



AGENDA REPORT

TO: Edward D. Reiskin
City Administrator

FROM: Alexa Jeffress, Director,
Economic & Workforce
Development Department

SUBJECT: Fox Theater Funding Agreement and
Design Contract

DATE: September 27, 2022

City Administrator Approval

Date: Oct 13, 2022

RECOMMENDATION

Staff Recommends That The City Council:

(1) Accept An Informational Report On An Emergency Professional Services Agreement With Wiss, Janney, Elstner Associates, Inc. (WJE) In The Amount Of Two Hundred And Thirty-Four Thousand Dollars (\$234,000) For Investigation, Design, Bidding and Construction Support Services For Roof And Heating, Ventilating And Air Conditioning (HVAC) Repairs At The Fox Oakland Theater Pursuant To Oakland Municipal Code Section 2.04.020.G; And

(2) Adopt A Resolution Authorizing The Following:

A. Execution Of A Professional Services Agreement With 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 HVAC Repairs At The Fox Theater And Waiver Of The Competitive Process Pursuant To Oakland Municipal Code 2.04.051.B; And

B. 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

EXECUTIVE SUMMARY

Approval of this proposed resolution will authorize the City Administrator to execute a Professional Services Agreement with Wiss, Janney, Elstner Associates, Inc. (WJE) in an amount not-to-exceed \$150,000 to deliver design, bidding and construction support services in two phases for critical roof and Heating, Ventilating And Air Conditioning (HVAC) repairs at the Fox Theater, which is controlled by the City of Oakland (City) located at 1807 Telegraph Avenue (the Property). The resolution also authorizes receipt and appropriation of one million dollars (\$1,000,000) toward this capital project from Fox Oakland Theater, Inc. (FOT), a City-affiliated nonprofit associated with the Fox Theater. This report also provides an informational update on

CED Committee
October 25, 2022

the City's existing contract with WJE that was executed on an emergency basis in Fall 2021 for services related to this capital project (**Attachment A**).

BACKGROUND / LEGISLATIVE HISTORY

The present-day Fox Theater is the result of a City-sponsored redevelopment project that began in 1996 and was completed in 2009. The land and improvements associated with the Fox Theater are today controlled by the City. [Ordinance No. 13629 C.M.S.](#) and the associated [December 1, 2020 staff report](#) include a detailed background of the fifteen years of legislative history for the renovation of the Fox Theater (Fox Theater Renovation Project). This history includes actions by the Redevelopment Agency of the City of Oakland (Agency), the Oakland Redevelopment Successor Agency (ORSA) and the City. The following is a brief summary of these actions:

- 2005-2006: the Agency approved a Disposition and Development Agreement for renovation of the Fox Theater (Fox DDA), including \$35.5 million in loans;
- 2006: the City and Agency created the non-profit organization, FOT, to facilitate financing and to implement improvements and renovations associated with the Fox Theater Renovation Project; FOT remains as the owner of these "improvements" until 2036 and will then cease to exist.
- 2008-2010: the Agency approved amendments to the Fox DDA, including \$14.15 million in additional financing for the Fox Theater Renovation Project;
- 2012: the Agency was dissolved by operation of State law and the City Council established ORSA as the successor to the Agency;
- 2013: ORSA approved a Long-Range Property Management Plan (LRPMP) for the disposition and use of former Agency-owned property, most of which were transferred to the City. In the case of the Fox Theater, there were existing obligations with FOT that needed to be modified before the transfer to the City could be implemented;
- 2016: ORSA approved a loan assignment (from Fox Theater Master Tenant, LLC, an entity that was established and controlled by FOT to FOT) as part of the unwinding of the tax credit structure that was used to finance the renovation of the Fox Theater;
- 2017-2020: ORSA approved cancelation of Fox Theater loans, and transfer of the DDA and property to the City; the City accepted the DDA and Property and approved a lease-leaseback structure with FOT; to settle the outstanding ORSA loans, FOT approved a pledge to pay ORSA \$4.4 million immediately from existing funds and \$3.96 million in sixteen annual installments from the \$247,500 annual lease payments from the City. The City retained \$3.4 million (of the \$4.4 million FOT payment to ORSA) through the Bond Expenditure Agreement with ORSA. Of the \$3.4 million, the City approved and allocated \$2.8 million for a capital reserve fund for the Fox (Fox Theater Capital Project) and the remaining \$600,000 for Fox operations (Fox Theater Operating Project).

On June 22, 2021, following the approval of the City, ORSA, FOT and the County of Alameda Countywide Oversight Board, ownership of the Fox Theater transferred to the City. Leading up to the transfer, the FOT Board of Directors and its property management company were in the process of investigating roof leak issues at the Property. The FOT Board had authorized hiring WJE to prepare an initial investigation into the roof leaks, which was completed on March 2, 2020. WJE was chosen because they were part of the original design team for the Fox Theater renovations in 2006 and were thoroughly familiar with the Fox Theater building. Portions of the roof were replaced in 2002 and 2006-09. In 2006-09 the remainder of the roof was covered in a fluid-applied coating over the then existing modified-bitumen roofing membrane. This last, coated section was a short-term fix that has required emergency repairs in the past few rainy seasons and major work on the roof is still required to avoid ongoing leaks and significant damage to the building.

Around the same period as the roof leak issues (2020 to 2021), two of the tenants at the Fox Theater – Oakland School for the Arts and GASS Entertainment LLC (GASS, which operates the performing arts theater) – requested the FOT Board investigate issues with the HVAC system serving these tenant spaces. Maintenance reports from the tenants' HVAC service vendors recommended that repairs and upgrades to the HVAC systems serving these two tenant spaces were important strategies to reduce the risk of inhaled health hazards. The HVAC recommendations include an upgraded HVAC for Oakland School for the Arts, a replacement of the control systems for both tenants, and new rooftop equipment and roof penetrations that must be coordinated with the roof repairs as one construction project to ensure sound, water-tight repairs.

When the Property transferred to the City in June 2021, the City assumed from FOT responsibility for management of the Property's operations, including implementing capital improvements, and took over FOT's interest as landlord in the Oakland School for the Arts and GASS leases. As a result, the City became responsible for implementing the improvements to the roof and HVAC systems and these improvements became subject to the City's public contracting requirements for construction projects.

ANALYSIS AND POLICY ALTERNATIVES

Staff recommends approval of this resolution to authorize a Professional Services Agreement with WJE to deliver design, bidding and construction support services to complete these urgent roof and HVAC repairs to the Property. Staff also recommends that the City Council authorize receipt and appropriation of \$1.0 million toward this capital project from Fox Oakland Theater, Inc., a City-affiliated nonprofit associated with the Fox Theater. Approval of the recommended action advances the citywide priority of **housing, economic and cultural security** because investment in this capital improvement to the historic Fox Theater will help to preserve this significant cultural asset, which is a major contributor to the economic vitality of Oakland's Uptown District.

Emergency WJE Contract

Given the urgency of the roof leak problems and the health risks associated with the current HVAC systems, and consistent with the City's public contracting requirements, the City Administrator invoked his emergency procurement authority in Fall 2021 to execute a contract

between the City and WJE in the amount of \$234,000 so that WJE could complete their work started under FOT to investigate the problems with the roof and HVAC systems, design a solution, and prepare construction documents.

Attachment A is a Report on the Emergency Contract with WJE to further demonstrate consistency with Oakland Municipal Code (OMC) Section 2.04.020.G, which requires that a report on the emergency contract award be presented for informational purposes to the City Council within a reasonable time of contract execution. The report includes a history of WJE's extensive experience with the Fox Theater Renovation Project, its recent activities in researching the roof conditions, explanation of the roof and HVAC issues at the Fox Theater, justification for executing the contract on an emergency basis, and the status of the contract.

New WJE Contract for Additional Services

WJE's \$234,000 emergency contract was used to prepare bridging documents and construction drawings for Phase 1 of the HVAC and roof repair project. A new contract with WJE in an amount not-to-exceed \$150,000 is now needed so that WJE can continue work during the bid and construction phases of both Phase 1 and Phase 2 of the Project, as follows:

Phase 1

- Leland Saylor Associates (a subcontractor of WJE) will prepare construction cost estimates for the work at 95% completion level.
- WJE and Salas O'Brien (Salas), a subcontractor of WJE, will provide design consultant services to City and construction contractor throughout the construction phase, which includes reviewing contractor submittals to ensure conformance with construction documents, site visits to monitor installation work in progress, and responding to issues that arise in the field during construction.

Phase 2

- City will hire a design consultant team from the City's current on-call list to design and prepare construction drawings based on the bridging and criteria documents previously prepared by WJE and Salas. Given their expertise, WJE and Salas will perform two peer reviews of the construction drawings prepared by the on-call design team.
- The City's on-call design team will provide construction phase services. WJE and Salas will provide limited additional consulting services to assist the City's on-call design team.

WJE meets the conditions for a waiver of competitive bidding because a new WJE contract would allow the design firm that originally worked on the Fox Theater Renovation Project to now complete design and engineering services that began on an emergency basis in 2021. Specifically, staff is seeking City Council to find that it is in the best interest of the City to waive the competitive process for WJE pursuant to OMC Section 2.04.051.B because such waiver will prevent a further delay in formally bidding for the construction contract for Phase 2 of the urgent roof and HVAC repairs.

Funding Agreement with FOT

In June of 2021, the FOT board approved a Funding Agreement to transfer \$1.0 million of its funds to the City to help cover the costs of the roof and HVAC repairs and upgrades. The proposed resolution would authorize the City to accept these funds, appropriate them, and

allocate them to the City's existing "Fox Theater Capital Project," which already has \$2.8 million that was previously allocated via the City Council's December 2020 approval of the Bond Expenditure Agreement ([Resolution No. 88459 C.M.S.](#)). With the additional \$1.0 million from FOT, there will be a total of \$3.8 million available specifically for this Fox Roof and HVAC Project, as shown in the Project's Sources and Uses table below.

SOURCES & USES OF FUNDS

<u>Sources</u>	<u>Amount</u>	<u>Uses</u>	<u>Amount</u>
Fox Theater Capital Project - 1005784	2,800,000	WJE Design - Emergency Contract	234,000
FOT Funding Agreement	1,000,000	WJE Design - Additional Contract	150,000
		On-Call Design Team for Phase 2	166,000
		Construction Contract - Phase I (On-Call)	1,300,000
		Construction Contract - Phase 2 (TBD)	1,509,000
		Permit Fees	100,000
		OPW Staff	341,000
Total Sources of Funds		Total Uses of Funds	
	3,800,000		3,800,000

By accepting \$1.0 million in funds from FOT, the City will have sufficient funds to complete Phase 1 of the Project as described above. Additional funding will be needed to complete construction of Phase 2. Staff plans to return to Council in Spring 2024, following a formal Oakland Public Works (OPW) Request for Bids (RFB) solicitation process, to award a construction contract for the Phase 2 work and to allocate additional funding, as needed at that time.

FISCAL IMPACT

Approval of this proposed resolution will authorize the City Administrator to accept and appropriate \$1.0 million from FOT to Miscellaneous Capital Projects Fund (5999); Fox Theater Capital Project (1005784); CIP Central District Organization (94889) and to allocate \$150,000 from the Fox Theater Capital Project for a new Professional Services Agreement with WJE. There is no additional fiscal impact at this time.

PUBLIC OUTREACH / INTEREST

FOT Board of Directors approved several actions in an open public meeting on June 1, 2021 in anticipation of this recommended action (See **Attachment B**). See <https://www.oaklandca.gov/topics/fox-oakland-theater-inc> for up-to-date information on FOT

Board meeting times, agendas and minutes.

COORDINATION

The Economic and Workforce Development Department's Public/Private Development Division and OPW's Project & Grant Management Division worked jointly on the preparation of this

report and consulted with the FOT Board of Directors, Office of the City Attorney and the City Finance Department's Treasury and Budget Bureaus.

SUSTAINABLE OPPORTUNITIES

Economic: These proposed actions will enable City staff to provide critical capital repairs to sustain the Fox Theater, a key asset of the cultural arts and entertainment business community in the Uptown District. The Fox Theater helps boost economic activity by increasing foot traffic for nearby restaurants, bars and retailers within the neighborhood.

Environmental: Fox Theater tenants, which includes the student body of the Oakland School for the Arts, and theater attendees will likely benefit from improved indoor air quality and temperature conditions due to the proposed HVAC improvements. Tenants will likely have reduced exposure to inhaled health hazards. Lastly, ongoing maintenance of this asset will secure a highly transit-accessible entertainment venue within the Bay Area and helps to reduce overall car usage for the region.

Race & Equity: These proposed actions will enable the Fox Theater to continue to house the Oakland School for the Arts, which trains and educates a diverse student body, creating opportunities for future employment. Ongoing maintenance of City-owned lease space provides future opportunities to house non-profit and/or community benefit organizations at subsidized rental rates.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

Rehabilitation of the Fox Theater was completed in 2009. The proposed roof and HVAC improvements authorized by this resolution are categorically exempt from CEQA pursuant to CEQA Guidelines Section 15301 (Existing Facilities), which exempts repairs or minor alterations of existing public or private structures or facilities, involving negligible or no expansion of existing or former uses.

ACTION REQUESTED OF THE CITY COUNCIL

Staff Recommends That The City Council

- (1) Accept An Informational Report On An Emergency Professional Services Agreement With Wiss, Janney, Elstner Associates, Inc. (WJE) In The Amount Of Two Hundred And Thirty-Four Thousand Dollars (\$234,000) For Investigation, Design, Bidding and Construction Support Services For Roof And Heating, Ventilating And Air Conditioning (HVAC) Repairs At The Fox Oakland Theater Pursuant To Oakland Municipal Code Section 2.04.020.G; and
- (2) Adopt a Resolution Authorizing The Following:
 - a. Execution Of A Professional Services Agreement With 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 HVAC Repairs At The Fox Theater And Waiver Of The Competitive Process Pursuant To Oakland Municipal Code 2.04.051.B; And

- b. Execution Of A Funding Agreement Between The City Of Oakland And The Fox Oakland Theater, Inc. (FOT) To Accept And Appropriate One Million Dollars (\$1,000,000) To Fund Roof And HVAC Repairs At The Fox Theater

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

Respectfully submitted,



ALEXA JEFFRESS
Director, Economic & Workforce
Development Department

Reviewed by:
Kelley Kahn, Director of Real Estate and
Strategic Partnerships
Economic & Workforce Development

Brendan Moriarty,
Manager of Real Property Assets
Economic & Workforce Development

Tess Kavanagh, CIP Project Coordinator
Bureau of Design & Construction Oakland
Public Works

Prepared by:
Hui-Chang Li, Urban Economic
Coordinator Public/Private Development
Division

Attachments (2):
Attachment A – Report on Emergency Contract with WJE
Attachment B – June 1, 2021 FOT Board Minutes

ATTACHMENT A
Report on Emergency Contract with Wiss, Janney, Elstner Associates, Inc.

History of WJE's participation in the Fox Theater Renovation Project

Oakland Public Works determined the information available was not sufficient to bid the Fox Roof and HVAC Project ("Project") and that more detailed construction documents were needed. Since Wiss, Janney, Elstner Associates, Inc. ("WJE") was part of the design team for the Fox Theater renovations in 2006 ("Fox Theater Renovation Project") and had recently been hired by Fox Oakland Theater, Inc. ("FOT") to prepare a Leak Investigation & Roof Condition Report ("WJE 2020 Report"), it was determined that the most efficient way to produce the bridging documents was for the City to contract with WJE.

In regard to the City's requirements for Local/Small Local Business Enterprise participation for City contracts, neither WJE nor its subcontractor Salas-O'Brien or Leland Saylor are L/SLBEs. Both subcontractors have an Oakland office but have not filed to be a certified SLBE in Oakland, although LSA is a certified SLBE in Alameda County. In any case, the Fox Theater Renovation Project has overall met the current L/SLBE requirements and the addition of WJE's professional services contract in the amount of \$234,000 does not change that.

More specifically, the Fox Theater Renovation Project was subject to the 2003 Local & Small Local For Profit and Not For Profit Business Enterprise Program which required 20% L/SLBE and 10% SLBE participation. The Fox Theater Renovation Project set a higher goal of 50% LBE and 20% SLBE. In the pre-development phase, the Fox Theater Renovation Project reached this higher goal, with 50% LBE and 23% SLBE in professional services contracts. In the construction phase, the Fox Theater Renovation Project reached 75% of this higher goal with 18% LBE and 19% SLBE.

Justification for Executing the New WJE Contract on an Emergency Basis

The City's Risk Management Department advised that while Cal/OSHA rules and California Guidelines alone do not create an emergency situation, the particular circumstances of this historic building and the associated use of the space as an indoor school and performing space when combined with the current climate of COVID-19 and anticipated wildfires arguably constitute an emergency need for repairs.

Ensuring adequate ventilation is particularly important given the large numbers of people, many of whom are school-aged, that congregate inside the building due to the school and theater uses. There have also been numerous water intrusion issues on the roof, walls and basement that need to be immediately addressed to prevent damage to the building including growth of mold. The confluence of three issues—COVID-19, wildfires, and mold—potentially pose an immediate health and safety threat to the building's occupants, which includes students, staff, and members of the public.

Explanation of Roof and HVAC Issues at the Fox Theater

Two main tenants of the Fox Theater – Oakland School for the Arts ("OSA") and GASS Entertainment LLC ("GASS") – have provided information on the need for immediate repairs and upgrades to the Heating, Ventilating And Air Conditioning ("HVAC") systems. This includes the

immediate need to upgrade the HVAC control systems in order to provide complete control over the amount of external air circulation as recommended by updated Cal/OSHA guidance to reduce the risk of COVID-19 transmission by building occupants. OSA specifically has reported that temperatures in the wrap around portion of the building have been recorded at 105 degrees while staff and students are present. Prior efforts to install portable air conditioner units were unsuccessful due to the existing electrical infrastructure of the historic building.

There is a strong likelihood that additional HVAC equipment will be placed on the roof and that such additional loads will require roofing removal, localized strengthening of the roof structure, and reinstallation of roofing. The WJE 2020 Report noted roof leaks in at least seven different areas. Wall leaks were identified in four areas and basement leaks in three locations. The WJE 2020 report also noted damage to curb flashing, sealants and insulation for the HVAC ductwork and pipes. The report also called out areas of deteriorated or failed paint and surface corrosion on the mechanical catwalks where the new HVAC equipment will be installed. There were numerous other locations where deteriorated roofing conditions are causing interior damage to this historic asset as revealed by damage to interior ceiling finishes. The roofing work is closely related to the emergency HVAC work and ideally would be coordinated together.

Status of WJE's Emergency Contract

The WJE Professional Services Agreement was executed under emergency authorization in Fall 2021 in the amount of \$234,000. Under the contract, the WJE's design team completed Bridging and Criteria Documents ("bridging documents") for a design-build project that includes (1) roof leak repairs; (2) additional roof maintenance and repair; (3) replacement of the OSA wraparound wing HVAC system; and (4) replacement of the HVAC control systems for both OSA and GASS.

Oakland Public Works originally intended to use the bridging documents to bid out to a single prime design-build contractor and to use the remainder of WJE's contract to assist with the bidding and construction phases. However, the Capital Contracts Division later determined they did not have up-to-date procurement templates ready to bid this out as a design-build contract. They advised using the remainder of WJE's emergency contract to instead prepare full Construction Documents ("CD"s) so the Project could be bid out using the design-bid-build project delivery method.

However, the funds remaining under WJE's contract were only enough to complete CDs for a portion of the Project that was determined to be the most time-sensitive and could be delivered quickly by OPW's on-call construction contractors and within the limits of the existing construction budget. That scope of work includes: (1) critical roofing repairs to address specific reported leaks and (2) replacement of the HVAC control system for GASS ("Phase 1"). The CDs for the remaining work, or what has become "Phase 2", are in the process of being concurrently prepared by an OPW on-call design team and includes: (1) additional roof repair and maintenance; (2) replacement of the OSA wrap-around HVAC system; and (3) replacement of the HVAC control system for OSA. After CDs are completed, OPW will follow the formal Request for Bids ("RFB") solicitation process for the construction of this Phase 2 work.

In summary, WJE's emergency contract was used to prepare bridging documents for the Project and CDs for what has become the first phase of the Project. A new contract with WJE in an amount not-to-exceed \$150,000 is needed so there could be consistent design coverage to see the Project through to construction completion, and specifically to continue to provide assistance during the bid and construction phases of both Phase 1 and 2 of the Project.

Attachment B

(see Item# 7C for FOT Board approval of \$1M funding for Fox Roof/HVAC Project)

FOX OAKLAND THEATER, INC.

a California nonprofit public benefit corporation controlled by the City of Oakland

BOARD OF DIRECTORS MEETING

Tuesday , June 1, 2021 10:00 a.m.

MINUTES

1. Roll Call

Alexa Jeffress (President) Betsy Lake (Director)
Margaret O'Brien (CFO) Brendan Moriarty (Director)
Hui-Chang Li (Secretary) Anthony Reese (Director)
Kelley Kahn (Director)

Meeting called to order at 10:00 am. Board members present: Alexa Jeffress, Margaret O'Brien, Brendan Moriarty, Anthony Reese.

Quorum was achieved with four members present.

2. Public Comment

(1 minute per speaker)

Lisa Sherman-Colt provided public comment.

3. **Nominate Anthony Reese as Acting Secretary**

Presenter: Brendan Moriarty

**ACTION
ITEM**

Brendan Moriarty moved to nominate Anthony Reese as Acting Secretary. Motion was seconded by Alexa Jeffress. Motion passed by consensus.

4. **Approval of April 7, 2021 FOT Board Meeting Minutes**

Presenter: Anthony Reese

**ACTION
ITEM**

Brendan Moriarty moved to approve the April 7, 2021 FOT board meeting minutes. Motion seconded by Anthony Reese. Motion passed by consensus.

5. **FOT Financial Status**

Presenter: Patrick Lane

INFO ITEM

Patrick Lane proved update: Approximately \$6 million in FOT operating reserves, with \$4.4 million to be paid to ORSA in exchange for termination of all existing loan agreements and transfer of the property to the City. An addition \$1 million will be sent to the City to finish capital improvement work.

Remaining \$68,903 in reserves will be held by FOT and used as operating reserves – mostly for tax return and financial audit services. FOT is not expected to earn any income with the exception of the rent payment from the City, which will be paid to ORSA.

6. Fox Theater Asset Transfer from ORSA to City

INFO ITEM

Presenter: Patrick Lane

Staff will be ready to begin the asset transfer once the lease amendments proposed for approval in this meeting are executed. By the end of June, asset should be controlled by the City. The City will then be providing an annual rent payment to FOT, which be paid to ORSA per the Pledge Agreement. \$3.4 million of the \$4.4 million received by ORSA will be used to fund operating expenses and capital improvements for the building.

7. Property Management

7a) Property Management Agreement with Colliers

INFO ITEM

Presenter: Anthony Reese

Anthony Reese provided update: agreement with Colliers is nearing completion. Will be able to confirm soon with Colliers.

7b) Property Management Agreement Extension with CCIG

**ACTION
ITEM**

Presenter: Anthony Reese

Staff Recommendation :

Authorize staff to negotiate and execute an Amendment No. 14 to the professional services agreement with California Capital & Investment Group (“CCIG”) to continue providing property management services at the Fox Theater (“Property”) until 30 days after the closing date of the transfer of ownership of the Property from the Oakland Redevelopment Successor Agency (“ORSA”) to the City.

Anthony Reese stated that Amendment No. 14 to the agreement with CCIG is to build an overlap between CCIG and Colliers contracts to allow for assistance during the asset transfer and property management transfer.

Anthony Reese moved to approve and execute an Amendment No. 14 with CCIG. Motion was seconded by Margaret O'Brien. Motion passed.

7c) Capital Improvement Needs: Waterproofing, Roof Repair & HVAC

**ACTION
ITEM**

Presenter: Patrick Lane

Staff Recommendation :

Authorize approval and execution of a Funding Agreement between the Fox Oakland Theater, Inc and the City of Oakland for up to \$1.0 million for roof replacement, water penetration prevention, and HVAC renovations to the Fox Theater, subject to acceptance and appropriation of such funds by the City Council.

Margaret O'Brien moved to approve the Funding Agreement. Motion was seconded by Anthony Reese. Motion passed.

7d) Repairs & Maintenance: Emporium Water Meter

Presenter: Anthony Reese

**ACTION
ITEM**

Staff Recommendation :

- (1) Authorize CCIG to enter into contract with Kruse Plumbing to replace the faulty water sub-meter that services Emporium in an amount not-to-exceed \$15,000;
- (2) Authorize staff to negotiate a reduced payment plan with Emporium for their total outstanding EBMUD charges billed to-date (\$27,044.99 for the period as of Feb 3, 2021) and to collect no less than \$10,000 from Emporium upon execution of the First Amendment to the Lease Agreement; and
- (3) Grant staff administrative authority to negotiate and waive subsequent outstanding EBMUD charges due pursuant to Section 9(a) of the Emporium Lease.

Faulty water meters have prevented FOT from billing Emporium the appropriate amount for their usage. This action will allow staff to collect what the consultant determines is reasonable to charge for Emporium's usage and allow staff to make future adjustments to billing while the meter is still in disrepair. Staff will also negotiate and execute contract with Kruse Plumbing to replace meter.

Alexa Jeffress moved to approve the item. Motion was seconded by Anthony Reese. Motion passed by consensus.

8. Fox Theater Tenant Lease Amendments

8a) GASS Lease Amendment #5

Presenter: Brendan Moriarty

**ACTION
ITEM**

Staff Recommendation :

Authorize approval and execution of a fifth lease amendment with GASS Entertainment, LLC to:

- (1) extend the expiration date of the first renewal option from February 6, 2024 to December 31, 2025;
- (2) grant a fourth option to renew for five (5) years from January 1, 2036 to December 31, 2040 for a total potential lease term of thirty-two (32) years;
- (3) adjust renewal terms to a January 1 to December 31 calendar basis and corresponding paid admissions rent as follows:
 - (A) First renewal term: February 6, 2019 to December 31, 2025;
 - (B) Second renewal term: January 1, 2026 to December 31, 2030;
 - (C) Third renewal term: January 1, 2031 to December 31, 2035;
 - (D) Fourth renewal term: January 1, 2036 to December 31, 2040;
- (4) adjust additional premises rent by an additional fourteen percent (14%) starting January 1, 2026 and by 10% every five (5) years thereafter;
- (5) adjust the landlord's share of the facility fee for each paid admission as follows:
 - (A) Increase from \$1.00 to \$1.50 effective January 1, 2031;

- (B) Increase from \$1.50 to \$1.75 effective January 1, 2036;
- (C) Effective January 1, 2026, increase the landlord's share of the facility fee annually by an amount equal to the percentage change in the consumer price index ("CPI") or two (2) percent, whichever is greater;
- (D) Clarify landlord and tenant's reporting and meeting requirements regarding the collection and use of the facility fee for capital improvements by landlord and major repairs and maintenance by tenant; and
- (6) clarify tenant's obligation to provide the Oakland School of the Arts ("OSA") with use of the theater space pursuant to a memorandum of understanding ("MOU") between tenant and OSA dated May 3, 2021.

Brendan Moriarty moved to approve the item. Motion was seconded by Alexa Jeffress. Motion passed by consensus.

8b) OSA Lease Amendment

Presenter: Brendan Moriarty

**ACTION
ITEM**

Staff Recommendation :

Authorize approval and execution of a first lease amendment with Oakland School of the Arts, a nonprofit organization to:

- (1) extend the term of the lease from June 30, 2021 to June 30, 2023 with a three-year option to renew until June 30, 2026;
- (2) effective July 1, 2021 to June 30, 2023, reduce base rent of \$78,375 per month by 40% in an amount equal to \$47,025 per month; and in the event of a hold over, adjust base rent annually by an amount equal to the percentage change in the consumer price index or two (2) percent, whichever is greater;
- (3) provide a rent credit of \$68,131.81 for tenant's base rent obligations for use of the theater space;
- (4) provide a rent credit of \$10,000 for tenant's base rent obligations for professional services related to analysis of repairs and improvements for the HVAC system;
- (5) clarify landlord's obligations to repair and maintain the structural portions of the building; and
- (6) acknowledge that tenant and the theater operator have entered into a memorandum of understanding for tenant's free and discounted use of the theater space and terminate the landlord's obligation to provide tenant rent credit for use of the theater space.

Alexa Jeffress moved to approve the item. Motion was seconded by Margaret O'Brien. Motion passed by consensus.

9. Other Items

INFO ITEM

9a) Board Meeting Schedule Revisions

- Cancel June 7, 2021 and September 13, 2021 meetings
- Move to bi-annual board meetings on 1st Mondays of December and June; tentative meeting schedule:

- Thursday, December 1, 2021
- Wednesday, June 1, 2022

9b) Board Composition

Presenter: Anthony Reese/Brendan Moriarty

**ACTION
ITEM**

Staff Recommendation :

Accept resignation of Margaret O'Brien as a board member and discuss board composition.

Brendan Moriarty moved to reject the resignation of Margaret O'Brien. Motion was seconded by Alexa Jeffress. Motion passed by consensus.

10 Adjournment

Meeting adjourned at 10:48 am.