Regular Meeting of the:

Pampa City Commission
October 9, 2012
4:00 p.m.

City of Pampa
201 W. Kingsmill St.
P.O. Box 2499
Pampa, Texas  79066-2499
Phone: 806-669-5750
Fax: 806-669-5767
PLEDGE OF ALLEGIANCE TO TEXAS FLAG

“HONOR THE TEXAS FLAG; I PLEDGE ALLEGIANCE TO THEE; TEXAS, ONE STATE UNDER GOD, ONE AND INDIVISIBLE.
CITY OF PAMPA
CITY COMMISSION AGENDA
REGULAR MEETING

John Studebaker, Commissioner Ward 1  Brad Pingel, Mayor  Richard Morris, City Manager
Chris Porter, Commissioner Ward 2  Karen Price, City Secretary
Robert Dixon, Commissioner Ward 3  Leland Waters, City Attorney
Karen McLain, Commissioner Ward 4  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, OCTOBER 9, 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

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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.

SPOT LIGHT

► Recognition of “Best Practice Program” for Pampa Police Department – Kelly Rushing

AUTHORIZATIONS BY CITY COMMISSION:

1. Consider approving the minutes of the September 25, 2012 regular City Commission Meeting as presented.

2. Excuse the absence of Commissioner Karen McLain from the September 25, 2012 regular City Commission Meeting.

3. Consider approving on first reading Ordinance No.1580, an Ordinance of the City of Pampa, Texas amending tonnage fees to be charged at the City’s Landfill.

4. Consider approving on first reading Resolution No. R12-018, a Resolution of the City of Pampa approving a grant in the amount of $50,000.00 from the Pampa Economic Development Corporation to Hidden Hills Golf Course.

5. Consider approving on first reading Resolution No. R12-019, a Resolution of the City of Pampa approving a Loan Agreement in the amount of $282,000.00 between the Pampa Economic Development Corporation and The Theater Group (Cinema IV).

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 Friday, October 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: October 9, 2012

DESCRIPTION: Consider approving the minutes of the September 25, 2012 regular City Commission Meeting.

STAFF CONTACT: Karen Price

FINANCIAL IMPACT: N/A

SOURCE OF FUNDS: N/A

START/COMPLETION SCHEDULE:

RECOMMENDED ACTION: Approve minutes.

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

PRESENT: Brad Pingel Mayor
          John Studebaker Commissioner
          Chris Porter Commissioner
          Robert Dixon Commissioner

ABSENT: Karen McLain Commissioner

STAFF: Richard Morris City Manager
       Shane Stokes Asst. City Manager
       Leland Waters City Attorney
       Karen Price City Secretary
       Donny Hooper Public Works Director
       Robin Bailey Finance Director
       Kim Powell Fire Chief
       Elaine Johnson Utilities
       Gayla Pickens Asst. Finance Directory
       Kevin Webb IT Manager

VISITORS: Paul Nachtigall Highland Baptist Church
          Clay Rice PEDC

NEWS MEDIA: Mike Ehrle KGRO

INVOCATION: Paul Nachtigall Highland Baptist Church

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PUBLIC COMMENTS: NONE

AUTHORIZATIONS BY COMMISSION:

12-126


A motion was made by Commissioner Dixon and Seconded by Commissioner Studebaker to approve the minutes of the September 7, 2012 Public Hearing, September 11, 2012 Public Hearing/Regular City Commission Meeting and the September 18, 2012 Special City Commission Meeting as presented, with each Commission Member voting AYE, the motion carried.

12-127

2. Consider adopting on second and final reading Ordinance No. 1576, an Ordinance of the City of Pampa setting a tax rate of $0.621027 on each $100.00 valuation of property and levying an Ad Valorem Tax.

ORDINANCE NO. 1576

AN ORDINANCE SETTING A TAX RATE OF $0.621027 ON EACH $100.00 VALUATION OF PROPERTY AND LEVYING AD VALOREM TAXES FOR USE AND SUPPORT OF THE MUNICIPAL
GOVERNMENT OF THE CITY OF PAMPA FOR THE FISCAL YEAR OF 2012-2013; PROVIDING FOR APPORTIONING OF EACH LEVY FOR SPECIFIC PURPOSES; PROVIDING WHEN TAXES SHALL BECOME DUE AND WHEN SUCH TAXES SHALL BECOME DELINQUENT IF NOT PAID AND FOR PENALTY AND INTEREST; PROVIDING FOR SAVINGS AND SEVERABILITY CLAUSES; PROVIDING FOR AN EFFECTIVE DATE; AND PROVIDING FOR PUBLICATION OF THE CAPTION HEREOF.

A motion was made by Commissioner Porter and Seconded by Commissioner Studebaker to adopting on second and final reading Ordinance No. 1576, an Ordinance of the City of Pampa setting a tax rate of $0.621027 on each $100.00 valuation of property and levying an Ad Valorem Tax, with Mayor Pingel, Commissioner Studebaker, and Commissioner Porter voting AYE and Commissioner Dixon voting NAY, the motion carried.

12-128

3. Consider adopting on second and final reading Ordinance No. 1577, an Ordinance of the City of Pampa amending the monthly rates to be charged for water within and outside the corporate limits of the City of Pampa.

ORDINANCE NO. 1577

AN ORDINANCE OF THE CITY OF PAMPA, TEXAS, PROVIDING THAT THE CODE OF ORDINANCES OF THE CITY OF PAMPA, TEXAS, BE AMENDED BY REVISING CHAPTER 13, SECTIONS 13.02.038 AND 13.02.039 OF SAID CODE PROVIDING FOR THE MONTHLY RATES TO BE CHARGED FOR WATER WITHIN AND OUTSIDE THE CORPORATE LIMITS OF THE CITY OF PAMPA, TEXAS, RESPECTIVELY, AND PROVIDING FOR AN EFFECTIVE DATE.

A motion was made by Commissioner Dixon and Seconded by Commissioner Porter to adopt on second and final reading Ordinance No. 1577, an Ordinance of the City of Pampa amending the monthly rates to be charged for water within and outside the corporate limits of the City of Pampa, with each Commission Member voting AYE, the motion carried.

12-129

4. Consider adopting on second and final reading Ordinance No. 1578, an Ordinance of the City of Pampa amending the monthly rates to be charged for sewer service within and outside the corporate limits of the City of Pampa.

ORDINANCE NO. 1578

AN ORDINANCE OF THE CITY OF PAMPA, TEXAS, PROVIDING THAT THE CODE OF ORDINANCES OF THE CITY OF PAMPA, TEXAS, BE AMENDED BY REVISING SECTION 13.03.002 OF SAID CODE PROVIDING FOR THE MONTHLY RATES TO BE CHARGED FOR SEWER SERVICE WITHIN AND OUTSIDE THE CORPORATE LIMITS OF THE CITY OF PAMPA, TEXAS; AND PROVIDING FOR AN EFFECTIVE DATE.

A motion was made by Commissioner Studebaker and Seconded by Commissioner Dixon to adopt on second and final reading Ordinance No. 1578, an Ordinance of the City of Pampa amending the monthly rates to be charged for sewer service within and outside the corporate limits of the City of Pampa, with each Commission Member voting AYE, the motion carried.
5. Consider adopting on second and final reading Ordinance No. 1579, an Ordinance of the City of Pampa amending rates for solid waste disposal for residential and other customers within and outside the corporate limits of the City of Pampa.

ORDINANCE NO. 1579

AN ORDINANCE OF THE CITY OF PAMPA, TEXAS, PROVIDING THAT THE CODE OF ORDINANCES, CITY OF PAMPA, TEXAS, BE AMENDED BY REVISING CHAPTER 6, SECTIONS 6.05.010(a), 6.05.010(b), AND 6.05.010(d), PROVIDING FOR RATES FOR SOLID WASTE DISPOSAL FOR RESIDENTIAL AND OTHER CUSTOMERS WITHIN AND OUTSIDE THE CORPORATE LIMITS OF THE CITY OF PAMPA, TEXAS, RESPECTIVELY, AND PROVIDING FOR AN EFFECTIVE DATE.

A motion was made by Commissioner Studebaker and seconded by Commissioner Porter to adopt on second and final reading Ordinance No. 1579, an Ordinance of the City of Pampa amending rates for solid waste disposal for residential and other customers within and outside the corporate limits of the City of Pampa, with each Commission Member voting AYE, the motion carried.

6. Consider authorizing the City Manager to enter into an amended Solid Waste Disposal Agreement with the following cities and companies: Allied Waste, City of Canadian, City of Clarendon, City of Higgins, City of Lefors, City of McLean, City of Skellytown, City of Wheeler, City of White Deer, County of Hemphill, Texas Trash Can, Waste Wranglers Inc., and Wasteco, Inc.

A motion was made by Commissioner Dixon and Seconded by Commissioner Studebaker to authorize the City Manager to enter into an amended Solid Waste Disposal Agreement effective October 1, 2012 in the amount of $36.50 per ton with the following cities and companies: Allied Waste, City of Canadian, City of Clarendon, City of Higgins, City of Lefors, City of McLean, City of Skellytown, City of Wheeler, City of White Deer, County of Hemphill, Texas Trash Can, Waste Wranglers, Inc., and Wasteco, Inc., with each Commission Member voting AYE, the motion carried.


A motion was made by Commissioner Studebaker and Seconded by Commissioner Dixon to approve the List of Disbursements dated August 31, 2012, with total Disbursements being $2,058,233.73, and amount after balance sheets and income accounts being $1,054,184.75, with each Commission Member voting AYE, the motion carried.

ADJOURNMENT

There being no further business on the agenda, the meeting was adjourned at 4:12 p.m. by Mayor Brad Pingel.

Karen L. Price, City Secretary Brad Pingel, Mayor
AGENDA ITEM NO. 2

ITEM/PROJECT: COMMISSION ABSENCE

MEETING DATE: October 9, 2012

DESCRIPTION: Excuse the absence of Commissioner Karen McLain from the September 25, 2012 regular City Commission Meeting.

STAFF CONTACT: N/A

FINANCIAL IMPACT: N/A

SOURCE OF FUNDS: N/A

START/COMPLETION SCHEDULE: N/A

RECOMMENDED ACTION: Excuse Commissioner McLain’s absence.

BACKGROUND/ADDITIONAL INFORMATION:
AGENDA ITEM NO. 3

ITEM/PROJECT: ORDINANCE NO. 1580 – TONNAGE FEES AT LANDFILL

MEETING DATE: October 9, 2012

DESCRIPTION: Consider approving on first reading Ordinance No. 1580, an Ordinance of the City of Pampa, Texas amending tonnage fees to be charged at the City’s Landfill.

STAFF CONTACT: Donny Hooper

FINANCIAL IMPACT:

SOURCE OF FUNDS:

START/COMPLETION SCHEDULE:

RECOMMENDED ACTION: Approve Ordinance No. 1580 on first reading.

BACKGROUND/ADDITIONAL INFORMATION: Ordinance attached.
ORDINANCE NO. 1580

AN ORDINANCE OF THE CITY OF PAMPA, TEXAS, PROVIDING THAT THE CODE OF ORDINANCES, CITY OF PAMPA, TEXAS, BE AMENDED BY REVISING SECTION 6.06.004 OF SAID CODE PROVIDING FOR FEES TO BE CHARGED AT THE CITY’S SANITARY LANDFILL; AND PROVIDING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE CITY OF PAMPA, TEXAS:

Section 1.

Section 6.06.004 of the Code of Ordinances of the City of Pampa; be amended so that such section shall read as follows:

“Sec. 6.06.004. Fees.

“(a) There shall be paid and collected from the owner or driver of any vehicle for the use of the sanitary landfill for the disposal of solid waste and rubbish a fee of $36.50 per ton, except as follows:

(1) Any resident of the City, upon satisfactory proof with valid driver’s license of such residency and for non-commercial disposal only:

   All vehicles: No charge

(2) For any non-resident of the City and for non-commercial disposal only:

   All vehicles: $36.50 per ton

(3) Soils: $36.50 per ton

(4) Sewer sludge: $36.50 per ton

(5) Trees/Tree Limbs: $36.50 per ton

(6) Business located within corporate limits disposing of locally generated grease trap slurry, car wash grit and septic tank contents: $7.95 per hundred gallons

(7) Business located outside corporate limits disposing of grease trap slurry, car wash grit, and septic tank contents: $11.35 per hundred gallons
(8) Small animals (e.g., dogs, cats): $36.50 per ton with a $25.00 minimum

(9) Concrete: $36.50 per ton

(10) Metal: $36.50 per ton

(11) Any item which may require special handling and not otherwise described herein: As quoted by the landfill superintendent

(12) Any specific Solid Waste Disposal Agreement approved by the City providing for other fees or providing for other waste or rubbish.

“(b) All fees required hereunder shall be paid in cash upon entry into the landfill and prior to the use thereof, unless other method of payment has been made by prior written agreement with the City.”

Section 2.

All rates set under Section 1 above shall be effective October 1, 2012.

PASSED AND APPROVED on its first reading this 10th day of October, 2012.

PASSED AND ADOPTED on its second and final reading this ____ day of October, 2012.

CITY OF 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: RESOLUTION NO. R12-018 – GRANT FROM PEDC TO HIDDEN HILLS GOLF COURSE.

MEETING DATE: October 9, 2012

DESCRIPTION: Consider approving on first reading Resolution No. 12-018, a Resolution of the City of Pampa approving a grant in the amount of $50,000 from the Pampa Economic Development Corporation to Hidden Hills Golf Course.

STAFF CONTACT: Shane Stokes

FINANCIAL IMPACT: $50,000

SOURCE OF FUNDS: PEDC Operating Budget

START/COMPLETION SCHEDULE:

RECOMMENDED ACTION: Approve Resolution No. R12-018 on first reading.

BACKGROUND/ADDITIONAL INFORMATION: Resolution attached.
RESOLUTION NO. R12-018

A RESOLUTION APPROVING A GRANT BY THE PAMPA ECONOMIC DEVELOPMENT CORPORATION TO THE CITY OF PAMPA FOR CONSTRUCTION OF CART PATHS AT HIDDEN HILLS PUBLIC GOLF COURSE

WHEREAS, the Pampa Economic Development Corporation (“Pampa EDC”) has presented a request to grant $50,000 to the City of Pampa for construction of approximately 5000 feet of paved cart paths at Hidden Hills Public Golf Course;

AND WHEREAS, the Pampa EDC will hold a public hearing on October 18, 2012;

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

That the grant of $50,000 by the Pampa EDC to the City of Pampa for construction of paved cart paths at Hidden Hills Public Golf Course be and it is hereby APPROVED.

INTRODUCED, READ and APPROVED on its first reading this the 9th day of October, 2012.

READ, APPROVED and ADOPTED on its second and final reading on this the ______ day of October, 2012.

CITY OF PAMPA, TEXAS

By: ________________________________
    Brad Pingel
    Mayor

ATTEST:

___________________________________
Karen L. Price
City Secretary

APPROVED AS TO FORM:

___________________________________
Leland W. Waters
City Attorney
AGENDA ITEM NO. 5

ITEM/PROJECT: RESOLUTION NO. R12-019 – LOAN FROM PEDC TO THE THEATER GROUP (CINEMA IV)

MEETING DATE: October 9, 2012

DESCRIPTION: Consider approving on first reading Resolution No. R12-019, a Resolution of the City of Pampa approving a Loan Agreement in the amount of $282,000.00 between the Pampa Economic Development Corporation and The Theater Group (Cinema IV).

STAFF CONTACT: Clay Rice

FINANCIAL IMPACT: $282,000.00

SOURCE OF FUNDS: PEDC Operating Budget

START/COMPLETION SCHEDULE:

RECOMMENDED ACTION: Approve Resolution No. R12-019 on first reading.

BACKGROUND/ADDITIONAL INFORMATION: Resolution and Agreement attached.
RESOLUTION NO. R12-019

A RESOLUTION APPROVING ECONOMIC DEVELOPMENT AGREEMENT BETWEEN THE PAMPA ECONOMIC DEVELOPMENT CORPORATION AND THE THEATER GROUP LLC, AND A LOAN BY THE PAMPA ECONOMIC DEVELOPMENT CORPORATION TO THE THEATER GROUP

WHEREAS, the Pampa Economic Development Corporation (“Pampa EDC”) has presented a request for approval of Economic Development Agreement (“the Agreement”) between the Pampa EDC and The Theater Group LLC, doing business as Cinema IV (“Cinema IV”);

AND WHEREAS, the Pampa EDC has presented a request to make a loan of $282,000 to Cinema IV as part of the Agreement, upon the terms hereafter set out;

AND WHEREAS, the Pampa EDC will hold a public hearing on October 18, 2012;

AND WHEREAS, the Pampa EDC has requested that the City Commission approve such Agreement and loan;

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

That the Agreement between the Pampa EDC and Cinema IV be and it is hereby APPROVED; and

That the loan by the Pampa EDC to Cinema IV in the amount of $282,000.00, bearing interest at the rate of 4% per annum and being payable in 119 equal monthly installments beginning February 1, 2013 and 1 final installment of all remaining principal and interest due January 1, 2023; providing for the personal guarantee of Troy Scott Schwiegerath, Breanne Maye Schwiegerath, Jason Brett Scott and Terra Kathryn Scott; and providing conditions for acceleration and other terms as therein provided in copy of note attached hereto as Exhibit “A” and made a part hereof, be and it is hereby APPROVED.

INTRODUCED, READ and APPROVED on its first reading this the 9th day of October, 2012

READ, APPROVED and ADOPTED on its second and final reading on this the ______ day of October, 2012.

CITY OF PAMPA, TEXAS

By: ________________________________
Brad Pingel
Mayor

ATTEST:

___________________________________
Karen L. Price
City Secretary

APPROVED AS TO FORM:

___________________________________
Leland W. Waters
City Attorney
This Economic Development Incentive Agreement ("Agreement") is made by and between the Pampa Economic Development Corporation, a Texas nonprofit corporation, ("Pampa EDC") and The Theater Group LLC ("Company"), acting by and through their respective authorized officers and governing persons.

WITNESSETH:

WHEREAS, the Company is currently operating a movie theater in Pampa, Texas.

WHEREAS, the Company wants to convert their existing projection equipment to digital projection equipment in order to expand business and to create additional primary jobs in Pampa, Texas.

WHEREAS, the Pampa EDC has adopted programs for promoting economic development; and

WHEREAS, the Development Corporation Act, Tex. Loc. Gov’t Code Ann. Tex. Loc. Gov’t Code Ann.§501.101 authorizes the Pampa EDC to provide economic development projects for the creation or retention of primary jobs.

WHEREAS, the Pampa EDC has determined that making an economic development loan to Company in accordance with this Agreement will further the objectives of the Pampa EDC and will benefit the Pampa EDC and the inhabitants of Pampa, Texas;

NOW THEREFORE, in consideration of the foregoing, and on the terms and conditions hereinafter set forth, the parties agree as follows:

Article I
Definitions

Wherever used in this Agreement, the following terms shall have the meanings ascribed to them:

"Pampa EDC" shall mean the Pampa Economic Development Corporation, a Texas nonprofit corporation.

"Company" shall mean The Theater Group LLC, a Texas limited liability company.
“Event of Bankruptcy or Insolvency” shall mean the dissolution or termination of a party’s existence as a going business, insolvency, appointment of receiver for any part of such party’s property and such appointment is not terminated within ninety (90) days after such appointment is initially made, any general assignment for the benefit of creditors, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against such party and such proceeding is not dismissed within ninety (90) days after the filing thereof.

“Force Majeure” shall mean any contingency or cause beyond the reasonable control of a party, including, without limitation, acts of God or the public enemy, war, riot, civil commotion, insurrection, government or de facto governmental action (unless caused by the intentionally wrongful acts or omissions of the party), fires, explosions or floods, strikes, slowdowns or work stoppages.

“Loan” shall mean economic development loan that in the aggregate do not exceed $282,000.00

Article II
Term

The effective term of this Agreement shall begin 60 days from September 25, 2012, being the date of the published notice of this project, said effective date being November 25, 2012 (the “Effective Date”) and shall continue until the Promissory Note, attached hereto, is paid in full, unless sooner terminated as provided herein.

Article III
Economic Development Loan

3.1 The Pampa EDC agrees to loan the Company the sum of $282,000.00. Said loan shall bear interest at the rate of 4% per annum, and shall be repaid in 119 monthly installments of $2,874.32 per month, beginning February 1, 2013 and continuing on the 1st day of each month thereafter until January 1, 2023, when the remaining principal and interest shall be paid in full. Said loan shall be secured by a security interest, a UCC-1 security agreement, and a lien reservation the following equipment:

Digital System Complete, four units/
Christie CP2210 digital cinema projector, w/auto lens turret and lens
GDC SX2000A digital cinema server with IMB and all cabling and connection hardware
Jnior Automation control
20RU Rack mount pedestal
Xenon lamp (CDXL-16M)
UPS/Battery backup for projector and server
Cabling, connectors, hardware

Sound Systems and speakers: four units/ Dolby CP 750 Audio Processor
Auditoriums/ 4 units, Masking
Satellite/Remote Connectivity Package: Microspace Satellite Delivery and remote connectivity- four screens

In the event that any of the above described collateral is destroyed or sold during the term of the loan, the Company agrees to substitute collateral of equivalent value.

During the term of the loan, the Company agrees to insure the collateral in accordance with the Pampa EDC’s reasonable requirements regarding choice of carrier, risks insured against, and amount of coverage. Policies must be written in favor of the Company, be endorsed to name the Pampa EDC as an additional insured, and provide that the Pampa EDC will receive at least ten days’ notice before cancellation. The Company must provide copies of the policies or evidence of insurance to the Pampa EDC.

In the event that the Company defaults on the payment of any obligation or installment due to Pampa Economic Development Corporation under the terms of the promissory note, Pampa Economic Development Corporation shall have the right to repossess said equipment, under the terms of this Economic Development Agreement between the Pampa Economic Development Corporation and The Theater Group LLC and the Security Agreement.

The Company shall execute a Promissory Note, in the form of the Promissory Note attached hereto as Exhibit “A” and a Security Agreement, in the form of the Security Agreement attached hereto as Exhibit “B”.

Article IV.
Termination

This Agreement shall terminate upon any one of the following: (1) by written agreement of the parties; (2) Expiration Date; (3) by either party in the event the other party breaches any of the terms or conditions of this Agreement and such breach is not cured within thirty (30) days after written notice thereof; (4) by Pampa EDC, if Company suffers an Event of Bankruptcy or Insolvency; (5) by Pampa EDC, if any taxes or assessments owed to the City or the State of Texas by Company shall become delinquent (provided, however, the Company retains the right to timely and properly protest and contest any such tax or assessment); and (6) by Pampa EDC, if any subsequent Federal or State legislation or any decision of a court of competent jurisdiction declares or renders this Agreement invalid, illegal or unenforceable; and (7) the singular or collective payment of the Loan.
Article V.
Miscellaneous

5.1 Binding Agreement. The terms and conditions of this Agreement are binding upon the successors and assigns of all parties hereto. This Agreement may not be assigned without the consent of the Pampa EDC.

5.2 Limitation on Liability. It is acknowledged and agreed by the parties that the terms hereof are not intended to and shall not be deemed to create a partnership or joint venture among the parties. It is understood and agreed between the parties that Company, in satisfying the conditions of this Agreement, has acted independently, and Pampa EDC assumes no responsibilities or liabilities to third parties in connection with these actions. Company agrees to indemnify and hold harmless the Pampa EDC from all such claims, suits, and causes of action, liabilities and expenses, including reasonable attorney’s fees, of any nature and whatsoever arising out of the Company’s performance of the conditions under this Agreement.

5.3 Authorization. Each party represents that it has full capacity and authority to grant all rights and assume all obligations that it is granted and assumed under this Agreement.

5.4 Notice. Any notice required or permitted to be delivered hereunder shall be deemed received three (3) days thereafter sent by the United States Mail, postage prepaid, certified mail, return receipt requested, addressed to the party at the address set forth below or on the day actually received as set by courier or otherwise hand delivered.

If intended for Pampa EDC:

Attention: President
Pampa Economic Development Corporation
P.O. Box 2398
Pampa, Texas 79066-2398

If intended for Company:

Attention:
The Theater Group LLC
1827 N. Sumner
Pampa, TX 79065

5.5 Entire Agreement. This Agreement is the entire Agreement between the parties with respect to the subject matter covered in this Agreement. There is no other collateral oral or written Agreement between the parties that in any manner relates to the subject matter of this Agreement.
5.6 Governing Law. The Agreement shall be governed by the laws of the State of Texas; and venue for any action concerning this Agreement shall be in the State District Court of Gray County, Texas.

5.7 Amendment. This Agreement may be amended by the mutual written agreement of the parties.

5.8 Legal Construction. In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect other provisions, and it is the intention of the parties to this Agreement that in lieu of each provision that is found to be illegal, invalid, or unenforceable, a provision by added to this Agreement which is legal, valid and enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable.

5.9 Recitals. The recitals to this Agreement are incorporated herein.

5.10 Counterparts. This Agreement may be executed in counterparts. Each of the counterparts shall be deemed an original instrument, but all of the counterparts shall constitute one and the same instrument.

5.11 Exhibits. Any exhibits to this Agreement are incorporated herein by reference for all purposes wherever reference is made to the same.

5.12 Survival of Covenants. Any of the representations, warranties, covenants, and obligations of the parties, as well as any rights and benefits of the parties, pertaining to a period of time following the termination of this Agreement shall survive termination.

5.13 Contingent Upon Approval of City Commission of City of Pampa. This Agreement between the Pampa EDC and the Company is contingent upon the Pampa EDC receiving approval by the City Commission of the City of Pampa.
Executed on this ___ day of October, 2012. The Effective Date of this Agreement shall be the 25th day of November, 2012.

Pampa Economic Development Corporation  The Theater Group LLC

By: ________________________________  By: ________________________________
Gary Sutherland, President          Troy Scott Schwiegerath, Managing Member

By: ________________________________
Breanne Maye Schwiegerath, Managing Member

By: ________________________________
Jason Brett Scott, Managing Member

By: ________________________________
Terra Kathryn Scott, Managing Member
Exhibit “A”
Promissory Note

Date: November 25, 2012

Borrower: The Theater Group LLC

Borrower’s Mailing Address: 1837 N. Sumner, Pampa, Texas 79065

Lender: Pampa Economic Development Corporation, a Texas non-profit corporation

Place for Payment: P.O. Box 2398, Pampa, Texas 79066-2398

Principal Amount: $282,000.00

Annual Interest Rate: 4%

Maturity Date: On or before January 1, 2023

Terms of Payment (principal and interest): The Principal Amount and interest are due and payable in 119 equal monthly installments of $2,874.32 on the 1st day of each month, beginning February 1, 2013, and continuing until January 1, 2023, when the remaining principal and interest shall be paid in full. Payments will be applied first to accrued interest and the remainder to reduction of the Principal Amount.

Borrowers promise to pay to the order of Lender the Principal Amount plus interest at the Annual Interest Rate. This note is payable at the Place for Payment and according to the Terms of Payment.

This Note will become immediately due and payable at the option of the Pampa Economic Development Corporation if any of the following actions are taken by or against, or a listed event occurs in connection with The Theater Group LLC, Borrower:

1. Discontinuation of the Company’s business
2. Insolvency
3. Business failure
4. Appointment of a receiver
5. Assignment for the benefit of creditors
6. Filing of a petition in bankruptcy
7. The commencement of any proceeding under any bankruptcy or insolvency laws or any laws relating to the relief of debtors
8. Default under the terms of an Economic Development Agreement between the Pampa Economic Development Corporation and The Theater Group LLC
The failure of the Pampa Economic Development Corporation to exercise Pampa Economic Development Corporation’s option to accelerate the maturity of this Note will not constitute a waiver of the right to exercise the option to accelerate at any other time.

If Borrower defaults in the payment of this note, Lender may declare the unpaid principal balance, earned interest, and any other amounts owed on the note immediately due. Borrower and each surety, endorser, and guarantor waive all demand for payment, presentation for payment, notice of intention to accelerate maturity, notice of acceleration of maturity, protest, and notice of protest, to the extent permitted by law.

Borrower also promises to pay reasonable attorney’s fees and court and other costs if this note is placed in the hands of an attorney to collect or enforce the note. These expenses will bear interest from the date of advance at the Annual Interest Rate on Matured, Unpaid Amounts. Borrower will pay Lender these expenses and interest on demand at the Place for Payment. These expenses and interest will become part of the debt evidenced by the note and will be secured by any security for payment.

Borrower may prepay this note in any amount at any time before the Maturity Date without penalty or premium.

Interest on the debt evidenced by this note will not exceed the maximum rate or amount of nonusurious interest that may be contracted for, taken, reserved, charged, or received under law. Any interest in excess of that maximum amount will be credited on the Principal Amount or, if the Principal Amount has been paid, refunded. On any acceleration or required or permitted prepayment, any excess interest will be canceled automatically as of the acceleration or prepayment or, if the excess interest has already been paid, credited on the Principal Amount or, if the Principal Amount has been paid, refunded. This provision overrides any conflicting provisions in this note and all other instruments concerning the debt.

When the context requires, singular nouns and pronouns include the plural.

The Theater Group LLC

By: ___________________________
Troy Scott Schwiegerath, Managing Member
By: ______________________________________
Breanne Maye Schwiegerath, Managing Member

By: ______________________________________
Jason Brett Scott, Managing Member

By: ______________________________________
Terra Kathryn Scott, Managing Member

For value received, we Troy Scott Schwiegerath, Breanne Maye Schwiegerath, Jason Brett Scott and Terra Kathryn Scott, jointly and severally, absolutely and unconditionally guarantee payment of this note according to its terms to the same extent as if we were makers of this note. We, jointly and severally, waive all demand and all notices, including notice of intention to accelerate the maturity, notice of acceleration of maturity, notice of nonpayment, presentment for payment, protest, notice of protest, suit, and diligence. We also jointly and severally waive any notice of and defense based on the extension of time of payment or change in methods of payment and consent to all renewals, extensions, and other adjustments in the manner of payment of this note. This is a guaranty of payment and performance, not of collection, and it is an agreement of guaranty, not of suretyship. We jointly and severally waive all requirements of law, if any, to require that any collection efforts be made against Maker or that any action be brought against Maker before resorting to this guaranty.

______________________________
Troy Scott Schwiegerath

______________________________
Breanne Maye Schwiegerath

______________________________
Jason Brett Scott

______________________________
Terra Kathryn Scott
Security Agreement

Date: October 3, 2012

Debtor: The Theater Group LLC, a Texas corporation

Debtor's Mailing Address:

The Theater Group LLC
1837 N. Sumner
Pampa, Texas 79065

Secured Party: Pampa Economic Development Corporation, a Texas nonprofit corporation

Secured Party's Mailing Address:

Pampa Economic Development Corporation
P.O. Box 2398
Pampa, TX 79066-2398

Classification of Collateral: Instruments

Collateral (including all accessions):

- Digital System Complete, four units/
- Christie CP2210 digital cinema projector, w/auto lens turret and lens
- GDC SX2000A digital cinema server with IMB and all cabling and connection hardware
- Jnior Automation control
- 20RU Rack mount pedestal
- Xenon lamp (CDXL-16M)
- UPS/Battery backup for projector and server
- Cabling, connectors, hardware

- Sound Systems and speakers: four units/ Dolby CP 750 Audio Processor

- Auditoriums/ 4 units, Masking

Satellite/Remote Connectivity Package: Microspace Satellite Delivery and remote connectivity-
four screens

Obligation
Note

Date: November 24, 2012

Original principal amount: $282,000.00

Borrower (Obligor): The Theater Group LLC

Lender (Secured Party): Pampa Economic Development Corporation

Maturity date: January 1, 2023

Terms of Payment: As provided in the note.

Debtor's Representations Concerning Debtor and Locations:

Debtor's, The Theater Group LLC office is located at 1837 N. Sumner, Pampa Texas.

Debtor's, The Theater Group LLC, state of organization is Texas; Debtor's name, as shown in its organizational documents, as amended, is exactly as set forth above; and Debtor's organizational identification number is 0800635183

Debtor's, The Theater Group LLC, federal tax identification number is _____________

Debtor's records concerning the Collateral are located at 1837 N. Sumner, Pampa Texas.

Debtor grants to Secured Party a security interest in the Collateral and all its proceeds to secure the Obligation and all renewals, modifications, and extensions of the Obligation. Debtor authorizes Secured Party to file a financing statement describing the Collateral.

A. Debtor represents and warrants the following:

1. No financing statement covering the Collateral is filed in any public office.

2. Debtor owns the Collateral and has the authority to grant this security interest, free from any setoff, claim, restriction, security interest, or encumbrance except liens for taxes not yet due.

3. All information about Debtor's financial condition is or will be accurate when provided to Secured Party.

4. Each instrument and security, certificated or uncertificated, in the Collateral is
and will represent the valid, legally enforceable obligation of the issuer thereof.

5. The transaction under which each instrument and security, certificated or uncertificated, in the Collateral was issued and transferred to Debtor conforms and will conform in all respects to applicable state and federal law, including securities law and consumer credit law.

B. Debtor agrees to-

1. Defend the Collateral against all claims adverse to Secured Party's interest; pay all taxes imposed on the Collateral; keep the Collateral free from liens, except for liens in favor of Secured Party or for taxes not yet due; keep the Collateral in Debtor's possession and ownership except as otherwise provided in this agreement; maintain the Collateral in good condition; and protect the Collateral against waste, except for ordinary wear and tear.

2. Pay all Secured Party's expenses, including reasonable attorney's fees and legal expenses, incurred to (a) obtain, preserve, perfect, defend, and enforce this agreement; (b) retake, hold, prepare for disposition, dispose, collect, or enforce the Collateral; and (c) collect or enforce the Obligation. These expenses will bear interest from the date of advance at the rate stated in the Note for matured, unpaid amounts and are payable on demand at the place where the Obligation is payable. These expenses and interest are part of the Obligation and are secured by this agreement.

3. Sign and deliver to Secured Party any documents or instruments that Secured Party considers necessary to obtain, maintain, and perfect this security interest in the Collateral and take any action request by Secured Party for Secured Party to obtain control of investment property in the Collateral.

4. Notify Secured Party immediately of any event of default and of any material change (a) in the Collateral, (b) in Debtor's Mailing Address, (c) in the location of any Collateral, (d) in any other representation or warranty in this agreement, and (e) that may affect this security interest, and of any change (f) in Debtor's name and (g) of any location set forth above to another state.

5. Use the Collateral primarily according to the stated classification.

6. Maintain accurate records of the Collateral at the address set forth above, furnish Secured Party any requested information related to the Collateral; and permit Secured Party to inspect and copy all records relating to the Collateral.

7. If the collateral is not in the possession or control of Secured Party, permit Secured Party to inspect the Collateral.
8. Immediately deliver to Secured Party, with an assignment or endorsement, current and after-acquired instruments and certificated securities in the Collateral.

9. Preserve the liability of all obligors on the Collateral and preserve the priority of all security for the Collateral.

10. On Secured Party's demand, deposit all payments received as proceeds of the Collateral in a special bank account designated by Secured Party, who alone will have power of withdrawal.

11. Cause all obligors on the Collateral to pay and perform all their obligations and inform Secured Party immediately of the default in the payment or performance of any Collateral.

C. Debtor agrees not to-

1. Sell, transfer, or encumber any of the Collateral.

2. Change its name or jurisdiction of organization, merge or consolidate with any person, or convert to a different entity without notifying Secured Party in advance and taking action to continue the perfected status of the security interest in the Collateral.

3. Modify any term of any instrument or security in the Collateral.

4. Commingle any payment on the Collateral with any of Debtor's other funds or property.

D. Default and Remedies

1. A default exists if -
   
   a. Debtor, Obligor, or any secondary obligor fails to timely pay or perform any obligation or covenant in any written agreement between Secured Party and any of Debtor, Obligor, or secondary obligor;
   
   b. any warranty, covenant, or representation in this agreement or in any other written agreement between Secured Party and any of Debtor, Obligor, or secondary obligor is materially false when made;
   
   c. a receiver is appointed for Debtor, Obligor, any secondary obligor, or any Collateral;
   
   d. any Collateral is assigned for the benefit of creditors;
e. a bankruptcy or insolvency proceeding is commenced by Debtor, a partnership in which Debtor is a general partner, Obligor, or any secondary obligor;

f. a bankruptcy or insolvency proceeding is commenced against Debtor, a partnership in which Debtor is a general partner, Obligor, or any secondary obligor, and the proceeding continues without dismissal for sixty days, the party against whom the proceeding is commenced admits the material allegations of the petition against it, or an order for relief is entered;

g. any of the following parties is dissolved, begins to wind up its affairs, is authorized to dissolve or wind up its affairs by its governing body or persons, or any event occurs or condition exists that permits the dissolution or winding up of the affairs of any of the following parties: Debtor; a partnership of which Debtor is a general partner; Obligor; or any secondary obligor; and

h. any Collateral is impaired by loss, theft, damage, levy and execution, issuance of an official writ or order of seizure, or destruction, unless it is promptly replaced with collateral of like kind and quality or restored to its former condition.

2. If a default exists, Secured Party may -

a. demand, collect, convert, redeem, settle, compromise, receipt for, realize on, sue for, and adjust the Collateral either in Secured Party's or Debtor's name, as Secured Party desires, or take control of any proceeds of the Collateral and apply the proceeds against the Obligation;

b. take possession of any Collateral not already in Secured Party's possession, without demand or legal process, and for that purpose Debtor grants Secured Party the right to enter any premises where the Collateral may be located;

c. without taking possession, sell, lease, or otherwise dispose of the Collateral at any public or private sale in accordance with law;

d. exercise any rights and remedies granted by law or this agreement;

e. notify obligors on the Collateral to pay Secured Party directly;

f. as Debtor's agent, make any endorsements in Debtor's name and on Debtor's behalf of any instruments in the Collateral and to any proceeds of the Collateral;

g. exercise and enforce all rights, including voting rights, available to an owner of the Collateral; or
h. transfer record ownership of any Collateral to Secured Party.

3. Foreclosure of this security interest by suit does not limit Secured Party's remedies, including the right to sell the Collateral under the terms of this agreement. Secured Party may exercise all remedies at the same or different times, and no remedy is a defense to any other. Secured Party's rights and remedies include all those granted by law and those specified in this agreement.

4. Secured Party's delay in exercising, partial exercise of, or failure to exercise any of its remedies or rights does not waive Secured Party's rights to subsequently exercise those remedies or rights. Secured Party's waiver of any default does not waive any other default by Debtor. Secured Party's waiver of any right in this agreement or of any default is binding only if it is in writing. Secured Party may remedy any default without waiving it.

5. Secured Party has no obligation to clean or otherwise prepare the Collateral for sale.

6. Other than exercising reasonable care to assure safe custody of the Collateral in its possession, Secured Party has no responsibility for the Collateral. Secured Party has no obligation to collect any of the Collateral and is not liable for failure to collect any of the Collateral, for failure to preserve any right pertaining to the Collateral, or for any act or omission on the part of Secured Party or Secured Party's officers, agents, or employees, except willful misconduct.

7. Secured Party has no obligation to satisfy the Obligation by attempting to collect the Obligation from any other person liable for it. Secured Party may release, modify, or waive any collateral provided by any other person to secure any of the Obligation. If Secured Party attempts to collect the Obligation from any other person liable for it or releases, modifies, or waives any collateral provided by any other person, that will not affect Secured Party's rights against Debtor. Debtor waives any right Debtor may have to require Secured Party to pursue any third person for any of the Obligation.

8. If Secured Party must comply with any applicable state or federal law requirements in connection with a disposition of the Collateral, such compliance will not be considered to adversely affect the commercial reasonableness of a sale of the Collateral.

9. Secured Party may sell the Collateral without giving any warranties as to the Collateral. Secured Party may specifically disclaim any warranties of title or the like. This procedure will not be considered to adversely affect the commercial reasonableness of a sale of the Collateral.

10. If Secured Party sells any of the Collateral on credit, Debtor will be credited only
with payments actually made by the purchaser and received by Secured Party for application to the indebtedness of the purchaser. If the purchaser fails to pay for the Collateral, Secured Party may resell the Collateral and Debtor will be credited with the proceeds of the sale.

11. If Secured Party purchases any of the Collateral being sold, Secured Party may pay for the Collateral by crediting the purchase price against the Obligation.

12. Secured Party has no obligation to marshal any assets in favor of Debtor or against or in payment of the Note, any of the Other Obligation, or any other obligation owed to Secured Party by Debtor or any other person.

13. If the Collateral is sold after default, recitals in the bill of sale or transfer will be prima facie evidence of their truth and all prerequisites to the sale specified by this agreement and by law will be presumed satisfied.

E. General

1. Notice is reasonable if it is mailed, postage prepaid, to Debtor at Debtor’s Mailing Address at least ten days before any public sale or ten days before the time when the Collateral may be otherwise disposed of without further notice to Debtor.

2. This security interest will neither affect nor be affected by any other security for any of the Obligation. Neither extensions of any of the Obligation nor releases of any of the Collateral will affect the priority or validity of this security interest.

3. This agreement binds, benefits, and may be enforced by the successors in interest of Secured Party and will bind all persons who become bound as debtors to this agreement. Assignment of any part of the Obligation and Secured Party's delivery of any part of the Collateral will fully discharge Secured Party from responsibility for that part of the Collateral. If such an assignment is made, Debtor will render performance under this agreement to the assignee. Debtor waives and will not assert against any assignee any claims, defenses, or setoffs that Debtor could assert against Secured Party except defenses that cannot be waived. All representations, warranties, and obligations are joint and several as to each Debtor.

4. This agreement may be amended only by an instrument in writing signed by Secured Party and Debtor.

5. The unenforceability of any provision of this agreement will not affect the enforceability or validity of any other provision.

6. This agreement will be construed according to Texas law, without regard to choice-of-law rules of any jurisdiction. This agreement is to be performed in, and has been signed by Debtor in, the county of Secured Party's Mailing Address.
7. Interest on the Obligation secured by this agreement will not exceed the maximum amount of nonusurious interest that may be contracted for, taken, reserved, charged, or received under law. Any interest in excess of that maximum amount will be credited on the principal of the Obligation or, if that has been paid, refunded. On any acceleration or required or permitted prepayment, any such excess will be canceled automatically as of the acceleration or prepayment or, if already paid, credited on the principal of the Obligation or, if the principal of the Obligation has been paid, refunded. This provision overrides any conflicting provisions in this and all other instruments concerning the Obligation.

8. In no event may this agreement secure payment of any debt that may not lawfully be secured by a lien on real estate or create a lien otherwise prohibited by law.

9. When the context requires, singular nouns and pronouns include the plural.

10. Any term defined in sections 1.101 to 11.108 of the Texas Business and Commerce Code and not defined in this agreement has the meaning given to the term in the Code.

The Theater Group LLC

By: ___________________________
    Troy Scott Schwiegerath, Managing Member

By: ___________________________
    Breanne Maye Schwiegerath, Managing Member

By: ___________________________
    Jason Brett Scott, Managing Member

By: ___________________________
    Terra Kathryn Scott, Managing Member
STATE OF TEXAS )

COUNTY OF GRAY )

This instrument was acknowledged before me on ________________, 2012, by Troy Scott Schwiegerath, as the Managing Member of The Theater Group LLC, a Texas corporation, on behalf of said corporation.

________________________________________________________________________
Notary Public, State of Texas
My commission expires: ________________________

STATE OF TEXAS )

COUNTY OF GRAY )

This instrument was acknowledged before me on ________________, 2012, by Breanne Maye Schwiegerath, as the Managing Member of The Theater Group LLC, a Texas corporation, on behalf of said corporation.

________________________________________________________________________
Notary Public, State of Texas
My commission expires: ________________________

STATE OF TEXAS )

COUNTY OF GRAY )

This instrument was acknowledged before me on ________________, 2012, by Jason Brett Scott, as the Managing Member of The Theater Group LLC, a Texas corporation, on behalf of said corporation.

________________________________________________________________________
Notary Public, State of Texas
My commission expires: ________________________
STATE OF TEXAS

COUNTY OF GRAY

This instrument was acknowledged before me on ________________, 2012, by Terra Kathryn Scott, as the Managing Member of The Theater Group LLC, a Texas corporation, on behalf of said corporation.

Notary Public, State of Texas
My commission expires: __________________________

AFTER RECORDING RETURN TO:
Buzzard Law Firm, P.C.
208 N. Russell St.
Pampa, TX 79065
Tel: (806) 665-7281
Fax: (806) 669-0972