

OAKLAND OVERSIGHT BOARD

RESOLUTION No. 2014- 4

A RESOLUTION RATIFYING THE OAKLAND REDEVELOPMENT SUCCESSOR AGENCY'S ASSUMPTION, REAFFIRMATION AND RATIFICATION OF GUARANTIES AND INDEMNITIES REQUIRED FOR TAX CREDIT FINANCING FOR THE FOX THEATER PROJECT

WHEREAS, on July 19, 2005, the Redevelopment Agency of the City of Oakland ("Redevelopment Agency") authorized the Agency Administrator to enter into a Disposition and Development Agreement ("DDA") with Oakland Renaissance NMTC, Inc. ("ORNMTC"), a California non-profit corporation, for the renovation for the Fox Theater Project (the "Project"); and

WHEREAS, on July 18, 2006, the Redevelopment Agency authorized the Agency Administrator to amend the DDA and permit the DDA to be assigned to Fox Oakland Theater, Inc. ("FOT") a California non-profit corporation; and

WHEREAS, the Redevelopment Agency evaluated the costs of renovating the Fox Theater and determined that in order to complete the project, it would need a variety of sources of financing, including: state and federal grants, private fund raising, New Market Tax Credits (NMTC), Historic Tax Credits (HTC), and financing from the Agency; and

WHEREAS, the Project was ultimately financed with a combination of sources of funds including NMTCs and HTCs; and

WHEREAS, as a condition to obtaining the NMTC and HTC investments in the Project, the Redevelopment Agency was required to provide certain guaranties and indemnities to the investors, including Banc of America Community Development Corporation and National Trust Community Investment Fund III, LLC; and

WHEREAS, on October 31, 2006, the Agency authorized the Agency Administrator to further amend the DDA and enter into agreements with tax credit financing entities to provide the following guaranties:

1. A guaranty that the Fox theater project will be completed in accordance with the requirements of the National Park Service certification for historic property status and for eligibility for HTCs;

2. A guaranty against loss of tax credits due to a breach by FOT entities of the applicable tax credit rules and regulations;
3. A guaranty that the Fox Theater Project has funds sufficient to provide the following:
 - (a) replacement reserves,
 - (b) recurring expenses,
 - (c) debt service payments,
 - (d) preferred return for tax credit financing, and
 - (e) reserve for tax credit buyout;
4. An indemnity for protecting the tax credit financiers, and the commercial lending entity from existing and future, known or unknown losses from environmental contamination; and

WHEREAS, the Redevelopment Agency, consistent with the approved Amended DDA, entered into certain guaranty agreements for the benefit of the NMTC and HTC investors; and

WHEREAS, the Oakland Redevelopment Successor Agency ("ORSA") is the successor to all rights and obligations of the Redevelopment Agency pursuant to the provisions of Health and Safety Code Section 34173; and

WHEREAS, Banc of America Community Development Corporation has requested that ORSA enter into two Assumption, Reaffirmation and Ratification of Indemnity Agreements ("Reaffirmation Agreements") for the 2006 and 2009 NMTC Transactions for the Fox Theater, reaffirming that ORSA is the successor to the Redevelopment Agency and is obligated under the guaranties previously provided by the Redevelopment Agency; and

WHEREAS, ORSA has already assumed the guaranty obligations and has listed the guaranty obligations on the Recognized Obligation Payment Schedules ("ROPS"); and

WHEREAS, since the Fox Project was completed over five years ago, and no changes to the physical project would be triggered by the this legislation, there will be no effect on the environment by this new action and it is therefore exempt from CEQA pursuant to CEQA Guidelines Section 15061(b)(3), which states that "CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA", and

WHEREAS, the Reaffirmation Agreements do not change or increase ORSA's obligations but rather ratify that ORSA is obligated under the guaranty agreements; now, therefore:

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 reaffirmations only acknowledge an existin obligations and do not add new obligations or increase the existing obligations of ORSA.

SECTION 2. The Oakland Oversight Board hereby approves the action of the ORSA board authorizing the ORSA Administrator to negotiate and enter into appropriate agreements with the tax credit financing entities providing tax credit financing to the Fox Theater Project, including the Reaffirmation Agreements for the 2006 and 2009 NMTC transactions.

SECTION 3. The Oakland Oversight Board requires that the Reaffirmation Agreements shall be reviewed and approved as to form and legality by ORSA General Counsel prior to execution by ORSA, and shall be placed on file with the ORSA Secretary.[]

ADOPTED, OAKLAND, CALIFORNIA, May 22, 2014

PASSED BY THE FOLLOWING VOTE:

AYES- CARSON, GERHARD, MULVEY, ORTIZ, QUAN, TUCKER, YEE

NOES-

ABSENT-

ABSTENTION-

EXCUSED- CARSON RINNE, YEE

ATTEST:



SECRETARY, OAKLAND
OVERSIGHT BOARD

