Oakland Oversight Board
Memorandum

TO:	Oakland Oversight Board	**FROM:**	Mark Sawicki
SUBJECT:	Fox Theater Loan Assignment, Subordination & Guaranty	**DATE:**	September 26, 2016
		ITEM:	#3

RECOMMENDATION

Staff recommends that the Oakland Oversight Board adopt two resolutions approving: 1) the assignment of the $1,400,000 tenant improvement loan for the Fox Theater from Fox Theater Master Tenant to Fox Oakland Theater, Inc.; and 2) modification of the existing loan repayment guaranty from the Redevelopment Agency of the City of Oakland to Fox Oakland Theater, Inc. for a conventional loan not to exceed $4,600,000 and subordination of the Successor Agency loan to this conventional loan.

EXECUTIVE SUMMARY

The attached legislation authorizes the assignment of, and amendment to, various loans and loan guaranties for the Fox Theater Project. The tax credit financing that was used to fund the renovations for the Fox Theater Project required the City and former Redevelopment Agency (the "Agency") to set up Fox Oakland Theater, Inc. ("FOT"), a non-profit public benefit corporation. FOT then set up Fox Theater Manager, Inc. ("FTM"), a for profit corporation owned by FOT. Finally, FTM set up two limited liability companies owned by the tax credit investor and FTM: Fox Theater Landlord LLC ("FTLL") and Fox Theater Master Tenant, LLC ("FTMT"). Now that the tax credit compliance periods have ended, the financing structure can be simplified and most of these entities can be dissolved. In order to dissolve these entities, FTMT must first assign a $1,400,000 Agency loan to FOT. This loan and other Successor Agency debt will need to be subordinated to a new $4,600,000 conventional loan to FOT, and this new loan will need to be guaranteed by ORSA.

OUTCOME

The redevelopment dissolution statutes, in particular Health and Safety Code Section 34181, direct the Oversight Board, through the Successor Agency, to determine whether any contracts, agreements, or other arrangements between the dissolved redevelopment agency and any private parties should be terminated or renegotiated to reduce liabilities and increase net revenues to the taxing entities, and present proposed termination or amendment agreements to the Oversight Board for its approval. The Board may approve any amendments to, or early termination of, those agreements, if it finds that amendments or early termination would be in the best interests of the taxing entities.

The assignment of the FTMT loan is part of an expected eventual unwind of the Historic and New Markets Tax Credit transaction and will allow ORSA to terminate several contingent liabilities, including the following items from the Recognized Obligation Payment Schedule ("ROPS"): #99 and #100 (Fox Theater New Markets Tax Credit Loan Guaranties); and #101 (Fox Theater New Markets Tax Credit and Historic Tax Credit Investment Guaranty). The tax credit unwind will eventually remove approximately $30,000,000 in contingent liabilities. In addition, the assignment and replacement loan guaranty will allow FOT to refinance the existing $6,500,000 commercial loan, which would otherwise require a $4,600,000 payment on December 15, 2016, per ROPS Item #98 (Fox Theater Loan Payment Guaranty for construction/permanent loan). The refinancing of this loan may also require subordination of the other Agency financing for the Fox Theater, including the $1,400,000 Agency loan to FTMT, and subordination of the leasehold interest in the Fox Theater. The subordinations, assignment and loan guaranty all will help to prevent ORSA from having to make a $4,600,000 payment from the next Redevelopment Property Tax Trust Fund distribution under the existing loan guaranty, thereby reducing liabilities and increasing net revenue in the best interest of the taxing entities. Even if ORSA were to receive no additional payments for the $1,400,000 Agency loan to FTMT, ORSA would still be in a better financial position than it would be in having to pay off the remaining $4,600,000 on the $6,500,000 Construction Loan. However, it is more likely that ORSA will continue to receive payments under the $1,400,000 Agency loan, and these payments will increase after the refinanced loan is paid off in 10 years, even if the lender providing the refinanced loan requires reserves to be set aside before payments are made on the $1,400,000 Agency loan. The various Fox Theater entities currently have cumulative cash balances of approximately $1,500,000, which should be sufficient for any reserve requirement. Most of these funds are required for operating and replacement reserves, and possibly a debt service reserve for the new $4,600,000 loan, but a small portion may be available for paying down a portion of the balloon payment, thus reducing the refinancing amount and the ORSA obligation. Of the existing cash balances, approximately $280,000 is held by FTLL and these are funds may be available for paying down this loan.

BACKGROUND/LEGISLATIVE HISTORY

The Fox renovation is one of the most unique construction projects ever undertaken by the Agency. The Agency directly financed a substantial portion of the costs and City staff, financed by the Agency, acted as developer for the project with California Commercial Group as a consultant. The City and Agency indirectly own the project through the various entities created to facilitate the tax credit financing for the renovation, and ORSA (as successor to the Agency) owns the underlying property, with a ground lease to the developer.

Generating tax credit equity and reducing the direct costs to the Agency required the Agency to develop a complicated financing structure to subsidize the project. The City and Agency created the Fox entities - FOT, FTMT, FTLL and FTM - to enter into a series of ownership and financial structures and agreements to insure that the project would receive Historic and New Markets Tax Credits needed for funding the project. These are summed up as follows:

On July 19, 2005, the Agency and City Council ("City") approved resolutions authorizing a Lease Disposition and Development Agreement ("LDDA") between the Agency and Oakland

Renaissance NMTC, Inc., a nonprofit public benefit corporation ("ORNMTC") that was required to apply for and accept historic tax credits. (Agency Resolution No. 2006-0046 C.M.S. and City Resolution No 79382 C.M.S.)

On July 18, 2006 and October 31, 2006, the Agency and City approved resolutions authorizing an Amended and Restated Disposition and Development Agreement between the Agency and ORNMTC, which was later assigned to the then-newly created FOT. FOT replaced ORNMTC and was established specifically as the entity to control the project via a ground lease and, in accordance with the DDA, to indirectly own and manage the other financial entities created to secure the Historic and New Markets Tax Credit equity for the project. (Agency Resolution Nos. 2006-0057 C.M.S. and 2006-0073 C.M.S. and City Resolution Nos. 80057 C.M.S. and 80247 C.M.S.) The DDA includes several pieces of Agency financing, including: 1) $4,100,000 predevelopment loan; 2) $6,500,000 loan for the land (the lease value was based on the cost to the Agency for purchasing and preserving the building); and 3) a $21,500,000 construction loan. The Agency resolutions also authorized guaranties for the tax credit investments and a $6,500,000 conventional construction loan.

On October 31, 2006, the Agency approved a resolution revising authority for the guaranties including the guaranty for the $6,500,000 commercial loan. (Agency Resolution No. 2006-0073 C.M.S.)

On July 15, 2008, the Agency approved Resolution Nos. 2008-0075 C.M.S. through 2008-0080 C.M.S. authorizing the Agency Administrator to: (1) amend the Disposition And Development Agreement to provide for a Bridge Loan to FOT for $7,450,000 to pay for increased project costs; (2) to enter into a Tenant Improvement Grant Agreement with GASS Entertainment Inc., the selected theater operator, for $2,000,000 to pay for theater tenant improvements; (3) to enter into a loan agreement with FTMT, which was indirectly controlled by FOT via the ground lease and DDA, for $2,700,000 to pay for additional theater tenant improvements and restaurant tenant improvements; (4) to enter into a loan agreement with the Oakland School for the Arts ("OSA") for $2,300,000 to fund the school tenant improvements; (5) to apply for, accept and appropriate grant funds from: (a) California Cultural And Historical Endowment Grant in the amount of $1,400,000; (b) Department Of Housing And Community Development Infill Infrastructure Grant in the amount of $10,000,000; and (c) a Federal Housing And Urban Development Grant in the amount of $3,000,000; and (6), to accept and appropriate $68,750 in historic mitigation funds from Signature At Broadway Grand LLC.

On May 19, 2009, the Agency approved Resolution No. 2009-0061 C.M.S. authorizing an amendment to Resolution No. 2008-0077 C.M.S. to divide the $2,700,000 loan to FTMT into two loans: (1) a $1,400,000 loan to FTMT for restaurant tenant improvements, and (2) a $1,300,000 loan to Friends of the Oakland Fox ("FOOF").

On January 5, 2010, the Agency approved Resolution Nos. 2010-0010 C.M.S. authorizing an additional $2,000,000 construction loan to pay for the final change orders.

ANALYSIS

In order to generate equity from the New Markets and Historic Tax Credits, the City and Redevelopment Agency helped create four entities. FTMT was wholly owned by Bank of America, the tax credit investor and 100 percent sole member of FTMT. FTM was the nonmember manager of FTMT. FTLL was owned by FTMT (10%) and FTM (90%), which is owned by FOT. The various agreements with the Agency and other entities were passed through FOT to the various other Fox Theater entities. With the end of the tax credit compliance period, ownership of FTMT has been transferred to FOT. Now all of the other entities are owned by FOT directly or indirectly and can be dissolved. The dissolution of these entities will result in approximately $186,000 in annual savings from eliminated Federal and State taxes and fees, as well as accounting, legal, property management and other consultant costs. These savings will allow FOT to set aside maintenance reserves for the Fox Theater and repay debt to ORSA. FOT will be able to dissolve the other three entities as soon as the remaining loans, contracts and other obligations are formally assigned to FOT. Most of the ORSA loans are with FOT, but one of the loans - the $1,400,000 tenant improvement loan - requires ORSA consent for the assignment of this $1,400,000 loan to FOT.

Failure to refinance the $4,600,000 debt by December, 2016, would result in the ORSA guaranty being called and thus requiring a payment by ORSA of $4,600,000. The Ground Lease structure and the refinancing of the $4,600,000 debt will reduce ORSA liabilities, both in terms of the guaranty, and also with respect to property liabilities. Additional benefits will occur once FOT has built up operating funds and a maintenance reserve, when net revenue will be paid to ORSA as deferred loan payments. Since the Agency loans to the Fox Theater project were primarily made with bond funds, Central District TA Bonds Series 2006 Taxable, the repayments are considered bond proceeds under the Bond Expenditure Agreement and will be transferred to the City for projects and programs that are consistent with the bond covenants, i.e. blight abatement within the Central District.

If approved by the Oversight Board, the proposed assignment of the Successor Agency Loan, the modification of the loan guaranty, and subordination of other Successor Agency debt will be submitted to DOF for approval. Staff reviewed the proposed action with DOF, and DOF staff appeared willing to approve the proposed legislation once it has been authorized by ORSA, the City, and the Oversight Board. Corresponding legislation is scheduled to be heard by the ORSA Board on October 4th, 2016.

COST SUMMARY/IMPLICATIONS

The $1,400,000 FTMT loan is the only debt with ORSA that has been regularly paid by any of the entities, with payments of approximately $100,000 per year, or $620,278 to date. This loan was made with unrestricted redevelopment funds and any payments are considered to be general ORSA revenue. The interest and principal payments therefore offset other ORSA costs, reducing ORSA's claims on the Redevelopment Property Tax Trust Fund, and result in additional revenue to the taxing entities, of which approximately 29 percent comes to the City of Oakland. The total payments will be approximately $2,000,000 and the City's share of the distributions to taxing entities will be approximately $580,000. In addition, the project has also been paying a number of other conventional and New Markets enhanced loans. This debt will also need to be assumed by FOT but, with consolidation of this debt, there will be additional funds available for the Project.

The new $4,600,000 loan payment guaranty will not impact the City or the taxing entities. Without the guaranty, the taxing entities, including the City of Oakland, would likely share in a $4,600,000 reduction in net funds from the Redevelopment Property Tax Trust Fund ("RPTTF") in January 2017. The City's share of RPTTF would be reduced by approximately $1,334,000. But with the new payment guaranty on the $4,600,000 loan, such payment from RPTTF would be prevented and over time the liability would be eliminated. It is expected that FOT will have sufficient funds to repay the full $4,600,000 refinanced loan from revenues generated from the Project.

For questions regarding this report, please contact Patrick Lane in the Project Implementation Division at 238-7362.

Respectfully submitted,

/s/

Mark Sawicki
Director, Economic & Workforce
Development Department

Prepared by:
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Economic & Workforce Development Department,
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OAKLAND OVERSIGHT BOARD

RESOLUTION NO. 2016-________

A RESOLUTION CONSENTING TO THE ASSIGNMENT OF A $1,400,000 LOAN FROM THE AGENCY AND FOX THEATER MASTER TENANT, LLC TO FOX OAKLAND THEATER, INC. AND SUBORDINATING THE LOAN TO A NEW $4,600,000 LOAN

WHEREAS, the Redevelopment Agency of the City of Oakland ("Agency") entered into a Disposition and Development Agreement ("DDA") on December 15, 2006 with Fox Oakland Theater, Inc.("FOT") to ground lease and undertake the restoration of the Fox Theater and to provide loans to carry out the restoration; and

WHEREAS, renovation of the Fox Theater required creation of several other entities to employ New Markets and Historic Tax Credits in the project, including Fox Theater Manager, Inc., Fox Theater Landlord LLC and Fox Theater Master Tenant LLC; and

WHEREAS, in December 2006 Fox Theater Master Tenant LLC entered into a ten year lease agreement with GASS Entertainment, LLC ("GASS") for the purpose of operating the Fox Theater as a live performing arts venue; and

WHEREAS, a portion of the wrap around buildings in the Fox Theater, on 18th Street and Telegraph Avenue, was set aside to be a restaurant (the "Restaurant Space"); and

WHEREAS, in November 2009 Fox Theater Master Tenant LLC entered into a $1,400,000 loan to cover tenant improvements in the "Restaurant Space"; and

WHEREAS, in October 2010 Fox Theater Master Tenant LLC entered into a five year lease agreement with BMZ Enterprises, LLC ("Rudy's") for the purpose of operating a restaurant in a portion of the Restaurant Space; and

WHEREAS, in May 2011 Fox Theater Master Tenant LLC amended the lease agreement with GASS for the purpose of adding the VIP Space, a portion of the Restaurant Space, to the lease; and

WHEREAS, the project never had funds to complete tenant improvements for the Fox Theater's "Restaurant Space" on 18th and Telegraph of which the landlord's (Fox Theater Master Tenant LLC) share were estimated to be approximately $1.4 million; and

WHEREAS, the $1,400,000 Agency loan and other funds from the Fox Theater project were used to fund the basic tenant improvements and to give tenant improvement allowances to GASS and Rudy's for the Restaurant Space; and

WHEREAS, a portion of the rent from the Restaurant Space (i.e., everything over $1.50/sq. ft./month, along with the repayment of the tenant improvement allowance provided to the tenants of the Restaurant Space) is being used by Fox Theater Master Tenant LLC to repay the $1,400,000 Agency loan; and

WHEREAS, Fox Theater Master Tenant LLC is no longer required to exist for the tax credit financing because the tax credit compliance periods are over; and

WHEREAS, Fox Oakland Theater wishes to take over the project, assume the $1,400,000 Agency loan from Fox Theater Master Tenant LLC and eliminate the other development entities including Fox Theater Master Tenant LLC; and

WHEREAS, assignment of the $1,400,000 Agency loan is required for these actions to be concluded; and

WHEREAS, Fox Oakland Theater will provide the same security for the $1,400,000 Agency loan: a pledge of the funds from a portion of the rent from the Restaurant Space and repayment of the tenant improvement allowance provided to the tenants of the Restaurant Space; and

WHEREAS, financing of the Fox Theater Project included a $6,500,000 construction loan that has a ten year term with an approximately $4,600,000 balloon payment due in December of 2016; and

WHEREAS, refinancing of the $6,500,000 construction loan, which would have a principal amount of $4,600,000 at the time of the refinancing, may require subordination of the $1,400,000 Agency loan; and

WHEREAS, the Oakland Redevelopment Successor Agency ("ORSA") was established as the successor agency to the Agency pursuant to Health and Safety Code Sections 34171(j) and 34173; and

WHEREAS, the ORSA Board is scheduled to hear corresponding legislation on October 4th, 2016; now:

Based on the foregoing recitals and the documentation presented to the Oakland Oversight Board at a public meeting, the Oakland Oversight Board does resolve as follows:

SECTION 1. The Oakland Oversight Board finds and determines that the proposed assignment of ORSA's loan and other actions related to the Fox Theater financing described herein will benefit the taxing entities because the assignment will

(1) reduce the financial liability of the taxing entities by facilitating the refinancing of the Fox Theater conventional debt and avoiding the need to pay on the existing loan guaranty on ORSA's Recognized Obligation Payment Schedule ("ROPS"); and
(2) increase net revenues to the taxing entities by reducing the need for a payment on the Fox Theater loan guaranty, increase the net revenue available for repaying the loan and thereby increase the amount of residual Redevelopment Property Tax Trust Fund ("RPTTF") funds that will flow to the taxing entities; and
(3) be in the best interest of the taxing entities because it both reduces ORSA liabilities and increases funds that will flow to the taxing entities.

SECTION 2. The Oakland Oversight Board hereby consents to the assignment of the Agency loan made to Fox Theater Master Tenant LLC to Fox Oakland Theater in the amount of the $1,400,000 under the terms and conditions set forth in this resolution.

SECTION 3. The Oakland Oversight Board hereby approves the subordination of this $1,400,000 Agency loan to a new loan of not more than $4,600,000.

SECTION 4. The Oakland Oversight Board hereby approves the action of the ORSA Board authorizing the ORSA Administrator to assign the Agency loan and other actions related to the Fox Theater re-financing.

ADOPTED, OAKLAND, CALIFORNIA ________________________________, 2016

PASSED BY THE FOLLOWING VOTE:

AYES– BYRD, CHAIR CARSON, LITTLE, MULVEY, ORTIZ, TUCKER

NOES–

ABSENT–

ABSTENTATIONS-

ATTEST:________________________
SECRETARY OAKLAND
OVERSIGHT BOARD

OAKLAND OVERSIGHT BOARD

RESOLUTION NO. 2016-________

RESOLUTION REGARDING THE FOX THEATER PROJECT AMENDING RESOLUTION NOS. 2006-0073 AND 2009-0057 TO MODIFY THE EXISTING LOAN REPAYMENT GUARANTY FROM THE REDEVELOPMENT AGENCY OF THE CITY OF OAKLAND TO FOX OAKLAND THEATER, INC. FOR CONVENTIONAL LOAN NOT TO EXCEED $4,600,000

WHEREAS, the Redevelopment Agency of the City of Oakland ("Agency") entered into a Disposition and Development Agreement ("DDA") on December 15, 2006 with Fox Oakland Theater, Inc.("FOT") to ground lease and undertake the restoration of the Fox Theater and to provide loans to carry out the restoration; and

WHEREAS, renovation of the Fox Theater required numerous funding sources including Agency loans, New Markets and Historic Tax Credits, governmental and private grants and a commercial loan of $6,500,000; and

WHEREAS, the commercial loan of $6,500,000 was primarily secured by a guaranteed income stream donation to Oakland School for the Arts from CBS Outdoor's (now Outfront Media) income from a billboard on Port of Oakland property, but also required additional security from the Agency because of the unlikely, but possible interruptions in the income stream should the billboard lease be terminated by the Port or on account of actions of the California Transportation Agency; and

WHEREAS, on July 18, 2006, the Agency approved providing a guaranty of up to $6,500,000 for the commercial loan; and

WHEREAS, the $6,500,000 commercial loan has a 10 year term and has been paid down to where on the maturity date of this loan, December 20, 2016, a balloon payment in the approximate amount of $4,600,000 will be due; and

WHEREAS, the Oakland Redevelopment Successor Agency ("ORSA") was established as the successor agency to the Agency pursuant to Health and Safety Code Sections 34171(j) and 34173; and

WHEREAS, ORSA has listed the loan guaranty as an enforceable obligation on its Recognized Obligation Payment Schedule ("ROPS") and must pay the $4,600,000 balloon payment if FOT is not successful in refinancing the commercial loan; and

WHEREAS, FOT is finding it difficult to negotiate a new loan to finance the $4,600,000 balloon payment due to the complicated nature of the income that would be used to secure the debt; and

WHEREAS, FOT is therefore requesting that ORSA include the $4,600,000 loan guaranty payment in the amended 2016-17B ROPS in order to make the balloon payment due on December 20, 2016 should refinancing be unsuccessful; and

WHEREAS, ORSA also is successor in interest to several unsecured Agency loans to FOT for the Fox Theater project, including $6,500,000 for the ground lease payment, $27,000,000 in 2006 for initial development, and additional development loans for 7,450,000 in 2009 and $2,000,000 in 2010; and

WHEREAS, the refinancing of the debt would trigger repayment of these ORSA loans per the promissory notes and FOT is requesting this requirement to be waived for the proposed refinancing; and

WHEREAS, refinancing of the existing debt may also require ORSA to subordinate its existing loans to FOT related to the Fox Theater Project to the refinanced debt; and

WHEREAS, the ORSA Board is scheduled to hear corresponding legislation on October 4th, 2016; now:

Based on the foregoing recitals and the documentation presented to the Oakland Oversight Board at a public meeting, the Oakland Oversight Board does resolve as follows:

SECTION 1. The Oversight Board hereby finds and determines that ORSA's providing FOT with a new guaranty and subordinating its existing loans to the Fox in order to facilitate refinancing of the commercial loan will:

(1) reduce the financial liability of the taxing entities by avoiding the need for to pay on the existing loan guaranty on ORSA's Recognized Obligation Payment Schedule ("ROPS"); and
(2) increase net revenues to the taxing entities by reducing the need for a payment on the Fox Theater loan guaranty, and thereby increase the amount of residual Redevelopment Property Tax Trust Fund ("RPTTF") funds that will flow to the taxing entities; and
(3) be in the best interest of the taxing entities because it both reduces ORSA liabilities and increases funds that will flow to the taxing entities.

SECTION 2. The Oversight Board hereby approves adding the payment of the existing loan guaranty in the amount of $4,600,000 to the 2016-17 ROPS for funding from the RPPTF during the 2016-17 B ROPS period.

SECTION 3. The Oversight Board hereby approves ORSA providing a new loan guaranty for the benefit of the conventional lender providing a refinanced loan to Fox Oakland Theater in the amount of $4,600,000 under the terms and conditions set forth in this resolution and authorizes the inclusion of the new loan guaranty on the amendment to the 2016-17 ROPS.

SECTION 4. The Oversight Board hereby approves the subordination of the FOT Leasehold interest in the Fox Theater property as well as the Agency loans to the Fox Theater, without triggering the repayment term for the loans, to facilitate the refinancing of the commercial loan.

SECTION 5. The Oversight Board approves the action of the ORSA Board authorizing the ORSA Administrator to negotiate, approve, and execute a loan guaranty, subordination agreements and related documents necessary to assist FOT in obtaining a refinanced loan for $4,600,000.

ADOPTED, OAKLAND, CALIFORNIA ________________________________, 2016

PASSED BY THE FOLLOWING VOTE:

AYES– BYRD, CHAIR CARSON, LITTLE, MULVEY, ORTIZ, TUCKER

NOES–

ABSENT–

ABSTENTATIONS-

ATTEST:________________________

SECRETARY OAKLAND
OVERSIGHT BOARD