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OFFICE OF THE CITY CLERK
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**REDEVELOPMENT AGENCY
OF THE CITY OF OAKLAND
SUPPLEMENTAL AGENDA REPORT**

2009 DEC 22 PM 5:45

TO: Office of the Agency Administrator
ATTN: Dan Lindheim
FROM: Community and Economic Development Agency
DATE: January 5, 2010

RE: **A Supplemental Report Regarding a Revised 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 responds to informational requests made at the December 15, 2009 meeting of the Community and Economic Development (CED) Committee concerning the proposed Agency loan of \$2,000,000 to complete the Fox Theater Project. At the meeting, committee members recommended approval of the loan with two changes: (1) find new funding sources that exclude any appropriations from the Oakland Police Department, and (2) the terms of the Agency loan to Fox Oakland Theater, Inc (FOT) be shortened from thirty years to seven years. The committee members also requested clarification of the process for appointing members to the FOT board and a clear explanation of how the theater can be returned to the Agency ownership after the tax benefit period expires.

FISCAL IMPACT

The proposed funding for the additional \$2,000,000 loan to the Fox Theater Project included \$246,771.18 from surplus appropriations from staff allocations in the police department from various years that are in the carry forward account in the Agency, but which have been deleted in the City. Per the request of Council members, these funds have been replaced as a source for the loan with funds from FY 2009-10 tax increment rebates for the Uptown Project. The new sources of funds are:

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Fund	Org	Project	\$ Amount	Organization
9510	Various	S00800	\$4,594.76	Various
9510	8222	S00800	\$35,937.09	Finance
9510	88229	S00800	\$40,120.69	Planning
9510	88689	S00800	\$372,948.15	Redevelopment
9510	88559	S00800	\$458,513.73	Economic Development
9510	94800	S00800	\$841,114.40	Uptown Tax Rebates FY 2008-09
9510	94800	S00800	\$246,771.18	Uptown Tax Rebates FY 2009-10
Total			\$2,000,000.00	

The change in sources was an additional \$246,771.18 from Uptown Tax Rebates for FY 2009-10. The Agency received the request from Forest City for the FY 2009-10 tax rebate, which was \$433,000 less than budgeted. The assessed value for the property is lower based on lower rents and higher vacancies. Because of reductions in property value and property taxes for the Uptown Project, the Agency is not required to rebate the amount projected when the project was approved, and there are surplus funds set aside for these rebates. Funding this project with the funds listed above will not directly impact any other projects or programs in the Agency.

KEY ISSUES AND IMPACTS

New Loan Terms

In order to close out the project and pay all outstanding invoices to the subcontractors for work already performed, the project is in need of the Agency loan in the amount of **\$2 million**. The loan is for two purposes; (1) pay for cost increases and maintain project cash flow and (2) pay for project operations. The \$2 million loan to FOT will be an addition to the existing loan of \$25.5 million made by the Agency to FOT in July 2006. Unlike the existing loan, which has a term of 30 years, the loan requested in this action will have a **term of seven years** at an interest rate of 6% per annum with payments from any surplus development funds, but otherwise deferred until the loan is due in January 2014. The project is already required to make surplus revenue payments to the Agency toward by the existing loans. This will provide funding until FOT is able to unwind the deal and refinance all of the loans or transfer the Fox Theater back to the Redevelopment Agency.

FOT Board Appointments

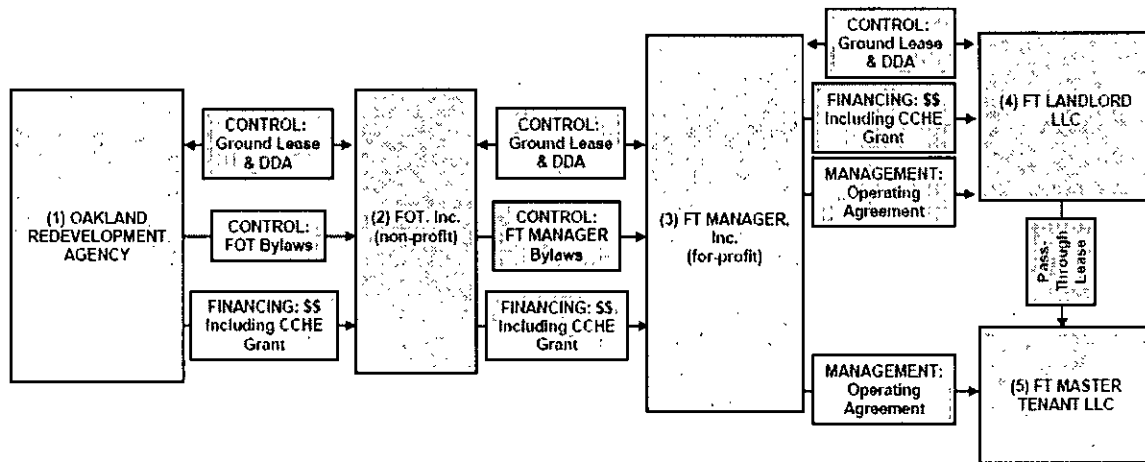
The FOT board is composed of at least three but no more than seven Directors. Currently there are five Directors; they include: Gregory Hunter, President, Patrick Lane, Secretary, Katano Kasaine, Treasurer, Walter Cohen and Al Auletta. All Directors must be employees of the City of Oakland or the Redevelopment Agency and are appointed by the Redevelopment Agency Administrator for a term of five years. A Director's term

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ends and his or her position shall be deemed vacant upon the Director's ceasing to be an employee of the City of Oakland or the Redevelopment Agency.

Existing Ownership of Project and How it Eventually Returns to the Agency

The Fox Theater Renovation Project required a very complex ownership structure needed to qualify and secure both New Market Tax Credit equity and Historic Tax Credit equity.



Under this ownership structure, the Agency owns the Property and leased the property to FOT pursuant to a Disposition and Development Agreement and a ground lease. FOT (a non-profit public benefit corporation), assigned its interest in the ground lease to **Fox Theater Manager, Inc** (a for-profit entity). FT Manager assigned its interest in the ground lease to **Fox Theater Landlord LLC** (established to capture New Market Tax Credits) and FT Landlord subleased to **FT Master Tenant LLC** (established to capture Historic Tax Credit equity). FT Manager is the manager for both FT Landlord and FT Master Tenant. FOT and FT Manager have the same City/Agency employees as directors. All of the leased interests are subject to the terms of the DDA and the ground lease. This structure has been successful in securing over \$26 million in New Markets Tax Credit equity and Historic Tax Credit equity to the Project. Bank of America has been the investor for all of the tax credits.

At the end of the tax credit benefit period, which is in approximately six years from now, FOT has the option of buying out the tax credit investors and, conversely, the tax credit investors have an option to require FOT to buy them out. In either event FOT would pay a percentage of the tax credit investment for the buyout (approximately \$2 million). At that point the various tax credit entities are disbanded. The Agency can then exercise an option to buyout FOT's interest and retake full ownership of the Fox Theater (subject to the GASS and OSA leases). The purchase price on the Agency's option is the greater of

fair market value at determined at that time or the debt on the property plus \$10. It is assumed that the debt on the property will be greater than fair market value and since the debt is the Agency debt, other than possibly the tax credit buyout, the Agency would not need to pay any more to buyout FOT. Alternatively, the Agency can leave FOT's leasehold interest and let FOT manage the property, similar to the Paramount Theater.

RECOMMENDATION(S) AND RATIONALE

As stated in the December 1, 2009 supplemental report to the CED Committee, the project is in need of **\$6.8 million** to pay off all outstanding bills. Of this amount, **\$5.8 million** is needed by FOT to pay Turner Construction and the sub-contractors and to clear the liens currently placed on the project. An additional \$535,000 is needed to pay soft costs 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 project is expecting two payments from the National Trust, totaling \$3.7 million in historic tax credit equity by before the end of the year. However, these funds could be at risk if FOT does not identify funds to complete the project and obtain a lien-free title report. One of the requirements of the tax credit investors is that the project budget be in balance. Without being able to show a source to cover the remaining gap, the investor is not required to make any of the additional payments. Obtaining this loan is therefore of the utmost importance.

The Oakland School for the Arts is also expected to prepay \$400,000 in rent in lieu of the grant that was pledged to the project but never delivered. There are also contributions from FOOF and funds on hand that when combined with the requested Agency loan and tax credit equity, will enable FOT to pay Turner Construction, all the sub-contractors and most of the consultants. Any outstanding balance owed CCG and the other consultants will be paid when the final tax credit equity payment of \$1,186,000 is received in the spring of 2010, from which the reserve will also be financed. This reserve is expected to stay in place throughout the tax credit period and will come back to FT Landlord when FOT is able to unwind the current ownership structure and take back ownership of the theater. At that time, the Agency will have the option of direct ownership of the theater through a buy out, and can gain control of the reserve, or at least have the funds used for loan repayments to the Agency.

Authorizing this loan will allow the contractor, 34 subcontractors, and various other consultants to be paid, including 12 local and small local companies.

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ACTIONS REQUESTED OF THE REDEVELOPMENT AGENCY

For the reasons stated above, it is recommended that the Agency approve the revised 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.

Respectfully submitted,

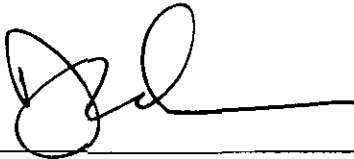


Walter S. Cohen, Director
Community and Economic Development
Agency

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

Prepared by: Patrick S. Lane and Jeffrey Chew
Redevelopment Division

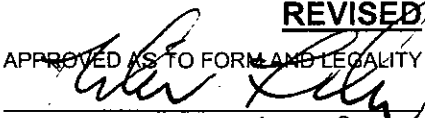
APPROVED AND FORWARDED TO THE
CITY COUNCIL



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REVISOR
APPROVED AS TO FORM AND LEGALITY

AGENCY COUNCIL

REDEVELOPMENT AGENCY OF THE CITY OF OAKLAND

RESOLUTION No. _____ C.M.S.

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.

WHEREAS, the Agency entered into a Disposition and Development Agreement (DDA) in December 15, 2006 with Fox Oakland Theater Inc.(FOT) for the purpose of developing the Fox Theater with financial assistance as follows: (1) a loan in the amount of \$33,500,000, including (a) \$22,500,00 in new Central District capital and operating funds, (b) \$3,000,000 already expended under a predevelopment loan and (c) \$6,500,000 in previously expended acquisition and capital improvement costs; (d) \$1,500,000 to advance funds for a fire insurance settlement; (2) a guarantee to secure a \$6,500,000 commercial loan, for construction and long-term financing; and (3) authorize reimbursement to FOT for the following sums: (a) the California Cultural and Historic Endowment (CCHE) Proposition 40 Grant in the amount of \$2,887,500; and (b) the State Historic Preservation Office Grant in the amount of \$375,000; and

WHEREAS, FOT has successfully added to the above sources including: (1) \$1,064,250 in additional CCHE funds, (2) \$13,156,000 in Historic Tax Credits, (3) \$8,610,000 in New Markets Tax Credits, (4) \$726,500 in additional insurance proceeds; and (5) \$594,000 in HUD funding; and

WHEREAS, FOT has successfully secured new funding sources amounting to \$14.4 million; and

WHEREAS, the Agency approved an amendment to the Disposition and Development Agreement (DDA) on July 15, 2008 to provide a bridge loan to Fox Oakland Theater Inc. (FOT) in the amount of \$7,450,000 to fund additional costs associated with the design and construction of the historic renovation of the Project: and

WHEREAS, the bridge loan is intended to be repaid with funds anticipated from: (1) Historic Tax Credits, (2) additional Prop 40 funding, (3) a HUD Grant, (4) a HUD Urban Infill Grant and, (5) a contribution from Friends of the Oakland Fox; and

WHEREAS, an additional \$2,000,000 is needed to (1) pay for increases in project costs resulting from additional construction and historic renovation that was required by the National Park Service (NPS) and the State Office of Historic Preservation (SHPO) necessary to secure a Part III Certification for the building and to pay for other unanticipated cost increases in an amount of \$950,000 and (2) to bridge the final tax credit equity payment due the project thus maintaining positive project cash flow and allowing all sub contractors to be paid before the anticipated funds are received in an amount of \$600,000 and. (3) to cover an unanticipated shortfall in projected tax equity revenue needed to close out the Fox Theater Project in an amount of \$450,000; and

WHEREAS, the terms of the loan to FOT would be 6% interest for a period of seven years from execution of the loan with payments based on a residual receipts payable in order of priority with prior Agency loans on the Fox Theater project 30 years, corresponding to the payoff date of the original loan from the Agency to FOT beginning in June 2006; and

WHEREAS, It is anticipated that at sometime in the future after the tax benefit period terminates (in approximately seven years) the Agency might choose to take back the property and either forgive the loan or extend the term of the loan to allow for continued payments to the Agency; and

WHEREAS, the Fox Theater is exceeding all attendance expectations attracting approximately 150,000 patrons during the first year of operation, exceeding the projections by 50,000 and is helping to draw people to area restaurants and bars, increasing General Fund revenue from new business license taxes and from additional sales and parking taxes; 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 her 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 Agency loan FOT for the Fox Theater 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 approves a loan to Fox Oakland Theater, INC in the amount of the \$2,000,000 under the terms and conditions set forth in this resolution; and be it further

RESOLVED: That funds totaling \$2,000,000 to the Fox Theater Project is from Central District Operating Fund (9510), Central District Planning Project (S00800) and from various organizations, as shown below

Fund	Org	Project	\$ Amount	Organization
9510	Various	S00800	\$4,594.76	Various
9510	407110	S00800	\$9,583.36	Police
9510	404110	S00800	\$237,187.82	Police
9510	8222	S00800	\$35,937.09	Finance
9510	88229	S00800	\$40,120.69	Planning
9510	88689	S00800	\$372,948.15	Redevelopment
9510	88559	S00800	\$458,513.73	Economic Development
9510	94800	S00800	\$841,114.40	Uptown Tax Rebates FY 2008-09
<u>9510</u>	<u>94800</u>	<u>S00800</u>	<u>\$246,771.18</u>	<u>Uptown Tax Rebates FY 2009-10</u>
Total			\$2,000,000.00	

and be it further

RESOLVED: That funding this project will not directly impact any other projects or programs in the Agency; and be it further

RESOLVED: That the Agency Administrator is authorized make the loan in the amount of \$2,000,000 under the terms and conditions set forth in this resolution; 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, _____, 2010

PASSED BY THE FOLLOWING VOTE:

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

NOES-

ABSENT-

ABSTENTION-

ATTEST: _____

LATONDA SIMMONS
Secretary of the Redevelopment Agency of
the City of Oakland, California