



CITY OF OAKLAND

AGENDA REPORT

TO: Edward D. Reiskin
ORSA Administrator

FROM: Alexa Jeffress
Director, EWDD

SUBJECT: Fox Theater Asset Transfer and Loan
Termination

DATE: November 10, 2020

ORSA Administrator Approval 

Date: November 19, 2020

RECOMMENDATION

Conduct A Public Hearing And Upon Conclusion Adopt A Resolution, Acting As The Oakland Redevelopment Successor Agency (“ORSA”) Board, That:

1. **Authorizes The ORSA Administrator Or Designee To Execute A Second Amendment (“Second Amendment”) To The Disposition And Development Agreement (“DDA”) Between ORSA, As Successor To The Redevelopment Agency, And The Fox Oakland Theater, Inc. (“FOT”) For The Real Property Located At 1807 Telegraph Avenue (“Fox Theater”), That Obligates ORSA To:**
 - A. **Execute A Loan Satisfaction Agreement Terminating All Loan Agreements Between FOT And ORSA Totaling Approximately \$46.4 Million Of Principal And \$27.9 Million Of Accrued Interest (“Loan Terminations”);**
 - B. **Accept Approximately \$4.4 Million From FOT’s Operating And Replacement Reserves (“Cash Payment”) And A Pledge Agreement From FOT In The Amount Of \$3.96 Million, Payable In Annual Installments Of \$247,500 Over 16 Years (“Pledge”), As Consideration For The Loan Terminations;**
 - C. **Execute An Amendment And Assignment Of The Ground Lease With ORSA As Assignor and Current Ground Lessor, To The City As Assignee And New Ground Lessor, And FOT As Ground Lessee, For A Term Of 16 Years (“Assignment”); And**
 - D. **Pursuant To The Long-Range Property Management Plan, Convey To The City, By Grant Deed, A Fee Simple Interest In The Fox Theater (“Grant Deed”) And Terminate The DDA, Concurrently With Acceptance Of The Cash Payment and Pledge From FOT And The Execution And Delivery Of The Loan Terminations And Assignment.**

2. Authorizes The ORSA Administrator Or Designee To Take All Actions Necessary To Implement The Second Amendment, Including Without Limitation The Execution And Delivery Of The Loan Terminations, Assignment, And Grant Deed, Consistent With The Foregoing Terms.

EXECUTIVE SUMMARY

In 2006, the City of Oakland (City) and the Oakland Redevelopment Agency (Agency) created a nonprofit affiliate, Fox Oakland Theater, Inc. (FOT) to facilitate renovation of the historic Fox Theater, located at 1807 Telegraph Avenue, and manage its rehabilitation pursuant to the terms of a Disposition and Development Agreement (DDA) and 60-year ground lease (the Ground Lease). The Agency also provided \$46.4 million in deferred residual receipt loans (the Loans) to FOT to finance the development. The Agency was dissolved in 2012 at the end of Redevelopment and transferred its ownership of the Fox Theater real property and the Loans to the Oakland Redevelopment Successor Agency (ORSA), while FOT retained title to all of the improvements that it constructed using Historic and New Market Tax Credits under the terms of the DDA and related financing arrangements with the Agency (the Improvements). Under the terms of the existing Ground Lease, the Improvements are to automatically vest in ORSA upon termination of the Ground Lease, as the owner of the Fox Theater real property.

Since 2017, the City has sought to transfer the Fox Theater real property from ORSA to the City consistent with ORSA's approved Long Range Property Management Plan. The large unpaid balances of the Loans owed by FOT to ORSA, which total \$73.6 million as of June 2020, including principal and accrued unpaid interest, make it difficult to transfer the Fox Theater real property without first terminating the Loans. However, ORSA cannot amend the DDA to terminate the Loans without demonstrating to the California Department of Finance (DOF) that loan forgiveness will reduce liabilities and increase revenues for the taxing entities.

The proposed legislation will result in ORSA transferring the Fox Theater real property to the City and forgiving the outstanding principal balance and all unpaid interest on the Loans to FOT. ORSA will also amend and assign the existing Ground Lease to the City as lessor and FOT as lessee. The City would then enter into a leaseback agreement for the Fox Theater real property with the Improvements (the Leaseback) with FOT as lessor and the City as lessee, pursuant to which the City would agree to pay rent to FOT in the amount of \$247,500 per year for a term of 16 years (\$3.96 million in the aggregate). As consideration for ORSA's termination of the loans, FOT would pledge to pay these sums to ORSA together with a one-time up-front payment of \$4.4 million from its reserves. The Leaseback would provide an option to the City to purchase the Improvements for a nominal amount of one dollar upon satisfaction of FOT's pledge.

Staff recommends approval of this proposal because 1) it permits ORSA and the taxing entities to shorten the time necessary for its unwinding of ORSA's redevelopment obligations as required under dissolution law, while also reducing liabilities and increasing revenues for the taxing entities, 2) it will resolve the untenable continuing accumulation of debt that is currently encumbering the Fox Theater real property, and 3) it will allow the City to gain control of the historic landmark Fox Theater, an important public asset that anchors the vibrant Uptown business district.

BACKGROUND / LEGISLATIVE HISTORY

2005-06 Approval and Agreement

On July 19, 2005, the Agency Board and City Council approved resolutions authorizing a DDA between the Agency and Oakland Renaissance NMTC, Inc. (ORNMTC), a non-profit corporation, for the renovation of the Fox Theater (Agency Resolution No. 2006-0046 C.M.S. and City Council Resolution No. 79382 C.M.S.). The DDA included a 60-year Ground Lease, a loan of \$13 million and other grants and funding from the Agency.

On July 18, 2006, the Agency and City approved resolutions authorizing an Amended and Restated DDA between the Agency and ORNMTC, which was later assigned to FOT, a single-purpose non-profit corporation established by the City and the Agency to manage the rehabilitation of the Fox Theater and own and manage other financial entities created to attract private equity through Historic and New Market Tax Credits (Tax Credits) (Agency Resolution No. 2006-0057 C.M.S. and City Council Resolution No. 80057 C.M.S.). This financing structure generated \$26.2 million in tax credit equity for the project. Pursuant to the DDA and Ground Lease, the Agency leased the Fox Theater real property to FOT for 60 years, commencing September 2006. The amended DDA provided for \$25.5 million in Agency loans (increased from \$13 million) and \$6.5 million to prepay the ground rent for the full 60-year term of the Ground Lease, for a total loan amount of \$32 million. In 2016, the DDA was amended to provide for another \$3.5 million loan to buy out the tax credit investor.¹

2008 -2010 Amendments

On July 15, 2008, the Agency approved resolutions authorizing: (1) an amendment to the DDA for an additional loan to FOT for \$7.45 million for increased project costs; (2) a Tenant Improvement Grant Agreement with GASS Entertainment Inc. (which GASS assigned to its subsidiary, Another Planet Entertainment (“APE”), the selected operator for the concert hall component of the building), for \$2 million to pay for concert hall tenant improvements; (3) a loan agreement with Fox Theater Master Tenant, LLC (FTMT), an entity that was established and controlled by FOT, for \$2.7 million to pay for additional concert hall and restaurant tenant improvements; and (4) a loan agreement with the Oakland School for the Arts (OSA) for \$2.3 million to fund tenant improvements (Resolution Nos. 2008-0075 C.M.S. through 2008-0080 C.M.S.) located in the school component of the building.

On May 19, 2009, the Agency approved a resolution amending Resolution No. 2008-0077 C.M.S. to divide the \$2.7 million loan to FTMT into two loans: (1) a \$1.4 million loan to FTMT for restaurant tenant improvements, and (2) a \$1.3 million loan to Friends of the Oakland Fox (FOOF) (Redevelopment Agency Resolution No. 2009-0061 C.M.S.).

On January 5, 2010, the Agency approved a resolution authorizing the Agency Administrator to amend the DDA to provide for an additional loan to FOT for \$2 million to pay for increased project costs (Agency Resolution No. 2009-0061 C.M.S.).

¹ The total cost of the renovation was approximately \$88 million, including \$26.2 million in equity contributed by tax credit investors.

Dissolution of Redevelopment Agency

On February 1, 2012, the Agency was dissolved by operation of law. On July 17, 2012, the City Council, pursuant to Resolution No. 12-02 C.M.S., established ORSA as the successor to the Agency. Under dissolution law, ORSA became the owner of all the assets and liabilities of the Agency, including the Agency's interest in the Fox Theater real property and the Loans made by the Agency to FOT.

Long-Range Property Management Plan

In 2013, pursuant to redevelopment agency dissolution law, DOF approved ORSA's Long-Range Property Management Plan (LRPMP) for the disposition and use of former Agency-owned property. The Fox Theater is listed in the LRPMP as a property held by ORSA to fulfill existing obligations, i.e. the DDA and the Ground Lease. At the time, the enforceable obligations also included various contingent commitments to the tax credit investors such as buyouts, guaranties, and indemnities. The LRPMP provides that, once the enforceable obligations are satisfied and/or the terms of the various contingent obligations run out, the Fox Theater will be transferred to the City.

2016 Loan Assignment

On October 4, 2016, the ORSA Board approved a resolution authorizing the assignment of the \$1.4 million FTMT loan to FOT as part of the unwinding of the tax credit structure that was necessary to finance the renovation of the Fox Theater (ORSA Resolution No. 2016-008 C.M.S.).

2017 Fox Theater Loan Assignment

On October 17, 2017, the City and ORSA approved resolutions authorizing the assignment of the Loans from ORSA to the City, contingent on the City agreeing to pay 30 percent of Loan repayments to ORSA. On October 23, 2017, the Oakland Redevelopment Successor Agency Oversight Board (the Oakland Oversight Board)² approved a resolution authorizing the Loan assignments, but DOF did not approve the action. Per its letter dated December 5, 2017, DOF considered the proposed assignment agreement to be a new agreement, which ORSA is not permitted to execute pursuant to Health and Safety Code section 34177.3.

2018 Fox Theater DDA Amendment

Based on the City and ORSA-approved resolutions of October 17, 2017, and by revising the previous proposal as amendments to the DDA, the proposed transfer was resubmitted to the

² Pursuant to redevelopment dissolution law, each redevelopment successor agency, including ORSA, has an Oversight Board to oversee the successor agency in its efforts to wind down the former redevelopment agency's operations. The Oakland Oversight Board was comprised of representatives of the local agencies that serve the redevelopment project area: The City, county, special districts, and K-14 educational agencies. Effective July 1, 2018, an Alameda Countywide Oversight Board (the Countywide Oversight Board) was created to consolidate and supersede all County of Alameda Successor Agency Oversight Boards, including the Oakland Oversight Board, into one body.

Oakland Oversight Board. On March 26, 2018, the Oakland Oversight Board approved a resolution authorizing a second amendment to the DDA, including assignment to the City of ORSA's interests in (1) the DDA and (2) the Loans made to FOT, contingent on the City agreeing to pay 30 percent of the Loan repayments to ORSA. But DOF denied approval again, although DOF determined that the DDA amendment may be allowed if ORSA could demonstrate that the DDA amendment reduces liabilities and increases revenues to the taxing entities.

The current proposal follows the direction from DOF and is contingent upon approval by the Countywide Oversight Board and DOF.

ANALYSIS AND POLICY ALTERNATIVES

Analysis of Terms

The Agency provided Loans totaling \$46.4 million to FOT³, which were transferred to ORSA upon the dissolution of the Agency in 2012. The Agency regarded the Loans as long-term subsidies for the rehabilitation of the Fox Theater that it expected FOT to repay only if the project's net cash flow permitted. Accordingly, the Agency structured its financing as residual receipts loans.⁴ The principal balance on all Loans and accrued unpaid interest of approximately \$27.9 million have resulted in total outstanding debt to ORSA of approximately \$73.6 million⁵. To date, as anticipated by the Agency, cash flow from the operation of the Fox Theater has been insufficient to make any significant debt service payments, and it is unlikely that FOT will be able to pay back its debt to ORSA by the Loan maturity date in December of 2036.

Under this proposal, ORSA will transfer the Fox Theater real property to the City pursuant to the LRPMP subject to the existing Ground Lease, forgive the outstanding principal balance and all unpaid interest on the Loans, and assign the existing Ground Lease to the City as new lessor and FOT as lessee. (See **Attachment A** for Existing vs. New Ownership Graphic). The parties would amend the Ground Lease to facilitate a leaseback arrangement of the Improvements owned by FOT. Under the Leaseback, the City will agree to pay rent to FOT in the amount of

³ The Loans include the following:(i) a \$25.5 million Agency loan issued in 2006, (ii) \$6.5 million of owner financing in 2006 to prepay the ground rent for the full 60-year term, (iii) a \$3.5 million loan authorized under the DDA to buy out the tax credit investor in 2016, (iv) a \$7.45 million Agency loan issued in 2008, (v) a \$1.4 million loan to Fox Theater Master Tenant LLC issued in 2009 and assigned to FOT in 2017, which was the only one in repayment through fiscal year (FY) 2019-20, and (vi) a \$2 million Agency loan issued in 2010.

⁴ The residual receipts arrangement provides for loan repayments to ORSA only when net cash flow is available after payment of all operating expenses, debt service, reserves and certain syndication fees.

⁵ FOT was servicing one of the six Loans (\$1.4 million) through Q4 FY 2020, thereby reducing the Loan principal from \$46.4 million to \$45.7 million. As of June 30, 2020, the accrued unpaid interest was \$27.9 million.

\$247,500 per year for a term of 16 years. As consideration for ORSA's termination of the Loans, FOT will pledge to pay these sums to ORSA together with a one-time payment of \$4.4 million⁶ from FOT's cash-on-hand and reserves. (See **Attachment B** for Fox Theater Transfer - Flow of Assets and Cash).

The source of the \$247,500 will be the rent payments that the City will receive from the existing tenant leases with APE/Gass (for the concert venue), OSA (for the school), and Emporium (for the arcade bar). In addition, the Leaseback would provide the City with an option to purchase the Improvements for a nominal amount of one dollar upon full payment of the amount of the FOT pledge to ORSA.

Under the proposal, the City would assume fee ownership of the Fox Theater real property from ORSA and would continue to lease the Fox Theater to FOT pursuant to the assignment and amendment to the Ground Lease, and would then lease the entirety of the Fox Theater back from FOT with the Improvements under the terms of the Leaseback. The City would also acquire FOT's rights and obligations as sublandlord under the tenant leases, and the rights and the obligations under FOT's professional services agreements. The City would take over responsibility for (1) operating and maintaining the Fox Theater and managing the three subleases with the assistance of a third-party property management company, (2) any liabilities that may arise from operations of the property, and (3) any expenses that are typically the responsibility of the property owner, such as the special assessments for the Lake Merritt-Uptown District Association.

Upon transfer of the Fox Theater to the City, the DDA and the Ground Lease will cease to be ORSA obligations, and project staffing costs for the administration of the DDA and the Ground Lease that are allocated in ORSA's annual Recognized Obligation Payment Schedule (ROPS) can be removed, thereby significantly reducing ORSA's financial and legal liabilities, as required by DOF. If the recommended approach is not approved, these obligations would remain as enforceable obligations of ORSA payable from Redevelopment Property Tax Trust Fund (RPTTF) until the expiration of the Ground Lease in 2066. Furthermore, FOT's inability to repay the Loans would likely not be resolved until the maturity date in 2036. Staff has received preliminary consent for its proposal from DOF. However, the proposal must also be accepted by the Countywide Oversight Board, once the City Council, acting as the ORSA Board, has approved the proposed legislation.

Analysis of Dissolution Requirements

ORSA can amend its agreements with third-parties such as FOT, with the approval of the Countywide Oversight Board and DOF, if the amendment (1) reduces liabilities to the taxing entities, (2) increases net revenues to the taxing entities, and (3) is in the best interests of the taxing entities. Implementation of the recommendations outlined in this report will reduce liabilities of ORSA and the taxing entities, increase revenues to the taxing entities and generally be in the best interest of the taxing entities for the reasons described below. In addition,

⁶ \$4.4 million is the amount available in FOT's bank statement on July 31, 2019. The amount increased to \$5.3 million as of July 31, 2020.

implementation of the recommendations would enable the City to gain control of the Fox Theater as a public asset and ensure the long-term viability of the OSA.

1. Insufficient Cash Flow to Repay Loans

The sole sources of revenue available to FOT are the tenant leases with APE/Gass for the concert hall, OSA for the charter school and Emporium for the arcade bar, which collectively generate annual gross revenue of approximately \$1.7 million⁷, while operating expenses total approximately \$600,000 per year. After subtracting another \$150,000 per year to fund a capital reserve, about \$1 million of net revenue could be available annually for debt service, which is insufficient to cover annual interest payments of over \$2.25 million and would be better used to grow the capital reserve for the Fox Theater.

Moreover, FOT's lease revenues have significantly decreased since March 2020 because of the COVID-19 pandemic, which forced the closure of the concert hall, charter school and arcade bar. The duration of these business closures cannot be predicted and are likely to continue into 2021 if not longer. With rents deferred, the pandemic has made it even more difficult for FOT to service the Loans. Without the recommended changes, FOT's total debt will increase each year. By the end of the loan term in 2036, the total outstanding debt is expected to rise from approximately \$73.6 million as of June 30, 2020 to \$110.3 million, assuming no further payments can be made. FOT's financial situation and the physical condition of the building will further deteriorate if any net revenue that could be made available for major capital improvements, such as a new roof, are diverted to Loan repayments. Since two of the three tenants are already subject to market rents, there are no alternatives available to increase FOT's available net cash flow without requiring an untenable increase in rent from the OSA.⁸

2. Termination of the Existing Obligations will Result in RPTTF Savings

Upon transfer of the Fox Theater to the City, the DDA and the Ground Lease will cease to be ORSA obligations, and project staffing costs for the administration of the DDA and the Ground Lease that are allocated in ORSA's annual ROPS can be removed, thereby significantly reducing ORSA's financial and legal liabilities and satisfying DOF requirements.

If the proposal is approved, ORSA would be able to remove the administrative/management costs related to the Fox Theater from the ROPS in 2021-22 resulting in savings of almost \$15.3 million in RPTTF funding over the remaining term of the Ground Lease (ROPS Line 54: savings estimated to start at \$205,180 in fiscal year (FY) 2021-22 and increasing by 2 percent per year for 45 years through the end of the Ground Lease term in 2066).

⁷ The tenant leases are (i) the OSA which pays \$940,500 per year, (ii) the Arcade Bar which pays approximately \$110,000 in rent per year, and (iii) the Theater operator which pays approximately \$640,000 per year.

⁸ Former governor Jerry Brown, who was Mayor of Oakland at the time of the Fox Theater renovation, successfully advocated for the OSA to be a below market rate (BMR) tenant in the building as one of the community benefits provided by the Agency. Outfront Media has pledged billboard revenue (until April 2026) to help partially cover OSA's rent because the school would have difficulty affording even the BMR rate.

3. The Transfer will Permit Earlier Dissolution of ORSA

If the recommendations are implemented, ORSA will be able to dissolve 25 years earlier. Instead of remaining in existence until 2066 (the end of the Ground Lease term), if the Fox Theater is removed from the ROPS, ORSA could dissolve in 2041 when its long-term bonds and development agreement obligations terminate.⁹ This would result in additional savings of at least \$6.25 million in RPTTF funding (25 years times the \$250,000 annual minimum successor agency administrative fee).

4. Recommendations will Result in an Increase in Revenue to the Taxing Entities

The recommendations provide for (i) an initial FOT payment to ORSA of approximately \$4.4 million, and (ii) a FOT Pledge of \$247,500 per year to ORSA for the benefit of the taxing entities for the 16-year term of the Leaseback Agreement (coinciding with the 2036 maturity date of the Loans), equal to an aggregate payment of \$3.96 million. The FOT Pledge would be paid using the rent revenue that FOT receives from the City under the Leaseback. Of the initial \$4.4 million, 22.5 percent (\$990,000) would be paid to ORSA for distribution to the taxing entities.¹⁰

As the Loans cannot be repaid, the current realistic value of the Fox Theater is most accurately expressed by the net revenue generated by the Fox Theater in combination with its operating reserves. These values are represented by the \$247,500 annual Pledge and the \$4.4 million one-time payment, respectively. The additional revenues made possible through the transfer, in the form of the RPTTF savings discussed above and summarized in **Table 1** below, will therefore result in an increase in revenues to the taxing entities when compared to a scenario in which no transfer is made.

Table 1: Revenue Increases to Taxing Entities and RPTTF Savings

	Amount (nominal \$) in rounded numbers
Share of One-Time \$4.4 million Payment	\$990,000
Sum of Annual Payment of \$247,500	\$3,960,000
Elimination of Fox Theater Administrative Costs in 2021 instead of 2066 – <i>RPTTF Savings</i>	\$15,300,000
ORSA Dissolution by 2041 instead of 2066 – <i>RPTTF Savings</i>	\$6,250,000
Total	\$26,500,000

⁹ The only other long-term ORSA obligations are other development project monitoring obligations that could be transferred to the City (ROPS Lines 93, 97, 352-354 and 396) together with the associated real estate assets once ORSA's financial obligations are completed.

¹⁰ The \$3.41 million balance, comprised of restricted bond funds, would be transferred to the City in accordance with the Bond Expenditure Agreement.

5. The Risk of Future Additional Potential Liabilities to ORSA and the Taxing Entities will be Eliminated.

Once ownership of the Fox Theater real property is transferred to the City, the City, rather than ORSA, will take on legal responsibility for the real property, and any liability that may arise from personal injury or property damage. In addition, the City would become responsible for payment of special tax assessments and for maintenance, management, repairs, and capital improvements (including the roof, exterior, mechanical, electrical and plumbing systems) and for repair of any catastrophic damage resulting from an earthquake or other disaster. The risk of additional potential liability to ORSA (and thus the taxing entities) will be eliminated.

Policy Alternatives

The main alternative to the proposal would be the continued operation of the Fox Theater by FOT under the terms of the Ground Lease and DDA. There would be little change for the next 16 years: FOT would collect rent, pay for operations, set aside funds for the capital replacement reserve and then use any remaining net revenue to make debt service payments to ORSA, which is unlikely to exceed the \$247,500 annual Pledge amount. However, by the end of the loan term in 2036, the total outstanding debt, which is projected to grow from \$73.6 million to approximately \$110 million, assuming no to minimal payments are made, would still need to be resolved before ownership of the Fox Theater can be returned to the City as contemplated by the LRPMP.

In the deal that staff has worked out with DOF, the issue of the outstanding loans is resolved now, rather than kicking the can down the road, which risks putting the future ownership of the Fox in question. By taking action now to execute the proposed transfer and lease-leaseback, ORSA gets a known amount of its Loans repaid; and the City eliminates this lingering ownership uncertainty, secures control of the historic landmark Fox Theater and immediately gains funds to both operate the Fox Theater and build a capital reserve for the benefit of the building's long term sustainability.

FISCAL IMPACT

The transfer of the Fox Theater from ORSA to the City and the Leaseback from FOT to the City means the City, and not FOT, will now be responsible for: (1) receiving rents and other payments (such as common area maintenance reimbursements) directly from the three tenants; (2) directly paying for expenses related to the ongoing management and operations and maintenance of the Fox Theater; and (3) paying for capital improvements and other expenses that are the typical responsibilities of the property owner.

As part of the proposed asset transfer, FOT will make a \$4.4 million payment to ORSA in Fiscal Year 2020-21. \$3.41 million of that \$4.4 million is considered program income to "Central District: TA Bonds Series 2006T" and per the Bond Expenditure Agreement will be transferred to the City (Fund 5614). This \$3.41 million is therefore restricted for a redevelopment purpose in the Central District Redevelopment Project Area.

The allocation of the \$3.41 million is being brought to the City Council concurrently as part of a proposed amendment to the Bond Spending Plan, which proposes that \$2.81 million be allocated to a new Fox Theater Capital Reserve Account:

Fund: 5614 - Central District: TA Bonds Series 2006T
Project: New 'Fox Theater Capital' project to-be-established
Organization: 94889 - CIP Central District
Account: Various
Program: SC13 – Downtown Redevelopment,

and \$600,000 be allocated to a new Fox Theater Operations Account:

Fund: 5614 - Central District: TA Bonds Series 2006T
Project: New 'Fox Theater Operations' project to-be-established
Organization: 94889 - CIP Central District
Account: Various
Program: SC13 – Downtown Redevelopment.

This Capital Reserve Account will be the source of funds for necessary major repairs and replacements of the building systems (such as the roof, exterior, mechanical, electrical and plumbing) in the event that the operating cash flow becomes insufficient. With the Capital Reserve, the Fox Theater should be self-funding. The City's General Fund is not expected to be affected except possibly in the event of a major natural disaster, when the Capital Reserve and insurance may not be enough to cover the cost of repairing unanticipated damage caused by the disaster.

In recent years, the Fox Theater has generated approximately \$1.7 million in gross revenue, about \$600,000 of which has been used to cover operating expenses and maintenance. If the Fox Theater's annual revenue was to continue at this "normal" level, amendments to the Bond Spending Plan would propose that the revenue be allocated as follows:

- \$600,000 for operations & maintenance (O&M);
- \$247,500 for rent to FOT (per the Leaseback Agreement) which FOT would use to fund the annual Pledge to ORSA (first payment is due in FY 2021-22);
- \$426,000 (or 50 percent of net revenues) to the Capital Reserves Account; and
- \$426,000 (or 50 percent of net revenues) for staffing for development projects including the Fox Theater

However, due to the COVID-19 crisis, the gross revenue for FY 2020-21 is projected to be reduced from \$1.7 million to \$500,000. Because the proposed transfer is expected to be executed by the beginning of 2021, the Fox Theater will be operated by the City for only half of the fiscal year. Therefore, the Bond Spending Plan is proposing to set aside only \$300,000 (of the anticipated \$500,000) from FY 2020-21 gross revenues into the Fox Theater Operating Account for a total of \$900,000 (\$900,000 = \$300,000 plus the \$600,000 referenced above).

PUBLIC OUTREACH / INTEREST

No public outreach or coordination is required for this legislation other than the posting on the City's website. Separate actions are required by the FOT Board of Directors which were made in an open meeting on July 15, 2020. See <https://www.oaklandca.gov/topics/fox-oakland-theater-inc> for up-to-date information on meeting times, agendas and minutes.

COORDINATION

The following were consulted during the preparation of this report:

- FOT Board
- Counsel for ORSA
- Office of the City Attorney
- City Finance Department including Treasury and Budget Bureaus

SUSTAINABLE OPPORTUNITIES

The proposed actions are only financial and legal in nature and there are no new ***Economic, Environmental or Race and Equity*** opportunities from the transfer and assignment of the Fox Theater Improvements, cash held by FOT and the leases from ORSA to the City. Any sustainable opportunities were from the renovation of the Fox Theater in 2006, although implementation of the recommendations would enable the City to maintain control of the Fox Theater as a public asset and to better ensure the long-term viability of the OSA.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

Since the Fox Project was completed in 2009 and the proposed actions would result in no changes to the physical building or changes to the operations of the building, there will be no effect on the environment by this new action. The actions are therefore not a project subject to CEQA pursuant to CEQA Guidelines Section 15378, because there is not a potential to result in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, and are exempt from CEQA pursuant to CEQA Guidelines Section 15061(b)(3), because it can be seen with certainty that there is no possibility that the actions may have a significant effect on the environment.

ACTION REQUESTED OF THE ORSA BOARD

Conduct A Public Hearing And Adopt A Resolution, Acting As The Oakland Redevelopment Successor Agency ("ORSA") Board, That:

1. Authorizes The ORSA Administrator Or Designee To Execute A Second Amendment ("Second Amendment") To The Disposition And Development Agreement ("DDA") Between ORSA, As Successor To The Redevelopment Agency, And The Fox Oakland Theater, Inc.

("FOT") For The Real Property Located At 1807 Telegraph Avenue ("Fox Theater"), That Obligates ORSA To:

- A. Execute A Loan Satisfaction Agreement Terminating All Loan Agreements Between FOT And ORSA Totaling Approximately \$46.4 Million Of Principal And \$27.9 Million Of Accrued Interest ("Loan Terminations");
 - B. Accept Approximately \$4.4 Million From FOT's Operating And Replacement Reserves ("Cash Payment") And A Pledge Agreement From FOT In The Amount Of \$3.96 Million, Payable In Annual Installments Of \$247,500 Over 16 years ("Pledge"), As Consideration For The Loan Terminations;
 - C. Execute An Amendment And Assignment Of The Ground Lease With ORSA As Assignor and Current Ground Lessor, To The City As Assignee And New Ground Lessor, And FOT As Ground Lessee, For A Term Of 16 Years ("Assignment"); and
 - D. Pursuant To The Long-Range Property Management Plan, Convey To The City, By Grant Deed, A Fee Simple Interest In The Fox Theater ("Grant Deed") And Terminate The DDA, Concurrently With Acceptance Of The Cash Payment and Pledge From FOT And The Execution And Delivery Of The Loan Terminations And Assignment.
2. Authorizes The ORSA Administrator Or Designee To Take All Actions Necessary To Implement The Second Amendment, Including Without Limitation The Execution And Delivery Of The Loan Terminations, Assignment, And Grant Deed, Consistent With The Foregoing Terms.

For questions regarding this report, please contact Hui-Chang Li, Urban Economic Coordinator, Public/Private Development Division, at (510) 238-6239.

Respectfully submitted,



ALEXA JEFFRESS
Director, Economic and Workforce
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Prepared by:
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Attachments (2):

- Attachment A – Existing vs. New Ownership Graphic
- Attachment B – Fox Theater Transfer - Flow of Assets and Cash