

  
CITY ATTORNEY'S OFFICE

## OAKLAND CITY COUNCIL

RESOLUTION NO. \_\_\_\_\_ C.M.S.

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### RESOLUTION AUTHORIZING THE FOLLOWING:

- 1) EXECUTION OF A PROFESSIONAL SERVICES AGREEMENT WITH WISS, JANNEY, ELSTNER ASSOCIATES, INC. (WJE) IN A NOT-TO-EXCEED AMOUNT OF ONE HUNDRED AND FIFTY THOUSAND DOLLARS (\$150,000) TO DELIVER ADDITIONAL DESIGN, BIDDING AND CONSTRUCTION SUPPORT SERVICES, IN TWO PHASES, FOR ROOF AND HEATING, VENTILATION AND AIR CONDITIONING (HVAC) REPAIRS AT THE FOX THEATER AND WAIVER OF THE COMPETITIVE PROCESS PURSUANT TO OAKLAND MUNICIPAL CODE SECTION 2.04.051.B; AND
- 2) EXECUTION OF A FUNDING AGREEMENT BETWEEN THE CITY OF OAKLAND AND THE FOX OAKLAND THEATER, INC. TO ACCEPT AND APPROPRIATE ONE MILLION DOLLARS (\$1,000,000) TO FUND ROOF AND HVAC REPAIRS AT THE FOX THEATER

**WHEREAS**, on June 22, 2021, the Fox Theater transferred from Oakland Redevelopment Successor Agency (ORSA) and Fox Oakland Theater, Inc. (FOT) to the City of Oakland (City) pursuant to Ordinance No. 13629 and ORSA Resolution No. 2020-006 adopted December 15, 2020; and

**WHEREAS**, the City took over management of the Fox Theater's operations, including implementing capital improvements, formerly the role of FOT, pursuant to an assignment of subleases with the Oakland School for the Arts (OSA), GASS Entertainment LLC (GASS), and The Emporium Oakland LLC authorized by Ordinance No. 13630 and assignment of professional services agreement with Collier International, Inc. for property management services pursuant to Resolution No. 88415 C.M.S. adopted December 15, 2020; and

**WHEREAS**, Wiss, Janney, Elstner Associates, Inc. (WJE) was part of the design team for the Fox Theater renovations in 2006 and are familiar with the historic Fox Theater building; and

**WHEREAS**, FOT authorized hiring WJE to prepare an initial investigation of the reported roof leaks at the Fox Theater, which was completed March 2, 2020; and

**WHEREAS**, in June 2021, FOT authorized the transfer of One Million Dollars (\$1,000,000) of its funds to the City's Fox Theater Capital Project to partially fund the roof and HVAC improvements at the Fox Theater; and

**WHEREAS**, in June 2021, the City approved Two Million Eight Hundred Thousand Dollars (\$2,800,000) for the Fox Theater Capital Project and Six Hundred Thousand Dollars (\$600,000) in the Fox Theater Operating Project from ORSA bond funds provided to the City through the Bond Expenditure Agreement with ORSA, which funds came from an initial Four Million Four Hundred Thousand Dollar (\$4,400,000) payment from FOT to ORSA as part of the transfer of the Fox Theater to the City; and

**WHEREAS**, two of the tenants at the Fox Theater – OSA and GASS – have requested roof repairs and upgrades to HVAC systems serving the tenant school space and performing arts venue; and

**WHEREAS**, the HVAC upgrade recommendations include new rooftop equipment and roof penetrations that must be coordinated with outstanding major roof repairs as one construction project to ensure sound, water-tight repairs; and

**WHEREAS**, in a situation deemed by the City Administrator to be an emergency for the immediate preservation of the public peace, health or safety, the City Administrator may authorize a contract exceeding the City Administrator's non-emergency purchase authority in any one transaction, without previous specific action by the City Council, for the payment for services, or a combination thereof, to be furnished to the City pursuant to Section 2.04.020.G of the Oakland Municipal Code (OMC); and

**WHEREAS**, on September 3, 2021, the City Administrator authorized a professional services agreement with WJE in the amount of Two Hundred And Thirty-Four Thousand Dollars (\$234,000) to investigate roof leaks and HVAC deficiencies, recommend repairs, and prepare design-build bridging documents for use in formal bidding for roof and HVAC repairs at the Fox Theater, pursuant to OMC Section 2.04.020.G because of the urgency of roof leaking problems and HVAC upgrade recommendations to reduce exposure to inhaled health hazards; and

**WHEREAS**, an additional One Hundred Fifty Thousand Dollars (\$150,000) in services from WJE are needed for design, bidding and construction support services, in two phases, for roof and HVAC repairs at the Fox Theater; and

**WHEREAS**, OMC Section 2.04.040.B requires the City Administrator to conduct a Request for Proposals/Qualifications (RFP/Q) process for professional services contracts, and OMC Section 2.04.051.B permits the City Council to waive the RFP/Q process upon a finding that it is in the best interest of the City to do so; and

**WHEREAS**, the City Administrator has determined that it is in the best interest of the City to waive the RFP/Q process because of the specialized services, consultation, and engineering reports provided by WJE and such waiver will prevent a delay in procuring construction documents necessary for use in formal bidding; now, therefore, be it

**RESOLVED:** That the City Council finds that it is in the best interest of the City to waive the competitive selection process pursuant to OMC Chapter 2.04.051.B and authorizes the City Administrator to execute a professional services agreement with WJE in an amount not to exceed One Hundred Fifty Thousand Dollars (\$150,000) for additional design, bidding and construction support services, in two phases, for roof and HVAC repairs at the Fox Theater; and

**FURTHER RESOLVED:** That the City Council authorizes the City Administrator to execute a funding agreement between the City and FOT to accept and appropriate One Million Dollars (\$1,000,000) to the Fox Theater Capital Project in Miscellaneous Capital Projects Fund (5999); Fox Theater Capital Project (1005784); CIP Central District Organization (94889) and allocate One Hundred Fifty Thousand Dollars (\$150,000) from such funds for a professional services agreement with WJE for roof and HVAC improvements at the Fox Theater; and

**FURTHER RESOLVED:** That the City Council authorizes the City Administrator 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

**FURTHER RESOLVED:** That the above agreements shall be reviewed and approved by the Office of the City Attorney to form and legality and placed on file in the Office of the City Clerk.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

AYES - FIFE, GALLO, KALB, KAPLAN, REID, TAYLOR, THAO AND  
PRESIDENT FORTUNATO BAS

NOES –

ABSENT –

ABSTENTION –

ATTEST: \_\_\_\_\_

ASHA REED  
City Clerk and Clerk of the Council of the  
City of Oakland, California