



Board Binder Open Session

August 2, 2021

Agenda



Effective March 16, 2020, Governor Greg Abbott authorized the temporary suspension of certain statutory provisions of the Texas Open Meetings Act. This meeting of the Midland Development Corporation is being held pursuant to such authorization and will limit face-to-face interactions for the purpose of slowing the spread of the coronavirus (COVID-19).

**MIDLAND DEVELOPMENT CORPORATION AS AUTHORIZED BY CHAPTER 504 OF THE TEXAS
LOCAL GOVERNMENT CODE**

NOTICE OF PUBLIC MEETING

In accordance with Chapter 551, Texas Government Code, as amended, notice is hereby given to the public that the Board of Directors of the Midland Development Corporation will meet in regular session, open to the public, in the Midland Chamber of Commerce board room, 303 West Wall Street, Suite 200, Midland, Texas, at 10:00 a.m. on August 2, 2021.

Videoconference Information

Join Zoom Webinar

<https://us02web.zoom.us/j/89192296720?pwd=V3I4cm1EYmRNZ2NJaVA2STNzc2dFUT09>

Passcode: 778516

Or join by phone:

Dial (for higher quality, dial a number based on your current location):

US: +1 346 248 7799 or +1 253 215 8782 or +1 669 900 9128 or +1 646 558 8656 or +1 301 715 8592
or +1 312 626 6799

Webinar ID: 891 9229 6720

Passcode: 778516

International numbers available: <https://us02web.zoom.us/j/89192296720?pwd=V3I4cm1EYmRNZ2NJaVA2STNzc2dFUT09>

At such meeting, the Board of Directors may discuss, consider, and take action on any of the following items:

1. Call meeting to order.
2. Motion approving the minutes of the July 12, 2021, meeting of the Midland Development Corporation.
3. Presentation from MOTRAN Alliance, Inc. on infrastructure projects and initiatives in Midland and the Permian Basin.
4. Resolution authorizing the execution of an economic development agreement with MOTRAN Alliance, Inc.
5. Resolution authorizing the execution of an interlocal agreement with the University of Texas Permian Basin to advertise and publicize the City of Midland for the purpose of developing new and expanded business enterprises.

6. Resolution authorizing the execution of a promotional agreement with Higher Orbits to advertise and publicize the City of Midland for the purpose of developing new and expanded business enterprises.
7. Resolution authorizing the execution of a consulting services agreement with Kimley-Horn and Associates, Inc., for the airspace modeling services related to the integration of a round-trip, point-to-point flight of a reusable launch vehicle between Midland International Air & Space Port and Spaceport America.
8. Resolution authorizing the execution of a second amendment to that certain economic development agreement between the Midland Development Corporation and Susie's South Forty Confections, Inc.
9. Resolution authorizing the execution of an amendment to that certain lease agreement between the Midland Development Corporation and Loraine at Texas Office Tower Ltd., DBA Centennial Tower, LTD., regarding real property located at 200 North Loraine, Midland, Texas 79701.
10. Presentation on the June 2021 monthly expenses and economic development activity report from the Midland Development Corporation Executive Director.
11. Pursuant to Texas Government Code §551.101, the Board of Directors will hold an Executive Session, which is closed to the public to discuss the following matters as permitted under the following Texas Government Code Sections:
 - a. Section 551.072 Deliberation Regarding Real Property
 - i. Discuss the sale, exchange, lease or value of real property described as an approximate 53.62-acre tract of land out of Section 11, Block 40, T-2-S, T&P RR Co. Survey, Midland County, Texas.
 - b. Section 551.087 Deliberation Regarding Economic Development Negotiations
 - i. Discuss business prospects that the Midland Development Corporation seeks to have, locate, stay, or expand in or near the City of Midland, Texas, and discuss possible incentives, and discuss contract compliance on the part of businesses.

Posted this 30th day of July 2021.

Amy M. Turner
City Secretary

July 12th Minutes

MIDLAND DEVELOPMENT CORPORATION

MINUTES

July 12, 2021

The Board of Directors of the Midland Development Corporation convened in regular session at the Midland Chamber of Commerce conference room, 303 W. Wall Street, Suite 200, Midland, Texas, at 10:00 a.m. on July 12, 2021.

Board Members present: Chairman Wesley Bownds, Director Stephen Lowery, Director Berry Simpson, Director Lourcey Sams, Director Chase Gardaphe, Director Jill Pennington and Director Brad Bullock

Board Members absent: None

Staff Members present: Assistant City Manager Tina Jauz, Assistant City Attorney Nicholas Toulet-Crump, Director of Engineering Jose Ortiz, Interim Finance Director Christy Weakland, and Deputy City Secretary SueAnn Reyes

Council Member(s) present: Council member Michael Trost and Council member Lori Blong

MDC Staff Members present: Executive Director Sara Harris, Marketing and Administrative Coordinator Kendall Gray

1. Call meeting to order.
2. Motion approving the minutes of the June 7, 2021, meeting of the Midland Development Corporation.

Director Lowery moved to approve the minutes of the June 07, 2021 meeting of the Midland Development Corporation; seconded by Director Gardaphe. The motion carried by the following vote: AYE: Bownds, Lowery, Simpson, Sams, Gardaphe, Pennington and Bullock. NAY: None. ABSTAIN: None. ABSENT: None.

3. Resolution approving the budget for the Midland Development Corporation's 2021-2022 Fiscal Year.

Sara Harris gave an overview of the budget for the 2021-2022 Fiscal Year. She noted that budgeted revenue had been increased 22% over the previous fiscal year's budget and gave detail on the following expense categories: general and administrative expenses reduced 47% compared to the prior year's budget; operating expenses reduced 23%; and economic development agreements and promotional agreements reduced 17% based on prior year commitments. Budgeted capital purchases increased

150% based on anticipated needs in fiscal year 2022. Bottom-line change in budgeted expenses was a reduction of 7% year-over-year.

Director Simpson moved to approve the budget for the Midland Development Corporation's 2021-2022 Fiscal Year; seconded by Director Pennington. The motion carried by the following vote: AYE: Bownds, Lowery, Simpson, Sams, Gardaphe, Pennington and Bullock. NAY: None. ABSTAIN: None. ABSENT: None.

4. Resolution authorizing the execution of an economic development agreement with the City of Midland for the construction of certain improvements to the Midland Draw; and authorizing payment therefor.

Director of Engineering Jose Ortiz gave an overview of the Midland Draw Improvement Project including increased stormwater capacity, reduce risk of flooding upstream, upgrading old channel geometry and upgrading existing sewer collector.

Director Gardaphe moved to approve the execution of an economic development agreement with the City of Midland for the construction of certain improvements to the Midland Draw; and authorizing payment therefor; seconded by Director Sams. The motion carried by the following vote: AYE: Bownds, Lowery, Simpson, Sams, Gardaphe, Pennington and Bullock. NAY: None. ABSTAIN: None. ABSENT: None.

5. Resolution authorizing the execution of a contract with Strong Environmental Services, LLC, in the amount of \$57,250.00 for the installation of additional security measures at the Western United Life

Sara Harris explained that additional security measures, including steel bars and plating at the building's east and west entrances, and steel bars on eleven of the building's second-story windows were needed to keep vagrants and intruders from trespassing into the building.

Director Lowery moved to approve the execution of a contract with Strong Environmental Services, LLC, in the amount of \$57,250.00 for the installation of additional security measures at the Western United Life; seconded by Director Simpson. The motion carried by the following vote: AYE: Bownds, Lowery, Simpson, Sams, Gardaphe, Pennington and Bullock. NAY: None. ABSTAIN: None. ABSENT: None.

6. Resolution authorizing the execution of a promotional agreement with Dini Spheris, Inc., to advertise and publicize the City of Midland for the purpose of developing new and expanded business enterprises.

Director Simpson moved to approve authorizing the execution of a promotional agreement with Dini Spheris, Inc., to advertise and publicize the City of Midland for the purpose of developing new and expanded business enterprises; seconded by Director Pennington. The motion carried by the following vote: AYE: Bownds, Lowery, Simpson, Sams, Gardaphe, Pennington and Bullock. NAY: None. ABSTAIN: None. ABSENT: None.

7. Presentation on the June 2021 monthly expenses and economic development activity report from the Midland Development Corporation Executive Director.

Sara Harris reported no large disbursements and a sales tax increase of 3% compared to the prior year. She stated that the MDC is well-positioned to be able to meet all obligations this year and moving forward.

Board recessed into executive session at 10:44 a.m.

8. Pursuant to Texas Government Code §551.101, the Board of Directors will hold an Executive Session, which is closed to the public to discuss the following matters as permitted under the following Texas Government Code Sections:
 - a. Section 551.072 Deliberation Regarding Real Property
 - i. Discuss the sale, exchange, lease or value of real property described as an approximate 374-acre tract of land out of Section Thirty-Three (33), Block Forty (40), T-1-S, T&P RR Co. Survey, Midland County, Texas.
 - b. Section 551.087 Deliberation Regarding Economic Development Negotiations
 - i. Discuss business prospects that the Midland Development Corporation seeks to have, locate, stay, or expand in or near the City of Midland, Texas, and discuss possible incentives, and discuss contract compliance on the part of businesses.

Board reconvened into open session at 11:21 a.m.

All the business at hand having been completed, Chairman Bownds adjourned the meeting at 11:21a.m.

Respectfully submitted,

SueAnn Reyes, Deputy City Secretary

PASSED AND APPROVED the 2nd Day of August 2021.

Berry Simpson, Secretary

MOTRAN FY 2022 Agreement

RESOLUTION NO. _____

**RESOLUTION AUTHORIZING THE EXECUTION OF
AN ECONOMIC DEVELOPMENT AGREEMENT WITH
MOTRAN ALLIANCE, INC.**

WHEREAS, the Board of Directors finds it to be in the public interest to authorize the execution of an economic development agreement with the Motran Alliance, Inc.;

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE MIDLAND DEVELOPMENT CORPORATION:

SECTION ONE. That the Chairman and Secretary are hereby authorized and directed to execute and attest, respectively, on behalf of the Midland Development Corporation, an economic development agreement with the Motran Alliance, Inc., said agreement being attached hereto as Exhibit A, and incorporated herein for all purposes.

SECTION TWO. That the City Comptroller of the City of Midland, Texas, is hereby authorized and directed to pay Motran Alliance, Inc., a maximum of \$142,500.00 in accordance with the terms of said agreement, from funds available in the Midland Development Corporation's budget for fiscal year 2021-2022.

On motion of Director _____, seconded by Director _____, the above and foregoing resolution was adopted by the Board of Directors of the Midland Development Corporation at a regular meeting on the _____ day of _____, A.D., 2021, by the following vote:

Directors voting "AYE":

Directors voting "NAY":

WESLEY BOWNDS,
Chairman of the Midland
Development Corporation

ATTEST:

BERRY SIMPSON,
Secretary of the Midland
Development Corporation

APPROVED AS TO FORM ONLY:

JOHN OHNEMILLER,
Attorney for the Midland
Development Corporation

**ECONOMIC DEVELOPMENT AGREEMENT BETWEEN
THE MIDLAND DEVELOPMENT CORPORATION AND
MOTRAN ALLIANCE, INC.**

WHEREAS, Motran Alliance, Inc., submitted a proposal to the Midland Development Corporation for economic development purposes and the funds for such Proposal can be appropriated by the Midland Development Corporation for fiscal year 2021-2022; and

WHEREAS, the primary purpose of Motran Alliance, Inc., is to raise funds for and improve the infrastructure of the Permian Basin area; and

WHEREAS, such activities will create the groundwork for developing new and expanded enterprises in the Midland/Odessa area; and

WHEREAS, the parties have agreed on the terms and conditions and have set forth such terms and conditions in this Agreement;

NOW, THEREFORE, the Midland Development Corporation, hereinafter referred to as the "MDC", and Motran Alliance, Inc., a Texas non-profit corporation, hereinafter referred to as "MOTRAN", do hereby contract and agree as follows:

I.

Economic Development Program

MOTRAN shall provide the economic development services as provided in **Exhibit B**, which document is incorporated herein by reference. Said services shall be referred to herein as the "Economic Development Program."

II.

Funding

The MDC shall pay to MOTRAN the total sum of One Hundred Forty-Two Thousand, Five Hundred Dollars (\$142,500.00), for the MDC fiscal year, said funds to be used solely for the purpose of conducting the Economic Development Program as delineated in **Exhibit B**. The MDC shall dispense funds to MOTRAN by paying one-half of the total on or before December 1, 2021,

Exhibit A

and one-half on or before April 1, 2022. It is understood and agreed that MOTRAN will obtain the remaining necessary funds for completion of the Program from other sources. MOTRAN may perform services that are not eligible for expenditure of funds by the MDC but the percentage of Economic Development Corporation funds received must not exceed the percentage of eligible services performed by MOTRAN.

III.

Budget and Financial Reporting

MOTRAN shall comply with the budget showing the revenues and expenses, a copy of which is attached as **Exhibit A**, to be received and incurred during the term of this Agreement. The hereinafter required financial reports shall, in each case, show the relationship of actual expenses to the authorized expenses shown in said budget.

On or before the 25th day of each month during the term of this Agreement, MOTRAN shall make and send to the MDC, and file with the City Secretary of the City of Midland, a report showing an accounting of all funds received and expended during the preceding month. Said report shall also show the cumulative expenses and revenues for the preceding month together with all prior months covered by this Agreement.

MOTRAN shall maintain complete and accurate financial records of each expenditure of Economic Development Program funds made by it. The general method of financial record keeping and reporting proposed by MOTRAN to be used in complying with the requirements of this Agreement shall be submitted to and approved by the MDC. The sufficiency of detail of any activity or financial report required by this Agreement shall be determined by the MDC. All of MOTRAN's records pertaining and related to the activities and funds under the Agreement shall be available for inspection by the MDC or MDC's representatives at any time during MOTRAN's normal office hours. The revenue provided by the MDC under this Agreement must be maintained by MOTRAN in a separate account established for that purpose and may not be co-mingled with any other money or maintained in any other account.

IV.

Informal Reporting

The Activity Reporting Requirements outlined in Article V are for the purpose of providing information to meet the very basic exchange of information. However, to be efficient in the use of economic development funds, to compete in the open market for jobs, to be able to respond to issues and economic development opportunities in a timely manner, to make decisions regarding goals, objectives and priorities and to foster the necessary teamwork between the MDC and MOTRAN, it is necessary to plan and to implement certain informal reporting and interactions which could occur on a frequent basis. For these purposes, the parties agree to engage in certain interaction and interoffice communications.

1. When decisions need to be made regarding negotiations or strategy, MOTRAN will meet with those persons designated by the MDC to develop a plan.
2. MOTRAN will meet with the MDC whenever necessary and also develop and distribute in writing or by oral presentation, reports when needed over and above those required in Article V.

V.

Activity Reporting Requirements

The Parties agree to the following provisions to establish necessary activity reporting requirements:

1. MOTRAN will provide quarterly activity reports in writing to the MDC and City Secretary of Midland that will provide a current status report. This report will provide hard data when available.

VI.

Audit

In addition to the heretofore required reports covering activities and expenditures under the Economic Development Program, a certified audit of the funds and activities of such Economic

Development Program shall be made annually. The costs of making the audit shall be paid by MOTRAN but MOTRAN may use MDC funds. The auditors performing the above described audit shall have access to and the right to examine all records and accounts directly related to the Economic Development Program and such other MOTRAN records and accounts as may be reasonably necessary to conduct and complete its audit of the Economic Development Program funds.

VII.

Independent Contractor

It is expressly understood and agreed that as to any and all of the services tendered by MOTRAN in conducting the Economic Development Program under this contract, MOTRAN shall be considered an independent contractor insofar as its relationship to the MDC. Accordingly, the officers and employees of MOTRAN used or involved in the Economic Development Program under this Agreement shall not be considered, for any purpose, to be the officers and employees of the MDC.

It is expressly understood and agreed that MOTRAN shall perform all work and services described herein as an independent contractor and not as an officer, agent, servant or employee of the MDC; that MOTRAN shall have exclusive control of and the exclusive right to control the details of the services and work performed hereunder, and all persons performing the same; and shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors; that the doctrine of *respondeat superior* shall not apply as between MDC and MOTRAN, its officers, agents, employees, contractors and subcontractors; and that nothing herein shall be construed as creating a partnership or joint enterprise between MDC and MOTRAN. No person performing any of the work and services described hereunder shall be considered an officer, agent, servant or employee of the MDC. Further, it is specifically understood and agreed that nothing in this Agreement is intended or shall be construed as creating a "Community of Pecuniary Interest" or "An Equal Right of Control".

MOTRAN shall be an independent contractor under this Agreement and shall assume all of the rights, obligations and liabilities, applicable to MOTRAN as such independent contractor hereunder. The MDC does not have the right to control the means, methods or details of MOTRAN's work. The MDC does not have the power to direct the order in which MOTRAN's work should be done. MOTRAN shall assume exclusive responsibility for the work hereunder. MOTRAN is entirely free to do the work in its own way.

VIII.

Agreement Period

This Agreement shall become effective on October 1, 2021 and shall terminate on September 30, 2022. If MOTRAN violates the terms or conditions of this Agreement, or fails to provide the agreed services, the MDC may terminate this Agreement under the following conditions. The MDC shall provide written notice of the violations or failures to MOTRAN. MOTRAN shall have thirty (30) days to cure the violations or failures or to file a written response with the MDC. If MOTRAN fails to cure or to file a written response within such 30-day period, the MDC may terminate this Agreement immediately. If a written response is filed, the MDC shall set a hearing before the MDC's Board of Directors and provide notice to MOTRAN. After consideration of the response and the testimony at the hearing, the MDC may declare if there has or has not occurred the stated violations or failures. If the Board finds that such violations or failures have occurred, it shall give MOTRAN thirty (30) days' written notice and an opportunity to cure. If not cured within such period, the MDC may terminate this Agreement immediately.

IX.

Civil Rights

MOTRAN agrees that as to all its programs and activities, it shall fully comply with all Civil Rights Acts and not discriminate against any person on the basis of race, color, national original, sex or disability.

X.

Indemnity

MOTRAN SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND MDC AND ALL OF MDC'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, PROPERTY DAMAGE, LOSSES, AND EXPENSE OF ANY CHARACTER WHATSOEVER, INCLUDING REASONABLE ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ON ACCOUNT OF ANY NEGLIGENT ACT OF MOTRAN OR MDC, MDC'S OFFICERS, AGENTS AND EMPLOYEES, WHETHER SUCH NEGLIGENT ACT WAS THE SOLE PROXIMATE CAUSE OF THE INJURY OR DAMAGE OR A PROXIMATE CAUSE JOINTLY AND CONCURRENTLY WITH MOTRAN OR MOTRAN'S EMPLOYEES, AGENTS OR SUBCONTRACTORS NEGLIGENCE, IN THE EXECUTION, SUPERVISION AND OPERATIONS GROWING OUT OF OR IN ANY WAY CONNECTED WITH THE PERFORMANCE OF THIS AGREEMENT, AND CONTRACTOR WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST CITY OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES, INCLUDING ATTORNEY'S FEES.

XI.

Excess MDC Funds

Any funds that are paid by the MDC to MOTRAN pursuant to this Agreement, not expended by the end of the term of this Agreement shall be refunded to the MDC within thirty (30) days after the end of the term of this Agreement, unless MOTRAN can provide the MDC with written notice as to the funds that have not been expended but have been committed, and such commitment is supported by contracts or other written documentation.

XII.

Property

The parties agree that Any records and documents that are developed for the purpose of accomplishing services on behalf of the MDC by MOTRAN, and necessary to continue to provide such services, or to show the rights or responsibilities of the MDC, shall be the joint property of the MDC and MOTRAN with equal rights of use and access.

XIII.

Project

The parties agree that this constitutes an eligible project as defined in Chapter 501 of the Texas Local Government Code, as amended.

XIV.

Assignment

The parties hereto shall not assign or subcontract this Agreement, in whole or in part, any such assignment or subcontract being void.

XV.

Notice

Any notice or report which may or shall be given under the provisions of this Agreement shall, unless otherwise provided herein, be in writing and shall be either delivered via email or sent by United States Mail:

If to MDC:

Midland Development Corporation
200 N. Loraine St., Ste. 610
Midland, Texas 79701

with copy to:

City Attorney's Office
City of Midland
300 N. Loraine St., Ste. 320
Midland, Texas 79701

If to MOTRAN:

Motran Alliance, Inc.
P.O. Box 60816

XVI.

Severability

This Agreement shall be construed in accordance with the laws of the State of Texas. If any clause or provision of this Agreement is illegal, invalid, or unenforceable under present or future laws effective during the term hereof, then it is the intention of the parties hereto that the remainder of this Agreement shall not be affected thereby, and it is also the intention of both parties that in lieu of each clause or provision that is illegal, invalid or unenforceable, there be added as a part of this Agreement a clause or provision as similar in meaning to such illegal, invalid or unenforceable clause or provision as may be possible and be legal, valid and enforceable.

XVII.

Alteration

This Agreement may not be altered, changed or amended, except by an instrument in writing signed by both parties hereto.

XVIII.

Entire Agreement and Binding Effect

This Agreement constitutes the entire agreement between the MDC and MOTRAN. No prior written or prior or contemporaneous oral promises or representations shall be binding. The provisions of this Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties.

XIX.

Venue

All performance and payment made pursuant to this Agreement shall be deemed to have occurred in Midland County, Texas. Exclusive venue for any claims, suits or any other action arising from or connected in any way to this Agreement or the performance of this Agreement shall

be in Midland County, Texas. This Agreement shall be governed by the laws of the State of Texas. The obligations and undertakings of each of the parties to this agreement shall be deemed to have occurred in Midland County, Texas.

XX.

Compliance With Laws

In the payment and employment of people to serve as employees pursuant to this Agreement, MOTRAN shall comply with all federal, state and local laws, rules, regulations and ordinances with respect to payment of minimum wages. MOTRAN shall not discriminate against people on the basis of race, sex, age, religion, national origin, or mental or physical disability in the application, hiring, termination, evaluation, or compensation of people assigned to work under this Agreement, and shall further comply with all laws, rules and regulations prohibiting such discrimination including but not limited to, the Civil Rights Act of 1964, the Civil Rights Act of 1991, the Age Discrimination in Employment Act, and the Americans With Disabilities Act.

XXI.

Governmental Immunity

By executing this Agreement, the MDC is not waiving its right of governmental immunity. The MDC is not granting consent to be sued by legislative resolution or action.

THERE IS NO WAIVER OF GOVERNMENTAL IMMUNITY.

XXII.

Governmental Immunity

By executing this Agreement, **MOTRAN AGREES TO WAIVE AND DOES HEREBY WAIVE ANY CLAIM IT HAS OR MAY HAVE AGAINST THE MDC, REGARDING THE AWARD OF ATTORNEY'S FEES, WHICH ARE IN ANY WAY RELATED TO THE AGREEMENT, OR THE CONSTRUCTION, INTERPRETATION OR BREACH OF THE AGREEMENT. MOTRAN SPECIFICALLY AGREES THAT IF MOTRAN BRINGS OR**

COMMENCES ANY LEGAL ACTION OR PROCEEDING RELATED TO THIS AGREEMENT, THE CONSTRUCTION, INTERPRETATION, VALIDITY OR BREACH OF THIS AGREEMENT, INCLUDING, BUT NOT LIMITED TO, ANY ACTION PURSUANT TO THE PROVISIONS OF THE TEXAS UNIFORM DECLARATORY JUDGMENTS ACT (TEXAS CIVIL PRACTICE AND REMEDIES CODE SECTION 37.001, ET SEQ., AS AMENDED), MOTRAN AGREES TO WAIVE AND RELINQUISH ANY AND ALL RIGHTS TO THE RECOVERY OF ATTORNEY'S FEES TO WHICH MOTRAN MIGHT OTHERWISE BE ENTITLED.

MOTRAN AGREES THAT THIS IS THE INTENTIONAL RELINQUISHMENT OF A PRESENTLY EXISTING KNOWN RIGHT. MOTRAN ACKNOWLEDGES THAT IT UNDERSTANDS ALL TERMS AND CONDITIONS OF THIS AGREEMENT.

XXIII.

Release

NOTWITHSTANDING ANY OTHER PROVISION CONTAINED HEREIN, MOTRAN HEREBY RELEASES, ACQUITS, RELINQUISHES AND FOREVER DISCHARGES MDC, MDC'S EMPLOYEES AND OFFICERS, FROM ANY AND ALL DEMANDS CLAIMS OR CAUSES OF ACTION OF ANY KIND WHATSOEVER WHICH MOTRAN HAS OR MIGHT HAVE IN THE FUTURE, INCLUDING BUT NOT LIMITED TO BREACH OF AGREEMENT, QUANTUM MERUIT, CLAIMS UNDER THE DUE PROCESS AND TAKINGS CLAUSES OF THE TEXAS AND UNITED STATES CONSTITUTIONS, TORT CLAIMS, OR MDC'S NEGLIGENCE.

XXIV.

Third-Party Beneficiary

The MDC's approval of this Agreement does not create a third-party beneficiary. There is no third-party beneficiary to this Agreement. No person or entity who is not a party to this

Agreement shall have any third-party beneficiary or other rights hereunder.

EXECUTED by the duly authorized officials of the Parties this ____ day of _____, 2021.

**MIDLAND DEVELOPMENT
CORPORATION**

By _____
Wesley Bownds, Chairman

ATTEST:

Berry Simpson, Secretary

[Signature Page Follows]

MOTRAN ALLIANCE, INC.

By _____

Name _____

Title _____

THE STATE OF TEXAS §
 §
COUNTY OF MIDLAND §

BEFORE ME, the undersigned authority, on this day personally appeared _____, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he/she executed and delivered the foregoing instrument for the purposes and consideration therein expressed on behalf of MOTRAN ALLIANCE, INC.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this ____ day of _____, 2021.

Notary Public, State of Texas

MOTRAN, INC.

	Approved 2020-21	Proposed 2021-22	MDC 2021-22	ODC 2021-22
REVENUES				
Founding Members Dues	20,000.00	20,000.00		
Members Dues	60,000.00	70,000.00		
Grants	15,000.00	15,000.00		
Interest Earned	500.00	250.00		
Midland Development Corp.	137,000.00	142,500.00	142,500.00	
Odessa Development Corp.	142,500.00	142,500.00		142,500.00
PBC Revenue	50,000.00	10,000.00		
Misc. Income	3,500.00	0.00		
TOTAL REVENUES	\$428,500.00	\$400,250.00	\$142,500.00	\$142,500.00
EXPENSES				
Bank Fees	250.00	250.00		
Dues & Subscriptions	1,500.00	1,500.00		
Events	20,000.00	20,000.00		
Food & Entertainment	5,500.00	5,500.00		
Gifts	1,500.00	1,500.00		
Health Ins. Reimbursement	10,000.00	10,000.00	2,500.00	2,500.00
Insurance	4,000.00	4,000.00		
I-14 Initiative	12,500.00	12,500.00	2,500.00	2,500.00
Miscellaneous Expenses	250.00	300.00		
Office Lease	11,000.00	11,000.00		
Office Supplies	6,000.00	6,000.00		
Payroll-Salaries	236,000.00	238,000.00	110,000.00	110,000.00
Payroll-Service Fee	1,500.00	1,600.00		
Payroll Taxes	17,500.00	17,500.00	8,000.00	8,000.00
401 K Plan	8,000.00	8,000.00		
Postage	3,500.00	2,600.00		
Marketing	25,000.00	25,000.00	8,000.00	8,000.00
Program Supplies	2,000.00	2,000.00		
Telephone	4,000.00	4,000.00		
Travel Expenses	16,000.00	16,000.00	5,500.00	5,500.00
Professional Services	12,000.00	13,000.00	6,000.00	6,000.00
ODC Wifi/Broadband	5,500.00			
Website Updates	20,000.00			
Contingency	5,000.00			
TOTAL EXPENSES	\$428,500.00	\$400,250.00	\$142,500.00	\$142,500.00

Exhibit A

EXHIBIT B

ECONOMIC DEVELOPMENT SERVICES

The Midland Development Corporation seeks to provide the infrastructure to support an aggressive commitment to make Midland competitive for economic development. These objectives include working to secure additional infrastructure funding for the area and aggressively pursue the development and improvement of transportation corridors connecting Midland and Odessa throughout the region and domestic markets, as well as, other significant international markets. The MDC will support the regional efforts by MOTRAN and others to achieve that objective and to promote and develop new and expanded business enterprises and infrastructure in the area, as well as, promotion of the Midland-Odessa combined statistical area (CSA).

MOTRAN employs an executive director and associated staff whose primary duties include working with national, state, regional, and local entities, as well as, private businesses to provide additional investment in area infrastructure, establishing the La Entrada al Pacifico as a premier trade corridor to help further the economic opportunities presented to this area with regard to international trade, working to improve transportation infrastructure in the region, development of links between Interstates 14 and 27 and the Midland-Odessa area, and strategies to leverage local efforts for additional state and federal highway dollars.

It is for this purpose that the Midland Development Corporation agrees to provide partial funding for MOTRAN to employ necessary staff and assist in performing the following duties:

- Organize and manage the international public policy initiative and all advocacy efforts;
- Organize and manage intergovernmental relations including committee organization, and international organizations;
- Direct and participate in fund raising and public relations including direct marketing, web site development membership development and public speaking engagements;
- Direct and participate in research and production of technical and economic reports;
- Serve as the representative of the organization, both nationally and internationally;
- Draft corporate documents; and
- Perform related duties as directed, including seeking additional transportation funding from federal, state, and private sources for purposes of infrastructure development, and forging and organizing regional partnerships to accomplish area and regional infrastructure goals.

UTPB Midland Entrepreneurial Challenge

RESOLUTION NO. _____

RESOLUTION AUTHORIZING THE EXECUTION OF AN INTERLOCAL AGREEMENT WITH THE UNIVERSITY OF TEXAS PERMIAN BASIN TO ADVERTISE AND PUBLICIZE THE CITY OF MIDLAND FOR THE PURPOSE OF DEVELOPING NEW AND EXPANDED BUSINESS ENTERPRISES

WHEREAS, The University of Texas Permian Basin (“*UTPB*”) has requested funding from the Midland Development Corporation (“*MDC*”), with said funds to be used for the management and administration of the Midland Entrepreneurial Challenge within the corporate limits of the City of Midland (“*City*”); and

WHEREAS, UTPB has agreed to advertise and publicize the City of Midland in conjunction with its management and administration of the Midland Entrepreneurial Challenge for the purpose of developing new and expanded business enterprises within the City of Midland; and

WHEREAS, the MDC Board of Directors finds that the Midland Entrepreneurial Challenge, through its development and cultivation of local business ventures and innovations, will greatly enhance and promote economic development within the City; and

WHEREAS, Section 504.105 of the Texas Local Government Code authorizes the MDC to make promotional expenditures that advertise or publicize the City for the purpose of developing new and expanded business enterprises; and

WHEREAS, the MDC Board of Directors finds that the expenditure of promotional funds for the management and administration of the Midland Entrepreneurial Challenge will advertise or publicize the City for the purpose of developing new and expanded business enterprises as authorized by the Act; and

WHEREAS, the MDC Board of Directors finds it to be in the public interest to authorize the execution of an interlocal agreement with UTPB to advertise and publicize the City for the purpose of developing new and expanded business enterprises;

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS

OF THE MIDLAND DEVELOPMENT CORPORATION:

SECTION ONE. That the Chairman and Secretary are hereby authorized and directed to execute and attest, respectively, on behalf of the Midland Development Corporation, an interlocal agreement with The University of Texas Permian Basin to advertise and publicize the City of Midland for the purpose of developing new and expanded business enterprises. Said agreement shall be in a form substantially similar to that attached hereto as Exhibit A and incorporated herein for all purposes.

SECTION TWO. That the City Comptroller of the City of Midland is hereby authorized and directed to pay The University of Texas Permian Basin, in accordance with the terms of said agreement, upon receipt of proper invoices approved by the Chairman of the Midland Development Corporation or his designee from funds available in the Midland Development Corporation Promotions Project (800705).

On motion of Director _____, seconded by Director _____, the above and foregoing resolution was adopted by the Board of Directors of the Midland Development Corporation at a regular meeting on the _____ day of _____, A.D., 2021, by the following vote:

Directors voting "AYE":

Directors voting "NAY":

WESLEY BOWNDS,
President of the Midland
Development Corporation

ATTEST:

BERRY SIMPSON,
Secretary for the Midland
Development Corporation

APPROVED AS TO FORM ONLY:

JOHN OHNEMILLER,
Attorney for the Midland
Development Corporation

INTERLOCAL AGREEMENT

BETWEEN

**THE UNIVERSITY OF TEXAS PERMIAN BASIN AND
MIDLAND DEVELOPMENT CORPORATION**

This Interlocal Agreement (the “*Agreement*”), is made and entered into this 25th day of August, 2021, between The University of Texas Permian Basin (“*UTPB*”), and the Midland Development Corporation (“*MDC*”), an economic development corporation existing under the authority of Chapter 504 of the Texas Local Government Code, pursuant to Chapter 791 of the Texas Government Code, also known as the Interlocal Cooperation Act, regarding the Midland Entrepreneurial Challenge. UTPB and MDC are sometimes collectively referred to herein as the “*Parties.*”

WITNESSETH:

WHEREAS, MDC is a governmental entity of the state of Texas and is authorized by its governing body to enter into this Agreement; and

WHEREAS, MDC is authorized to expend promotional funds in order to advertise or publicize the City of Midland for the purpose of developing new and expanded business enterprises pursuant to Section 504.105 of the Texas Local Government Code; and

WHEREAS, UTPB is a governmental entity of the state of Texas and is authorized by its governing body to enter into this Agreement; and

WHEREAS, UTPB actively promotes business development and economic growth within the City of Midland and the surrounding region for the purposes of creating jobs and developing new and expanded business enterprises in the same; and

WHEREAS, MDC’s expenditure of promotional funds for the advertising and promotional services described herein will advertise and publicize the City of Midland for the purpose of developing new and expanded business enterprises, and will thereby enhance and promote economic development within the City of Midland; and

WHEREAS, it is the desire of the Parties hereto to combine their efforts for the purpose of developing new and expanded business enterprises within the City of Midland;

NOW, THEREFORE, in consideration of the covenants and conditions stated herein, and in consideration of the mutual benefits which will accrue to the Parties, as well as the general citizenry of the City of Midland, the Parties have agreed and do hereby agree as follows:

Exhibit A

I. PURPOSE

The purpose of this Agreement is to state the terms and conditions under which UTPB shall perform advertising and promotional services for MDC for the purpose of developing new and expanded business enterprises in the City of Midland and thereby enhance and promote economic development within the City of Midland.

II. OBLIGATIONS OF THE PARTIES

A. MDC Payment. MDC agrees to provide to UTPB funds in an amount not to exceed FIVE HUNDRED THOUSAND and No/00 DOLLARS (\$500,000.00), in consideration for UTPB's services described herein (the "*Service Funds*"). In addition to the Service Funds, MDC agrees to pay UTPB an amount not to exceed SEVENTY-SEVEN THOUSAND, SIX HUNDRED AND SEVENTY-SEVEN and No/00 DOLLARS (\$77,677.00) for any marketing and administrative costs associated with the operation and management of the Midland Entrepreneurial Challenge (the "*Administration Funds*"). MDC's payment of the Administration Funds shall not exceed a cumulative amount of SEVENTY-SEVEN THOUSAND, SIX HUNDRED AND SEVENTY-SEVEN and No/ 100 DOLLARS (\$77,677.00) over the term of this Agreement. MDC agrees to provide the Service Funds and Administration Funds (cumulatively referred to as the "*Funds*") subject to all conditions and restrictions contained in this Agreement. The payment of the Funds shall be on a cost-reimbursement basis, and shall be provided by MDC to UTPB upon MDC's receipt of a written request by UTPB. In conjunction with its written request for the Funds, UTPB shall submit invoices or statements demonstrating UTPB's payment of funds in support of UTPB's performance of the services described herein (the "*Supporting Documentation*"). The approval of the Supporting Documentation is subject to the sole and absolute discretion of MDC's Chairman. Notwithstanding any provision of this Agreement to the contrary, the Parties agree that it shall be in the sole and absolute discretion of MDC to reimburse UTPB for the services to be performed described herein depending on the rendered quality of said services and the quality of the Supporting Documentation, as determined by MDC. The Parties agree that this provision, in all of its aspects, is consistent with Texas Government Code § 791.011(e).

B. UTPB Services. UTPB shall use commercially reasonable efforts to provide those promotional services described in **Exhibit A**, which is attached hereto and incorporated herein for all purposes. UTPB shall coordinate with MDC's Executive Director regarding the design, nature, content, and implementation of said services to enable the advertising and promotional activities performed hereunder to be effective and efficient in achieving the purpose of this Agreement. UTPB shall require its vendors to provide detailed outlines for any marketing strategies to include dates, times, media platforms, and proofs. Additionally, UTPB agrees to oversee the operation and management of the Midland Entrepreneurial Challenge. Regarding the Midland Entrepreneurial Challenge, UTPB shall provide those services and duties described in **Exhibit B**, which is attached hereto and incorporated herein for all purposes.

C. UTPB Report. On or before August 31, 2022, UTPB shall provide MDC with a written report containing a detailed summary of 1) UTPB's efforts to promote new and expanded business enterprises within the City of Midland; and 2) the participants, qualifications, evaluation material, and results of the Midland Entrepreneurial Challenge.

III. INDEPENDENT CONTRACTOR

UTPB shall operate hereunder as an independent contractor and not as an officer, agent, servant, or employee of MDC. UTPB shall have exclusive control of, and the exclusive right to control, the details of the work to be performed hereunder and all personnel performing the same and shall be solely responsible for the acts and omissions of its officers, members, agents, employees or contractors. In no event shall any person participating in or performing any of UTPB's duties or responsibilities hereunder be considered an officer, agent, or employee of MDC. Further, it is specifically understood and agreed that nothing in this Agreement is intended or shall be construed as creating a "Community of Pecuniary Interest" or "An Equal Right of Control" which would give rise to vicarious liability. UTPB shall be an independent contractor under this Agreement and shall assume all the rights, obligations and liabilities, applicable to it as such independent contractor hereunder. MDC does not have the power to direct the order in which the work is done. MDC shall not have the right to control the means, methods or details of UTPB's work. UTPB shall assume exclusive responsibility for its work.

IV. TERM OF AGREEMENT

Upon execution by the Parties, this Agreement becomes effective August 25, 2021, and shall terminate on September 30, 2022, or when terminated by mutual agreement of the Parties, or when terminated as hereinafter provided.

V. INSURANCE

UTPB shall, at all times during the term of this Agreement, maintain and keep in full force and effect insurance in the following types and minimum amounts with companies authorized to do business in the State of Texas:

Commercial General Liability (including Contractual liability):

-Personal Injury:	\$1,000,000.00 per person
	\$1,000,000.00 per occurrence
-Property Damage:	\$100,000.00 per occurrence

Workers' Compensation: Statutory limits

Employers' Liability: \$500,000.00 per accident or occurrence

The Commercial General Liability shall be on a per project aggregate, including completed operations, and shall be on a claims-occurred basis. This insurance shall name MDC as an additional insured and waive subrogation in favor of MDC.

The Workers' Compensation coverage provided by UTPB shall inure to the benefit of employees injured during the course and scope of their employment by UTPB pursuant to this Agreement. The Workers' Compensation shall waive all rights of subrogation in favor of MDC.

All insurance required pursuant to this Agreement shall provide for a waiver of subrogation in favor of MDC. All insurance required pursuant to this Agreement, except for Workers' Compensation Insurance, shall name MDC as an additional insured on a claims occurred basis. MDC shall be provided the notice by UTPB's insurance provider not later than thirty (30) days prior to any reduction or termination of such coverage.

UTPB shall contractually require all contractors, subcontractors, and sub-subcontractors that work on any portion of the work that is the subject of this Agreement to obtain insurance coverage that meets or exceeds the policy requirements and minimum amounts specified herein. All contractors, subcontractors, and sub-subcontractors shall obtain insurance policies that provide blanket waivers of subrogation in favor of MDC and policies that name MDC as an additional insured on a claims occurred basis (except workers' compensation).

The Parties agree that, prior to the execution of the Agreement, UTPB shall provide one or more certificates of insurance specifically stating that these requirements have been met and subject to the approval of MDC. The parties also agree that this Agreement shall not become effective until the City Attorney's Office of the City of Midland, Texas, reviews and approves of all certificates of insurance required under this Agreement. MDC shall not be required to provide any insurance whatsoever pursuant to this Agreement.

UTPB certifies that the certificate of insurance provided as required herein complies with the requirements of Chapter 1811 of the Texas Insurance Code. UTPB shall not use an unapproved certificate of insurance or insert inappropriate language on a certificate. Compliance with state law is the sole responsibility of UTPB.

VI. GENERAL TERMS

A. Entire Agreement. This Agreement embodies the complete agreement of the Parties, superseding all oral or written, previous and contemporary agreements between the Parties relating to matters in this Agreement; and except as otherwise provided herein, this Agreement cannot be modified or amended without a written agreement of the Parties.

B. Termination. MDC may terminate this Agreement at will for any or no reason upon giving at least ninety (90) days' written notice to UTPB. The parties to this Agreement understand and agree that it is in MDC's sole and absolute discretion to cancel the Agreement during the term of the Agreement without penalty to MDC. UTPB has no expectation and have received no guarantees that this Agreement will not be terminated before the end of the Agreement term. The Parties have bargained for the flexibility of terminating this Agreement upon tender of the requisite notice at any time during the term of the Agreement. All work and services under the Agreement shall be suspended upon termination of the Agreement becoming effective.

C. Multiple Counterparts. This Agreement may be executed in one or more counterparts, each of which will be deemed an original.

D. Payments from Current Revenues. The payment of funds made by MDC for the performance of UTPB's services shall be paid from current revenues available to MDC.

E. Legal Construction. In case one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions hereof and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

F. Defenses. This Agreement is made pursuant to Chapter 791, Texas Government Code. It is agreed that, in the execution of this Agreement, neither Party waives any immunity or defense that would otherwise be available to it against third parties, or against claims arising from the exercise of governmental powers and function. This Agreement shall not be construed as a waiver regarding the issues of governmental immunity, sovereign immunity or qualified immunity.

G. Third-Party Beneficiary. MDC's approval of this Agreement does not create a third-party beneficiary. There is no third-party beneficiary to this Agreement. No person or entity who is not a Party to this Agreement shall have any third-party beneficiary or other rights hereunder.

H. Assignment. The Parties hereto shall not assign this Agreement, in whole or in part, any such assignment being void.

I. Governing Law and Venue. This Agreement shall be governed by the laws of the State of Texas. All performance and payment made pursuant to this Agreement shall be deemed to have occurred in Midland County, Texas. Exclusive, sole and mandatory venue for any claims, suits or any other action arising from or connected in any way to this Agreement or the performance of this Agreement shall be in Midland County, Texas. The obligations and undertakings of each of the Parties shall be deemed to have occurred in Midland County, Texas.

J. Release. **NOTWITHSTANDING ANY OTHER PROVISION CONTAINED HEREIN, UTPB HEREBY RELEASES, ACQUITS, RELINQUISHES AND FOREVER DISCHARGES MDC, MDC'S EMPLOYEES AND OFFICERS, FROM ANY AND ALL DEMANDS CLAIMS, DAMAGES, OR CAUSES OF ACTION OF ANY KIND WHATSOEVER WHICH UTPB HAS OR MIGHT HAVE IN THE FUTURE, INCLUDING BUT NOT LIMITED TO BREACH OF CONTRACT, QUANTUM MERUIT, CLAIMS UNDER THE DUE PROCESS AND TAKINGS CLAUSES OF THE TEXAS AND UNITED STATES CONSTITUTIONS, TORT CLAIMS, OR MDC'S NEGLIGENCE.**

K. Notices. All notices to either Party required under this Agreement shall be sent by certified U.S. mail, postage prepaid, addressed to such Party at its respective address shown below. All notices shall be deemed given on the date so deposited in the mail, unless otherwise provided herein. Either Party hereto may change the address below by sending written notice of such change to the other Party.

If to UTPB:

The University of Texas
Permian Basin
College of Business
Attn: CesarioValenzuela,
VP Business Affairs/CFO
4901 E. University Blvd
Odessa, Texas 79762

If to MDC:

Midland Development Corporation
Attn: Executive Director
200 N. Loraine Street, Suite 610

Midland Texas, 79701

[Signature Pages Follow]

The Parties have caused this Agreement to be executed by their duly authorized representatives on this ____ day of _____, 2021.

MIDLAND DEVELOPMENT
CORPORATION

Wesley Bownds, Chairman

ATTEST:

Berry Simpson, Secretary

THE UNIVERSITY OF TEXAS
PERMIAN BASIN

Cesario Valenzuela, VPAA/CFO

THE STATE OF TEXAS §

§

COUNTY OF _____ §

BEFORE ME, the undersigned authority, on this ___ day of _____ 2021, personally appeared _____ for the University of Texas Permian Basin, known to me to be the person and official whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same as the act and deed of said entity, for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the _____ day of _____, 2021.

Notary Public, State of Texas

Exhibit A

Promotional Services to be Provided by

The University of Texas Permian Basin

1. Branding the City of Midland for the purpose of developing new and expanded business enterprises in the new Midland Entrepreneurial Challenge website, brochure and media materials.
2. Promoting the Midland Entrepreneurial Challenge on the UTPB website.
3. Adding a link from the Midland Entrepreneurial Challenge website to the Midland Development Corporation's website.
4. Including a description and logo for the Midland Development Corporation in the Midland Entrepreneurial Challenge promotional materials, when feasible.
5. Including a reference to the Midland Entrepreneurial Challenge and the City of Midland's support of this new program in press releases and live or prerecorded media soundbites, when feasible.

Exhibit B

Included on Following Pages



THE UNIVERSITY OF TEXAS
PERMIAN BASIN



MIDLAND ENTREPRENEURIAL CHALLENGE

Dr. Ryan Peckham, Roden Fellow for Entrepreneurship

University of Texas Permian Basin

Mesa Building 2225

4901 E. University Blvd

Odessa, Texas 79762

Phone: 432-552-2175



THE UNIVERSITY OF TEXAS
PERMIAN BASIN

COLLEGE OF BUSINESS

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UT Permian Basin College of Business Overview

Introduction and Overview

The **UT Permian Basin College of Business** Entrepreneurship programs have fully invested in the future of Entrepreneurship in our community. Over the last year we have introduced the Blackstone Launchpad, a student driven entrepreneurship network funded by the Blackstone Charitable foundation, providing tools, mentorship and entrepreneurship opportunities for our students, regardless of their chosen major or college of study. We are aiming to open our state of the art Blackstone Launchpad and Entrepreneurship Physical space in the fall of 2022 that will include co-working facilities, sound and audio recording spaces, as well as a fabrication and innovation lab where prototypes can be created. With revamped and reintroduced Entrepreneurship Minor and Certificate options, we are meeting the needs of today's aspiring entrepreneurs, with applicable knowledge based materials. We have also worked over the past few months with the UT Austin IC2 institute to bring to life the Small.biz-XLR8 program in West Texas. This 10-week training program has run over the summer, providing more in depth knowledge to small business to help them thrive. We have 20 companies participating in this program.

Mission

Provide consulting, training and research to small businesses.

Vision

To be a leading economic development organization by empowering entrepreneurs.

Meet Our Team

The UT Permian Basin College of Business illustrates a team highly flexible and capable of adapting to various cultures, while providing cohesive expertise to solve key problems faced by local businesses. The process includes the development of business plans, financial projections, and risk analysis unique to the business. We provide advice to solve problems, create value, improve growth, and maximize business efficiency and profitability. The team is committed to staying relevant with the latest developments in our field of expertise, bring the latest knowledge and skills to support our clients. Our primary goal is to educate and instruct, partner during development of the business, build trust and advance business objectives.

Dr. Ryan Peckham, Business Consultant, Assistant Professor and Roden Fellow of Entrepreneurship
Ryan is an assistant professor of management and entrepreneurship within the College of Business at UTPB, having taught multiple management, finance, and entrepreneurship courses at the undergraduate and graduate levels. He is also a registered investment advisor (RIA) and has owned a

private investment firm for ten years. Previous to these roles, Dr. Peckham was VP of Business Development for Security Bank and worked with many small businesses across West Texas. He received his Doctorate of Business Administration from the University of Liverpool, England, United Kingdom, with a behavioral finance concentration.

Mrs. Taylor Novak, MBA, Project Coordinator, UTPB Entrepreneurship Programs Coordinator

Taylor has a varied background, ranging from her start in sales, where she worked for several business to business and business to consumer roles over five years, including a Fortune 500 Company. She then moved into higher education to explore her passion for helping young adults, where she has brought students personalized attention and real-world advice, as well as marketing and professionalism learning in the workplace that students can take with them after leaving the university setting. She completed her undergraduate degree in Hospitality and Tourism at Oklahoma State University and her Master of Business Administration degree at University of the Southwest, Hobbs, NM.

TBD, Project Coordinator/Consultant

The selected person for this position will have a degree in business with experience in entrepreneurship programs. They will be available for one-on-one meetings and advisement.

The Entrepreneurial Challenge

1.0 Introduction

The Midland Entrepreneurial Challenge continues to empower innovative ideas and strategies proven to be both community inspiring and financially lucrative. The value provided by the competition includes a detailed critique from the expertise of our judges, encapsulating the importance of developing the necessary objectives to achieve market strength. Throughout the competition entrepreneurs are forced to think critically about virtually every aspect of their business. Contestants are obligated to assess their level of detail that is often overlooked, while becoming open to new and valuable suggestions that defines both short/long-term outcomes.

1.1 Midland Economic Challenge funding

The Midland Entrepreneurial Challenge (MEC), which will be funded by the Midland Development Corporation (MDC) and partnered with the University of Texas Permian Basin (UTPB), is designed to assist entrepreneurs with expanding an existing business or starting a new one.

1.2 The Purpose

Each participant will gain a better understanding of how to develop and follow a realistic business plan and model to ensure a growing business. This undoubtedly will have a positive economic impact for Midland.

1.3 Orientations

Through several orientation seminars presented by UTPB, entrepreneurs and business owners who are interested in participating, will better understand the requirements of the competition.

1.4 The Benefits

Once qualified, all entrants will have access to business coaching, expertise, and other pertinent resources offered via UTPB. These one-on-one meetings will discuss strategy, assist with building financials and finalize business plans before they are submitted.

1.5. Award Monies

This fiscal year, the plan includes \$500,000 total available award money to be distributed up to \$100,000 to each selected winner(s) concluded from the deliberation and decision of our judges.

FY 2019: \$500,000 / 5 to 8 businesses = \$62,500 to \$100,000 approximately to each winner

2.0 Business Description

2.1. Midland Development Corporation

The idea to hold and fund a business plan competition in Midland, TX originated with the Midland Development Corporation in spring of 2017. Business competition of this nature have been held in Texas in the past. The research data and information has been gathered to mobilize the program came directly from the West Texas Enterprise Center in Amarillo, Texas, who has been successfully executing this type of event for over fifteen years. Midwestern State University in Wichita Falls, TX has been engaged with a business plan competition for the past ten years and has also provided information.

3.0. About the Challenge

3.1. The Objective

The objective of this program is provide another source of capital funding to business owners and entrepreneurs in Midland who might not be able to obtain the funding otherwise. The value participating in business plan process allows participants to gain a better understanding of how

to develop, build and grow strong businesses that will even further strengthen Midland’s economic condition and development.

3.2 Partnership

The funding will be provided by the Midland Development Corporation and the program administration, workshops, and business plan consultation will be provided by UTPB College of Business.

3.3 The Future

Each fiscal year, the amount of funding available overall will be increased. Therefore, more winners can be chosen or the award amount will increase per participant enabling them to leave a larger economic footprint on Midland. No cap will be placed on how much a business owner can receive, but funds must not exceed the request made in the business plan. However, the business owners may be awarded less than what is requested in the business plan. Below are estimates on how the judges may choose the winners:

- ✓ *FY 2019: \$500,000 / 5 to 8 businesses = \$62,500 to \$100,000 approximately to each winner*

4.0 Partnership

The **Entrepreneurial Challenge** opportunity is funded by the **Midland Development Corporation** and overseen by the UT Permian Basin College of Business. The program is a fully integrated program that provides another source of capital funding to commercialize business concepts. This program is specifically directed at both startups and/or existing business wanting to expand. In addition, it is purposely designed to foster community involvement and innovation by bringing local entrepreneurs and professionals together to continue the economic diversification of the City of Midland. The outcomes contribute to a community’s identity that preserves the unique character created by a vibrant small business community. Other benefits are the increased employment while keeping tax dollars close to home and improving the city as a result.

University of Texas Permian Basin College of Business provides knowledge, guidance, and a significant amount of value when preparing a strategic business plan, marketing strategies and financial projections to secure capital infusion. The applied benefits for participants include supportive workshops appropriate to scale a business, understanding organizational financials, intellectual property, exit strategies and social media marketing opportunities to grow and expand into a profitable market position.

The Plan for FY: 2021-2022

5.0 Guidelines (Contract Suggestions)

The newly developed guidelines ensure consistency and set standards with cohesive rules to protect the integrity of the program. The objective includes keeping the city brand values while safeguarding the opportunity to participating contestants. Additional suggestions protect the program and deliver necessary guidelines to ensure standards are enforced.

5.1 Proposed Guidelines for Midland Entrepreneurial Challenge

- ✓ The winning businesses must be headquartered in the City of Midland, in order to receive award monies.
- ✓ Winning businesses cannot sell or relocate the business outside city limits of Midland for a period of five years after receiving funding.
- ✓ Participants cannot be an immediate relative of administrative officials or judges or engaged in any other business partnerships with an administrative official or judge. All special circumstances will go under the review of the UTPB Lead Coordinator, who will make the final decision.
- ✓ Each participant in the challenge must become a client of the UTPB SBDC by completing the 641 SBA form.
- ✓ Award recipients must provide UTPB with economic impact data on time according to the Accountability section.
- ✓ Participants must have a credit score of at least 640 to participate. All special circumstances will be under review by the UTPB Lead Coordinator, who will make the final decision.
- ✓ Attendance is mandatory for all seminars throughout the competition unless excused by the UTPB Entrepreneurship Challenge Consultant.
- ✓ Past winners of the challenge cannot reenter the challenge for the same business for five years, however, if the past winner is in good standings with UTPB according to the Accountability section for a full three years, the winner may enter for a different business with approval from the UTPB Lead Coordinator.
- ✓ Past contestants who were not awarded any monies may reenter the following year.
- ✓ A participant is not allowed to participate in the challenge if he or she was convicted of a felony. UT Permian Basin will conduct background checks on all participants and the cost of the background check will be incorporated in the entry fee.

6.0 Basics of Receiving the Award Money

6.1 Payment method

In the event you are a recipient of the award money, the total awarded amount will be given in installments that will be distributed shortly after the completion of the challenge by UTPB, and be funded by Midland Development Corporation. The winning businesses must submit a W-9 form and UTPB New Vendor form to the program coordinator in order for funds to be dispersed. Checks will be mailed to the address listed. In addition, winners must:

- ✓ Be able to provide proof that the business headquarters is in the **city of Midland in order to receive** money.
- ✓ Show proof of a **“business account”** to deposit the monies. You must keep all personal purchases in a separate bank account.

6.2 Award Monies

Winners will receive their awarded monies from the challenge in installments. In order for a winner to receive an installment, they must provide invoices that are consistent with the strategy stated in the business plan. Those invoices will be approved or rejected by the UTPB MEC Program Coordinator. If approved, a check for the total amount of the approved invoices will be distributed by UTPB and mailed to the winner’s address that was submitted on the UTPB New Vendor Form. In the event that the winner changes his or her mailing address after submission of the UTPB New Vendor Form, it is the responsibility of the winner to notify the UTPB MEC Program Coordinator of the change.

After an installment has been issued to a winner, they will not be able to request additional funds until that winner provides receipts for the past approved invoices to be audited by the UTPB MEC Program Coordinator. This process will be repeated until the total award money has been distributed.

6.3 Installments

In the event that a winner receives an installment and does not spend the money in a specific amount of time determined by the UTPB MEC Program Coordinator, they will be required to give the money back to UTPB for holding. If a winner spends the approved installment on anything other than the approved invoices, without consent from the UTPB MEC Program Coordinator, that winner will be in violation of the terms and conditions of the challenge and all monies must be paid back to the Midland Development Corporation through UTPB, and the winner will be banned from any future business challenges in which UTPB is involved.

6.4 Financing

A challenge participant is allowed to acquire bank financing or other investor financing before the completion of the competition with the plan to pay off or make payments on those loans

with the anticipated award monies from the challenge. These plans need to be addressed in the business plan and/or approved by the UTPB MEC Program Coordinator before the funds are obtained and UTPB must receive a copy of the loan documents to keep on record. University of Texas Permian Basin, Midland Development Corporation, the judges, or any other entity involved with the Midland Entrepreneurial Challenge are not responsible for repaying the loans in the event the business does not receive funds from the challenge.

6.5 Seek Accounting Advice

Award money **“IS”** counted as taxable income. Please confide in a CPA for accounting advice regarding the funds.

7.0 Accountability

The newly developed guidelines ensure consistency, set standards with cohesive rules to protect the integrity of the program.

7.1 Award Monies Expenditures

The award money received from the challenge must only be spent on the items articulated in the business plan. The Midland Development Corporation also wants to track the benefit to the community. In order for this to happen, there are requirements you must follow. For the first 90 days after receiving the first installment of the award monies:

- ✓ Contestants must email income statement and balance statements (and loan payments receipts if applicable) **monthly** to the MEC Program Coordinator at UTPB. As long as the business is following the business plan, we will ask for no additional information.
- ✓ If you use the award money for equity in a loan, you must provide a copy of the loan agreement to the MEC Program Coordinator at UTPB along with payment receipts.

7.2 Meeting the Requirements

If you meet all the requirements during the first 90 days, for the remainder of the first year and the entirety of the second year, you are required to:

- ✓ Email P&L and balance statements (and loan payments receipts if applicable) **quarterly** to the MEC Program Coordinator at UTPB. As long as the business is following the business plan, we will ask for no additional information.
- ✓ If the business is not meeting goals, UTPB will work to reassess financial projections and make adjustments. New goals and strategies will be set to get the business back on track. Contestants will require to report in the same manner within the first 90 days.

7.3 Business Audit

If you met all the requirements through the first and second year, for the third year you are required to:

- ✓ Email P&L and balance statements (and loan payments receipts if applicable) **biannually** to the MEC Program Coordinator at UTPB.

7.4 Business Audit Continuation

If you meet all the requirements through the first three years, for the fourth and fifth year, you are required to:

- ✓ Email P&L and balance statements (and loan payment receipts if applicable) to the MEC Program Coordinator at UTPB **at the end of the year**.

7.5 Midland Presentation

At any time during the five year period after receiving award monies from the Midland Entrepreneurial Challenge, the Midland Development Corporation Board of Directors may request a “**State of your Business**” presentation to the Midland Development Corporation Board of Directors monthly meeting. If a presentation is requested, the business owner(s) is highly encouraged to attend.

7.6 Violation of Terms

If the business fails to adhere to the requirements listed in Guidelines and Accountability, the business will be in violation of the terms of the *Midland Entrepreneurial Challenge* and all monies received from the competition will have to be paid back to the Midland Development Corporation. UTPB will act as a liaison to recover the funds. If the business does not have the total amount available to reimburse at one time, a payment plan with interest will be arranged for the balance owed. The interest rate will be set at the SBA current loan rate plus prime. The length of the repayment plan will be determined by the Midland City Attorney’s office. In addition to paying back the awarded monies, all past winners that violate the terms and conditions of the competition will not be allowed to participate in any future competitions involving UTPB.

8.0 Orientation Directions

8.1 Orientation

Orientations will begin as illustrated in section **13.0 Schedule of Events**. Three orientations, two in the evening and one in the afternoon will be offered.

8.2 Agreements

After attending at least one orientation, attendees that wish to join the challenge must pay the non-refundable entry fee, signed confidentiality agreement, and a signed winner's agreement to the UTPB MEC Program Coordinator by the date of the first seminar listed in the section **13.0 Schedule of Events**.

9.0. Business Challenge Terms

9.1. Submit Agreement

Must submit signed winners agreement by the date of the first seminar.

9.2. Submit confidentiality

Must submit signed confidentiality agreement by the date of the first seminar.

9.3. Submit Credit Report

Must submit a credit report for each owner of the business by the date of the first seminar. The owners' names must be clear on the document and the source of the credit score report must be deemed acceptable by the UTPB MEC Program Coordinator. Credit score must be 640 or higher in order to participate.

9.4. Payment

Must pay the non-refundable entry fee by the date of the first seminar. The fee will be determined by UTPB at a later date.

9.5. Submit Investor Fact Sheet

Must submit Investor Fact Sheet on Midlandentrepreneurialchallenge.com

9.6. Meeting Appointments

Must schedule at least two face-to-face one-on-one coaching sessions with a UTPB representative in order for business plan to be accepted.

9.7. Submit Business Plan

Must submit the business plan on Midlandentrepreneurialchallenge.com website.

9.8. Failure to adhere to the terms

Failure to adhere to the Business Challenge Terms could result in disqualification from the challenge.

10.0 Selection of Judges

In an effort to select the best judges for the competition, UTPB seeks individuals that have developed and owned a major business within the Midland community. Judges should be industry-related experts, someone with a specific market niche, previous winner, someone with a prestigious reputation, or individuals with a high-level experience and legitimacy to the program.

To the extent UTPB designates an “Eligible Judge”, the Eligible Person is stated qualified to participate with a background of 10 or more years of experience in business and/or qualifications consisting of the following;

- Business Owner
- Local Bank Lender
- Community Leader

To the extent of “**NOT**” being qualified includes any “Person” with interrelationships relevant to board members of the Midland Development Corporation and all staff in representing or influencing the challenge outcome.

10.1 Judging of the Competition

The process of judging incorporates a distinctive competence to recognize a disruptive or unique business concept. Contestants will be required to demonstrate a clear market need and a viable method to supply the demand. Characteristically, candidates are evaluated on the ability to develop the company and position to manage risks. Other assessments include the ability to have a realistic potential to succeed and fully understanding the financial requirements. In addition, employment is evaluated as growth by determining the number of full-time or FTE within three years to five years. In the business plan, judges will validate funding, cash requirements, determine cost structures and revenue streams. In the final stage, contestants are evaluated on how well the team persuasively presents the plan and provide a logical overview.

10.2 Judging Criteria

First Round: Investor Fact Sheet

Second Round: Business Plan

• Viability	15	• Business	15
• Team and Partners	15	• Product/Service	15
• Financial	15	• Marketing	15
• Growth	15	• Management	15
• Strategy	15	• New Job Creation	15
• Competition	10	• New Revenue for City	15
• <u>Advancement</u>	<u>15</u>	• <u>Watch to see Pitch</u>	<u>10</u>
Total	100	Total	100

Third Round: Pitch in Front of Judges

- Effective communication of the business plan, validation of funding request, and support for job creation. 1-20
 - Judges questions are answered thoroughly and effectively. 1-20
 - Knowledge, expertise, and ability of entrepreneur. 1-20
 - Commercial viability of the venture. 1-20
 - Overall effectiveness and quality of presentation. 1-20
- | | |
|-------|-----|
| Total | 100 |
|-------|-----|

10.3 Biggest Hurdles for the Judges

- ✓ Marketing activities with no strategic focus (i.e. website – launch and take orders.)
- ✓ No competitive analysis
- ✓ Unrealistic sales expectations
- ✓ Financials that appear to be “pulled out of the air”
- ✓ Lack of job creation details

10.4 Judges Awarding Candidates

The program will include three to five independent judges chosen by UTPB, prior to the start of the Midland Entrepreneurial Challenge. Judges will remain anonymous to the participants until the final (live) pitch. Judges are required to sign a confidentiality agreements with each participating business. The judges will read and score the Investor Fact Sheet to determine who is going forward to the next round. The following round, the judges will read and score the strategic business plan to determine who will move to the last round. The final round, the judges will appear in person to listen to each finalist business pitch with the ability to questions to each contestant. Once the round is completed, judges will record their scores after deliberating. The UTPB MEC Program Coordinator will calculate the average scores and present them back to the judges. The judges will then decide where they will draw the line in the rankings and how much money each winner will receive based on the \$500,000 provided by Midland Development Corporation.

10.5 Structure of Pitch

- ✓ Each finalist will receive a 30-minute block. Each block will consist of set up, presentation, question and answer with the judges, and clean up.
- ✓ The presentation order will be determined at random. All the finalists' names will be placed in a random name picker and assigned a time block.
- ✓ Only the business presenting, the judges, and the UTPB consultants are allowed in the room during the pitch.
- ✓ A one-hour break will be given to the judges half way through the pitch presentations.
- ✓ After all the pitches have been presented, the judges will score each business. The scores will be averaged and ranked by the UTPB MEC Program Coordinator and presented back to the judges.
- ✓ The judges will determine how many of the top average scores will be declared winners and how much of the \$500,000 each winner will receive.
- ✓ Judges will not award more money than is requested by a business, however, less money can be awarded.
- ✓ The winners and losers will be informed of the results the next business day and the winners will be invited to the award ceremony.

11.0 Business Plan Outline & Entrants Focus

11.1 The Business

- Legal structure and ownership
- Industry, niche, or specialization
- Key goals
- Why does the business exist?
- Prior entrepreneurship and management experience

11.3 Product/Service

- Description of each product/service
- What problem will it solve?
- How does it benefit customers?

11.4 Marketing

- Target market
- Competitive environment
- Distribution strategy
- Pricing strategy
- Promotion strategy
- Positioning strategy

11.5 Management

- Operation systems and process
- Current employees
- Job creation
- Financials
- Utilization of MDC funds

12.0 Workshops

The UTPB provided workshops are essential for entrepreneurs to learn a particular subject, and initiatives to increase performance and longevity. Attending workshops often assist business owners to achieve success by providing new skills and methods of practice. The workshops selected for the Entrepreneurial Challenge will include;

12.1 QuickBooks course(s)

- Enter and track – Vendors, Customers, Employees, and banking requirements.

12.2 Type of Business Loans

- Line of Credit, Installment loans, Balloon Loans, Interim Loans, Letter of Credit
- Interim Loans, SBA Loans, Secured and Unsecured Loans, and many more

12.3 Marketing through social networks, website, and other types of media

- Develop a plan, create a social media channel and create a content library, scheduling, analytics, and posting consistency, and website development.

12.4 Developing the right business model

- Develop the cohesive vision, roadmap that analyzes market strategies, how revenue will be generated, acquiring investors and establishing partnerships.

12.5 Fact Sheet presentation emphasizing key points of the business

- Answer basic questions about the business, describe the products and services, and the vision of the business in a concise terms in a well-organized format
- Emphasize key performance indicators

12.6 Business Narrative – defining objectives, map strategies, and describing goals

- Focus on the specific steps and ideas to succeed, and also how to achieve both their short/long-term objectives

12.7 Emerging Financials Projections, future revenues and expenses

- Forecast sales, operational cost, cash-flow, income, assets and liabilities, and breakeven analysis

12.8 Methods applied to establish interest that enables conversation

- Stimulating interest with major points, using the right amount of slides, establishing the need, developing the message map, and defining the essentials derived from research.

The new fiscal year provides opportunity to apply more workshops to raise immediate awareness necessary to minimize operational budgets, capitalize on a target marketing strategy, and effectively factor in challenges and pitfalls. Within each topic, several diverse workshops are offered throughout

the year best suited for the business owner to achieve their objectives. Workshops are led by other successful business owners, skilled UTPB faculty and staff, and professionals such as accountants and tax specialists. These educational offerings help small business owners tackle many of the issues associated to the beginning of the operation.

13.0 Schedule Events

Date	Time	Topic
TBD	6 – 7:30 PM	Orientation
TBD	Noon – 1 PM	Orientation
TBD	6 – 7:30 PM	Orientation
TBD	6 – 7:30 PM	Brainstorming & Business Model Canvas Seminar
TBD	6 PM	Nondisclosure Agreements to be signed by Judges
TBD	6 – 7:30 PM	Fact Sheet Seminar
TBD	6 PM	Fact Sheets are due
TBD	6 – 7:30 PM	Business Plan Seminar
TBD	6 PM	Fact Sheets are sent to Judges
TBD	6 – 8 PM	Marketing Seminar
TBD	6 – 8 PM	QuickBooks Online Beginner Training Class
TBD	6 PM	Fact Sheet Score Cards are received from Judges
TBD	6 – 8 PM	QuickBooks Online Intermediate Training Class
TBD	6 PM	Business Plans are due
TBD	6 PM	Business Plans are sent to Judges
TBD	6 – 8 PM	Lender Seminar
TBD	6 – 7:30 PM	Pitch seminar
TBD	6 PM	Business Plan Score Card are received from Judges
TBD	10 AM – 4 PM	Pitch Presentation to Judges
TBD	7 – 9 PM	Award Ceremony

MEC Program Coordinator

14.0 Responsibilities to the Challenge

The *MEC Program Coordinator* will be the main point person for the challenge. This consultant will deliver comprehension developments of emerging business models, advances priorities to meet expectations, and guides the perspective owner(s) to undertake competitive differentiation and transformation of market challenges into a strategic business plan. Contestants can rely on assistance with critical business issues, how to thrive in an evolving marketplace and receive necessary guidance and preparation for each phase of the challenge. Our core solutions are customized for each participant specific to industry, needs and scale.

The responsibilities include analysis and evaluation of each contestant's requirements and business goals while recommending appropriate strategies and logistics to increase business opportunities. During the competition, the position requires identifying functional requirements, distribution paths and provide analytical suggestions appropriate to developing business models. The progression requires financial analyses collectively with a detail overview to advocate improvements and efficiencies while integrating best practices to develop objectives to achieve expected goals.

Contestants are routinely challenged to analyze and respond to the following topics

- Is the market big enough to ensure growth?
- Describe the company's major pitfalls to sustain market presence.
- Are your capital requirements realistic?
- What are associated risks?
- Are there ways to pivot the approach to market?
- How big is your market & who is going to buy?

The strategic business plan requires participants to respond to these difficult questions that require immediate answers to configure the hypothesis. The valuable aspect builds on informed decisions about how the entrepreneur should invest their time to generate success.

Other responsibilities of the coordinator(s) include speaking on behalf of the Challenge, working directly with a marketing firm to create brand driven booklets, website updates, and schedule meetings with participants, judges, and coordinate plans for activities throughout the challenge and award event.

Marketing the Opportunity

15.0 Increase participation

Our efforts are focused on brand awareness that promotes community opportunity. The success of our marketing campaigns are influenced by a strong strategy outlining both short/long-term objectives, timelines and specific channels to jumpstart awareness to increase participation.

15.1 Website

We will work with the web developer to reinvigorate the current version of the Entrepreneurial Challenge Website to increase visualization of the opportunity, improve the delivery of content and advance the brand of the City of Midland. The newly re-design website will offer many

benefits including informing prospects of the requirement; increase interest and enhance a professional “brand,” while improving customer service.

15.2 Brochures

Brochures provide the necessary details about the Challenge making them useful for many purposes. The brochure is shared with potential candidates, and provides the opportunity to explain the process, development and the outcome in promoting the opportunity. We aim to make a brochure in both English and Spanish.

15.3 Television

To grow interest and optimize marketing expenditures, this platform provides exceptional speed-to-market and can scale easily before, during and advocate the outcome. The motivation exemplifies the city’s support, branding of the program and provides the necessary integrity to promote the program. The platform provides interaction, personalization of the message while translating relevant information to increase community interest.

15.4 Radio

Radio enables the ability to target effectively to our audience because it's 100% audio-based. A radio ad is cost-efficient, targeted, easy to track, and effective without visualization of the brand. Research illustrates that each advertising dollar spent generates an average sales return of six dollars from the listeners 28 day after hearing the ad.

15.5 Newspaper

Utilizing our local newspaper triples ad campaign effectiveness along with website location to deliver pertinent information to potential contestants. The message in print increases the visibility of the opportunity and investment by three times.

15.6 News Release

The delivery of a press release is not an advertisement; it’s a way to promote the program and the opportunity to engage the community. The benefit is our ability to target audiences of other journalists with a well-designed message to speak to them specifically while promoting the program in addition to the attached advertisement of the benefit for community participation.

15.7 Facebook Ads/Social Media

Facebook ads are at the core of targeting our community for startups and newly developed businesses. Facebook offers the ability to advertise by age, interests, behavior, and especially within the local area.

15.8 Digital Ad Campaigns

The main advantage of digital marketing is the ability to target an audience in a cost-effective and measurable method. Other digital marketing advantages include increasing brand loyalty and driving the opportunity to create online interest.

Entrepreneurial Challenge Proposal (FY: 2021-2022)

Marketing

Our efforts are focus on growing and diversifying the City of Midland, providing new businesses, additional jobs and boosting tax revenue.

Introduction

While applying current marketing campaigns to attract contestants two months prior to the competition, by using various channels to promote and provide information relevant to promoting the event, our past outcome included 21 candidates to begin the competition, resulting in six winners. From the 15 contestants that did not make the finals, seven contestants (47 percent of the 15) continued their concept through hiring, add capital or opening a storefront.

Owners Name	Company Name	Process
Arceneaux, Britney	Flying Cow	Have not hired and are still working out of their home. They have still not taken any loans and only used profits to sustain their business.
Cole, Jaime	JT Properties and Staging	Hired 3 full-time employees, and will seek finance in the near future.
Gutierrez, Alma	Queen Bee Paeteria	No hires, and no recent financing, but the company continues to remains profitable.
Hearn, J.P.	Fountainville Creamery	Does not want to release information, but they are doing extremely well and currently growing.
Holguin, Dustin	Holguin Media	Will soon be hiring, and seeking necessary funding to sustain growth. Pivoted to servicing medical practices instead of car dealerships and doing well.
McFarlane, Debbie	Spotless Paws & Claws	No hires, no growth, no funding. Looking for social media help from Enactus group (campus student group) to begin developing a website and social media strategies.
McLelland, Maribel	Eagle's Shadow Trading Post	Has not received financing or hired any employees. Waiting for developer to complete construction on shopping center to rent space to begin their business.

Marketing Proposal

UTPB proposes to keep the same amount of advertising dollars from FY 2019-2020 to influence additional contestants, while advancing the message to inspire community interest and to drive the opportunity of starting a business in Midland. This awareness enables additional contestants with a probability of these businesses to continue to receive capital infusion, create jobs, and build diversify without the reliance of award money. The additional advertisement improves awareness and direct relationships with our target market, while personalizing the opportunity to increase a connection to the challenge. The benefits include increasing visibility and recognition of the opportunity, developing the audience, and providing the information.

Current Media Partners (Proposal)

TBD

Midland Entrepreneurial Challenge

OVERVIEW: Provide marketing and advertising services to support the 2021-2022 Midland Entrepreneurial Challenge.

Website: TBD

The utilization of advertising placement dollars and described channels are illustrated specifically for this event below:

Project	Description	Pricing
Website Update	Provide minor updates to existing website	\$4,000
Brochure Design & Printing	Design of new brochure. Estimate includes printing of 500.	\$2,750
Television Production	Includes script, voice over talent, graphics for a 30-second spot and a 4-second spot ID to promote the orientation sessions	\$4,500
Television Placement	10-Week Television Buy - Network & Cable	\$15,000
Social Media Development & Management	Set up social media accounts and manage posts/boosts to promote the orientation. Post schedule will also include highlights on winners after awards ceremony.	\$4,000
Social Media AD Campaign	Run targeted ads on Facebook to promote the challenge to Midland entrepreneurs.	\$2,500
Digital Campaign	Digital ad campaign targeted to Midland entrepreneurs. Ads will be targeted based upon behaviors, keyword searches, and physical locations. All ads will drive back to the Challenge's website.	\$3,500
Award Invitations	Design and printing of award ceremony invitations. Includes printing of 500 postcards.	\$1,250
Banners/Pull Screen	Includes design and printing of one pull screen plus hardware.	\$1,250
Coordination/Consultation	Coordination of all projects throughout the course of the orientations and awards	\$2,500
Total:		\$41,295

Terms: "Current Media Partner" requires a 50% down payment and assets to be provided before we begin work. This proposal is an estimate, not a fixed bid. Remainder will be due prior to delivery of this

project. Estimate does not include out-of-pocket expenses including travel and other purchases. This estimate will be valid for 30 days. Estimate may be +/- 10%.

Marketing Budget Suggestion

FY: 2017-2018	FY: 2018-2019	FY 2021-2022
\$30,000.00	\$41,295.00	\$42,000.00

MEC Program Coordinators

Our MEC Program Coordinator(s) organizes and executes venture developments on behalf of our clients according to specific requirements. Meeting with assigned clients when needed and perform an initial assessment of a problematic situation.

Clients are assisted in reforming their operations and supporting their business by providing intuitive guidance throughout the strategic planning process to include financial projections, and loan types and availability. Consultants will also undertake projects on behalf of the client’s business when it lacks resources to perform them in-house. The assigned consultant has first and foremost a broad knowledge of the many facets of business that include competitive forces model, value chain models, synergies, core competencies and network-based strategies. The ideal candidate will also possess great problem-solving skills to provide solutions and recommendations that will increase profitability and efficiency. In referencing advertising dollars, the goal is to contribute to the contestants’ long lasting success to enable a long-term relationship that expands our reputation into the community.

Business Challenge Consultant Budget Suggestion

FY: 2017-2018	FY: 2018-2019	FY 2021-2022
\$22,900.00 FT Salary + \$5,954.00 Fringe Benefits	\$25,700.00 FT Salary + \$6,682.00 Fringe Benefits	\$29,438.00 PT Salary + \$2,944.00 Fringe Benefits
\$28,854	\$32,382	\$32,382

Awards Ceremony

The ceremony provides a chance for celebration and reflection of the commitment among our contestants, recognition of the devotion of our community judges and appreciation of the opportunity provided by Midland Development Corporation. This platform allows us to discuss the importance of their business in the community, and the achievement of the person being awarded. Gathering and sharing experiences is a very powerful means of encouragement. The first year, there were 20 people at the ceremony, and the last ceremony had a significant increase for a total 80 people, illustrating a

300 percent growth. Many attended including family of our contestants, MDC board members, city officials, UTPB faculty and staff.

FY: 2017-2018	FY: 2018-2019	FY: 2021-2022
\$1,500.00	\$2,000.00	\$3,500.00

FY: 2017-2018

Annual Budget for Program FY 2017-2018

Capital Funding Grant	\$350,000.00 (MDC award)
Administrative Expenses	\$30,854.00 (Operating Funds)
Advertising/Marketing (Red Pixel)	\$15,000.00 + \$15,000.00 = \$30,000.00
Total	\$395,854.00

Administrative Expenses

Business Consultant	\$22,900.00 (Full-time salary \$45,800)
Fringe Benefits	\$5,954.00 (26% of Salary)
Awards Ceremony	\$1,500.00 (Banquet, Music, and Food)
Miscellaneous	\$500.00
Total:	\$30,540.00

FY: 2018-2019

Annual Budget for Program FY 2018-2019

Capital Funding Grant	\$500,000.00 (MDC award)
Administrative Expenses (Proposing)	\$34,882.00 (Operating Funds)
Advertising/Marketing (Red Pixel)	\$41,295.00 (Current Media Partners)
Total	\$576,177.00

Administrative Expenses

Business Consultant (Master's Degree)	\$25,700.00 (Full-time salary \$51,400)
Fringe Benefits	\$6,682.00 (26% of Salary)
Awards Ceremony	\$2,000.00 (Banquet, Music, Food and Dessert)
Miscellaneous	\$500.00
Total:	\$34,882.00

FY: 2021-2022

Annual Budget for Program FY 2021-2022 (Proposing)

Capital Funding Grant	\$500,000.00 (MDC award)
Administrative Expenses (Proposing)	\$36,382.00 (UTPB Operating Expense)
Advertising/Marketing (TBD Agency)	\$41,295.00 (Current Media Partners)
Grand Total	\$577,677.00

Administrative Expenses Breakdown (Proposing)

Business Consultant (Master's Degree)	\$29,438.00
Fringe Benefits	\$2,944 (10% of PT Salary)
Awards Ceremony	\$3,500.00 (Banquet, Music, Food, and Dessert)
Miscellaneous	\$500.00
Total:	\$36,382.00

Higher Orbits Promotional Agreement



Midland Independent School District

OFFICE OF THE SUPERINTENDENT

615 W. Missouri Avenue, Midland, Texas 79701
Office: 432.240.1002 | www.midlandisd.net

**SCHOOL BOARD
OF TRUSTEES**

July 29, 2021

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District 4

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To Whom it May Concern:

Midland Independent School District fully supports Higher Orbits Go For Launch! in collaboration with the Midland Education Foundation and the Midland Development Corporation. Go For Launch! is a multiday program that uses Space Exploration as a platform to launch student involvement in Science, Technology, Engineering and Math, Art, teamwork, communication and leadership. This program was developed to reach high school-aged students. We are thrilled to partner with the MDC, private sponsors, and the Education Foundation to fund Higher Orbits Go For Launch! programming.

We are very excited to work with Higher Orbits and bring a program to our community that gives students the experience and skills that can lead to success in any venture that requires imagination, leadership, teamwork, and problem-solving skills.

Thank you for the opportunity to express our support for this program. Please contact us if you have any questions.

Respectfully,

Angélica Ramsey, Ed.D.
Superintendent of Schools
Midland Independent School District

RESOLUTION NO. _____

RESOLUTION AUTHORIZING THE EXECUTION OF A PROMOTIONAL AGREEMENT WITH HIGHER ORBITS TO ADVERTISE AND PUBLICIZE THE CITY OF MIDLAND FOR THE PURPOSE OF DEVELOPING NEW AND EXPANDED BUSINESS ENTERPRISES

WHEREAS, the Midland Development Corporation (the “MDC”) is authorized to expend promotional funds in order to advertise and publicize the City of Midland (the “City”) for the purpose of developing new and expanded business enterprises pursuant to Section 504.105 of the Texas Local Government Code; and

WHEREAS, the Board of Directors finds that a promotional agreement with Higher Orbits that provides for the expenditure of promotional funds to advertise and publicize the City for the purpose of developing new and expanded business enterprises, will thereby enhance and promote economic development within the City and the State of Texas; and

WHEREAS, the Board of Directors finds it to be in the public interest to authorize the execution of a promotional agreement with Higher Orbits for the purposes described herein;

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE MIDLAND DEVELOPMENT CORPORATION:

SECTION ONE. That the Chairman and Secretary are hereby authorized and directed to execute and attest, respectively, on behalf of the Midland Development Corporation, a promotional agreement with Higher Orbits. Said agreement being in a form substantially similar to Exhibit A, which is attached hereto and incorporated herein for all purposes.

SECTION TWO. That the City Comptroller of the City of Midland is hereby authorized and directed to pay Higher Orbits in accordance with the terms of said agreement from funds available in the Midland Development Corporation Promotions Project (800705) upon receipt of proper invoices or statements.

On motion of Director _____, seconded by Director _____, the above and foregoing resolution was adopted by the Board of Directors of the Midland

Development Corporation at a regular meeting on the _____ day of _____, AD,
2021, by the following vote:

Directors voting "AYE":

Directors voting "NAY":

WESLEY BOWNDS,
Chairman of the Midland
Development Corporation

ATTEST:

BERRY SIMPSON,
Secretary for the Midland
Development Corporation

APPROVED AS TO FORM ONLY:

JOHN OHNEMILLER,
Attorney for the Midland
Development Corporation

PROMOTIONAL AGREEMENT

THIS PROMOTIONAL AGREEMENT (“*Agreement*”) is made and effective the 24th day of August, 2021, by and between the MIDLAND DEVELOPMENT CORPORATION (“*MDC*”), an economic development corporation existing under the authority of Chapter of 504 of the Texas Local Government Code, and HIGHER ORBITS (“*HIGHER ORBITS*”). In this Agreement, MDC and HIGHER ORBITS are sometimes individually referred to as a “*Party*” and collectively referred to as the “*Parties*.”

WITNESSETH:

WHEREAS, MDC is authorized to expend promotional funds in order to advertise or publicize the City of Midland for the purpose of developing new and expanded business enterprises pursuant to Section 504.105 of the Texas Local Government Code;

WHEREAS, MDC’s expenditure of promotional funds for the advertising and promotional services described herein will advertise and publicize the City of Midland for the purpose of developing new and expanded business enterprises, and will thereby enhance and promote economic development within the City of Midland; and

WHEREAS, it is the desire of the Parties to combine their efforts for the purpose of promoting the City of Midland and HIGHER ORBITS by executing the *Go for Launch!* Program in Midland to engage high school students about aerospace and STEM, and excite Midland students about the possibilities of a career in aerospace;

NOW, THEREFORE, in consideration of the covenants and conditions stated herein, and in consideration of the mutual benefits which will accrue to the Parties, as well as the general citizenry of the City of Midland, the Parties have agreed and do hereby agree as follows:

I. PURPOSE

The purpose of this Agreement is to state the terms and conditions under which HIGHER ORBITS shall perform advertising and promotional services for MDC for the purpose of developing new and expanded business enterprises in the City of Midland and thereby enhance and promote economic development within the City of Midland.

II. OBLIGATIONS OF THE PARTIES

A. MDC Payment. MDC agrees to make one (1) lump-sum payment to ENTITY in the amount of \$57,500.00, with said payment to be made on or before September 30, 2021. The total funds provided by MDC under this Agreement shall not exceed \$57,500.00. The Parties covenant and agree that all funds provided by MDC under this Agreement are in exchange for HIGHER ORBITS’ advertising and promotional services as set forth herein.

B. Entity Services. HIGHER ORBITS shall use commercially reasonable efforts to provide those services described in Exhibit A, which is attached hereto and incorporated herein for all purposes. HIGHER ORBITS shall perform all services in a workmanlike manner. HIGHER ORBITS shall coordinate with MDC’s Executive Director regarding the design, nature, content,

Exhibit A

and implementation of the services to enable the advertising and promotional activities performed hereunder to be effective and efficient in achieving the purpose of this Agreement.

C. Entity Report. During the term of this Agreement, at a time and place mutually agreed to by the Parties, HIGHER ORBITS shall provide MDC with a report or presentation containing a detailed summary of HIGHER ORBITS' efforts to promote new and expanded business enterprises within the City of Midland.

III. INDEPENDENT CONTRACTOR

HIGHER ORBITS shall operate hereunder as an independent contractor and not as an officer, agent, servant, or employee of MDC. HIGHER ORBITS shall have exclusive control of, and the exclusive right to control, the details of the work to be performed hereunder and all personnel performing the same, and shall be solely responsible for the acts and omissions of its officers, members, agents, employees or contractors. In no event shall any person participating in or performing any of HIGHER ORBITS' duties or responsibilities hereunder be considered an officer, agent, or employee of MDC. Further, it is specifically understood and agreed that nothing in this Agreement is intended or shall be construed as creating a "Community of Pecuniary Interest" or "An Equal Right of Control," which would give rise to vicarious liability. HIGHER ORBITS shall be an independent contractor under this Agreement and shall assume all the rights, obligations and liabilities, applicable to it as such independent contractor hereunder. MDC does not have the power to direct the order in which the work is done. MDC shall not have the right to control the means, methods or details of HIGHER ORBITS' work. HIGHER ORBITS shall assume exclusive responsibility for its work.

IV. TERM OF AGREEMENT

Upon execution by the Parties, this Agreement becomes effective August 24, 2021, and shall terminate on July 31, 2022, or when terminated by mutual agreement of the Parties, or when terminated as hereinafter provided.

V. GENERAL TERMS

A. Entire Agreement. This Agreement embodies the complete agreement of the Parties, superseding all oral or written, previous and contemporary agreements between the Parties relating to matters in this Agreement; and except as otherwise provided herein, this Agreement cannot be modified or amended without a written agreement of the Parties.

B. Termination. MDC may terminate this Agreement at will for any or no reason upon giving at least ninety (90) days' written notice to HIGHER ORBITS. The parties to this Agreement understand and agree that it is in MDC's sole and absolute discretion to cancel the Agreement during the term of the Agreement without penalty to MDC. HIGHER ORBITS has no expectation and has received no guarantees that this Agreement will not be terminated before the end of the Agreement term. The Parties have bargained for the flexibility of terminating this Agreement upon tender of the requisite notice at any time during the term of the Agreement. All work and services under the Agreement shall be suspended upon termination of the Agreement becoming effective.

C. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument.

D. Legal Construction. In case one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions hereof and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

E. Notices. All notices to either Party required under this Agreement shall be sent by certified U.S. mail, postage prepaid, addressed to such Party at its respective address shown below. All notices shall be deemed given on the date so deposited in the mail, unless otherwise provided herein. Either Party hereto may change the address below by sending written notice of such change to the other Party.

If to MDC:

Executive Director
Midland Development Corp.
200 N. Loraine St., Suite 610
Midland, Texas 79701

If to HIGHER ORBITS:

Michelle Lucas
Higher Orbits
PO Box 4092
Leesburg, VA 20177

F. Assignment. This Agreement shall be binding upon the Parties and their successors and assigns. This Agreement may not be assigned by HIGHER ORBITS without the prior written consent of MDC.

G. Release. NOTWITHSTANDING ANY OTHER PROVISION CONTAINED HEREIN, HIGHER ORBITS HEREBY RELEASES, ACQUITS, RELINQUISHES AND FOREVER DISCHARGES MDC, MDC'S EMPLOYEES AND OFFICERS, FROM ANY AND ALL DEMANDS CLAIMS, DAMAGES, OR CAUSES OF ACTION OF ANY KIND WHATSOEVER WHICH HIGHER ORBITS HAS OR MIGHT HAVE IN THE FUTURE, INCLUDING BUT NOT LIMITED TO BREACH OF CONTRACT, QUANTUM MERUIT, CLAIMS UNDER THE DUE PROCESS AND TAKINGS CLAUSES OF THE TEXAS AND UNITED STATES CONSTITUTIONS, TORT CLAIMS, OR MDC'S NEGLIGENCE.

H. Amendments. This Agreement may be amended by written instrument executed by both Parties expressly stating the intention to amend this Agreement.

I. Governmental Immunity. By executing this agreement, MDC is not waiving its right of governmental immunity. MDC is not granting consent to be sued by legislative resolution or action. **THERE IS NO WAIVER OF GOVERNMENTAL IMMUNITY.**

J. Waiver of Attorney Fees. By executing this Agreement, **THE PARTIES AGREE TO WAIVE AND DO HEREBY WAIVE ANY CLAIM THEY HAVE OR MAY HAVE AGAINST THE OTHER PARTY REGARDING THE AWARD OF ATTORNEY FEES, WHICH ARE IN ANY WAY RELATED TO THIS AGREEMENT, OR THE CONSTRUCTION, INTERPRETATION, OR BREACH OF THIS AGREEMENT. THE**

PARTIES SPECIFICALLY AGREE THAT IF EITHER PARTY BRINGS OR COMMENCES ANY LEGAL ACTION OR PROCEEDING RELATED TO THIS AGREEMENT, THE CONSTRUCTION, INTERPRETATION, VALIDITY OR BREACH OF THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO ANY ACTION PURSUANT TO THE PROVISIONS OF THE TEXAS UNIFORM DECLARATORY JUDGMENTS ACT (TEXAS CIVIL PRACTICE AND REMEDIES CODE SECTION 37.001, ET SEQ., AS AMENDED), THAT PARTY AGREES TO WAIVE AND RELINQUISH ANY AND ALL RIGHTS TO THE RECOVERY OF ATTORNEY FEES TO WHICH IT MIGHT OTHERWISE BE ENTITLED.

K. Governing Law and Venue. This Agreement shall be governed by the laws of the State of Texas. All performance and payment made pursuant to this Agreement shall be deemed to have occurred in Midland County, Texas. Exclusive venue for any claims, suits or any other action arising from or connected in any way to this Agreement or the performance of this Agreement shall be in Midland County, Texas. The obligations and undertakings of each of the Parties shall be deemed to have occurred in Midland County, Texas.

L. Third-Party Beneficiary. MDC's approval of this Agreement does not create a third-party beneficiary. There is no third-party beneficiary to this Agreement. No person or entity who is not a Party to this Agreement shall have any third-party beneficiary or other rights hereunder.

M. Governmental Function. MDC and HIGHER ORBITS hereby acknowledge and agree that the entirety of MDC's performance and obligations under this Agreement are governmental functions. By entering into this Agreement, HIGHER ORBITS releases MDC from any present or future claims asserting that MDC's performance or obligations under this Agreement are not governmental functions.

[Signature Pages Follow]

EXECUTED by the duly authorized officials of the Parties as of the day and year first above written.

**MIDLAND DEVELOPMENT
CORPORATION**

By _____
Wesley Bownds, Chairman

ATTEST:

Berry Simpson, Secretary

HIGHER ORBITS

By _____

Name _____

Title _____

THE STATE OF TEXAS §

§

COUNTY OF MIDLAND §

BEFORE ME, the undersigned authority, on this day personally appeared _____, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he/she executed and delivered the foregoing instrument for the purposes and consideration therein expressed on behalf of HIGHER ORBITS

GIVEN UNDER MY HAND AND SEAL OF OFFICE this _____ day of _____, 2021.

Notary Public, State of Texas

Promotional Services to be Provided by Higher Orbits, Inc.

1. Branding the City of Midland for the purpose of developing new and expanded business enterprises in website, brochure, and media materials.
2. Including references to the Midland Development Corporation's support for the Midland Go for Launch! events in media releases, including advertising, social media posts, television, and newspaper coverage where appropriate.
3. Including a description and logo for the Midland Development Corporation in the Midland Go for Launch! website and promotional materials where appropriate.

Kimley-Horn
Consulting Services
Agreement

The Department of Defense is funneling billions of dollars to the private sector for hypersonic testing and development. Location is the bottleneck, with limited space available for private companies, and existing testing locations like California rejecting the industry.

Table illustrating market share Midland can reasonably hope to capture with an established high-speed corridor. Each company has either visited Midland or plans to do so by Q4 2021.

Prospects	Acres Needed	Facility Size - Sq Ft	Employees	Capex (\$ Millions)	Timeframe
Prospect 1	3	25,000	20	15	2022
Prospect 2	10	100,000	50	75	2021
Prospect 3	3	25,000	20	5	2022
Prospect 4	3	25,000	85	50	2021
Prospect 5	5	50,000	10	5	2021
Prospect 6	5	150,000	15	25	2022
Prospect 7	3	5,000	5	5	2021
Prospect 8	5	50,000	60	15	2021
Prospect 9	3	25,000	20	25	2022
Prospect 10	3	20,000	25	10	2022
Prospect 11	1	1,000	5	1	2021
Prospect 12	10	100,000	100	25	2022
Prospect 13	10	75,000	50	25	2022
	64	651,000	465	281	

From 2021 National Defense Authorization Act (NDAA):

- ...Encourages the development of our hypersonic weapons, as well as defenses against the hypersonic weapons of our competitors – an area of intense technological competition between the United States, China, and Russia – a key element of national defense – by:
 - o Increasing funding to test materials able to withstand the hypersonic environment
 - o Encouraging mission planning and the development of force structure for employing hypersonic weapons systems, as well as the architecture needed to field such systems
 - o Developing prototyping for hypersonic weapons
 - o **Targeting investment in testing and infrastructure for flight and ground test campaigns**

RESOLUTION NO. _____

RESOLUTION AUTHORIZING THE EXECUTION OF A CONSULTING SERVICES AGREEMENT WITH KIMLEY-HORN AND ASSOCIATES, INC., FOR AIRSPACE MODELING SERVICES RELATED TO THE INTEGRATION OF A ROUND-TRIP, POINT-TO-POINT FLIGHT OF A REUSABLE LAUNCH VEHICLE BETWEEN MIDLAND INTERNATIONAL AIR & SPACE PORT AND SPACEPORT AMERICA

WHEREAS, the Board of Directors finds it to be in the public interest to authorize the execution of a consulting services agreement with Kimley-Horn and Associates, Inc., for airspace modeling services related to the integration of a round-trip, point-to-point flight of a reusable launch vehicle between Midland International Air & Space Port and Spaceport America;

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE MIDLAND DEVELOPMENT CORPORATION:

SECTION ONE. That the Chairman and Secretary are hereby authorized and directed to execute and attest, respectively, on behalf of the Midland Development Corporation, a consulting services agreement with Kimley-Horn and Associates, Inc., for airspace modeling services related to the integration of a round-trip, point-to-point flight of a reusable launch vehicle between Midland International Air & Space Port and Spaceport America. Said agreement being in a form substantially similar to Exhibit A, which is attached hereto and incorporated herein for all purposes.

SECTION TWO. That the City Comptroller is hereby authorized and directed to pay Kimley-Horn and Associates, Inc., in accordance with the terms of said agreement, from funds available in the Midland Development Corporation operating budget upon receipt of proper invoice or statement executed by the Chairman of the Midland Development Corporation or his designee.

On motion of Director _____, seconded by Director _____, the above and foregoing resolution was adopted by the Board of Directors of the Midland

Development Corporation at a regular meeting on the _____ day of _____, AD,
2021, by the following vote:

Directors voting "AYE":

Directors voting "NAY":

WESLEY BOWNDS,
Chairman of the Midland
Development Corporation

ATTEST:

BERRY SIMPSON,
Secretary of the Midland
Development Corporation

APPROVED AS TO FORM ONLY:

JOHN OHNEMILLER,
Attorney for the Midland
Development Corporation

CONSULTING SERVICES AGREEMENT

THIS AGREEMENT is made and effective the 25th day of August, 2021, by and between the MIDLAND DEVELOPMENT CORPORATION, a Type A corporation pursuant to Chapter 504 of the Texas Local Government Code, as amended (hereinafter called "*MDC*"), and KIMLEY-HORN AND ASSOCIATES, INC. (hereinafter referred to as "*COMPANY*").

ARTICLE I. PURPOSE

The purpose of this Agreement is to state the terms and conditions under which *COMPANY* shall provide consulting services and deliverables (also referred to as the "services") for airspace modeling related to the integration of a roundtrip point-to-point flight of a Reusable Launch Vehicle (RLV) between Midland International Air & Space Port (MAF) and Spaceport America into the National Airspace System.

ARTICLE II. SERVICES TO BE PERFORMED

1. *COMPANY* shall provide those services described in **Exhibit A**, which is attached hereto and incorporated herein for all purposes.
2. *COMPANY* shall perform all the services under this Agreement consistent with the same level of skill and care as other professionals in approximately the same region at approximately the same point in time and for the same types of projects. *COMPANY* represents that any employee who performs services under this Agreement shall be fully qualified and competent to perform the services described in **Exhibit A**.

ARTICLE III. FINANCIAL CONSIDERATIONS

MDC agrees to pay *COMPANY* in an amount not to exceed \$99,000.00 for the consulting services described in **Exhibit A**. *MDC* agrees to pay *COMPANY* upon presentation of proper invoice(s) that set forth all fees and costs. The *MDC*'s Executive Director must approve all additional expenses and reimbursable expenses in advance. Within thirty (30) days of the date on which *COMPANY*'s invoice is received by *MDC*, *MDC* shall pay the full amount of such invoice; provided, however, that if *MDC* objects to any portion of an invoice, *MDC* shall notify *COMPANY* of *MDC*'s objection and the grounds therefor within fifteen (15) days of the date of

Exhibit A

receipt of the invoice, and the parties shall immediately make every effort to settle the disputed portion of the invoice. MDC in any event shall pay every portion of the invoice that is not in dispute within the 30-day period for payment.

ARTICLE IV. TERM

The term of this Agreement shall be from August 24, 2021 until December 31, 2021, unless the Project is completed sooner or the Agreement is terminated as provided below.

ARTICLE V. TERMINATION AT WILL

MDC may terminate this Agreement at will for no or any reason upon giving at least one-hundred eighty (180) days' written notice to COMPANY. The parties to this Agreement understand and agree that it is in MDC's sole discretion to cancel the Agreement during the term of the Agreement without penalty to MDC. COMPANY has no expectation and has received no guarantees that this Agreement will not be terminated before the end of the Agreement term. The parties have bargained for the flexibility of terminating this Agreement upon tender of the requisite notice at any time during the term of the Agreement. All work and services under the Agreement shall be suspended upon termination of the Agreement becoming effective.

ARTICLE VI. ASSIGNMENT

This Agreement provides for consulting services, and COMPANY shall not assign this Agreement, in whole or in part, without the prior written consent of MDC. It is understood that the services shall be either self-performed or subcontracted by COMPANY.

ARTICLE VII. OWNERSHIP AND CONFIDENTIALITY OF DOCUMENTS AND OTHER WORK PRODUCT

Any deliverables or reports provided to MDC by COMPANY under this Agreement shall become the sole property of MDC and shall be delivered to MDC. COMPANY may make copies of any and all instruments of service for its files.

ARTICLE VIII. INDEPENDENT CONTRACTOR

It is expressly understood and agreed that COMPANY shall perform all work and services

described herein as an independent contractor and not as an officer, agent, servant or employee of MDC; that COMPANY shall have exclusive control of and the exclusive right to control the details of the services and work performed hereunder, and all persons performing the same; and shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors; that the doctrine of respondeat superior shall not apply as between MDC and COMPANY, its officers, agents, employees, contractors and subcontractors; and that nothing herein shall be construed as creating a partnership or joint enterprise between MDC and COMPANY. No person performing any of the work and services described hereunder by COMPANY shall be considered an officer, agent, servant or employee of MDC. Further, it is specifically understood and agreed that nothing in this Agreement is intended or shall be construed as creating a “Community of Pecuniary Interest” or “An Equal Right of Control” which would give rise to vicarious liability. COMPANY shall be an independent contractor under this Agreement and shall assume all of the rights, obligations and liabilities, applicable to it as such independent contractor hereunder. MDC does not have the power to direct the order in which the work is done. MDC shall not have the right to control the means, methods or details of COMPANY’S work. COMPANY shall assume exclusive responsibility for the work. COMPANY is entirely free to do the work in its own way.

ARTICLE IX. INSURANCE

COMPANY shall at all times during the term of this Agreement maintain and keep in full force and effect insurance in the following types and minimum amounts with companies authorized to do business in the State of Texas:

Commercial General Liability (including Contractual liability):

-Personal Injury: \$1,000,000.00 per person
\$1,000,000.00 per occurrence

-Property Damage: \$500,000.00 per occurrence

Business Automobile Liability: \$250,000.00 combined single limit -
Personal Injury and Property Damage

Workers’ Compensation: Statutory limits

Employers’ Liability: \$500,000.00 per accident or occurrence

The Commercial General Liability shall be on a per project aggregate, including completed

operations, and shall be on a claims-occurred basis. This insurance shall name MDC as an additional insured and waive subrogation in favor of MDC.

The Business Automobile Liability insurance provided by COMPANY shall cover any auto for bodily injury and property damage, including owned vehicles, hired and non-hired vehicles, and employee non-ownership, and the amount of such policy shall be a minimum of \$250,000.00 covering any vehicle used for the execution of the work that is the subject of this Agreement. This insurance shall name MDC as an additional insured and waive subrogation in favor of MDC.

The Workers' Compensation coverage provided by COMPANY shall inure to the benefit of employees injured during the course and scope of their employment by COMPANY pursuant to this Agreement. The Workers' Compensation shall waive all rights of subrogation in favor of MDC.

All insurance required pursuant to this Agreement shall provide for a waiver of subrogation in favor of MDC. All insurance required pursuant to this Agreement, except for Workers' Compensation Insurance, shall name MDC as an additional insured on a claims occurred basis. MDC shall be provided the notice by COMPANY'S insurance provider not later than thirty (30) days prior to any reduction or termination of such coverage.

COMPANY shall contractually require all contractors, subcontractors, and sub-subcontractors that work on any portion of the work that is the subject of this Agreement to obtain insurance coverage that meets or exceeds the policy requirements and minimum amounts specified herein. All contractors, subcontractors, and sub-subcontractors shall obtain insurance policies that provide blanket waivers of subrogation in favor of MDC and policies that name the MDC as an additional insured on a claims occurred basis (except workers' compensation).

The parties agree that, prior to the execution of the Agreement, COMPANY shall provide one or more certificates of insurance specifically stating that these requirements have been met and subject to the approval of MDC. MDC shall not be required to provide any insurance whatsoever pursuant to this Agreement.

COMPANY certifies that the certificate of insurance provided as required herein complies with the requirements of Chapter 1811 of the Texas Insurance Code. COMPANY shall not use an unapproved certificate of insurance or insert inappropriate language on a certificate. Compliance with state law is the sole responsibility of COMPANY.

ARTICLE X. ATTORNEY FEES

BY EXECUTING THIS AGREEMENT, COMPANY AGREES TO WAIVE AND DOES HEREBY WAIVE ANY CLAIM IT HAS OR MAY HAVE IN THE FUTURE AGAINST MDC REGARDING THE AWARD OF ATTORNEY FEES THAT IS IN ANY WAY RELATED TO THIS AGREEMENT, OR THE CONSTRUCTION, INTERPRETATION OR BREACH OF THIS AGREEMENT. COMPANY AGREES THAT IF COMPANY BRINGS OR COMMENCES ANY LEGAL ACTION OR PROCEEDING RELATED TO THIS AGREEMENT, THE CONSTRUCTION, INTERPRETATION, VALIDITY OR BREACH OF THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO ANY ACTION PURSUANT TO THE PROVISIONS OF THE TEXAS UNIFORM DECLARATORY JUDGMENTS ACT (TEXAS CIVIL PRACTICE AND REMEDIES CODE SECTION 37.001, *ET SEQ.*, AS AMENDED), THAT COMPANY AGREES TO (i) WAIVE AND RELINQUISH ANY AND ALL RIGHTS TO THE RECOVERY OF ATTORNEY FEES TO WHICH IT MIGHT OTHERWISE BE ENTITLED AND (ii) ASSUME COMPLETE FINANCIAL RESPONSIBILITY FOR AND PAY ALL ATTORNEY FEES AND ASSOCIATED COSTS INCURRED IN GOOD FAITH BY MDC IN MDC'S CONTESTING OF THE LEGAL ACTION OR PROCEEDING BROUGHT BY COMPANY.

COMPANY AGREES THAT THIS IS THE VOLUNTARY AND INTENTIONAL (i) RELINQUISHMENT AND ABANDONMENT OF A PRESENTLY EXISTING KNOWN RIGHT AND (ii) ASSUMPTION OF A FUTURE OBLIGATION IN THE EVENT THAT COMPANY BRINGS OR COMMENCES ANY LEGAL ACTION OR PROCEEDING AGAINST MDC RELATED TO THIS AGREEMENT, THE CONSTRUCTION, INTERPRETATION, VALIDITY OR BREACH OF THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO ANY ACTION PURSUANT TO THE PROVISIONS OF THE TEXAS UNIFORM DECLARATORY JUDGEMENTS ACT (TEXAS CIVIL PRACTICE AND REMEDIES CODE SECTION 37.001, *ET SEQ.*, AS AMENDMED). COMPANY ACKNOWLEDGES THAT COMPANY UNDERSTANDS ALL TERMS AND CONDITIONS OF THE AGREEMENT. COMPANY FURTHER ACKNOWLEDGES AND AGREES THAT THERE WAS AND IS NO DISPARITY OF

BARGAINING POWER BETWEEN COMPANY AND MDC. THIS SECTION SHALL NOT BE CONSTRUED OR INTERPRETED AS A WAIVER OF GOVERNMENTAL IMMUNITY.

COMPANY IS RELYING ON ITS OWN JUDGMENT. COMPANY ACKNOWLEDGES THAT COMPANY HAD THE OPPORTUNITY TO DISCUSS THIS AGREEMENT WITH LEGAL COUNSEL PRIOR TO ITS EXECUTION.

ARTICLE XI. GOVERNMENTAL IMMUNITY

By executing this Agreement MDC is not waiving its right of governmental immunity. MDC is retaining its immunity from suit. MDC is not granting consent to be sued by legislative resolution or action. **THERE IS NO WAIVER OF GOVERNMENTAL IMMUNITY.**

ARTICLE XII. NO THIRD-PARTY BENEFICIARIES

MDC's approval of this Agreement does not create a third-party beneficiary. There is no third-party beneficiary to this Agreement. No person or entity who is not a party to this Agreement shall have any third-party beneficiary or other rights hereunder.

ARTICLE XIII. RELEASE

NOTWITHSTANDING ANY OTHER PROVISIONS, COMPANY HEREBY RELEASES, ACQUITS, RELINQUISHES AND FOREVER DISCHARGES MDC, MDC'S EMPLOYEES AND OFFICERS, FROM ANY AND ALL DEMANDS, CLAIMS, DAMAGES, OR CAUSES OF ACTION OF ANY KIND WHATSOEVER WHICH COMPANY HAS OR MIGHT HAVE IN THE FUTURE, INCLUDING BUT NOT LIMITED TO BREACH OF AGREEMENT, QUANTUM MERUIT, CLAIMS UNDER THE DUE PROCESS AND TAKINGS CLAUSES OF THE TEXAS AND UNITED STATES CONSTITUTIONS, TORT CLAIMS, OR MDC'S NEGLIGENCE.

ARTICLE XIV. INDEMNITY

COMPANY SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND MDC AND ALL OF MDC'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, ACCIDENTAL DEATH,

LOSSES, PROPERTY DAMAGE AND EXPENSES OF ANY CHARACTER WHATSOEVER, INCLUDING ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ON ACCOUNT OF ANY NEGLIGENT ACT OF COMPANY, THEIR AGENTS OR EMPLOYEES, OR ANY SUBCONTRACTOR, IN THE EXECUTION, SUPERVISION AND OPERATIONS GROWING OUT OF OR IN ANY WAY CONNECTED WITH THE PERFORMANCE OF THIS AGREEMENT, AND COMPANY WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST MDC OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES, INCLUDING ATTORNEY'S FEES.

COMPANY SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND MDC AND ALL OF MDC'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, ACCIDENTAL DEATH, PROPERTY DAMAGE, LOSSES, AND EXPENSES OF ANY CHARACTER WHATSOEVER INCLUDING ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ON ACCOUNT OF ANY NEGLIGENT ACT OF MDC, MDC'S OFFICERS, AGENTS AND EMPLOYEES, WHETHER SUCH NEGLIGENT ACT WAS THE SOLE PROXIMATE CAUSE OF THE INJURY OR DAMAGE OR A PROXIMATE CAUSE JOINTLY AND CONCURRENTLY WITH COMPANY OR COMPANY'S EMPLOYEES, AGENTS OR SUBCONTRACTORS NEGLIGENCE IN THE EXECUTION, SUPERVISION AND OPERATIONS GROWING OUT OF OR IN ANY WAY CONNECTED WITH THE PERFORMANCE OF THIS AGREEMENT, AND COMPANY WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST MDC OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES, INCLUDING ATTORNEY'S FEES.

COMPANY AGREES THAT IT SHALL INDEMNIFY AND SAVE MDC HARMLESS FROM ALL CLAIMS GROWING OUT OF ANY DEMANDS OF SUBCONTRACTORS, LABORERS, WORKMEN, MECHANICS, MATERIALMEN, AND FURNISHERS OF MACHINERY AND PARTS THEREOF, EQUIPMENT, POWER

TOOLS AND ALL SUPPLIES, INCURRED IN THE FURTHERANCE OF THE PERFORMANCE OF THIS AGREEMENT. WHEN MDC SO DESIRES, COMPANY SHALL FURNISH SATISFACTORY EVIDENCE THAT ALL OBLIGATIONS OF THE NATURE HEREINABOVE DESIGNATED HAVE BEEN PAID, DISCHARGED OR WAIVED. COMPANY, ITS SURETIES AND INSURANCE CARRIERS SHALL DEFEND, INDEMNIFY AND SAVE HARMLESS MDC AND ALL OF ITS OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, OR CLAIMS OF ANY CHARACTER WHATSOEVER, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ARISING FROM ANY ACT OF COMPANY OR ANY SUBCONTRACTOR, THEIR AGENTS OR EMPLOYEES, IN THE EXECUTION AND SUPERVISION OF THIS AGREEMENT, AND SHALL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST MDC OR ANY OF ITS OFFICERS, AGENTS, OR EMPLOYEES INCLUDING ATTORNEY'S FEES.

ARTICLE XV. GENERAL PROVISIONS

A. Waiver. No waiver by MDC of a breach of any covenant, condition, or restriction of this Agreement shall be construed or held to be a waiver of any succeeding or preceding breach of the same or any other covenant, condition, or restriction contained in this Agreement.

B. Governing Law and Venue. The laws of the State of Texas shall govern, construe and enforce all the rights and duties of the parties, including but not limited to tort claims and any and all contractual claims or disputes, arising from or relating in any way to the subject matter of this Agreement, without regard to conflict of laws and rules that would direct application of the laws of another jurisdiction. All performance and payment made pursuant to this Agreement shall be deemed to have occurred in Midland County, Texas. The obligations and undertakings of each of the parties to this Agreement shall be deemed to have occurred in Midland County, Texas. Exclusive venue for any claims, suits or any other action arising from or connected in any way to this Agreement or the performance of this Agreement shall be in Midland County, Texas.

C. Notice. Any notice or demand that shall be made regarding this Agreement, shall be

H. Federal Wage Requirements. If applicable, the Davis-Bacon Act, 29 CFR 5.5, and any related acts or regulations are hereby incorporated by reference and made a part of this Agreement, and all terms and requirements under said laws, by such incorporation, are made terms and requirements of this Agreement, to which the parties to this Agreement have agreed to be bound.

I. Notice of Alleged Breach; Statutory Prerequisites. As a condition precedent to filing suit for alleged damages incurred by an alleged breach of an express or implied provision of this Agreement, COMPANY or his legal representative, shall give the MDC Chairman, or any other reasonable official of MDC, notice in writing (consisting of one original and seven copies of notice attached to a copy of this Agreement) of such damages, duly verified, within ninety (90) days after the same has been sustained. The discovery rule does not apply to the giving of this notice. The notice shall include when, where and how the damages occurred, the apparent extent thereof, the amount of damages sustained, the amount for which COMPANY will settle, the physical and mailing addresses of COMPANY at the time and date the claim was presented and the physical and mailing addresses of COMPANY for the six months immediately preceding the occurrence of such damages, and the names and addresses of the witnesses upon whom COMPANY relies to establish its claim; and a failure to so notify the MDC Chairman within the time and manner provided herein shall exonerate, excuse and except MDC from any liability whatsoever. MDC is under no obligation to provide notice to COMPANY that COMPANY'S notice is insufficient. MDC reserves the right to request reasonable additional information regarding the claim. Said additional information shall be supplied within thirty (30) days after receipt of notice.

The statutory prerequisites outlined herein constitute jurisdictional requirements pursuant to Section 271.154 of the Texas Local Government Code and Section 311.034 of the Texas Government Code. Notwithstanding any other provision, COMPANY'S failure to comply with the requirements herein shall perpetually bar COMPANY'S claim for damages under Chapter 271 of the Texas Local Government Code, and Section 311.034 of the Texas Government Code, regardless if MDC has actual or constructive notice or knowledge of said claim or alleged damages. COMPANY agrees that the requirements of this entire Agreement are reasonable.

J. Prompt Pay Act. MDC and COMPANY agree that Texas Government Code, Chapter 2251, Payment for Goods and Services does not waive governmental immunity.

K. Compliance. COMPANY agrees that it shall comply with Texas Government Code Section 2252.908, as amended. COMPANY agrees that it shall comply with Texas Local Government Code Section 176.006, as amended.

L. Governmental Function. MDC and COMPANY hereby acknowledge and agree that the entirety of MDC's performance and obligations under this Agreement is a governmental function. By entering into this Agreement, COMPANY releases MDC from any present or future claims asserting that MDC's performance or obligations under this Agreement are not governmental functions.

M. Conflict of Terms. If a conflict of terms or language exists between: (i) any of the provisions of this Agreement and (ii) any of the provisions contained in any exhibit(s) attached to this Agreement, precedence shall be given to the provisions of this Agreement. For the avoidance of any doubt, the provisions contained in this Agreement shall supersede any and all conflicting provisions contained in any exhibit(s) attached hereto. Furthermore, the parties acknowledge and agree that any provision contained in an exhibit(s) attached to this Agreement that imposes an additional express or implied obligation on MDC is hereby made void and of no force or effect. MDC's sole and exclusive obligations under this Agreement are contained in the provisions of this Agreement that precede the signature page(s), which evidences the parties' execution.

[Signature Pages Follow]

EXECUTED IN DUPLICATE the day and year first above mentioned.

MIDLAND DEVELOPMENT CORPORATION

Wesley Bownds, Chairman

ATTEST

Berry Simpson, Secretary

[Signature Page Follows]

KIMLEY-HORN AND ASSOCIATES, INC.

By: _____

Name: _____

Title: _____

STATE OF _____ §
 §
COUNTY OF _____ §

BEFORE ME, the undersigned authority, on this ____ day of _____, 2021, personally appeared, _____ of _____, known to me to be the person and official whose name is subscribed to the forgoing instrument, and acknowledged to me that he executed the same as the act and deed of said entity, for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the ____ day of _____, 2021.

Notary Public, State of _____



June 17, 2021

Mrs. Sara Harris
Executive Director
Midland Development Corporation
200 N Loraine St. 4610
Midland, TX 79701

Re: Proposal for Point-to-Point Airspace Modeling

Dear Mrs. Harris

Kimley-Horn and Associates, Inc. (“Kimley-Horn” or the “Consultant”) is pleased to submit this letter agreement (the “Agreement”) to Midland Development Corporation (“MDC” or “Client”) for providing professional consulting services for airspace modeling related to integration of a roundtrip point-to-point flight of a Reusable Launch Vehicle (RLV) between Midland International Air and Space Port (MAF) and Spaceport America into the National Airspace System.

PROJECT UNDERSTANDING AND BACKGROUND

Kimley-Horn understands that MDC plans to partner with a vehicle operator to conduct a point-to-point test flight of their current generation launch vehicle between MAF and Spaceport America and back. Kimley-Horn will assist in the planning, execution, and delivery of a National Airspace System (NAS) simulation model that incorporates planned airspace corridors to RLV operations. The proposed scope of services represents the current understanding of the proposed operation and will build on prior services completed by Kimley-Horn in support of a high-speed airspace corridor. Prior services included conducting surveying and interviewing prospective aerospace companies interested in operating from Midland International Air and Space Port and the delivery of a High-Speed Airspace Corridor Technical Memo in February 2020.

SCOPE OF SERVICES

Kimley-Horn will provide the services specifically set forth below.

Task 1 – SIMULATION MODEL DEVELOPMENT AND VALIDATION

Kimley-Horn will obtain the data and tools to build an air traffic simulation model representative of Instrument Flight Rules (IFR) operations within the airspace near Midland International Airport (MAF) extending to White Sands Missile Range. The baseline model will incorporate current (as of NTP of this agreement) aircraft flight routings, controlled airspace sectors in Fort Worth (ZFW) and Albuquerque (ZAB) Air Route Traffic Control Centers along with Midland Class C and White Sands Missile Range restricted airspace.

The model will utilize the most recent calendar year (as of NTP of this Agreement) of commercial flight plans along with select flight track data (where available) to include monthly and seasonal variations in the analysis. Additionally, the model will include convective weather periods along with Traffic Management Flow Initiatives as issued by the FAA.

Simulation validation of the baseline model will consist of the analysis of airspace sector counts and transit times of the flight plans as compared to select days of track data. The airspace model, once validated, can be used to assess impacts of operations (hypersonic testing, supersonic testing, and suborbital flights) as well as variations with testing and highspeed corridors in the vicinity of Midland International Air and Space Port.

Task 2 – HIGH-LEVEL FEASIBILITY ANALYSIS

Kimley-Horn will utilize the validated simulation model (from Task 1) to evaluate the NAS impact of proposed test corridors on anticipated aircraft activity during MAF operations. From the simulation model, Kimley-Horn will provide the Client a recommendation for the times and days when there would be the least projected impact on current NAS. Kimley-Horn’s analysis will focus on a notional Option C corridor (see Figure 2) with either a direct point-to-point path (C1) or a connection from Midland International Air and Space Port to the Option A Extension (C2). Any refinement of the aforementioned corridors to meet the launch vehicle specifications can be performed as an Additional Service upon the Client’s request.

Key Performance Indicators Kimley-Horn will employ to understand the impact on NAS operations will consist of additional miles flown for commercial air traffic when the restricted airspace is active, potential surface delays to avoid in flight rerouting of aircraft and potential airspace sector congestion due to rerouted aircraft. These measures will be collected assuming the active restricted airspace is from the surface to unlimited altitude.

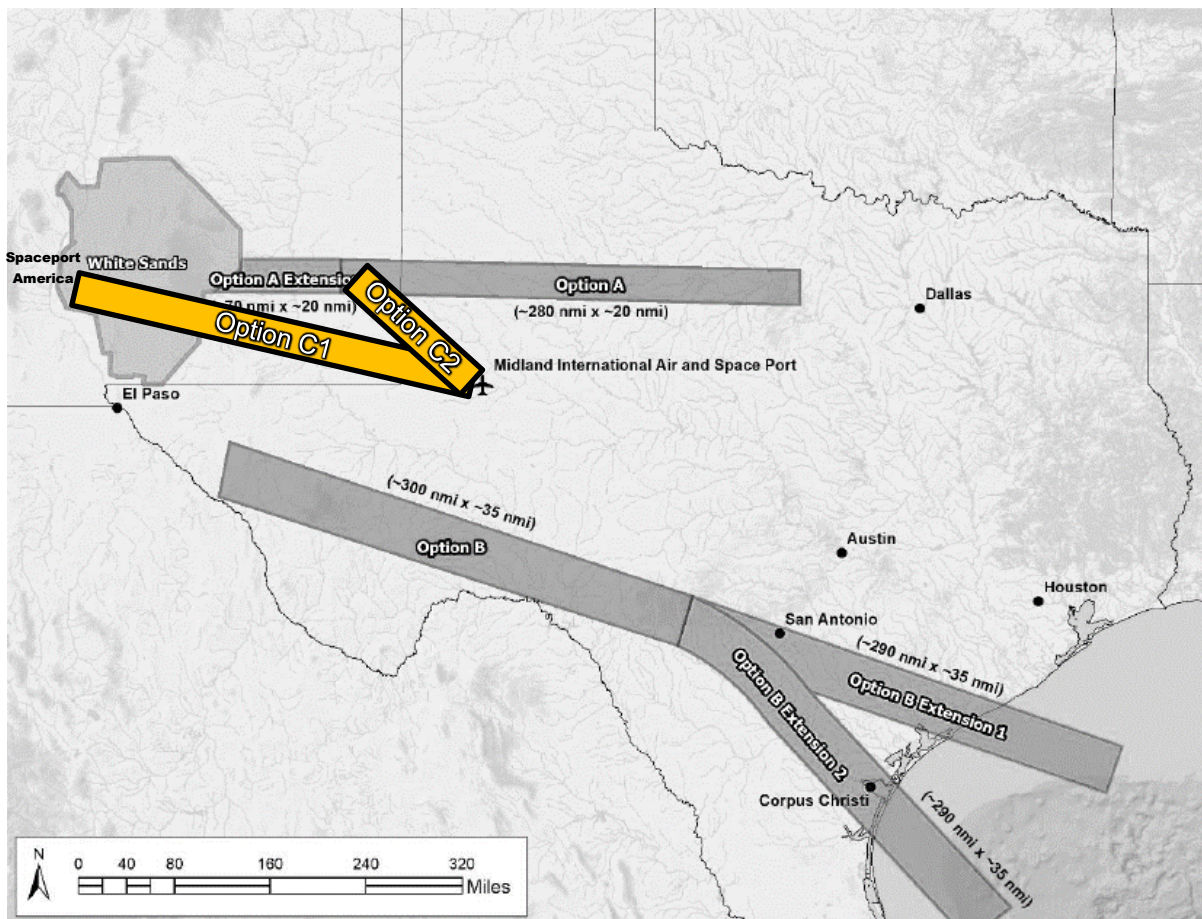


Figure 2. Corridor Exhibit

Task 3 – STAKEHOLDER COORDINATION AND TECHNICAL MEMORANDUM

Kimley-Horn will coordinate with stakeholders that are anticipated to consist of MDC, MAF, New Mexico Spaceport Authority (NMSA), the vehicle operators, and FAA to collect data to perform the simulation analyses and prepare the documentation for a parametric airspace simulation experiment. Kimley-Horn will prepare a list of required data necessary to build the simulation and schedule coordination calls to collect data from the aforementioned stakeholders and other organizations.

Kimley-Horn will prepare a technical memo and PowerPoint briefing summarizing the results of the high-level feasibility analysis. The airspace model will be available to the Client for future use related to corridor development and point-to-point suborbital flight.

The final project deliverable will include:

1. Technical Memo for Airspace High-Level Feasibility Analysis (PDF)
2. Briefing for Airspace High-Level Feasibility Analysis (PPT)

FEES AND BILLING

Kimley-Horn will perform the scope of services in **Tasks 1 - 3** for the lump sum fee below. Note: Individual budget amounts below are informational only. Other Direct Costs include airspace model license costs for two (2) months.

Kimley-Horn Labor Fee (Estimate):	\$85,000
Other Direct Costs (Expenses):	\$14,000
Total Lump Sum Fee	\$99,000

Lump sum fees will be invoiced monthly based upon the overall percentage of services performed. Payment will be due within 25 days of your receipt of the invoice and should include the invoice number and Kimley-Horn project number.

CLOSURE

In addition to the matters set forth herein, our Agreement shall include and be subject to, and only to, the attached Standard Provisions, which are incorporated by reference. As used in the Standard Provisions, "Consultant" shall refer to Kimley-Horn and Associates, Inc., and "Client" shall refer to Midland Development Corporation.

Kimley-Horn, in an effort to expedite invoices and reduce paper waste, submits invoices via email in an Adobe PDF format. We can also provide a paper copy via regular mail if requested. Please include the invoice number and Kimley-Horn project number with all payments. Please provide the following information:

_____ Please email all invoices to _____

_____ Please copy _____

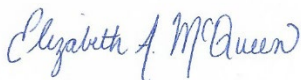
If you concur in all the foregoing and wish to direct us to proceed with the services, please have authorized persons execute both copies of this Agreement in the spaces provided below, retain one copy, and return the other to us. Fees and times stated in this Agreement are valid for sixty (60) days after the date of this letter.

To ensure proper set up of your projects so that we can get started, please complete and return with the signed copy of this Agreement the attached Request for Information. Failure to supply this information could result in delay in starting work on your project.

We appreciate the opportunity to provide these services to you. Please contact me if you have any questions.

Very truly yours,

Kimley-Horn AND ASSOCIATES, INC.



Elizabeth McQueen
Senior Project Manager



David Whyte
Senior Vice President

Attachment: Standard Provisions

Midland Development Corporation.

By: _____, General Partner

(Date)

(Print or Type Name)

(Email Address)

OR

By: _____, President/Vice President

(Date)

(Print or Type Name)

(Email Address)

Attest:

_____, Secretary/Assistant Secretary

(Print or Type Name)

Affix Corporate Seal:

Kimley-Horn AND ASSOCIATES, INC.
STANDARD PROVISIONS

(1) **Consultant's Scope of Services and Additional Services.** The Consultant will perform only the services specifically described in this Agreement. If requested by the Client and agreed to by the Consultant, the Consultant will perform Additional Services, which shall be governed by these provisions. Unless otherwise agreed to in writing, the Client shall pay the Consultant for any Additional Services an amount based upon the Consultant's then-current hourly rates plus an amount to cover certain direct expenses including telecommunications, in-house reproduction, postage, supplies, project related computer time, and local mileage. Other direct expenses will be billed at 1.15 times cost.

(2) **Client's Responsibilities.** In addition to other responsibilities herein or imposed by law, the Client shall:

- (a) Designate in writing a person to act as its representative, such person having complete authority to transmit instructions, receive information, and make or interpret the Client's decisions.
- (b) Provide all information and criteria as to the Client's requirements, objectives, and expectations for the project and all standards of development, design, or construction.
- (c) Provide the Consultant all available studies, plans, or other documents pertaining to the project, such as surveys, engineering data, environmental information, etc., all of which the Consultant may rely upon.
- (d) Arrange for access to the site and other property as required for the Consultant to provide its services.
- (e) Review all documents or reports presented by the Consultant and communicate decisions pertaining thereto within a reasonable time so as not to delay the Consultant.
- (f) Furnish approvals and permits from governmental authorities having jurisdiction over the project and approvals and consents from other parties as may be necessary.
- (g) Obtain any independent accounting, legal, insurance, cost estimating and feasibility services required by Client.
- (h) Give prompt written notice to the Consultant whenever the Client becomes aware of any development that affects the Consultant's services or any defect or noncompliance in any aspect of the project.

(3) **Period of Services.** Unless otherwise stated herein, the Consultant will begin work after receipt of a properly executed copy of this Agreement. This Agreement assumes conditions permitting continuous and orderly progress through completion of the services. Times for performance shall be extended as necessary for delays or suspensions due to circumstances that the Consultant does not control. If such delay or suspension extends for more than six months, Consultant's compensation shall be renegotiated.

(4) **Method of Payment.** Client shall pay Consultant as follows:

- (a) Invoices will be submitted periodically for services performed and expenses incurred. Payment of each invoice will be due within 25 days of receipt. The Client shall also pay any applicable sales tax. All retainers will be held by the Consultant and applied against the final invoice. Interest will be added to accounts not paid within 25 days at the maximum rate allowed by law. If the Client fails to make any payment due under this or any other agreement within 30 days after the Consultant's transmittal of its invoice, the Consultant may, after giving notice to the Client, suspend services and withhold deliverables until all amounts due are paid.
- (b) If the Client relies on payment or proceeds from a third party to pay Consultant and Client does not pay Consultant's invoice within 60 days of receipt, Consultant may communicate directly with such third party to secure payment.
- (c) If the Client objects to an invoice, it must advise the Consultant in writing giving its reasons within 14 days of receipt of the invoice or the Client's objections will be waived, and the invoice shall conclusively be deemed due and owing. If the Client objects to only a portion of the invoice, payment for all other portions remains due within 25 days of receipt.
- (d) If the Consultant initiates legal proceedings to collect payment, it may recover, in addition to all amounts due, its reasonable attorneys' fees, reasonable experts' fees, and other expenses related to the proceedings. Such expenses shall include the cost, at the Consultant's normal hourly billing rates, of the time devoted to such proceedings by its employees.
- (e) The Client agrees that the payment to the Consultant is not subject to any contingency or condition. The Consultant may negotiate payment of any check tendered by the Client, even if the words "in full satisfaction" or words intended to have similar effect appear on the check without such negotiation being an accord and satisfaction of any disputed debt and without prejudicing any right of the Consultant to collect additional amounts from the Client.

(5) **Use of Documents.** All documents and data prepared by the Consultant are related exclusively to the services described in this Agreement, and may be used only if the Client has satisfied all of its obligations under this Agreement. They are not intended or represented to be suitable for use or reuse by the Client or others on extensions of this project or on any other project. Any modifications by the Client to any of the Consultant's documents, or any reuse of the documents without written authorization by the Consultant will be at the Client's sole risk and without liability to the Consultant, and the Client shall indemnify, defend and hold the Consultant harmless from all claims, damages, losses and expenses, including but not limited to attorneys' fees, resulting therefrom. The Consultant's electronic files and source code remain the property of the Consultant and shall be provided to the Client only if expressly provided for in this Agreement. Any electronic files not containing an electronic seal are provided only for the convenience of the

Client, and use of them is at the Client's sole risk. In the case of any defects in the electronic files or any discrepancies between them and the hardcopy of the documents prepared by the Consultant, the hardcopy shall govern.

(6) **Opinions of Cost.** Because the Consultant does not control the cost of labor, materials, equipment or services furnished by others, methods of determining prices, or competitive bidding or market conditions, any opinions rendered as to costs, including but not limited to the costs of construction and materials, are made solely based on its judgment as a professional familiar with the industry. The Consultant cannot and does not guarantee that proposals, bids or actual costs will not vary from its opinions of cost. If the Client wishes greater assurance as to the amount of any cost, it shall employ an independent cost estimator. Consultant's services required to bring costs within any limitation established by the Client will be paid for as Additional Services.

(7) **Termination.** The obligation to provide further services under this Agreement may be terminated by either party upon seven days' written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof, or upon thirty days' written notice for the convenience of the terminating party. The Consultant shall be paid for all services rendered and expenses incurred to the effective date of termination, and other reasonable expenses incurred by the Consultant as a result of such termination.

(8) **Standard of Care.** The standard of care applicable to Consultant's services will be the degree of care and skill ordinarily exercised by consultants performing the same or similar services in the same locality at the time the services are provided. No warranty, express or implied, is made or intended by the Consultant's performance of services, and it is agreed that the Consultant is not a fiduciary with respect to the Client.

(9) **LIMITATION OF LIABILITY.** In recognition of the relative risks and benefits of the Project to the Client and the Consultant, the risks are allocated such that, to the fullest extent allowed by law, and notwithstanding any other provisions of this Agreement or the existence of applicable insurance coverage, that the total liability, in the aggregate, of the Consultant and the Consultant's officers, directors, employees, agents, and subconsultants to the Client or to anyone claiming by, through or under the Client, for any and all claims, losses, costs or damages whatsoever arising out of or in any way related to the services under this Agreement from any causes, including but not limited to, the negligence, professional errors or omissions, strict liability or breach of contract or any warranty, express or implied, of the Consultant or the Consultant's officers, directors, employees, agents, and subconsultants, shall not exceed twice the total compensation received by the Consultant under this Agreement or \$50,000, whichever is greater. Higher limits of liability may be negotiated for additional fee. This Section 9 is intended solely to limit the remedies available to the Client or those claiming by or through the Client, and nothing in this Section 9 shall require the Client to indemnify the Consultant.

(10) **Mutual Waiver of Consequential Damages.** In no event shall either party be liable to the other for any consequential, incidental, punitive, or indirect damages including but not limited to loss of income or loss of profits.

(11) **Construction Costs.** Under no circumstances shall the Consultant be liable for extra costs or other consequences due to unknown conditions or related to the failure of contractors to perform work in accordance with the plans and specifications. Consultant shall have no liability whatsoever for any costs arising out of the Client's decision to obtain bids or proceed with construction before the Consultant has issued final, fully-approved plans and specifications. The Client acknowledges that all preliminary plans are subject to substantial revision until plans are fully approved and all permits obtained.

(12) **Certifications.** The Consultant shall not be required to execute certifications or third-party reliance letters that are inaccurate, that relate to facts of which the Consultant does not have actual knowledge, or that would cause the Consultant to violate applicable rules of professional responsibility.

(13) **Dispute Resolution.** All claims by the Client arising out of this Agreement or its breach shall be submitted first to mediation in accordance with the American Arbitration Association as a condition precedent to litigation.

(14) **Hazardous Substances and Conditions.** Consultant shall not be a custodian, transporter, handler, arranger, contractor, or remediator with respect to hazardous substances and conditions. Consultant's services will be limited to analysis, recommendations, and reporting, including, when agreed to, plans and specifications for isolation, removal, or remediation. The Consultant will notify the Client of unanticipated hazardous substances or conditions of which the Consultant actually becomes aware. The Consultant may stop affected portions of its services until the hazardous substance or condition is eliminated.

(15) **Construction Phase Services.**

(a) If the Consultant prepares construction documents and the Consultant is not retained to make periodic site visits, the Client assumes all responsibility for interpretation of the documents and for construction observation, and the Client waives any claims against the Consultant in any way connected thereto.

(b) The Consultant shall have no responsibility for any contractor's means, methods, techniques, equipment choice and usage, sequence, schedule, safety programs, or safety practices, nor shall Consultant have any authority or responsibility to stop or direct the work of any contractor. The Consultant's visits will be for the purpose of endeavoring to provide the Client a greater degree of confidence that the completed work of its contractors will generally conform to the construction documents prepared by the Consultant. Consultant neither guarantees the performance of contractors, nor assumes responsibility for any contractor's failure to perform its work in accordance with the contract documents.

(c) The Consultant is not responsible for any duties assigned to it in the construction contract that are not expressly provided for in this Agreement. The Client agrees that each contract with any contractor shall state that the contractor shall be solely responsible for job site safety and its means and methods; that the contractor shall indemnify the Client and the Consultant for all claims and liability arising out of job site accidents; and that the Client and the Consultant shall be made additional insureds under the contractor's general liability insurance policy.

(16) No Third-Party Beneficiaries; Assignment and Subcontracting. This Agreement gives no rights or benefits to anyone other than the Client and the Consultant, and all duties and responsibilities undertaken pursuant to this Agreement will be for the sole benefit of the Client and the Consultant. The Client shall not assign or transfer any rights under or interest in this Agreement, or any claim arising out of the performance of services by Consultant, without the written consent of the Consultant. The Consultant reserves the right to augment its staff with subconsultants as it deems appropriate due to project logistics, schedules, or market conditions. If the Consultant exercises this right, the Consultant will maintain the agreed-upon billing rates for services identified in the contract, regardless of whether the services are provided by in-house employees, contract employees, or independent subconsultants.

(17) Confidentiality. The Client consents to the use and dissemination by the Consultant of photographs of the project and to the use by the Consultant of facts, data and information obtained by the Consultant in the performance of its services. If, however, any facts, data or information are specifically identified in writing by the Client as confidential, the Consultant shall use reasonable care to maintain the confidentiality of that material.

(18) Miscellaneous Provisions. This Agreement is to be governed by the law of the State of Florida. This Agreement contains the entire and fully integrated agreement between the parties and supersedes all prior and contemporaneous negotiations, representations, agreements or understandings, whether written or oral. Except as provided in Section 1, this Agreement can be supplemented or amended only by a written document executed by both parties. Any conflicting or additional terms on any purchase order issued by the Client shall be void and are hereby expressly rejected by the Consultant. Any provision in this Agreement that is unenforceable shall be ineffective to the extent of such unenforceability without invalidating the remaining provisions. The non-enforcement of any provision by either party shall not constitute a waiver of that provision nor shall it affect the enforceability of that provision or of the remainder of this Agreement.

(19) PURSUANT TO FS 558.0035, EMPLOYEES OF CONSULTANT MAY NOT BE HELD INDIVIDUALLY LIABLE FOR DAMAGES RESULTING FROM NEGLIGENCE UNDER THIS AGREEMENT.

Susie's South Forty
Confections
Economic
Development
Agreement
Second
Amendment

RESOLUTION NO. _____

RESOLUTION AUTHORIZING THE EXECUTION OF A SECOND AMENDMENT TO THAT CERTAIN ECONOMIC DEVELOPMENT AGREEMENT BETWEEN THE MIDLAND DEVELOPMENT CORPORATION AND SUSIE'S SOUTH FORTY CONFECTIONS, INC.

WHEREAS, the Board of Directors finds it to be in the public interest to authorize the execution of a second amendment to that certain economic development agreement with Susie's South Forty Confections, Inc.;

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE MIDLAND DEVELOPMENT CORPORATION:

SECTION ONE. That the Chairman is hereby authorized and directed to execute, on behalf of the Midland Development Corporation, a second amendment to that certain economic development agreement with Susie's South Forty Confections, Inc. Said amendment shall be in a form substantially similar to that of Exhibit A, which is attached hereto and incorporated herein for all purposes.

SECTION TWO. That said second amendment shall not become effective until approved by the Midland City Council.

On motion of Director _____, seconded by Director _____, the above and foregoing resolution was adopted by the Board of Directors of the Midland Development Corporation at a regular meeting on the _____ day of _____, A.D., 2021, by the following vote:

Directors voting "AYE":

Directors voting "NAY":

WESLEY BOWNDS,
Chairman of the Midland
Development Corporation

ATTEST:

BERRY SIMPSON,
Secretary of the Midland
Development Corporation

APPROVED AS TO FORM ONLY:

JOHN OHNEMILLER,
Attorney for the Midland
Development Corporation

**SECOND AMENDMENT TO THE ECONOMIC DEVELOPMENT AGREEMENT
BETWEEN THE MIDLAND DEVELOPMENT CORPORATION
AND SUSIE’S SOUTH FORTY CONFECTIONS, INC.**

THIS SECOND AMENDMENT is made and effective August 25, 2021, by and between the Midland Development Corporation (“MDC”), a Type A corporation existing under the authority of Chapter 504 of the Texas Local Government Code, and Susie’s South Forty Confections, Inc. (“Company”).

WHEREAS, MDC and Company entered into that certain Economic Development Agreement dated January 24, 2018 (the “Agreement”), which was approved by the Midland Development Corporation Board of Directors and the Midland City Council; and

WHEREAS, MDC and Company executed an amendment to the Agreement on or about July 13, 2020 (the “First Amendment”), which was approved by the Midland City Council; and

WHEREAS, the Agreement, inclusive of the First Amendment, has been in full force and effect since its effective date and has not been allowed to lapse; and

WHEREAS, Company and MDC desire to make certain amendments to the Agreement as set forth below;

W I T N E S S E T H:

For and in consideration of the execution of this Second Amendment and the mutual promises and covenants of the parties hereto, it is mutually promised, understood and agreed as follows:

- 1) Section I.F of the Agreement is hereby amended to read in its entirety as follows:

Company anticipates maintaining Full-Time Jobs (as defined herein) at the Property by January 31, 2022, resulting in a total Annual Payroll (as defined herein) of not less than \$400,000.00.

- 2) Section II.H of the Agreement is hereby deleted in its entirety.

- 3) Article III of the Agreement is hereby deleted in its entirety.

- 4) Article IV of the Agreement is hereby amended to read in its entirety as follows:

A. [INTENTIONALLY OMITTED]

B. [INTENTIONALLY OMITTED]

Exhibit A

C. Annual Payroll as of January 31, 2022. By January 31, 2022, Company shall certify to MDC, as described in Section X.B below, that Company has established an Annual Payroll of at least \$400,000.00.

D. Personal Property Investment. By January 31, 2022, Company shall invest, or cause to be invested, a minimum of \$95,000.00 in new Personal Property in the Business at the Property, and Company shall (i) maintain such minimum value of new Personal Property at the Property through December 31, 2024, and (ii) maintain said new Personal Property in good-working condition at the Business on the Property. Said investment in Personal Property in the Business at the Property facilities shall be evidenced by tax statements issued by the Midland Central Appraisal District, which shall be provided to MDC on a yearly basis during the term of this Agreement. Company shall provide paid invoices and certification that the Personal Property has been paid for, in full, and the Personal Property has been installed and is functioning properly.

E. Annual Compliance Certifications. Beginning on January 31, 2023 and continuing every anniversary thereof during the term of this Agreement, Company shall certify to MDC, as described in Section X.B below, the following:

1. The total Annual Payroll as of December 31 of the preceding year.
2. The total amount of Personal Property investment made at the Business on the Property as of December 31 of the preceding year. Company shall describe or list the Personal Property investment and provide certification as to the purchase price or cost of such Personal Property until such time as \$95,000.00 has been invested in Personal Property.

Pursuant to this Section, there will be a total of four (4) Annual Compliance Certifications due, covering Full-Time Jobs created and maintained, and Personal Property expenditures in years 2021 through 2024.

F. Security Agreement. Company shall execute the Security Agreement in a form substantially similar to that of Exhibit B, attached hereto and incorporated herein for all purposes (the “*Security Agreement*”). MDC shall have the right to file a UCC-1 Financing Statement in the state of Company's incorporation in order to perfect a lien on the assets described in the Security Agreement. Company agrees that MDC may, in an event of default by Company under the Agreement, as amended, execute against Company's Personal Property pursuant to the terms of the Security Agreement.

- 5) Section X.B.1 of the Agreement is hereby amended to read in its entirety as follows:

As to the certification required in Section IV.C, Company shall provide reasonable evidence or supporting documentation. Documentation for employment numbers may be in the form of Texas Workforce Commission Employer Quarterly Reports, or certified employee rosters that show the hours worked and positions filled, or such

other reports as may be agreed upon by MDC and Company. Upon a reasonable request, MDC may review Company's Texas Workforce Commission Employer Quarterly Reports in Midland, Texas, but may not copy or retain a copy of said reports

- 6) The Agreement, inclusive of this Second Amendment, is hereby ratified and affirmed by Company and MDC, and the Agreement shall in all respects remain in full force and effect in accordance with its provisions and as amended above.

[Signature Pages Follow]

EXECUTED by the duly authorized officials as of the day and year first above written.

MIDLAND DEVELOPMENT
CORPORATION

Wesley Bownds, Chairman

ATTEST:

Berry Simpson, Secretary

SUSIE'S SOUTH FORTY CONFECTIONS,
INC.

Susie Hitchcock-Hall, President/Owner

THE STATE OF TEXAS §
 §
COUNTY OF MIDLAND §

BEFORE ME, _____, a notary public, on this day personally appeared Susie Hitchcock-Hall, President/Owner of Susie's South Forty Confections, Inc., known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same as the act and deed of said Company for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS _____ day of _____, A.D., 2021.

Notary Public, in and for
the State of Texas

Centennial Tower Office Lease Renewal

RESOLUTION NO. _____

RESOLUTION AUTHORIZING THE EXECUTION OF AN AMENDMENT TO THAT CERTAIN LEASE AGREEMENT BETWEEN THE MIDLAND DEVELOPMENT CORPORATION AND LORAINÉ AT TEXAS OFFICE TOWER, LTD., DBA CENTENNIAL TOWER, LTD., REGARDING REAL PROPERTY LOCATED AT 200 NORTH LORAINÉ, MIDLAND, TEXAS 79701

WHEREAS, the Board of Directors finds it to be in the public interest to authorize the execution of an amendment to that certain Lease Agreement between the Midland Development Corporation and Lorainé at Texas Office Tower, Ltd., DBA Centennial Tower, Ltd., regarding real property located at 200 North Lorainé, Midland, Texas 79701;

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE MIDLAND DEVELOPMENT CORPORATION:

THAT the Chairman and Secretary are hereby authorized and directed to execute and attest, respectively, on behalf of the Midland Development Corporation, an amendment to that certain Lease Agreement between the Midland Development Corporation and Lorainé at Texas Office Tower, Ltd., DBA Centennial Tower, Ltd., regarding real property located at 200 North Lorainé, Midland, Texas 79701. Said amendment being in a form substantially similar to Exhibit A, which is attached hereto and incorporated herein for all purposes.

On motion of Director _____, seconded by Director _____, the above and foregoing resolution was adopted by the Board of Directors of the Midland Development Corporation at a regular meeting on the _____ day of _____, A.D., 2021, by the following vote:

Directors voting "AYE":

Directors voting "NAY":

WESLEY BOWNDS,
Chairman of the Midland
Development Corporation

ATTEST:

BERRY SIMPSON,
Secretary for the Midland
Development Corporation

APPROVED AS TO FORM ONLY:

JOHN OHNEMILLER,
Attorney for the Midland
Development Corporation

FIRST AMENDMENT TO LEASE

STATE OF TEXAS X
COUNTY OF MIDLAND X

KNOW ALL MEN BY THESE PRESENTS

REFERENCE is hereby made to that certain Office Lease Agreement dated August 23, 2016, by and between Loraine at Texas Office Tower, Ltd. d/b/a Centennial Tower, Ltd. (hereinafter referred to as "Lessor"), and Midland Development Corporation (hereinafter referred to as "Lessee").

NOW THEREFORE, Lessor and Lessee mutually desire to extend the term of the lease for a term of five (5) years, and

WHEREAS Lessor and Lessee are entering into this First Amendment to Lease as of the date preceding the signatures below, and

THE TERMS AND CONDITIONS FOR THE EXTENSION OF TERM ARE OUTLINED BELOW:

- 1. Condition of Premises: Lessee accepts the Leased Premises in "as is" condition.
2. Commencement Date of Extension: October 1, 2021
3. Lease Expiration Date: September 30, 2026
4. Rent for Leased Premises (3,324 sf)
10/01/21 to 09/30/22 \$20.00 psf. \$5,540.00 monthly
10/01/22 to 09/30/23 \$20.50 psf. \$5,678.50 monthly
10/01/23 to 09/30/24 \$21.00 psf. \$5,817.00 monthly
10/01/24 to 09/30/25 \$21.50 psf. \$5,955.50 monthly
10/01/25 to 09/30/26 \$22.00 psf. \$6,094.00 monthly
5. The Base Year set forth in Paragraph 3 of the Office Lease Agreement shall be changed to 2021, and additional operating expense reimbursements, in any, shall commence October 1, 2022.
6. Lessee is granted an option to terminate (the "Option") this Lease after the first consecutive thirty-six (36) months of the Lease term.

EXCEPT as stated above, all other covenants, terms and conditions of the Lease Agreement shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF, the said parties have hereunto set their hands this ____ day of _____, 20_____.

LESSOR: Loraine at Texas Office Tower, Ltd. d/b/a Centennial Tower, Ltd.

LESSEE: Midland Development Corporation

By: _____

By: _____

Name: Jim Hightower

Name: Sara Harris

Title: General Partner

Title: _____

Income Statement

MIDLAND DEVELOPMENT CORPORATION
INCOME STATEMENT FOR THE 10 MONTHS ENDED
July 31, 2021

	Jul-21	YTD	Budgeted Amount
Revenue	\$990,774.44	\$10,344,668.08	\$9,000,000.00
40100 - State Sales Tax	\$909,387.44	\$9,512,401.27	\$9,000,000.00
40600 - Public ROW Use Fees	\$0.00	\$3,858.40	\$0.00
43000 - Interest	\$0.00	\$2,843.64	\$0.00
43010 - Interest - Nonpooled Invest	\$0.00	\$11,694.77	\$0.00
46190 - Miscellaneous Rentals	\$81,387.00	\$813,870.00	\$0.00
4235150 - Midland Dvlpmnt Corp Revenue	\$990,774.44	\$10,344,668.08	\$9,000,000.00

Expense	\$350,914.72	\$12,559,248.84	\$22,656,815.00
51010 - Base Salary	\$19,020.83	\$445,194.53	\$692,150.00
51090 - Fica MDC Portion	\$1,455.10	\$27,840.61	\$65,456.00
51110 - Health Insurance	\$2,657.00	\$25,502.47	\$55,460.00
51135 - ACCE Profit Sharing	\$0.00	\$24,895.47	\$48,451.00
52010 - Office Supplies	\$926.12	\$2,524.30	\$11,000.00
52110 - Motor Vehicle Supplies	\$0.00	\$257.95	\$1,000.00
52115 - Minor Furniture & Fixtures	\$0.00	\$0.00	\$500.00
52155 - Minor Computer Hrdwre & Periph	\$0.00	\$0.00	\$5,000.00
52160 - Computer Software & Supplies	-\$649.51	\$16,739.07	\$30,000.00
52620 - Postage	\$0.00	\$120.00	\$700.00
53010 - Communication	\$1,316.15	\$14,174.16	\$17,000.00
53030 - Light & Power	\$8.96	\$80.36	\$150.00
53110 - Insurance-External	\$0.00	\$39,784.38	\$190,000.00
53212 - Equipment Rental-External	\$345.34	\$3,451.00	\$5,000.00
53220 - Advertising	\$5,854.51	\$192,593.17	\$200,000.00
53370 - Grounds Maintenance	\$1,110.00	\$8,857.87	\$5,000.00
53405 - Software Maintenance	\$1,251.72	\$12,606.59	\$12,000.00
53440 - External Audit Fees	\$0.00	\$22,218.00	\$20,000.00
53450 - Consulting Fees	\$88,581.45	\$345,451.81	\$500,000.00
53510 - Travel & Entertainment	\$68.07	\$2,073.00	\$15,000.00
53520 - Dues & Subscriptions	\$1,487.84	\$14,132.75	\$20,000.00
53530 - Training,Registration Fees,Etc	\$0.00	\$1,524.89	\$10,000.00
53905 - Economic Development Incentive	\$2,000.00	\$8,348,318.23	\$18,553,329.00
53907 - Business Recruitment & Retentn	\$606.15	\$30,256.68	\$50,000.00
53920 - Rent	\$6,094.00	\$59,771.68	\$75,000.00
54010 - Building Maintenance	\$9,739.74	\$93,257.20	\$45,000.00
55120 - Maint. - Instruments & Appara.	\$47.79	\$355.64	\$3,000.00
56188 - MOTRAN	\$0.00	\$137,000.00	\$137,000.00
56202 - General Fund Services	\$32,557.08	\$325,570.80	\$390,619.00
56410 - Payment of Principal	\$0.00	\$0.00	\$60,000.00
56420 - Interest Expense	\$0.00	\$0.00	\$12,000.00
56910 - Depreciation Expense	\$37,344.26	\$336,098.38	\$0.00
56995 - Project Non Capital - Promotions	\$75,000.00	\$303,932.70	\$27,000.00
57000 - Capital Land Purchases	\$0.00	\$20,812.50	\$0.00
57001 - Capital Buildings & Structures	-\$1,576.08	\$843,191.20	\$0.00
57002 - Capital Improve Other Than Bldg	\$0.00	\$143,419.97	\$1,400,000.00
57070 - Construction in Process	\$65,668.20	\$717,241.48	\$0.00
235235 - Midland Development Corp	\$350,914.72	\$12,559,248.84	\$22,656,815.00

July 2021 Net Income: \$639,859.72

Year-to-Date Net Income: (\$2,214,580.76)

Balance Sheet

MIDLAND DEVELOPMENT CORPORATION
BALANCE SHEET FOR THE PERIOD ENDED
July 31, 2021
(Used for Internal Purposes Only)

ASSETS

Current Assets

Cash and cash equivalents	21,924,583	
Sales tax receivable	2,186,318	
Prepaid expenses	107,133	
Accounts receivable	-	
	-	24,218,033

Non-Current Assets

Capital Assets, net	21,923,860	
Forgivable Loans		
Made to Primary Government	-	
Made to Other	506,579	
Total Forgivable Loans	506,579	
		22,430,439

Total Assets		\$ 46,648,473
--------------	--	---------------

LIABILITIES AND NET POSITION

Liabilities

Accounts payable	-	
Retainage Payable	36,612	
Capital Leases payable	173,698	
Commitments payable		
Due within one year	7,603,741	
Due in more than one year	9,924,962	
Total Commitments Payable	17,528,703	
		17,739,014

Net Position

Net investment in capital assets	21,923,860	
Restricted for Forgivable Loans	506,579	
Restricted for Capital Leases	173,698	
Promotions	1,908,275	
Unrestricted	4,397,046	
	4,397,046	28,909,459

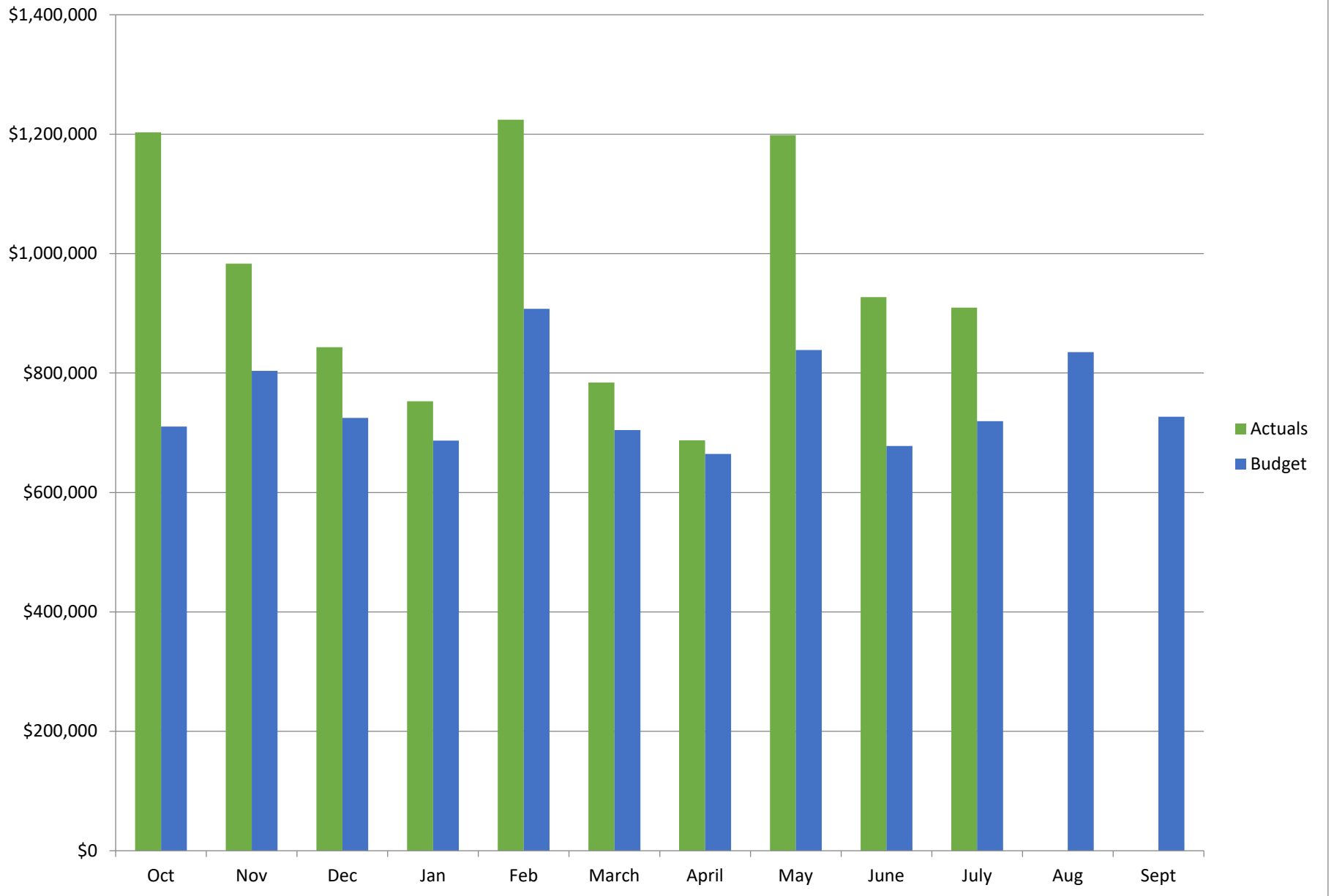
Total Liabilities and Net Position		\$ 46,648,473
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Sales Tax

Sales Tax Variance

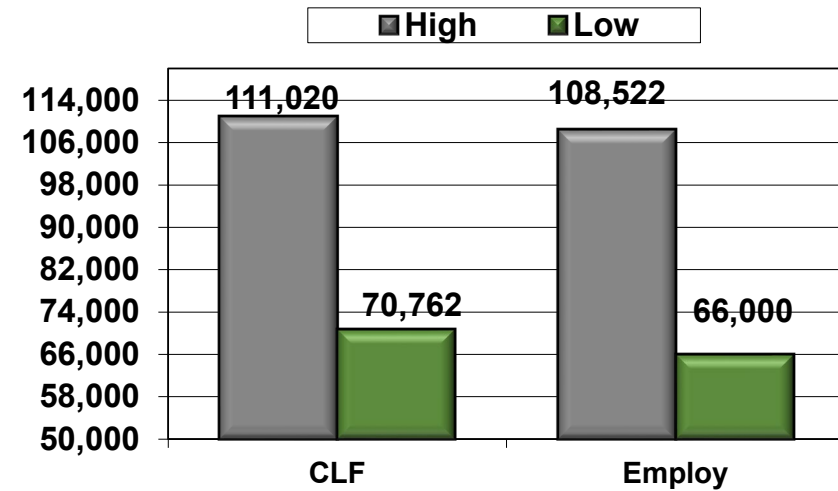
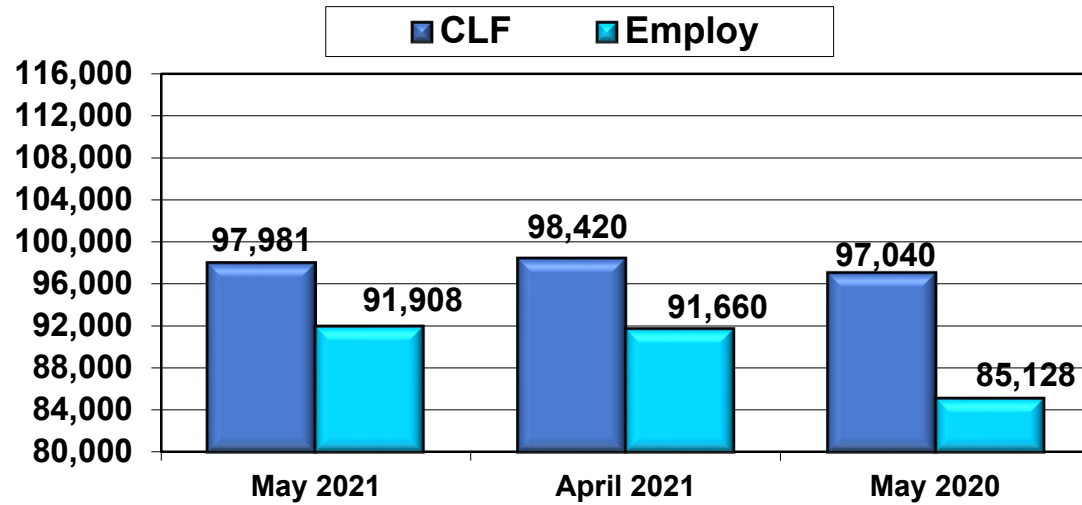
	2018-2019	2019-2020	% Change	2019-2020	2020-2021	% Change	YTD Change
October	\$1,168,778.63	\$1,219,993.44	4.38%	\$1,219,993.44	\$1,203,058.10	-1.39%	-1.39%
November	\$1,315,318.62	\$1,266,357.10	-3.72%	\$1,266,357.10	\$983,259.60	-22.36%	-12.07%
December	\$1,185,882.84	\$1,263,226.93	6.52%	\$1,263,226.93	\$843,087.27	-33.26%	-19.21%
January	\$1,143,749.27	\$1,036,178.70	-9.41%	\$1,036,178.70	\$752,584.05	-27.37%	-20.97%
February	\$1,442,774.27	\$1,279,615.49	-11.31%	\$1,279,615.49	\$1,224,314.99	-4.32%	-17.46%
March	\$1,209,440.03	\$966,824.94	-20.06%	\$966,824.94	\$783,914.25	-18.92%	-17.66%
April	\$1,135,613.41	\$1,006,559.17	-11.36%	\$1,006,559.17	\$687,198.37	-31.73%	-19.42%
May	\$1,381,858.75	\$1,251,139.57	-9.46%	\$1,251,139.57	\$1,198,336.79	-4.22%	-17.38%
June	\$1,175,734.10	\$897,050.21	-23.70%	\$897,050.21	\$927,060.71	3.35%	-15.55%
July	\$1,242,133.20	\$876,285.08	-29.45%	\$876,285.08	\$909,387.44	3.78%	-14.02%
August	\$1,359,171.41	\$1,074,175.26	-20.97%	\$1,074,175.26			
September	\$1,315,787.31	\$834,182.16	-36.60%	\$834,182.16			
Annual Total	\$15,076,241.84	\$12,971,588.05	-13.96%	\$12,971,588.05	\$9,512,201.57		

Sales Tax Actuals vs Budget Estimates



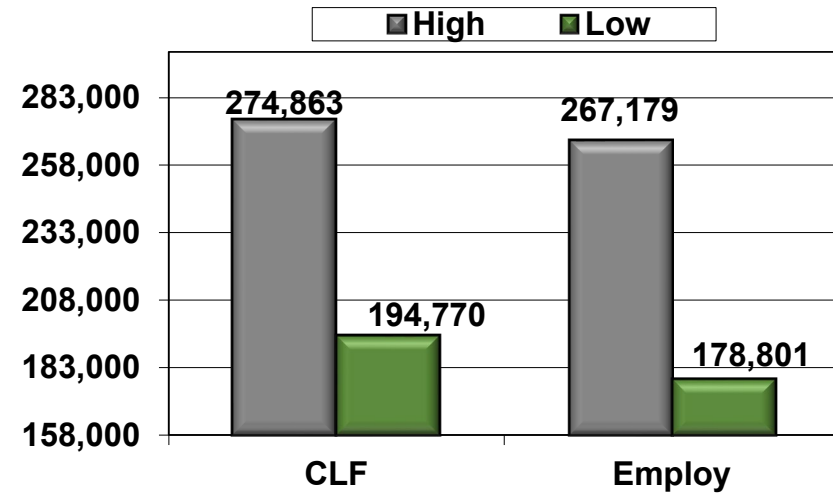
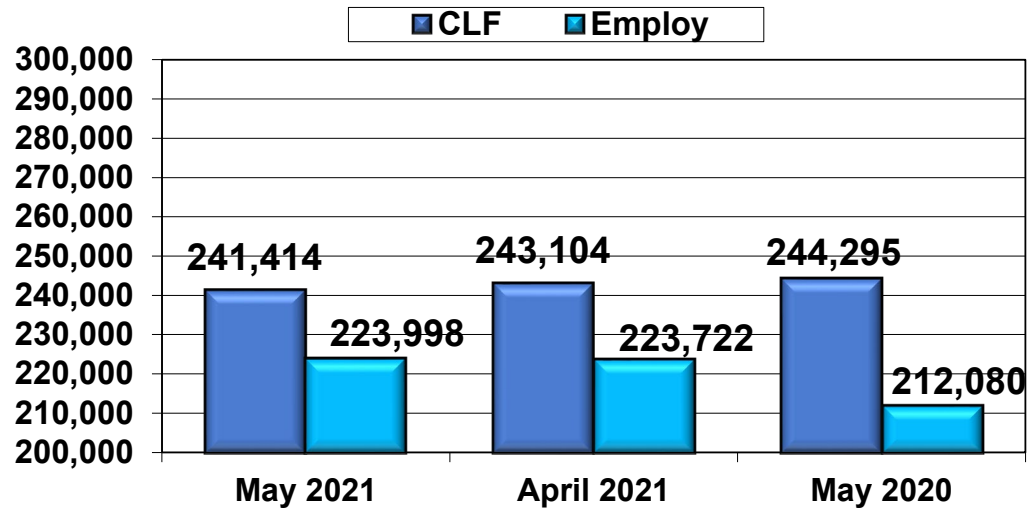
Activity Report

May 2021 Midland MSA Employment Information



	May 2021	April 2021	May 2020	High	Low
Civilian Labor Force	97,981	98,420	97,040	111,020 (Feb 2020)	70,762 (Jan 2010)
Employment	91,908	91,660	85,128	108,522 (Dec 2019)	66,000 (Jan 2010)
Unemployment	6,073	6,760	11,912	11,912 (May 2020)	1,788 (May 2019)
Unemployment Rate	6.2%	6.9%	12.3%	12.3% (May 2020)	1.7% (Apr 2019)

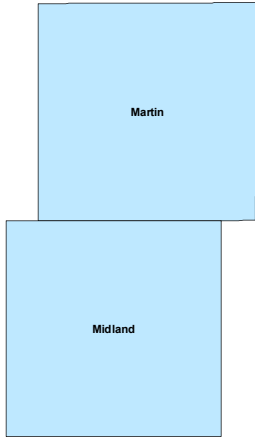
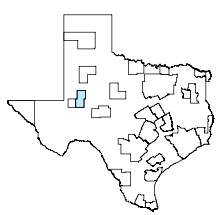
May 2021 Permian Basin Workforce Development Area Employment Information



	May 2021	April 2021	May 2020	High	Low
Civilian Labor Force	241,414	243,104	244,295	274,863 (Feb 2020)	194,770 (Jan 2010)
Employment	223,998	223,722	212,080	267,179 (Feb 2020)	178,801 (Jan 2010)
Unemployment	17,416	19,382	32,215	32,215 (May 2020)	5,115 (Apr 2019)
Unemployment Rate	7.2%	8.0%	13.2%	13.2% (May 2020)	1.9% (Apr 2019)

Midland MSA

May 2021



MSA Labor Force Statistics

	May-21	Apr-21	May-20	Yearly Change
Civilian Labor Force	97,981	98,420	97,040	941
Employed	91,908	91,660	85,128	6,780
Unemployed	6,073	6,760	11,912	-5,839
Unemployment Rate	6.2%	6.9%	12.3%	-6.1%

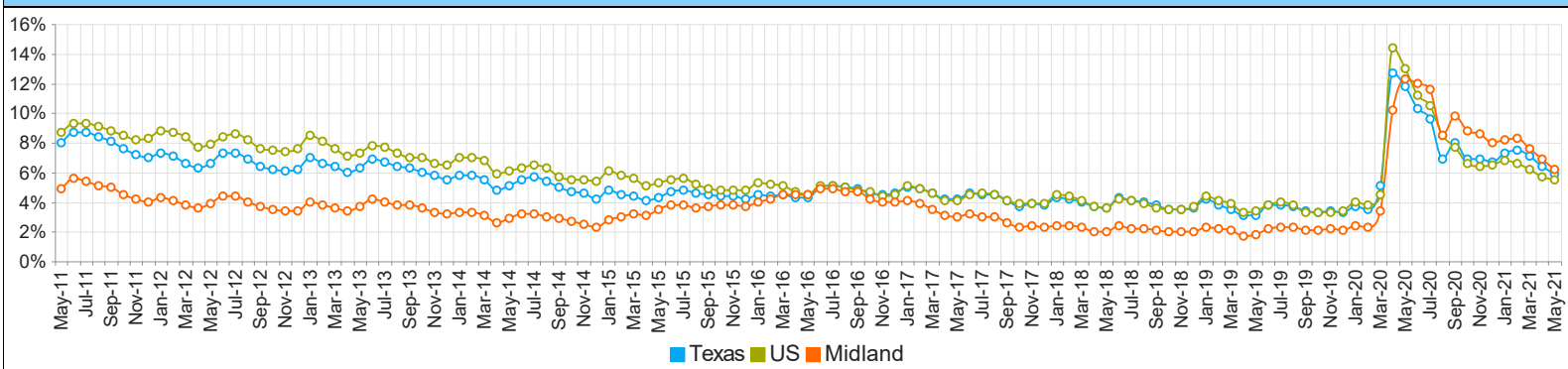
Texas Labor Force Statistics

	May-21	Apr-21	May-20	Yearly Change
Civilian Labor Force	14,061,243	14,060,909	13,549,965	511,278
Employed	13,231,992	13,162,985	11,957,125	1,274,867
Unemployed	829,251	897,924	1,592,840	-763,589
Unemployment Rate	5.9%	6.4%	11.8%	-5.9%

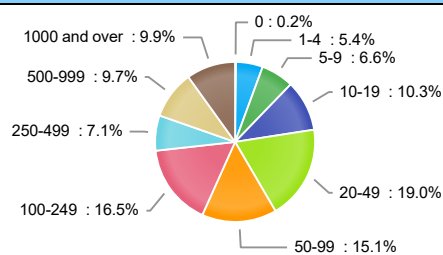
US Labor Force Statistics

	May-21	Apr-21	May-20	Yearly Change
Civilian Labor Force	160,607,000	160,379,000	157,975,000	2,632,000
Employed	151,778,000	151,160,000	137,461,000	14,317,000
Unemployed	8,829,000	9,220,000	20,514,000	-11,685,000
Unemployment Rate	5.5%	5.7%	13.0%	-7.5%

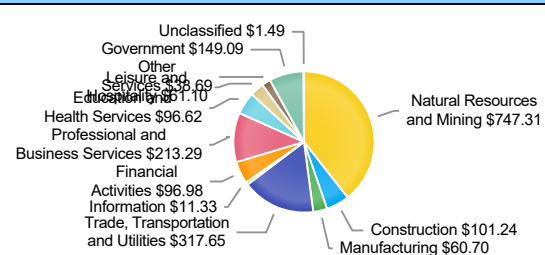
Historical Unemployment Rates



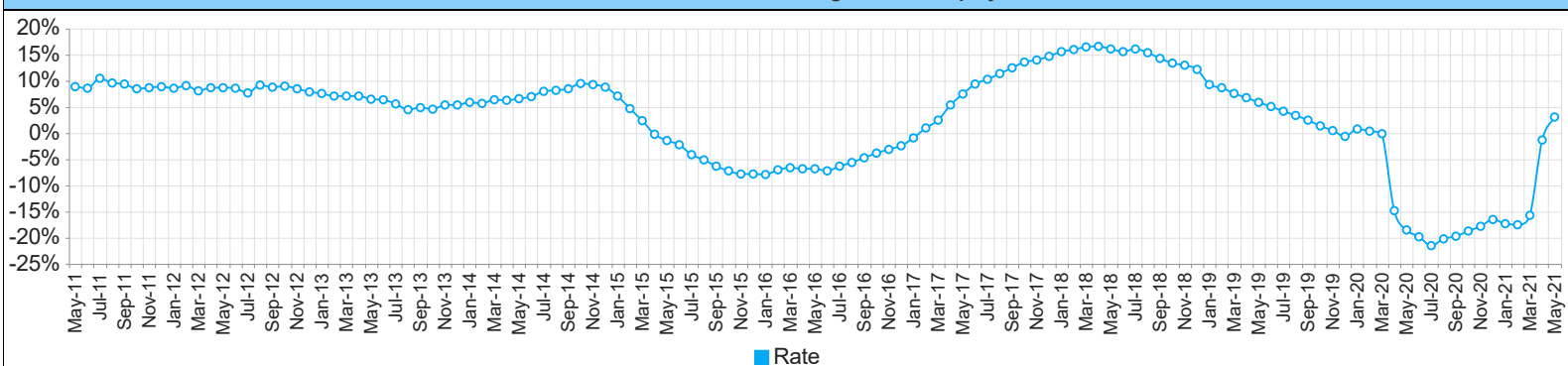
Employment by Size Class (4th Quarter 2020)



Wages by Industry (in millions) (4th Quarter 2020)



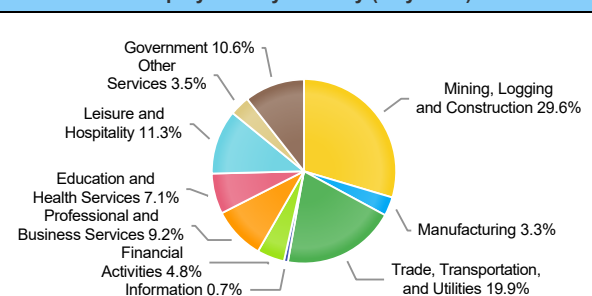
Annual Growth Rate Total Non-agricultural employment



Employment by Industry (May 2021)

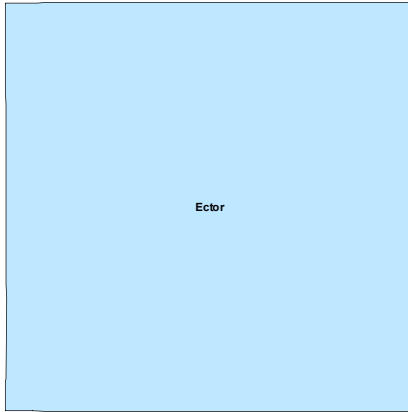
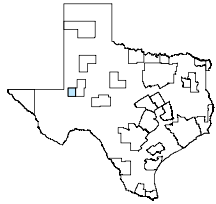
Industry	Current Month Employment	% Monthly Change	% Yearly Change
Total Nonfarm	96,000	0.1%	3.1%
Mining, Logging and Construction	28,400	0.0%	0.4%
Manufacturing	3,200	0.0%	-5.9%
Trade, Transportation, and Utilities	19,100	-1.0%	2.1%
Information	700	0.0%	16.7%
Financial Activities	4,600	0.0%	0.0%
Professional and Business Services	8,800	0.0%	-5.4%
Education and Health Services	6,800	0.0%	4.6%
Leisure and Hospitality	10,800	3.8%	24.1%
Other Services	3,400	0.0%	0.0%
Government	10,200	-1.0%	6.2%

Employment by Industry (May 2021)



Odessa MSA

May 2021

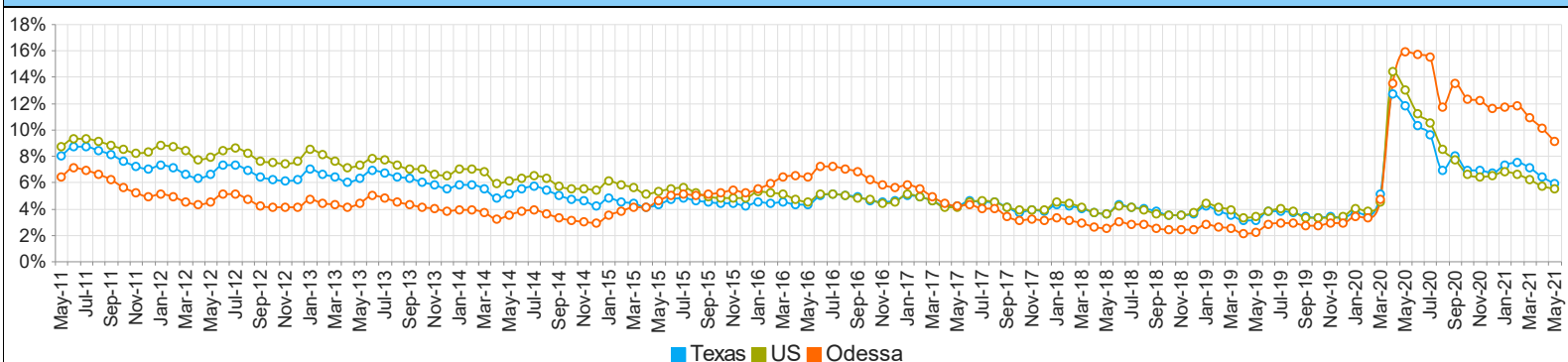


MSA Labor Force Statistics				
	May-21	Apr-21	May-20	Yearly Change
Civilian Labor Force	78,151	78,887	81,445	-3,294
Employed	71,066	70,949	68,460	2,606
Unemployed	7,085	7,938	12,985	-5,900
Unemployment Rate	9.1%	10.1%	15.9%	-6.8%

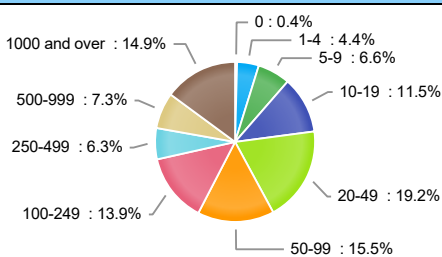
Texas Labor Force Statistics				
	May-21	Apr-21	May-20	Yearly Change
Civilian Labor Force	14,061,243	14,060,909	13,549,965	511,278
Employed	13,231,992	13,162,985	11,957,125	1,274,867
Unemployed	829,251	897,924	1,592,840	-763,589
Unemployment Rate	5.9%	6.4%	11.8%	-5.9%

US Labor Force Statistics				
	May-21	Apr-21	May-20	Yearly Change
Civilian Labor Force	160,607,000	160,379,000	157,975,000	2,632,000
Employed	151,778,000	151,160,000	137,461,000	14,317,000
Unemployed	8,829,000	9,220,000	20,514,000	-11,685,000
Unemployment Rate	5.5%	5.7%	13.0%	-7.5%

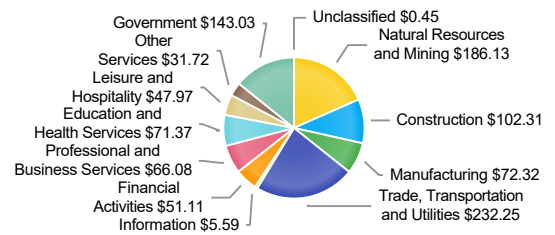
Historical Unemployment Rates



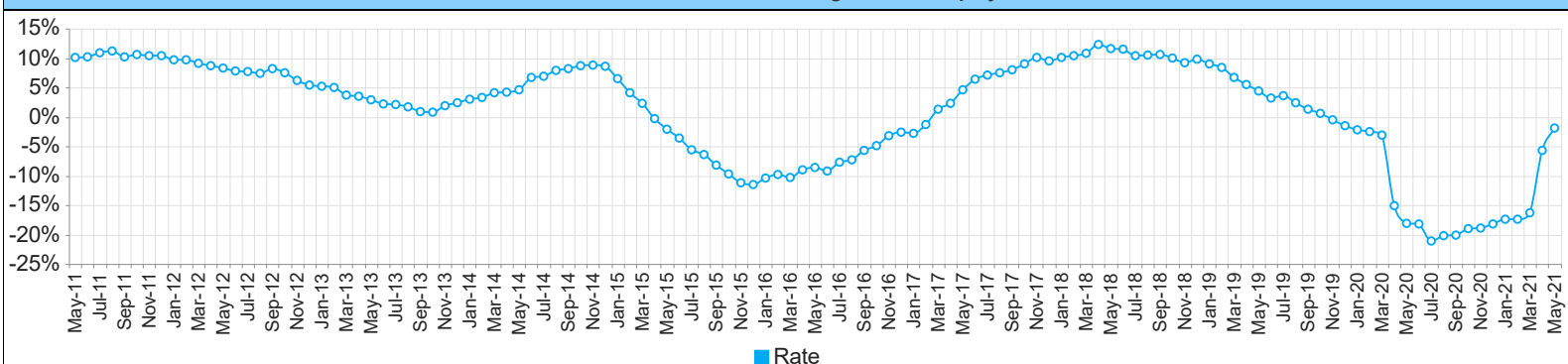
Employment by Size Class (4th Quarter 2020)



Wages by Industry (in millions) (4th Quarter 2020)



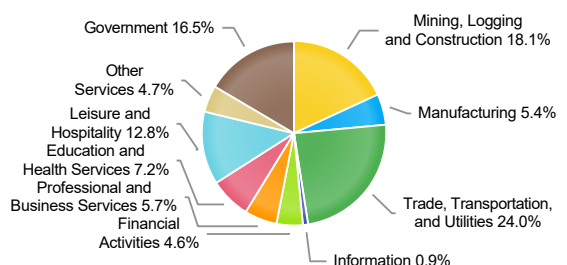
Annual Growth Rate Total Non-agricultural employment



Employment by Industry (May 2021)

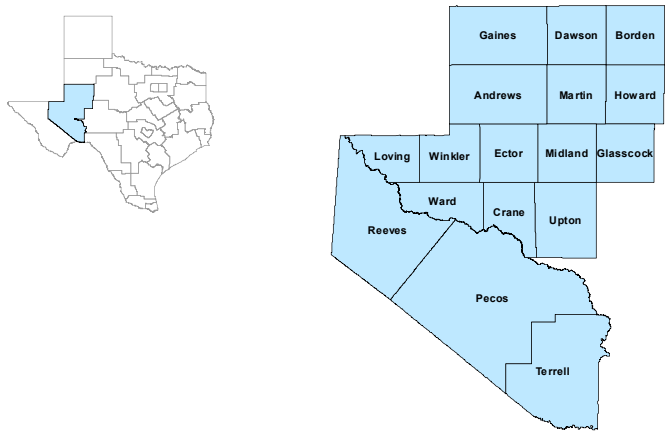
Industry	Current Month Employment	% Monthly Change	% Yearly Change
Total Nonfarm	67,900	0.1%	-1.9%
Mining, Logging and Construction	12,300	-1.6%	-19.6%
Manufacturing	3,700	0.0%	-14.0%
Trade, Transportation, and Utilities	16,300	-0.6%	-2.4%
Information	600	0.0%	50.0%
Financial Activities	3,100	3.3%	-3.1%
Professional and Business Services	3,900	0.0%	0.0%
Education and Health Services	4,900	-2.0%	-2.0%
Leisure and Hospitality	8,700	3.6%	19.2%
Other Services	3,200	0.0%	6.7%
Government	11,200	0.9%	10.9%

Employment by Industry (May 2021)



Permian Basin Workforce Development Area

May 2021



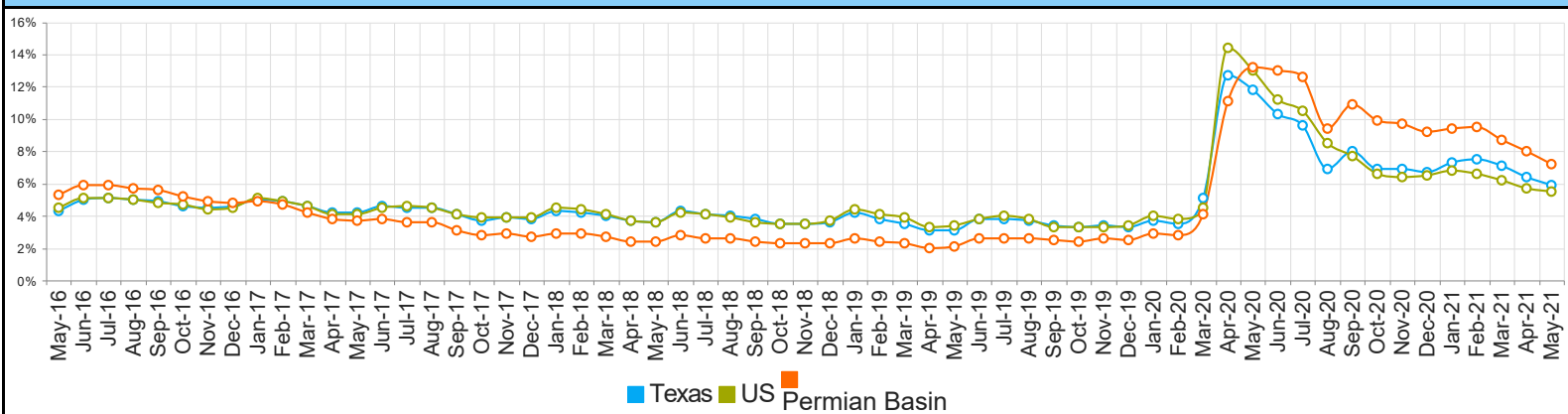
WDA Labor Force Statistics				
	May-21	Apr-21	May-20	Yearly Change
Civilian Labor Force	241,414	243,104	244,295	-2,881
Employed	223,998	223,722	212,080	11,918
Unemployed	17,416	19,382	32,215	-14,799
Unemployment Rate	7.2%	8.0%	13.2%	-6.0%

Texas Labor Force Statistics				
	May-21	Apr-21	May-20	Yearly Change
Civilian Labor Force	14,061,243	14,060,909	13,549,965	511,278
Employed	13,231,992	13,162,985	11,957,125	1,274,867
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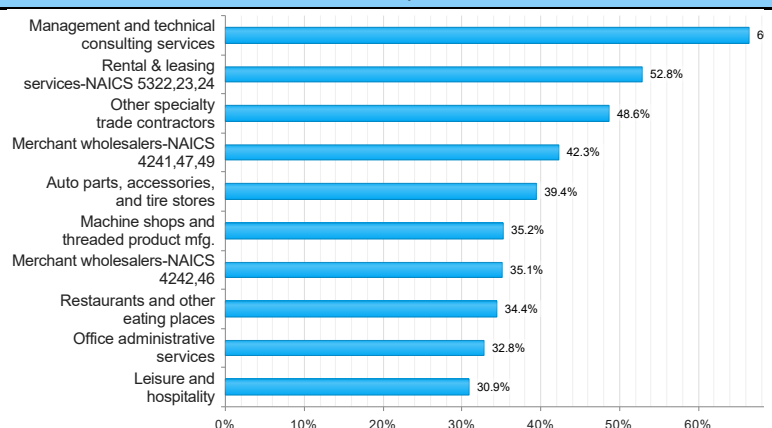
US Labor Force Statistics				
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Unemployed	8,829,000	9,220,000	20,514,000	-11,685,000
Unemployment Rate	5.5%	5.7%	13.0%	-7.5%

Continued Claims for the Week of the 12th				
	May-21	Apr-21	May-20	Yearly Change
WDA	2,530	3,050	21,813	-19,283
Texas	145,024	167,469	1,010,727	-865,703

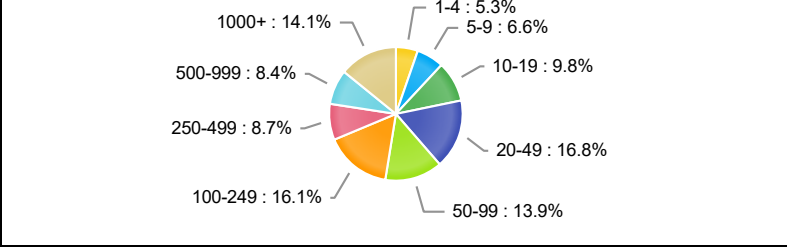
Historical Unemployment Rates



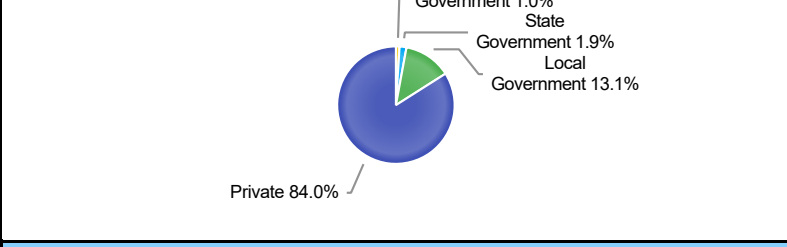
Projected Top Ten Fastest Growing Industries in WDA (% Growth 2018-2028)



Employment by Size Class (4th Quarter 2020)



Employment by Ownership (4th Quarter 2020)



Average Weekly Wage (4th Quarter 2020)

	Q4 2020	Q3 2020	Q4 2019	Quarterly Change	Yearly Change
WDA	\$1,352	\$1,194	\$1,363	\$158	\$-11
Texas	\$1,294	\$1,150	\$1,187	\$144	\$107
US	\$1,339	\$1,172	\$1,185	\$167	\$154

Employment by Industry (4th Quarter 2020, Percent Change)

Industry	Employment	% of Total	% Quarterly Change	% Yearly Change
Natural Resources and Mining	38,975	18.5%	4.3%	-30.7%
Construction	15,628	7.4%	-2.9%	-25.8%
Manufacturing	8,277	3.9%	-2.4%	-25.7%
Trade, Transportation and Utilities	47,471	22.6%	2.9%	-13.4%
Information	1,584	0.8%	-0.6%	-31.7%
Financial Activities	9,135	4.3%	0.8%	-9.8%
Professional and Business Services	15,015	7.1%	1.4%	-14.6%
Education and Health Services	38,123	18.1%	3.8%	-2.2%
Leisure and Hospitality	22,688	10.8%	1.7%	-10.1%
Other Services	6,218	3.0%	-2.1%	-14.1%
Public Administration	7,360	3.5%	-2.9%	-0.6%

Employment by Industry (4th Quarter 2020)

