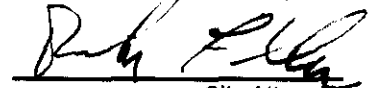


# OAKLAND CITY COUNCIL



City Attorney

2006 OCT 12 PM 1:23

RESOLUTION No. 80247 C.M.S.

Introduced by Councilmember \_\_\_\_\_

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**A RESOLUTION AUTHORIZING AMENDMENTS TO THE OAKLAND REDEVELOPMENT AGENCY'S DISPOSITION OF THE FOX THEATER TO FOX OAKLAND THEATER, INC. (FOT), A NON-PROFIT ENTITY, INCLUDING AMENDMENTS TO THE DISPOSITION AND DEVELOPMENT AGREEMENT (DDA) AND REVISIONS AND SUPPLEMENTS TO ORIGINAL GUARANTEES REQUIRED FOR TAX CREDIT FINANCING FOR THE FOX THEATER PROJECT AND OTHER AGREEMENTS INCLUDING:**

- **MODIFYING THE EXISTING LOAN REPAYMENT GUARANTEE FROM THE AGENCY TO FOT FOR CONVENTIONAL LOAN TO FOT NOT TO EXCEED \$6,500,000, AND THE EXISTING CONTINGENT LOAN NOT TO EXCEED \$3,530,000 FOR COSTS ASSOCIATED WITH OBTAINING HISTORIC TAX CREDITS AND NEW MARKETS TAX CREDITS, TO INCLUDE OPERATING COSTS WITHIN THE SCOPE OF THE GUARANTEES;**
- **A GUARANTEE BY THE AGENCY IN FAVOR OF THE TAX CREDIT INVESTMENT ENTITIES FOR (A) COMPLETION OF THE FOX THEATER REHABILITATION WORK IN COMPLIANCE WITH APPLICABLE LAWS AND THE HISTORIC TAX CREDITS REQUIREMENTS, (B) PAYMENT OF CARRYING COSTS THROUGH LEASE UP, AND (C) THAT THE PROJECT IS FREE OF LIENS UPON COMPLETION OF REHABILITATION;**
- **A GUARANTEE BY AGENCY IN FAVOR OF THE TAX CREDIT INVESTMENT ENTITIES RELATING TO THE HISTORIC TAX CREDITS AND NEW MARKETS TAX CREDITS IN EVENT THE TAX CREDITS ARE NOT AWARDED OR ARE RECAPTURED BY THE INTERNAL REVENUE SERVICE AS A RESULT OF NON-COMPLIANCE WITH IRS TAX CREDIT REQUIREMENTS BY FOR OR ITS AFFILIATED ENTITIES;**
- **ENVIRONMENTAL INDEMNIFICATION FOR THE LENDERS AND TAX CREDIT INVESTORS TO PROTECT AGAINST EXISTING AND FUTURE, KNOWN OR UNKNOWN ENVIRONMENTAL MATTERS**

**WHEREAS**, on July 19, 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 for the renovation for the Fox

Theater Project at the real property identified in Exhibit A; and

**WHEREAS**, on July 18, 2006, the Agency authorized the Agency Administrator to amend the DDA and permit the DDA to be assigned to Fox Oakland Theater, Inc. ("FOT") a California non-profit corporation; and

**WHEREAS**, the Agency evaluated the costs of renovating the Fox Theater and determined that in order to complete the project FOT 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**, FOT solicited proposals for New Markets Tax Credit and Historic Tax Credit financing for the Fox Theater Project and has entered into a letter of intent with affiliates of Bank of America for New Markets and Historic Tax Credit financing; and

**WHEREAS**, the Bank of America proposal requires that the Agency make the types of guarantees that are typically given in tax credit financing to assure Bank of America affiliates receive the benefits of the tax credit financing; and

**WHEREAS**, Bank of America's New Markets Tax Credit proposal would provide \$10.4 million in financing for the Fox Theater Project; and

**WHEREAS**, Bank of America's Historic Tax Credits proposal would provide \$8.9 million in financing for the Fox Theater Project; and

**WHEREAS**, Bank of America's tax credit proposal requires the Agency to guarantee that construction of the Fox Theater Project is completed so that the Project will be eligible for tax credits; 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 Oakland School for the Arts 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 on July 18, 2006, the Agency approved a contingent loan to FOT of up to \$6.5 million to guarantee the commercial loan; and

**WHEREAS**, the financing for the Fox Theater Project includes a contingent loan of \$3,530,000 to FOT to be used to meet the annual return and buyout costs associated with obtaining Historic and New Markets Tax Credits, which costs are not covered by revenue from the net operating income from the Project (approved on July 18, 2006); and

**WHEREAS**, Bank of America's tax credit proposal requires the Agency to provide guarantees sufficient to avoid a Project operating deficit and to pay the preferred return and such guarantee can be accomplished by modifying existing Agency guarantees to the

Fox Theater Project for a commercial loan \$6.5 million and a return and buyout contingent loan of \$3.5 million the agency has already provided to the Fox Theater Project; and

**WHEREAS**, the Bank of America proposal requires the Agency provide an environment indemnity for the Bank of America affiliates providing a tax credit financing;

**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**, a renovated and restored Fox Theater would remove a significant blight, save an important historical and cultural resource, spur other economic development, provide an educational facility, add an entertainment venue, and be a benefit to the Central District, Uptown Activity Area, and the surrounding neighborhood; and

**WHEREAS**, renovation and restoring the Fox Theater is not financially feasible without the Agency's assistance and there is no other reasonable means of providing the financing available to acquire, renovate, and restore the Fox Theater; and

**WHEREAS**, the Agency's funding of the Fox Theater Project will assist in the elimination of blight in the Central District and the Fox Theater Project is consistent with the Redevelopment Plan; and

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

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

**WHEREAS**, the City 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 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 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 City of Oakland hereby finds and determines that the lease of the 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 City hereby approves the Agency's amended terms for disposition of the Property to FOT, subject to and on the terms and conditions of the amended and restated DDA, and including the guarantees for the tax credit investors and DDA amendments for those guarantees; 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 finds that Fox Theater Project is of a benefit to the Central District and Uptown Activity Area, there are no other reasonable means of financing the Fox Theater Project except by using Agency funds, the Agency funds will assist in the removal of the blight created by the Fox Theater's present condition and the City therefore authorizes the use of Agency funds for the Fox Theater Project as a publicly-owned facility; 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'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.

OCT 31 2006

IN COUNCIL, OAKLAND, CALIFORNIA, \_\_\_\_\_, 20\_\_\_\_\_

**PASSED BY THE FOLLOWING VOTE:**


AYES - ~~Brooks~~, BRUNNER, ~~Chang~~, KERNIGHAN, NADEL, QUAN, ~~Reid~~, and PRESIDENT DE LA FUENTE - 5

NOES - 0

ABSENT - Reid - 1

ABSTENTION - 0

Excused - Brooks, Chang - 2

ATTEST:   
LaTonda Simmons  
City Clerk and Clerk of the Council  
of the City of Oakland, California

# EXHIBIT A PARCEL MAP

