

**NOTICE OF SPECIAL
ROSENBERG DEVELOPMENT CORPORATION WORKSHOP**

NOTICE IS HEREBY GIVEN THAT THE ROSENBERG DEVELOPMENT CORPORATION OF THE CITY OF ROSENBERG, FORT BEND COUNTY, TEXAS, WILL MEET IN SPECIAL SESSION OPEN TO THE PUBLIC AS FOLLOWS:

DATE: Thursday, April 03, 2014
TIME: 6:30 p.m.
PLACE: Imperial Performing Arts Center
823 3rd Street
Rosenberg, Texas 77471
PURPOSE: Special Rosenberg Development Corporation Workshop

Call to order.

AGENDA

1. Hold Board workshop regarding the Imperial Performing Arts Performance Agreement, and take action as necessary.(Malik)
2. Adjournment.

{EXECUTION PAGES TO FOLLOW}

DATED AND POSTED this the 27th day of March, 2014, at 4:40 p.m. by
Linda Cernosek

Attest:

Linda Cernosek
Linda Cernosek, City Secretary
City of Rosenberg



Approved for posting:

AM
Randall Malik, Economic Development Director

Reasonable accommodation for the disabled attending this meeting will be available; persons with disabilities in need of special assistance at the meeting should contact the City Secretary at (832) 595-3340.



COMMUNICATION FORM

April 03, 2014

ITEM #	ITEM TITLE
1	Imperial Performing Arts

ITEM/MOTION

Hold Board workshop regarding the Imperial Performing Arts Performance Agreement, and take action as necessary.

APPROVAL	SUPPORTING DOCUMENTS
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SUBMITTED BY :

Randall Malik
Economic Development Director

- 1) Imperial Performing Arts Performance Agreement
- 2) Accounts Payable Vendor Maintenance List

EXECUTIVE SUMMARY

Imperial Performing Arts representatives have requested an onsite meeting with the Board.

**ROSENBERG DEVELOPMENT CORPORATION
AND
IMPERIAL PERFORMING ARTS
PERFORMANCE AGREEMENT**

THE STATE OF TEXAS §
 § KNOW ALL MEN BY THESE PRESENTS:
COUNTY OF FORT BEND §

THIS PERFORMANCE AGREEMENT (“Agreement”) is made and entered into by and between the ROSENBERG DEVELOPMENT CORPORATION (the “RDC”), an economic development corporation organized pursuant to Section 4B of the Development Corporation Act of 1979, as amended, and Imperial Performing Arts, Inc. (“IPA”), a Texas Not for Profit Corporation Chartered under Section 501 (c)3 of the Internal Revenue Code.

WHEREAS, the RDC has established policies to adopt such reasonable projects, as are permitted by law, to promote tourism and cultural arts in the City of Rosenberg in accordance with Section 505 of the Texas Local Government Code; and

WHEREAS, the RDC finds that the activities described in this Agreement are consistent with the authorized projects described in Section 505.152 of the Texas Local Government Code; and

WHEREAS, the IPA proposes to establish a performing and cultural arts program in Historic Downtown Rosenberg; which will be initiated with the lease (the “Arts Center Lease”) and renovation of the building located at 823 3rd Street, Rosenberg, Texas, 77471, as an arts center (the “Arts Center”) and

WHEREAS, as part of the Arts Center Lease, IPA will have a purchase option for its assignee to purchase the building known as the “Cole Theatre” located at 930 3rd Street,

Rosenberg, Texas 77471, as a performing arts and concert facility (the "Theatre"), and then IPA will lease, renovate, and operate the Theatre; and

WHEREAS, the IPA agrees to open the Arts Center no later than September 30, 2012, and open the Cole Theatre no later than December 31, 2014; and

WHEREAS, the IPA agrees to operate a performing arts program that will consist of no less than sixty (60) public ticketed events per year in the City of Rosenberg and no less than (6) community events per year for a period of ten (10) years from the date of opening of the Arts Center and an additional six (6) community events per year from the date of the opening of the Theatre; and

WHEREAS, provided IPA receives the endorsement and cooperation of the City of Rosenberg, IPA agrees to coordinate the preparation of an application to the State of Texas for the designation of Historic Downtown Rosenberg as a Cultural Arts District; and

WHEREAS, the RDC seeks to promote Historic Downtown Rosenberg as a cultural and performing arts destination for the purposes of promoting tourism, and to attract new businesses and expand existing businesses in the Historic Downtown Rosenberg area; and

NOW, THEREFORE, in consideration of the premises and the mutual benefits and obligations set forth herein, including the recitals set forth above, the RDC and the IPA agree as follows:

1.

IPA covenants and agrees that it will lease, renovate and reopen the Arts Center, as shown in Exhibit "A", for the purposes of holding cultural and performing arts events. IPA represents and agrees that renovation of the building will be completed by September 30, 2012, and be completed in accordance with all applicable City of Rosenberg ordinances and codes. In

addition to delays from force majeure (see Section 15), extension of the foregoing deadline, due to extenuating circumstances, may be granted at the sole discretion of the Board of Directors of the RDC (“RDC Board”), and will not be unreasonably withheld. Request for such extension should be submitted in writing to the RDC at the address listed below. An illustration of the proposed renovations is shown in Exhibit “C”. Such illustration is not intended to represent a specific plan of renovation, and shall not be construed as representing the actual appearance or layout, nor any approval of plans on behalf of the City of Rosenberg.

2.

IPA covenants and agrees that it will arrange to renovate and reopen the Cole Theatre to operate as a cultural and performing arts center as shown in Exhibit “A”. IPA represents and agrees that renovation of the building will be completed by December 31, 2014, and be completed in accordance with all applicable City of Rosenberg ordinances and codes. In addition to delays from force majeure (see Section 15), extension of the foregoing deadline, due to extenuating circumstances, may be granted at the discretion of the RDC Board, and will not be unreasonably withheld. Request for such extension should be submitted in writing to the RDC at the address listed below.

3.

IPA covenants and agrees that it will conduct a minimum of sixty (60) public ticketed performing and cultural arts events, as well as (6) community events, per year for a ten (10) year period commencing with the date of opening of the Arts Center and will conduct an additional six (6) community events per year commencing with the date of opening of the Theatre. Ticketed events shall consist of the following:

- (1) Professional, public-ticketed events;
- (2) Art education classes and performances;

- (3) Special and seasonal events; and
- (4) Partner events and private events.

Each of the above described events, except education classes and private events, shall be considered a "publicly ticketed event" for purposes of this Agreement, provided that tickets must be purchased for admission to the event. Community events shall be defined as events provided for the purposes of education, celebrating holidays, or recognizing culturally significant events and organizations. Such events may include IPA participation in other events organized by the City of Rosenberg, or some other community organization. Provided IPA obtains the endorsement and cooperation of the City of Rosenberg, IPA further covenants and agrees that it will coordinate the development of an application to the State of Texas for the designation of Historic Downtown Rosenberg as a Cultural Arts District.

4.

In consideration of IPA's representations, promises, and covenants, the RDC agrees, subject to the terms and conditions of this Agreement, to provide One Hundred Thousand Dollars and 00/100 (\$100,000.00) in funding for the renovation of the Art Center and One Hundred and Fifty Thousand Dollars and 00/100 (\$150,000.00) for the promotion of the RDC as an underwriter of six (6) events. Such payments will be made on the later of April 1, 2012, or upon proof of an executed Arts Center Lease being submitted to the RDC. Payment will be contingent upon the completion of all statutory requirements contained in Section 505.159 and Section 505.160 of the Texas Local Government Code. Subsequent payments of One Hundred Thousand Dollars and 00/100 (\$100,000.00) for the renovation of the Cole Theatre and One Hundred and Fifty Thousand Dollars and 00/100 (\$150,000.00) for the promotion of the RDC as the underwriter of six (6) events shall be made by the RDC on the first anniversary of the date of the initial payment, contingent upon the approval of such funds in the RDC annual budget in

Fiscal Year 2012-2013, and upon the completion of all statutory requirements contained in Section 505.159 and Section 505.160 of the Texas Local Government Code. Should IPA fail to meet the requisite number of events for a given year, credit for additional events, above the mandatory number of events in a previous or subsequent year, may be credited towards the requirement.

5.

IPA agrees that it will provide an annual report to the RDC Board, to occur no later than ninety (90) days from the completion of IPA's fiscal year to include a proposed budget for the next fiscal year, in the same format as Exhibit "B". The report shall be made each subsequent year for the duration of this Agreement, and will include the number of ticketed events held annually, the number of community events held annually, the status of the creation of the Cultural Arts District designation, and any other information pertaining to the operation of IPA and performing arts in the City of Rosenberg as the RDC Board deems pertinent and reasonable.

6.

IPA covenants and agrees that it does not and will not knowingly employ an undocumented worker. An "undocumented worker" shall mean an individual who, at the time of employment, is not (a) lawfully admitted for permanent residence to the United States; or (b) authorized by law to be employed in that manner in the United States.

7.

The RDC may declare IPA in default of this Agreement if IPA fails to comply with any term of this Agreement or vacates any of the properties subject to the Agreement before the term of the Agreement ends. The RDC shall notify IPA of any default in writing specifying the default. IPA shall have ninety (90) days from the date of notice to cure any default. If IPA fails to cure the default, the RDC may terminate this Agreement by written notice.

It is understood and agreed that, in the event of a default by IPA of any obligation under this Agreement resulting in termination by the RDC, IPA will reimburse the RDC the amount of funds provided minus ten percent (10%) for each full year of the Agreement that has been completed, with interest at the rate equal to the ninety (90) day Treasury Bill plus one half percent ($\frac{1}{2}\%$) per annum from the date of execution of this Agreement. Reimbursement to the RDC shall be made within one hundred and twenty (120) days after the RDC notifies the IPA of the termination.

IPA further understands and agree that if IPA is convicted of a violation under 8 U.S.C. Section 1324a(f), IPA will reimburse the RDC the total amount of any payment, reimbursement or incentive made to IPA, with interest at the rate equal to the ninety (90) day Treasury Bill plus one-half percent ($\frac{1}{2}\%$) per annum, within one hundred and twenty (120) days after the RDC notifies IPA of the violation.

IPA agrees to allow the RDC, upon request, reasonable access to information necessary to ensure compliance with this Agreement.

In the event either IPA or RDC brings legal proceedings against the other in order to enforce, interpret, or for a breach of any provision of this Agreement, the party in whose favor final judgment is entered by a court of competent jurisdiction shall be entitled to recover expenses, including court costs and attorneys' fees and disbursement (including those incurred on appeal) incurred by the prevailing party.

8.

This Agreement shall inure to the benefit of and be binding upon the RDC, IPA or IPA's successors and assigns, affiliates, and subsidiaries, and shall remain in force whether IPA sells, assigns, or in any other manner disposes of, either voluntarily or by operation of law, all or any

part of the Property (the “Cole Theatre and the Arts Center”), and the agreements herein contained shall be held to be covenants running with the Property for so long as this Agreement, or any extension hereof, remains in effect.

9.

Any notice provided or permitted to be given under this Agreement must be in writing and may be served by (i) depositing the same in the United States mail, addressed to the party to be notified, postage prepaid, registered or certified mail, return receipt requested; or (ii) delivering the same in person to such party; or (iii) overnight or messenger delivery service that retains regular records of delivery and receipt; or (iv) facsimile; provided a copy of such notice is sent within one (1) day thereafter by another method provided above. The initial addresses of the parties for the purpose of notice under this Agreement shall be as follows:

If to RDC:	Rosenberg Development Corporation Post Office Box 32 2110 4 th Street Rosenberg, Texas 77471 Attn: Executive Director
If to IPA:	Imperial Performing Arts 8410 Highway 90A, Ste. 130 Sugar Land, Texas 77478 Attn: Chairman of the Board of Directors

10.

This Agreement shall be performable and enforceable in Fort Bend County, Texas, and shall be construed in accordance with the laws of the State of Texas.

11.

Except as otherwise provided in this Agreement, this Agreement shall be subject to change, amendment, or modification only in writing with the signatures and mutual consent of the parties hereto.

12.

The failure of any party to insist in any one or more instances on the performance of any of the terms, covenants or conditions of this Agreement, or to exercise any of its rights, shall not be construed as a waiver or relinquishment of such term, covenant, or condition, or right with respect to further performance.

13.

This Agreement shall bind and benefit the respective parties and their legal successors and shall not be assignable, in whole or in part, by any party without first obtaining written consent of the other party.

14.

In the event any one or more words, phrases, clauses, sentences, paragraphs, sections, or other parts of this Agreement, or the application thereof to any person, firm, corporation, or circumstance, shall be held by any court of competent jurisdiction to be invalid or unconstitutional for any reason, then the application, invalidity or unconstitutionality of such words, phrases, clauses, sentences, paragraphs, sections, or other parts of this Agreement shall be deemed to be independent of and severable from the remainder of this Agreement, and the validity of the remaining parts of this Agreement shall not be affected thereby.

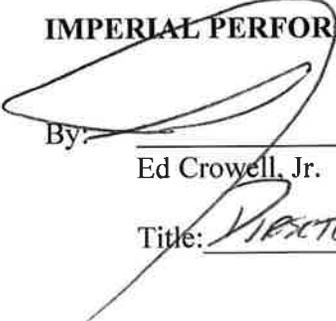
15.

If by reason of force majeure, IPA is unable to perform any obligation of this Agreement, it shall give notice of the force majeure to the RDC in writing within thirty (30) calendar days of the expiration of the occurrence relied upon. The obligation of IPA, to the extent and for the period of time affected by the force majeure, shall be suspended. IPA shall endeavor to remove or overcome the inability with all reasonable effort. For purposes of this Agreement, "force

majeure” shall mean acts of God, landslides, lightning, earthquakes, hurricanes, storms, floods, or other natural occurrences; strikes, lockouts, insurrections, riots, wars or other civil or industrial disturbances; orders of any kind of the Federal or State government or of any civil or military authority, explosions, fires, breakage or accidents to machinery, lines, or equipment, or the failure of the electrical system or water supply system; or any other cause not reasonably within the control of IPA.

IN TESTIMONY OF WHICH, THIS AGREEMENT has been executed by the parties on this 6th day of MARCH 2012 (the “Effective Date”).

IMPERIAL PERFORMING ARTS, INC.

By: 
Ed Crowell, Jr.
Title: DIRECTOR

ATTEST:

By: 

Name: EDWARD G. CROWELL III

Title: EXECUTIVE DIRECTOR, IMPERIAL PERFORMING ARTS

ROSENBERG DEVELOPMENT CORPORATION



By:

Bill Knesek
Bill Knesek
President, Rosenberg Development Corporation

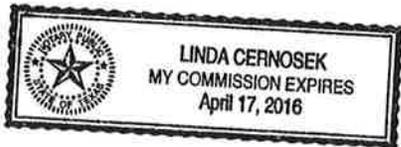
ATTEST:

By: *Linda Cernosek*
Linda Cernosek
Corporate Secretary

ACKNOWLEDGMENT

THE STATE OF TEXAS §
§
COUNTY OF FORT BEND §

This instrument was acknowledged before me on the 6th day of March 2012, by Edward G. Crowell III the Executive Director of Imperial Performing Arts, Inc., a Texas Corporation, for and on behalf of said corporation.



Linda Cernosek
Notary Public in and for the State of Texas
My Commission Expires: 4-17-2016

(SEAL)

ACKNOWLEDGMENT

THE STATE OF TEXAS §
 §
COUNTY OF FORT BEND §

This instrument was acknowledged before me on the _____ day of March 2012, by Bill Knesek, President of the Rosenberg Development Corporation ("RDC"), for and on behalf of said Corporation.



(SEAL)

Linda Cernosek
Notary Public in and for the State of Texas
My Commission Expires: 4-17-2016



EXHIBIT "A"

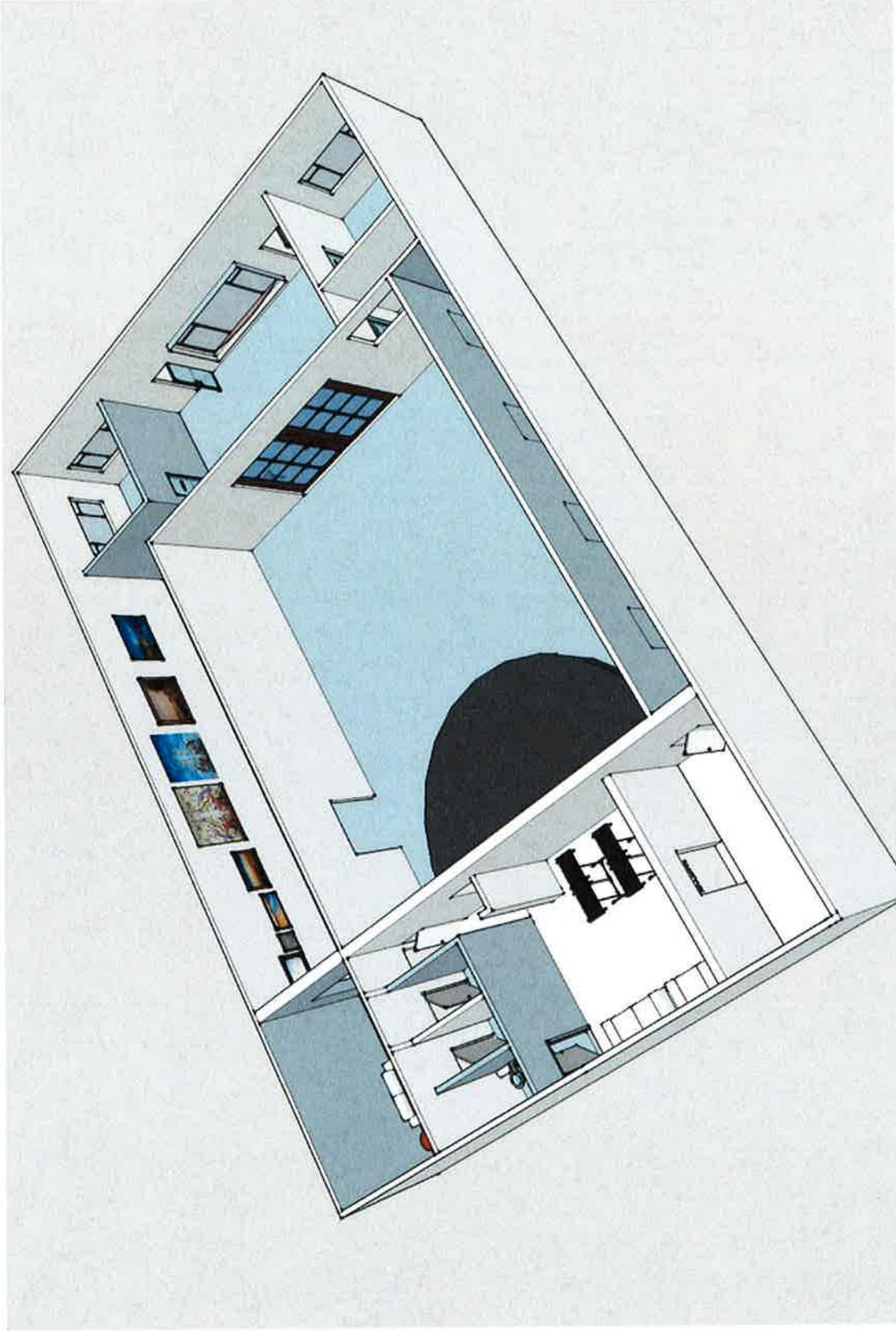
823 3rd Street

930 3rd Street
Cole Theater



Note: Locations of buildings as described on this map are conceptual only, and are not meant to convey any rights or approvals by the City of Rosenberg.

EXHIBIT "C"
Conceptual Layout of the Renovated Arts Center



Note: This illustration is conceptual only, and is not intended to provide any assurances or commitments as to final layout and appearance of the Arts Center after renovation.

**BUDGET PROPOSAL – HISTORIC DOWNTOWN ROSENBERG TO BECOME
CULTURAL DISTRICT**

Proposed by Imperial Arts, Submitted January 12, 2012

Item	Year 1 Proposed	Year 2 Proposed
PERSONNEL		
Executive Director CEO/COO and Spokesperson		
Artistic Director Manager/Director of all Artistic Programming		
Musical Director Manager/Director of all Musical Programming		
Visual Arts Director Manager/Director of all Visual Arts Programming		
Education Director Manager/Director of all Education Activity		
Rosenberg Arts Center Manager Facility/Calendar Manager		
Rosenberg Arts Center Technical Director Lighting/Sound/Equipment Manager		
Development Director Manager/Director of all Fundraising Efforts		
Marketing Director Manager/Director of all Advertising and Public Relations Efforts		
General Administrative Support Clerical/General Admin/Manpower		
PERSONNEL Sub-Total	\$ 165,000	\$ 175,000
Employee Related Taxes (8%)	\$ 13,200	\$ 14,000
Employee Benefits (15%)	\$ 9,000	\$ 9,000
PERSONNEL EXPENSES – Total	\$ 187,200	\$ 198,000
RAC OPERATING EXPENSES		
Rent (TBD)	\$ -	\$ -
Electrical	\$ 12,000	\$ 12,000
Water	\$ 600	\$ 600
Gas	\$ 900	\$ 900
Trash	\$ 500	\$ 500
Telephone	\$ 900	\$ 900
Internet / Website	\$ 2,400	\$ 2,400
Janitorial	\$ 600	\$ 600
Security Officer	\$ 2,000	\$ 2,000
Security Alarm / Monitoring	\$ 0	\$ 0
Based on 2010–11 operating expenses of The Imperial Theatre		
RAC OPERATING EXPENSES – Total	\$ 19,900	\$ 19,900
EQUIPMENT		
Equipment Purchases	\$ 2,500	\$ 1,500
Equipment Rental	\$ 1,500	\$ 1,500
Equipment Maintenance	\$ 1,500	\$ 1,500
Equipment Expendables	\$ 1,500	\$ 1,500
Furniture and Fixtures	\$ 1,500	\$ 500
Musical Instrument Maintenance	\$ 3,000	\$ 3,000
Facility Maintenance	\$ 1,500	\$ 1,500
Upgrades to existing equipment, regular maintenance/repairs		
EQUIPMENT RELATED EXPENSES – Total	\$ 13,000	\$ 11,000
ADMINISTRATIVE EXPENSES		
General Supplies Administrative, Facility, and non-program-specific	\$ 2,000	\$ 2,500
Printing In-house and out-sourced printing of promotional materials	\$ 2,500	\$ 2,500
Marketing/Advertising	\$ 12,000	\$ 12,000
Fundraising Advertising, fundraising events, and public relations events	\$ 5,000	\$ 5,000
Licenses and Permits	\$ 550	\$ 550
Insurance	\$ 4,000	\$ 4,000
Accounting Fees	\$ 1,800	\$ 1,800
Legal Fees Fees to professional services	\$ 3,000	\$ 3,000
Subscriptions/Memberships/Dues	\$ 1,200	\$ 1,200
Staff Development	\$ 1,000	\$ 1,000
Travel/Meals/Entertainment Professional memberships/continuing education	\$ 3,600	\$ 3,600
Cultural District Consultant Consultation fee and travel expense	\$ 2,000	\$ 1,000
Capital Campaign Campaign-specific expenses	\$ 5,000	\$ 5,000
ADMINISTRATIVE EXPENSES – Total	\$ 43,650	\$ 43,150
PROGRAMMING		
Productions, Concerts, Films, and Events Professional design, construction, and execution of public-ticketed events	\$ 40,000	\$ 50,000
Arts Education Programs Educational activities for all ages in every area of performing and visual arts	\$ 10,000	\$ 10,000
PROGRAMMING – Total	\$ 50,000	\$ 60,000
ROSENBERG ARTS CENTER		
BUILDING COSTS (Cursory Estimates)		
General Requirements Job-site supervision and job-site costs not covered below	\$ 0	\$ 0
Existing Conditions Demolition of internal structures – asbestos abatement not included	\$ 5,000	\$ 0
Concrete	\$ 0	\$ 0
Masonry	\$ 0	\$ 0
Metals	\$ 0	\$ 0
Wood, Plastics, Composites Stage flooring and storage shelving	\$ 2,500	\$ 0
Thermal and Moisture Protection	\$ 0	\$ 0
Openings Interior and exterior doors, frames, and hardware	\$ 10,000	\$ 0
Finishes Drywall partitions, paint ceilings, and floor treatments	\$ 10,000	\$ 0
Specialties	\$ 0	\$ 0
Equipment	\$ 0	\$ 0
Furnishings	\$ 0	\$ 0
Special Construction Install theatrical sound and lighting systems	\$ 1,000	\$ 0
Conveying Systems	\$ 0	\$ 0
Fire Suppression Requirements not confirmed – no allocations provided	\$ 0	\$ 0
Plumbing Restroom fixtures – non-ADA requirements	\$ 15,000	\$ 0
HVAC Additional capacity and modify existing ductwork	\$ 20,000	\$ 0
Integrated Automation	\$ 0	\$ 0
Electrical Upgrade service, upgrade existing grid, modify lighting	\$ 20,000	\$ 0
Communications / Fire Alarm Install fire alarm system	\$ 0	\$ 0
Electronic Safety and Security Install security system	\$ 0	\$ 0
Exterior Improvements Repair and paint fascia, add external signage	\$ 3,500	\$ 2,500
Contractor Fee	\$ 10,000	\$ 2,500
BUILDING COSTS– Total	\$ 97,000	\$ 5,000
Procurement and Contracting Program Management Consulting Fees	\$ 23,000	\$ 0
Utilities	\$ 0	\$ 0
Moving Expenses	\$ 3,000	\$ 0
RAC – Total	\$ 123,000	\$ 5,000
COLE THEATER ACQUISITION/RESTORATION	\$ 0	\$ 1,000,000
TOTAL EXPENSES	\$ 436,750	\$ 1,337,050
PROJECTED INCOME		
Ticket Revenue	\$ 50,000	\$ 60,000

Accounts Payable
Vendor Maintenance



User: maritzas
Printed: 03/17/2014 - 7:59 AM

Date	Vendor Name	Invoice No	Check Number	Commodity	Item Number	Quanti	Amount
4/11/2013	Imperial Performing Arts, In	2013	155174			0.00	\$100,000.00
4/11/2013	Imperial Performing Arts, In	2013-1	155174			0.00	\$150,000.00
4/16/2012	Imperial Performing Arts, In	2012	4424			0.00	\$100,000.00
4/16/2012	Imperial Performing Arts, In	2012	4424			0.00	\$150,000.00
4/2/2012	Imperial Performing Arts, In	40212	150230			0.00	\$100.00

ITEM 2

Adjournment.