

AGENDA PACKET

FOX OAKLAND THEATER, INC.

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

BOARD OF DIRECTORS MEETING

TELECONFERENCE ACCESS INFORMATION AND PUBLIC COMMENT GUIDANCE

Wednesday, April 7, 2021
1:00 p.m.

ACCESSING FOT BOARD TELECONFERENCE MEETINGS:

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/92801152293>
Webinar/Meeting ID: **928 0115 2293**
- **To listen to the meeting by phone**, please dial the numbers below, **depending on your location**, at the noticed meeting time.

To call using iPhone OneTap, dial either of the numbers below:

(USA) +1 (408) 638-0968
followed by 928 011 522 93 #

(USA) +1 (669) 900-6833
followed by 928 011 522 93 #

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For international call-in numbers:
<https://zoom.us/u/azN3QQiAp>

If you need special assistance to participate in meetings, **please contact the FOT Secretary Hui-Chang Li** (hLi@oaklandca.gov or 510-238-6239) or **FOTB staff Brandon Wolinsky** (bWolinsky@oaklandca.gov or (510) 238-3250). When possible, please **notify staff five (5) days prior** to the meeting so we can make reasonable arrangements to ensure accessibility.

PROVIDING PUBLIC COMMENT:

All public comment will be taken at the beginning of the meeting under Agenda Item No. 2: Public Comment.

There are two ways to submit public comments:

- **Email before the meeting.** 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
- **During the Public Comment period at the meeting.** During Agenda Item No. 2, participants may provide comment during the live meeting webcasting, either by:
 - Clicking the **“Raise Your Hand”** button to request to speak during the Public Comment period, which occurs in within the first half of the meeting. During your turn, you will be permitted to provide your 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.”

AGENDA PACKET

FOX OAKLAND THEATER, INC.

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BOARD OF DIRECTORS MEETING AGENDA

Wednesday, April 7, 2021, 1:00 p.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)	

2. Public Comment

(1 minute per speaker)

3. [Approval of December 7, 2020 FOT Board Meeting Minutes](#)

Presenter: Hui-Chang Li

ACTION ITEM

4. FOT Financial Status ([Exhibit A](#))

Presenter: Hui-Chang Li

INFO ITEM

5. Fox Theater Asset Transfer from ORSA to City

Presenter: Hui-Chang Li

INFO ITEM

6. Property Management

6a) Property Management Agreement with Colliers

Presenter: Anthony Reese

INFO ITEM

6b) Emporium Lease Amendment

Presenter: Brendan Moriarty/ Anthony Reese

ACTION ITEM

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](#))

6c) Capital Improvement Needs: Roof Repair & HVAC

Presenter: Patrick Lane/ George Durney

INFO ITEM

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, 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, 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.

FOX OAKLAND THEATER, INC.

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

BOARD OF DIRECTORS MEETING Monday, December 7, 2020, 3:00 p.m.

MINUTES

1. Roll Call

Meeting called to order at 3:00 p.m.

Board Members present: **Alexa Jeffress (President), Hui-Chang Li (Secretary), Kelley Kahn (Director), Brendan Moriarty, Anthony Reese**

*Quorum was achieved with five members present.
Betsy Lake (Director) arrived after roll call was conducted.*

2. Public Comment

(1 minute per speaker)

Lisa Sherman-Colt, Executive Director of the Oakland School of the Arts (OSA), provided comment regarding the faulty HVAC system and its impact on OSA's activities at the Fox Theater.

3. Approval of October 2, 2020 FOT Board Meeting Minutes

Presenter: Hui-Chang Li

Moved by Hui-Chang Li, seconded by Anthony Reese. Motion was approved by consensus.

ACTION ITEM

4. FOT Financial Status (Exhibit A)

Presenter: Hui-Chang Li

Hui-Chang Li updated the Board that the FY19-20 audit is still currently underway, with a draft expected by the end of December 2020. Operating reserves have mostly remained constant at about \$5.2 million, which also includes the \$4.4 million one-time reserve payment that will be made as part of the asset transfer. The amount also includes the remaining OSA rent reserve, which is now down to \$259,000, and is projected to be exhausted by June 2021. Billboard revenue is expected to only cover the minimum obligation for 2020-21, and OSA has been notified to expect to begin paying out-of-pocket starting in June 2021. Following the asset transfer and in accordance with the bond expenditure agreement, \$3.4 million of the \$4.4 million payment will be retained by the City to apply towards Fox Theater's capital reserves.

INFO ITEM

5. Fox Theater Asset Transfer from ORSA to City

Presenter: Hui-Chang Li

INFO ITEM

Hui-Chang Li updated the Board that the City Council approved the staff recommendation of the FOT Board resolution on December 1, 2020. The item required a second hearing to receive ordinances, which is assumed to be approved. Following the second hearing, the item will need to be approved by the Countywide Oversight Board, which will likely be scheduled on January 20, 2021. Following Oversight Board approval, the transaction should be implemented 30 to 45 days after January 20.

6. Property Management

6a) Enter into Property Management Agreement with Colliers

Presenter: Anthony Reese

ACTION ITEM

Staff Recommendation:

Authorize approval and execution of a Property Management Agreement with Collier's International Real Estate Management Services (CA), Inc. to serve as the Property Manager for the Fox Oakland Theater in an amount not to exceed \$6,200 per month, or \$74,400 per year plus a 3% interest increase on each anniversary date, for a term of 5 years, which may be extended for two additional terms of 5 years each, consistent with the terms of the request for proposal issued on March 13, 2020, as described in the Resolution ([Exhibit B](#))

Alexa Jeffress moved to approve and execute a Property Management Agreement with Collier's International to serve as the Property Manager for the Fox Theater. Motion was seconded by Kelley Kahn and approved by consensus.

6b) CCIG Property Management Agreement Extension

Presenter: Hui-Chang Li

ACTION ITEM

Staff Recommendation:

Authorize staff to negotiate and execute an Amendment No. 13 to the professional services agreement with California Capital & Investment Group ("CCIG") to continue providing property management services at the Fox Theater until the earlier of January 31, 2021 or 30 days after the execution of the property management agreement with Collier's International Real Estate Management Services (CA), Inc.

Anthony Reese introduced an amendment to the above staff recommendation to now recommend:

Authorization for staff to negotiate and execute an Amendment No. 13 to the professional services agreement with California Capital & Investment Group ("CCIG") or alternate arrangements to continue providing property management services at the Fox Theater until the later of February 28, 2021 or 30 days after the execution of the property management agreement with Collier's International Real Estate Management Services (CA), Inc.

Betsy Lake requested the extension of the Agreement for services be limited to an hourly basis, but not to exceed the current rate of \$8,550/month, specifically to assist and facilitate the transition of property management services to Colliers.

Betsy Lake moved to authorize staff to negotiate and execute an extension of the professional services agreement or alternate arrangement with CCIG. Motion was seconded by Brendan Moriarty and approved by consensus.

6c) Capital Improvement Needs: Waterproofing and Roof Repair

ACTION ITEM

Presenter: George Durney

Staff Recommendation:

Authorize approval and execution of an agreement with roofing material and services proposal with Garland/DBS, Inc. to provide roofing material and services in the amount of \$476,281, plus a 15% contingency in the amount of \$71,442, for a total amount not to exceed \$547,723, as described in the Resolution ([Exhibit C](#))

Brendan Moriarty moved to authorize approval and execution of an agreement with Garland/DBS Inc. to provide roofing material and services. Motion was seconded by Betsy Lake and approved by consensus.

6d) Capital Improvement Needs: HVAC Repairs

INFO ITEM

Presenter: Anthony Reese

Anthony Reese provided an update on needed HVAC repairs for Fox Theater. Current lease terms state that FOT Inc. is responsible for HVAC repairs in the common areas. Staff will conduct investigation to determine if those systems are segregated to allocate repair costs accordingly. Anthony was advised to work with staff in the Public Works Department and the FOT Inc. HVAC engineer contractor to determine if the system should be repaired or replaced. Following determination, staff will solicit bids for repair/replacement and present for the Board's review.

7. Schedule for Upcoming Meetings

Hui-Chang Li corrected a typo to the tentative schedule, shown revised below:

The following is the tentative schedule for upcoming quarterly FOT Board meetings in 2021:

- Monday, March 1, 2021, 3pm
- Monday, June 7, 2021, 3pm
- ~~Monday, August 2, 2021~~ Monday, September 13, 2021, 3pm
- ~~Monday, November 1, 2021~~ Monday, December 6, 2021, 3pm

8. Other Items to Discuss

9. 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, Jordan Flanders, and Naree Chan

Negotiating Parties: Oakland School for the Arts

Under Negotiation: Price and terms of payment for the lease of the property.

Item #4 FOT Financial Status – Update

- FY 19-20 Audit is near completion. Final draft is expected this month.
- Operating Reserves as of:
 - Dec 1, 2020: approximately **\$5.2 million**
 - March 1, 2021: approximately **\$5.9 million**
 - Increase a result of APE/GASS paying in full its outstanding balance through Feb 1st
 - Includes \$1 million anticipated for HVAC and Roof Repair/Replacement
 - Includes One-Time Reserve Payment for ORSA Asset transfer: \$4.4 million
 - Includes OSA Rent Reserve Remaining: \$116,653
 - expected to exhaust by 6/1/2021

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

RESOLUTION NO. _____

RE: 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; AND

(2) ADJUST BASE RENT BY FIFTY PERCENT (50%) FROM APRIL 1, 2020 THROUGH MARCH 31, 2023 AS FOLLOWS:

(A) ADJUSTED BASE RENT IN THE AMOUNT OF \$4,615.58 PER MONTH FROM APRIL 1, 2020 TO AUGUST 31, 2021 FOR A TOTAL AMOUNT OF \$78,464.78 IN OUTSTANDING RENT; AND

(B) ADJUSTED BASE RENT IN THE AMOUNT OF \$5,077.14 PER MONTH FROM SEPTEMBER 1, 2021 TO AUGUST 31, 2022; AND

(C) ADJUSTED BASE RENT IN THE AMOUNT OF \$5,178.68 PER MONTH FROM SEPTEMBER 1, 2022 TO MARCH 31, 2023; AND

(3) RESUME BASE RENT IN THE AMOUNT OF \$10,357.36 PER MONTH, AS ADJUSTED ANNUALLY, FROM APRIL 1, 2023 THROUGH AUGUST 31, 2026; AND

(4) WAIVE THE TEN PERCENT (10%) LATE CHARGE AND REQUIRE A LUMP SUM PAYMENT OF \$93,675.94 (“LUMP SUM”) IN OUSTANDING ADJUSTED BASE RENT AND OUTSTANDING ADDITIONAL RENT FOR THE PERIOD OF APRIL 1, 2020 THROUGH AUGUST 31, 2021 UPON EXECUTION OF THE LEASE AMENDMENT; AND

(5) PROVIDE LESSEE THE RIGHT TO TERMINATE EFFECTIVE APRIL 1, 2023 UPON A NINETY (90) DAY NOTICE; AND

(6) ADJUST GUARANTOR’S LIABILITY AS FOLLOWS:

(A) REDUCE THE AGGREGATE SUM OF GUARANTOR’S LIABILITY FROM \$120,000 TO \$60,000 UNTIL AUGUST 31, 2021; AND

(B) REDUCE THE GUARANTOR’S LIABILITY TO SIX (6) MONTHS OF THE THEN TOTAL AMOUNT OF BASE RENT AND ADDITIONAL

RENT STARTING SEPTEMBER 1, 2021 DURING EXTENDED TERMS;
AND

(7) RECONCILE COMMON AREA MAINTENANCE (“CAM”) CHARGES ON A
JANUARY TO DECEMBER CALENDAR YEAR BASIS.

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 Corporation and Emporium Oakland, LLC (Lessee) executed a Lease Agreement dated August 29, 2018 (“Lease”) for 1805 Telegraph Avenue, Oakland, California (“Premises”); and

WHEREAS, the Premises includes a 4,503 square feet interior restaurant, bar and arcade plus 400 square feet of exterior patio space; and

WHEREAS, on March 1, 2020, Alameda County Interim Health Officer Erica Pan, MD, MPH, FAAP declared a Local Health Emergency in response to the COVID-19 pandemic threat to public health and safety, and

WHEREAS, on March 4, 2020, California Governor Gavin Newsom proclaimed that a State of Emergency exists in California as a result of the threat of COVID-19; and

WHEREAS, on March 16, 2020, Alameda County Interim Health Officer Erica Pan, MD, MPH, FAAP issued a Shelter-in-Place Order, and further Amended the order on April 29, 2020, that requires all Alameda County Residents to stay in their homes and leave only for specified essential purposes; and

WHEREAS, the Corporation and Lessee wish to amend the Lease in light of the impact to Lessee from the Shelter- in-Place Orders issued by the Alameda County Public Health Department in response to the global COVID-19 pandemic; and

WHEREAS, due to the large size of the outstanding balance Lessee owes as of March 1, 2021 (\$148,029.95 for Base Rent, Additional Rent and EBMUD charges) and uncertain future economic conditions, Lessee is expected to terminate the Lease effective September 1, 2021 and cease to operate absent a modification of Lease terms; and

WHEREAS, Corporation desires for Lessee to remain a tenant of the Premises and eventually return to pre-pandemic levels of operation and employment; and

WHEREAS, the Board of Directors of the Corporation deems it to be in the best interest of the Corporation to have the Corporation authorize the execution of a Lease Amendment with the Lessee and to conduct all other necessary actions for this transaction.

NOW, THEREFORE, BE IT RESOLVED: That the Board of Directors hereby authorize the Corporation to execute a Lease Amendment and Guaranty Amendment with the Lessee that substantially reflects the following terms and conditions:

- (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; and
- (2) Adjust Base Rent by Fifty Percent (50%) from April 1, 2020 through March 31, 2023 as follows:
 - (A) Adjusted Base Rent in the amount of \$4,615.58 per month from April 1, 2020 to August 31, 2021 for a total amount of \$78,464.78 in outstanding rent;
 - (B) Adjusted Base Rent in the amount of \$5,077.14 per month from September 1, 2021 to August 31, 2022; and
 - (C) Adjusted Base Rent in the amount of 5,178.68 per month from September 1, 2022 to March 31, 2023; and
- (3) Resume Base Rent in the amount of \$10,357.36 per month, as adjusted annually, from April 1, 2023 through August 31, 2026; and
- (4) Waive the Ten Percent (10%) late charge and require a Lump Sum payment of \$93,675.94 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; and
- (5) Provide Lessee the right to terminate effective April 1, 2023 upon a Ninety (90) day notice; and
- (6) Adjust Guarantor's liability as follows:
 - (A) Reduce the aggregate sum of Guarantor's liability from \$120,000 to \$60,000 until August 31, 2021; and

(B) Reduce the Guarantor's liability to Six (6) months of the then total amount of Base Rent and Additional Rent starting September 1, 2021 during extended terms; and

(7) Reconcile CAM charges on a January to December calendar year basis.

FURTHER RESOLVED: That the Lease Amendment between the Corporation and Lessee shall be reviewed and approved for form and legality by the Corporation's General Counsel; and be it

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 to facilitate the transactions authorized herein and any other action described in this Resolution; and be it

FURTHER RESOLVED: 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.

IN WITNESS HEREOF, the undersigned Members of the Board of Directors of the Corporation have executed this Action as of _____.

Alexa Jeffress, President

Hui Chang Li, Secretary

Margaret O'Brien, Chief Financial Officer

Betsy Lake, Board Member

Kelley Kahn, Board Member

Brendan Moriarty, Board Member

Anthony Reese, Board Member