

**CITY OF OAKLAND
AGENDA REPORT**

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OFFICE OF THE CITY CLERK
OAKLAND

2003 OCT -2 PM 3: 22

TO: Office of the City Manager/Agency Administrator
ATTN: Deborah Edgerly
FROM: Community and Economic Development Agency
DATE: October 14, 2003

RE: REPORT RECOMMENDING ADOPTION OF A RESOLUTION AUTHORIZING AN EXCLUSIVE NEGOTIATION AGREEMENT WITH FOX THEATER I CORPORATION FOR REVITALIZING THE FOX THEATER AND THE COMMERCIAL/OFFICE WRAP-AROUND BUILDINGS, AND AUTHORIZING EXPENDITURE OF UP TO \$800,000 FOR TESTING AND CLEANUP WORK NECESSARY TO PREPARE THE THEATER AND WRAP-AROUND BUILDINGS INTO A PERFORMING ARTS CENTER AND FUTURE HOME FOR THE OAKLAND SCHOOL FOR THE ARTS ("PROJECT").

SUMMARY:

In 1996, the Agency purchased the Fox Theater from a private entity, and began efforts to revitalize and eventually re-open the theater and surrounding commercial/office buildings into a Performing Arts Center. In the past few years, a number of proposals from private developers were received by CEDA staff and judged to be either too conceptual in nature or financially infeasible.

In the winter of 2002, an unsolicited volunteer development team convened by California Capital Group (CCG) began a thorough analysis of the costs associated with one of the development alternatives outlined for the theater in the 2001 Fox Master Plan. This concept is for a 500-600 seat cabaret-style venue within the shell of the existing historic theater. The idea is predicated on the assumption that the theater could be opened relatively quickly and for a fraction of the costs needed to restore the theater to its full 3000 seat potential (estimated cost, \$60 million). At some point in the future, when funds are available, the theater could be converted into the larger venue.

The CCG development team prepared conceptual drawings for the cabaret design, and cost estimates for the needed improvements to the building's various systems. Upon completion of this work, the development team expanded its scope of work to include the 50,000 square foot commercial office and retail wrap-around building that is attached to the Fox. This was done as a response to the need to find a location for the Oakland School for the Arts (OSA), and provide needed space for it to expand beyond the limited confines of its present home at the Alice Arts Center. According to the development team, the costs associated with the renovation of the theater and surrounding building is \$23.95 million. The City/Agency would fund approximately \$13 million of the costs

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from the sale of City Center Garage West, which is presently owned by the City. Tax Credits and private funding would pay for the balance.

In order for the Historic Tax Credits to be used, at a value of almost \$3.5 million, the Fox would need to be transferred from the Agency to a for-profit entity. A method being advocated by the development team to accomplish the project would be for the OSA and the Paramount Theater Board to form a non-profit entity that would enter into an agreement with the Agency for ownership and operation, and subsequently create a for-profit subsidiary that would be eligible for the tax credits and would seek construction financing.

The OSA and The Paramount Board are currently negotiating a Memorandum of Understanding (MOU), to form the legal entity (to be named Fox Theatre I Corporation) and retain CCG as the fee developer, both prerequisites to moving ahead on the project (see attached MOU). Staff has reviewed the concept drawings, cost estimates and the financing and operational framework with the development team and the OSA and finds it to be the most realistic approach to date for re-opening the Fox and providing a compatible use for the wrap-around building(s).

Because the OSA will need to move from its present location at the Alice Arts Center before the Fox project is scheduled for completion in 2006, it will need temporary space. The OSA has expressed interest in the parking lot behind the Fox, which is owned by the Agency (see attached map). This could provide temporary space and make for an easy transition to the permanent facility when it is ready. OSA has proposed a temporary "Big Top" approach to housing the school in tent-like structures on the parking lot. The OSA would pay for the temporary facility, (letter of financial commitment forthcoming), in exchange for a license agreement to occupy the site, rent free, until the theater and wrap-around buildings are completed. The City would lose approximately one year in parking revenue, or about \$230,000 above and beyond the anticipated revenue reduction associated with the uptown development. Use of this site is consistent with phasing for the uptown development.

If authorized by the Agency, staff will enter into an ENA with Fox Theater I Corporation to continue the approach initiated by the CCG development team to revitalize the Fox and wrap-around building(s).

FISCAL IMPACT:

If the Agency determines to adopt the attached resolution authorizing entering into an ENA, then up to \$800,000 would be needed for building investigation, structural testing, design-development drawings, environmental clean-up work and associated costs during the ENA period. These funds are in the adopted FY 2003-2005 ORA budget. Specifically, the sources are as follows: \$300,000 from the Fox Master Plan (P131130); \$100,000 will be reprogrammed from Fox Maintenance (P131140) and; \$400,000 from

the Fox Retail line item (P131170). Should the funding for these tasks be expended, and the anticipated project not proceed, the work undertaken would be applicable and usable for any future use of the Fox Theater and Wrap-around Building.

BACKGROUND AND HISTORY:

The Oakland Fox Theater is a National Historic Landmark located in downtown Oakland. Opened in 1928, during the heyday of movie palaces, the theater reflects the state of the art in "atmosphere" theaters of the era. Inspired by Brahman Temples of Northern India, the theater is an eclectic mix of Moorish and European architectural styles. When the theater was first opened, it was outfitted with opulent finishes and the latest in movie-going technology and, unlike most theaters of the day, the Fox was also a mixed-use venue, with offices and storefronts surrounding it on three sides.

Over the years the theater maintained an entertainment presence in the community. In fact, along with the nearby Paramount, it contributed to an entertainment district that is commonly referred to today as uptown. During the 1930's and 1940's, the character of the Fox began to change from a movie and vaudeville house to a stage for major performers and entertainers. Bing Crosby, Frank Sinatra, and the Big Band sounds of the era filled the 3000 seats on a regular basis, but after World War II, the theater went through another transition from live performances to a traditional movie theater. By the late 1960's the theater began to lose popularity with first-run movie distributors and patrons. The theater finally closed in 1972, except for a few marginal shops that remained open in the buildings that surround the main theater.

By the late 1990's the Fox had stood vacant for over twenty years. In 1996, the Agency purchased the theater from a private party (cost \$3 million) and began the process of stabilizing the deteriorated building and implementing a strategy to ultimately re-open the theater as a performing arts center. These efforts included: relocation of the surround building tenants in 1998-99 (approximate cost, \$200,000); total replacement of the leaky roof in 1999 (approximate cost, \$950,000); completion of facade restoration and storefront drawings in 2000 (approximate cost, \$30,000); renovation of the historic marquee and vertical sign in 2001 (approximate cost, \$650,000); and completion of the Fox Master Plan in 2001 (approximate cost, \$350,000).

The Fox Master Plan, prepared by the architectural firm of Hardy Holzman Pfeiffer, (HHPA), outlined a number of development options for the theater, ranging from total restoration and development of a 2500 seat Broadway-style theater, to a cabaret-style venue seating 600-1000 patrons, to a minimalist approach, consisting of basic upgrades that would make the theater habitable, but unfinished. The surround buildings were included in the various options. All the options were drawn to scale and "order of magnitude costs" were calculated for each option. They varied in price from \$70 million for a completely restored Broadway theater to \$20 million for the renovation of the wrap-around office and commercial buildings that surround the theater. On completion, the

Master Plan was made available to developers who had previously shown interest in the theater and to those simply interested in the report's findings.

Over a dozen development entities expressed varying degrees of interest in revitalizing the Fox, toured the theater and reviewed the Master Plan. Most submitted conceptual ideas for the theater, but did not include a financial plan. One proposal included a financial plan, but it was linked to a housing development plan behind the Fox, that when sold would provide the capital needed to renovate the theater. In addition the land which could financially drive the project was not under their control but the present uptown developer, Forest City. Other proposals were not sufficiently developed, especially as to the financial feasibility of the proposed projects.

In the winter of 2002, after many unsuccessful attempts to secure a viable development proposal for the Fox, CEDA was approached by a development team that wished to do a very thorough analysis of one of the HHPA theater options outlined in the Fox Master Plan. The team, which consisted of CCG as the developer, and a variety of architects, engineers, and cost estimators, began analyzing the costs associated with restoring the theater into a cabaret-style venue that would seat approximately 600 people. Contemporaneously, the Oakland School for the Arts began seeking a new home. The Fox analysis was then expanded to evaluate the rehabilitation of the attached wrap-around building(s) into a new home for the Oakland School for the Arts (OSA).

Over the past eight months, in cooperation with staff and the School for the Arts, the development team has prepared a proposal consisting of the following elements: (1) a concept plan for the theater's restoration; (2) a concept and use plan for the re-use of the commercial /retail buildings that wrap around the theater; (3) a detailed analysis of improvements and "order of magnitude costs" needed to make the structures safe and operational, (structural, mechanical, electrical, fire protection, hazardous materials etc.); (4) a financial and operational framework (including sources and uses of funds); and (5) a schedule for implementing the improvements and reopening the Fox into a performing arts venue. Each of these elements is outlined below:

KEY ISSUES AND IMPACTS

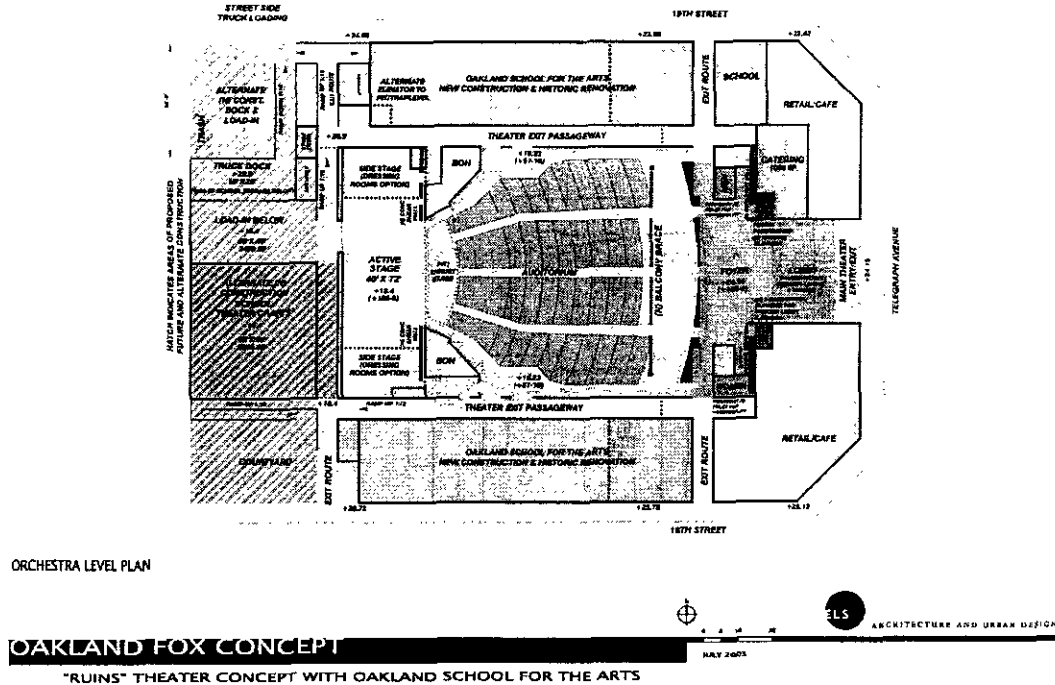
1. Fox Theater Concept Plan:

The CCG development team's concept for the Fox Theater is very similar to the "Basics" alternative outlined in the 2001 Fox Master Plan, consisting of a 600 plus or minus cabaret-style theater with platform seating and food and beverage service. The balcony and the basement of the building would not be used in this concept and would be closed to the public. All additions and modifications to the historic theater would be reversible and/or in compliance with the Secretary of the Interior's Standards for Rehabilitation.

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Fox Theater Concept Design



The concept for the theater includes:

- 600 plus seat theater with cabaret or chair seating
- 40 foot by 72 foot stage with additional thrust stage
- lighting grids above stage and seating areas to highlight historic interior
- renovated lobby and main entrance on Telegraph Ave
- refurbished restrooms on mezzanine level
- seismic bracing of balcony and stage house
- refurbished upper lobby
- warming kitchen
- new loading and truck dock
- historic restoration of Telegraph Ave façade

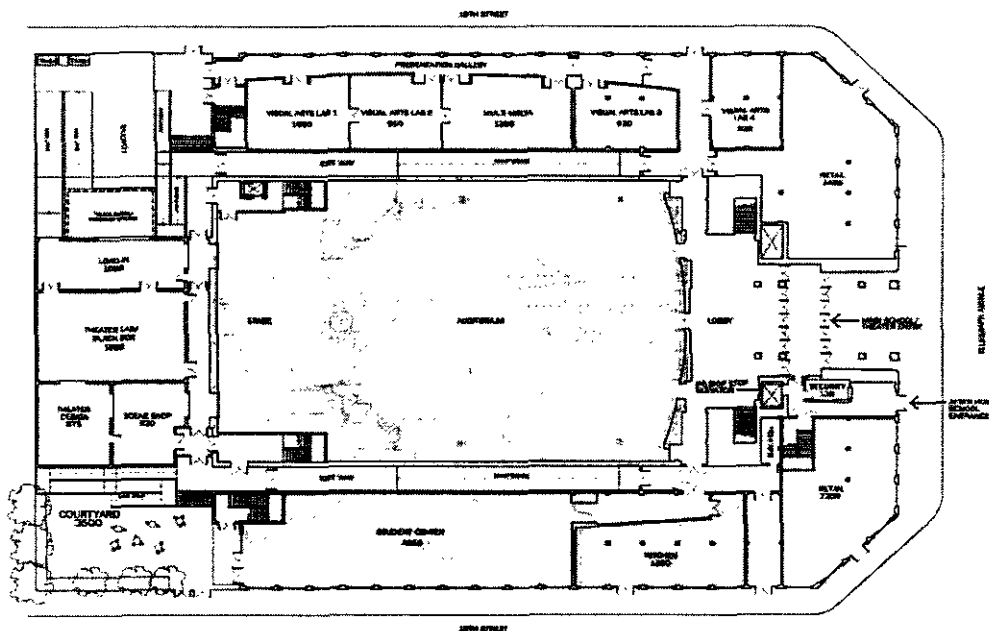
The restored theater would be programmed for both educational and non-profit groups as well as profit oriented entertainment events. During the ENA period, additional market information will be obtained regarding possible users and events for the renovated theater. In addition, discussions with the Paramount General Manager will take place during the ENA to identify potential users and events that complement the Paramount.

2. Commercial Wrap-Around Building(s) Concept and Reuse Plan:

The development team's concept for the building(s) that wrap around the theater space is to rehabilitate the existing office and commercial space as the new home for the Oakland School for Arts (OSA). In the spring of 2003, the OSA concluded that its existing space at the Alice Arts Center would not be practical for its permanent facility because of cost and adverse community impacts. By September 2004, the school will have outgrown the capacity of its present space. It hopes to construct temporary facilities on the parking lot behind the present Fox Theater during the two-year period that the wrap-around buildings are being rehabilitated and made ready for re-use. This would make for an easy transition to the permanent facility but would also require a license agreement between OSA and the Agency that will allow OSA to occupy the temporary site rent free, in exchange for funding the temporary facilities.

The school has worked closely with the developer to program the wrap-around spaces and produce a conceptual plan that incorporates its long-term needs. The conceptual program has been used for cost estimating. Any improvements to the wrap-around buildings would be consistent with the Secretary of the Interior's Standards for Rehabilitation.

Commercial Wrap-Around Building(s) Concept and Re-Use Plan



The concept for the wrap-around building(s) includes:

- capacity for 520 students
- shared lobby with the Fox Theater

- multi-media and visual arts galleries on the 1st floor
- ground floor retail space
- student center and outdoor courtyard on 1st floor
- secured entry on the 2nd floor
- new 2nd and 3rd floor additions to the sides of the wrap-around buildings
- academic and music rooms on 2nd floor and 3rd floor
- new loading dock and possible black box theater on 1st floor

The wrap-around building would be renovated at the same time that the theater is being restored in order to minimize construction costs and fully integrate the two uses (theater and OSA).

3. Preliminary Budget for Renovation of Theater and Wrap-Around Building(s)

The CCG development team has worked closely with their architects, engineers and contractor to produce order of magnitude costs for the theater renovation and the rehabilitation and new additions to the wrap-around buildings. These estimates are based on multiple visits to the buildings by the entire development team.

Table 1. Fox Theater Renovation Costs:

Hazardous materials	\$366,000
Foundation and Excavation	\$335,000
Structural Frame	\$1,546,000
Roof and Waterproofing	\$0
Exterior Wall	\$25,000
Interior Construction	\$523,000
Special Requirements	\$450,000
Vertical Transportation	\$90,000
Mechanical	\$1,361,000
Electrical	\$780,000
Site Work	\$115,000
Sub-Total	\$5,591,000
General Conditions and Fees	\$1,118,000
Sub-Total	\$6,709,000
Estimating/Construction Cont.	\$1,342,000
Sub-Total	\$8,051,000
Cost Reduction	\$538,200
TOTAL	\$7,512,800

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Table 2. Wrap-Around Building Renovation and New Construction Costs:

New 3 rd and 4 th Floor Additions to Wrap-Around Building(s) on 18 th and 19 th	\$3,615,000
New One Story Loading Dock, Shops	\$650,000
Renovation of existing Wrap-Around	\$3,975,000
Total Building Additions/ Improvements	\$ 8,240,000
Add new Elect. Service, Panels, Distribution	\$750,000
Subtotal	\$8,990,000
20% Design and Construction Contingency	\$1,798,000
Subtotal	\$ 10,788,000
Overhead and Profit 15%	\$ 1,618,200
TOTAL	\$12,406,200

The total estimated construction cost of renovating the Fox Theater into the cabaret-style theater, and renovating the attached wrap-around building(s) to accommodate the long-term growth projection of the OSA is \$19,918,000. Soft costs of 9.66% or \$2,312,950, and contingency of 7.1% or \$1,719,000, contribute to a total cost for the entire renovation of **\$23,950,000**. These costs will be verified during the ENA, upon completion of the Design-Development Drawings.

4. Financial Framework, Including Sources and Uses of Funds

A new financial and organizational framework is needed to make the Fox Theater and OSA Project a reality. This is because under the present ownership structure, the Fox, which is owned by the Agency, is not eligible for the Historic Tax Credits administered by the U.S. Department of the Interior and The Department of the Treasury. Under the program, investors are allowed up to 20% of the costs of the renovation to be offset by direct tax reductions to the investor. These tax credits are a direct income tax credit, not a deduction which reduces the amount of income subject to taxation. In general, a dollar of tax credit reduces the amount of income tax owed by one dollar. The 20% rehabilitation tax credit equals 20% of the amount spent in a certified rehabilitation of a certified historic structure. Ownership and control of the project, whether by fee ownership or by long term lease, must be a tax-paying entity (not a public agency or a tax-exempt 501(c)(3)).

To take advantage of the Historic Tax Credits, the ownership of the Fox (and wrap-around buildings) must be transferred from the Agency to a new entity(s). The structure that is being proposed would involve the OSA Board and the Paramount Theater Board forming a new non-profit entity called Fox Theater I Corporation. Both the OSA Board and the Paramount Board have agreed in principle to the formation of the new entity (see attached MOU). As a non-profit, Fox Theater Restoration I would be qualified to receive donations from public and private sources for the renovation and operation of the theater

and/or school. It would be the entity that would enter into any development agreements with the Agency.

Fox Theater Restoration I would sell the theater and wrap-around building(s) to a newly created for-profit subsidiary called Fox Theater Restoration II, that would be the new owner of the theater complex. This entity is crucial to the theater restoration in order to take advantage of the 20% Historic Tax Credits. This entity would contract with the City/Agency and with the private lending institutions for financing.

Sources of funds for the project are as follows:

Proceeds from Sale of City Center Garage West:	\$13,000,000 ¹
Currently Budgeted Funds for Fox	\$ 800,000
Historic Tax Credits	\$ 3,700,000
Façade Improvement Funds and State Grant	\$ 750,000
Construction Loan (school rent services debt)	\$ 4,000,000
New Market Tax Credits	\$ 1,000,000
Proceeds from Cal Arts Building	\$ 700,000
TOTAL	\$23,950,000

5. Contingency Plan for Servicing / Eliminating City Debt

In the event the OSA were to vacate the wrap-around buildings surrounding the Fox, the Agency would service or eliminate the \$4,000,000 construction loan debt by either: (1) renting the 50,000 square foot wrap building to other office tenants at fifty cents a square foot (this is the rate OSA would be paying for the space and is well below market rate and could be increased); (2) issuing bonds to pay off the entire \$4,000,000 debt; or (3) using existing tax increment dollars to service the debt. If the theater should fail to attract users, the Agency could implement similar procedures as outlined for OSA. Because the theater is being developed in a manner that is sensitive to the historic character of the theater, any improvements made under this proposal will be reversible, allowing for the future restoration of the Fox (if the market and funding exist) into a 2500 seat venue without jeopardizing future tax credits.

6. Management and Profits

It is the intention, under this proposal, that the operations of the Fox would be the responsibility of the Paramount Theater of the Arts and all profits would go to the PTA, which is owned by the City of Oakland. A detailed management structure will be negotiated during the ENA.

¹ The Agency currently has two offers for purchase of the City Center West Garage. This matter is addressed in a separate report to the City Council.

7. Project Schedule

The project schedule is as follows:

- Council authorizes ENA with recommended developer... Oct.03
- ENA entered into between Agency and developer Dec.03
- Design/Development drawings..... Feb.04
- Environmental Review complete..... Feb.04
- Financing commitments complete..... Feb.04
- CED Committee review Mar.04
- Council authorizes DDA Mar.04
- DDA entered into by all parties..... Mar.04
- Financing Complete, close of escrow..... Aug.04
- Project Construction Aug.04
- Project Completion..... July 06

8. Alternatives to Sale of City Center Garage West

The key financial commitment comes from a needed infusion of \$13,000,000. Sources of this level of capital have become very scarce due to: (1) administrative overhead for Agency and City departments which limits bonding capacity, (2) the recent issuance of bond indebtedness which has absorbed most free tax increment, (3) State Educational Relief Augmentation Fund transfer which has absorbed tax increment growth for this year, (4) limited capital facility holdings by the Agency which could be sold to raise this level of capital, and (5) the reserve of bond proceeds and sale proceeds of smaller properties to fund the Uptown Project.

The only remaining sources of funding are sales of assets which have not had their proceeds allocated:

- a. **Sale of the Cal Arts Building** – potentially could generate **\$1.4 million**.
- b. **Sale of the 17th Street Garage site** for development of a garage by a private party – savings to Agency would be about \$4 million in capital expenditure for the construction of this garage plus land proceeds of approximately \$1.0 million, for a total of **\$5 million** in cash available for other projects.
- c. **Sale of the Ice Center** – The Ice Center parcel (70,567 sq. ft.) is valued at approximately \$4,586,000 based on an assumed sales price of \$65 per square foot. Subtracting demolition costs of about \$500,000 would yield \$4,000,000 in net proceeds of sale. However, the loss of the Ice Center as a community recreational asset could not easily be replaced. Selling the Ice Center as a business based on the current net profit of approximately \$65,000/year would yield a sale price of approximately **\$722,000**.
- d. **Sale of 8th and Washington parking lot** – Could raise **\$650,000**.

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The combined revenues of options "a" through "d" above would be approximately \$7.75 million, far short of the \$13 million needed for the Fox project.

9. City Center West Garage Sale Process

The only viable way to raise \$13 million in the short run is by **sale of the City Center West Garage** which could yield between **\$15.5 million** and \$19 million. Various offers have been submitted, but such a sale should be subject to an RFP process to attain the highest price and the best terms.

If the City Council authorizes the recommended ENA, then staff will issue an RFP to formally solicit proposals for purchase of the City Center West Garage. There would be no commitment to sell the garage, as any such sale would be contingent upon a favorable and viable outcome of the theater ENA process and authorization by the Council of a DDA for the Fox Theater Project. If the ENA process yields a viable project, then staff would return to the City Council with a proposed DDA for the Theater project and a proposed sale of the City Center Garage West to fund the project. Upon sale of the garage the Agency would transfer proceeds to the City to pay down a \$19 million loan the City holds on the garage. The City could then use the proceeds to fund the Fox project.

SUSTAINABLE OPPORTUNITIES

Economic: This project, if developed, will contribute significantly to the elimination of physical blight in the Uptown District of Downtown Oakland. In addition, it will stimulate new investment in the area, create development opportunities in the food and entertainment sectors and support and complement adjacent development projects.

Social Equity: The project, if developed, will train and educate students in the performing arts, providing them with opportunities for future employment. The project will promote pedestrian activity and vitality and public safety to an area that is presently void of positive activity.

Environmental: The project, if developed, will remove dangerous and hazardous materials from an existing building and replace them with recycled content materials and other environmentally sensitive materials.

DISABILITY AND SENIOR CITIZEN ACCESS

If and when this becomes a project, it will comply with all applicable State and Federal accessibility laws and regulations.

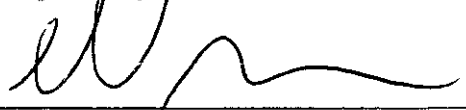
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RECOMMENDATION AND RATIONALE

Staff recommends that the Agency enter into an Exclusive Negotiating Agreement with Fox Theater I Corporation, an entity consisting of the Paramount Theater of the Arts Inc. and Oakland School for the Arts. An agreement to form this entity is presently being negotiated (see attached MOU). Fox Theatre I Corporation would engage the services of the California Capital Group as a fee developer and to provide for building investigation, structure testing, architectural drawings, environmental clean-up and other activities required during the ENA period. This recommendation would entail authorizing staff to utilize up to \$800,000 for building investigation, structural testing, design-development drawings, environmental clean-up work and associated costs during the ENA period.

Respectfully submitted,



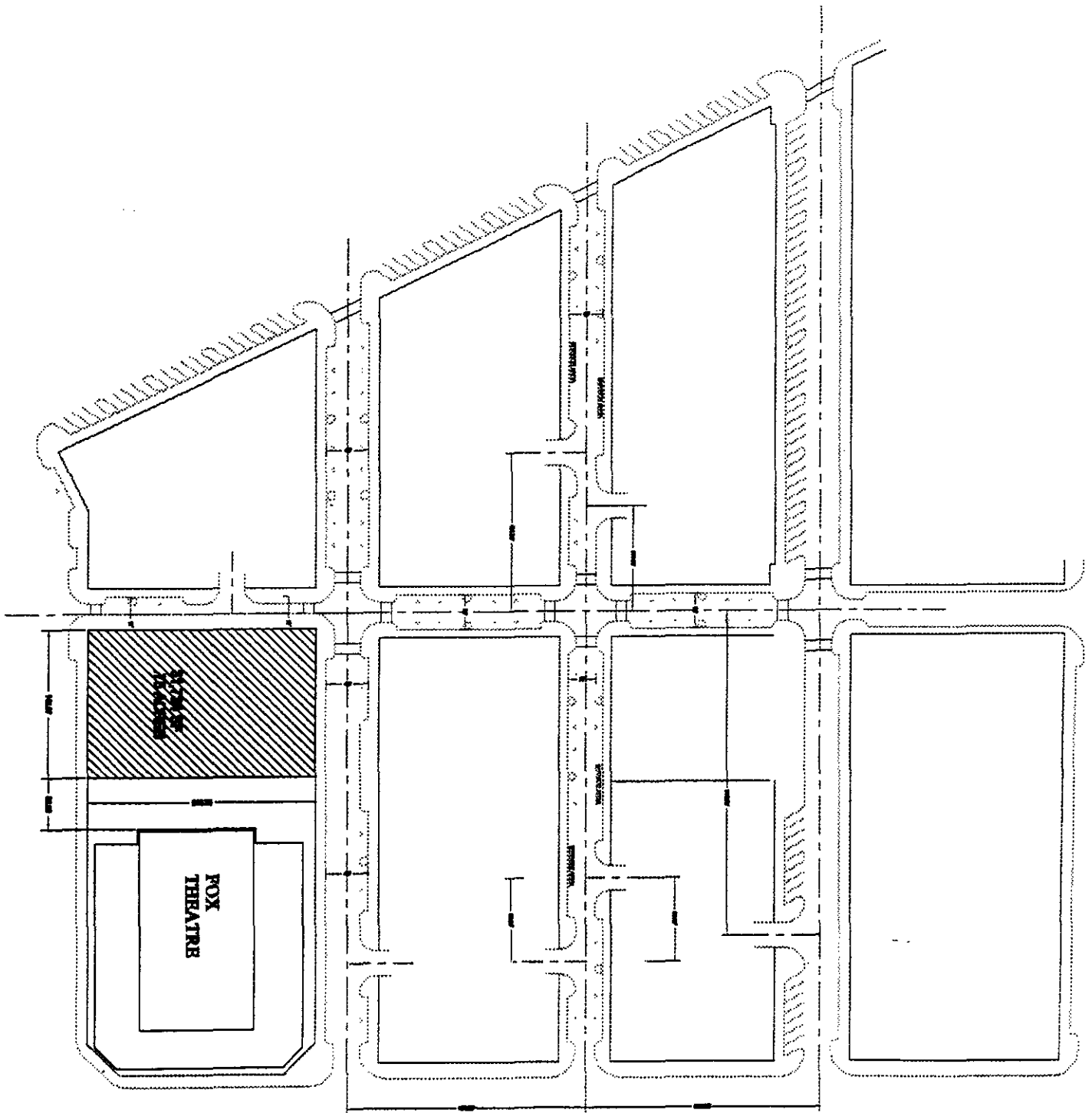
Daniel Vanderprieem, Director
Economic Development, Redevelopment,
Housing and Community Development
Divisions

Prepared by:
Jeffrey Chew, Project Manager
Downtown Redevelopment Unit

APPROVED AND FOWARDED TO THE CITY COUNCIL


OFFICE OF THE CITY MANAGER

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RESOLUTION No. _____ C.M.S.

A RESOLUTION AUTHORIZING THE AGENCY ADMINISTRATOR TO NEGOTIATE AND EXECUTE AN EXCLUSIVE NEGOTIATION AGREEMENT WITH FOX THEATER I CORPORATION, TO DEVELOP THE FOX THEATRE AND ATTACHED WRAP-AROUND BUILDINGS INTO A PERFORMING ARTS CENTER AND HOME FOR THE OAKLAND SCHOOL FOR THE ARTS, AND AUTHORIZING THE EXPENDITURE OF UP TO EIGHT HUNDRED THOUSAND DOLLARS (\$800,000) FOR TESTING, DESIGN, CLEANUP AND RELATED WORK DURING THE EXCLUSIVE NEGOTIATING PERIOD

WHEREAS, the Fox Theater has sat vacant for over twenty-five years in the Uptown District of downtown Oakland and has been a blighting influence on the neighborhood; and

WHEREAS, the Redevelopment Agency purchased the Fox Theater in 1996 with the intention of restoring and re-opening the theater and the attached wrap-around buildings and stimulating new investment opportunities in the Uptown District ; and

WHEREAS, the Redevelopment Agency has completed certain steps in the restoration of the theater including: replacement of the roof in 1999; completion of façade restoration and store front drawings in 2000; renovation of the historic marquee and vertical sign in 2001; completion of the Fox Master Plan in 2002; and successful recipient of a \$375,000 grant for façade restoration from the California Heritage Fund Program in 2002; and

WHEREAS, the Redevelopment Agency has been approached by development entities interested in revitalizing the Fox ,but none of the proposals have been regarded as financially feasible by Agency staff ; and

WHEREAS, in the winter of 2002, the Agency was approached by a development team headed by California Capital Group, a California corporation ("CCG") that wished to evaluate, in detail, one of the options for renovating the Fox as outlined in the Fox Master Plan ; and

WHEREAS, the CCG development team has prepared concept drawings and detailed cost estimates for revitalizing the Fox Theater into a cabaret-style performing arts

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venue that would activate the Fox for an unspecified time period before future funding could be obtained for a full theater restoration; and

WHEREAS, the CCG development team has discussed with the Oakland School for the Arts their future expansion plans, and has prepared concept drawings and detailed cost estimates for accommodating their needs in the wrap-around buildings which are attached to the Fox; and

WHEREAS: the CCG development team has held discussions with the Oakland School for the Arts and the Paramount Theater of the Arts, Inc. regarding possible operating and financing structures necessary to develop the theater and attached wrap-around buildings and agree to call themselves Fox Theater I Corporation; and

WHEREAS: the Agency staff has reviewed all concept drawings, cost estimates and possible development and operation frameworks and found them to be a realistic and financially responsible method to revitalizing the theater and attached wrap-around buildings worthy of further analysis and negotiation; and

WHEREAS: the Agency and Fox Theater I Corporation wish to enter into a period of study and negotiations over the project proposal; and

WHEREAS: the Agency and the CCG development team agree that the cost associated with an ENA would be approximately \$800,000 and would be needed for building investigation, structural testing, Design Development Drawings, environmental clean-up and associated costs; and

WHEREAS: the Agency has determined that the work paid for during the ENA would be applicable and usable for any future use of the Fox Theater and Wrap Buildings even if this particular project were not to proceed; and

WHEREAS: the \$800,000 needed for the ENA period is in the adopted FY 2003-2005 ORA budget, specifically programmed for the Fox Theater (P131130, P131140, P131170); now, therefore, be it

RESOLVED: that the Agency Administrator is authorized to negotiate and enter into an ENA with Fox Theater I Corporation for the purpose of studying and evaluating the feasibility of, and negotiating terms and conditions for, the renovation of the Fox Theater into a performing arts venue and the attached wrap-around buildings into a new home for the Oakland School of the Arts; and be

FURTHER RESOLVED: that the exclusive negotiating period will be for five months, with an option to extend said period by an additional three months with the approval of the Agency Administrator in his/her sole discretion; and

FURTHER RESOLVED: that the ENA shall be reviewed and approved as to form and legality by Agency Counsel prior to execution; and

FURTHER RESOLVED: the Agency will complete review of all necessary CEQA documentation during the ENA period; and

FURTHER RESOLVED: that the Agency Administrator is further authorized to take whatever action is necessary with respect to the ENA and the project consistent with this Resolution and its basic purposes.

IN AGENCY, OAKLAND, CALIFORNIA, _____, 2003

PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, BRUNNER, CHANG, NADEL, QUAN, REID, WAN, AND CHAIRPERSON DE LA FUENTE,

NOES-

ABSENT-

ABSTENTION-

ATTEST: _____
CEDA FLOYD
Secretary of the Redevelopment
Agency of the City of Oakland

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MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING ("Memorandum") is entered into effective September 1, 2003 (the "Effective Date") between the following parties:

- (a) California Capital Group, a General Partnership ("CCG");
 - (b) The Paramount Theatre of the Arts, a California nonprofit corporation ("PTA");
- and
- (c) Oakland School for the Arts, a California nonprofit corporation ("OSA").

RECITALS

A. The City of Oakland Redevelopment Agency ("ORA") presently owns the Fox Oakland Theatre Building located on Telegraph Avenue, Oakland, California, which includes, among other facilities and improvements, a main theatre building and an office/retail building on the exterior of the main theatre building on 18th Street, Telegraph Avenue, and 19th Street (the "Fox Theatre Building").

B. The Fox Theatre Building has been closed for a number of years and is in need of extensive and significant renovation in order for it to be usable.

C. CCG has been working for the last several months with representatives of ORA and a local team of design professionals for the purpose of developing a design concept to renovate the Fox Theatre Building, to create a proposed strategy and process to implement the renovation of the Fox Theatre Building, and to provide for the ultimate ownership and operation of the Fox Theatre Building to be controlled by community based arts organizations as more specifically detailed in this Memorandum.

D. The parties are entering into this nonbinding Memorandum for the purpose of stating the anticipated process, including the parties' roles, in achieving the renovation of the Fox Theatre Building as provided in this Memorandum.

AGREEMENT

1. **Basic Goals.** The basic goals of the parties are to renovate the Fox Theatre Building based upon the so-called "ruins concept" which is shown and described on those preliminary design plans dated July 23, 2003, prepared by ELS/Starkweather Bondi Architects (Exhibit A) so as to accomplish the following:

(a) Make the main theatre auditorium usable for public and private events. It is anticipated that:

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(i) PTA would have exclusive control over the Theater space, however PTA will provide OSA adequate use of the theater during days and evenings to support the programs and performances of OSA. PTA will retain priority of the majority of dates pledged for revenue generating activities. The parties further agree to detail and clarify the use of the theater in the operating agreement within 45 days of the execution of the ENA.

Note: All operating costs of the main theatre auditorium (as such costs are defined in the ultimate operating agreement) shall be paid by PTA and OSA for those periods of time used by PTA and OSA.

(a) Lease to OSA substantially all of the exterior office/retail portion of the Fox Theatre Building as renovated (approximately 54,000 square feet) for the operation of its school and related purposes. The lease, including the term, rent and other economic provisions, will be negotiated. Prior to completion of renovation, OSA will relocate on a temporary basis and occupy the surface parking lot immediately behind the Fox Theatre Building in portables and tents. The terms and conditions of the temporary occupancy shall be negotiated.

(b) Lease space in the exterior office/retail portion of the Fox Theatre Building (that is not leased to OSA) to retail and service-oriented tenants to promote foot traffic and provide services to visitors to the Fox Oakland Theatre.

(c) PTA would have exclusive use of the box office and approximately 1,000 square feet of ground floor space for the purpose of administrative functions and operating box office activities. The terms and conditions of the lease or other agreement granting PTA this right shall be negotiated.

(d) PTA would pledge either a percentage of its surplus from the Paramount Theater operation or a to be negotiated minimum rent. In addition, 80% of the future Fox Theater net operating income shall be pledged to debt service payments with the remaining 20% being dedicated to operating and capital reserves as PTA's governing body may dictate.

2. Process for Achieving Goals.

(a) **Ownership and Operational Structure.** The ultimate ownership and operational structure for the Fox Theatre Building will be determined during the negotiations of the ENA and the DDA described in Sections 2(c) and (d). A tentative outline of a possible structure is attached to this Memorandum as Exhibit B.

It is anticipated that a new California nonprofit corporation will be formed prior to or shortly after the beginning of the negotiation of the ENA. For purposes of this Memorandum, the corporation shall be referred to as "Fox Theatre I Corporation." The initial members of Fox Theatre I Corporation shall be PTA and OSA, and the initial members of the Board of Directors shall be individuals designated by PTA and OSA so that PTA and OSA shall have equal representation on the Board of Directors. The initial purpose of Fox Theatre I Corporation shall be to enter into a Fee Development Agreement with CCG as provided in Section 2(b), and ultimately enter into an ENA and DDA with CRA and other applicable parties.

(b) **Fee Development Agreement.** Upon formation of Fox Theatre I Corporation, a Fee Development Agreement shall be negotiated and entered into between Fox Theatre I Corporation and CCG, whereby CCG shall, as agent and representative of Fox Theatre I Corporation, among other things:

(i) negotiate an Exclusive Negotiating Agreement ("ENA") with ORA that will be entered into between ORA and Fox Theatre I Corporation;

(ii) negotiate a Disposition and Development Agreement ("DDA") with ORA during the term of the ENA that will be entered into between ORA and Fox Theatre I Corporation, and any other entity required by the DDA; and

(iii) manage the obligations under the DDA on behalf of Fox Theatre I Corporation, including without limitation, formation of other required entities, selection of design professionals and other required professionals, management and oversight of the design, development and construction of the renovations, negotiation of all agreements required by the DDA (including, without limitation, operating agreements, lease with OSA, and leases for retail space), arranging of public and private financing (including procuring available Historic Tax Credits), negotiating the construction contract(s), preparing development and construction budgets, and all other activities reasonably necessary to accomplish the goals stated in **Section 1.**

CCG shall have sole authority to perform its duties under the Fee Development Agreement, but shall provide periodic written reports to the Fox Theatre I Corporation's Board of Directors.

It is anticipated that CCG shall be paid a fee for its services performed under the Development Agreement as follows:

(i) Two percent (2%) of the total project costs (as ultimately defined), excluding CCG's fee, on a monthly basis in accordance with the following schedule:

(A) fifteen percent (15%) of the fee to be paid during the period of time negotiating the ENA;

(B) twenty percent (20%) of the fee to be paid during the period of time negotiating the DDA;

(C) forty percent (40%) of the fee to be paid during the construction and renovation of the Fox Theatre Building;

(D) twenty percent (20%) of the fee to be paid upon receipt of a temporary certificate of occupancy; and

(E) five percent (5%) of the fee to be paid upon expiration of the applicable lien periods after completion of the renovation provided no liens are recorded against the Fox Theatre Building.

(ii) Additionally, CCG shall be entitled to a "performance fee" (not to exceed \$250,000) in an amount equal to twenty percent (20%) of any contingency savings.

A preliminary renovation and construction budget is attached to this Memorandum as Exhibit C.

ORA shall fund and pay for the costs and expenses of CCG (including payment of its fee under the Project Development Agreement) and other third parties during the period beginning with the negotiation of the ENA through finalizing the DDA.

(c) **Exclusive Negotiating Agreement.** During the term of the ENA, the following agreements shall be entered into, without limitation: the DDA; a right of entry agreement with ORA; a funding agreement with ORA; an operating agreement between ORA, PTA, OSA, Fox Theatre I Corporation, and/or other applicable entities; and the Fee Development Agreement.

Additionally, the following activities shall occur during the term of the ENA, without limitation: establishment of mold and lead-based paint abatement program; preparation of preliminary design development drawings; establishment of a contractor selection process; preparation of initial development and construction budget; application for Part 1 of the Historic Tax Credit certification; construction lender solicitation; and solicitation and possible identifying Historic Tax Credit Partner(s).

(d) **Development and Disposition Agreement.** During the term of the DDA, the following activities shall occur, without limitation: execution of final construction contracts; finalize development and construction costs; finalize lease with OSA; obtain final Historic Tax Credit certification; and finalize construction loan agreement and loan agreement with ORA.

(e) **Anticipated Timing.** A tentative time schedule to accomplish the activities and goals stated in this Section 2 is attached to this Memorandum as Exhibit D.

3. **Community Cooperation.** The parties agree to collaborate with a number of identified community based organizations to perform such activities as outreach activities, fundraising, workforce development, and educational support.

4. **Authority.** It is acknowledged that this memorandum is non-binding, and that each of the parties is proceeding with the understanding that the costs and commitments of each party will be detailed during the ENA phase of this project. Additionally, PTA may be required to obtain separate Oakland City Council authority as not to violate the terms of its operating agreement for the Paramount Theater.

SIGNATURES ON THE FOLLOWING PAGE.

Executed on the Effective Date.

CCG:

California Capital Group, a General Partnership

By:

[Signature]
PHILIP H. TACONIA

Print or Type Name

Title:

MANAGING GENERAL PARTNER

Address:

300 FRANK H. DINKEL PLAZA
SUITE 300
OAKLAND CA 94612

PTA:

Paramount Theatre of the Arts, a California nonprofit corporation

By:

[Signature]
DAVID P. J. JANSCH

Print or Type Name

Title:

PRESIDENT
BOARD OF DIRECTORS

Address:

2025 BROADWAY
OAKLAND, CA 94612

OSA:

Oakland School for the Arts, a California nonprofit corporation

By:

[Signature]
LONT BERRY

Print or Type Name

Title:

DIRECTOR

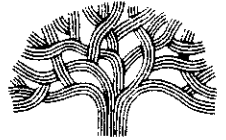
Address:

[Signature]
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OCTOBER 21, 2003

IGNACIO DE LA FUENTE, PRESIDENT
CITY COUNCIL
OAKLAND, CALIFORNIA

PRESIDENT DE LA FUENTE AND MEMBERS OF THE CITY COUNCIL

SUBJECT: REPORT RECOMMENDING ADOPTION OF A RESOLUTION AUTHORIZING AN EXCLUSIVE NEGOTIATION AGREEMENT WITH FOX THEATER I CORPORATION FOR REVITALIZING THE FOX THEATER AND THE COMMERCIAL/OFFICE WRAP-AROUND BUILDINGS, AND AUTHORIZING EXPENDITURE OF UP TO \$800,000 FOR TESTING AND CLEANUP WORK NECESSARY TO PREPARE THE THEATER AND WRAP-AROUND BUILDINGS INTO A PERFORMING ARTS CENTER AND FUTURE HOME FOR THE OAKLAND SCHOOL FOR THE ARTS ('PROJECT'). OR ALTERNATIVELY, PASSAGE OF A MOTION AUTHORIZING ISSUANCE OF A REQUEST FOR PROPOSALS FOR THE PROJECT.

PURPOSE AND SCOPE

In accordance with the Measure H Charter Amendment, which was passed by the voters at the General election of November 5, 1996, we have made an impartial financial analysis of the accompanying Council Agenda Report and Proposed Resolution. The purpose of our analysis was to evaluate the reasonableness of the proposed resolution.

In making our analysis we also discussed various matters with Redevelopment Agency staff.

Since the Measure H Charter Amendment specifies that our impartial financial analysis is for informational purposes only, we did not apply Generally Accepted Government Auditing Standards as issued by the Comptroller General of the United States. Moreover, the scope of our analysis was impaired by Administrative Instruction Number 137,

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effective May 21, 1997, which provides only one (1) week for us to plan, perform and report on our analysis.

SUMMARY

The Oakland Fox Theater is a National Historic Landmark, located in downtown Oakland, which opened in 1928. The theater closed in 1972, except for a few marginal shops that remained open in the buildings that surround the main theater. In 1996, the Agency purchased the theater from a private party and began the process of stabilizing the deteriorated building and planning to eventually re-open the theater as a performing arts center.

Fox master plan

The Fox Master Plan, which was prepared in 2001 by the architectural firm of Hardy Holzman Pfeiffer, (HHPA), outlined a number of development options for the theater, ranging from:

- (1) total restoration and development of a 2,500-seat Broadway-style theater, to
- (2) a cabaret-style venue seating 600-1,000 patrons, to
- (3) basic upgrades that would make the theater habitable, but unfinished.

The commercial and office wrap-around buildings were included in the various options, whose costs varied from \$70 million for a completely restored Broadway theater, to \$20 million for the renovation of the wrap-around buildings.

On completion, the Master Plan was made available to developers who had previously shown interest in the theater and to those simply interested in the report's findings.

Potential developers

In the winter of 2002, CEDA was approached by the California Capital Group (CCG), a development team that wished to do a very thorough analysis of one of the options outlined in the Fox Master Plan -- a cabaret-style venue that would seat approximately 600 people. Contemporaneously, the Oakland School for the Arts, which is presently located in the Alice Arts Center, began seeking a new home. Accordingly, the team's analysis was expanded to evaluate the renovation of the wrap-around buildings into a new home for the Oakland School for the Arts.

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FISCAL IMPACT

California Capital Group estimates that the costs associated with the renovation of the theater and wrap-around buildings will total \$23,950,000 -- approximately half for the theater and half for the Oakland School for the Arts -- as summarized below:

<u>Description</u>	<u>Amount</u>
Design and construction	\$ 19,918,000
Soft costs – 9.66% (not described)	2,312,950
Contingency – 7.1%	1,719,000
Unexplained difference	<u>50</u>
Total	<u>\$ 23,950,000</u>

Funds are expected to be available from the following sources:

<u>Description</u>	<u>Amount</u>
Sale of City Center Garage West	\$ 13,000,000
Currently Budgeted Funds for Fox	800,000
Historic Tax Credits	3,700,000
Façade Improvement Funds and State Grant	750,000
Construction Loan (school rent services debt)	4,000,000
New Market Tax Credits	1,000,000
Sale of Cal Arts Building	<u>700,000</u>
TOTAL	<u>\$ 23,950,000</u>

According to the Agenda Report, the Agency currently has two offers to purchase the City Center West Garage, and will address this matter in a separate report to the Council.

NEW OWNERSHIP

According to the Agenda Report, a new financial and organizational framework is needed to make the Project a reality. This is because the Fox, which is owned by the Agency, is not eligible for the 20% Historic Tax Credits administered by the U.S. Department of the Interior and Department of the Treasury.

To make the project eligible for the tax credits, the ownership of the Fox (and wrap-around buildings) must be transferred from the Agency to a new entity(s). Under the structure that is being proposed, the Boards of Directors of the Paramount Theatre of the Arts and Oakland School for the Arts would form a new non-profit entity called Fox

Theater I Corporation, which would be qualified to receive donations from public and private sources for the renovation and operation of the theater and/or school. This would be the entity that would enter into any development agreements with the Agency. In turn, Fox Theater I Corporation would sell the theater and wrap-around buildings to a newly created for-profit subsidiary called Fox Theater II Corporation, which would be the new owner of the theater complex. This entity would make the Project eligible for the 20% Historic Tax Credits, and would contract with the City/Agency and with the private lending institutions for financing.

The Boards of Directors of both the Paramount Theatre of the Arts, Inc. and the Oakland School for the Arts have agreed in principle to form the two corporations.

STAFF RECOMMENDATIONS

Staff recommends that the Agency:

- (1) accept the report;
- (2) direct staff to issue an RFP to developers for the renovation of the Fox Theater and the attached wrap-around building(s); and
- (3) direct staff to review the proposals and return to Council with a recommendation for entering into an Exclusive Negotiating Agreement (ENA) with the most qualified development team.

As an alternative to the RFP process, the Agency may decide to enter into a negotiation agreement with Fox Theater I Corporation, an entity consisting of the Paramount Theatre of the Arts, Inc. and Oakland School for the Arts.

CITY AUDITOR'S CONCERNS

(1) The Agency prepared the Agenda Report and Proposed Resolution without obtaining financial information regarding the three participants in the proposed revitalization of the Fox Theater:

- California Capital Group, a General Partnership (CCG)
- The Paramount Theatre of the Arts, Inc., a California nonprofit corporation (PTA)
- Oakland School for the Arts, a California nonprofit corporation (OSA)

Therefore, the Agenda Report may or may not have adequately assessed the key issues and impacts associated with the project.

(2) According to the Memorandum of Understanding between CCG, PTA and OSA, PTA would have exclusive control over the Theater space, and would lease the exterior/retail portion of the building to OSA. Although the terms of the lease are not stated in the MOU, in its September 11, 2003 edition the Oakland Tribune quoted the General Partner

of GGC as saying that OSA would pay rent probably “in excess of \$300,000” per year, which would help service annual debt service anticipated at just over \$400,000.

Since we did not have access to financial data of the OSA, we have not been able to perform the financial analysis that would support this assertion.

(3) The General Partner of California Capital Group, in response to our request for financial data, said that he would supply the information to us at a later date.

(4) The costs of the project are estimated to be \$23,950,000, based on data provided by California Capital Group, and include \$2,312,950 for soft costs and \$ 1,719,000 for contingencies. There was no documentation for any of the cost estimates. According to the Agenda Report: “These costs will be verified during the ENA, upon completion of the Design-Development Drawings”.

(5) The project is likely to trigger various provisions of the California Environmental Quality Act, which would require the preparation of an environmental impact study. The Agenda Report did not address this issue and its associated costs.

(6)The Agenda Report presumes that \$13,000,000 of the total proceeds from the sale of the City Center Garage West will be available to help fund the project.

The Agency has received from one party an offer to purchase the garage for \$15,500,000, and from another party a letter of interest to purchase the garage for \$19,000,000. Our concern is that the Agency has not made an appraisal of the garage, and may sell it at less than its fair market value in order to finance the Fox Theater I Corporation project.

(7) The Agenda Report estimates that a Historic Tax Credit in the amount of \$3,700,000 will be available to help fund the project. If the credit is not available, the City will need to provide the \$3,700,000.

UNANSWERED QUESTIONS REGARDING FOX THEATER I AND II CORPORATIONS

Fox Theater I Corporation

According to the Agenda Report, the Paramount Theatre of the Arts, Inc. and the Oakland School for the Arts will form the Fox Theater I Corporation, a not-for-profit corporation.

1. What is the composition of the Board of Directors of the Fox Theater I Corporation?
2. How is the Board of Directors of the Fox Theater I Corporation elected or appointed?

3. Is the Fox Theater I Corporation in existence, or have the Articles of Incorporation been submitted to the Secretary of State?
4. Do the Fox Theater I Corporation Articles of Incorporation include a dedication clause protecting the assets of that corporation for the City of Oakland? If so, is that dedication clause specific and how does it dedicate the assets?
5. How will the Fox Theater I Corporation be funded?
6. We understand that the Fox Theater I Corporation will be the recipient of the real estate known as the Fox Theater. What consideration will be paid to the City of Oakland for the property?
7. Will there be any cancellation provision for any debt due from the Fox Theater I Corporation to the City of Oakland?
8. Will any liability from the Fox Theater I Corporation to the City of Oakland be a priority first position liability?
9. How will the Fox Theater I Corporation earn its income?
10. What will be the nature of the expenses of the Fox Theater I Corporation?

Fox Theater II Corporation

According to the Agenda Report, the Fox Theater II Corporation will be set up as a for-profit entity.

1. What type of entity is the Fox Theater II Corporation?
2. How will the Fox Theater II Corporation be owned, and by whom, and in what percentages?
3. How will the Board of Directors of the Fox Theater II Corporation be selected?
4. The Fox Theater II Corporation is to receive either ownership or a possessory interest in the real estate known as the Fox Theater. Will this be an ownership interest or possessory interest?
5. How will the Fox Theater II Corporation compensate the Fox Theater I Corporation for the type of interest it receives in the real estate known as the Fox Theater?
6. How will the Fox Theater II Corporation be funded?
7. If the Fox Theater II Corporation receives a possessory interest, for what term will that interest exist?
8. What will happen to the assets and liabilities of the Fox Theater II Corporation if it goes out of business and liquidates?
9. How will the Fox Theater II Corporation derive its income?
10. What will be the nature of expenses for the Fox Theater II Corporation?
11. Is there any assurance that the Fox Theater II Corporation will be profitable?
12. Will the Fox Theater II Corporation be an entity that pays its tax on its own tax return, or will it be a flow-through entity where its taxes will be recognized by shareholders that will then report the taxable income and credits on their income tax returns?

CONCLUSION AND RECOMMENDATION

Since there are many concerns that need to be resolved, and questions that are unanswered, we recommend that the City Council send the Proposed Resolution back to the Agency for additional analysis.

Prepared by:

Jack McGinity
Jack McGinity, CPA

Report completion date:
October 1, 2003

Issued by:

Roland E. Smith
Roland E. Smith, CPA
City Auditor

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