



Board Binder Open Session

February 6, 2023

Agenda



**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 February 6, 2023. A quorum of the Board of Directors of the Midland Development Corporation intends to be physically present at the aforementioned location.

Videoconference Information

Join Zoom Webinar

<https://us02web.zoom.us/j/86209444997?pwd=bEJPYkFpZUxMU2xEMXV2aDVwekMwQT09>

Passcode: 271496

Or join by phone:

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

US: +1 346 248 7799 or +1 669 900 9128 or +1 719 359 4580 or +1 253 205 0468 or +1 253 215 8782 or +1 669 444 9171 or +1 507 473 4847 or +1 564 217 2000 or +1 646 558 8656 or +1 646 931 3860 or +1 689 278 1000 or +1 301 715 8592 or +1 305 224 1968 or +1 309 205 3325 or +1 312 626 6799 or +1 360 209 5623 or +1 386 347 5053

Webinar ID: 862 0944 4997

Passcode: 271496

International numbers available: <https://us02web.zoom.us/j/86209444997>

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. Introduction of new Midland Development Corporation board director Zachary Deck.
3. Motion approving the minutes of the January 9, 2023, meeting of the Midland Development Corporation.
4. Resolution authorizing signatories on Midland Development Corporation bank accounts.
5. Resolution authorizing the execution of a consultant services agreement with InterFlight Global Corporation in an amount not to exceed \$159,500.00 for services related to the procurement of new tenants for facilities located at the Spaceport Business Park; and authorizing payment for said agreement.

6. Resolution authorizing the execution of a contract with Big Apple Group in the amount of \$7,500.00 for professional engineering services related to the demolition of the Western United Life Building; approving \$2,500.00 for certain related travel expenses; and authorizing payment for said agreement.
7. Resolution amending the personnel policies of the Midland Development Corporation.
8. Presentation on the January 2023 monthly expenses and economic development activity report from the Midland Development Corporation Executive Director and staff.
9. 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 551.087 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 3rd day of February 2023.

Amy M. Turner
City Secretary

January 9th Minutes

MIDLAND DEVELOPMENT CORPORATION

MINUTES

January 09, 2023

The Board of Directors of the Midland Development Corporation convened in regular session at the Midland Chamber of Commerce board room, 303 West Wall Street, Suite 200, Midland, Texas, at 2:00 p.m. on January 09, 2023.

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

Board Members absent: None

Staff Members present: Assistant City Manager Tina Jauz, City Attorney Nicholas Toulet-Crump, and Deputy City Secretary Vanessa White

Council Member(s) present: Mayor Lori Blong and Councilman Dan Corrales

MDC Staff Members present: Executive Director Sara Harris, Business Retention & Expansion Coordinator Sammi Steele, and Marketing & Administrative Coordinator Gabrielle Franks

1. Call meeting to order.

Chairman Lowery called the meeting to order at 2:00 pm

2. Presentation thanking outgoing Midland Development Corporation Chairman Stephen Lowery.

3. Motion electing officers to serve through December 2023.

Director Simpson moved to appoint Chase Gardaphe as Chairman, Berry Simpson as First Vice Chair, P Lourcey Sams as Second Vice Chair, Jill Pennington as Secretary, and Brad Bullock as Treasurer; seconded by Director Sams. The motion carried by the following vote: AYE: Lowery, Bullock, Pennington, Sisniega, and Gardaphe, . NAY: None. ABSTAIN: None. ABSENT: None.

4. Motion approving the minutes of the December 12, 2022, meeting of the Midland Development Corporation.

Director Bullock moved to approve the minutes of the December 12, 2022 meeting of the Midland Development Corporation; seconded by Director Pennington. The motion carried by the following vote: AYE: Lowery, Sams, Simpson, Gardaphe, and Sisniega. NAY: None. ABSTAIN: None. ABSENT: None.

5. Resolution establishing the dates of the regular meetings of the Midland Development Corporation Board of Directors to be held during the period of February 2023 to January 2024.

Director Sisniega moved to approve Resolution ED-429 establishing the dates of the regular meetings of the Midland Development Corporation Board of Directors to be held during the period of February 2023 to January 2024, seconded by Director Bullock. The motion carried by the following vote: AYE: Lowery, Sams, Simpson, Gardaphe, and Pennington. NAY: None. ABSTAIN: None. ABSENT: None.

6. Presentation on the December 2022 monthly expenses and economic development activity report from the Midland Development Corporation Executive Director and staff.

Sara Harris gave an overview of the month's expenses, and economic development activity. Gabrielle Franks updated the board with the social media stats on Facebook, Instagram, LinkedIn, and now TikTok. Sammi Steele gave an overview of the business retention and expansion program in 2022.

Board recessed into executive session at 2:42 p.m.

7. 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 551.087 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 3:14 p.m.

All the business at hand having been completed, Director Simpson adjourned the meeting at 3:14 p.m.

Respectfully submitted,

Vanessa White, Deputy City Secretary

PASSED AND APPROVED the 6th Day of February 2023.

Jill Pennington, Secretary

MDC Bank Account Signatories

RESOLUTION NO. _____

**RESOLUTION AUTHORIZING SIGNATORIES ON
MIDLAND DEVELOPMENT CORPORATION BANK
ACCOUNTS**

WHEREAS, the Midland Development Corporation Board of Directors finds it to be in the public interest to authorize withdrawals from all bank accounts held by the Midland Development Corporation by the individuals listed in Section One hereof;

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

SECTION ONE. That the following individuals are hereby authorized to withdraw funds from all bank accounts held by the Midland Development Corporation: Chase Gardaphe; Berry Simpson; P. Lourcey Sams; Jill Pennington; Brad Bullock; Lucy Sisniega; Zachary Deck; and Sara Harris.

SECTION TWO. That two (2) signatures shall be required for withdrawal amounts over \$2,500.00, and for any employee expense reimbursement over \$500.00.

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., 2023, by the following vote:

Directors voting "AYE":

Directors voting "NAY":

CHASE GARDAPHE,
Chairman of the Midland
Development Corporation

ATTEST:

JILL PENNINGTON,
Secretary of the Midland
Development Corporation

APPROVED AS TO FORM ONLY:

JOHN OHNEMILLER,
Attorney for the Midland
Development Corporation

InterFlight Global

RESOLUTION NO. _____

RESOLUTION AUTHORIZING THE EXECUTION OF A CONSULTANT SERVICES AGREEMENT WITH INTERFLIGHT GLOBAL CORPORATION IN THE AMOUNT OF \$159,500.00 FOR SERVICES RELATED TO THE PROCUREMENT OF NEW TENANTS FOR FACILITIES LOCATED AT THE SPACEPORT BUSINESS PARK; AND AUTHORIZING PAYMENT FOR SAID AGREEMENT

WHEREAS, the Board of Directors finds it to be in the public interest to authorize the execution of a consultant services agreement with InterFlight Global Corporation in the amount of \$159,500.00 for services related to the procurement of new tenants for facilities located at the Spaceport Business Park;

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 consultant services agreement with InterFlight Global Corporation in the amount of \$159,500.00 for services related to the procurement of new tenants for facilities located at the Spaceport Business Park. Said agreement being in the form substantially similar to that of 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 InterFlight Global Corporation in accordance with the terms of said agreement from funds available in the Midland Development Corporation Fund (235) Operating Budget upon receipt of proper invoices or statements approved by the Executive Director of the Midland Development Corporation or her 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 _____, A.D., 2023, by the following vote:

Directors voting "AYE":

Directors voting "NAY":

CHASE GARDAPHE,
Chairman of the Midland
Development Corporation

ATTEST:

JILL PENNINGTON,
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 28th day of February, 2023, by and between the MIDLAND DEVELOPMENT CORPORATION, a Type A corporation pursuant to Chapter 504 of the Texas Local Government Code, as amended (“*MDC*”), and INTERFLIGHT GLOBAL CORPORATION (“*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 (the “*services*”) in connection with procuring new tenants for City of Midland-owned properties located at Midland International Air & Space Port Business Park.

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

1. *MDC* agrees to pay *COMPANY* in an amount not to exceed \$159,500.00 for the consulting services described in **Exhibit A**. *MDC* agrees to pay *COMPANY* according to the schedule set forth in **Exhibit A**. The *MDC* Executive Director, or his/her designee, 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 thereof within fifteen (15) days of the date of receipt of the invoice, and the parties shall immediately make every effort to settle the disputed

Exhibit A

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.

2. Expenses will be invoiced separately. Additional travel, lodging, and other direct or incidental expense guidelines include the following:

- a. Privately-owned vehicle mileage will be reimbursed at the current GSA mileage rate;
- b. When mileage is charged, a mileage usage log or approved alternate method must be maintained to support the charge. If mileage usage log is submitted, it must include at a minimum travel dates, times, locations and mileage traveled;
- c. Car rental reimbursement will be limited to cost of full-sized vehicle, or SUV if multiple passengers, and necessary fuel;
- d. Airfare reimbursement will be limited to cost of economy class fares;
- e. Lodging reimbursement will be limited to the cost of standard rooms, upgrade expenses for studios and suites are not an allowable reimbursement expense;
- g. Tips for service, i.e. meals, and parking greater than 20% are not an allowable reimbursement expense; and
- h. Profit mark-ups are not allowable expense on other direct or incidental expenses.

ARTICLE IV. TERM

The term of this Agreement shall be from **February 28, 2023 until February 29, 2024**, 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

COMPANY shall not, either directly or indirectly, assign all or any part of this Agreement or any interest, right or privilege herein, without the prior written consent of MDC. The issue on whether or not to grant consent to an assignment is in the sole discretion of MDC.

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

All reports, information and other data (“*Instruments of Service*”), given to, prepared or assembled by COMPANY under this Agreement, and any other related documents or items shall become the sole property of MDC and shall be delivered to MDC, without restriction, except that COMPANY may make copies of any and all Instruments of Service for its files. MDC shall not make any modification to the plans and specifications or make them available for use by third parties without the prior written authorization of COMPANY, which consent shall not be unreasonably withheld.

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.

Notwithstanding any contrary provision contained herein, MDC's Executive Director, in his/her sole and absolute discretion, may modify the insurance requirements contained in this Article.

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. THE PROVISIONS OF THIS ARTICLE SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

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 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. THE PROVISIONS OF THIS ARTICLE SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

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 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.

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 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.

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.

THE PROVISIONS OF THIS ARTICLE SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

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 rights and duties of the Parties, including, but not limited to, tort claims and any 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 the Parties shall be deemed to have occurred in Midland County, Texas. Exclusive venue for any claim, suit, or other action arising from or connected in any way to this Agreement shall be in Midland County, Texas.

C. Notice. Any notice or demand that shall be made regarding this Agreement, shall be made in writing and delivered either in person or by certified or registered mail. Notice by mail shall be complete upon deposit of the paper, postage prepaid, in a post office or official depository under the care and custody of the United States Postal Service addressed as follows:

If to MDC: Executive Director
Midland Development Corporation
200 N. Loraine, Suite 610
Midland, Texas 79701

If to COMPANY: InterFlight Global Corporation
1434 Spruce Street, Suite 100
Boulder, Colorado 80302

The parties hereto may change the above-designated addresses by giving notice pursuant to the terms of this Section.

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

E. Use of Language. Words in the singular shall be held to include the plural, unless the context otherwise requires.

F. Amendments, Modifications, Alterations. No amendment, modification, or alteration of the terms of this Agreement shall be binding unless it is in writing, dated subsequent to the date of this Agreement, and duly executed by the parties to this Agreement.

G. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed as original, and all of which shall constitute one and the same instrument.

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 (1) original and seven (7) 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 (6) 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. The provisions of this Section shall survive the termination of this Agreement.

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. Anti-Boycott Statutes. To the extent that Tex. Gov't Code §§ 2271.002 and 2274.002 apply to this Agreement, COMPANY hereby verifies that:

- COMPANY does not boycott Israel and will not boycott Israel during the term of this Agreement;
- COMPANY does not boycott energy companies and will not boycott energy companies during the term of this Agreement; and
- COMPANY does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and will not discriminate during the term of this Agreement against any firearm entity or firearm trade association.

If Tex. Gov't Code § 2270.002 does not apply to this Agreement, such verification is not required, and COMPANY shall be deemed to have not made such verification.

M. Records Retention and Production of Information. To the extent that this Agreement is a contract described by Tex. Gov't Code § 552.371, COMPANY shall: (i) preserve all contracting information related to the Agreement as provided by the records retention requirements applicable to MDC for the duration of the contract; (ii) promptly provide to MDC any contracting information related to the Agreement that is in the custody or possession of COMPANY on request of MDC; and (iii) on completion of the Agreement, either (a) provide at no cost to MDC all contracting information related to the Agreement that is in the custody or possession of COMPANY, or (b) preserve the contracting information related to the Agreement as provided by the records retention requirements applicable to MDC.

N. Public Information. To the extent that this Agreement is a contract described by Tex. Gov't Code § 552.371, COMPANY agrees as follows in accordance with Tex. Gov't Code § 552.372(b): The requirements of Subchapter J, Chapter 552, Government Code, may apply to this contract, and the contractor or vendor agrees that the contract can be terminated if the contractor or vendor knowingly or intentionally fails to comply with a requirement of that subchapter.

O. 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 and acceptance hereof.

P. Iron or Steel Products Statute. COMPANY agrees that all iron or steel products produced through a manufacturing process and used in the project that is the subject of this Agreement shall be produced in the United States in accordance with Government Code § 2252.202, *et seq.*, as amended.

Q. Interpretation. By executing this Agreement, the Parties acknowledge and agree that this Agreement shall not be interpreted or construed against any Party solely because such Party or its legal counsel drafted this Agreement. The Parties have read, understood, and approve of the language and terms set forth herein.

[Signature Pages Follow]

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

MIDLAND DEVELOPMENT CORPORATION

Chase Gardaphe, Chairman

ATTEST:

Jill Pennington, Secretary

[Signature Page Follows]

COMPANY:

By: _____

Name: _____

Title: _____

STATE OF _____ §

§

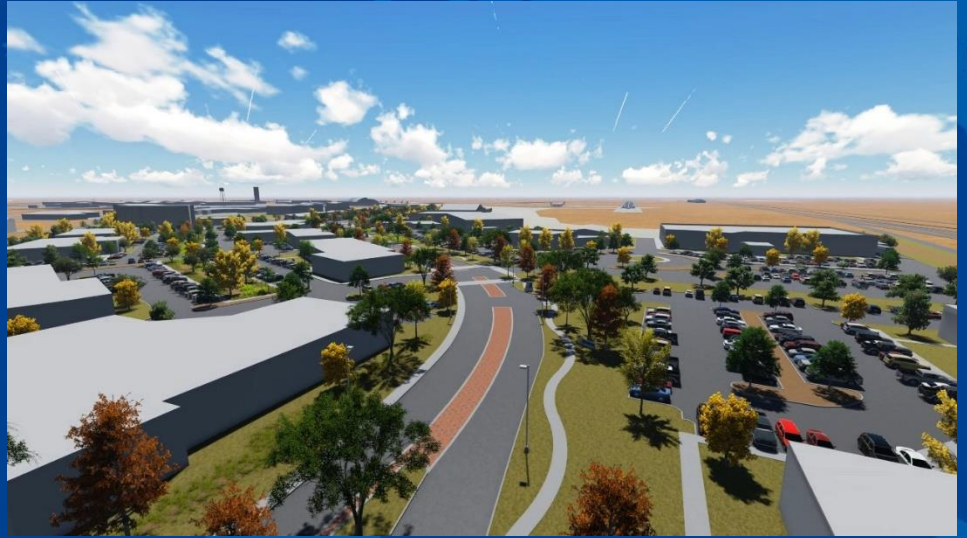
COUNTY OF _____ §

§

BEFORE ME, the undersigned authority, on this ____ day of _____, 20__, 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 _____, 20__.

Notary Public, State of _____



MIDLAND AIR & SPACEPORT BUSINESS PARK DEVELOPMENT
HIGH SPEED AEROSPACE TRANSPORTATION WORKSHOPS & FAM TRIPS
MASTER, BUSINESS AND MARKETING PLANS

~ CONTRACT RENEWAL 2023 ~



Wednesday, January 18th, 2023

Presented to: Mrs. Sara Harris, Executive Director, Midland Development Corporation



InterFlight Global
Intelligent Aviation & Aerospace Solutions

Exhibit A

Wednesday, January 18th, 2023

Mrs. Sara Harris, Executive Director
Midland Development Corporation
200 N. Loraine, Suite 610
Midland, TX 79701

Dear Mrs. Sara Harris:

[InterFlight Global Corporation \(IFG\)](#) is pleased to present you with this contract renewal proposal for the year 2023. We are ready, willing, and able to continue augmenting the MDC's Aerospace and Defense economic industries development efforts including all actions and activities required to effectively select, attract, retain, and grow the existing pool of high-quality aerospace tenants as lessees, developers and investors of the available space(s), land and properties at the Midland Air and Spaceport and environs. It is a pleasure, honor and privilege working for the MDC with your leadership, support, and guidance.

This renewal proposal will be complemented by IFG's regular and year end 2022 briefings with highlights of some of our most important accomplishments for 2022, and the strategic forecasts of the follow-on activities envisioned to succeed in the tasks proposed for the Midland Air and Spaceport Business Park and environs in 2023.

Our highly specialized knowledge, experience, participation and leadership in the Aerospace and Defense industries and complexes, is the key to our successful promotion, marketing, and economic impact of incoming companies to the Midland Air and Spaceport.

Our day-to-day activities in the Aerospace and Defense industrial ecosystem allows us to identify, attract and assist the MDC to close deals with selected tenants to come to and grow in Midland insourcing jobs, CAPEX and producing important direct, indirect, and induced economic impacts the mid and long term. Our unique "consultative-brokerage" methodology for economic and business development involves cost effective "inbound" prospects visits (Familiarization (FAM) Trips), strategic structuring of their relocation plans and all insights and arguments to induce leases.

The existing prospect tenant pipeline is robust and growing from month to month. Importantly, existing tenants, and potential new ones, are bringing their relationships with them, e.g., strategic partners, vendors, suppliers and clients to the Familiarization trips, workshops, and meetings, as well as at trade shows and industry events. For example, our newest tenant Firehawk Aerospace, has brought the Spaceport to the attention of Raytheon, Draper Technologies, and the US DOD at many levels. Also, Firehawk Aerospace has brought to Midland, Houston's premier aerospace and defense private funding and incubator-maker space powerhouse Capital Factory. We expect their familiarization visits of 2022 to yield great results for new incoming companies and for the companies already established in Midland. We are very optimistic about the growing relationship with the NASA Johnson Space Center, and with Spaceport America after their familiarization visits to Midland in 2022.

IFG applauds and welcomes the newly acquired parcel of circa 300 acres of land at the Spaceport, to accommodate prospect tenants and potential tenants.

In summary, the Spaceport forecast for the Business Park Phase I is on track, and IFG is extremely confident and optimistic that the Spaceport Business Park will grow even more as an Aerospace and Defense industrial complex financial, economic and diversification asset to the City of Midland. At IFG, we have domestic and international reach in both the public and private segments of both the air and space transportation and defense industries. Very importantly for this project, we understand the Midland Air and Spaceport competitive edge very well and are set to attract new companies, and together with the MDC, we can maximize Midland's competitive edge aligning public and private funding, economic and business development.

We are fully involved in and engaged with these fast-evolving sectors and prepared to apply our expertise to your needs.

For the project, our Professional Fees are (Exhibit A):

1. STRATEGIC-BUSINESS PLAN REVIEWS AND UPDATES - \$19,500
2. FAMILIARIZATION (FAM) TRIPS (MINIMUM 3) - \$35,000
3. MDC REPRESENTATION YEAR-ROUND - \$35,000
4. HIGH SPEED AEROSPACE TRANSPORTATION (HSAT) WORKSHOP - END OF YEAR - \$70,000

\$159,500 total (contract length of 12 months: February 2023 through January 2024), excludes travel costs.

The project will be billed in four (4) bi-monthly stages of \$39,875 each.

Thank you for the opportunity to submit this proposal. We look forward to continuing work on this important “momentum building” and financial climb for the Spaceport and the Spaceport Business Park.

Midland Spaceport, we are building success upon success!

Sincerely,

A handwritten signature in black ink, appearing to read "Oscar S. Garcia". The signature is fluid and cursive, with a prominent flourish at the end.

Oscar S. Garcia, Chairman & CEO
InterFlight Global Corporation

EXHIBIT A. FIXED FIRM PRICE OVERVIEW – ALL ELEMENTS

Project Task List and Price:

PROJECT NAME: MIDLAND AIR AND SPACEPORT BUSINESS DEVELOPMENT		
	PROJECT ACTIVITY	FIXED FIRM PRICE
Element 1	STRATEGIC-BUSINESS PLAN REVIEWS AND UPDATES	\$19,500
1.1	Marketing, Communications and Economic Development Plan Execution	
1.2	Spaceport Strategic and Business Plan Aligned with Midland Airport Master Plans	
1.3	Workshop Design / Integration MAF Master- W/Master, Business & Marketing Plan	
Element 2	FAMILIARIZATION (FAM) TRIPS (MINIMUM 3)	\$35,000
2.1	Fam Trips to bring potential tenants, businesses and relationships to the Spaceport Business Park	
2.2	Organization and execution of Fam Trips	
2.3	Identification, Selection, Capture and Closing of new Tenants and Customers for Spaceport and Business Park	
2.4	Three to four Fam Trips per year, with multiple invitees each, 3-day span	
2.5	Follow ups from Fam Trips- Retention and Closing support to MDC	
Element 3	MDC REPRESENTATION YEAR-ROUND	\$35,000
3.1	Multiple Trips to represent MDC, e.g. Commercial Spaceflight Federation in Washington DC	
3.2	Strategic Relationships Building- Economic Development (Tenants)	
3.3	Strategic Relationships Building-Regulatory, Legislative and PPP (CSF, GSA, FAA, DOT/C/D, Lobbying support)	
Element 4	HIGH SPEED AEROSPACE TRANSPORTATION (HSAT) WORKSHOP	\$70,000
4.1	Organization, arrangement and execution of HSAT Workshop	
4.2	Alignment with MAF General Business Dev Mission/Vision/Values Statements	
4.3	Workshop Design and Integration MAF Master-Business Plan	
4.4	Workshop Contents-Leading to sales, leasing and investment in MAF	
4.5	Workshop Marketing Collaterals, Promotion and PR	
4.6	Final Preparations-Logistics	
4.7	Post Workshop Reports and Materials to Attendees and MAF, and Follow Ups	
4.8	Meetings/Workshop Delivery	
4.9	Production Costs - e.g. year-round marketing/strategic alignment with MDC interests, paid travel for key influencers, thought leaders and guest speakers to enhance the event	
4.10	Marketing, Communications and PR Costs-Included	
TOTAL COST		\$159,500

Project Leader

Oscar S. Garcia



Oscar S. Garcia is the founding Partner, Chairman and CEO of InterFlight Global Corporation (IFG), an international aerospace, aviation and space expert consulting firm in business since 1992. At the firm, he serves clients as a Senior Consultant, Board Advisor and Project Leader

in the areas of Private-Public Asset, Properties and Investments Economic Development, Strategic Planning, Finance, Marketing and Strategy. He has over twenty years of experience advising and consulting for Senior Management and Governance Boards of startup companies, joint ventures, public entities- governments and large aerospace conglomerates. His expertise includes, but it no limited to the design, set up, growth and expansion of aerospace, aviation and space related properties, assets and companies.

Oscar serves on the FAA/AST COMSTAC as a full member and Standards Working Group Chairman. He is the Chairman and of the FastForward Group and a UN-ICAO Point of Contact and Space Transportation Leader. In addition, he serves in the Commercial Spaceflight Federation (CSF) Standards, Air & Space Ports and Operations Committees. He has served in the Space Florida Board Advisory Committee, Beacon Council Action Committee Board. He serves on Embry Riddle Aeronautical University's Business School Industrial Advisory Board and Alumni Advisory Council to the President and Board of Trustees.

He is a past (2006-2007) President and current Chairman of the Aerospace Committee for the prestigious Greater Miami Aviation Association (GMAA) Board of Directors. The GMAA is today the dorsal spine of the aviation and aerospace industries socio-economic affairs in Southern Florida.

Registrations:

United Nations International Civil Aviation Organization- ICAO- Office of Outer Space Affairs (UNOOSA) USA Member and Point of Contact Suborbital Space Transportation Learning Group

US Department of Transportation-Federal Aviation Administration-Office of Commercial Space- Advisor-Commercial Space Transportation Advisory Committee (COMSTAC) Member and Chair of the Standards Working Group

Commercial Spaceflight Federation- Industry Standards Technical Committee Member

Chairman, FastForward -Global High-Speed Aerospace Transportation Think Tank (2008-Present)

Greater Miami Aviation Association (GMAA), Board Director-Committee Chair (2004-Present)

Space Florida, Business Development Advisory Committee to the Board (2006-2010)

Embry-Riddle Aeronautical University, Industry Advisory Board, College of Business, Alumni Advisory Board to the President and Trustees (2007-Present)

FAA Airline Transport Pilot License, rated on B747-400, B777 200/300 and SF340B aircraft and flight experience in a variety of simulators and general aviation aircraft

MBA, Embry-Riddle Aeronautical University, 2002

MBA, Embry-Riddle Aeronautical University, 2002

B.S. in Applied Science, Specialization in Aviation Technology and Aerospace Engineering, Thomas Edison State College/San Diego State University, 1995

International Experience

2014-2019 Transportation Research Board (TRB) and United Nations-International Civil Aviation Organization Space Learning Group-Point of Contact and Space Transportation Leader

- TRB member of commercial space, airspace integration-new users and high speed flight committees and research groups
- UN-ICAO's Space Learning Group is a UN-OOSA (Office of Outer Space Affairs) entity charged with the development of future suborbital international space transportation industry [2014-Present Commercial Space Flight Federation \(CSF\)](#)
- Associate Member and Committee Member; Standards, Air & Space Ports and Operations. CSF is the world's foremost commercial space trade association and an industry leader in front of public and private entities.

2010-2020 FAA-AST COMSTAC Working Groups: Operations, Suborbital Reusable Vehicles, Chairman Safety and Standards Working Group

- Full Committee Member (three terms) and Safety Standards Working Group Chairman in support of the Commercial Space Transportation Advisory Committee to the FAA Administrator; developing the international rulemaking, technical, regulatory, operational and commercial feasibility of suborbital vehicles, infrastructure and commerce chain wide space transportation capabilities.

2010-Present Fast Forward Project-High Speed Flight and Sub/Orbital Transportation Industry Research Group

- Project Member in support of strategic areas of research, economic, business, environmental, political, civic and technological development of the commercial suborbital transportation industry worldwide. The group is broadly supported across the aerospace industry, with key members from flight system providers (both entrepreneurial and traditional aerospace hardware companies), future operators, government agencies, commercial aero Air & Space Ports, academic organizations, and specialist consultants. Members have background ranging from traditional aviation to space applications. Reference: Dr. John Olds, President

2006-2015 Flight Research Associates-NASA AMES

- Board Advisory and Consulting Services for the development of Human Factors, Operational simulations (aircraft and ATC), Air Traffic Control (ATC) systems and technologies in support of commercial suborbital space transportation. Reference: James Miller, President

2008-2010 Space Florida-Miami Dade Aviation Department (MDAD)

- Feasibility Study for a Commercial Aero Air & Space Port in South Florida. References include: Frank DiBello, President, Space Florida; Bernie McShea, VP Business Development, Space Florida; Jose Abreu, Director MDAD; Miguel Southwell, Director Business Development, MDAD; Greg Owens, Director Real Estate and Properties, MDAD



InterFlight Global
Intelligent Aviation & Aerospace Solutions



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LONDON - MADRID - MIAMI [Head Office] - WASHINGTON D.C. - DUBAI

Big Apple Group
Civil Engineering –
Western United Life
Building

RESOLUTION NO. _____

RESOLUTION AUTHORIZING THE EXECUTION OF A CONTRACT WITH BIG APPLE GROUP IN THE AMOUNT OF \$7,500.00 FOR PROFESSIONAL ENGINEERING SERVICES RELATED TO THE DEMOLITION OF THE WESTERN UNITED LIFE BUILDING; APPROVING \$2,500.00 FOR CERTAIN RELATED TRAVEL EXPENSES; AND AUTHORIZING PAYMENT FOR SAID AGREEMENT

WHEREAS, the Board of Directors finds it to be in the public interest to authorize the execution of a contract with Big Apple Group in the amount of \$7,500.00 for professional engineering services related to the demolition of the Western United Life Building; and

WHEREAS, the Board of Directors finds it to be in the public interest to approve \$2,500.00 for certain related travel expenses

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 contract with Big Apple Group in the amount of \$7,500.00 for professional engineering services related to the demolition of the Western United Life Building. Said contract shall be kept on file in the office of the City Secretary and referenced by the date and number of this Resolution.

SECTION TWO. That the sum of \$2,500.00 for certain related travel expenses is hereby approved.

SECTION THREE. That the City Comptroller is hereby authorized and directed to pay Big Apple Group in accordance with the terms of said contract from funds available in the Midland Development Corporation Fund (235) Operating Budget upon receipt of proper invoices or statements approved by the Executive Director of the Midland Development Corporation or her 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 _____, A.D., 2023, by the following vote:

Directors voting "AYE":

Directors voting "NAY":

CHASE GARDAPHE,
Chairman of the Midland
Development Corporation

ATTEST:

JILL PENNINGTON,
Secretary of the Midland
Development Corporation

APPROVED AS TO FORM ONLY:

JOHN OHNEMILLER,
Attorney for the Midland
Development Corporation



Alex J. Sabetta, P.E., CME, OUPV

*Supervising Engineer
Big Apple Group
Ozone Park, NY
2019-Present*

Mr. Sabetta's experience spans from the full development of residential housing as an apprentice carpenter, to the installation and rehabilitation of approximately 100 miles of water and wastewater conveyance systems to the lead site engineer for an extensive wastewater treatment plant upgrade to an 850 MGD Water Pollution Control Facility on the East Coast, to the resident engineer for the Burlington County Bridge Commission responsible for 3 major bridges in the Philadelphia area. Mr. Sabetta specializes in remote project control devices, protection of historic/landmark/critically close structures during construction, trenchless technology, project coordination, geodynamics, Implosion dynamics, and concrete construction with one of his designs winning the 2013 ACEC New York Engineering Excellence Award for Water Resources. Mr. Sabetta has completed over 200,000 CY of rock demolition in residential and urban areas utilizing conventional and micro-blasting with controlled explosives. Mr. Sabetta has assisted in the demolition and implosion of over 36 structures and was responsible for all the critical vibration calculations and protection procedures of the adjacent structures for the implosion of the Georgia Dome in Atlanta, GA receiving recognition by the National Demolition Association as the "Most Critical Demolition of 2017".

Education: Bachelor of Science in Civil and Environmental Engineering, Rutgers University – 2007

Certifications:

Professional Engineering License: NJ, PA, NY, DE, FL, and NCEES RECORDS APPROVED

Certified Municipal Engineer

United States Merchant Marine – Operator of Uninspected Passenger Vessels

OSHA – 40 Hour Training, SEPTA, NYC-MTA, MARTA, PATH, PANYNJ, NJ Transit, MetroNorth – Safety Training certificates

ACI – Grade I Field Technician, Aggregate I, Concrete Strength I, ACI Lab I, ACI Lab II

NYCDOB Lab License No. 00120

Work History:

Sabetta & Son Construction: 1994-2003

Apprenticed under father in construction business, 4th generation carpenter by trade.

TNT Construction: 2003-2004

Employed as Carpenter/General Contractor in medium to large scale projects for clients such as Lockheed Martin, Citgo Asphalt, and the Delaware River Port Authority.

T&M Associates: 2006

Employed as Engineering Intern. Completing various projects from solid waste facility construction to roadway projects.

Malcolm Pirnie/ARCADIS: 2007-2013

Began employment as an entry level engineer and was promoted multiple times to a Senior Project Engineer, responsible for management of 9 construction projects (contracted at \$18 Million), and responsible for workload and

CORPORATE OFFICE

963 S. Oyster Bay Road
Hicksville, NY 11801

NEW YORK CITY

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Ozone Park, NY 11416

NEW JERSEY

223 Lawnside Avenue
Collingswood, NJ 08108

■ 718.767.2900

■ info@bigappletesting.com

■ bigapplegroupny.com



management of 5 employees. Completed sampling and testing per ASTM And ACI standards and completed concrete mix designs for lightweight concrete outfall structure for the 2nd street Netting facility and sanitary sewer outfall structure for the Edgewater Water Pollution control facility.

T&M Associates: 2013-2016

Sr. Project Manager/Engineer involved in various construction management and design of water/wastewater systems. Reviewed sampling and testing lab reports and compared to ACI and ASTM standards for various projects. Designed and checked concrete mix packages for bridge concrete pier support repairs and retrofits.

Dayton Inspection Services: 2016-2019

Mr. Sabetta lead coordination of approximately 90 active construction projects along the East Coast, resolving arising issues by designing solutions through instrumentation, analyzing trends and data to develop appropriate solutions.

Big Apple Group: 2019-Present

Leading the expansion into heavy highway/bridge construction projects in New Jersey, Pennsylvania, Delaware, and New York in add. Mr. Sabetta is also supervising over 200 active private and infrastructure construction projects ranging from Baltimore, MD to Bridgeport, CT on the 95 corridor.

Brief Summary of Projects Completed/Under Construction*:

2000 Arch Street, Philadelphia, PA*
The Highline New York, New York, NY*
Congress Street Substation Flood Mitigation, Bridgeport, CT*
NYCTA Essex Street Station, New York, NY
Northern Blvd Bridge Fender Replacement, Queens, NY*
Expansion of the Harlem Hospital, New York, NY*
Domino Square, Brooklyn, NY*
Montgomery County Justice Center, Norristown, PA*
125 West 57th Street, New York, NY*
589 Fulton Street, Brooklyn, NY*
625 Fulton Street, Brooklyn, NY*
PATH Grove Street Station Platform Extension, Jersey City, NY
Fair Lawn Avenue Bridge Replacement, Patterson, NJ
77 Commercial Street, Brooklyn, NY*
Concrete warehouse 1881 Route 46, Roxbury, NJ
319 Bond Street, Brooklyn, NY* (Historic Movable Bridge)
P-106 Navy Yard Submarine Propulsor Facility – Philadelphia, PA
PATH Harrison Railyard Bulkhead Extension – Harrison, NJ*
1634 Church Avenue, Brooklyn NY*
319 Bond Street (Historic), Brooklyn NY*
77 Commercial Street, Brooklyn, NY*
215 West 42nd Street- Times Square Theater Redevelopment –New York, NY*
159 Broadway, Brooklyn, NY*
Victoria Theater Redevelopment – New York, NY
Sunbury Generation Plant Demolition*, Shamokin Dam, PA
Demolition of the Georgia Dome, Atlanta, GA
Demolition of Bloomfield Mansion, Villanova, PA
GSP Interchange 109 Improvements – Middletown Township, NJ
Rehab of Warren County Bridge – Lopatcong, NJ



Replacement of Burlington Road Bridge Over Indians Fields Branch – Bridgeton City, NJ
238 Fulton Street, Brooklyn, NY
Ocean Drive Bridge Over Townsends Inlet – Avalon, NJ
Closter-Harrington Park Bridge Replacement – Bergen County, NJ
Admiral's Row Development (Historic), Brooklyn, NY
Assunpink Creek Daylighting – Trenton, NJ
Broadway Terminal Industrial Sidetrack– Camden, NJ
2013 Structural Repairs of the Burlington Bristol Bridge – Burlington, NJ
2014 Structural Repairs of the Tacony Palmyra Bridge- Palmyra, NJ
Bridge Mounted Structures Rehab (Burlington-Bristol Bridge) – Burlington, NJ
ACOE Debris Collaboration and Removal for Sandy Disaster – Queens, NY; Morrisville, PA
New Castle County – Brandywine Hundred Sanitary Sewer Rehabilitation – Wilmington, DE
Edgewater Water Pollution Control Facility – Outfall Extension – Edgewater, NJ
Westchester County WD3 Improvements – Mt. Pleasant, NY
Passaic Valley Sewerage Commission: Oxygenation Deck Rehabilitation – Newark, NJ
Bridgeport WPCF Long Term Control Plan and Monitoring – Bridgeport, CT
Nilsen Avenue Water Booster Pump Station – Mahwah, NJ
Manchester Utilities Authority Water system improvements – Haledon/North Haledon, NJ
Mahwah Stage 5 Water and Sanitary Sewer Extension – Mahwah, NJ
2nd Street Netting Facility- Jersey City, NJ
Citydock Netting Facility – Newark, NJ
18th Street Screening Facility – Jersey City, NJ
Delaware Canal Pedestrian Tunnel – Morrisville, PA
SEPTA Conshohocken Station Norristown Line Deep Foundations – Norristown, PA
Hoboken Northwest Resiliency Park – Hoboken, NJ
Route 34 Bridge Over Former Freehold & James Railroad – Wall, NJ
Replacement of Island Park Bridge – Califon, NJ
CHOP Physician & Administrative Office Building – Philadelphia, PA
Caspian Avenue Gardner's Basin Bulkhead & Revetment – Atlantic City, NJ
South Absecon Inlet Jetty Repair – Atlantic City, NJ
Delaware River Heritage Trail, Route 130 Bypass – Bordentown, NJ
Route 322 Business, Bridge Over Raccoon Creek – Mullica Hill, NJ
NJ Parkway Rio Grande Avenue Entrance Improvements – Wildwood, NJ
Gloucester County Solid Waste Facility – South Harrison, NJ
Riverwinds Community Center HVAC Retrofit – West Deptford, NJ
Pennsauken Solid Waste Facility – Pennsauken, NJ
Bergen County Utilities Authority Gravity Belt Thickener – Little Ferry, NJ

Contact:

office: 718-767-2900

cell: 856-466-5594

email: alex@bigapplegroupny.com



big apple
group

civil engineering solutions

ENGINEERING SERVICES PROPOSAL

300 W. TEXAS AVENUE, MIDLAND, TEXAS

PREPARED FOR:

DAVID DENSMORE

MIDWEST WRECKING CO. OF TEXAS, INC.

1600 AIRPORT FWY, SUITE 500

BEDFORD, TX 76022

BUILD WITH CONFIDENCE



January 27, 2023

David Densmore
Midwest Wrecking Co. of Texas, Inc.
1600 Airport Fwy, Suite 500
Bedford, TX 76022

CONFIDENTIAL PRICING

Re: 300 W. Texas Avenue, Midland, Texas

Mr. Densmore:

Thank you for the opportunity to provide our proposal. We appreciate your interest in our company and look forward to working with you.

At Big Apple Group, we are committed to providing our clients with exceptional service. It is our priority to assess each individual project need and provide a comprehensive proposal for *all* the quality assurance services identified as required.

Please let us know if you have any questions or need any guidance through-out any stage of your project's life cycle. We attribute the success of our company directly to the satisfaction of our customers – Thank You. We hope you will think of us as your partner.

Sincerely,

Alex J. Sabetta, PE
NE Regional Supervising Engineer
718-767-2900
Alex@bigapplegroupny.com

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936 S. Oyster Bay Road
Hicksville, NY 11801

NEW YORK CITY
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Ozone Park, NY 11416

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223 Lawnside Avenue
Collingswood, NJ 08108

■ 718.767.2900
■ info@bigappletesting.com
■ bigapplegroupny.com

Scope of Services & Fee Schedule

Big Apple Group NY, LLC Engineering Services			
Hourly Rates			
Item No.	Description	Unit Price	Unit
1	Principal Engineer	\$ 350.00	per hour
1a	Principal Engineer – Day Rate*	\$ 2,500.00	Per day
2	Senior Engineer (P.E.)	\$ 250.00	per hour
3	Senior Technician	\$ 175.00	per hour
4	Project Manager	\$ 150.00	per hour
5	Staff Engineer (E.I.T.)	\$ 125.00	per hour
6	Field Technician	\$ 75.00	per hour
7	Administrative/Office	\$ 60.00	per hour

Estimation of Scope of Engineering Services

Estimation - One Time Charges				
Service	Quantity	Units	Unit Price	Extended Price
Engineering Services				
Principal Engineer – Day Rate	3	Per day	\$2,500.00	\$7,500.00
Travel/Expenses from PHL or JFK to Midland, Texas	-	At cost	-	-
Total				\$7,500.00

This pricing is based on:

- The above estimate is an approximation, client will only be charged for work rendered
- Big Apple’s experience with projects of similar size and scope
- Client is required to provide safe, OSHA Compliant, methods/access for installation if deemed unsafe or above the 16’ limit
- Client is responsible for all costs associated with travel, lodging, from JFK or PHL Airport to Midland, Texas for peer review of implosion procedure and protection measures.
- Additional consulting/engineering services able to be done remotely will be done at abovementioned engineering rates for follow up/meetings as needed.

STANDARD TERMS AND CONDITIONS

The Proposal is conditioned on Client's acceptance of the following Standard Terms and Conditions. By accepting the Proposal, Client agrees that the Terms and Conditions will be incorporated into the agreement (the "Contract") between Client and Big Apple Group ("Firm") as to Firm's performance of the scope of services set forth in the Proposal (the "Work") in connection with the project for which Client seeks Firm's Proposal (the "Project").

ACCESS – Client agrees to provide access and right of entry to the premises where Firm will perform the Work for Firm's personnel and any materials necessary for Firm to complete the Work. Client is responsible for obtaining any necessary permission from any property owners for access and use of their property. To the extent applicable, Client agrees to provide necessary scaffolds or personnel hoists to perform the Work in a safe manner.

PROVISION AND USE OF PROJECT DOCUMENTS – Client agrees to provide Firm with all information reasonably available to Client pertaining to the Work or the Project (the "Project Documents"). The Project Documents include, to the extent they exist but without limitation, any written agreements concerning the Project, plans, surveys, recorded deeds, correspondence, reports, specifications, subsurface reports, easement information, and any other related items or information. Should Firm request any additional information or documents from Client, Client agrees to use all commercially reasonable efforts to obtain and provide such information or documents. Client acknowledges that Firm may fully rely on the Project Documents and information contained therein, or provided by Client in connection with the same, in the performance of its Work in connection with the Project. Firm may provide Project Documents to third parties, but only in furtherance of Firm's Work, without notifying Client in advance. Firm assumes no duty or obligation to verify the completeness or accuracy of the Project Documents.

PAYMENT TERMS – A Retainer of \$5,000.00 is due upon execution of this contract to commence work. Client agrees to pay Firm for the balance of any amounts due for Work upon Firm's completion of the Work and invoicing Client for same. Payment is due thirty (30) days after Client's receipt of an invoice (the "Due Date"). If Client fails to pay an invoice on or before the Due Date, Firm reserves the right, three (3) days after Firm delivers written notice to Client of said delinquency, to: 1) immediately cease all Work under this Contract or any other contract between Client and Firm; and 2) to pursue any and all remedies against Client. Client shall fully indemnify and hold Firm harmless from and against any and all damages of any nature and kind whatsoever, without limitation, that result in whole or in part, from Firm's cessation of its Work in connection with Client's non-payment as described in this section. In the event Firm commences a legal action or pursues a claim of any kind or any collection effort against Client for an unpaid invoice or portion of same (collectively "Claim"), the Client agrees that it shall owe Firm, in addition to the principal amount of the invoice(s), interest in the amount of one percent (1%) per month commencing on the Due Date, and all collection costs, including without limitation court costs, reasonable attorneys' fees, staff time, administrative time, and any other reasonable expenses in connection with Firm's pursuit of a Claim. In the event Firm possesses a Client retainer, Firm may, at its option, apply monies paid as a retainer to any invoice, at any time. Once Firm has been paid for all invoices, Firm shall refund any remaining retainer to the Client, after Client's request. Firm reserves the right to modify or increase its billing rates on or after the one-year anniversary date of the effective date of the Contract, which will be defined as the date Client accepts the Proposal unless otherwise agreed by the parties.

STANDARD OF CARE AND DISCLAIMER OF WARRANTIES – Firm will perform its services in connection with the Project in a manner consistent with the level of care and skill ordinarily exercised by members of the construction testing and inspection profession practicing contemporaneously under similar conditions in the locality of the project. **Firm makes no other warranties, express or implied.**

INDEMNIFICATION –

A) FIRM TO CLIENT: Firm hereby agrees to indemnify and hold the Client and its current and future owners, officers, directors, members, shareholders, parent corporations, subsidiaries, related entities, affiliates, and employees harmless from, against and for any third-party losses, injuries, damages, claims, penalties, actions, causes of action, demands, liabilities, judgments, expenses, or the like, including reasonable attorney's fees and reasonable litigation costs (collectively "Third-Party Claims"), which are directly and proximately caused by the negligence or willful misconduct of Firm or Firm's employees, agents, sub consultants, or anyone acting by, through, on behalf of, or under Firm; provided, however, that Firm's obligation hereunder shall not exceed the percentage of Third-Party Claims for which Firm is found liable and responsible. At Client's request, Firm will provide confirmation to the Client of Firm's insurance coverage regarding professional liability and commercial liability coverage.

Notwithstanding anything herein to the contrary, Firm's indemnification obligations do not apply to any portion of the Third-Party Claims caused by the negligence of any party that would otherwise be indemnified by Firm.

B) CLIENT TO FIRM: Client hereby agrees to indemnify and hold Firm, and its current and future owners, officers, directors, members, shareholders, parent corporations, subsidiaries, related entities, affiliates, agents, and employees (collectively "Firm Parties") harmless from, against and for all Third-Party Claims, which are directly and proximately caused by the negligence or willful misconduct of the Client or the Client's employees, agents, sub consultants, or anyone acting by, through, on behalf of, or under the Client; provided, however, that the Client's obligation hereunder shall not exceed the percentage of Damages for which the Client is found liable and responsible. Notwithstanding anything herein to the contrary, Client's indemnification obligations do not apply to any portion of the Third-Party Claims caused by the negligence of any party that would otherwise be indemnified by Client.

LIMITATION OF LIABILITY AND WAIVER OF CONSEQUENTIAL DAMAGES – Any claim asserted by Client against Firm for damages, cost of defense, or expenses which the Client asserts or may assert against Firm concerning breaches of the Contract, design defects, errors, omissions, or professional negligence, with the exception of Third-Party Claims as defined above, shall be limited to the amount of Firm's fee for the Work. Under no circumstances shall Firm be liable for extra costs or other consequences due to changed conditions or for costs related to the failure of contractors or suppliers to install work in accordance with the plans and specifications. The limitation of liability to the amount of Firm's fee for the Work is a specifically bargained-for provision of this agreement, reflected in Firm's fees. The Firm shall not be liable for errors in judgment or for any loss or damage, which occurs for any reason beyond the control of the Consultant.

WAIVER OF CONSEQUENTIAL DAMAGES AND LOST PROFITS – Firm shall not be liable to Client for indirect, special, incidental and/or consequential damages, including without limitation lost profits or damages resulting from business interruption, whether based in warranty, contract, tort or any other legal theory, and whether or not advised of the possibility of such damages. Firm shall not be liable to Client for lost profits of any nature or character.

OWNERSHIP OF DOCUMENTS – All reports, field data, data, notes, plans, calculations, estimates, drawing documents and other work and items which Firm creates or prepares in furtherance of or in connection with the Work (collectively "Firm Materials"), are instruments of service and shall remain Firm's property, until Client fully pays Firm for all Work and expenses related to Firm's creation of Firm Materials. Client shall immediately return to Firm, upon Firm's demand, all Firm Materials which Firm furnishes to the Client or Client's agents, servants, employees, subcontractors, any person or entity for whom Client is responsible and/or anyone acting by, through or under Client (collectively "The Client Parties"), before the associated Work and expenses are paid for in full. Client further agrees any Firm Materials in its possession before Client has paid for the associated Work and expenses will not be used for any purpose other than to complete the Project. Proprietary information and Firm's intellectual property including, but not limited to, Firm's layering process for plans (collectively "Proprietary Information"), are not included within the phrase Firm Materials and shall, without exception, remain the exclusive property of Firm. Firm does not, by this Proposal, the performance of the Work, or otherwise, grant or convey any interest in the Proprietary Information to any party other than Firm.

PERMITTED USES OF DOCUMENTS – The Client agrees not to use or re-use Firm Materials, in whole or in part, for any purpose other than for the Project. Client further agrees not to alter Firm Materials. The Client further agrees not to transfer, send, share, copy, convey or provide Firm Materials to any individual or entity aside from the Client Parties without Firm's prior written consent. The Client further covenants and agrees to waive any and all claims, actions, demands and causes of action, whether legal, equitable or otherwise, of every nature and description, that the Client has, had or may have against Firm related to or resulting in any way from uses prohibited in this section (collectively "Misuse"). The Client agrees, to the fullest extent permitted by law, to indemnify, defend, and hold Firm and Firm Parties harmless from any and all third-party losses, injuries, damages, claims, penalties, actions, causes of action, demands, liabilities, judgments, expenses, or the like, including reasonable attorney's fees and reasonable litigation costs, and any other related expenses arising from or in any way related to Misuse.

REVOCAION OF CERTIFICATION OR STATEMENTS – Firm shall have the right to revoke any certification, statements, professionally sealed documents or plans in the event of Misuse or Client's failure to pay amounts due and owing for the Work.

TERMINATION – Client may terminate the Contract if Firm fails to substantially perform under the Contract, after five (5) business days' written notice to Firm and an opportunity for Firm to cure during that period. The Client may terminate this Contract for convenience after three (3) business days' written notice to the Firm. Firm may terminate the Contract if Client breaches the Contract or these Terms and Conditions after five (5) business days' written notice to Client and an opportunity for Client to cure during that period. Firm may also terminate this Contract in the event there is a period exceeding four months during which Firm's inspectors are

not required at the Project site due to suspension or reduction of inspection operations at the Project site. Written notice of termination shall describe the reasons, to the extent they exist, for the termination. In the event either party terminates the Contract for any reason, Client shall pay Firm for all Work Firm has performed and all expenses Firm has incurred up through and including the termination date. In the event Client terminates the Contract for convenience, Client shall pay Firm, in addition to amounts Client would pay firm under the immediately preceding sentence, any reasonable amounts incurred by Firm in terminating its Work.

SEVERABILITY AND TITLES – The provisions of the Contract and these Terms and Conditions shall be severable, and if any provision of either shall be determined by any court of competent jurisdiction to be invalid, such determination shall not affect or invalidate the remainder of these Terms and Conditions or the Contract. The titles given to the Articles in this document are for ease of reference, only, and shall not be relied upon or utilized for any other purpose.

CONSTRUCTION AND ACKNOWLEDGMENT OF AGREEMENT – This Contract was negotiated pursuant to an arms-length transaction and is the product of joint drafting. Each party to the Contract acknowledges its full understanding of and agreement with the Contract’s terms. Each party has had the opportunity to consult with counsel of its choosing as to the Contract’s terms before executing it. The Contract shall not be construed more strictly against one party the other.

ENTIRE AGREEMENT – The parties agree and acknowledge that there are no verbal representations, promises, understandings or agreements concerning or relating to the Work other than as contained in the Contract. All previous negotiations and agreements between the parties concerning or relating to the Work are merged into the Contract. The terms of this document may only be modified by writing, signed by the parties hereto.

VENUE AND GOVERNING LAW – Any claims, actions, controversies, disputes of any nature concerning or relating to the Contract or the Work must be brought in federal or state court within Queens County or Kings County, New York. The parties hereto understand, agree, and acknowledge the above constitutes a waiver of a right that the parties might otherwise have to bring a claim, action, proceeding, or the like in any other venue, jurisdiction or location. This document shall be deemed to have been made in and shall be governed by and construed in accordance with the laws of the State of New York, without regard to conflicts of law rules.

Please indicate your approval by signing below and returning this document to (email address/fax):

Project Name: 300 W. Texas Avenue, Midland, Texas

Company: _____

Big Apple Group, NY LLC

(Authorized Signer)

(Authorized Signer)

Date

Date

Scope of Services & Fee Schedule

Big Apple Group NY, LLC Engineering Services			
Hourly Rates			
Item No.	Description	Unit Price	Unit
1	Principal Engineer	\$ 350.00	per hour
1a	Principal Engineer – Day Rate*	\$ 2,500.00	Per day
2	Senior Engineer (P.E.)	\$ 250.00	per hour
3	Senior Technician	\$ 175.00	per hour
4	Project Manager	\$ 150.00	per hour
5	Staff Engineer (E.I.T.)	\$ 125.00	per hour
6	Field Technician	\$ 75.00	per hour
7	Administrative/Office	\$ 60.00	per hour

Estimation of Scope of Engineering Services

Estimation - One Time Charges				
Service	Quantity	Units	Unit Price	Extended Price
Engineering Services				
Principal Engineer – Day Rate	3	Per day	\$2,500.00	\$7,500.00
Travel/Expenses from PHL or JFK to Midland, Texas	-	At cost	-	-
Total				\$7,500.00

This pricing is based on:

- The above estimate is an approximation, client will only be charged for work rendered
- Big Apple’s experience with projects of similar size and scope
- Client is required to provide safe, OSHA Compliant, methods/access for installation if deemed unsafe or above the 16’ limit
- Client is responsible for all costs associated with travel, lodging, from JFK or PHL Airport to Midland, Texas for peer review of implosion procedure and protection measures.
- Additional consulting/engineering services able to be done remotely will be done at abovementioned engineering rates for follow up/meetings as needed.

STANDARD TERMS AND CONDITIONS

The Proposal is conditioned on Client's acceptance of the following Standard Terms and Conditions. By accepting the Proposal, Client agrees that the Terms and Conditions will be incorporated into the agreement (the "Contract") between Client and Big Apple Group ("Firm") as to Firm's performance of the scope of services set forth in the Proposal (the "Work") in connection with the project for which Client seeks Firm's Proposal (the "Project").

ACCESS – Client agrees to cause the owner of the premises where the Work will be performed (the "Owner") to provide access and right of entry to the premises where Firm will perform the Work for Firm's personnel and any materials necessary for Firm to complete the Work. Client is responsible for obtaining any necessary permission from any property owners for access and use of their property. To the extent applicable, Client agrees to use commercially reasonable efforts to cause the Owner to provide necessary scaffolds or personnel hoists to perform the Work in a safe manner.

PROVISION AND USE OF PROJECT DOCUMENTS – Client agrees to provide Firm with all information reasonably available to Client pertaining to the Work or the Project (the "Project Documents"). The Project Documents include, to the extent they exist but without limitation, any written agreements concerning the Project, plans, surveys, recorded deeds, correspondence, reports, specifications, subsurface reports, easement information, and any other related items or information. Should Firm request any additional information or documents from Client, Client agrees to use all commercially reasonable efforts to obtain and provide such information or documents. Client acknowledges that Firm may fully rely on the Project Documents and information contained therein, or provided by Client in connection with the same, in the performance of its Work in connection with the Project. Firm may provide Project Documents to third parties, but only in furtherance of Firm's Work, without notifying Client in advance. Firm assumes no duty or obligation to verify the completeness or accuracy of the Project Documents.

PAYMENT TERMS – A Retainer of \$5,000.00 is due upon execution of this contract to commence work. Client agrees to pay Firm for the balance of any amounts due for Work upon Firm's completion of the Work and invoicing Client for same. Payment is due thirty (30) days after Client's receipt of an invoice (the "Due Date"). If Client fails to pay an invoice on or before the Due Date, Firm reserves the right, three (3) days after Firm delivers written notice to Client of said delinquency, to: 1) immediately cease all Work under this Contract or any other contract between Client and Firm; and 2) to pursue any and all remedies against Client. In the event Firm commences a legal action or pursues a claim of any kind or any collection effort against Client for an unpaid invoice or portion of same (collectively "Claim"), the Client agrees that it shall owe Firm, in addition to the principal amount of the invoice(s), interest in the amount of one percent (1%) per month commencing on the Due Date, and all collection costs, including without limitation court costs, reasonable attorneys' fees, staff time, administrative time, and any other reasonable expenses in connection with Firm's pursuit of a Claim. In the event Firm possesses a Client retainer, Firm may, at its option, apply monies paid as a retainer to any invoice, at any time. Once Firm has been paid for all invoices, Firm shall refund any remaining retainer to the Client, after Client's request. Firm reserves the right to modify or increase its billing rates on or after the one-year anniversary date of the effective date of the Contract, which will be defined as the date Client accepts the Proposal unless otherwise agreed by the parties.

STANDARD OF CARE AND DISCLAIMER OF WARRANTIES – Firm will perform its services in connection with the Project in a manner consistent with the level of care and skill ordinarily exercised by members of the construction testing and inspection profession practicing contemporaneously under similar conditions in the locality of the project. **Firm makes no other warranties, express or implied.**

INDEMNIFICATION –

A) FIRM TO CLIENT: Firm hereby agrees to indemnify and hold the Client and its current and future owners, officers, directors, members, shareholders, parent corporations, subsidiaries, related entities, affiliates, and employees harmless from, against and for any third-party losses, injuries, damages, claims, penalties, actions, causes of action, demands, liabilities, judgments, expenses, or the like, including reasonable attorney's fees and reasonable litigation costs (collectively "Third-Party Claims"), which are directly and proximately caused by the negligence or willful misconduct of Firm or Firm's employees, agents, sub consultants, or anyone acting by, though, on behalf of, or under Firm; provided, however, that Firm's obligation hereunder shall not exceed the percentage of Third-Party Claims for which Firm is found liable and responsible. At Client's request, Firm will provide confirmation to the Client of Firm's insurance coverage regarding professional liability and commercial liability coverage. Notwithstanding anything herein to the contrary, Firm's indemnification obligations do not apply to any portion of the Third-Party Claims caused by the negligence of any party that would otherwise be indemnified by Firm.

B) CLIENT TO FIRM: To the extent allowed by law, Client hereby agrees to indemnify and hold Firm, and its current and future owners, officers, directors, members, shareholders, parent corporations, subsidiaries, related entities, affiliates, agents, and employees (collectively "Firm Parties") harmless from, against and for all Third-Party Claims, which are directly and proximately caused by the negligence or willful misconduct of the Client or the Client's employees, agents, sub consultants, or anyone acting by, through, on behalf of, or under the Client; provided, however, that the Client's obligation hereunder shall not exceed the percentage of Damages for which the Client is found liable and responsible. Notwithstanding anything herein to the contrary, Client's indemnification obligations do not apply to any portion of the Third-Party Claims caused by the negligence of any party that would otherwise be indemnified by Client.

LIMITATION OF LIABILITY AND WAIVER OF CONSEQUENTIAL DAMAGES – Any claim asserted by Client against Firm for damages, cost of defense, or expenses which the Client asserts or may assert against Firm concerning breaches of the Contract, design defects, errors, omissions, or professional negligence, with the exception of Third-Party Claims as defined above, shall be limited to the amount of Firm's fee for the Work. Under no circumstances shall Firm be liable for extra costs or other consequences due to changed conditions or for costs related to the failure of contractors or suppliers to install work in accordance with the plans and specifications. The limitation of liability to the amount of Firm's fee for the Work is a specifically bargained-for provision of this agreement, reflected in Firm's fees. The Firm shall not be liable for errors in judgment or for any loss or damage, which occurs for any reason beyond the control of the Consultant.

WAIVER OF CONSEQUENTIAL DAMAGES AND LOST PROFITS – Neither party to this Contract shall be liable for indirect, special, incidental and/or consequential damages, including without limitation lost profits or damages resulting from business interruption, whether based in warranty, contract, tort or any other legal theory, and whether or not advised of the possibility of such damages.

OWNERSHIP OF DOCUMENTS – All reports, field data, data, notes, plans, calculations, estimates, drawing documents and other work and items which Firm creates or prepares in furtherance of or in connection with the Work (collectively "Firm Materials"), are instruments of service and shall remain Firm's property, until Client fully pays Firm for all Work and expenses related to Firm's creation of Firm Materials. Client shall immediately return to Firm, upon Firm's demand, all Firm Materials which Firm furnishes to the Client or Client's agents, servants, employees, subcontractors, any person or entity for whom Client is responsible and/or anyone acting by, through or under Client (collectively "The Client Parties"), before the associated Work and expenses are paid for in full. Client further agrees any Firm Materials in its possession before Client has paid for the associated Work and expenses will not be used for any purpose other than to complete the Project. Proprietary information and Firm's intellectual property including, but not limited to, Firm's layering process for plans (collectively "Proprietary Information"), are not included within the phrase Firm Materials and shall, without exception, remain the exclusive property of Firm. Firm does not, by this Proposal, the performance of the Work, or otherwise, grant or convey any interest in the Proprietary Information to any party other than Firm.

PERMITTED USES OF DOCUMENTS – The Client agrees not to use or re-use Firm Materials, in whole or in part, for any purpose other than for the Project. Client further agrees not to alter Firm Materials. The Client further agrees not to transfer, send, share, copy, convey or provide Firm Materials to any individual or entity aside from the Client Parties without Firm's prior written consent unless the expenses for the Work have been paid in full. The Client further covenants and agrees to waive any and all claims, actions, demands and causes of action, whether legal, equitable or otherwise, of every nature and description, that the Client has, had or may have against Firm related to or resulting in any way from uses prohibited in this section (collectively "Misuse"). The Client agrees, to the fullest extent permitted by law, to indemnify, defend, and hold Firm and Firm Parties harmless from any and all third-party losses, injuries, damages, claims, penalties, actions, causes of action, demands, liabilities, judgments, expenses, or the like, including reasonable attorney's fees and reasonable litigation costs, and any other related expenses arising from or in any way related to Misuse.

Notwithstanding any contrary provision contained herein, the Firm acknowledges and agrees that the Client is subject to the Texas Public Information Act (the "Act"). Nothing in this Contract shall be construed to limit or modify the Client's rights or obligations under the Act, and the Firm agrees that Client retains full and ultimate authority in determining its obligations in complying with the Act and any ruling issued by the Office of the Attorney General. Furthermore, the Firm agrees that the Client's actions disclosures, and general compliance with the Act shall not be constructed as a breach of this Contract.

REVOCATION OF CERTIFICATION OR STATEMENTS – Firm shall have the right to revoke any certification, statements, professionally sealed documents or plans in the event of Misuse or Client's failure to pay amounts due and owing for the Work.

TERMINATION – Client may terminate the Contract if Firm fails to substantially perform under the Contract, after five (5) business days’ written notice to Firm and an opportunity for Firm to cure during that period. The Client may terminate this Contract for convenience after three (3) business days’ written notice to the Firm. Firm may terminate the Contract if Client breaches the Contract or these Terms and Conditions after five (5) business days’ written notice to Client and an opportunity for Client to cure during that period. Firm may also terminate this Contract in the event there is a period exceeding four months during which Firm’s inspectors are not required at the Project site due to suspension or reduction of inspection operations at the Project site. Written notice of termination shall describe the reasons, to the extent they exist, for the termination. In the event either party terminates the Contract for any reason, Client shall pay Firm for all Work Firm has performed and all expenses Firm has incurred up through and including the termination date. In the event Client terminates the Contract for convenience, Client shall pay Firm, in addition to amounts Client would pay firm under the immediately preceding sentence, any reasonable amounts incurred by Firm in terminating its Work.

SEVERABILITY AND TITLES – The provisions of the Contract and these Terms and Conditions shall be severable, and if any provision of either shall be determined by any court of competent jurisdiction to be invalid, such determination shall not affect or invalidate the remainder of these Terms and Conditions or the Contract. The titles given to the Articles in this document are for ease of reference, only, and shall not be relied upon or utilized for any other purpose.

CONSTRUCTION AND ACKNOWLEDGMENT OF AGREEMENT – This Contract was negotiated pursuant to an arms-length transaction and is the product of joint drafting. Each party to the Contract acknowledges its full understanding of and agreement with the Contract’s terms. Each party has had the opportunity to consult with counsel of its choosing as to the Contract’s terms before executing it. The Contract shall not be construed more strictly against one party the other.

ENTIRE AGREEMENT – The parties agree and acknowledge that there are no verbal representations, promises, understandings or agreements concerning or relating to the Work other than as contained in the Contract. All previous negotiations and agreements between the parties concerning or relating to the Work are merged into the Contract. The terms of this document may only be modified by writing, signed by the parties hereto.

VENUE AND GOVERNING LAW – Any claims, actions, controversies, disputes of any nature concerning or relating to the Contract or the Work must be brought in a state court in Midland County, Texas. The parties hereto understand, agree, and acknowledge the above constitutes a waiver of a right that the parties might otherwise have to bring a claim, action, proceeding, or the like in any other venue, jurisdiction or location. This document shall be deemed to have been made in and shall be governed by and construed in accordance with the laws of the State of Texas, without regard to conflicts of law rules.

Please indicate your approval by signing below and returning this document to (email address/fax):

Project Name: 300 W. Texas Avenue, Midland, Texas

Company: _____

Big Apple Group, NY LLC

(Authorized Signer)

(Authorized Signer)

Date

Date

MDC Personnel Policies

Previous policy: Cell phones not addressed.

Proposed policy addition:

MDC reserves the right to provide cell phones to employees on an individual, case-by-case basis. If the MDC elects to provide a cell phone to an employee, the cost of the data and service plan for said cell phone will be paid by the MDC. If an employee so desires, the employee's personal cell phone number may be used for the cell phone that is provided to the employee by the MDC, and the cell phone may be used for both personal use and MDC business. All communications, data, information, and files on a cell phone that relate to MDC business are subject to the Texas Public Information Act, regardless of whether the cell phone is the personal cell phone of an employee or is provided to the employee by the MDC.

If an employee resigns or voluntarily separates from employment with the MDC, and said separation is not a result of the employee's violation of the MDC personnel policies, the employee may purchase their provided cell phone from the MDC and retain the associated cell phone number. Upon separation from employment, the MDC will cease paying for the data and service plan at the end of the monthly billing cycle following the separation. An employee who elects to purchase a provided cell phone from the MDC shall pay the appropriate amount pursuant to the following schedule:

<u>Purchase Date of Cell Phone</u>	<u>Cost to Employee</u>
Within 0-12 months of separation	\$300
Within 13-24 months of separation	\$200
Within 25-36 months of separation	\$100
37 months or more prior to separation	\$50

Notwithstanding the above schedule and any contrary policy contained herein, if an employee who elects to purchase a provided cell phone has been employed by the MDC for less than twelve (12) months, the cost to the employee for said cell phone purchase shall be \$400.

If an employee's separation from the MDC is involuntary or if an employee is afforded the opportunity to resign in lieu of termination, said employee shall not be entitled to purchase a provided cell phone from the MDC. The provided cell phone will remain the property of the MDC; provided, however, that the phone number associated with the employee's provided cell phone may be relinquished to the employee if authorized by the Executive Director.

RESOLUTION NO. _____

**RESOLUTION AMENDING THE PERSONNEL
POLICIES OF THE MIDLAND DEVELOPMENT
CORPORATION**

WHEREAS, the Board of Directors finds it to be in the public interest to amend the personnel policies of the Midland Development Corporation;

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

THAT the personnel policies of the Midland Development Corporation attached hereto as Exhibit A and incorporated herein are hereby amended and approved.

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 special meeting on the _____ day of _____, A.D., 2023, by the following vote:

Directors voting "AYE":

Directors voting "NAY":

CHASE GARDAPHE,
Chairman of the Midland
Development Corporation

ATTEST:

JILL PENNINGTON
Secretary of the Midland
Development Corporation

APPROVED ONLY AS TO FORM:

JOHN OHNEMILLER,
Attorney for the Midland
Development Corporation

Personnel Policies

Midland Development Corporation (“MDC”)

Effective February 6, 2023

Exhibit A

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Acknowledgement of Receipt and Understanding of Personnel Policies
Wage Deduction Authorization Agreement
Credit Card Use Agreement

I. Introduction

1.01 Introduction

- (a) The Midland Development Corporation (“MDC”) welcomes you to our staff. Within this document, you will find information that describes our Personnel Policies regarding employment as well as valuable information concerning our expectations for your activities while employed and representing MDC. Our intent is to provide fair and equitable Policies that will make your experience enjoyable, safe, and professional. These Policies as amended from time to time shall apply to all current and future applicants and employees of MDC. These Policies supersede all previous Policies, letters, memoranda, communications, and/or understandings that may have been previously issued and/or communicated with respect to the matters discussed herein, subject to applicable laws.
- (b) As can be expected, these Personnel Policies cannot be and are not intended to be all-inclusive with respect to employment-related issues that may arise. These Policies are not considered a substitute for sound management, business judgment, and reasonable professional discretion. These Policies and/or any terms, conditions, compensation, policies, rules, and/or procedures associated with employment by MDC are subject to change at the sole discretion of MDC, subject to applicable laws. Any changes shall become effective on date(s) determined by MDC. After such dates, all superseded and/or previous Policies, rules, and/or procedures shall be null and void. These Policies do not create any contractual or property rights between MDC and the employee.
- (c) Certain federal, state, and/or local laws may be created, modified, or rescinded during the course of your employment. If there are any inconsistencies between any federal, state, or local laws and these Policies, the applicable federal, state, or local laws will govern. In no event shall any Policy of MDC be interpreted, construed, relied upon, or enforced to the extent such Policy is unlawful. Nothing in these Policies is intended to interfere with, restrain, or prevent concerted activity protected by the National Labor Relations Act or other applicable laws.
- (d) Copies of these Personnel Policies shall be provided to employees at Orientation, and remain available for inspection and study throughout the course of employment upon reasonable request to the Executive Director. If there is any provision of these Policies or any other rule or procedure which an employee does not understand, the employee should ask questions and/or request clarification from the Executive Director. Employees are encouraged to communicate ideas, suggestions, goals, concerns, and issues in a good faith professional manner in accordance with the guidelines set forth in these Policies. It is very important to be thoroughly familiar with these Policies. Any employee who violates,

disregards, or deviates from these Policies or other procedures and rules may be subject to disciplinary action up to and including immediate termination, subject to applicable laws.

- (e) After completing your review of these Policies, please acknowledge your receipt and understanding by signing and returning the Acknowledgment of Receipt and Understanding of Personnel Policies and all other necessary forms to the Executive Director. A copy of the signed Acknowledgement and the other forms shall be kept in the employee's Personnel File.

1.02 Employment at Will

- (a) MDC is an at-will employer. This means that either MDC or an employee may terminate the employment relationship at any time, for any reason or no reason at all, so long as such reason is not prohibited by applicable law. Continued employment with MDC and/or any particular terms, conditions, compensation and/or benefits are not guaranteed in any manner or for any period of time, subject to applicable laws and regulations. Any verbal or written statement to the contrary is invalid and should not be relied upon by any prospective or current employee.
- (b) Employees are free to resign at any time, with or without notice or cause. MDC requests any employee who intends to resign or retire provide at least two (2) weeks written advance notice to the Executive Director as a matter of professional courtesy. However, MDC shall have the right and ability to accept the resignation to be effective immediately.
- (c) Any agreement, promise, or representation that appears to contradict or modify the at-will relationship must be contained in a specific written agreement between MDC and the employee which is signed by both the Executive Director and the employee and subsequently approved by MDC's Board of Directors.

II. Hiring and Employee Classifications

2.01 Hiring Process

- (a) Individuals must generally meet the minimum experience, education, mental, and physical requirements of the position(s) for which they are applying to be considered for employment. Individuals may also be required to possess or be capable of obtaining and possessing certain types of job-related licenses, certifications, or credentials. Reasonable accommodations may be made for qualified individuals during the hiring process as required by law. Hiring decisions will be based on merit, ability, skill, competence, training, credentials, education, experience, qualifications, the ability to fulfill the requirements of the position, and/or possible job-related testing and investigations conducted in accordance with applicable laws. Employment is subject to the approval of the City of Midland's City Council.
- (b) MDC's Board of Directors are responsible for ultimately hiring staff and personnel required to conduct the business of MDC. While the Executive Director shall have the responsibility of overseeing and managing the staff and personnel of MDC, MDC's Board of Directors shall have the responsibility of and make all decisions with respect to the terms and conditions of MDC's staff and personnel. MDC relies upon the accuracy and completeness of the information provided by an applicant during the hiring process and throughout any period of employment. MDC reserves the right to investigate and verify any and all information provided. MDC may exclude from further consideration any individual who gives false, misleading, or incomplete information. If the individual has already been hired, the individual may be subject to disciplinary action up to and including immediate termination.
- (c) MDC recognizes the importance of maintaining a safe, efficient, and effective workplace with employees who are honest, trustworthy, qualified, and who do not present a risk to themselves or others. In furtherance of these legitimate interests, MDC may conduct background investigations for all employees, applicants for employment, all applicants for a specific position, only the finalists for a position, or only the individual who has been offered the position depending on the nature and circumstances of the hiring process and position being filled. All investigations will be conducted on a non-discriminatory basis and in accordance with applicable laws, including the Fair Credit Reporting Act.
- (d) Depending on the circumstances surrounding their previous employment with MDC, MDC may consider former employees for employment. Employees who were discharged for violations of MDC Policies, procedures, or for performance-related problems may not be eligible for rehire.

2.02 Equal Employment Opportunities

- (a) It is the policy of MDC to grant equal employment opportunities to all qualified persons without regard to race, color, age, sex, religion, gender, sexual orientation, citizenship status, disability, pregnancy, national origin, genetic information, veteran status, or membership in any other class protected by applicable laws. Violations of this Policy may result in disciplinary action up to and including immediate termination.
- (b) All employment decisions made by MDC are based upon sound business practices, legitimate business interests, and in accordance with applicable federal, state, and local laws. It is the intent and desire of MDC that equal opportunity be provided in employment, wages, promotion, benefits, and all other privileges, terms, and conditions of employment as required by applicable laws.
- (c) Applicants and employees with questions or concerns about any type of discrimination associated with MDC should bring these issues to the attention of the Executive Director using 3.01 Employment Issues and Resolution Process Policy. Applicants and employees may ask questions, raise concerns, seek accommodations, report in good faith any violation of this and other Policies, and cooperate in any investigation of alleged violations without fear of reprisal or retaliation.

2.03 Position Descriptions.

- (a) MDC shall establish and maintain a Position Description for each position. A Position Description shall be available to current employees upon reasonable request to the Executive Director with respect to position(s) held while employed by MDC, and to applicants and employees with respect to new positions being applied for. MDC shall attempt to make each Position Description as thorough and complete as possible, but there may be variations in assignments, tasks, responsibilities, requirements, and functions within a position that may not be specifically set out in writing.
- (b) The Position Description will identify the education, experience, skills, and mental and physical requirements, functions, and other necessary qualifications associated with each position. MDC will periodically review the Position Description to ensure any necessary changes are recognized and adequately documented. If any employee believes that any Position Description is inaccurate or otherwise needs review or revisions, please notify the Executive Director in writing.

2.04 Employee Classifications

- (a) Generally, all employees of MDC are “at-will” employees. As an “at-will” employee, an employee’s Classification does not guarantee any specific duration of employment, any specific term, condition, compensation, or benefit will continue throughout employment, subject to applicable laws. Employees who have questions, concerns, or believe they have been misclassified should report the matter in writing to the Executive Director. The report should state how the employee believes he or she should be classified, the factual basis for such belief, and any documentation which the employee believes to be relevant.
- (b) Full Time, Part Time, and Temporary Employees.
1. Full Time Employees. Full Time Employees are generally scheduled to work at least forty (40) hours per week on a full workweek basis for a continuous and undefined period of time.
 2. Part Time Employees. Part Time Employees are generally scheduled to work less than forty (40) hours per week on a full workweek basis for a continuous and undefined period of time. Part Time Employees retain this status until notified of a written status change by the Executive Director.
 3. Temporary Employees. Employees hired as temporary replacements for Full Time or Part Time Employees for short periods of time such as for project specific work, internships, and/or only during peak periods are considered Temporary Employees. Temporary Employees retain this status until notified of a written status change by the Executive Director. Temporary Employees who are contracted to work from a Temporary Employment Agency are considered employees of the Temporary Employment Agency and not MDC. Individuals from a Temporary Employment Agency are to be paid by the Temporary Employment Agency and not placed on MDC’s payroll or receive benefits, subject to applicable laws.
 4. Independent Contractors. Independent Contractors are not employees. They do not receive regular employment benefits and no deductions are made from pay for taxes, Medicare, or Social Security. Independent Contractors are not subject to these Policies.
- (c) Exempt and Non Exempt Employees.
1. Exempt Employees. Exempt Employees are employees who are paid on a salary basis and have duties that fall within the Executive, Administrative, Professional, Outside Sales, Motor Carrier, or any other exempt categories described in the Fair Labor Standards Act. Exempt Employees are not eligible for overtime pay, and in

some cases, not subject to minimum wage regulations. Exempt Employees are expected to work the hours necessary to fulfill their job requirements and the essential functions of their positions. Exempt employees may have irregular hours which may begin and end outside the normal work day.

2. Non Exempt Employees. Non Exempt Employees do not fall within any exempt category described in the Fair Labor Standards Act. Non Exempt Employees are required to be paid at least minimum wage and overtime. Non Exempt Employees are required to complete and provide accurate records of all time spent working on behalf of MDC. Paid Time Off does not count as hours worked for purposes of determining eligibility for overtime. Non Exempt employees are expected to confine their work to the normal work-day and workweek. Non Exempt employees who work overtime without authorization may be subject to discipline up to and including termination of employment.

2.05 Orientation

- (a) Orientation is the welcoming process designed to make new employees feel comfortable and informed about MDC and MDC's Policies, procedures, and expectations. During Orientation, employees will receive a copy of these Personnel Policies, documents pertaining to benefits, wage deductions, authorizations, information about taxes, and other important legal issues and agreements. Employees must complete all paperwork, training, and documentation associated with Orientation and their new position at their earliest convenience and/or as instructed.

- (b) During Orientation, employees will be provided with a basic overview of the general operations of MDC, as well as some of its significant Policies, rules, and procedures. Employees will be notified of any required training, and the time frame during which it must be completed. Orientation and subsequent training will cover topics such as confidentiality, these Personnel Policies, MDC's prohibition of unlawful harassment, discrimination, and retaliation, MDC information and property, record keeping, the Employment Issues and Resolution Process, and Disciplinary Procedures. Throughout the course of employment, it is the employee's responsibility to attend and complete all required training assignments, and to seek any additional guidance and/or training necessary to safely, effectively, and efficiently perform his or her job.

2.06 Separation from Employment

- (a) Separation from employment is an inevitable part of all employment relationships. Many of the reasons for separation are routine. Unless a specific written agreement exists between MDC and an employee that has been signed by both the Executive Director and the employee, and subsequently independently approved by MDC's Board of Directors, both MDC and the employee have the right to terminate the employment relationship at any time, with or without cause or notice, subject to applicable laws.
- (b) Employees are responsible for returning all MDC-related information and property received during the course of employment. Employees may be responsible for any lost or damaged items. The value of any lost or damaged items or any amounts owed by the employee to MDC may be deducted from the employee's final paycheck to the extent permissible under applicable laws.
- (c) An Exit Interview may be scheduled between the employee and the Executive Director. The Exit Interview will allow an opportunity to complete any necessary forms, discuss issues related to compensation, benefits, and leave, the repayment of outstanding debts, the return of MDC information and property, and to remind the employee of his or her post-employment obligations. The employee's experiences at MDC will be discussed, as well as the reasons and motivations for the separation. Efforts will be made to keep the information discussed at the Exit Interview confidential.

III. Workplace Policies

3.01 Employment Issues and Resolution Process

- (a) MDC strives to provide a satisfactory working environment free of discrimination, harassment, and hostility. However, misunderstandings, problems, and frustrations may arise from time to time. MDC values the input of its employees, and is committed to maintaining a working environment in which everyone can communicate openly without fear of reprisal or retaliation. This Policy allows an employee to report in good faith any employment-related complaints, disagreements, issues, concerns, and/or voice suggestions in a reasonable, professional, and respectful manner. If an employee believes these Personnel Policies, or any other Policy, procedure, or rule has been or will be violated, then the matter should be promptly reported as described in the guidelines set forth in this Policy. This Policy is only available to current employees.
- (b) MDC maintains an open door policy and takes employee concerns, questions and issues seriously. All employees are encouraged to discuss any employment-related questions or concerns with the Executive Director. When employment-related misunderstandings, problems, frustrations, or concerns arise, the employee should direct his or her concerns to the individual(s) directly involved. If the matter is not resolved to the satisfaction of the employee, the employee should discuss the matter with the Executive Director. Whenever informal discussions with the Executive Director do not resolve the issue in a satisfactory manner, the employee may file a Written Report.
- (c) When informal consultation does not result in the resolution of the complaint, issue, or concern, the employee may provide a Written Report to the Executive Director. If the Written Report concerns the Executive Director, the Written Report may be filed with the Chairman of MDC's Board of Directors. Any employee who files a Written Report should keep a copy for his or her own records. The Written Report must be filed within ten (10) workdays of the most recent incident causing the need for the Report, or the initial knowledge of the most recent incident by the reporting employee. Upon the written request of the reporting employee to the Executive Director, a Written Report or any part thereof may be withdrawn. The withdrawal of a Written Report or any part thereof will preclude its re-filing. The Written Report must be signed by the reporting employee and include the following whenever possible:
 - (1) Name, work address, and work telephone number of the reporting employee;
 - (2) A short statement providing the factual basis and background of the incident(s) the basis of the Report, including the date(s) of the incident(s), the identities and contact information of the individuals and witnesses involved, and the date the employee

first learned of the incident(s);

- (3) Copies of any documentation supporting the reporting employee's position; and
 - (4) The relief the reporting employee believes should be granted, which should include more than one alternative.
- (d) Upon the receipt of a Written Report, the Executive Director will attempt to resolve the Written Report, including any necessary informal mediation between the individuals involved. The Executive Director shall be afforded thirty (30) workdays from the date of the Written Report to resolve the issue. If the Written Report cannot be resolved within thirty (30) workdays, the Written Report and all information associated with such report will be forwarded to the Chairman of MDC's Board of Directors to either: (1) make a determination within ten (10) working days of receipt based upon the information furnished by the Executive Director and the matter will be deemed closed; or (2) appoint within five (5) working days an individual to investigate the Written Report. The results of such investigation will be reported to MDC's Board of Directors who will then make a determination and the matter will be deemed closed. There is no right or process available to appeal a determination by MDC under this Policy. A final determination will be made in writing and will be delivered to the employee with a copy to be maintained in the employee's Personnel File.
- (e) After MDC has made a final determination, MDC may make follow up inquiries after an appropriate amount of time has passed to insure that issues have not resumed and/or no retaliation has taken place. However, anyone involved in the situation which necessitated the written report should not wait for MDC to follow up if issues persist or there is a belief that retaliation has occurred. If issues persist, a new Written Report should be filed, if necessary.

3.02 Conflicts of Interest

- (a) MDC recognizes the rights of its employees to engage in private endeavors and certain opportunities and activities unrelated to MDC. However, employees are expected to devote their best efforts to the interests and success of MDC, and avoid even the appearance of conflicts of interest. Conflicts of interest arise in those situations where there may be a divided loyalty between the interests of MDC and the interests of the employee and/or others outside of MDC. The most common types of these situations occur where (1) employees take advantage of business opportunities that typically would or could be of interest to MDC or those working with MDC; (2) employees use MDC information or property for their own personal benefit; or (3) employees otherwise compete or disadvantage MDC in some manner. Because it may be difficult to identify all potential conflicts of interest, employees are encouraged to notify MDC prior to participating in outside activities or accepting other employment. If MDC determines that an activity constitutes a conflict of interest, the employee may be asked to terminate the outside activity if he or she wishes to remain an employee of MDC. Violations of this Policy may result in disciplinary action up to and including immediate termination.

- (b) MDC asks its employees to seriously consider the effect that an outside activity or employment may have on their endurance, punctuality, attendance, and performance as an employee of MDC. Employees may not engage in activities that interfere or conflict with the performance of MDC-related tasks. No outside activity or work may be performed during working hours. No MDC information, property, or systems may be used in connection with outside activities or work unrelated to MDC.

3.03 Professionalism

- (a) It is important for all employees to contribute to MDC's public image through proper dress, personal appearance, neatness, and cleanliness. Employees should strive to perform at the highest levels of professionalism in all respects of their employment whether in person, on the telephone, via email or other written correspondence, and while travelling on business. Employees should interact with others in a respectful and courteous manner. Employees should take instruction and constructive criticism from supervisors or other persons of authority.

- (b) During business hours, employees are expected to present a clean and neat appearance and to dress according to the requirements of their positions and each day's tasks. When hosting or participating in a meeting, professional dress is required. Professional dress is considered dress slacks and collared long sleeve shirts for men (no tie required) and dress slacks/skirt and blouse or dress for women. Please consult the Executive Director if you have questions as to what constitutes appropriate attire. The Executive Director has the authority to request that any employee who is not dressed appropriately leave work immediately to change clothes.

3.04 Performance Appraisals

- (a) Employees are strongly encouraged to discuss job performance, expectations, issues, concerns, and goals daily on an ongoing informal basis. MDC has also designed Performance Appraisals to formally assess job performance, expectations, issues, concerns, and goals when an employee's performance does not meet MDC's expectations or the requirements of the employee's position. The Position Description will form the foundation of the Performance Appraisal. MDC encourages all employees to adequately prepare and fully participate in this important evaluation process.
- (b) The Performance Appraisal will consist of a written portion to be completed by the Executive Director. A meeting will take place between the Executive Director and employee to discuss the Performance Appraisal. Employees will be allowed to make dissenting comments, and provide any relevant information or documentation they desire. At the end of the meeting, the employee will be asked to sign the Performance Appraisal acknowledging the meeting. The Performance Appraisal will be kept in the employee's Personnel File. If the employee believes the Performance Appraisal is erroneous, unsatisfactory, or incomplete, the employee may submit a written statement with supporting documentation attached providing the basis for such belief to the Executive Director.

3.05 Online Activities and Social Media

- (a) MDC provides access to the internet to employees to better perform their jobs. Use of the internet in a manner that violates MDC Policies, rules, or applicable laws may subject employees to disciplinary action up to and including immediate termination. Employees must not share passwords with any other individuals. Employees are not to engage in any commercial or illegal activities while using the internet provided by MDC. MDC will have access to a log of all usage, including a list of employees who have used the internet and the sites they visited. MDC may monitor this usage from time to time, and employees found to be abusing usage or using the internet inappropriately will be subject to disciplinary action.
- (b) Before creating online content, please consider some of the risks and rewards that are involved. Employees should be aware that while an employee may consider a communication personal, it is accessible by public audiences and may be confused as a communication originating from MDC. Keep in mind any conduct that adversely affects job performance, the performance of fellow employees, or otherwise affects the business of MDC may result in disciplinary action up to and including termination. Any work-related questions, concerns, complaints, or issues should be handled by speaking directly to those involved. The application of this Policy should not be construed to prevent or limit an employee from engaging in any activities related to the terms and conditions of employment or concerted, mutual aid and protection. MDC will not construe or apply this Policy in a manner that improperly interferes with or limits employee rights under the National Labor Relations Act or other applicable laws, and each case will be considered on its own merits before any adverse action is taken.
- (c) Online activities and social media posts must not be discriminatory or harassing. Threatening or intimidating conduct towards others, such as a threat of violence, is similarly prohibited. Employees should refrain from using social media while working, unless it is work-related or as authorized by the Executive Director and consistent with MDC's Policies. Employees shall not use MDC email addresses to register on social networks, blogs, or any website primarily used for personal use. Social Media shall not be used for internal or external business communications. Employees should not represent or hold themselves out as spokespersons for MDC on personal social media unless pre-approved by the Executive Director. Employees should always make clear that their views are not necessarily those of MDC. Employees should always maintain the confidentiality of MDC Information.

3.06 Disciplinary Procedures

- (a) It is the goal of MDC to maintain an orderly, safe, efficient, and effective working environment. As a result, MDC may have to respond to or correct inappropriate employee behavior or conduct. When violations of Policies, procedures, rules, or other unacceptable conduct occurs, or if MDC believes that there are issues that need to be addressed with respect to the employment relationship, MDC may take any number of corrective disciplinary actions. Employees might informally meet with a supervisor, be given a formal verbal or written warning, be placed on probation, be suspended with or without pay, be demoted, transferred, or immediately terminated. Employees should not assume or rely upon MDC taking progressive disciplinary action. MDC will determine the manner and degree of disciplinary action. Because the particular facts and circumstances of each situation may vary and are many times unique, any action taken by MDC in a specific case should not be assumed to establish any type of future precedent.
- (b) MDC expects employees to follow rules of conduct that will protect the safety of all employees and the interests and property of MDC. While it is not possible to list all the forms of behavior that are considered unacceptable by MDC, the following are some examples of misconduct that may result in disciplinary action up to and including immediate termination, subject to applicable laws:
- (1) Theft or other unauthorized removal or possession of property;
 - (2) Possession, distribution, sale, transfer or use of illegal drugs;
 - (3) Fighting or threatening violence in the workplace;
 - (4) Negligence or other improper conduct leading to damage of MDC-owned property;
 - (5) Sexual or other unlawful harassment;
 - (6) Possession of dangerous or unauthorized materials, such as explosives, firearms, or weapons in the workplace;
 - (7) Excessive absenteeism or any absence without notice;
 - (8) Unauthorized disclosure of trade secrets or confidential information;
 - (9) Violation of Personnel Policies;
 - (10) Failure to perform duties as required;
 - (11) Insubordination and/or the failure to follow instructions; and
 - (12) Viewing or accessing offensive, pornographic, or inappropriate materials in the workplace or using MDC equipment or property.

3.07 Business and Travel Expenses

- (a) All employees play a role in controlling expenses incurred in connection with business-related activities. Please always ask for detailed receipts itemizing the expenses for which you are requesting reimbursement. Such detailed receipts must be submitted to MDC by the employee on a monthly basis in connection with the employee's Expense Report for the month in which the expense was incurred to be eligible for reimbursement. At all times, please remember you are using tax payer's money and incur only those expenses you would be willing to pay if you were paying the expenses personally. All business travel must be approved in advance in writing by the Executive Director. MDC reserves the right to not reimburse any employees for unnecessary, unauthorized, and/or unreasonable expenses which are not incurred in connection with MDC business or operations. Employees who violate this Policy or who falsify or exaggerate expenses may be subject to disciplinary action up to and including immediate termination.
- (b) MDC will reimburse employees for reasonable business travel expenses incurred while on assignments away from town as set forth herein. Please check hotel reservation cancellation policies as some reservations made online have no cancellation policies. Host hotels are acceptable due to networking opportunities at the host hotel, but always look at choices for cheaper hotel rates. No employee will be reimbursed for charges associated with the snack bar in hotel rooms. If you have extra personal charges to your room such as movies, you must have the hotel give you a separate bill for these charges so they can be paid personally and not charged to MDC. Room service charges will only be allowed if you have a late arrival or if there is an illness or other special circumstances.
- (c) All ridesharing and taxi receipts must be saved and submitted for reimbursement. Ridesharing and taxi rides to venues other than those associated with the business purposes of the travel will not be reimbursed by MDC. Car rentals are acceptable if you are in an area that does not have adequate transportation, if the event, show, or hotel is not conveniently located, or if you have several meetings scheduled in the area. Employees who use a personal vehicle for business purposes shall be reimbursed at the current IRS rate per mile upon presentation of voucher and approval by the Executive Director. Mileage will be reimbursed by the IRS rate only to and from your destination. Please use Google Maps to calculate your mileage and attach documentation when requesting reimbursement by MDC.
- (d) Compare the costs of different airlines when booking air travel related to MDC business to obtain the most reasonably-priced flight. Changes to flights that incur additional costs must be approved by the Executive Director. If travel plans change, cancel all flights and obtain information on how credits can be used on other flights.

- (e) The cost of attending breakfast, luncheon, and dinner meetings in the administration of the affairs of MDC as well as the cost of entertaining necessary visiting business personnel shall be borne by MDC upon documentation of expenditure. Please use calculators to calculate tips on all receipts. Be sure and check to see if the gratuity is already included in the ticket. 20% will be the maximum allowed amount for gratuities. Employees should use the Entertainment Expenses Form when entertaining guests that includes name and their affiliation. If you are entertaining a prospect or site selector, you are allowed reasonable alcohol charges. If you are eating out with a group that is not a prospect or site selector, please always ask for separate checks – not group checks. If you are not entertaining a prospect or site selector, employees will be responsible for their own alcohol charges.

- (f) Advances received in connection with the payment of business expenses not settled prior to the conclusion of the next pay period may be subject to payroll deduction. Reimbursement requests submitted more than two months after the expense is incurred will not be honored.

3.08 Credit Cards

- (a) MDC may authorize the issuance of credit cards to certain employees for use in their jobs. This policy sets out the acceptable and unacceptable uses of such credit cards. Use of MDC-issued credit cards is a privilege, which MDC may withdraw for any reason or no reason, in its sole and absolute discretion at any time. Any credit card MDC issues to an employee must be used for business purposes only, in conjunction with the employee's job duties. Employees with such credit cards shall not use them for any non-business, non-essential purpose (i.e., for any personal purchase or any other transaction that is not authorized or needed to carry out their duties). Employees must pay for personal purchases (i.e., transactions for the benefit of anyone or anything other than MDC) with their own funds or personal credit cards. MDC will not regard expenses for one's own business-related use, such as lodging and meals while on MDC-approved business trips, as personal purchases, as long as such expenses are consistent with MDC's travel and expense reimbursement practices and/or policies. If an employee uses an MDC-issued credit card, the employee must request a detailed receipt itemizing the employee's specific purchases and submit same to MDC on a monthly basis in connection with the employee's Expense Report for the month in which the expense was incurred. Violations of this requirement may result in the employee reimbursing MDC for such expense. If an employee mistakenly uses an MDC-issued credit card for a personal purchase or unauthorized transaction, the employee shall (i) immediately notify the Executive Director of the purchase/transaction and (ii) reimburse the MDC within fifteen (15) business days of becoming aware of the purchase/transaction. Employees that comply with the notification and reimbursement Policy contained herein shall not be subject to paycheck deductions described below.
- (b) If any employee uses an MDC credit card for personal purchases in violation of this Policy, the cost of such purchase(s) will be considered an advance of future wages payable to that employee, and will be recovered in full from the employee's next paycheck; any balance remaining will be deducted in full from subsequent paychecks until the wage advance is fully repaid. Such deductions may take the employee's pay below minimum wage for the pay period(s) in question.
- (c) If an employee uses an MDC credit card for any other type of unauthorized transaction in violation of this Policy (i.e., incurs financial liability on MDC's part that is not within the scope of the employee's duties or the employee's authorization to make business-related purchases), the cost of such purchase(s) or transaction will be the financial responsibility of that employee, and the employee will be expected to reimburse MDC via deductions from pay until the unauthorized amount is fully repaid. Such deductions will be in the amount of the unauthorized purchase(s), but if a deduction for such amount would take the employee below minimum wage for the workweek in question, the deductions will be in two or more equal increments that will not take the employee's pay below minimum wage

for any workweek involved. In addition to financial responsibility and liability for wage deductions, any purchases an employee makes with a company credit card in violation of this policy will result in disciplinary action, up to and possibly including termination of employment.

3.09 Prohibition Against Harassment

- (a) MDC is committed to providing a work environment that is free of unlawful harassment. Harassment refers to conduct that is pervasive and sufficiently severe to alter the condition of an employee's employment or interferes with an employee's ability to perform job-related functions. Conduct by any employee which constitutes harassment is strictly prohibited and may result in disciplinary action up to and including immediate termination.

- (b) Sexual Harassment may be defined as unwelcome sexual advances, requests for sexual favors and other expressive or physical conduct of a sexual nature when: (1) submission to such conduct is explicitly or implicitly made a term or condition of employment; (2) an individual's submission or rejection of such conduct is used as a basis for an employment decision affecting the individual; (3) such conduct has the purpose or effect of substantially interfering with an individual's work performance; or (4) such conduct, in intent or effect, creates an intimidating, hostile, or offensive work environment. Examples of conduct constituting sexual harassment and which are strictly prohibited by this Policy include, but are not limited to: (1) persistent, unwelcome flirtation, advances, and/or propositions of sexual nature; (2) repeated insults, humor, comments, jokes, anecdotes and/or actions that belittle or demean an individual's or groups sexuality or gender; (3) repeated, unwelcome comments of a sexual nature about an individual's body or clothing; (4) unwarranted displays of sexually suggestive objects or pictures; (5) unnecessary touching such as patting, pinching, hugging, or repeated brushing against an individual's body; (6) suggestions that submission to or rejection of sexual advances will affect decisions regarding such matters as an individual's employment, work assignments or status, salary or letters of recommendation, and (7) sexual assault. Sexual harassment may also involve conduct based on gender, pregnancy or childbirth.

- (c) Any employee who has information concerning an incident of harassment is expected to promptly report the matter in accordance with the Employment Issues and Resolution Process Policy. Employees who raise good faith concerns and/or make Reports can do so without fear of reprisal. Any employee engaging in threats or other forms of intimidation or retaliation against a complaining employee or any other person involved in implementing this Policy may be subject to disciplinary action up to and including immediate termination.

3.10 Drugs, Weapons, and Alcohol Policy

- (a) It is the policy of MDC to maintain its property and to provide a drug-free working environment that is both safe for our employees and others and conducive to efficient and productive work standards. Violations of this Policy may result in disciplinary action up to and including termination of employment.
- (b) Illegal drugs including but not limited to marijuana, cocaine, opiates (including heroin, morphine, and codeine), hallucinogens, amphetamines, methamphetamines, barbiturates, methaqualone, designer and look-alike drugs, and any other drugs or substances which will in any way affect safety or job performance, including inhalants, whether or not illegal are prohibited.
- (c) Employees are allowed to maintain prescription drugs provided that the prescription drugs have been prescribed by a licensed physician to the person in possession of the prescription drugs, the drugs are in their current, labeled prescription container, and the drugs do not adversely affect the employee's ability to perform job-related tasks in a safe and effective manner. When receiving a prescription from a physician, employees should always ask whether or not the prescribed medication may affect their ability to perform their jobs. Any potential impairment of the ability to work should be reported to the Executive Director.
- (d) Smoking or the use of e-cigarettes or vaporizers is prohibited throughout MDC offices and within 25 feet of any exterior door. This Policy applies equally to all employees, customers, and visitors.
- (e) The consumption of or being under the influence of alcohol is prohibited during working hours, with the exception of occasional work-related after-hours or social events at which alcohol may be consumed in moderation, with the awareness that professional behavior must be maintained and the employee must adhere to all other Personnel Policies of MDC.
- (f) The provisions of this Policy and related Policies may not apply to every employee in every situation. MDC reserves the right, within the requirements imposed by federal, state, or local governments, to rescind, modify, or deviate from this or any other Policy, practice, or guidelines as it considers appropriate in its sole discretion in either individual or MDC wide situations with or without notice.

3.11 Searches and Inspections

- (a) In an effort to safeguard employees, visitors, property, and information, MDC shall take reasonable and necessary steps to monitor, search, and inspect the workplace, employees, and visitors. MDC reserves the right to conduct searches and inspections to monitor compliance with Policies, rules and laws concerning the safety of individuals, missing property, and to protect the security of MDC's property and information. Employees and visitors should have no expectation of privacy while on property owned, controlled, or being used by MDC, while using resources or equipment provided by MDC, and/or while performing services on behalf of MDC. No oral or written statements otherwise made by MDC are intended to or should be relied upon to alter MDC's workplace privacy policy or create any expectation of privacy. When performing a search or inspection, MDC is not accusing anyone of theft, some other crime, or any other improper conduct. Any prohibited items which are discovered will be confiscated and/or turned over to the appropriate authorities. Employees who interfere with or violate this Policy may be subject to disciplinary action up to and including immediate termination.
- (b) MDC retains the right to access all MDC property and information, including computers, desks, files, file cabinets, voicemails, electronic information, electronic storage devices, and other property which MDC may own, finance, lease, or use. MDC may search employees and visitors, as well as personal items such as bags, purses, backpacks, lunch boxes, and other containers. MDC may conduct searches on a random basis. As a general rule, with the exception of items related to personal hygiene or health, employees should not bring anything to the workplace that they would not be prepared to show and possibly turn over to MDC or law enforcement authorities for search and inspection. Employees will be asked to sign a form consenting to the search. By consenting to the search, however, employees are not excused from complying with all MDC Policies, rules, and regulations and may be subject to disciplinary action, up to and including termination, if the employee is found to be in possession of property not belonging to the employee or information the employee is not authorized to have or to remove from the premises. When possible, searches will be conducted by two employees, one who will conduct the search and the other will act as a witness. If the search is conducted in a closed room or space, at least one member of management who is present will be the same sex as the employees whose belongings are being searched. In no event will body or strip searches be conducted. Employees however, may be asked to remove outer clothing such as coats and sweaters and may be asked to empty any pockets.
- (c) Employees should exercise good judgment and discretion when bringing personal property to the workplace. MDC specifically and expressly assumes no risk or liability for any loss or damage to personal property. Purses and wallets should be kept with the employee at

all times. Employees should not bring valuables or large amounts of cash to the workplace or in a vehicle parked outside. Employees shall not bring personal locks to use in connection with their employment. Employees should not bring personal furniture or storage devices to the workplace.

3.12 Health and Safety

- (a) MDC has established safe work practices and Policies to ensure an effective, efficient, and healthy working environment consistent with the requirements of the Occupational Safety and Health Act of 1970 (“OSHA”). Each employee is responsible for reviewing, understanding, and complying with MDC’s safety practices and Policies. Employees should immediately report any unsafe working conditions and suspend work until the condition is resolved. Violations of this Policy may result in disciplinary action up to and including termination.
- (b) When conducting business on behalf of MDC, employees should:
 - (1) Perform all duties in accordance with established safe operating procedures;
 - (2) Comply with all applicable federal, state, and local laws, regulations, and MDC policies;
 - (3) Only attempt to remedy unsafe working conditions if it is safe to do so;
 - (4) Utilize all personal protective equipment and devices; and
 - (5) Maintain good housekeeping to ensure a neat, tidy, and safe working environment.
- (c) All employees should be of sufficient health to properly, effectively, and safely perform their duties. Employees who have a disease or illness that is contagious and readily communicable in connection with the performance of the employees’ jobs shall not be permitted to work, subject to applicable laws.
- (d) Employees are expected to report all work-related incidents, accidents, injuries, and near misses to the Executive Director, no matter how minor they may initially appear. MDC will provide a form which shall be used to make such reports. If the employee is unable to make the report, the Executive Director should make the report on behalf of the employee. If safe to do so, employees are expected to remain at the scene until all related issues are resolved or until given further instruction. A delay or failure to report injuries or illnesses may cause a delay or denial of related benefits. MDC prohibits any discrimination or retaliation against any employees who make such a report.
- (e) In the event an employee requires medical attention, whether injured or becoming ill while at work, the employee’s personal physician should be notified. If it is necessary for the employee to be seen by a doctor or go to the hospital and the circumstances do not require immediate assistance, a family member or the emergency contact for the employee should be called to transport the employee. If immediate assistance is required, 911 should be called to transport the employee. Employees shall not be responsible and should not transport another employee who is in need of medical attention.

3.13 Employee Information and Personnel Files

- (a) Personnel Files are business records of MDC and remain the sole property of MDC. Personnel Files shall include records relating to applications, performance, discipline, requests for leave, requests for paid time off, compliments and complaints, benefit enrollment and change forms, emergency contact information, acknowledgement and consent forms, an inventory of property provided to the employee, documentation related to wage changes, and transfer requests. Files relating to an investigation of employee misconduct shall be maintained separately by the Executive Director. Only information relating to the imposition of discipline as the result of any investigation shall be maintained in the employee's Personnel File. Employees are entitled to review their own Personnel Files on a quarterly basis. An employee wishing to review his or her Personnel File should submit a written request to the Executive Director. The employee will be permitted to review the Personnel File during normal business hours and in the presence of the Executive Director. Employees will not be allowed to remove any information from the Personnel File. Employees are permitted to provide a written response to any document contained in their Personnel Files with which they disagree. The Executive Director will be responsible for maintaining Personnel Files. Medical Records and documentations related to immigration status must not be maintained in Personnel Files.
- (b) Personal information about MDC's employees is considered to be Confidential Information. MDC will limit disclosure of any information related to employees or contained in Personnel Files to situations in which MDC determines that release of the information is necessary due to business or legal reasons. In situations where the request for disclosure is not supported by a business or legal reason, disclosure of employee information will generally be limited to those circumstances in which an employee or former employee has signed a written consent form agreeing to the disclosure. Employee information and Personnel Files will be released to federal, state, and local law enforcement agencies and other officials in response to a subpoena or in response to a written request on the agency's letterhead. Employees who, because of their job duties, have access to employee information and Personnel Files will be expected to maintain the confidentiality of this personal information in those files or be subject to disciplinary action for unwarranted disclosures. In no event should any employee take home any documents relating to employment. Removing such documents or making copies of documents to take home is considered theft.
- (c) MDC understands that employees may desire or need MDC to verify employment and wage information to third parties, such as mortgage companies, credit card issuers, and educational institutions. With respect to request for references on current or former employees, MDC will release dates of employment and position(s) held. Before any

additional information is released, MDC requires a Consent Form indicating what information is to be provided and to which entity.

- (d) MDC maintains all employee medical information in separate confidential Medical Records Files. This Policy does not excuse employees from complying with appropriate requests for information pursuant to attendance procedures. If, however, an employee does not provide the information directly to the Executive Director, the employee will not be entitled to return to work or receive benefits until proper documentation has been received, subject to applicable laws.

3.14 Computers and Technology

- (a) MDC maintains computer, internet, email, and telephone systems along with other electronic equipment used to communicate, access, and store information. These systems are intended for authorized and legitimate business-related purposes only. Employees are expected to use these systems responsibly, ethically, and lawfully at all times. Incidental and occasional personal use is permitted provided it does not negatively impact employee job performance or the interests of MDC. Personal information and messages stored, sent, or received on MDC's systems will be treated in the same manner as all other information and messages. All work performed as well as all information, and messages stored, sent, or received on MDC's systems may be subject to search, retrieval, investigation, and review. Violations of this Policy may result in disciplinary action, up to and including immediate termination. Violations may also result in civil and/or criminal liability with respect to the offending employee. Employees who use MDC computers to steal confidential or proprietary information may be liable under the Computer Fraud and Abuse Act.
- (b) MDC may provide computers to some employees as required to do their jobs. All employees should understand all computers are MDC property and subject to removal or replacement at any time. Employees should not store or use personal programs on MDC computers. If an employee needs software to do his or her job, the employee should contact the Executive Director to inquire about new software. Employees may not bring software from home or download software from the internet to install on MDC computers. Employees are prohibited from doing any MDC work on any personal equipment such as personal laptop computers. Employees who use MDC computers for personal business risk losing that information if the computer is replaced and risk disciplinary action. Employees are also prohibited from using personal storage devices such as DVDs, CDs, memory sticks of any kind, MP3 players, iPods, or other similar equipment to store any MDC information. If an employee needs to transmit documents or presentations to off-site meetings, MDC will provide employees with memory sticks for transporting the information if the employee would prefer not to take a MDC laptop to the meeting. These memory sticks must be treated the same as any other MDC property and must be returned to MDC when not in use. MDC reserves the right to examine the entire contents of any personal storage device on which it learns an employee is storing MDC information.
- (c) Employees should not attempt to change passwords issued to them without notifying MDC and receiving permission for the change. MDC may override any applicable passwords in accordance with applicable laws. Employees should always ensure the physical security of MDC property and equipment and avoid leaving it unattended and/or unprotected, even at premises or locations otherwise controlled by MDC. All reasonable efforts should be

taken to avoid damage, alteration, theft, fraudulent, or unauthorized access, and disclosure of MDC information. All persons with access to MDC's computers, technology, and related systems must adhere to the specific security measures and internal controls established for safeguarding its integrity and validity.

- (d) MDC reserves the right to provide cell phones to employees on an individual, case-by-case basis. If the MDC elects to provide a cell phone to an employee, the cost of the data and service plan for said cell phone will be paid by the MDC. If an employee so desires, the employee's personal cell phone number may be used for the cell phone that is provided to the employee by the MDC, and the cell phone may be used for both personal use and MDC business. All communications, data, information, and files on a cell phone that relate to MDC business are subject to the Texas Public Information Act, regardless of whether the cell phone is the personal cell phone of an employee or is provided to the employee by the MDC.

If an employee resigns or voluntarily separates from employment with the MDC, and said separation is not a result of the employee's violation of the MDC personnel policies, the employee may purchase their provided cell phone from the MDC and retain the associated cell phone number. Upon separation from employment, the MDC will cease paying for the data and service plan at the end of the monthly billing cycle following the separation. An employee who elects to purchase a provided cell phone from the MDC shall pay the appropriate amount pursuant to the following schedule:

<u>Purchase Date of Cell Phone</u>	<u>Cost to Employee</u>
Within 0-12 months of separation	\$300
Within 13-24 months of separation	\$200
Within 25-36 months of separation	\$100
37 months or more prior to separation	\$50

Notwithstanding the above schedule and any contrary policy contained herein, if an employee who elects to purchase a provided cell phone has been employed by the MDC for less than twelve (12) months, the cost to the employee for said cell phone purchase shall be \$400. If an employee's separation from the MDC is involuntary or if an employee is afforded the opportunity to resign in lieu of termination, said employee shall not be entitled to purchase a provided cell phone from the MDC. The provided cell phone will remain the property of the MDC; provided, however, that the phone number associated with the employee's provided cell phone may be relinquished to the employee if authorized by the Executive Director.

3.15 MDC Information and Records

- (a) MDC's information, particularly its Confidential Information and trade secrets, are very valuable assets that must be protected. Employees should not improperly or unlawfully view, review, access, use, disclose, or rely MDC's information. MDC's information should only be disclosed by employees to the extent necessary to perform their jobs, and only after reasonable security measures have been taken. Unauthorized disclosure could destroy the value of the information, give an unfair advantage to others, expose MDC's business to fraud and unfair competition, compromise the privacy of information and communications, and subject the disclosing party to both criminal and civil liability. Violations of this Policy may result in disciplinary action up to and including immediate termination. All employees must immediately return all information upon request at any time, and shall return all information with or without request immediately upon separation from employment with MDC.

- (b) All employees are responsible for maintaining accurate, timely, and reasonably detailed documents, reports, and other records in the course of their employment. No employee shall falsify or improperly alter any records. Each entry and all information must properly reflect the transaction being recorded to the best of the employee's knowledge, information, and belief. Good business practices and MDC policy requires that certain information be retained for various periods of time. It is the responsibility of each employee to ensure records are retained in compliance with MDC's document and email retention policies and applicable laws. For questions about records disposal, employees should contact the Executive Director, particularly if any litigation, investigation, or administrative action is (or may be) threatened or pending. Documents that need not be kept shall be disposed of in compliance with MDC policies.

3.16 Confidential Information and Trade Secrets

- (a) The nature of MDC's operations is such that MDC has Confidential Information, proprietary information, and trade secrets (collectively referred to herein as "Confidential Information") relating to its business and operations which, if disclosed, could lead to violations of laws and MDC policies, rules, and regulations. Each employee should understand the importance of making sure Confidential Information is protected from disclosure to competitors, suppliers, vendors, and other similarly situated outsiders. In the event that an employee inadvertently releases Confidential Information, the employee should immediately notify the Executive Director so that appropriate action may be taken. Any violations of this Policy may result in disciplinary action up to and including immediate termination. Nothing in this Policy or other MDC procedure will be enforced, nor should be construed, to infringe upon an employee's rights under §7 of the National Labor Relations Act to engage in protected concerted activity.
- (b) Each employee has a legal and ethical obligation to take all steps reasonably necessary in order to keep Confidential Information confidential. This obligation continues even after an employee leaves MDC. Confidential Information should be treated at all times with the utmost confidentiality and discretion.
- (c) The following guidelines address some of the issues and problems that may arise, but obviously cannot provide detailed guidance for every situation. When in doubt, have a healthy suspicion.
 - (1) **Conversations in Public.** Employees should only have conversations about Confidential Information with those who have a need to know, and must take care to avoid such conversations where those who do not need to know may overhear. Conversations about Confidential Information in public places, such as elevators, restaurants, and airplanes should be avoided, and should not be discussed with spouses, relatives, or friends.
 - (2) **Confidential Documents and Materials.** Employees should not leave documents or materials containing Confidential Information where they can be seen by any unauthorized person, such as unattended conference rooms, on copy machines, in the mail room, or any public locations.
 - (3) **Support Personnel.** Care must be taken to ensure that persons who are providing support to MDC (such as vendors, suppliers, manufacturers, computerized data services, copy services, and experts) receive only Confidential Information which they have a need to know, and ensure that proper agreements, procedures, and policies are in place to ensure such support personnel take appropriate measures to

protect confidentiality.

- (4) **Safekeeping of Financial Information.** Employees shall ensure Confidential Information remains reasonably protected when not in use and that any computer used to access such information is password protected, encrypted, and otherwise secured.
- (5) **Personal Information.** Confidential Information also may include information which can be used to identify employees such as social security or employee numbers, or private information related to medical issues or conditions.
- (d) When there is a separation of employment for any reason, all employees shall return all Confidential Information in his or her possession, custody, and control.
- (e) By signing the Acknowledgment of Receipt of Employee Handbook, the employee acknowledges that from time to time he or she will receive Confidential Information, including proprietary information and trade secrets related to MDC. The employee acknowledges and agrees that such Confidential Information, if shared directly or indirectly with competitors, suppliers, vendors, and other similarly situated outsiders, could be detrimental to MDC because it would place MDC at a competitive disadvantage if disclosed and/or could result in violations of law. The employee further acknowledges and agrees that but for his or her employment at MDC, he or she would not have received such information, as it is not available to the public. Accordingly, by signing the Acknowledgment, the employee agrees that he or she, except as necessary to conduct business of MDC, shall not disclose, copy, communicate, or divulge to, or use any Confidential Information for the direct or indirect benefit of any person, firm, association, or company other than MDC.
- (f) **“Confidential Information”** includes information in the possession of, prepared by, obtained by, or compiled by MDC, regardless of whether such information is specifically marked or identified as confidential, and whether or not such information was conveyed orally, in writing, electronically, or in any other format related to MDC and/or its past, present, and future customers, clients, prospects, vendors. Confidential Information may include information pertaining to, but not limited to: accounting, accounts receivable and payable, advertising, agreements, acquisitions, analyses, appraisals, areas of interest, assessments, assets, banking information, benefits, blueprints, bonus payments, books, budgets, business plans, business records, buyer lists, capital accounts, compensation, compilations of information, computer files, computer programs, computer software, conclusions, contractor lists, contracts, correspondence, credit information, data, databases, designs, distributor lists, divestitures, documents, drawings, , employee lists and information, engineering, equipment, estimates, evaluations, files, financial information,

financial statements, forecasts, formulas, graphic depictions, handbooks, health information, intellectual property, inventions, investigations, investments, handbooks, improvements, instructions, inventions, know-how, lease information, legal information, literature, loan documents, manuals, manufacturing information, maps, marketing, materials, memoranda, models, negotiations, net worth, office policies, operating techniques and processes, operations, opportunities, orders, personal information, personnel information, photographs, plans, policies, pricing, procedures, products, projections, proprietary information, processes, prospects, prototypes, purchases, publications, records, reports, research, results, royalty payments, salary information, sales, schedules, services, show-how, source code, special needs, specifications, studies, taxes, technical data, techniques, technology, terms of agreements, title information, trade secrets, including as that term is defined by the Texas Uniform Trade Secrets Act, vendor information, vendor lists, and works of authorship, and/or any tangible or intangible manifestations of the foregoing, whether or not patentable or copyrightable, regardless of whether such information is the direct property of MDC or the property of a third party associated with MDC that would appear to a reasonable person to be confidential or proprietary in the context and circumstances in which the information is known or used. Minor and/or aesthetic modification of Confidential Information made by Employee is included within the definition of Confidential Information and belongs to MDC only. Employee recognizes that the above list is not exhaustive. Confidential Information does not include any information that is or becomes readily available, ascertainable, or known to the public other than as a result of any breach of confidentiality obligations owed to MDC or others. MDC maintains and reasonably protects the confidentiality of its Confidential Information through the use of agreements, marking or identifying information as “Confidential”, “private”, “secret”, or “personal”, restrictive covenants, Orientation, training, passwords, identification codes, and secured rooms, areas, and storage devices. Any failure to specifically mark information as Confidential does not waive any right to deem such information as Confidential. All employees are required to sign a Confidentiality and Non-Disclosure Agreement as a condition of continued employment. Confidential Information is information which is not generally available to or known by the public and/or those outside of or unassociated with MDC. As a general rule, before disclosing or receiving Confidential Information, employees should ensure that agreements are in place describing how the parties can use and must protect the information being exchanged. An employee’s duty to maintain the secrecy of Confidential Information extends after separation from MDC.

- (g) **NOTICE.** Theft of a trade secret can subject an individual to civil liability, damages, exemplary damages, and attorneys’ fees under the Texas Uniform Trade Secrets Act and the federal Defend Trade Secrets Act. TEX. CIV. PRAC. & REM. CODE §§134A.001-

.008; 18 U.S.C. §§1831-36. Additionally, theft of a trade secret is a crime under Texas Penal Code §31.05 and the Federal Economic Espionage Act of 1996, 18 U.S.C. §1832. However, an individual shall not be held criminally or civilly liable under any Federal or State trade secret law for the disclosure of a trade secret that is made: (1) in confidence to a Federal, State, or local government official or to an attorney solely for the purpose of reporting or investigating a suspected violation of law, or (2) in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal. An individual who files a lawsuit for retaliation by an employer for reporting a suspected violation of law may disclose the trade secret to the attorney of the individual and use the trade secret information in the court proceeding if the individual files any document containing the trade secret under seal and does not disclose the trade secret, except pursuant to court order.

3.17 Americans with Disabilities Act (“ADA”)

- (a) MDC strives to comply with the ADA and ensure equal opportunities in employment for qualified individuals with known physical or mental disabilities if such accommodations would not impose an undue hardship on MDC and/or does not pose a direct threat to the health or safety of others in the workplace or to the individual. MDC will maintain application, hiring, and employment policies and procedures which allow persons with disabilities meaningful employment opportunities. Pre-employment inquiries will be limited to the applicant’s ability to perform the functions of the position. MDC may require medical verification of the disability and the need for accommodation. MDC is committed to making our facilities accessible to applicants, employees, and members of the public as required by law. Employees who are aware of accessibility problems or who may have suggestions for improvements should contact the Executive Director.
- (b) MDC will provide reasonable accommodations as required by law to disabled applicants and employees where the disability affects the hiring process or performance of essential job functions. Any applicant or employee who requests an accommodation should notify the Executive Director and specifically identify the reason for the accommodation and what accommodations he or she believes is needed. To enable MDC to maintain accurate records regarding requests for accommodation, individuals seeking a reasonable accommodation must follow up on an oral request for accommodation by confirming their request in writing. The employee should also present a written note from a medical provider indicating the restrictions necessitated by a disability and the duration of any such restrictions. MDC will engage in a good faith interactive process with the employee to determine what, if any, reasonable accommodations can be made. The individual requesting the accommodation should cooperate with MDC in discussing and evaluating a number of alternative accommodations. The accommodation granted by MDC may not in all cases be the particular accommodation requested or desired by the applicant or employee.
- (c) MDC recognizes that when pregnant, an employee may need a temporary accommodation to allow her to perform the essential functions of her job. These accommodations may include things like providing light duty; modifying physical requirements of a position, such as providing lifting aids or a place to elevate one’s feet; modification of an employee’s schedule, such as to provide more frequent breaks; or, providing modification to certain rules, such as the dress code. If, after returning to work following the birth of the child the employee requires additional accommodations, the employee may submit another request for accommodation along with the required documentation.

3.18 Driving on MDC Business

- (a) MDC strives to protect its employees and others by assessing that those who drive MDC's fleet vehicles, or rental or personal vehicles while on MDC business, are qualified to do so. Employees must possess all required license(s) prior to operating any vehicles owned, leased, or in possession of MDC, or while otherwise driving on MDC business. MDC reviews motor vehicle records to determine whether an employee is qualified to hold a position for which driving is an essential job function, as well as to ensure that an individual is eligible to be insured by our liability carrier. Employees assigned driving duties must remain insurable under MDC's liability insurance and own their own insurance as required under the laws of the states in which the employee will be driving.
- (b) Individuals being considered for employment and all current employees who drive an MDC vehicle, or drive rental or personal vehicles while on MDC business, should report any arrest, pending charge, moving violation, conviction, or deferred adjudication/diversion program related to the operation of a motor vehicle they receive as soon as practical, but no later than three days after receipt, unless the offense is subject to a nondisclosure order from a court. Such report should be made whether or not the vehicle being operated at the time of the incident was a personal vehicle or MDC vehicle, and whether or not the incident occurred while on MDC business or on personal time. The report should be made to the Executive Director. Any documentation received by the individual must be provided to MDC. MDC will promptly determine whether the employee remains qualified to operate an MDC vehicle, considering the particular facts and circumstances involved, and report all of the foregoing to its insurance carrier so that a prompt decision on continued coverage of the employee also can be made. Any and all motor vehicle accidents (in an MDC vehicle or in a personal vehicle while on MDC business) sustained while at work, regardless of whether the damage is to person or property, or both, should be reported immediately to the Executive Director.
- (c) The following rating system outlines how MDC determines an individual's eligibility for employment (or continued employment) in certain positions and/or status to drive an MDC vehicle and/or status to drive a rental or personal vehicle while on MDC business:
 - Satisfactory - An individual is eligible to and may drive an MDC vehicle, or a rental or personal vehicle while on MDC business, if his or her driving record reveals no more than one moving violation in the past twelve months.
 - Probationary - An individual may be eligible and continue to drive an MDC vehicle, or a rental or personal vehicle while on MDC business, with the stipulation that the individual's motor vehicle record will be pulled on a more frequent basis during a probationary period, when a driving record reveals more than one moving violation in the past twelve months, but not more than two moving violations in the past twenty-four months.

Unsatisfactory - An individual is not eligible for any position which requires driving as an essential job function, and/or shall not drive an MDC vehicle, or a rental or personal vehicle while on MDC business, if the individual is not eligible for coverage under MDC's liability insurance policies related to driving, and/or his or her driving record reflects:

- A currently suspended or revoked license;
- Three or more moving violations in the last thirty-six months;
- One or more instances of driving under the influence (DUI) or driving while intoxicated (DWI) within the past sixty months;
- At fault in a fatal accident within the past sixty months;
- Hit and run or eluding or leaving the scene of an accident within the past thirty-six months;
- Reckless or careless driving, drag racing, or speed contest within the past twelve months; or
- Possession of an open alcoholic beverage container, disregarding or evading a police officer, driving on the wrong side of the road, failure to comply with implied consent law, felony involving a motor vehicle, homicide or vehicular assault, illegal passing resulting in an accident, manslaughter with or without gross negligence, possession of a controlled substance, speeding 31 miles or more over the posted speed limit, or filing a false report within the past sixty months.

In the event an individual falls within the Unsatisfactory category above for positions where driving is an essential job function, that individual will not be hired if a candidate for employment. Current employees may be terminated. The determination of whether to terminate an individual within the Unsatisfactory category where driving is an essential job function, shall be made at the sole discretion of MDC, and subject to all applicable laws.

- (d) As a driver, your first responsibility is to pay attention to the road. Employees must observe all safety and traffic laws. All illegal, dangerous, or unprofessional conduct is prohibited. No employee may transport a non-employee unless there is a work-related reason to do so. No driver or passenger may consume alcohol, other substances, or be in any condition which may otherwise affect the safe operation of a vehicle. Cell phone use while driving an MDC vehicle, or a personal vehicle while on MDC business, is prohibited. This includes receiving or placing calls, text messaging, surfing the Internet, receiving or responding to email, checking for phone messages, or any other use of the cell phone that may lead to driver distraction. Notwithstanding the prohibitions above, a cellular device may be used to receive or place calls by utilizing a hands-free device, which includes, for example, speaker phones, earpieces, wired headsets, and Bluetooth, so long as use of a

hands-free device complies with the laws of the state in which the activity is being conducted. Employees must determine and comply with the laws of the state in which the activity is being conducted. Regardless of the hands-free exception, MDC strongly discourages employees from utilizing any cellular device for any purpose while driving. MDC recommends that if the use of a cellular device is necessary while driving, employees pull their vehicle aside in a safe place to conduct the activity.

- (e) MDC is not responsible for any moving traffic violations, parking tickets, or any other city ordinances or state or federal laws regarding an employee's driving habits. Any tickets issued are the employee's responsibility, even if the ticket is issued while driving an MDC vehicle or conducting business for MDC.
- (f) MDC prohibits impaired driving. Employees should abide by the law and use a designated driver, call a cab, or utilize a ride-sharing service if they are entertaining on MDC's behalf.

3.19 Drug Testing

- (a) The purpose of this Drug Testing Policy is to promote the health, safety, and efficiency of MDC employees and those with whom MDC employees may come into contact with, and to protect MDC information and property. A positive drug test or the refusal to submit to testing may result in disciplinary action, up to and including immediate termination, even for a first offense, subject to applicable laws.
- (b) In accordance with and to the greatest extent allowed by law, drug testing by MDC may be utilized in the following circumstances:
 - (1) Pre-employment examinations before or after an offer has been made in the event the employee will be operating vehicles owned or in the possession of MDC or driving is a necessary function of their position;
 - (2) To comply with contractual agreements and governmental regulations and requirements;
 - (3) When MDC has reasonable suspicion to believe that an employee is in the possession of or is using, has used, or is otherwise under the influence of a prohibited substance in violation of MDC Policies. Employees who are tested upon such reasonable suspicion will be suspended from work with pay pending the results of the test;
 - (4) When an employee returns to active employment after a non-medical leave of absence of thirty (30) or more days;
 - (5) Following an on the job accident, incident, injury, or near miss in situations in which employee drug use is likely to have contributed to the incident and for which the test can accurately identify impairment caused by drug use; and
 - (6) Random, periodic, or unannounced testing at the discretion of MDC.
- (c) All employees shall have the opportunity, prior to testing, to list all prescription and non-prescription drugs and substances that they have used in the last thirty (30) days and to explain the circumstances of such drugs and present any relevant explanation and/or documentation.
- (d) Upon receipt, MDC will inform the employee of the results of the testing performed in connection with this Policy. Employees will be given an opportunity to provide a written explanation and/or produce any relevant documentation. After reviewing the test results and the employee's response, if any, MDC will meet with the employee. Following the meeting, MDC will determine the appropriate course of action.

IV. Attendance and Leave Policies

4.01 Regular Hours of Work

- (a) It is essential for all staff members to be available, arrive on time, and ready to work during MDC's normal business hours, as scheduled, and/or as necessary to perform the essential functions of their positions at locations designated by MDC subject to applicable laws. Unauthorized and/or excessive absences and tardiness place a burden on MDC and fellow employees. Violations of this Policy may result in disciplinary action up to and including immediate termination. However, MDC recognizes that some absences are legitimate and otherwise lawful, and will not support the issuance of disciplinary action.
- (b) Normal business hours are from 8:00 a.m. to 5:00 p.m. Monday through Friday with approximately one hour for lunch. At the discretion of the Executive Director, hours of work may be flexible to meet the demands of our mission.
- (c) An employee must notify the Executive Director not more than 30 minutes after his or her scheduled starting time if he or she expects to be late or absent. The employee should continue to notify the Executive Director each day he or she is absent not more than 30 minutes after his or her scheduled starting time until a date of return has been established. Subject to applicable laws, an employee who is absent from work for three (3) consecutive working days without contacting the Executive Director will be considered to have abandoned his or her position and voluntarily resigned.
- (d) If at any time an employee believes he or she may need an accommodation with respect to his or her work schedule, the employee should notify the Executive Director. The request for accommodation should be made as soon as the employee becomes aware of the need for the modification. Each request will be considered separately in light of the employee's needs, the employee's position, the needs of MDC, and applicable laws.

4.02 General Policies Related to Leave

- (a) MDC provides comprehensive programs of paid and unpaid leave designed to assist employees during periods when the employee or the employee's family is confronted with serious health conditions, injuries, illnesses, military leave, a new child through birth, adoption or foster care, or otherwise needs to be away from their jobs.
- (b) Employees should contact the Executive Director as soon as becoming aware of a need for being absent. If the absence is foreseeable, the employee should provide at least thirty (30) days advance written notice. MDC reserves the right to judge the merits of requests on a case by case basis, and may accept, reject, or grant conditional or partial leave. The failure to request leave in accordance with the guidelines set forth in these Personnel Policies may result in a delay or denial of a request for Leave. Employees should provide prompt notice to the Executive Director of any change in the circumstances underlying the need for leave and/or any change in the employee's anticipated return to work date. Leave may be canceled by MDC if it is determined that the reason for the leave has been misrepresented by employee. Falsification of the reasons for requesting leave or misrepresentation of an entitlement to paid leave may lead to disciplinary action up to and including immediate termination. MDC will not tolerate any discrimination, harassment, or retaliation with respect to any employee who requests or receives any of the benefits associated with MDC's leave Policies. Any employee who believes that he or she has been subject to discrimination, harassment, or retaliation based upon a request or use of leave should report the matter in accordance with MDC's Policies.
- (c) If an employee takes leave due to illness, injury, or other medical reason, MDC may require medical documentation verifying the need for the leave and identifying what duties of the employee's job can be performed, which duties cannot be performed, and what accommodations might be necessary to enable the employee to continue working and/or return to work. Prior to being allowed to return to work, MDC may require an acceptable job-related release from a medical provider indicating the employee's ability to perform the essential functions of the employee's position with or without reasonable accommodation. Any medical information received from an employee will be kept confidential, maintained in a separate file than the employee's Personnel File, and only disclosed as necessary.
- (d) Employees on leave from MDC may not perform work for any other employer that is considered by MDC to be an actual or potential conflict of interest or which conflicts with the reason(s) for the leave. Employees on leave will remain subject to all MDC Policies generally applicable to MDC employees.
- (e) It is the employee's responsibility to make arrangements with MDC to continue making

any required contributions during the leave period. This is particularly important if the leave is without pay or at a reduced rate that may be less than the amount of the employee's contribution in connection with his or her participation in applicable benefit plans.

4.03 Regular Holidays

- (a) Subject to the discretion of MDC and based upon operational needs and other legitimate business interests, MDC will generally observe the City of Midland's paid holidays except for Christmas where there is an option to close during the week of Christmas or alternate employees off during the week of Christmas or the week of New Year's. The aforementioned will be scheduled in advance at the discretion of the Executive Director. The ultimate decision to designate certain days as paid holidays is ultimately left to the sole discretion of the Executive Director. An employee who is hired but starts work on a day immediately after a Holiday will not receive paid Holiday leave. Any employee on unpaid leave in connection with other Policies will not receive paid holiday leave. If a Holiday occurs while an employee is otherwise on approved paid leave, the Holiday will be counted as Holiday leave rather than a day of paid leave. An employee may choose to work on any designated Holiday and earn an additional day of PTO provided that such employee obtains written pre-approval from the Executive Director.
- (b) The following are Holidays followed by the City of Midland:

Christmas Eve & Christmas Day	Independence Day
New Year's Eve & New Year's Day	Labor Day
Martin Luther King Day	Thanksgiving Day and Friday After
President's Day	
Good Friday	
Memorial Day	

Any Holidays occurring on Saturday will be observed the preceding Friday. Holidays occurring on Sunday will be observed the following Monday.

4.04 Paid Time Off (“PTO”)

- (a) PTO provides all full-time staff members with paid time away from work that can be used for vacation, personal time, personal illness, or time off to care for dependents. PTO must be scheduled in advance and be approved by the Executive Director, except in the case of illness or emergency. A failure to timely request PTO may result in a delay or denial of the requested leave. In the event of illness or emergency, the employee should contact the Executive Director as soon as it is safe and feasible to do so. This PTO Policy takes the place of traditional sick, absence, personal time, and vacation policies. Absences due to bereavement, jury duty, and/or military reserve duty are not counted against an employee’s PTO. PTO is a discretionary benefit and subject to modification by MDC at any time. All PTO must be exhausted prior to taking any unpaid leave offered by MDC. PTO may not be used to offset tardiness or unauthorized absences. PTO is not part of any overtime calculation. PTO must be taken in least 2-hour increments.
- (b) All full-time employees are eligible to earn PTO. PTO is earned on a monthly basis and credited to an employee’s PTO Bank on the first day of the month following the month that PTO was earned. Eligibility to earn PTO is contingent on an employee having worked or utilized PTO for the entire month. An employee must be actively working to earn PTO. No PTO is earned while an employee is on leave. Part-time, temporary employees, and independent contractors are not eligible for PTO. A maximum of 80 hours of PTO can be carried over for any 1 year, up to a maximum accumulation of 480 hours total. After 1 year of service, during the month of December, employees may elect to cash out a 40-hour block of unused PTO, provided that the employee has taken at least 40 hours of PTO during the year. Employee shall receive payment for this cash out in the next regular pay cycle.
- (c) Employees are granted a specific allotment of PTO each calendar year based upon their employment status and their length of service with MDC. PTO is earned on the following schedule:

Years of Eligible Service	Earned Per Pay Period
Upon Hiring	7.33
After 4 Years of Continuous Employment	9.00

- (d) If an employee should leave MDC for any reason, that portion of his or her PTO that has been earned but not used will be paid out upon separation of employment up to a maximum of 200 hours. The payment will be calculated based upon an employee’s basic hourly rate for an 8 hour workday.

4.05 Personal Leave of Absence

- (a) A Personal Leave of Absence without pay not to exceed 12 weeks, subject to applicable laws, may be granted at the sole discretion of the Executive Director for the following reasons:
 - 1. The birth, adoption, or placement in foster care of the employee's child to care for the child (must be taken within 12 months of the birth, adoption, or placement);
 - 2. To care for the employee's spouse, child, or parent if the spouse, child or parent has a serious health condition; or
 - 3. The employee has a serious health condition and all PTO has been exhausted.
- (b) All requests for Personal Leave must be in writing and include the reason and anticipated length of time for which the Leave is being requested. Health insurance, dental insurance, vision insurance, life insurance, and retirement plan benefits will continue during a Personal Leave of Absence, subject to the terms and conditions of each respective benefit plan.
- (c) During a Personal Leave of Absence, the employee may be required to verify continued unavailability for work to the reasonable satisfaction of MDC. Accepting other employment during a period of inactive status without MDC's approval is deemed inconsistent with the purposes of this Policy and may be grounds for immediate termination. This Policy is not intended and shall not replace any leave to which employees are otherwise entitled as a matter of law.
- (d) During a Personal Leave of Absence, an employee's job status will be protected in that MDC will make reasonable efforts to hold the position open, or return the employee to work in a similar position, if one is available, for which the employee may be qualified. Before returning to work after the completion of a Personal Leave of Absence, the employee must be able to demonstrate that he or she remains qualified to perform the duties of his or her job with or without reasonable accommodation.

4.06 Jury Duty Leave

- (a) MDC encourages employees to fulfill their civic responsibilities by serving on juries when required. Paid leaves of absences for jury duty will be granted to employees who have been notified to serve up to 5 days. Employees on jury duty are expected to report to work any day they are excused from jury duty at least 2 hours prior to the end of MDC's normal business hours. Employees must show the jury duty summons to the Executive Director as soon as possible so that the Executive Director may make arrangements to accommodate their absences.
- (b) MDC will continue to provide health insurance benefits for the full term of the jury duty absence. PTO and Holiday leave will continue to accrue for up to two weeks during Jury Duty Leave.
- (c) Upon return from Jury Duty Leave, employees must submit to the Executive Director a signed Certificate of Jury Duty Service indicating the number of days served, if available, from the Court Clerk.

4.07 Voting

- (a) MDC encourages all employees to vote, and when possible, use early voting procedures to cause the least disruption to the workplace. MDC prefers employees to use the start or end of the day to vote. However, MDC will provide up to 2 hours of paid voting leave time for any employee who is unable to vote before or after his or her workday. Any employee must notify the Executive Director of his or her intent to leave the office to vote and of the proposed time of leave. Employees are encouraged to take advantage of early voting opportunities.

4.08 Military Leave

- (a) MDC complies with all legal requirements regarding Military Leave. MDC provides Military Leave to employees who serve in the uniformed services as required by the Uniformed Services Employment and Reemployment Rights Act (“USERRA”) and other applicable laws. An employee who is a member of the National Guard or a reserve component of the armed forces shall be granted leave upon presentation of official orders or instructions. An employee who has enlisted in the armed forces or who is called to active duty will be placed on leave in accordance with federal laws.
- (b) Military Leave may not exceed five (5) years, except in certain defined circumstances. Employees whose military service is less than thirty one (31) days must report back to work at the beginning of the first full, regularly scheduled work day following completion of service after allowing for a period of safe travel home and eight (8) hours of rest. Employees who are on Military Leave for more than thirty (30) days but less than 181 days must apply for reemployment within fourteen (14) days after completing service. Employees whose Military Leave is greater than 180 days must apply for reemployment within ninety (90) days after completing service. Employees who anticipate Military Leave in excess of five (5) years should contact the Executive Director.
- (c) Upon the employee’s request, accrued but unused PTO may be paid during Military Leave. After thirty (30) days of continuous Military Leave, employees may elect to continue participation in MDC’s health insurance benefits at their own expense. The election to continue participation in the health insurance benefits may continue for up to twenty four (24) months or during the remaining period of Military Leave, whichever is shorter. PTO will not accrue during Military Leave.
- (d) To be eligible for reinstatement following Military Leave, an employee must have provided advance notice of the need for Military Leave (when possible) and have completed his or her service on a basis that is not dishonorable or otherwise prohibited under USERRA. Generally, an employee returning from Military Leave will be reemployed in the same position and seniority level that the employee would have attained had there been no Military Leave. If necessary, MDC will provide training to assist the employee returning from Military Leave to transition back to the workforce.

4.09 Bereavement Leave

- (a) Full-time employees may be excused from work with pay for up to three (3) days in the event of death in the immediate family. Immediate family includes: spouse, parent, parents-in-law, children, brother or sister, brother-in-law or sister-in-law, grandparents, and grandchildren. Time off with pay to attend the funeral of a relative other than those listed herein is generally limited to one (1) day. An employee needing additional days off will need to utilize PTO.

4.10 Unexpected Closing and Inclement Weather

- (a) From time to time, MDC may find it necessary to suspend or modify business operations, close its offices, and/or release its employees because of unforeseeable circumstances. If MDC is closed or there is a change in MDC's regular hours of operation, MDC will notify employees through the use of MDC's internal and external communications systems including e-mail. Unless employees receive specific instructions, all employees should plan to be at work as scheduled. Employees in essential positions may be asked to work on days when MDC is otherwise closed. Employee safety is the primary factor when considering any workplace closure.
- (b) In the event serious weather conditions develop which may affect the ability of employees to report to work, the Executive Director will determine which, if any, employees should report to work. If, in the opinion of the Executive Director, the situation is potentially dangerous, MDC may close its affected facilities.

V. Compensation and Benefits

5.01 Fair Wage Compliance Policy

- (a) MDC is committed to compensating its employees consistent with the requirements of applicable federal, state and local wage and hour laws and regulations. In determining the amount of an employee's compensation, MDC shall consider, among other things, the nature and scope of the position, what other employers pay their employees for comparable jobs, what MDC pays comparable employees in similar positions, the employee's knowledge, experience, and ability to meet duties per the Position Description, adherence to MDC Policies, initiative, skill, education, training, dependability, cooperation, aptitude, ability, and the overall performance of the employee and MDC. Although MDC strives to be consistent in how jobs are titled, a title does not automatically determine what an employee's compensation will be. Nothing contained in these Personnel Policies or any other representation by any employee or representative of MDC should be interpreted or relied upon to establish any contractual right on the part of an employee to receive any additional compensation or bonuses other than the employee's base wages or salary, subject to applicable laws. Compensation increases are discretionary and are recommended by the Executive Director and subject to final approval by MDC's Board of Directors.
- (b) The Federal Fair Labor Standards Act (hereinafter, "FLSA") guarantees the payment of minimum wage for all hours worked in any one work week, except under certain specified circumstances. In some jurisdictions, local law may provide for a higher minimum wage. The FLSA requires the payment of an overtime premium to non-exempt employees equal to 1.5 times the regular straight time rate for hours worked after forty (40) in any one work week. Under the FLSA, certain categories of employees are paid a guaranteed salary every week and are exempt from the payment of overtime. MDC classifies its employees as exempt or nonexempt based upon a good faith understanding of their duties and responsibilities. It is MDC Policy to follow all state and federal regulations governing deductions from wages.
- (c) The following conduct does not constitute an exhaustive list of improper wage and payroll practices. However, it is intended to provide examples of the kinds of conduct that will not be tolerated by MDC:
- Failing to permit employees to clock in when they begin performing services;
 - Requiring or permitting employees to work off the clock;
 - Falsifying the start and end times of employee work hours;
 - Shaving or altering employee payroll and/or records of hours worked;
 - Rolling overtime hours to a later work week;

- Improper deductions from wages; and
 - Improperly deducting break time not taken by an employee.
- (d) MDC encourages employees to report any perceived improper wage or payroll practice, regardless of who the offender may be. MDC will not in any way retaliate against an employee who makes a wage complaint nor permit any employee to do so. Retaliation is a serious violation of this Policy and should be reported immediately.
- (e) MDC seeks to recognize and reward the successful performance of its employees. Merit Increases may be awarded to an employee who meets MDC’s performance standards on a continuous basis. Merit Increases will not be granted to an employee whose performance has not met the expectations of MDC. An employee who is granted a Merit Increase will receive the following percentage increase to his or her annual gross salary:

Years of Service	Annual Merit Increase
First 4 Years of Continuous Service	3%
After 4 Years of Continuous Service	5%

- (f) Eligible employees may receive an Annual Bonus using methodology determined by and at the sole discretion of MDC. The Annual Bonus is only available to Full Time Employees of MDC who have not been formally disciplined by MDC for a violation of MDC policies, procedures, or rules during the preceding Fiscal Year. The payment of the Annual Bonus will be conditioned on Employee remaining employed by MDC on the date the Annual Bonus is paid. Any employee who is otherwise eligible to receive the Annual Bonus forfeits any rights and expectations to receive the Annual Bonus if he or she separates from employment with MDC for any reason. Employees become eligible for the Annual Bonus after the completion of one (1) year of continuous employment. The Annual Bonus will be paid within thirty (30) days after the start of MDC’s Fiscal Year. MDC’s current Fiscal Year is October 1 to September 30. MDC will deduct all taxes, withholdings, and other deductions typically associated with the payment of wages. The Annual Bonus shall be calculated as follows:

Experience	Bonus Calculation
First Year of Eligibility	20% of 30% of Current Base Salary
Second Year of Eligibility	30% of 30% of Current Base Salary

Third Year of Eligibility	50% of 30% of Current Base Salary
Fourth Year of Eligibility	20% of 40% of Current Base Salary
Fifth Year of Eligibility	30% of 40% of Current Base Salary
Sixth Year of Eligibility	50% of 40% of Current Base Salary
After Sixth Year of Eligibility	50% of 40% of Current Base Salary

As an example, if an eligible employee completes his or her third year of eligibility and has a current base salary of \$75,000.00, the employee's Annual Bonus shall be calculated as follows:

$$(\$75,000.00 \times 30\%) \times 50\% = \text{Annual Bonus of } \$11,250.00$$

5.02 Payroll

- (a) Paychecks will reflect work performed by the employee for the previous pay period. Paychecks will include the employee's salary or wages less any mandatory or employee authorized deductions. Employees should immediately make sure all information and payments received from MDC are correct, including the amount of hours worked, rate of pay, overtime, if any, and deductions. MDC accepts no liability and the employee shall hold MDC harmless if payment is requested in a manner other than direct deposit, subject to applicable laws.

- (b) All employees will be paid on the fifteenth and the last day of the month or the closest workday to these days. No advances on paychecks are permitted. No loans shall be made to employees by MDC.

5.03 Employee Benefits

- (a) MDC sponsors a comprehensive benefits program for eligible employees. The benefits offered by MDC are generally governed and further defined by specific legal documents between the employee and third party benefit plan administrators. These other documents will determine employees' actual rights, obligations, and eligibility requirements. All employees should read these documents and any additional information provided by plan administrators to understand the terms, conditions, and eligibility requirements of the different benefits offered by MDC. While MDC hopes these benefits will be continued indefinitely, the future of these benefits is not guaranteed to any employee. Nothing in these Policies or which otherwise may be communicated to you by MDC or any of its representatives should be construed or relied upon to alter or amend these documents or information, or the rights, benefits or responsibilities discussed therein. The descriptions in these Personnel Policies or other documents are only brief summaries for your general information and convenience.
- (b) The existence of any benefits offered by MDC do not signify that an employee will be employed for the requisite time necessary to qualify for the benefits as employment with MDC is "at-will". MDC specifically reserves the right to modify, suspend, and/or terminate any of the benefits offered to employees subject to applicable laws. MDC employees have no contractual or property rights, and therefore should have no expectations that they will continue to receive any benefits through the course of their employment, save and except for those benefits which are required by applicable federal or state laws. Because of the foregoing, employees should not materially rely upon and/or contend the existence of any benefits induced their continued employment.
- (c) Please refer to the summary plan description and/or other documents received from the plan administrators to the extent employees have questions or concerns. All questions should be directed to the plan administrators. Employees should not rely upon any advice or representations made by MDC or any of its employees with respect to the terms, conditions, benefits, coverage, or eligibility requirements of any benefits offered by MDC.

5.04 Workers' Compensation Insurance

- (a) MDC provides a comprehensive workers' compensation insurance program at no cost to its employees with respect to injury or illness sustained in the course of employment that requires medical, surgical, or hospital treatment.
- (b) Employees who sustain work-related injuries or illnesses should inform the Executive Director as soon as safely possible. No matter how minor an on-the-job injury or illness may appear, it is important that it be reported. The report should contain as many details as possible, including but not limited to the date, time, and description of the illness or injury, the employee's belief as to what caused the illness or injury, the identity of the employee's treating medical provider, and the identities of any witnesses or persons with knowledge of relevant facts. The employee should also retain all paperwork filed or received in connection with the injury or illness and provide copies to MDC. The failure to promptly report work-related injuries and/or illnesses may result in a delay or denial of benefits.

5.05 Career/Staff Development

- (a) All personnel may be required to attend career courses and/or conferences which add to their competence or which are conducive to the enhancement of their knowledge and participation in MDC affairs. Expenses for such conferences, including registration, fees, transportation, and personal traveling and living expenses may be reimbursed by MDC after having been pre-approved in writing by the Executive Director.
- (b) Fees or dues for memberships in professional, civic, and business organizations may be paid by MDC if pre-approved in writing by the Executive Director.

5.06 Payroll Deductions

- (a) In compliance with federal and state law, MDC makes certain payroll deductions for taxes and employee benefits. Other deductions may be made if authorized by law or by the employee. It is MDC's intent to comply with the laws and only make lawful deductions.

- (b) Employees who believe that an improper deduction has been made should notify the Executive Director in writing within ten (10) days of the alleged improper deduction. If a deduction is determined to be in error, MDC will refund the amount within a reasonable period of time.

5.07 Overtime

- (a) Non Exempt Employees should strive to complete all assigned and necessary tasks during the standard forty (40) hour workweek. From time to time, MDC may require its employees to work in excess of a forty (40) hour workweek. This work may be required before or after regular working hours during the normal workweek, or on Saturday or Sundays. Compensation related to overtime will be paid to Non Exempt Employees in accordance with federal and state wage and hour laws. All time sheets or records requesting payment for overtime hours must be submitted by the designated deadline for each pay period. The refusal to work overtime and/or violations of this Policy may result in disciplinary action, up to and including immediate termination.
- (b) Overtime compensation will be payable to Non Exempt Employees for all hours actually worked in excess of forty (40) hours per work week at a rate of one and one half (1 ½) times the Non Exempt Employee's regular hourly rate of pay. Any time an employee is on Leave or not otherwise working will not constitute hours worked and will not be included in the calculation of overtime. In compliance with applicable laws, hours worked each week may not be averaged over two (2) or more weeks; each week must stand alone. Applicable laws provide for exemption of all professional, administrative, and executive positions, among others, as defined in the statutes, from compliance with the overtime provisions of the Fair Labor Standards Act. Exempt Employees are not eligible for overtime compensation.
- (c) Non Exempt Employees shall not work in excess of forty (40) hours in a workweek without prior written approval from the Executive Director. If, during any workweek, a Non Exempt Employee has reason to believe that he or she will work more than forty (40) hours, the employee shall provide to the Executive Director with advance notice. The Executive Director will either deny the request, and if necessary, modify the Non Exempt Employee's schedule to ensure that no more than forty (40) hours will be worked, or approve the request. Working in excess of forty (40) hours in a workweek without prior written approval from the Executive Director may result in disciplinary action.

Income Statement

MIDLAND DEVELOPMENT CORPORATION
INCOME STATEMENT FOR THE 4 MONTHS ENDED
January 31, 2023

	Jan-23	YTD	Budgeted Amount
Revenue	\$5,551,412.17	\$7,323,552.16	\$11,976,644.00
40100 - State Sales Tax	\$5,433,344.89	\$6,814,179.41	\$11,000,000.00
40600 - Public ROW Use Fees	\$0.00	\$0.00	\$0.00
43000 - Interest	\$0.00	\$88,200.00	\$0.00
43010 - Interest - Nonpooled Invest	\$36,680.28	\$95,624.75	\$0.00
46190 - Miscellaneous Rentals	\$81,387.00	\$325,548.00	\$976,644.00
4235150 - Midland Dvlpmt Corp Revenue	\$5,551,412.17	\$7,323,552.16	\$11,976,644.00

Expense	\$304,521.46	\$3,603,661.11	\$22,392,778.00
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51010 - Base Salary	\$24,188.00	\$100,218.41	\$350,096.00
51090 - Fica MDC Portion	\$924.16	\$4,481.98	\$28,234.00
51110 - Health Insurance	\$1,374.27	\$5,019.39	\$28,080.00
51135 - ACCE Profit Sharing	\$1,605.00	\$6,198.98	\$24,507.00
52010 - Office Supplies	\$1,033.65	\$2,858.14	\$6,000.00
52110 - Motor Vehicle Supplies	\$0.00	\$90.19	\$1,500.00
52115 - Minor Furniture & Fixtures	\$0.00	\$0.00	\$1,000.00
52155 - Minor Computer Hrdwre & Periph	\$2,691.71	\$3,583.07	\$5,000.00
52160 - Computer Software & Supplies	\$0.00	\$24,027.11	\$30,000.00
52620 - Postage	\$122.10	\$252.10	\$300.00
53010 - Communication	\$1,316.07	\$5,275.01	\$17,000.00
53030 - Light & Power	\$9.09	\$36.14	\$150.00
53110 - Insurance-External	\$286.00	\$286.00	\$150,000.00
53212 - Equipment Rental-External	\$0.00	\$1,068.34	\$5,000.00
53220 - Advertising	\$64,554.33	\$139,805.83	\$200,000.00
53370 - Grounds Maintenance	\$1,000.70	\$13,378.78	\$22,000.00
53405 - Software Maintenance	\$1,329.22	\$5,316.88	\$12,000.00
53440 - External Audit Fees	\$0.00	\$4,347.00	\$35,000.00
53450 - Consulting Fees	\$13,382.77	\$38,451.07	\$500,000.00
53510 - Travel & Entertainment	\$78.70	\$257.52	\$8,000.00
53520 - Dues & Subscriptions	\$611.62	\$2,266.19	\$15,000.00
53530 - Training,Registration Fees,Etc	\$1,600.00	\$2,206.29	\$10,000.00
53905 - Economic Development Incentive	\$0.00	\$0.00	\$5,129,123.00
53907 - Business Recruitment & Retentn	\$9,304.49	\$23,224.24	\$50,000.00
53909 - Prior Year Committed Incentives	\$2,112.00	\$1,127,200.19	\$9,999,673.00
53920 - Rent	\$5,678.50	\$22,714.00	\$68,142.00
54010 - Building Maintenance	-\$6,372.81	\$28,193.99	\$80,000.00
55120 - Maint. - Instruments & Appara.	\$94.42	\$256.01	\$1,000.00
56188 - MOTRAN	\$0.00	\$71,250.00	\$142,500.00
56202 - General Fund Services	\$31,651.08	\$159,161.40	\$379,813.00
56410 - Payment of Principal	\$0.00	\$0.00	\$70,605.00
56420 - Interest Expense	\$0.00	\$0.00	\$6,595.00
56910 - Depreciation Expense	\$35,346.39	\$106,039.18	\$416,460.00
56995 - Project Non Capital - Promotions	\$0.00	\$73,298.67	\$1,100,000.00
57000 - Capital Land Purchases	\$0.00	\$0.00	\$0.00
57001 - Capital Buildings & Structures	\$10,600.00	\$558,838.02	\$3,500,000.00
57002 - Capital Improv Other Than Bldg	\$100,000.00	\$100,000.00	\$0.00
57070 - Construction in Process	\$0.00	\$974,060.99	\$0.00
235235 - Midland Development Corp	\$304,521.46	\$3,603,661.11	\$22,392,778.00

January 2023 Net Income: \$5,246,890.71

Year-to-Date Net Income: \$3,719,891.05

Balance Sheet

MIDLAND DEVELOPMENT CORPORATION
BALANCE SHEET FOR THE PERIOD ENDED
January 31, 2023
(Used for Internal Purposes Only)

ASSETS

Current Assets

Cash and cash equivalents	22,206,575	
Investments	7,704,935	
Sales tax receivable	-	
Prepaid expenses	-	
Accounts receivable	74,936	
	29,986,446	29,986,446

Non-Current Assets

Capital Assets, net	27,567,601	
Forgivable Loans		
Made to Primary Government	-	
Made to Other	6,579	
Total Forgivable Loans	6,579	
	27,574,180	27,574,180

Total Assets	\$ 57,560,627
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LIABILITIES AND NET POSITION

Liabilities

Accounts payable	84,917	
Retainage Payable	6,510	
Capital Leases payable	93,357	
Commitments payable		
Due within one year	10,077,353	
Due in more than one year	7,376,259	
Total Commitments Payable	17,453,612	
	17,638,396	17,638,396

Net Position

Net investment in capital assets	27,567,601	
Restricted for Forgivable Loans	6,579	
Restricted for Capital Leases	93,357	
Promotions	1,059,123	
Unrestricted	11,195,571	
	39,922,231	39,922,231

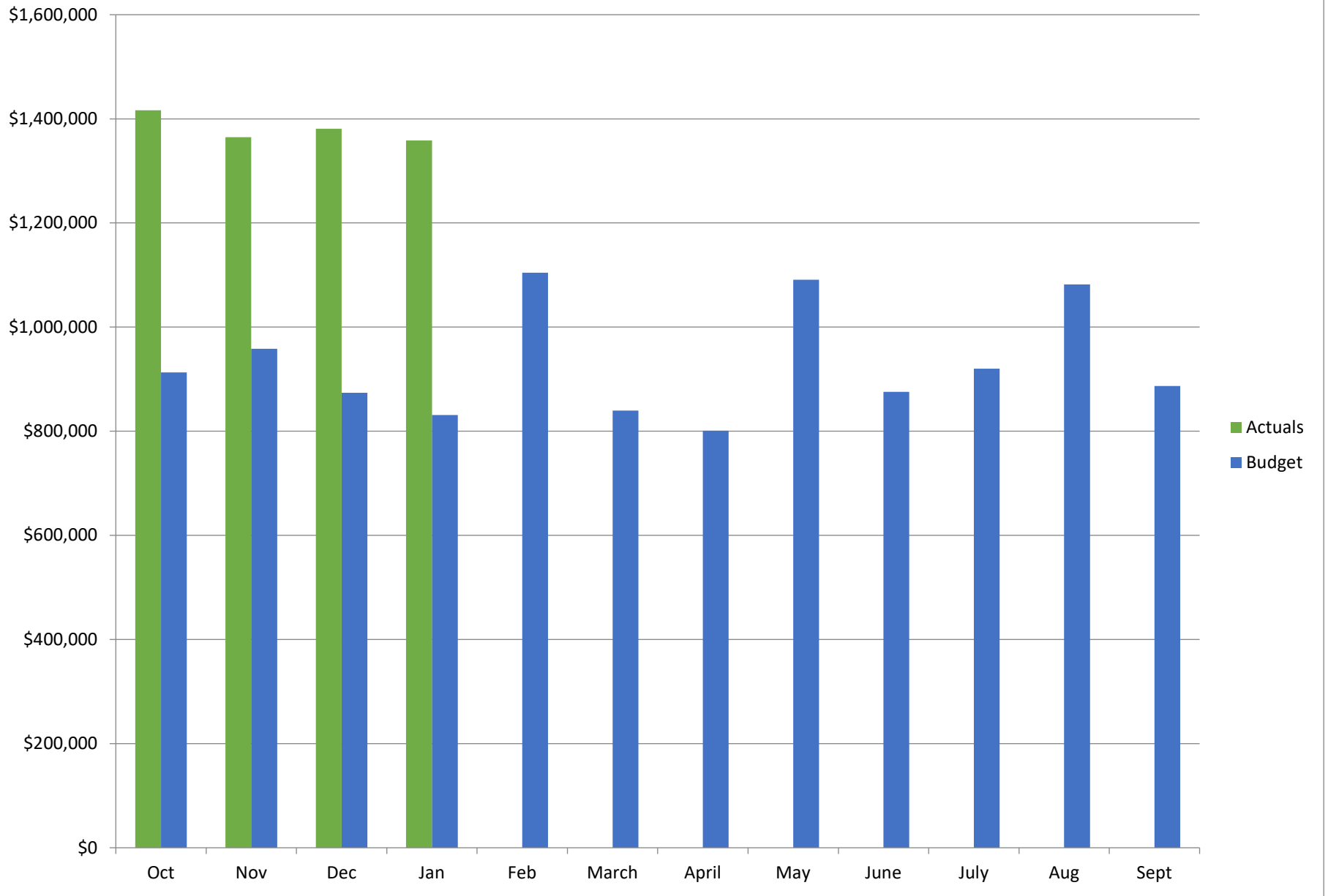
Total Liabilities and Net Position	\$ 57,560,627
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Sales Tax

Sales Tax Variance

	2020-2021	2021-2022	% Change	2021-2022	2022-2023	% Change	YTD Change
October	\$1,203,058.10	\$971,343.63	-19.26%	\$971,343.63	\$1,416,510.48	45.83%	45.83%
November	\$983,259.60	\$1,156,353.89	17.60%	\$1,156,353.89	\$1,364,595.51	18.01%	30.71%
December	\$843,087.27	\$1,013,549.80	20.22%	\$1,013,549.80	\$1,380,834.52	36.24%	32.49%
January	\$752,584.05	\$1,117,874.02	48.54%	\$1,117,874.02	\$1,358,336.22	21.51%	29.61%
February	\$1,224,314.99	\$1,434,528.04	17.17%	\$1,434,528.04			
March	\$783,914.25	\$983,421.74	25.45%	\$983,421.74			
April	\$687,198.37	\$1,015,116.31	47.72%	\$1,015,116.31			
May	\$1,198,336.79	\$1,487,467.44	24.13%	\$1,487,467.44			
June	\$927,060.71	\$1,218,236.38	31.41%	\$1,218,236.38			
July	\$909,387.44	\$1,326,275.50	45.84%	\$1,326,275.50			
August	\$1,176,070.55	\$1,582,536.23	34.56%	\$1,582,536.23			
September	\$978,956.15	\$1,303,011.95	33.10%	\$1,303,011.95			
Annual Total	\$11,667,228.27	\$14,609,714.93	25.22%	\$14,609,714.93	\$5,520,276.73		

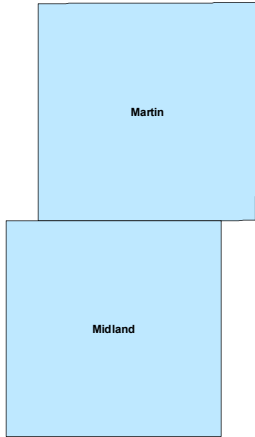
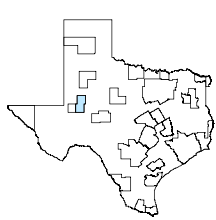
Sales Tax Actuals vs Budget Estimates



Activity Report

Midland MSA

December 2022

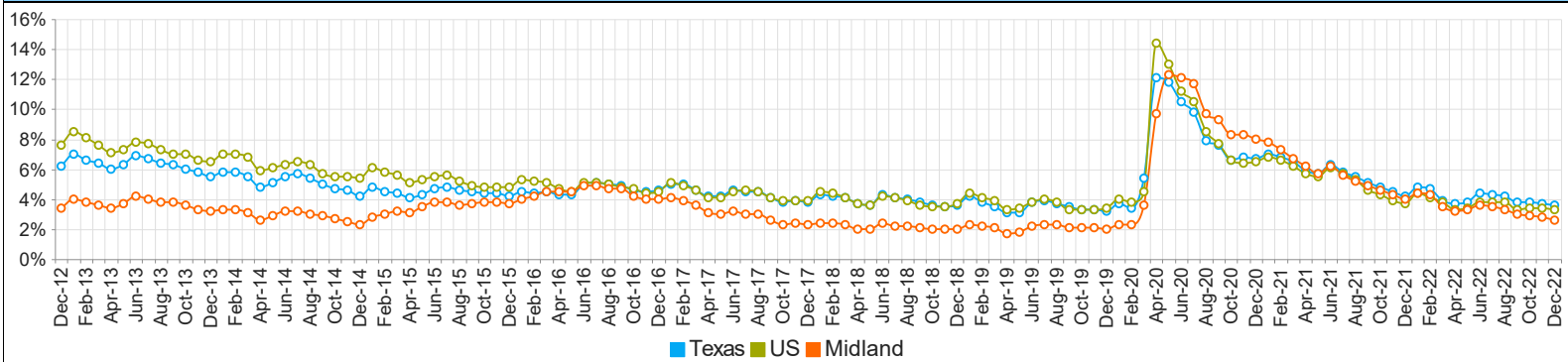


MSA Labor Force Statistics				
	Dec-22	Nov-22	Dec-21	Yearly Change
Civilian Labor Force	105,497	104,795	103,649	1,848
Employed	102,761	101,854	99,519	3,242
Unemployed	2,736	2,941	4,130	-1,394
Unemployment Rate	2.6%	2.8%	4.0%	-1.4%

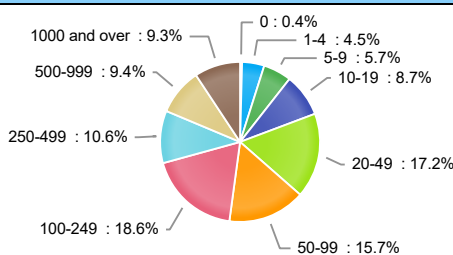
Texas Labor Force Statistics				
	Dec-22	Nov-22	Dec-21	Yearly Change
Civilian Labor Force	14,720,000	14,704,057	14,369,567	350,433
Employed	14,189,378	14,160,174	13,761,548	427,830
Unemployed	530,622	543,883	608,019	-77,397
Unemployment Rate	3.6%	3.7%	4.2%	-0.6%

US Labor Force Statistics				
	Dec-22	Nov-22	Dec-21	Yearly Change
Civilian Labor Force	164,224,000	164,272,000	161,696,000	2,528,000
Employed	158,872,000	158,749,000	155,732,000	3,140,000
Unemployed	5,352,000	5,523,000	5,964,000	-612,000
Unemployment Rate	3.3%	3.4%	3.7%	-0.4%

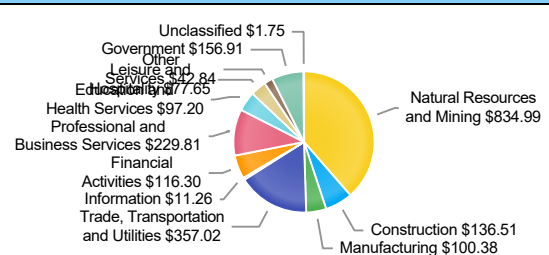
Historical Unemployment Rates



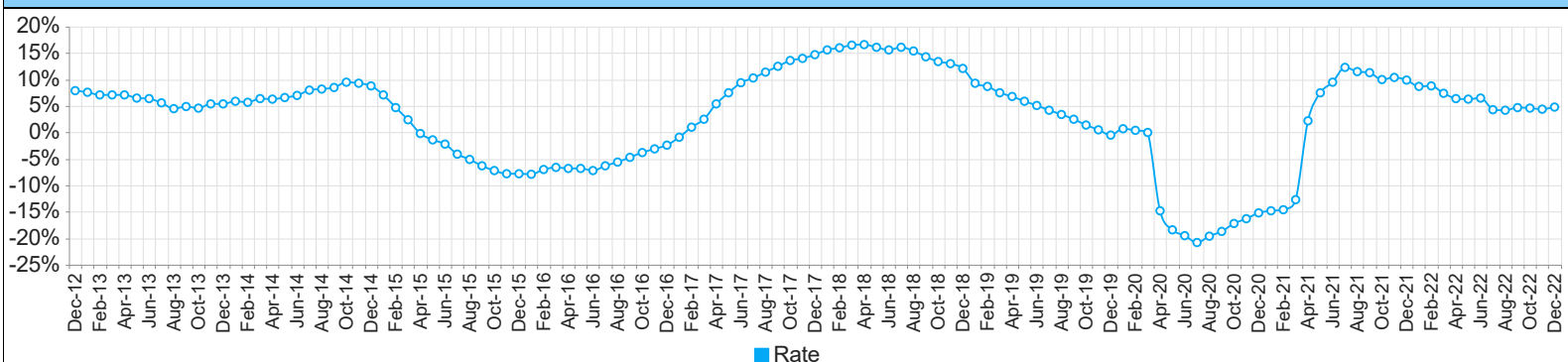
Employment by Size Class (2nd Quarter 2022)



Wages by Industry (in millions) (2nd Quarter 2022)



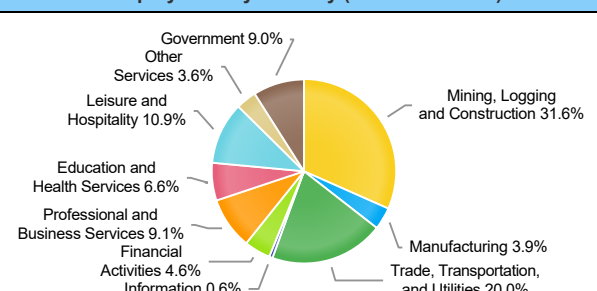
Annual Growth Rate Total Non-agricultural employment



Employment by Industry (December 2022)

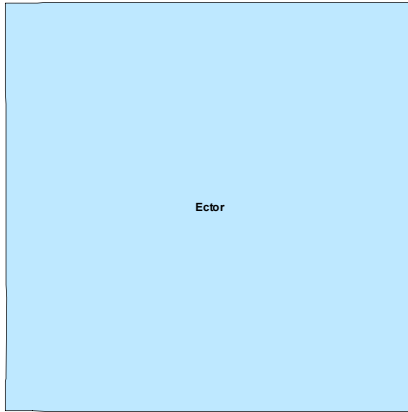
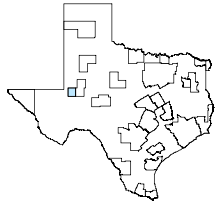
Industry	Current Month Employment	% Monthly Change	% Yearly Change
Total Nonfarm	110,600	0.7%	4.8%
Mining, Logging and Construction	34,900	1.7%	9.4%
Manufacturing	4,300	0.0%	7.5%
Trade, Transportation, and Utilities	22,100	0.9%	1.4%
Information	700	0.0%	0.0%
Financial Activities	5,100	0.0%	2.0%
Professional and Business Services	10,100	0.0%	1.0%
Education and Health Services	7,300	0.0%	4.3%
Leisure and Hospitality	12,100	0.0%	6.1%
Other Services	4,000	0.0%	5.3%
Government	10,000	0.0%	1.0%

Employment by Industry (December 2022)



Odessa MSA

December 2022

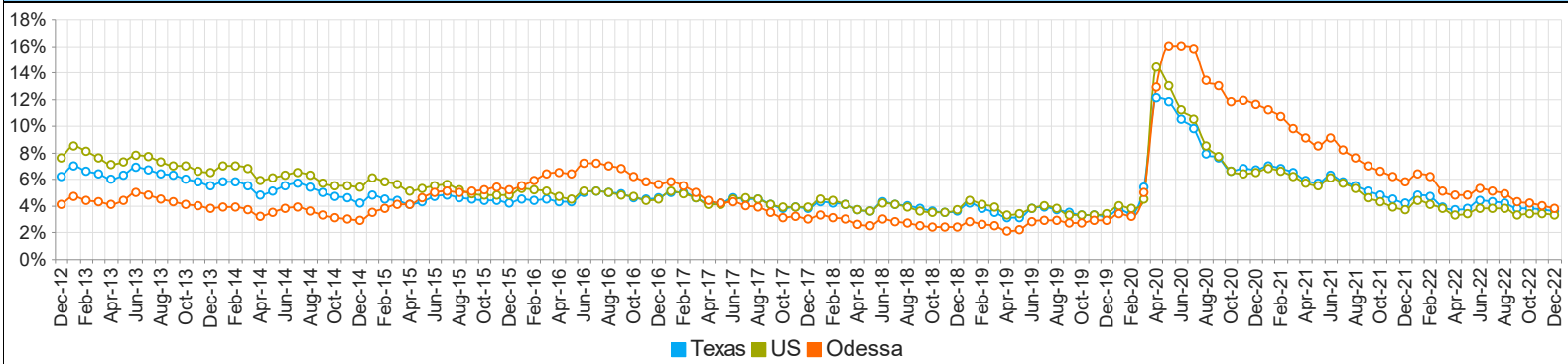


MSA Labor Force Statistics				
	Dec-22	Nov-22	Dec-21	Yearly Change
Civilian Labor Force	81,648	81,456	81,054	594
Employed	78,576	78,185	76,357	2,219
Unemployed	3,072	3,271	4,697	-1,625
Unemployment Rate	3.8%	4.0%	5.8%	-2.0%

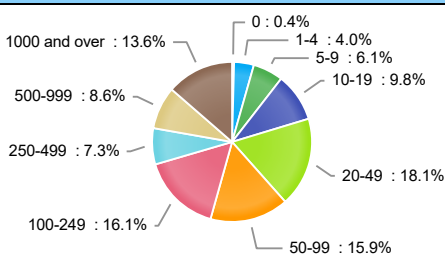
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Unemployment Rate	3.3%	3.4%	3.7%	-0.4%

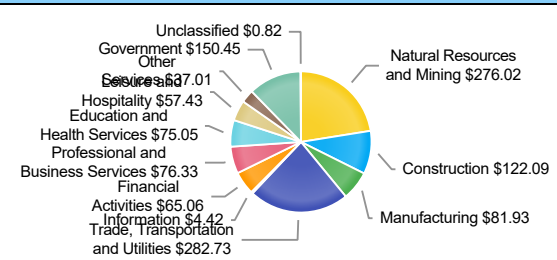
Historical Unemployment Rates



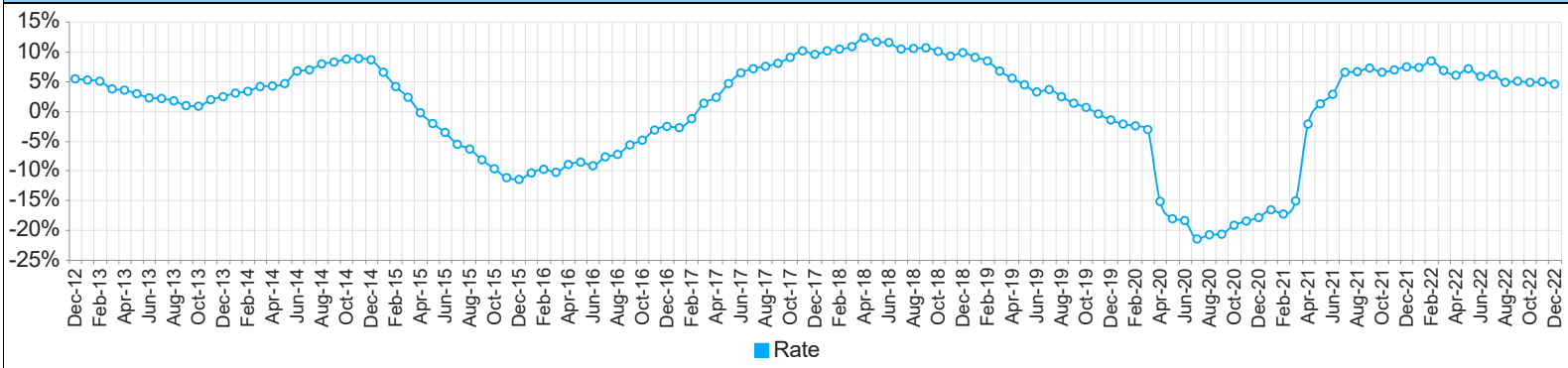
Employment by Size Class (2nd Quarter 2022)



Wages by Industry (in millions) (2nd Quarter 2022)



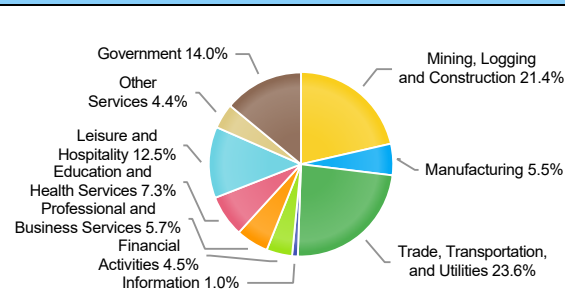
Annual Growth Rate Total Non-agricultural employment



Employment by Industry (December 2022)

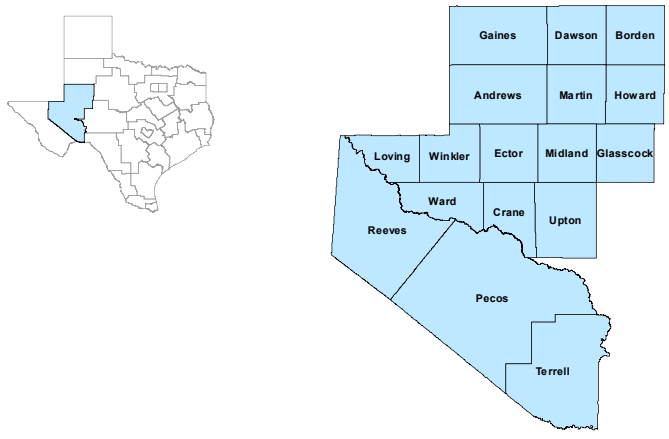
Industry	Current Month Employment	% Monthly Change	% Yearly Change
Total Nonfarm	77,000	0.3%	4.5%
Mining, Logging and Construction	16,500	0.6%	10.7%
Manufacturing	4,200	0.0%	2.4%
Trade, Transportation, and Utilities	18,200	1.1%	1.7%
Information	800	0.0%	0.0%
Financial Activities	3,500	0.0%	6.1%
Professional and Business Services	4,400	-2.2%	2.3%
Education and Health Services	5,600	0.0%	5.7%
Leisure and Hospitality	9,600	0.0%	5.5%
Other Services	3,400	0.0%	3.0%
Government	10,800	0.0%	0.9%

Employment by Industry (December 2022)



Permian Basin Workforce Development Area

December 2022



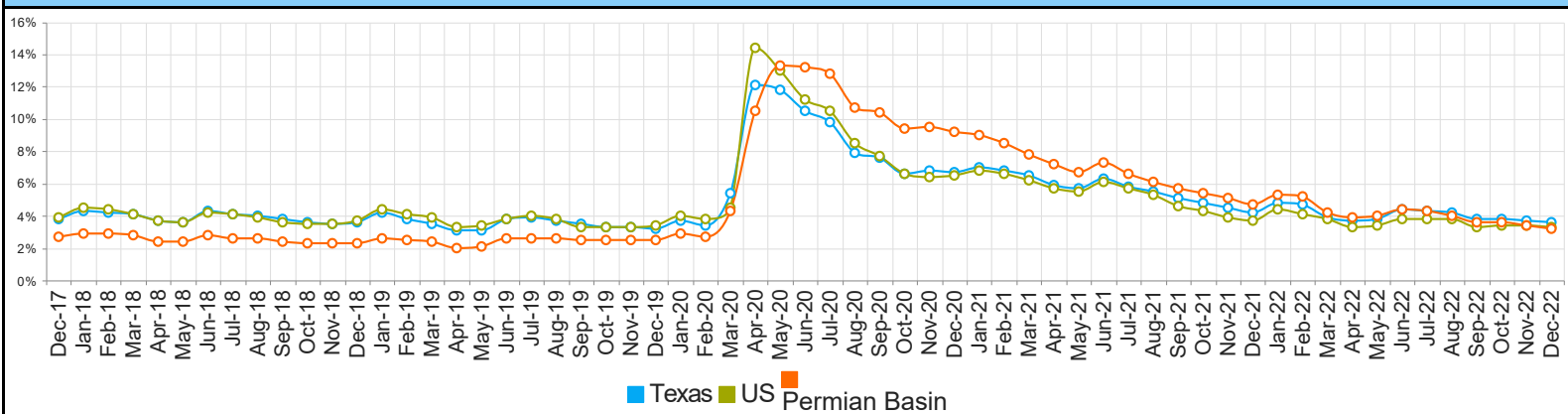
WDA Labor Force Statistics				
	Dec-22	Nov-22	Dec-21	Yearly Change
Civilian Labor Force	253,306	252,331	250,403	2,903
Employed	245,217	243,689	238,515	6,702
Unemployed	8,089	8,642	11,888	-3,799
Unemployment Rate	3.2%	3.4%	4.7%	-1.5%

Texas Labor Force Statistics				
	Dec-22	Nov-22	Dec-21	Yearly Change
Civilian Labor Force	14,720,000	14,704,057	14,369,567	350,433
Employed	14,189,378	14,160,174	13,761,548	427,830
Unemployed	530,622	543,883	608,019	-77,397
Unemployment Rate	3.6%	3.7%	4.2%	-0.6%

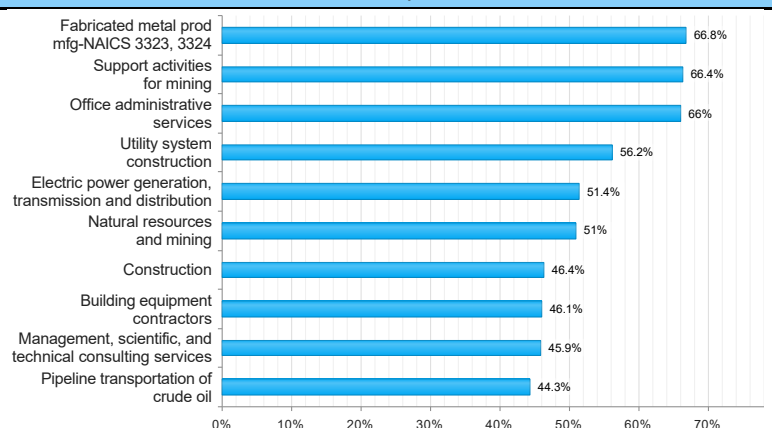
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Unemployed	5,352,000	5,523,000	5,964,000	-612,000
Unemployment Rate	3.3%	3.4%	3.7%	-0.4%

Continued Claims for the Week of the 12th				
	Dec-22	Nov-22	Dec-21	Yearly Change
WDA	797	801	1,140	-343
Texas	88,368	80,935	81,952	6,416

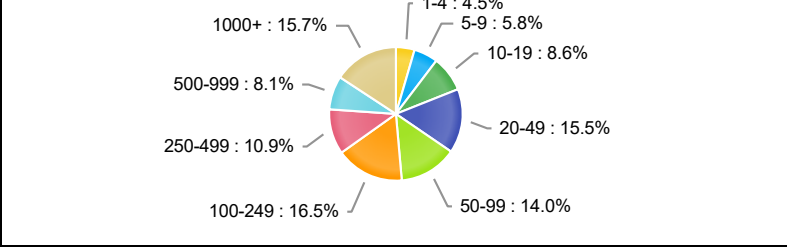
Historical Unemployment Rates



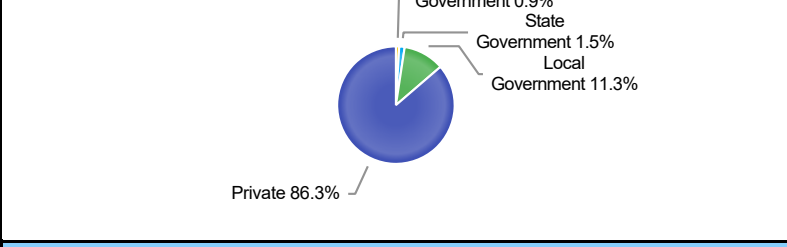
Projected Top Ten Fastest Growing Industries in WDA (% Growth 2020-2030)



Employment by Size Class (2nd Quarter 2022)



Employment by Ownership (2nd Quarter 2022)



Average Weekly Wage (2nd Quarter 2022)					
	Q2 2022	Q1 2022	Q2 2021	Quarterly Change	Yearly Change
WDA	\$1,390	\$1,459	\$1,248	-\$69	\$142
Texas	\$1,284	\$1,368	\$1,210	-\$84	\$74
US	\$1,294	\$1,374	\$1,241	-\$80	\$53

Employment by Industry (2nd Quarter 2022, Percent Change)

Industry	Employment	% of Total	% Quarterly Change	% Yearly Change
Natural Resources and Mining	49,549	20.4%	4.3%	16.3%
Construction	19,467	8.0%	5.5%	21.2%
Manufacturing	13,929	5.7%	2.8%	52.8%
Trade, Transportation and Utilities	50,590	20.9%	0.7%	4.7%
Information	1,906	0.8%	4.4%	6.2%
Financial Activities	10,534	4.3%	1.6%	6.7%
Professional and Business Services	17,660	7.3%	0.8%	7.4%
Education and Health Services	39,025	16.1%	-1.1%	1.8%
Leisure and Hospitality	25,625	10.6%	4.5%	4.7%
Other Services	7,021	2.9%	4.3%	8.8%
Public Administration	7,101	2.9%	-1.0%	-2.7%

Employment by Industry (2nd Quarter 2022)

