

AGENDA PACKET

FOX OAKLAND THEATER, INC.

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

BOARD OF DIRECTORS MEETING

Wednesday, May 3, 2023
2:00 p.m.

250 FRANK H. OGAWA PLAZA, 5TH FLOOR, SUITE 5313
OAKLAND, CA 94612

If you need special assistance to participate in meetings, **please contact FOTB staff Brandon Wolinsky** (bwolinsky@oalandca.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 bwolinsky@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.**

AGENDA PACKET

FOX OAKLAND THEATER, INC.

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

BOARD OF DIRECTORS MEETING

AGENDA

Wednesday, May 3, 2023
2:00 p.m.

1. Roll Call

Hui-Chang Li (Secretary) Betsy Lake (Director)
Kelley Kahn (Director) Brendan Moriarty (Acting Secretary)

2. Public Comment

(1 minute per speaker)

3. [FOT Board Composition and Appointments](#)

ACTION ITEM

Presenter: Brendan Moriarty/Brandon Wolinsky

Staff Recommendation:

Authorize the following appointments to the Board of Directors of Fox Oakland Theater, Inc.:

- (1) Kelley Kahn as Board President;
- (2) Brendan Moriarty as Secretary; and
- (3) Brittany Hines as Chief Financial Officer

4. [Approval of December 1, 2021 FOT Board Meeting Minutes](#)

ACTION ITEM

Presenter: Brendan Moriarty

5. FOT Financial Status

INFO ITEM

Presenter: Brandon Wolinsky

6. [Professional Services Agreement with CohnReznick for Financial Statement Review and Tax Return Preparation Services](#)

ACTION ITEM

Presenter: Brandon Wolinsky

Staff Recommendation:

Authorize approval and execution of a professional services agreement with CohnReznick, Inc. For the Fox Oakland Theater, Inc. (FOT) in an amount not to exceed seventy thousand dollars (\$70,000) to perform as-needed financial statement review and annual tax preparation services for FOT for a five-year period, beginning with fiscal year 2021-2022 through fiscal year 2025-2026, with a 2-year option to extend..

7. Schedule for Upcoming Meetings

Presenter: Brendan Moriarty/Brandon Wolinsky

INFO ITEM

8. Adjournment

AGENDA PACKET

FOX OAKLAND THEATER, INC.

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

BOARD OF DIRECTORS MEETING

MINUTES

Wednesday, December 1, 2021 12:15 PM

1. Roll Call

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

Meeting called to order at 12:15pm. Board members present: Alexa Jeffress, Margaret O'Brien, Kelley Kahn, and Brendan Moriarty.

2. Public Comment

(1 minute per speaker)

No public comment received.

3. Board Composition

Anthony Reese's Resignation

Alexa Jeffress announced Anthony Reese's resignation from the City of Oakland and the FOT Board.

INFO ITEM

4. Nominate New Acting Secretary

Kelley Kahn nominated Brendan Moriarty as acting secretary. Motion was seconded by Margaret O'Brien. Motion passed by consensus.

ACTION ITEM

4. [Approval of June 1, 2021 FOT Board Meeting Minutes](#)

Presenter: Brendan Moriarty

Brendan Moriarty moved to approve the June 1, 2021 FOT board meeting minutes. Motion seconded by Alexa Jeffress. Motion passed with three ayes.

ACTION ITEM

5. FOT Financial Status

INFO ITEM

Presenter: Patrick Lane

Patrick Lane provided an update on FOT financial status:

FOT has a little over \$1.8 million in account. Roughly \$1 million will be transferred to City to fund the roof and HVAC repair work. Afterwards, FOT will be left with roughly \$800,000, which will be used to cover operation costs for the remainder of its obligations over the next 15 years. After this period, any remaining funds will be transferred to the City. The only confirmed expenses going forward is pledge agreement payment to the taxing entities, which will be covered by ongoing rent payments from the City. Expenses for tax returns may still occur, but audits will likely cease because there is no obligation due to being under the \$1 million in financial activity threshold.

6. Fox Theater Asset Transfer Update

INFO ITEM

Presenter: Patrick Lane

Patrick Lane provided update:

Transactions will still occur between the City and FOT due to the status of the project at transfer. FOT is owed \$43,000 in tenant CAM charges due to some payments being in arrear and not balanced by the closing date. There is security deposit of \$10,000 given to FOT that needs to be transferred to the City, because the City will be obligated to provide the deposit to Emporium when the lease is over. Pre-paid rent from OSA (\$145,000) will need to be transferred from FOT to the City.

FOT also paid the taxes because the assessment came in near the end of its ownership, it's difficult to determine obligated payor since the City is a non-taxable entity. City owes tax assessment payment to FOT, but will be reimbursed out of the CAM. In total, roughly \$54,000 to \$55,000 owed from FOT to the City that will come out of the \$800,000.

7. California Capital Investment Group (“CCIG”) Property Management Update

INFO ITEM

Presenter: Brendan Moriarty

CCIG contract was amended (Amendment #15) to extend term until the end of year or 30 days after audit is complete, whichever is later. This is to allow for CCIG staff to provide financial documents and other support to CohnReznick to complete the FY2021 audit.

8. Roof Repair & HVAC Update

INFO ITEM

Presenter: Patrick Lane

FOT had decided to do an emergency contract with WJE. Department of Public Works taking lead with coordinating work. Contract with WJE to obtain bridging documents is not executed, and is still being reviewed by Public Works. Scope of work includes repairing the roof, installing new controls for HVAC for both Fox Theater and OSA, and improvements to HVAC for OSA needed for COVID and fire season.

Both HVAC improvements were agreed to in the June 2021 lease amendments. In regards to GASS/APE, FOT will use the facility fees to pay for the cost of this work. City will be paying for the improvements at OSA.

9. Board Meeting Schedule

- Continue with bi-annual schedule. Next meeting dates:
 - Wednesday, June 1, 2022
 - Thursday, December 1, 2022

10. Adjournment

Meeting adjourned at 12:43pm.

X

Hui-Chang Li
Secretary

**BOARD OF DIRECTORS OF
FOX OAKLAND THEATER, INC.**

RESOLUTION NO. _____

RESOLUTION AUTHORIZING THE FOLLOWING APPOINTMENTS TO THE
BOARD OF DIRECTORS OF FOX OAKLAND THEATER, INC.:

- (1) KELLEY KAHN AS BOARD PRESIDENT;
- (2) BRENDAN MORIARTY AS SECRETARY; AND
- (3) BRITTANY HINES AS CHIEF FINANCIAL OFFICER

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, in January 2023, Alexa Jeffress ceased to be an employee of the City of Oakland and resigned as President of the Corporation; and

WHEREAS, the Corporation desires to appoint Kelley Kahn as President of the Corporation; and

WHEREAS, the Corporation desires to appoint Brittany Hines as Chief Financial Officer of the Corporation; and

WHEREAS, the Corporation desires to appoint Brendan Moriarty as Secretary of the Corporation; and

WHEREAS, the Board of Directors of the Corporation deems it to be in the best interest of the Corporation to have a fully reconstituted Board.

NOW, THEREFORE, BE IT RESOLVED: That the Board of Directors hereby appoints Kelley Kahn as Board President, Brendan Moriarty as Secretary, and Brittany Hines as Chief Financial Officer; 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 _____.

Kelley Kahn, President

Brittany Hines, Chief Financial Officer

Brendan Moriarty, Secretary

Betsy Lake, Board Member

Hui Chang Li, Board Member

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

RESOLUTION NO. _____

RESOLUTION AUTHORIZING APPROVAL AND EXECUTION OF A PROFESSIONAL SERVICES AGREEMENT WITH COHNREZNICK, INC. FOR THE FOX OAKLAND THEATER IN AN AMOUNT NOT TO EXCEED SEVENTY THOUSAND DOLLARS (\$70,000) TO PERFORM AS-NEEDED FINANCIAL STATEMENT REVIEW AND ANNUAL TAX PREPARATION SERVICES FOR THE FOX OAKLAND THEATER INC. (FOT) FOR A FIVE-YEAR PERIOD, BEGINNING WITH FISCAL YEAR 2021-2022 THROUGH FISCAL YEAR 2025-2026, WITH A TWO-YEAR OPTION TO EXTEND THE TERM THROUGH FISCAL YEAR 2027-2028

The undersigned, constituting all members of the Board of Directors of Fox Oakland Theater Inc., a California nonprofit public benefit corporation (“**FOT**” or the “**Corporation**”), do hereby adopt the following statements as true and correct and, where resolved, comprise the resolutions and authorizations of the Corporation:

WHEREAS, on July 15, 2022, FOT issued a request for proposals (RFP) to contract with a certified public accounting firm (CPA) to perform as-needed financial statement review and annual tax preparation services for FOT for a five-year period, beginning with fiscal year 2021-2022 through fiscal year 2025-2026, with a two-year option to extend the term for a maximum of seven years through fiscal year 2027-2028; and

WHEREAS, FOT has received proposals from CPA firms to perform the requested services described in the RFP; and

WHEREAS, following evaluations of the received proposals, FOT staff has determined that CohnReznick, Inc. possesses the best qualifications to provide the requested services; and

WHEREAS, the FOT Board of Directors has authorized its President to enter into a Professional Services Agreement (the “**Agreement**”) with CohnReznick, Inc. for as-needed financial statement review and annual tax preparation services; and

WHEREAS, funds are available for this Agreement in FOT’s Union Bank account; and

WHEREAS, pursuant to its Bylaws, FOT is subject City of Oakland rules, policies, and programs set forth in the Oakland Municipal Code (OMC), including but not limited to the City of Oakland's purchasing ordinance set forth in OMC Chapter 2.04; and

WHEREAS, a competitive process for professional services is required for contracts in excess of Fifty Thousand Dollars (\$50,000) pursuant to OMC 2.04.051.

NOW, THEREFORE, BE IT RESOLVED: That the Board of Directors hereby authorizes the Corporation to execute a professional services agreement with CohnReznick, Inc., for a total contract amount not to exceed Seventy Thousand Dollars (\$70,000) for a five-year period, beginning with fiscal year 2021-2022 through fiscal year 2025-2026 with a two-year option to extend the term for a maximum seven years through fiscal year 2027-2028; and be it

FURTHER RESOLVED: That the Agreement between the Corporation and CohnReznick, Inc. 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.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK- SIGNATURES ON FOLLOWING PAGE]

IN WITNESS HEREOF, the undersigned Members of the Board of Directors of the Corporation have executed this Action as of May 3, 2023.

Kelley Kahn, President

Brendan Moriarty, Secretary

Brittany Hines, Chief Financial Officer

Betsy Lake, Board Member