



Board Binder Open Session

April 3, 2023

Agenda



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

NOTICE OF PUBLIC MEETING

In accordance with Chapter 551, Texas Government Code, as amended, notice is hereby given to the public that the Board of Directors of the Midland Development Corporation will meet in regular session, open to the public, in the Midland Chamber of Commerce board room, 303 West Wall Street, Suite 200, Midland, Texas, at 10:00 a.m. on April 3, 2023. A quorum of the Board of Directors of the Midland Development Corporation intends to be physically present at the aforementioned location.

Videoconference Information

Join Zoom Webinar

<https://us02web.zoom.us/j/81027057065?pwd=V1dLNnZ1aVlwVmZUVyt6UzFYVDIsZz09>

Passcode: 466699

Or join by phone:

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

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

Webinar ID: 810 2705 7065

Passcode: 466699

International numbers available: <https://us02web.zoom.us/j/81027057065?pwd=V1dLNnZ1aVlwVmZUVyt6UzFYVDIsZz09>

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 March 6, 2023, meeting of the Midland Development Corporation.
3. Presentation from City of Midland Aquatics.
4. Resolution authorizing the execution of a promotional agreement with City of Midland Aquatics, Inc., to advertise and publicize the City of Midland for the purpose of developing new and expanded business enterprises.
5. Presentation from Hispanic Cultural Center of Midland.

6. Resolution authorizing the execution of a promotional agreement with Hispanic Cultural Center of Midland, Inc., to advertise and publicize the City of Midland for the purpose of developing new and expanded business enterprises.
7. Presentation on the March 2023 monthly expenses and economic development activity report from the Midland Development Corporation Executive Director and staff.

Posted this 30th day of March 2023.

Marcia Bentley German
City Governance Officer/City Secretary

March 6th Minutes

MIDLAND DEVELOPMENT CORPORATION

MINUTES

March 06, 2023

The Board of Directors of the Midland Development Corporation convened in regular session at the Midland Chamber of Commerce board room, 303 West Wall Street, Suite 200, Midland, Texas, at 10:00 a.m. on March 06, 2023.

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

Board Members absent: None

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

Council Member(s) present: Mayor Lori Blong, Council Member Dan Corrales, and Council Member Amy Stretcher Burkes

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

1. Call meeting to order.

Chairman Gardaphe called the meeting to order at 10:02 am

2. Motion approving the minutes of the February 06, 2023, meeting of the Midland Development Corporation.

Director Simpson moved to approve the minutes of the February 06, 2023, meeting of the Midland Development Corporation; seconded by Director Pennington. The motion carried by the following vote: AYE: Gardaphe, Sams, Bullock, Sisniega, and Deck. NAY: None. ABSTAIN: None. ABSENT: None.

3. Resolution authorizing the execution of an economic development agreement with the City of Midland for the State Highway 191 wastewater main extension project; and authorizing payment therefor.

Director Pennington moved to approve Resolution ED-434 authorizing the execution of an economic development agreement with the City of Midland for the State Highway 191 wastewater main extension project; and authorizing payment therefor, seconded by Director Bullock. The motion carried by the following vote: AYE: Gardaphe, Simpson, Sams, Sisniega, and Deck. NAY: None. ABSTAIN: None. ABSENT: None.

4. Resolution authorizing the execution of a memorandum of understanding between the Midland Development Corporation and Second Story Coworking; said memorandum of understanding to provide for the creation and establishment of Founder's Blend Midland, which shall provide business owners, investors, and members of the community with certain opportunities relating to the entrepreneurial ecosystem in West Texas.

Director Simpson moved to approve Resolution ED-435 authorizing the execution of a memorandum of understanding between the Midland Development Corporation and Second Story Coworking; said memorandum of understanding to provide for the creation and establishment of Founder's Blend Midland, which shall provide business owners, investors, and members of the community with certain opportunities relating to the entrepreneurial ecosystem in West Texas, seconded by Director Deck. The motion carried by the following vote: AYE: Gardaphe, Bullock, Sams, Pennington, and Sisniega. NAY: None. ABSTAIN: None. ABSENT: None.

5. Presentation on the February 2023 monthly expenses and economic development activity report from the Midland Development Corporation Executive Director and staff.

Sara Harris gave an overview of the month's expenses, and economic development activity noting that revenue continues to increase year-over-year with sales tax revenue 35% above budget. Final disbursements were made from the MDC to Weir/SPM Flow Control and the Midland Hispanic Cultural Center pursuant to their respective agreements. \$600,000.00 demolition costs associated with the Western United Life Building were disbursed as work was completed. Gabrielle Franks updated the board with the social media stats. Sammi Steele gave an overview of the business retention and expansion program in February.

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

6. 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.

Board reconvened into open session at 11:39 a.m.

All the business at hand having been completed, Chairman Gardaphe adjourned the meeting at 11:39 a.m.

Respectfully submitted,

Vanessa White, Deputy City Secretary

PASSED AND APPROVED the 3rd Day of April 2023.

Jill Pennington, Secretary

COM Aquatics

RESOLUTION NO. _____

RESOLUTION AUTHORIZING THE EXECUTION OF A PROMOTIONAL AGREEMENT WITH CITY OF MIDLAND AQUATICS, INC., TO ADVERTISE AND PUBLICIZE THE CITY OF MIDLAND FOR THE PURPOSE OF DEVELOPING NEW AND EXPANDED BUSINESS ENTERPRISES

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

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

WHEREAS, the Board of Directors finds it to be in the public interest to authorize the execution of a promotional agreement with City of Midland Aquatics, Inc., for the purposes described herein;

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

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

SECTION TWO. That the City Comptroller of the City of Midland, Texas, is hereby authorized and directed to pay City of Midland Aquatics, Inc., in accordance with the terms of said promotional agreement from funds available in the Midland Development

Corporation Promotions Project (800705) upon receipt of proper invoices or statements approved by the Executive Director of the Midland Development Corporation.

On motion of Director _____, seconded by Director _____, the above and foregoing resolution was adopted by the Board of Directors of the Midland Development Corporation at a regular meeting on the _____ day of _____, AD, 2023, by the following vote:

Directors voting "AYE":

Directors voting "NAY":

CHASE GARDAPHE,
Chairman of the Midland
Development Corporation

ATTEST:

JILL PENNINGTON,
Secretary for the Midland
Development Corporation

APPROVED AS TO FORM ONLY:

JOHN OHNEMILLER,
Attorney for the Midland
Development Corporation

PROMOTIONAL AGREEMENT

THIS PROMOTIONAL AGREEMENT (“*Agreement*”) is made and effective the 25th day of April, 2023, by and between THE MIDLAND DEVELOPMENT CORPORATION (“*MDC*”), an economic development corporation existing under the authority of Chapter of 504 of the Texas Local Government Code, and CITY OF MIDLAND AQUATICS, INC. (“*COM Aquatics*”), a Texas nonprofit corporation. In this Agreement, MDC and COM Aquatics are sometimes individually referred to as a “*Party*” and collectively referred to as the “*Parties*.”

WITNESSETH:

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

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

WHEREAS, it is the desire of the Parties to combine their efforts for the purpose of promoting economic development within the City of Midland;

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

I. PURPOSE

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

II. OBLIGATIONS OF THE PARTIES

A. MDC Payment. MDC agrees to make two (2) payments to COM Aquatics in accordance with the following schedule:

1. \$350,000.00 on or before May 31, 2023.
2. \$350,000.00 on or before November 30, 2023.

The total funds provided by the MDC under this Agreement shall not exceed \$700,000.00. The Parties covenant and agree that all funds provided by the MDC under this Agreement are in exchange for COM Aquatics’ advertising and promotional services as set forth herein.

B. COM Aquatics Services. COM Aquatics shall use commercially reasonable efforts to provide those services described in Exhibit A, which is attached hereto and incorporated herein

for all purposes. COM Aquatics shall perform all services in a workmanlike manner. COM Aquatics shall coordinate with MDC's Chairman, or his designee, regarding the design, nature, content, and implementation of the services to enable the advertising and promotional activities performed hereunder to be effective and efficient in achieving the purpose of this Agreement.

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

III. INDEPENDENT CONTRACTOR

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

IV. TERM OF AGREEMENT

Upon execution by the Parties, this Agreement becomes effective April 25, 2023, and shall terminate on September 30, 2024, or when terminated by mutual agreement of the Parties, or when terminated as hereinafter provided.

V. GENERAL TERMS

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

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

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

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

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

If to MDC:

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

If to COM Aquatics:

Brad Swendig, Executive Director
City of Midland Aquatics, Inc.
3003 North A Street
Midland, Texas 79705

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

G. Release. NOTWITHSTANDING ANY OTHER PROVISION CONTAINED HEREIN, COM AQUATICS 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 COM AQUATICS HAS OR MIGHT HAVE IN THE FUTURE, INCLUDING BUT NOT LIMITED TO BREACH OF CONTRACT, QUANTUM MERUIT, CLAIMS UNDER THE DUE PROCESS AND TAKINGS CLAUSES OF THE TEXAS AND UNITED STATES CONSTITUTIONS, TORT CLAIMS, OR MDC'S NEGLIGENCE.

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

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

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

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

K. Governing Law and Venue. This Agreement shall be governed by and construed in accordance with the laws and court decisions of the State of Texas. All performance and payment made pursuant to this Agreement shall be deemed to have occurred in Midland County, Texas. The sole, exclusive, and mandatory venue for any claims, suits, disputes or any other action arising from, relating to or concerning in any way 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. All payments under this Agreement are deemed to have taken place in Midland County, Texas.

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

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

[Signature Pages Follow]

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

**MIDLAND DEVELOPMENT
CORPORATION**

Chase Gardaphe, Chairman

ATTEST:

Jill Pennington, Secretary

[Signature Page Follows]

CITY OF MIDLAND AQUATICS, 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 CITY OF MIDLAND AQUATICS, INC.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this _____ day of _____, 2023.

Notary Public, State of Texas

Promotional Services to be Provided by COM Aquatics

1. Branding the City of Midland for the purpose of developing new and expanded business enterprises on website, brochure and media materials, when feasible.
2. Promoting COM Aquatics.
3. Including references to the Midland Development Corporation's support for COM Aquatics in a press release.
4. Including a description and logo for the Midland Development Corporation in COM Aquatics promotional materials, when feasible.

Hispanic Cultural Center

RESOLUTION NO. _____

RESOLUTION AUTHORIZING THE EXECUTION OF A PROMOTIONAL AGREEMENT WITH HISPANIC CULTURAL CENTER OF MIDLAND, INC., TO ADVERTISE AND PUBLICIZE THE CITY OF MIDLAND FOR THE PURPOSE OF DEVELOPING NEW AND EXPANDED BUSINESS ENTERPRISES

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

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

WHEREAS, the Board of Directors finds it to be in the public interest to authorize the execution of a promotional agreement with Hispanic Cultural Center of Midland, Inc., for the purposes described herein;

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

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

SECTION TWO. That the City Comptroller of the City of Midland, Texas, is hereby authorized and directed to pay Hispanic Cultural Center of Midland, Inc., in accordance with the terms of said promotional agreement from funds available in the Midland Development

Corporation Promotions Project (800705) upon receipt of proper invoices or statements approved by the Executive Director of the Midland Development Corporation.

On motion of Director _____, seconded by Director _____, the above and foregoing resolution was adopted by the Board of Directors of the Midland Development Corporation at a regular meeting on the _____ day of _____, AD, 2023, by the following vote:

Directors voting "AYE":

Directors voting "NAY":

CHASE GARDAPHE,
Chairman of the Midland
Development Corporation

ATTEST:

JILL PENNINGTON,
Secretary for the Midland
Development Corporation

APPROVED AS TO FORM ONLY:

JOHN OHNEMILLER,
Attorney for the Midland
Development Corporation

PROMOTIONAL AGREEMENT

THIS PROMOTIONAL AGREEMENT (“*Agreement*”) is made and effective the 25th day of April, 2023, by and between THE MIDLAND DEVELOPMENT CORPORATION (“*MDC*”), an economic development corporation existing under the authority of Chapter of 504 of the Texas Local Government Code, and HISPANIC CULTURAL CENTER OF MIDLAND, INC. (“*Hispanic Cultural Center*”), a Texas nonprofit corporation. In this Agreement, MDC and Hispanic Cultural Center are sometimes individually referred to as a “*Party*” and collectively referred to as the “*Parties.*”

WITNESSETH:

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

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

WHEREAS, it is the desire of the Parties to combine their efforts for the purpose of promoting the City of Midland and the Hispanic Cultural Center;

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

I. PURPOSE

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

II. OBLIGATIONS OF THE PARTIES

A. MDC Payment. MDC agrees to make two (2) payments to Hispanic Cultural Center in accordance with the following schedule:

1. \$15,000.00 on or before January 31, 2024.
2. \$15,000.00 on or before January 31, 2025.

The total funds provided by MDC under this Agreement shall not exceed \$30,000.00. The Parties covenant and agree that all funds provided by MDC under this Agreement are in exchange for Hispanic Cultural Center's advertising and promotional services as set forth herein.

B. Hispanic Cultural Center Services. Hispanic Cultural Center shall use commercially reasonable efforts to provide those services described in Exhibit A, which is attached hereto and incorporated herein for all purposes. Hispanic Cultural Center shall perform all services in a workmanlike manner. Hispanic Cultural Center shall coordinate with MDC's Chairman, or his designee, regarding the design, nature, content, and implementation of the services to enable the advertising and promotional activities performed hereunder to be effective and efficient in achieving the purpose of this Agreement.

C. Hispanic Cultural Center Report. During the term of this Agreement, at a time and place mutually agreed to by the Parties, Hispanic Cultural Center shall provide MDC with a report or presentation (the "**Report**") containing a detailed summary of Hispanic Cultural Center's efforts to promote new and expanded business enterprises within the City of Midland.

III. INDEPENDENT CONTRACTOR

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

IV. TERM OF AGREEMENT

Upon execution by the Parties, this Agreement becomes effective April 25, 2023, and shall terminate on December 31, 2025, or when terminated by mutual agreement of the Parties, or when terminated as hereinafter provided.

V. GENERAL TERMS

A. Entire Agreement. This Agreement embodies the complete agreement of the Parties, superseding all oral or written, previous and contemporary agreements between the Parties

relating to matters in this Agreement; and except as otherwise provided herein, this Agreement cannot be modified or amended without a written agreement of the Parties.

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

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

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

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

If to MDC:

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

If to Hispanic Cultural Center:

Hispanic Cultural Center of Midland, Inc.
P.O. Box 51404
Midland, Texas 79710

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

G. Release. **NOTWITHSTANDING ANY OTHER PROVISION CONTAINED HEREIN, HISPANIC CULTURAL CENTER 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 HISPANIC CULTURAL CENTER HAS OR MIGHT HAVE IN THE FUTURE, INCLUDING BUT NOT LIMITED TO BREACH OF CONTRACT, QUANTUM MERUIT, CLAIMS UNDER THE DUE**

PROCESS AND TAKINGS CLAUSES OF THE TEXAS AND UNITED STATES CONSTITUTIONS, TORT CLAIMS, OR MDC'S NEGLIGENCE.

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

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

J. Waiver of Attorney Fees. By executing this Agreement, **THE PARTIES AGREE TO WAIVE AND DO HEREBY WAIVE ANY CLAIM THEY HAVE OR MAY HAVE AGAINST THE OTHER PARTY REGARDING THE AWARD OF ATTORNEY FEES, WHICH ARE IN ANY WAY RELATED TO THIS AGREEMENT, OR THE CONSTRUCTION, INTERPRETATION, OR BREACH OF THIS AGREEMENT. THE PARTIES SPECIFICALLY AGREE THAT IF EITHER PARTY BRINGS OR COMMENCES ANY LEGAL ACTION OR PROCEEDING RELATED TO THIS AGREEMENT, THE CONSTRUCTION, INTERPRETATION, VALIDITY OR BREACH OF THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO ANY ACTION PURSUANT TO THE PROVISIONS OF THE TEXAS UNIFORM DECLARATORY JUDGMENTS ACT (TEXAS CIVIL PRACTICE AND REMEDIES CODE SECTION 37.001, ET SEQ., AS AMENDED), THAT PARTY AGREES TO WAIVE AND RELINQUISH ANY AND ALL RIGHTS TO THE RECOVERY OF ATTORNEY FEES TO WHICH IT MIGHT OTHERWISE BE ENTITLED.**

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

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

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

[Signature Page Follows]

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

**MIDLAND DEVELOPMENT
CORPORATION**

Chase Gardaphe, Chairman

ATTEST:

Jill Pennington, Secretary

[Signature Page Follows]

**HISPANIC CULTURAL CENTER
OF MIDLAND, 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 HISPANIC CULTURAL CENTER OF MIDLAND, INC.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this _____ day of _____, 2023.

Notary Public, State of Texas

Promotional Services to be Provided by Hispanic Cultural Center

1. Branding the City of Midland for the purpose of developing new and expanded business enterprises on website, brochure and media materials, when feasible.
2. Promoting the Hispanic Cultural Center.
3. Including references to the Midland Development Corporation's support for Hispanic Cultural Center in a press release.
4. Including a description and logo for the Midland Development Corporation in Hispanic Cultural Center promotional materials, when feasible.

Income Statement

MIDLAND DEVELOPMENT CORPORATION
INCOME STATEMENT FOR THE 6 MONTHS ENDED
March 31, 2023

	Mar-23	YTD	Budgeted Amount
Revenue	\$1,473,980.30	\$6,459,295.63	\$11,976,644.00
40100 - State Sales Tax	\$1,344,612.50	\$5,733,765.25	\$11,000,000.00
40600 - Public ROW Use Fees	\$0.00	\$0.00	\$0.00
43000 - Interest	\$10,730.09	\$65,146.53	\$0.00
43010 - Interest - Nonpooled Invest	\$37,250.71	\$171,961.85	\$0.00
46190 - Miscellaneous Rentals	\$81,387.00	\$488,422.00	\$976,644.00
49020 - Sale of Buildings	\$0.00	\$410,370.00	\$0.00
4235150 - Midland Dvlpmt Corp Revenue	\$1,473,980.30	\$6,869,665.63	\$11,976,644.00

Expense	\$832,205.15	\$4,643,986.03	\$22,392,778.00
51010 - Base Salary	\$24,575.08	\$149,754.44	\$350,096.00
51090 - Fica MDC Portion	\$1,881.00	\$9,278.75	\$28,234.00
51110 - Health Insurance	\$1,374.27	\$7,767.93	\$28,080.00
51135 - ACCE Profit Sharing	\$1,633.62	\$10,407.21	\$24,507.00
52010 - Office Supplies	\$196.08	\$3,336.51	\$6,000.00
52110 - Motor Vehicle Supplies	\$204.61	\$294.80	\$1,500.00
52115 - Minor Furniture & Fixtures	\$0.00	\$0.00	\$1,000.00
52155 - Minor Computer Hrdwre & Periph	\$0.00	\$3,036.28	\$5,000.00
52160 - Computer Software & Supplies	\$594.29	\$24,621.40	\$30,000.00
52620 - Postage	\$139.30	\$968.80	\$300.00
53010 - Communication	\$1,370.71	\$8,000.95	\$17,000.00
53030 - Light & Power	\$0.00	\$63.26	\$150.00
53110 - Insurance-External	\$3,077.00	\$4,424.00	\$150,000.00
53212 - Equipment Rental-External	\$312.97	\$1,775.48	\$5,000.00
53220 - Advertising	\$5,603.95	\$157,264.46	\$200,000.00
53370 - Grounds Maintenance	\$1,266.70	\$16,186.61	\$22,000.00
53405 - Software Maintenance	\$1,525.54	\$10,863.35	\$12,000.00
53440 - External Audit Fees	\$0.00	\$19,473.00	\$35,000.00
53450 - Consulting Fees	\$51,390.31	\$101,508.57	\$500,000.00
53510 - Travel & Entertainment	\$5,271.82	\$6,770.35	\$8,000.00
53520 - Dues & Subscriptions	\$7,056.36	\$11,406.32	\$15,000.00
53530 - Training,Registration Fees,Etc	\$175.00	\$7,103.34	\$10,000.00
53905 - Economic Development Incentive	\$0.00	\$0.00	\$5,129,123.00
53907 - Business Recruitment & Retentn	\$5,209.53	\$34,811.53	\$50,000.00
53909 - Prior Year Committed Incentives	\$243,046.11	\$1,772,113.60	\$9,999,673.00
53920 - Rent	\$5,678.50	\$34,071.00	\$68,142.00
54010 - Building Maintenance	\$12,927.43	\$69,282.15	\$80,000.00
55120 - Maint. - Instruments & Appara.	\$331.48	\$654.18	\$1,000.00
56188 - MOTRAN	\$0.00	\$71,250.00	\$142,500.00
56202 - General Fund Services	\$31,651.08	\$189,609.48	\$379,813.00
56410 - Payment of Principal	\$0.00	\$0.00	\$70,605.00
56420 - Interest Expense	\$0.00	\$0.00	\$6,595.00
56910 - Depreciation Expense	\$0.00	\$106,039.18	\$416,460.00
56995 - Project Non Capital - Promotions	\$73,312.41	\$160,611.08	\$1,100,000.00
57001 - Capital Buildings & Structures	\$352,400.00	\$1,551,238.02	\$3,500,000.00
57002 - Capital Improv Other Than Bldg	\$0.00	\$100,000.00	\$0.00
57070 - Construction in Process	\$0.00	\$0.00	\$0.00
235235 - Midland Development Corp	\$832,205.15	\$4,643,986.03	\$22,392,778.00

March 2023 Net Income: \$641,775.15

Year-to-Date Net Income: \$1,815,309.60

Balance Sheet

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

ASSETS

Current Assets

Cash and cash equivalents	19,527,406	
Investments	7,704,935	
Sales tax receivable	-	
Prepaid expenses	-	
Accounts receivable	-	
	27,232,341	

Non-Current Assets

Capital Assets, net	29,002,139	
Forgivable Loans		
Made to Primary Government	-	
Made to Other	6,579	
Total Forgivable Loans	6,579	
		29,008,718

Total Assets	\$ 56,241,059
--------------	---------------

LIABILITIES AND NET POSITION

Liabilities

Accounts payable	85,335	
Retainage Payable	52,010	
Capital Leases payable	93,357	
Commitments payable		
Due within one year	10,900,769	
Due in more than one year	12,091,488	
Total Commitments Payable	22,992,257	
		23,222,958

Net Position

Net investment in capital assets	29,002,139	
Restricted for Forgivable Loans	6,579	
Restricted for Capital Leases	93,357	
Promotions	971,810	
Unrestricted	2,944,215	
	33,018,100	

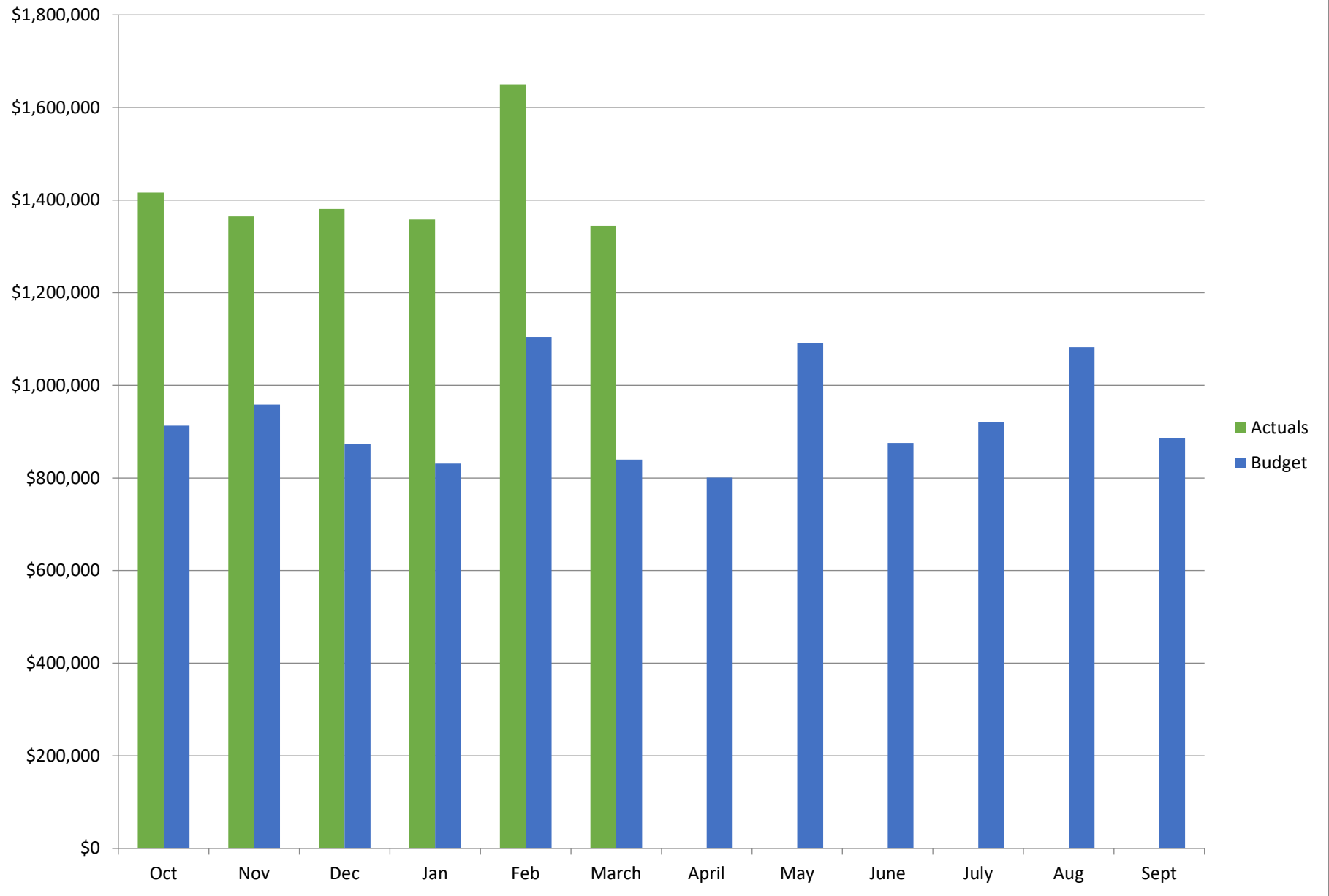
Total Liabilities and Net Position	\$ 56,241,059
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Sales Tax

Sales Tax Variance

	2020-2021	2021-2022	% Change	2021-2022	2022-2023	% Change	YTD Change
October	\$1,203,058.10	\$971,343.63	-19.26%	\$971,343.63	\$1,416,510.48	45.83%	45.83%
November	\$983,259.60	\$1,156,353.89	17.60%	\$1,156,353.89	\$1,364,595.51	18.01%	30.71%
December	\$843,087.27	\$1,013,549.80	20.22%	\$1,013,549.80	\$1,380,834.52	36.24%	32.49%
January	\$752,584.05	\$1,117,874.02	48.54%	\$1,117,874.02	\$1,358,336.22	21.51%	29.61%
February	\$1,224,314.99	\$1,434,528.04	17.17%	\$1,434,528.04	\$1,649,985.00	15.02%	25.93%
March	\$783,914.25	\$983,421.74	25.45%	\$983,421.74	\$1,344,612.50	36.73%	27.52%
April	\$687,198.37	\$1,015,116.31	47.72%	\$1,015,116.31			
May	\$1,198,336.79	\$1,487,467.44	24.13%	\$1,487,467.44			
June	\$927,060.71	\$1,218,236.38	31.41%	\$1,218,236.38			
July	\$909,387.44	\$1,326,275.50	45.84%	\$1,326,275.50			
August	\$1,176,070.55	\$1,582,536.23	34.56%	\$1,582,536.23			
September	\$978,956.15	\$1,303,011.95	33.10%	\$1,303,011.95			
Annual Total	\$11,667,228.27	\$14,609,714.93	25.22%	\$14,609,714.93	\$8,514,874.23		

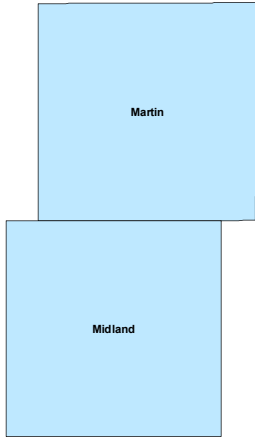
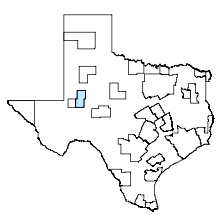
Sales Tax Actuals vs Budget Estimates



Activity Report

Midland MSA

February 2023

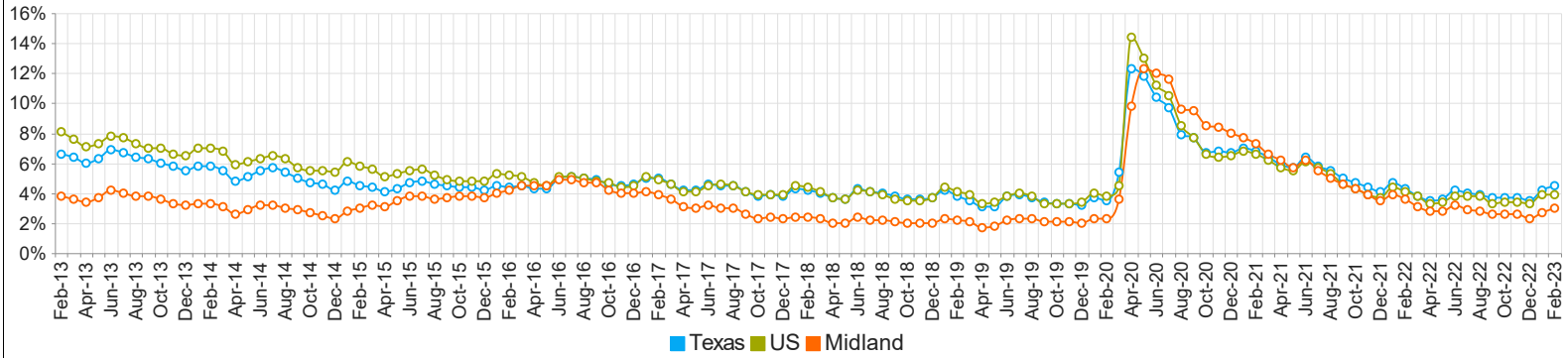


MSA Labor Force Statistics				
	Feb-23	Jan-23	Feb-22	Yearly Change
Civilian Labor Force	114,496	113,569	106,476	8,020
Employed	111,062	110,472	102,627	8,435
Unemployed	3,434	3,097	3,849	-415
Unemployment Rate	3.0%	2.7%	3.6%	-0.6%

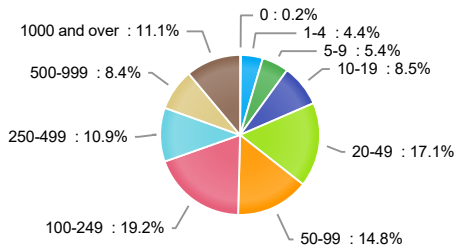
Texas Labor Force Statistics				
	Feb-23	Jan-23	Feb-22	Yearly Change
Civilian Labor Force	15,046,646	14,877,616	14,613,813	432,833
Employed	14,369,352	14,254,769	13,979,120	390,232
Unemployed	677,294	622,847	634,693	42,601
Unemployment Rate	4.5%	4.2%	4.3%	0.2%

US Labor Force Statistics				
	Feb-23	Jan-23	Feb-22	Yearly Change
Civilian Labor Force	166,178,000	165,070,000	163,725,000	2,453,000
Employed	159,713,000	158,692,000	156,942,000	2,771,000
Unemployed	6,465,000	6,378,000	6,782,000	-317,000
Unemployment Rate	3.9%	3.9%	4.1%	-0.2%

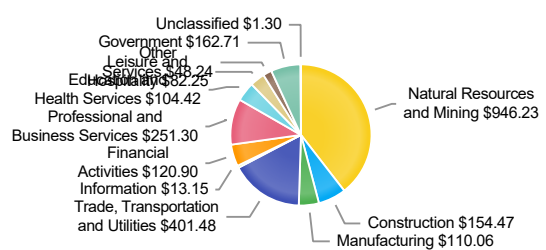
Historical Unemployment Rates



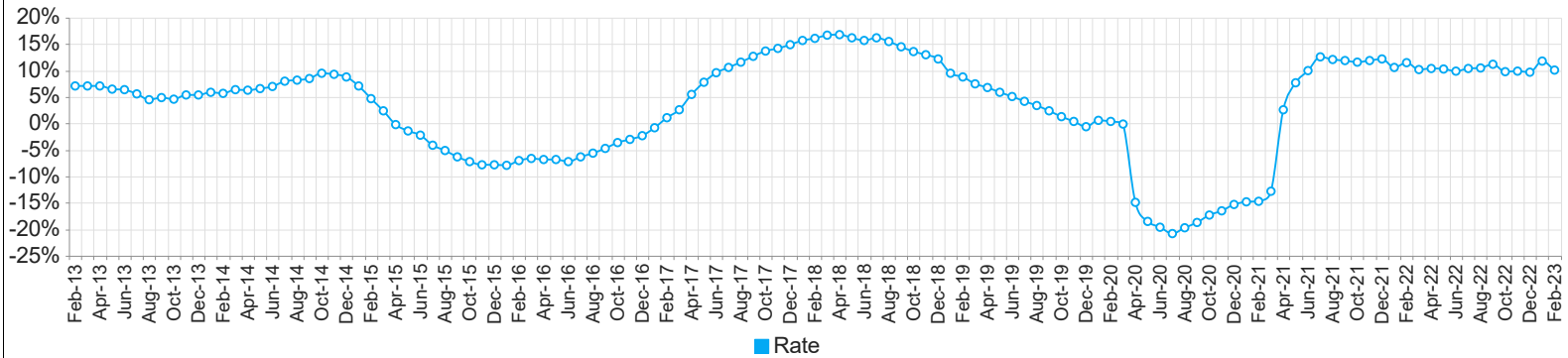
Employment by Size Class (3rd Quarter 2022)



Wages by Industry (in millions) (3rd Quarter 2022)



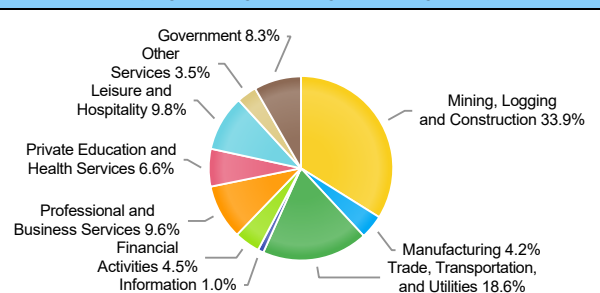
Annual Growth Rate Total Non-agricultural employment



Employment by Industry (February 2023)

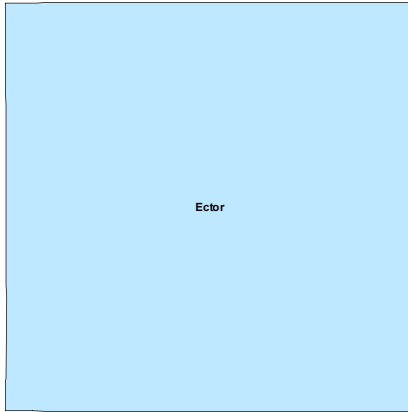
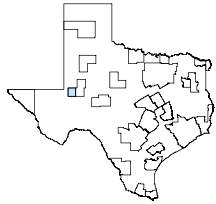
Industry	Current Month Employment	% Monthly Change	% Yearly Change
Total Nonfarm	118,700	0.1%	10.1%
Mining, Logging and Construction	40,200	-0.5%	18.6%
Manufacturing	5,000	-2.0%	13.6%
Trade, Transportation, and Utilities	22,100	0.5%	4.2%
Information	1,200	0.0%	20.0%
Financial Activities	5,300	0.0%	6.0%
Professional and Business Services	11,400	-0.9%	9.6%
Private Education and Health Services	7,800	0.0%	5.4%
Leisure and Hospitality	11,600	0.0%	6.4%
Other Services	4,200	0.0%	10.5%
Government	9,900	4.2%	1.0%

Employment by Industry (February 2023)



Odessa MSA

February 2023

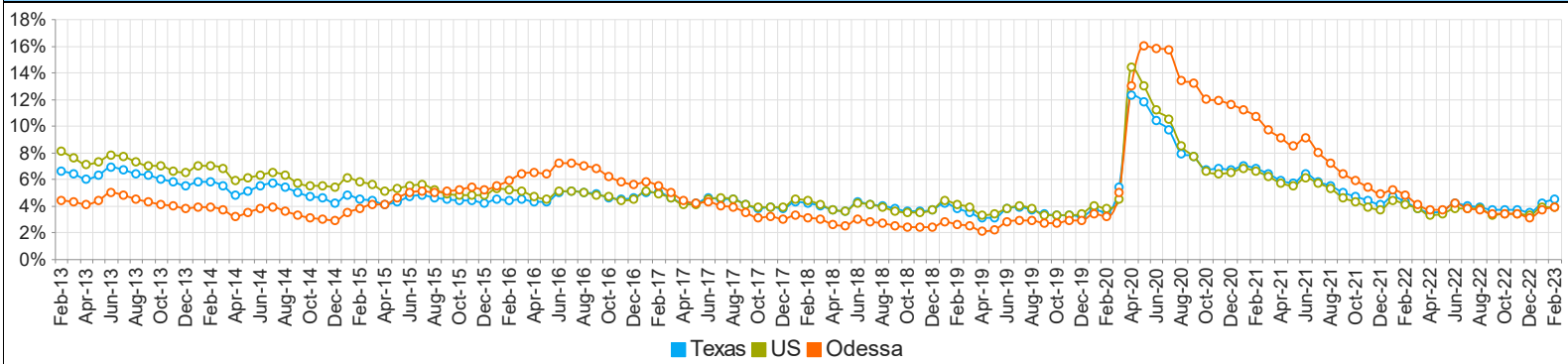


MSA Labor Force Statistics				
	Feb-23	Jan-23	Feb-22	Yearly Change
Civilian Labor Force	86,381	85,746	82,544	3,837
Employed	82,974	82,612	78,589	4,385
Unemployed	3,407	3,134	3,955	-548
Unemployment Rate	3.9%	3.7%	4.8%	-0.9%

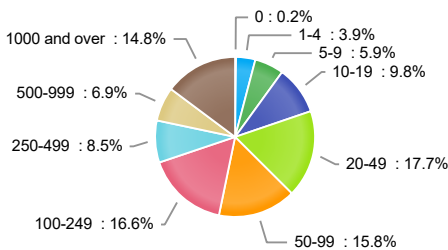
Texas Labor Force Statistics				
	Feb-23	Jan-23	Feb-22	Yearly Change
Civilian Labor Force	15,046,646	14,877,616	14,613,813	432,833
Employed	14,369,352	14,254,769	13,979,120	390,232
Unemployed	677,294	622,847	634,693	42,601
Unemployment Rate	4.5%	4.2%	4.3%	0.2%

US Labor Force Statistics				
	Feb-23	Jan-23	Feb-22	Yearly Change
Civilian Labor Force	166,178,000	165,070,000	163,725,000	2,453,000
Employed	159,713,000	158,692,000	156,942,000	2,771,000
Unemployed	6,465,000	6,378,000	6,782,000	-317,000
Unemployment Rate	3.9%	3.9%	4.1%	-0.2%

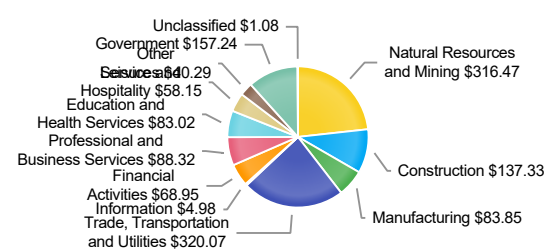
Historical Unemployment Rates



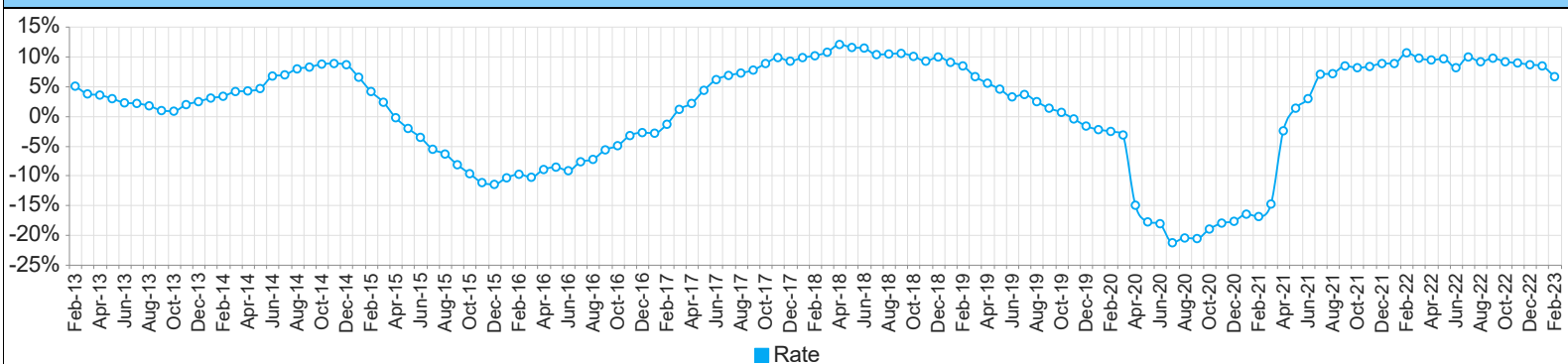
Employment by Size Class (3rd Quarter 2022)



Wages by Industry (in millions) (3rd Quarter 2022)



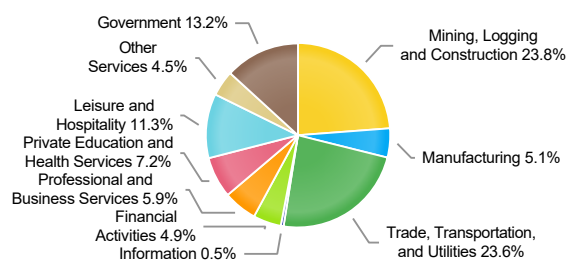
Annual Growth Rate Total Non-agricultural employment



Employment by Industry (February 2023)

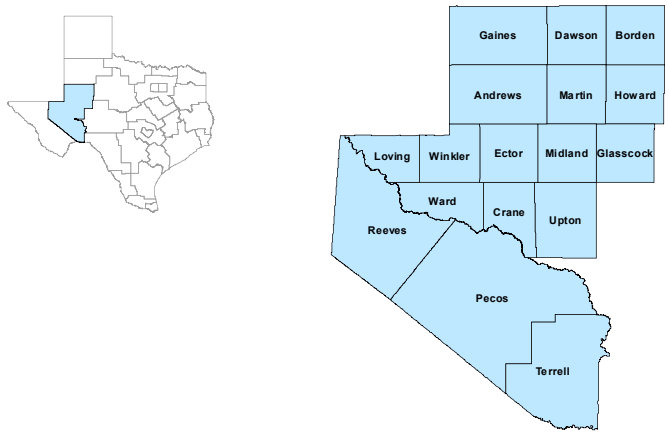
Industry	Current Month Employment	% Monthly Change	% Yearly Change
Total Nonfarm	80,200	0.1%	6.6%
Mining, Logging and Construction	19,100	-0.5%	17.9%
Manufacturing	4,100	0.0%	7.9%
Trade, Transportation, and Utilities	18,900	0.0%	4.4%
Information	400	0.0%	0.0%
Financial Activities	3,900	0.0%	8.3%
Professional and Business Services	4,700	0.0%	-2.1%
Private Education and Health Services	5,800	0.0%	5.5%
Leisure and Hospitality	9,100	1.1%	1.1%
Other Services	3,600	0.0%	9.1%
Government	10,600	1.0%	1.0%

Employment by Industry (February 2023)



Permian Basin Workforce Development Area

February 2023



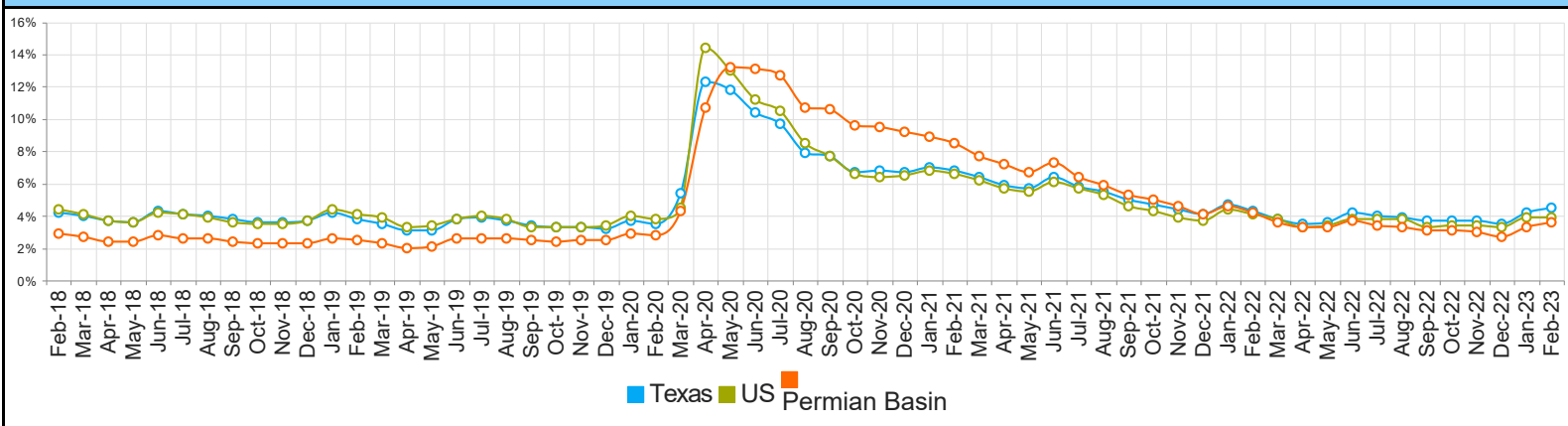
WDA Labor Force Statistics				
	Feb-23	Jan-23	Feb-22	Yearly Change
Civilian Labor Force	272,007	269,782	258,007	14,000
Employed	262,346	260,957	247,082	15,264
Unemployed	9,661	8,825	10,925	-1,264
Unemployment Rate	3.6%	3.3%	4.2%	-0.6%

Texas Labor Force Statistics				
	Feb-23	Jan-23	Feb-22	Yearly Change
Civilian Labor Force	15,046,646	14,877,616	14,613,813	432,833
Employed	14,369,352	14,254,769	13,979,120	390,232
Unemployed	677,294	622,847	634,693	42,601
Unemployment Rate	4.5%	4.2%	4.3%	0.2%

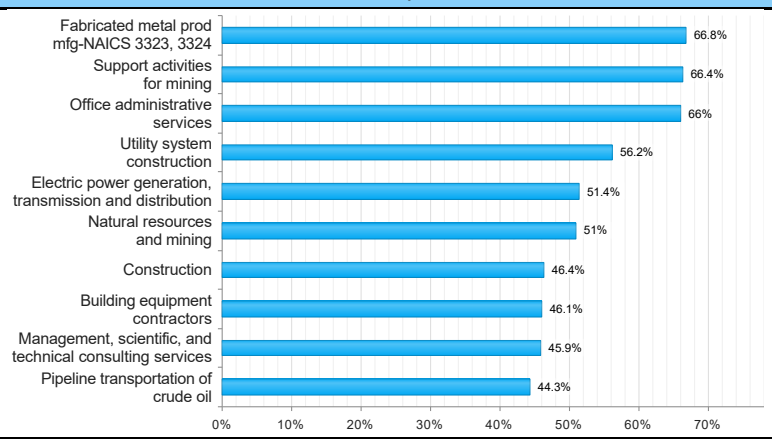
US Labor Force Statistics				
	Feb-23	Jan-23	Feb-22	Yearly Change
Civilian Labor Force	166,178,000	165,070,000	163,725,000	2,453,000
Employed	159,713,000	158,692,000	156,942,000	2,771,000
Unemployed	6,465,000	6,378,000	6,782,000	-317,000
Unemployment Rate	3.9%	3.9%	4.1%	-0.2%

Continued Claims for the Week of the 12th				
	Feb-23	Jan-23	Feb-22	Yearly Change
WDA	841	832	1,194	-353
Texas	96,642	97,030	78,514	18,128

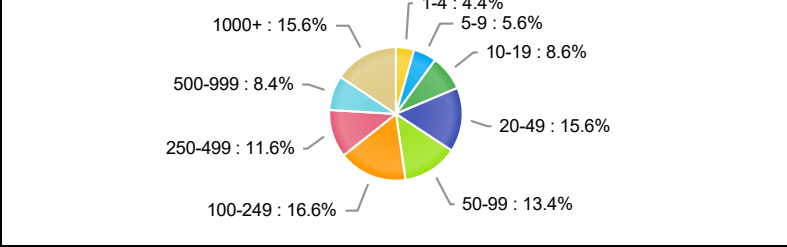
Historical Unemployment Rates



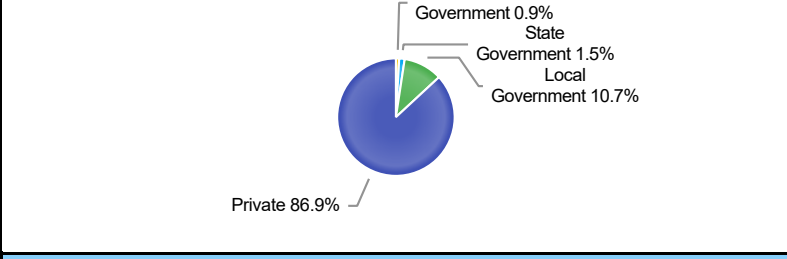
Projected Top Ten Fastest Growing Industries in WDA (% Growth 2020-2030)



Employment by Size Class (3rd Quarter 2022)



Employment by Ownership (3rd Quarter 2022)



Average Weekly Wage (3rd Quarter 2022)

	Q3 2022	Q2 2022	Q3 2021	Quarterly Change	Yearly Change
WDA	\$1,501	\$1,388	\$1,293	\$113	\$208
Texas	\$1,333	\$1,282	\$1,227	\$51	\$106
US	\$1,334	\$1,294	\$1,250	\$40	\$84

Employment by Industry (3rd Quarter 2022, Percent Change)

Industry	Employment	% of Total	% Quarterly Change	% Yearly Change
Natural Resources and Mining	52,263	21.1%	5.1%	20.0%
Construction	20,423	8.2%	4.3%	25.8%
Manufacturing	14,386	5.8%	2.9%	53.3%
Trade, Transportation and Utilities	51,791	20.9%	2.2%	4.8%
Information	2,129	0.9%	11.3%	11.9%
Financial Activities	10,864	4.4%	2.4%	8.3%
Professional and Business Services	18,079	7.3%	2.2%	8.8%
Education and Health Services	38,079	15.3%	-2.8%	1.4%
Leisure and Hospitality	25,971	10.5%	1.1%	3.8%
Other Services	7,122	2.9%	1.4%	6.6%
Public Administration	6,982	2.8%	-1.6%	-4.0%

Employment by Industry (3rd Quarter 2022)

