

**REDEVELOPMENT AGENCY  
AND THE CITY OF OAKLAND**  
*AGENDA REPORT*

FILED  
OFFICE OF THE CITY CLERK  
OAKLAND

2007 DEC 26 AM 10:13

**To:** Office of the City/Agency Administrator  
**Attn:** Deborah Edgerly  
**From:** Community and Economic Development Agency  
**Date:** January 8, 2008

**RE: An Agency Resolution Amending Resolution No. 2007-0011 C.M.S. To Approve The Grant Agreement For The California Cultural And Historical Endowment Under The State Of California Proposition 40 (Clean Water, Clean Air, Safe Neighborhood Parks And Coastal Protection Act Of 2002), For The Historic Fox Theater Renovation For An Amount Equal To One Million, Sixty-Four Thousand, Two Hundred And Fifty Dollars (\$1,064,250)**

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**SUMMARY**

A resolution has been prepared for the Redevelopment Agency ("Agency") Board to amend Resolution No. 2007-0011 C.M.S., which originally authorized the Agency Administrator to apply for, accept and appropriate grant funds from the California Cultural and Historical Endowment ("CCHE") Grant Program, Round 3, for an amount up to \$3,000,000 for the renovation and re-opening of the Fox Theater. The original staff report and resolution are included as *Attachment A* of the proposed "amendment resolution".

Staff is returning to Council with this "amendment resolution" because the grantor is requesting the addition of two specific items: (1) approving the Grant Agreement for the actual grant amount received of \$1,064,250; and (2) authorizing the Agency Administrator to appoint a Project Manager for the Grant Agreement as her designee and agent to conduct all negotiations and execute all documents relating to the completion of the Project, and to authorize her to make any changes in the Project Manager as she may deem appropriate (*Attachment B* of the proposed "amendment resolution").

**FISCAL IMPACT**

Originally, Resolution No. 2007-0011 C.M.S. authorized the acceptance and appropriation of State grant funds in an amount up to \$3,000,000.

The actual grant amount received is \$1,064,250. The revised resolution will appropriate these Round 3 grant funds to the Central District Grants Fund (9215), Capital Improvement Project - Economic Development Organization (94800), to a new project to be determined.

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Community and Economic Development Committee  
January 8, 2008

## BACKGROUND

In February 2007, Staff received Council approval of Resolution No. 2007-0011 C.M.S., which authorized the Agency Administrator to apply for, accept and appropriate grant funds from the CCHE Round 3 Grant Program for an amount up to \$3,000,000 for the renovation of the Fox Theater.

In October 2007, Staff was notified that CCHE had approved \$1,064,250 in grant funds for the Fox Theater Project. In preparing the grant agreement between CCHE and the Redevelopment Agency, CCHE informed Agency staff that a second, more specific resolution is required which approves the grant agreement and its terms and the specific grant amount, in addition to appointing a specific Project Manager for the grant.

## KEY ISSUES AND IMPACTS

The specific amendments to Resolution No. 2007-0011 C.M.S. include the addition of two items:

(1) Approve the terms and conditions of the Grant Agreement in the amount of \$1,064,250, to be funded from the California Clean Water, Clean Air, Safe Neighborhood Parks, and Coastal Protection Act of 2002; and

(2) Authorize the Agency Administrator to appoint a Project Manager for the Grant Agreement as her designee and agent to conduct all negotiations, execute and submit all documents including, but not limited to, Scope of Work, CCHE Invoices, CCHE Progress Reports, CCHE Final Reports, and other documentation which may be necessary for the completion of the Project and to authorize her to make any changes in the Project Manager as she may deem appropriate.

Timely approval of this “amendment resolution” is important because the Fox Theater Project is fully under construction. Staff need an executed Grant Agreement soon so that the grant funds can begin to be accessed.

## SUSTAINABLE OPPORTUNITIES

**Economic:** The Fox Theater Project, located in the Uptown area, will provide educational opportunities for approximately 500 students at the Oakland School for the Arts.

**Environmental:** The Uptown area will be greatly improved by eliminating a major blighting influence on the neighborhood, restoring a significant historic building to landmark status, and helping to create a positive investment environment in the area.

**Social Equity:** The Agency will be providing tangible benefit to the Uptown by investing in facilities to support educational and recreational opportunities for youth and the community.

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**DISABILITY AND SENIOR CITIZEN ACCESS**

The proposed project will be designed to be in compliance with the Americans with Disabilities Act (ADA) and Older Americans Act, and other applicable laws to enhance accessibility for people with disabilities and senior citizens.

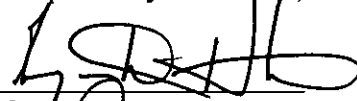
**RECOMMENDATIONS AND RATIONALE**

It is recommended that Redevelopment Agency approve the resolution amending Resolution 2007-0011 C.M.S. Staff is returning to Council with this “amendment resolution” because the grantor is requesting the addition of two specific items: (1) approving the Grant Agreement for the actual grant amount received of \$1,064,250; and (2) authorizing the Agency Administrator to appoint a Project Manager for the Grant Agreement as her designee and agent to conduct all negotiations and execute all documents relating to the completion of the Project, and to authorize her to make any changes in the Project Manager as she may deem appropriate.

**ACTIONS REQUESTED OF THE REDEVELOPMENT AGENCY**

Staff recommends that the Redevelopment Agency approve the resolution amending Resolution 2007-0011 C.M.S. to approve the Grant Agreement for the California Cultural and Historical Endowment under the State of California Proposition 40 (Clean Water, Clean Air, Safe Neighborhood Parks and Coastal Protection Act of 2002), for the historic Fox Theater renovation for an amount equal to one million, sixty-four thousand, two hundred and fifty dollars (\$1,064,250).

Respectfully submitted,



Gregory D. Hunter

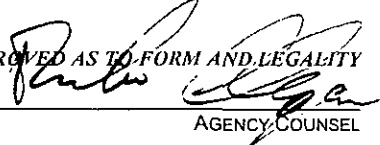
Deputy Director of Economic Development and Redevelopment  
Community and Economic Development Agency

Prepared by: Jeffrey Chew, Project Manager  
Redevelopment Agency

APPROVED AND FORWARDED  
TO THE COMMUNITY AND ECONOMIC DEVELOPMENT COMMITTEE

  
Office of the City/Agency Administrator

2007 DEC 26 AM 10:13

  
AGENCY COUNSEL

**REDEVELOPMENT AGENCY  
OF THE CITY OF OAKLAND**

RESOLUTION NO. \_\_\_\_\_ C.M.S.

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AN AGENCY RESOLUTION AMENDING RESOLUTION NO. 2007-0011 C.M.S. TO APPROVE THE GRANT AGREEMENT FOR THE CALIFORNIA CULTURAL AND HISTORICAL ENDOWMENT UNDER THE STATE OF CALIFORNIA PROPOSITION 40 (CLEAN WATER, CLEAN AIR, SAFE NEIGHBORHOOD PARKS AND COASTAL PROTECTION ACT OF 2002), FOR THE HISTORIC FOX THEATER RENOVATION FOR AN AMOUNT EQUAL TO ONE MILLION, SIXTY-FOUR THOUSAND, TWO HUNDRED AND FIFTY DOLLARS (\$1,064,250)

**WHEREAS**, Agency Resolution No. 2007-0011 C.M.S. was approved on February 20, 2007 (attached as Attachment A), which authorized the Agency Administrator to apply for, accept and appropriate grant funds from the California Cultural and Historical Endowment ("CCHE") Grant Program ("Grantor"), Round 3, for an amount up to \$3,000,000 for the renovation and re-opening of the Fox Theater; and

**WHEREAS**, the Agency received an actual award of \$1,064,250 in CCHE grant funds; and

**WHEREAS**, the Grant Agreement (attached as Attachment B) requires the Grantee to certify by resolution the approval of the Grant Agreement and its terms before execution of the Agreement; and

**WHEREAS**, upon execution of this Agreement and approval of its terms and conditions, Grantee will perform all of the tasks stated in the Agreement; and

**WHEREAS**, this Resolution amends and adds to Agency Resolution No. 2007-0011 C.M.S.; now, therefore, be it

**RESOLVED**: That the Oakland Redevelopment Agency hereby amends Resolution 2007-0011 to incorporate the following:

1. Approve the terms and conditions of the Grant Agreement in the amount of \$1,064,250, to be funded from the California Clean Water, Clean Air, Safe Neighborhood Parks, and Coastal Protection Act of 2002; and

2. Certify that the Grantee has reviewed, understands and agrees to the Grant Agreement; and
3. Authorize the Agency Administrator to appoint a Project Manager for the Grant Agreement as her designee and agent to conduct all negotiations, execute and submit all documents including, but not limited to, Scope of Work, CCHE Invoices, CCHE Progress Reports, CCHE Final Reports, and other documentation which may be necessary for the completion of the Project and to authorize her to make any changes in the Project Manager as she may deem appropriate.

**RESOLVED:** That if the Grant Agreement is approved, the Agency Administrator is authorized to accept and appropriate funds in the amount of one million, sixty-four thousand, two hundred and fifty dollars (\$1,064,250) to the Central District Grants Fund (9215), Capital Improvement Project – Economic Development Organization (94800), in a project to be determined; and be it further

**RESOLVED:** That all documents related to this transaction shall be reviewed and approved by Agency Counsel prior to execution, and copies will be placed on file with the Agency Secretary; and be it further

**RESOLVED:** That the custodians and locations of the documents or other materials which constitute the record of proceedings upon which the Agency’s decision is based are respectively: (a) the Community & Economic Development Agency, Projects Division, 250 Frank H. Ogawa Plaza, 5th Floor, Oakland CA; (b) the Community & Economic Development Agency, Planning Division, 250 Frank H. Ogawa Plaza, 3rd Floor, Oakland CA; and (c) the Office of the City Clerk, 1 Frank H. Ogawa Plaza, 1st Floor, Oakland, CA.

IN AGENCY, OAKLAND, CALIFORNIA, \_\_\_\_\_, 2007

PASSED BY THE FOLLOWING VOTE:

AYES-BROOKS, BRUNNER, CHANG, NADEL, QUAN, REID, KERNIGHAN AND  
CHAIRPERSON DE LA FUENTE,

NOES-

ABSENT-

ABSTENTION-

ATTEST: \_\_\_\_\_  
LATONDA SIMMONS  
Secretary of the Redevelopment  
Agency of the City of Oakland

**ATTACHMENT A**  
**CCHE Round 3 Grant – Fox Theater Project**  
**Staff Report and Resolution**  
**February 2007**

OFFICE OF THE CITY CLERK  
2007 FEB 13 PM 6:14

**REDEVELOPMENT AGENCY OF THE  
CITY OF OAKLAND  
AGENDA REPORT**

TO: Office of the Agency Administrator  
ATTN: Deborah Edgerly  
FROM: Community and Economic Development Agency  
DATE: February 13, 2007

**RE: A Resolution Authorizing the Agency Administrator to Apply for, Accept, and Appropriate Grant Funds From the California Cultural and Historical Endowment Program Under State of California Proposition 40 (Clean Water, Clean Air, Safe Parks and Coastal Protection Act of 2002), for the Historic Fox Theater Renovation in an Amount of up to Three Million Dollars (\$3,000,000)**

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#### **SUMMARY**

A resolution has been prepared for the Redevelopment Agency ("Agency") Board to authorize the Agency Administrator, or her designee, to apply for, accept and appropriate grant funds from the California Cultural and Historical Endowment (CCHE) grant program for up to three million dollars (\$3,000,000) for the renovation and re-opening of the Fox Theater as a Performing Arts Center and future home of the Oakland School for the Arts. The CCHE grant focuses on cultural, social, and economic evolution in the 20<sup>th</sup> century and to preserve, document, and interpret the understanding of 20<sup>th</sup> century history through existing historical parks, monuments, museums and other facilities. This is the third round of funding by CCHE. The Agency applied for a grant for the Fox Theater in the first round of funding and was awarded \$2,887,500, which is being used to pay for a portion of the construction costs associated with the structural redesign of the Fox Theater. The new grant, if awarded, will be used to restore elements that have been value engineered out of the project and allow for a greater level of historic finish restoration in the theater including: (1) the restoration of the original lobby and lobby doors, (2) related plaster work and new flooring in the lobby, (3) historic painting in the mezzanine lobby and, (4) select tenant improvements in the restaurant and lobby spaces.

#### **FISCAL IMPACT**

Approval of the proposed resolution will authorize the Agency Administrator to apply for, accept and appropriate State grant funds in the amount of up to \$3,000,000 to the Central District Grants Fund (9215), Capital Improvement Project – Economic Development Organization (94800), Fox Theater Master Plan Project (P131120) for

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capital improvements of the Fox Theater. The grant requires the grantee to match the state funds on a one-to-one basis, the Fox Project match will be provided through the \$25.5 million loan already approved for this project.

## **BACKGROUND**

### **Grant Funding Source Overview**

The purpose of the CCHE Program is to preserve, document and interpret those periods of California 20<sup>th</sup> century history that illustrate the rapid cultural, social, and economic changes that took place. In particular, CCHE focuses on projects that provide for public discovery and appreciation of California's rich, diverse and changing cultures, especially during historical periods and locations that have been traditionally under-represented or overlooked. CCHE is also interested in projects that interpret recent history, but which have not been well represented in the past.

CCHE is currently working with a funding source of voter-approved bonds from the California Clean Water, Clean Air, Safe Neighborhood Parks, and Coastal Protection Act of 2002, more commonly known as Proposition 40. Under CCHE's grant program, approximately \$122 million will be available to government entities and non-profit organizations through a competitive grant application process. Grant funds have been awarded in three funding cycles over a 3-year period. This is the third and last round of funding. The Agency was successful in receiving a first round grant in the amount of \$2,887,500 for the partial renovation of the Fox Theater. The Agency would apply for the maximum amount, \$3,000,000, for this round of funding.

### **Fox Theater Renovation Project**

The Fox Theater is a vital part of current efforts to revitalize the Uptown neighborhood of the Oakland Central District. Plans for a new residential and commercial development adjacent to the theater are currently underway and will eventually provide over 1000 new housing units to this part of the city. Additional private investment to the area is expected to follow. The Agency is also currently designing new public street improvements for the neighborhood that will help compliment the historic character of the area. The renovation of the theater into a performing arts facility and the addition of the Oakland School for the Arts in the connecting wrap-around buildings will compliment the existing efforts to revitalize this neighborhood into a residential arts and entertainment district. The renovation of the Fox meets all of the goals of the grant and should be a strong candidate for the third cycle of funding under the program.

The Fox Theater was purchased by the Agency in 1996 and is undergoing a multi-phased effort to restore and reuse the historic building. The first phases included the replacement of the roof of the theater and commercial wings (January 2000); completion of the Fox



Theater Master Plan (June 2001); rehabilitation of the historic marquee and sign (November 2001); cleaning the theater's interior of mold, lead-based paint and asbestos (July 2004); and completion of predevelopment activities associated with the development of the theater and wrap-around buildings (August 2004). The City and Agency approved a Disposition and Development Agreement ("DDA") with Oakland Renaissance NMTC, Inc. ("ORNMTTC"), a non-profit corporation created by the City and Agency to finance projects with New Markets Tax Credits, which included a \$13 Million loan (July 2005). The City and Agency later approved an amendment on this DDA to transfer the project to a new non-profit corporation created by the Agency to develop the Fox Theater – Fox Oakland Theater, Inc. ("FOT"), which also provided financial guarantees and increased the loan to \$25.5 Million (July 2006). The City and Agency later approved expanded financial guarantees based on the requirements of tax credit investor, Bank of America (October 2006).

### **Use of Grant Funds**

The most important phase of the Fox Project is the actual interior and exterior renovation of the theater and wrap-around building(s). The financing for this phase is in place and renovation is underway and will be completed in the fall of 2008. Although the theater can be completed without the grant, the project budget has a small construction contingency for such a major historic building and some tenant improvements for the lobby and other items were value engineered out of the project. The CCHE grant will allow elements that have been value engineered out of the project to be restored and allow for a greater level of historic finish in the theater including: (1) a more complete restoration of the original lobby and lobby doors, (2) the installation of new flooring in the lobby and a higher grade of plaster work, (3) detailed historic painting in the mezzanine lobby, (4) select tenant improvements in the restaurant and lobby spaces, and (5) other changes to the scope of work for historic elements found during construction.

The Fox Theater is a City of Oakland Landmark listed on the National Register of Historic Places. Any restoration, alteration or modification to the building must follow the Secretary of the Interior's Standards for Rehabilitation.

### **KEY ISSUES AND IMPACTS**

There is one major Council concern to be addressed – project eligibility/priority. With grant applications, two questions arise: (1) what other projects qualify, and (2) which projects should be submitted. In the case of the CCHE grant, each entity applying is required to set priorities among its projects. But since the City and Agency are considered separate entities, and the Agency is only submitting the Fox application, this does not apply. While the Agency has in the past owned several major historic buildings – Preservation Park, Old Oakland, Plaza Building, Rotunda Building, etc. – the Fox Theater is the last one remaining in Agency ownership and in need of renovation.

The Council may be concerned that the Fox project will be in competition with the other City projects. Multiple City sponsored projects have been submitted for a CCHE grant in the past, including the Fox and Oakland Museum of California. Both projects were approved and received almost the maximum award amounts.

### **SUSTAINABLE OPPORTUNITIES**

Economic: The proposed projects will aid in generating jobs for the local economy through utilizing local businesses whenever possible for contract work. The Fox project will provide educational opportunities for approximately 500 students.

Environmental: The Uptown area will be greatly improved by eliminating a major blighting influence on the neighborhood, restoring a significant historic building to landmark status, and helping to create a positive investment environment in the area. The project will also aid in natural resources conservation through the selection of appropriate materials and equipment in the design and construction process.

Social Equity: The Agency will be providing tangible benefit to the Uptown by investing in facilities to support active educational and recreational opportunities and programming for youth and the community.

### **DISABILITY AND SENIOR CITIZEN ACCESS**

The proposed project will be designed to be in compliance with the Americans with Disabilities Act (ADA) and Older Americans Act, and other applicable laws to enhance accessibility for people with disabilities and senior citizens. The accessibility program coordinator will be requested to participate in project review at all stages of the design process.

### **RECOMMENDATIONS AND RATIONALE**

As noted previously, the Fox is a key part of the historic and future fabric of Oakland's downtown. It is therefore recommended that Redevelopment Agency approve the resolution authorizing this grant application for the Fox Theater renovation. The project has been evaluated against the grant requirements, project readiness, benefit of the project to meet the needs of the community, and additional funding requirements. It appears to be a strong contender for additional CCHE Grant funds.

Once the Agency authorizes the grant application, staff will proceed with preparing the grant applications. Since the **application deadline is March 1, 2007** for the proposed grant, the Council/Agency is requested to make its decision immediately.

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**ACTIONS REQUESTED OF THE REDEVELOPMENT AGENCY**

Staff recommends that the Redevelopment Agency approve the above-mentioned resolution authorizing the Agency Administrator to apply for, accept and appropriate grant funds of up to \$3,000,000 from the California Cultural Historical Endowment for the Fox Theater renovation.

Respectfully submitted,



**CLAUDIA CAPPIO**

Director, Community and Economic  
Development Agency


Prepared by:  
Jeffrey Chew, Project Manager  
CEDA Redevelopment

APPROVED AND FORWARDED TO THE  
COMMUNITY AND ECONOMIC  
DEVELOPMENT COMMITTEE:

  
OFFICE OF THE CITY ADMINISTRATOR

2007 FEB -1 PM 6:14

APPROVED AS TO FORM AND LEGALITY

  
AGENCY COUNSEL

## REDEVELOPMENT AGENCY OF THE CITY OF OAKLAND

RESOLUTION No. \_\_\_\_\_ C.M.S.

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**A RESOLUTION AUTHORIZING THE AGENCY ADMINISTRATOR TO APPLY FOR, ACCEPT, AND APPROPRIATE GRANT FUNDS FROM THE CALIFORNIA CULTURAL AND HISTORICAL ENDOWMENT PROGRAM UNDER STATE OF CALIFORNIA PROPOSITION 40 (CLEAN WATER, CLEAN AIR, SAFE PARKS AND COASTAL PROTECTION ACT OF 2002), FOR THE HISTORIC FOX THEATER RENOVATION IN AN AMOUNT OF UP TO THREE MILLION DOLLARS (\$3,000,000)**

**WHEREAS**, the Oakland Redevelopment Agency is sponsoring the renovation of the Historic Fox Theater (the "Project") by providing substantial financing; and

**WHEREAS**, additional funds in the amount of Three Million Dollars (\$3,000,000) are needed to improve the following components of the renovation: (1) the restoration of the original lobby and lobby doors, (2) related plaster work and new flooring in the lobby, (3) historic painting in the mezzanine lobby, (4) select tenant improvements in the restaurant and lobby spaces, and (5) other changes to the scope of work for historic elements found during construction; and

**WHEREAS**, the people of the State of California have enacted the CALIFORNIA CLEAN WATER, CLEAN AIR, SAFE NEIGHBORHOOD PARKS, AND COASTAL PROTECTION ACT OF 2002, which provides funds to the State of California for grants to eligible Applicants; and

**WHEREAS**, the California State Library has been delegated the responsibility for the administration of the Cultural and Historical Endowment Program setting up necessary procedures, and

**WHEREAS**, said procedures established by the California State Library Services require the Applicant's Governing Body to certify by resolution the approval of the Application before submission of said Application to the State, and

**WHEREAS**, the Agency is required to identify matching funds in the amount of three million dollars (\$3,000,000) as a condition of the grant the source of which shall be identified by the date of grant application; and

**WHEREAS**, the Agency anticipates it will provide its match through the \$25.5 million loan already approved for the Project; and

**WHEREAS**, the Agency as the Applicant will enter into a Contract with the State of California for the Project; and

**WHEREAS**, the Agency is considered a "Responsible Agency" under the California Environmental Quality Act (CEQA); and

**WHEREAS**, on July 19, 2005 the Agency adopted a Mitigated Negative Declaration for the Project; and

**WHEREAS**, the Agency hereby finds and determines on the basis of substantial evidence in the record that the Initial Study and Mitigated Negative Declaration fully analyzes the potential environmental effects of the project and incorporates mitigation measures to substantially lessen or avoid any potentially significant impacts in accordance with CEQA. None of the circumstances necessitating preparation of additional environmental review as specified in CEQA and the CEQA Guidelines, including without limitation Public Resources Code Section 21166 and CEQA Guidelines Section 15162, are present in that (1) there are no substantial changes proposed in the project or the circumstances under which the project is undertaken that would require major revisions of the Initial Study/Mitigated Negative Declaration due to the involvement of new environmental effects or a substantial increase in the severity of previously identified significant effects; and (2) there is no "new information of substantial importance" as described in CEQA Guidelines Section 15162(a)(3); now, therefore, be it

**RESOLVED:** That the Agency has independently reviewed and considered this environmental determination, and the Agency finds and determines that this action complies with CEQA because this action on the part of the Agency does not necessitate preparation of a subsequent or supplemental EIR Section 15162 (subsequent EIRs and negative declarations); and be it further

**RESOLVED:** That the Oakland Redevelopment Agency hereby:

1. Approves the filing of an Application for local assistance funds from California Cultural and Historical Endowment Program under the California Clean Water, Clean Air, Safe Neighborhood Parks and Coastal Protection Act of 2002 for the Fox Theater Renovation Project for an amount of Three Million Dollars (\$3,000,000), and identifying of the Agency loan as the source of matching funds for the grant application; and Certifies that the Applicant has or will have sufficient funds to operate and maintain the Project; and
2. Certifies that the Applicant has reviewed, understands, and agrees to the General Provisions contained in the Contract shown in the Procedural Guide; and
3. Certifies that the Grantee has or will have available, prior to commencement of any work on the Project, the Match; and
4. Certifies that the Project conforms to the Oakland General Plan and any element of any applicable city or county general plan; and
5. Appoints the Agency Administrator, or her authorized representative, as agent to conduct all negotiations, execute and submit all documents including, but not limited to, Applications, agreements, payment requests and so on, which may be necessary for the completion of the Project provided that such agreements shall be reviewed and approved by the Office of the City Attorney and shall be filed with the Office of the City Clerk; and be it further

**RESOLVED:** That if the Application is approved, the Agency Administrator is authorized to accept and appropriate funds in the amount of up to three million dollars (\$3,000,000) to the Central District Grants Fund (9215), Capital Improvement Project – Economic Development Organization (94800), Fox Theater Master Plan Project (P131120) ; and be it further

**RESOLVED:** That all documents related to this transaction shall be reviewed and approved by Agency Counsel prior to execution, and copies will be placed on file with the Agency Secretary; and be it further

**RESOLVED:** That the custodians and locations of the documents or other materials which constitute the record of proceedings upon which the Agency's decision is based are respectively: (a) the Community & Economic Development Agency, Projects Division, 250 Frank H. Ogawa Plaza, 5th Floor, Oakland CA; (b) the Community & Economic Development Agency, Planning Division, 250 Frank H. Ogawa Plaza, 3rd Floor, Oakland CA; and (c) the Office of the City Clerk, 1 Frank H. Ogawa Plaza, 1st Floor, Oakland, CA.

IN AGENCY, OAKLAND, CALIFORNIA, \_\_\_\_\_, 2007

PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, BRUNNER, CHANG, NADEL, QUAN, REID,  
KERNIGHAN AND CHAIRPERSON DE LA FUENTE,

NOES-

ABSENT-

ABSTENTION-

ATTEST: \_\_\_\_\_

LATONDA SIMMONS  
Secretary of the Redevelopment  
Agency of the City of Oakland

STATE OF CALIFORNIA

GRANT AGREEMENT	GRANT AGREEMENT NUMBER
CCHE GRANT AGREEMENT	07-C 4-25

1. This Grant Agreement is entered into between the Grantee named below:

STATE AGENCY'S NAME  
California Cultural and Historical Endowment (CCHE) 900 N Street, #380, Sacramento, CA 95814

GRANTEE'S NAME  
Redevelopment Agency of the City of Oakland

2. The term of this Agreement is from December 3, 2007 through December 31, 2008

3. The maximum amount of this Agreement is: \$ 1,064,250

4. The parties agree to comply with the terms and conditions of the following sections which are by this reference made a part of the Agreement.

- CCHE GRANT AGREEMENT**
- |   |   |
|---|---|
| Part I:<br>A. Parties to the Agreement<br>B. Incorporation of Documents by Reference<br>C. Scope of Work<br>D. Conditions Precedent<br>E. Project Completion and Reports<br>F. Expenditure of Funds<br>G. Payment Provisions<br>H. Terms of Agreement, Completion Date, Project Schedule<br>I. Termination of Agreement | Exhibits:<br>A. CCHE Project Synopsis<br>B. Scope of Work<br>C. Standard Terms and Conditions<br>D. Special Terms and Conditions<br>E. State Certification Requirements<br>F. CCHE Invoice<br>G. CCHE Quarterly Progress Report<br>H. CCHE Final Report |
|---|---|

**IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto.**

GRANTEE		Budget Office Use Only	
GRANTEE'S NAME Redevelopment Agency of the City of Oakland		Amt Encumbered: Item: Chapter: Statute: Fiscal Year: Index: Object: PCA:	
BY (Authorized Signature)	DATE SIGNED (Do not type)		
PRINT NAME AND TITLE OF PERSON SIGNING Deborah A. Edgerly, City Administrator			
ADDRESS 250 Frank Ogawa Plaza, Suite 5313, Oakland Ca 94612			
STATE OF CALIFORNIA			
AGENCY NAME California Cultural and Historical Endowment (CCHE)			
BY (Authorized Signature)	DATE SIGNED (Do not type)		
PRINT NAME AND TITLE OF PERSON SIGNING Diane Matsuda, Executive Officer			
ADDRESS 900 N Street, #380, Sacramento, CA 95814			



**CCHE GRANT AGREEMENT**

**PART I**

The California Cultural and Historical Endowment ("CCHE") acting pursuant to Section 20070 of the Education Code and its Resolution of September 27, 2007 hereby grants to the Redevelopment Agency of the City of Oakland ("Grantee"), a sum not to exceed ONE MILLION, SIXTY-FOUR THOUSAND, TWO HUNDRED FIFTY DOLLARS (\$1,064,250), subject to the terms and conditions set forth below.

Source of Funds:

CCHE has received an appropriation from Proposition 40 (California Clean Water, Clean Air, Safe Neighborhood, Parks and Coastal Protection Act of 2002), and may distribute funds from Proposition 40 to projects that promote California's cultural and historical resources. This project meets the objectives of the CCHE program.

**Brief Summary of the Project:**  
CCHE funds will assist with the renovation of the Fox Oakland Theater.

This Project is further described in Exhibit A – CCHE Project Synopsis.

**A. Parties to the Agreement:**

This Grant Agreement ("Agreement") is entered into between CCHE and the Grantee named below:88

**GRANTEE**

Grantee:	Redevelopment Agency of the City of Oakland
Organization:	Redevelopment Agency of the City of Oakland
Address:	250 Frank Ogawa Plaza, Suite 5313 Oakland Ca 94612
Authorized Signatory, Title:	Project Manager, Redevelopment Agency of the City of Oakland

All communication between the parties should be directed to the individuals named below. All official notifications must be in writing.

1. The designated Grant Manager for CCHE is listed below. The Grant Manager may be changed at any time by CCHE by written notice thereof to the Grantee.

**GRANT MANAGER**

Name:	Francelle Phillips
Address:	CCHE 900 N Street, Room 380 Sacramento, CA 95814
Phone:	916-657-1892
Fax:	(916) 651-9871
Email:	fphillips@library.ca.gov

2. The designated Project Manager for the Grantee is listed below. The Project Manager may be changed at any time by Grantee with written notice thereof to CCHE by the authorized representative of the Grantee. All communications submitted to the Project Manager shall be as binding as if given to the Grantee.

**PROJECT MANAGER**

Name:	Jeffrey Chew
Mailing Address:	250 Frank Ogawa Plaza, Suite 5313, Oakland, CA 94612
Phone:	(510) 238-3629
Fax:	(510) 238-3691
Email:	jbchew@oaklandnet.com
Street Address:	Same as above

3. The Grantee shall designate an Accountant for the Project, and the Project Manager may not also serve as the Project Accountant. The Accountant for this Project is:

**ACCOUNTANT**

Name:	Sunny Nguyen
Mailing Address:	250 Frank Ogawa Plaza, Suite 5313 Oakland, Ca 94612
Phone:	(510) 238-6705
Fax:	(510) 238-3691
Email:	msnguyen@oaklandnet.com
Street Address:	250 Frank Ogawa Plaza, Suite 5313 Oakland, Ca 94612

The Grantee shall at all times exercise responsibility over the design, management and implementation of the Project, and may not delegate or assign its responsibilities under this Agreement. The grant funds may be used only for the approved Project purposes as stated in this Agreement. The Grantee hereby agrees to complete the Project in accordance with all the terms and conditions of this Agreement.

## **B. Incorporation of Documents by Reference**

The following exhibits and other documents are incorporated by reference into this Agreement and made a part hereof:

- Exhibit A. CCHE Project Synopsis
- Exhibit B. Scope of Work
- Exhibit C. Standard Terms and Conditions
- Exhibit D. Special Terms and Conditions
- Exhibit E. State Certification Requirements
- Exhibit F. CCHE Invoice
- Exhibit G. CCHE Progress Report
- Exhibit H. CCHE Final Report

In the event of any inconsistency between or among the main body of this Agreement and the above documents, the inconsistency shall be resolved, except as otherwise provided herein, by giving precedence in the following order: (1) the CCHE Board Resolution; (2) the body of the Agreement; (3) the Scope of Work approved by the Executive Officer; (4) California Cultural and Historical Endowment Round Three Project Grant Summary; (5) the General Terms and Conditions; (6) the Special Terms and Conditions; and (7) CCHE Invoice.

## **C. Scope of Work**

Prior to the commencement of the Project and disbursement of funds, Grantee shall submit a Scope of Work to the Executive Officer or her designee for review and written approval as to its consistency with the terms of this Agreement which are all incorporated and considered as Exhibit B. The Scope of Work shall have the same effect as if included in the text of this Agreement. The Scope of Work may be amended as provided in this Agreement, upon the Grantee's submission of a modified Scope of Work and the Executive Officer's written approval of it.

The Scope of Work consists of three charts:

1. Exhibit B-1 – Workplan, Sources of Funding and Schedule
2. Exhibit B-2 – Budget Summary
3. Exhibit B-3 – Budget Chart by Calendar Year

### **Exhibit B-1 – Workplan, Sources of Funding and Schedule**

The Workplan shall include:

- a. A detailed chart of all of the tasks that will be needed in order for your Project to proceed.
- b. The tasks should have divisible sections that list out each logical step that will need to be completed. These steps shall be listed in the column labeled "Deliverable(s)" to clearly illustrate all of the elements to complete the task. Examples of tasks that can be listed include such items as design plans; install HVAC; install plumbing, lighting, fabrication and installation of exhibits; and line item construction cost estimates.

- c. There is also a section at the bottom of the Workplan to provide a narrative description of more complicated and detailed tasks.

#### Sources of Funding

All Sources of Funding to complete the tasks will be listed in this chart. The categories will include funding from CCHE, matching resources, and the Match Source.

#### Schedule

A Schedule will also be included as part of this chart to provide the estimated initiation date and the completion date of all tasks.

#### **Exhibit B-2 – Budget Summary**

The Budget Summary will outline all costs to be incurred to complete the Project by budget categories.

#### **Exhibit B-3 – Budget Chart by Calendar Year**

The Budget Chart by Calendar Year is a chart that will identify the tasks and budget categories to complete each task and the total cost of each task. The chart will outline the Budget and tasks by each calendar year.

### **D. Conditions Precedent to Commencement of Project and/or Disbursement of Funds**

In addition to any other conditions contained in this Agreement, Grantee shall not commence the Project and CCHE shall not be obligated to disburse any funds under this Agreement unless and until the following conditions precedent have been met:

1. A Resolution has been adopted by the Grantee's governing entity (e.g., City Council/Board of Supervisors/Board of Directors) authorizing the execution of this Agreement and approving its terms and conditions. In the case of a State agency, the Director of the agency/department or Executive Officer of a board or commission must authorize the execution of this Agreement and approve its terms and conditions.
2. The Executive Officer has given written approval of the Scope of Work.
3. The Grantee has provided documentation that an escrow account or a similar commitment has been created to fulfill the matching fund requirement.
4. The Grantee shall provide documentation that demonstrates that it has the legal right, control and oversight of the premises for at least 20 years, such as a long-term lease or easement.

Example of a Resolution

Resolution of the (Grantee)

Approving the Grant Agreement for the  
California Cultural and Historical Endowment (CCHE)

Under the California Clean Water, Clean Air, Safe Neighborhood Parks, and Coastal Protection Act of 2002

Grantee: \_\_\_\_\_

Project Number: \_\_\_\_\_

WHEREAS, the people of the State of California have enacted the California Clean Water, Clean Air, Safe Neighborhood Parks, and Coastal Protection Act of 2002, which provides funds to the State of California for the California Cultural and Historical Endowment (CCHE) Grant Program and;

WHEREAS, the California Cultural and Historical Endowment (CCHE) has been delegated the responsibility for the creation and administration of the Grant Agreement between the Grantee and CCHE; and

WHEREAS, the Grant Agreement requires the Grantee to certify by resolution the approval of the Grant Agreement and its terms before execution of the Agreement; and

WHEREAS, upon execution of this Agreement and approval of its terms and conditions, Grantee will perform all of the tasks stated in the Agreement; and

NOW, THEREFORE, BE IT RESOLVED that the (Grantee)

1. Approves the terms and conditions of the Grant Agreement to be funded from the California Clean Water, Clean Air, Safe Neighborhood Parks, and Coastal; Protection Act of 2002 and;
2. Certifies that the Grantee has or will have sufficient funds to operate and maintain the Project; and
3. Certifies that the Grantee has reviewed, understands and agrees to the Grant Agreement; and
4. Appoints the (Project Manager) \_\_\_\_\_ as agent to conduct all negotiations, execute and submit all documents including, but not limited to, Scope of Work, CCHE Invoices, CCHE Progress Reports, CCHE Final Reports, and other documentation which may be necessary for the completion of the Project.

I, the undersigned, hereby certify that the foregoing Resolution Number \_\_\_\_\_ was duly adopted by the (name of organization) following a roll call vote:

- Ayes
- Noes
- Absent

\_\_\_\_\_  
Secretary/Clerk

## **E. Project Completion and Reports**

### **1. CCHE Quarterly Progress Reports**

Progress Reports are due every quarter. Depending on when you start your Project, your first/next Quarterly Progress Report will be as follows:

- January 15<sup>th</sup> - for the quarter ending December 31<sup>st</sup>
- April 15<sup>th</sup> - for the quarter ending March 31<sup>st</sup>
- July 15<sup>th</sup> - for the quarter ending June 30<sup>th</sup>
- October 15<sup>th</sup> - for the quarter ending September 30<sup>th</sup>

CCHE Quarterly Progress Reports will summarize the work completed for the quarter covered by the report in addition to a detailed narrative of all the areas described in the summary and to any and all activities and tasks indicated in the Scope of Work. This may include draft products, reports, interim findings, meetings and the results of meetings, problems, comparison of your Project to the timeline you submitted, narrative financial assessment and whether you are progressing within the approved budget, proposed activities for the next quarter and copies of any materials created during the current reporting period.

Failure to submit a complete and timely Quarterly Progress Report on the dates indicated in this Agreement will result in a delay in payment. Failure to submit any two (2) consecutive Quarterly Progress Reports may result in forfeiture of the Agreement funds awarded for this Project.

A Quarterly Progress Report form is included as Exhibit G.

### **2. CCHE Final Report**

The Grantee shall submit a CCHE Final Report on or before the date listed in the Scope of Work. A request for final payment should be submitted at the same time as the CCHE Final Report.

A detailed list of the items needed to complete the CCHE Final Report is included in Exhibit H.

### **3. Term of Agreement**

The Grantee shall complete the Project by the completion date provided in the section on page one, number two entitled "Term of the Agreement". Upon completion of the Project, the Grantee shall supply CCHE with evidence of completion by submitting: (1) the Scope of Work and any other work products specified in the Scope of Work; (2) the CCHE Final Report; and (3) a fully executed final CCHE Invoice. Within thirty days of Grantee's compliance with this paragraph, CCHE shall determine whether a Project has been satisfactorily completed. If CCHE determines that the Project has been satisfactorily completed, CCHE shall issue to the Grantee a Letter of Acceptance of the Project. The Project shall be deemed complete as of the date of the Letter of Acceptance.

## **F. Expenditure of Funds and Allocation of Funding Among Budget Items**

Except as otherwise provided herein, the Grantee shall expend funds in the manner described in the Scope of Work and approved by the Executive Officer for each individual Project. The dollar amount of an itemized task in the

Budget category(ies) set forth in Exhibit B-2 may be increased by up to ten percent (10%) through reallocation of funds from another category or categories, without approval by the Executive Officer or her designee; however, the Grantee shall notify the CCHE in writing at the time of making any such reallocation, and shall identify both the categories being increased and those being decreased. Any increase of more than 10% in the amount of an item must be approved in writing by the Executive Officer or her designee.

## **G. Payment Provisions**

### **1. Invoice Requirements**

CCHE will disburse funds to Grantee upon: (i) receipt and approval of a CCHE Invoice with supporting detail indicating that all items requested for reimbursement have been paid by the Grantee; and (ii) documentation to illustrate, or to show progress toward completion of task, and/or receipt of deliverables.

Required detail includes an invoice cost breakdown by task and dates that the invoice covers. Additional documentation such as copies of permits, drawings, plans and photos may also be submitted to illustrate progress.

CCHE may request additional documentation such as copies of checks, contractor or vendor invoices, payroll detail, receipts for purchases, or general ledger information.

A properly submitted CCHE Invoice will list each of the approved items that appear on the Scope of Work. The CCHE Grant Manager will not accept a CCHE Invoice for which work has not been pre-approved in the Scope of Work and will return the invoice as a **disputed invoice** to the Grantee. An incomplete invoice is considered a **disputed invoice**.

### **2. Invoice Format**

Invoices shall be submitted based on the format provided as Exhibit F, and shall contain all the information included in the three parts of the CCHE Invoice Form.

### **3. Payment Schedule**

Grantee may submit a CCHE Invoice monthly, in arrears and, only after satisfactory completion of each phase or task as indicated in the Scope of Work. The CCHE Grant Manager will review and either approve or dispute all invoices. The CCHE will pay undisputed invoices no more frequently than monthly after receipt and approval of a properly itemized invoice for completion of work set forth in this Grant Agreement. Invoices bearing the number of this Agreement shall be submitted to:

Francelle Phillips CCHE 900 N Street, Room 380 Sacramento, CA 95814
--

### **4. Disputes**

If there are any disputes regarding a CCHE Invoice, the CCHE Grant Manager shall notify the Grantee within 15 calendar days of receipt of a properly submitted invoice. Any disputed item will be subtracted from the invoice and the CCHE will process the invoice for the undisputed amount. Dispute resolution will follow the procedure outlined in Exhibit D, Special Terms and Conditions.

## 5. Performance Retention

CCHE shall withhold ten percent (10%) from each CCHE Invoice submitted. Disbursements shall be made on the basis of costs incurred to date, less 10% of the total invoice amount. The remaining amounts withheld shall be disbursed upon: (1) Grantee's satisfactory completion of a discrete Project phase (for which the 10% was retained); or (2) completion of the Project, and Grantee's compliance with Project closure requirements set forth in this Agreement.

## 6. Audit

**All CCHE Invoices and supporting documentation are subject to an audit by the Department of Finance as well as the Bureau of State Audits. This will include the expenditure of all matching and other resources.**

## H. Term of Agreement; Completion Date; Project Schedule

1. This Agreement shall take effect upon CCHE's receipt of one or more original completed copies of this Agreement signed by the authorized representatives of both parties and the Executive Officer, or her designee, together with a certified copy of Grantee's resolution or written authorization authorizing Grantee's execution of this Agreement. The term of the Agreement shall run from the effective date through December 31, 2008.
2. All work shall be completed by the completion date(s) shown in the Scope of Work. The Grantee agrees to submit all work products identified in the Scope of Work by the date set forth in Exhibit B-1. For good cause, the completion date, as well as any other dates set forth in the Schedule, may be extended by the Executive Officer upon written request by the Grantee.

## I. Termination of Agreement

If the Grantee fails to complete the Project in accordance with this Agreement, or fails to fulfill any other obligations of this Agreement prior to the termination date, the Grantee shall be liable for immediate repayment to CCHE of all amounts disbursed by the CCHE under this Agreement, plus accrued interest. CCHE may, in its sole discretion, consider extenuating circumstances and not require repayment for work partially completed. This paragraph shall not be deemed to limit any other remedies CCHE may have for breach of this Agreement.

If it is necessary to terminate its obligation under this Agreement for cause, following notice of intent to terminate, CCHE and the Grantee shall enter into a written termination agreement establishing the effective date for termination of the Project, the basis for settlement of any outstanding obligations, and the amount and the date of payment of any sums due to either party. This paragraph shall not be deemed to limit any legal or equitable remedies that either party may have for breach of this Agreement.



## **Exhibit A – CCHE Project Synopsis**

CCHE funds will be used to assist with the renovation of the Fox Oakland Theater. CCHE funds will provide for the restoration and painting of the historic ceiling and theater proscenium. Other CCHE-funded tasks include the purchase and installation of tile in the restrooms and the repair and replacement of terrazzo tile at the theater entrance.

**Exhibit B – Scope of Work**

**Exhibit B-1 Workplan, Sources of Funding and Schedule**

Task Descriptions	Deliverable(s)	CCHE	Match	Match Source	Start Date	Completion Date
<b>TOTAL</b>						
<b>Workplan</b>		<b>Sources of Funding</b>			<b>Schedule</b>	
Narrative information to further explain one or more of the task descriptions: <i>Match and grant breakdowns provided above are estimates as of November 27, 2007, and could change based on actual contractor submittals and expenditures.</i>						

## Exhibit B-2 Budget Summary

Grantee shall implement the Project as identified in the Scope of Work, Exhibit B-1, and shall be compensated in accordance with the budget outlined below:

<b>Labor</b>	<b>\$</b>
<b>Travel Expenses</b>	<b>\$</b>
<b>Direct Capital Asset Costs</b>	<b>\$</b>
<b>Building and Facility Costs</b>	<b>\$</b>
<b>TOTAL DIRECT COSTS</b>	<b>\$</b>
<b>Indirect Costs</b>	<b>\$</b>
<b>TOTAL CCHE PROJECT BUDGET</b>	<b>\$</b>

**Exhibit B-3 – Budget Chart by Calendar Year**

**Estimate for Calendar Year 2007 (Use of Match Funds)**

<b>Task No.</b>	<b>Task Description</b>	<b>Labor</b>	<b>Travel Expenses</b>	<b>Direct Capital Asset Costs</b>	<b>Building and Facility Costs</b>	<b>TOTAL DIRECT COSTS</b>	<b>INDIRECT COSTS</b>	<b>TOTAL COSTS</b>
<b>Total</b>								

**Estimate for Calendar Year 2008 (Use of Grant Funds)**

<b>Task No.</b>	<b>Task Description</b>	<b>Labor</b>	<b>Travel Expenses</b>	<b>Direct Capital Asset Costs</b>	<b>Building and Facility Costs</b>	<b>TOTAL DIRECT COSTS</b>	<b>INDIRECT COSTS</b>	<b>TOTAL COSTS</b>
<b>Total</b>								

## **Exhibit C – Standard Terms and Conditions**

### **1. Approval**

Matching funds may be counted towards the Grantee's matching fund requirement retroactive to the date of the approval of funding by the CCHE Board on September 27, 2007.

Grantee will need to document the amount and source of matching funds used toward one or more of the tasks set forth in the Scope of Work. This documentation will be submitted to CCHE in the form of a CCHE Invoice.

This Agreement is of no force or effect until signed by both parties. Grantee may not commence performance on portions of the Scope of Work for which CCHE funds will be used and reimbursement is requested.

### **2. Amendment**

No amendment or variation of the terms of this Agreement shall be valid unless made in writing, signed by the parties and approved as required. No oral understanding or Agreement not incorporated in the Agreement is binding on any of the parties.

### **3. Assignment**

*This Agreement is not assignable by the Grantee, either in whole or in part, without the consent of CCHE in the form of a formal written amendment by the parties approved by CCHE.*

### **4. Audit**

Grantee agrees that CCHE, the Department of Finance (DOF), Office of State Audits and Evaluations, or their designated representative shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement. Grantee agrees to maintain such records for an audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. Grantee agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, Grantee agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this Agreement. (Authority: Government Code 8546.7, PCC 10115 et seq., CCR Title 2, Section 1896).

### **5. Indemnification**

Grantee agrees to indemnify, defend and save harmless CCHE its officers, agents and employees from any and all claims and losses accruing or resulting to any and all contractors, subcontractors, suppliers, laborers, and any other person, firm or corporation furnishing or supplying work services, materials, or supplies in connection with the performance of this Agreement, and from any and all claims and losses accruing or resulting to any person, firm or corporation who may be injured or damaged by Grantee in the performance of this Agreement.

### **6. Independent Contractor**

Grantee, and the agents and employees of Grantee, in the performance of this Agreement, shall act in an independent capacity and not as officers or employees or agents of the State.

**7. Certification Clauses**

The CONTRACTOR CERTIFICATION CLAUSES contained in this Agreement as Exhibit E entitled State Certification Requirements are hereby incorporated by reference and made a part of this Agreement by this reference as if attached hereto.

**8. Timeliness**

Time is of the essence in this Agreement.

**9. Governing Law**

This Agreement is governed by and shall be interpreted in accordance with the laws of the State of California.

**10. Unenforceable Provision**

In the event that any provision of this Agreement is unenforceable or held to be unenforceable, then the parties agree that all other provisions of this Agreement have force and effect and shall not be affected thereby.

## **Exhibit D – Special Terms and Conditions**

### **1. Subcontracts**

The Grantee is responsible for all subcontracted work. Subcontractors not specifically identified in the grant application must be obtained using a competitive bidding process, or provide a satisfactory explanation and obtain CCHE staff approval for non-compliance with this requirement. Nothing in this Agreement creates any contractual relationship between any third party contractor and CCHE. All subcontracts must be in writing and must include specific language that establishes the rights of the auditors of the State to examine the records of the subcontractor relative to the services and materials provided under the subcontract and/or the grant agreement.

### **2. Government Permits**

Grantee is responsible for ensuring compliance with all applicable permitting requirements that may be required to accomplish the Project described in the CCHE Workplan. No work that is subject to any such requirements may proceed under this Grant Agreement until written evidence of compliance is received by the Grant Manager.

### **3. Acknowledgment and Publicity**

The Grantee agrees that it will acknowledge CCHE's support whenever Projects that are funded, in whole or in part, by this Agreement are publicized in any news media, brochures, articles, seminars or other type of promotional material. Any exhibits, buildings, displays, publications, or other products which are made possible by or derived in whole or in part from this Project shall acknowledge the assistance of CCHE as follows, or by similar acknowledgment: "Funding for this Project has been provided in part by the California Cultural and Historical Endowment."

### **4. Audits/Accounting/Records**

The Grantee shall maintain satisfactory financial accounts, documents, and records relating to the Project. The accounts, documents, and records relating to the Project shall be retained by the Grantee for three years following the date of final reimbursement by CCHE under the paragraph entitled "Term of Agreement" in Part 1, and shall be subject to examination and audit by CCHE, the Department of Finance, Office of State Audits and Evaluations, during that period. The Grantee may use any generally accepted accounting procedures, provided such system meets minimum requirements established by the State of California.

### **5. Inspection**

Throughout the term of this Agreement, CCHE shall have the right to inspect the Project area to ascertain compliance with this Grant Agreement. The State, through any authorized representatives, has the right at all reasonable times to inspect or otherwise evaluate the work performed or being performed under this Grant Agreement including subcontract-supported activities and the premises in which it is being performed. If any inspection or evaluation is made by the CCHE of the premises of the Grantee or a subcontractor, the Grantee shall provide and shall require all subcontractors to provide all reasonable facilities and assistance for the safety and convenience of the State representatives in the performance of their duties.

### **6. Interest Restrictions**

Any interest earned from grant funds shall be applied to the Project for eligible Project needs.

## **7. Travel**

Any reimbursement for necessary travel and per diem shall be at rates specified by the California Department of Personnel Administration for similar employees or verification supplied that such rates are not available to the Grantee. No travel outside of California shall be reimbursed unless prior written authorization is obtained from the State. Reimbursement for travel must be documented in detail and copies of receipts attached to the specific CCHE Invoice involving travel.

## **8. Operations and Maintenance**

The Grantee shall maintain and operate the facility and structures constructed or improved as part of the Project, if any, throughout the term of this Grant Agreement, consistent with the purposes for which this grant was made. The Grantee assumes all operations and maintenance costs of the facilities and structures; CCHE shall not be liable for any cost of such maintenance, management or operation.

## **9. Damages for breach affecting tax exempt status**

In the event that any breach of any of the provisions of this Agreement by the Grantee result in the loss of tax exempt status for any state bonds, or if such breach results in an obligation of the part of CCHE to reimburse the federal government by reason of any arbitrage profits, the Grantee shall immediately reimburse CCHE in an amount equal to any damage paid by or loss incurred by CCHE due to the breach.

## **10. Change of budget**

Grantee agrees that any refunds, rebates, credits, donations, in-kind contributions or other amounts (including any interest thereon) accruing or received by the Grantee after the Agreement has been executed with CCHE be immediately reported in writing to CCHE if such items pertain to the approved list of items that has received prior approval for CCHE funding. CCHE will then have the opportunity to adjust and amend the budget of the Agreement accordingly to reflect the source and amount of such budget items.

## **11. Liability**

Grantee agrees to indemnify, defend and save harmless CCHE and the State, its officers, agents and employees, from any and all liabilities, claims, demands, damages or costs resulting from, growing out of, or in any way connected with or incident to this Agreement, except for active negligence of CCHE, its officers, agents or employees. The duty of the Grantee to indemnify and save harmless includes the duty to defend as set forth in Civil Code Section 2778.

The parties expressly acknowledge that this Agreement is an agreement for the subvention of public funds from CCHE to the Grantee, and is not an agreement as that term is defined in Government Code section 895 or a construction contract under Civil Code sections 2783 or 2783. Accordingly, it is acknowledged Grantee does not, in matters arising under this Agreement, have any right to contribution and indemnity from CCHE and/or the State of California arising under government Code Sections 895.2 and 895.6.

Grantee waives any and all rights to any type of express or implied indemnity or right of contribution from the State, its officers, agents or employees, for any liability resulting from, growing out of, or in any way connected with or incident to this Agreement, except such liability as results from CCHE's active negligence.



## **12. Liability Insurance**

Throughout the term of this Agreement, the Grantee shall provide and maintain public-liability and property-damage insurance for liability assumed by the Grantee under this Agreement with minimum limits of liability as follows:

- A single limit for bodily injury (including death) and property damage liability combined of \$1,000,000 each occurrence and \$1,000,000 in the aggregate.
- This insurance shall be issued by a company or companies admitted to transact business in the State of California.
- CCHE is not responsible for premiums and assessments on any insurance policy.
- The company or companies providing such insurance shall have no recourse against CCHE or the State of California, or their members, officers and employees, or any of them, for payment of any premiums or assessments under such insurance.
- A copy of Grantee's current insurance policy shall be submitted to CCHE for their records.
- Nothing in this Agreement shall prohibit Grantee from self-insuring all or part of the insurance requirements

## **13. Loss Insurance**

Throughout the term of this Agreement, the Grantee shall provide and maintain insurance against fire, vandalism and other loss, damage, or destruction of the facilities or structures constructed pursuant to this Agreement.

CCHE is not responsible for premiums and assessments on any insurance policy.

## **14. Withholding of Grant disbursements**

CCHE may withhold all or any portion of the grant funds provided for by this Grant Agreement in the event that the Grantee has materially violated, or threatens to materially violate, any term, provision, condition, or commitment of this Agreement or the Grantee fails to maintain reasonable progress toward completion of the Project.

## **15. Compliance with Law**

Grantee agrees that it will, at all times, comply with and require its contractors and subcontractors to comply with all applicable federal and state and local laws, rules, guidelines, regulations, and applicable requirements.

## **16. Dispute Resolution**

Any claim that the Grantee may have regarding the performance of this Agreement including, but not limited to, claims for additional compensation or extension of time, shall be submitted to the CCHE Grant Manager in writing within thirty days of its accrual. The Grantee and the CCHE Executive Officer or Executive Officer's designee shall then make a good faith effort to resolve the claim, and process an amendment to this Agreement to implement the terms of any such resolution. If the Grantee and the CCHE are unable to resolve the dispute, the decision of the Executive Officer or the Executive Officer's designee shall be final.

## **17. Grantee's Name Change**

An amendment is required to change the Grantee's name as listed on this Agreement. Upon receipt of legal documentation of the name change the State will process the amendment. Payment of invoices presented with

a new name cannot be paid prior to approval of said amendment.

**18. Severability**

If any provision of this Agreement is held invalid or unenforceable by any court of final jurisdiction, it is the intent of the parties that all other provisions of this Agreement be constructed to remain fully valid, enforceable, and binding on the parties.

**19. Standard of Professionalism**

The Grantee shall conduct all work consistent with the professional standards of the industry and type of work being performed under the Agreement.

**20. Amendments**

Except as otherwise provided herein, no alteration or variation of the terms of this Agreement shall be valid unless made in writing and signed by the parties hereto, and no oral understanding or agreement to be incorporated herein shall be binding on any of the parties hereto.

**21. Venue**

All proceedings concerning the validity and operation of this Agreement and the performance of the obligations imposed upon the parties hereunder shall be held in Sacramento County, California. The parties hereby waive any right to any other venue.

**22. Sections and Headings**

The headings and captions of the various sections of this Agreement have been inserted only for the purpose of convenience, and are not a part of this Agreement and shall not be deemed in any manner to modify, explain, or restrict any of the provisions of this Agreement.

**23. Entire Agreement**

This Agreement, and the Exhibits, constitutes the entire contract between the parties hereto, relating to the Project and may not be modified except by an instrument in writing signed by the parties hereto.

## **Exhibit E – State Certification Requirements**

By signing this Agreement, the Grantee's authorized representative is certifying under penalty of perjury that the following clauses will be enforced for the duration of the Project with CCHE.

### **1. Non-Discrimination**

During the performance of this Agreement, Grantee and its subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, sexual orientation, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age (over 40), marital status, and denial of family care leave. Grantee and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Grantee and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code Section 12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full. Grantee and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.

Grantee shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Agreement.

### **2. Drug-Free Workplace Certification**

Grantee will comply with the requirements of the Drug-Free Workplace Act of 1990 and will provide a drug-free workplace by taking the following actions:

- a. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations.
- b. Establish a Drug-Free Awareness Program to inform employees about:
  1. the dangers of drug abuse in the workplace;
  2. the person's or organization's policy of maintaining a drug-free workplace;
  3. any available counseling, rehabilitation and employee assistance programs; and,
  4. penalties that may be imposed upon employees for drug abuse violations.
- c. Every employee who works on the CCHE Project will:
  1. receive a copy of the company's drug-free workplace policy statement; and,
  2. agree to abide by the terms of the company's statement as a condition of employment on the Agreement.

Failure to comply with these requirements may result in suspension of payments under the Agreement or termination of the Agreement or both and Grantee may be ineligible for award of any future State Agreements if

CCHE determines that any of the following has occurred: the Grantee has made false certification, or violated the certification by failing to carry out the requirements as noted above. (Government Code 8350 et seq.)

### **3. National Labor Relations Board**

By signing the Agreement, the Grantee swears under penalty of perjury that no more than one final unappealable finding of contempt of court by a federal court has been issued against the Grantee within the immediately preceding two year period because of the Grantee's failure to comply with an order of a federal court which orders the Grantee to comply with an order of the National Labor Relations Board.

### **4. Union Activities**

By signing this Agreement Grantee hereby acknowledges the applicability of Government Code section 16645 through section 16649 to this Agreement and agrees to the following:

- a. Grantee will not assist, promote or deter union organizing by employees performing work on a state service contract, including a public works contract.
- b. No state funds received under this Agreement will be used to assist, promote or deter union organizing.
- c. Grantee will not, for any business conducted under this Agreement, use any state property to hold meetings with employees or supervisors, if the purpose of such meetings is to assist, promote or deter union organizing, unless the state property is equally available to the general public for holding meetings.
- d. If Grantee incurs costs, or makes expenditures to assist, promote or deter union organizing, Grantee will maintain records sufficient to show that no reimbursement from state funds has been sought for these costs, and that Grantee shall provide those records to the Attorney General upon request.

### **5. Conflict of Interest**

By signing this Agreement, Grantee certifies that it will comply the following provisions regarding current or former state employees. If Grantee has any questions on the status of any person rendering services or involved with the Agreement, contact CCHE immediately for clarification.

#### **Current State Employees**

- a. No officer or employee shall engage in any employment, activity or enterprise from which the officer or employee receives compensation or has a financial interest and which is sponsored or funded by any state agency, unless the employment, activity or enterprise is required as a condition of regular state employment.
- b. No officer or employee shall contract on his or her own behalf as an independent contractor with any state agency to provide goods or services.

#### **Former State Employees**

- a. For the two-year period from the date he or she left state employment, no former state officer or employee may enter into a contract in which he or she engaged in any of the negotiations,

transactions, planning, arrangements or any part of the decision-making process relevant to the contract while employed in any capacity by any state agency.

- b. For the twelve-month period from the date he or she left state employment, no former state officer or employee may enter into a contract with any state agency if he or she was employed by that state agency in a policy-making position in the same general subject area as the proposed contract within the 12-month period prior to his or her leaving state service.

If Grantee violates any provisions of above paragraphs, such action by Grantee shall render this Agreement void.

Members of boards and commissions are exempt from this section if they do not receive payment other than payment of each meeting of the board or commission, payment for preparatory time and payment for per diem. (Public Contracts Code, Section 10430 (e).)

#### **6. Labor Code/Workers' Compensation**

Grantee agrees to comply with Section 3700 of the Labor Code, which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that Code, and Grantee confirms that it will comply with such provisions before commencing the performance of the work of this Agreement.

Grantee also certifies that it will comply with Labor Code Sections 1810-1815, inclusive, regarding maximum hours per workweek.

#### **7. Americans With Disabilities Act**

Grantee assures the State that it complies with the Americans with Disabilities Act (ADA) of 1990, which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA.

#### **8. Authority**

By entering into the foregoing Agreement the Grantee gives assurance and certifies with respect to the grant that it possesses legal authority to apply for and receive the grant funds.

**Exhibit G – CCHE Quarterly Progress Report**

Grantee: \_\_\_\_\_

Date Report Submitted: \_\_\_\_\_

Address: \_\_\_\_\_

Grant Agreement Number: \_\_\_\_\_

\_\_\_\_\_

Time Period Covered by this Report: \_\_\_\_\_

Project Number: \_\_\_\_\_

**Brief Summary of Work Completed in this Progress Report:**

(box expands)

1. Please provide a detailed narrative of all of the areas described above and an explanation to any and all attachments to further support the items listed.
2. Please describe the tasks accomplished within this Progress Report.
3. Please describe any problems or opportunities encountered during this Progress Report:
4. Please provide your assessment of this Project and how you have or have not been in compliance with the Scope of Work and Budget submitted.
5. Please describe your plans of what you plan to accomplish for the next Progress Report.
6. Attachments to this Report include:
  - a.
  - b.
  - c.
  - d.
  - e.
7. Financial Information Regarding the Period Covered by this Progress Report:

Item(s)

Budget Category

8. Narrative Information on the financial information submitted:

I certify that Project Number \_\_\_\_\_ in the amount of \$\_\_\_\_\_, is accurate and in accordance with the CCHE Grant Agreement. I further certify that these are actual expenditures allowed under the CCHE Grant Agreement and that all funds were expended for the purposes of the CCHE Project.

Authorized Grantee Signature: \_\_\_\_\_ Date: \_\_\_\_\_

### **Important Things to Remember:**

1. Progress Reports are due every quarter. Depending on when you start your Project, your first/next Progress Report will be as follows:
  - January 15<sup>th</sup> - for the quarter ending December 31<sup>st</sup>
  - April 15<sup>th</sup> - for the quarter ending March 31<sup>st</sup>
  - July 15<sup>th</sup> - for the quarter ending June 30<sup>th</sup>
  - October 15<sup>th</sup> - for the quarter ending September 30<sup>th</sup>
  
2. The summary of work completed should include all of the activities and tasks you have indicated in your Scope of Work including all draft products, reports, interim findings, meetings and the results of meetings, problems, assessment of your Project to the timeline you submitted, narrative financial assessment and whether you are progressing within the approved budget, proposed activities for the next CCHE Progress Report and copies of any materials created during this CCHE Progress Report.
  
3. Failure to submit a complete and timely progress report may result in a disputed invoice.
  
4. Progress Reports shall be submitted to CCHE by regular US mail: Francelle Phillips, CCHE, 900 "N" Street, Room 380, Sacramento, CA 95814

## Exhibit H – CCHE Final Report

Grantee: \_\_\_\_\_

Date Report Submitted: \_\_\_\_\_

Address: \_\_\_\_\_

Grant Agreement Number: \_\_\_\_\_

\_\_\_\_\_

Grant Period (indicate from effective date of  
Grant Agreement to completion): \_\_\_\_\_

Project Number: \_\_\_\_\_

**Brief Summary of Project and Goals Achieved:**  
**(detailed information will be provided regarding the grant closeout procedures)**

Please provide the following information in narrative form

1. Narrative of Project Goals and how they were achieved.
2. An evaluation how CCHE funds were used to contribute to the thread stated your Project goals.
3. How CCHE funds were used to achieve these goals.
4. Other financial contributions toward the Project goals
5. Findings, conclusions or recommendations for follow up or ongoing activities that might result from successful completion of Project.
6. Reflections and Final Comments
7. Copies of any news articles and other promotional material created during the Project, not submitted as part of the Progress Report. (specify)
8. Financial Information Regarding the Project and whether Project was able to stay within budget categories:
9. Financial Narrative of Project:
10. Visual Documentation of completed Project.

I certify that Project Number \_\_\_\_\_ in the amount of \$ \_\_\_\_\_, is accurate and in accordance with the CCHE Grant Agreement. I further certify that these are actual expenditures allowed under the CCHE Grant Agreement and that all funds were expended for the purposes of the CCHE Project.

Authorized Grantee Signature: \_\_\_\_\_ Date: \_\_\_\_\_