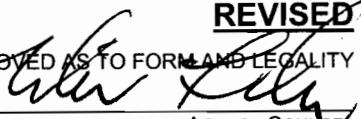


FILED
OFFICE OF THE CITY CLERK
OAKLAND

2009 DEC 22 PM 5:45

REVISED
APPROVED AS TO FORM AND LEGALITY

AGENCY COUNCIL

REDEVELOPMENT AGENCY
OF THE CITY OF OAKLAND
2010-0010
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, JAN - 5 2010, 2010

PASSED BY THE FOLLOWING VOTE:

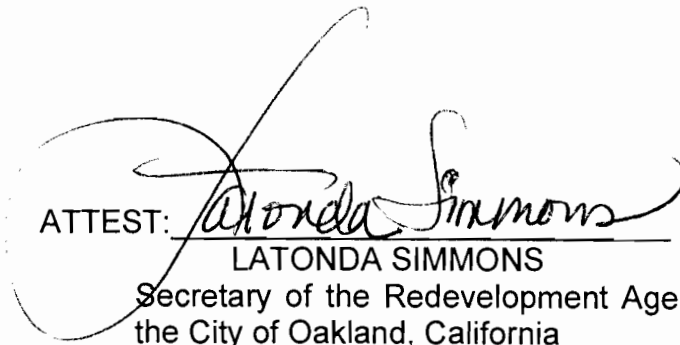
AYES- BROOKS, DE LA FUENTE, KAPLAN, KERNIGHAN, NADEL, QUAN, REID AND CHAIRPERSON BRUNNER, -8

NOES- 0

ABSENT- 0

ABSTENTION- 0

ATTEST:



LATONDA SIMMONS

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