



Board Binder Open Session

September 12, 2022

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 September 12, 2022. 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/83218390280?pwd=akVRWXIkWmJORHZMNMzSkE5SktiQT09>

Passcode: 012802

Or join by phone:

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

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

Webinar ID: 832 1839 0280

Passcode: 012802

International numbers available: <https://us02web.zoom.us/u/kdfeQ1638>

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

1. Call meeting to order.
2. Motion approving the minutes of the August 1, 2022, meeting of the Midland Development Corporation.
3. Presentation from the Midland Community Theatre on the Cole Theatre capital campaign project.
4. Presentation from MOTRAN Alliance, Inc. on infrastructure projects and initiatives in Midland and the Permian Basin.
5. Resolution authorizing the execution of an economic development agreement with MOTRAN Alliance, Inc.
6. Resolution authorizing an amendment to that certain Economic Development Agreement between the Midland Development Corporation and the City of Midland for the Todd Drive Expansion and CR 1160 Overpass Improvements Project.

7. Resolution authorizing the execution of a professional services agreement with Kimley-Horn and Associates, Inc., in the amount of \$974,060.99 for professional services related to mainlane, bridge, and intersection improvements located at Todd Drive and State Loop 250; and authorizing payment for said agreement.
8. Resolution authorizing the execution of a consultant services agreement with The Perryman Group in an amount not to exceed \$80,000.00 for the production of certain economic indices and reports regarding the City of Midland, Texas, and the Permian Basin.
9. Presentation on the August 2022 monthly expenses and economic development activity report from the Midland Development Corporation Executive Director and staff.
10. Pursuant to Texas Government Code §551.101, the Board of Directors will hold an Executive Session, which is closed to the public to discuss the following matters as permitted under the following Texas Government Code Sections:
 - a. Section 551.072 Deliberation Regarding Real Property
 - i. Discuss the sale, exchange, lease or value of real property described as an approximate 374-acre tract of land out of Section 33, Block 40, T-1-S, T&P RR Co. Survey, Midland County, Texas.
 - b. Section 551.087 Deliberation Regarding Economic Development Negotiations
 - i. Discuss business prospects that the Midland Development Corporation seeks to have, locate, stay, or expand in or near the City of Midland, Texas, and discuss possible incentives, and discuss contract compliance on the part of businesses.

Posted this 9th day of September 2022.

Amy M. Turner
City Secretary

August 1st Minutes

MIDLAND DEVELOPMENT CORPORATION

MINUTES

August 1, 2022

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 10:00 a.m. on August 01, 2022.

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

Board Members absent: Director Jill Pennington and Director Chase Gardaphe

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

Council Member(s) present: Mayor Patrick Payton and Council Member Lori Blong

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

1. Call meeting to order.

Chairman Lowery called the meeting to order at 10:00 am

2. Motion approving the minutes of the June 06, 2022 meeting of the Midland Development Corporation.

Director Simpson moved to approve the minutes of the June 06, 2022 meeting of the Midland Development Corporation; seconded by Director Bullock. The motion carried by the following vote: AYE: Lowery, Sams and Sisniega. NAY: None. ABSTAIN: None. ABSENT: Pennington and Gardaphe.

3. Presentation from the Bush Tennis Center on the ACE Athletic Center project.

Bush Tennis Center Executive Director Tim Stallard from gave an overview of the ACE Athletic Center project and the impact that the Bush Tennis Center has on the local community and economy.

4. Resolution authorizing the execution of an interlocal agreement with the University of Texas of the Permian Basin to advertise and publicize the City of Midland for the purpose of developing new and expanded business enterprises.

Director Simpson moved to approve Resolution ED-413 authorizing the execution of an interlocal agreement with the University of Texas of the Permian Basin to advertise and publicize the City of Midland for the purpose of developing new and expanded

business enterprises; seconded by Director Bullock. The motion carried by the following vote: AYE: Lowery, Sisniega, and Sams. NAY: None. ABSTAIN: None. ABSENT: Pennington and Gardaphe.

5. Resolution authorizing payment in the amount of \$18,825.29 to the University of Texas of the Permian Basin pursuant to that certain Incubator and Makerspace Grant Agreement between the Midland Development Corporation and the University of Texas of the Permian Basin.

Director Bullock moved to approve Resolution ED-414 authorizing payment in the amount of \$18,825.29 to the University of Texas of the Permian Basin pursuant to that certain Incubator and Makerspace Grant Agreement between the Midland Development Corporation and the University of Texas of the Permian Basin. seconded by Director Sisniega. The motion carried by the following vote: AYE: Lowery, Sams, and Simpson. NAY: None. ABSTAIN: None. ABSENT: Pennington and Gardaphe.

6. Resolution authorizing the execution of a professional services agreement with Parkhill, Smith, & Cooper, Inc., in an amount not to exceed \$110,300.00 for professional services related to a site assessment and development at Midland International Air & Space Port; and authorizing payment for said agreement.

Director Bullock moved to approve Resolution ED-415 authorizing the execution of a professional services agreement with Parkhill, Smith, & Cooper, Inc., in an amount not to exceed \$110,300.00 for professional services related to a site assessment and development at Midland International Air & Space Port; and authorizing payment for said agreement. seconded by Director Simpson. The motion carried by the following vote: AYE: Lowery, Sisniega, and Sams. NAY: None. ABSTAIN: None. ABSENT: Pennington and Gardaphe.

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

Director Simpson moved to approve Resolution ED-416 authorizing the execution of a promotional agreement with Higher Orbits, Inc., to advertise and publicize the City of Midland for the purpose of developing new and expanded business enterprises. seconded by Director Sams. The motion carried by the following vote: AYE: Lowery, Bullock and Sisniega NAY: None. ABSTAIN: None. ABSENT: Pennington and Gardaphe.

8. Resolution authorizing the execution of a second amendment to that certain Promotional Agreement with the Permian Basin Area Foundation.

Director Bullock moved to approve Resolution ED-417 authorizing the execution of a second amendment to that certain Promotional Agreement with the Permian Basin Area Foundation. seconded by Director Sams. The motion carried by the following vote: AYE: Lowery, Simpson, and Sisniega. NAY: None. ABSTAIN: None. ABSENT: Pennington and Gardaphe.

9. Resolution authorizing the execution of a second amendment to that certain Promotional Agreement with the Permian Basin Area Foundation.

Director Simpson moved to approve Resolution ED-418 authorizing the execution of a second amendment to that certain Promotional Agreement with the Permian Basin Area Foundation. seconded by Director Sisniega. The motion carried by the following vote: AYE: Lowery, Bullock and Sams. NAY: None. ABSTAIN: None. ABSENT: Pennington and Gardaphe.

10. Resolution authorizing the execution of a second amendment to that certain Promotional Agreement with the Permian Basin Area Foundation.

Director Bullock moved to approve Resolution ED-419 authorizing the execution of a second amendment to that certain Promotional Agreement with the Permian Basin Area Foundation. seconded by Director Simpson. The motion carried by the following vote: AYE: Lowery, Sams and Sisniega. NAY: None. ABSTAIN: None. ABSENT: Pennington and Gardaphe.

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

MDC Executive Director, Sara Harris reported that there were no significant disbursements for the month of July 2022. She also reported a sizeable increase year over year in sales tax revenues.

Board recessed into executive session at 11:58 a.m.

12. Pursuant to Texas Government Code §551.101, the Board of Directors will hold an Executive Session, which is closed to the public to discuss the following matters as permitted under the following Texas Government Code Sections:

a. Section 551.072 Deliberation Regarding Real Property

- i. Discuss the sale, exchange, lease or value of real property described as Lots 5 and 6, Block 35, Original Town of Midland, an addition to the City of Midland, Midland County, Texas.
- ii. Discuss the sale, exchange, lease or value of real property described as Lots 1A and 9-12, Block 35, Original Town of Midland, an addition to the City of Midland, Midland County, Texas.
- iii. Discuss the sale, exchange, lease or value of real property described as an approximate 53.62-acre tract of land out of Section 11, Block 40, T-2-S, T&P RR Co. Survey, Midland County, Texas.
- iv. Discuss the sale, exchange, lease or value of real property described as an approximate 374-acre tract of land out of Section 33, Block 40, T-1-S, T&P RR Co. Survey, Midland County, Texas.

b. Section 551.087 Deliberation Regarding Economic Development Negotiations

- i. Discuss business prospects that the Midland Development Corporation seeks to have, locate, stay, or expand in or near the City of Midland, Texas, and discuss possible incentives, and discuss contract compliance on the part of businesses.

Board reconvened into open session at 12:43 p.m.

All the business at hand having been completed, Chairman Lowery adjourned the meeting at 12:43 p.m.

Respectfully submitted,

Vanessa White, Deputy City Secretary

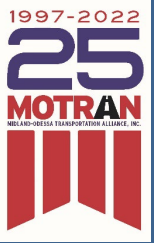
PASSED AND APPROVED the 12th Day of September 2022.

Jill Pennington, Secretary

MOTRAN FY 2023 Agreement



INTERSTATE IMPACT



MIDLAND/ODESSA

Direct Local Connection to 3 interstates



Provides Enhanced Connections to 12 interstates



Better Connections to Gulf and East Coast Ports

Connects Energy Production and Defense Installations

Serves as Critical Hurricane Evacuation Route

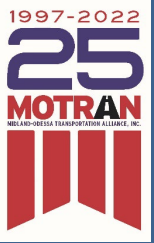
Supports Existing Economic Spheres of Influence for Energy, Agriculture and Consumer Goods

- (TX) Midland-Odessa
- (TX) San Angelo
- (TX) Killeen/Temple
- (TX) College Station/Bryan
- (TX) Beaumont/Port Arthur)
- (LA) Alexandria
- (MS) Hattiesburg
- (AL) Tuscaloosa
- (AL) Montgomery
- (AL-GA) Columbus
- (GA) Macon-Bibb/Warner Robbins
- (GA) Augusta

- (TX) Huntsville
- (LA) DeRidder-Fort Polk South
- (LA/MS) Natchez
- (MS) Brookhaven
- (MS) Laurel (Laurel-Hattiesburg)
- (AL) Selma (Selma-Montgomery)
- (GA) Milledgeville



INTERSTATE IMPACT



MIDLAND/ODESSA



Port of Corpus Christi
 Port of Houston
 Port of Beaumont
 Port of Port Arthur
 Port of Gulfport
 Port of Savannah
 Port of Charleston

Direct Local Connection to 3 interstates



Better Connections to Gulf and East Coast Ports

Connects Energy Production and Defense Installations

Provides Enhanced Connections to 12 interstates

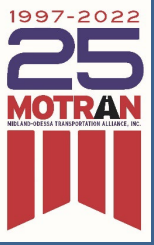


Serves as Critical Hurricane Evacuation Route

Supports Existing Economic Spheres of Influence for Energy, Agriculture and Consumer Goods



INTERSTATE IMPACT



Direct Local Connection to 3 interstates



Provides Enhanced Connections to 12 interstates



Better Connections to Gulf and East Coast Ports

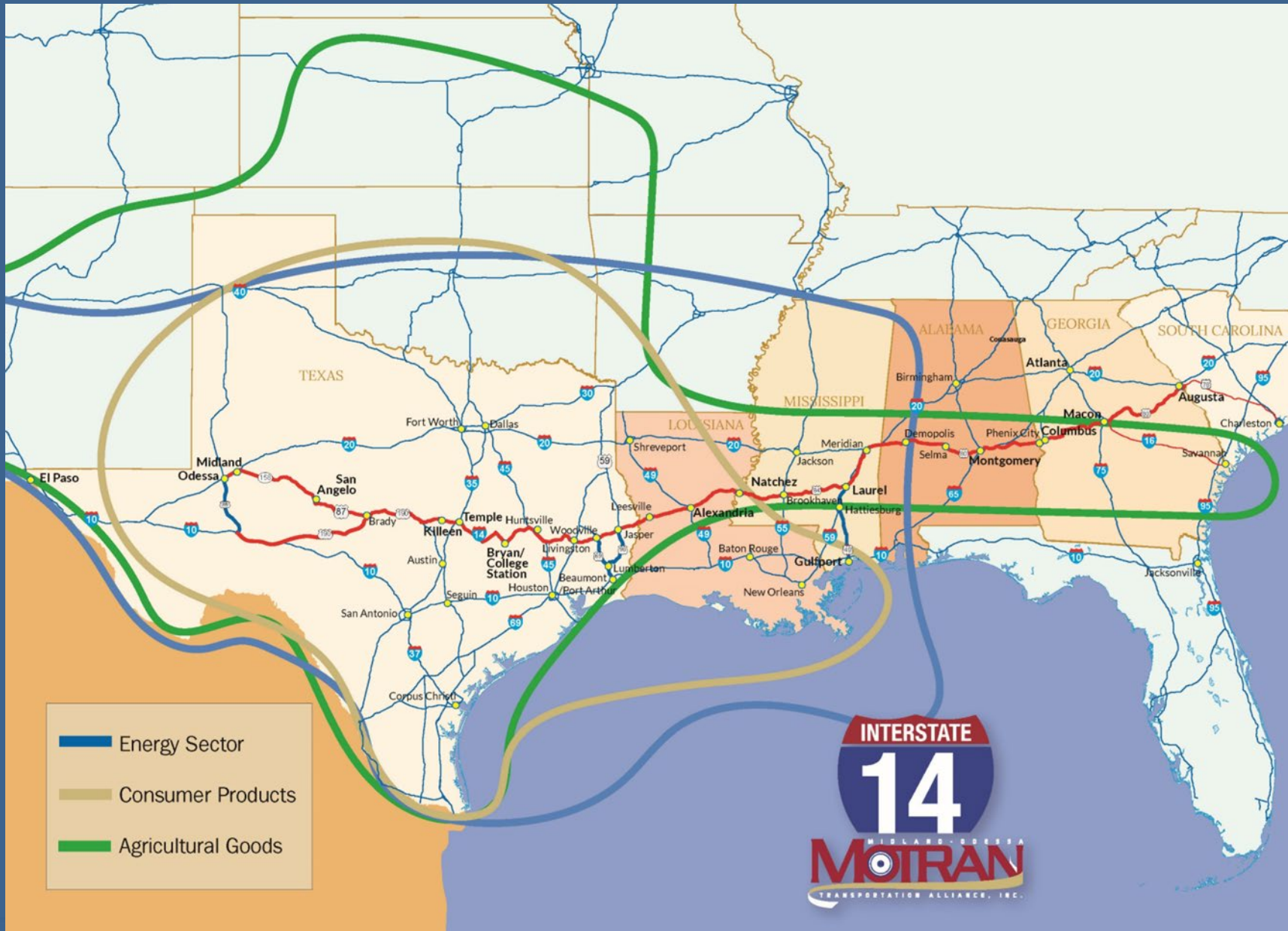
Connects Energy Production and Defense Installations

Serves as Critical Hurricane Evacuation Route

Supports Existing Economic Spheres of Influence for Energy, Agriculture and Consumer Goods

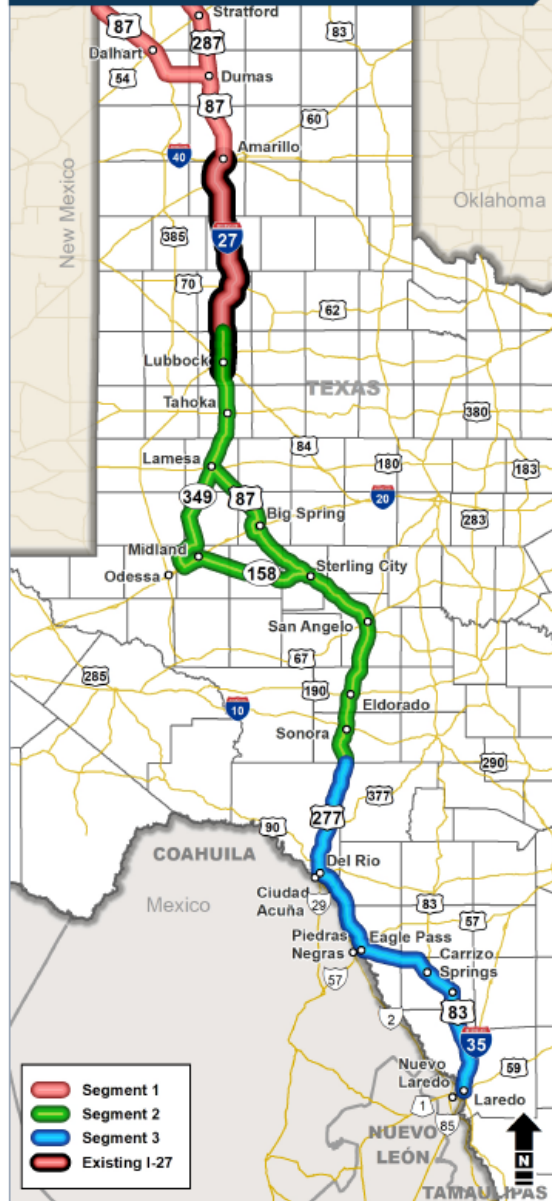
- Fort Bliss (Army)
- Goodfellow (Air Force)
- Fort Hood (Army)
- Corpus Christi Army Depot and Naval Air Station
- San Antonio Joint Base
- Fort Polk (Army)
- England (Air Force)
- Camp Beauregard (Army)
- Camp Shelby (Army)
- Fort Rucker (Army)
- Maxwell (Air Force)
- Fort Benning (Army)
- Robins (Air Force)
- Fort Gordon (Army)
- Fort Stewart (Army)







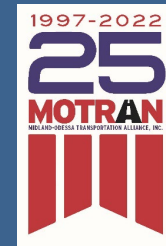
Ports-to-Plains Corridor Interstate Feasibility Study Segments



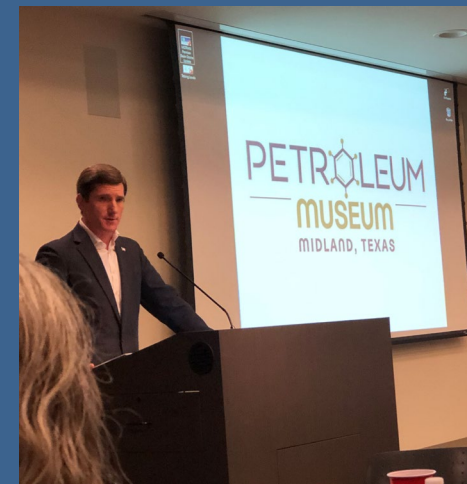
Segment #2



CRYPTO MINING IN THE BASIN



OZONE NON-ATTAINMENT NOTICE



OZONE LEVEL TESTING

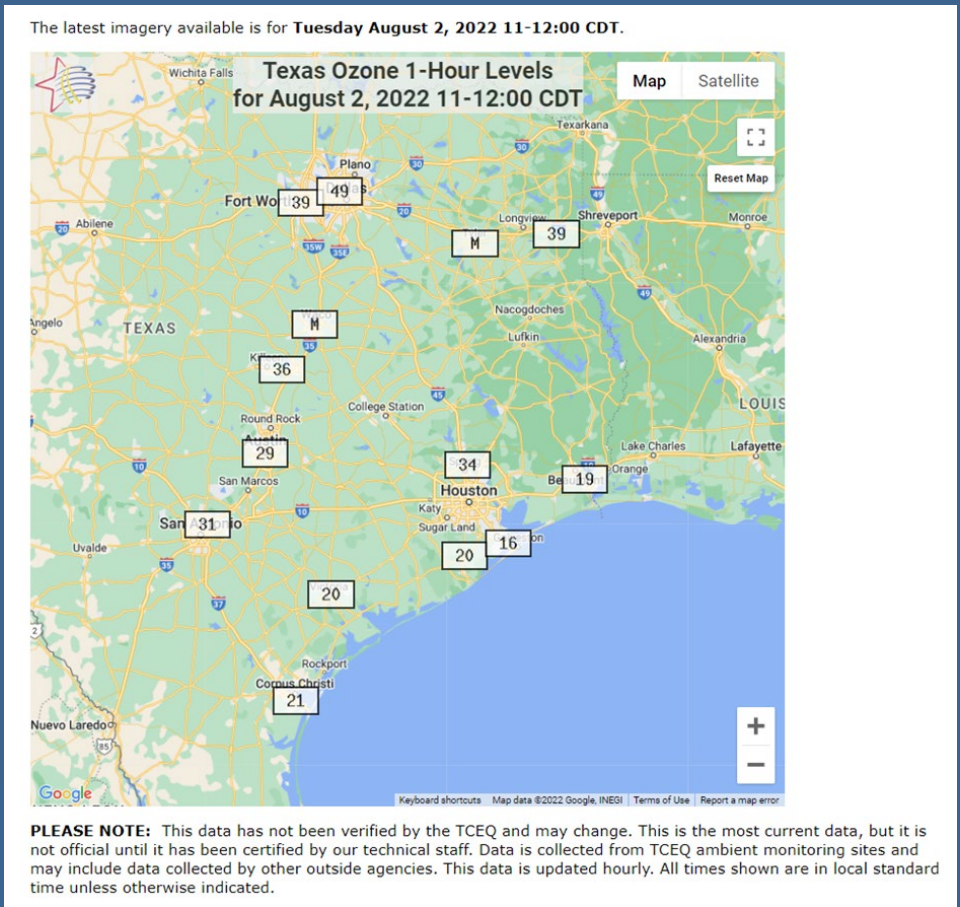
COUNTY	LOCATION	July 5th - 4pm	July 6th - 2:30pm	July 19th 3:06 PM	July 26th - 4:10pm	July 28th - 3pm	August 1st - 11am	HIGHEST RECORDED VALUE
MIDLAND	MAF	28	32	18	21	17	18	41
MIDLAND	WESTWOOD		27		11		10	33
MIDLAND	FM 1788 & CR 60		26		19		11	30

MIDLAND AVERAGE 20

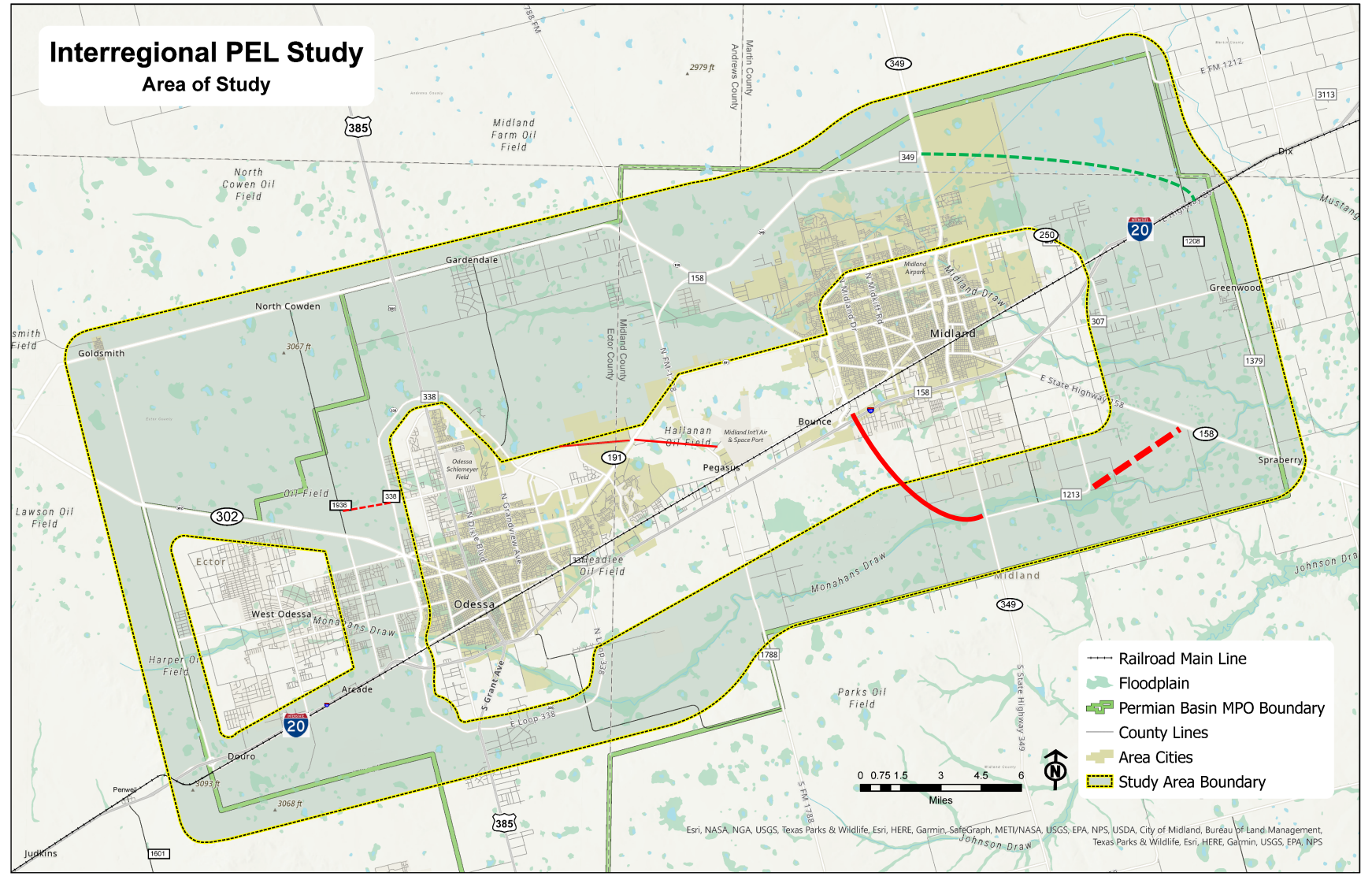
COUNTY	COMPOSITE	HIGHEST LEVEL
ANDREWS	18	22
ODESSA *	12	21
KERMIT	30	44
MONAHANS	15	20
BIG SPRING*	25	28
STANTON	15	16
PECOS*	15	16
MENTONE	12	14

10 Minute Testing Periods (with 10 second air cycling)

* Denotes Multiple Testing Sites



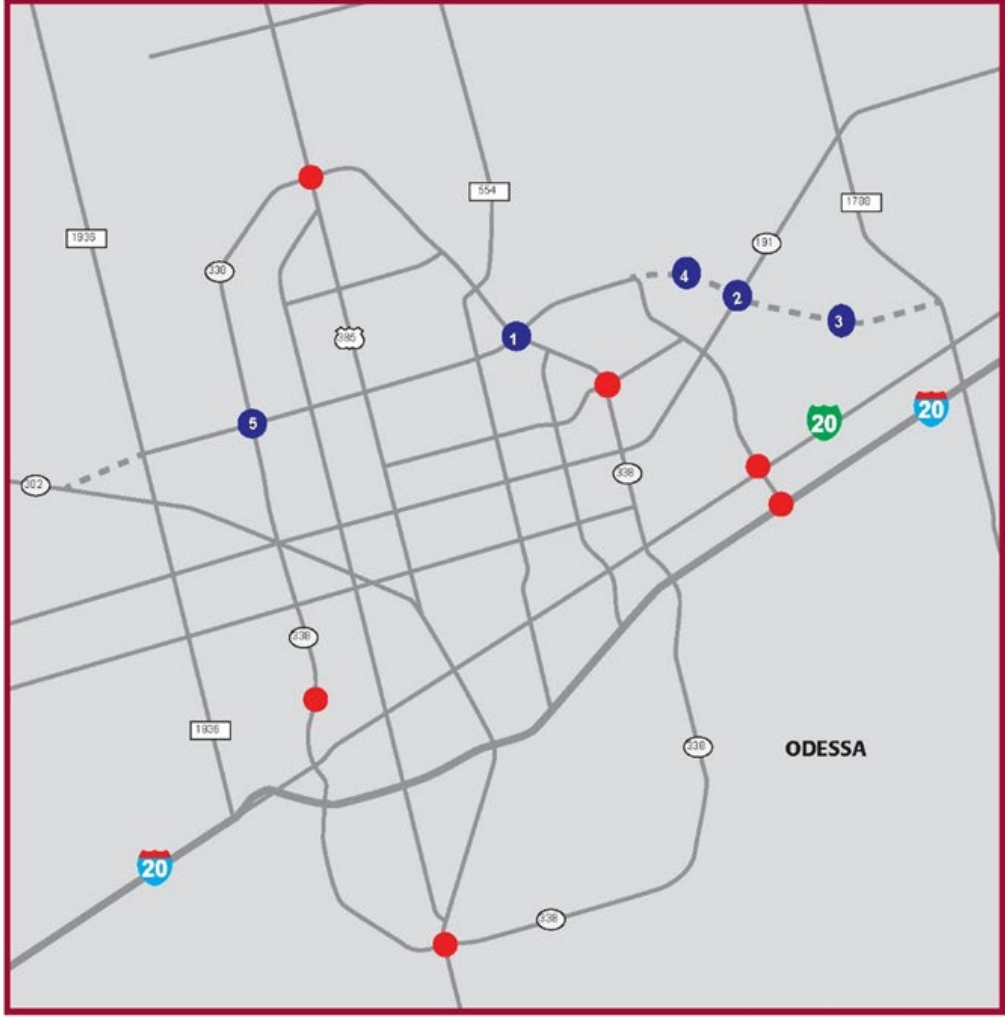
Interregional PEL Study
Area of Study



OUTER LOOP AND CSA CONNECTIVITY

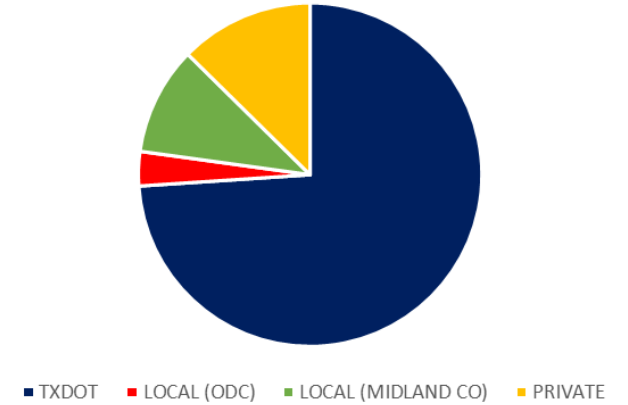
YUKON ROAD

Corridor Development



- Yukon Corridor Projects
- Other Local Leverage Projects

YUKON CORRIDOR FUNDING



SOURCE	AMOUNT
TXDOT	\$45,680,000.00
LOCAL (ODC)	\$2,000,000.00
LOCAL (MIDLAND CO)	\$6,300,000.00
PRIVATE	\$7,800,000.00
TOTAL	\$61,780,000.00



ADDITIONAL FUNDING IN 2023 FOR THE MIDLAND-ODESSA CSA



\$5 Million



\$36 Million
Ector County

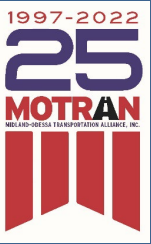
\$38 Million
Midland County



\$56 Million
Martin County



TELLING THE STORY OF THE PERMIAN BASIN



LUNCH & LEARN FOR
LEGISLATIVE STAFFERS
SEPT 15TH IN AUSTIN

TARGETED SOCIAL MEDIA PAID SOCIAL MEDIA COMBINED RESULTS



Data as of July 31, 2022



RESOLUTION NO. _____

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

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

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

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

SECTION TWO. That the City Comptroller of the City of Midland, Texas, is hereby authorized and directed to pay Motran Alliance, Inc., a maximum of \$142,500.00 in accordance with the terms of said agreement, from funds available in the Midland Development Corporation's budget for fiscal year 2022-2023.

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., 2022, by the following vote:

Directors voting "AYE":

Directors voting "NAY":

STEPHEN LOWERY,
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

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

WHEREAS, Motran Alliance, Inc., submitted a Proposal to the Midland Development Corporation for economic development purposes and the funds for such Proposal can be appropriated by the Midland Development Corporation for fiscal year 2022-2023; and

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

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

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

NOW, THEREFORE, the Midland Development Corporation (“*MDC*”) and Motran Alliance, Inc. (“*MOTRAN*”) do hereby contract and agree as follows:

I.

Economic Development Program

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

II.

Funding

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

dispense funds to MOTRAN by paying one-half of the total on or before December 1, 2022, and one-half on or before April 1, 2023. It is understood and agreed that MOTRAN will obtain the remaining necessary funds for completion of the Program from other sources. MOTRAN may perform services that are not eligible for expenditure of funds by the MDC but the percentage of Economic Development Corporation funds received must not exceed the percentage of eligible services performed by MOTRAN.

III.

Budget and Financial Reporting

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

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

MOTRAN shall maintain complete and accurate financial records of each expenditure of Economic Development Program funds made by it. The general method of financial record keeping and reporting proposed by MOTRAN to be used in complying with the requirements of this Agreement shall be submitted to and approved by the MDC. The sufficiency of detail of any activity or financial report required by this Agreement shall be determined by the MDC. All of MOTRAN's records pertaining and related to the activities and funds under the Agreement shall be available for inspection

by the MDC or MDC's representatives at any time during MOTRAN's normal office hours. The revenue provided by the MDC under this Agreement must be maintained by MOTRAN in a separate account established for that purpose and may not be co-mingled with any other money or maintained in any other account.

IV.

Informal Reporting

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

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

V.

Activity Reporting Requirements

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

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

VI.

Audit

In addition to the heretofore required reports covering activities and expenditures under the Economic Development Program, a certified audit of the funds and activities of such Economic Development Program shall be made annually. The costs of making the audit shall be paid by MOTRAN but MOTRAN may use MDC funds. The auditors performing the above described audit shall have access to and the right to examine all records and accounts directly related to the Economic Development Program and such other MOTRAN records and accounts as may be reasonably necessary to conduct and complete its audit of the Economic Development Program funds.

VII.

Independent Contractor

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

It is expressly understood and agreed that MOTRAN shall perform all work and services described herein as an independent contractor and not as an officer, agent, servant or employee of the MDC; that MOTRAN shall have exclusive control of and the exclusive right to control the details of the services and work performed hereunder, and all persons performing the same; and

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

VIII.

Agreement Period

This Agreement shall become effective on October 1, 2022 and shall terminate on September 30, 2023. In the event that MOTRAN violates the terms or conditions of this Agreement, or fails to provide the agreed services, the MDC may terminate this Agreement under the following conditions. The MDC shall provide written notice of the violations or failures to MOTRAN. MOTRAN shall have thirty (30) days to cure the violations or failures or to file a written response with the MDC. If MOTRAN fails to cure or to file a written response within such 30-day period, the MDC may terminate this Agreement immediately. If a written response is filed, the MDC shall set a hearing before the MDC's Board of Directors and provide notice to MOTRAN.

After consideration of the response and the testimony at the hearing, the MDC may declare if there has or has not occurred the stated violations or failures. If the Board finds that such violations or failures have occurred, it shall give MOTRAN thirty (30) days written notice and an opportunity to cure. If not cured within such period, the MDC may terminate this Agreement immediately.

IX.

Civil Rights

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

X.

Indemnity

MOTRAN SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND MDC AND ALL OF MDC'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, PROPERTY DAMAGE, LOSSES, AND EXPENSE OF ANY CHARACTER WHATSOEVER INCLUDING REASONABLE ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ON ACCOUNT OF ANY NEGLIGENT ACT OF MDC, MDC'S OFFICERS, AGENTS AND EMPLOYEES, WHETHER SUCH NEGLIGENT ACT WAS THE SOLE PROXIMATE CAUSE OF THE INJURY OR DAMAGE OR A PROXIMATE CAUSE JOINTLY AND CONCURRENTLY WITH MOTRAN OR MOTRAN'S EMPLOYEES, AGENTS OR SUBCONTRACTORS NEGLIGENCE, IN THE EXECUTION, SUPERVISION AND OPERATIONS GROWING OUT OF OR IN ANY WAY CONNECTED WITH THE

PERFORMANCE OF THIS AGREEMENT, AND CONTRACTOR WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST CITY OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES, INCLUDING ATTORNEY'S FEES.

XI.

Excess MDC Funds

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

XII.

Property

The parties agree to the following conditions regarding property rights:

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

XIII.

Project

The parties agree that this Agreement is an eligible "Project" as defined in Chapter 501 of the Texas Local Government Code, as amended.

XIV.

Assignment

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

XV.

Notice

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

If to MDC:

Midland Development Corp.
200 N. Loraine, Ste. 610
Midland, TX 79701

If to MOTRAN:

Motran Alliance, Inc.
P.O. Box 60816
Midland, TX 79711

With Copy To:

City Manager
City of Midland, Texas
P.O. Box 1152
Midland, TX 79702

XVI.

Severability

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

clause or provision as may be possible and be legal, valid and enforceable.

XVII.

Alteration

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

XVIII.

Entire Agreement and Binding Effect

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

XIX.

Venue

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

XX.

Compliance With Laws

In the payment and employment of people to serve as employees pursuant to this Agreement, MOTRAN shall comply with all federal, state and local laws, rules, regulations and ordinances with

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

XXI.

Governmental Immunity

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

XXII.

Waiver of Attorney's Fees

By executing this Agreement, **MOTRAN AGREES TO WAIVE AND DOES HEREBY WAIVE ANY CLAIM IT HAS OR MAY HAVE AGAINST THE MDC, REGARDING THE AWARD OF ATTORNEY'S FEES, WHICH ARE IN ANY WAY RELATED TO THE AGREEMENT, OR THE CONSTRUCTION, INTERPRETATION OR BREACH OF THE AGREEMENT. MOTRAN SPECIFICALLY AGREES THAT IF MOTRAN BRINGS OR COMMENCES ANY LEGAL ACTION OR PROCEEDING RELATED TO THIS AGREEMENT, THE CONSTRUCTION, INTERPRETATION, VALIDITY OR BREACH OF THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO ANY ACTION PURSUANT TO THE PROVISIONS OF THE TEXAS UNIFORM DECLARATORY JUDGMENTS ACT (TEXAS CIVIL PRACTICE AND REMEDIES CODE SECTION 37.001, ET SEQ., AS**

AMENDED), MOTRAN AGREES TO WAIVE AND RELINQUISH ANY AND ALL RIGHTS TO THE RECOVERY OF ATTORNEY'S FEES TO WHICH MOTRAN MIGHT OTHERWISE BE ENTITLED.

MOTRAN agrees that this is the intentional relinquishment of a presently existing known right. MOTRAN acknowledges that it understands all terms and conditions of the Agreement.

By execution of the Agreement MOTRAN hereby represents and warrants to the MDC that MOTRAN has read and understood the Agreement.

XXIII.

Release

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

XXIV.

Third-Party Beneficiary

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

EXECUTED by the duly authorized officials of the Parties this _____ day of _____, 2022.

**MIDLAND DEVELOPMENT
CORPORATION**

Stephen Lowery, Chairman

ATTEST:

Jill Pennington, Secretary

[Signature Page Follows]

MOTRAN ALLIANCE, INC.

By _____

Name _____

Title _____

THE STATE OF TEXAS §

 §

COUNTY OF MIDLAND §

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

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

Notary Public, State of Texas

MOTRAN, INC.

	APPROVED 2021-22	PROPOSED 2022-23	MDC 2021-22	ODC 2021-22
REVENUES				
Founding Members Dues	20,000.00	20,000.00		
Members Dues	70,000.00	75,000.00		
Grants	15,000.00	15,000.00		
Interest Earned	250.00	500.00		
Midland Development Corp.	142,500.00	142,500.00	142,500.00	
Odessa Development Corp.	142,500.00	142,500.00		142,500.00
PBC Revenue	10,000.00	10,000.00		
Misc. Income	0.00	0.00		
TOTAL REVENUES	\$400,250.00	\$405,500.00	\$142,500.00	\$142,500.00
EXPENSES				
Bank Fees	250.00	100.00		
Dues & Subscriptions	1,500.00	1,800.00		
Events	20,000.00	20,000.00		
Food & Entertainment	5,500.00	5,500.00		
Gifts	1,500.00	1,400.00		
Health Ins. Reimbursement	10,000.00	11,500.00	2,500.00	2,500.00
Insurance	4,000.00	4,000.00		
I-14 Initiative	12,500.00	12,500.00	2,500.00	2,500.00
Miscellaneous Expenses	300.00	100.00		
Office Lease	11,000.00	11,000.00		
Office Supplies	6,000.00	6,000.00		
Payroll-Salaries	238,000.00	238,000.00	110,000.00	110,000.00
Payroll-Service Fee	1,600.00	1,600.00		
Payroll Taxes	17,500.00	17,500.00	8,000.00	8,000.00
401 K Plan	8,000.00	8,000.00		
Postage	2,600.00	2,500.00		
Marketing	25,000.00	27,000.00	8,000.00	8,000.00
Program Supplies	2,000.00	2,500.00		
Telephone	4,000.00	4,000.00		
Travel Expenses	16,000.00	17,000.00	5,500.00	5,500.00
Professional Services	13,000.00	13,500.00	6,000.00	6,000.00
ODC Wifi/Broadband				
Website Updates				
Contingency				
TOTAL EXPENSES	\$400,250.00	\$405,500.00	\$142,500.00	\$142,500.00

Exhibit A



MOTRAN PROPOSAL TO MDC

SCOPE OF SERVICES – FY 2022-2023

PURPOSE: SECURE ADDITIONAL AREA INFRASTRUCTURE FUNDING

Additional transportation funding helps facilitate necessary improvements related to maximizing current economic opportunities, as well as, providing the additional capacity in our infrastructure system to accommodate new development (housing, retail, commercial) and lays the groundwork necessary to support developments that would allow economic diversification.

Work to help increase telecommunications infrastructure and investment in the area through increased broadband deployment to gaps in current service and higher levels of service, improved cellular communications, and facilitating a more competitive market.

ENERGY SECTOR IMPROVEMENTS

- MOTRAN will continue to work the department on the Permian Basin Regional Freight Study to develop a list of energy sector projects for the area, that facilitate short and long-term freight needs and economic development opportunities.
- MOTRAN will continue to work for additional capacity/levels of service improvements in the Delaware Basin region, especially as it relates to the build out to standard of the SH 302 between Odessa and Kermit/Mentone and SH 349 from Midland to Rankin to facilitate economic growth along these critical workforce and freight corridors.
- MOTRAN will continue to push priorities in the Central Permian Basin, especially related to connectivity to and from the Midland-Odessa area, that are currently overlooked in the Permian Promise.

PROJECT SPECIFIC IMPROVEMENTS ALONG I-20, LP 338, US 385, SH 349, SH 158, and the South Midland Loop (Extension of Loop 250 South of I-20 to SH 349 and ultimately SH 158), and SH 191 between Midland and Odessa.

- Support development of Loop 338 in Odessa and capacity improvements to the Interstate 20 Corridor in Odessa.
- Development of a connection of US 385 to I-10 as a freeway design (4 lane divided)
- Development of SH 349 South of I-20 to 4 lane divided
- Continuing to work with Midland County on the South Midland Loop to facilitate future I-14
- Capacity Improvements to SH 191
- Completion and Extension of the Craddick Reliever Route West to Odessa and East to I-20

INTERSTATES 14 & 27

- MOTRAN will continue efforts aimed at the development of the western segment of I- 14 to the US 87/SH158/I-20 corridor, and a routing of I-27 which honors the original concept where the route serves both Midland and Odessa.

TRUCK PARKING

- Work with TXDOT and local truck stop owners to facilitate opportunities for enhanced truck parking to facilitate transportation and driver needs without creating problems for residential areas and other area businesses.

LOCAL LEVERAGE OPPORTUNITIES

- Work to recruit private sector investments in area infrastructure that can leverage additional state and federal investment.

BROADBAND AND TELECOM INFRASTRUCTURE

- Continue discussions with providers and promoting area growth and new market opportunities to potential providers

COMMERCIAL AIR SERVICE

- Continue discussions with carriers and promoting area growth and new market opportunities to potential providers

TELLING THE STORY OF THE PERMIAN BASIN

- Through our Permian Basin Coalition efforts, continue to provide demographic and economic data highlighting the needs and impact of the Permian Basin both to regional leaders and state leaders. In 2020-2021, we expanded our current network to begin communicating this same data on the national/federal level as well.

Todd Drive Amendment

RESOLUTION NO. _____

RESOLUTION AUTHORIZING THE EXECUTION OF AN AMENDMENT TO THAT CERTAIN ECONOMIC DEVELOPMENT AGREEMENT BETWEEN THE MIDLAND DEVELOPMENT CORPORATION AND THE CITY OF MIDLAND FOR THE TODD DRIVE EXPANSION AND CR 1160 OVERPASS IMPROVEMENTS PROJECT

WHEREAS, the Board of Directors finds it to be in the public interest to authorize the execution of an amendment to that certain Economic Development Agreement between the Midland Development Corporation and the City of Midland for the Todd Drive Expansion and CR 1160 Overpass Improvements Project;

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

THAT the Chairman and Secretary are hereby authorized and directed to execute and attest, respectively, on behalf of the Midland Development Corporation, an amendment to that certain Economic Development Agreement between the Midland Development Corporation and the City of Midland for the Todd Drive Expansion and CR 1160 Overpass Improvements Project. Said amendment shall be in a form substantially similar to that of Exhibit A, which is attached hereto and incorporated herein for all purposes.

On motion of Director _____, seconded by Director _____, the above and foregoing resolution was adopted by the Board of Directors of the Midland Development Corporation at a regular meeting on the _____ day of _____, A.D., 2022, by the following vote:

Directors voting "AYE":

Directors voting "NAY":

STEPHEN LOWERY,
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

**AMENDMENT TO THE ECONOMIC DEVELOPMENT AGREEMENT
BETWEEN THE MIDLAND DEVELOPMENT CORPORATION
AND THE CITY OF MIDLAND**

THIS AMENDMENT is made and effective September 29, 2022, by and between the Midland Development Corporation (“MDC”), a Type A corporation pursuant to Chapter 504 of the Texas Local Government Code and the City of Midland, Texas (“City”), a home-rule municipality.

WHEREAS, the MDC and the City entered into that certain Economic Development Agreement, effective February 23, 2022 (the “Agreement”), which provides for the acquisition of right-of-way along Todd Drive, which was approved by the Midland City Council Motion No. 022-2022; and

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

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

W I T N E S S E T H:

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

1. Section I.A is hereby deleted in its entirety and replaced with the following:
 - A. MDC and City desire to set forth the terms and conditions upon which Seven Hundred Fifty-Five Thousand Nine Hundred Thirty-Nine and 01/100 Dollars (\$755,939.01) in incentive funds will be provided to City as consideration for its (i) acquisition of right-of-way along Todd Drive from Business Interstate 20 to Golf Course Road, (ii) acquisition of right-of-way along Golf Course Road from Fairgrounds Road to Todd Drive, and (iii) acquisition of right-of-way along Todd Drive from Loop 250 to Occidental Parkway (the “Project”).
2. Article II is hereby deleted in its entirety and replaced with the following:

II. MDC Funding

Within five (5) days after receiving written notice from City that a purchase and sale agreement, or other such agreement, for the acquisition of right-of-way necessary and appropriate for the Project has been entered into by and between City and a landowner, MDC shall promptly provide City with written confirmation that MDC will provide to City incentive funds necessary for City’s obligations

Exhibit A

under such agreement (an “*Eligible Agreement*”). Within three (3) days after City provides MDC a final closing or settlement statement issued by the title company for an Eligible Agreement, MDC shall provide to City incentive funds in an amount equal to the purchase price and closing costs that are the responsibility of City, as set forth in such closing or settlement statement (the “*Funds*”). The Funds shall be disbursed and repaid as provided in Section III. Notwithstanding any contrary provision contained herein, the Funds due and payable pursuant to this Agreement shall not exceed a total of Seven Hundred Fifty-Five Thousand Nine Hundred Thirty-Nine and 01/100 Dollars (\$755,939.01).

3. Section III.A is hereby deleted in its entirety and replaced with the following:
 - A. The Project. City agrees to engage in (or provide for) the following activities in furtherance of the Project: (i) acquisition of right-of-way along Todd Drive from Business Interstate 20 to Golf Course Road, (ii) acquisition of right-of-way along Golf Course Road from Fairgrounds Road to Todd Drive, and (iii) acquisition of right-of-way along Todd Drive from Loop 250 to Occidental Parkway. A depiction of the Project scope is contained in Exhibit A, which is attached hereto and incorporated herein for all purposes.
4. Section III.C is hereby deleted in its entirety and replaced with the following:
 - C. Repayment of Funds. If City fails to acquire the right-of-way necessary for the Project by December 31, 2027 (the “*Land Acquisition Date*”), then City agrees to repay all unused Funds to MDC. Any repayable Funds shall be repaid, without interest, within thirty (30) days following City’s receipt of written notice from MDC that any portion of the unused Funds are due to be repaid pursuant to this Section.
5. Section III.D is hereby deleted in its entirety.
6. Section III.E is hereby deleted in its entirety and replaced with the following:
 - E. Extensions. The Land Acquisition Date set forth herein may be extended upon a written request from City to MDC for an extension of the time allowed to complete the tasks required by this Agreement, and MDC providing to City written approval of such request.
7. Section VII.A is hereby deleted in its entirety and replaced with the following:
 - A. Notwithstanding any provision hereof which might be interpreted otherwise, MDC’s total financial commitment during the term of this Agreement shall not exceed Seven Hundred Fifty-Five Thousand Nine Hundred Thirty-Nine and 01/100 Dollars (\$755,939.01) in the aggregate.

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

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

MIDLAND DEVELOPMENT CORPORATION

Stephen Lowery, Chairman

ATTEST:

Jill Pennington, Secretary

CITY OF MIDLAND, TEXAS

Robert Patrick, City Manager

ATTEST:

Amy M. Turner, City Secretary

ECONOMIC DEVELOPMENT AGREEMENT

THIS AGREEMENT is entered into by and between the **MIDLAND DEVELOPMENT CORPORATION** ("**MDC**"), an Economic Development Corporation existing under the authority of Chapter 504 of the Texas Local Government Code, and the **CITY OF MIDLAND, TEXAS** ("**City**"), a home-rule municipal corporation.

I.

Recitals

- A.** MDC and City desire to set forth the terms and conditions upon which One Million Seven Hundred Thirty Thousand and No/100 Dollars (\$1,730,000.00) in incentive funds will be provided to City as consideration for its (i) acquisition of right-of-way along Todd Drive from Business Interstate 20 to Golf Course Road, (ii) acquisition of right-of-way along Golf Course Road from Fairgrounds Road to Todd Drive, (iii) acquisition of right-of-way along Todd Drive from Loop 250 to Occidental Parkway, and (iv) engineering and design work for an overpass located at the intersection of Loop 250 and Todd Drive (the "**Project**").
- B.** The Project will facilitate commercial and industrial development in the City of Midland.
- C.** The MDC Board of Directors (the "**Board**") and the City Council of the City of Midland, Texas (the "**Council**") find that the purpose of this Agreement qualifies as an infrastructure improvement project under Section 501.103 of the Texas Local Government Code, and is therefore eligible for MDC funding.
- D.** The Board and the Council find that the Project and expenditures therefor are required or suitable for infrastructure necessary to promote or develop new or expanded business enterprises within the City of Midland.
- E.** The Board and the Council find that this Agreement does not constitute a direct incentive to or expenditure on behalf of a business enterprise as described in Tex. Loc. Gov't Code § 501.158.

NOW, THEREFORE, in consideration of the promises and of the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, MDC and City hereby agree as follows:

II.
MDC Funding

- A. **ROW Funds.** Within five (5) days after receiving written notice from City that a purchase and sale agreement, or other such agreement, for the acquisition of right-of-way necessary and appropriate for the Project has been entered into by and between City and a landowner, MDC shall promptly provide City with written confirmation that MDC will provide to City incentive funds necessary for City's obligations under such agreement (an "*Eligible Agreement*"). Within three (3) days after City provides MDC a final closing or settlement statement issued by the title company for an Eligible Agreement, MDC shall provide to City incentive funds in an amount equal to the purchase price and closing costs that are the responsibility of City, as set forth in such closing or settlement statement (the "*ROW Funds*"). The ROW Funds shall be disbursed and repaid as provided in Section III. Notwithstanding any contrary provision contained herein, the ROW Funds due and payable pursuant to this Agreement shall not exceed a total of One Million Sixty Thousand and No/100 Dollars (\$1,060,000.00).
- B. **Design Funds.** Within fifteen (15) days after receiving written notice from the City that the City has entered into a contract with a third party for completion of engineering and design work necessary and appropriate for the design of an overpass located at the intersection of Todd Drive and Loop 250, the MDC shall provide to the City incentive funds for the City's obligations under such agreement (the "*Design Funds*"). Notwithstanding any contrary provision contained herein, the Design Funds due and payable pursuant to this Agreement shall not exceed a total of Six Hundred Seventy Thousand and No/100 Dollars (\$670,000.00). The ROW Funds and the Design Funds are cumulatively referred to as the "*Funds*."
- C. **Total Funds.** It is expressly understood that the Funds, cumulative in their amounts, shall not exceed a total of One Million Seven Hundred Thirty Thousand and No/100 Dollars (\$1,730,000.00). MDC agrees to forgive repayment of the Funds if the conditions contained in Section III are met.

III.
Obligations of City

- A. **The Project.** City agrees to engage in (or provide for) the following activities in furtherance of the Project: (i) acquisition of right-of-way along Todd Drive from Business Interstate 20 to Golf Course Road; (ii) acquisition of right-of-way along Golf Course Road from Fairgrounds Road to Todd Drive, (iii) acquisition of right-

of-way along Todd Drive from Loop 250 to Occidental Parkway, and (iv) engineering and design work for an overpass located at the intersection of Loop 250 and Todd Drive. A depiction of the Project scope is contained in Exhibit A, which is attached hereto and incorporated herein for all purposes.

- B. **Completion.** Upon completion of the Project, City shall certify such to MDC in accordance with Section VII.B.
- C. **Repayment of ROW Funds.** If City fails to acquire the right-of-way necessary for the Project by December 31, 2027 (the "*Land Acquisition Date*"), then City agrees to repay all unused ROW Funds to MDC. Any repayable ROW Funds shall be repaid, without interest, within thirty (30) days following City's receipt of written notice from MDC that any portion of the unused ROW Funds are due to be repaid pursuant to this Section.
- D. **Repayment of Design Funds.** If City fails to provide for provide for the completion of the engineering and design work for an overpass located at the intersection of Loop 250 and Todd Drive by December 31, 2025 (the "*Design Completion Date*"), then City agrees to repay all unused Design Funds to MDC. Any repayable Design Funds shall be repaid, without interest, within thirty (30) days following City's receipt of written notice from MDC that any portion of the unused Design Funds are due to be repaid pursuant to this Section.
- E. **Extensions.** The Project Completion Date and the Land Acquisition Date set forth herein may be extended upon a written request from City to MDC for an extension of the time allowed to complete the dates' respective tasks required by this Agreement, and MDC providing to City written approval of such request.

IV. Term

Upon execution by all of the parties, this Agreement becomes effective on February 22, 2022 (the "*Effective Date*"), and shall terminate when the requirements set forth in Sections II and III are completed, or when terminated by mutual agreement of the parties, or when terminated as hereinafter provided.

V. Law

The parties are aware of statutory limitations on the Funds and the use of the Funds under Chapters 501 and 504 of the Texas Local Government Code, and the parties

acknowledge that the Funds herein granted or guaranteed shall be utilized solely for purposes authorized under that law and by the terms of this Agreement.

**VI.
Documents**

Prior to any payment by MDC, City shall deliver to MDC an executed copy of this Agreement.

**VII.
Special Conditions**

- A. **Financial Commitment.** Notwithstanding any provision hereof which might be interpreted otherwise, MDC's total financial commitment during the term of this Agreement shall not exceed One Million Seven Hundred Thirty Thousand and No/100 Dollars (\$1,730,000.00) in the aggregate.
- B. **Certification.** As to any certification required under this Agreement, City shall provide a letter from the City Manager. E-mail is an acceptable form of certification under this Agreement.
- C. **Payments.** Payments to be made to City under Section II shall be made upon a written request from City and completion of all necessary supporting documentation. The payment request and documentation should be directed to MDC Executive Director, 200 North Loraine Street, Suite 610, Midland, Texas 79701.

**VIII.
General Terms**

- A. **Entire Agreement.** This Agreement embodies the complete agreement of the parties hereto, superseding all oral or written, previous and contemporary agreements between the parties relating to matters in this Agreement; and except as otherwise provided herein, this Agreement cannot be modified or amended without a written agreement of the parties.
- B. **No Third-Party Beneficiary.** The parties' approval of the 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.

- C. **Legal Relationship.** The parties are not, and shall not be considered as, joint venturers, partners, or agents of each other; and neither shall have the power to bind nor obligate the other, except as set forth in this Agreement. The parties agree not to represent to anyone that they are agents of one another or have any authority to act on behalf of one another. It is mutually understood and agreed that nothing in this Agreement is intended or shall be construed as in any way creating or establishing any partnership, joint venture, or agency between MDC and City. 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.
- D. **Terminations.** This Agreement may be terminated by mutual agreement of the parties or by either party, upon the failure of the other party to fulfill an obligation as set forth herein if the default is not cured within thirty (30) days after written notice from the other party.
- E. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument.
- F. **Venue.** The obligations of the parties to this Agreement are deemed to have been performed in Midland County, Texas, and if legal action is necessary to enforce same, exclusive venue shall be in Midland County, Texas. All payments under this Agreement are deemed to have taken place in Midland County, Texas. The obligations and undertakings of each of the parties to this Agreement shall be deemed to have been performed in Midland County, Texas.
- G. **Legal Construction.** In case one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions hereof and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.
- H. **Law.** This Agreement is subject to all applicable state and federal laws, and the parties agrees that they will comply in all material respects with all such applicable laws, regulations, orders and rules of the State of Texas and other such governmental agencies. This Agreement shall be governed by and construed in accordance with the laws and court decisions of the State of Texas.
- I. **Assignment.** This Agreement shall be binding upon the parties hereto and their successors and assigns. This Agreement may not be assigned by City without the

prior written consent of MDC.

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

If to MDC:

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

If to City:

City Manager
City of Midland
P.O. Box 1152
Midland, Texas 79702

- K. **Amendment.** This Agreement may be amended by written instrument executed by both parties expressly stating the intention to amend this Agreement.

- L. **Payments.** All payments to either party required under this Agreement shall be sent by certified U.S. mail, postage prepaid, addressed to such party at the addresses shown below. All payments shall be deemed given on the date so deposited in the mail, unless otherwise provided herein. Either party hereto may change the address below by sending written notice of such change to the other in the manner provided herein.

If to MDC:

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

If to City:


City Manager
City of Midland
P.O. Box 1152
Midland, Texas 79702

- M. MDC and City hereby agree and acknowledge that this Agreement is supported by good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties.

- N. This Agreement shall not be effective until approved by the Council.

IN WITNESS WHEREOF, MDC and City have executed this Agreement on the
_____ day of _____, 2022.

**MIDLAND DEVELOPMENT
CORPORATION**



Stephen Lowery, Chairman

ATTEST:



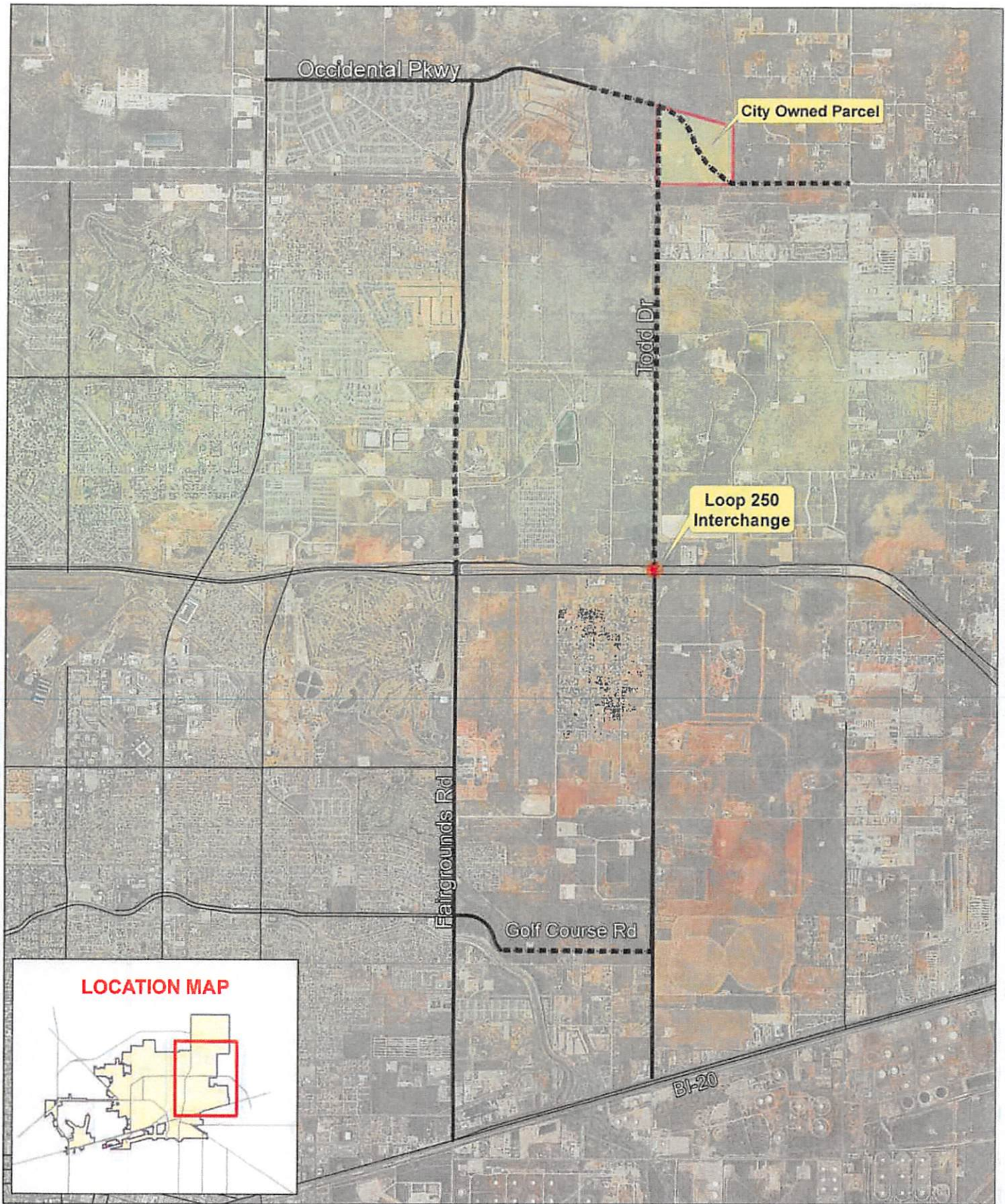
Jill Pennington, Secretary

CITY OF MIDLAND, TEXAS

Patrick Payton, Mayor

ATTEST:

Amy M. Turner, City Secretary



Date: 1/26/2022

- Loop250_Interchange
- Existing Street
- Proposed Street
- City Owned Parcel

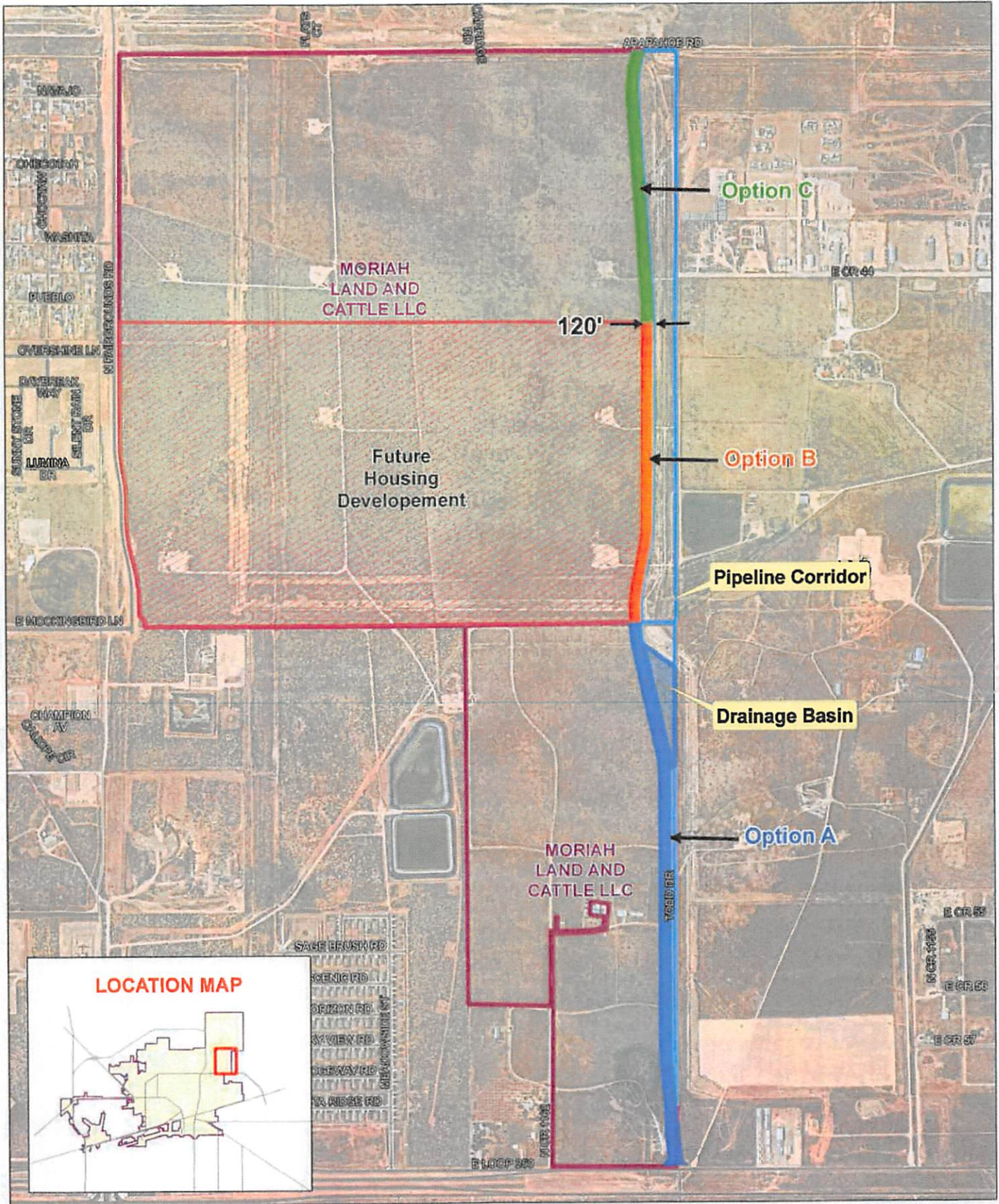
Proposed Todd Drive Alignment

Exhibit A



0 1,500 3,000 Feet

©THE CITY OF MIDLAND • 2022
 THIS DOCUMENT IS A PRELIMINARY DESIGN FOR A
 PLANNING PURPOSES AND IS NOT TO BE USED FOR
 CONSTRUCTION. THE CITY OF MIDLAND SHALL NOT BE RESPONSIBLE FOR
 ANY ERRORS BASED UPON THE USE OF THIS DATA.



Date: 11/29/2021

- Proposed ROW**
- █ Option A (17.8 Acres)
 - █ Option B (7.78 Acres)
 - █ Option C (8.83 Acres)
 - █ Pipeline Corridor (40.17 Acres)
 - █ Future Housing Development
 - █ Parcel Boundary

Todd Drive Proposed ROW

Total Acquisition Acreage: 34.41

Option A Acreage: 17.8

Option B Acreage: 7.78

Option C Acreage: 8.83



0 500 1,000 Feet

©THE CITY OF MIDLAND - 2021
 THIS DATA IS NOT A SUBSTITUTION FOR A SURVEY PRODUCT. WHILE IT IS DESIGNED TO BE USED AS A PRELIMINARY TOOL IN PREPARING ONE OF THE SOLUTIONS, ENGINEER'S REVIEW OF THE INFORMATION CONTAINED HEREIN.
 THE CITY OF MIDLAND SHALL NOT BE RESPONSIBLE FOR ANY DECISIONS BASED UPON THE USE OF THIS DATA.

Kimley Horn

RESOLUTION NO. _____

RESOLUTION AUTHORIZING THE EXECUTION OF A PROFESSIONAL SERVICES AGREEMENT WITH KIMLEY-HORN AND ASSOCIATES, INC., IN THE AMOUNT OF \$974,060.99 FOR PROFESSIONAL SERVICES RELATED TO MAINLANE, BRIDGE, AND INTERSECTION IMPROVEMENTS LOCATED AT TODD DRIVE AND STATE LOOP 250; 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 professional services agreement with Kimley-Horn and Associates, Inc., in the amount of \$974,060.99 for professional services related to mainlane, bridge, and intersection improvements located at Todd Drive and State Loop 250;

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 professional services agreement with Kimley-Horn and Associates, Inc., in the amount of \$974,060.99 for professional services related to mainlane, bridge, and intersection improvements located at Todd Drive and State Loop 250. Said agreement being in a form substantially similar to Exhibit A, which is attached hereto and incorporated herein for all purposes.

SECTION TWO. That the City Comptroller is hereby authorized and directed to pay Kimley-Horn and Associates, Inc., in accordance with the terms of the above-referenced 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.,

2022, by the following vote:

Directors voting "AYE":

Directors voting "NAY":

STEPHEN LOWERY,
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

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT is made and effective the 27th day of September, 2022, by and between the MIDLAND DEVELOPMENT CORPORATION (“*MDC*”), and Kimley-Horn and Associates, Inc. (“*COMPANY*”). *MDC* and *COMPANY* are at times individually referred to as a “*Party*” and collectively referred to as the “*Parties*.”

ARTICLE I. PURPOSE

The purpose of this Agreement is to state the terms and conditions under which *COMPANY* shall perform engineering services to provide plans, specifications, and estimate for mainlane, bridge, and intersection improvements at State Loop 250 and Todd Drive intersection (the “*Services*”) for *MDC*. The *Services* are more specifically set forth in **Exhibit A**, which is attached hereto and incorporated herein for all purposes.

ARTICLE II. SERVICES TO BE PERFORMED

COMPANY shall provide the *Services* in a manner consistent with the same level of skill and care as other professionals that perform similar services for similar projects in approximately the same region and at approximately the same point in time. *COMPANY* represents that any employee who performs the *Services* shall be fully qualified and competent to perform the *Services*.

ARTICLE III. FINANCIAL CONSIDERATIONS

MDC agrees to pay *COMPANY* an amount not to exceed \$974,060.99 for the performance of the *Services*. *MDC* agrees to pay *COMPANY* according to the schedule set forth in **Exhibit A** upon presentation of a monthly invoice. The monthly invoice shall set forth all service fees for the month and those expenses described in **Exhibit A** that *COMPANY* incurs during the previous month for which *COMPANY* receives advanced written approval from the *MDC* Executive Director. All additional and/or reimbursable expenses must be approved by the *MDC* Executive Director prior to incurring such expenses.

Within thirty (30) days of the date *COMPANY*’s invoice is received by *MDC*, *MDC* shall pay the full amount of such invoice; provided, however, that if *MDC* objects to any portion of an invoice, *MDC* shall notify *COMPANY* of *MDC*’s objection and the grounds therefor within fifteen (15) days of the date of receipt of the invoice, and the *Parties* shall immediately make every effort

Exhibit A

to settle the disputed portion of the invoice. Notwithstanding the foregoing, MDC shall pay every portion of the invoice that is not in dispute within the 30-day period for payment.

ARTICLE IV. TERM

The term of this Agreement shall be from September 27th, 2022 until September 30, 2023, unless the Services are completed sooner or the Agreement is terminated as provided below.

ARTICLE V. TERMINATION AT WILL

MDC may terminate this Agreement at will, for any or no reason, upon giving COMPANY at least one hundred eighty (180) days' written notice. The Parties understand and agree that it is in MDC's sole and absolute discretion to cancel this Agreement during the term set forth in Article IV without penalty to MDC. COMPANY has no expectation and has received no guarantees that this Agreement will not be terminated during the Agreement's term. The Parties have bargained for the flexibility of terminating this Agreement upon tender of the requisite notice at any time during this Agreement's term. 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 obtaining MDC's prior written consent. The issue of whether to grant such consent shall be in the sole and absolute 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 document or item shall become the sole and exclusive property of MDC. The Instruments of Service shall be promptly delivered, without restriction, to MDC and such other persons or entities as MDC may designate; provided, however, that COMPANY may make copies of the Instruments of Service for its files.

ARTICLE VIII. INDEPENDENT CONTRACTOR

COMPANY shall perform the Services as an independent contractor and not as an officer, agent, servant or employee of MDC. COMPANY shall have exclusive control of and the exclusive

right to control the details of the Services and all persons performing the same. COMPANY shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors. The Parties acknowledge and agree that the doctrine of *respondeat superior* shall not apply as between MDC and COMPANY, its officers, agents, employees, contractors and subcontractors. Nothing in this Agreement shall be construed as creating a partnership or joint enterprise between MDC and COMPANY. No person performing the Services 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 nor shall be construed as creating a “Community of Pecuniary Interest” or “An Equal Right of Control” that would give rise to vicarious liability. COMPANY is an independent contractor under this Agreement and shall assume all rights, obligations, and liabilities applicable to it as an independent contractor. MDC does not have the power to direct the order in which the services are performed. MDC shall not have the right to control the means, methods or details of COMPANY’S work. COMPANY shall assume exclusive responsibility for performing the Services, and is entirely free to perform the Services in its own way.

ARTICLE IX. INSURANCE

During the term of this Agreement, COMPANY shall 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 policy shall be on a per project aggregate, including completed operations, and shall be on a claims-occurred basis. This policy shall name MDC as an additional insured and waive subrogation in favor of MDC.

The Business Automobile Liability policy shall cover any vehicle for bodily injury and

property damage, including owned vehicles, hired and non-city 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 Services. This policy shall name MDC as an additional insured and waive subrogation in favor of MDC.

The Workers' Compensation policy 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 policy shall waive all rights of subrogation in favor of MDC.

All insurance policies required by this Agreement shall (i) provide for a waiver of subrogation in favor of MDC, and (ii) name MDC as an additional insured on a claims-occurred basis (except for the Workers' Compensation policy). Prior to any reduction or termination of the insurance policies referenced herein, COMPANY shall ensure that its insurance provider submits written notice to MDC no later than thirty (30) days prior to the reduction or termination of such coverage.

COMPANY shall contractually require all contractors, subcontractors, and sub-subcontractors that perform the Services 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 the MDC and that name the MDC as an additional insured on a claims-occurred basis (except Workers' Compensation).

Prior to the execution of the Agreement, COMPANY shall provide one or more certificates of insurance specifically stating that requirements of this Article have been met, which shall be subject to the approval of MDC. MDC shall not be required to provide any insurance pursuant to this Agreement.

By executing this Agreement, COMPANY certifies that the certificate of insurance provided pursuant to this Article 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 and this Agreement is the sole and exclusive responsibility of COMPANY.

Notwithstanding any contrary provision contained herein, the 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 KNOWINGLY, CONCLUSIVELY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY CLAIM IT HAS OR MAY HAVE IN THE FUTURE AGAINST MDC, REGARDING THE AWARD OF ATTORNEY FEES, WHICH ARE IN ANY WAY RELATED TO THIS AGREEMENT OR THE CONSTRUCTION, INTERPRETATION, OR BREACH OF THIS AGREEMENT. COMPANY SPECIFICALLY 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) OR CHAPTER 271 OF THE TEXAS LOCAL GOVERNMENT CODE), COMPANY AGREES TO ABANDON, WAIVE AND RELINQUISH ANY AND ALL RIGHTS TO THE RECOVERY OF ATTORNEY FEES TO WHICH COMPANY MIGHT OTHERWISE BE ENTITLED.

COMPANY AGREES THAT THIS IS A VOLUNTARY AND INTENTIONAL RELINQUISHMENT AND ABANDONMENT OF A PRESENTLY-EXISTING KNOWN RIGHT. COMPANY ACKNOWLEDGES THAT IT UNDERSTANDS ALL TERMS AND CONDITIONS OF THIS AGREEMENT. COMPANY FURTHER ACKNOWLEDGES AND AGREES THAT THERE WAS AND IS NO DISPARITY OF BARGAINING POWER BETWEEN CITY AND COMPANY. THIS SECTION SHALL NOT BE CONSTRUED OR INTERPRETED AS A WAIVER OF GOVERNMENTAL IMMUNITY.

COMPANY IS RELYING ON ITS OWN JUDGMENT AND HAD THE OPPORTUNITY TO DISCUSS THIS AGREEMENT WITH COMPETENT LEGAL COUNSEL PRIOR TO ITS EXECUTION. THE PROVISIONS OF THIS ARTICLE SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

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 BENEFICIARY

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

ARTICLE XIII. RELEASE

NOTWITHSTANDING ANY CONTRARY PROVISION CONTAINED HEREIN, COMPANY HEREBY RELEASES, ACQUITS, RELINQUISHES AND FOREVER DISCHARGES MDC AND ITS AGENTS, BOARD MEMBERS, 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 CITY'S NEGLIGENCE. THE PROVISIONS OF THIS ARTICLE SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

ARTICLE XIV. 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 made regarding this Agreement shall be made in writing and delivered, either in person or by certified or registered mail, at the addresses provided below. 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.

If to MDC: Midland Development Corporation
 200 North Loraine Street, Suite 610
 Midland, Texas 79701

If to COMPANY: Kimley-Horn and Associates, Inc.
 4411 98th Street, Suite 300
 Lubbock, Texas 79424

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

D. Severability. If one or more of the provisions contained in this Agreement are held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this Agreement, and this Agreement shall be construed as if the invalid, illegal, or unenforceable provision were never 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 this Agreement shall be binding unless such is evidenced in writing, dated subsequent to the date of this Agreement, and duly executed by the Parties.

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 statutes and regulations are made terms and conditions of this Agreement, to which the Parties 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 its legal representative shall give the Executive Director written notice (consisting of one (1) original and seven (7) copies of such notice attached to a copy of this Agreement) of such duly-verified damages within one hundred fifty (150) days after the same has been sustained. The discovery rule does not apply to the giving of such 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, 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. COMPANY's failure to so notify the Executive Director 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 additional information regarding the claim. Said additional information shall be supplied within thirty (30) days after COMPANY's receipt of such 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 contrary provision contained herein, 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 of whether MDC has actual or constructive notice or knowledge of said claim or alleged damages. COMPANY agrees that the requirements of this entire Agreement are reasonable.

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

K. Compliance. COMPANY shall comply with Texas Government Code § 2252.908, *et seq.*, as amended, and Texas Local Government Code § 176.006, *et seq.*, 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 CITY 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 Page(s) Follows]

EXECUTED IN DUPLICATE the day and year first above mentioned.

THE CITY OF MIDLAND, TEXAS

Stephen Lowery, Chairman

ATTEST:

Jill Pennington, Secretary

COMPANY:

By: _____

Name: _____

Title: _____

STATE OF _____ §

§

COUNTY OF _____ §

BEFORE ME, the undersigned authority, on this ____ day of _____, 20____ personally appeared, _____, an officer 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 corporation, 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 Texas

July 7, 2022

Ms. Sara Harris
Midland Development Corporation
200 N Loraine, Ste 610
Midland, TX 79701

Re: Professional Services Agreement for SL 250 at Todd Road Grade Separation

Dear Ms. Harris:

Kimley-Horn and Associates, Inc. (“Kimley-Horn” or “ENGINEER”) is pleased to submit this letter agreement (the “Agreement”) to Midland Development Corporation (“CLIENT”) for providing plans, specifications, and estimate (PS&E) for mainlane, bridge and intersection improvements at SL 250 and Todd Road intersection.

PROJECT UNDERSTANDING

A. Project Description

The ENGINEER shall provide Engineering services required for the preparation of plans, specifications, and estimates (PS&E) and related documents, for SL 250 at Todd Road mainlanes, grade separation and intersection improvements, located in Midland, Texas. These services consist of preparing roadway and bridge design, retaining wall design, hydrologic and hydraulic design, traffic control design, traffic signal, survey, geotechnical data collection, pavement design, signing and pavement markings, and contract management and administration necessary to support the design process.

Currently, SL 250 is grade separated at Fairgrounds Road and Elkins Road with double bridge structures and two lanes in each direction. SL 250 mainlanes exist from Fairgrounds Road to 3,900-ft to the east and from Elkins Road to 1,850-ft to the west. A pair of entrance and exit ramps exist just east of Fairgrounds Road and just west of Elkins Road. This project will complete the mainlanes between Fairgrounds Road and Elkins Road and design a grade separated overpass over Todd Road. The ENGINEER will also design the intersection configuration at Todd Road, U-Turns, Todd Road approaches and two signalized intersections.

B. Design Criteria

The ENGINEER shall prepare all work in accordance with the latest version of applicable State’s procedures, specifications, manuals, guidelines, standard drawings, and standard specifications or previously approved special provisions and special specifications, which include: the PS&E Preparation Manual, Roadway Design Manual, Hydraulic Design Manual, the Texas Manual on Uniform Traffic Control Devices (TMUTCD), Standard Specifications for Construction and Maintenance of Highways, Streets and Bridges, (latest Edition), and other State approved manuals. When design criteria are not identified in State manuals, the ENGINEER shall notify the CLIENT and State and refer to the American Association of State Highway and Transportation Officials (AASHTO), A Policy on Geometric Design of Highways and Street, (latest Edition). In addition, the ENGINEER shall follow the State’s District guidelines in developing the Plan, Specification, and Estimate (PS&E) package. The ENGINEER shall prepare each PS&E package in a form suitable for letting through the State’s construction contract bidding and awarding process.

C. Right of Entry and Coordination

If applicable, the ENGINEER shall notify the CLIENT and State and secure permission to enter private property to perform any Engineering or geotechnical activities needed off State right-of-way. In pursuance of the CLIENT and State's policy with the public, the ENGINEER shall not commit acts which would result in damages to private property, and the ENGINEER shall make every effort to comply with the wishes and address the concerns of affected private property owners. The ENGINEER shall contact each property owner prior to any entry onto the owner's property and shall request concurrence from the CLIENT and State prior to each entry.

The ENGINEER shall notify the CLIENT and State and coordinate with adjacent ENGINEERs on all controls at project interfaces. The ENGINEER shall document the coordination effort, and each ENGINEER shall provide written concurrence regarding the agreed project controls and interfaces. In the event the ENGINEER and the other adjacent ENGINEERs are unable to agree, the ENGINEER and each adjacent ENGINEER shall meet jointly with the CLIENT and State for resolution. The CLIENT and/or State will have authority over the ENGINEER's disagreements and the CLIENT and State's decision will be final.

SCOPE OF SERVICES

ENGINEER will provide the services specifically set forth below. The survey for this project is being completed under a separate task order and thus will not be included in this scope of services.

TASK 1 – DATA COLLECTION

- 1.1. The ENGINEER shall collect, review, and evaluate data described below. The ENGINEER shall notify the CLIENT in writing whenever the ENGINEER finds disagreement with the information or documents:
 - A. Data from TxDOT (State), including, but not limited to, "as-built plans," existing schematics; right-of-way maps; subsurface utility engineering (SUE) mapping; previous corridor studies, reports, and plans conducted by other agencies and groups; environmental documents; existing channel and drainage easement data; existing traffic counts; accident data; Project Management Information system (PMIS) data; identified hazardous material sites; current unit bid price information; current special provisions; special specifications; and standard drawings, if available.
 - B. Utility plans and documents from appropriate municipalities and utility companies.
 - C. Flood plain information and studies from the Federal Emergency Management Agency (FEMA), the United States Corps of Engineers (USACE), local municipalities and other governmental agencies.
 - D. Obtain graphics files, plans, documents, and other pertinent data for existing and proposed improvements along the proposed corridor. Review collected information and process the data into MicroStation reference files and organize it into project reference notebooks.
 - E. Conduct field reconnaissance and collect data including a photographic record of notable existing features.
- 1.2. Design Criteria.
 - A. The ENGINEER shall develop the roadway design criteria based on the controlling factors specified by the State (i.e., 4R, 3R, 2R, or special facilities), by use of the funding categories, design speed, functional classification, roadway class and any other set criteria as set forth in PS&E Preparation Manual, Roadway Design Manual, Bridge Design Manual, Hydraulic Design

Manual, and other deemed necessary State approved manuals. In addition, the ENGINEER shall prepare the Design Summary Report (DSR) and submit it electronically. The ENGINEER shall obtain written concurrence from the CLIENT and State prior to proceeding with a design if any questions arise during the design process regarding the applicability of State's design criteria.

1.3. Preliminary Cost Estimates.

- A. The ENGINEER shall develop a preliminary cost estimate using the Average Low Bid Unit Price. The ENGINEER shall estimate the total project cost including preliminary engineering, final engineering, construction, and utility relocation.

1.4. Design Concept Conference.

- A. In accordance with the State's Project Development Process Manual, the ENGINEER, in cooperation with the CLIENT and State, shall plan, attend, and document the Design Concept Conference (DCC) to be held prior to the 30 percent milestone submittal. In preparation for the DCC, the ENGINEER shall complete a State's Design Summary Report (DSR) to serve as a checklist for the minimum required design considerations. The conference will provide for a brainstorming session in which decision makers, stakeholders and technical personnel may discuss and agree on:

1. Roadway and drainage design parameters
2. Engineering constraints
3. Project development schedule
4. Other issues as identified by the CLIENT and State
5. Identify any Design Exceptions and Waivers
6. Preliminary Construction Cost Estimate

TASK 2 – SURVEY

- 2.1. The topographic design survey for this project will be completed under a separate contract with the City of Midland. For this contract, the ENGINEER's surveyor shall stake or mark in the field the location of proposed soil borings for bridge design and retaining walls. The Engineer's surveyor shall also provide signed and sealed Survey Control Point Data sheets of the before-mentioned topographic design survey for insertion into the construction documents.

TASK 3 – GEOTECHNICAL BORINGS AND INVESTIGATIONS

- 3.1 The ENGINEER and subconsultant shall determine the location of proposed soil borings for bridge design, retaining walls, pavement design, and traffic signals in accordance with the latest edition of the State's Geotechnical Manual. The CLIENT and State will review and provide comments for a boring layout submitted by the ENGINEER showing the general location and depths of the proposed borings. Once the ENGINEER receives the CLIENT and State's review comments then subconsultant shall perform soil borings (field work), soil testing and prepare the boring logs in accordance with the latest edition of the State's Geotechnical Manual and State District's procedures and design guidelines.
 - A. All geotechnical work should be performed in accordance with the latest version of the State's Geotechnical Manual. All testing shall be performed in accordance with the latest version of the State's Manual of Test Procedures. American Society for Testing Materials (ASTM) test procedures can be used only in the absence of the State's procedures. All soil classification should be done in accordance with the Unified Soil Classification System.
 - B. The subconsultant shall perform retaining wall analyses consisting of settlement analysis, computation of the factor of safety for bearing capacity, global stability, overturning and sliding.

- In addition, the subconsultant shall develop allowable bearing pressure, passive earth pressure, friction factor, settlement analysis (consolidation report) and lateral earth pressure for the retaining walls.
- C. The subconsultant shall perform soil borings, testing and analysis to include slope stability analysis, settlement analysis, and foundation design recommendations for retaining walls, bridges, embankments, and any temporary soil retaining systems.
 - D. The ENGINEER shall provide a signed, sealed and dated geotechnical report from subconsultant which contains soil boring locations, boring logs, laboratory test results, generalized subsurface conditions, ground water conditions, analyses and recommendations for settlement and slope stability of the earthen embankments and retaining walls, skin friction tables and design capacity curves including skin friction and point bearing for bridge foundations. The skin friction tables and design capacity curves must be present for piling and drilled shaft foundation.
 - E. The subconsultant shall sign, seal and date soil boring sheets to be used in the PS&E package. The preparation of soil boring sheets must be in accordance with a State's District standards.
 - F. Foundation Studies: The ENGINEER shall coordinate with the CLIENT and State to determine the location of soil borings to be drilled within the project limits.
 - 1. Bridges - by advancing four (4) boring to an estimated depth of eighty (80) feet below existing grade at the selected boring locations. The borings are proposed to be located at the proposed crossing of Todd Road and SL 250.
 - 2. Retaining Walls – by advancing eight (8) additional borings to an estimated depth of forty (40) feet below existing grade at each selected boring location. The spacing for borings is proposed at roughly two hundred (200) foot intervals along the proposed retaining wall alignments on both sides of the proposed Todd Road bridge.
 - G. The ENGINEER shall incorporate soil boring data sheets prepared, signed, sealed, and dated by the subconsultant. The soil boring sheets shall be in accordance with the State's WINCORE software as can be found on the Texas Department of Transportation (TxDOT) website. Bentley's software may be used in lieu of WINCORE to produce the soil boring sheets, if the information conveyed is consistent with the information provided by WINCORE.
 - H. The subconsultant shall follow applicable state traffic control standards when performing geotechnical field operations.
 - I. The ENGINEER will use State standard details to prepare foundation designs for traffic signals, large guide signs, and illumination assemblies.

TASK 4 – SUBSURFACE UTILITY ENGINEERING

4.1 Utility Engineering Investigation.

Includes utility investigations subsurface and above ground prepared in accordance with AASHTO standards [ASCE C-1 38-02 (<http://www.fhwa.dot.gov/programadmin/asce.cfm>)] and Utility Quality Levels as follows.

- A. Utility Quality Levels are defined in cumulative order (least to greatest) as follows:
 - 1. Quality Level D - Existing Records: Utilities are plotted from review of available existing records.
 - 2. Quality Level C - Surface Visible Feature Survey: Quality level "D" information from existing records is correlated with surveyed surface-visible features. Includes Quality Level D information. If there are variances in the designated work area of Level D, a new schematic

or plan layout will be necessary to identify the limits of the proposed project and the limits of the work area required for the work authorization; including highway stations, limits within existing or proposed right of way, additional areas outside the proposed right of way, and distances or areas to be included along existing intersecting roadways.

3. Quality Level B - Designate: Two-dimensional horizontal mapping. This information is obtained through the application and interpretation of appropriate non-destructive surface geophysical methods. Utility indications are referenced to established survey control. Incorporates quality levels C and D information to produce Quality Level B. If there are variances in the designated work area of Level D, a new schematic or plan layout will be necessary to identify the limits of the proposed project and the limits of the work area required for the work authorization; including highway stations, limits within existing or proposed right of way, additional areas outside the proposed right of way, and distances or areas to be included along existing intersecting roadways.
 4. Quality Level A - Locate (Test Hole): Three-dimensional mapping and other characterization data. This information is obtained through exposing utility facilities through test holes and measuring and recording (to appropriate survey control) utility/environment data. Incorporates quality levels B, C and D information to produce Quality Level A.
- 4.2 Subsurface Utility Locate (Test Hole) Service (Quality Level A)
- A. Locate means to obtain precise horizontal and vertical position, material type, condition, size, and other data that may be obtainable about the utility facility and its surrounding environment through exposure by non-destructive excavation techniques that ensures the integrity of the utility facility. Subsurface Utility Locate (Test Hole) Services (Quality Level A) are inclusive of Quality Levels B, C, and D.
 - B. The ENGINEER shall:
 1. Review requested test hole locations and advise the CLIENT and State in the development of an appropriate locate (test hole) work plan relative to the existing utility infrastructure and proposed highway design elements.
 2. Coordinate with utility owner inspectors as may be required by law or utility owner policy.
 3. Neatly cut and remove existing pavement material, such that the cut not to exceed 0.10 square meters (1.076 square feet) unless unusual circumstances exist.
 4. Measure and record the following data on an appropriately formatted test hole data sheet that has been sealed and dated by the ENGINEER:
 - a. Elevation of top and/or bottom of utility tied to the datum of the furnished plan.
 - b. Identify a minimum of two benchmarks utilized. Elevations shall be within an accuracy of 15mm (.591 inches) of utilized benchmarks.
 - c. Elevation of existing grade over utility at test hole location.
 - d. Horizontal location referenced to project coordinate datum.
 - e. Outside diameter of pipe or width of duct banks and configuration of non-encased multi-conduit systems.
 - f. Utility facility material(s).
 - g. Utility facility condition.
 - h. Pavement thickness and type.
 - i. Coating/Wrapping information and condition.
 - j. Unusual circumstances or field conditions.

5. Excavate test holes in such a manner as to prevent any damage to wrappings, coatings, cathodic protection or other protective coverings and features. Water excavation can only be utilized with written approval from the appropriate State District Office.
6. Be responsible for any damage to the utility during the locating process. In the event of damage, the ENGINEER shall stop work, notify the appropriate utility facility owner, the CLIENT and State and appropriate regulatory agencies. The regulatory agencies include but are not limited to the Railroad Commission of Texas and the Texas Commission on Environmental Quality. The ENGINEER shall not resume work until the utility facility owner has determined the corrective action to be taken. The ENGINEER shall be liable for all costs involved in the repair or replacement of the utility facility.
7. Back fill all excavations with appropriate material, compact backfill by mechanical means, and restore pavement and surface material. The ENGINEER shall be responsible for the integrity of the backfill and surface restoration for a period of three years. Install a marker ribbon throughout the backfill.
8. Furnish and install a permanent above ground marker (as specified by the State, directly above center line of the utility facility).
9. Provide complete restoration of work site and landscape to equal or better condition than before excavation. If a work site and landscape is not appropriately restored, the ENGINEER shall return to correct the condition at no extra charge to the CLIENT and State.
10. Plot utility location position information to scale and provide a comprehensive utility plan sign and sealed by the responsible ENGINEER. This information shall be provided in the latest version of Micro Station or Geopak format used by the State. The electronic file will be delivered on C.D or DVD. When requested by the CLIENT and State, the Locate information must be over laid on the State's design plans.
11. Return plans, profiles, and test hole data sheets to the CLIENT and State. If requested, conduct a review of the findings with the CLIENT and State.
12. Close-out permits as required.

4.3 Project SUE Scope

- A. The scope of this proposal consists of Quality Level "A" and "B" SUE. Utilities to be designated include gas, telecommunications, electric, traffic signals, storm, water, and sanitary sewer. Overhead inventory is to be included. Designating will be performed within the following limits:
 1. SL 250 at Todd Rd.: perform Level "B" designating along SL 250 from 300' west of CR 1163 traveling east ending 1300' west of Elkins Rd.
 2. Six (6) QL "A" test holes will be included in the budget. Test hole locations will be determined by the ENGINEER and subcontractor once the QL "B" SUE deliverable has been reviewed. Subcontractor will have all designating marks and test holes surveyed using project control point data provided by the ENGINEER.

TASK 5 – ROADWAY DESIGN

5.1 Geometric Design

- A. Preliminary Geometric Project Layout. The ENGINEER shall develop a preliminary geometric project layout (Layout) for the full length of the project to be reviewed and approved by the CLIENT and State prior to the ENGINEER proceeding with the 30% milestone submittal package.

- B. The Layout must consist of a planimetric file of existing features and the proposed improvements within the existing and any proposed ROW. The Layout must also include the following features: existing and proposed ROW, existing and proposed horizontal and vertical alignment and profile grade line, cross culverts, lane widths, cross slopes, ditch slopes, pavement structure, clear zone, dedicated right turn lanes, corner clips, retaining walls, guard rail, and water surface elevations for various rainfall frequencies, etc. Existing major subsurface and surface utilities must be shown on the Layout. The ENGINEER shall develop the proposed alignment to avoid the relocation of existing utilities as much as possible. The ENGINEER shall consider Americans with Disabilities Act (ADA) requirements when developing the Layout. The Layout must be prepared in accordance with the current Roadway Design Manual. The ENGINEER shall provide horizontal and vertical alignment of the project layout in English units for main lanes and cross streets. Minor alignment alternatives must be considered to provide for an optimal design. The project layout must be coordinated with the CLIENT and State and adjacent Engineers, if any. The ENGINEER shall also provide proposed and existing typical sections with the profile grade line (PGL), lane widths, cross slopes, ROW lines, ditch shapes, pavement structures and clear zones depicted, etc.

5.2 Roadway Design

- A. The ENGINEER shall use Bentley's OpenRoads 3D Design technology in the design and preparation of the roadway plan sheets.
- B. The ENGINEER shall provide roadway plan and profile drawings using CADD standards as required by the State. The drawings must consist of a planimetric file of existing features and files of the proposed improvements. The roadway base map must contain line work that depicts existing surface features. Existing major subsurface and surface utilities must be shown if requested by the CLIENT and State. Existing and proposed right-of-way lines must be shown. Plan and Profile must be shown on separate or same sheets (this depends upon width of pavement) for main lanes.
1. The plan view shall contain the following design elements:
 - a. Calculated roadway centerlines for mainlanes, bridges, and cross streets, as applicable. Horizontal control points must be shown. The alignments must be calculated using OpenRoads horizontal geometry tools.
 - b. Pavement edges for all improvements (mainlanes, bridges, and cross streets, as applicable.)
 - c. Lane and pavement width dimensions.
 - d. Proposed structure locations, lengths, and widths.
 - e. Direction of traffic flow on all roadways. Lane lines and arrows indicating the number of lanes must also be shown.
 - f. Drawing scale shall be 1" =100'
 - g. Control of access line, ROW lines and easements.
 - h. Begin and end super elevation transitions and cross slope changes.
 - i. Limits of riprap, block sod, and seeding.
 - j. Existing utilities and structures.
 - k. Benchmark information.
 - l. Radii call outs, curb location, Concrete Traffic Barrier (CTB), guard fence, crash safety items and American with Disabilities Act Accessibility Guidelines (ADAAG) compliance items.
 2. The profile view shall contain the following design elements:

- a. Calculated profile grade for proposed mainlanes (cite direction), bridges, and cross streets, if applicable. Vertical curve data, including “K” values must be shown. The profiles must be calculated using OpenRoads vertical geometry tools.
- b. Existing and proposed profiles along the proposed centerline of the mainlanes.
- c. Water surface elevations at cross culvert for the design year and 100-year storms, if applicable.
- d. Calculated vertical clearances at grade separations and overpasses, considering the appropriate super elevation rate, superstructure depth and required clearance.
- e. The location of interchanges, mainlanes, and grade separations (shall include cross sections of any proposed or existing roadway, structure, or utility crossing).
- f. Drawing vertical scale to be 1” =10’.

5.3 Typical Sections

- A. The ENGINEER shall prepare typical sections for all proposed and existing roadways and structures. Typical sections must include width of travel lanes, shoulders, outer separations, border widths, curb offsets, and ROW. The typical section must also include Proposed Profile Gradeline (PGL), centerline, pavement design, longitudinal joints, side slopes, sodding or seeding limits, concrete traffic barriers and sidewalks, if required, station limits, common proposed and existing structures including retaining walls, existing pavement removal, riprap, limits of embankment and excavation, etc.

5.4 Mainlane Design

- A. The ENGINEER shall provide the design of SL 250 mainlanes with full shoulders. The design must be consistent with the current TxDOT Roadway Design Manual.

5.5 Cross Streets

- A. The ENGINEER shall provide an intersection layout detailing the pavement design and drainage design at the intersection of Todd Road. The layout must include the horizontal and vertical alignments, curb returns, geometrics, transition length, stationing, pavement, drainage details, and American with Disabilities Act Accessibility Guidelines (ADAAG) compliance items. The ENGINEER shall design for full pavement width to the ROW and provide a transition to the existing roadway.

5.6 Cut and Fill Quantities

- A. The ENGINEER shall develop an earthwork analysis to determine cut and fill quantities and provide final design cross sections at 100 feet intervals. Cross sections must be delivered in standard Open Roads Designer format on 11”x17” sheets or roll plots and electronic files. The ENGINEER shall provide all criteria and input files used to generate the design cross sections. Cross sections and quantities must include existing pavement removals. Annotation shall include at a minimum existing and proposed ROW, side slopes (front & back), profiles, etc.
- B. The ENGINEER shall submit a PDF set of drawings at the 30%, 60%, and 90%, and final submittals, respectively.

5.7 Plan Preparation

- A. The ENGINEER shall prepare roadway plans, profiles, and typical sections for the proposed improvements. This scope of services and the corresponding cost proposal are based on the ENGINEER preparing plans to construct freeway main lanes, bridges, and cross streets at intersections. The roadway plans must consist of the types and be organized in the sequence as described in the PS&E Preparation manual.

5.8 Pavement Design

- A. The State shall provide the mainlane pavement design and submit to CLIENT and ENGINEER for use in the project design.

5.9 Pedestrian and Bicycle Facilities

- A. The ENGINEER shall coordinate with the State to incorporate pedestrian and bicycle facilities as required or shown on the project's schematic. All pedestrian and bicycle facilities must be designed in accordance with the latest Americans with Disabilities Act Accessibility Guidelines (ADAAG), the Texas Accessibility Standards (TAS), the most current state roadway design manual, and the AASHTO Guide for the Development of Bicycle Facilities

TASK 6 – DRAINAGE DESIGN

6.1 Data Collection.

- A. The ENGINEER shall provide the following data collection services:
 1. Conduct field inspections to observe current conditions and the outfall channels, the cross-drainage structures, drainage easements, and land development projects that contribute flow to the tributary. Document field inspections with digital photos.
 2. Collect available applicable data including Geographic Information System (GIS) data and maps, site survey data, construction plans, previous reports and studies, and readily available rainfall history for the area. Sources of data collected must include, but are not limited to, the State, County, and Federal Emergency Management Agency (FEMA).
 3. Collect available Flood Insurance Rate Maps (FIRMs), Flood Insurance Study (FIS) study data, and models.
 4. Review survey data and coordinate any additional surveying needs with CLIENT and State.
 5. Meet with local government officials to obtain historical flood records. Interview residents or local government employees to obtain additional high-water information if available. Obtain frequency of road closure and any additional high-water information from the District Maintenance office.

6.2 Cross Drainage Structure.

- A. The ENGINEER shall provide the following services:
 1. Determine drainage areas and flows for cross culvert drainage systems.
 2. Determine the sizing of the drainage crossing. The scope may include extending, adjusting, or replacing non-bridge-class culvert crossing or crossings as specified in this Work Authorization. Develop designs that minimize the interference with the passage of traffic or cause damage to the highway and local property in accordance with the State's Hydraulic Design Manual, District criteria and any specific guidance provided by the State. Cross drainage design shall be performed using HY-8 or HEC RAS

6.3 Temporary Drainage Facilities

- A. The ENGINEER shall develop plans for all temporary drainage facilities necessary to allow staged construction of the project and to conform with the phasing of adjacent construction projects without significant impact to the hydraulic capacity of the area. Drainage area maps are not required for temporary drainage.

6.4 Plans, Specifications and Estimates (PS&E) Development for Hydraulics.

- A. The ENGINEER shall provide the following services:
 1. Prepare the PS&E package in accordance with the applicable requirements of the State's specifications, standards, and manuals, including the PS&E Preparation Manual. Include the following sheets and documents, as appropriate:
 2. Hydrologic Data Sheets

3. Hydraulic Data Sheets
4. Culvert Layout Sheets
5. Storm Drain Plan/Profile Sheets, if applicable
6. Roadway Plan & Profile Sheets including profile grade line of parallel ditches, if applicable.
7. All other relevant sheets
8. Prepare culvert cross sections and identify each cross-section's station location.
9. Identify areas requiring trench protection, excavation, shoring and de-watering.
10. Prepare drainage area maps.
11. If applicable, prepare plan and profile sheets for storm drain systems and outfall ditches.
12. Select any necessary standard details from State or District's list of standards for items such as inlets, manholes, junction boxes and end treatments.
13. Prepare drainage details for outlet protection, outlet structures and utility accommodation structures.
14. Identify pipe strength requirements.
15. Prepare drainage facility quantity summaries.
16. Identify potential utility conflicts and, if feasible, design to mitigate or avoid those identified conflicts
17. Consider pedestrian facilities, utility impacts, driveway grades, retaining wall and concrete traffic barrier drainage impacts.
18. Prepare Hydraulic Data Sheets for any bridge or cross drainage structures at the outfall channel and indicate site location (e.g., station and name of creek or bayou), if applicable.
19. Develop layouts for the following:
 20. Subsurface drainage at retaining walls.
 21. Outfall channels within existing ROW

TASK 7 – BRIDGE DESIGN

7.1 Bridge Layout

- A. The ENGINEER shall prepare a bridge layout plan sheet for each bridge. The ENGINEER shall determine the location of each soil boring needed for foundation design in accordance with the *Geotechnical Manual*.
- B. Prior to preparation of each bridge layout, the ENGINEER shall prepare a comparative cost analysis of bridge structures to determine: (1) the optimum bridge beams for vertical clearance roadway, (2) the optimum bridge structure versus roadway embankment, pavement, soil stabilization, and retaining walls.
- C. The ENGINEER shall submit each bridge layout early in the plan preparation process to obtain approval from the CLIENT and State. The ENGINEER shall comply with all relevant sections of the latest edition of the State's *LRFD Bridge Design Manual, Bridge Project Development Manual, Bridge Detailing Guide, and AASHTO LRFD Bridge Design Specifications and respective checklists*. Each bridge layout sheet must include bridge typical sections, structural dimensions, abutment and bent locations, superstructure and substructure types. The ENGINEER shall locate and plot all soil borings and utilities, show proposed retaining walls, and, for staged construction, indicate limits of existing bridge for removal and reconstruction.

- D. Bridge layout must include the following:
1. Plan View
 - a. Horizontal Curve data
 - b. Bearing of centerline
 - c. Bridge and Culvert skew angles
 - d. Control Stations at the beginning and end of structures
 - e. Dimensioned widths of bridge or culvert, roadway, rail, and shoulders
 - f. Type and limits of riprap
 - g. Location of profile grade line
 - h. Direction of flow
 - i. North arrow
 - j. Roadway functional class
 - k. Design Speed
 - l. Traffic data
 - m. Existing and proposed structure numbers
 - n. Cross-slope and superelevation data
 - o. Traffic flow directional arrows
 - p. Railing type
 - q. Bent stations and bearings
 - r. Retaining wall locations
 - s. Approach pavement crown width
 - t. Typical bridge section showing beam type and spacing
 - u. Joint and seal type and spacing
 - v. Locations of soil borings
 - w. Phased construction
 - x. Any other information required in the State's Bridges and Structures Operation and Planning Manual, Bridge Design Manual, and Bridge Detailing Manual.
 2. Profile View
 - a. Profile grade
 - b. Vertical curve data
 - c. Finished roadway elevation at beginning and end of bridge
 - d. Overall structure length
 - e. Type and overall length of railing
 - f. Existing and proposed ground lines clearly labeled
 - g. Profile view grid elevations and stations
 - h. Station of structure compatible with grid stations
 - i. Applicable standard titles

- j. Type of riprap
- k. Type of foundation; number, size, and length of foundation elements
- l. Length and type of span unit
- m. Bent numbers
- n. Bearing seat elevations
- o. Soil bore data
- p. Fixed or expansion condition at each beam end
- q. Column heights
- r. Any other information required in the State's Bridges and Structures Operation and Planning Manual, Bridge Design Manual, and Bridge Detailing Manual.

7.2 Bridge Detail Summary.

- A. The ENGINEER shall prepare total bridge quantities, estimates, and summary sheets for each bridge or bridge class culvert.

7.3 Bridge Structural Details.

- A. The ENGINEER shall prepare each structural design and develop detailed structural drawings of all required details in compliance with above-listed manuals and guidelines. The ENGINEER shall assemble and complete all applicable State Standard Details sheets.
- B. Additionally, the ENGINEER shall:
 - 1. Perform calculations for design of bridge abutments and bents (only applicable for non-standard bridge.)
 - 2. Perform calculations for bridge slab design (only applicable for non-standard bridge.)
 - 3. Perform calculations to determine elevations of bridge substructure and super structure elements.
 - 4. Perform calculations for bridge girder design (only applicable for non-standard bridge.)
 - 5. Prepare necessary foundation details and plan sheets.
 - 6. Prepare plan sheets for abutment and bent design (only applicable for non-standard bridge.)
 - 7. Prepare plan sheets for additional abutment and bent details (only applicable for non-standard bridge.)
 - 8. Prepare framing plan and slab plan sheets (only applicable for non-standard bridge.)
 - 9. Compute and prepare tables for slab and bearing seat elevations, dead load deflections, etc. (only applicable for non-standard bridge.)
 - 10. Design beams and prepare beam design tables (only applicable for non-standard bridge.)
 - 11. Prepare special provisions and special specifications in accordance to the above-listed manuals and guidelines.

TASK 8 – RETAINING WALLS

8.1 Retaining Walls and Miscellaneous Structures

- A. The ENGINEER shall develop each retaining wall design and determine the location of each soil boring needed for the foundation design of each retaining wall in accordance with the *Geotechnical Manual*. Prior to preparation of retaining wall layouts, the ENGINEER shall

- prepare a comparative cost analysis of different types of retaining walls versus roadway embankment, pavement, soil stabilization, retaining walls type, and available ROW to determine optimum selection based on economics, construction time duration, ROW encroachments (need for construction easements) and construction feasibility. The ENGINEER shall submit early in the plan preparation the retaining wall layouts to obtain approval from the State. The ENGINEER shall incorporate all necessary information from above referenced manuals and respective checklists into the retaining wall layouts. For stage construction, the ENGINEER shall indicate limits of existing retaining walls for removal and reconstruction and determine limits of temporary retaining walls to be shown on the TCP.
- B. The approximate limits of each retaining wall shall be based on Station or length. The ENGINEER shall notify the CLIENT and State the type of retaining walls that will be used for and Cut and Fill location.
 - C. The ENGINEER shall provide layouts (scale 1" =100'), elevations, quantity estimate, summary of quantities, typical cross sections, and structural details of all retaining walls within the project.
 - D. If applicable, the State will provide architectural standard drawings. The ENGINEER shall incorporate architectural standard drawings into design details. The specific requirements for each item are as follows:
 1. Layout Plan
 - a. Designation of reference line
 - b. Beginning and ending retaining wall stations
 - c. Offset from reference line
 - d. Horizontal curve data
 - e. Total length of wall
 - f. Indicate face of wall
 - g. All wall dimensions and alignment relations (alignment data as necessary)
 - h. Soil boring locations
 - i. Drainage, signing, lightning, etc. that is mounted on or passing through the wall.
 - j. Subsurface drainage structures or utilities which could be impacted by wall construction.
 2. Elevation:
 - a. Top of wall elevations
 - b. Existing and finished ground line elevations
 - c. Vertical limits of measurement for payment
 - d. Type, limits, and anchorage details of railing (only if Traffic Railing foundation standard is not being used on this project)
 - e. Top and bottom of wall profiles plotted at correct station & elevation.
 - f. Underdrains
 - g. Any soil improvement, if applicable.
 - h. Drainage, signing, lighting etc. as noted above
 - i. Drainage structures and utilities as noted above
 3. Sectional View:

- a. Reinforced volume
 - b. Underdrain location
 - c. Soil improvements, if applicable
4. General Guidelines for Retaining Walls
 - a. For retaining wall submittals, the ENGINEER shall check State's Bridge Division website for current requirements.

TASK 9 – TRAFFIC CONTROL

9.1 Traffic Control Plan, Detour, Sequence of Construction.

- A. The ENGINEER shall prepare Traffic Control Plans (TCP) including TCP typical sections, for the project. If requested by the State, the ENGINEER shall complete Form 2229-Significant Project Procedures along with Page 4 of Form 1002, specifically titled Accelerated Construction Procedures. A detailed TCP must be developed in accordance with the latest edition of the TMUTCD. The ENGINEER shall implement the current Barricade and Construction (BC) standards and TCP standards as applicable. The ENGINEER shall interface and coordinate phases of work, including the TCP, with adjacent ENGINEERS. The ENGINEER shall:
 1. Provide a written narrative of the construction sequencing and work activities per phase and determine the existing and proposed traffic control devices (regulatory signs, warning signs, guide signs, route markers, construction pavement markings, barricades, flag personnel, temporary traffic signals, etc.) to be used to handle traffic during each construction sequence. The ENGINEER shall show temporary roadways and detours required to maintain lane continuity throughout the construction phasing. If temporary shoring is required, prepare layouts, and show the limits on the applicable TCP.
 2. Develop each TCP to provide continuous, safe access to each adjacent property during all phases of construction and to preserve existing access. The ENGINEER shall notify the CLIENT and State in the event existing access must be eliminated and must receive approval from the CLIENT and State prior to any elimination of existing access.
 3. Design temporary drainage to replace existing drainage disturbed by construction activities or to drain detour pavement. The ENGINEER shall show horizontal and vertical location of culverts and required cross sectional area of culverts.
 4. Prepare each TCP in coordination with the CLIENT and State. The TCP must include interim signing for every phase of construction. Interim signing must include regulatory, warning, construction, route, and guide signs. The ENGINEER shall interface and coordinate phases of work, including the TCP, with adjacent ENGINEERS, which are responsible for the preparation of the PS&E for adjacent projects.
 5. Maintain continuous access to abutting properties during all phases of the TCP. The ENGINEER shall develop a list of each abutting property along its alignment. The ENGINEER shall prepare exhibits for and attend meetings with the public, as requested by the CLIENT and State.
 6. Make every effort to prevent detours and utility relocations from extending beyond the proposed Right-of-way lines. If it is necessary to obtain additional permanent or temporary easements and Right-of-Entry, the ENGINEER shall notify the CLIENT and State in writing of the need and justification for such action. The ENGINEER shall identify and coordinate with all utility companies for relocations required.
 7. Describe the type of work to be performed for each phase of sequence of construction and any special instructions (e.g., storm drain, culverts, bridges, railing, illumination, signals,

- retaining walls, signing, paving surface sequencing or concrete placement, ROW restrictions, utilities, etc.) that the contractor should be made aware to include limits of construction, obliteration, and shifting or detouring of traffic prior to the proceeding phase.
8. Include the work limits, the location of channelizing devices, positive barrier, location and direction of traffic, work area, stations, pavement markings, and other information deemed necessary for each phase of construction.
 9. The ENGINEER shall identify and delineate any outstanding ROW parcels.
 10. Delineate areas of wetlands on traffic control plans.

TASK 10 - SIGNING, PAVEMENT MARKINGS AND SIGNALIZATION

10.1 Signing.

- A. The ENGINEER shall prepare drawings, specifications, and details for all signs. The ENGINEER shall coordinate with the CLIENT and State (and other ENGINEERS as required) for overall temporary, interim, and final signing strategies and placement of signs outside contract limits. The ENGINEER shall:
 1. Prepare sign detail sheets for large guide signs showing dimensions, lettering, shields, borders, corner radii, etc., and shall provide a summary of large and small signs to be removed, relocated, or replaced.
 2. Designate the shields to be attached to guide signs.
 3. Illustrate and number the proposed signs on plan sheets.
 4. Select each sign foundation from State Standards.

10.2 Pavement Marking.

- A. The ENGINEER shall detail both permanent and temporary pavement markings and channelization devices on plan sheets. The ENGINEER shall coordinate with the CLIENT and State (and other ENGINEERS as required) for overall temporary, interim, and final pavement marking strategies. The ENGINEER shall select Pavement markings from the latest State standards.
- B. The ENGINEER shall provide the following information on sign and pavement marking layouts:
 1. Roadway layout.
 2. Center line with station numbering.
 3. Designation of arrow used on exit direction signs
 4. Culverts and other structures that present a hazard to traffic.
 5. Location of utilities.
 6. Existing signs to remain, to be removed, to be relocated or replaced.
 7. Proposed signs (illustrated, numbered and size).
 8. Proposed overhead sign bridges to remain, to be revised, removed, relocated, or replaced.
 9. Proposed overhead sign bridges, indicating location by plan.
 10. Proposed markings (illustrated and quantified) which include pavement markings, object markings and delineation.
 11. Quantities of existing pavement markings to be removed.
 12. Proposed delineators, object markers, and mailboxes.
 13. The location of interchanges, mainlanes, grade separations, frontage roads and ramps.

14. The number of lanes in each section of proposed highway and the location of changes in numbers of lanes.
15. Right-of-way limits.
16. Direction of traffic flow on all roadways.

10.3 Traffic Warrant Studies. (Intentionally omitted)

10.4 Signalization.

- A. The ENGINEER shall identify and prepare Traffic Signal Plans for all warranted traffic signals. The ENGINEER shall confirm the power source for all signals and coordinate with the appropriate utility agency. Traffic Signal Plans must be signed and sealed by a Texas Registered Professional ENGINEER. The ENGINEER shall develop all quantities, general notes, specifications and incorporate the appropriate agency standards required to complete construction. Traffic signal poles, fixtures, signs, and lighting must be designed per the Green Ribbon Report recommendations and standards.
- B. The ENGINEER shall provide the following information in the Traffic Signal Plans:
 1. Plan Development
 - a. Estimate and quantity sheet
 - i. List of all bid items
 - ii. Bid item quantities
 - iii. Specification item number
 - iv. Paid item description and unit of measure
 - b. Basis of estimate sheet (list of materials)
 - c. General notes and specification data.
 - d. Condition diagram
 - i. Highway and intersection design features and ROW
 - ii. Roadside development
 - iii. Traffic control including illumination
 - e. Plan sheet(s)
 - i. Existing traffic control that will remain (signs and markings)
 - ii. Existing utilities
 - iii. Proposed highway improvements
 - iv. Proposed installation
 - v. Proposed additional traffic controls
 - vi. Proposed illumination attached to signal poles or stand alone
 - i. Proposed power pole source
 - f. Notes for plan layout
 - g. Phase sequence diagram(s)
 - i. Signal locations
 - ii. Signal indications
 - iii. Phase diagram

- iv. Signal conductors termination chart
- v. Signal sequence table
- vi. Flashing operation (normal and emergency)
- vii. Preemption operation (when applicable)
- viii. Contact responsible Agency to obtain interval timing, cycle length and offset
- h. Construction detail sheets(s)
 - i. Poles (State standard sheets)
 - ii. Detectors
 - iii. Pull Box and conduit placement on signal layout
 - iv. Controller Foundation standard sheet
 - v. Electrical chart
 - vi. Conduit chart
 - vii. Signal pole and signal head chart
 - viii. Controller, Radar Presence Detector (RPD), and Radar Advance Detection Devices (RADD) chart
 - ix. Accessible Pedestrian Signals (APS) message chart
 - x. Minimum pedestrian timing chart
 - xi. Signal head and ped pole details
 - xii. Traffic signal pole foundation
- i. Marking details (when applicable)
- j. Aerial or underground interconnect details (when applicable)
- 2. General Requirements
 - a. Contact local utility company
 - i. Confirm power source
 - b. Prepare governing specifications and special provisions list
 - c. Prepare project estimate
 - d. Conduct traffic counts and prepare Traffic Signal Warrant Studies for all proposed and existing traffic signals at designated locations.
- 3. Summary of Quantities
 - a. Small signs tabulation
 - b. Large signs tabulation including all guide signs
- 4. Sign Detail Sheets
 - a. All signs except route markers
 - b. Design details for large guide signs
 - c. Dimensioning (letters, shields, borders, etc.)
 - d. Designation of shields attached to guide signs

TASK 11 - MISCELLANEOUS DESIGN

- 11.1 Storm Water Pollution Prevention Plan (SW3P)
- A. The ENGINEER shall develop SW3P, on separate sheets from (but in conformance with) the TCP, to minimize potential impact to receiving waterways. The SW3P shall include text describing the plan, quantities, type, phase and locations of erosion control devices and any required permanent erosion control.
- 11.2 Compute and Tabulate Quantities
- A. The ENGINEER shall provide the summaries and quantities within all formal submittals.
- 11.3 Miscellaneous Structure Details
- A. The ENGINEER shall provide necessary details required to supplement standard details.
- 11.4 Estimate
- A. The ENGINEER shall independently develop and report quantities necessary to construct the contract in standard State bid format at the specified milestones and Final PS&E submittals. The ENGINEER shall prepare each construction cost estimates using Estimator or any approved method. The estimate shall be provided at each milestone submittal or in DCIS format at the 95% and Final PS&E submittals per State's District requirement.
- 11.5 Contract time determination.
- A. The ENGINEER shall prepare a detailed contract time estimate to determine the approximate time required for construction of the project in calendar and working days (based on the State standard definitions of calendar and working days) at the 95% and Final PS&E milestone. The schedule shall include tasks, subtasks, critical dates, milestones, deliverables, and review requirements in a format which depicts the interdependence of the various items and adjacent construction packages. The ENGINEER shall provide assistance to the CLIENT and State in interpreting the schedule.
- 11.6 Specifications and General Notes.
- A. The ENGINEER shall identify necessary standard specifications, special specifications, special provisions and the appropriate reference items. The ENGINEER shall prepare General Notes from the District's *Master List of General Notes*, Special Specifications and Special Provisions for inclusion in the plans and bidding documents. The ENGINEER shall provide General Notes, Special Specifications and Special Provisions in the required format.
- 11.7 Constructability Review.
- A. The ENGINEER shall provide Independent Quality Review of the constructability PS&E sets.
- B. The ENGINEER shall perform constructability reviews at major project design milestones (e.g., 30%, 60%, 90%, and final plan) to identify potential constructability issues and options that would provide substantial time savings during construction. The constructability review must be performed for all roadway and structural elements such as Sequence of Work/Traffic Control, Drainage (Temporary and Permanent), Storm Water Pollution Prevention Plan (SW3P), Environmental Permits, Issues and Commitments (EPIC) addressed, identify Utility conflicts; ensuring accuracy and appropriate use of Items, Quantities, General Notes, Standard and Special Specifications, Special Provisions, Contract Time/Schedule, Standards; and providing detailed comments in an approved format. Reviews must be captured in a Constructability Log identifying areas of concern and potential conflict. The ENGINEER shall provide the results of all Constructability reviews and recommendations to the CLIENT and

State at major project design milestone submittals.

TASK 12 - CONTRACT MANAGEMENT AND ADMINISTRATION

The ENGINEER shall perform the following services:

- 12.1 Perform all work in accordance with the State's latest practices, criteria, specifications, policies, procedures, and Standards of Uniformity (SOU). All documents shall be sufficient to satisfy the current SOUs available from the State.
- 12.2 Act as an agent for the CLIENT and State when specified in a work authorization.
- 12.3 Notify the CLIENT and State of its schedule, in advance, for all field activities.
- 12.4 Notify the CLIENT and State as soon as practical, by phone and in writing, if performance of environmental services discloses the presence or likely presence of significant impacts (in accord with 40 Code of Federal Regulations (CFR) 1500-1508). Inform the CLIENT and State of the basis for concluding that there are significant impacts and the basis for concluding that the impacts may require mitigation.
- 12.5 Notify the CLIENT and State as soon as practical, by phone and in writing, if performance of environmental services results in identification of impacts or a level of controversy that may elevate the Transportation Activity's status from a categorical exclusion or environmental assessment, and the State will reassess the appropriate level of documentation.
- 12.6 Prepare monthly written progress reports for each project.
- 12.7 Develop and maintain a detailed project schedule to track project conformance to Exhibit C, Work Schedule, for each work authorization. The schedule submittals shall be hard copy and electronic format.
- 12.8 Meet on a scheduled basis with the CLIENT and State to review project progress.
- 12.9 Prepare, distribute, and file both written and electronic correspondence.
- 12.10 Document phone calls and conference calls as required during the project to coordinate the work for various team members.

TASK 13 - CONSTRUCTION PHASE SERVICES

- 13.1 The Engineer shall provide Construction Phase Services at the written request of the State's Project Manager. The written request shall include a description of the work requested, a mutually agreed upon time limit, and any special instructions for coordination and submittal. These services shall include, but are not limited to the following:
 - A. Attend preconstruction meeting (Omitted)
 - B. Attend partnering meeting (Omitted)
 - C. Attend field meetings and make visits to site
 - D. Calculate quantities and assist the area engineer in preparing change orders
 - E. Review and approval of shop drawings
 - F. Review and approval of forming details
 - G. Responding to requests for information (RFIs)

- H. Providing minor redesign (major redesign should be handled with a contract supplement), which will include changes to the affected plan sheets and an updated copy of the 3D corridor model.
- I. Answering general questions
- J. Providing clarification
- K. Other project related tasks in support of the State during construction

DELIVERABLES

The ENGINEER shall submit the following deliverables to the State:

1. Plan Development
 - a. Preliminary Geometric Layout
 - i. Estimate of construction cost.
 - ii. Engineer's internal QA and QC markup set.
 - iii. One set of a roll format for each alignment alternative analyzed.
 - b. 30% Plans Submittal. Provide the State with a review set of plans that includes the items listed below:
 - i. Estimate of construction cost.
 - ii. Engineer's internal QA and QC markup set.
 - iii. Form 1002 and Design Exceptions with existing and proposed typical sections, location map and design exception exhibits.
 - iv. Preliminary 3D corridor model, in the most current format, created using Bentley's OpenRoads tools, and with detail to verify the design of the 30% plan sheets.
 - v. Bridge and retaining wall layouts in PDF format for the State District review.
 - vi. Engineer's internal QA and QC marked up set.
 - vii. One set of a roll format TCP phasing layouts for TCP concept, and significant project procedures form (State Form 2229) to present at the TCAT for the State review.
 - viii. Preliminary Title Sheet
 - ix. Preliminary Index Sheet
 - x. Existing and Proposed Typical Sections
 - xi. Preliminary Summary Sheets
 - xii. Survey Control Data Sheets
 - xiii. Preliminary Removal Layouts
 - xiv. Preliminary Plan & Profile Sheets for all Alignments
 - xv. Preliminary Intersection Layouts
 - xvi. Preliminary Grading Sheets
 - xvii. Preliminary Drainage Area Maps

- xviii. Preliminary Culvert Computations
- xix. Preliminary Culvert Layouts
- xx. Preliminary Bridge Layouts
- c. Preliminary Bridge and Retaining Wall Layout (PBLR) Submittal (Between 30% Submittal and 60% Submittal) Provide the State with a review set of plans that includes the items listed below:
 - i. PDF set of 11" x 17" bridge and retaining wall layouts for the State District Bluebeam review.
 - ii. External stability analysis for retaining walls.
 - iii. Engineer's internal QA and QC marked up set.
 - iv. One set of a roll format TCP phasing layouts, one copy of the pdf of plan sheets for TCP concept, and significant project procedures form (State Form 2229) to present at the TCAT for the State review.
- d. 60% Plans Submittal. Provide the State with a review set of plans that includes the items listed below:
 - i. Estimate of construction cost.
 - ii. Engineer's internal QA and QC marked up set.
 - iii. Preliminary marked-up General Notes, list of Specifications, and list of Special Provisions
 - iv. One set of a roll format TCP phasing layouts, one copy of the .pdf of plans sheets for TCP concept, and significant project procedures form (State Form 2229) to present at the TCAT for the State review.
 - v. Address 30% Comments.
 - vi. Preliminary 3D corridor model, in the most current format, created using Bentley's OpenRoads tools, and with detail to verify the design of the 60% plan sheets. The level of detail of the surface and subsurface features will be at the direction of the State.
 - vii. Updated Title Sheet with Index of Sheets including Standards
 - viii. Final Existing and Proposed Typical Sections
 - ix. Updated Summary Sheets
 - x. Preliminary Traffic Control Plan Sheets
 - xi. Survey Control Data Sheets
 - xii. Final Removal Layouts
 - xiii. Final Plan & Profile Sheets for all Alignments
 - xiv. Final Intersection Layouts
 - xv. Preliminary Illuminations Sheets
 - xvi. Preliminary Miscellaneous Roadway Details
 - xvii. Final Drainage Area Maps
 - xviii. Final Culvert Computations
 - xix. Final Culvert Layouts
 - xx. Preliminary Hydraulic Computations

- xxi. Soil Borings
 - xxii. Preliminary Retaining Wall Layouts
 - xxiii. Approved Bridge Layouts
 - xxiv. Preliminary Utility Layout Sheets
 - xxv. Preliminary Signing, Delineation & Pavement Marking Layouts
 - xxvi. Preliminary SWP3 Layouts and EPIC Sheet
 - xxvii. Roadway Cross-Sections (scale 1" =20' horizontally and vertically)
 - xxviii. Preliminary Contract Time Determination
- e. 90% Review Submittal. Provide the State with a review set of plans that includes the items listed below:
- i. Estimate of construction cost.
 - ii. Construction schedule.
 - iii. New Special Specifications and Special Provisions with Form 1814, if applicable.
 - iv. Engineer's internal QA and QC marked up set.
 - v. Other supporting documents.
 - vi. A detailed 3D corridor model, in the most current format, created using Bentley's OpenRoads tools, and with detail to verify the design of the 90% plan sheets. The level of detail of the surface and subsurface features will be at the direction of the State.
 - vii. New Special Specifications and Special Provisions with Form 1814, if applicable.
 - viii. Address 60% Comments
 - ix. Updated Title Sheet with Index of Sheets
 - x. Final Existing and Proposed Typical Sections
 - xi. Final Summary Sheets
 - xii. Final Traffic Control Plan Sheets
 - xiii. Final Control Data Sheets
 - xiv. Final Removal Layouts
 - xv. Final Plan & Profile Sheets
 - xvi. Final Intersection Layouts
 - xvii. Final Illuminations Sheets
 - xviii. Final Miscellaneous Roadway Details
 - xix. Final Drainage Area Maps
 - xx. Final Culvert Computations
 - xxi. Final Culvert Layouts
 - xxii. Final Hydraulic Computations
 - xxiii. Final Retaining Wall Layouts

- xxiv. Final Bridge Sheets
 - xxv. Final Utility Layout Sheets
 - xxvi. Final Signing, Delineation, & Pavement Marking Layouts
 - xxvii. Final SWP3 Layouts and EPIC Sheet
 - xxviii. Final Roadway Cross-Sections (scale 1" =20), if changed
 - xxix. Final construction cost Estimate, marked-up General Notes, Specification Data Sheet, Special Provisions, Special Specifications
 - xxx. Final Contract Time Determination
- f. Final submittal (100%).
- i. Revised supporting documents from 90% review comments.
 - ii. A final 3D corridor model, in the most current format, created using Bentley's OpenRoads tools. The level of detail of the surface and subsurface features will be at the direction of the State.
 - iii. A final 3D earthwork model, if applicable, in either .XML or .ICM format (as directed by the State) created using Bentley's OpenRoads tools. The level of detail of the surface and subsurface features will be at the direction of the State.
- A. Electronic Copies
- 1. The Engineer shall furnish the State with a USB flash drive of the final plans in the current graphics format used by the State, .pdf format, and in the District's File Management System (FMS) format.
 - 2. The Engineer shall also provide separate USB flash drive containing cross section information (in dgn, XLR, & ASCII formats) for the contractor's use.
 - 3. The Engineer shall provide the Primavera (P6) file, MS Project or the latest scheduling program used by the State for construction time estimate.
- B. Calculations
- 1. The Engineer shall provide the following:
 - a. All quantity and non-structural design calculations.
 - b. Engineering design calculations, load rating calculations, analysis, input calculations, quantities, geometric designs (GEOPAK GPK files), etc. relating to the project's structural elements. Project structural elements include, but are not limited to: bridges, retaining walls, overhead sign foundations, high-mast illumination foundations, non-standard culverts, custom headwalls and drainage appurtenances.
 - c. Working copies of all spreadsheets and output from any programs utilized on a USB flash drive in a universally reliable format.
 - d. Submit element normally bound using a .pdf format.
- C. Archiving File for Bridge Design Calculations and Notes
- 1. The Engineer shall scan the design notes (or convert electronic files) and submit a single PDF file for each bridge. In the case of a single design done for twin structures, submit the same notes under two separate NBI numbers.
 - a. Refer to *Figure 6: Guidance for Calculation Retention* in the Bridge Division's *Quality Control and Quality Assurance Guide* at http://ftp.dot.state.tx.us/pub/txdot-info/library/pubs/bus/bridge/qa_qc_guide.pdf for the design elements that are required and how to assemble the PDF file.

- b. Additionally, the file should contain:
 - i. Completed Quality Control Cover Sheet from the Quality Control and Quality Assurance Guide at http://ftp.dot.state.tx.us/pub/txdot-info/library/pubs/bus/bridge/qa_qc_guide.pdf
 - ii. The Engineer is allowed to use their own cover sheet if it is similar to the Quality Control Coversheet from the Quality Control and Quality Assurance Guide.
 - iii. Bridge layout at the time of the original design
 - iv. Load rating calculations.
 - v. Communication directly related to the included elements
- c. Do not include bridge geometry runs (BGS, Geomath, spreadsheets, etc.).
2. Name the file using the following naming convention:
 - a. Design notes: NBI_DN_yyyy—mm, with yyyy-mm being the year and month the PDF file is submitted (ex. 1234567890abcde_DN_2015-06)
 - b. Change Orders: NBI_CO_yyyy—mm, with yyyy-mm being the year and month the PDF file is submitted (ex. 1234567890abcde_CO_2015-06)
3. Send the Archiving File PDF of bridge design notes to the State's project manager, who will submit to the State's Bridge Management Group. The files will become part of the permanent bridge file in the State's bridge inspection database management system.

ADDITIONAL SERVICES

Services not specifically identified in the Scope of Services above shall be considered additional and shall be performed on an individual basis upon authorization by the CLIENT. Such services shall include, but are not limited to, the following:

- A. Environmental Documentation
- B. Public Involvement or Public Outreach
- C. Construction staking
- D. Schematic Design
- E. Traffic projections
- F. Traffic Intersection Analysis
- G. Signal warrants or signal timing
- H. Existing water or sanitary sewer relocations
- I. Landscape or Irrigation design
- J. Right of Way Acquisition Services
- K. Bid Phase Services or Construction Contract Administration

CLIENT AND STATE RESPONSIBILITIES

Subject to availability, the services to be provided or performed by the CLIENT or State will include, but not be limited to, the following items:

1. Name, address, and phone number of the CLIENT'S project manager.
2. Records available that would assist in the completion of the work described in PART 2.0.
3. Review, and coordination of review by the State, of recommendations offered by the ENGINEER and approval or rejection of any or all work performed under this contract.

4. Review of progress of work and final acceptance of all documents.
5. Processing of all periodic payment requests submitted by ENGINEER.
6. Assistance in the coordination and scheduling of site visits.
7. Available horizontal control points, benchmark elevations and descriptions for vertical control in the project area.
8. Available existing Right-of-Way (ROW) maps of state and municipal highway facilities in the project corridor.
9. Available interface data for any projects adjacent to the project corridor.
10. Current average bid prices for construction, maintenance, and operation costs.
11. Assistance as necessary in obtaining the required data and information from other local, regional, state, and federal agencies.
12. Timely reviews of deliverables in accordance with Part 4.0 (Periods of Service) of the Task Order
13. Authorizations and decisions necessary for the ENGINEER to maintain the project work schedule.
14. Examples of acceptable format for the deliverables required by the work authorizations.

SCHEDULE:

The term of this contract commences on the effective date and continues without interruption for a term of 12 months. If the ENGINEER determines that additional time is required to complete the Services, the CLIENT may, but is not obligated to, at their discretion, execute an agreement to grant additional time so long as the amount of consideration does not increase. Deliverables will be submitted to the CLIENT by the ENGINEER according to the following schedule:

Task	Deliverable	Period of Service
1	Data Collection	Through end of project
2	Geotechnical	Q1 2023
3	Subsurface Utility Engineering (SUE)	Q1 2023
4	Roadway Design	2023
	30% PS&E	TBD
	60% PS&E	TBD
	90% PS&E	TBD
	100% PS&E	TBD

FEE AND EXPENSES

Kimley-Horn will perform the services in Tasks 1 - 12 for the total lump sum fee below. Individual task amounts are informational only. All permitting, application, and similar project fees will be paid directly by the Client.

TASK DESCRIPTION	Prime Provider KHA	Sub Provider SURVEY	Sub Provider GEOTECH	Sub Provider SUE	Total Labor Cost
1. Data Collection	\$ 15,075.00	\$ -	\$ -	\$ -	\$ 15,075.00
2. Survey	\$ 2,860.00	\$ 3,000.00	\$ -	\$ -	\$ 5,860.00
3. Geotechnical Borings and Investigations	\$ 5,540.00	\$ -	\$ 206,924.74	\$ -	\$ 212,464.74
4. Subsurface Utility Engineering	\$ 4,580.00	\$ -	\$ -	\$ 47,100.00	\$ 51,680.00
5. Roadway Design	\$ 125,935.00	\$ -	\$ -	\$ -	\$ 125,935.00
6. Drainage Design	\$ 94,650.00	\$ -	\$ -	\$ -	\$ 94,650.00
7. Bridge Design	\$ 118,400.00	\$ -	\$ -	\$ -	\$ 118,400.00
8. Retaining Walls	\$ 50,700.00	\$ -	\$ -	\$ -	\$ 50,700.00
9. Traffic Control	\$ 42,585.00	\$ -	\$ -	\$ -	\$ 42,585.00
10. Signing, Pavement Markings and Signalization	\$ 85,675.00	\$ -	\$ -	\$ -	\$ 85,675.00
11. Miscellaneous Design	\$ 113,820.00	\$ -	\$ -	\$ -	\$ 113,820.00
12. Contract Management and Administration	\$ 51,120.00	\$ -	\$ -	\$ -	\$ 51,120.00
LABOR SUBTOTALS	\$ 710,940.00	\$ 3,000.00	\$ 206,924.74	\$ 47,100.00	\$ 967,964.74
Direct Expenses	\$ 6,096.25				\$ 6,096.25
PROVIDER SUBTOTALS (LUMP SUM)	\$ 717,036.25	\$ 3,000.00	\$ 206,924.74	\$ 47,100.00	\$ 974,060.99

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

Closure

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

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

Please email all invoices to sharris@midlandtxedc.com

Please copy _____

If you want us to proceed with the services, please have an authorized person sign this Agreement below and return to us. We will commence services only after we have received a fully executed agreement. Fees and times stated in this Agreement are valid for sixty (60) days after the date of this letter.

(This space is intentionally left blank)

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

Very truly yours,

KIMLEY-HORN AND ASSOCIATES, INC.

Signed:

Printed Name: Pedro (Rey) Carrasco, Jr., P.E.

Title: Project Manager

Signed:

Printed Name: Brian Boecker, P.E.

Title: Senior Vice President

Midland Development Corporation

SIGNED: _____

PRINTED NAME: _____

TITLE: _____

DATE: _____

Attachment – Standard Provisions

KIMLEY-HORN AND ASSOCIATES, INC.

STANDARD PROVISIONS

- 1) **Consultant's Scope of Services and Additional Services.** The Consultant will perform only the services specifically described in this Agreement. If requested by the Client and agreed to by the Consultant, the Consultant will perform Additional Services, which shall be governed by these provisions. Unless otherwise agreed to in writing, the Client shall pay the Consultant for any Additional Services an amount based upon the Consultant's then-current hourly rates plus an amount to cover certain direct expenses including telecommunications, in-house reproduction, postage, supplies, project related computer time, and local mileage. Other direct expenses will be billed at 1.15 times cost.
- 2) **Client's Responsibilities.** In addition to other responsibilities herein or imposed by law, the Client shall:
 - a. Designate in writing a person to act as its representative, such person having complete authority to transmit instructions, receive information, and make or interpret the Client's decisions.
 - b. Provide all information and criteria as to the Client's requirements, objectives, and expectations for the project and all standards of development, design, or construction.
 - c. Provide the Consultant all available studies, plans, or other documents pertaining to the project, such as surveys, engineering data, environmental information, etc., all of which the Consultant may rely upon.
 - d. Arrange for access to the site and other property as required for the Consultant to provide its services.
 - e. Review all documents or reports presented by the Consultant and communicate decisions pertaining thereto within a reasonable time so as not to delay the Consultant.
 - f. Furnish approvals and permits from governmental authorities having jurisdiction over the project and approvals and consents from other parties as may be necessary.
 - g. Obtain any independent accounting, legal, insurance, cost estimating, and feasibility services required by Client.
 - h. Give prompt written notice to the Consultant whenever the Client becomes aware of any development that affects the Consultant's services or any defect or noncompliance in any aspect of the project.
- 3) **Period of Services.** Unless otherwise stated herein, the Consultant will begin work after receipt of a properly executed copy of this Agreement. This Agreement assumes conditions permitting continuous and orderly progress through completion of the services. Times for performance shall be extended as necessary for delays or suspensions due to circumstances that the Consultant does not control. If such delay or suspension extends for more than six months, Consultant's compensation shall be renegotiated.
- 4) **Method of Payment.** Client shall pay Consultant as follows:
 - a. Invoices will be submitted periodically for services performed and expenses incurred. Payment of each invoice will be due within 25 days of receipt. The Client shall also pay any applicable sales tax. All retainers will be held by the Consultant and applied against the final invoice. Interest will be added to accounts not paid within 25 days at the maximum rate allowed by law. If the Client fails to make any payment due under this or any other agreement within 30 days after the Consultant's transmittal of its invoice, the Consultant may, after giving notice to the Client, suspend services and withhold deliverables until all amounts due are paid.
 - b. If the Client relies on payment or proceeds from a third party to pay Consultant and Client does not pay Consultant's invoice within 60 days of receipt, Consultant may communicate directly with such third party to secure payment.
 - c. If the Client objects to an invoice, it must advise the Consultant in writing giving its reasons within 14 days of receipt of the invoice or the Client's objections will be waived, and the invoice shall conclusively be deemed due and owing. If the Client objects to only a portion of the invoice, payment for all other portions remains due.
 - d. If the Consultant initiates legal proceedings to collect payment, it may recover, in addition to all amounts due, its reasonable attorneys' fees, reasonable experts' fees, and other expenses related to the proceedings. Such expenses shall include the cost, at the Consultant's normal hourly billing rates, of the time devoted to such proceedings by its employees.
 - e. The Client agrees that the payment to the Consultant is not subject to any contingency or condition. The Consultant may negotiate payment of any check tendered by the Client, even if the words "in full satisfaction" or words intended to have similar effect appear on the check without such negotiation being an accord and satisfaction of any disputed debt and without prejudicing any right of the Consultant to collect additional amounts from the Client.
- 5) **Use of Documents.** All documents and data prepared by the Consultant are related exclusively to the services described in this Agreement and may be used only if the Client has satisfied all of its obligations under this Agreement. They are not intended or represented to be suitable for use or reuse by the Client or others on extensions of this project or on any other project. Any modifications by the Client to any of the Consultant's documents, or any reuse of the documents without written authorization by the Consultant will be at the Client's sole risk and without liability to the Consultant, and the Client shall indemnify, defend and hold the Consultant

harmless from all claims, damages, losses and expenses, including but not limited to attorneys' fees, resulting therefrom. The Consultant's electronic files and source code remain the property of the Consultant and shall be provided to the Client only if expressly provided for in this Agreement. Any electronic files not containing an electronic seal are provided only for the convenience of the Client and use of them is at the Client's sole risk. In the case of any defects in the electronic files or any discrepancies between them and the hardcopy of the documents prepared by the Consultant, the hardcopy shall govern.

- 6) **Intellectual Property.** Consultant may use or develop its proprietary software, patents, copyrights, trademarks, trade secrets, and other intellectual property owned by Consultant or its affiliates ("Intellectual Property") in the performance of this Agreement. Unless explicitly agreed to in writing by both parties to the contrary, Consultant maintains all interest in and ownership of its Intellectual Property and conveys no interest, ownership, license to use, or any other rights in the Intellectual Property to Client. Any enhancements of Intellectual Property made during the performance of this Agreement are solely owned by Consultant and its affiliates.
- 7) **Opinions of Cost.** Because the Consultant does not control the cost of labor, materials, equipment or services furnished by others, methods of determining prices, or competitive bidding or market conditions, any opinions rendered as to costs, including but not limited to the costs of construction and materials, are made solely based on its judgment as a professional familiar with the industry. The Consultant cannot and does not guarantee that proposals, bids or actual costs will not vary from its opinions of cost. If the Client wishes greater assurance as to the amount of any cost, it shall employ an independent cost estimator. Consultant's services required to bring costs within any limitation established by the Client will be paid for as Additional Services.
- 8) **Termination.** The obligation to provide further services under this Agreement may be terminated by either party upon seven days' written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof, or upon thirty days' written notice for the convenience of the terminating party. The Consultant shall be paid for all services rendered and expenses incurred to the effective date of termination, and other reasonable expenses incurred by the Consultant as a result of such termination.
- 9) **Standard of Care.** The standard of care applicable to Consultant's services will be the degree of care and skill ordinarily exercised by consultants performing the same or similar services in the same locality at the time the services are provided. No warranty, express or implied, is made or intended by the Consultant's performance of services, and it is agreed that the Consultant is not a fiduciary with respect to the Client.
- 10) **LIMITATION OF LIABILITY.** IN RECOGNITION OF THE RELATIVE RISKS AND BENEFITS OF THE PROJECT TO THE CLIENT AND THE CONSULTANT, THE RISKS ARE ALLOCATED SUCH THAT, TO THE FULLEST EXTENT ALLOWED BY LAW, AND NOTWITHSTANDING ANY OTHER PROVISIONS OF THIS AGREEMENT OR THE EXISTENCE OF APPLICABLE INSURANCE COVERAGE, THAT THE TOTAL LIABILITY, IN THE AGGREGATE, OF THE CONSULTANT AND THE CONSULTANT'S OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, AND SUBCONSULTANTS TO THE CLIENT OR TO ANYONE CLAIMING BY, THROUGH OR UNDER THE CLIENT, FOR ANY AND ALL CLAIMS, LOSSES, COSTS OR DAMAGES WHATSOEVER ARISING OUT OF OR IN ANY WAY RELATED TO THE SERVICES UNDER THIS AGREEMENT FROM ANY CAUSES, INCLUDING BUT NOT LIMITED TO, THE NEGLIGENCE, PROFESSIONAL ERRORS OR OMISSIONS, STRICT LIABILITY OR BREACH OF CONTRACT OR ANY WARRANTY, EXPRESS OR IMPLIED, OF THE CONSULTANT OR THE CONSULTANT'S OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, AND SUBCONSULTANTS, SHALL NOT EXCEED TWICE THE TOTAL COMPENSATION RECEIVED BY THE CONSULTANT UNDER THIS AGREEMENT OR \$50,000, WHICHEVER IS GREATER. HIGHER LIMITS OF LIABILITY MAY BE NEGOTIATED FOR ADDITIONAL FEE. THIS SECTION IS INTENDED SOLELY TO LIMIT THE REMEDIES AVAILABLE TO THE CLIENT OR THOSE CLAIMING BY OR THROUGH THE CLIENT, AND NOTHING IN THIS SECTION SHALL REQUIRE THE CLIENT TO INDEMNIFY THE CONSULTANT.
- 11) **Mutual Waiver of Consequential Damages.** In no event shall either party be liable to the other for any consequential, incidental, punitive, or indirect damages including but not limited to loss of income or loss of profits.
- 12) **Construction Costs.** Under no circumstances shall the Consultant be liable for extra costs or other consequences due to unknown conditions or related to the failure of contractors to perform work in accordance with the plans and specifications. Consultant shall have no liability whatsoever for any costs arising out of the Client's decision to obtain bids or proceed with construction before the Consultant has issued final, fully approved plans and specifications. The Client acknowledges that all preliminary plans are subject to substantial revision until plans are fully approved and all permits obtained.
- 13) **Certifications.** All requests for the Consultant to execute certificates, lender consents, or other third-party reliance letters must be submitted to the Consultant at least 14 days prior to the requested date of execution. The Consultant shall not be required to execute certificates, consents, or third-party reliance letters that are inaccurate,

that relate to facts of which the Consultant does not have actual knowledge, or that would cause the Consultant to violate applicable rules of professional responsibility.

- 14) **Dispute Resolution.** All claims arising out of this Agreement or its breach shall be submitted first to mediation in accordance with the American Arbitration Association as a condition precedent to litigation. Any mediation or civil action by Client must be commenced within one year of the accrual of the cause of action asserted but in no event later than allowed by applicable statutes.
- 15) **Hazardous Substances and Conditions.** Consultant shall not be a custodian, transporter, handler, arranger, contractor, or remediator with respect to hazardous substances and conditions. Consultant's services will be limited to analysis, recommendations, and reporting, including, when agreed to, plans and specifications for isolation, removal, or remediation. The Consultant will notify the Client of unanticipated hazardous substances or conditions of which the Consultant actually becomes aware. The Consultant may stop affected portions of its services until the hazardous substance or condition is eliminated.
- 16) **Construction Phase Services.**
 - a. If the Consultant prepares construction documents and the Consultant is not retained to make periodic site visits, the Client assumes all responsibility for interpretation of the documents and for construction observation, and the Client waives any claims against the Consultant in any way connected thereto.
 - b. The Consultant shall have no responsibility for any contractor's means, methods, techniques, equipment choice and usage, sequence, schedule, safety programs, or safety practices, nor shall Consultant have any authority or responsibility to stop or direct the work of any contractor. The Consultant's visits will be for the purpose of endeavoring to provide the Client a greater degree of confidence that the completed work of its contractors will generally conform to the construction documents prepared by the Consultant. Consultant neither guarantees the performance of contractors, nor assumes responsibility for any contractor's failure to perform its work in accordance with the contract documents.
 - c. The Consultant is not responsible for any duties assigned to it in the construction contract that are not expressly provided for in this Agreement. The Client agrees that each contract with any contractor shall state that the contractor shall be solely responsible for job site safety and its means and methods; that the contractor shall indemnify the Client and the Consultant for all claims and liability arising out of job site accidents; and that the Client and the Consultant shall be made additional insureds under the contractor's general liability insurance policy.
- 17) **No Third-Party Beneficiaries; Assignment and Subcontracting.** This Agreement gives no rights or benefits to anyone other than the Client and the Consultant, and all duties and responsibilities undertaken pursuant to this Agreement will be for the sole benefit of the Client and the Consultant. The Client shall not assign or transfer any rights under or interest in this Agreement, or any claim arising out of the performance of services by Consultant, without the written consent of the Consultant. The Consultant reserves the right to augment its staff with subconsultants as it deems appropriate due to project logistics, schedules, or market conditions. If the Consultant exercises this right, the Consultant will maintain the agreed-upon billing rates for services identified in the contract, regardless of whether the services are provided by in-house employees, contract employees, or independent subconsultants.
- 18) **Confidentiality.** The Client consents to the use and dissemination by the Consultant of photographs of the project and to the use by the Consultant of facts, data and information obtained by the Consultant in the performance of its services. If, however, any facts, data or information are specifically identified in writing by the Client as confidential, the Consultant shall use reasonable care to maintain the confidentiality of that material.
- 19) **Miscellaneous Provisions.** This Agreement is to be governed by the law of the State of Texas. This Agreement contains the entire and fully integrated agreement between the parties and supersedes all prior and contemporaneous negotiations, representations, agreements, or understandings, whether written or oral. Except as provided in Section 1, this Agreement can be supplemented or amended only by a written document executed by both parties. Any conflicting or additional terms on any purchase order issued by the Client shall be void and are hereby expressly rejected by the Consultant. If Client requires Consultant to register with or use an online vendor portal for payment or any other purpose, any terms included in the registration or use of the online vendor portal that are inconsistent or in addition to these terms shall be void and shall have no effect on Consultant or this Agreement. Any provision in this Agreement that is unenforceable shall be ineffective to the extent of such unenforceability without invalidating the remaining provisions. The non-enforcement of any provision by either party shall not constitute a waiver of that provision nor shall it affect the enforceability of that provision or of the remainder of this Agreement.

The Perryman
Group Consulting
Services
Agreement

RESOLUTION NO. _____

**RESOLUTION AUTHORIZING THE EXECUTION OF A
CONSULTANT SERVICES AGREEMENT WITH THE
PERRYMAN GROUP IN AN AMOUNT NOT TO
EXCEED \$80,000.00 FOR THE PRODUCTION OF
CERTAIN ECONOMIC INDICES AND REPORTS
REGARDING THE CITY OF MIDLAND, TEXAS, AND
THE PERMIAN BASIN**

WHEREAS, the Board of Directors finds it to be in the public interest to authorize the execution of a consultant services agreement with The Perryman Group in an amount not to exceed \$80,000.00 for the production of certain economic indices and reports regarding the City of Midland, Texas, and the Permian Basin;

**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 The Perryman Group in an amount not to exceed \$80,000.00 for the production of certain economic indices and reports regarding the City of Midland, Texas, and the Permian Basin. 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 The Perryman Group, in accordance with the terms of the consulting services agreement, from funds available in the Midland Development Corporation Operating Budget upon receipt of proper invoices or statements approved by the Executive Director 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., 2022, by the following vote:

Directors voting "AYE":

Directors voting "NAY":

STEPHEN LOWERY,
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 12th day of September, 2022, 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 THE PERRYMAN GROUP (“*COMPANY*”).

ARTICLE I. PURPOSE

The purpose of this Agreement is to state the terms and conditions under which *COMPANY* shall perform certain consulting services to provide economic indices (hereinafter also referred to as the “*Project*”) for *MDC*.

ARTICLE II. SERVICES TO BE PERFORMED

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

ARTICLE III. FINANCIAL CONSIDERATIONS

MDC agrees to pay *COMPANY* in an amount not to exceed \$80,000.00 for the consulting services described in **Exhibit A**. *MDC* agrees to pay *COMPANY* according to the schedule set forth in **Exhibit A**.

ARTICLE IV. TERM

The term of this Agreement shall be from September 12, 2022, until September 30, 2023, unless the Agreement is terminated as provided below.

Exhibit A

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, the 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.

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.

ARTICLE XIV. INDEMNITY

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

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

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

COMPANY AGREES THAT IT WILL 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 WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST MDC OR ANY OF ITS OFFICERS, AGENTS, OR EMPLOYEES INCLUDING ATTORNEY'S FEES.

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

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

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

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

J. Prompt Pay Act. MDC and COMPANY agree that Texas Government Code, Chapter

2251, Payment for Goods and Services does not waive governmental immunity.

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

L. 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 CITY 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 IN DUPLICATE the day and year first above mentioned.

MIDLAND DEVELOPMENT CORPORATION

Stephen Lowery, Chairman

ATTEST:

Jill Pennington, Secretary

[Signature Page Follows]

PROJECT CONCEPT

Development and Maintenance of an Economic Index for Midland and the Permian Basin

August 2022

510 N. Valley Mills Dr., Suite 300

Waco, TX 76710

ph. 254.751.9595, fax 254.751.7855

info@perrymangroup.com

www.perrymangroup.com



Exhibit A

Development and Maintenance of an Economic Index for Midland and the Permian Basin

I. Introduction

The Perryman Group (TPG) The Perryman Group (TPG) is pleased to present this project concept for the development of a summary economic index for Midland and the Permian Basin. This measure would be designed to be easily grasped, while backed by rigorous econometric and statistical modeling. It would also be based on frequently released data to allow for monthly updates and provide detail on individual sectors of the economy.

II. Qualifications

TPG is uniquely qualified to conduct this analysis. Dr. M. Ray Perryman, founder and President of the firm, has extensive experience in econometric modeling, statistical modeling, and other data analysis methods needed for the development of an index for Midland and the Permian Basin.

The Perryman Group has served the needs of more than **2,500 private-sector** clients in numerous industries including

- the **9** largest firms in the US,
- **8 of the 10** largest law firms in the US,
- **3 of the 4** largest domestic foundations,
- the **6** largest energy companies doing business in the US,
- the **12** largest technology companies in the world,
- the **5** largest financial institutions in the US,
- **two-thirds** of the Global 25, and
- more than **one-half** of the Fortune 100.

The firm has also completed over **1,000 public policy studies** on a variety of issues, and Dr. Perryman has served as advisor and/or consultant to several Presidents, numerous House and Senate Committees, 10 Cabinet departments, numerous

foreign governments, and more than 100 other state and federal agencies. He has testified extensively regarding economic, financial, statistical, and damages issues in state and federal courts as well as in more than 100 regulatory proceedings.

Models and Systems

The Perryman Group maintains an extensive set of proprietary models and systems which are ideally suited to this analysis. Dr. M. Ray Perryman, founder and President of the firm, developed the key models to be used in this study in the 1970s and early 1980s and has consistently maintained, expanded, and updated them since that time. The firm also maintains an extensive set of detailed historical data which will be used in the development of an index.

The **US Multi-Regional Econometric Model** provides detailed industry-level is used to provide ongoing forecasts for the various regions and metropolitan areas within the United States. It is formulated in an internally consistent manner and is designed to permit the integration of relevant global, national, state, and local factors into the projection process.

The model is the result of four decades of continuing research in econometrics, economic theory, statistical methods, and key policy issues and behavioral patterns, as well as intensive, ongoing study of all aspects of the global, US, state, metropolitan area, and county economies. It is extensively used by scores of federal and State governmental entities on an ongoing basis, as well as hundreds of major corporations. This model has been used to produce ongoing forecasts of Texas and its regions and counties since the early 1980s and has been extended to include any county or multi-county area in the United States.

The **US Multi-Regional Impact Assessment System (USMRIAS)** is designed to measure the multiplier (or “ripple”) effects of an economic stimulus through the

economy. It has been used in hundreds of applications and public policy studies in all 50 states, has been peer reviewed on numerous occasions, and enjoys an excellent reputation for reliability and credibility. The system reflects the unique industrial structure and characteristics of the United States and every local area within the country.

The USMRIAS is somewhat similar in format to the Input-Output Model of the United States which is maintained by the US Department of Commerce. The model developed by TPG, however, incorporates several important enhancements and refinements. Specifically, the expanded system includes (1) comprehensive 500-sector coverage for any county, multi-county, or urban region; (2) calculation of both total expenditures and value-added by industry and region; (3) direct estimation of expenditures for multiple basic input choices (expenditures, output, income, or employment); (4) extensive parameter localization; (5) price adjustments for real and nominal assessments by sectors and areas; (6) measurement of the induced impacts associated with payrolls and consumer spending; (7) embedded modules to estimate multi-sectoral direct spending effects; (8) estimation of retail spending activity by consumers; and (9) comprehensive linkage and integration capabilities with a wide variety of econometric, real estate, occupational, and fiscal impact models, thus permitting dynamic simulations.

Related Experience

The Perryman Group has analyzed the economic and fiscal effects of various types of economic stimuli on hundreds of occasions over the past four decades. These assessments include effects of corporate locations and expansions, major real estate developments, regulatory and other policy changes, benefits payments, legislative initiatives, tax reform, and numerous others.

The Perryman Group also has extensive experience in index number construction. Dr. Perryman was the first to use econometric models to derive index numbers when he created a measure of Federal Reserve actions while still in graduate school in the 1970s. This measure has been adopted by numerous central banks throughout the world. The Perryman Group has also created industrial production and unit labor cost indices that can be implemented for any county in the US; these measures are widely utilized throughout the country.

Dr. Perryman has been an advisor to the US Department of Labor, the US Department of Commerce, and the Federal Reserve System on various index number construction issues. He also created a technique for weighting various economic measures in an optimal manner. The Perryman Group has developed similar index measures for other clients, and provides a regular quarterly index for multiple regions for a major public investment and financial services firm.

The firm has also conducted a number of studies specifically involving the Permian Basin and Midland. Dr. Perryman developed an econometric model of the areas in the late 1970s and has provided ongoing projections for the region since that time. In addition to the large Priority Midland study which was recently completed, the firm has performed economic development analyses and strategic plans, corporate location impact studies, health care studies, a large-scale study of commercial activity on University Lands, an evaluation of housing patterns and needs, workforce studies, tax policy assessments, studies of tourism and recreation effects of various venues and programs (including new hotels, athletic programs, and cultural amenities), assessments of the costs of homelessness, and many other analyses within the region. The firm recently completed an analysis of the economic impact of the University of Texas Permian Basin and is presently examining (1) the effects of a potential Census undercount on the region, (2) the impact of the Permian Basin on all segments of the Texas economy, and (3) economic elements of a strategic plan for the Odessa area.

In summary, TPG brings decades of knowledge and expertise to this endeavor. A short biographical summary for Dr. Perryman and a Firm Profile (attached to this project concept) highlight key aspects of The Perryman Group's capabilities as well as representative project work and testimony. More detailed information can be found on the firm's website at www.perrymangroup.com.

III. Scope of Work

- A. TPG will compile research related to this topic including empirical studies related to summary measures of business activity. (TPG is familiar with this literature and, as noted above, Dr. Perryman has published extensively in the field.)
- B. TPG will compile a dataset of reliable data series released with sufficient frequency and granularity to be used as input components of the summary measure. This information will include series that capture patterns in key industries (such as energy, health care, manufacturing, real estate and finance).
- C. TPG will utilize econometric and statistical methods to develop a summary measure. As noted, it is anticipated that this indicator would incorporate industry-level components.
- D. The firm's proprietary models and databases will be used in the development and testing of the summary measure and its individual components. The index will be designed in the same manner as a multi-regional index that TPG has provided for a major financial services firm for the past several years.

- E. TPG will prepare, on a monthly basis, a brief report that provides the latest index values for Midland and the Permian Basin and key sectors and describes the underlying factors causing movement.

IV. Fees and Timing

- A. TPG will complete the initial analysis and provide monthly updates Over the period from June 2022 through September 2023 for one year for an annual fee of \$80,000 plus any direct, out-of-pocket expenses. An initial retainer of one-half of this amount is requested upon project initiation. The remainder will be due of upon completion of the first monthly summary.

V. Other Provisions

- A. Any additional work or appearances will be performed upon request and billed in accordance with the firm's standard rates or be the subject of a separate agreement.
- B. TPG will carry appropriate insurance coverage throughout the life of this project. Assuming timely payment of invoices, TPG will hold all sponsoring entities harmless for any debts incurred in the completion of this analysis.

M. RAY PERRYMAN

President & CEO, The Perryman Group
Institute Distinguished Professor of Economic Theory and Method
International Institute for Advanced Studies

ACADEMIC BACKGROUND

Ph.D. in Economics, Rice University
B.S. in Mathematics, Baylor University

SELECTED ACADEMIC/PROFESSIONAL POSITIONS AND ACTIVITY (Current and Former)

Business Economist-in-Residence, Cox School of Business, Southern Methodist University
University Professor and Economist-in-Residence, Baylor University
Herman Brown Professor of Economics, Baylor University
Founder and Director, Center for the Advancement of Economic Analysis, Baylor University
President, Southwestern Economics Association
President, Southwestern Society of Economists
Editor, *The Southwestern Journal of Economic Abstracts*
Editor, *International Series in Economic Modeling* (book series)
Editor and Author, *The Perryman Report & Texas Letter* (monthly economic newsletter)
Editor and Author, *The Perryman Economic Forecast* (subscription forecasting service)
Author, "The Economist" (syndicated weekly newspaper column)
Host, *The Perryman Report*, daily radio broadcast on the Texas State Network
Assistant Editor, *The Journal of Economics*
Contributing Economist, "Marketplace Radio," National Public Radio
Published or presented more than 400 academic papers
Authored or edited 5 books

SELECTED ADVISORY/CONSULTING ACTIVITY (Current and Former)

Advisor or Member for more than 50 governmental entities at the international, federal, state, and regional levels including: Federal Task Force on the Savings and Loan Crisis, Congress of the United States; Joint Economic Committee, Congress of the United States; United States Senate Academic Advisory Committee on the North American Free Trade Agreement; and Governor's Task Force on Economic Growth
Economic Advisor, Federal Reserve System and Federal Home Loan Bank Board
Economic Advisor, United States Senate
Economic Advisor, United States House of Representatives
Economic Advisor, Office of the President
Economic Advisor, US Departments of State, Defense, the Treasury, Labor, Agriculture, the Interior, Commerce, Energy, and Housing and Urban Development
Economic Consultant, Federal Communications Commission
Economic Advisor, Office of the Governor, State of Texas
Economic Advisor, Ministry of Economic Affairs, Republic of China
Chairman of the Board and President, Texas Manufacturing Technology Center
Chairman, Blue Cross & Blue Shield of Texas Affiliate Board

Member, Board of Directors, Health Care Service Corporation (Chair of Finance, Governance and Nominating, and Compensation Committees)
Member, Board of Directors, Real Estate Council of Dallas
Chairman, Texas Legislative Conference
President, Board of Directors, Texas Leadership Institute
Co-Chair, Strategic Advisory Committee, Team Texas: The Future of Nursing, Robert Wood Johnson Foundation
Member, Board of Visitors, Scott & White Hospital
Director, Women's Financial Services, Southern Methodist University
Advisory Director, Texas Association of Business and Chambers of Commerce
Advisory Director, Chase Bank
Director of projects, studies, and analyses for more than 2,000 clients, including major corporations, public utilities, government agencies, and financial services groups
Published more than 2,500 trade articles and columns

SELECTED HONORS AND AWARDS

Doctoris Honoris Causa degree, International Institute for Advanced Studies
Lifetime Achievement Award, International Institute for Advanced Studies
Citation for Outstanding Initiative in Promoting World Trade, China External Development and Trade Administration
Honorary Lifetime Fellow, National Academy of Nursing
Citation for Meritorious Efforts in Promoting World Capitalism (including the People's Republic of China), The Democracy Foundation
Citation for Promoting International Academic Exchange, The Asia and World Institute
Citation for Outstanding Advisory Contributions, Congress of the United States
Presidential Medal of Merit
First Recipient, "Ray Perryman Leadership Award," Texas Association of Nurse Practitioners
Award for Outstanding Research Achievement in Economic Modeling, Systems Research Foundation
Outstanding Texas Leader (John Ben Shepperd Memorial Award)
Outstanding Alumnus in Economic Research, Rice University
Named the Outstanding Young Person in the World in the Field of Economics and Business Innovation, one of five Outstanding Young Texans, one of ten Outstanding Young Americans, and one of ten Outstanding Young Persons in the World
2012 Texan of the Year, Texas Legislative Conference
2013 Distinguished Service Medal, Baylor University
2014 Texas Leadership Hall of Fame, JBS Leadership Institute
2016 Cesar E. Chavez Conscience Builders Award, Cesar E. Chavez Legacy and Educational Foundation
2018 Most Dynamic Economic Researcher in the US by Global Business Insights
2019 Chairman's Award for Lifetime Achievement in Economic Development from the International Economic Development Council
2019 "Go Global" Award for Economic Analysis from the International Trade Council
Recognized by Texas Legislature for "tireless efforts in helping to build a better Texas" and "shaping the economic future of the state; extensive contributions to economic growth in the Lone Star State"

THE PERRYMAN GROUP

Firm Profile and Capabilities

The Perryman Group (TPG) specializes in all aspects of economic analysis, research, and forecasting. Led by Dr. M. Ray Perryman, the organization enjoys a worldwide reputation for its forecasting, modeling efforts, and high-profile public policy studies. For more than 30 years, the firm has provided some of the most innovative approaches in the industry to meet the needs of thousands of clients.

IMPACT ASSESSMENT

Over more than three decades, The Perryman Group has developed a reputation for quality impact assessment techniques. The firm maintains a set of impact evaluation models which can be applied in numerous contexts. These systems have been employed in projects measuring economic effects of various activities around the globe. Specific industrial detail can be provided for more than 500 industries at the national, state, regional, metropolitan statistical area (MSA), and county level.

Previous studies include (among hundreds of others) the economic impact of site locations, utility rate changes, infrastructure development, new transportation facilities, tourism and cultural attractions, regulatory changes, educational programs and investments, legislative changes, economic development initiatives, insurance and judicial reform, immigration policy, water resources, health care facilities and initiatives, mixed-use real estate developments, and communications and Internet policy. In addition to traditional economic aggregates such as employment, income, sales, expenditures, and gross product, TPG also provides projections of consumer spending, secondary development, occupational categories, and fiscal revenues.

REGULATORY ANALYSIS

The Perryman Group has considerable experience and expertise in providing support for regulatory proceedings and initiatives. Previous projects have included analyzing the effects of utility and transportation rate changes on consumers and industrial concerns and evaluating the need for new electric facilities, water projects, transportation projects, and telecommunications investments. The firm also has experience in assessing the economic aspects of environmental regulations, energy policy, insurance, automobile dealerships, and other sectors subject to regulatory oversight. In addition, testimony has been provided before state and federal regulatory bodies on hundreds of occasions.

LITIGATION SUPPORT AND EXPERT TESTIMONY

For litigation support and expert testimony purposes, The Perryman Group investigates and testifies on a variety of issues. Providing research, analysis, and testimony on behalf of major US law firms and their clients in complex matters, the Perryman team has addressed topics including security markets, intellectual property, employment, forensics, officers' and directors' liability,

real estate markets, cash flow estimation, environmental and natural resource factors, lender liability, valuation, taxation, damage measurement, business losses, and antitrust issues. Dr. Perryman has successfully testified on numerous occasions and is well known for making the most difficult material and concepts readily accessible and easy to understand for any audience.

PUBLIC POLICY

The Perryman Group frequently prepares public policy studies that play a key role in shaping legislation. Representative topics include energy deregulation, communications (telephone, Internet, and cable), judicial reforms, insurance, transportation (water, air, rail, trucking, and highway funding), financial services, health care, economic development, education funding and policy, taxation, social services, oil and gas development, pipelines, mergers and acquisitions, competition, real estate, franchising, legal aid, and international trade). Analysis by the firm often plays a key role in policy formulation and implementation. More than 1,000 studies have been prepared.

ECONOMIC DEVELOPMENT AND STRATEGIC PLANNING

The Perryman Group has assisted communities, states, regions, and nations in comprehensive economic development efforts. The firm also aids corporations in determining appropriate sites for new facilities and negotiating suitable arrangements. Efforts by The Perryman Group have played a positive role in the creation of hundreds of thousands of jobs. In particular, the firm provided the underlying analysis that led to the creation of major economic development programs in Texas that are widely regarded as the state-of-the-art.

In today's world, economic development means different things in different places. For some communities, it is investing in major infrastructure programs to support future production. In others, it's attracting traditional manufacturing establishments. In still others, it's creating a base of small or large "high-tech" facilities. Some areas or institutions want to become distribution or service centers; others want to capitalize on an existing natural resource base. In many instances, the primary objective is to retain and expand existing firms; the top priority can also be establishing an environment that is conducive to small company startups. Companies and educational organizations also have multiple objectives, ranging from improved labor rates to opportunities for technology transfer.

Utilizing systems specifically geared to economic development, the firm's consultants can identify "target industries" that are likely to expand in the near future and be a complement to the local resource base. Through detailed analysis of workforce characteristics, the existing industrial base, quality-of-life factors, and local attitudes and perceptions, the firm can craft positive plans to maximize opportunities and go the extra mile to ensure their implementation.

FORECASTING AND MODELING

The firm has developed and maintains a full range of international, national, regional, state, metropolitan area, and small area (zip code, census tract, etc.) forecasting and modeling capabilities. In particular, Dr. Perryman has developed large-scale econometric and impact

assessment models that have been used in hundreds of projects across all 50 states and many foreign countries. These systems and the accompanying data resources permit forecasting of energy demand and supply, real estate market absorption, retail sales, infrastructure needs, industrial performance (manufacturing and service), transportation demand, financial markets, bond feasibility, construction costs, investment returns, and numerous other applications. In addition, projections regarding labor markets, demographics, global markets and trade, and cost factors such as wage rates and capital costs are generated for clients and subscribers on a frequent basis. Forecasts have been provided in a subscription service for more than three decades. The firm is on retainer to various entities (such as financial institutions and electricity providers) to supply ongoing information.

PUBLICATIONS

The Perryman Group prepares several publications on a regular basis. The forecast series provides an in-depth analysis of the national, state, regional, and local economies in the state of Texas. The Perryman Report & Texas Letter is a monthly newsletter that provides analysis of local, statewide, national, and international issues, with particular attention given to how they impact the economy in Texas.

PRESENTATIONS

Nationally recognized as an informative and entertaining speaker, Dr. M. Ray Perryman addresses audiences from all walks of life. Dr. Perryman has established a reputation for communicating often dry subjects in an effective and humorous fashion. Other presentations include specialized seminars on the economic outlook, industrial trends and patterns, economic development, and forecasting techniques.

In addition, the firm often provides briefings to corporate boards of directors and senior management personnel on a variety of topics, including assessment of national and regional economic conditions, trends in specific industries, patterns in international trade, and strategic planning in an uncertain business environment.

Income Statement

MIDLAND DEVELOPMENT CORPORATION
INCOME STATEMENT FOR THE 11 MONTHS ENDED
August 31, 2022

	Aug-22	YTD	Budgeted Amount
Revenue	\$1,417,958.95	\$10,446,009.21	\$10,976,644.00
40100 - State Sales Tax	\$1,326,335.50	\$9,596,520.23	\$10,000,000.00
40600 - Public ROW Use Fees	\$0.00	\$4,823.00	\$0.00
43000 - Interest	\$873.55	\$2,854.90	\$0.00
43010 - Interest - Nonpooled Invest	\$9,362.90	\$27,941.08	\$0.00
46190 - Miscellaneous Rentals	\$81,387.00	\$813,870.00	\$976,644.00
4235150 - Midland Dvlpmnt Corp Revenue	\$1,417,958.95	\$10,446,009.21	\$10,976,644.00

Expense	\$522,662.32	\$14,352,053.50	\$21,110,973.00
51010 - Base Salary	\$26,221.23	\$254,706.21	\$350,493.00
51090 - Fica MDC Portion	\$2,005.92	\$18,049.13	\$28,442.00
51110 - Health Insurance	\$1,201.70	\$9,783.62	\$30,180.00
51135 - ACCE Profit Sharing	\$0.00	\$1,450.00	\$24,535.00
52010 - Office Supplies	\$235.32	\$4,581.69	\$6,000.00
52110 - Motor Vehicle Supplies	\$0.00	\$970.44	\$1,000.00
52115 - Minor Furniture & Fixtures	\$0.00	\$0.00	\$500.00
52155 - Minor Computer Hrdwre & Periph	\$0.00	\$49.98	\$5,000.00
52160 - Computer Software & Supplies	\$0.00	\$52,098.32	\$25,000.00
52620 - Postage	\$0.00	\$319.75	\$300.00
53010 - Communication	\$1,323.50	\$14,449.31	\$17,000.00
53030 - Light & Power	\$8.91	\$98.40	\$150.00
53110 - Insurance-External	\$117,308.39	\$342,390.45	\$110,000.00
53212 - Equipment Rental-External	\$345.34	\$3,481.75	\$5,000.00
53220 - Advertising	\$6,183.95	\$166,231.75	\$200,000.00
53370 - Grounds Maintenance	\$1,161.99	\$14,464.85	\$12,000.00
53405 - Software Maintenance	\$1,329.22	\$12,611.02	\$12,000.00
53440 - External Audit Fees	\$0.00	\$31,000.00	\$24,000.00
53450 - Consulting Fees	\$36,999.67	\$241,489.80	\$250,000.00
53510 - Travel & Entertainment	\$1,134.57	\$8,175.51	\$8,000.00
53520 - Dues & Subscriptions	\$4,344.70	\$13,951.70	\$20,000.00
53530 - Training,Registration Fees,Etc	\$45.00	\$7,168.84	\$8,000.00
53905 - Economic Development Incentive	\$0.00	\$0.00	\$4,527,925.00
53907 - Business Recruitment & Retentn	\$0.00	\$27,575.57	\$50,000.00
53909 - Prior Year Committed Incentives	\$20,937.29	\$5,652,426.31	\$9,798,329.00
53920 - Rent	\$5,540.00	\$60,940.00	\$75,000.00
54010 - Building Maintenance	\$7,279.32	\$44,987.29	\$80,000.00
55120 - Maint. - Instruments & Appara.	\$34.58	\$764.26	\$1,000.00
56188 - MOTRAN	\$0.00	\$142,500.00	\$142,500.00
56202 - General Fund Services	\$32,557.08	\$358,127.88	\$390,619.00
56410 - Payment of Principal	\$0.00	\$0.00	\$60,000.00
56420 - Interest Expense	\$0.00	\$0.00	\$12,000.00
56910 - Depreciation Expense	\$40,626.22	\$405,445.54	\$336,000.00
56995 - Project Non Capital - Promotions	\$215,838.42	\$499,572.02	\$1,000,000.00
57000 - Capital Land Purchases	\$0.00	\$4,820,128.99	\$0.00
57001 - Capital Buildings & Structures	\$0.00	\$144,185.00	\$0.00
57002 - Capital Improve Other Than Bldg	\$0.00	\$0.00	\$3,500,000.00
57070 - Construction in Process	\$0.00	\$997,878.12	\$0.00
235235 - Midland Development Corp	\$522,662.32	\$14,352,053.50	\$21,110,973.00

August 2022 Net Income: \$895,296.63

Year-to-Date Net Income: (\$3,906,044.29)

Balance Sheet

MIDLAND DEVELOPMENT CORPORATION
BALANCE SHEET FOR THE PERIOD ENDED
August 31, 2022
(Used for Internal Purposes Only)

ASSETS

Current Assets

Cash and cash equivalents	15,278,359	
Investments	8,000,000	
Sales tax receivable	-	
Prepaid expenses	-	
Accounts receivable	-	
	23,278,359	23,278,359

Non-Current Assets

Capital Assets, net	27,597,161	
Forgivable Loans		
Made to Primary Government	-	
Made to Other	6,579	
Total Forgivable Loans	6,579	
	27,603,741	27,603,741

Total Assets	\$	50,882,099
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LIABILITIES AND NET POSITION

Liabilities

Accounts payable	55,646	
Retainage Payable	-	
Capital Leases payable	93,357	
Commitments payable		
Due within one year	6,928,677	
Due in more than one year	8,380,259	
Total Commitments Payable	15,308,936	
	15,457,939	15,457,939

Net Position

Net investment in capital assets	27,597,161	
Restricted for Forgivable Loans	6,579	
Restricted for Capital Leases	93,357	
Promotions	1,241,275	
Unrestricted	6,485,787	
	35,424,160	35,424,160

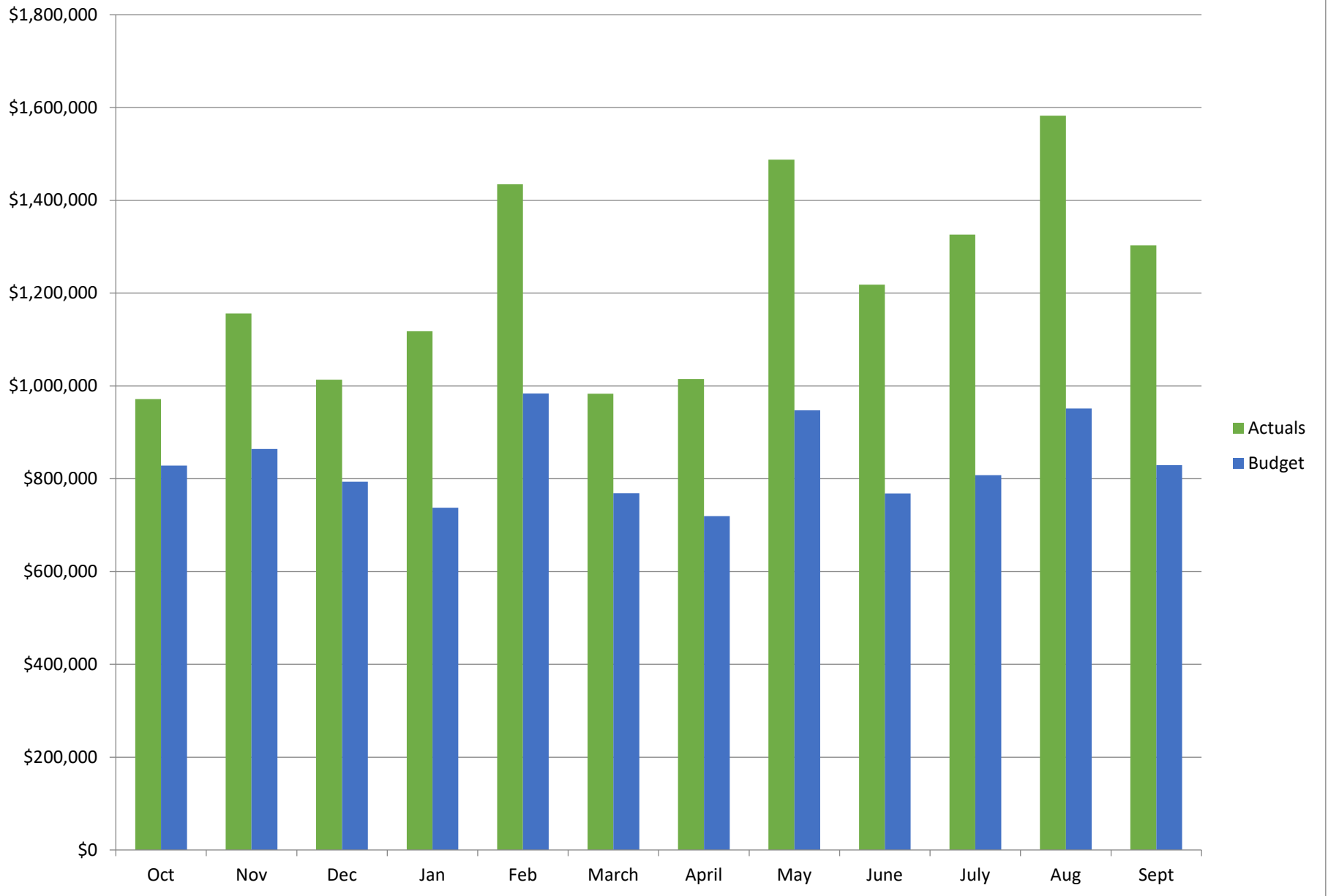
Total Liabilities and Net Position	\$	50,882,099
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Sales Tax

Sales Tax Variance

	2019-2020	2020-2021	% Change	2020-2021	2021-2022	% Change	YTD Change
October	\$1,219,993.44	\$1,203,058.10	-1.39%	\$1,203,058.10	\$971,343.63	-19.26%	-19.26%
November	\$1,266,357.10	\$983,259.60	-22.36%	\$983,259.60	\$1,156,353.89	17.60%	-2.68%
December	\$1,263,226.93	\$843,087.27	-33.26%	\$843,087.27	\$1,013,549.80	20.22%	3.69%
January	\$1,036,178.70	\$752,584.05	-27.37%	\$752,584.05	\$1,117,874.02	48.54%	12.62%
February	\$1,279,615.49	\$1,224,314.99	-4.32%	\$1,224,314.99	\$1,434,528.04	17.17%	13.73%
March	\$966,824.94	\$783,914.25	-18.92%	\$783,914.25	\$983,421.74	25.45%	15.32%
April	\$1,006,559.17	\$687,198.37	-31.73%	\$687,198.37	\$1,015,116.31	47.72%	18.75%
May	\$1,251,139.57	\$1,198,336.79	-4.22%	\$1,198,336.79	\$1,487,467.44	24.13%	19.59%
June	\$897,050.21	\$927,060.71	3.35%	\$927,060.71	\$1,218,236.38	31.41%	20.87%
July	\$876,285.08	\$909,387.44	3.78%	\$909,387.44	\$1,326,275.50	45.84%	23.25%
August	\$1,074,175.26	\$1,176,070.55	9.49%	\$1,176,070.55	\$1,582,536.23	34.56%	24.50%
September	\$834,182.16	\$978,956.15	17.36%	\$978,956.15	\$1,303,011.95	33.10%	25.22%
Annual Total	\$12,971,588.05	\$11,667,228.27	-10.06%	\$11,667,228.27	\$14,609,714.93	25.22%	25.22%

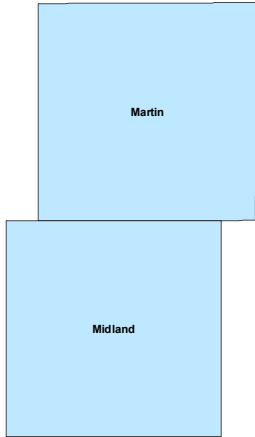
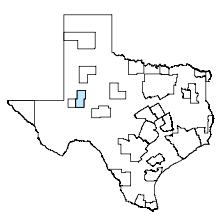
Sales Tax Actuals vs Budget Estimates



Activity Report

Midland MSA

July 2022

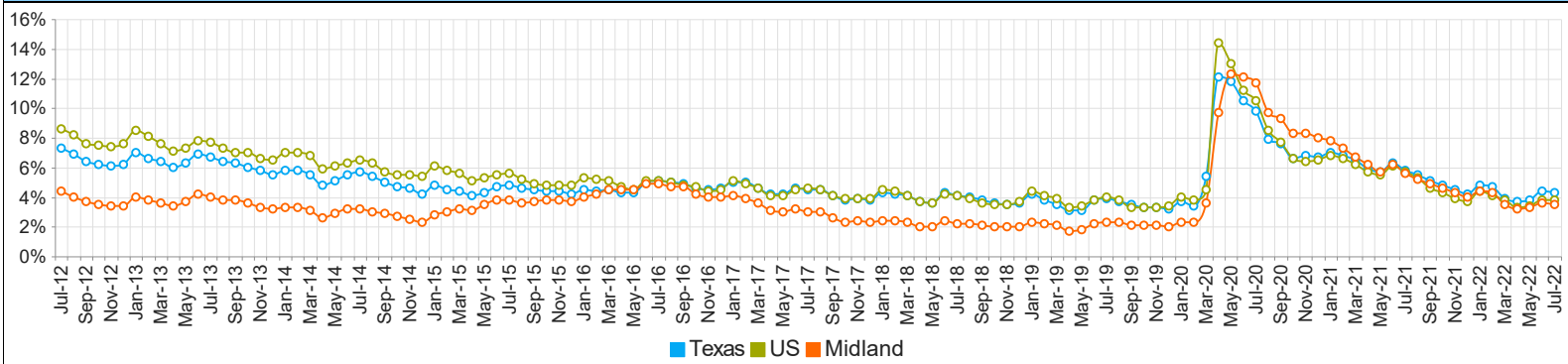


MSA Labor Force Statistics				
	Jul-22	Jun-22	Jul-21	Yearly Change
Civilian Labor Force	103,608	104,263	102,900	708
Employed	99,961	100,483	97,136	2,825
Unemployed	3,647	3,780	5,764	-2,117
Unemployment Rate	3.5%	3.6%	5.6%	-2.1%

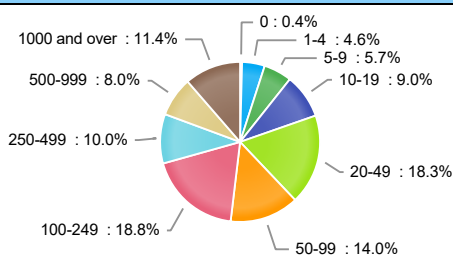
Texas Labor Force Statistics				
	Jul-22	Jun-22	Jul-21	Yearly Change
Civilian Labor Force	14,601,731	14,584,377	14,252,822	348,909
Employed	13,971,714	13,945,230	13,421,359	550,355
Unemployed	630,017	639,147	831,463	-201,446
Unemployment Rate	4.3%	4.4%	5.8%	-1.5%

US Labor Force Statistics				
	Jul-22	Jun-22	Jul-21	Yearly Change
Civilian Labor Force	165,321,000	165,012,000	162,817,000	2,504,000
Employed	159,067,000	158,678,000	153,596,000	5,471,000
Unemployed	6,255,000	6,334,000	9,221,000	-2,966,000
Unemployment Rate	3.8%	3.8%	5.7%	-1.9%

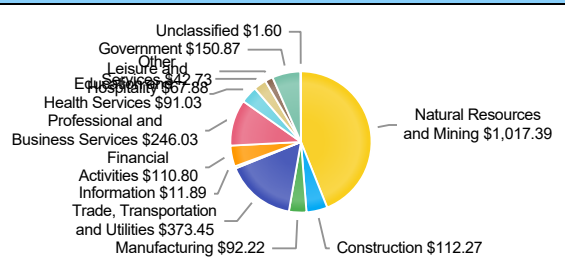
Historical Unemployment Rates



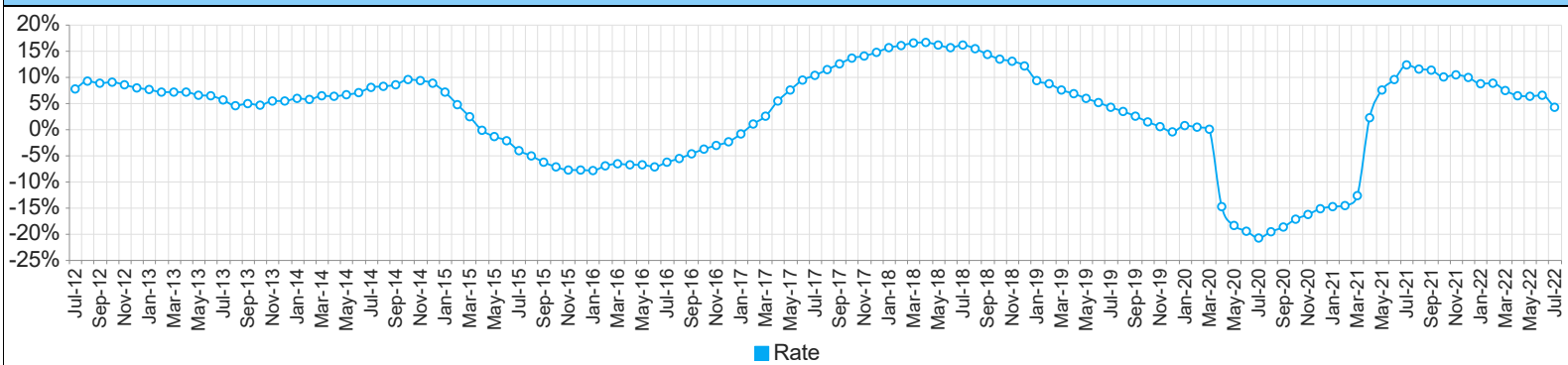
Employment by Size Class (1st Quarter 2022)



Wages by Industry (in millions) (1st Quarter 2022)



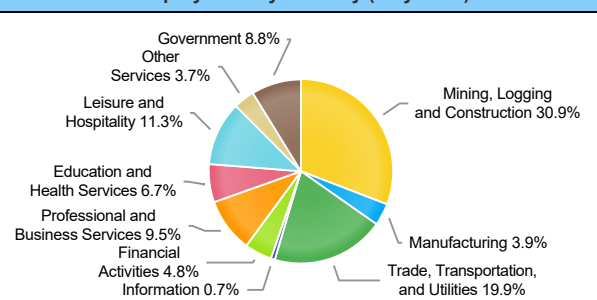
Annual Growth Rate Total Non-agricultural employment



Employment by Industry (July 2022)

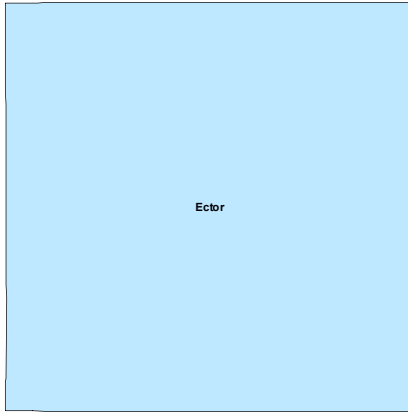
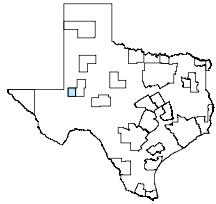
Industry	Current Month Employment	% Monthly Change	% Yearly Change
Total Nonfarm	106,600	-0.9%	4.2%
Mining, Logging and Construction	32,900	-1.5%	7.5%
Manufacturing	4,200	2.4%	10.5%
Trade, Transportation, and Utilities	21,200	0.0%	2.9%
Information	700	0.0%	0.0%
Financial Activities	5,100	0.0%	4.1%
Professional and Business Services	10,100	0.0%	3.1%
Education and Health Services	7,100	0.0%	-2.7%
Leisure and Hospitality	12,000	0.0%	10.1%
Other Services	3,900	-2.5%	5.4%
Government	9,400	-5.1%	-6.0%

Employment by Industry (July 2022)



Odessa MSA

July 2022

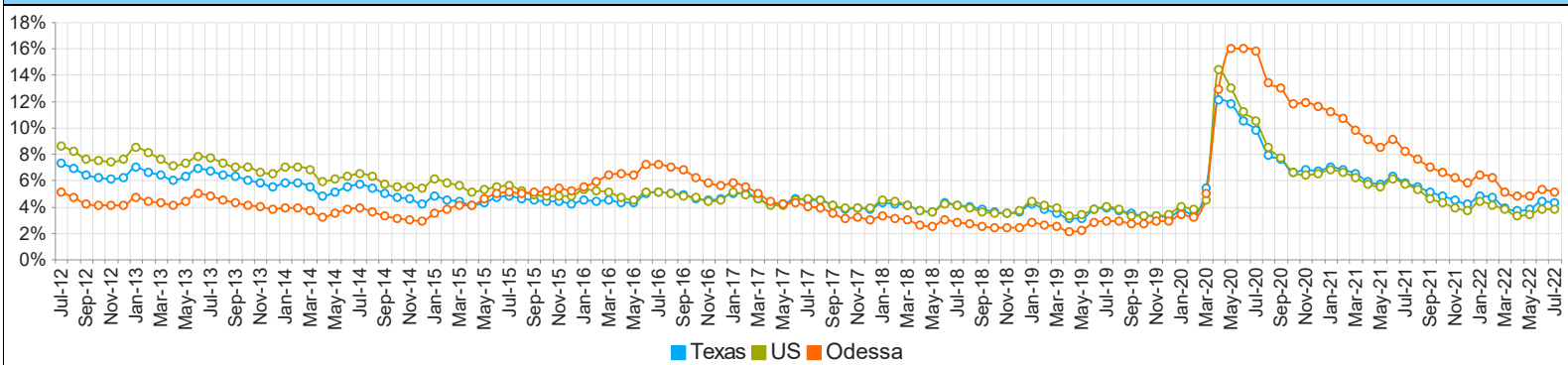


MSA Labor Force Statistics				
	Jul-22	Jun-22	Jul-21	Yearly Change
Civilian Labor Force	80,807	81,030	80,368	439
Employed	76,698	76,713	73,751	2,947
Unemployed	4,109	4,317	6,617	-2,508
Unemployment Rate	5.1%	5.3%	8.2%	-3.1%

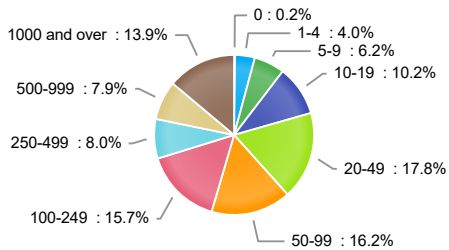
Texas Labor Force Statistics				
	Jul-22	Jun-22	Jul-21	Yearly Change
Civilian Labor Force	14,601,731	14,584,377	14,252,822	348,909
Employed	13,971,714	13,945,230	13,421,359	550,355
Unemployed	630,017	639,147	831,463	-201,446
Unemployment Rate	4.3%	4.4%	5.8%	-1.5%

US Labor Force Statistics				
	Jul-22	Jun-22	Jul-21	Yearly Change
Civilian Labor Force	165,321,000	165,012,000	162,817,000	2,504,000
Employed	159,067,000	158,678,000	153,596,000	5,471,000
Unemployed	6,255,000	6,334,000	9,221,000	-2,966,000
Unemployment Rate	3.8%	3.8%	5.7%	-1.9%

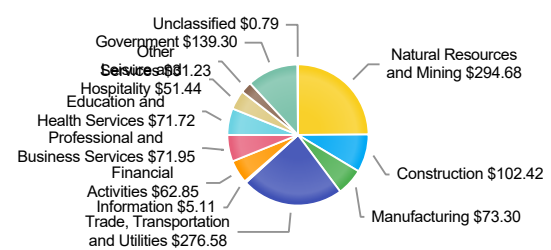
Historical Unemployment Rates



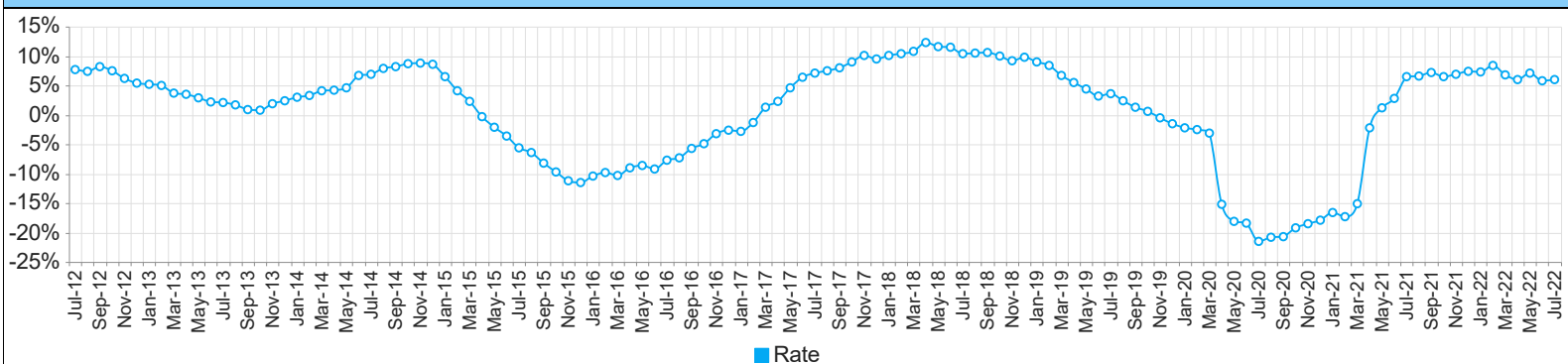
Employment by Size Class (1st Quarter 2022)



Wages by Industry (in millions) (1st Quarter 2022)



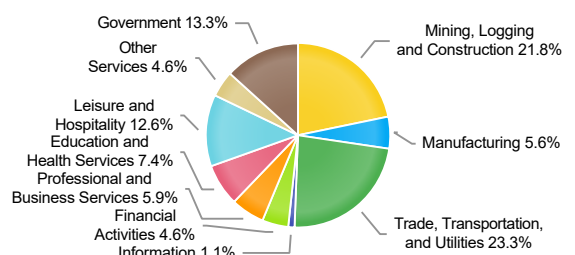
Annual Growth Rate Total Non-agricultural employment



Employment by Industry (July 2022)

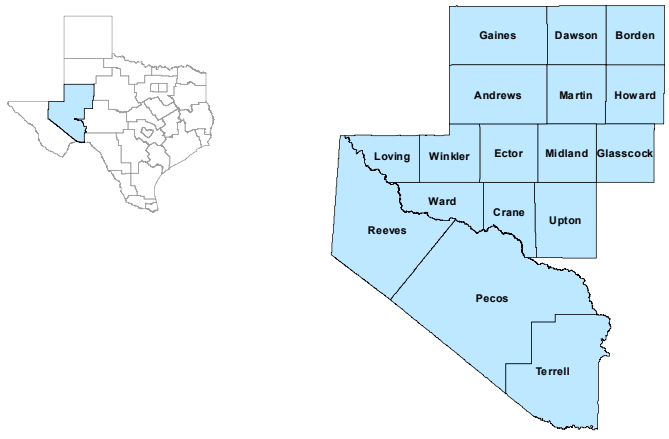
Industry	Current Month Employment	% Monthly Change	% Yearly Change
Total Nonfarm	74,700	0.1%	6.0%
Mining, Logging and Construction	16,300	1.9%	13.2%
Manufacturing	4,200	0.0%	5.0%
Trade, Transportation, and Utilities	17,400	0.0%	3.0%
Information	800	0.0%	0.0%
Financial Activities	3,400	0.0%	3.0%
Professional and Business Services	4,400	0.0%	4.8%
Education and Health Services	5,500	1.9%	3.8%
Leisure and Hospitality	9,400	0.0%	8.0%
Other Services	3,400	0.0%	3.0%
Government	9,900	-2.9%	3.1%

Employment by Industry (July 2022)



Permian Basin Workforce Development Area

July 2022



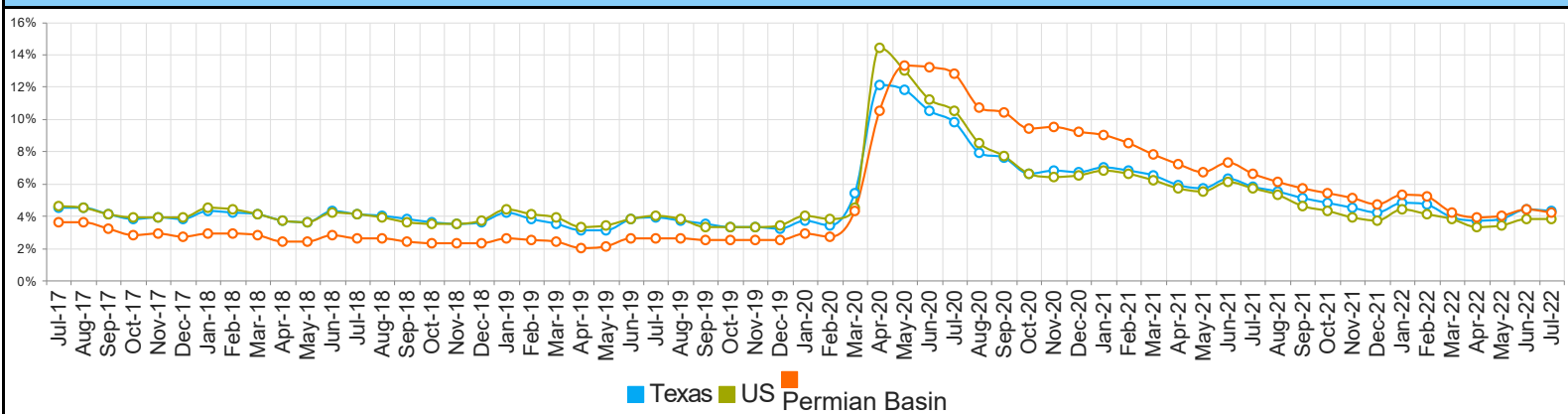
WDA Labor Force Statistics				
	Jul-22	Jun-22	Jul-21	Yearly Change
Civilian Labor Force	252,259	252,352	249,630	2,629
Employed	241,539	241,231	233,164	8,375
Unemployed	10,720	11,121	16,466	-5,746
Unemployment Rate	4.2%	4.4%	6.6%	-2.4%

Texas Labor Force Statistics				
	Jul-22	Jun-22	Jul-21	Yearly Change
Civilian Labor Force	14,601,731	14,584,377	14,252,822	348,909
Employed	13,971,714	13,945,230	13,421,359	550,355
Unemployed	630,017	639,147	831,463	-201,446
Unemployment Rate	4.3%	4.4%	5.8%	-1.5%

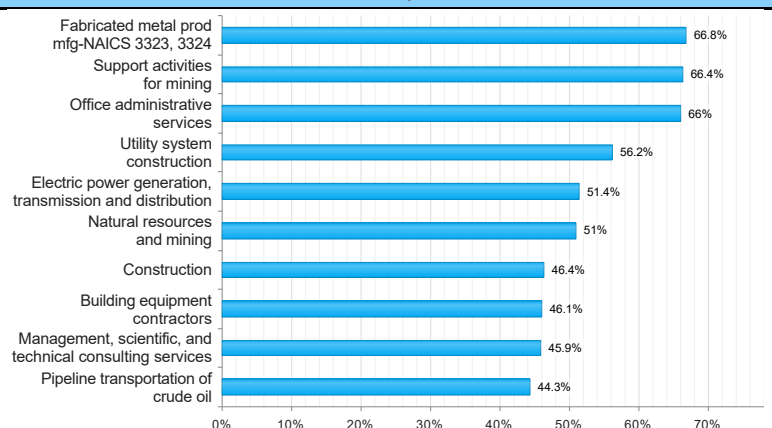
US Labor Force Statistics				
	Jul-22	Jun-22	Jul-21	Yearly Change
Civilian Labor Force	165,321,000	165,012,000	162,817,000	2,504,000
Employed	159,067,000	158,678,000	153,596,000	5,471,000
Unemployed	6,255,000	6,334,000	9,221,000	-2,966,000
Unemployment Rate	3.8%	3.8%	5.7%	-1.9%

Continued Claims for the Week of the 12th				
	Jul-22	Jun-22	Jul-21	Yearly Change
WDA	889	927	2,085	-1,196
Texas	84,152	79,892	143,062	-58,910

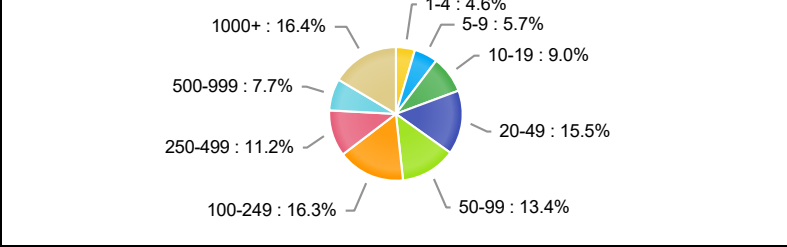
Historical Unemployment Rates



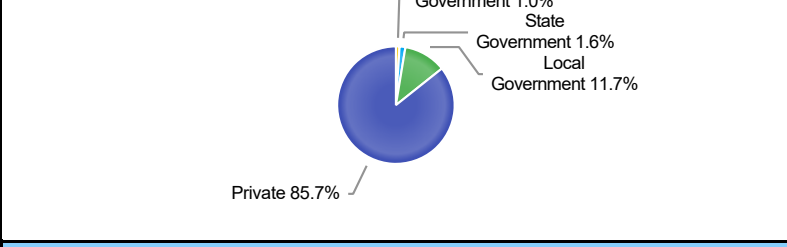
Projected Top Ten Fastest Growing Industries in WDA (% Growth 2020-2030)



Employment by Size Class (1st Quarter 2022)



Employment by Ownership (1st Quarter 2022)



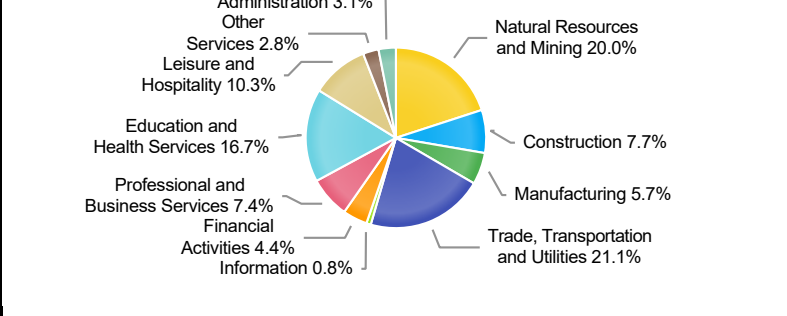
Average Weekly Wage (1st Quarter 2022)

	Q1 2022	Q4 2021	Q1 2021	Quarterly Change	Yearly Change
WDA	\$1,459	\$1,452	\$1,331	\$7	\$128
Texas	\$1,369	\$1,375	\$1,259	-\$6	\$110
US	N/A	\$1,418	\$1,288	N/A	N/A

Employment by Industry (1st Quarter 2022, Percent Change)

Industry	Employment	% of Total	% Quarterly Change	% Yearly Change
Natural Resources and Mining	47,428	20.0%	4.4%	17.0%
Construction	18,180	7.7%	6.3%	15.7%
Manufacturing	13,535	5.7%	39.8%	55.5%
Trade, Transportation and Utilities	50,084	21.1%	-2.8%	5.8%
Information	1,817	0.8%	2.5%	22.6%
Financial Activities	10,355	4.4%	1.8%	8.3%
Professional and Business Services	17,472	7.4%	1.3%	10.4%
Education and Health Services	39,460	16.7%	-0.2%	1.4%
Leisure and Hospitality	24,492	10.3%	-0.9%	7.5%
Other Services	6,721	2.8%	-0.8%	7.4%
Public Administration	7,435	3.1%	2.7%	1.2%

Employment by Industry (1st Quarter 2022)



*The average weekly wage for U.S. for the latest quarter is not available. It will be updated shortly.