

FOX OAKLAND THEATER, INC.

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

BOARD OF DIRECTORS MEETING

October 2, 2020

2:00 p.m.

MINUTES

1. Roll call

Meeting called to order at 2:05 p.m.

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

Quorum was achieved with four members present.

Betsy Lake (Director) arrived late after quorum was achieved.

Others present: Patrick Lane (staff), Brandon Wolinsky (staff), Jens Hillmer (staff), Margaret O'Brien

2. Public Comment

No speakers provided public comment.

3. Approval of Minutes for July 15, 2020 – **Action Item**

Moved by Hui-Chang Li, seconded by Alexa Jeffress. Motion was approved.

4. Board appointments – **Action Item**

Hui-Chang Li moved to confirm Margaret O'Brien to replace Adam Benson as CFO, seconded by Anthony Reese. Motion was approved by consensus.

5. FOT Financial Status – **Informational Item**

Hui-Chang Li updated the Board that the FY 19-20 audit is currently underway. Consultant will provide draft report by November 30, 2020. As of October 1, 2020, FOT has approximately \$5.2 million in Operating and Capital Reserve funds, which have been stable since July 2020. Hui-

Chang Li added that reserve funds would usually be growing over this period in usual years, and reminded that projections for revenue and expenses in FY 2020-21 will be a “wash.” Operating reserve funds also include the One-Time Payment to ORSA for the Fox Theater transfer to the City (\$4.4 million) and the remaining OSA Rent Reserve (\$403,153), the latter is expected to be exhausted by July 1, 2021.

6. Lease Updates – **Informational Item**

a) Another Planet Entertainment LLC (“APE”)-GASS Entertainment LLC Lease & Request for Rent Deferral – Update

On September 4, 2020, Brendan Moriarty and Anthony Reese submitted a proposal in response to APE allowing for rent deferral, with an interest charge, until December 31, 2021, or after five concerts hosted the Fox Theater, whichever the sooner of the two. Proposal included requirement to continue contributions towards the CAM charges.

In response, APE stated that they had secured funding from an alternative source and will no longer need the FOTB’s rent deferral assistance. Will be coming current on outstanding payments and will be continue to make rent payments and contribute to CAM charges.

Regarding OSA: Brendan Moriarty and Anthony Reese flagged about \$68,000 in payments from 2007 to 2019 paid by OSA to APE for use of theater stage. This contradicted the APE-GASS lease agreement with OSA that allowed OSA ten uses of the stage for free. In addition, OSA was provided with 30 uses of the stage conditional on reimbursing GASS for its out-of-pocket costs related to OSA’s stage use. In their response, APE-GASS claimed that the written agreement doesn’t reflect the original intent of both parties. Brendan Moriarty and Anthony Reese will be following up with APE to better understand the historic practice and original intent of both parties. They will likely will provide an update on outcome of these discussions at the next FOTB meeting.

b) Emporium Lease & Request for Rent Deferral – Update

Emporium had requested a rent deferral, which Anthony Reese confirmed was granted. Duration of this deferral will continue until they are able to substantially re-open their business.

i) Rudy's Back Rent Loan Payment – Update

Rudy's, a former Fox tenant that previously moved out, has an outstanding loan balance for back rent owed to FOT for approximately \$55,000 in principal (original principal amount a little under \$100,000); they now request a relief in the form of loan deferral. Anthony Reese stated that they requested financials that demonstrate financial hardship. It's expected that the FOTB will receive these documents by the end of October. Once reviewed, we'll either grant them a deferral or return to the FOT Board for further direction.

c) OSA Lease Amendment – Update

OSA still pending review of FOT Board's lease amendment extending their term to April 30, 2026. OSA had requested rent relief, but we're still waiting for them on a written request for specific terms of rent relief to the FOT Board. Their prepaid rent reserve is expected to expire in July, 2021, so we're eager to finalize negotiations prior to then.

7. Fox Theater Asset Transfer from ORSA to City/FOT – Informational Item

Jens Hillmer provided update that report is with the City Attorney's office. Staff is still working on the legislation for the report. Initial goal was to take this report in conjunction with bond spending plan staff report to the November 10th City Council meeting, followed with the second reading of the ordinances and that report on December 1st. The deadline is extremely tight, as the entire report is due by October 12th to the City Administrator's Office. Staff are unsure if the Board would like to postpone this item until December or January. The staff report for the Asset Transfer item is near complete. Primary drivers of this delay are due to finalizing the legislation for the report. Alexa Jeffress noted the importance of advancing this item by the end of this year, due to potential additional evaluation by the State DOF. She will follow up with staff to discuss timing and strategy.

8. Property Management

a) RFP For Property Management Services to replace CCIG – Action Item

Anthony Reese introduced Colliers International, the selected vendor providing FOT with its property management services, as well as their skills, expertise and a summary of their past experiences in property management.

Staff recommends authorization to negotiate an asset/property management agreement with Colliers International as the new Property Manager for the Fox Oakland Theater in an amount not to exceed Six Thousand Two Hundred Dollars (\$6,200) per month, or Seventy-Four Thousand Four Hundred Dollars (\$74,400) per year plus a three percent (3%) increase on each anniversary date, for a term of five (5) years, which may be extended for two (2) additional terms of five (5) years each.

Brendan Moriarty moved to authorize staff to negotiate an asset/property management agreement with Colliers International as the new Property Manager for the FOT. Motion was seconded by Alexa Jeffress and approved by consensus.

b) Capital Improvement Needs – Update on Waterproofing and Roof Report – Update

Staff has been attempting to fix various roof leaks at the Fox Theater that are affecting the OSA and other spaces in the building. Staff has been working with Public Works Department and one of their on- call roofing contractors, the Garland Company, to investigate the causes and to propose fixes. Once staff inspects roof, they hope that the contractor will be able to refine their preliminary estimate into a final bid price. Staff expects availability within the next two to three weeks, at which time, would request the Board to approve at the next convening. Staff expects the work should take around 10 days to complete.

9. Next Meeting: December 7, 2020 @ 3 p.m.

Alexa Jeffress stated there may be a special FOTB meeting prior to this date – however, date has not been confirmed.

10. Other

11. Adjournment

Meeting adjourned at 2:54 p.m.



Hui-Chang Li, Secretary

FOTB meeting minutes 10-2-20_FINAL

Final Audit Report

2021-02-26

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