

CITY OF OAKLAND



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IGNACIO DE LA FUENTE, PRESIDENT
CITY COUNCIL
OAKLAND, CALIFORNIA

PRESIDENT DE LA FUENTE AND MEMBERS OF THE CITY COUNCIL

SUBJECT: REDEVELOPMENT AGENCY AND CITY RESOLUTIONS: (1) AUTHORIZING APPROVAL AND EXECUTION OF A DISPOSITION AND DEVELOPMENT AGREEMENT AND RELATED DOCUMENTS WITH OAKLAND RENAISSANCE NMTC (RENAISSANCE), A NON-PROFIT ENTITY, FOR THE SALE AND DEVELOPMENT OF THE FOX THEATER AS A MIXED USE ENTERTAINMENT, OFFICE AND SCHOOL DEVELOPMENT; AND (2) APPROVING AND APPROPRIATING THE FOLLOWING FINANCIAL ASSISTANCE TO RENAISSANCE FOR DEVELOPMENT OF THE PROJECT: (A) AN AGENCY LOAN OF \$13,000,000; (B) TRANSFER OF \$4,985,000 OF STATE OF CALIFORNIA PROPOSITION 55 GRANT FUNDS; (C) TRANSFER OF \$2,887,500 OF STATE OF CALIFORNIA PROPOSITION 40 GRANT FUNDS; (D) TRANSFER OF \$1,300,000 INSURANCE PROCEEDS FOR FIRE DAMAGE AT THE FOX THEATER, AND (E) TRANSFER OF A \$375,000 CALIFORNIA HERITAGE GRANT

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

The City Auditor is elected by the citizens of Oakland to serve as an officer in charge of an independent department auditing City government activities. The independence of the City Auditor is established by the City Charter.

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, effective May 21, 1997, which provides only two (2) weeks 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 (called the wrap-around buildings). In 1996, the Agency purchased the theater from a private party with the intention of restoring and re-opening the theater and the attached wrap-around buildings in order to stimulate investment in the Uptown District of Oakland.

To date, the Agency has already spent \$ 6,600,000 on the theater, including the \$3,000,000 purchase price. The new phase, if approved, will involve: (1) the completion of all construction documents, (2) the bidding of the project, and (3) the actual construction-renovation of the theater and wrap-around buildings.

FISCAL IMPACT

The total project cost of the Design Development Phase, is estimated at \$33,921,422, to be funded from the following sources:

<u>Description</u>	<u>Amount</u>
Oakland Redevelopment Agency loan	\$13,000,000
Viacom Port Authority Billboard lease	6,000,000
Calif. Schools Facility Proposition Grant	4,983,922
Calif. Conservation Historic Endowment Grant	2,887,500
U.S Govt. - Historic Tax Credits	2,500,000
Oakland Redevelopment Agency	1,500,000
Fire insurance proceeds	1,300,000
Friends of Oakland Fox	1,000,000
State Office of Historic Preservation Grant	<u>750,000</u>
Total	<u>\$33,921,422</u>

In addition, the project might qualify for New Market Tax Credits when they become available.

OWNERSHIP OF THE FOX THEATER

According to the Agenda Report, in order to proceed with this phase of the project, the Agency's consultant, California Capital Group (CCG), recommends that the Agency enter into a Disposition and Development Agreement (DDA) with Oakland Renaissance NMTC (ORNMTTC), a non-profit, public benefit corporation created by the Agency, and managed by city staff. This arrangement would be necessary to take advantage of Historic Tax Credits and possibly New Markets Tax Credits when they become available. To receive New Markets Tax Credits, the ORNMTTC must participate in the ownership of the project; consequently, CCG also recommends transfer of ownership of the theater and wrap-around buildings to the ORNMTTC so that ORNMTTC can, in turn, create a for-profit entity to take advantage of the tax credits, and at the same time limit the Agency's future liability for the property including any claims and long-term maintenance.

To take advantage of both New Markets Tax Credits (NMTC) and Historic Tax Credits (HTC), the ownership structure has been designed to meet the strict requirements of IRS rules. The structure has several elements-- which include investors and Agency-related entities. It is essential to note that control remains exclusively with the Agency. The ORNMTTC, a non-profit, public-benefit corporation, was created by the Agency in 2004 specifically to take advantage of New Markets Tax Credits. Its board consists entirely of employees of the City of Oakland. In this structure, ORNMTTC will enter into an agreement with a tax credit investor(s) (such as Bank of America, Chevron, City Corp, etc.) for Historic Tax Credits and New Markets Tax Credits.

The Agency will transfer title to the ORNMTTC and contribute approximately \$13 million and the grants to the project (as a loan). The tax credit investors will contribute between \$3.0 million and \$6.7 million through ORNMTTC to the project in exchange for the use of the tax credits. For the seven-year life of this project, the Investor will "own" at least 99% of the project (necessary for the Investor to take advantage of tax credits). However, ORNMTTC will retain control and the Investor will be "bought out" at the end of seven years according to a deal struck at the commencement of the project. The buyout can be structured to be minimal.

Fox I, a for-profit entity, will be created to own the Fox. It will contract with a building contractor for the construction and renovation of the theater and wrap-around buildings and provide construction funding. Again, the control of all funds and the control of the project will remain with the Agency

CITY AUDITOR'S CONCERNS

1. The estimated costs of the project -- \$33,921,422 -- may be too low, since they include a contingency of only \$1,226,691 (5 percent).

2. There is no assurance that the Fox Theater, after renovation, will be profitable. According to the Agenda Report (Page 2):

“CCG and their consultants, AMS Planning and Research, estimate that the theater, if developed as a 1380 seat cabaret- style venue and operated by the Paramount Theater of the Arts (PTA), and allowing for the Oakland School for the Arts (OSA) to use the theater an average of three days a month, would necessitate approximately a \$300,000 yearly subsidy from the Agency to remain open. If the theater were operated by a contracted operator, the theater **might** operate at a budget surplus of over \$250,000 a year.”(Emphasis added.)

* * *

“if the PTA were to operate the theater, the Agency would need to budget approximately \$300,000 to \$500,000 a year for an indeterminate amount of time, depending on the success of the theater. Income from the theater would off-set this to some extent, but because the income projections will depend on the eventual users and number of event days, the modified number cannot be determined at this time. These funds would need to be allocated by the Agency on a yearly basis starting with the ORA 2007-2009 budget.”

3. According to the Agenda Report (page 5), Historic Tax Credits totaling \$2,500,000 will be available to fund the project. However, the Agency has no assurance that transferring the Historic Tax Credits to another entity is allowable under the Internal revenue Code.. If it is not, the City will need to provide the \$2,500,000.

CONCLUSION

Before approving the Proposed Resolution, the Council should carefully consider the several concerns that have not been resolved.

Prepared by:

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June 27, 2005