CITY OF PAMPA
CITY COMMISSION AGENDA
REGULAR MEETING

John Studebaker, Commissioner Ward 1
Rebecca Holmes, Commissioner Ward 2
Robert Dixon, Commissioner Ward 3
Neil Fulton, Commissioner Ward 4
Brad Pingel, Mayor
Richard Morris, City Manager
Karen Price, City Secretary
Leland Waters, City Attorney
Shane Stokes, Asst. City Manager

Notice is hereby given of a REGULAR MEETING of the City Commission of the City of Pampa, Texas to be held on TUESDAY, APRIL 10, 2012 at 4:00 p.m. at City Hall – City Commission Chamber, Third Floor, 201 W. Kingsmill, Pampa, Texas, for the purpose of considering the following agenda items.

All agenda items are subject to action. The City Commission reserves the right to adjourn into Executive Session on any agenda item should the need arise and if applicable pursuant to authorization by Title 5, Chapter 551, of the Texas Government Code.

CALL TO ORDER

INVOCATION

PLEDGE OF ALLEGIANCE

PUBLIC COMMENTS:
Citizens who have signed a card to speak to the City Commission will be heard at this time. In compliance with the Texas Open Meetings Act, unless the subject matter of the presentation is on the agenda, the City Staff and City Commission Members are prevented from discussing the subject and may respond only with statements of factual information or existing city policy. Citizens are limited to three (3) minutes for their presentation to the City Commission.

AUTHORIZATIONS BY CITY COMMISSION:

1. Consider approving the minutes of the March 27, 2012 Regular City Commission meeting as presented.
2. Excuse Commissioner John Studebaker from the March 27, 2012 Regular City Commission meeting.
3. Consider approving on first reading Ordinance No. 1568, an Ordinance of the City of Pampa re-enacting the nocturnal curfew for minors under the age of 17.
4. Consider authorizing the City Manager to sign lease agreement with Rig Fabrication and Repair, Inc. for property located at 1133 Price Road, Pampa, Texas.

ADJOURNMENT

CERTIFICATION

I certify that the above Agenda was posted on the outside officially designated bulletin board in front of City Hall, facing Kingsmill Street, a place convenient and readily accessible to the general public at all times and said Agenda was posted on Thursday, April 5, 2012 before 5:00 P.M. and remain so posted continuously for at least 72 hours preceding the scheduled time of said meeting.

Karen L. Price, City Secretary
ASSESSIBILITY STATEMENT

In compliance with the Americans with Disabilities Act, the City of Pampa will provide for reasonable accommodations for persons attending City Commission meetings. To better serve you, requests should be received 24 hours prior to the meetings. Please contact Karen Price, City Secretary, at 669-5750. City Hall is wheelchair accessible. Entry is on the West side of the building.

AGENDA REMOVAL NOTICE

This public notice was removed from the official designated bulletin board at 201 W. Kingsmill Street, Pampa, Texas, City Hall on the following date and time:

Date: _______________________________ Time: _______________________________

By: _____________________________________________
AGENDA ITEM NO. 1

ITEM/PROJECT: MINUTES

MEETING DATE: April 10, 2012

DESCRIPTION: Consider approving the minutes of the March 27, 2012 Regular City Commission meeting.

STAFF CONTACT: Karen Price

FINANCIAL IMPACT: N/A

SOURCE OF FUNDS: N/A

START/COMPLETION SCHEDULE: N/A

RECOMMENDED ACTION: Approve minutes.

BACKGROUND/ADDITIONAL INFORMATION: Minutes attached.
CALL TO ORDER: Mayor Brad Pingel at 4:00 p.m.

PRESENT: Brad Pingel Mayor
          Rebecca Holmes Commissioner
          Robert Dixon Commissioner
          Neil Fulton Commissioner

ABSENT: John Studebaker Commissioner

STAFF: Richard Morris City Manager
       Leland Waters City Attorney
       Karen Price City Secretary
       Shane Stokes Asst. City Manager
       Donny Hooper Public Works Director
       Kelly Rushing Chief of Police
       Kim Powell Fire Chief
       Robin Bailey Finance Director
       Gayla Pickens Asst. Finance Director
       Danny Winborne Asst. Public Works Director
       Charlene Gardner Deputy City Secretary
       Jil Arias Engineer in Training
       Ed Turner Public Service Department
       Jay Weeden Public Service Department
       Terry Brown Public Service Department
       Geno Shuck Public Service Department

VISITORS: Gary Brown Brown, Graham & Company
          Danny Woods Brown, Graham & Company
          Blossom Matthews First United Methodist Church
          Clay Rice PEDC
          Kathy Cota PEDC
          Rubin Carter

NEWS MEDIA: Molliee Bryant Pampa News
            Mike Ehrle KGRO Radio

INVOCATION: Blossom Matthews, Pastor First United Methodist Church

PLEDGE OF ALLEGIANCE

PUBLIC COMMENTS: NONE

IN THE SPOTLIGHT:

► Donny Hooper, Director Public Works honored the Street Division of the Public Service Department for Service above Self for repair of traffic light at Austin Elementary School.

AUTHORIZATIONS BY COMMISSION:

12-034

1. Consider approving the minutes of the February 29, 2012 Special City Commission meeting and the March 13, 2012 Regular City Commission meeting as presented.

A motion was made by Commissioner Fulton and Seconded by Commissioner Holmes to approve the minutes of the February 29, 2012 Special City Commission meeting and the March 13, 2012 Regular City Commission meeting as presented, with each Commission Member voting AYE, the motion carried.
2. Excuse Commissioner Neil Fulton from the February 28, 2012 Regular City Commission meeting.

A motion was made by Commissioner Dixon and Seconded by Commissioner Holmes to excuse Commissioner Neil Fulton from the February 28, 2012 Regular City Commission meeting, with each Commission Member voting AYE, the motion carried.


Danny Woods with Brown, Graham and Company, Certified Public Accounts presented the 2011 CAFR to the Commission.

A motion was made by Commissioner Holmes and Seconded by Commissioner Fulton to accept the 2011 Comprehensive Annual Financial Report (CAFR) as presented by Brown, Graham & Company, Certified Public Accountants, with each Commission Member voting AYE, the motion carried.

4. Consider adopting on second and final reading Ordinance No. 1565, an Ordinance of the City of Pampa, Texas relative to the rezoning of property located at Lots 15 through 22, Block 4, Wilcox Addition, commonly known as 801 E. Campbell.

AN ORDINANCE OF THE CITY OF PAMPA, TEXAS, AMENDING SECTION 3 OF ORDINANCE NO. 690 (APPENDIX A TO THE CODE OF ORDINANCES, CITY OF PAMPA, TEXAS), PASSED AND APPROVED ON APRIL 8, 1969, CHANGING FROM A SINGLE-FAMILY 3 DISTRICT AND PLACING IN A COMMERCIAL DISTRICT LOTS 15,16,17,18,19,20,21, AND 22, BLOCK 4, WILCOX ADDITION TO THE CITY OF PAMPA, GRAY COUNTY, TEXAS, AND PROVIDING FOR EFFECTIVE DATE.

A motion was made by Commissioner Holmes and Seconded by Commissioner Fulton to adopt on second and final reading Ordinance No. 1565, an Ordinance of the City of Pampa, Texas relative to the rezoning of property located at Lots 15 through 22, Block 4, Wilcox Addition, commonly known as 801 E. Campbell, with each Commission Member voting AYE, the motion carried.

5. Consider adopting on second and final reading Ordinance No. 1566, an Ordinance of the City of Pampa, Texas relative to the rezoning of property located at Lots 12 through 14, Block 4, Wilcox Addition, commonly known as 821 E. Campbell.

AN ORDINANCE OF THE CITY OF PAMPA, TEXAS, AMENDING SECTION 3 OF ORDINANCE NO. 690 (APPENDIX A TO THE CODE OF ORDINANCES, CITY OF PAMPA, TEXAS), PASSED AND APPROVED ON APRIL 8, 1969, CHANGING FROM A SINGLE-FAMILY 3 DISTRICT AND PLACING IN A COMMERCIAL DISTRICT LOTS 12, 13 AND 14, BLOCK 4, WILCOX ADDITION TO THE CITY OF PAMPA, GRAY COUNTY, TEXAS, AND PROVIDING FOR EFFECTIVE DATE.
A motion was made by Commissioner Holmes and Seconded by Commissioner Fulton to adopt on second and final reading Ordinance No. 1566, an Ordinance of the City of Pampa, Texas relative to the rezoning of property located at Lots 12 through 14, Block 4, Wilcox Addition, commonly known as 821 E. Campbell, with each Commission Member voting AYE, the motion carried

12-039

6. Consider adopt on second and final reading Ordinance No. 1567, an Ordinance of the City of Pampa, Texas amending its Adult Business Ordinance.

ORDINANCE NO. 1567

AN ORDINANCE OF THE CITY OF PAMPA, TEXAS, PROVIDING THAT ITS CODE OF ORDINANCES BE AMENDED BY REVISIONING ARTICLE 4.08 ADULT BUSINESSES TO ADD PARAGRAPHS (h), (i), (j), AND (k) TO SECTION 4.08.001, AND BY AMENDING SECTION 4.08.007 (c); AND PROVIDING FOR AN EFFECTIVE DATE.

A motion was made by Commissioner Fulton and Seconded by Commissioner Holmes to adopt on second and final reading Ordinance No. 1567, an Ordinance of the City of Pampa, Texas amending its Adult Business Ordinance, with each Commission Member voting AYE, the motion carried.

12-040

7. Consider adopting Jane Steele as the City of Pampa’s representative on the Emergency Services Foundation of Texas Board of Directors.

A motion was made by Commissioner Dixon and Seconded by Commissioner Holmes to appoint Jane Steele as the City of Pampa’s representative on the Emergency Services Foundation of Texas Board of Directors, with each Commission Member voting AYE, the motion carried.

12-041


A motion was made by Commissioner Holmes and Seconded by Commissioner Dixon to adopt Resolution No. R12-006, a Resolution amending certain fees and cart rentals at the Hidden Hills Municipal Golf Course, with each Commission Member voting AYE, the motion carried.

12-042

9. Consider appointing an Election Judge and Alternate Election Judge for the May 12, 2012 City of Pampa General, Special and Bond Elections. (Considerar el nombramiento del Juez Electoral y el Juez Suplente para alas Elecciones Generales, Especiales y de Bonos de la ciudad de Pampa el 12 de mayo 2012.)

A motion was made by Commissioner Holmes and Seconded by Commissioner Fulton to appoint Nell Bailey as Election Judge and Ora Mae Hedrick as Alternate Election Judge for the May 12, 2012 City of Pampa General, Special and Bond Elections, with each Commission Member voting AYE, the motion carried.

A motion was made by Commissioner Holmes and Seconded by Commissioner Dixon to approve the List of Disbursements dated February 29, 2012 with total Disbursements being $1,777,768.86 and the amount after balance sheet and income accounts being $1,194,537.00, with each Commission Member voting AYE, the motion carried.

ADJOURNMENT

There being no further business on the agenda, the meeting was adjourned at 4:47 p.m. by Mayor Brad Pingel.

Karen L. Price, City Secretary

Brad Pingel, Mayor
### Agenda Item No. 2

<table>
<thead>
<tr>
<th>Item/Project:</th>
<th>Excuse Absence</th>
</tr>
</thead>
<tbody>
<tr>
<td>Meeting Date:</td>
<td>April 10, 2012</td>
</tr>
<tr>
<td>Description:</td>
<td>Excuse Commissioner John Studebaker from the March 27, 2012 Regular City Commission meeting.</td>
</tr>
<tr>
<td>Staff Contact:</td>
<td></td>
</tr>
<tr>
<td>Financial Impact:</td>
<td>N/A</td>
</tr>
<tr>
<td>Source of Funds:</td>
<td>N/A</td>
</tr>
<tr>
<td>Start/Completion Schedule:</td>
<td>N/A</td>
</tr>
<tr>
<td>Recommended Action:</td>
<td>Excuse Commission Studebaker’s absence.</td>
</tr>
<tr>
<td>Background/Additional Information:</td>
<td></td>
</tr>
</tbody>
</table>
AGENDA ITEM NO. 3

ITEM/PROJECT: ORDINANCE NO. 1568 – CURFEW ORDINANCE

MEETING DATE: April 10, 2012

DESCRIPTION: Consider approving on first reading Ordinance No. 1568, an Ordinance of the City of Pampa re-enacting the nocturnal curfew for minors under the age of 17.

STAFF CONTACT: Chief Kelly Rushing

FINANCIAL IMPACT: N/A

SOURCE OF FUNDS: N/A

START/COMPLETION SCHEDULE: N/A

RECOMMENDED ACTION: Approve Ordinance No. 1568 on first reading.

BACKGROUND/ADDITIONAL INFORMATION: Ordinance attached.
AN ORDINANCE OF THE CITY OF PAMPA, TEXAS, RE-INTRODUCING AND CONTINUING SECTION 8.04 OF CHAPTER 8 OF THE CODE OF ORDINANCES PROVIDING FOR A NOCTURNAL CURFEW FOR MINORS UNDER THE AGE OF 17; PROVIDING FOR OFFENSES; PROVIDING FOR DEFENSES; PROVIDING FOR ENFORCEMENT; PROVIDING FOR PENALTIES; SETTING FORTH CUMULATIVE AND SEVERABILITY CLAUSES; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City Commission finds that violence, gang activity and crime involving persons under the age of seventeen (17) years in Pampa occurs to an extent that it is cause for concern; and

WHEREAS, the allure of gang activity, the power and invincibility that exists in numbers, and peer pressure make juvenile perpetrators of crime its victims as well as perpetrators; and

WHEREAS, persons under the age of seventeen (17) years are particularly vulnerable to victimization; and

WHEREAS, the City of Pampa has a vital interest in protecting persons under the age of seventeen (17) years by limiting the opportunities for victimization, by requiring parental control and responsibility and by protecting the public from irresponsible acts; and

WHEREAS, the City Commission finds that the public interest will be served by a curfew which forecloses constitutionally unprotected conduct by persons under the age of seventeen (17) years during hours when the likelihood of adult supervision is the least.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF PAMPA, TEXAS:

Section 1.

That Section 8.04 of Chapter 8 of the Code of Ordinances of the City of Pampa, Texas shall continue to read as follows:

“Article 8.04. Nocturnal Curfew for Minors Under the Age of Seventeen (17) years.

“Sec. 8.04.001. Definitions.

“The following words, terms, and phrases, when used in this Article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

“a. City: Means the City of Pampa, Texas.

“b. Curfew hours: Means 12:01 a.m. until 6:00 a.m. daily.

“c. Emergency: Means by unforeseen combination of circumstances or the resulting state that calls for immediate action. The term includes, but is not limited to, a fire, a natural disaster, an automobile accident, or any situation requiring immediate action to prevent serious bodily injury or loss of life.

“d. Establishment: Means any privately-owned place of business operated for profit to which the public is invited, including, but not limited to, any place of amusement or entertainment.

“e. Guardian: Means:
“f.  Minor: Means any person under seventeen (17) years of age.

“g.  Operator: Means any individual, firm, association, partnership, or corporation operating, managing, or conducting any establishment. The term includes the members of partners of an association or partnership and the officers of a corporation.

“h.  Parent: Means a person who is:

(1)  a natural parent, adoptive parent, or step-parent of another person; or

(2)  at least 18 years of age and authorized by a parent or guardian to have the care and custody of a minor.

“i.  Police Department: Means the police department of the City.

“j.  Public Place: Means any place to which the public or a substantial group of the public has access and includes, but not limited to, streets, parks, highways and common areas of schools, hospitals, apartment houses, office buildings, transport facilities, and shops.

“k.  Remain: Means to:

(1)  linger or stay; and

(2)  fail to leave premises when requested to do so by a police officer or the owner, operator, or other person in control of the premises.

“l.  Serious Bodily Injury: Means bodily injury that creates a substantial risk of death or that causes death, serious permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.

“The use of any gender includes the other genders, and the use of either the singular or the plural includes the other in the context in which they are used.

“Sec. 8.04.002. Offenses.

“a.  A minor commits an offense if he remains in any public place or on the premises of an establishment within the City during curfew hours.

“b.  A parent or guardian of a minor commits an offense if he knowingly permits, or by insufficient control allows, the minor to remain in any public place or on the premises of any establishment within the City during curfew hours.

“c.  The owner, operator, or any employee of an establishment commits an offense if he knowingly allows a minor to remain upon the premises of the establishment during curfew hours.

“Sec. 8.04.003. Defenses.

“a.  It is a defense to prosecution under Sec. 804.002 above that the minor was:
(1) accompanied by the minor’s parent or guardian; or
(2) on an errand at the direction of the minor’s parent or guardian, without any detour or stop; or
(3) in a motor vehicle involved in interstate travel; or
(4) engaged in an employment activity, or going to or returning home from an employment activity, without any detour or stop; or
(5) involved in an emergency; or
(6) on the sidewalk abutting the minor’s residence or abutting the residence of a next door neighbor if the neighbor did not complain to the Police Department about the minor’s presence; or
(7) attending an official school, religious or other recreational activity supervised by adults and sponsored by the City of Pampa, a civic organization, or another similar entity that has undertaken responsibility for the minor, or going to or returning home from such activity, without any detour or stop; or
(8) exercising First Amendment rights protected by the United States Constitution, such as the free exercise of religion, freedom of speech, and the right of assembly; or
(9) married or had been married or had disabilities of minority removed in accordance with Chapter 31 of the Texas Family Code.

“b. It is a defense to prosecution under Sec. 8.04.002-c that the owner, operator, or employee of an establishment promptly notified the Police Department that a minor was present on the premises of the establishment during curfew hours and refused to leave.

“Sec. 8.04.004. Enforcement.

“Before taking any enforcement action under this section, a police officer shall ask the apparent offender’s age and reason for being in the public place. The officer shall not issue a citation or make an arrest under this article unless the officer reasonably believes that an offense has occurred and that, based on any response or other circumstances, no defense under Sec. 8.04.003 is present.

“Sec. 8.04.005. Penalties.

“a. A person who violates a provision of this Article is guilty of a separate offense for each day or part of day during which the violation is committed, continued, or permitted. Each offense, upon conviction, is punishable by a fine not to exceed $500.00.

“b. When required by Section 51.08 of the Texas Family Code, as amended, the Municipal Court shall waive original jurisdiction over a minor who violates this Article and shall refer the minor to juvenile court.”
Section 2.
Provisions Cumulative.

The provisions of this ordinance are to be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances inconsistent with or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent any such inconsistency or conflict.

Section 3.
Severability

If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portion of this ordinance. The City Commission of the City of Pampa hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, clauses, or phrases be declared unconstitutional or invalid.

Section 4.
Effective Date

This Ordinance shall be effective upon its final reading and passage as provided by law.

Section 5.
Renewal Provisions

This ordinance shall expire and automatically repeal itself after thirty-six (36) months from its effective date unless it shall have been re-introduced and passed at two separate meetings of the City Commission prior to its expiration. Re-enactment prior to expiration shall not require re-publication.

RE-INTRODUCED AND PASSED on first reading, this 10th day of April, 2012.

PASSED, APPROVED and ADOPTED on second and final reading this the ________ day of April, 2012.

CITYOF PAMPA, TEXAS

By: __________________________
    Brad Pingel, Mayor

ATTEST:

Karen L. Price, City Secretary

APPROVED AS TO FORM:

______________________________
Leland W. Waters, City Attorney
AGENDA ITEM NO. 4

ITEM/PROJECT: LEASE AGREEMENT

MEETING DATE: April 10, 2012

DESCRIPTION: Consider authorizing the City Manager to sign lease agreement with Rig Fabrication and Repair, Inc. for property located at 1133 Price Road, Pampa, Texas.

STAFF CONTACT: Richard Morris

FINANCIAL IMPACT:

SOURCE OF FUNDS:

START/COMPLETION SCHEDULE:

RECOMMENDED ACTION: Authorize City Manager to sign lease agreement.

BACKGROUND/ADDITIONAL INFORMATION: Lease agreement attached.
LEASE AGREEMENT

This Lease is entered into between the CITY OF PAMPA, TEXAS, a home-rule municipality ("Landlord"), and RIG FABRICATION AND REPAIR, a Louisiana Corporation ("Tenant").

In consideration of the mutual covenants and agreements of this Lease, and other good and valuable consideration, Landlord demises and leases to Tenant, and tenant leases from Landlord, the premises situated at 1133 Price Road, Pampa, Gray County, Texas, legally described as Lot 1B, Block 1, Tract 1-B, Country Garden Estates, City of Pampa, Gray County, Texas (collectively referred to as “the premises” or “the leased premises” in this Lease).

ARTICLE 1. TERM

Term of Lease

§ 1.01. The term of this Lease is one (1) year, beginning on April 1, 2012 and ending on March 31, 2013. Term of Lease will include additional option for a second (2nd) year and third (3rd) year lease with 5% increase each additional year.

Holdover

§ 1.02. If Tenant holds over and continues in possession of the premises after the Lease term expires, Tenant will be considered to be occupying the premises on a month-to-month tenancy, subject to all the terms of this Lease.

ARTICLE 2. RENT

Fixed Rent

§ 2.01. Tenant will pay Landlord $4,000.00 per month on or before the 25th day of each month as a fixed rent for the next month. Rent for any fractional month at the beginning or end of the Lease term will be pro-rated on a per-day basis. Tenant will pay this fixed rent to Landlord at the Finance Department of the City of Pampa, located at City Hall, 200 W. Foster, Pampa, Texas, or at such other location or locations that Landlord may from time to time designate by written notice to Tenant.

Taxes and Assessments as Additional Rent

§ 2.02. a. In addition to the fixed rent specified in § 2.01, Tenant will pay in full all real-property taxes, special assessments, and governmental charges of any kind imposed on the premises during the Lease term, including any special assessments imposed on or against the premises for constructing or improving public works. This additional rent is payable directly to the entity imposing the tax, assessment, or charge at least 5 days before the date payment is due.
Tenant will provide Landlord with a receipt or other evidence of payment for each tax, assessment, or charge paid as soon as a receipt or other evidence is available to Tenant.

b. Tenant may, at its own expense, contest any tax or assessment for which it is responsible under subparagraph a. Except as provided in subparagraph c, Tenant need not pay the tax, assessment, or charge while the contest is pending. Except as provided in subparagraph c, Tenant may prevent Landlord from paying any tax, assessment, or charge that Tenant is contesting under this subparagraph, pending resolution of the contest, by depositing with Landlord the full amount of the tax or assessment, plus the amount of any penalty that might be imposed for failing to make timely payment and one year of interest at the rate imposed by the entity levying the tax or assessment. When the contest is resolved, Tenant may use the money deposited with Landlord to pay any tax or assessment, plus any penalty or interest, due under the final resolution and keep any balance of the deposit. If the deposit is insufficient to pay these amounts, Tenant must immediately pay the balance due to the entity imposing the tax, assessment, or charge.

c. Notwithstanding subparagraph b, Landlord may pay, or require Tenant to pay, any tax, assessment, or charge for which Tenant is responsible under subparagraph a, pending resolution of Tenant’s contest of the tax, assessment, or charge, if payment is demanded by a holder of a mortgage on the premises or if failing to pay will subject all or part of the premises to forfeiture or loss.

ARTICLE 3. USE OF PREMISES

Landlord’s Waiver of Implied Warranty of Suitability

§ 3.01. Landlord disclaims any warranty of suitability that may otherwise have arisen by operation of law. Landlord does not warrant (a) that no latent defects exist in the facilities that are vital to Tenant’s use of the premises for Tenant’s intended commercial purpose; and (b) that these essential facilities will remain in a suitable condition. Tenant leases the property “AS IS,” whether suitable or not, and waives the implied warranty of suitability.

Tenant’s Warranty Regarding Use

§ 3.02. Tenant represents and warrants to Landlord that Tenant intends to use the premises for legal businesses and that Tenant has all necessary permits to conduct said business. Tenant’s use of the property is restricted to those purposes specified in this section unless Tenant obtains Landlord’s prior written consent to any change in use. Before the Lease term begins, Tenant must give Landlord an affidavit of an officer of Tenant, referred to as the “Officer’s Affidavit,” setting forth a detailed description of the operations that Tenant will conduct on the premises and stating any applicable permit numbers. The Officer’s Affidavit must be organized and prepared in a narrative form, including a description and quantification of all hazardous materials to be generated, manufactured, refined, transported, treated, stored, handled, or disposed of on the premises. After the Lease term begins, Tenant must notify Landlord as to any
changes in Tenant’s operation or use or generation of hazardous materials by way of a supplemental Officer’s Affidavit. Tenant must also supplement and update the Officer’s Affidavit on each anniversary of the commencement of the Lease term. Tenant may not begin or alter any operations on the property before (a) obtaining all required operating and discharge permits or approvals, including but not limited to air pollution control permits and pollution discharge elimination system permits, from all governmental or public authorities having jurisdiction over the Tenant’s operations or the property; and (b) providing copies of such permits and approvals to the Landlord.

Compliance with Laws

§ 3.03.  a. Tenant may not use, or permit using, the premises in any manner that results in waste of premises or constitutes a nuisance or for any illegal purpose. Tenant, at its own expense, will comply, and will cause its officers, employees, agents, and invitees to comply, with all applicable laws, ordinances, and governmental rules and regulations concerning the use of the premises, including Hazardous Materials Laws.

b. Tenant, at its sole cost, must comply with all Hazardous Materials Laws in connection with Tenant’s use of the premises.

c. “Hazardous Materials” means any substance, material, or waste that is or becomes regulated by any local governmental agency, the State of Texas, or the federal government, including, but not limited to, any material or substance that is: (1) designated as a “hazardous substance” pursuant to Section 311 of the Clean Water Act, 33 U.S.C., § 1251, et seq., or listed pursuant to Section 307 of the Clean Water Act, 33 U.S.C. § 1317; (2) defined as a “hazardous substance” pursuant to Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601, et seq.; (3) defined as a “hazardous waste” pursuant to Section 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. § 6901, et seq.; (4) petroleum; (5) asbestos; and (6) polychlorinated biphenyls.

d. “Hazardous Materials Laws” means any federal, state, or local statute, ordinance, order, rule, or regulation of any type relating to the storage, handling, use, or disposal of any Hazardous Materials, the contamination of the environment, or any removal of such contamination, including, without limitation, those statutes referred to in subparagraph c.

Rights of Inspection

§ 3.04. Tenant must permit Landlord and Landlord’s agents, servants, and employees, including but not limited to legal counsel and environmental consultants and engineers, access to the premises for the purpose of conducting environmental inspections and sampling during regular business hours, and during other hours either by agreement of the parties or in the event of an environmental emergency. Tenant may not restrict access to any part of the premises, and Tenant may not impose any conditions to access. If Landlord’s environmental inspection includes sampling and testing of the premises, Landlord must use its best efforts to avoid interfering with Tenant’s use of the premises, and on completion of sampling and testing must
repair and restore the affected areas of the premises as made necessary by any sampling and testing.

Environmental Reporting Requirements

§ 3.05.  

a. Tenant must promptly supply Landlord with copies of all notices, reports, correspondence, and submissions made by Tenant to the United States Environmental Protection Agency, the United States Occupational Safety and Health Administration, or any other local, state, or federal authority that requires submission of any information concerning environmental matters or hazardous materials pursuant to hazardous materials laws.

b. Tenant must promptly notify Landlord in advance of any scheduled meeting between Tenant and any of the agencies specified in subparagraph a.

c. Tenant must promptly notify Landlord as to any liens threatened or attached against the premises pursuant to any environmental law. If an environmental lien is filed against the premises, Tenant must, within 30 days from the date on which the lien is placed against the premises, and at any rate before the date on which any governmental authority begins proceedings to sell the premises pursuant to a lien, either: (1) pay the claim and remove the lien from the premises; or (2) furnish either (a) a bond satisfactory to the Landlord in the amount of the claim on which the lien is based, or (b) other security satisfactory to the Landlord in an amount sufficient to discharge the claim on which the lien is based.

ARTICLE 4. REPAIRS AND MAINTENANCE

Repairs and Maintenance by Tenant

§ 4.01. Tenant will, throughout the Lease term and any extensions of it, at its own expense and risk, maintain the premises and all improvements on them in good order and condition, including, but not limited to, making all repairs and replacements necessary to keep the premises and improvements in that condition. All maintenance, repairs and replacements required by this section must be performed promptly when required.

Tenant’s Failure to Repair or Maintain

§ 4.02. If Tenant fails to perform its obligation to repair, replace, or maintain, as set forth in § 4.01, within a reasonable time after notice from Landlord of the need for the repair, replacement, or maintenance, Landlord may enter the premises and make the repairs or replacements, or perform the maintenance, or have the repairs or replacements made or maintenance performed, at its own expense. On Landlord’s notice to Tenant of the performance and cost of any maintenance, repairs, or replacements under this section, Tenant must immediately reimburse Landlord for any reasonable costs incurred by Landlord under this section, together with interest on the sum at the highest legal rate from the date of the notice until the date paid by Tenant to Landlord.
Allocation of Environmental Cleanup Costs

§ 4.03. Tenant is responsible only for the payment of that portion of any cleanup costs necessary for compliance with Hazardous Materials Laws that arise as a result of Tenant’s discharge of hazardous materials on the premises during the Tenant’s occupancy of the premises. Landlord is responsible for all other cleanup costs or for ensuring that any other responsible parties participate in the cleanup to the extent of its responsibility for a release.

ARTICLE 5. UTILITIES AND GARBAGE REMOVAL

Utility Charges

§ 5.01. Tenant will pay all utility charges for water, electricity, heat, gas, and telephone service used in and about the premises during the Lease term. Tenant will pay the charges directly to the utility company or municipality furnishing the service before the charges are delinquent.

Garbage Removal

§ 5.02. Tenant will pay for all garbage removal from the premises during the Lease term.

ARTICLE 6. ALTERATIONS, ADDITIONS AND IMPROVEMENTS

Consent of Landlord

§ 6.01. Tenant may not make any alterations, additions, or improvements to the premises without Landlord’s prior written consent. Landlord may not unreasonably withhold consent for nonstructural alterations, additions, or improvements.

Property of Landlord

§ 6.02. All alterations, additions, or improvements made by Tenant will become Landlord’s property when the Lease terminates. However, Landlord may, when the Lease terminates, remove any alterations, additions, and improvements made by Tenant and any other property it placed in the premises, and charge Tenant the cost of removal plus interest.

Alterations Required by Accessibility Laws

§ 6.03. If any alterations, additions, or improvements to the premises are mandated by legal requirements related to accessibility by persons with disabilities (“accessibility alterations”), Tenant is responsible for making them. This allocation of responsibility for compliance with such legal requirements is a material inducement for the parties to enter this Lease.
ARTICLE 7. TRADE FIXTURES AND SIGNS

Trade Fixtures

§ 7.01. Tenant may, at all times, erect or install shelves, bins, machinery, equipment, or other trade fixtures, in, on, or about the premises, if Tenant complies with all applicable governmental laws, ordinances, and regulations regarding the fixtures. Tenant may remove all trade fixtures when this Lease terminates, if Tenant is not in default under the Lease and the fixtures can be removed without structural damage to the building. Tenant must repair any damage to the premises caused by removing trade fixtures, and all the repairs must be completed before the Lease terminates. Any trade fixtures not removed by Tenant when this Lease terminates are considered abandoned by Tenant and will automatically become Landlord’s property. If any trade fixture installed by Tenant is abandoned when the Lease terminates, Tenant must pay Landlord any reasonable expense actually incurred by Landlord to remove the fixture from the premises, less the fair market value of the fixture once removed, if the fixture is removed before any subsequent tenant enters the premises.

Signs

§ 7.02. Tenant may erect signs on any portion of the premises, including, but not limited to, the exterior walls, subject to applicable laws, ordinances, and regulations. Tenant must remove all signs when this Lease terminates and repair any damage resulting from erecting or removing the signs.

ARTICLE 8. MECHANIC’S LIEN

§ 8.01. Tenant will not permit any mechanic’s lien to be placed on the premises or improvements on the premises. Tenant will promptly pay any mechanic’s lien that is filed on the premises or on improvements located on the premises. If default in payment of the lien continues for 20 days after Landlord’s written notice to Tenant, Landlord may, at its option, pay the lien or any portion of it without inquiring into its validity. Any amounts Landlord pays to remove a mechanic’s lien caused by Tenant to be filed against the premises or improvements on them, including expenses and interest, are due from Tenant to Landlord and must be repaid to Landlord immediately on rendition of notice, together with interest at 10 percent annually until repaid.

ARTICLE 9. INSURANCE AND INDEMNITY

Property Insurance

§ 9.01. Tenant must, at its own expense during the Lease term, keep all buildings and improvements on the premises insured for replacement value coverage of not less than $150,000.00 against loss or damage by fire or theft, to include direct loss by windstorm, hail, explosion, riot or riot attending a strike, civil commotion, aircraft, vehicles, and smoke, in the
total amounts of not less than the full fair insurable value of the buildings and improvements. The insurance is to be carried by one or more insurance companies authorized or admitted to do business in Texas. Choice of an insurance company is subject to approval by Landlord, who will not unreasonably withhold approval if the company has a Best’s Insurance Rating of AAB or better. The insurance policy or policies must name both Landlord and Tenant as insured. The policies must provide that any proceeds for loss or damage to buildings or to improvements are payable to Landlord, who will use the same for repair and restoration purposes.

**Liability Insurance**

§ 9.02. Tenant, at its own expense, must provide and maintain in force during the Lease term, liability insurance in the amount of $1,000,000.00. This insurance is to be carried by one or more insurance companies authorized or admitted to transact business in Texas. Choice of an insurance company is subject to approval by Landlord, who will not unreasonably withhold approval if the company has a Best’s Insurance Rating of AAB or better. The policy must cover Landlord as well as Tenant, for any liability for property damage or personal injury arising from Tenant’s occupying or Landlord owns the premises.

**Remedy for Failure to Provide Insurance**

§ 9.03. Tenant must furnish Landlord with certificates of all insurance required by this article. If Tenant does not provide the certificates when Landlord delivers possession to Tenant, or if Tenant allows any insurance required under this article to lapse, Landlord may, at its option, take out and pay the premiums on the necessary insurance to comply with Tenant’s obligations under this article. Landlord is entitled to reimbursement from Tenant for all amounts spent to procure and maintain the insurance, with interest at the rate of 10 percent annually from the date Tenant receives Landlord’s notice of payment until reimbursement.

**Tenant’s Environmental Indemnity**

§ 9.04. Tenant must indemnify, defend, and hold harmless Landlord from and against all claims, liabilities, losses, damages, and costs, foreseen or unforeseen, including without limitation counsel, engineering, and other professional or expert fees, that Landlord may incur by reason of Tenant’s action or inaction with regard to Tenant’s obligations under Articles 3 and 4 of this Lease. This section survives the expiration or earlier termination of this Lease.

**Landlord’s Environmental Indemnity**

§ 9.05. Landlord must indemnify, defend, and hold Tenant harmless from and against all claims, liabilities, losses, damages, and costs, foreseen and unforeseen, including without limitation counsel, engineering, and other professional or expert fees, that Tenant may incur by reason of Landlord’s obligations under § 4.03. This section survives the expiration or earlier termination of this Lease.
Hold-Harmless Clause

§ 9.06. Tenant will indemnify and hold Landlord harmless against any claims, demands, damages, costs, and expenses, including reasonable attorney’s fees for defending claims and demands, arising from the conduct or management of Tenant’s business on the premises or its use of them; from any breach by Tenant of any conditions of this Lease; or from any act of negligence of Tenant, its agents, contractors, employees, subtenants, concessionaires, or licensees in or about the premises. If any action or proceeding is brought against Landlord by reason of any such claim, Tenant, on notice from Landlord, will defend the action or proceeding by counsel acceptable to Landlord.

ARTICLE 10. DAMAGE OR DESTRUCTION OF PREMISES

Notice to Landlord

§ 10.01. If the premises, or any structures or improvements on them, are damaged or destroyed by fire, tornado, or other casualty, Tenant must immediately give Landlord written notice of the damage or destruction, including a general description of the damage and, as far as known to Tenant, the cause of the damage.

Total Destruction

§ 10.02. If the building on the premises is totally destroyed by fire, tornado, or other casualty by other than the negligence, gross negligence, or intentional tort of Tenant or any person in or about the premises with Tenant’s express or implied consent, or if it is so damaged that rebuilding or repairs cannot reasonably be completed within 30 working days at a cost not to exceed $50,000.00, and the damage exceeds the insurance recovery, this Lease will terminate, and rent will be abated for the unexpired portion of this Lease, effective as of the date of written notification as provided in § 10.01.

Partial Destruction

§ 10.03. If the building or other improvements on the premises are damaged by fire, tornado, or other casualty by other than the negligence, gross negligence, or intentional tort of Tenant or any person in or about the premises with Tenant’s express or implied consent, but not to such an extent that rebuilding or repairs cannot reasonably completed within 30 working days and at a cost not to exceed $50,000.00, and the damage exceeds the insurance recovery, this Lease will not terminate except as follows:

a. If the premises are partially destroyed before the final twelve months of the Lease term, Landlord must, at its sole cost and risk, proceed immediately to rebuild or repair the damaged buildings and improvements to substantially the condition they were in before the damage. If the damage renders the premises untenantable in whole or in part, the rent payable during the period in which they are untenantable will be adjusted equitably. If Landlord fails to
complete the rebuilding or repairs within 60 working days from the date of Tenant’s written notification to Landlord of the damage, Tenant may terminate this Lease by written notification to Landlord. On the notification, all rights and obligations under this Lease will cease.

b. If the premises are partially destroyed during the final twelve months of the Lease term, Landlord need not rebuild or repair them. If Landlord elects not to rebuild or repair and the damage rendered the premises untenantable in whole or in part, Tenant may terminate the Lease or continue it with the rent for the remainder of the Lease period adjusted equitably.

ARTICLE 11. CONDEMNATION

Total Condemnation

§ 11.01. If, during the Lease term or any extension or renewal of it, all of the premises are taken for any public or quasi-public use under any governmental law, ordinance, or regulation, or by right of eminent domain, or are sold to the condemning authority under threat of condemnation, this Lease will terminate, and the rent will be abated during the unexpired portion of this Lease, effective as of the date the condemning authority takes the premises.

Partial Condemnation

§ 11.02. If less than all, but more than 10 percent, of the premises is taken for any public or quasi-public use under any governmental law, ordinance, or regulation, or by right of eminent domain, or is sold to the condemning authority under threat of condemnation, Tenant may terminate the Lease by giving Landlord written notice within 30 days after the entity exercising the power of condemnation takes possession of the condemned portion. In addition, if 10 percent of the parking area, or all of the signage, of the premises is taken for any public or quasi-public use under any governmental law, ordinance, or regulation or by right of eminent domain, or is sold to the condemning authority under threat of condemnation, Tenant may terminate the Lease by giving Landlord written notice within 30 days after the entity exercising the power of condemnation take possession of the condemned portion.

If the premises are partially condemned and Tenant fails to exercise the option to terminate the Lease under this section, or if less than 10 percent of the premises is condemned, this Lease will not terminate, but Tenant may, at its sole expense, restore and reconstruct the building and other improvements situated on the premises to make them reasonably tenantable and suitable for the uses for which the premises are leased. The fixed rent payable under § 2.01 of this Lease will be adjusted equitably during the unexpired portion of this Lease.
Condemnation Award

§ 11.03. City of Pampa, Texas, is entitled to receive and retain the entire award in any condemnation proceedings, except for any portion attributable to trade fixtures, which Tenant is entitled to receive and retain. The termination of this Lease will not affect the right to this award.

ARTICLE 12. DEFAULT

Tenant’s Default

§ 12.01. If Tenant allows the rent to be in arrears more than 30 days after written notice of the delinquency, or remains in default under any other condition of this Lease for 30 days after written notice from Landlord, Landlord may, at its option, without notice to Tenant, terminate this Lease, or, in the alternative, Landlord may reenter and take possession of the premises and remove all persons and property without being considered guilty of any manner of trespass and may (but is not required to) relet the premises (or any part of them) for all or any part of the remainder of the Lease term, to a party satisfactory to Landlord and at the monthly rental as Landlord can secure with reasonable diligence. If Landlord cannot relet after reasonable efforts to do so or if the monthly rental is less than the rental Tenant was obligated to pay under this Lease (or any renewal of it) plus the expense of reletting, then Tenant must pay Landlord the amount of the deficiency.

Tenant and Landlord agree that, for the purpose of posting the notice required by Property Code Section 93.002(f), the “front door” of the leased premises is the entrance on the South side of the building.

Landlord’s Lien

§ 12.02. If Tenant defaults in paying rent or any other sum due from Tenant to Landlord under this Lease, Landlord has a lien on all fixtures, chattels, or other property of any description belonging to Tenant that are placed in, or become a part of, the premises as security for rent due and to become due for the remainder of the current Lease term and any other sum tenant owes Landlord. This lien is not in lieu of, nor in any way affects, the statutory landlord’s lien but is in addition to that lien, and Tenant grants Landlord a security interest in all of Tenant’s property placed in or on the premises for purposes of the contractual lien. This does not prevent Tenant’s selling any merchandise in the ordinary course of business free of such landlord’s lien. If Landlord exercises the option to terminate the leaseholder, reenter, and relet the premises as provided in the preceding paragraph and gives Tenant reasonable notice of the intent to take possession and an opportunity for a hearing on the matter, Landlord may take possession of all of Tenant’s property on the premises and sell it at public or private sale after giving Tenant reasonable notice of the time and place of any public sale or of the time after which any private sale is to be made, for cash or on credit, for the prices and terms that Landlord considers best, with or without having the property present at the sale. The proceeds of the sale will be applied
first to the necessary and proper expense of removing, storing, and selling the property; then to
the payment of any rent due or to become due under this Lease; any balance will be paid to
Tenant.

Landlord’s Default

§ 12.03. If Landlord defaults in performing any term or covenant that Landlord must
perform under this agreement, Tenant may, after not fewer than 30 days’ notice to Landlord,
remedy the default by any necessary action and, in connection with the remedy, may pay
expenses and employ counsel. Landlord must, on demand, pay Tenant all sums expended, or
obligations incurred, by Tenant in connection with remedying Landlord’s default.

Cumulative Remedies

§ 12.04. All Landlord’s and Tenant’s rights and remedies under this article are cumulative,
and none will exclude any other right or remedy provided by law or any other provision of this
Lease. All the consistent rights and remedies may be exercised and enforced concurrently and
whenever occasion for their exercise arises.

Waiver of Breach

§ 12.05. All Landlord’s or Tenant’s waiving a breach of this Lease by the other party does
not constitute a continuing waiver or a waiver of any subsequent breach.

ARTICLE 13. INSPECTION BY LANDLORD

§ 13.01. Tenant will permit Landlord and its agents, representatives, and employees to
enter the premises at all reasonable times for the purpose of inspection or any other purpose
necessary to protect Landlord’s interest in the premises or to perform Landlord’s duties under
this Lease.

ARTICLE 14. ASSIGNMENT AND SUBLEASE

Assignment and Subletting by Tenant

§ 14.01. a. Tenant may not sublet, assign, encumber, or otherwise transfer this Lease,
or any right or interest in it or in the premises or the improvements on them, without Landlord’s
written consent. If Tenant sublets, assigns, encumbers, or otherwise transfers its rights or
interests in this Lease or in the premises or the improvements on them without Landlord’s
written consent, Landlord may, at its option, declare this Lease terminated. If Landlord consents
in writing to an assignment, sublease, or other transfer of all or any of Tenant’s rights under this
Lease, the assignee or subtenant must assume all of Tenant’s obligations under this Lease, and
Tenant will remain liable for every obligation under the Lease. Landlord may not arbitrarily or unreasonably withhold consent under this section.

b. As a condition precedent to the Tenant’s right to sublease the property or to assign this Lease, the Tenant must, at the Tenant’s own expense, fulfill all of the Tenant’s environmental obligations under Article 3 of this Lease. If this condition is not satisfied, the Landlord has the right to withhold consent to any proposed sublease or assignment.

**Assignment by Landlord**

§ 14.02. Landlord may assign or transfer any of its interests under this Lease. On transfer, and on the transferee’s assumption of its obligations, Landlord is relieved of its obligations under the Lease.

**ARTICLE 15. MISCELLANEOUS**

**Notices and Addresses**

§ 15.01. All notices required under this Lease may be given by the following method:

a. By first class mail, addressed to the proper party, at the following addresses:

**Landlord:**
City of Pampa, Texas
P. O. Box 2499
Pampa, Texas 79066-2499

**Tenant:**
Rig Fabrication & Repair
1513 B Chemin Agreeable Road
Youngsville, Louisiana 70592

Notices are effective when received. Either party may change the address to which notices are to be sent by sending written notice of the new address to the other party in accordance with the provisions of this section.

**Parties Bound**

§ 15.02. This agreement binds, and inures to the benefit of, the parties to the lease and their respective heirs, executors, administrators, legal representatives, successors, and assigns when this agreement permits.
Texas Law to Apply

§ 15.03. This agreement is to be construed under Texas law, and all obligations of the parties created by this lease are performable in Gray County, Texas.

Legal Construction

§ 15.04. If one or more of the provisions contained in this agreement are for any reason held by a court of competent jurisdiction to be invalid, illegal, or unenforceable in any respect, the invalidity, illegality, or unenforceability will not affect any other provision of the agreement, which will be construed as if it had not included the invalid, illegal, or unenforceable provision.

Prior Agreements Superseded

§ 15.05. This agreement constitutes the parties’ sole agreement and supersedes any prior understandings or written or oral agreements between the parties with respect to the subject matter.

Amendment

§ 15.06. No amendment, modification, or alteration of this agreement is binding unless in writing, dated subsequent to the date of this agreement, and duly executed by the parties.

Rights and Remedies Cumulative

§ 15.07. The rights and remedies provided by this Lease are cumulative, and either party’s using any right or remedy will not preclude or waive its right to use any other remedy. These rights and remedies are in addition to any other rights the parties may have by law, statute, ordinance, or otherwise.

Attorney’s Fees and Costs

§ 15.08. If, as a result of either party’s breaching this agreement, the other party employs an attorney to enforce its rights under this Lease, then the breaching or defaulting party will pay the other party the reasonable attorney’s fees and costs incurred to enforce the Lease.

Force Majeure

§ 15.09. Neither Landlord nor Tenant is required to perform any term or covenant in this Lease so long as performance is delayed or prevented by force majeure, which includes acts of God, strikes, lockouts, material or labor restrictions by any governmental authority, civil riot, floods, and any other cause not reasonably within Landlord’s or Tenant’s control and that Landlord or Tenant cannot, by exercising due diligence and paying money, prevent or overcome, in whole or part.
Time of Essence

§ 15.10. Time is of the essence of this agreement.

The undersigned Landlord and Tenant execute this agreement on the ______ day of April 2012, at Pampa, Gray County, Texas.

LANDLORD
CITY OF PAMPA, TEXAS

By: Richard E. Morris, City Manager

TENANT
Rig Fabrication & Repair

By: Glen Richardson, Owner

ATTEST:

By: Karen L. Price, City Secretary

APPROVED AS TO FORM

By: Leland W. Waters, City Attorney