

# AGENDA PACKET

## FOX OAKLAND THEATER, INC.

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

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### BOARD OF DIRECTORS MEETING MINUTES

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

#### 1. Roll Call

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

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

*Quorum was achieved with four members present.*

#### 2. Public Comment

(1 minute per speaker)

*Lisa Sherman-Colt provided public comment.*

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

Presenter: Brendan Moriarty

**ACTION ITEM**

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

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

Presenter: Anthony Reese

**ACTION ITEM**

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

#### 5. FOT Financial Status

Presenter: Patrick Lane

**INFO ITEM**

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

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

## 6. Fox Theater Asset Transfer from ORSA to City

INFO ITEM

Presenter: Patrick Lane

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

## 7. Property Management

### 7a) Property Management Agreement with Colliers

INFO ITEM

Presenter: Anthony Reese

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

### 7b) Property Management Agreement Extension with CCIG

ACTION ITEM

Presenter: Anthony Reese

#### Staff Recommendation:

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

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

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

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

ACTION ITEM

Presenter: Patrick Lane

#### Staff Recommendation:

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

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

## 7d) Repairs & Maintenance: Emporium Water Meter

**ACTION ITEM**

Presenter: Anthony Reese

### Staff Recommendation:

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

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

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

## 8. Fox Theater Tenant Lease Amendments

### 8a) GASS Lease Amendment #5

**ACTION ITEM**

Presenter: Brendan Moriarty

### Staff Recommendation:

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

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

- (5) adjust the landlord's share of the facility fee for each paid admission as follows:
  - (A) Increase from \$1.00 to \$1.50 effective January 1, 2031;
  - (B) Increase from \$1.50 to \$1.75 effective January 1, 2036;
  - (C) Effective January 1, 2026, increase the landlord's share of the facility fee annually by an amount equal to the percentage change in the consumer price index ("CPI") or two (2) percent, whichever is greater;
  - (D) Clarify landlord and tenant's reporting and meeting requirements regarding the collection and use of the facility fee for capital improvements by landlord and major repairs and maintenance by tenant; and
- (6) clarify tenant's obligation to provide the Oakland School of the Arts ("OSA") with use of the theater space pursuant to a memorandum of understanding ("MOU") between tenant and OSA dated May 3, 2021.

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

### **8b) OSA Lease Amendment**

**ACTION ITEM**

Presenter: Brendan Moriarty

#### **Staff Recommendation:**

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

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

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

## **9. Other Items**

**INFO ITEM**

**9a) Board Meeting Schedule Revisions**

- Cancel June 7, 2021 and September 13, 2021 meetings
- Move to bi-annual board meetings on 1<sup>st</sup> Mondays of December and June; tentative meeting schedule:
  - Thursday, December 1, 2021
  - Wednesday, June 1, 2022

**9b) Board Composition**

Presenter: Anthony Reese/Brendan Moriarty

**ACTION ITEM**

**Staff Recommendation:**

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

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

**10. Adjournment**

*Meeting adjourned at 10:48 am.*



Brendan Moriarty  
Acting Secretary