

CITY OF OAKLAND

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OAKLAND

SEP - 1 AM 10: 25

AGENDA REPORT

TO: Sabrina B. Landreth
City Administrator

FROM: Mark Sawicki
Director, EWD

SUBJECT: Fox Theater Loan Assignment and
Guarantee

DATE: August 15, 2016

City Administrator Approval

Date:

8/31/16

RECOMMENDATION

Staff Recommends That The Oakland Redevelopment Successor Agency ("ORSA") Adopt The Following Legislation:

1. **A Resolution Authorizing The Agency Administrator To Consent To The Assignment Of The \$1.4 Million Loan Agreement Between The Agency And Fox Theater Master Tenant, LLC To Assign The \$1.4 Million Loan To Fox Oakland Theater, Inc. And Subordinate The Loan To A New \$4,600,000 Loan.**
2. **A Resolution Regarding The Fox Theater Project Amending Resolution Nos. 2006-0073 And 2009-0057 To Modify The Existing Loan Repayment Guarantee From The Redevelopment Agency Of The City Of Oakland To Fox Oakland Theater, Inc. For Conventional Loan Not To Exceed \$4,600,000.**

EXECUTIVE SUMMARY

Staff recommends that the ORSA board approve the attached legislation authorizing the assignment and amendment to various loans and loan guaranties for the Fox Theater Project. The tax credit financing for the Fox Theater Project required the City and former Redevelopment Agency (the "Agency") to set up Fox Oakland Theater, Inc. ("FOT"), a non-profit public benefit corporation. FOT then set up Fox Theater Manager, Inc. ("FTM") a for profit corporation owned by FOT. Finally FTM set up two limited liability companies owned by the tax credit investor and FTM - Fox Theater Landlord LLC ("FTLL") and Fox Theater Master Tenant, LLC ("FTMT"). With the end of the tax credit compliance periods, most of these entities can be eliminated. In order to eliminate these entities, the Agency must first assign a \$1,400,000 Loan, made by the Agency to FTMT, to FOT. This loan must be subordinated to a new \$4,600,000 conventional loan to FOT, and the new loan must be guaranteed by ORSA.

BACKGROUND / LEGISLATIVE HISTORY

The Fox renovation is one of the most unique construction projects ever undertaken by the Agency. Since it combines new building technology with historic preservation, the challenges to

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this project have always been: (1) to preserve the building and modernize it at the same time; (2) to insure the City's requirements have been met to make the building systems fully compliant with current codes, (3) to balance the need for seismic safety with historic integrity; (4) to preserve architectural detail and still accommodate all new mechanical, electrical and plumbing requirements; and (5) to ensure the maintenance of historic tax credits with the needs of the users. The fact that the building stood vacant for over forty years compounded the renovation complexities.

All of these many complexities required the Agency to develop a complicated financing structure to underwrite the project. The City and Agency created the Fox entities - FOT, FTMT, FTLL and FTM - to enter into a series of ownership and financial structures and agreements to insure that the project would receive Historic and New Markets Tax Credits needed for project completion. These are summed up as follows:

On July 19, 2005, the Agency and City Council ("City") approved resolutions authorizing a Lease Disposition and Development Agreement ("LDDA") between the Agency and Oakland Renaissance NMTC, Inc. ("ORNMTC"), a nonprofit public benefit corporation, that was required to apply for and accept historic tax credits. Agency Resolution No. 2006-0046 C.M.S. and City Resolution No 79382 C.M.S.

On July 18, 2006 and October 31, 2006, the Agency and City approved resolutions authorizing an Amended and Restated Disposition and Development Agreement between the Agency and ORNMTC, which was later assigned to the then-newly created FOT. FOT replaced ORNMTC and was established specifically as the entity to control the project via a ground lease and in accordance with the DDA and to indirectly own and manage the other financial entities created to secure the Historic and New Markets Tax Credit equity for the project, Agency Resolution Nos. 2006-0057 C.M.S. and 2006-0073 C.M.S. and City Resolution Nos. 80057 C.M.S. and 80247 C.M.S. The DDA includes several pieces of Agency financing, including: 1) \$4.1 million predevelopment loan; 2) \$6.5 million loan for the land (the lease value was based on the cost to the Agency for purchasing and preserving the building); and 3) a \$21.5 million construction loan. The Agency resolutions also authorized guarantees for the tax credit investments and \$6.5 million conventional construction loan.

On October 31, 2006 the Agency approved a resolution revising authority for the guarantees including the guarantee for the \$6,500,000 commercial loan - Agency Resolution No. 2006-0073 C.M.S.

On July 15, 2008 the Agency approved Resolution Nos. 2008-0075 C.M.S. through 2008-0080 C.M.S. authorizing the Agency Administrator to: (1) amend the Disposition And Development Agreement to provide for a Bridge Loan to FOT for \$7,450,000 to pay for increased project costs; (2) to enter into a Tenant Improvement Grant Agreement with GASS Entertainment Inc., the selected theater operator, for \$2,000,000 to pay for theater tenant improvements; (3) to enter into a loan agreement with FTMT, which was indirectly controlled by FOT via the ground lease and DDA, for \$2,700,000 to pay for additional theater tenant improvements and restaurant tenant improvements; (4) to enter into a loan agreement with the Oakland School for the Arts ("OSA") for \$2,300,000 to fund the school tenant improvements; (5) to apply for, accept and appropriate grant

funds from: (a) California Cultural And Historical Endowment Grant in the amount of \$1,400,000; (b) Department Of Housing And Community Development Infill Infrastructure Grant in the amount of \$10,000,000; and (c) a Federal Housing And Urban Development Grant in the amount of \$3,000,000; and (6), to accept and appropriate \$68,750 in historic mitigation funds from Signature At Broadway Grand LLC.

On May 19, 2009 the Agency approved Resolution Nos. 2009-0061 C.M.S. authorizing an amendment to Resolution No. 2008-0077 C.M.S. to divide the \$2.7 million loan to FTMT into two loans: (1) a \$1.4 million loan to FTMT for restaurant tenant improvements, and (2) a \$1.3 million loan to Friends of the Oakland Fox ("FOOF"). Agency Resolution No. 2009-0061 C.M.S.

On January 5, 2010 the Agency approved Resolution Nos. 2010-0010 C.M.S. authorizing an additional \$2.0 million construction loan to pay for the final change orders.

ANALYSIS AND POLICY ALTERNATIVES

In order to generate equity from the New Markets and Historic Tax Credits, the City and Redevelopment Agency helped create four entities. FTMT was wholly owned by Bank of America, the tax credit investor, as the 100 percent sole member of FTMT. FTM was the nonmember manager of FTMT. FTLL was owned by FTMT (10%) and FTM (90%), which is owned by FOT. The various agreements with the Agency and other entities were passed through FOT to the various other Fox Theater entities. With the end of the tax credit compliance period, ownership of FTMT has been transferred to FOT. Now all of the other entities are owned by FOT directly or indirectly and can be dissolved. The dissolution of these entities will result in approximately \$186,000 in annual savings from eliminated Federal and State taxes and fees, as well as accounting, legal, property management and other consultant costs. These savings will allow FOT to set aside maintenance reserves for the Fox Theater and repay debt to ORSA. FOT will be able to dissolve the other three entities as soon as the remaining loans, contracts and other obligations are formally assigned to FOT. Most of the ORSA loans are with FOT, but one of the loans - the \$1.4 million tenant improvement loan - requires ORSA consent for the assignment of this \$1.4 million loan to FOT.

The City has the opportunity to determine the management of the Fox Theater. The two main options are: 1) leave the Ground Lease in place and have FOT manage the property; or 2) terminate the Ground Lease and have the City manage the property. There are two issues that impact this decision:

1. The underlying property is owned by ORSA as a property with an existing obligation. But the Long Range Property Management Plan anticipated the site changing from a property with an existing obligation that remained with ORSA to a property for future development that is transferred to the City.
2. There is a \$6.5 million conventional loan to FTLL with approximately \$4.6 million in outstanding principal that needs to be refinanced by December 15, 2016, when the remaining balance of the loan is due. FTLL needs to remain in place until this loan is refinanced.

Staff is recommending that the Ground Lease remain in place with FOR continuing as the leasehold owner of the Fox Theater in order to minimize City liability for the building and to allow FOT to refinance the \$4.6 million debt. Failure to refinance the \$4.6 million debt by December will result in the ORSA guarantee being called requiring a payment from ORSA of \$4.6 million. The Ground Lease structure and the refinancing of the \$4.6 million debt will reduce ORSA liabilities both in terms of the guarantee but also with respect to property liabilities. Additional benefits will occur once FOT has built up operating funds and a maintenance reserve, when net revenue will be paid to ORSA as deferred loan payments. Since the Agency loans to the Fox Theater project were primarily made with bond funds, Central District TA Bonds Series 2006 Taxable, the repayments are considered bond proceeds under the Bond Expenditure Agreement and will be transferred to the City for projects and programs that are consistent with the bond covenants, i.e. blight abatement within the Central District.

The redevelopment dissolution statutes, in particular Health and Safety Code Section 34181, direct the Oversight Board through the Successor Agency to:

Determine whether any contracts, agreements, or other arrangements between the dissolved redevelopment agency and any private parties should be terminated or renegotiated to reduce liabilities and increase net revenues to the taxing entities, and present proposed termination or amendment agreements to the oversight board for its approval. The board may approve any amendments to or early termination of those agreements if it finds that amendments or early termination would be in the best interests of the taxing entities.

The assignment of the FTMT loan is part of the unwind of Historic and New Markets Tax Credit deal and will allow ORSA to terminate several contingent liabilities including the following items from the Recognized Obligation Payment Schedule: 98 Fox Theater Loan Payment Guaranty for construction/permanent loan; 99 and 100 Fox Theater New Markets Tax Credit Loan Guaranties; and 101 Fox Theater New Markets Tax Credit and Historic Tax Credit investment Guaranty. The tax credit unwind will eventually remove approximately \$30 million in contingent liabilities. In addition, the assignment and replacement loan guarantee will allow FOT to refinance the \$6.5 million commercial loan, which would otherwise require a \$4,600,000 payment on December, 2016, and continue making regular loan payments to ORSA. The refinancing of this loan may also require subordination of the other Agency financing for the Fox Theater, including the \$1.4 million Agency loan to FTMT, and subordination of the leasehold interest in the Fox Theater. The subordinations, assignment and loan guarantee all will help to prevent ORSA from having a \$4,600,000 payment from the next Redevelopment Property Tax Trust Fund distribution under the existing loan guarantee (ROPS Item #98), thereby reducing liabilities and increasing net revenue in the best interest of the taxing entities. Even in the worst case scenario, if ORSA were to receive no additional payments for the \$1.4 million Agency loan to FTMT, ORSA would be in much better shape than it would be in having to pay off the remaining \$4.6 million on the \$6.5 million Construction Loan. But it is more likely that ORSA will continue to receive payments under the \$1.4 million Agency loan and these payments will increase after the refinanced loan is paid off in 10 years, even if, the lender providing the refinanced loan requires reserves be set aside before payments are made on the \$1.4 million Agency loan. The various Fox Theater entities currently have cash balances of approximately \$1.5 million, which should be sufficient for any reserve requirement. Most of these funds are

required for operating and replacement reserves, and possibly a debt service reserve for the new \$4,600,000 loan, but a small portion may be available for paying down a portion of the balloon payment reducing the refinancing and the ORSA obligation. Of the existing cash balances, approximately \$280,000 is held by FTLL and these are funds that might be available for paying down this loan.

FISCAL IMPACT

The \$1.4 million FTMT loan is the only debt with ORSA that has been regularly paid by any of the entities, approximately \$100,000 per year. This loan was made with unrestricted redevelopment funds and any payments are general ORSA revenue. The interest and principal payments therefore offsets other ORSA costs, reducing ORSA's claims on the Redevelopment Property Tax Trust Fund and results in additional revenue to the taxing entities of which approximately 29 percent comes to the City of Oakland. The total payments will be approximately \$2.0 million and the City's share of the distributions to taxing entities will be approximately \$580,000. The project has also been paying a number of other conventional and New Markets enhanced loans. This debt will also need to be assumed by FOT, but with consolidation of this debt, there will be additional funds available for the Project.

The new \$4.6 million loan payment guarantee will not impact the City or the taxing entities. Without the guarantee, the taxing entities, including the City of Oakland, are likely to have a \$4,600,000 reduction in net funds from the Redevelopment Property Tax Trust Fund ("RPTTF") in January 2017. The City's share of RPTTF would be reduced by approximately \$1,334,000. With the payment guarantee on the \$4.6 million loan, this payment is likely to be prevented and with time the liability would be eliminated. It is expected that FOT will have sufficient funds to repay the full \$4.6 million refinanced loan from revenues generated from the Project.

PUBLIC OUTREACH / INTEREST

There were numerous presentations to the Landmarks Preservation Advisory Board, Planning Commission, Community and Economic Development Committee, and City Council from 2000 to 2010 for the planning and implementation of the Fox Theater Renovation Project. This includes at least 20 resolutions by the Redevelopment Agency and the City. This is the first action by the ORSA board, Agency board or City Council since the project was completed in 2010.

COORDINATION

Staff from Workforce and Economic Development coordinated with the Office of the City Attorney, outside counsel for the various Fox entities, the Controller's Bureau, and the Budget Office. These discussions have led to the recommendation of transferring all Fox Theater activities to FOT and eliminating the other entities. This action must be coordinated with the amended 2016-17B Recognized Obligation Payment Schedule and both items need to be approved by the Oakland Redevelopment Successor Agency Oversight Board and submitted to the California Department of Finance by October 1, 2016.

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PAST PERFORMANCE, EVALUATION AND FOLLOW-UP

The Fox Theater Project has been very successful. The Theater has consistently exceeded the initial projections for ticket sales. The projection for the first three years was 290,000 tickets sold; but the actual number of tickets sold was 496,935, an average of 165,645 per year. This is over 71 percent higher than projected. More recently it has been even better, with 245,009 tickets sold in 2014, 104 percent higher than projected, and 244,986 tickets sold in 2015, 96 percent higher than projected. The theater has brought thousands of new customers Downtown, packing bars and restaurants on concert nights. This has encouraged new bars and restaurants to open in the Uptown Area and throughout the Downtown, including Rudy's Can't Fail Café in the Project.

In addition, the wrap around buildings of the theater house OSA. OSA now accommodates more than 620 students and has expanded to include space in nearby buildings, Piedmont Piano on San Pablo and Sweets Ballroom on Broadway. OSA is a public charter middle and high school in the Oakland Unified School District with a mission to train pre-professional arts students (grades 6-12) in a college preparatory setting. Admission requires an audition in one of nine arts emphases: Circus Arts, Dance, Digital Media, Instrumental Music, Literary Arts, Production Design, Theater, Visual Arts, and Vocal Music. Upon acceptance to the school, academic placement is determined based upon the student's prior preparation for a challenging academic curriculum. In addition to students' academic class schedules, OSA provides off campus performance opportunities, extra rehearsal opportunities, in the evenings and on weekends, and the use of the Fox Theater venue for certain school performances. The first 10 graduated classes (618 students) have shown strong academic performance with 74 percent matriculating to four-year colleges, 18 percent to two-year colleges, and eight percent chose work, travel, vocational schools, the military, or were undecided.

SUSTAINABLE OPPORTUNITIES

Economic: The project replaced an underutilized, vacant and blighted property with a theater, charter middle/high school and restaurant that act as a commercial catalyst for this district. The theater attracts up to 245,000 concert goers a year to the neighborhood and the project created new and preserved existing permanent employment opportunities (143 FTE) as well as temporary construction-related jobs (160 FTE years). The project will generate sales tax, property taxes, utility taxes, and business license tax.

Environmental: The project has preserved a historically significant structure and improved upon the physical environment in the Downtown. The project removed dangerous and hazardous materials from an existing building and replaced them with recycled content materials and other environmentally sensitive materials. Because it is located by a BART station, the rehabilitated project has encouraged the use of mass transit and helped to reduce the reliance on automobiles and the harmful emissions that they produce.

Social Equity: The project exceeded the City local hiring goals of 20 percent of local and small business enterprises, achieving over 40 percent participation by those business enterprises. In addition, the project houses the Oakland School for the Arts, which is training and educating students and providing them with opportunities for future employment. The project is promoting

pedestrian activity, street vitality and public safety to an area that was void of pedestrian activity and that had a high incidence of crime.

CEQA

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

ACTION REQUESTED OF THE ORSA BOARD

Staff Recommends That ORSA Adopt The Following Legislation:

1. A Resolution Authorizing The Agency Administrator To Consent To The Assignment Of The \$1.4 Million Loan Agreement Between The Agency And Fox Theater Master Tenant, LLC To Assign The \$1.4 Million Loan To Fox Oakland Theater, Inc. And Subordinate The Loan To A New \$4,600,000 Loan.
2. A Resolution Regarding The Fox Theater Project Amending Resolution Nos. 2006-0073 And 2009-0057 To Modify The Existing Loan Repayment Guarantee From The Redevelopment Agency Of The City Of Oakland To Fox Oakland Theater, Inc. For Conventional Loan Not To Exceed \$4,600,000.

For questions regarding this report, please contact Patrick Lane, Manager of Project Implementation, at (510) 238-7362.

Respectfully submitted,



Mark Sawicki, Director
Economic and Workforce Development

Prepared by:
Patrick Lane, Manager
Project Implementation

2016 SEP -1 AM 10:25

BY:  _____
ORSA COUNSEL

OAKLAND REDEVELOPMENT SUCCESSOR AGENCY

RESOLUTION No. 2016- _____

A RESOLUTION REGARDING THE FOX THEATER PROJECT AMENDING RESOLUTION NOS. 2006-0073 AND 2009-0057 TO MODIFY THE EXISTING LOAN REPAYMENT GUARANTEE FROM THE REDEVELOPMENT AGENCY OF THE CITY OF OAKLAND TO FOX OAKLAND THEATER, INC. FOR CONVENTIONAL LOAN NOT TO EXCEED \$4,600,000

WHEREAS, the Redevelopment Agency of the City of Oakland ("Agency") entered into a Disposition and Development Agreement ("DDA") on December 15, 2006 with Fox Oakland Theater, Inc. ("FOT") to ground lease and undertake the restoration of the Fox Theater and to provide loans to carry out the restoration; and

WHEREAS, renovation of the Fox Theater required numerous funding sources including Agency loans, New Markets and Historic Tax Credits, governmental and private grants and a commercial loan of \$6,500,000; and

WHEREAS, the commercial loan of \$6,500,000 was primarily secured by a guaranteed income stream donation to Oakland School for the Arts from CBS Outdoor's (now Outfront Media) income from a billboard on Port of Oakland property, but also required additional security from the Agency because of the unlikely, but possible interruptions in the income stream should the billboard lease be terminated by the Port or actions of the California Transportation Agency; and

WHEREAS, on July 18, 2006, the Agency approved providing a guaranty of up to \$6.5 million to guarantee the commercial loan; and

WHEREAS, the \$6,500,000 commercial loan has a 10 year term and has been paid down to where on the maturity date of this loan, December 20, 2016, a balloon payment in the approximate amount of \$4,600,000 will be due; and

WHEREAS, the Oakland Redevelopment Successor Agency ("ORSA") was established as the successor agency to the Agency pursuant to Health and Safety Code Sections 34171(j) and 34173; and

WHEREAS, ORSA has listed the loan guarantee as an enforceable obligation on its Recognized Obligation Payment Schedule ("ROPS") and must pay the \$4,600,000 balloon payment if FOT is not successful in refinancing the commercial loan; and

WHEREAS, FOT is finding it difficult to negotiate a new loan to finance the \$4,600,000 balloon payment due to the complicated nature of the income that would be used to secure the debt; and

WHEREAS, FOT is therefore requesting that ORSA include the \$4,600,000 loan guarantee payment in the amended 2016-17B ROPS in order to make the balloon payment due on December 20, 2016 should refinancing be unsuccessful; now, therefore, be it

RESOLVED: That ORSA hereby finds and determines that providing FOT with a new guaranty in order to facilitate refinancing of the commercial loan will reduce immediate liabilities related to repaying the existing loan; increase net revenue to the taxing entities and be in the best interest of the taxing entities; and be it further

RESOLVED: That ORSA hereby approves adding the payment of the existing loan guarantee in the amount of \$4,600,000 to the 2016-17 ROPS for funding from the Redevelopment Property Tax Trust Fund during the 2016-17 B ROPS period; and be it further

RESOLVED: That ORSA hereby approves a new loan guarantee for the benefit of the lender providing a refinanced loan to Fox Oakland Theater in the amount of the \$4,600,000 under the terms and conditions set forth in this resolution and authorizes the inclusion of the new loan guarantee on the amendment to the 2016-17 ROPS; and be it further

RESOLVED, That ORSA hereby approves the subordination of the FOT Leasehold interest in the Fox Theater property to facilitate the refinancing of the commercial loan; and be it further

RESOLVED: That the ORSA Administrator is authorized to negotiate, approve, and execute a loan guarantee, subordination agreements and related documents necessary to assist FOT in obtaining a refinanced loan for \$4,600,000; and be it further

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

RESOLVED: That the custodians and locations of the documents or other materials which constitute the record of proceedings upon which the ORSA's decision is based is the Economic and Workforce Development Department, Project Implementation, 250 Frank H. Ogawa Plaza, 5th Floor, Oakland CA.

BY SUCCESSOR AGENCY, OAKLAND, CALIFORNIA, _____,
2016

PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, CAMPBELL WASHINGTON, GALLO, GUILLEN, KALB,
KAPLAN, REID, and CHAIRPERSON GIBSON McELHANEY,

NOES-

ABSENT-

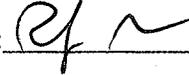
ABSTENTION-

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

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APPROVED AS TO FORM AND LEGALITY:

BY:



ORSA COUNSEL

OAKLAND REDEVELOPMENT SUCCESSOR AGENCY

RESOLUTION No. 2016- _____

A RESOLUTION AUTHORIZING THE AGENCY ADMINISTRATOR TO CONSENT TO THE ASSIGNMENT OF THE \$1.4 MILLION LOAN AGREEMENT BETWEEN THE AGENCY AND FOX THEATER MASTER TENANT, LLC TO ASSIGN THE \$1.4 MILLION LOAN TO FOX OAKLAND THEATER, INC. AND SUBORDINATE THE LOAN TO A NEW \$4,600,000 LOAN

WHEREAS, the Redevelopment Agency of the City of Oakland ("Agency") entered into a Disposition and Development Agreement ("DDA") on December 15, 2006 with Fox Oakland Theater, Inc. ("FOT") to ground lease and undertake the restoration of the Fox Theater and to provide loans to carry out the restoration; and

WHEREAS, renovation of the Fox Theater required creation of several other entities to employ New Markets and Historic Tax Credits in the project, including Fox Theater Manager, Inc., Fox Theater Landlord LLC and Fox Theater Master Tenant LLC; and

WHEREAS, in December 2006 Fox Theater Master Tenant LLC entered into a ten year lease agreement with GASS Entertainment, LLC ("GASS") for the purpose of operating the Fox Theater as a live performing arts venue; and

WHEREAS, a portion of the wrap around buildings in the Fox Theater, on 18th Street and Telegraph Avenue, was set aside to be a restaurant (the "Restaurant Space"); and

WHEREAS, in November 2009 Fox Theater Master Tenant LLC entered into a \$1.4 million loan to cover tenant improvements in the "Restaurant Space"; and

WHEREAS, in October 2010 Fox Theater Master Tenant LLC entered into a five year lease agreement with BMZ Enterprises, LLC ("Rudy's") for the purpose of operating a restaurant in a portion of the Restaurant Space; and

WHEREAS, in May 2011 Fox Theater Master Tenant LLC amended the lease agreement with GASS for the purpose of adding the VIP Space, a portion of the Restaurant Space, to the lease; and

WHEREAS, the project never had funds to complete tenant improvements for the Fox Theater's the "Restaurant Space" on 18th and Telegraph of which the landlord's (Fox Theater Master Tenant LLC) share was estimated to be approximately \$1.4 million; and

WHEREAS, the \$1.4 million loan and other funds from the Fox Theater project were used to fund the basic tenant improvements and to give tenant improvement allowances to GASS and Rudy's for the Restaurant Space; and

WHEREAS, a portion of the rent from the Restaurant Space (i.e., everything over \$1.50/sq. ft./month, along with the repayment of the tenant improvement allowance provided to the tenants of the Restaurant Space) is being used by Fox Theater Master Tenant LLC to repay the \$1.4 million loan; and

WHEREAS, Fox Theater Master Tenant LLC is no longer required to exist for the tax credit financing because the tax credit compliance periods are over; and

WHEREAS, Fox Oakland Theater wishes to take over the project, assume the \$1.4 million loan from Fox Theater Master Tenant LLC and eliminate the other development entities including Fox Theater Master Tenant LLC; and

WHEREAS, assignment of the \$1.4 million loan is required for these actions to be concluded; and

WHEREAS, Fox Oakland Theater will provide the same security for the \$1.4 million loan: a pledge of the funds from a portion of the rent from the Restaurant Space and repayment of the tenant improvement allowance provided to the tenants of the Restaurant Space; and

WHEREAS, financing of the Fox Theater Project included a \$6,500,000 construction loan that has a ten year term with an approximately \$4,600,000 balloon payment due in December of 2016; and

WHEREAS, refinancing of the \$6,500,000 construction loan, which would have a principal amount of \$4,600,000 at the time of the refinancing, may require subordination of the \$1,400,000 Agency loan; and

WHEREAS, the Oakland Redevelopment Successor Agency ("ORSA") was established as the successor agency to the Agency pursuant to Health and Safety Code Sections 34171(j) and 34173;

Now, therefore, be it

RESOLVED: That ORSA hereby finds and determines that assignment of the \$1,400,000 Agency loan to Fox Oakland Theater and the subordination of this loan to a new construction loan will reduce several contingent liabilities related to loan and tax credit guaranties; eliminate the chance of future loan repayments to the lender under the guaranty; and assist with the repayment of the Agency loan; and be it further

RESOLVED: That ORSA hereby consents to the assignment of the loan made to Fox Theater Master Tenant LLC to Fox Oakland Theater in the amount of the \$1,400,000 under the terms and conditions set forth in this resolution; and be it further

RESOLVED: That ORSA hereby approves the subordination of this \$1,400,000 Agency loan to a new loan of not more than \$4,600,000; and be it further

RESOLVED: That the ORSA Administrator is authorized to negotiate, approve, and execute any loan documents to permit the assignment of the \$1,400,000 loan to Fox Oakland Theater, Inc. and the subordination of this loan to a lender chosen to refinance the loan with a principal amount of \$4,600,000; and be it further

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

RESOLVED: That the custodians and locations of the documents or other materials which constitute the record of proceedings upon which ORSA's decision is based is the Economic and Workforce Development Department, Project Implementation, 250 Frank H. Ogawa Plaza, 5th Floor, Oakland CA.

BY SUCCESSOR AGENCY, OAKLAND, CALIFORNIA, _____,
2016

PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, CAMPBELL WASHINGTON, GALLO, GUILLEN, KALB,
KAPLAN, REID, and CHAIRPERSON GIBSON McELHANEY,

NOES-

ABSENT-

ABSTENTION-

ATTEST: _____

LATONDA SIMMONS
Secretary of the Oakland
Redevelopment Successor Agency