

# AGENDA ITEM 8.0

California Cultural and Historical Endowment Board Meeting  
05/31/2012

## STAFF REPORT

<b>GRANTEE:</b>	Oakland Redevelopment Agency
<b>PROJECT:</b>	Oakland Fox Theater
<b>LOCATION:</b>	Oakland
<b>PROJECT SUMMARY:</b>	Grantee is making a retroactive request for a material change to authorize work that is different than what was requested in the original grant application and which has already been completed.
<b>FUNDING RESERVED:</b>	\$500,000
<b>FUNDING RESERVATION DATE:</b>	04/14/2010
<b>FUNDING APPROVAL DATE:</b>	06/22/2010
<b>IN GRANT AGREEMENT?:</b>	Yes
<b>GRANT AGREEMENT TERM:</b>	03/31/2011-08/31/2011
<b>FUNDING ROUND:</b>	Funding Round 4

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## BACKGROUND INFO

The Fox Theater, originally opened in 1928, is one of the Bay Area's best surviving examples of an early 20th Century movie palace. Inspired by the Brahman Temples of Northern India, with brick and terra cotta exterior, an elaborately tiled 115 foot tower dome and exotic Hindu and Moorish ornamentation, the Fox had no discriminatory policies towards its patrons which was unusual for the time.

CCHE Round 4 funds were awarded to the Oakland Redevelopment Agency, now the City of Oakland, by the CCHE Board on June 22, 2010, for finishing historical touches of the interior and exterior of the theater's historic wraparound building.

In August 2011, the City of Oakland communicated to CCHE that the work outlined in the original grant application had been completed prior to the grant agreement start date of March 31, 2011. The City expressed a desire to revise the scope of work for the project since the work for which the funds had originally been requested and approved had already been completed. The CCHE Project Manager advised the City that budget revisions are allowable if the original intent of the project is not compromised and that significant changes are considered a material change and must be approved by the CCHE Board. The CCHE Project Manager instructed the grantee to submit an extension request and a new workplan.

The grant subsequently expired on August 31, 2011, and considerable time passed without responsive communication from the grantee, despite multiple attempts by e-mail and phone on the part of the CCHE Project Manager to encourage the submission of documentation to extend the grant term or request a material change. Communication issues were exacerbated by the elimination of the Redevelopment Agency and the loss of some supporting staff, but throughout the term of the CCHE grant, the same City of Oakland Project Manager has been consistently involved with the project.

In January 2012, CCHE staff again asked the City of Oakland to address the ongoing communication and submission issues. At that point, the City indicated that it proposed to change the work plan to include work that had already been completed to the interior of two of the four wraparound buildings that are part of the exterior of the Oakland Fox Theater. The two buildings in question include restaurant space on 18th and Telegraph Street and space known as "V.I.P." space.

In March 2012, CCHE Executive Director Mimi Morris, Grant Manager Francelle Phillips, and Project Manager Diane Sousa

and the City of Oakland Project Manager Patrick Lane discussed the proposed work plan revisions and CCHE learned that the City of Oakland had already authorized improvements made by the tenants to the two buildings during the time period: March 2010-March 2012.

We learned that the improvements were not necessarily made in accordance with the Standards of the Secretary of the Interior for the Treatment of Historic Buildings and that the improvements, rather than being “historic, finishing work” as described in the original grant application, were more along the lines of tenant improvements for a restaurateur tenant: a kitchen hood, a built-in bench for patrons, a wet bar, emergency exit lighting, faux brick painting, handrails, a display case for 1950s-style Barbie dolls, etc. See attached photos.

CCHE advised the grantee that the completed work done on the restaurant and “VIP” space was a departure from the historic improvements proposed in the grant application which had been approved by the CCHE Board in June of 2010. We advised the grantee that their grant had expired last August and that the work which was performed was done without the consent of the board and that the CCHE would not be able to reimburse the City of Oakland without Board approval of a material change request. CCHE staff advised the grantee that staff would not be supportive of a material change request in light of the substantial changes to the proposal and grantee’s failure to submit acceptable workplan and extension documentation to the CCHE in advance of expending funds.

Additionally, CCHE's funds must be used for spaces that will be available to the general public for a period of at least 20 years. The exclusive and private VIP Space limits public access and is therefore not available to everyone, only a subset of theater-goers, making any expenditures for improvements to that space with CCHE funds unallowable.

## **REQUEST**

The City of Oakland is making a retroactive request for a material change from the original scope of work requested in their application which asked for funding to make artistic improvements to the historic wraparound building, They request instead to be reimbursed for tenant-commissioned renovations that have already been completed for two leased spaces of the wraparound building, Rudy's Can't Fail Cafe and the Theater VIP space.

The City of Oakland's request qualifies as a material change because there has been a change in focus of the project so that the revised plan no longer reflects the original purpose of the CCHE grant and there has been a change of circumstances altering the structure of the Project or affecting the grantee's ability to implement the project.

## **FACTORS TO BE CONSIDERED:**

**Project Thread-**If the proposed modification to the original application does not substantially change the scope of the project thread, the project should be allowed to continue in its modified/amended form.

In this instance the proposed tasks significantly deviate from the original intent of the grant application which included finishing historic touches to the exterior and interior of the wraparound building.

**Access-**If the proposed amendment causes a change in public access to the project because of change of project thread or location, it will be considered by the CCHE Board in making their determination as to whether or not to grant an amendment or terminate the Grant Agreement. By changing the scope of work from historic finishing touches of the interior and exterior of the wraparound building to renovations of a VIP Space, public access is limited. The VIP space is exclusive, private in

nature, and not open to the general public.

Capacity of Applicant-Changes in key personnel, budgetary changes involving specific tasks indicated in the work plan, and local, regional zoning or planning laws may should also be considered.

Per the Request for Proposal Requirements regarding Re-granting: Applicants who apply for CCHE funding are responsible for carrying out the project from its initiation to completion. An applicant cannot delegate or assign the grant or tasks to another entity. The material change request submitted by the City asks that CCHE reimburse the City for work that was commissioned and paid for by the grantee's tenants and completed without board approval.

### **BUDGET DETAIL**

The City of Oakland is requesting a budget revision, in the form of a material change request, to revise all previously approved tasks related to the artistic improvements of the historic wraparound building such as: floor and ceiling improvements; fixtures and historic lighting; painting, stenciling, and other wall and column treatments; casework and hardware; restored historic storefronts and permanent hardscape and installation of awnings; and direct the funds instead into the tenant-commissioned renovations that have already been completed: design and consultation costs; construction management; ceiling demolition; faux brick wall painting; Barbie doll display case; benches; lighting wiring; emergency exit lighting; handrails; roof repair; and wet bar. (See Photos.)

### **BUDGET DETAILS**

	<b>CCHE BUDGET</b>	<b>MATCH</b>
Building and Facility Costs:		
VIP Space	\$474,718	\$618,227
Rudy's Can't Fail Café	<u>\$ 25,282</u>	<u>\$ 67,672</u>
	<b>\$500,000</b>	<b>\$685,899</b>

### **STAFF RECOMMENDATION**

Because of the City of Oakland's completion of the Fox Theater's historic restoration project tasks for which the CCHE Board had originally awarded funding prior to the start of the CCHE grant agreement, the lack of communication regarding the changed project, and the expenditure of funds for items clearly outside of the originally approved grant proposal, CCHE staff recommends that the Board reject the material change requested by the City of Oakland.

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