



DISTRIBUTION DATE: 4/2/12

Memorandum

TO: HONORABLE MAYOR &
CITY COUNCIL

FROM: Gregory Hunter

SUBJECT: Fox Theater Performance Audit

DATE: April 2, 2012

City Administrator
Approval

Date

4/02/12

INFORMATION

The Fox Theater Renovation Project Performance Audit ("Fox Audit") was forwarded to the Community and Economic Development Committee in an informational report on January 24, 2012 and forwarded to the City Council for the February 7, 2012 meeting. The discussion at the Committee meeting included presentations by the City Auditor, outside audit team and Community and Economic Agency. The Fox Audit included 17 recommendations; most of which were focused on City procedures for a major project. Four of the recommendations were directly related to the Fox Project. These items required additional review and/or negotiations with California Capital Group ("CCG") or Turner Construction Company ("Turner") to return what the City Auditor characterized as over payments from the project. These four items included:

1. Unsupported costs of \$178,726 paid to CCG.
2. Overpayment of fees to CCG totaling \$178,843.
3. Possible refunds from Turner due to potential costs being less than budgeted for Turner's Guaranteed Maximum Price (GMP) contract.
4. Fox Theater Landlord LLC may have overpaid for some change orders. In particular, some of the labor for some change orders may have been over-priced.

The four items in question relate to contracts that were held by Fox Oakland Theater, Inc., a non-profit corporation set up by the City for the project, and three other related entities (collectively referred to as "FOT"). Following are updates on the status of the four items noted above identified in the Fox Audit:

Item Number 1 - FOT provided documentation supporting the expenditures to the Auditor and the City after the Audit recommendations were prepared. This included invoices and other

documentation for \$184,661.80 in expenditures from January 2007, which were missing from the spreadsheets reviewed for the Fox Audit. These documents more than covered the \$178,726 in unsupported costs reported in the Fox Audit.

Item Number 2 – FOT conducted further research related to this Audit finding that there was \$178,843 in overpayment of fees to CCG. FOT concluded that \$142,500 was paid for services for April through August 2006 when CCG was not under contract but was still working on the project. During this period the project was in the process of being transferred between three entities; the Redevelopment Agency, FOT and Oakland Renaissance New Markets Tax Credits, Inc. (another non-profit entity set up by the City.)

On August 8th 2006 FOT approved a contract amendment for \$1,050,000 with CCG for this period, but did not have sufficient funds to cover the full contract increase. Therefore, \$150,000 was deferred until a later date when funds were available. The project's financing subsequently closed in December 2006. At that time the contract should have been amended for the previous period to cover the \$142,500 in additional fees. Although this amendment was not made, the \$142,500 in fees was paid in December 2006. CCG's contract was amended at that time but only to cover the period going forward. To correct this oversight FOT is currently considering amending the contract; however, FOT is awaiting the resolution of the remaining \$36,343 in fees, which are in dispute as noted below, before completing this amendment.

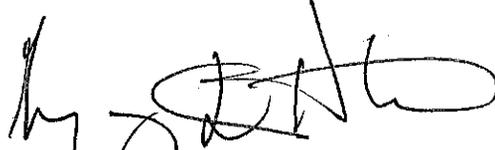
FOT found that \$36,343 in payments for developer/management fees to CCG seem to be over payments. FOT issued demand letters to CCG on January 24, 2012. CCG has offered to split the difference on this portion of the fees and return approximately \$18,171. FOT has directed outside counsel to reviewing records and verify this finding before finalizing any agreements with CCG.

Item Number 3 – Per the construction contract, FOT was due 70% of the savings from costs that were less than budgeted. While there were over a thousand line items in the construction budget, the Fox Audit identified twenty-two items in which the costs were less than budgeted. The savings on these 22 items totaled \$320,977, in which FOT was due a \$224,684 reduction in the contract. FOT did not receive these cost savings and may therefore be due a refund from Turner.

FOT issued demand letters to Turner on January 24, 2012. Turner has argued that this issue was covered in the final settlement when Turner substantially reduced the outstanding change order request. FOT has directed outside counsel to review the supporting records and verify this finding.

Item Number 4 – FOT has directed outside counsel to review the contract and the three change orders that the Fox Audit found with over-priced labor costs exceeding prevailing wage rates.

FOT is currently waiting for the completion of the Audit review by outside counsel before pursuing any further action relating to the four Fox Audit findings. The review by outside counsel is due by early April. Staff will provide an update on any further action taken regarding the four findings.

A handwritten signature in black ink, appearing to read 'Gregory Hunter', written in a cursive style.

Gregory Hunter
Deputy Director,
Office of Neighborhood Investment