

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

FILED
OFFICE OF THE CITY CLERK
OAKLAND

2009 NOV 24 PM 3:47
Office of the Agency Administrator

ATTN: Dan Lindheim

FROM: Community and Economic Development Agency

DATE: December 1, 2009

RE: **A Supplemental Report Regarding A Resolution Authorizing The Agency Administrator To Provide A Loan To Fox Oakland Theater, Inc., A California Non-Profit Corporation, In An Amount Not To Exceed \$2,000,000 To Fund The Completion Of The Fox Theater Renovation Project**

SUMMARY

This Supplemental Report provides additional information about anticipated sources of funds needed to closeout payment to all the contractors who have worked on the Fox Theater Project. This additional information was requested by City Council members and was not available at the time that the original staff report and resolution was submitted to the City Clerk for the December 1, 2009 Community and Economic Development Committee.

FISCAL IMPACT

The report has no fiscal impact to the Agency beyond what is contained in the original report submitted to the City Clerk for the December 1, 2009 Community and Economic Development Committee.

Purpose of Loan:

An Agency loan in the amount of \$2 million is needed to closeout the Fox Project and pay Turner Construction and the subcontractors for all outstanding invoices for work already performed. A portion of the loan, amounting to **\$1,550,000**, will be used to pay the contractors and will supplement two historic tax credit equity payments expected to be received by the project in the next few weeks. The remainder of the loan, **\$450,000** will be used to pay for outstanding Federal and State tax liabilities that were not anticipated and not budgeted in the project.

KEY ISSUES AND IMPACTS

Funds needed to close out the Project:

The Project is in need of **\$6.8 million** to reach close out. Of this amount, **\$ 5,769,791** is needed by FOT to pay Turner Construction and the sub-contractors and to clear the liens currently placed on the Project. In addition, funds amounting to **\$534,526** are needed to pay soft costs

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associated with design and project management and to clear those liens on the Project. Finally, an additional **\$500,000** is needed to maintain a required operating reserve for the Project but would not involve any lien issues.

The table below summarizes payments needed to close out the Project. Since the anticipated tax equity funds flowing into the Project are time staggered, the table has been divided into two columns, distinguished by date. The first column shows payments that can be made by December 2009 (when approximately \$3.7 million in historic tax credit payments are expected and when the portion of the requested **Agency loan amounting to \$1,550,000** could be available). The second column shows payments that will need to be deferred until the final tax credit equity payment is expected sometime before the summer of 2010. Under this schedule, all of the sub-contractors and consultants would be paid by December 15, 2009. A final payment to Turner of approximately \$680,000 and a final payment to CCG in the amount of \$120,000 would be paid when the final tax equity payment is received.

Need to Pay to Close Out Project *	December 2009	Summer 2010	Total
Turner & Subs	5,090,657	679,134	5,769,791
Architectural Dimensions	255,000		255,000
California Capital Group		120,831	120,831
Other Soft Costs	158,695		158,695
Operating Reserve		500,000	500,000
Total	5,504,352	1,299,965	6,804,317

Funds coming into the Project:

The Project is expecting two payments from the National Trust, totaling \$3.7 million in historic tax credit equity by December 15, 2009. In addition, that portion of the Agency loan being requested and totaling \$1,550,000 and a \$250,000 payment from Bank of America will allow the project to pay the contractors and subs as outlined in the discussion above. By summer of 2010, the last remaining tax credit payment totaling approximately \$1.2 million and a rent payment of \$400,000 from the Oakland School for the Arts will allow final payment to Turner and CCG. Any funds in excess of what is needed to closeout the Project will be used to pay down the Agency loan.

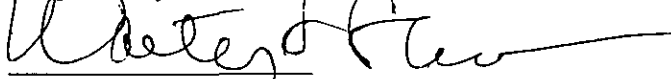
Remaining Funds to be Received	December 2009	Summer 2010	Total
New Agency Loan	1,550,000		1,550,000
BofA Grant	250,000		250,000
HTCs	3,704,352		3,704,352
Remaining HTCs		1,186,630	1,186,630
OSA remaining amt owed		400,000	400,000
Total	5,504,352	1,586,630	7,090,982

Loan to FOT Operations: Approximately \$450,000 of the requested Agency loan will go to FOT operations to pay for outstanding Federal and State tax liabilities that were not budgeted in the project. To develop the project, the City and Agency set up a non-profit and a for-profit corporation – FOT and FT Manager. Because the project received rent (the CBS billboard revenue which is credited to Oakland School for the Arts rent) and interest income during construction, when there were no offsetting operating expenses, FT Manager (the for-profit arm of FOT) has income tax liabilities for this income. Although the income was budgeted to the project and was included in the sources of funds, the tax liability was not budgeted. Since FOT is the 100% owner of FT Manager, FOT needs to fund these liabilities in the form of a capital contribution to FT Manager. These liabilities include \$334,800 in federal taxes, \$83,198 in State taxes, plus penalties.

ACTIONS REQUESTED OF THE REDEVELOPMENT AGENCY

Staff requests that the Agency approve the resolution regarding the Fox Theater Project, authorizing the Agency Administrator to provide a loan to Fox Oakland Theater, Inc., a California non-profit corporation, in an amount not to exceed \$2,000,000 to fund the completion of the Fox Theater renovation project. In addition, staff requests that the Agency direct the preparation of an informational report for presentation to the CED Committee in the spring of 2010 reviewing the history of this project, including Council authorizations, staff project management, contractor performance, and City/Agency's financial commitments, to provide a complete retrospective account of the Fox Theater project for use in crafting future management plans for other development activities.

Respectfully submitted,

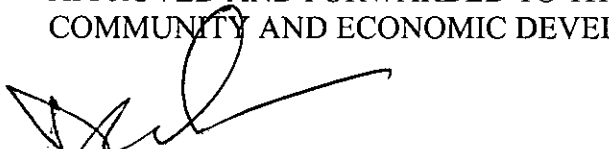


Walter S. Cohen, Director
Community and Economic Development Agency

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

Prepared by: Jeffrey Chew
Redevelopment Agency

**APPROVED AND FORWARDED TO THE
COMMUNITY AND ECONOMIC DEVELOPMENT COMMITTEE:**



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