

FOX OAKLAND THEATER, INC.

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

BOARD OF DIRECTORS MEETING

Tele-Conference

July 15, 2020

10:00 a.m.

PUBLIC PARTICIPATION

This meeting will be held by tele-conference and recorded. The public may observe and/or participate in this meeting in the following two ways:

- To join the meeting by video conference, please click on this Zoom link at the noticed meeting time.

<https://zoom.us/j/92073512963>

Meeting ID: 920 7351 2963

- To listen to the meeting by phone, please dial the numbers below, depending on your location, at the noticed meeting time:

Dial by your location

+1 669 900 6833 US (San Jose)

+1 408 638 0968 US (San Jose)

+1 346 248 7799 US (Houston)

+1 253 215 8782 US (Tacoma)

+1 312 626 6799 US (Chicago)

+1 646 876 9923 US (New York)

+1 301 715 8592 US (Germantown)

Meeting ID: 920 7351 2963

Find your local number: <https://zoom.us/u/afIWHsb5E>

If you need special assistance to participate in meetings, please contact the FOT Secretary (hli@oaklandca.gov or 510-238-6239). When possible, please notify staff five (5) days prior to the meeting so we can make reasonable arrangements to ensure accessibility.

ALL PUBLIC COMMENT WILL BE TAKEN AT THE BEGINNING OF THE MEETING UNDER ITEM 2 PUBLIC COMMENT.

There are three ways to submit public comments:

- eComment. Please email hli@oaklandca.gov to send your comment directly to the Board and staff BEFORE the meeting starts. eComment submission closes five (5) minutes before posted meeting time
- To comment by Zoom video conference, click the “Raise Your Hand” button to request to speak when Public Comment is being taken at the beginning of the meeting. You will be permitted to speak during your turn, allowed to comment, and after the allotted time, re-muted.
- To comment by phone, please call on one of the above listed phone numbers. You will be prompted to “Raise Your Hand” by pressing “*9” to speak when Public Comment is taken. You will be permitted to speak during your turn, allowed to comment, and after the allotted time, re-muted. Please unmute yourself by pressing *6

FOX OAKLAND THEATER, INC.

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

BOARD OF DIRECTORS MEETING

July 15, 2020

10:00 a.m.

AGENDA

1. Roll call
(Alexa Jeffress, President; Adam Benson, CFO; Hui-Chang Li, Secretary;
Betsy Lake, Director; Kelley Kahn, Director; Brendan Moriarty, Staff;
Anthony Reese, Staff)

2. Public Comment *(1 minute each)*

3. Waiver of notice and consent – ***Action Item***

FOX OAKLAND THEATER, INC.

WAIVER OF NOTICE AND CONSENT TO HOLDING THE July 15, 2020 BOARD OF DIRECTORS MEETING

The following Directors of Fox Oakland Theater, Inc., a California nonprofit public benefit corporation (the "Corporation"), waive notice of and consent to the holding of the meeting of the Board of Directors of the Corporation on **July 15, 2020** at Oakland, California, and consent to the transaction of any and all business that may be properly brought before that meeting.

Dated: _____

Alexa Jeffress, President

Adam Benson, Chief Financial Officer

Hui-Chang Li, Secretary

Betsy Lake, Director

Kelley Kahn, Director

4. Approval of Minutes for December 2, 2019 – ***Action Item***

FOX OAKLAND THEATER, INC.

BOARD OF DIRECTORS MEETING December 2, 2019

MINUTES

1. Roll call

Meeting called to order at 3:10pm. Members present were Adam Benson (Chief Financial Officer), Hui Chang Li (Secretary), Alexa Jeffress (President), and Jens Hillmer (Director). Quorum was achieved.

Others present: Kelley Kahn (Staff) and Eric Simundza (Staff).

2. Waiver of notice and consent

3. Approval of Minutes for August 13, 2019.

Moved by Alexa Jeffress, seconded by Hui Chang Li, and approved by consensus.

4. Board resignation and elections

- a. Jens Hillmer is resigning as Board Director.
- b. Confirmation of board members – The City Administrator, Sabrina Landreth, will be asked to confirm the recommendation to add Kelley Kahn to the Fox Oakland Theater Inc. board to replace Jens Hillmer. Ratification of Kelley Kahn moved by Adam Benson, seconded by Alexa Jeffress, and approved by consensus.

5. Approval of Quarterly Meeting Schedule. In 2020, board meetings will be held on the first Monday of the last month in each quarter at 3pm:

- a. Monday, March 2nd, 2020 @ 3pm
- b. Monday, June 1st, 2020 @ 3pm
- c. Monday, September 14th, 2020 @ 3pm
- d. Monday, December 7th, 2020 @ 3pm

6. CCIG Termination letter – CCIG sent a letter to the City/FOT on November 6, 2019, notifying that it would terminate its property management services for the Fox Theater on December 31, 2019. As this did not provide adequate time for staff to find a replacement manager, staff approached CCIG to request more time and CCIG agreed to continue services for at least 6 more months if their monthly payment is increased from \$5,500 to \$8,550. Staff recommended the board authorize a 6-month extension to CCIG's Property Management Agreement and

allow month-to-month extensions thereafter through December 31, 2020, for \$8,550 per month, starting January 1, 2020. Moved by Adam Benson, seconded by Alexa Jeffress, and approved by consensus.

Staff will seek to get this new Agreement executed before the start of the new year.

7. Update on RFP to replace CCIG. Staff is preparing an RFP, targeting release in February 2020, and hiring of new property manager by June 2020. Adam Benson instructed that in advance of the RFP and replacement of CCIG, the FOT accounts currently held with Bank of America should be moved to Union Bank, the City's current bank.

8. Den Activation. APE sent a letter in August stating their intention to aggressively start promoting, marketing and advertising the Den as a stand-alone event space, available for private events, effective September 1. They also planned to partner with Visit Oakland to target certain conferences and new companies and use the Den for pop-up activations of local businesses. Staff requested their marketing materials as well as monthly reports about the progress of their campaign activities and whether they result in more activities at the Den.

Kelley Kahn suggested that in addition to Visit Oakland, APE should work with Downtown BID to hold popup events, and use the space for arts groups (e.g., Ubuntu). Adam Benson suggested that APE be required to hold a mandatory number of private events at the Den. Staff will hold a meeting with APE prior to the next FOT board meeting.

9. Update on OSA Lease. Staff will be meeting with OSA on December 4th to discuss a lease extension, which will extend existing rent of 940,000 per year through the end of the billboard license agreement in April 2026. OSA has been in talks with the Port of Oakland to extend the billboard revenue sharing agreement and should also have an update on their Charter Renewal application. If the billboard license agreement is extended, staff recommends extending the lease term past 2026.

10. FOOF Loan. Staff is working with City Attorney to call a default action on the \$1.3 million Friends of Oakland Fox (FOOF) loan. This loan is owed to ORSA (not FOT) but because APE is the guarantor, this could impact future lease negotiations with APE.

11. Update on Fox Theater Asset Transfer. A draft Oversight Board Resolution regarding the Asset Transfer was sent to DOF on September 10, 2019. DOF objected to the portion of the one-time payment of \$3.5 million that would not flow to the taxing entities. On October 10, 2019, FOT revised its proposed one-time payment from \$3.5M to \$4.4M, while holding that the share of the one-time payment not flowing to the taxing entities and retained by the City is set by the

Bond Expenditure Agreement. Further clarification was provided by email on November 1, 2019.

12. Update on Waterproofing Investigation. Staff received bids for a waterproofing investigation from Architectural Resources Group and Wiss, Janney, Elstner Associates (WJE). Staff has chosen WJE based on detail of proposal, expertise of the firm, and familiarity with the Fox Theater project. The results of this study will inform further roof work. In the interim, patching will continue as needed.
13. Fox Oakland Theater Inc to withdraw from membership of ORNMTC 2 LLC.
Moved by Alexa Jeffress and seconded by Hui-Chang Li, and approved by consensus.
14. Adjournment at 4:15 pm.

DRAFT

Hui Chang Li, Secretary

[to be signed when approved by FOT Board]

5. Board appointments – ***Action Item***

- a. Confirm Brendan Moriarty and Anthony Reese

CITY OF OAKLAND

Memorandum

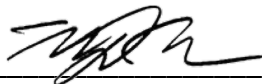
TO: Ed Reiskin, Agency Administrator
FROM: Alexa Jeffress, Director - Economic and Workforce Development Department
DATE: June 24, 2020
RE: Board Appointment for FOT, Inc.

The Fox Oakland Theater, Inc., a California nonprofit public benefit corporation controlled by the City of Oakland, currently has five City of Oakland staff members on its Board:

Alexa Jeffress, President
Adam Benson, Chief Financial Officer
Hui-Chang Li, Secretary
Betsy Lake, Director
Kelley Kahn, Director

Pursuant to FOT Bylaws, additional Board members need to be nominated by the Agency Administrator and then confirmed by the Board. The next meeting of the FOT Board is scheduled for July 15, 2020 at 10 a.m. I am recommending that Brendan Moriarty and Anthony Reese from the Real Estate Division be added to the FOT Board as Directors.

Please confirm this nomination by signing below.



Approved by:
Ed Reiskin, Agency Administrator

CC: Adam Benson, Hui-Chang Li, Betsy Lake, Kelley Kahn, Jens Hillmer

6. FOT Bylaw Amendment – ***Action Item***

- a. To clarify that FOT is a City-controlled entity subject to City policies and programs and further consistency with the Brown Act (Gov. Code 54950 et. seq.), the California Public Records Act (Gov. Code 6250-6270), and Chapter 2.20 of the Oakland Municipal Code

**ACTION BY UNANIMOUS WRITTEN CONSENT OF THE BOARD OF DIRECTORS
OF
FOX OAKLAND THEATER, INC.**

RESOLUTION NO. _____

RE: AUTHORIZING AMENDMENT OF THE BYLAWS OF THE FOX OAKLAND THEATER, INC. TO CLARIFY THE CORPORATION IS A CITY-CONTROLLER ENTITY SUBJECT TO POLICIES AND PROGRAMS OF THE CITY OF OAKLAND AND TO FURTHER CONSISTENCY WITH APPLICABLE STATE AND LOCAL LAWS AND REQUIREMENTS, INCLUDING THE PUBLIC NOTICING AND PUBLIC RECORDS REQUIREMENTS OF THE BROWN ACT (GOV. CODE § 54950 ET. SEQ), THE CALIFORNIA PUBLIC RECORDS ACT (GOV. CODE §§ 6250-6270), AND CHAPTER 2.20 OF THE OAKLAND MUNICIPAL CODE

The undersigned, constituting all members of the Board of Directors of Fox Oakland Theater Inc., a California nonprofit public benefit corporation (the “Corporation”), do hereby adopt the following statements as true and correct and, where resolved, comprise the resolutions and authorizations of the Corporation:

WHEREAS, pursuant to its Articles of Incorporation and Bylaws, the Corporation is formed and operated to support the City of Oakland (“City”) and the Successor Redevelopment Agency to restore and operate the historic Fox Theater;

WHEREAS, pursuant to its Bylaws, all the Directors of the Corporation must be employees of the City or ORSA and their position is deemed vacant if the Director ceases to be such an employee of the City or ORSA;

WHEREAS, the City Attorney’s Office shall advise all boards of the City pursuant to Section 401 of the Charter;

WHEREAS, the Corporation as City-controlled entity is subject to all City rules, policies, and programs set forth in the Oakland Municipal Code, including but not limited to the public procurement laws;

WHEREAS, the Bylaws of the Corporation may be amended by the vote of a majority of all members of the Board of Directors upon receipt of a thirty (30) day notice of a vote to amend the Bylaws, pursuant to Section 3 of Article X of the Bylaws;

WHEREAS, the notice requirements contained in the Bylaws may be waived in writing by any Director, either before or after the meeting, pursuant to Section 9 of Article V of the Bylaws;

WHEREAS, the Corporation deems it to be in its best interest to amend its Bylaws to further consistency with applicable state and local laws and requirements; and

NOW, THEREFORE, BE IT RESOLVED: That the Corporation desires to amend the Bylaws as attached as Exhibit A and hereby incorporated.

FURTHER RESOLVED: That the Corporation is a City-controlled entity subject to the public noticing and public records requirements of the Ralph M. Brown Act (Gov. Code § 54950 et. seq), the California Public Records Act (Gov. Code §§ 6250-6270), and Chapter 2.20 “Public Meetings and Public Records” of the Oakland Municipal Code.

FURTHER RESOLVED: That the Corporation shall comply with all City rules, policies, and programs set forth in the Oakland Municipal Code, including but not limited to the public procurement laws set forth in Chapter 2.04 “Purchasing System” of the Oakland Municipal Code, as amended, and subject to applicable state and federal laws.

FURTHER RESOLVED: That the City Attorney shall serve as General Counsel to the Corporation where there are no directly adverse conflicts, and the City Attorney shall approve as to form and legality all contracts and documents of the Corporation in order to maintain oversight and ensure compliance with state and City requirements;

RESOLVED FURTHER: That to the extent that any actions authorized herein have already been performed by the Corporation, such actions are hereby ratified, confirmed and approved in all respects.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK- SIGNATURES ON FOLLOWING PAGE]

IN WITNESS HEREOF, the undersigned Members of the Corporation have executed this Action by Unanimous Written Consent as of July 15, 2020.

Alexa Jeffress, President

Hui Chang Li, Secretary

Adam Benson, Chief Financial Officer

Betsy Lake, Board Member

Brendan Moriarty, Board Member

Anthony Reese, Board Member

BYLAWS

OF

FOX OAKLAND THEATER, INC.

A California Nonprofit Public Benefit Corporation

ARTICLE I

NAME

The name of this Corporation is Fox Oakland Theater, Inc., a California nonprofit public benefit corporation.

ARTICLE II

OFFICES

The principal executive office of the Corporation shall be located in the City of Oakland, State of California, at 250 Frank Ogawa Plaza, 5th floor, Oakland, California, or such other address as the Board of Directors may from time to time designate. Additional offices may be established and maintained at such place or places in the City of Oakland, State of California, as the Board of Directors may from time to time designate.

ARTICLE III

GENERAL AND SPECIFIC PURPOSES; LIMITATIONS

Section 1. General and Specific Purposes. The purposes of the Corporation as outlined in the Articles of Incorporation are:

- (a) To preserve historic resources for cultural, historic, educational, and recreational purposes in the City of Oakland,
- (b) To serve low-income communities and low-income persons in the City of Oakland by promoting economic development and job creation in such communities by removing physical, social and economic blight thereby creating and encouraging economic development.

This Corporation is formed, and shall be operated, to support the City of Oakland, a municipal corporation in the State of California, and the Oakland Redevelopment Successor Agency, the successor agency to the Redevelopment Agency of the City of Oakland under Health and Safety Code Section 34173 ("Successor Agency"). . In the context of this purpose, the principal activities of the Corporation will be restore and operate the Fox Theater in Oakland, California as an historic resource in Oakland, as an educational facility, and as a performing arts venue.

Section 2. Limitations. Notwithstanding any other provisions of the Articles of the Incorporation, the Corporation shall not, except to an insubstantial degree, engage in any other activities or exercise of power that do not further the purposes of the Corporation. The Corporation shall not carry on any other activities not permitted to be carried on by: (a) a corporation exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code, or the corresponding section of any future federal tax code; or (b) by a corporation, contributions to which are deductible under Section 170(c)(2) of the Internal Revenue Code, or the corresponding section of any future federal tax code.

Section 3. Public Meetings and Public Records. The Corporation is a City-controlled entity subject to the public noticing and public record requirements of the Ralph M. Brown Act (Gov. Code § 54950 et. seq), the California Public Records Act (Gov. Code §§ 6250-6270), and Chapter 2.20 “Public Meetings and Public Records” of the Oakland Municipal Code.

Section 4. City Polices and Programs. The Corporation shall comply with City rules, policies, and programs set forth in the Oakland Municipal Code, including but not limited to the public procurement laws set forth in Chapter 2.04 “Purchasing System” of the Oakland Municipal Code, as amended, and subject to applicable state and federal laws.

Section 5. General Counsel. The City Attorney’s Office for the City of Oakland shall serve as General Counsel to the Corporation, and all documents, agreements, and contracts shall be approved as to form and legality.

ARTICLE IV

MEMBERSHIP

This Corporation shall have no members. All corporate actions shall be approved by the Board of Directors as provided in these Bylaws. All rights which would otherwise rest in the members shall rest in the Directors.

ARTICLE V

DIRECTORS

Section 1. **Powers of Directors.**

(a) General Powers. Subject to the provisions and limitations of the California Public Benefit Corporation Law and any other applicable laws, and subject to any limitations of the Articles of Incorporation or these Bylaws, the

Corporation's powers shall be exercised, by or under the direction of the Board of Directors

(b) **Specific Powers.** Without prejudice to the general powers set forth in Section 1(a) of these Bylaws, but subject to the same limitations, the board shall have the power to do the following:

(1) Appoint and remove, at the pleasure of the Board of Directors, all corporate officers, agents, and employees; prescribe powers and duties for them as consistent with the California Public Benefit Corporations Law, the Articles of Incorporation, and these Bylaws; fix their compensation; and require from them security for faithful service.

(2) Change the principal office or the principal business office in California from one location to another; and designate a place in California for holding any meeting of members.

(3) Borrow money and incur indebtedness on the Corporation's behalf and cause to be executed and delivered for the Corporation's purposes, in the corporate name, promissory notes, bonds, debentures, deeds of trust, mortgages, pledges, hypothecations, and other evidence of debt and securities.

(4) Adopt and use a corporate seal; and alter the forms of the seal.

Section 2. Number of Directors. The Board of Directors shall consist of at least three (3) but no more than seven (7) directors unless changed by amendment to these bylaws.

Section 3. Designation of Directors. All Directors shall be nominated by the Administrator of the Successor Agency and confirmed by the Board of Directors. Each Director shall hold office until the expiration of the term for which designated and until a successor has been designated and qualified.

The City of Oakland and the Successor Agency are governmental agencies that represent the interests of residents of low-income communities in the City of Oakland. All of the Directors of the Corporation shall be employees of the City of Oakland or the Successor Agency whose employment duties are related in whole or in part to the advancement of redevelopment, community development, or economic development in the City of Oakland. A Director's term shall be ended and his or her position shall be deemed vacant upon that Director's ceasing to be an employee of the City of Oakland or the Successor Agency.

Section 4. Term of Office of Directors. Directors are designated for a term of five (5) years.

Section 5. Vacancies. A vacancy shall be deemed to exist in the event that the actual number of Directors is less than the authorized number for any reason, including, but not limited to, death, removal, resignation, or the Director's ceasing to be an employee of the City of Oakland or the Successor Agency of the City of Oakland. A resignation shall be effective upon receipt of written notice by the Board, the President, or the Secretary, unless the notice specifies a later time of effectiveness. The Administrator of the Successor Agency may remove any Director with or without cause. Absence of a Director from three or more consecutive Board meetings shall constitute cause for removal. If a vacancy occurs, the Administrator of the Successor Agency shall designate a Director to fill the vacancy. A Director so designated shall serve for the unexpired term of his or her predecessor and shall be subject to the same qualifications as provided for herein for Directors.

Section 6. Meetings of the Board. The Board of Directors shall meet at least twice each fiscal year at such dates, times and places as the Board of Directors may determine. At the first meeting held during each fiscal year, the Board of Directors shall elect officers. In addition to the semi-annual meetings, additional regular or special meetings shall be held at such times as shall from time to time be fixed by the Directors. Special meetings of the Board of Directors for any purpose or purposes may be called at any time by the President of the Board or by any three (3) Directors. Notice of regular meetings shall be given to the Directors not less than seventy-two (72) hours prior to the time of the meeting pursuant to Section 54954.2 of the Government Code and Section 2.20.080 of the Oakland Municipal Code, as both may be amended. Notice requirements of special meetings are set forth below in Section 8 of this Article V.

Section 7. Meetings by Telephone or Other Telecommunications Equipment. Any Board meeting may be held by conference telephone, video screen communication, or other communications equipment, subject to Section 54953 of the Government Code, as amended. All votes shall be by roll call. The agenda must provide the opportunity for the public to address the Board. Participation in a meeting under this Section shall constitute presence in person at the meeting if all of the following apply:

- (a) Each Director participating in the meeting can communicate concurrently with all other Directors;
- (b) Each Director is provided the means of participating in all matters before the Board, including the capacity to propose, or to interpose an objection to, a specific action to be taken by the Corporation;
- (c) The Board has adopted and implemented a means of verifying both of the following:
 - (1) A person communicating by telephone, video screen, or other communications equipment is a Director entitled to participate in the Board meeting.

- (2) All statements, questions, actions or votes were made by that Director and not by another person not permitted to participate as a Director.

Section 8. Notice of Special Board Meetings. Notice of special meetings shall comply with Section 54956 of the Government Code and Section 2.20.070 of the Oakland Municipal Code, as both may be amended, and shall be given to the Directors not less than forty-eight (48) hours prior to the time of the meeting.

Section 9. [Intentionally Omitted]

Section 10. Quorum of Directors. A quorum for any meeting of the Board of Directors shall be a majority of the members of the Board. Except where a greater vote is required by the Articles of Incorporation or these Bylaws or by applicable law, if a quorum is present, the affirmative vote of a majority of the Directors present at the meeting, entitled to vote, and voting on any matter, shall be the act of the Board of Directors.

Section 11. [Intentionally Omitted]

Section 12. Standard of Care. A Director shall perform the duties of a director, including duties as a member of any committee of the Board on which the Director may serve, in good faith, in a manner such Director believes to be in the best interest of the Corporation and with such care, including reasonable inquiry, as an ordinarily prudent person in a like situation would use under similar circumstances.

In performing the duties of a Director, a Director shall be entitled to rely on information, opinions, reports or statements, including financial statements and other financial data, in each case prepared or presented by:

- (a) One or more officers or employees of the Corporation whom the Director believes to be reliable and competent in the matters presented;
- (b) Counsel, independent accountants or other persons as to matters which the Director believes to be within such person's professional or expert competence; or
- (c) A committee of the Board upon which the Director does not serve, as to matters within its designated authority, which committee the Director believes to merit confidence, so long as, in any such case, the Director acts in good faith, after reasonable inquiry when the need therefore is indicated by the circumstances and without knowledge that would cause such reliance to be unwarranted.

A person who performs the duties of a Director in accordance with the above shall have no liability based upon any failure or alleged failure to discharge that person's

obligations as a Director, including, without limiting the generality of the foregoing, any actions or omissions which exceed or defeat a public or charitable purpose to which a corporation, or assets held by it, are dedicated.

Section 13. Loans and Self-Dealing Transactions.

A. Loans. The Corporation shall not make any loan of money or property to or guarantee the obligation of any Director or officer.

B. Self-Dealing Transactions. The Board shall not approve a self-dealing transaction. A self-dealing transaction is one to which the Corporation is a party and in which one or more of the Directors has a material financial interest and which does not meet the requirements of Subsection C below.

C. Exemptions. The following transactions are exempted from the prohibition of Subsection B above:

- (1) A transaction which is part of a public or charitable program approved in good faith by the Board of Directors without unjustified favoritism and which results in a benefit to one or more Directors of their families only because they are in a class of persons intended to be benefited by the program.
- (2) A transaction of which the Director with a material financial interest has no actual knowledge, and which does not exceed the lesser of one percent of the gross receipts of the Corporation for the preceding fiscal year or \$100,000.
- (3) A transaction which has been approved by the Attorney General before or after it was consummated.
- (4) A transaction which the Board of Directors, having knowledge of the material facts concerning the transaction and the Director's interest in the transaction, authorizes (by a vote of a majority of the Directors then in office without counting the vote of the interested Director) after considering and in good faith determining, upon reasonable investigation under the circumstances, that (a) the transaction will be entered into by the Corporation for its own benefit, (b) the transaction is fair and reasonable as to the Corporation, and (c) the Corporation could not have obtained a more advantageous arrangement with reasonable effort under the circumstances.

Section 14. Contracts with Directors. No director of this Corporation nor any other Corporation, firm, association, or other entity in which one or more of this Corporation's Directors are Directors or have a material financial interest, shall be

interested, directly or indirectly, in any contract or transaction with this Corporation, unless (a) the material facts regarding that Director's financial interest in such contract or transaction or regarding such common directorship, officeship, or financial interest are fully disclosed in good faith and noted in the minutes, or are known to all members of the board prior to the board's consideration of such contract or transaction; (b) such contract or transaction is authorized in good faith by a majority of the Board of Directors by a vote sufficient for that purpose without counting the votes of the interested Directors; (c) before authorizing or approving the transaction, the Board of Directors considers and in good faith decides after reasonable investigation that the Corporation could not obtain a more advantageous arrangement with reasonable effort under the circumstances; and (d) the Corporation for its own benefit enters into the transaction, which is fair and reasonable to the Corporation at the time the transaction is entered into.

This Section does not apply to a transaction that is part of a charitable program of this Corporation if it (a) is approved or authorized by the Corporation in good faith and without unjustified favoritism and (b) results in a benefit to one or more Directors or their families because they are in the class of persons intended to be benefited by the charitable program of this Corporation.

Section 15. Inspection Rights. Every Director shall have the absolute right at any reasonable time to inspect and copy all books, records, and documents, and to inspect the physical properties of this corporation. Such inspection by a Director may be made in person or by agent or attorney and the right of inspection includes the right to copy and make extracts.

Section 16. Compensation. No Director shall receive any compensation from the Corporation for serving on the Board, other than his or her salary or other regular compensation received as an employee of the City of Oakland. Subject to approval by the Board of Directors, Directors shall be entitled to receive reimbursement for necessary travel and other actual expenses incurred in performing duties of his or her office and in attending meetings of the Board of Directors and meetings of committees of the Board of Directors.

Section 17. Interested Persons Limit. No more than forty-nine (49) percent of the persons serving on the Corporation's Board may be interested persons. For purposes of this section, "interested persons" means either:

- (a) Any person currently being compensated by the Corporation for services rendered to it within the previous twelve (12) months, whether as a full- or part-time employee, independent contractor, or otherwise; or
- (b) Any brother, sister, ancestor, descendant, spouse, brother-in-law, sister-in-law, son-in-law, daughter-in-law, mother-in-law or father-in-law of any such person.

ARTICLE VI

COMMITTEES

Section 1. Committees of Directors. The Board of Directors may, by resolution adopted by a majority of the Directors then in office, designate one or more committees, each consisting of two or more Directors, to serve at the pleasure of the Board. Appointments to such committees shall be made annually by majority vote of the Directors then in office. Any committee, to the extent provided in the resolution, shall have all the authority of the Board, except that no committee, regardless of the Board resolution, may:

- (a) Fill vacancies on the Board of Directors or on any committee;
- (b) Fix compensation of the Directors for serving on the Board or any committee;
- (c) Amend or repeal these Bylaws or adopt new bylaws;
- (d) Amend or repeal any resolution of the Board of Directors which by its express terms is not so amendable or repealable;
- (e) Appoint any other committees of the Board of Directors or the members of these committees; or
- (f) Approve any self-dealing transaction.

Section 2. Advisory Committees. Advisory committees may be appointed from time to time by the Board of Directors. Advisory committees' membership may consist of Directors only, both Directors and nondirectors, or nondirectors only. Advisory committees have no legal authority to act for the Corporation, but shall report their findings and recommendations to the Board of Directors.

Section 3. Meetings. Except as otherwise provided in this Article, meetings and actions of committees shall be governed by and held and taken in accordance with the provisions of these Bylaws concerning meetings of Directors, with such changes in the content of those Bylaws as are necessary to substitute the committee and its members for the Board of Directors and its members. Minutes shall be kept of each meeting of any committee and shall be filed with the corporate records. The Board of Directors may adopt rules for the governance of any committee not inconsistent with the provisions of these bylaws.

ARTICLE VII

OFFICERS

Section 1. Officers. The officers of the Corporation shall be a President, Secretary, Chief Financial Officer and such officers as the Board of Directors may appoint. No person may hold more than one of these offices at one time. Other than the President, the officers need not be members of the Board of Directors

Section 2. Appointment. The Board of Directors shall elect all officers of the Corporation for terms of one year, or until their successors are elected and qualified.

Section 3. Removal. Subject to the rights, if any, of the officer under any contract of employment, any officer of the Corporation may be removed with or without cause by the Board of Directors at any time.

Section 4. Resignation. Any officer may resign at any time by giving written notice to the Corporation. Any resignation shall take effect at the date of the receipt of that notice or at any later time specified by that notice and unless otherwise specified in that notice, the acceptance of the resignation shall not be necessary to make it effective. Any resignation is without prejudice to the rights, if any, of this corporation under any contract to which the officer is a party.

Section 5. President. The President shall be the chief executive officer of the Corporation and shall be responsible for conducting the affairs of the Corporation in a manner consistent with the policies and directives of the Board of Directors. He or she shall supervise, direct, and control the Corporation's activities, affairs, and officers. The President shall have such other powers and duties as the Board of Directors or these Bylaws, as amended, may require.

Section 6. Secretary. The Secretary shall serve notice of and act as secretary at all meetings and proceedings of the Board of Directors, shall record all such proceedings and actions of the Board of Directors in the minute book and shall be responsible for conducting the affairs of the Corporation in a manner consistent with the policies and directives of the Board of Directors. The minutes of the meetings shall include the time and place that the meeting.

The Secretary shall keep or cause to be kept, at the principal California office, a copy of the Articles of Incorporation and Bylaws, as amended to date.

The Secretary shall give, or cause to be given, notice of all meetings of the Board of Directors, and of Committees of the Board of Directors that these Bylaws require to be given. The Secretary shall keep the corporate seal, if any, in safe custody and shall have such other powers and perform such other duties as the Board of Directors or the Bylaws may require.

Section 7. Chief Financial Officer. The Chief Financial Officer of the Corporation shall keep and maintain, or cause to be kept and maintained, adequate and correct books and accounts of the Corporation's properties and transactions. The Chief Financial Officer shall send or cause to be given to the Directors such financial statements and reports as are required to be given by law, by these Bylaws, or by the Board of Directors. The books of account shall be open to inspection by any Director at all reasonable times.

The Chief Financial Officer shall (i) deposit or cause to be deposited, all money and other valuables in the name and to the credit of the Corporation with such depositories as the Board of Directors may designate; (ii) disburse the Corporation's funds as the board may order; (iii) render to the President, Chairman of the Board, if any, and the Board of Directors, when requested, an account of all transactions as [Chief Financial Officer] and of the financial condition of the Corporation; and (iv) have such other powers and perform such other duties as the Board or these Bylaws may require.

If required by the Board of Directors, the Chief Financial Officer shall give the Corporation a bond in the amount and with the surety or sureties specified by the Board of Directors for faithful performance of the duties of the office and for restoration to the Corporation of all of its books, papers, vouchers, money and other property of every kind in the possession or under the control of the Chief Financial Officer on his or her death, resignation, retirement, or removal from office.

The Chief Financial Officer may be an employee of the City of Oakland or Successor Agency appointed by the City Administrator or Administrator of the Successor Agency.

Section 8. Compensation. Officers shall not receive compensation for serving in their capacities as such provided, other than his or her salary or other regular compensation received as an employee of the City of Oakland or the Successor Agency. However, officers may be reimbursed for their reasonable expenses incurred in performing duties of his or her office.

Section 9. Execution of Instruments. Any and all instruments executed in the name of the Corporation, including, but not limited to, contracts, agreements, purchase orders, notes, deeds, deeds of trust, mortgages, leases, security agreements, checks and drafts issued, endorsements of checks and drafts received, certificates, applications and reports, shall be executed by one or more officers, employees or agents of the Corporation as authorized from time to time by the Board of Directors. Such authorization may be general or confined to specific instances. The respective officers and duties thereof as established and defined in this Article and by resolution of the Board of Directors include, except as otherwise provided, the authority to execute instruments in the name of the Corporation when the execution of the instrument is incident to carrying out the duties of the offices.

ARTICLE VIII

RECORDS

Section 1. Minute Book. The Corporation shall keep or cause to be kept a minute book which shall contain:

- (a) The record of all meetings of the Board of Directors including date, place, those attending the proceedings thereof, a copy of the notice of the meeting and when and how given, written consent to holding meeting, written approvals of minutes of meeting, and unanimous written consents to action of the Board of Directors without a meeting, and similarly as to meetings of committees of the Board of Directors and as to meetings or written consents of the Incorporator of the Corporation prior to the appointment of the initial Board of Directors.
- (b) A copy of the Articles of Incorporation and all amendments thereof and a copy of all certificates filed with the Secretary of State.
- (c) A copy of the Bylaws, as amended, duly certified by the Secretary.

Section 2. Annual Report. Financial statements shall be prepared as soon as reasonably practicable after the close of the fiscal year. The financial statements shall contain in appropriate detail the following:

- (a) The assets and liabilities, including trust funds, of the Corporation as of the end of the fiscal year.
- (b) The principal changes in assets and liabilities, including trust funds, during the fiscal year.
- (c) The revenue or receipts of the Corporation, both unrestricted and restricted to particular purposes, for the fiscal year.
- (d) The expenses or disbursements of the Corporation, for both general and restricted purposes during the fiscal year.
- (e) Any transaction during the previous fiscal year involving \$50,000 or more to which the Corporation or a subsidiary was a party and in which any Director or officer of the Corporation or subsidiary had or has direct or indirect material financial interest. The report must disclose the names of the interested persons involved in such transaction, stating such person's relationship to the Corporation, the nature of such person's interest in the transaction and, where practicable, the amount of such interest.

- (f) The amount and circumstances of any indemnification or advances aggregating more than \$10,000 paid during the fiscal year to any officer or Director of the Corporation.

Such financial statements shall be accompanied by any report thereon of independent accountants, or, if there is no such report, the certificate of an authorized officer of the Corporation that such statements were prepared without audit from the books and records of the Corporation. A report including the financial statements prescribed above shall be furnished annually to all Directors of the Corporation.

ARTICLE IX

INDEMNIFICATION

Section 1. Indemnification of Directors, Officers and Employees. The Corporation shall indemnify its Directors, officers, employees and other eligible persons pursuant to the provisions of Section 5238 of the California Nonprofit Public Benefit Corporation Law, or pursuant to a contract entered into with any employee who is not an officer or Director, against all expenses, judgments, fines, settlements, and other amounts actually and reasonably incurred by them in connection with any "proceeding." As that term is used in that section, and including an action by or in the right of the Corporation, by reason of the fact that the person is or was a person described in that section. "Expenses", as used in this bylaw, shall have the same meaning as in that Section 5238 of the Corporations Code.

On written request to the Board of Directors by any person seeking indemnification under Corporations Code Section 5238(b), the Board of Directors shall promptly decide under Corporation Code Section 5238(c) whether the applicable standard of conduct set forth in Corporations Code Section 5238(b) or Section 5238(c) has been met and, if so, the Board of Directors shall authorize indemnification. If the Board of Directors cannot authorize indemnification, because the number of Directors who are parties to the proceeding with respect to which indemnification is sought prevents the formation of a quorum of directors who are not parties to that proceeding, the Board of Directors shall not authorize the indemnification, and schedule another meeting for this authorization to be voted on by a quorum of the Board of Directors

To the fullest extent permitted by law and except as otherwise determined by the Board of Directors in a specific instance, expenses incurred by a person seeking indemnification under Article IX of these Bylaws in defending any proceeding covered by those Sections shall be advanced by the Corporation before final disposition of the proceeding, on receipt by the Corporation of an undertaking by or on behalf of that person that the advance will be repaid unless it is ultimately found that the person is entitled to be indemnified by the Corporation for those expenses.

Section 2. Advancement of Expenses. Expenses incurred in defending any proceeding may be advanced by the Corporation as authorized in Section 5328 of the California Nonprofit Public Benefit Corporation Law prior to final disposition of such proceeding, upon receipt of an undertaking by or on behalf of the Director, officer or employee who is entitled to be indemnified.

ARTICLE X

MISCELLANEOUS

Section 1. Fiscal Year. The fiscal year of the Corporation shall be from July 1 through June 30 of each year.

Section 2. Dedication of Assets. The property of the Corporation is irrevocably dedicated to public purposes and no part of the net income or assets of the Corporation shall ever inure to the benefit of any director, officer or member thereof or to the benefit of any private person. In the event of dissolution, any assets of the Corporation remaining after compliance with the applicable provisions of Chapter 15 (commencing with Section 6510), Chapter 16 (commencing with Section 6610), and Chapter 17 (commencing with Section 6710) of the California Nonprofit Public Benefit Corporation Law shall be distributed to a nonprofit fund, foundation, or corporation, other than one created for religious purposes, that is organized and operated exclusively for charitable purposes, and which has established and maintained its tax-exempt status under Section 501(c)(3) or 501(c)(4) of the Internal Revenue Code or the corresponding provision of any future Internal Revenue Law.

Section 3. Amendment of Bylaws. These Bylaws may be amended by the vote of a majority of all of the members of the Board of Directors.

Section 4. Reimbursement of Expenses of the Corporation. The Corporation shall provide full reimbursement for monies expended on behalf of the Corporation by its officers or Directors if such expenditures have received prior approval from the Board of Directors.

CERTIFICATE OF SECRETARY

I certify that I am the duly elected and acting Secretary of Fox Oakland Theater, Inc., a California nonprofit public benefit corporation; that these Bylaws, consisting of eleven pages are the Bylaws of this Corporation as adopted by the Board of Directors on July 15, 2020 and that these Bylaws have not been amended or modified since that date.

Executed on _____ at Oakland, California.

By: _____

Name: _____

Its: Secretary

BYLAWS

OF

FOX OAKLAND THEATER, INC.

A California Nonprofit Public Benefit Corporation

ARTICLE I

NAME

The name of this Corporation is Fox Oakland Theater, Inc., a California nonprofit public benefit corporation.

ARTICLE II

OFFICES

The principal executive office of the Corporation shall be located in the City of Oakland, State of California, at 250 Frank Ogawa Plaza, 5th floor, Oakland, California, or such other address as the Board of Directors may from time to time designate. Additional offices may be established and maintained at such place or places in the City of Oakland, State of California, as the Board of Directors may from time to time designate.

ARTICLE III

GENERAL AND SPECIFIC PURPOSES; LIMITATIONS

Section 1. General and Specific Purposes. The purposes of the Corporation as outlined in the Articles of Incorporation are:

(a1) ~~To the preservation of~~ historic resources for cultural, historic, educational, and recreational purposes in the City of Oakland,

(b2) ~~To~~ serve low-income communities and low-income persons in the City of Oakland by promoting economic development and job creation in such communities by removing physical, social and economic blight thereby creating and encouraging economic development.

This Corporation is formed, and shall be operated, to support the City of Oakland, a municipal corporation in the State of California, and the [Oakland Redevelopment Successor Agency, the successor agency to the](#) -Redevelopment Agency of the City of Oakland [under Health and Safety Code Section 34173 \("Successor Agency"\)](#), ~~- a community redevelopment agency organized and existing under the California Community Redevelopment Law.~~ In the context of this purpose, the principal activities of the Corporation will be restore and operate the Fox Theater in

Oakland, California as an historic resource in Oakland, as an educational facility, and as a performing arts venue.

Section 2. Limitations. Notwithstanding any other provisions of the Articles of the Incorporation, the Corporation shall not, except to an insubstantial degree, engage in any other activities or exercise of power that do not further the purposes of the Corporation. The Corporation shall not carry on any other activities not permitted to be carried on by: (a) a corporation exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code, or the corresponding section of any future federal tax code; or (b) by a corporation, contributions to which are deductible under Section 170(c)(2) of the Internal Revenue Code, or the corresponding section of any future federal tax code.

Section 3. Public Meetings and Public Records. The Corporation is a City-controlled entity subject to the public noticing and public record requirements of the Ralph M. Brown Act (Gov. Code § 54950 et. seq), the California Public Records Act (Gov. Code §§ 6250-6270), and Chapter 2.20 "Public Meetings and Public Records" of the Oakland Municipal Code.

Section 4. City Polices and Programs. The Corporation shall comply with City rules, policies, and programs set forth in the Oakland Municipal Code, including but not limited to the public procurement laws set forth in Chapter 2.04 "Purchasing System" of the Oakland Municipal Code, as amended, and subject to applicable state and federal laws.

Section 5. General Counsel. The City Attorney's Office for the City of Oakland shall serve as General Counsel to the Corporation, and all documents, agreements, and contracts shall be approved as to form and legality.

ARTICLE IV

MEMBERSHIP

This Corporation shall have no members. All corporate actions shall be approved by the Board of Directors as provided in these Bylaws. All rights which would otherwise rest in the members shall rest in the Directors.

ARTICLE V

DIRECTORS

Section 1. **Powers of Directors.**

(a) **General Powers.** Subject to the provisions and limitations of the California Public Benefit Corporation Law and any other applicable laws, and subject to any limitations of the Articles of Incorporation or these Bylaws, the Corporation's powers shall be exercised, by or under the direction of the Board of Directors

(b) **Specific Powers.** Without prejudice to the general powers set forth in Section 1(a) of these Bylaws, but subject to the same limitations, the board shall have the power to do the following:

(1) Appoint and remove, at the pleasure of the Board of Directors, all corporate officers, agents, and employees; prescribe powers and duties for them as consistent with the California Public Benefit Corporations Law, the Articles of Incorporation, and these Bylaws; fix their compensation; and require from them security for faithful service.

(2) Change the principal office or the principal business office in California from one location to another; and designate a place in California for holding any meeting of members.

(3) Borrow money and incur indebtedness on the Corporation's behalf and cause to be executed and delivered for the Corporation's purposes, in the corporate name, promissory notes, bonds, debentures, deeds of trust, mortgages, pledges, hypothecations, and other evidence of debt and securities.

(4) Adopt and use a corporate seal; and alter the forms of the seal.

Section 2. **Number of Directors.** The Board of Directors shall consist of at least three (3) but no more than seven (7) directors unless changed by amendment to these bylaws.

Section 3. **Designation of Directors.** ~~The initial Directors shall be Daniel Vanderprieem, Niccolo Deluca, Katano Kasaine, Gregory Hunter, and Patrick Lane. Thereafter All~~ Directors shall be ~~designated~~ nominated by the ~~Agency~~ Administrator of the ~~Redevelopment-Successor Agency of City of Oakland~~ and confirmed by the Board of Directors. Each Director shall hold office until the expiration of the term for which designated and until a successor has been designated and qualified.

The City of Oakland and the ~~Redevelopment-Successor Agency of the City of Oakland~~ are governmental agencies that represent the interests of residents of low-income communities in the City of Oakland. All of the Directors of the Corporation shall be employees of the City of Oakland or the ~~Redevelopment-Successor Agency of the City of Oakland~~ ("Oakland Redevelopment Agency") whose employment duties are related in whole or in part to the advancement of redevelopment, community development, or economic development in the City of Oakland. A Director's term shall be ended and his or her position shall be deemed vacant upon that Director's ceasing to

be an employee of the City of Oakland or the [Redevelopment Successor Agency of the City of Oakland](#).

Section 4. Term of Office of Directors. Directors are designated for a term of five (5) years.

Section 5. Vacancies. A vacancy shall be deemed to exist in the event that the actual number of Directors is less than the authorized number for any reason, including, but not limited to, death, removal, resignation, or the Director's ceasing to be an employee of the City of Oakland or the [Redevelopment Successor Agency of the City of Oakland](#). A resignation shall be effective upon receipt of written notice by the Board, the President, or the Secretary, unless the notice specifies a later time of effectiveness. The [Agency Administrator of the Oakland Redevelopment Successor Agency](#) may remove any Director with or without cause. Absence of a Director from three or more consecutive Board meetings shall constitute cause for removal. If a vacancy occurs, the [Agency Administrator of the Oakland Redevelopment Successor Agency](#) shall designate a Director to fill the vacancy. A Director so designated shall serve for the unexpired term of his or her predecessor and shall be subject to the same qualifications as provided for herein for Directors.

Section 6. Meetings of the Board. The Board of Directors shall meet at least twice each fiscal year at such dates, times and places as the Board of Directors may determine. At the first meeting held during each fiscal year, the Board of Directors shall elect officers. In addition to the semi-annual meetings, additional regular or special meetings shall be held at such times as shall from time to time be fixed by the Directors. Special meetings of the Board of Directors for any purpose or purposes may be called at any time by the President of the Board or by any three (3) Directors. [Notice of regular meetings shall be given to the Directors not less than seventy-two \(72\) hours prior to the time of the meeting pursuant to Section 54954.2 of the Government Code and Section 2.20.080 of the Oakland Municipal Code, as both may be amended. Notice requirements of special meetings are set forth below in Section 8 of this Article V.](#)

Section 7. Meetings by Telephone or Other Telecommunications Equipment. Any Board meeting may be held by conference telephone, video screen communication, or other communications equipment, [subject to Section 54953 of the Government Code, as amended. All votes shall be by roll call. The agenda must provide the opportunity for the public to address the Board.](#) Participation in a meeting under this Section shall constitute presence in person at the meeting if all of the following apply:

- (a) Each Director participating in the meeting can communicate concurrently with all other Directors;
- (b) Each Director is provided the means of participating in all matters before the Board, including the capacity to propose, or to interpose an objection to, a specific action to be taken by the Corporation;

- (c) The Board has adopted and implemented a means of verifying both of the following:
- (1) A person communicating by telephone, video screen, or other communications equipment is a Director entitled to participate in the Board meeting.
 - (2) All statements, questions, actions or votes were made by that Director and not by another person not permitted to participate as a Director.

Section 8. Notice of Special Board Meetings. Notice of special meetings shall ~~comply with Section 54956 of the Government Code and Section 2.20.070 of the Oakland Municipal Code, as both may be amended, and shall~~ be given to the Directors not less than ~~four (4) days prior to the meeting if delivered by first class mail or not less than forty-eight (48) hours prior to the time of the meeting if the notice is delivered personally or by telephone. If mailed, such notice shall be deemed given when deposited in the United States mail, with postage thereon prepaid, directed to the Director.~~

Section 9. Waivers of Notice. ~~The notice requirements contained in these bylaws may be waived in writing by any Director, either before or after the meeting. The attendance of any Director at a meeting without protesting prior to the conclusion of the meeting the lack of notice of such meeting shall constitute a waiver of notice by him or her. All waivers shall be made part of the minutes of the meetings. [Intentionally Omitted]~~

Section 10. Quorum of Directors. A quorum for any meeting of the Board of Directors shall be ~~a majority three (3) of the~~ members of the Board. Except where a greater vote is required by the Articles of Incorporation or these Bylaws or by applicable law, if a quorum is present, the affirmative vote of a majority of the Directors present at the meeting, entitled to vote, and voting on any matter, shall be the act of the Board of Directors. ~~A meeting at which a quorum is initially present may continue to transact business notwithstanding the withdrawal of Directors, if any action taken is approved by at least a majority of the required quorum for such meeting. A majority of the Directors then present, whether or not constituting a quorum, may adjourn any meeting to another time and place.~~

Section 11. Action In Lieu of a Meeting. ~~Any Board action required or permitted to be taken by the Board may be taken without a meeting, if all Directors of the Board, not including any "interested director" as defined in Corporations Code Section 5233, individually or collectively consent in writing. Such written consent shall be made a part of the minutes of the proceedings of the Board. Such action by written consent shall have the same force and effect as the unanimous vote of the Directors. [Intentionally Omitted]~~

Section 12. Standard of Care. A Director shall perform the duties of a director, including duties as a member of any committee of the Board on which the Director may serve, in good faith, in a manner such Director believes to be in the best interest of the Corporation and with such care, including reasonable inquiry, as an ordinarily prudent person in a like situation would use under similar circumstances.

In performing the duties of a Director, a Director shall be entitled to rely on information, opinions, reports or statements, including financial statements and other financial data, in each case prepared or presented by:

- (a) One or more officers or employees of the Corporation whom the Director believes to be reliable and competent in the matters presented;
- (b) Counsel, independent accountants or other persons as to matters which the Director believes to be within such person's professional or expert competence; or
- (c) A committee of the Board upon which the Director does not serve, as to matters within its designated authority, which committee the Director believes to merit confidence, so long as, in any such case, the Director acts in good faith, after reasonable inquiry when the need therefore is indicated by the circumstances and without knowledge that would cause such reliance to be unwarranted.

A person who performs the duties of a Director in accordance with the above shall have no liability based upon any failure or alleged failure to discharge that person's obligations as a Director, including, without limiting the generality of the foregoing, any actions or omissions which exceed or defeat a public or charitable purpose to which a corporation, or assets held by it, are dedicated.

Section 13. Loans and Self-Dealing Transactions.

A. Loans. The Corporation shall not make any loan of money or property to or guarantee the obligation of any Director or officer.

B. Self-Dealing Transactions. The Board shall not approve a self-dealing transaction. A self-dealing transaction is one to which the Corporation is a party and in which one or more of the Directors has a material financial interest and which does not meet the requirements of Subsection C below.

C. Exemptions. The following transactions are exempted from the prohibition of Subsection B above:

- (1) A transaction which is part of a public or charitable program approved in good faith by the Board of Directors without unjustified favoritism and which results in a benefit to one or more Directors of

their families only because they are in a class of persons intended to be benefited by the program.

- (2) A transaction of which the Director with a material financial interest has no actual knowledge, and which does not exceed the lesser of one percent of the gross receipts of the Corporation for the preceding fiscal year or \$100,000.
- (3) A transaction which has been approved by the Attorney General before or after it was consummated.
- (4) A transaction which the Board of Directors, having knowledge of the material facts concerning the transaction and the Director's interest in the transaction, authorizes (by a vote of a majority of the Directors then in office without counting the vote of the interested Director) after considering and in good faith determining, upon reasonable investigation under the circumstances, that (a) the transaction will be entered into by the Corporation for its own benefit, (b) the transaction is fair and reasonable as to the Corporation, and (c) the Corporation could not have obtained a more advantageous arrangement with reasonable effort under the circumstances.

Section 14. Contracts with Directors. No director of this Corporation nor any other Corporation, firm, association, or other entity in which one or more of this Corporation's Directors are Directors or have a material financial interest, shall be interested, directly or indirectly, in any contract or transaction with this Corporation, unless (a) the material facts regarding that Director's financial interest in such contract or transaction or regarding such common directorship, officeship, or financial interest are fully disclosed in good faith and noted in the minutes, or are known to all members of the board prior to the board's consideration of such contract or transaction; (b) such contract or transaction is authorized in good faith by a majority of the Board of Directors by a vote sufficient for that purpose without counting the votes of the interested Directors; (c) before authorizing or approving the transaction, the Board of Directors considers and in good faith decides after reasonable investigation that the Corporation could not obtain a more advantageous arrangement with reasonable effort under the circumstances; and (d) the Corporation for its own benefit enters into the transaction, which is fair and reasonable to the Corporation at the time the transaction is entered into.

This Section does not apply to a transaction that is part of a charitable program of this Corporation if it (a) is approved or authorized by the Corporation in good faith and without unjustified favoritism and (b) results in a benefit to one or more Directors or their families because they are in the class of persons intended to be benefited by the charitable program of this Corporation.

Formatted: Underline

Section 15. Inspection Rights. Every Director shall have the absolute right at any reasonable time to inspect and copy all books, records, and documents, and to inspect the physical properties of this corporation. Such inspection by a Director may be made in person or by agent or attorney and the right of inspection includes the right to copy and make extracts.

Section 16. Compensation. No Director shall receive any compensation from the Corporation for serving on the Board, other than his or her salary or other regular compensation received as an employee of the City of Oakland. Subject to approval by the Board of Directors, Directors shall be entitled to receive reimbursement for necessary travel and other actual expenses incurred in performing duties of his or her office and in attending meetings of the Board of Directors and meetings of committees of the Board of Directors.

Section 17. Interested Persons Limit. No more than forty-nine (49) percent of the persons serving on the Corporation's Board may be interested persons. For purposes of this section, "interested persons" means either:

- (a) Any person currently being compensated by the Corporation for services rendered to it within the previous twelve (12) months, whether as a full- or part-time employee, independent contractor, or otherwise; or
- (b) Any brother, sister, ancestor, descendant, spouse, brother-in-law, sister-in-law, son-in-law, daughter-in-law, mother-in-law or father-in-law of any such person.

ARTICLE VI

COMMITTEES

Section 1. Committees of Directors. The Board of Directors may, by resolution adopted by a majority of the Directors then in office, designate one or more committees, each consisting of two or more Directors, to serve at the pleasure of the Board. Appointments to such committees shall be made annually by majority vote of the Directors then in office. Any committee, to the extent provided in the resolution, shall have all the authority of the Board, except that no committee, regardless of the Board resolution, may:

- (a) Fill vacancies on the Board of Directors or on any committee;
- (b) Fix compensation of the Directors for serving on the Board or any committee;
- (c) Amend or repeal these Bylaws or adopt new bylaws;

- (d) Amend or repeal any resolution of the Board of Directors which by its express terms is not so amendable or repealable;
- (e) Appoint any other committees of the Board of Directors or the members of these committees; or
- (f) Approve any self-dealing transaction .

Section 2. Advisory Committees. Advisory committees may be appointed from time to time by the Board of Directors. Advisory committees' membership may consist of Directors only, both Directors and nondirectors, or nondirectors only. Advisory committees have no legal authority to act for the Corporation, but shall report their findings and recommendations to the Board of Directors.

Section 3. Meetings. Except as otherwise provided in this Article, meetings and actions of committees shall be governed by and held and taken in accordance with the provisions of these Bylaws concerning meetings of Directors, with such changes in the content of those Bylaws as are necessary to substitute the committee and its members for the Board of Directors and its members. Minutes shall be kept of each meeting of any committee and shall be filed with the corporate records. The Board of Directors may adopt rules for the governance of any committee not inconsistent with the provisions of these bylaws.

ARTICLE VII

OFFICERS

Section 1. Officers. The officers of the Corporation shall be a President, Secretary, Chief Financial Officer and such officers as the Board of Directors may appoint. No person may hold more than one of these offices at one time. Other than the President, the officers need not be members of the Board of Directors

Section 2. Appointment. The Board of Directors shall elect all officers of the Corporation for terms of one year, or until their successors are elected and qualified.

Section 3. Removal. Subject to the rights, if any, of the officer under any contract of employment, any officer of the Corporation may be removed with or without cause by the Board of Directors at any time.

Section 4. Resignation. Any officer may resign at any time by giving written notice to the Corporation. Any resignation shall take effect at the date of the receipt of that notice or at any later time specified by that notice and unless otherwise specified in that notice, the acceptance of the resignation shall not be necessary to make it effective. Any resignation is without prejudice to the rights, if any, of this corporation under any contract to which the officer is a party.

Section 5. President. The President shall be the chief executive officer of the Corporation and shall be responsible for conducting the affairs of the Corporation in a manner consistent with the policies and directives of the Board of Directors. He or she shall supervise, direct, and control the Corporation's activities, affairs, and officers. The President shall have such other powers and duties as the Board of Directors or these Bylaws, as amended, may require.

Section 6. Secretary. The Secretary shall serve notice of and act as secretary at all meetings ~~and~~ proceedings of the Board of Directors, shall record all such proceedings and actions of the Board of Directors in the minute book and shall be responsible for conducting the affairs of the Corporation in a manner consistent with the policies and directives of the Board of Directors. The minutes of the meetings shall include the time and place that the meeting.

The Secretary shall keep or cause to be kept, at the principal California office, a copy of the Articles of Incorporation and Bylaws, as amended to date.

The Secretary shall give, or cause to be given, notice of all meetings of the Board of Directors, and of Committees of the Board of Directors that these Bylaws require to be given. The Secretary shall keep the corporate seal, if any, in safe custody and shall have such other powers and perform such other duties as the Board of Directors or the Bylaws may require.

Section 7. Chief Financial Officer. The Chief Financial Officer of the Corporation shall keep and maintain, or cause to be kept and maintained, adequate and correct books and accounts of the Corporation's properties and transactions. The Chief Financial Officer shall send or cause to be given to the Directors such financial statements and reports as are required to be given by law, by these Bylaws, or by the Board of Directors. The books of account shall be open to inspection by any Director at all reasonable times.

The Chief Financial Officer shall (i) deposit or cause to be deposited, all money and other valuables in the name and to the credit of the Corporation with such depositories as the Board of Directors may designate; (ii) disburse the Corporation's funds as the board may order; (iii) render to the President, Chairman of the Board, if any, and the Board of Directors, when requested, an account of all transactions as [Chief Financial Officer] and of the financial condition of the Corporation; and (iv) have such other powers and perform such other duties as the Board or these Bylaws may require.

If required by the Board of Directors, the Chief Financial Officer shall give the Corporation a bond in the amount and with the surety or sureties specified by the Board of Directors for faithful performance of the duties of the office and for restoration to the Corporation of all of its books, papers, vouchers, money and other property of every

kind in the possession or under the control of the Chief Financial Officer on his or her death, resignation, retirement, or removal from office.

The Chief Financial Officer may be an employee of the City of Oakland or [Oakland Redevelopment Successor Agency](#) appointed by the City Administrator or [Agency Administrator of the Successor Agency](#).

Section 8. Compensation. Officers shall not receive compensation for serving in their capacities as such provided, other than his or her salary or other regular compensation received as an employee of the City of Oakland or the [Oakland Redevelopment Successor Agency](#). However, officers may be reimbursed for their reasonable expenses incurred in performing duties of his or her office.

Section 9. Execution of Instruments. Any and all instruments executed in the name of the Corporation, including, but not limited to, contracts, agreements, purchase orders, notes, deeds, deeds of trust, mortgages, leases, security agreements, checks and drafts issued, endorsements of checks and drafts received, certificates, applications and reports, shall be executed by one or more officers, employees or agents of the Corporation as authorized from time to time by the Board of Directors. Such authorization may be general or confined to specific instances. The respective officers and duties thereof as established and defined in this Article and by resolution of the Board of Directors include, except as otherwise provided, the authority to execute instruments in the name of the Corporation when the execution of the instrument is incident to carrying out the duties of the offices.

ARTICLE VIII

RECORDS

Section 1. Minute Book. The Corporation shall keep or cause to be kept a minute book which shall contain:

- (a) The record of all meetings of the Board of Directors including date, place, those attending the proceedings thereof, a copy of the notice of the meeting and when and how given, ~~written waivers of notice of meeting~~, written consent to holding meeting, written approvals of minutes of meeting, and unanimous written consents to action of the Board of Directors without a meeting, and similarly as to meetings of committees of the Board of Directors and as to meetings or written consents of the Incorporator of the Corporation prior to the appointment of the initial Board of Directors.
- (b) A copy of the Articles of Incorporation and all amendments thereof and a copy of all certificates filed with the Secretary of State.

- (c) A copy of the Bylaws, as amended, duly certified by the Secretary.

Section 2. Annual Report. Financial statements shall be prepared as soon as reasonably practicable after the close of the fiscal year. The financial statements shall contain in appropriate detail the following:

- (a) The assets and liabilities, including trust funds, of the Corporation as of the end of the fiscal year.
- (b) The principal changes in assets and liabilities, including trust funds, during the fiscal year.
- (c) The revenue or receipts of the Corporation, both unrestricted and restricted to particular purposes, for the fiscal year.
- (d) The expenses or disbursements of the Corporation, for both general and restricted purposes during the fiscal year.
- (e) Any transaction during the previous fiscal year involving \$50,000 or more to which the Corporation or a subsidiary was a party and in which any Director or officer of the Corporation or subsidiary had or has direct or indirect material financial interest. The report must disclose the names of the interested persons involved in such transaction, stating such person's relationship to the Corporation, the nature of such person's interest in the transaction and, where practicable, the amount of such interest.
- (f) The amount and circumstances of any indemnification or advances aggregating more than \$10,000 paid during the fiscal year to any officer or Director of the Corporation.

Such financial statements shall be accompanied by any report thereon of independent accountants, or, if there is no such report, the certificate of an authorized officer of the Corporation that such statements were prepared without audit from the books and records of the Corporation. A report including the financial statements prescribed above shall be furnished annually to all Directors of the Corporation.

ARTICLE IX

INDEMNIFICATION

Section 1. Indemnification of Directors, Officers and Employees. The Corporation shall indemnify its Directors, officers, employees and other eligible persons pursuant to the provisions of Section 5238 of the California Nonprofit Public Benefit

Corporation Law, or pursuant to a contract entered into with any employee who is not an officer or Director, against all expenses, judgments, fines, settlements, and other amounts actually and reasonably incurred by them in connection with any "proceeding." As that term is used in that section, and including an action by or in the right of the Corporation, by reason of the fact that the person is or was a person described in that section. "Expenses", as used in this bylaw, shall have the same meaning as in that Section 5238 of the Corporations Code.

On written request to the Board of Directors by any person seeking indemnification under Corporations Code Section 5238(b), the Board of Directors shall promptly decide under Corporation Code Section 5238(c) whether the applicable standard of conduct set forth in Corporations Code Section 5238(b) or Section 5238(c) has been met and, if so, the Board of Directors shall authorize indemnification. If the Board of Directors cannot authorize indemnification, because the number of Directors who are parties to the proceeding with respect to which indemnification is sought prevents the formation of a quorum of directors who are not parties to that proceeding, the Board of Directors shall not authorize the indemnification, and schedule another meeting for this authorization to be voted on by a quorum of the Board of Directors

To the fullest extent permitted by law and except as otherwise determined by the Board of Directors in a specific instance, expenses incurred by a person seeking indemnification under Article IX of these Bylaws in defending any proceeding covered by those Sections shall be advanced by the Corporation before final disposition of the proceeding, on receipt by the Corporation of an undertaking by or on behalf of that person that the advance will be repaid unless it is ultimately found that the person is entitled to be indemnified by the Corporation for those expenses.

Section 2. Advancement of Expenses. Expenses incurred in defending any proceeding may be advanced by the Corporation as authorized in Section 5328 of the California Nonprofit Public Benefit Corporation Law prior to final disposition of such proceeding, upon receipt of an undertaking by or on behalf of the Director, officer or employee who is entitled to be indemnified.

ARTICLE X

MISCELLANEOUS

Section 1. Fiscal Year. The fiscal year of the Corporation shall be from July 1 through June 30 of each year.

Section 2. Dedication of Assets. The property of the Corporation is irrevocably dedicated to public purposes and no part of the net income or assets of the Corporation shall ever inure to the benefit of any director, officer or member thereof or to the benefit of any private person. In the event of dissolution, any assets of the Corporation remaining after compliance with the applicable provisions of Chapter 15

(commencing with Section 6510), Chapter 16 (commencing with Section 6610), and Chapter 17 (commencing with Section 6710) of the California Nonprofit Public Benefit Corporation Law shall be distributed to a nonprofit fund, foundation, or corporation, other than one created for religious purposes, that is organized and operated exclusively for charitable purposes, and which has established and maintained its tax-exempt status under Section 501(c)(3) or 501(c)(4) of the Internal Revenue Code or the corresponding provision of any future Internal Revenue Law.

Section 3. Amendment of Bylaws. These Bylaws may be amended by the vote of a majority of all of the members of the Board of Directors. ~~All Directors must receive at least thirty (30) days notice of any vote on amending or repealing these Bylaws.~~

Section 4. Reimbursement of Expenses of the Corporation. The Corporation shall provide full reimbursement for monies expended on behalf of the Corporation by its officers or Directors if such expenditures have received prior approval from the Board of Directors.

CERTIFICATE OF SECRETARY

I certify that I am the duly elected and acting Secretary of Fox Oakland Theater, Inc., a California nonprofit public benefit corporation; that these Bylaws, consisting of eleven pages are the Bylaws of this Corporation as adopted by the Board of Directors on ~~August 8, 2006~~ July 15, 2020 and that these Bylaws have not been amended or modified since that date.

Executed on _____ at Oakland, California.

By: _____

Name: _____

Its: Secretary

7. FOT Financial Status – *Update*
 - a. FY 18-19 Audit and taxes completed
 - b. Fiscal Impact of COVID-19

Item #7 FOT Financial Status – Update

Highlights from FY 18-19 Audit, b/w June 30, 2018 and June 30, 2019 :

- ✓ Cash reserves grew from \$3.5 million to \$4.5 million
- ✓ Revenue stable: decreased by \$141,000 to \$1.875 million
- ✓ Expenses stable: decreased from \$4.7 million to \$4.6 million
- ✓ FOT assets are now less than the liabilities: the net assets fell from \$1,833,397 to -\$915,775 as the value of the building improvement declines from depreciation and the outstanding loans increase from accrued interest.

Between June 30, 2019 and June 30, 2020:

- ✓ Cash reserves grew from \$4.5 million to \$5.2 (Includes \$546K OSA Rent Reserve)

ORSA Asset Transfer - One-Time Reserve Payment	(\$4,400,000) *
ORSA Asset Transfer - Annual Pledge Payment	(\$247,500)
<u>Remaining for Capital Improvements for 2020-21</u>	<u>\$587,800</u>

* 77.5% or \$3.4M should come back to City per Bond Expenditure Agreement for Fox Operations

Item# 7 FOT Financial Status – Update

FY 2020-21 BUDGET FORECAST ("*the moderate case scenario*")

Income

			<u>Notes</u>
Outfront Income for OSA Rent (Expires April 2026)	500,000	63%	[1] Assumes billboard revenue drops by \$100K; Annual rent due: \$940,500
Emporium	27,639	3%	[2] Assumes rent restarts in April 2021 after 12-month deferral at full rate \$9,231
BMZ (Rudy's) Repayment on Back Rent	8,709	1%	[3] Assumes repayment (\$2,903/month) starts again after 12-month deferral in April 2021
APE Paid Admissions Rent	0	0%	[4] Assumes ticket sales in 2020 will not exceed 100,000 so "Paid Admissions Rent" will not be triggered
APE Special Events Rent	10,000	1%	[5] Assumes some rent from Special Events
APE Facility Fee from Ticket Sales	10,000	1%	[6] Assumes some tickets sold for Facility Fee (300,000 tickets on average for "normal" year)
APE VIP Space/Den Rent	33,763	4%	[7] Assumes rent for VIP/Den space continues without gap
APE TI Loan Repayment	13,548	2%	[8] Assumes rent for TI Loan repayment continues without gap
CAM Reimbursements	192,000	24%	[9] Kept CAM reimbursemet constant and assumed CAM costs incurred are reimbursed by tenants
TOTAL INCOME	795,659	100%	[10] Projecting a ~ 50% drop in income from ~\$1.6M (normal year)

Expenses

Capital Reserve/Expenses	200,000	34%	[11] Capital Reserve Setaside
CAM Charges	192,000	33%	[12] See Note 9
Property Management Fee	120,000	21%	[13] Asssumes \$10k/month for monthly Property Management and On-Site Manager Fee
Repairs and Maitenance	40,000	7%	
Other Third Party	25,000	4%	
Other Incidentals	5,000	1%	
TOTAL EXPENSES	582,000	100%	
NET OPERATING INCOME	213,659		[14] Projecting an ~80% drop in NOI from ~\$1M (normal year)

8. Lease Updates

a. APE Lease

- i. APE Request for Rent Reduction – **Action Item**
- ii. Default Notice. Staff worked with Agency Counsel to ORSA to prepare a letter to inform APE that they are in default of their lease obligation to provide OSA with use of the Fox Theater for up to 10 events per year free of charge. Sending this letter was placed on hold due to COVID-19
- iii. FOOF Loan. Staff is working with Agency Counsel to ORSA on calling a default action on the \$1.3 million Friends of Oakland Fox (FOOF) loan owed to ORSA, for which APE is guarantor.
- iv. Den Activation. In response to FOT Board direction, APE sent email in December 2019 saying they have incentivized their Sales VP to push for Den rentals/events, and she has brought in 3 since September (Cushman and Wakefield, TMC Party, Cookie's Grand Opening Party).

b. Emporium Lease

- i. Request for Rent Deferral– **Action Item**
 - ii. Rudy's Back Rent Loan Payment – last payment March 1, 2020. BMZ Enterprises (aka Rudy's or RCFC) pays \$2,902.96 monthly in back rent pursuant to termination agreement – \$98,696.89 in total, amortized over 36 months at 3.75% annual interest, starting 8/1/18 and extending to 7/1/21.
 1. Authorize staff to negotiate and execute a Promissory Note or similar document with BMZ Enterprises to require payment of outstanding rent starting no later than December 31, 2020, subject to an interest to be determined by staff - **Action Item**
- c. OSA Lease Amendment to extend existing rent of \$940,500 per year through the end of the billboard license agreement in April 2026. OSA had its Charter renewed through June 30, 2025 but did not extend the Billboard Pledge past 2026.
- i. Billboard Revenue (Pre-paid rent balance)

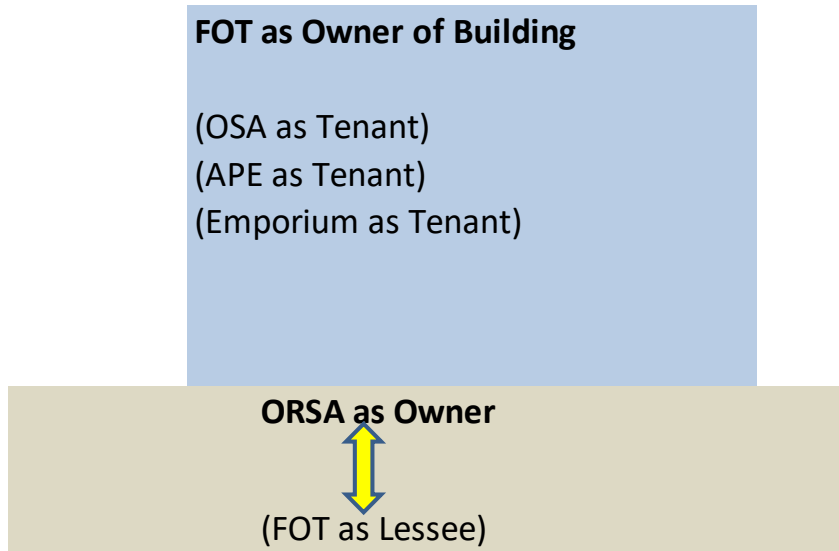
9. Fox Theater Asset Transfer from ORSA to City/FOT – *Update*

- a. California Department of Finance (“DOF”) has granted “pre-approval” for staff’s proposed asset transfer and lease-leaseback transaction for the Fox Theater that results in ORSA conveying the land to the City of Oakland and terminating \$47 million in associated Redevelopment Agency loans in exchange for a one-time payment of \$4.4 million and a pledge of future payments of \$247,500 per year for 16 years. Staff is scheduling for the September 15, 2020 City Council meeting and then Oversight Board ASAP after that.

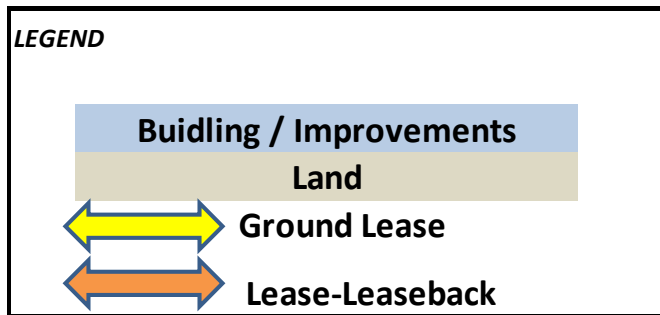
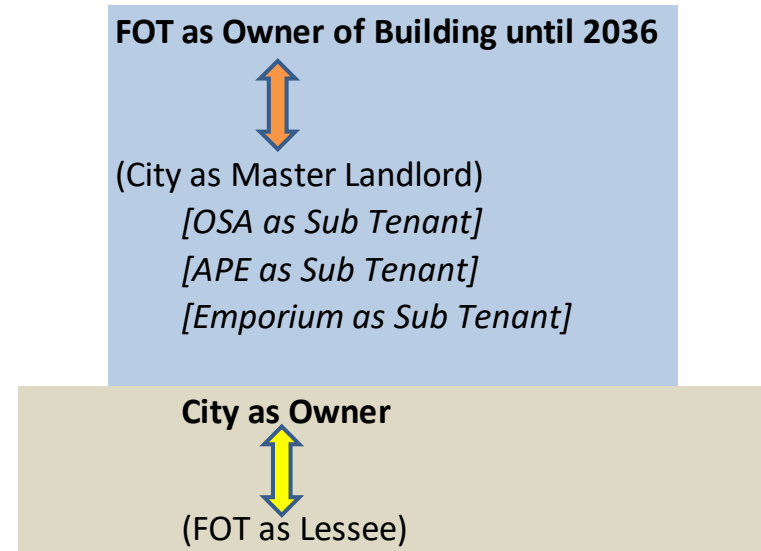
- b. Authorize execution of the following – **Action Items**
 - i. Second Amendment to the Amended and Restated Development and Disposition Agreement (“DDA”) to allow the DDA between ORSA and FOT to terminate, effectively concurrently, on
 1. Assignment and amendment of existing Ground Lease from ORSA to the City as Landlord and FOT as Tenant for a term of 16 years and in the amount of \$1 per year subject to approval by ORSA and the City Council;
 2. Termination of existing Redevelopment Agency loan documents in the amount of \$47 million owed by FOT to ORSA;
 3. Execution of the Pledge Agreement by FOT to pay ORSA \$3.96 million or \$247,500 annually for 16 years; subject to approval by ORSA and the Oversight Board (“OSB”); and
 4. Transfer of \$4.4 million from FOT operating and replacement reserve to ORSA.
 - ii. Assignment of FOT Subleases with Another Planet Entertainment LLC (“APE”)-GASS Entertainment LLC, Oakland School of the Arts (“OSA”), and Emporium to the City subject to approval by the City Council
 - iii. Assignment of FOT third party contract with CCIG for property management services to the City subject to approval by the City Council
 - iv. Approval of a Leaseback Agreement for the Fox Theater Improvements by and between FOT as building owner and Lessor, and the City as Lessee for a term of 16 years and in the amount of \$247,500 per year with an option to purchase upon satisfaction of the Pledge Agreement between FOT and ORSA subject to approval by the City Council

Item#9 Fox Theater Asset Transfer from ORSA to City/FOT

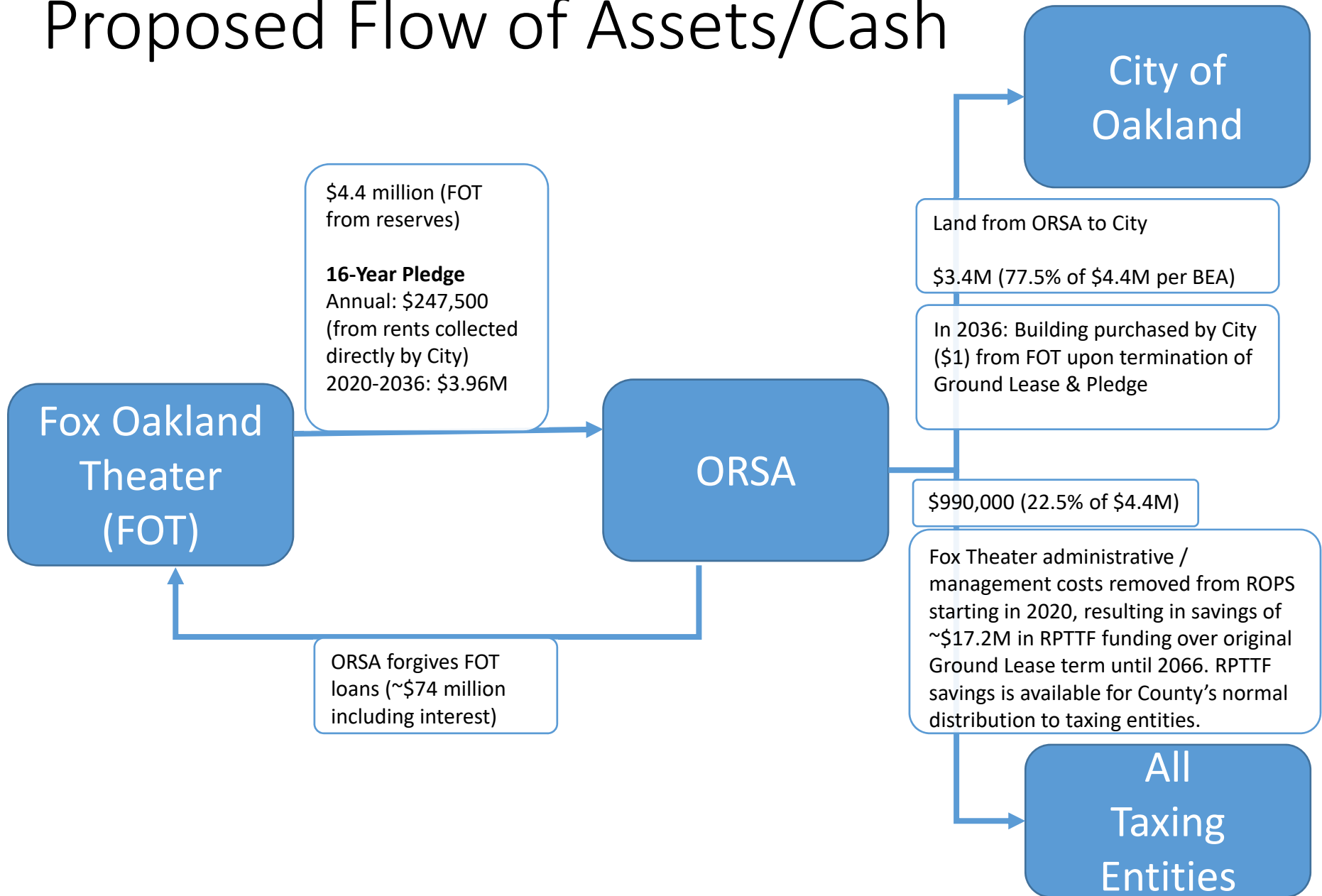
EXISTING



PROPOSED



Item#9 Fox Theater Asset Transfer from ORSA to City/FOT Proposed Flow of Assets/Cash



**ACTION BY UNANIMOUS WRITTEN CONSENT OF THE BOARD OF DIRECTORS
OF
FOX OAKLAND THEATER, INC.**

RESOLUTION NO. _____

RE: AUTHORIZE APPROVAL OF THE FOLLOWING ACTIONS, AND EXECUTION OF THE FOLLOWING DOCUMENTS:

- 1) A SECOND AMENDMENT TO THE AMENDED AND RESTATED DISPOSITION AND DEVELOPMENT AGREEMENT (“**DDA**”) BETWEEN THE OAKLAND REDEVELOPMENT SUCCESSOR AGENCY (“**ORSA**”) (AS SUCCESSOR TO THE REDEVELOPMENT AGENCY OF THE CITY OF OAKLAND (“**REDEVELOPMENT AGENCY**”)) AND FOX OAKLAND THEATER, INC. (“**CORPORATION**”);
- 2) ASSIGNMENT OF ORSA’S INTEREST AS LANDLORD UNDER THE EXISTING GROUND LEASE OF THE FOX THEATER PROPERTY TO THE CITY OF OAKLAND (“**CITY**”) AND AMENDMENT OF THE GROUND LEASE WITH THE CORPORATION REMAINING AS TENANT FOR A TERM OF 16 YEARS;
- 3) TERMINATION OF EXISTING LOAN DOCUMENTS PERTAINING TO LOANS PROVIDED BY THE REDEVELOPMENT AGENCY WITH AN APPROXIMATE CURRENT BALANCE OF \$74,000,000 OWED BY THE CORPORATION TO ORSA;
- 4) EXECUTION OF A PLEDGE AGREEMENT PURSUANT TO WHICH THE CORPORATION WOULD PLEDGE TO PAY ORSA \$247,500 ANNUALLY FOR 16 YEARS FOR A TOTAL OF \$3.96 MILLION;
- 5) APPROVAL OF A LEASE-BACK AGREEMENT PURSUANT TO WHICH THE CORPORATION AS LESSOR WOULD LEASE THE FOX THEATER BUILDING TO THE CITY AS LESSEE FOR A TERM OF 16 YEARS FOR AN ANNUAL LEASE PAYMENT OF \$247,500 WITH A CITY OPTION TO PURCHASE THE BUILDING UPON SATISFACTION OF THE CORPORATION’S PAYMENT OBLIGATIONS UNDER THE PLEDGE AGREEMENT;
- 6) ASSIGNMENT OF ALL SUBLEASES AND THIRD-PARTY CONTRACTS FROM THE CORPORATION TO CITY AS THE LANDLORD UNDER THE AMENDED GROUND LEASE;
- 7) TRANSFER OF THE CORPORATION’S EXISTING OPERATING AND REPLACEMENT RESERVES TO ORSA IN THE APPROXIMATE AMOUNT OF \$4,400,000.

The undersigned, constituting all members of the Board of Directors of Fox Oakland Theater Inc., a California nonprofit public benefit corporation (the “**Corporation**”), do hereby adopt the following statements as true and correct and, where resolved, comprise the resolutions and authorizations of the Corporation:

WHEREAS, the former Redevelopment Agency of the City of Oakland (the “**Redevelopment Agency**”) and the Corporation entered into that certain Amended and Restated Disposition and Development Agreement dated December 15, 2006, as amended by that First Amendment to Amended and Restated Disposition and Development Agreement dated August 1, 2008 (collectively, the “**DDA**”);

WHEREAS, the DDA provided for the ground lease of the real property known as the Fox Theater located at 1807 Telegraph Avenue in the City of Oakland (the “**Fox Theater Land**”) to the Corporation for 60 years until 2066 in connection with the Corporation’s use of Historic and New Markets Tax Credit (“**NMTC**”) equity to finance rehabilitation and improvements of the Fox Theater;

WHEREAS, subject to approval by ORSA, the City Council, and the Alameda County Oversight Board (“**Oversight Board**”), as applicable, the Corporation deems it to be in its best interest to enter into a Second Amendment to the DDA to allow the DDA to terminate, effectively concurrently with (1) conveyance of the Fox Theater Land from ORSA to the City in accordance with ORSA’s approved Long-Range Property Management Plan (“**LRPMP**”), (2) assignment of ORSA’s interest as lessor under the existing Ground Lease to the City, and amendment of the Ground Lease to provide for the Corporation to continue as the tenant for a term of 16 years, (3) termination of approximately \$74,000,000 in existing loan obligations owed by the Corporation to ORSA, (4) transfer of approximately \$4,400,000 from the Corporation’s operating and replacement reserves to ORSA, (5) the Corporation’s execution of a Pledge Agreement pursuant to which the Corporation would pledge to pay ORSA the aggregate sum of \$3,960,000 or \$247,500 annually for 16 years, and (6) execution of a Lease-Back Agreement pursuant to which the Corporation as lessor would lease the Fox Theater building to the City as lessee for a term of 16 years for an annual lease payment of \$247,500 with a City option to purchase the building upon satisfaction of the Corporation’s payment obligations under the Pledge Agreement;

WHEREAS, the Corporation deems it to be in its best interest for ORSA to assign its obligations as lessor under the existing Ground Lease to the City;

WHEREAS, subject to approval by the City Council, the Corporation desires to execute an amended Ground Lease with the City as lessor and the Corporation as tenant for a term of 16 years with a nominal annual lease payment in the amount of \$1 per year;

WHEREAS, the Corporation has existing loan obligations to ORSA for loans provided by the Redevelopment Agency for the rehabilitation and improvement of the Fox Theater with an approximate balance of approximately \$74,000,000, which consists of approximately \$45,722,036 in principal and \$27,949,585 in interest;

WHEREAS, subject to approval by ORSA and the Oversight Board, the Corporation deems it to be in its best interest to terminate its obligations under the \$74,000,000 loans owed to ORSA pursuant to the amended DDA, in exchange for the Corporation's transfer of \$4,400,000 from its operating and replacement reserve to ORSA and execution of a Pledge Agreement pursuant to which the Corporation would pledge to pay to ORSA the aggregate sum of \$3,960,000 or \$247,500 annually for 16 years,

WHEREAS, subject to approval by the City Council, in connection with the transactions described in this Resolution, the Corporation deems it to be in its best interest to execute a Lease-Back Agreement for the Fox Theater building by and between the Corporation as building owner and lessor and the City as lessee for a term of 16 years with an annual lease payment of \$247,500 and with a City option to purchase the Corporation's interests in the Fox Theater improvements upon satisfaction of the Corporation's obligations under the Pledge Agreement;

WHEREAS, subject to approval by the City Council, in connection with the conveyance of the Fox Theater land to the City and the City's assumption of ORSA's interest as lessor under the Ground Lease, the Corporation deems it to be in its best interest to (1) assign the Corporation's interests as sublandlord under existing subleases with Another Planet Entertainment LLC ("APE"), GASS Entertainment LLC, Oakland School of the Arts ("OSA"), and Emporium to the City, and (2) assign its existing contract with California Capital and Investment Group ("CCIG") for Fox Theater property management services to the City.

NOW, THEREFORE, BE IT RESOLVED: That the Corporation shall execute the documents necessary for the City to receive the Fox Theater from ORSA in accordance with the approved LRPMP, including, but not limited to, the Second Amendment to DDA.

FURTHER RESOLVED: That the Corporation shall execute a Pledge Agreement to pay ORSA the aggregate sum of \$3,960,000 or \$247,500 annually for 16 years.

FURTHER RESOLVED: That the Corporation shall execute such instruments and perform such actions as are necessary to facilitate the City's assumption of ORSA's interest as lessor under the Ground Lease, and amendment of the Ground Lease to provide for a 16 year term corresponding to the term of the Pledge Agreement.

FURTHER RESOLVED: That the Corporation shall execute a Lease-Back Agreement for the Fox Theater building by and between the Corporation as building owner and lessor and the City as lessee for a term of 16 years corresponding to the term of the amended Ground Lease and the Pledge Agreement, with an annual lease payment of \$247,500 and with a City option to purchase the Corporation's interests in the Fox Theater improvements upon satisfaction of the Pledge Agreement.

FURTHER RESOLVED: That the Corporation shall execute assignment agreements and such other documents as necessary to assign to the City the Corporation's interests under the subleases with APE, OSA, and Emporium, and the third-party contract with CCIG for Fox Theater property management services.

FURTHER RESOLVED: That the Corporation shall execute and perform such actions as are necessary to facilitate ORSA's termination and forgiveness of the Corporation's obligations under the outstanding former Redevelopment Agency loans.

FURTHER RESOLVED: That the Corporation shall execute and perform such actions as are necessary to transfer \$4,400,000 from its operating and replacement reserves to ORSA.

FURTHER RESOLVED: That any one officer of the Corporation and any one board member of the Corporation, acting on behalf of the Corporation, shall be authorized and directed to execute and deliver any and all necessary documents and instruments, including, but not limited to, the amendment to the DDA, the assignment and amendment of the Ground Lease, the Pledge Agreement, the Lease-Back Agreement, and assignment agreements, and to undertake all other actions and execute all other instruments and documents to facilitate the transactions authorized herein and any other action described in this Resolution.

RESOLVED FURTHER: That to the extent that any actions authorized herein have already been performed by the Corporation, such actions are hereby ratified, confirmed and approved in all respects.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK- SIGNATURES ON FOLLOWING PAGE]

IN WITNESS HEREOF, the undersigned Members of the Board of Directors of the Corporation have executed this Action by Unanimous Written Consent as of July 15, 2020.

Alexa Jeffress, President

Hui Chang Li, Secretary

Adam Benson, Chief Financial Officer

Betsy Lake, Board Member

Brendan Moriarty, Board Member

Anthony Reese, Board Member

10. Property Management

- a. Authorize California Capital and Investment Group (“CCIG”) Professional Services Agreement (“PSA”) Amendment No. 12 for property management and accounting services for an additional 5 months until December 31, 2020 – **Action Item**
- b. RFP for Property Management Services to replace CCIG - *Update*
- c. Capital Improvement Needs – Update on Waterproofing and Roof Repair

11. Next Meeting: September 14, 2020 @ 3pm

12. Other

13. Adjournment

Item#10b RFP for Property Management Services to replace CCIG

Timeline

- 
- Distribution of RFP
March 13, 2020
 - Pre-Proposal Meeting (optional)
UPDATED: July 28, 2020 at 10:00 a.m.
 - Deadline for Questions
UPDATED: August 3, 2020
 - RFP Deadline Submission
UPDATED: August 14, 2020