

Approved as to Form and Legality



City Attorney's Office

OAKLAND CITY COUNCIL

RESOLUTION NO. _____ C.M.S.

RESOLUTION AUTHORIZING THE CITY ADMINISTRATOR OR DESIGNEE TO EXECUTE AN ASSIGNMENT, WITH CITY AS ASSIGNEE AND FOT AS ASSIGNOR, OF ANY PROFESSIONAL SERVICES AGREEMENT (“PSA”) THAT MAY BE ENTERED INTO BETWEEN FOT AND COLLIERS INTERNATIONAL, INC. FOR THE PURPOSE OF PROVIDING PROPERTY MANAGEMENT SERVICES AT THE FOX THEATER ASSUMING SUCH PSA IS IN AN AMOUNT NOT TO EXCEED \$6,200 PER MONTH, OR \$74,400 PER YEAR AND IS FOR A TERM OF FIVE YEARS THAT IS EXTENDABLE FOR TWO ADDITIONAL TERMS OF FIVE YEARS EACH

WHEREAS, the City of Oakland would assume fee ownership of the Fox Theater property located at 1807 Telegraph Avenue, Oakland, California as part of the proposed asset transfer of the Fox Theater from the Oakland Redevelopment Successor Agency (“ORSA”) to the City, pursuant to the Long Range Property Management Plan (“LRPMP”), which is being considered concurrently with this Resolution and subject to approval by the ORSA Board, City Council, and the Alameda Countywide Oversight Board; and

WHEREAS, contingent on required approvals for the proposed asset transfer, as outlined in the proposed Second Amendment to the Amended and Restated Disposition and Development Agreement dated December 15, 2006 (with the First Amendment to Amended and Restated Disposition and Development Agreement dated August 1, 2008, collectively referred to as the “DDA”), the City would continue to lease the Fox Theater property to the Fox Oakland Theater, Inc. (“FOT”), pursuant to the existing Ground Lease, as amended and assigned from ORSA to the City under the terms of the proposed Assignment and Amendment to the Ground Lease; and

WHEREAS, under the proposed terms of the Leaseback Agreement being considered concurrently with this Resolution, the City would then lease back the entirety of FOT’s interests in the Fox Theater, including all improvements owned by FOT; and

WHEREAS, the City would acquire FOT’s rights and obligations as sublandlord under FOT’s subtenant leases, and desires to acquire the current rights and the obligations under FOT’s professional services agreements; and

WHEREAS, the City as assignee would assume and agree to perform all outstanding obligations of FOT as assignor, including assuming responsibility for operating and maintaining the Fox Theater and managing the existing three subleases with the assistance of a third-party property management company; and

WHEREAS, FOT has executed Amendment No. 12 to a professional services agreement with California Capital & Investment Group (“CCIG”) as successor to California Capital Group to provide property management services at the Fox Theater through December 31, 2020, which amends that original agreement dated February 1, 2004 with the Redevelopment Agency of the City of Oakland as the original assignor. The original agreement has been amended by Amendment No. 1 dated February 9, 2005; Amendment No. 2 dated August 1, 2005; Amendment No. 3 dated August 21, 2006; Amendment No. 4 dated November 27, 2006; Amendment No.5 dated July 31, 2008; Amendment No. 6 dated January 1, 2009; Amendment No. 7 dated June 2, 2009; Amendment No. 8 dated October 5, 2010; Amendment No. 9 dated January 25, 2013; and Amendment No. 10 dated January 25, 2013; Amendment No. 11 dated December 11, 2019; and Amendment No. 12 dated July 30, 2020 (collectively, the “Property Management Services Agreement”); and

WHEREAS, on July 15, 2020, the Board of Directors of FOT adopted Resolution No. 24 authorizing the assignment of its third party contracts for property management services to the City subject to approval by the City Council; and

WHEREAS, on March 13, 2020, FOT issued a request for proposal for asset/property management services for the Fox Theater; and

WHEREAS, on October 2, 2020, the Board of Directors of FOT authorized staff to negotiate an asset/property management agreement with Colliers International to provide property management services for the Fox Theater in an amount not to exceed Six Thousand Two Hundred Dollars (\$6,200) per month, or Seventy-Four Thousand Four Hundred Dollars (\$74,400) per year plus a three percent (3%) increase on each anniversary date, for a term of five years, which may be extended for two additional terms of five years each; and now, therefore, be it

RESOLVED: That the City Council approves the assignment of the Property Management Services Agreement with Colliers International from FOT to the City and authorizes the City Administrator or designee to execute the Assignment of Contracts, substantially in the form attached and incorporated herein as **Exhibit A**, contingent upon City Council and ORSA approval of the proposed transactions relating to the transfer of the Fox Theater from ORSA to the City and the effectiveness of an Alameda Countywide Oversight Board resolution approving the proposed transactions, as outlined in the Second Amendment to the DDA and this Resolution; and be it

FURTHER RESOLVED: That the City Council authorizes the City Administrator or his or her designee, without returning to Council, to conduct all negotiations, execute and submit all documents, including but not limited to applications, agreements, amendments, modifications, payment requests, operating reserves, and related actions which may be necessary for the above-referenced agreements, without increasing the amount of the agreements; and be it

Exhibit A

Assignment of Contracts
(Fox Theater located at 1807 Telegraph Ave)

ASSIGNMENT OF CONTRACTS

THIS ASSIGNMENT OF CONTRACTS (“**Assignment**”), is made as of the ___ day of _____, 202__ (“**Effective Date**”) by and between Fox Oakland Theater, Inc., a California nonprofit public benefit corporation (“**Assignor**”) and the City of Oakland, a municipal corporation (“**Assignee**”).

RECITALS

WHEREAS, Assignor and Assignee have entered into (i) that certain Amendment and Assignment of Ground Lease dated as of the date hereof, and (ii) that certain Lease Back Agreement with Option to Purchase dated as of the date hereof (the “**Leaseback Agreement**”) pertaining to the real property and the improvements located thereon known as the Fox Theater, located in the City of Oakland, Alameda County, California, (“**Property**”) as more particularly described in the Leaseback Agreement; and

WHEREAS, the Leaseback Agreement provides, *inter alia*, that Assignee shall manage and operate the Property; and

WHEREAS, Assignor desires to assign to Assignee certain contracts pertaining to the Property, and Assignee desires to assume the rights and obligations of Assignor under such contracts.

NOW THEREFORE, in consideration of the premises and the mutual covenants herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Assignment. Assignor hereby assigns, sets over and transfers to Assignee all of its right, title and interest in, to, and under the contracts (“**Contracts**”) identified on Exhibit A attached hereto and incorporated herein by this reference.
2. Assumption of Obligations. Assignee assumes and agrees to perform all obligations of Assignor under the Contracts arising as of the date hereof.
3. Representations and Warranties. Assignor hereby represents and warrants that as of the date of this Assignment: (i) there are no uncured defaults existing under any of the Contracts on the part of Assignor or any other party, and to the best of Assignor’s knowledge, no breach has been committed under any Contract which alone or with the passage of time, the giving of notice, or both would constitute a default under the Contract, (ii) none of the parties under any of the Contracts have any right of offset nor any claim against Assignor under the Contracts, (iii) all obligations of Assignor under the Contracts have been paid current as of the date of this Assignment, (iv) Assignor has delivered to Assignee a complete and correct copy of each of the Contracts together with all amendments thereto, and shall deliver the originals of all such documents to Assignee concurrently with the execution of this Assignment; (v) except as stated in the Contracts, no party has any right to extend or renew the term of any Contract, or any option to terminate any Contract.

4. Indemnity. Assignor agrees to indemnify, protect, defend (with counsel reasonably acceptable to Assignee) and hold harmless Assignee from and against any and all liability, loss, cost, damage and expense (including attorneys' fees and costs and court costs) relating to Assignor's obligations with respect to the Contracts arising or accruing prior to the Effective Date. Assignee agrees to indemnify, protect, defend (with counsel reasonably acceptable to Assignor) and hold harmless Assignor from and against any and all liability, loss, cost, damage and expense (including attorneys' fees and costs and court costs) relating to Assignee's obligations with respect to the Contracts arising and accruing from and after the Effective Date.

5. Miscellaneous. This Assignment and the obligations of the parties hereunder shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns, shall be governed by and construed in accordance with the laws of the State of California, and may not be modified or amended in any manner other than by a written agreement signed by the parties.

6. Severability. If any term or provision of this Assignment or the application thereof to any persons or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Assignment or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby, and each term and provision of this Assignment shall be valid and enforced to the fullest extent permitted by law.

7. Counterparts. This Assignment may be executed in counterparts, each of which shall be an original and all of which counterparts taken together shall constitute one and the same instrument.

SIGNATURES ON FOLLOWING PAGE

IN WITNESS WHEREOF, the undersigned have executed this Assignment of Contracts as of the date first set forth above.

ASSIGNOR:

FOX OAKLAND THEATER, INC.
a California non-profit public benefit corporation

By:
Name:
Title: _____

By:
Name:
Title: _____

ASSIGNEE:

CITY OF OAKLAND, a municipal corporation

By: _____
Name:
City Administrator

APPROVED AS TO FORM AND LEGALITY:

Barbara Parker
City Attorney

By: _____

Deputy City Attorney

Exhibit A

CONTRACTS

(Attach list)