

FOX OAKLAND THEATER, INC.

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

BOARD OF DIRECTORS MEETING Wednesday, April 7, 2021, 1:00 p.m.

MINUTES

1. Roll Call

Meeting called to order at 1:00 pm.

Board members present: Alexa Jeffress, Margaret O'Brien, Hui-Chang Li, Kelley Kahn, Brendan Moriarty, Anthony Reese

Quorum was achieved with six members present.

2. Public Comment

(1 minute per speaker)

Lisa Sherman-Colt, Executive Director of OSA, provided comment in favor of a rent reduction for OSA due to the financial impacts caused by COVID.

Kimberly Palmore (OSA), provided comment in support of Lisa Sherman-Colt's previous comment.

3. Approval of December 7, 2020 FOT Board Meeting Minutes

ACTION ITEM

Presenter: Hui-Chang Li

Hui-Chang Li read a correction to the draft minutes.

Alexa Jeffress moved to approve December 7, 2020 meeting minutes, seconded by Anthony Reese. Motion passed, with one abstention from Margaret O'Brien due to absence at last meeting.

4. FOT Financial Status (Exhibit A)

INFO ITEM

Presenter: Hui-Chang Li

Hui-Chang Li provided update that the FOT Inc. audit is nearing completion. Once completed, a copy will be provided to board members. Operating reserves increased from \$5.2 million to \$5.9 million, as of March 1, 2021. The increase is due to an APE/GASS payment of its full outstanding balance through February 1, 2021. Additionally, APE/GASS has since resumed paying its monthly payments. \$1 million from the operating reserves is intended to go towards the HVAC and roof repair/replacement project. \$4.4 million will be going towards the ORSA asset transfer. OSA rent reserves continues to decline and is anticipated to be exhausted by June 1, 2021. Following completion of the asset transfer and roof repair project, FOT Inc. is expected to have \$500,000 in operating reserves, which is what is expected to be maintained for the remaining 16-year term.

Patrick Lane explained that the \$4.4 million will be paid by FOT Inc. to ORSA, but under the bond expenditure agreement, \$3.4 million will be transferred to the City. \$2.8 million will be held by the City as capital reserves for the Fox Theater, with the remaining \$600,000 held as Fox Theater's operating reserves.

5. Fox Theater Asset Transfer from ORSA to City

INFO ITEM

Presenter: Hui-Chang Li

Hui-Chang Li provided update on the ongoing asset transfer process: City Council, the County Oversight Board, and DOF have all provided necessary approvals on this item. Staff are currently in the implementation stage to close on this transaction. Staff have opened escrow and are working with the Office of the City Attorney and outside counsel to finalize legal documents. Signing parties will be FOT Inc., ORSA, and the City. Staff will be able to finalize this item following approval of lease amendments and property management agreement with Colliers. Expected to finalize within the next 60 days.

Approval of pending lease amendments is planned for upcoming May FOT Board meeting. An amendment to the management agreement to allow CCIG to remain for 30 days after the asset transfer is also planned for the May meeting.

6. Property Management

6a) Property Management Agreement with Colliers

INFO ITEM

Presenter: Anthony Reese

Anthony Reese stated that staff and Colliers are still negotiating on the insurance and indemnification items in the management agreement.

6b) Emporium Lease Amendment

ACTION ITEM

Presenter: Brendan Moriarty/ Anthony Reese

Staff Recommendation:

Authorize approval and execution of a lease amendment and guaranty amendment with Emporium Oakland, LLC to:

1. Extend the lease from September 1, 2021 to August 31, 2026 as lessee's option to exercise a first extended term of five (5) years
2. Adjust base rent by fifty percent (50%) from April 1, 2020 through March 31, 2023
3. Resume base rent in the amount of \$10,357.36 per month, as adjusted annually, from April 1, 2023 through August 31, 2026
4. Waive the ten percent (10%) late charge and require a lump sum payment of \$93,675.94 ("lump sum") in outstanding adjusted base rent and outstanding additional rent for the period of April 1, 2020 through August 31, 2021 upon execution of the lease amendment
5. Provide lessee the right to terminate effective April 1, 2023 upon a ninety (90) day notice
6. Adjust guarantor's liability to six (6) months of base rent in effect; and
7. Reconcile CAM charges on a January to December calendar year basis ([Exhibit B](#))

Due to lack of a rent reduction mechanism built into their lease agreement and an inability to operate business effectively over the past year, Emporium has experienced significant accrual of unpaid rent, totaling almost \$150,000. Staff has proposed a lease amendment, as detailed in the proposed resolution, to assist with the financial burden and to extend the lease, which would otherwise expire on August 31, 2021, until August 31, 2026.

Brendan Moriarty moved to approve and execute lease amendment and guaranty amendment with Emporium Oakland, LLC. Motion was seconded by Hui-Chang Li. Motion passed by consensus.

6c) Capital Improvement Needs: Roof Repair & HVAC

INFO ITEM

Presenter: Patrick Lane/ George Durney

Patrick Lane provided update: FOT Board approved a resolution in December authorizing FOT to enter into a contract with Garland, Inc. for roof repair, following an informal bidding process. However, the Office of the City Attorney determined that due to the tax credit unwinding process, FOT is now considered a City-related entity. Therefore, FOT needs to closely follow the City's full public contracting process, which was not previously followed to arrive at the selection of Garland.

Staff have now started the process to find a new contractor to complete the roof repair work. In addition, due to COVID and OSA's planned recommencement of in-person learning, HVAC work needs to be completed as well. Staff now intend to coordinate both repair work concurrently.

Staff is currently scoping and bidding a roof and HVAC repair/replacement project for the Fox Theater. Due to OSA intending to have in-person learning by August 2021, this item is considered an "emergency" situation, and therefore the City Administrator's Office advised that an emergency declaration can be issued, which will shorten the contracting process.

Staff is working with Public Works and the tenant to assist with defining the Scope of Work for the project. Provided FOT Board approval is granted at the May meeting, FOT Inc. will transfer funds to the City to implement this work – which will likely be more than \$1 million due to the expanded SOW.

Margaret clarified that OSA will be resuming in-person learning next week per Lisa's text comment. In response to an inquiry to Brendan Moriarty, Patrick Lane stated that they were unable to provide estimate of cost or timeline of the repair work due to still ongoing project scoping.

Hui-Chang Li also noted that authorization for the transfer of \$1 million will come back as an action item at the next FOT board meeting.

7. Other Items to Discuss

8. Adjournment for Closed Session

Pursuant to California Government Code Section 54956.8:

CONFERENCE WITH REAL PROPERTY NEGOTIATORS

- a) Property:** Fox Theater, 1807 Telegraph Ave, Oakland, California (a portion of the ground floor of the wrap around buildings off Telegraph, along 18th Street and 19th Street, as well as the second and third floors)

FOT's Negotiator: Brendan Moriarty, Anthony Reese, Patrick Lane, Naree Chan, and Jordan Flanders

Negotiating Parties: APE/GASS

Under Negotiation: Price and terms of payment for the lease of the property's theater space.

- b) **Property:** Fox Theater, 1807 Telegraph Ave, Oakland, California (a portion of the ground floor of the wrap around buildings off Telegraph, along 18th Street and 19th Street, as well as the second and third floors)

FOT's Negotiator: Brendan Moriarty, Anthony Reese, Patrick Lane, Naree Chan, and Jordan Flanders

Negotiating Parties: Oakland School of the Arts

Under Negotiation: Price and terms of payment for the lease of the property's school space.

X 

Brendan Moriarty
Acting Secretary