigated for feasibility, including recessing the bracing, or using a less intrusive approach such as a moment frame or a horizontal diaphragm(s). If no other approach is feasible, the exposed steel shall be painted to be as unobtrusive as possible when viewed from the exterior of the building.
- (8) If the two historic storefronts flanking the historic office entry on 19th Street can not be retained in place, they shall be salvaged and relocated / reconstructed in an appropriate and compatible location subject to review and approval by the Development Director.
- (9) All historic storefronts and elements shall be individually evaluated for rehabilitation and salvage potential and a final plan developed based on this evaluation and specifying which elements are to be retained or replaced for each storefront bay. Salvaged elements from deteriorated storefronts or those proposed for removal at the one story office wings shall be used as replacement elements to the maximum extent feasible. Replacement materials will be visually compatible with and match the originals in color, finish and all other visual qualities. The storefront bases shall be uniformly finished with marble to match the existing historic marble base material. In all cases, the historic design of the transoms, mezzanine spandrels and awning boxes shall be retained, or reconstructed whether rehabilitation or replacement is selected as the appropriate treatment.

Monitoring Responsibility: City of Oakland, Community and Economic Development Agency (CEDA), Planning and Zoning Division, Building Services Division.

Monitoring Timeframe: Prior to obtaining a building permit and during all phases of construction.

Mitigation Measure CULT-4: The project applicant shall incorporate the following changes/elements into the rehabilitation plan for the proposed project:

- (1) Retain in place the existing brick and terra cotta facades, including historic storefront elements at the transom and mezzanine levels. Shore and protect the façade during construction. If necessary to protect them from

damage, historic storefront elements - including transom glazing and framing, mezzanine spandrel panels and recessed awning boxes - may be catalogued, removed and stored for reinstallation. However, these historic storefront elements shall be returned to the original location and plane, not recessed back from the façade opening. If left in place, provide adequate protection against damage for façade and storefront elements during construction.

- (2) All storefront transoms and awning boxes, and mezzanine transoms shall be retained and refurbished or repaired to the same specification as the three-story office wings. Mezzanine spandrel panels shall be replaced where missing with opaque glass, similar to the originals. Marble bulkheads and column bases may be removed and replaced with compatible new material. Marble so removed shall be salvaged for use in storefront rehabilitation at the three-story wings, along with any intact historic window frame elements. New glazing and bulkhead panels shall be installed in the same plane as the original material. Repairs to damaged terra cotta or replacement of missing pieces shall be treated the same as for the theater exterior. (Refer to Mitigation Measure CULT-1.)

- (3) Additional specifications and details for the design and construction of the proposed seismic joints at the juncture of the one-story and three-story office facades shall be provided at the building permit stage for review and approval by the Development Director prior to the issuance of the Building Permit. Criteria for evaluation shall focus on minimizing the visibility of the proposed joint and its impacts to historic materials such that masonry elements will not be cut and exposed to weather on unfired or unglazed surfaces.

Monitoring Responsibility: City of Oakland, Community and Economic Development Agency (CEDA), Planning and Zoning Division, Building Services Division.

Monitoring Timeframe: Prior to obtaining a building permit and during all phases of construction.

Mitigation Measure CULT-5: The project applicant shall incorporate the following changes/elements into the rehabilitation plan for the proposed project:

During design development the alignment, proportions and depth of the horizontal divisions of the curtain wall shall be revised to align and be more compatible with the lines of the mid floor spandrel and upper floor window heads at the historic three-story office building. The vertical elements shall be studied and redesigned or paired, if appropriate, to achieve a wider profile and minimal depth, more in keeping with that of the historic columns/pilasters below. An exterior color scheme, including materials sample board shall be submitted to the

Development Director for review and approval at or before the time of application for building permit.

Monitoring Responsibility: City of Oakland, Community and Economic Development Agency (CEDA), Planning and Zoning Division, Building Services Division.

Monitoring Timeframe: Prior to obtaining a building permit and during all phases of construction.

Mitigation Measure CULT-6a: If excavation is going to occur, a pre-construction archaeological testing program shall be implemented to help identify whether historic or unique archaeological resources exist within the project site.

Monitoring Responsibility: City of Oakland, Community and Economic Development Agency (CEDA), Building Services Division.

Monitoring Timeframe: Prior to obtaining a demolition, grading or building permit and during all phases of construction.

Mitigation Measure CULT-6b: If excavation is going to occur, archaeological monitoring of ground-disturbing construction in the project site shall be conducted. Monitoring shall be conducted by a cultural resource professional approved by the City who meets the Secretary of the Interior's Professional Qualifications Standards for Prehistoric and Historical Archaeology. Examples of potential historic or unique archaeological resources that could be identified within the project site include: back-filled wells; basements of buildings that pre-date Euro-American buildings that were constructed on the Project site; and backfilled privies. For these resources to be considered significant pursuant to CEQA, they would have to have physical integrity *and* meet at least one of the criteria listed in *CEQA Guidelines* section 15064.5(a)(3) (for historic resources) and/or CEQA section 21083.2(g) (for unique archaeological resources). These criteria include: association with events that have made a significant contribution to the broad patterns of California history and cultural heritage; association with the lives or persons important in our past; embodiment of the distinctive characteristics of a type, period, region, or method of construction, or represents the work of an important creative individual, or possesses high artistic values; yield, or may likely yield, information important in prehistory or history; contains information needed to answer important scientific research questions and be subject to a demonstrable public interest in that information; have a special and particular quality such as being the oldest of its type or the best available example of its type; or be directly associated with a scientifically recognized important prehistoric or historic event or person.

If historic or unique archaeological resources associated with the Chinese community are identified within the project site and are further determined to be unique, the City shall consult with representatives of an established local Chinese-

American organization regarding the potential use of the archaeological findings for interpretive purposes.

Upon completion of such archaeological monitoring, evaluation, or data recovery mitigation, the archaeologist shall prepare a report documenting the methods, results, and recommendations of the investigation, and submit this report to the NWIC. Public displays of the findings of archaeological recovery excavation(s) of historical or unique resources shall be prepared. As appropriate, brochures, pamphlets, or other media, shall be prepared for distribution to schools, museums, libraries, and – in the case of Chinese-American archaeological deposits – Chinese-American organizations.

Monitoring Responsibility: City of Oakland, Community and Economic Development Agency (CEDA), Building Services Division.

Monitoring Timeframe: Ongoing throughout demolition, grading and all phases of construction.

Mitigation Measure CULT-7: Should human remains be encountered, construction activities shall be halted and the County Coroner notified immediately. If the human remains are of Native American origin, the Coroner shall notify the Native American Heritage Commission (NAHC) within 24 hours of this identification, and a qualified archaeologist shall be contacted to evaluate the situation. The NAHC will identify a Native American Most Likely Descendent (MLD) to inspect the site and provide recommendations for the proper treatment of the remains and associated grave goods. The archaeologist shall recover scientifically-valuable information, as appropriate and in accordance with the recommendations of the MLD. Upon completion of such analysis, as appropriate, the archaeologist shall prepare a report documenting the methods and results of the investigation. This report shall be submitted to the NWIC.

Monitoring Responsibility: City of Oakland, Community and Economic Development Agency (CEDA), Building Services Division.

Monitoring Timeframe: Ongoing throughout demolition, grading and all phases of construction.

NOISE

NOISE-1a: Standard construction activities shall be limited to between 7:00 a.m. and 7:00 p.m. Monday through Friday. No construction activities shall be allowed on weekends until after the buildings are enclosed without prior authorization of the Building Services and Planning Divisions of the Community and Economic Development Agency.

Monitoring Responsibility: City of Oakland, Community and Economic Development Agency (CEDA), Building Services Division.

Monitoring Timeframe: Ongoing throughout demolition, grading and all phases of construction.

NOISE-1b: To reduce daytime noise impacts due to construction, to the maximum feasible extent, the City shall require the applicant to develop a site-specific noise reduction program, subject to city review and approval, which includes the following measures:

- Signs shall be posted at the construction site that include permitted construction days and hours, a day and evening contact number for the job site, and a day and evening contact number for the City in the event of problems;
- An on-site complaint and enforcement manager shall be posted to respond to and track complaints;
- A pre-construction meeting shall be held with the job inspectors and the general contractor/on-site Project manager to confirm that noise mitigation and practices are completed prior to the issuance of a building permit (including construction hours, neighborhood notification, posted signs, etc.);
- Equipment and trucks used for Project construction shall utilize the best available noise control techniques (e.g., improved mufflers, equipment redesign, use of intake silencers, ducts, engine enclosures, and acoustically attenuating shields or shrouds, wherever feasible);
- Impact tools (e.g., jack hammers, pavement breakers, and rock drills) used for Project construction shall be hydraulically or electrically powered wherever possible to avoid noise associated with compressed-air exhaust from pneumatically powered tools. However, where use of pneumatic tools is unavoidable, an exhaust muffler on the compressed-air exhaust shall be used; this muffler can lower noise levels where feasible, which could achieve a reduction of 5 dBA. Quieter procedures shall be used, such as drills rather than impact equipment, whenever feasible; and
- Stationary noise sources shall be located as far from sensitive receptors as possible, and they shall be muffled and enclosed within temporary sheds, or insulation barriers or other measures shall be incorporated to the extent feasible.

Monitoring Responsibility: City of Oakland, Community and Economic Development Agency (CEDA), Building Services Division.

Monitoring Timeframe: Prior to sign off of the first building permit, demolition, grading or building and ongoing throughout demolition, grading and all phases of construction.

Mitigation Measure NOISE-2: The project applicant shall have an acoustical analysis prepared that details noise reduction requirements and noise insulation features necessary to achieve acceptable interior and exterior noise levels. The requirements shall be sufficient to achieve a minimum of 45 dBA for all interior building spaces and shall achieve either Normally Acceptable or Conditionally Acceptable ranges for exterior school uses.

Measures to reduce the interior noise levels may include:

- Portions of the theater that are used for the school shall be designed and constructed with ventilation systems, to achieve the indoor fresh-air ventilation requirements specified in Chapter 35 of the Uniform Building Code, to achieve the 45 dBA CNEL interior noise standard.

Monitoring Responsibility: City of Oakland, Community and Economic Development Agency (CEDA), Planning and Zoning Division, Building Services Division.

Monitoring Timeframe: Prior to building permit sign off.

TRANSPORTATION/TRAFFIC

Mitigation Measure TRANS-1: The project sponsor shall optimize the signal timing at the intersection of Telegraph and 19th Street in the year 2025. With this improvement, the intersection would operate at LOS C in the AM peak hour.

Monitoring Responsibility: City of Oakland, Community and Economic Development Agency (CEDA), Building Services Division, Public Works Agency, Traffic Engineering Division.

Monitoring Timeframe: Prior to the year, 2025.

A. McNeil

OFFICE OF THE CITY CLERK
OAKLAND

REDEVELOPMENT AGENCY
OF THE CITY OF OAKLAND

2005 JUN 15 PM 2:32

RESOLUTION No. _____ C.M.S.

A RESOLUTION: (1) AUTHORIZING THE AGENCY ADMINISTRATOR TO APPROVE AND EXECUTE A DISPOSITION AND DEVELOPMENT AGREEMENT AND RELATED DOCUMENTS WITH OAKLAND RENAISSANCE NMTC, A NON-PROFIT ENTITY, FOR THE SALE AND DEVELOPMENT OF THE FOX THEATER AS A MIXED USE ENTERTAINMENT, OFFICE AND SCHOOL DEVELOPMENT; AND (2) APPROVING AND APPROPRIATING 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 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, 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 City Council has approved the sale 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: 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 Agency 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 Agency 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 Agency 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 Agency hereby authorizes the Agency Administrator or her designee to sell the Property to Renaissance, subject to and on the terms and conditions of the DDA; and be it further

RESOLVED: That the Agency hereby authorizes the Agency Administrator or her designee to allocate and appropriate funding in the amount of \$ 22,547,000 for the implementation of the Project as follows: (1) the Loan in the amount of \$13,000,000; (2) transfer to Renaissance of the following sums: (A) the Prop 40 Grant in the amount of \$2,887,500; (B) the Prop 55 Grant in the amount of \$4,985,000; (C) the Insurance Proceeds in the amount of \$1,300,000; and (D) the SHPO Grant in the amount of \$375,000, all on the 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 Theatre 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) the DDA with Renaissance, its affiliates, transferees or designees including, without limitation, Fox I, L.L.C., or similar for-profit entity created to develop the Project, all as generally set forth in the agenda report for this item, and (2) 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 (3) such other documents as necessary or appropriate, in consultation with the Agency Counsel, to facilitate the 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 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 Agency 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 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, _____, 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
Secretary of the Redevelopment
Agency of the City of Oakland

EXHIBIT A

MAP OF FOX THEATRE

ASSESSOR'S MAP 8

642
1999

Scale: 1"=50'

MAP OF OAKLAND AND VICINITY (BK.17 Pg.14)
CAMPBELL TRACT (BK.2 Pg.64)

Code Area Nos.17-022



2-63 RG
4-8-85 RB
9-27-92 CSL
Corrected: 7-12-77 RM

THIS MAP SHOULD BE USED FOR REFERENCE PURPOSES ONLY. NO LIABILITY IS ASSUMED FOR THE ACCURACY OF THE DATA SHOWN. PARCELS MAY NOT COMPLY WITH LOCAL SUBDIVISION BUILDING ORDINANCES.

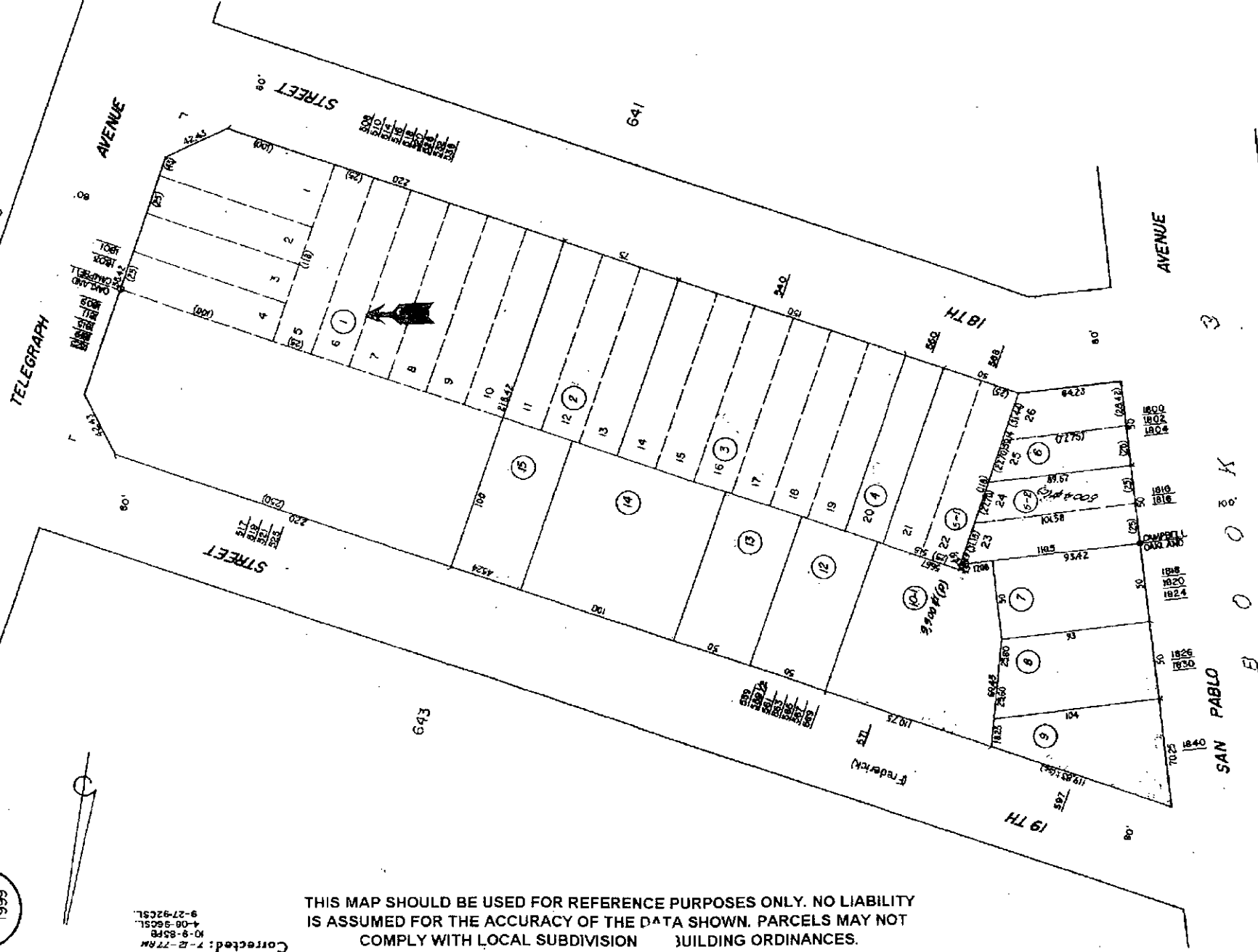


EXHIBIT B

MITIGATION MONITORING AND REPORTING
PROGRAM

CONDITIONS OF APPROVAL and MITGATION MONITORING PLAN

Modifications to the Conditions of Approval are indicated as directed by the Planning Commission at the June 1, 2005 meeting. Revisions are shown in underline for new language, and as strikethrough for deleted language.

STANDARD CONDITIONS:

1. Approved Use.

a. Ongoing.

The project shall be constructed and operated in accordance with the authorized use as described in this letter and the plans dated 3/31/05 and submitted on May 25, 2005 and as amended by the following conditions. Any additional uses or facilities other than those approved with this permit, as described in the project description and the approved plans, will require a separate application and approval. Any deviation from the approved drawings, conditions of approval or use shall required prior written approval from the Zoning Administrator.

2. Effective Date, Expiration, and Extensions

a. Ongoing.

This permit shall become effective upon satisfactory compliance with these conditions. This permit shall expire June 1, 2007 unless actual construction or alteration, or actual commencement of the authorized activities in the case of a permit not involving construction or alteration, has begun under necessary permits by this date. Upon written request and payment of appropriate fees submitted no later than the expiration date of this permit, the Zoning Administrator may grant an extension of this date, with additional extensions subject to approve by the City planning Commission.

3. Scope of This Approval; Major and Minor Changes to Approval

a. Ongoing.

The project is approved pursuant to the Planning Code only and shall comply with all other applicable codes, requirements, regulations and guidelines, including but not limited to those imposed by the City's Building Services Division and the City's Fire Marshal. Minor changes to approved plans may be approved administratively by the Zoning Administrator. Major changes shall be subject to review and approval by the City Planning Commission.

4. Modification of Conditions or Revocation

a. Ongoing.

The City Planning Department reserves the right, after notice and public hearing, to alter Conditions of Approval or revoke this permit if it is found that the

approved facility or use is violating any of the Conditions of Approval, any applicable codes, requirements, regulations or guidelines, or is causing a public nuisance.

5. Recording of Conditions of Approval

a. Prior to issuance of building permit or commencement of activity.

The applicant shall execute and record with the Alameda County Recorder's Office a copy of these conditions of approval on a form approved by the Zoning Administrator. Proof of recordation shall be provided to the Zoning Administrator.

6. Reproduction of Conditions on Building Plans

a. Prior to issuance of building permit.

These conditions of approval shall be reproduced on page one of any plans submitted for a building permit for this project.

7. Defense, Indemnification & Holdharmless

a. Ongoing

The applicant shall defend (with counsel reasonably acceptable to the City), indemnify, and hold harmless the City of Oakland, the City of Oakland, its agents, officers, and employees from any claim, action, or proceeding (including legal costs and attorney's fees) against the City of Oakland, its agents, officers or employees to attack, set aside, void or annul, an approval by the City of Oakland, the Office of Planing and Zoning Division, Planning Commission, or City Council relating to this project. The City shall promptly notify the applicant of any claim, action or proceeding and the City shall cooperate fully in such defense. The City may elect, in its sole discretion, to participate in the defense of said claim, action, or proceeding.

8. Waste Reduction and Recycling

a. Prior to issuance of a building or demolition permit

The applicant may be required to complete and submit a "Waste Reduction and Recycling Plan," and a plan to divert 50 percent of the solid waste generated by the operation of the project, to the Public Works Agency for review and approval, pursuant to City of Oakland Ordinance No. 12253. Contact the City of Oakland Environmental Services Division of Public Works at (510) 238-7073 for information.

PROJECT SPECIFIC CONDITIONS:

1. Seismic Bracing

a. Prior to sign off of the building permit

Prior to sign off of the building permit set of drawings, provide an architectural detail illustrating how the steel cable installation (or other seismic bracing of the auditorium) relates to the building in order to mitigate its appearance, for review and approval by the Development Director.

2. New Mezzanine Opening

a. Prior to sign off of the building permit

Prior to sign off of the building permit set of drawings, provide an architectural detail illustrating how the new mezzanine opening mitigates its appearance, for review and approval by the Development Director.

3. Operable Security Grille

a. Prior to sign off of the building permit

Prior to sign off of the building permit set of drawings, provide an architectural elevation, installation details and catalogue cuts, illustrating the new operable security grille at or near the sidewalk edge, for review and approval by the Development Director.

4. New Ticket Office and Security Booth

a. Prior to sign off of the building permit

Prior to sign off of the building permit set of drawings, provide an architectural elevation, of the new ticket office and security booth at the lobby foyer spaces, for review and approval by the Development Director.

5. Interior elevations at 1928 theater exits

a. Prior to sign off of the building permit

Prior to building permit approval, the applicant shall submit interior elevations at the original recessed 1928 theater exits at 18th and 19th Streets, including all interior finishes for review and approval by the Development Director. As much as possible of the existing interior finishes shall be retained.

6. Inventory Management Plan

a. Prior to sign off of the building permit

Prior to sign off of the building permit, the applicant shall submit an inventory management plan, including a records management system tying the record index to the stored materials' location and the original building location.

7. Addition Building Colors and Materials

a. Prior to sign off of the building permit

Prior to sign off of the building permit, the applicant shall submit proposed addition building colors and materials, for review and approval by the Development Director.

8. Window Replacement

a. Prior to sign off of the building permit

Should it be determined that the windows require replacement, the applicant shall submit architectural details of the proposed window replacement for review and approval by the Development Director.

9. Rooftop Equipment

a. Prior to sign off of the building permit

Prior to sign off of the building permit set of drawings, the applicant shall submit a roof plan and a section through the roof with all proposed roof top equipment, to scale, to determine if rooftop screening is required, for review and approval by the Development Director.

10. Signage

a. Prior to sign off of the building permit

Any proposed new signage shall be submitted under a separate application with appropriate submittals for review and approval.

11. Inclusion of Conditions in State Department of Alcoholic Beverage Control (ABC) License.

a. Prior to signing of State Department of Alcoholic Beverage Control zoning affidavit.

The applicant shall submit a letter to staff signed by the applicant addressed to the State Department of Alcoholic Beverage Control (ABC) stipulating that they wish to include conditions of their ABC license. The City Planning Commission may, after notice and hearing, revoke this Conditional Use Permit if the applicant fails to include the above conditions in the ABC license.

12. Conformance with State Department of Alcoholic Beverage Control (ABC) Regulations.

a. Ongoing.

The approved activity shall conform to all provisions of the State Department of Alcoholic Beverage Control (ABC) license. The state license and state conditions shall be posted along with these Conditional Use Permit conditions in a place visible to the public. This use shall also conform to all State Retail Operating Standards, Section 25612.5 of the Business and Professions Code and local Performance Standards, Section 15210, where applicable including any future changes in the above regulations. The intent of these standards is to reduce nuisance, litter, loitering, and crime associated with alcohol outlets. The City Conditions of Approval shall be forwarded to the Department of Alcoholic Beverage Control.

13. Compliance with City of Oakland Special Regulations for Alcoholic Beverage Sales Commercial Activities.

a. Within 30 days of this approval.

The applicant shall ensure that at least one sign (one square foot minimum with two-inch minimum letters) is posted and maintained in a legible condition at each public entrance to the building prohibiting littering and loitering as specified in these

conditions of approval. Required signage prohibiting open containers and drinking in public shall also be maintained in legible condition near each public entrance to the establishment. The "No Open Container" signs are available from the cashier located on the second floor of 250 Frank H. Ogawa Plaza.

14. Limitations on where alcohol is served at the theater.

~~*a. Ongoing*~~

~~Alcohol shall be served during theater performances, within the theater seating area only. If special functions are held at the Fox Theater, alcohol may be served in the foyer areas.~~

15. Storage of Alcohol during non-operating hours and at performances where minors are allowed.

a. Ongoing

During non-operating hours all alcoholic beverages shall be stored in an enclosed, locked secure area.

16. Graffiti Removal

a. Ongoing

Graffiti shall be removed within 72 ours of application. Removal shall follow the Secretary of Interior's Standards.

17. Bicycle Parking

a. Prior to the issuance of building permit

The applicant shall submit for review and approval of the Planning and Zoning Division, plans that show bicycle storage and parking facilities to accommodate long and short-term bicycle parking spaces consistent with the City of Oakland Bicycle Master Plan (July 1999). The plans shall show the design and location of bicycle racks within the secure bicycle storage areas. The applicant shall pay for the cost and installation of any bicycle racks in the public right of way.

18. Special Activities Permit.

a. Prior to commencement of activity.

The applicant shall secure and submit to the Planning and Zoning Division, the required Cabaret Permit from the Office of the City Manager, pursuant to Chapter 5.12 of the Oakland Municipal Code.

19. Recordation of Mitigation Monitoring and Reporting Program and Conditions of Approval.

a. Prior to issuance of demolition, grading or building permit.

The applicant shall execute and record with the Alameda County Recorder's Office a copy of the Mitigation Monitoring and Reporting Program and conditions of approval for the project, on a form approved by the Planning and Zoning Division. Proof of recordation shall be provided to the Planning and Zoning Division.

20. State, Federal, or County Authority Environmental Approval.

a. Prior to issuance of any demolition, grading or building permit.

The applicant shall provide to the Planning and Zoning Division, written verification that the appropriate State, Federal or County authorities have granted all required clearances and confirmed compliance with all applicable conditions imposed by said authorities, for all previous contamination at the site.

21. Hazardous Materials Assessment and Reporting Program.

a. Prior to issuance of any demolition, grading or building permit.

The applicant shall provide evidence from the City's Fire Department, Office of Emergency Services, indicating compliance with the City of Oakland Hazardous Material Assessment and Reporting Program, pursuant to City Ordinance No. 12323.

22. Soil Management Plan.

a. Prior to issuance of any demolition, grading or building permit.

The applicant shall submit all applicable documentation and plans required by the Regional Water Quality Control Board, the Alameda County Public Health Department, and the City's Fire Department, Office of Emergency Services, regarding remediation of the contaminated soil and groundwater identified on the site. These documents and plans shall be submitted to the Planning and Zoning Division, and shall demonstrate to the satisfaction of each agency with jurisdiction that all applicable standards and regulations have been met for the construction and site work to be undertaken pursuant to the permit.

23. Asbestos Removal

a. Prior to issuance of any demolition, grading or building permit.

The applicant shall submit for review and approval by the Planning and Zoning Division, written documentation that any asbestos containing materials (ACMs) have been removed from the project site prior to the start of any demolition activities. A licensed asbestos abatement firm in accordance with the BAAQMD's Regulation 11 shall conduct the removal of ACMs, Rule 2.

24. Lead Investigation and Removal.

a. Prior to issuance of any demolition, grading or building permits.

The applicant shall demonstrate to the satisfaction of the Office of Fire Department, Office of Emergency Services, that the site has been investigated for the presence of lead and does not contain hazardous levels of lead.

25. Lighting Plan.

a. Prior to issuance of building permit.

The applicant shall submit a lighting plan for review and approval by the Planning and Zoning Division, with referral to other City departments as appropriate. The plan shall include the design and location of all lighting fixtures or standards. The plan shall indicate lighting fixtures that are adequately shielded to a point below the light bulb and reflector and that prevent unnecessary glare onto adjacent properties. All lighting shall be architecturally integrated into the site and shall meet the Secretary of Interior's Standards for Rehabilitation.

26. Commercial Lighting.

a. Ongoing.

The applicant shall maintain all on-site lighting to meet the State Business and Professions Code Section 25612, providing enough illumination to identify loiterers standing in the immediate vicinity of the project site. Such illumination shall remain on during all hours of darkness when the business is open, but shall be shielded to a point below the light bulb and reflector and not cast unnecessary glare onto adjacent residential properties.

27. Meter Shielding.

a. Prior to issuance of building permits.

The applicant shall submit for review and approval by the Planning and Zoning Division, plans showing the location of any and all utility meters, transformers, and the like located within a box set within the building, located on a non-street facing elevation, or screened from view from any public right of way.

28. Master Signage Plan.

a. Prior to issuance of sign permit.

The applicant shall submit a Master Signage Plan for review and approval by the Planning and Zoning Division, showing areas of all proposed signage and establishing parameters for each tenant signage.

29. Loitering Prevention.

a. Ongoing.

The owner, manager, and employees of this establishment shall make appropriate efforts to discourage loitering from the premises including calling the police to ask that they remove loiters who refuse to leave. Persons loitering in the vicinity of the exterior of the establishment with no apparent business for more than ten minutes shall be asked to leave. Techniques discussed in the manual entitled "Loitering: Business and Community Based Solutions" may be used and are recommended by the Alcoholic Beverage Action Team.

30. Informational Presentation to the Landmarks Preservation Advisory Board

a. Following review by the State Historic Preservation Office

The applicant shall make an informational status presentation to the Landmarks Preservation Advisory Board regarding the final façade design for the new addition.

31. Conditional Use Permit to authorize Alcoholic Beverage Sales and a Management Plan to address prevention of any adverse effects of co-location of alcoholic beverage sales and high school.

a. Prior to issuance of occupancy permit

The applicant shall submit for review and approval by the ~~Development Director and/or~~ Planning Commission, an application for a Conditional Use Permit to authorize Alcoholic Beverage Sales and a Management Plan to address prevention of any possible adverse effects of co-location of uses for alcoholic beverage sales and for Civic Activities – Community Education.

32. Litter Receptacles

a. Prior to operation

Non-flammable external litter receptacles shall be installed outside of the building in a place accessible to employees and the public. The location shall be reviewed and approved by the Planning and Zoning Division.

33. CEQA Compliance with Mitigation Monitoring and Reporting Program.

a. Ongoing

The applicant shall implement the following Mitigation Monitoring and Reporting Program (MMP) which are the conditions of approval. The applicant shall be responsible for all costs and expenses associated with those conditions of approval and MMP. The MMP identifies the time frame and specific responsible party for implementation and monitoring for each mitigation measure. Overall monitoring and compliance with the mitigation measures will be the responsibility of the Planning and Zoning Division. Unless otherwise stated in the MMP, those Conditions of Approval herein that involve ongoing maintenance or any other ongoing provision shall be monitored and reported on pursuant to the City's Code Compliance procedures.

MITIGATION MONITORING PLAN

AESTHETICS

Mitigation Measure AES-1a: The specific reflective properties of project building materials shall be assessed by the City during Design Review as a part of the project's Development Standards, Procedures and Guidelines. Design Review shall ensure that the use of reflective exterior materials is minimized and that proposed reflective material would not create additional daytime or nighttime glare.

Monitoring Responsibility: City of Oakland, Community and Economic Development Agency (CEDA), Planning and Zoning Division.

Monitoring Timeframe: Prior to obtaining a building permit.

Mitigation Measure AES-1b: Specific lighting proposals shall be reviewed and approved by the City prior to installation. This review shall ensure that any outdoor night lighting for the project is down shielded and would not create additional nighttime glare.

Monitoring Responsibility: City of Oakland, Community and Economic Development Agency (CEDA), Planning and Zoning Division, Building Services Division.

Monitoring Timeframe: Prior to obtaining a building permit.

AIR QUALITY

Mitigation Measure AIR-1: Implementation of the following mitigation measures would reduce this impact to a less-than-significant level:

- The basic and enhanced construction-period pollution control measures listed by the BAAQMD in BAAQMD CEQA Guidelines Assessing the Air Quality Impacts of Projects and Plans shall be implemented during construction of the proposed project.
- Water sprays shall be utilized to control dust when material is being added or removed from a soil stockpile. When a stockpile is undisturbed for more than 1 week, the storage pile shall be treated with a dust suppressant or crusting agent to eliminate wind-blown dust generation.
- All neighboring properties located within 500 feet of property lines shall be provided with the name and phone number of a designated construction dust control coordinator who will respond to complaints within 24 hours by suspending dust-producing activities or providing additional personnel or equipment for dust control as deemed necessary. The phone number of the BAAQMD pollution complaints contact shall also be provided. The dust control coordinator shall be on-call during construction hours.

The coordinator shall keep a log of complaints received and remedial actions taken in response. This log shall be made available to City staff upon its request.

Monitoring Responsibility: City of Oakland, Community and Economic Development Agency (CEDA), Building Services Division.

Monitoring Timeframe: Prior to obtaining a demolition, grading or building permit and during all phases of construction.

CULTURAL RESOURCES

Mitigation Measure CULT-1: The following changes/elements shall be incorporated into the rehabilitation plan for the proposed project:

- (1) Any new terrazzo repair and replacement shall match the historic terrazzo in all visual qualities, including color, aggregate size and surface texture.
- (2) When terra cotta is to be repaired, it shall be repaired or replaced in a manner that matches the historic terra cotta in all visual qualities, including color, size, texture, and surface finish. Preservation Brief 7 – *The Preservation of Historic Glazed Architectural Terra-Cotta* published by the National Park Service shall guide the treatment of the terra cotta.
- (3) The new security grille/gate shall be installed in the least destructive and visually obtrusive manner and shall not destroy significant historic fabric.
- (4) The decorative grille removed from the south side of the lobby shall be conserved, labeled and stored on-site with a description of its original location. The marble removed for the enlarged openings shall be used to patch and repair like marble in other parts of the theater.
- (5) Any seismic safety work shall be accomplished in a manner that is consistent with the Secretary of Interior's Standards, to be completed in a manner that is the least visually obtrusive. Visible structural elements shall be painted a color to blend with the historic ceiling and/or walls.
- (6) The painted ceiling shall be conserved and stabilized. No new in-painting shall be undertaken. Should funds become available; the painting will meet the Secretary of Interior Standards. A plan for any new proposed painting shall be submitted to the City for review and approval by the Development Director.
- (7) The new mezzanine opening that removes a blank wall installed in the 1946 remodeling shall be held to the minimum necessary for the installation of the doors and staircase. The new doors shall be differentiated from the historic doors in the theater and office areas.

Monitoring Responsibility: City of Oakland, Community and Economic Development Agency (CEDA), Planning and Zoning Division, Building Services Division.

Monitoring Timeframe: Prior to obtaining a building permit and during all phases of construction.

Mitigation Measure CULT-2: The following changes/elements shall be incorporated into the rehabilitation plan for the proposed project:

- (1) If the horizontal beam cannot be installed from the ceiling void crawl space, then the historic plaster shall be saw cut, labeled, and curated for future reinstallation. If the beam is attached through the ceiling void and saw cutting takes place, adequate fire safety measures shall be instituted throughout the entire saw cutting process. If the plaster cannot be saw cut, then a mold of the profile shall be made and used for any new plastering when the beam is removed.
- (2) The temporary bracing at the rear of the auditorium shall be screened by a wall not to exceed 42" in height in order to permit the auditorium space to be visually connected. The screen wall shall be located adjacent to the bracing and not in alignment with the aisle.
- (3) If installed as proposed, the temporary ceiling netting shall be as transparent as possible and shall be attached through the ceiling bosses, which shall be retained and conserved for future reinstallation. This provision is provided to the extent, that if the ceiling plaster anchoring system has been tested to meet safety standards, the ceiling netting is not required.
- (4) The temporary steel bracing, if it is not concealed, shall be painted a color to blend with historic theater walls.
- (5) The new plywood flooring shall be installed over the historic wood floor and the cementitious aisle ends as unobtrusively as possible and to minimize damage, to the extent possible.
- (6) The new partial height walls at the sides of the auditorium shall be kept to a minimum height and shall be painted the same color as the historic wall to minimize visual intrusion.
- (7) The new cable lighting system on the underside of the balcony and the light trusses in the auditorium shall use existing openings. If any historic fixtures or plaster elements are removed, they shall be conserved and labeled for re-installation in the future.

- (8) The new plywood flooring and all new walls shall be installed in a manner to permit easy repairs when the walls are removed in the future.

Monitoring Responsibility: City of Oakland, Community and Economic Development Agency (CEDA), Planning and Zoning Division, Building Services Division.

Monitoring Timeframe: Prior to obtaining a building permit and during all phases of construction.

Mitigation Measure CULT-3: The following changes/elements shall be incorporated into the rehabilitation plan for the proposed project:

- (1) Retain and refurbish original 1928 entries at 18th & 19th Streets, including doors and transoms, marble paving and base, metal canopies, painted transom signage, and other features. Secure doors in fixed inoperable position. Interior of 1928 lobbies may be reconfigured as proposed for school use, including removal of interior doors and transoms.
- (2) Retain and refurbish original recessed 1928 theater exits at 18th and 19th Streets, including doors and transoms, paving, and all other exterior and interior finishes with the exception of where the access ramp must be modified to meet circulation requirements. This exception is limited to areas of the wainscoting and terrazzo floor in this area only.
- (3) All steel windows shall be evaluated consistent with criteria and standards of Preservation Brief 13 – *The Repair and Thermal Upgrading of Historic Steel Windows* published by the National Park Service. On the basis of the evaluation, damaged or deteriorated windows will be repaired or replaced in kind. Replacement windows will replicate the size and outward appearance of the original steel sash windows, including the size, shape and profile of the frames and muntins. The glazing and framing materials will be visually compatible with and match the originals in color, finish and all other visual qualities.
- (4) Conduct further inspection and testing of decorative metal spandrel panels to determine physical condition and to verify the need to replace any severely damaged panels. Clean and remove rust using the gentlest means possible. Provide additional specifications for any abrasive cleaning and the design and fabrication of any replacement panels for review and approval by the Development Director prior to undertaking such work.
- (5) Chemical or physical treatments, including cleaning of façade and/or façade elements, shall be conducted in accordance with Preservation Brief 1 – *Assessing Cleaning and Water-Repellent Treatments for Historic Masonry Buildings* and Brief 6 – *Dangers of Abrasive Cleaning in Historic Buildings* published by the National Park Service.

- (6) Steel sash windows proposed for removal at interior light wells and/or on the western (rear) façade shall be salvaged for use as replacements if sizes and/or design are appropriate, for deteriorated windows or window components if they can be repaired. Priority should be given to relocating salvaged windows at more visible street facades, rather than at interior light wells. Where windows are permanently removed, openings shall not be in-filled completely flush with the face of the exterior wall so that the former location is evident.
- (7) Alternatives to the proposed exposed steel seismic bracing at the exterior perimeter walls shall be investigated for feasibility, including recessing the bracing , or using a less intrusive approach such as a moment frame or a horizontal diaphragm(s). If no other approach is feasible, the exposed steel shall be painted to be as unobtrusive as possible when viewed from the exterior of the building.
- (8) If the two historic storefronts flanking the historic office entry on 19th Street can not be retained in place, they shall be salvaged and relocated / reconstructed in an appropriate and compatible location subject to review and approval by the Development Director.
- (9) All historic storefronts and elements shall be individually evaluated for rehabilitation and salvage potential and a final plan developed based on this evaluation and specifying which elements are to be retained or replaced for each storefront bay. Salvaged elements from deteriorated storefronts or those proposed for removal at the one story office wings shall be used as replacement elements to the maximum extent feasible. Replacement materials will be visually compatible with and match the originals in color, finish and all other visual qualities. The storefront bases shall be uniformly finished with marble to match the existing historic marble base material. In all cases, the historic design of the transoms, mezzanine spandrels and awning boxes shall be retained, or reconstructed whether rehabilitation or replacement is selected as the appropriate treatment.

Monitoring Responsibility: City of Oakland, Community and Economic Development Agency (CEDA), Planning and Zoning Division, Building Services Division.

Monitoring Timeframe: Prior to obtaining a building permit and during all phases of construction.

Mitigation Measure CULT-4: The project applicant shall incorporate the following changes/elements into the rehabilitation plan for the proposed project:

- (1) Retain in place the existing brick and terra cotta facades, including historic storefront elements at the transom and mezzanine levels. Shore and protect the façade during construction. If necessary to protect them from

damage, historic storefront elements - including transom glazing and framing, mezzanine spandrel panels and recessed awning boxes - may be catalogued, removed and stored for reinstallation. However, these historic storefront elements shall be returned to the original location and plane, not recessed back from the façade opening. If left in place, provide adequate protection against damage for façade and storefront elements during construction.

- (2) All storefront transoms and awning boxes, and mezzanine transoms shall be retained and refurbished or repaired to the same specification as the three-story office wings. Mezzanine spandrel panels shall be replaced where missing with opaque glass, similar to the originals. Marble bulkheads and column bases may be removed and replaced with compatible new material. Marble so removed shall be salvaged for use in storefront rehabilitation at the three-story wings, along with any intact historic window frame elements. New glazing and bulkhead panels shall be installed in the same plane as the original material. Repairs to damaged terra cotta or replacement of missing pieces shall be treated the same as for the theater exterior. (Refer to Mitigation Measure CULT-1.)

- (3) Additional specifications and details for the design and construction of the proposed seismic joints at the juncture of the one-story and three-story office facades shall be provided at the building permit stage for review and approval by the Development Director prior to the issuance of the Building Permit. Criteria for evaluation shall focus on minimizing the visibility of the proposed joint and its impacts to historic materials such that masonry elements will not be cut and exposed to weather on unfired or unglazed surfaces.

Monitoring Responsibility: City of Oakland, Community and Economic Development Agency (CEDA), Planning and Zoning Division, Building Services Division.

Monitoring Timeframe: Prior to obtaining a building permit and during all phases of construction.

Mitigation Measure CULT-5: The project applicant shall incorporate the following changes/elements into the rehabilitation plan for the proposed project:

During design development the alignment, proportions and depth of the horizontal divisions of the curtain wall shall be revised to align and be more compatible with the lines of the mid floor spandrel and upper floor window heads at the historic three-story office building. The vertical elements shall be studied and redesigned or paired, if appropriate, to achieve a wider profile and minimal depth, more in keeping with that of the historic columns/pilasters below. An exterior color scheme, including materials sample board shall be submitted to the

Development Director for review and approval at or before the time of application for building permit.

Monitoring Responsibility: City of Oakland, Community and Economic Development Agency (CEDA), Planning and Zoning Division, Building Services Division.

Monitoring Timeframe: Prior to obtaining a building permit and during all phases of construction.

Mitigation Measure CULT-6a: If excavation is going to occur, a pre-construction archaeological testing program shall be implemented to help identify whether historic or unique archaeological resources exist within the project site.

Monitoring Responsibility: City of Oakland, Community and Economic Development Agency (CEDA), Building Services Division.

Monitoring Timeframe: Prior to obtaining a demolition, grading or building permit and during all phases of construction.

Mitigation Measure CULT-6b: If excavation is going to occur, archaeological monitoring of ground-disturbing construction in the project site shall be conducted. Monitoring shall be conducted by a cultural resource professional approved by the City who meets the Secretary of the Interior's Professional Qualifications Standards for Prehistoric and Historical Archaeology. Examples of potential historic or unique archaeological resources that could be identified within the project site include: back-filled wells; basements of buildings that pre-date Euro-American buildings that were constructed on the Project site; and backfilled privies. For these resources to be considered significant pursuant to CEQA, they would have to have physical integrity *and* meet at least one of the criteria listed in *CEQA Guidelines* section 15064.5(a)(3) (for historic resources) and/or CEQA section 21083.2(g) (for unique archaeological resources). These criteria include: association with events that have made a significant contribution to the broad patterns of California history and cultural heritage; association with the lives or persons important in our past; embodiment of the distinctive characteristics of a type, period, region, or method of construction, or represents the work of an important creative individual, or possesses high artistic values; yield, or may likely yield, information important in prehistory or history; contains information needed to answer important scientific research questions and be subject to a demonstrable public interest in that information; have a special and particular quality such as being the oldest of its type or the best available example of its type; or be directly associated with a scientifically recognized important prehistoric or historic event or person.

If historic or unique archaeological resources associated with the Chinese community are identified within the project site and are further determined to be unique, the City shall consult with representatives of an established local Chinese-

American organization regarding the potential use of the archaeological findings for interpretive purposes.

Upon completion of such archaeological monitoring, evaluation, or data recovery mitigation, the archaeologist shall prepare a report documenting the methods, results, and recommendations of the investigation, and submit this report to the NWIC. Public displays of the findings of archaeological recovery excavation(s) of historical or unique resources shall be prepared. As appropriate, brochures, pamphlets, or other media, shall be prepared for distribution to schools, museums, libraries, and – in the case of Chinese-American archaeological deposits – Chinese-American organizations.

Monitoring Responsibility: City of Oakland, Community and Economic Development Agency (CEDA), Building Services Division.

Monitoring Timeframe: Ongoing throughout demolition, grading and all phases of construction.

Mitigation Measure CULT-7: Should human remains be encountered, construction activities shall be halted and the County Coroner notified immediately. If the human remains are of Native American origin, the Coroner shall notify the Native American Heritage Commission (NAHC) within 24 hours of this identification, and a qualified archaeologist shall be contacted to evaluate the situation. The NAHC will identify a Native American Most Likely Descendent (MLD) to inspect the site and provide recommendations for the proper treatment of the remains and associated grave goods. The archaeologist shall recover scientifically-valuable information, as appropriate and in accordance with the recommendations of the MLD. Upon completion of such analysis, as appropriate, the archaeologist shall prepare a report documenting the methods and results of the investigation. This report shall be submitted to the NWIC.

Monitoring Responsibility: City of Oakland, Community and Economic Development Agency (CEDA), Building Services Division.

Monitoring Timeframe: Ongoing throughout demolition, grading and all phases of construction.

NOISE

NOISE-1a: Standard construction activities shall be limited to between 7:00 a.m. and 7:00 p.m. Monday through Friday. No construction activities shall be allowed on weekends until after the buildings are enclosed without prior authorization of the Building Services and Planning Divisions of the Community and Economic Development Agency.

Monitoring Responsibility: City of Oakland, Community and Economic Development Agency (CEDA), Building Services Division.

Monitoring Timeframe: Ongoing throughout demolition, grading and all phases of construction.

NOISE-1b: To reduce daytime noise impacts due to construction, to the maximum feasible extent, the City shall require the applicant to develop a site-specific noise reduction program, subject to city review and approval, which includes the following measures:

- Signs shall be posted at the construction site that include permitted construction days and hours, a day and evening contact number for the job site, and a day and evening contact number for the City in the event of problems;
- An on-site complaint and enforcement manager shall be posted to respond to and track complaints;
- A pre-construction meeting shall be held with the job inspectors and the general contractor/on-site Project manager to confirm that noise mitigation and practices are completed prior to the issuance of a building permit (including construction hours, neighborhood notification, posted signs, etc.);
- Equipment and trucks used for Project construction shall utilize the best available noise control techniques (e.g., improved mufflers, equipment redesign, use of intake silencers, ducts, engine enclosures, and acoustically attenuating shields or shrouds, wherever feasible);
- Impact tools (e.g., jack hammers, pavement breakers, and rock drills) used for Project construction shall be hydraulically or electrically powered wherever possible to avoid noise associated with compressed-air exhaust from pneumatically powered tools. However, where use of pneumatic tools is unavoidable, an exhaust muffler on the compressed-air exhaust shall be used; this muffler can lower noise levels where feasible, which could achieve a reduction of 5 dBA. Quieter procedures shall be used, such as drills rather than impact equipment, whenever feasible; and
- Stationary noise sources shall be located as far from sensitive receptors as possible, and they shall be muffled and enclosed within temporary sheds, or insulation barriers or other measures shall be incorporated to the extent feasible.

Monitoring Responsibility: City of Oakland, Community and Economic Development Agency (CEDA), Building Services Division.

Monitoring Timeframe: Prior to sign off of the first building permit, demolition, grading or building and ongoing throughout demolition, grading and all phases of construction.

Mitigation Measure NOISE-2: The project applicant shall have an acoustical analysis prepared that details noise reduction requirements and noise insulation features necessary to achieve acceptable interior and exterior noise levels. The requirements shall be sufficient to achieve a minimum of 45 dBA for all interior building spaces and shall achieve either Normally Acceptable or Conditionally Acceptable ranges for exterior school uses.

Measures to reduce the interior noise levels may include:

- Portions of the theater that are used for the school shall be designed and constructed with ventilation systems, to achieve the indoor fresh-air ventilation requirements specified in Chapter 35 of the Uniform Building Code, to achieve the 45 dBA CNEL interior noise standard.

Monitoring Responsibility: City of Oakland, Community and Economic Development Agency (CEDA), Planning and Zoning Division, Building Services Division.

Monitoring Timeframe: Prior to building permit sign off.

TRANSPORTATION/TRAFFIC

Mitigation Measure TRANS-1: The project sponsor shall optimize the signal timing at the intersection of Telegraph and 19th Street in the year 2025. With this improvement, the intersection would operate at LOS C in the AM peak hour.

Monitoring Responsibility: City of Oakland, Community and Economic Development Agency (CEDA), Building Services Division, Public Works Agency, Traffic Engineering Division.

Monitoring Timeframe: Prior to the year, 2025.