

OAKLAND OVERSIGHT BOARD

RESOLUTION No. 2018-_____

A RESOLUTION APPROVING A SECOND AMENDMENT TO THE FOX THEATER DISPOSITION AND DEVELOPMENT AGREEMENT INCLUDING ASSIGNMENT TO THE CITY OF OAKLAND OF THE OAKLAND REDEVELOPMENT SUCCESSOR AGENCY'S INTERESTS IN (1) THE DISPOSITION AND DEVELOPMENT AGREEMENT AND (2) APPROXIMATELY \$47.5 MILLION IN LOANS MADE TO FOX OAKLAND THEATER, INC., FOR RENOVATION OF THE FOX THEATER, CONTINGENT ON THE CITY AGREEING TO PAY 30% OF THE LOAN REPAYMENTS TO THE OAKLAND REDEVELOPMENT SUCCESSOR AGENCY

WHEREAS, the Redevelopment Agency of the City of Oakland ("Redevelopment Agency") entered into a Disposition and Development Agreement ("DDA") on December 15, 2006 with Fox Oakland Theater, Inc. ("FOT") to ground lease the Fox Theater at 1807 Telegraph Avenue for 60 years and undertake the restoration of the property, and for the Redevelopment Agency to provide loans to carry out the restoration; and

WHEREAS, renovation of the Fox Theater required numerous funding sources including Redevelopment Agency loans, New Markets Tax Credits, Historic Tax Credits, governmental and private grants, and a commercial loan; and

WHEREAS, the Oakland Redevelopment Successor Agency ("ORSA") was established as the successor agency to the Redevelopment Agency pursuant to Health and Safety Code Sections 34171(j) and 34173; and

WHEREAS, with the dissolution of redevelopment agencies, the Fox Theater loans, as Redevelopment Agency assets, were transferred under the dissolution law to ORSA as the successor agency to the Redevelopment Agency; and

WHEREAS, the Fox Theater loan assets have a current value of \$47,534,470 in principal and approximately \$27,420,975 in accrued interest, of which 30% is attributable to the unrestricted (non-bond-funded) sources and 70% is bond funded; and

WHEREAS, recycled bond proceeds, including: revenue from loans made from bond proceeds or sale of property purchased with bond proceeds, should be treated as bond proceeds per memorandum from bond counsel; and

WHEREAS, ORSA has already determined that recycled bond proceeds should be transferred to the City of Oakland per the Bond Expenditure Agreement, which was approved by the Oversight Board on July 29, 2013, Resolution No. 2013-15; and

WHEREAS, the Fox Theater property is listed on ORSA's Long Range Property Management Plan as a property held to fulfill existing obligations, i.e., the tax credit investor buy out, loan repayment guaranty (both completed) and various contingent commitments to the tax credit investors; and, after these obligations are fulfilled, the Fox Theater property may be transferred to the City of Oakland pursuant to the Long Range Property Management Plan to be retained for future development; and

WHEREAS, staffing costs to manage the Fox Theater are currently included as ORSA costs on the Recognized Obligations Payment Schedules ("ROPS"); and

WHEREAS, if ORSA retains the Fox Theater and associated loans, ORSA will have to provide staffing to manage the property and loans for another 48 years at a conservative estimate of \$20,209,556 in costs over the term, based on \$254,678 in 2019-20 and increasing 2% per year for 48 years; and

WHEREAS, the ORSA loans require FOT to repay the loans in full by September 20, 2036, which will total \$128,731,995 if no payments are made; and

WHEREAS, FOT can pay no more than approximately \$1.1 million per year on these loans, which will leave an outstanding balance of \$108,931,995 when the loans become due and payable; and

WHEREAS, FOT has no other assets and no way of ever fully repaying the ORSA loans; and

WHEREAS, the City has proposed that ORSA amend the DDA to assign ORSA's interests in the Fox Theater DDA and the former Redevelopment Agency's loan assets to the City, contingent on the City agreeing to pay the unrestricted proportion (30%) of loan repayments received by the City to ORSA for the benefit of the taxing entities for the term of the loans; and

WHEREAS, as part of the transaction, the City has proposed to take over financial responsibility for staffing costs associated with the Fox Theater and associated project loans from ORSA; and

WHEREAS, the transfer and assignment of the Fox Theater DDA and associated project loans through the DDA amendment will reduce ORSA ROPS obligations related to project staffing by \$20,209,556, and the payments from the City will increase ORSA revenues by approximately \$5,940,000 (i.e., 30% of \$19,800,000); and

WHEREAS, the transfer and assignment of the Fox Theater DDA and associated project loans through the DDA amendment will therefore benefit the affected taxing entities by reducing current ORSA enforceable obligations and increasing current ORSA revenues; now, therefore:

Based on the foregoing recitals and the documentation presented to the Oakland Oversight Board at a public meeting, the Oakland Oversight Board does resolve as follows:

SECTION 1. The Oakland Oversight Board finds and determines that the proposed Second Amendment to the DDA, a draft of which is attached to this Resolution, including the assignment of the Fox Theater DDA and associated loans from ORSA to the City and other actions related to the Fox Theater Project described herein will benefit the taxing entities because the amendment will:

- (1) reduce the financial liability of the taxing entities by eliminating ongoing staffing costs related to the Fox Theater Project from the Recognized Obligation Payment Schedule (“ROPS”), with savings estimated to be \$20,209,556 over 48 years; and
- (2) increase net revenues to the taxing entities through the compensation provisions that will be required from the City of Oakland, estimated to be \$5,940,000 over 18 years; and
- (3) be in the best interest of the taxing entities because it both reduces ORSA liabilities and increases funds that will flow to the taxing entities, as well as winds-down the long-term involvement of ORSA in former Redevelopment Agency projects as contemplated by the dissolution law.

SECTION 2. The Oakland Oversight Board hereby approves the amendment of the Fox Theater DDA to assign ORSA’s interests in the DDA and the Redevelopment Agency loans made to FOT from ORSA to the City of Oakland in the amount of approximately \$47,511,536 in principal plus unpaid interest under the terms and conditions set forth in this resolution.

SECTION 3. The Oakland Oversight Board's approval is contingent on the City agreeing as part of the amendment to pay 30% of loan repayments to ORSA for the terms of the assigned loans.

ADOPTED, OAKLAND, CALIFORNIA _____, 2018

PASSED BY THE FOLLOWING VOTE:

AYES- BYRD, CHAIR CARSON, LITTLE, MULVEY, ORTIZ, TUCKER

NOES-

ABSENT-

ABSTENTATIONS-

ATTEST: _____

SECRETARY OAKLAND
OVERSIGHT BOARD

Oakland Oversight Board

Memorandum

TO: Oakland Oversight Board
SUBJECT: Fox Theater DDA Amendment

FROM: Mark Sawicki
DATE: March 26, 2018
ITEM: #4

RECOMMENDATION

City staff recommends that the Oakland Oversight Board adopt a resolution approving a second amendment to the Fox Theater Disposition and Development Agreement (“DDA”) with Fox Oakland Theater, Inc. (“FOT”) including assignment to the City of Oakland (“City”) of the Oakland Redevelopment Successor Agency’s (“ORSA’s”) interests in (1) the DDA and (2) approximately \$47.5 million in loans made to FOT, for renovation of the Fox Theater, contingent on the City agreeing to pay 30% of the loan repayments to ORSA.

EXECUTIVE SUMMARY

The former Oakland Redevelopment Agency entered into the DDA on December 15, 2006, and made several loans currently totaling \$47.5 million in principal to FOT, a nonprofit affiliate of the City, for the 2006-08 renovation of the theater. The Fox Theater property will be transferred to the City by ORSA (the successor to the assets of the Redevelopment Agency, including the loans) pursuant to the approved Long Range Property Management Plan. The purpose of the DDA amendment is to transfer the remaining duties and functions associated with the Fox Theater, including responsibilities over staffing the administration of the loans, from ORSA to the City, in order to complete an unwind of any remaining long-term redevelopment activities of ORSA related to the Fox Theater. The assignment of the loans receivable is contingent on the City entering into a compensation agreement with ORSA to transfer 30% of the loan repayments it receives back to ORSA for the remaining terms of the loans (which extend to 2036). This represents a return on the portion of investment that came from unrestricted funds such as tax increment revenue, versus the investment that came from restricted redevelopment bond funds.

OUTCOME

The redevelopment dissolution statutes, in particular Health and Safety Code Section 34181, direct the Oversight Board through the Successor Agency to:

Determine whether any contracts, agreements, or other arrangements between the dissolved redevelopment agency and any private parties should be terminated or renegotiated to reduce liabilities and increase net revenues to the taxing entities, and present proposed termination or amendment agreements to the oversight board for its approval. The board may approve any amendments to or early termination of those

agreements if it finds that amendments or early termination would be in the best interests of the taxing entities.

The assignment of the DDA is part of the transfer of the property to the City to unwind the ongoing activities of ORSA. This action will reduce the liabilities of ORSA by reducing the staffing costs now incurred by ORSA (currently a 48-year liability to manage the ground lease and DDA and a 18-year liability to manage the loans) by approximately \$367,264 per year, based on the proposed FY 2018-19 ROPS. Now that FOT will be able to make some debt payments, the loan structure will also generate revenue for ORSA of approximately \$1,100,000 per year for 18 years, which is the remaining term of the loan. As part of the assignment, the City will pledge to pay ORSA the unrestricted proportional share of the loan repayments, which is 30% of the total, an estimated \$330,000 per year for 18 years or \$5,940,000 over the remaining term. Without the transfer of the property and loans to the City, ORSA will need to exist as an entity through the remaining term of the lease, which is approximately 25 years longer than any other long term obligations of ORSA, such as bond debt.

BACKGROUND/LEGISLATIVE HISTORY

2005-06 Approval and Agreement

On July 19, 2005, the Redevelopment Agency Board and City Council approved resolutions authorizing a Disposition and Development Agreement (“DDA”) between the Redevelopment Agency and Oakland Renaissance NMTC, Inc. (“ORNMTTC”), a non-profit corporation, for the renovation of the Fox Theater (Agency Resolution No. 2006-0046 C.M.S. and City Resolution No 79382 C.M.S).

On July 18, 2006, the Redevelopment Agency and City approved resolutions authorizing an Amended and Restated DDA between the Redevelopment Agency and ORNMTC, which was later assigned to FOT, a newly-created single-purpose non-profit corporation. The DDA included initial loans of \$32,000,000. FOT was established by the City of Oakland and the Redevelopment Agency of the City of Oakland to manage the Fox Theater Project and to own and manage the other financial entities created to generate equity from Historic and New Markets Tax Credits (Agency Resolution No. 2006-0057 C.M.S. and City Resolution No. 80057 C.M.S). The Redevelopment Agency ground leased the property to FOT for 60 years pursuant to the DDA on September 20, 2006.

2008 Amendment

On July 15, 2008, the Redevelopment Agency approved resolutions authorizing the Agency Administrator to: (1) amend the DDA to provide for an additional loan to FOT for \$7,450,000 to pay for increased project costs; (2) enter into a Tenant Improvement Grant Agreement with GASS Entertainment Inc., the selected theater operator, for \$2,000,000 to pay for theater tenant improvements; (3) enter into a loan agreement with Fox Theater Master Tenant, LLC (“FTMT”), which is controlled by FOT via the ground lease and DDA, for \$2,700,000 to pay for additional theater tenant improvements and restaurant tenant improvements; (4) enter into a loan agreement

with Oakland School for the Arts for \$2,300,000 to fund the school's tenant improvements (Resolution Nos. 2008-0075 C.M.S. through 2008-0080 C.M.S.).

2009 Amendment

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

2010 Amendment

On January 5, 2010, the Redevelopment Agency approved a resolution authorizing the Agency Administrator to amend the DDA to provide for an additional loan to FOT for \$2,000,000 to pay for increased project costs. (Agency Resolution No. 2009-0061 C.M.S.)

Dissolution of Redevelopment Agency

On February 1, 2012, the Redevelopment Agency was dissolved by operation of law. On July 17, 2012, the City Council approved a resolution establishing the Oakland Redevelopment Successor Agency ("ORSA") as the successor to the Redevelopment Agency. Under the dissolution law, ORSA became the owner of all the assets and liabilities of the Redevelopment Agency, including the Redevelopment Agency's interest in the property and the loans made by the Redevelopment Agency to the project.

Long Range Property Management Plan

In 2013, pursuant to the dissolution law, a Long Range Property Management Plan ("LRPMP") for the disposition of former Redevelopment Agency property was approved. The Fox Theater property is listed in the LRPMP as a property held by ORSA to fulfill existing obligations. At the time, the enforceable obligations included various contingent commitments to the tax credit investors such as buyouts, guaranties, and indemnities. The LRPMP provides that, once the enforceable obligations are satisfied and/or the terms of the various contingent obligations run out, the property will be transferred to the City and be retained by the City for future development. The LRPMP thereby contemplates that ORSA's interests in the ground lease and the DDA would be transferred to the City along with the transfer of the property to the City.

Bond Expenditure Agreement

In 2013, pursuant to the dissolution law, Health and Safety Code Section 34191.4(c), which allows a successor agency that has received a finding of completion to use bond proceeds from bonds issued prior to 2011 for any purposes for which the bonds were sold, ORSA entered into a Bond Expenditure Agreement with the City of Oakland. Per the Bond Expenditure Agreement, and based on a memorandum from bond counsel, recycled bond proceeds, including repayments of loans made from bond proceeds or the proceeds from the sale of property purchased with bond

proceeds, are treated as bond proceeds and are restricted to uses authorized by the bond covenants. The Bond Expenditure Agreement was approved by the Oversight Board and DOF in 2013.

2016 Loan Assignment

On October 4, 2016, the ORSA Board approved a resolution authorizing the assignment of the \$1.4 million FTMT loan to FOT to eliminate the tax credit structure that had been required to finance the renovation of the Fox Theater, ORSA Resolution No. 2016-008 C.M.S.

ANALYSIS

REVIEW OF EXISTING FINANCIAL STRUCTURE AND NEED TO MODIFY LOANS AND DEBT

The intent at project inception was that the loans would all be invested in the Fox Theater as long-term subsidies; the Fox Theater would still be owned by the Redevelopment Agency, and the Redevelopment Agency would get the benefit of the improvements at the end of the lease term. The loans were an additional layer of Redevelopment Agency control when the property was leased to FOT, but were not expected to be fully repaid unless Theater revenues were dramatically greater than projected. The primary issue now before the Oversight Board concerns management of the financial obligations related to the Fox Theater. Following the dissolution of the Redevelopment Agency and the wind-down of the tax credit syndication structure that financed the theater renovation, the City is expected to assume ownership and direct control of the Fox Theater. Once the various contingent commitments to the tax credit investors run out by late 2018, including the compliance period and the IRS review period for NMTC transactions, the LRPMP will permit the City to acquire the property, subject to the ground lease. However, the loans made to the project by the Redevelopment Agency are now ORSA assets, and should also be assigned to the City along with the property, in order to fully wind down ORSA's continuing involvement in the Fox Theater Project.

The renovation of the Fox Theater required large subsidies by the Redevelopment Agency to make the project financially feasible. The Redevelopment Agency used FOT to create the tax credit structure and leverage its subsidies, in the form of loans, to bring additional equity to the project. The syndication of tax credits generated over \$26 million towards the renovation of the Fox Theater that would have otherwise needed to be funded by the Redevelopment Agency.

The Redevelopment Agency initially loaned FOT \$33 million for the project from restricted bond funds. Four additional loans totaling \$14.4 million were made to FOT or assigned to FOT over the following 11 years from tax increment and other unrestricted sources. These were mostly soft loans with no required debt service payments, although the \$1,400,000 tenant improvement loan to FTMT which was assigned to FOT and has approximately \$1,225,000 in outstanding principal is being repaid to ORSA.

With the elimination of the tax credit structure and the anticipated property transfer, there is a substantial amount of debt owed to ORSA from the Fox Theater that needs to be addressed,

including \$47,511,536 in principal and approximately \$29,908,000 in accrued interest as of January 2018. Without any payments, these loans are expected to total approximately \$128,731,995 by September 20, 2036 when the loans become due and payable.

Rather than wait until the end of the loan terms, staff proposes to transfer to the City the loans made by the Redevelopment Agency for the project, along with the transfer of the property and all other responsibilities for managing the project. The proposed transaction will eliminate substantial staffing costs now being paid by ORSA and increase payments to ORSA over the next 19 years, which will result in additional funds distributed to the taxing entities from the Redevelopment Property Tax Trust Fund (“RPTTF”).

Transferring the Fox Theater loans from ORSA to the City, along with the property transfer, will substantially reduce ORSA’s staffing costs for the project. Approximately 1.5 FTEs or \$367,264 in staffing costs for the Fox Theater were proposed in the FY 2018-19 ROPS. The staffing tasks include: (1) managing the ground lease and DDA; (2) managing the various entities -- a non-profit corporation, a for-profit corporation and two limited liability companies -- established as part of the Fox Theater syndication, which requires staff to oversee two boards, two annual audits, four sets of annual tax returns, four tax credit investments, five bank accounts, and manage several legal, accounting and property management contracts; (3) overseeing maintenance, improvements and other tenant issues; and (4) making sure the Fox Theater entities comply with the various compliance and reporting requirements to insure there are no claims on the tax credit guaranties by ORSA. Even after responsibilities are reduced in FY 2019-20 to approximately one FTE, the staffing costs would be \$254,678. If these costs increase by only 2% per year and carried for the remaining term of the DDA and ground lease -- 48 years -- the staffing costs would total **\$19,247,196** through 2066.

Most of the Fox Theater debt, approximately 70%, is bond funded, and, under the Bond Expenditure Agreement and bond covenants, any revenue from loan payments on bond-funded debt must be transferred to the City to be used for bond-eligible purposes. These loans have terms of 30 years or less. In 2036, when the loans are due, FOT will still have 30 years on the lease for the Fox Theater, but not any other significant assets. Even if FOT makes \$1.1 million per year in interest payments for the next 19 years, the outstanding ORSA debt will grow to approximately \$108,931,995. Most of the ORSA loans will therefore need to be written off at some point, and in recognition of this fact, most of this debt is listed as ‘Doubtful Accounts’ in ORSA’s Listing of Notes and Loans Receivable. By 2036, the Fox Theater will likely need substantial capital improvements, which will require FOT to borrow new funds to finance capital projects such as a new roof, exterior painting and repair, mechanical, electrical and plumbing upgrades and replacement and other major improvements. This new financing would need to be secured in front of the existing loans, so even if the terms of the ORSA loans are extended, there might not be significant revenue at the end of the term to repay the loans.

In the interest of unwinding ORSA from its remaining long-term redevelopment activities, staff proposes to: (1) assign the DDA from ORSA to the City; (2) transfer the \$47,511,536 in project-related loans receivable from ORSA to the City; (3) enter into a compensation agreement between the City and ORSA in connection with the assignment of the loans, under which the City will be obligated to compensate ORSA for 30% of loan repayments received by the City

over the terms of the loans (representing the share of tax increment revenue invested in the project); and (4) eliminate the Fox Theater from future ROPS, reducing annual staffing costs to ORSA by \$367,264 compared to the proposed FY 2018-19 ROPS. Termination of the tax credit structure and completion of debt payments on the conventional loan will allow FOT to accelerate the repayment of the ORSA loans. It is estimated that FOT should be able to pay \$1.1 million per year in debt service repayments on the ORSA loans. Of this, 30% of the total debt service is attributable to the unrestricted (non-bond-funded) portion of the loans. In other words, this is the amount attributable to tax increment revenue invested, which therefore should be repaid to ORSA, increasing the funds to be distributed to the taxing entities.

These actions will reduce ORSA's obligations, increase ORSA's revenue, and thus benefit the taxing entities, while also facilitating the wind-down of redevelopment. The savings in staffing for transferring the property and the associated loans will reduce staffing costs by approximately **\$20,209,556** through 2066 (based on reduced staffing of \$254,678 in 2019-20 and increasing 2% per year for 48 years). In addition, 30% of the debt service repayments will be paid to ORSA; approximately **\$5,940,000** in revenue for the benefit of the taxing entities through 2036 ($0.30 * \$1.1 \text{ million per year} * 18 \text{ years}$). The reduction in costs and increase in revenue will result in **\$26,149,556** in additional funds being distributed to the taxing entities from RPTTF. FOT should also be able to reimburse the City for its \$242,550 per year in staff costs from the savings in administrative costs and fees from the elimination of the tax credit structure used to finance the project.

POLICY ALTERNATIVES

Retention of the loans by ORSA is an alternative not recommended. There is no conceivable way that FOT will be able to fully repay all the ORSA loans. If ORSA does not assign the loans to the City, at some time ORSA will need to write off the debt. While FOT invested all the ORSA loan funds in the Fox Theater - as well as tax credit equity, grants and other funds - the Fox Theater value, based on an income approach, is not worth the cost of the renovations. The projected future rent from the Fox Theater is not enough to make full interest payments on the ORSA loans, let alone repay the principal, and FOT's liabilities are growing. The Fox Theater is the only asset that FOT has. There are no other sources of funds to repay FOT's loans from ORSA. This situation will not significantly change over the course of the lease. Even if the Fox Theater were to become more lucrative through more intense use or by charging higher rents, the total revenue would not be enough to cover the annual interest payment. And under the Bond Expenditure Agreement, most of any loan repayments (70%) received by ORSA would have to be transferred to the City anyway, since they would be considered unencumbered excess bond revenue; therefore, neither ORSA nor the taxing entities would financially benefit from ORSA's retention of the loans.

COST SUMMARY/IMPLICATIONS

The reduction in staffing costs on the ROPS and increase in debt service payments to ORSA will reduce the need for RPTTF by ORSA, increasing the payments of residual RPTTF made to the taxing entities, or result in direct payments from the City to the taxing entities per the required compensation agreement. The increased distributions from RPTTF or payments from the City to the taxing entities from these changes to the Fox Theater Project will average approximately \$633,500 per year for 18 years, or \$11,393,234, and \$492,000 per year for the following 30 years, or another \$14,756,322.

For questions regarding this report, please contact Patrick Lane in Public/Private Development at 238-7362.

Respectfully submitted,

/s/

Mark Sawicki
Director, Economic & Workforce
Development Department

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