

**CITY OF OAKLAND  
AGENDA REPORT**

OFFICE OF THE CITY CLERK  
CITY OF OAKLAND

TO: Office of the City Administrator/Agency Administrator  
ATTN: Deborah Edgerly  
FROM: Community and Economic Development Agency  
DATE: June 27, 2006

2006 JUN 15 PM 5:59

**RE: REDEVELOPMENT AGENCY AND CITY RESOLUTIONS REGARDING  
THE FOX THEATER INCLUDING:**

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

- (a) AUTHORIZING SUBSEQUENT TRANSFER FROM FOT BY SALE, OR LONG TERM LEASE OF THE FOX THEATER PROPERTY TO A FOR PROFIT DEVELOPMENT ENTITY CREATED BY FOT IN ORDER TO TAKE ADVANTAGE OF TAX CREDITS;**
- (b) AUTHORIZING A LOAN NOT TO EXCEED \$32,000,000 TO FOT TO PARTIALLY FUND THE PROJECT TO BE COMPRISED OF THE FOLLOWING: i) A SITE ACQUISITION LOAN OF \$6,500,000 TO FINANCE THE PURCHASE OF THE PROPERTY FROM THE AGENCY, ii) THE \$3,000,000 PREDEVELOPMENT LOAN PREVIOUSLY AUTHORIZED IN THE DDA, iii) AN ADDITIONAL PREDEVELOPMENT LOAN NOT TO EXCEED \$1,050,000 TO BE USED PRIOR TO TRANSFER OF THE FOX THEATER, AND iv) AN ADDITIONAL DEVELOPMENT LOAN NOT TO EXCEED \$21,450,000 TO BE USED TO COMPLETE CONSTRUCTION OF THE PROJECT;**
- (c) APPROVING ESSENTIAL TERMS FOR THE OAKLAND SCHOOL FOR THE ARTS LEASE FOR USE OF A PORTION OF THE FOX COMMERCIAL SPACE AS A CHARTER SCHOOL;**
- (d) APPROVING ESSENTIAL TERMS FOR THE ANOTHER PLANET ENTERTAINMENT LEASE FOR OPERATION OF THE FOX THEATER;**
- (e) AUTHORIZING THE DEVELOPER TO WAIVE COMPETITIVE BIDDING AND REQUEST FOR PROPOSAL REQUIREMENTS FOR ALL PROFESSIONAL SERVICES, PROCUREMENT AND CONSTRUCTION CONTRACTS; AND**

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

**(2) AUTHORIZING THE AGENCY TO REIMBURSE ORNMTC FOR ALL COSTS COVERED BY GRANTS THE AGENCY RECEIVES FOR THE PROJECT INCLUDING (A) THE PROP 40 GRANT IN THE AMOUNT OF \$2,887,500; AND (B) THE SHPO GRANT IN THE AMOUNT OF \$375,000; AND**

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

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## SUMMARY

This report presents the status of the predevelopment phase of the proposed Fox Theater Renovation Project (Project) and requests authorization to proceed with the development phase of the Project via Council approval of an Amended and Restated Disposition and Development Agreement (Amended DDA) presently between the Redevelopment Agency (Agency) and Oakland Renaissance NMTC, Inc. (ORMNMT), but later to be assigned to a newly created non-profit corporation, Fox Oakland Theater, Inc. (FOT). The Amended DDA will include terms for the Agency's proposed ownership structure and financial assistance for the Project and related items. It is important to note that the construction contract will not be entered into until sufficient funds are secured for the development phase of the Project.

Timely approval of this item is critical. First, the construction bids for the renovation will only be valid for a limited period of time, after which prices for materials and labor will likely increase. Second, the proposed primary tenant for the Project, the Oakland School for the Arts (OSA), must vacate their present site behind the Theater in time to allow the Fox Courts Project by Resources for Community Development to proceed and not cause additional delays to the affordable housing project.

In order to proceed with the development phase of the Project, the Agency must approve the Amended DDA between the Agency and ORNMTC, and authorize the assignment of the DDA and transfer of the Fox Theater Property to FOT, a non-profit entity that will succeed ORNMTC. The elements of the Amended DDA include: (a) authorizing subsequent transfer from FOT by sale or long term lease of the Property to a for profit development entity created by FOT in order to take advantage of tax credits; (b) authorizing a loan not to exceed \$32,000,000 to FOT to partially fund the Project, which includes i) a site acquisition loan of \$6,500,000 to finance the purchase of the Property from the Agency, ii) the \$3,000,000 predevelopment loan previously authorized in the existing DDA, iii) an additional predevelopment loan not to exceed \$1,050,000 to be used prior to the transfer of the Fox Theater, and iv) an additional development loan not to exceed \$21,450,000 to be used to complete construction of the Project; (c) approving essential terms for the OSA lease for use of a portion of the Fox commercial space as a charter school; (d) approving essential terms for the Another Planet Entertainment (APE) lease for operation of the Fox Theater; (e) authorizing a waiver of competitive bidding and request for proposal

requirements for all professional services, procurement and construction contracts; and (f) authorizing a loan repayment guarantee from the Agency to a conventional lender not to exceed \$6,500,000. Please see **Attachment No. 1, Term Sheet for the Amended and Restated DDA**. The Agency must authorize reimbursement to ORNMTC for all costs covered by grants the Agency receives for the Project, including (i) the California Cultural and Historical Endowment Proposition 40 Grant in the amount of \$2,887,500 and (ii) the State Historic Preservation Office Grant in the amount of \$375,000. Also, the Agency must ratify the prior DDA between the Agency and the ORNMTC entered into on August 30, 2005.

This report will also include information on local hiring and outreach efforts for the Project.

## **FISCAL IMPACT**

If the Agency authorizes Staff to proceed with amending the DDA, the Agency would be authorizing the following:

- (1) An acquisition loan of \$6,500,000, which is comprised of funds already expended for the purchase of the Fox and various capital improvements (including hazardous materials remediation and marquee restoration);
- (2) A development loan of \$25,500,000, which includes a \$3,000,000 predevelopment loan (which was previously authorized in the existing DDA and spent), a new predevelopment loan of \$1,050,000 (for additional tax credit syndication, design, bidding and construction work required prior to close of escrow and start of construction) and an additional \$21,450,000 (for construction) which can not be spent until all of the additional funding required for the Project is secured; and
- (3) A guarantee for the commercial loan of \$6,500,000 (for construction), to the Project.

**Acquisition loan of \$6,500,000:** The \$6,500,000 acquisition loan from the Agency will have no fiscal impact. The Agency will sell the Fox for \$6,500,000 and take back a note for the same value. This price is equal to the Agency's costs to purchase the property and make capital improvements (reroofing, marquee renovation, hazardous materials abatement, etc.) and the sales price and loan amount will need to be confirmed by an appraiser. No cash will exchange hands so there will not be a direct cost to the Agency (the monies having been previously authorized and spent). However, this value will be transferred in the Agency's books from property held for resale to a note receivable.

**Development loan of \$25,500,000:** The \$25,500,000 development loan is comprised of the \$3,000,000 predevelopment loan already made for the Project and \$22,500,000 in additional funds. \$22,500,000 is currently available as part of the Agency's capital and operating funds. Much of these funds originate from tax-exempt bond proceeds and require prohibitive rules on how these monies are spent. Therefore, Staff is proposing issuing new taxable bonds for this development loan portion.

Given the growth in the Central District, it has been determined that there is sufficient capacity to issue approximately \$22,500,000 in new taxable bonds. This issuance of taxable bonds would accomplish the following:

- (1) The taxable nature of the bond proceeds would allow the Project to capture significant benefits of tax credits. Because there are restrictive tax rules related to tax-exempt proceeds, the use of tax-exempt monies would result in \$10,300,000 less in tax credit benefit to the Project. With taxable bond proceeds, the Project would be able to maximize its tax credit benefit.
- (2) The issuance of additional taxable bonds for the Project would mean that more monies would be available for other tax-exempt eligible projects in the Central District area. Potential projects could include capital projects like additional public parking or infrastructure and facilities projects in the Central District.

Staff is therefore recommending that new bonds be issued in late 2006 in an amount of \$22,500,000 and that these new funds be substituted for the tax-exempt bond funding described above. The resolution will appropriate Central District capital and operating funds in an amount not to exceed \$22,500,000, in addition to the \$3,000,000 in predevelopment loan funds already expended for the Project. Any funds expended prior to issuance of the new bonds will be reimbursed as soon as proceeds are available.

The \$25,500,000 in Agency funds will be used to leverage \$10,300,000 in tax credits, \$5,062,500 in grants, \$500,000 in private contributions, and a \$6,500,000 conventional loan, for a total development budget of \$47,862,500. The development costs include: \$5,672,500 in soft costs, \$3,000,000 of which have been spent as part of the predevelopment loan to ORNMTC; \$38,340,000 in hard costs, with \$3,850,000 remaining for a contingency. The Agency will be authorized to reimburse ORNMTC for any costs covered under grants received by the Agency for the Project from the Central District Grant Fund (9215), including: (1) the Prop 40 Grant in the amount of \$2,887,500; and (2) the SHPO Grant in the amount of \$375,000. The Agency will then be reimbursed by the granting authority. Please see **Table 2** for details of the sources and uses of funds.

**Loan guarantee of \$6,500,000:** The \$6,500,000 conventional loan is being secured by the revenue stream pledged by CBS Outdoor to OSA and ORNMTC and will require a guarantee from the Agency as extra security. There are two potential fiscal impacts to the Agency from making this guarantee:

- (1) If the revenue is received as anticipated, the guarantee would have to stay on the Agency's books as a contingent liability and could reduce the Agency's bonding capacity over the next five years; and
- (2) If the revenue terminates as a result of Caltrans or the Port removing the sign, the Agency must make loan repayments of approximately \$600,000 per year for the remaining term of the estimated 20-year loan from the Central District Operations Fund (9510). Even assuming the CBS Outdoor revenue never materializes and the Agency makes payments of \$600,000 for the next 20 years, there is sufficient capacity to issue \$22,500,000 in new bonds.

## 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 to eliminate a blighting influence in the area,

restore an historic resource, and stimulate new investment in the Uptown District of Oakland. A number of steps have been completed and funds expended to date. They are included in Table 1.

**Table 1.**  
**Agency Expenditures on the Fox Theater, 1996 – 2006**

<b>Expenditure</b>	<b>Date</b>	<b>Totals</b>
Property Acquisition	1996	3,000,000
Roof Replacement	1999	1,000,000
Renovation of the historic marquee	2001	650,000
Completion of the Fox Master Plan	2001	350,000
Completion of initial hazardous materials abatement	2004	367,500
Completion of schematic designs, cost estimates and financing options	2004	432,500
Completion of Design Development Drawings	2005	746,000
<b>Total</b>		<b>6,546,000</b>

To date, the Agency has spent approximately \$6,546,000 on direct expenditures for the Theater. This does not include the \$3,000,000 predevelopment loan to ORNTMC which has already been spent as part of the original DDA with ORNMTC for the predevelopment and bid phase of the Project.

## **PROJECT DESCRIPTION**

### **General**

The Project consists of the renovation of the Fox Theater into a live performing arts center with a flexible seating plan capable of accommodating between 500 and 2,300 patrons. It will be structurally upgraded to meet existing seismic standards and renovated in a manner that will meet the Secretary of the Interior's Standards for Rehabilitation of Historic Properties (the Secretary's Standards). The existing attached buildings, which wrap around the Theater and are part of the original 1928 design, will be renovated into the future home of the OSA. These buildings will be used for academic classrooms. Two new additions have been designed onto the single story portions of the wrap-around buildings as part of the new school design. These will serve as performing arts studios for the school. Restaurant and bar spaces are designed for the ground floor along Telegraph Avenue. These will serve the Uptown neighborhood in general and the Theater during performances. See **Attachment No. 2, Project Graphics**.

### **Theater**

Orchestra Level: The orchestra level (main level) is a flexible design that can be configured differently for various types of performance. This will be accomplished through a series of carpeted platforms that will slope downward on the main floor toward the stage and can accommodate tables and chairs for cabaret-style performances or stadium seating for more traditional performances (some fixed stadium seats will exist with either configuration). Cabaret seating will seat approximately 500-600 patrons while stadium seating would seat approximately 1,100. Refreshments will be served from a bar at the rear of the Theater. Restrooms will be

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located at this level. This floor will be handicapped accessible. The ornate plaster ceiling and the large phantasmal figures will be restored.

**Balcony Level:** The balcony is a fixed stadium-style seating configuration and will accommodate approximately 1,000 patrons. It will be accessed by stairs and an elevator. The elevator interior will be restored to its original 1928 grandeur. Restrooms will be located at the mezzanine level which is located between the lower and upper balconies. A bar and refreshment area will be located in the mezzanine lobby.

**Basement:** The basement beneath the stage will be cleaned and new dressing rooms will be constructed.

**Stage:** The stage will be raised 20 inches to better accommodate new sight lines. New rigging and lighting systems will be installed. A new loading dock at the back of the Theater will allow trucks to load directly onto the stage.

### **Wrap-Around Buildings**

The wrap-around buildings consist of the existing 1928 structure and two new three-story additions on the 18<sup>th</sup> and 19<sup>th</sup> Street sides of the Theater.

**Existing Wrap-Around Building:** The ground floor of the existing wrap-around building will accommodate the Theater lobby, a bar and restaurant, a new Theater box office and restrooms. The bar and restaurant will each be approximately 4,000 square feet and will be accessible to Telegraph Avenue and to the inside of the Theater. A catering kitchen will also serve the Theater. The second and third floors will accommodate the academic classrooms and school administration offices for the OSA, including language labs, creative writing labs, and math/science labs.

**New Additions:** The two new “wing extensions” on the 18<sup>th</sup> and 19<sup>th</sup> Street sides of the Theater will accommodate the entrance to the OSA, a student center and rehearsal space at the ground level. Music and dance studios as well as practice rooms will be located on the second and third floors.

### **KEY OUTCOMES OF THE PREDEVELOPMENT PHASE**

**This section presents the results of the predevelopment phase to date, and reports on initial outreach efforts for the bid phase of the Project. Complete results from the bid phase will follow in a Supplemental Report.**

On July 19, 2005, the Council approved the execution of the DDA between the Agency and ORNMTC, and the following financial assistance: (1) approval and appropriation of an Agency loan to ORNMTC in the amount of \$13,000,000; and (2) transfer of all State grants and insurance settlement proceeds to ORNMTC. Information regarding how this and other financial assistance will need to be structured is presented later in this section.

Before proceeding with the remainder of the predevelopment and development phase of the Project, the Council also requested that staff return with certain documents related to the transaction for Agency approval, including: (1) the DDA with ORNMTC, which was executed on August 30, 2005 – a complete copy of the original DDA is available at the City Clerk’s Office and online (see link under Fox Theater on the Central District Redevelopment web page at <http://www.business2oakland.com/main/centraldistrict.htm>); (2) the essential terms of the lease with APE (**Attachment No. 5**); and (3) the essential terms of the OSA lease (**Attachment No. 6**).

Presented below are the results of the scope of work performed by CCG and its team, which is comprised of the KPA Group, ELS Architecture and Urban Design, Starkweather Bondy Architecture, Turner Construction, Silverman and Light, AMS Planning and Research, LSA Associates, SJ Engineers and Mark Moss & Company, and over twenty subcontractors:

- (1) Construction drawings**
- (2) Identification of sources and uses of funds**
- (3) Development of a Project financing and ownership structure**
- (4) Selection of a theater operator, and negotiation of lease terms**
- (5) Negotiation of lease terms with the OSA**
- (6) Bidding the Project, and a report of local hiring efforts**
- (7) Preparation of a Project Schedule**

CCG’s team has substantially completed their work as part of the predevelopment phase.

**The seven items above are explained in detail below:**

**(1) Construction Drawings**

Under the direction of CCG, ELS Architecture and Urban Design and Starkweather Bondy Architecture have completed the Construction Drawings for the Fox Theater and the wrap-around buildings. The Construction Drawings also include HVAC, structural, plumbing and electrical improvements needed to accommodate the intended uses, in addition to details for the restoration of the historic façade, which are consistent with the Secretary’s Standards. 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 reviewed by the Planning Commission on June 1, 2005. The Construction Drawings show a refined building addition as recommended by Landmarks Board and the Planning Commission. This modification was accomplished within the budget.

It is important to note that the design of the wrap-around building, with the exception of the science labs, has a flexible floor plan allowing ORNMTC the opportunity to lease the spaces to other office and commercial users if the OSA were to vacate the space in the future.

**(2) Sources and Uses of Funds**

The Agency and CCG have identified \$47,862,500 in potential sources to fund the Project. The Agency’s \$25,500,000 loan will be used to leverage \$10,300,000 in tax credits, \$5,062,500 in grants, \$500,000 in private contributions, and a \$6,500,000 conventional loan, for a total development budget of \$47,862,500. The development costs include: \$5,672,500 in soft costs, \$3,000,000 of which have been spent as part of the predevelopment loan to ORNMTC; \$38,340,000 in hard costs, with \$3,850,000 remaining for a contingency. A brief discussion of the status of each funding source follows:

**Table 2.  
 Sources and Uses of Funds**

<b>Sources</b>	<b>Totals</b>
Agency Loan	25,500,000
CCHE Prop 40 Grant	2,887,500
CHF Grant	375,000
Federal Charter School Facility Grant	1,200,000
HTCs	5,000,000
NMTCs	5,300,000
Conventional loan paid by OSA revenue stream and secured by Agency	6,500,000
Friends of the Oakland Fox Campaign	500,000
HUD funding	600,000
<b>Total Sources</b>	<b>47,862,500</b>
<b>Uses</b>	<b>Totals</b>
Soft costs total	5,672,500
Hard cost total	38,340,000
Contingency	3,850,000
<b>Total Uses - Hard plus Soft Costs</b>	<b>47,862,500</b>

**Explanation of Sources**

- **Agency Acquisition Loan of \$6,500,000:** Although not part of the development costs that have been or will be incurred by ORNMTC or FOT, the Agency is selling the Fox Theater to FOT for the costs the Agency has incurred in purchasing the property and making capital improvements and making a loan for the same amount. This \$6,500,000 is therefore both a source and a use and has been left out of the development budget.
- **Agency Development loan of \$25,500,000:** The Agency originally identified three sources of funds to fund the development cost for the Fox Theater Project, including:
  - (1) **\$13,000,000** from the Central District Tax Allocation Bond Series 2005 (Fund 9533), Fox Theater Master Plan Project (P131180). On July 19, 2005, per Redevelopment Agency Resolution No. 2005-0046, \$13,000,000 of bond proceeds was authorized as a loan to



- ORNMTC under the initial DDA. These monies include the \$3,000,000 predevelopment loan that has already been spent on the Project;
- (2) **\$5,000,000** from the Central District Tax Allocation Bond Series 2005 (Fund 9533), 10K Housing Project (P118550). The 10K Program has been a tremendous success, exceeding the 6,000 new residential units envisioned for the program by more than 2,000 units; therefore, the Agency was planning to re-program the \$5,000,000 currently in the 10K Program to the Fox Theater Project.
  - (3) **\$7,500,000** from the Agency's Operating Fund Balance. There are a number of sources of funds that may become available for the Project, but are not available now and possibly will not be available when it is time to sign the construction contract. These funds include an insurance settlement for the fire in the Fox Theater, additional grant sources like the proposed state infrastructure bond, and additional funds from New Markets Tax Credits (NMTCs) above the current budgeted amount. The Agency needs to provide funds from an alternative source until or in case these additional funds do not become available. The Agency has a current operating fund balance of \$20,400,000. After \$7,500,000 is appropriated to the Fox Project, \$12,900,000 will remain in the operating reserve. It is important to note that the \$12,900,000 of operating reserves is at sufficient levels as it is the Agency's practice to maintain approximately 50% of the annual budget as an operating reserve. The approved Agency Budget for the Central District FY 2005-06 is \$24,800,000; therefore, the "required" operating reserve would be approximately \$12,400,000.

The Agency has since determined that the remaining \$10,000,000 appropriated to the Fox and the \$5,000,000 appropriated to the 10K, all funded by tax-exempt bonds, cannot be used by the Project without significantly changing the structure of the Project and reducing the Agency control. For example, the Agency would need to grant all of the tax-exempt funds to a non-profit entity that was fully independent from City and Agency control. Fund 9533, which is a tax-exempt bond, is not allowed to be loaned by the Agency or used by the Agency in a way that will return revenue to the Agency. Because of the way it is set up with Agency control and staffing, ORNMTC is considered a part of the Agency. The syndication of tax credits will require the Project to be set up in a profit making structure but the bonds were issued as tax-exempt and are not allowed for private activity, i.e. profit making uses. Therefore, the Agency has determined that the best way to address this concern is to issue new taxable bonds and to reallocate the existing bonds for eligible uses – public parking, infrastructure and facilities in the Central District.

It has been determined that there is sufficient capacity to issue new bonds and the Central District requires new capital funds for the next two year budget, which the Agency will start planning in the Fall. Staff is therefore recommending that new bonds be issued in late 2006 and these new funds be substituted for the bond funding described above. The resolution will simply appropriate Central District capital and operating funds in an amount not to exceed \$22,500,000, in addition to the \$3,000,000 in predevelopment loan funds already expended for the Project. Funds from the Central District operating fund balance will be expended until the new bond funds become available. At that time the Central District operating fund balance will be reimbursed and all additional expenditures will come from the new bonds.

**Status of \$25,500,000 Agency Development loan:** \$3,000,000 was spent by ORNMTC for predevelopment activities, and an additional \$1,050,000 will go to further predevelopment activities once the proposed DDA Amendment is approved. The remaining \$21,450,000 will be available at close of escrow and start of construction once all the financing is in place.

- **California Cultural and Historic Endowment Proposition 40 Grant of \$2,887,500:** The focus of the CCHE Grant is to promote the preservation of California history by funding projects that have cultural, architectural and historic significance in the state. In January 2005, the Agency received an award of \$2,887,500 from the CCHE to reimburse expenditures related to the renovation of the Theater. The Agency has requested that CCHE allow the grant to be reassigned from the Agency to ORNMTC in order to utilize over \$10,000,000 in HTC's and NMTC's. **Status:** The expected transfer approval is pending. The Agency is working out final arrangements with the State for the use of the funds and will require flexibility in the DDA in order to comply with State requirements.
- **California Heritage Fund Grant of \$375,000:** In early 2004, the Agency received a California Heritage Fund (CHF) Grant from the State Historic Preservation Office in the amount of \$375,000 that was matched by the Agency dollar for dollar. **Status:** The time period to use the grant money expires on June 30, 2009. This money will be used to restore the historic façade of the Theater and wrap-around building.
- **Federal Charter School Facility Grant of \$1,200,000:** Working with the Mayor's office, Staff has secured a \$1,200,000 Federal Charter School Facility Incentive Grant. This replaces the School Facilities Grant (Proposition 55) from the State of California, which would have required unworkable legislative, code and schedule modifications to the Project. **Status:** This grant is available to the Project.
- **Historic Tax Credits \$5,000,000:** CCG has identified approximately \$5,000,000 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 FOT, a separate non-profit, public benefit entity (see section of report on financing and ownership). **Status:** The Agency has presented the Project to three separate financial institutions that have all expressed an interest in financing a portion of the Project, and in securing the HTC's and NMTC's.
- **New Markets Tax Credits \$5,300,000:** The Fox Project is eligible for NMTC's. Based on the cost of the Project it is estimated that approximately \$5,300,000 in NMTC equity would be available for the Project. In 2006, acting as a Community Development Entity (CDE), ORNMTC applied to the Department of the Treasury for an allocation of NMTC's. The Agency is also working with outside investors having CDE status who could purchase NMTC's. **Status:** The Agency has presented the Project to three separate financial institutions that have all expressed an interest in financing a portion of the Project, and in securing the HTC's and NMTC's.
- **Conventional loan paid by OSA revenue stream and secured by Agency guarantee of \$6,500,000:** As part of a new 20-year lease for a billboard on Port of Oakland property, CBS Outdoor has pledged to the OSA and ORNMTC, 31.5% of the adjusted gross revenues

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derived from general advertising for years 1-5 and 35% for years 6-20. OSA will assign all of this funding to the Fox owner as prepaid rent for the term of the OSA lease, 7.5 years. ORNMTC will then use this income stream to secure a loan in the amount of \$6,500,000. These funds will be used toward construction costs of the wrap building and additions for OSA. **Status:** ORNMTC and the Agency have been meeting with a number of lending institutions to secure a construction loan based on the billboard lease. All are interested, but would require a guarantee from the Agency to secure the loan in the event Caltrans decides to relocate or eliminate the billboard due to unforeseen circumstances.

- **Friends of the Oakland Fox (FOOF) Campaign contribution of \$500,000:** 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. Starting in the fall of 2005, FOOF embarked on a campaign to raise \$500,000 for the restoration of the Theater and wrap-around building. Individual and corporate contributions are currently being solicited to help fund sidewalk improvements that link the Fox and nearby Paramount Theater in a thematic fashion. **Status:** To date FOOF has raised approximately \$225,000, almost half of its stated goal. If the FOOF is unable to reach their stated goal, the existing sources of funds are still sufficient to fund the Fox restoration.
- **HUD Funding contribution of \$600,000:** The City of Oakland and the Fox Theater are earmarked for \$600,000 in a U.S. House of Representatives Transportation, Treasury, Housing and Urban Development appropriation bill for the fiscal year ending September 30, 2006. The funds are unrestricted and will be used for the Theater restoration. **Status:** Staff has met with representatives of HUD and has started the NEPA process to secure the grant.

### Explanation of Uses

**The total cost of the Theater and wrap-around building restoration needed to accommodate the cabaret and the Oakland School for the Arts is approximately \$47,862,500 (approximately \$42,190,000 in hard costs and \$5,672,500 in soft costs).**

The Project costs were prepared by both CCG and Turner, the proposed general contractor. Turner's 50% construction drawing estimates were for the Theater (2,200 patron configuration) and wrap-around buildings. Their estimates included costs for demolition, structural improvements, interior construction, mechanical, electrical, plumbing, etc. CCG provided all soft costs, which includes architectural, engineering and administration of the Project. Taking into account *both hard and soft costs*, the construction estimate reveals that the Theater renovation costs are approximately \$18,200,000, the existing wrap-around buildings costs are approximately \$13,400,000 and the new addition to the wrap-around buildings cost are approximately \$16,300,000 for a total of approximately \$47,862,500 (subject to adjustment based on the actual results from the bidding). Please see **Attachment No. 3, Project Cost Estimate**. Further breakdown of the soft costs, hard costs and contingency follows:

- **Soft Costs \$5,672,500:** The soft cost figure of \$5,672,500 includes preparation of Construction Drawings, bidding the Project and Contract Administration services during construction. Specifically, the soft costs include (1) \$3,000,000 for predevelopment phase

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activities to date via an Agency contract with CCG, of which \$2,900,000 has been expended and \$100,000 has been set aside for ORNMTC operations; (2) \$1,050,000 needed for remaining predevelopment phase activities, which will be used prior to the transfer of the Fox Theater; and (3) \$1,622,500 needed for Construction Administration costs for the Project. CCG has managed the many aspects of the Project, including architectural/engineering drawings and specifications, cost estimating, financing structures, pre and post bid assistance, early environmental cleanup, environmental review, and market research. CCG will continue its Construction Administration services throughout the development phase of the Project. CCG's portion of the soft costs equals \$999,000 or 2.1% of the total Project cost of \$47,862,500. The remaining portion of the soft costs, \$4,673,500 or 9.8% of the total Project cost, were or will be used to pay CCG's consultant team.

- **Hard Costs \$38,340,000:** Turner Construction has estimated the construction costs for the Project at approximately \$34,750,000. This amount is based on Turner's estimate of the 50% Construction Drawings and will be modified when all construction bids are negotiated. In addition, a construction management fee of \$3,590,000 is included, which represents approximately 10% of the hard construction costs and would be used to manage the Project on a day-to-day basis.
- **Contingency \$3,850,000:** A contingency of \$3,850,000 is included, which represents approximately 11% of the hard construction costs and would be used to cover change orders and any unexpected cost overruns.

### **(3) Project Financing and Ownership Structure**

Financing the Fox Theater Project depends on effectively utilizing multiple funding sources in a manner that will permit the Project to benefit from both State and Federal Grants and also from HTCs and NMTCs. This requires a financing structure that harmonizes state grant requirements and the federal tax credit programs. **Without approval of the proposed financing and ownership structure, the Fox Project would risk losing over \$10,300,000 in tax credits, the \$2,887,500 CCHE Grant, and/or the \$375,000 CHF Grant. The Agency cannot afford to replace these sources of funds for the Project.**

**Utilizing the HTC (approximately \$5,000,000):** Under the existing requirements of the federal HTC program, in order for a public organization like the Agency, which owns the Fox, to realize the benefits of the HTCs, which in the case of the Fox amount to at least \$5,000,000, the Agency must transfer the Fox Theater to a partnership with a for profit investor – usually a bank which is set up to participate in the HTC program. The proposed structure provides for the Agency, thru a DDA and Deed of Trust, to transfer (by sale or lease) the Fox Theater to ORNMTC, which will in turn transfer the Fox to a newly created non-profit to be called Fox Oakland Theater (FOT). FOT will transfer its interest in the Fox Theater to a newly formed for-profit limited liability company. Together they will be referred to as the Landlord Entity which would be managed by FOT. The Landlord Entity would contract with the General Contractor to renovate and construct the Project.

**Utilizing the NMTC (approximately \$5,300,000):** In order to take advantage of the NMTCs, which in the case of the Fox amounts to at least \$5,300,000, the Agency and equity investors (the

Bank) are required to make Qualified Equity Investments into a Community Development Entity (CDE) which, in turn, makes a loan to the for profit Landlord Entity. The proposed finance and ownership structure allows for this to happen.

**Utilizing the State Grant (\$2,887,500):** The Agency will expend its match requirement for this grant, in addition to the grant amount itself. The Agency will invoice CCHE for reimbursement after the funds have been expended.

**Accountability and Control:** The Landlord Entity will be subject to the requirements of the DDA and Deed of Trust. It will control the Project in several ways. The DDA and Deed of Trust will be recorded against the Property before the transfer and therefore will have priority over all other documents. It will require compliance with all grant agreements, including that of the CCHE Grant. The remedies will include the right to take action against the entity developing the Fox for violating grant agreements or not properly preserving the Property in the condition required by the design criteria, grants and historical registries. The remedies would include specific performance, a right by the Agency to enter the property and cure the violation, and, ultimately, the right of the Agency to retake the Property. **Please see Attachment No. 4, Development Entities**, for a description of the Agency control of the Fox Theater through development entities.

#### **(4) Theater Operator**

The Council asked staff to return with information on the proposed plan and operators for the Theater. Staff has selected and is negotiating with Another Planet Entertainment to operate the facility. The Term Sheet is included as **Attachment No. 5**. The process which has resulted in the selection of APE as the Theater operator follows.

Two approaches to managing and operating the Theater were examined by CCG along with AMS Planning and Research (AMS), a consultant specializing in arts facilities planning and management. The first option was for the Paramount Theater of the Arts (PTA) to operate the Theater in conjunction with the nearby Paramount Theater; the second was for the ORNMTC to contract with an outside party to manage and operate the facility.

#### **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, in similar fashion to 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 Fox owner could issue a Request for Proposals (RFP) for an operator.

However, the PTA was not selected primarily because an Agency subsidy would have been required. The PTA would have required the hiring of 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. In addition, operating the Theater as a cabaret would require an experienced food and beverage sales operator; the PTA is does not currently perform this function for the Paramount. Coordination between the two entities would increase costs.

### **Operation of the Fox by a Commercial Operator**

The second approach is for the ORNMTC to contract with an independent, commercial operator to manage and operate the Fox Theater. 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 places 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 (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 were: (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, in 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**

In January 2006, ORNMTC issued an RFP for the operation and management of the Theater. Several operators were contacted from the western United States, and advertisements were placed in the Los Angeles market as well as in the Oakland/SF market. In February, two proposals were received; one from the PTA, the other from APE. Both were invited to present their proposals to a panel consisting of City staff and a representative from the FOOF. Based on the interviews and the proposals, APE was selected by unanimous vote to negotiate with the ORNMTC for the right to operate the Theater.

### **(5) Oakland School for the Arts**

OSA is the primary tenant for the wrap-around building that surrounds the Theater. The charter school, which was founded in 2001, currently enrolls 400 students in grades 6-12 with plans to expand to 500 students. The students, which come from Oakland and surrounding communities, enjoy a comprehensive college-prep curriculum which is complimented with professional training in dance, music and theater. For the 2002-03 and 2004-05 school years, OSA received the highest CA Department of Education Academic Performance Index scores of any school in the Oakland Unified School District. This year marks the first graduating class with 90% of the students destined for college, including admission to such prestigious institutions as Stanford, Columbia and UC Berkeley. For information regarding the material terms for the OSA's lease for use of a portion of the Fox Theater commercial space as a charter school, please see **Attachment No. 6, OSA Term Sheet**.

## **(6) Bidding and Local Hiring Efforts**

### **Bidding**

It is recommended that the Agency authorize ORNMTC to waive the Agency's competitive bidding requirements set forth in Oakland Municipal Code Article 2.04.050 for project agreements. As indicated below, it is in the best interests of the Agency to authorize ORNMTC to waive bidding for construction agreements as it will allow ORNMTC to negotiate for greater than usual local business participation and lower costs, and will eliminate potential disputes over non-standard bidding and negotiating that could delay the Project.

ORMNMC wishes to hire Turner Construction as the general contractor to construct the Project who will in turn hire all 60 plus construction subcontractors. To increase local business participation and resident hiring on the Project, ORNMTC advertised and bid the subcontracts for the Project, and is reviewing all subcontractor bids for Local Business Enterprise (LBE) and Small Local Business Enterprise (SLBE) participation. See discussion of the outreach, support and advertising efforts undertaken by ORNMTC in this regard in the next section. ORNMTC will, if necessary, further negotiate with Turner and subcontractors before contracts are executed to increase LBE participation to fifty percent (50%) and SLBE participation to twenty percent (20%) (SLBE participation is included in LBE participation). These goals significantly exceed the City of Oakland's current local contracting and hiring goals of 20% LBE and 10% SLBE.

The Agency's bidding requirements for services and construction projects are set forth in Oakland Municipal Code Chapter 2.04, Articles 2.04.050 and 2.04.051. A competitive solicitation of proposals is required for professional services contracts. A competitive, advertised process with fixed, sealed bids and awards going to the "lowest, responsible bidder" is required for procurement and construction contracts. Agency Board approval of the DDA will establish that ORNMTC has authority to contract for the Agency. It is further recommended that the Agency establish clear authorization for ORNMTC to waive competitive bidding. This will forestall any future disputes concerning non-standard bidding or negotiation that could delay the Project.

### **Local Hiring Efforts**

The Council asked staff to return with information on the local hiring efforts and selection of subcontractors. A preliminary discussion of CCG's and Turner's efforts follows.

Between April and June 2006, sixty-two subcontractor bid packages were sent out (**see Attachment No. 7, Bid Package List**). With assistance from Turner, CCG has conducted extensive outreach to insure that all local contractors were given maximum opportunity to participate on the construction of the Project. Some of the highlights of their efforts are described below:

- CCG and Turner have had contact with over 600 firms regarding business status, capacity, and project experience, resulting in 90 one-on-one meetings with local contractors;

- CCG has sponsored several outreach events:
  - Fox Project Outreach at Rotunda (6/23/05)
  - DBE Fair (8/25/05)
  - Turner CM Course for LBEs (9/20/05)
  - Fox Project Outreach at Rotunda (1/25/06)
  - Pre-Bid Meeting (2/23/06)
  - Open Business Assistance Center (4/3/06)
  - EBSBC Bid Conference (4/20/06)
  - Fox Project Outreach at Rotunda (4/27/06)
  - Minority Economic Summit (5/5/06)
- Establishment of the Fox Theater Business Assistance Center Construction Program. The services are provided through a preexisting Agency contract with Mecca/Anue Management Inc. (Mecca) and include bid estimating and project-related technical assistance to local and small local business enterprises. Since the end of May, Mecca has provided assistance to 38 firms, 26 of which are designated LBEs, 26 of which are SLBEs, and 18 of which have been identified as minority/women-owned business enterprises.

**Complete information on the bids received will not be available until mid-June 2006. Staff will return with a Supplemental report to Council once bid information is available.**

### **(7) Project Schedule**

The schedule for the Project is as follows:

**Table 3.  
Project Schedule**

<b>Milestone</b>	<b>Date</b>
Planning Commission Review	June 1, 2005
Council Approval of original DDA	July 17, 2005
Execution of DDA between Agency and ORNMTC	August 30, 2005
CED Committee Review	June 27, 2006
Council Approval of Amended DDA	July 18, 2006
Execution of Amended DDA	August 2006
Close of Escrow	September 2006
Notice to Proceed	September 2006
OSA Occupancy	July 20, 2008
Theater Occupancy	September 1, 2008



## **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, and will benefit the local labor force by providing Living Wage employment.

### **Environmental**

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

### **Social Equity**

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

## **DISABILITY AND SENIOR CITIZEN ACCESS**

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

## **RECOMMENDATION(S) AND RATIONALE**

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

- The Project will establish the Project Area as an important cultural and entertainment center.
- The Project will provide employment and other economic benefits to disadvantaged persons living within or near the Project Area.
- The Project will restore an historically significant structure in the Project Area.

- The Project will improve environmental design in the Project Area, including creation of a definite sense of place and emphatic focal points.

### **ACTIONS REQUESTED OF THE AGENCY/CITY**

It is recommended that the Agency and City approve the resolutions regarding the Fox Theater including:

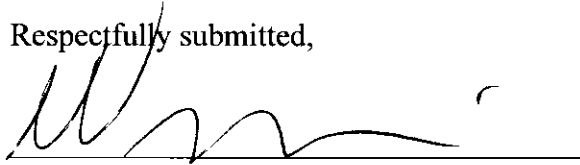
(1) Authorizing the Agency Administrator to enter into an Amended and Restated Disposition and Development Agreement between the Agency and Oakland Renaissance NMTC, Inc., a non-profit entity, and authorizing the assignment of the DDA and transfer of the Fox Theater Property to the Fox Oakland Theater, Inc., a non-profit entity, by sale for \$6,500,000 or long term lease based on a transfer value of \$6,500,000, and development of the Property as a mixed use entertainment, office and school facility, which DDA will include the following provisions:

- (a) Authorizing subsequent transfer from FOT by sale, or long term lease of the Fox Theater Property to a for profit development entity created by FOT in order to take advantage of tax credits;
- (b) Authorizing a loan not to exceed \$32,000,000 to FOT to partially fund the Project to be comprised of the following: i) a site acquisition loan of \$6,500,000 to finance the purchase of the Property from the Agency, ii) the \$3,000,000 predevelopment loan previously authorized in the existing DDA, iii) an additional predevelopment loan not to exceed \$1,050,000 to be used prior to the transfer of the Fox Theater, and iv) an additional development loan not to exceed \$21,450,000 to be used to complete construction of the Project;
- (c) Approving essential terms for the Oakland School for the Arts lease for use of a portion of the Fox commercial space as a charter school;
- (d) Approving essential terms for the Another Planet Entertainment lease for operation of the Fox Theater;
- (e) Authorizing the Developer to waive competitive bidding and request for proposal requirements for all professional services, procurement and construction contracts; and
- (f) Authorizing a loan repayment guarantee from the Agency to a conventional lender not to exceed \$6,500,000;

(2) Authorizing the Agency to reimburse ORNMTC for all costs covered by grants the Agency receives for the Project including (A) the Prop 40 Grant in the amount of \$2,887,500; and (B) the SHPO Grant in the amount of \$375,000; and

(3) Ratification of the prior DDA between the Agency and ORNMTC entered into on August 30, 2005.

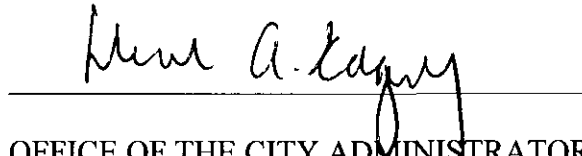
Respectfully submitted,



Dan Vanderpriem, 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: 1 Term Sheet for Amended and Restated DDA – Agency and ORNMTC  
2 Project Graphics  
3 Project Cost Estimate  
4 Development Entities  
5 Another Planet Term sheet  
6 OSA Term Sheet  
7 Bid Package List

## Attachment No. 1

### TERM SHEET FOR THE AMENDED AND RESTATED DISPOSITION AND DEVELOPMENT AGREEMENT BETWEEN THE REDEVELOPMENT AGENCY OF THE CITY OF OAKLAND AND OAKLAND RENAISSANCE NMTC, INC.

#### Project Description

- The Fox Theater (“Property”) is a three-story historic structure located on the eastern portion of the block bounded by 19<sup>th</sup> Street, 18<sup>th</sup> Street, San Pablo Avenue and Telegraph Avenue (“Site”), in the Central District Urban Renewal Area (“Central District”) of downtown Oakland, CA
- The Theater will be renovated into a performing arts center accommodating 500 – 2,300 patrons
- The wrap-around building will be renovated into the home of the Oakland School for the Arts (“OSA”), with a student capacity of approximately 450-500 students, or other future uses should the OSA cease leasing the space
- The completed Fox Theater Rehabilitation Project (“Project”) will contain approximately 62,315 square feet of Theater space, on the 1<sup>st</sup> and 2<sup>nd</sup> floors, and 57,000 square feet of School space, on the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> floors

#### Agency Responsibilities

- Transfer the Fox Theater by long-term lease or sale to Fox Oakland Theater, Inc., a California non-profit corporation (“Developer”) in an “as is” condition for \$6,500,000 (to be financed as part of the \$32,000,000 Agency loan)
- Condition the sale and the redevelopment of the Property in conformity with the Central District Redevelopment Plan
- Provide a below market rate Agency loan with payments deferred to Developer (initially Oakland Renaissance NMTC, Inc.) in an amount not to exceed \$32,000,000 for acquisition and development of the Property into a performing arts theater and home for the OSA, which includes: i) a site acquisition loan of \$6,500,000 to finance the purchase of the Property from the Agency, ii) the \$3,000,000 predevelopment loan previously authorized in the existing DDA, iii) an additional predevelopment loan not to exceed \$1,050,000 to be used prior to the transfer of the Fox Theater, and iv) a development loan not to exceed \$21,450,000 to be used to complete construction of the Project
- Utilize the \$2,887,500 California Cultural and Historic Endowment Grant funds for the development of the Property as a performing arts theater
- Transfer any insurance proceeds from the fire damage at the Fox Theater to the Developer to be used for the development of the Property
- Utilize the \$375,000 California Heritage Fund Grant for renovation of the façade portion of the Property
- Use Agency funds to secure a \$6,500,000 commercial loan for construction and long-term financing
- Utilize or transfer to Developer any grants or other funding the Agency receives that is designated for the Fox Theater

Item#: \_\_\_\_\_

### **Developer Responsibilities**

- Complete CBS Outdoor financing structure for billboard lease and all contract documents needed to access CBS Outdoor funding for the Project
- Comply with all City of Oakland policies including local hiring and prevailing wage requirements for contracts, including sub-contractors
- Renovate the Fox Theater and surrounding buildings in accordance with the Design Development and Construction Drawings for the Project
- Obtain all building permits and government approvals needed to complete Project
- Complete hazardous materials abatement requirements needed to occupy the Project
- Create all Historic Tax Credit (HTC) and New Markets Tax Credit (NMTC) syndication documents needed to finance the Project, and create an entity or entities to own and operate the Project
- Obtain all necessary financing, including a construction loan needed to complete the Project
- Provide a detailed schedule and timeline of all activities needed to complete the Project
- Perform all renovations and hazardous materials abatement work

### **OSA Material Lease Terms**

- Enter into a lease of at least 7.5-years with Developer to occupy approximately 57,000 SF in the Property, for use of the premises as a public charter school for the performing arts
- Provide rent to the Landlord at a rate of \$71,250 per month, payable from i) the revenue stream from CBS Outdoor pledged to the OSA (present value of \$6,500,000), and ii) a \$1,200,000 Federal Charter School Facility Grant
- Repair and maintain major systems, interior, windows, and courtyard improvements
- Provide all furniture, fixtures and equipment (“FF&E”) needs for the OSA
- Pay for pro-rata share of property insurance and taxes

### **Condition of Property**

- The Agency will sell the Property to the Developer in an “as is” condition
- As a condition of the sale, property will be sold with all outstanding grant requirements, tax credit requirements, and standard Agency conditions for a subsidized transaction

### **Price of Property**

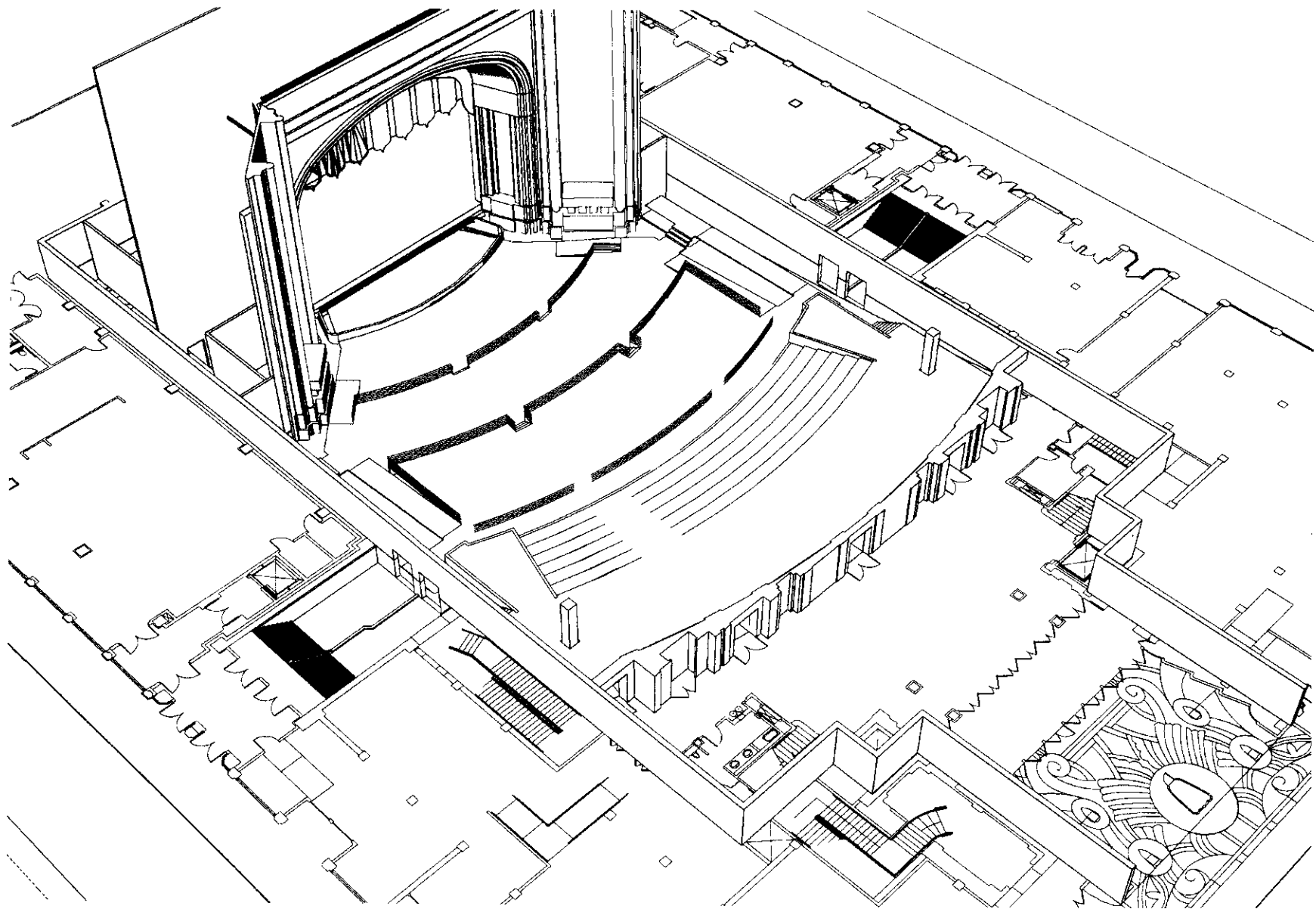
- The Agency transfer price of the Fox property will be \$6,500,000 as either the value of a long-term lease or price as a sale of the fee

### **Schedule**

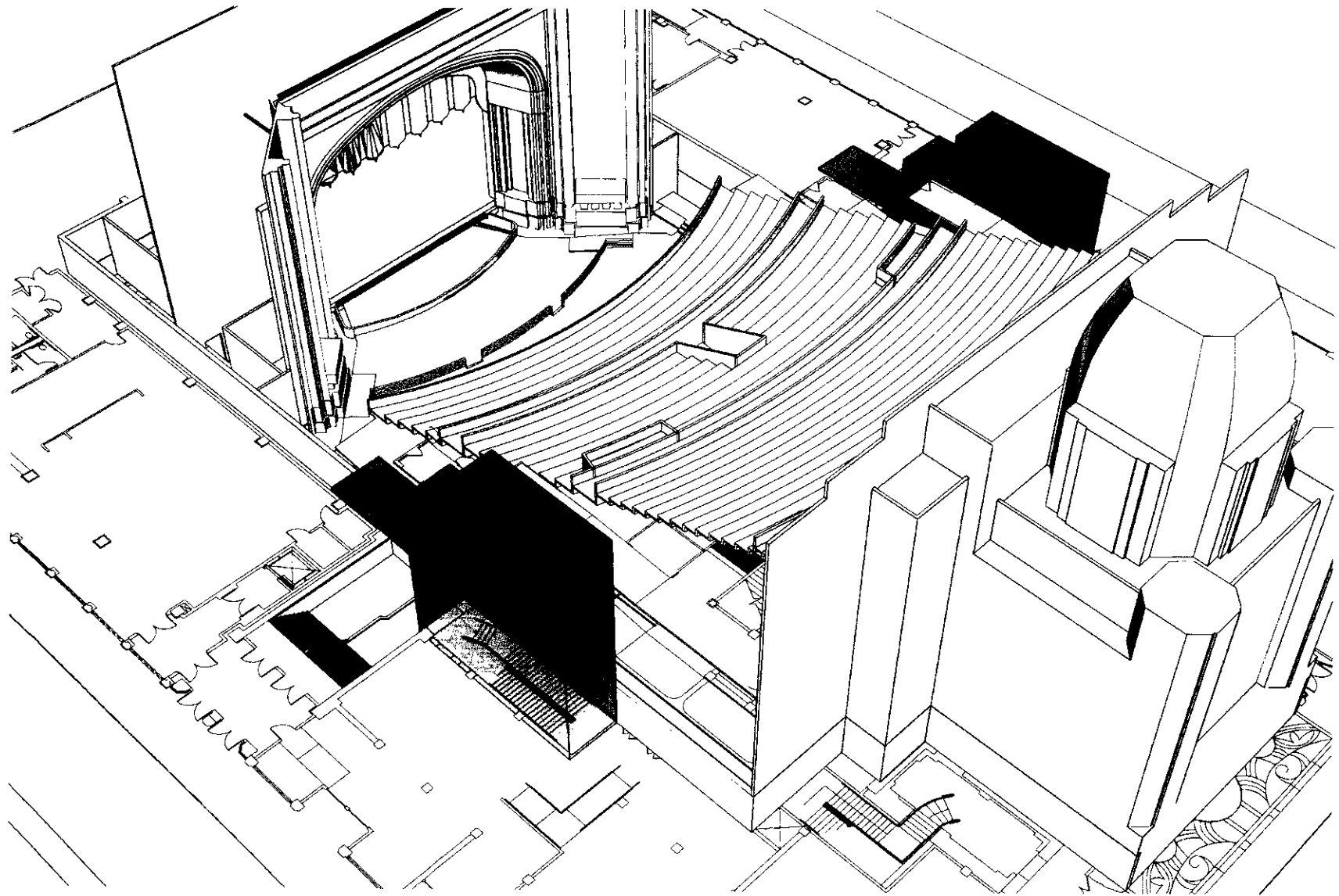
- Developer will begin construction on or about September 1, 2006
- The developer will complete the School portion of the Project by July 1, 2008

**Attachment No. 2**

**PROJECT GRAPHICS**

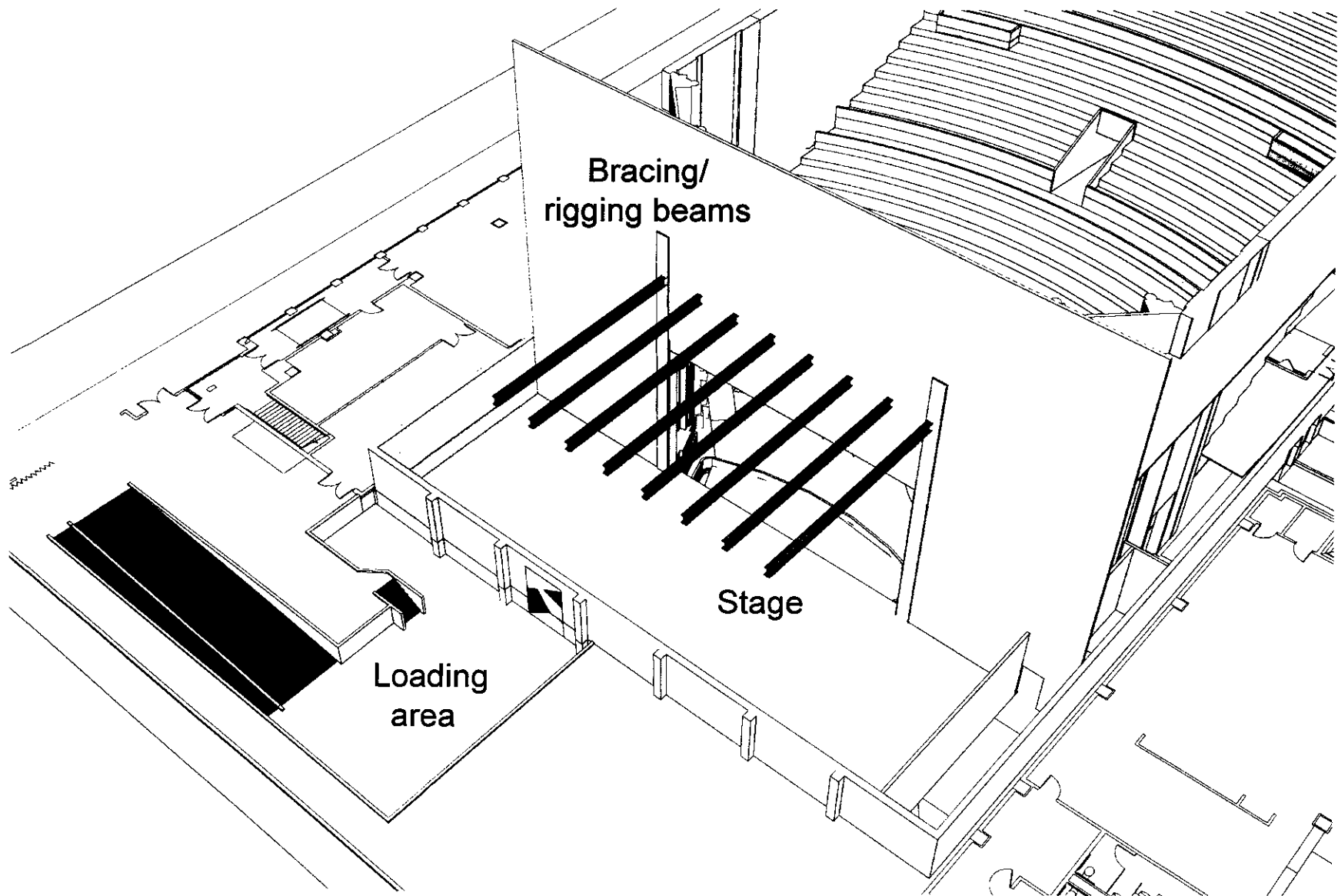


**Fox Theater – Orchestra Level – Maximum Capacity 1,180**

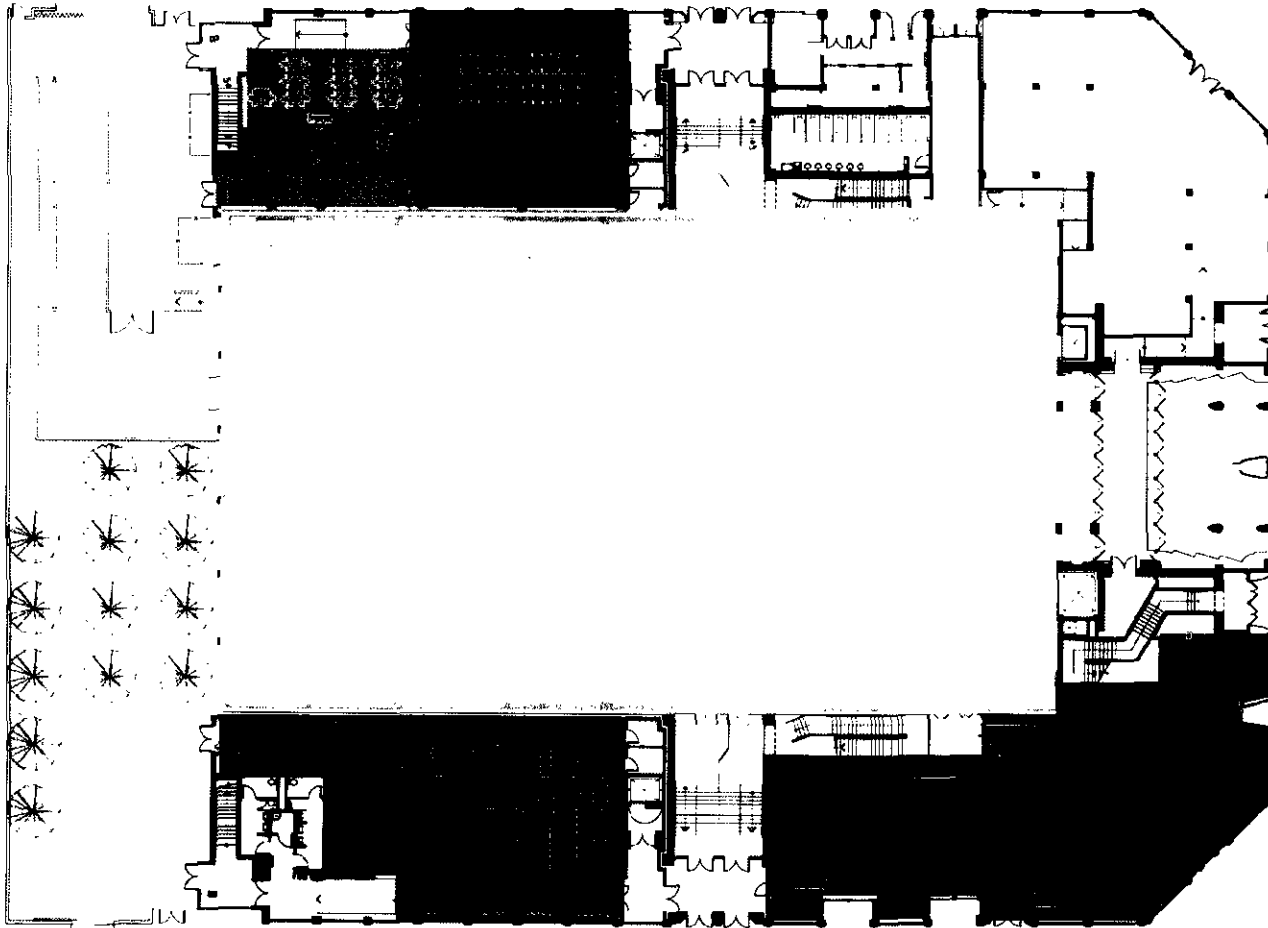


**Fox Theater – Balcony Level – Maximum Capacity 1,050**





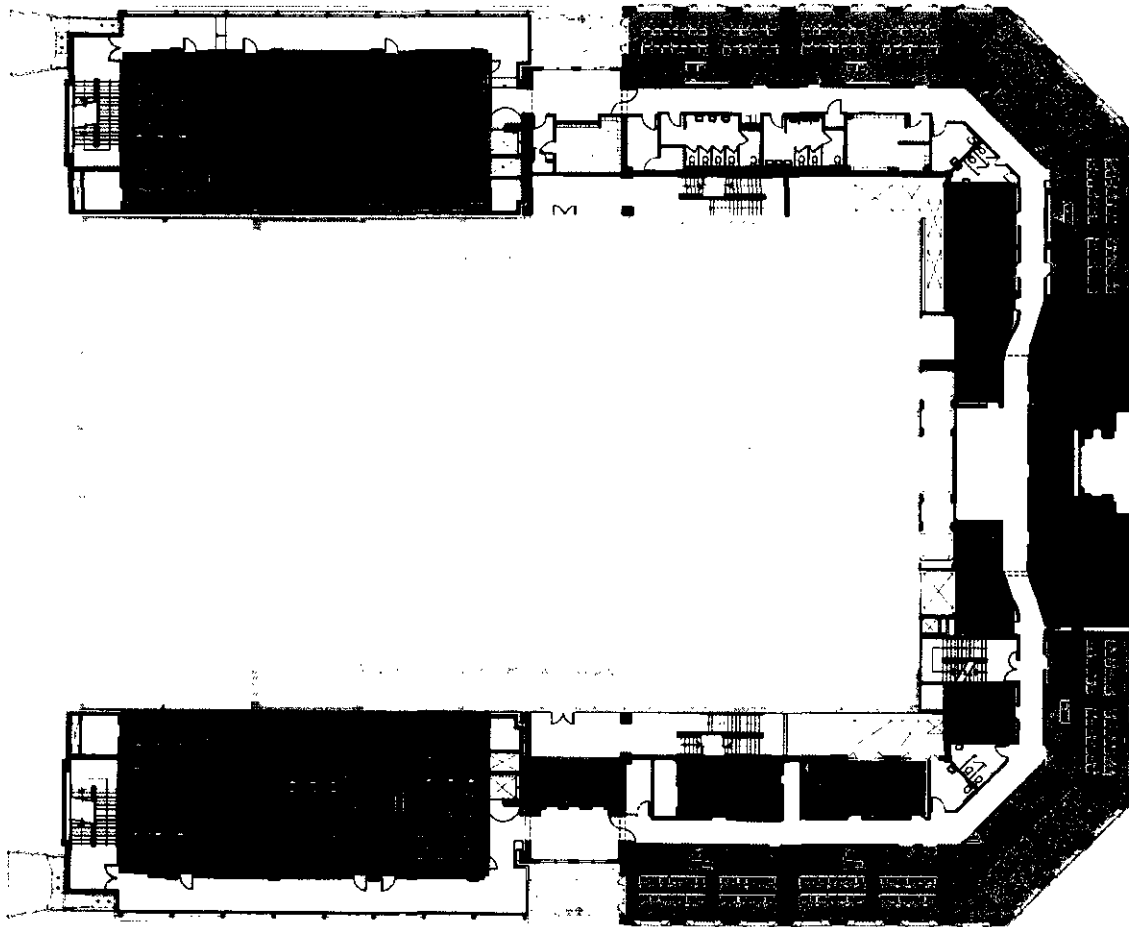
**Fox Theater – Loading Area and Stage**



- STUDENT CENTER**  
 2911 sf
  
- REHEARSAL SPACE**  
 2432 sf
  
- STAGE CRAFTS**  
 811 sf
  
- THEATER PRODUCTION & DESIGN**  
 662 sf
  
- SCHOOL EXIT**
  
- RESTAURANT**  
 5200 sf
  
- CIRCULATION & SUPPORT**  
 2029 sf

**LEASABLE SCHOOL  
 AREA:  
 11,337 sf**

# FIRST FLOOR PLAN



■ MUSIC CLASSROOMS &  
PRACTICE ROOMS  
3442 sf

■ DANCE CLASSROOMS  
2249 sf

■ ACADEMIC  
CLASSROOMS  
5537 sf

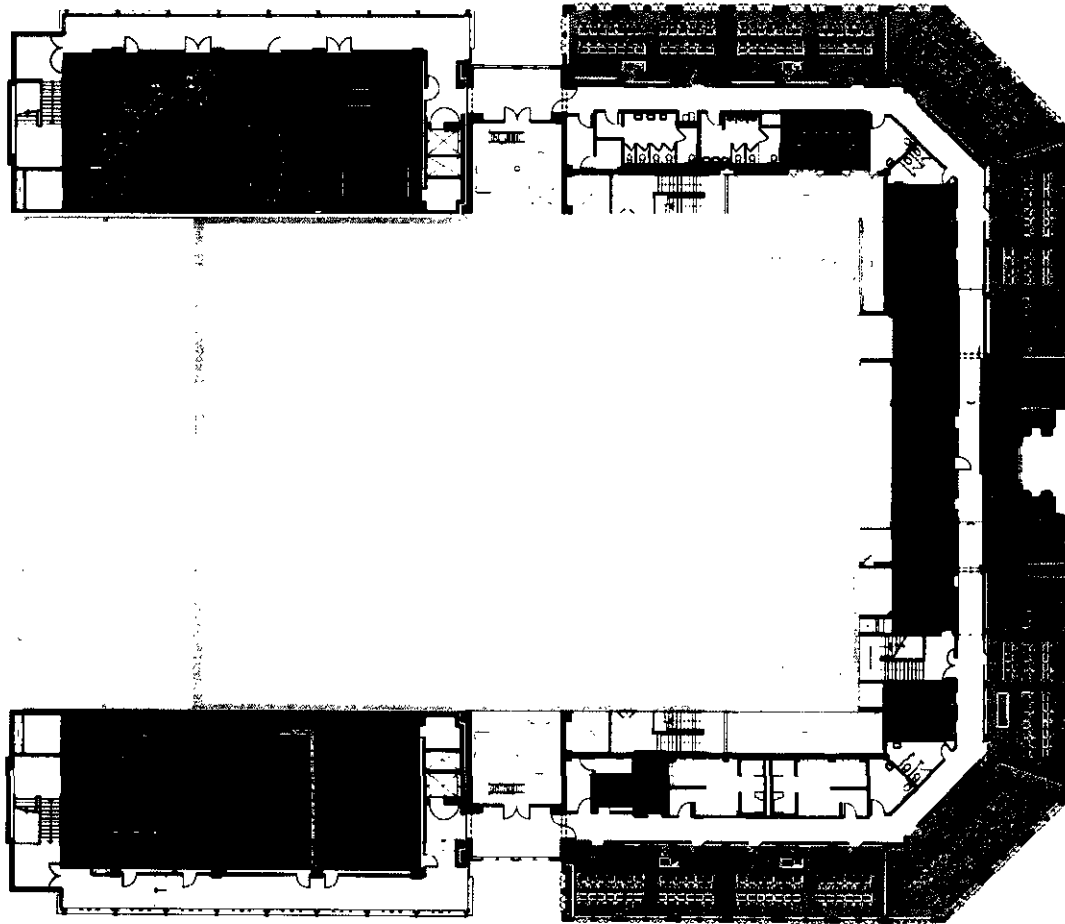
■ OFFICES &  
ADMINISTRATION  
3213 sf

□ SCHOOL EXIT

□ CIRCULATION &  
SUPPORT  
7477 sf

LEASABLE SCHOOL  
AREA:  
25,412 sf

## SECOND FLOOR PLAN



■ MUSIC CLASSROOMS &  
PRACTICE ROOMS  
4180 sf

■ DANCE CLASSROOMS  
2176 sf

■ ACADEMIC  
CLASSROOMS  
6043 sf

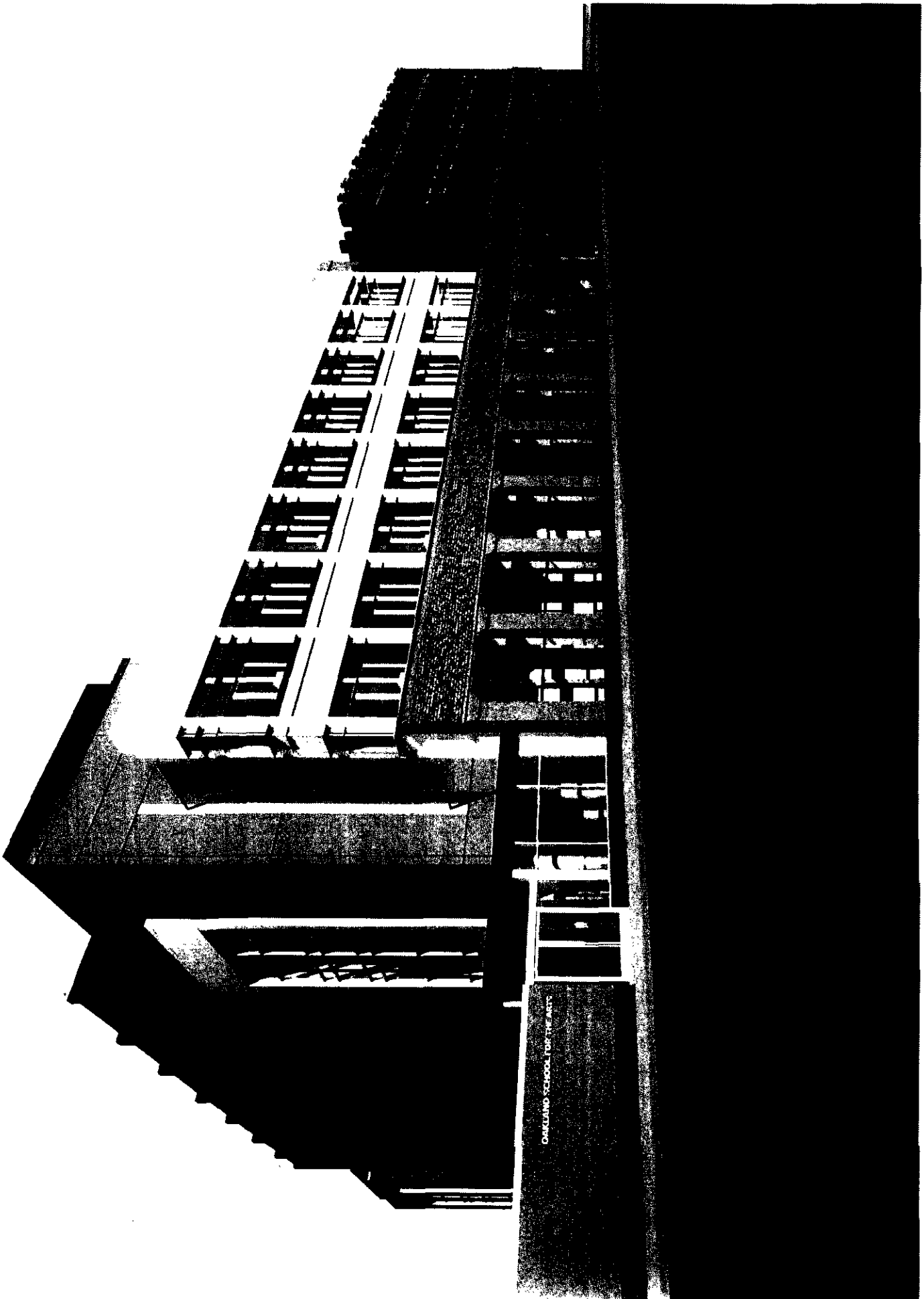
■ OFFICES &  
ADMINISTRATION  
2197 sf

□ SCHOOL EXIT

□ CIRCULATION &  
SUPPORT  
9002 sf

LEASABLE SCHOOL  
AREA:  
24,900 sf

## THIRD FLOOR PLAN



OAKLAND SCHOOL FOR THE ARTS

**Attachment No. 3**

**PROJECT COST ESTIMATE**

**Attachment No. 4**

**AGENCY CONTROL OF THE FOX THEATER THROUGH DEVELOPMENT ENTITIES**

<b>Entity</b>	<b>Legal Agreements</b>	<b>Security</b>
Oakland Redevelopment Agency	DDA with ORNMTC, Loan Agreement with ORNMTC	DDA will be the first recorded encumbrance on the property, there is no way to remove these requirements; the loan will be secured by a deed of trust
ORMNMC	DDA with ORA, Loan Agreement with ORA	DDA requires ORNMTC and all assignees to renovate theater and wrap buildings and to operate and maintain the property in accordance with the DDA; the Agency's \$6.5 million acquisition loan and \$25.5 million development loan will be in second position to the DDA and provide additional security
Developer – Fox Oakland Theater, Inc. ("FOT") a new non-profit entity set up to develop the Fox Theater as required to syndicate the Project for tax credits	Assignment and assumption Agreement for DDA, Loan Agreement, articles of incorporation	Will assume all responsibility under the DDA and Loan Agreement; Developer will be managing partner of LLC
Ownership LLCs – new limited liability corporations set up to (1) own the property and allow syndication of NMTC; and (2) master tenant the property and allow syndication of historic tax credits – ownership will return to the non-profit set up by the Agency after the tax credit recapture period in completed (7 years), the DDA and loan will remain in place	Assignment and assumption Agreement for DDA, Loan Agreement DDA, Loan Agreement	Will assume all responsibility under the DDA and Loan Agreement

All of the development and ownership interests are obligated to fulfill the terms of the DDA and deed of trust for the acquisition/development loan in perpetuity.

**Attachment No. 5**

**ANOTHER PLANET ENTERTAINMENT TERM SHEET**

**PREMISES**

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

**TENANT**

Another Planet Entertainment, LLC

**TERM**

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

**PERCENTAGE RENT**

Years 1-3:

Average paid full price attendance over the first 3 years:

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

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

Years 4-5:

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

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

Years 6-10:

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

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

First option period

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

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

**ADDITIONAL RENT**

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

**CONSTRUCTION**

Base building improvements the responsibility of Landlord.

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

**MAINTENANCE AND REPAIRS**

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

Landlord to repair and maintain structural and the exterior.



## **THEATER OPERATIONS**

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

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

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

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

## **FACILITY FEE**

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

## **NAMING RIGHTS**

Under negotiation.

**Attachment No. 6**

**OAKLAND SCHOOL FOR THE ARTS TERM SHEET**

**PREMISES**

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

**TENANT**

Oakland School for the Arts.

**TERM**

Seven and one-half years.

**COMMENCEMENT**

Term begins at substantial completion of construction work.

**CONSTRUCTION**

Base building improvements the responsibility of Landlord.

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

Furnishings, fixtures and equipment the responsibility of Tenant.

**BASE RENT**

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

**ADDITIONAL RENT**

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

**MAINTENANCE AND REPAIRS**

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

Landlord to repair and maintain structural and the exterior.

**USE OF PREMISES**

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

**USE OF THEATER.**

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

**Attachment No. 7**

**BID PACKAGE LIST**

## REHABILITATION OF FOX THEATER - OAKLAND, CA

### BID GROUP DUE DATES

BID GROUP	PKG #	SPEC SECTION	BID PACKAGE APPROXIMATE VALUE (\$000's)	BID PACKAGE	OUT TO BID	JOB WALKS MANDATORY	PREQUAL DURATION	PREQUALS DUE	BID DURATION	BID DUE
1	1.0	01000	717,000	GENERAL REQUIREMENTS	04/11/06	4/18/06 @ 10am	7	04/18/06	22	05/03/06
1	2.0	02110 / 02223	1,693,000	HAZMAT / DEMOLITION	04/11/06	4/18/06 @ 2pm	7	04/18/06	22	05/03/06
1	4.0	02450	817,000	MICROPILES / SHORING / EXCAVATION	04/13/06	4/19/06 @ 10:30am	7	04/20/06	28	05/11/06
1	5.1	03000	3,395,000	CONCRETE / REBAR 1	04/13/06	4/20/06 @ 8am	7	04/20/06	28	05/11/06
1	5.2	03000	1,450,000	CONCRETE / REBAR 2	04/13/06	4/20/06 @ 10am	7	04/20/06	28	05/11/06
1	5.3	03000	200,000	CONCRETE / REBAR 3	04/13/06	4/20/06 @ 130pm	7	04/20/06	28	05/11/06
1	6.1	05500	140,000	MISC IRON 1	04/13/06	4/19/06 @ 130pm	7	04/20/06	28	05/11/06
1	3.0	02300	131,000	EARTHWORK	05/02/06	TBD	7	05/09/06	22	05/24/06
1	7.0	02500	962,000	SITE IMPROVEMENTS / UTILITIES	05/02/06	TBD	7	05/09/06	22	05/24/06
1	2.1	02223		DEMOLITION 2	05/02/06	TBD	7	05/09/06	22	05/24/06
2	8.1	05100		ROUGH CARPENTRY 1	04/26/06	5/4/06 @ 8am	7	05/03/06	22	05/18/06
2	8.2	05100		ROUGH CARPENTRY 2	04/26/06	5/4/06 @ 8am	7	05/03/06	22	05/18/06
2	8.2	05700		MISC IRON 2 / METAL DECK	04/26/06	5/4/06 @ 10am	7	05/03/06	22	05/18/06
2	8.3	05700		MISC IRON 3 / STRUCTURAL STEEL	04/26/06	5/4/06 @ 10am	7	05/03/06	22	05/18/06
2	14.0	07600		SHEET METAL	04/26/06	5/5/06 @ 1pm	7	05/03/06	22	05/18/06
2	15.1	06800		CURTAINWALL / GLAZING	04/26/06	5/4/06 @ 1pm	7	05/03/06	22	05/18/06
2	15.2			HISTORIC FACADE	04/26/06	5/8/06 @ 1pm	7	05/03/06	22	05/18/06
2	19.1	09200		PLASTER 1	04/26/06	5/5/06 @ 10am	7	05/03/06	22	05/18/06
2	19.2	09200		PLASTER RESTORATION 2	04/26/06	5/5/06 @ 10am	7	05/03/06	22	05/18/06
2	21.0			PAVING	04/26/06	5/9/06 @ 9am	7	05/03/06	22	05/18/06
						5/10/06 @ 11am	5	05/09/06	21	05/25/06
						5/10/06 @ 8am	5	05/09/06	21	05/25/06
						5/10/06 @ 8am	5	05/09/06	21	05/25/06
						5/10/06 @ 915am	5	05/09/06	21	05/25/06
						5/10/06 @ 915am	5	05/09/06	21	05/25/06
						5/10/06 @ 915am	5	05/09/06	21	05/25/06
						5/10/06 @ 11am	5	05/09/06	21	05/25/06
						5/10/06 @ 11am	5	05/09/06	21	05/25/06
						5/10/06 @ 11am	5	05/09/06	21	05/25/06
						5/10/06 @ 11am	5	05/09/06	21	05/25/06
						5/10/06 @ 1pm	5	05/09/06	21	05/25/06
						5/10/06 @ 1pm	5	05/09/06	21	05/25/06
						5/10/06 @ 1pm	5	05/09/06	21	05/25/06
						5/12/06 @ 8am	5	05/09/06	21	05/25/06
						5/12/06 @ 915am	5	05/09/06	21	05/25/06
						5/12/06 @ 915am	5	05/09/06	21	05/25/06
						5/12/06 @ 915am	5	05/09/06	21	05/25/06
						5/11/06 @ 11am	5	05/09/06	21	05/25/06
						5/15/06 @ 8am	5	05/13/06	22	06/30/06
						5/16/06 @ 915am	5	05/13/06	22	06/30/06
						5/16/06 @ 915am	5	05/13/06	22	06/30/06
						5/16/06 @ 915am	5	05/13/06	22	06/30/06
						5/16/06 @ 11am	5	05/13/06	22	06/30/06
						5/16/06 @ 11am	5	05/13/06	22	06/30/06
						5/16/06 @ 11am	5	05/13/06	22	06/30/06
						5/17/06 @ 8am	5	05/13/06	22	06/30/06
						5/17/06 @ 8am	5	05/13/06	22	06/30/06
						5/17/06 @ 930am	5	05/13/06	22	06/30/06
						5/17/06 @ 11am	5	05/13/06	22	06/30/06
						5/17/06 @ 11am	5	05/13/06	22	06/30/06
							5	05/13/06	22	06/30/06
5	33.1	15000	4,356,000	HVAC 1 (CORE & SHELL)	?	?	?	?	?	?
5	33.2	15000		HVAC 2 (THEATER)						
5	33.3	15000		HVAC 3 (WRAP)						
5	33.4	15000		HVAC 4 (SCHOOL)						
5	34.1	15400	1,874,000	PLUMBING 1 (THEATER)						
5	34.2	15400		PLUMBING 2 (WRAP)						
5	34.3	15400		PLUMBING 3 (SCHOOL)						
5	35.1	15300	666,000	FIRE PROTECTION 1 (THEATER)						
5	35.2	15300		FIRE PROTECTION 2 (SCHOOL)						
5	36.1	16000	3,463,000	ELECTRICAL 1 (CORE & SHELL)						
5	36.2	16000		ELECTRICAL 2 (THEATER)						
5	36.3	16000		ELECTRICAL 3 (WRAP)						
5	36.4	16000		ELECTRICAL 4 (SCHOOL)						
6	32.0	11000		THEATER EQUIPMENT						
6	33.0	11000		THEATER SEATING						
6	34.0	16700		IT						
6	15.0	10000		NETTING						

OFFICE OF THE CITY CLERK  
OAKLAND

2006 JUN 15 PM 5:55

APPROVED AS TO FORM AND LEGALITY

AGENCY COUNSEL

REDEVELOPMENT AGENCY  
OF THE CITY OF OAKLAND

RESOLUTION No. \_\_\_\_\_ C.M.S.

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A RESOLUTION REGARDING THE FOX THEATER INCLUDING:

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

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

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

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

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

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

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

**(2) AUTHORIZING THE AGENCY TO REIMBURSE ORNMTC FOR ALL COSTS COVERED BY GRANTS THE AGENCY RECEIVES FOR THE PROJECT INCLUDING (A) THE PROP 40 GRANT IN THE AMOUNT OF \$2,887,500; AND (B) THE SHPO GRANT IN THE AMOUNT OF \$375,000; AND**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**WHEREAS**, in order to better enable the Developer to maintain strict project schedules with respect to project deadlines and flexibility to increase local and small business participation and attain the goal of Fifty Percent (50%) Local Business Enterprise

(LBE) and Twenty Percent (20%) Small Local Business Enterprise (SLBE) participation that the Agency desires, it is recommended that the Agency authorize the Developer to waive competitive bidding and request for proposal requirements for all professional services, procurement and construction contracts needed to complete construction of the Fox Theater Project, and to employ non-competitive means for selection of contractors and award of such contracts; and

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

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

**WHEREAS**, the Agency anticipates receiving funds from insurance coverage to compensate the Agency for fire damage to the Fox Theater that occurred in November 2004, but the amount of such compensation has not been finally determined through settlement or litigation with the Agency's property insurer and such funds should be allocated to the renovation of the Fox Theater; and

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

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

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

**WHEREAS**, the DDA will require the Agency to provide ORNMTC or FOT with financial assistance as follows: (1) a loan in the amount of \$32,000,000, including (a) \$22,500,00 in new Central District capital and operating funds, (b) \$3,000,000 already expended under the predevelopment loan with ORNMTC and (c) \$6,500,000 in previously expended acquisition and capital improvement costs that ORNMTC will assume upon transfer of the property; (2) provide a guarantee to secure a \$6,500,000 commercial loan, for construction and long-term financing; and (3) authorize reimbursement to ORNMTC for



the following sums: (A) the Prop 40 Grant in the amount of \$2,887,500; and (B) the SHPO Grant in the amount of \$375,000; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**RESOLVED:** That the Agency hereby allocates and appropriates and grants to the Developer the entire compensation paid for water damage to the Fox Theater when the final amount of such compensation has been determined and paid by the insurer of the

damage; and be it further

**RESOLVED:** That the Agency hereby authorizes the Agency Administrator or her designee to (1) authorize funding in the amount of \$32,000,000, including (a) appropriating \$22,500,00 in new Central District capital and operating funds, (b) \$3,000,000 already expended under the predevelopment loan with ORNMTC and (c) \$6,500,000 in previously expended acquisition and capital improvement costs that ORNMTC will assume upon transfer of the property; (2) provide a guarantee to secure a \$6,500,000 commercial loan, for construction and long-term financing; and (3) accept, appropriate and reimburse ORNMTC for the following sums from the Central District Grant Fund (9215): (A) the Prop 40 Grant in the amount of \$2,887,500; and (B) the SHPO Grant in the amount of \$375,000, under terms and conditions to be set forth in the DDA; and be it further

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

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

**RESOLVED:** That the Agency determines that it is in the best interests of the Agency and the Fox Theater Project to waive the Agency's competitive bidding and request for proposal processes for the Fox Theater Project, authorizes the Developer to do so and authorizes the Developer to employ non-competitive means to select contractors and negotiate all professional services, procurement and construction contracts for the Fox Theater Project; and be it further

**RESOLVED:** That the Agency hereby approves the essential terms to the OSA

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

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

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

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

IN AGENCY, OAKLAND, CALIFORNIA, \_\_\_\_\_, 2006

PASSED BY THE FOLLOWING VOTE:

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

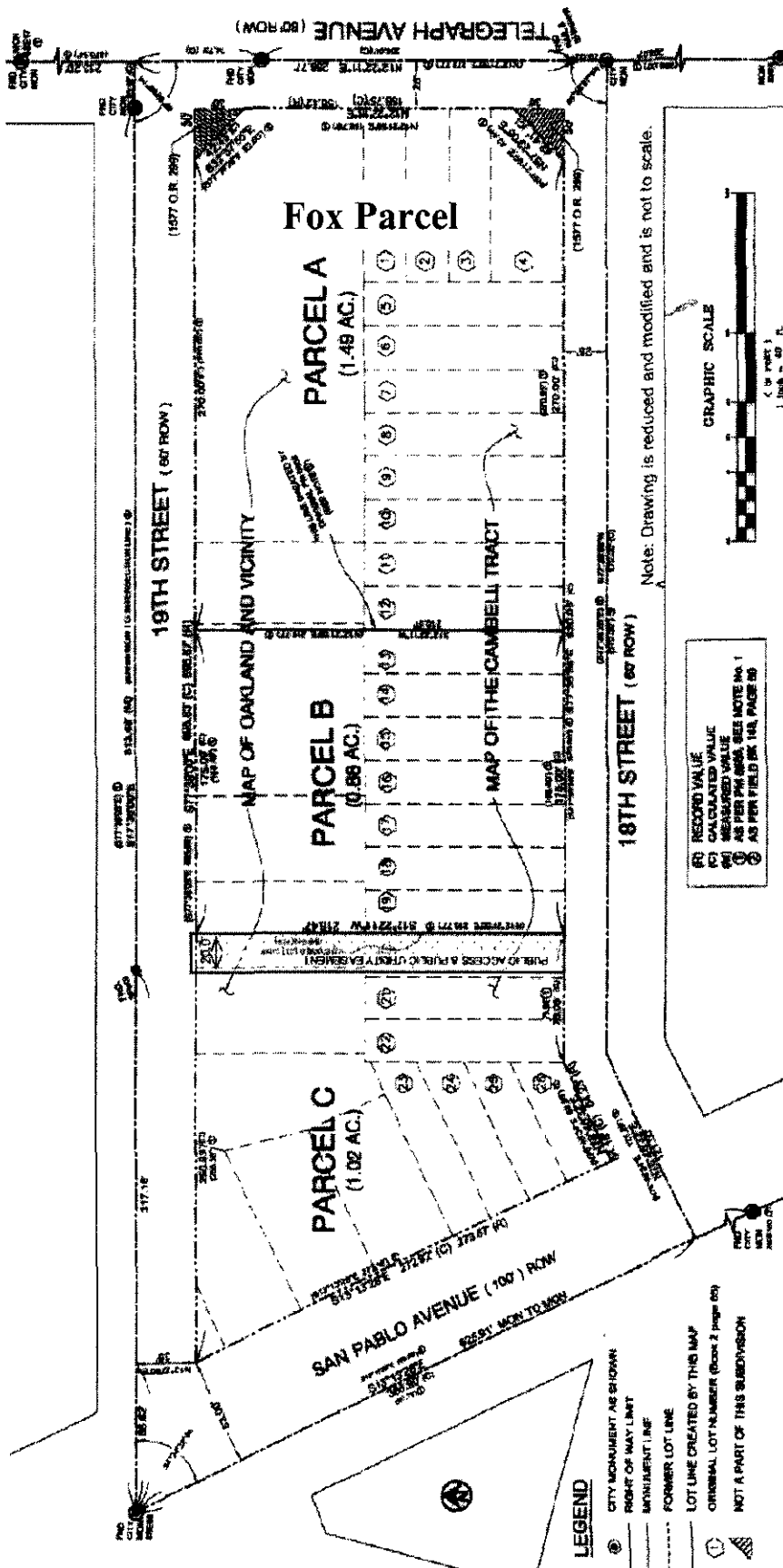
NOES-

ABSENT-

ABSTENTION-

ATTEST: \_\_\_\_\_  
LATONDA SIMMONS  
Secretary of the Redevelopment  
Agency of the City of Oakland

# EXHIBIT A PARCEL MAP



## EXHIBIT B

### ESSENTIAL TERMS TO THE OSA LEASE

#### **PREMISES**

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

#### **TENANT**

Oakland School for the Arts.

#### **TERM**

Seven and one-half years.

#### **COMMENCEMENT**

Term begins at substantial completion of construction work.

#### **CONSTRUCTION**

Base building improvements the responsibility of Landlord.

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

Furnishings, fixtures and equipment the responsibility of Tenant.

#### **BASE RENT**

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

#### **ADDITIONAL RENT**

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

#### **MAINTENANCE AND REPAIRS**

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

Landlord to repair and maintain structural and the exterior.

#### **USE OF PREMISES**

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

#### **USE OF THEATER.**

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

# EXHIBIT C

## ESSENTIAL TERMS TO THE APE LEASE

### **PREMISES**

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

### **TENANT**

Another Planet Entertainment, LLC

### **TERM**

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

### **PERCENTAGE RENT**

Years 1-3:

Average paid full price attendance over the first 3 years:

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

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

Years 4-5:

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

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

Years 6-10:

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

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

First option period

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

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

### **ADDITIONAL RENT**

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

### **CONSTRUCTION**

Base building improvements the responsibility of Landlord.

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

### **MAINTENANCE AND REPAIRS**

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

Landlord to repair and maintain structural and the exterior.

## **THEATER OPERATIONS**

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

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

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

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

## **FACILITY FEE**

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

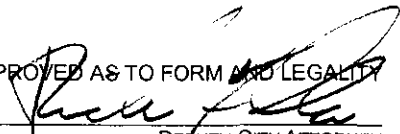
## **NAMING RIGHTS**

Under negotiation.



OFFICE OF THE CITY CLERK  
OAKLAND

APPROVED AS TO FORM AND LEGALITY

  
DEPUTY CITY ATTORNEY

2006 JUN 15 PM 5:55

## OAKLAND CITY COUNCIL

RESOLUTION No. \_\_\_\_\_ C.M.S.

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A RESOLUTION AUTHORIZING THE OAKLAND REDEVELOPMENT AGENCY TO DISPOSE OF THE FOX THEATER PROPERTY TO FOX OAKLAND THEATER, INC. (FOT), A NON-PROFIT CORPORATION PURSUANT TO A DISPOSITION AND DEVELOPMENT WHICH INCLUDES THE FOLLOWING TERMS:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

stream should the billboard lease be terminated by the Port or actions of the California Transportation Agency; and

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

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

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

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

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

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

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

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

**WHEREAS**, as required by the California Community Redevelopment Law, the Agency has made available to the public for inspection, no later than the first date of publication of the notice for the hearing, a report that contained a copy of the DDA terms

and a summary of the cost of the agreement to the Agency, the estimated fair market value of the Property at its highest and best use permitted under the Redevelopment Plan, and an explanation of why the sale of the Property and development of the Project will assist in the elimination of blight, with supporting facts and material; and

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

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

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

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

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

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

**RESOLVED:** That the City hereby finds and determines that the sale of the Property by the Agency to ORNMTC for the Project furthers the purposes of the California Community Redevelopment Law, contributes to the elimination of blight in the Central District Redevelopment Project Area, conforms to the Central District Redevelopment Plan, including its Implementation Plan, and furthers the goals and objectives of said Redevelopment Plan in that: (1) the Project will increase entertainment opportunities in the Central District; (2) the Project will provide necessary neighborhood-serving retail facilities lacking in the Central District; (3) the Project, once developed, will create permanent jobs for low and moderate income people, including jobs for area residents; (4) the Project will

help create a stable 24-hour community which will enhance the viability of retail businesses in the area; (5) the Project will redevelop a key underutilized site in the Central District; (6) the Project will improve environmental design within the Central District; and (7) the Project, once developed, will enhance depreciated and stagnant property values in the surrounding areas, and will encourage efforts to alleviate economic and physical blight conditions in the area; and be it further

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

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

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

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

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

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

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

IN COUNCIL, OAKLAND, CALIFORNIA, \_\_\_\_\_, 2006

PASSED BY THE FOLLOWING VOTE:

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

NOES-

ABSENT-

ABSTENTION-

ATTEST: \_\_\_\_\_  
CEDA FLOYD  
CITY CLERK

EXHIBIT A  
PARCEL MAP

