



Board Binder Open Session

August 1, 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 August 1, 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/87802266681?pwd=a25lRUg4bjZOenFkRXUwNU5rUFpCZz09>

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Or join by phone:

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Webinar ID: 878 0226 6681

Passcode: 565189

International numbers available: <https://us02web.zoom.us/j/87802266681?pwd=a25lRUg4bjZOenFkRXUwNU5rUFpCZz09>

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 June 6, 2022, meeting of the Midland Development Corporation.
3. Presentation from the Bush Tennis Center on the ACE Athletic Center project.
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.
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.
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.

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.
8. Resolution authorizing the execution of a second amendment to that certain Promotional Agreement with the Permian Basin Area Foundation.
9. Resolution authorizing the execution of an abatement contract with Ron Osborn, Inc., DBA Advanced Environmental Services in the amount of \$280,649.00 for the abatement of hazardous materials within the structures located on certain real property described as Lots 1A and 9-12, Block 35, Original Town of Midland, City of Midland, Midland County, Texas; and authorizing payment for said contract.
10. Resolution authorizing the execution of a consulting services agreement with Strong Environmental Services, LLC, in the amount of \$129,750.00 for services related to the abatement of hazardous materials within the structures located at certain real property described as Lots 1A and 9-12, Block 35, Original Town of Midland, City of Midland, Midland County, Texas; and authorizing payment for said agreement.
11. Presentation on the July 2022 monthly expenses and economic development activity report from the Midland Development Corporation Executive Director and staff.
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.

Posted this 29th day of July 2022.

Amy M. Turner
City Secretary

June 6th Minutes

MIDLAND DEVELOPMENT CORPORATION

MINUTES

June 06, 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 June 06, 2022.

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

Board Members absent: Director Jill Pennington

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

Council Member(s) present: Council Member Lori Blong, Council Member Dan Corrales, and Council Member Robin Poole

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

1. Call meeting to order.

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

2. Motion approving the minutes of the May 02, 2022 meeting of the Midland Development Corporation.

Director Bullock moved to approve the minutes of the May 05, 2022 meeting of the Midland Development Corporation; seconded by Director Gardaphe. The motion carried by the following vote: AYE: Lowery, Simpson, Sams and Sisniega. NAY: None. ABSTAIN: None. ABSENT: Pennington.

3. Motion cancelling the July 11, 2022, meeting of the Midland Development Corporation.

Director Sams moved to approve cancelling the July 11, 2022, meeting of the Midland Development Corporation.; seconded by Director Sisniega. The motion carried by the following vote: AYE: Lowery, Gardaphe, Bullock and Simpson. NAY: None. ABSTAIN: None. ABSENT: Pennington.

4. Resolution authorizing the execution of an amendment to that certain purchase and sale agreement between the Midland Development Corporation and 42, LLC, for the sale of an approximate 58.207-acre tract of land out of Section 11, Block 40, Township 2 South, T&P RR Co. Survey, Midland County, Texas.

Director Sams moved to approve Resolution ED-410 authorizing the execution of an amendment to that certain purchase and sale agreement between the Midland Development Corporation and 42, LLC, for the sale of an approximate 58.207-acre tract of land out of Section 11, Block 40, Township 2 South, T&P RR Co. Survey, Midland County, Texas.; seconded by Director Gardaphe. The motion carried by the following vote: AYE: Lowery, Sisniega, Bullock and Simpson. NAY: None. ABSTAIN: None. ABSENT: Pennington.

5. Resolution approving the budget for the Midland Development Corporation's 2022-2023 Fiscal Year.

Director Bullock moved to approve Resolution ED-411 approving the budget for the Midland Development Corporation's 2022-2023 Fiscal Year. seconded by Director Simpson. The motion carried by the following vote: AYE: Lowery, Sisniega, Sams and Gardaphe. NAY: None. ABSTAIN: None. ABSENT: Pennington.

6. Resolution appropriating funds from the Midland Development Corporation's 2020-2021 fiscal year budget to be used for promotional purposes, as authorized by Chapter 504 of the Texas Local Government Code.

Director Bullock moved to approve Resolution ED-412 appropriating funds from the Midland Development Corporation's 2020-2021 fiscal year budget to be used for promotional purposes, as authorized by Chapter 504 of the Texas Local Government Code. seconded by Director Sisniega. The motion carried by the following vote: AYE: Lowery, Simpson, Sams and Gardaphe. NAY: None. ABSTAIN: None. ABSENT: Pennington.

7. Discuss engaging one or more engineering firms for the purpose of obtaining tenants for certain property owned by the City of Midland at Midland International Air & Space Port.

MDC Executive Director, Sara Harris reported that the MDC has multiple prospects that need land at the Space port Business Park, requiring support for civil and structural engineering. She discussed that any agreement brought to the board could be structured task by task or there could be one or more firm's on-call as needed as prospects come in. The MDC can engage with any engineering firm deemed advisable. Every step of the process will be coordinated with the City of Midland's City Manager and the Department of Airports.

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

MDC Executive Director, Sara Harris reported that sales tax increase 24% year over year for the month of May 2022. She also noted a payment of \$4.8 million to close MDC's purchase of the West Texas Gas properties downtown.

Board recessed into executive session at 10:32 a.m.

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

a. Section 551.072 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 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 12:00 p.m.

All the business at hand having been completed, Chairman Lowery adjourned the meeting at 12:01 p.m.

Respectfully submitted,

Vanessa White, Deputy City Secretary

PASSED AND APPROVED the 1st Day of August 2022.

Jill Pennington, Secretary

Bush Tennis Center Presentation



BUSH A.C.E. ATHLETIC CENTER




BUSH
TENNIS CENTER



PROJECT OVERVIEW

The Bush ACE Athletic Center (BAC) will provide a world class athletic and training facility for residents of the Permian Basin. The athletic center will consist of five indoor basketball courts, a 50-yard indoor turf field, and an 12,000 square-foot high-performance training facility designed by Lance Hooton. The facility will be located on the east side of Bush Tennis Center and has a projected construction cost of \$9,000,000. NC Sturgeon Company in Midland, Texas will serve as the general contractor.

The Bush Tennis Center (BTC) is located on a 35-acre campus in north Midland and recognized as a 501c3 non-profit organization by the Internal Revenue Service. BTC currently serves over 400 members and hosts numerous events and programs for all ages. The Bush Tennis Center honors the legacy of President George H.W. Bush, President George W. Bush and the Bush family by serving the West Texas community.

In 2020, BTC opened **Chris Davidson Opportunity Park (CDOP)** on the west side of the BTC campus. CDOP is a \$4.5 million park designed for all children regardless of physical challenges.

In 2016, the Bush Tennis Center launched the **Bush ACE Outreach Program** to Advise, Counsel and Encourage (ACE) area youth by connecting positive role models with elementary-aged children through the sport of tennis. Thanks to partnerships with the University of Texas Permian Basin (UTPB) and the United States Tennis Association (USTA), ACE has provided free in-school programs to over 40,000 elementary-aged children throughout the Permian Basin and free or discounted after-school and summer programs. In addition to learning the sport of tennis, ACE promotes the core values of sportsmanship, integrity, self-confidence and hard work.

In 2021, ACE will continue to expand throughout Texas with new partnerships with the USTA Arthur Ashe National Junior Tennis & Learning program (NJTL), Baylor Tennis, Texas A&M Tennis, and Texas Tech Tennis. The 2021-2022 Bush ACE Outreach Program goal is to reach over 200,000 Texas children.

The addition of the Bush ACE Athletic Center will allow ACE to expand the program's platform to include basketball, volleyball, soccer, and high-performance training camps for football, baseball and gymnastics. The Bush ACE Athletic Center will also host numerous basketball, volleyball and indoor soccer tournaments that will bring valuable opportunities for area youth and a significant economic impact for the Permian Basin.

Sturgeon Construction and AS Design Studio will serve as the general contractor and design consultants for the Bush ACE Athletic Center. The Westlake Athletic Community Center management group in Austin, Texas will serve as a management and operations consultant. Lance Hooton founder of Hooton Sports Performance Training will serve as high performance training consultant for programming and staffing.

Proposed A.C.E. Athletic Center at Bush Tennis Center



PIONEER

NATURAL RESOURCES

PIONEER NATURAL RESOURCES is a large independent oil and gas exploration and production company headquartered in Irving, Texas, with operations solely in the Permian Basin. For more information, please visit www.pxd.com



THE BUSH TENNIS CENTER is a legacy gift to West Texas honoring President George H.W. Bush, President George W. Bush and the Bush family. The mission of the Bush Tennis Center (BTC) is to provide everyone the opportunity to experience the game of tennis, regardless of physical, financial or geographical barriers. Through BTC outreach programs, more than 40,000 children throughout the Permian Basin have had the opportunity to learn the sport of tennis. This year, the ACE outreach program (Advise- Counsel-Encourage) will visit more than 30 schools and provide free tennis and educational programs to over 12,000 children. Upon its completion, the Bush Tennis Center will be the second largest tennis center in the world with an estimated annual economic impact of over \$43 million per year to the Permian Basin economy. For more information, please visit www.bushtenniscenter.org.



SENIOR MANAGEMENT TEAM

Jeff Buch-Managing Director of Programming

Mr. Buch has over 25 years of experience in the sports and entertainment industry including 20 seasons of running youth basketball teams and tournaments in Westlake, TX. He has served as the Managing General Partner of the Austin Ice Bats Professional Hockey Club where he managed every aspect of the organization. His previous roles included Vice President of Sports Partnerships for First USA Bank where he analyzed and procured more than \$500 million in sports sponsorships from hundreds of major and minor league sports teams, collegiate athletic departments and professional leagues throughout the United States and Canada. Prior to his tenure with First USA, Mr. Buch held the position of Director of Advertising Sales for the Dallas Stars Hockey Club, as well as, legal consultant for Professional Sports Management where he prepared and presented arbitration cases for Major League baseball players. Mr. Buch received his Bachelor of Science from the University of California at Berkeley in 1986 and a Juris Doctorate from Loyola Law School in 1993. He is currently a member of the State Bar of Texas.

Lance Hooton-Managing Director of Performance Training

Coach Lance Hooton is recognized as one of the leading sports performance and nutrition coaches in the world. He has a proven track record in training elite athletes as well as designing programs and facilities for professional and collegiate teams.

Coach Hooton designed programs and facilities for the following organizations:

UT Austin - Track & Field and Baseball
UConn - Track & Field
OU - All Sports & Facility Design
Kansas - Men's Basketball
Texas A&M - Track & Field, Nutrition and Training
Harvard - Track & Field, Nutrition and Training
NFL - Seattle Seahawks (Offense & Defense)
MLB - Cincinnati Reds
NHL - Toronto Maple Leafs
USTA - Professional Player Development



Coach Hooton has trained world class athletes from multiple sports including:

Track & Field

Donovan Bailey - Olympic Gold Medalist & World Record Holder

Carl Lewis - Olympic Gold Medalist

Tennis

Andy Roddick - World #1, US Open Champion

Serena Williams - World #1, 23 Grand Slam Titles

MLB Baseball

Alex Rodriguez - AL MVP-World Champion, New York Yankees

Clayton Kershaw - NL MVP, Cy Young Award, Los Angeles Dodgers

NFL

Nick Foles - MVP Super Bowl LII, QB, Chicago Bears

Ricky Williams - Heisman Trophy Winner, Miami Dolphins

Marcus Williams – Safety, New Orleans Saints

NBA

Ray Allen - Olympic Gold Medalist, NBA World Champion, Boston Celtics

Richard Hamilton - NBA All Star, NBA World Champion, Detroit Pistons

Michelle Stallard-Director of Tennis & Athletics

Mrs. Stallard has over 35 years of club and resort management experience. She recently joined the BTC team, following 15 years as Director of Tennis at Horseshoe Bay Resort (HSB). During her tenure at HSB, the resort's tennis program received international recognition as one of the Top 10 Tennis Resort Destinations in the country (USA Today) and one of the Top 50 Tennis Resort Destinations in the World (Tennis Resorts Online). Prior to her employment at HSB, she served as Head Tennis Professional at Barton Creek Resort & Spa and Assistant Women's Tennis Coach at UT Austin. As a member of the UT Longhorns, she captured the Southwest Conference "Triple Crown" by winning the conference singles, doubles and team titles and earned NCAA Division One Academic-All America honors. Mrs. Stallard graduated from UT Austin with a B.S. Degree in Exercise Physiology and Corporate Fitness and she is a certified personal trainer by the Cooper's Institute in Dallas, Texas. Mrs. Stallard currently serves on the Board of Directors of the United States Professional Tennis Association (USPTA).

Bush Tennis Center to expand into premier athletic complex

[Stewart Doreen, MRT.com/Midland Reporter-Telegram](#)

June 28, 2022

Construction will soon begin at the Bush Tennis Center that will transform the premier tennis facility into the region's premier athletic complex.

Officials said materials have been delivered for the addition that will include five indoor basketball/volleyball courts, a 50-yard indoor turf room and a 12,000-square-foot, high-performance training facility designed by Lance Hooten.

Tim Stallard, executive director of the Bush Tennis Center, said this week that construction time will be around one year.

The Bush Tennis Center is located on a 35-acre campus in northwest Midland. Located on Briarwood Avenue, the tennis facility includes 19 full-size, lighted courts. According to the nonprofit's website, "upon its completion, Bush Tennis Center will be the second largest tennis center in the world with more than 60 courts including covered courts and indoor clay courts."

Bush Tennis Center officials have said that the Bush A.C.E. Outreach Program has provided free or discounted tennis programs for more than 40,000 children through the Permian Basin. In 2019, the Bush A.C.E. Outreach Program expanded through partnerships with UTPB, Baylor and Texas A&M, according to the Bush Tennis Center website.

"When we built the Bush Tennis Center, our goal was to provide a world-class tennis facility for West Texans and to provide programs to help area youth stay on the courts and out of the courts," Jim Henry, chairman of Henry Resources, has said of the center and its outreach program.

Stallard said the pro shop for the tennis center is currently halfway through construction and should be done in the next five months, Stallard said.

To the east of the Bush Tennis Center is the Chris Davidson Opportunity Park, which is described as "universally accessible" and "addresses the needs of the whole child, including physical, social/emotional, sensory, cognitive and communication."

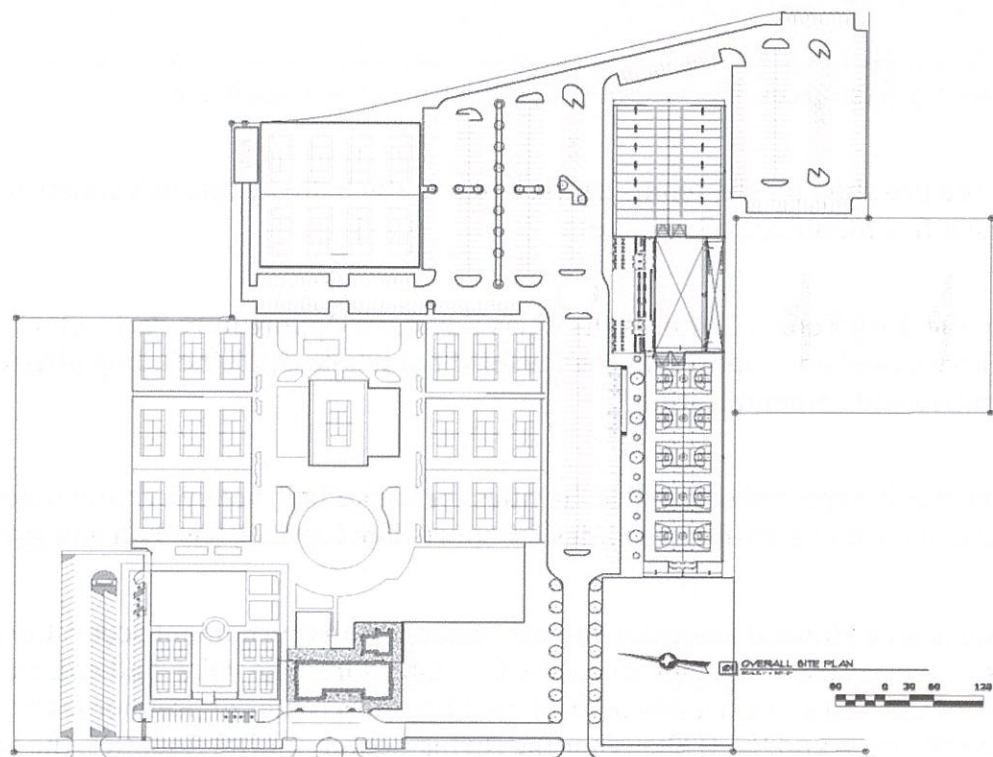
The athletic center is expected to provide facilities for basketball, volleyball and indoor soccer and be a home for those in need of a training facilities for sports like football, baseball and gymnastics.

What it will do is give Midland an option for the regional club tournament scene. Currently Midland families must travel across the region and state for club sports like volleyball and basketball. This facility will meet a need that doesn't exist and adds to the Midland's roster of premier facilities like the FMH Foundation Natatorium and the O'Shaughnessy Diving Center at COM Aquatics, the Scharbauer Sports

Complex, the city's golf facilities and the city's tournament tennis facilities (Bush Tennis Center and Midland College).

"This is something that is so overdue and desperately needed," Stallard said. "Midland doesn't have a facility like this."

Stallard also said this week that Pioneer Natural Resources has donated 3 acres for the complex, which will allow the Bush ACE Athletic Center to be home to a track and lacrosse field.



**BUSH PERFORMANCE
TRAINING CENTER**

Jason S. Dean Architects, LLC
ARCHITECTURE | INTERIORS
1000 W. 11TH ST. SUITE 100
MIDLAND, TEXAS 79701
409.712.7122 | JASON@JSDA.COM

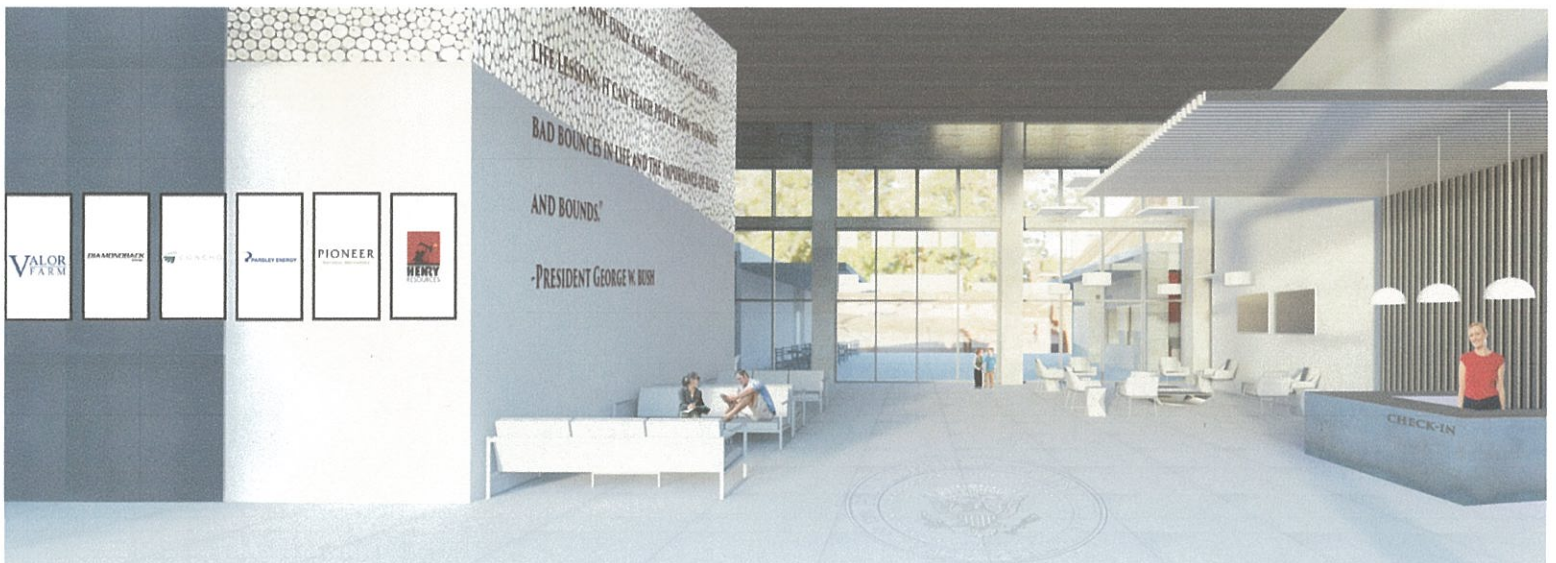
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20-005

DOUGLAS SCHARBAUER CLUBHOUSE & PRO SHOP



FRONT ELEVATION



PRO SHOP PERSPECTIVE



COURTYARD PERSPECTIVE

ACE

Outreach Program

POWERED BY PIONEER
NATURAL RESOURCES

The BUSH ACE OUTREACH PROGRAM was launched in 2016, at the Bush Tennis Center in Midland, Texas to Advise, Counsel, and Encourage (ACE) area youth by connecting positive role models with elementary-aged children through the sport of tennis. Thanks to partnerships with the University of Texas Permian Basin (UTPB) and the United States Tennis Association (USTA), ACE has provided free in-school programs to over 40,000 elementary-aged children throughout the Permian Basin and free or discounted after-school and summer programs supported by the Bush Tennis Center. In addition to learning the sport of tennis, ACE promotes the core values of sportsmanship, integrity, self-confidence and hard work.

In 2021, ACE will continue to expand throughout Texas with new partnerships with the USTA Arthur Ashe National Junior Tennis & Learning program (NJTL), Baylor Tennis, Texas A&M Tennis, TCU Tennis, UTPB Tennis, UT Austin Tennis and UT San Antonio Tennis. The 2021-2022 Bush ACE Outreach Program goal is to reach over 200,000 Texas children.

*"Be bold in your caring,
be bold in your dreaming
above all else,
always do your best."*

- President George H.W. Bush -



President George H.W. Bush and Barbara Bush taking in a match at Texas A&M.



President George W. Bush and Laura Bush at the grand opening of the Bush Tennis Center.



THE BUSH TENNIS CENTER is a legacy gift to West Texas honoring President George H.W. Bush, President George W. Bush and the Bush family. The mission of the Bush Tennis Center (BTC) is to provide everyone the opportunity to experience the game of tennis, regardless of physical, financial, or geographical barriers. Upon its completion, the Bush Tennis Center will be the second largest tennis center in the world with an estimated annual economic impact of over \$43 million per year to the Permian Basin economy. For more information, please visit www.bushtenniscenter.org.



2022 Calendar of Events

January:

3rd	Legacy High School begins daily practice
8 th	UTR Level based singles
14 th	Parent's Night Out
14 th	Bynum School begins weekly clinics
24 th	UTPB begins weekly practice
22 nd	UTPB/USTA free college clinic-lunch provided by ACE Outreach
28 th -29 th	Legacy Tournament – 9 schools (Legacy, Amarillo, Caprock, Odessa, Permian, Midland Christian, Big Lake, Andrews, Trinity)
30 th	UTPB Exhibition match v. St. Thomas University

February:

6 th	UTR Co-ed Doubles
8 th -10 th	MISD Intersession BTC Camp & Clinic
11 th	Parent's Night Out
12 th	UTPB v NMMI and UTPB v University of Southwest
15 th	Tall City JV Invitational-9 schools (Midland High, Legacy, Permian, Odessa, Frenship, Kermit, Compass, Monahans, Trinity)
18 th -19 th	Tall City Varsity Invitational-16 schools Girls Doubles, Mixed Doubles (Legacy, Midland High, Odessa, Permian, South Lake Carroll, Wall High, Lubbock High, Lubbock Coronado, Lubbock Cooper, Frenship, Abilene Wylie, Allen High, San Angelo Central, Coppell High, Lubbock Monterey, Amarillo High)

March:

7 th -10 th	BTC Spring Break Camp & Clinic
7 th - 10 th	UTR Spring Break Camp & Junior Clinic Camp, TBD
11 th	Parent's Night Out
17 th	Midland Legacy Invite
19 th	MISD JH singles matches
20 th	Austin Pro Am- E. Svitolina & G. Monfils benefiting ACE Outreach & Svitolina Foundation
25 th	UTPB v DBU
26 th	MISD JH singles matches*
26 th	UTPB v MSU
28 th -29 th	Trinity host TAPS 4-1A Districts

April:

1 st	JV District 2-6A Tourney
2 nd	MISD JH tournament
7 th	UTPB v. St. Mary
8 th	Parent's Night Out
9 th	MISD JH match
10 th	USTA Level 7
17 th	Closed for Easter
22 nd	UTPB v WNMU
23 rd	MISD JH tournament
30 th	Kendra Scott in-store fundraiser 1-3pm
30 th -May 1 st	Kendra Scott online fundraiser



2022 Calendar of Events (cont.)

May:

7 th -9 th	Best of the West Challenge featuring Pat Green
7 th -8 th	USTA Pat Green Junior and Adult Challenge
7 th	5k & Pet Parade benefiting Humane Society
7 th	State Championship BBQ Cook-off benefiting Bynum School
7 th	Pat Green Concert benefiting ACE Outreach
9 th	Valor Farm Eagles & Aces Golf Tournament @ Hogan Park Golf Course free invite to First Responders
13 th	Parent's Night Out
14 th	USPTA Junior Circuit
14 th	Partnership with Big Brother Big Sister continues
15 th	USPTA Junior Circuit Tournament TBD
21 st	End-of-School Play Day, TBD
28 th -29 th	USTA Level 6
31 st -June 3 rd	Junior Summer Clinics

June:

6 th -9 th	BTC Sports Camp Session 1/Junior Summer Clinics
13 th -16 th	BTC Sports Camp Session 2/Junior Summer Clinics
13 th -17 th	NIKE Junior Tennis Camp
20 th -23 rd	BTC Sports Camp Session 3/Junior Summer Clinics
25 th -26 th	USTA Jim Henry Open Level 6 Juniors & Adults
27 th -30 th	BTC Sports Camp Session 4/Junior Summer Clinics

July:

5 th -8 th	Junior Summer Clinics
9 th	Breakfast at Wimbledon Tennis & Pickleball Member Appreciation Social
11 th -14 th	BTC Sports Camp Session 5/Junior Summer Clinics
18 th -21 th	BTC Sports Camp Session 6/Junior Summer Clinics
25 th -28 th	Junior Summer Clinics
30 th	USTA Level 7

August:

1 st	Legacy weekly practice begins
12 th – 13 th	Basin Brawl TBD
20 th -21 st	USTA Level 7

September:

16 th -18 th	USTA Adult Major Zone (all courts needed)
16 th -18 th	All American Cup H.E.B. Center, Austin-East v. West
24 th	USTA Level 7



2022 Calendar of Events (cont.)

October:

8th Oktoberfest Member Appreciation Social or Food Truck Battle, TBD
8th USTA Level 7
10th Bi-Districts begin TBD El Paso, Abilene, Lubbock, Amarillo
13th Dueling Pianos Fundraiser @ Petroleum Club benefiting ACE Outreach
18th-19th USSP Circuit Senior Open Pickleball Tournament (50+)
19th-18th MISD Intersession BTC Junior Clinic TBD
29th USTA Level 6

November:

11th-12th XTO Veterans Weekend Event with Midland Athletic Co. Run
19th USTA Level 7
21st-22nd BTC Turkey Camp & Clinic
24th-25th Closed for Thanksgiving
26th-Dec. 13th Toys for Tots fundraiser drop-off location

December:

3rd Toys for Tots Tennis & Pickleball Fundraiser Member Appreciation Event
19th-21st BTC Winter Camp & Clinic
24th-25th Closed for Christmas

TexasMonthly

Have Racket, Will Travel: Seven Top Texas Tennis Resorts

By [Brittani Sonnenberg](#)

June 21, 2022

From luxury spas to grueling drills, our state offers something for players of every persuasion.

It was a terrible time to go on vacation. In two weeks, two hundred of our closest friends and family members would descend on Austin, and Alejandro and I still hadn't picked out rings, decided whether or not we needed a tent, or written our vows. It was time to get our act together. Instead, we packed our rackets, hit the road, and pretended our biggest challenge lay in figuring out how to hit a bigger forehand.

In our defense, tennis's global resurgence over the past two years is of a fundamentally procrastinatory nature. When COVID-19 pandemic shutdowns forced gyms and yoga studios to close, open-air tennis courts emerged as one of the few legitimate excuses to leave your house. And for an hour, rallying back and forth, you could forget about Zoom meetings, Lysol wipes, and spiking infection rates.

Ale and I had begun playing tennis in 2019, hitting on Wednesday nights with another couple, but during the pandemic we went from playing a couple times a week to daily. Along with the rest of the nation. According to a [2021 U.S. Tennis Association report](#), the number of Americans who play tennis—some 22.6 million—surged by 28 percent from 2019 to 2021.

Living in Austin, we were perfectly situated to fall for the sport. Tennis is hot in Texas. (Like, stupidly hot. I regularly play summer matches in 100-plus-degree heat.) But also: the sport is having a moment. The lady Longhorns snatched their second consecutive NCAA tennis championship this May, and Austin beat out other U.S. cities to score a new WTA pro tour event, the ATX Open, slated for February 2023. As the legendary Billie Jean King [said in a statement](#), “The addition of the ATX Open . . . will bring world-class tennis to one of the fastest growing markets in the country.” Move over, Wimbledon. Forget strawberries and cream and dainty Pimm's Cups. Texas is going to teach the tennis world how to tailgate with brisket and beer.

Ale and I crushed hard on tennis at the same time that we fell for each other. It swiftly became part of our (forgive the pun) courtship. Still, tensions emerged. Ale was always a little better, and after one particularly vexing set, I refused to kiss him back across the net. There's a reason mixed doubles is called divorce court. Overall, however, we loved competing, trying out drop shots, topspin serves, and down-the-line backhands. He proposed to me on Valentine's Day in 2021, during the February freeze, just before the power grid failed.

Fast-forward one year. We should've been planning our honeymoon, or responding to the DJ's increasingly urgent emails, but instead I found myself Googling “tennis resorts in Texas.” I whooped out loud at my search results, like an old oil prospector at the sight of spurting black gold. Tennis-lovin' Texans, rejoice: we are downright spoiled when it comes to “have racket, will travel” options. There are resorts for every type of player and traveler: a world-renowned “tennis ranch” in the Hill Country, blissfully air-conditioned courts and award-winning spa treatments in Houston and Dallas, and gorgeous red-clay courts on the shores of Horseshoe Bay.

Each spot comes with its own set of teaching pros, tempting surroundings, and accommodation styles, as distinct in personality as the stars playing in the French Open finals as I write this. And to save you from exhaustive research when you could be hitting balls or hitting the pool, here's a list of our five favorites. (Yes, you rabid pickleballers, we found a special escape for you, too.) May these dreamy destinations lure you from whatever you should be getting done at home this weekend.

[Las Colinas Four Seasons, Irving](#)

Our first stop: Las Colinas Four Seasons, in the Dallas suburb of Irving. With a gleaming marble lobby, wisteria-scented paths twisting through the sprawling property, and state-of-the-art indoor courts that had been resurfaced just three days before our visit, tennis had never felt so posh. (We are accustomed to playing on cracked outdoor courts, yelling game scores over the sounds of traffic and a nightly drum circle in Mueller Lake Park.)

That evening, after losing to Alejandro (but acing him with one of my slice serves out wide), we went out on the town, justifying our fresh-rigatoni carb-loading at **the Charles** with the semi-private lesson we'd scheduled for the next morning. (We were careful to continue this nutritional program with pain au chocolat at the breakfast buffet, courtesy of the hotel's nationally lauded pastry chef, Yudith Bustos.) At 10 a.m., in blissful, air-conditioned comfort, under the expert eye of pro Noah Lee and hotel tennis director Jerome Millet, we brushed up on our backhands and forehands. Having broken a light sweat, we agreed it was time to release all remaining toxins and spent the final delicious hours of our Four Seasons escape in the sauna, steam bath, and relaxation rooms at the spa (all free for hotel guests).

[Sage Hill Inn & Spa, Kyle](#)

We are living in a highly divided country. I'm not talking about politics. I'm talking about pickleball. Specifically, where you stand on the "pickleball is a legitimate sport" versus "what are these jokers with fake rackets doing on my tennis court?" debate. Prior to our trip to Sage Hill, Ale and I firmly belonged to the latter camp, reasoning that we liked our pickles only on sandwiches or with shots of bourbon.

Sage Hill Inn made me a convert. While some tennis resorts are beginning to cater to the swelling numbers of pickleball players (who speak of the sport with the glazed mien of most cult members) by adding a few dedicated courts, Sage Hill Inn has chosen to ignore tennis entirely and focus solely on the fermented market.

But if there's a spot that will urge you to rethink your prejudices, it's Sage Hill Inn. Breathtaking, pine-scented vistas, creek hikes amid vibrant wildflowers, and nirvana-inducing massages cracked us open like fresh eggs from the many chickens on the property. Our pickleball lesson with veteran tennis and pickleball pro Michelle King swiftly provided us with newfound respect for the sport. We were surprised to learn that our errors in pickleball helpfully revealed similar technique issues in tennis, made more glaring on a smaller court. After an hour, our thighs were sore and our egos even sorer. We repaired to the pool, rested in the shade of older and wiser live oaks, and decided we'll challenge my parents to a pickleball duel the next time we are all in Florida.

[The Houstonian Hotel, Club & Spa, Houston](#)

We booked our Houston trip for mid-May, two weeks after the wedding. Our guests had come and gone, a whole pig was roasted, and the entire thing ended in an enormous downpour, with everyone dancing in the rain. We were official, and we were officially exhausted. Thank God for the Houstonian and its paradisiacal vibes, sprawling across 27 hushed, wooded acres.

Our suite in the newly renovated wing of the hotel offered floor-to-ceiling windows that look out on lush subtropical vegetation. “I feel like we’re already in Bali,” Ale said, hinting at our imminent honeymoon. That night, the resort’s downtown location made it a breeze to zip over to dinner at the sumptuous **State of Grace**, where we slurped oysters and sipped chenin blanc.

The next morning, we had breakfast at Tribute, the resort’s excellent restaurant; it was the best bagel and lox I’ve eaten in Texas. Then we headed to another (hallelujah!) air-conditioned court for a lesson. The next hour involved the most philosophical treatment of tennis I’ve experienced since reading Timothy Gallwey’s cult favorite, *The Inner Game of Tennis*. Racquet sports director Mike May spent much of the pandemic rethinking how to short-circuit the fight/flight/freeze reaction so common to athletes, and how to reliably stay in the zone during play. Alejandro and I emerged from his instruction in an unexpectedly Zen state, which construction on the U.S. 290 West ride home promptly demolished.

John Newcombe Tennis Ranch, New Braunfels

Newk’s is the Rafael Nadal of tennis resorts. At 36, Nadal spent this year’s French Open sweating more and working harder than any of his younger opponents, and Newk’s, in its fifty-fourth year, continues to push its clients to the next level, packing ten hours of tennis instruction into one weekend session. You won’t find fluffed pillows or a dedicated pastry chef. But if hours of drills and point play, summer camp-style coach-counselors, karaoke parties, and beer chugging are your thing, Newk’s is the answer to your tennis prayers.

This time, I gave Ale a hug goodbye and headed to Newk’s with six women from my tennis team. It felt like going to Girl Scout camp, except instead of bug repellent and stationery, I’d packed a couple bottles of pecorino from the wedding stash. On Friday night, after most of the other guests had gone to bed, my friends and I blasted Maggie Rogers and swilled white wine, White Claws, and Gatorade, all while playing endless doubles points under the june bug-frenzied lights. By Sunday afternoon, after three straight days of tennis, we were ridiculously sunburned, but our serves were looking sharp, thanks to the nuanced coaching of adult programming director Adrian Bolido and his crew.

Horseshoe Bay Resort, Horseshoe Bay

On Memorial Day, Ale and I headed to the last spot on our list, the storied Horseshoe Bay Resort, well known among regional club players for its clay-court tournaments. The spry tennis director, Israel Castillo, who has toured with young tennis talents, groomed players for the UT tennis team, and coached Lance Armstrong, had agreed to see what he could do for Ale’s backhand and my forehand. Over the past few months, my wrist had begun hurting; Castillo suggested it had less to do with my stroke and more to do with my footwork. If you create a stable base, get the right distance from the ball, and twist your hips, he insisted, you can use your full power, and the swing takes care of itself. Minds officially blown, Ale and I practiced Castillo’s method. After witnessing one of Ale’s improved shots, Castillo came up to us and pointed to his arm. “Look at that,” he says. “Teaching goose bumps.”

After bidding Castillo and his saintly Tibetan terrier, Scholz, goodbye, Ale and I stopped at a burger joint in Spicewood. It had been a tough two months of post-tennis sauna sessions in Dallas, spa treatments in Kyle, a post-workout hot tub in Houston, chilling with my team in New Braunfels, and

soaking up a tennis guru's insights in Horseshoe Bay. After such a grinding tour, we decided that we deserved margaritas and cheeseburgers. Because if there is anything that Texas's stellar tennis resorts taught us, it's that relaxing is better for your game than any ball machine.

Two More to Try

Since my criteria for choosing "tennis resorts" included on-site clinics and coaches as well as sleeping accommodations, I didn't include these two places on the tour. However, if you're looking for an ideal beach spot to grab a game with your traveling companions or you happen to be passing through Midland and want a state-of-the-art facility with accomplished instructors, you'll want to check these two establishments out.

Royale Beach & Tennis Club, South Padre

Four hard courts + three swimming pools + beachfront location = pure bliss. No on-site pros or clinics, so show up with a partner if you want to play.

Bush Tennis Center, Midland

This ever-expanding center in the High Plains "will be the second largest tennis center in the world" upon its completion, according to the website (which also includes an adorable **YouTube video** of George W. endorsing his eponymous institution). No sleeping accommodations, so Airbnb or the nearby Holiday Inn are your best options.

**Have Racket, Will Travel: Seven
Have Racket, Will Travel: Seven Top Texas Tennis**

UTPB Midland Entrepreneurial Challenge

RESOLUTION NO. _____

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

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

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

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

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

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

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

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

OF THE MIDLAND DEVELOPMENT CORPORATION:

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

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

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

Directors voting "AYE":

Directors voting "NAY":

STEPHEN LOWERY,
President 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

INTERLOCAL AGREEMENT

BETWEEN

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

This Interlocal Agreement (the “*Agreement*”), is made and entered into this 23rd day of August, 2022, between the University of Texas of the Permian Basin (“*UTPB*”), and the Midland Development Corporation (“*MDC*”), an economic development corporation existing under the authority of Chapter 504 of the Texas Local Government Code, pursuant to Chapter 791 of the Texas Government Code, also known as the Interlocal Cooperation Act, regarding the Midland Entrepreneurial Challenge. UTPB and MDC are sometimes collectively referred to herein as the “*Parties*.”

WITNESSETH:

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

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

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

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

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

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

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

I. PURPOSE

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

II. OBLIGATIONS OF THE PARTIES

A. MDC Payment. MDC agrees to provide to UTPB funds in an amount not to exceed FIVE HUNDRED THOUSAND and No/00 DOLLARS (\$500,000.00), in consideration for UTPB's services described herein (the "*Service Funds*"). In addition to the Service Funds, MDC agrees to pay UTPB an amount not to exceed SEVENTY-EIGHT THOUSAND, SIX HUNDRED AND No/00 DOLLARS (\$78,600.00) for any marketing and administrative costs associated with the operation and management of the Midland Entrepreneurial Challenge (the "*Administration Funds*"). MDC's payment of the Administration Funds shall not exceed a cumulative amount of SEVENTY-EIGHT THOUSAND, SIX HUNDRED AND No/ 100 DOLLARS (\$78,600.00) over the term of this Agreement. MDC agrees to provide the Service Funds and Administration Funds (cumulatively referred to as the "*Funds*") subject to all conditions and restrictions contained in this Agreement. The payment of the Funds shall be on a cost-reimbursement basis, and shall be provided by MDC to UTPB upon MDC's receipt of a written request by UTPB. In conjunction with its written request for the Funds, UTPB shall submit invoices or statements demonstrating UTPB's payment of funds in support of UTPB's performance of the services described herein (the "*Supporting Documentation*"). The approval of the Supporting Documentation is subject to the sole and absolute discretion of MDC's Chairman. Notwithstanding any provision of this Agreement to the contrary, the Parties agree that it shall be in the sole and absolute discretion of MDC to reimburse UTPB for the services to be performed described herein depending on the rendered quality of said services and the quality of the Supporting Documentation, as determined by MDC. The Parties agree that this provision, in all of its aspects, is consistent with Texas Government Code § 791.011(e).

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

C. UTPB Report. On or before August 31, 2023, UTPB shall provide MDC with a written report containing a detailed summary of 1) UTPB's efforts to promote new and expanded business enterprises within the City of Midland; and 2) the participants, qualifications, evaluation material, and results of the Midland Entrepreneurial Challenge.

III. INDEPENDENT CONTRACTOR

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

IV. TERM OF AGREEMENT

Upon execution by the Parties, this Agreement becomes effective August 23, 2022, and shall terminate on September 30, 2023, or when terminated by mutual agreement of the Parties, or when terminated as hereinafter provided.

V. INSURANCE

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

Commercial General Liability (including Contractual liability):

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

Workers' Compensation: Statutory limits

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

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

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

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

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

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

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

VI. GENERAL TERMS

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

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

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

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

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

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

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

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

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

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

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

If to UTPB:

University of Texas of the
Permian Basin
College of Business
Attn: Dr. Ryan Peckham
4901 E. University Blvd
Odessa, Texas 79762

If to MDC:

Midland Development Corporation
Attn: Executive Director
200 N. Loraine Street, Suite 610
Midland Texas, 79701

[Signature Pages Follow]

The Parties have caused this Agreement to be executed by their duly authorized representatives on this ____ day of _____, 2022.

MIDLAND DEVELOPMENT
CORPORATION

Stephen Lowery, Chairman

ATTEST:

Jill Pennington, Secretary

UNIVERSITY OF TEXAS OF THE
PERMIAN BASIN

By: _____

Name: _____

Title: _____

THE STATE OF TEXAS

§

§

COUNTY OF _____

§

BEFORE ME, the undersigned authority, on this ___ day of _____ 2022,
personally appeared _____ for the University of Texas of the Permian
Basin, known to me to be the person and official whose name is subscribed to the foregoing
instrument, and acknowledged to me that he executed the same as the act and deed of said entity,
for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the _____ day of
_____, 2022.

Notary Public, State of Texas

Promotional Services to be Provided by

The University of Texas Permian Basin – Small Business Development Center

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



THE UNIVERSITY OF TEXAS
PERMIAN BASIN



MIDLAND ENTREPRENEURIAL CHALLENGE

Dr. Ryan Peckham, Roden Fellow for Entrepreneurship

University of Texas Permian Basin

Mesa Building 2225

4901 E. University Blvd

Midland, Texas 79762

Phone: 432-552-2175



THE UNIVERSITY OF TEXAS
PERMIAN BASIN

COLLEGE OF BUSINESS

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UT Permian Basin College of Business Overview

Introduction and Overview

The **UT Permian Basin College of Business** Entrepreneurship programs have fully invested in the future of Entrepreneurship in our community. Over the last year we have introduced the Blackstone Launchpad, a student driven entrepreneurship network funded by the Blackstone Charitable foundation, providing tools, mentorship, and entrepreneurship opportunities for our students, regardless of their chosen major or college of study. We aim to open our state-of-the-art Blackstone Launchpad and Entrepreneurship Physical space in the fall of 2022 that will include co-working facilities, sound, and audio recording spaces, as well as a fabrication and innovation lab where prototypes can be created. With revamped and reintroduced Entrepreneurship Minor and Certificate options, we are meeting the needs of today's aspiring entrepreneurs, with applicable knowledge-based materials.

We are also in the process of remodeling our CEED building to make it more accessible and relevant for today's entrepreneurs. The CEED building houses our Small Business Development Center (SBDC) and will also house co-working spaces for local entrepreneurs. This location is historically where we have housed our MEC challenge seminars so contestants will be introduced to this location and will now have a glance at how these facilities can be used during and after their competition is over.

Mission

We provide consulting, training, and research to small businesses.

Vision

To be a leading economic development organization by empowering entrepreneurs.

Meet Our Team

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

Dr. Ryan Peckham, Business Consultant, Assistant Professor and Roden Fellow of Entrepreneurship

Ryan is an assistant professor of management and entrepreneurship within the College of Business at UTPB, having taught multiple management, finance, and entrepreneurship courses at the undergraduate and graduate levels. He is also a registered investment advisor (RIA) and has owned a private investment firm for ten years. Previous to these roles, Dr. Peckham was VP of Business Development for Security Bank and worked with many small businesses across West Texas. He received his Doctor of Business Administration from the University of Liverpool, England, United Kingdom, with a behavioral finance concentration.

CC Serrato, Program Coordinator for the Office of Innovation & Commercialization

CC has served in various roles at UT Permian Basin for the past 10 years and has proven to be a vital part of the mission for the university. Her current role as the Program Coordinator in the new *Office of Innovation & Commercialization* will be to assist the department in coordinating entrepreneurship programs with education and research, and to help serve as a point of contact for dynamic engagement with the community and industries. The newly renovated *CEED Building on the Midland campus is where you can find CC working hard to accomplish this vision! (*To be completed early 2023)

Danna Church, Blackstone LaunchPad Campus Director

Since November 2021, Danna has served as UTPB's Blackstone LaunchPad Campus Director. She is available to assist all students regardless of their major to explore entrepreneurship and to cultivate an entrepreneurial mindset that will prepare them for the modern workforce. To accomplish this, she encourages students to participate in the many entrepreneurship opportunities provided by Blackstone LaunchPad such as workshops, mentoring, and competitions. The Blackstone LaunchPad office is currently located in the Roden Entrepreneurial Center but will soon be relocated to the newly renovated 1st floor of the Dunagan Library.

The Entrepreneurial Challenge

1.0 Introduction

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

1.1 Midland Economic Challenge funding

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

1.2 The Purpose

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

1.3 Orientations

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

1.4 The Benefits

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

1.5. Award Monies

This fiscal year, the plan includes \$500,000 total available award money to be distributed up to \$150,000 to each selected winner(s) concluded from the deliberation and decision of our judges.

2.0 Business Description

2.1. Midland Development Corporation

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

3.0. About the Challenge

3.1. The Objective

The objective of this program is to provide another source of capital funding to business owners and entrepreneurs in Midland who might not be able to obtain the funding otherwise. The value participating in business plan process allows participants to gain a better understanding of how to develop, build and grow strong businesses that will even further strengthen Midland's economic condition and development.

3.2 Partnership

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

3.3 The Future

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

4.0 Partnership

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

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

property, exit strategies and social media marketing opportunities to grow and expand into a profitable market position.

The Plan for FY: 2022-23

5.0 Guidelines (Contract Suggestions)

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

5.1 Proposed Guidelines for Midland Entrepreneurial Challenge

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

6.0 Basics of Receiving the Award Money

6.1 Payment method

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

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

6.2 Award Monies

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

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

6.3 Installments

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

6.4 Financing

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

6.5 Seek Accounting Advice

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

7.0 Accountability

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

7.1 Award Monies Expenditures

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

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

7.2 Meeting the Requirements

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

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

7.3 Business Audit

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

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

7.4 Business Audit Continuation

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

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

7.5 Midland Presentation

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

7.6 Violation of Terms

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

conditions of the competition will not be allowed to participate in any future competitions involving UTPB.

8.0 Orientation Directions

8.1 Orientation

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

8.2 Agreements

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

9.0. Business Challenge Terms

9.1. Submit Agreement

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

9.2. Submit confidentiality

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

9.3. Submit Credit Report

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

9.4. Payment

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

9.5. Submit Investor Fact Sheet

Must submit Investor Fact Sheet to the MEC email address by the deadline. (TBD)

9.6. Meeting Appointments

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

9.7. Submit Business Plan

Must submit the business plan to the MEC email address by the deadline. (TBD)

9.8. Failure to adhere to the terms

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

10.0 Selection of Judges

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

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

- Business Owner
- Local Bank Lender
- Community Leader

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

10.1 Judging of the Competition

The process of judging incorporates a distinctive competence to recognize a disruptive or unique business concept. Contestants will be required to demonstrate a clear market need and a viable method to supply the demand. Characteristically, candidates are evaluated on the ability to develop the company and position to manage risks. Other assessments include the ability to have a realistic potential to succeed and fully understanding the financial requirements. In addition, employment is evaluated as growth by determining the number of

full-time or FTE within three years to five years. In the business plan, judges will validate funding, cash requirements, determine cost structures and revenue streams. In the final stage, contestants are evaluated on how well the team persuasively presents the plan and provide a logical overview.

10.2 Judging Criteria

First Round: Investor Fact Sheet

• Viability	15
• Team and Partners	15
• Financial	15
• Growth	15
• Strategy	15
• Competition	10
• <u>Advancement</u>	<u>15</u>
Total	100

Second Round: Business Plan

• Business	15
• Product/Service	15
• Marketing	15
• Management	15
• New Job Creation	15
• New Revenue for City	15
• <u>Watch to see Pitch</u>	<u>10</u>
Total	100

Third Round: Pitch in Front of Judges

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

10.3 Biggest Hurdles for the Judges

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

10.4 Judges Awarding Candidates

The program will include three to five independent judges chosen by UTPB, prior to the start of the Midland Entrepreneurial Challenge. Judges will remain anonymous to the participants until the final (live) pitch. Judges are required to sign a confidentiality agreement with each participating business. The judges will read and score the Investor Fact Sheet to determine who is going forward to the next round. The following round, the judges will read and score the

strategic business plan to determine who will move to the last round. The final round, the judges will appear in person to listen to each finalist business pitch with the ability to questions to each contestant. Once the round is completed, judges will record their scores after deliberating. The UTPB MEC Program Coordinator will calculate the average scores and present them back to the judges. The judges will then decide where they will draw the line in the rankings and how much money each winner will receive based on the \$500,000 provided by Midland Development Corporation.

10.5 Structure of Pitch

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

11.0 Business Plan Outline & Entrants Focus

11.1 The Business

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

11.3 Product/Service

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

11.4 Marketing

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

11.5 Management

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

12.0 Workshops

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

12.1 QuickBooks course(s) – Contingent on availability

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

12.2 Type of Business Loans

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

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

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

12.4 Developing the right business model

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

12.5 Fact Sheet presentation emphasizing key points of the business

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

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

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

12.7 Emerging Financials Projections, future revenues and expenses

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

12.8 Methods applied to establish interest that enables conversation

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

The new fiscal year provides opportunity to apply more workshops to raise immediate awareness necessary to minimize operational budgets, capitalize on a target marketing strategy, and effectively factor in challenges and pitfalls. Within each topic, several diverse workshops are offered throughout the year best suited for the business owner to achieve their objectives. Workshops are led by other successful business owners, skilled UTPB faculty and staff, and professionals such as accountants and tax specialists. These educational offerings help small business owners tackle many of the issues associated to the beginning of the operation.

13.0 Schedule Events

Date	Time	Topic
TBD	6 – 7:30 PM	Orientation
TBD	Noon – 1 PM	Orientation
TBD	6 – 7:30 PM	Orientation
TBD	6 – 7:30 PM	Brainstorming & Business Model Canvas Seminar
TBD	6 PM	Nondisclosure Agreements to be signed by Judges
TBD	6 – 7:30 PM	Fact Sheet Seminar
TBD	6 PM	Fact Sheets are due
TBD	6 – 7:30 PM	Business Plan Seminar
TBD	6 PM	Fact Sheets are sent to Judges
TBD	6 – 8 PM	Marketing Seminar
TBD	6 – 8 PM	Business Structure / Intellectual Property
TBD	6 PM	Fact Sheet Score Cards are received from Judges
TBD	6 – 8 PM	City of Midland Resources Seminar
TBD	6 PM	Business Plans are due
TBD	6 PM	Business Plans are sent to Judges
TBD	6 – 8 PM	Lender Seminar
TBD	6 – 7:30 PM	Pitch seminar
TBD	6 PM	Business Plan Score Card are received from Judges
TBD	10 AM – 4 PM	Pitch Presentation to Judges
Feb 27 (Mon)	7 – 9 PM	Award Ceremony – Location: Rea Greathouse - WNPAC

MEC Program Coordinator

14.0 Responsibilities to the Challenge

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

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

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

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

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

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

Marketing the Opportunity

15.0 Increase participation

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

15.1 Website

We will work with the web developer to reinvigorate the current version of the Entrepreneurial Challenge Website to increase visualization of the opportunity, improve the delivery of content and advance the brand of the City of Midland. The newly re-design website will offer many benefits including informing prospects of the requirement; increase interest and enhance a professional “brand,” while improving customer service.

15.2 Brochures

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

15.3 Television

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

15.4 Radio

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

15.5 Newspaper

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

15.6 News Release

The delivery of a press release is not an advertisement; it’s a way to promote the program and the opportunity to engage the community. The benefit is our ability to target audiences of other

journalists with a well-designed message to speak to them specifically while promoting the program in addition to the attached advertisement of the benefit for community participation.

15.7 Facebook Ads/Social Media

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

15.8 Digital Ad Campaigns

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

Entrepreneurial Challenge Proposal (FY: 2022-2023)

Marketing

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

Introduction

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

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

Marketing Proposal

UTPB has made a few adjustments in the advertising dollars from the previous years to reflect a slight savings. This budget is used to influence additional contestants, while advancing the message to inspire community interest and to drive the opportunity of starting a business in Midland. This awareness enables additional contestants with a probability of these businesses to continue to receive capital infusion, create jobs, and build diversify without the reliance of award money. The additional advertisement improves awareness and direct relationships with our target market, while personalizing the opportunity to increase a connection to the challenge. The benefits include increasing visibility and recognition of the opportunity, developing the audience, and providing the information.

Current Media Partners (Proposal)

TBD

Midland Entrepreneurial Challenge

OVERVIEW: Provide marketing and advertising services to support the 2022-2023 Midland Entrepreneurial Challenge.

Current Website: <https://midlandentrepreneurialchallenge.com/>

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

Project	Description	Pricing
Website Update	Provide minor updates to existing website	\$4,000
Television Production	Includes script, voice over talent, graphics for a 30-second spot and a 4-second spot ID to promote the orientation sessions	\$4,500
Television Placement	6 Week Television Buy - Network & Cable	\$15,000
Social Media Development & Management	Set up social media accounts and manage posts/ boosts to promote the orientation. Post schedule will also include highlights on winners after awards ceremony.	\$4,000
Digital Campaign	Digital ad campaign targeted to Midland entrepreneurs. Ads will be targeted based upon behaviors, keyword searches, and physical locations. All ads will drive back to the Challenge’s website.	\$1,000
Award Invitations	Design and printing of award ceremony invitations. Includes printing of 125 postcards.	\$250
Banners/Pull Screen	Includes design and printing of one pull screen plus hardware.	\$350
Coordinator/Event Planning	Coordinate the MEC awards banquet, securing venue, ordering food, checks, plaques, and all related tasks. <i>To be paid upon successful completion – additional pay form submitted by UTPB after: 2.27.23</i>	\$4,500
Total:		\$33,600

Terms: “Current Media Partner” requires a 50% down payment and assets to be provided before we begin work. This proposal is an estimate, not a fixed bid. Remainder will be due prior to delivery of this project. Estimate does not include out-of-pocket expenses including travel and other purchases. This estimate will be valid for 30 days. Estimate may be +/- 10%.

Marketing Budget Suggestion

FY: 2018-2019	FY 2021-2022	FY 2022-2023
\$41,295.00	\$41,295.00	\$33,600

MEC Program Coordinators

The MEC Program Coordinator(s) will organize and execute the entire 6-month challenge and ensure that every aspect of this competition meets the expectations of the Midland Development Corporation + the additional months of preparation and follow up with the contestants for payments. This year’s program coordinators: Dr. Ryan Peckham, CC Serrato, and Danna Church will provide frequent updates to the board through Sara Harris and be available for any questions during the challenge. In addition, the MEC team will be in constant communication with the Small Business Development Corporation Director, Mr. Tyler Patton, to confirm the contestants are meeting with their staff on a regular basis. SBDC will assist clients with reforming their operations and supporting their business by providing intuitive guidance throughout the strategic planning process. This year we are proposing an additional pay form (to be processed by UTPB) for the MEC team, as opposed to hiring an outside consultant/coordinator to run this challenge. We feel the benefits to this proposal are invaluable to the community and the participants who want to come back and try again, will see a familiar face, and trust us in the process. The 2021-22 challenge was an absolute success from start to finish – and for those who attended the awards banquet, they can attest to the outstanding job our small team achieved!

MEC Coordinators Budget Suggestion

FY: 2018-2019	FY: 2021-2022	FY 2022-2023
\$25,700.00 FT Salary + \$6,682.00 Fringe Benefits (One Individual)	\$29,438.00 PT Salary + \$2,944.00 Fringe Benefits (One Individual)	\$40,000 PT Salary divided among 3 MEC Coordinators <small>(All 3 individuals are current UTPB employees – *will be submitted as additional pay by UTPB)</small>
\$32,382	\$32,382	\$40,000

Awards Ceremony

The ceremony provides a chance for celebration and reflection of the commitment among our contestants, recognition of the devotion of our community judges and appreciation of the opportunity provided by Midland Development Corporation. This platform allows us to discuss the importance of their business in the community, and the achievement of the person being awarded. Gathering and sharing experiences is a very powerful means of encouragement. The first year, there were 20 people at the ceremony, and the last ceremony had a significant increase for a total 115 people, illustrating a 300 percent growth. Many attended including family and friends of our contestants, MDC board members, city officials, UTPB faculty and staff.

FY: 2018-2019	FY: 2021-2022	FY: 2022-2023
\$2,000.00	\$3,500.00	\$3,500.00

The MEC Program Coordinator(s) will organize and execute the entire 6-month challenge and ensure that every aspect of this competition meets the expectations of the Midland Development Corporation + the additional months of preparation and follow up with the contestants for payments. This year’s program coordinators: Dr. Ryan Peckham, CC Serrato, and Danna Church will provide frequent updates to the board through Sara Harris and be available for any questions during the challenge. In addition, the MEC team will be in constant communication with the Small Business Development Corporation Director, Mr. Tyler Patton, to confirm the contestants are meeting with their staff on a regular basis. SBDC will assist clients with reforming their operations and supporting their business by providing intuitive guidance throughout the strategic planning process. This year we are proposing an additional pay form (to be processed by UTPB) for the MEC team, as opposed to hiring an outside consultant/coordinator to run this challenge. We feel the benefits to this proposal are invaluable to the community and the participants who want to come back and try again, will see a familiar face, and trust us in the process. The 2021-22 challenge was an absolute success from start to finish – and for those who attended the awards banquet can attest to the outstanding job our small team achieved!

FY: 2018-2019

Annual Budget for Program FY 2018-2019

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

Administrative Expenses

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

FY: 2021-2022

Annual Budget for Program FY 2021-2022

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

Administrative Expenses Breakdown

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

FY: 2022-2023

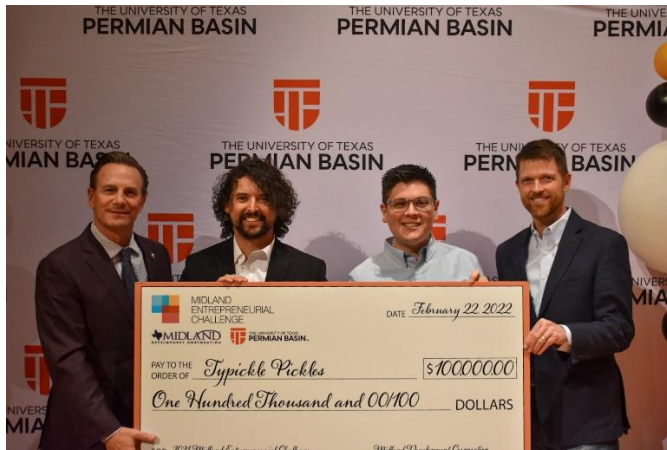
Annual Budget for Program FY 2022-2023

Capital Funding Grant	\$500,000.00 (MDC award)
Administrative Expenses (Proposing)	\$45,000.00 (UTPB Operating Expense)
Advertising/Marketing+ (TBD Agency)	\$33,600.00 (Current Media Partners)
Grand Total	\$578,600.00

Administrative Expenses Breakdown

Coordinators/MEC Team	\$40,000.00
Awards Ceremony	\$4,500.00 (Banquet, Music, Food, Checks, Awards)
Miscellaneous	\$500.00
Total:	\$45,000.00

MEC Awards Banquet 2021-22



Judges: Adrian Carrasco, Erica Mann, Jarrod Sparks, Kevin Harrington
Not Pictured: Rick Gasser

UTPB – CEED
Incubator
Reimbursement

RESOLUTION NO. _____

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

WHEREAS, the Midland Development Corporation previously entered into that certain Incubator and Makerspace Grant Agreement with the University of Texas of the Permian Basin; and

WHEREAS, the Board of Directors finds it to be in the public interest to authorize a reimbursement payment to the University of Texas of the Permian Basin pursuant to the terms of said agreement;

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

SECTION ONE. That the payment of \$18,825.29 to the University of Texas of the Permian Basin is hereby approved.

SECTION TWO. That the City Comptroller of the City of Midland, Texas, is hereby authorized and directed to pay the University of Texas of the Permian Basin the sum of \$18,825.29 from funds available in the Midland Development Corporation Fund (235) operating budget (Economic Development Incentives) (53905).

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



Please Remit To:
 The University of Texas of the Permian Basin
 Accounting Office
 4901 E. University Blvd.
 Odessa TX 79762
 United States

Page: 1
Invoice No: I_48000422
Invoice Date: 5/12/2022
Sponsor Number: SPN00085
Payment Terms: Net 30
Due Date: 6/12/2022
Award: PB0000458
Project ID: 1000004800
INVOICE TOTAL: 18,825.29

Sponsor:
 Midland Development Corporation
 Attn: Executive Director
 200 N. Loraine Street, Suite 610
 Midland, TX 79701
 sharris@midlandtxedc.com

Sponsor Award: MDC Incubator/Makerspace Grant
Award Amount: \$200,000.00

Apr-22

Description	Budget	Current Expenses	Cummulative Expenses	Available Budget	prior cummulative
Salaries	156,250.00	15,020.00	15,020.00	141,230.00	-
Benefits	43,750.00	3,805.29	3,805.29	39,944.71	-
Total	200,000.00	18,825.29	18,825.29	181,174.71	-

By signing this report, I certify to the best of my knowledge and belief that the report is true, complete, and accurate, and the expenditures, disbursements and cash receipts are for the purposes and objectives set forth in the terms and conditions of the Federal award. I am aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil or administrative penalties for fraud, false statements, false claims or otherwise. (U.S. Code Title 18, Section 1001 and Title 31, Sections 3729-3730 and 3801-3812).

Director of Accounting

6/12/22

Date

Parkhill – Spaceport Site Development

Permian Basin Vietnam Veterans Memorial



Permian Basin Business Center



US Border Patrol



U.S. Department Of Public Safety Driver...



RESOLUTION NO. _____

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

WHEREAS, the Board of Directors finds it to be in the public interest to authorize 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;

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, the 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. 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 Parkhill, Smith & Cooper, Inc., in accordance with the provisions of the above-referenced agreement, from funds available in the Midland Development Corporation Fund (235) Operating Budget upon receipt of proper invoice or statement 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 _____, 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 23rd day of August, 2023, by and between the MIDLAND DEVELOPMENT CORPORATION (“*MDC*”), and PARKHILL, SMITH & COOPER, 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 site development at Midland International Air & Space Port for a potential manufacturing and assembly facility (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 \$110,300.00 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 August 23, 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-owned 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, 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 MDC 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 MDC'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: Parkhill, Smith & Cooper, Inc.
 1700 West Wall Street #100
 Midland, Texas 79701

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 MDC for the duration of the contract; (ii) promptly provide to MDC any contracting information related to the Agreement that is in the custody or possession of COMPANY on request of MDC; and (iii) on completion of the Agreement, either (a) provide at no cost to MDC all contracting information related to the Agreement that is in the custody or possession of COMPANY, or (b) preserve the contracting information related to the Agreement as provided by the records retention requirements applicable to MDC.

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

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

acceptance hereof.

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

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

[Signature Page(s) Follows]

EXECUTED IN DUPLICATE the day and year first above mentioned.

MIDLAND DEVELOPMENT
CORPORATION

Stephen Lowery, Chairman

ATTEST:

Jill Pennington, Secretary

PARKHILL, SMITH & COOPER, INC.:

By: _____

Name: _____

Title: _____

STATE OF TEXAS §

§

COUNTY OF MIDLAND §

BEFORE ME, the undersigned authority, on this ____ day of _____, 2022, personally appeared, _____, an officer of PARKHILL, SMITH & COOPER, INC., 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 _____, 2022.

Notary Public, State of Texas

July 21, 2022

Ms. Sara Harris
Executive Director
Midland Development Corporation
200 N. Loraine St., Ste 610
Midland, Texas 79701

Re: Potential Manufacturing and Assembly Facility Development Site Assessment Report at MAF

Dear Ms. Harris:

We are pleased to submit to you our Scope and Fee Proposal for providing Professional Services for the above site assessment located at the Midland International Air & Space Port (MAF). Our proposal is based on the attached scope of work. We will be retaining Terracon Consultants, Inc. to assist in the environmental evaluation and soil testing of the proposed site. As we discussed, we have removed from the scope the relocation of the groundwater monitoring wells. Once the potential tenant has prepared their site layouts, we can evaluate the need to relocate any of the existing groundwater monitoring wells.

We are proposing to perform this scope of work based on a Standard Hourly Rates Method of Payment plus direct expenses and engineer's consultant's charges on the basis of cost times a factor 1.15 at a total not-to-exceed amount of \$110,300. Our current Hourly Rates Schedule is attached.

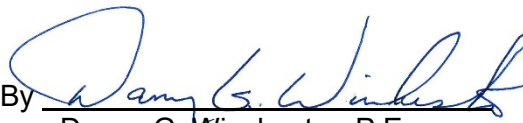
The breakdown of the above total not-to-exceed fee amount is:

Parkhill	\$45,000
Subconsultant (Terracon)	\$65,300

If you have questions on the scope of work proposed, please don't hesitate to give me a call.

Sincerely,

PARKHILL, SMITH & COOPER, INC.

By 
Danny G. Winchester, P.E.
Principal

MIDLAND DEVELOPMENT CORPORATION
POTENTIAL MANUFACTURING AND ASSEMBLY FACILITY DEVELOPMENT SITE ASSESSMENT
REPORT
AT MIDLAND INTERNATIONAL AIR & SPACE PORT

SCOPE OF PROFESSIONAL SERVICES

1. Scope of Professional Services – The Midland Development Corporation is looking at a site located at the Midland International Air & Space Port (MAF), east of the existing Air Cargo Facility and along the existing aircraft apron for a potential tenant to construct a large manufacturing and assembly facility (see attached Exhibit 1). Based on previous limited soil testing at this site, it is recommended that further environmental testing and evaluation be performed to determine the extent, if any, of potential environmental issues that would need to be addressed to prepare the site for development. Depending on the results of the environmental testing, recommendations for soil management during construction and/or facility construction methods will be developed as part of the Site Assessment Report. The services proposed include the following:
 - a. Environmental Assessment (Terracon Consultants proposal and scope attached)
 - i. Limited Soil Sampling at the proposed site.
 - ii. Limited Soil Gas Sampling at the proposed site.
 - iii. Soil Management Plan preparation based on the results of the soil sampling tests. This plan is intended to provide recommendations during construction of the facility to address excess soil generated.
 - b. Prepare and submit to the Federal Aviation Administration (FAA) a “Request for FAA Section 163 Determination” and an “Environmental Determination” for the proposed development on this site at MAF.
 - c. Review historical data to determine potential WWII era utilities or structures that would require removal either in preparation of the development or as part of the construction of the potential facility.
2. Parkhill will prepare a Site Assessment Report for this site which will include the items listed above.

Parkhill
Hourly Rate Schedule
 January 1, 2022 through December 31, 2022

Client: Midland Development Corporation

Project: MDC Facility Development Site Assessment at MAF

Agreement Date: _____

Location: Midland International Air & Space Port

CLASSIFICATION	HOURLY RATE	CLASSIFICATION	HOURLY RATE	CLASSIFICATION	HOURLY RATE
SUPPORT STAFF I	\$68.00	PROFESSIONAL LEVEL III		PROFESSIONAL LEVEL VI	
SUPPORT STAFF II	\$79.00	Architect	\$167.00	Architect	\$277.00
SUPPORT STAFF III	\$109.00	Civil Engineer	\$197.00	Civil Engineer	\$298.00
SUPPORT STAFF IV	\$116.00	Electrical Engineer	\$191.00	Electrical Engineer	\$311.00
SUPPORT STAFF V	\$129.00	Interior Designer	\$150.00	Interior Designer	\$239.00
SUPPORT STAFF VI	\$139.00	Landscape Architect	\$162.00	Landscape Architect	\$257.00
PROFESSIONAL LEVEL I		Mechanical Engineer	\$191.00	Mechanical Engineer	\$311.00
Architect	\$137.00	Structural Engineer	\$189.00	Structural Engineer	\$285.00
Civil Engineer	\$142.00	Surveyor III	\$134.00	Professional Surveyor VI	\$218.00
Electrical Engineer	\$145.00	Other Professional	\$147.00	Other Professional	\$234.00
Interior Designer	\$130.00	PROFESSIONAL LEVEL IV		PROFESSIONAL LEVEL VII	
Landscape Architect	\$130.00	Architect	\$205.00	Architect	\$356.00
Mechanical Engineer	\$142.00	Civil Engineer	\$230.00	Civil Engineer	\$356.00
Structural Engineer	\$136.00	Electrical Engineer	\$225.00	Electrical Engineer	\$356.00
Surveyor I	\$103.00	Interior Designer	\$164.00	Interior Designer	\$268.00
Other Professional	\$128.00	Landscape Architect	\$175.00	Landscape Architect	\$356.00
PROFESSIONAL LEVEL II		Mechanical Engineer	\$225.00	Mechanical Engineer	\$356.00
Architect	\$147.00	Structural Engineer	\$219.00	Structural Engineer	\$356.00
Civil Engineer	\$159.00	Surveyor IV	\$154.00	Professional Surveyor VII	\$241.00
Electrical Engineer	\$164.00	Other Professional	\$174.00	Other Professional	\$356.00
Interior Designer	\$137.00	PROFESSIONAL LEVEL V			
Landscape Architect	\$137.00	Architect	\$249.00		
Mechanical Engineer	\$164.00	Civil Engineer	\$277.00		
Structural Engineer	\$154.00	Electrical Engineer	\$275.00		
Surveyor II	\$115.00	Interior Designer	\$197.00		
Other Professional	\$135.00	Landscape Architect	\$213.00		
		Mechanical Engineer	\$275.00		
		Structural Engineer	\$264.00		
		Professional Surveyor V	\$181.00		
		Other Professional	\$194.00		

Expenses: Reimbursement for expenses as listed, but not limited to, incurred in connection with services, will be at cost plus 15 percent for items such as:

1. Maps, photographs, postage, phone, reproductions, printing, equipment rental, and special supplies related to the services.
2. Consultants, soils engineers, surveyors, contractors, and other outside services.
3. Rented vehicles, local public transportation and taxis, road toll fees, travel, and subsistence.
4. Special or job-specific fees, insurance, permits, and licenses applicable to work services.
5. Mileage at IRS-approved rate.

Rate for professional staff for legal proceedings or as expert witnesses will be a rate one-and-a-half times these Hourly Rates. Excise and gross receipt taxes, if any, will be added as an expense.

Foregoing Schedule of Charges is incorporated into the Agreement for Services provided, effective January 1, 2022 through December 31, 2022. After December 31, 2022, invoices will reflect the Schedule of Charges currently in effect.



POTENTIAL MANUFACTURING AND
ASSEMBLY FACILITY DEVELOPMENT SITE

EXHIBIT 1
SITE LOCATION - MAF

300 ft



July 20, 2022



Mr. Danny G. Winchester
Parkhill
1700 West Wall Street, Suite 100
Midland, Texas 79701

Phone: (432) 697-1447
Fax: (432) 697-9758
Email: dwinchester@team-psc.com

Re: Proposal for Environmental Consulting Services
Aerospace Development Park
NEC of La Force Boulevard and Highway 80 East
Midland, Midland County, Texas 79706
Terracon Project No. AR167008

Dear Mr. Winchester:

Terracon Consultants, Inc. (Terracon) appreciates the opportunity to submit this proposal to Parkhill to provide environmental consulting services in support of the anticipated development of a leased tract at the Aerospace Development Park located on the southwest portion of the Midland International Air & Space Port located at 9506 La Force Blvd in Midland, Texas. The proposed environmental consulting services include (Task 1) limited soil sampling for perfluoroalkyl substances/polyfluoroalkyl substances (PFAS) within the anticipated building footprint, (Task 2) assessment of soil gas within the building footprint to evaluate the feasibility of a vapor mitigation system, (Task 3) the generation of a soil management plan (SMP), and ~~(Task 4) the relocation of monitoring wells MW-26 and MW-34 to facilitate construction efforts of the facility.~~ **REMOVED FROM SCOPE**

Scope of Services
(see Section 2.0 of attached Proposal Detail)

Task 1: Limited Soil Sampling

Advance up to 3 soil borings in the area of the proposed development to a depth of up to 20 feet below ground or first encounter of groundwater, whichever is shallower. Collect up to 3 soil samples from each boring. Contain soil cuttings for analysis and disposal. Tremie grout the borings upon completion.

Task 2: Limited Soil Gas Sampling

Advance up to 3 soil gas points in the area of the proposed development to a depth of up to 10 feet below ground surface. Collect 1 soil gas sample from each soil gas point and 1 ambient air sample as an ambient air control.



Proposal for Environmental Consulting Services

Aerospace Development Park ■ Midland, Texas

July 20, 2022 ■ Terracon Proposal No. AR167008

<p>REMOVED FROM SCOPE →</p>	<p><u>Task 3: Soil Management Plan</u> Develop a soil management plan to evaluate and manage excess soil and groundwater generated during construction of the proposed facility.</p> <p><u>Task 4: Monitoring Well Relocation</u> Plug and abandon monitoring wells MW-26 and MW-34 in accordance with state regulations to facilitate future development in the area. Upon completion of the construction activities or when deemed appropriate, Terracon will install two monitoring wells as replacement wells to maintain north control of the hydrocarbon groundwater plume. The monitoring wells will be installed with surface completions to a depth of 40 feet below ground or first encounter of groundwater, whichever is shallower. The monitoring wells will be included in the quarterly monitoring program for the site.</p>
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<p>Schedule (see Section 3.0 of attached Proposal Detail)</p>	<p><u>Task 1: Limited Soil Sampling</u> Field drilling and sampling will take place based on earliest availability of the driller. The work will be done within one-week, barring weather delays. The analytical results will be received within 3 weeks from the time the laboratory receives the sampling containers. A summary will be presented within 24 to 48 hours of receipt of the results and a draft report will be generated within 3 weeks of receipt of all analytical results.</p> <p><u>Task 2: Limited Soil Gas Sampling</u> Field drilling and sampling will take place based on earliest availability of the driller. The work will be done within one-week, barring weather delays. The analytical results will be received within 3 weeks from the time the laboratory receives the sampling containers. A summary will be presented within 24 to 48 hours of receipt of the results and a draft report will be generated within 3 weeks of receipt of all analytical results.</p> <p><u>Task 3: Soil Management Plan</u> The plan will be drafted in 2 weeks and finalized within 3 days of receipt of comments.</p>
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Proposal for Environmental Consulting Services

Aerospace Development Park ■ Midland, Texas

July 20, 2022 ■ Terracon Proposal No. AR167008

<p>REMOVED FROM SCOPE</p>	<p><u>Task 4: Monitoring Well Relocation</u> Well plugging and abandonment will take place prior to the commencement of construction at the property and will take approximately one-day in the field.</p> <p>Well installation will be executed within one-week, barring weather delays. The analytical results will be received within 3 weeks from the time the laboratory receives the sampling containers. A summary will be presented within 24 to 48 hours of receipt of the results and a draft report will be generated within 3 weeks of receipt of all analytical results.</p>
<p>Compensation (see Section 3.0 of attached Proposal Detail)</p>	<p><u>Task 1: Limited Soil Sampling</u> Time and materials not to exceed \$37,200.</p> <p><u>Task 2: Limited Soil Gas Sampling</u> Time and materials not to exceed \$14,150.</p> <p><u>Task 3: Soil Management Plan</u> Time and materials not to exceed \$5,400.</p> <p><u>Task 4: Monitoring Well Relocation</u> REMOVED FROM SCOPE Time and materials not to exceed \$58,900.</p>

We have attached a Supplement to Agreement for Services that is incorporated into this proposal and that you must sign to authorize us to do this work. This proposal is valid for 60 days from the date of this proposal. We appreciate the opportunity to provide this proposal and look forward to working with you on this project. If this proposal meets with your approval, please sign the attached Supplement to Agreement for Services and return a copy to our Lubbock office. Project initiation may be expedited by emailing a signed copy to the undersigned.

Proposal for Environmental Consulting Services
Aerospace Development Park ■ Midland, Texas
July 20, 2022 ■ Terracon Proposal No. AR167008

If you should have any questions or comments regarding this proposal, please contact either of the undersigned at 806-300-0140.

Sincerely,
Terracon Consultants, Inc.



Rane Wilson, P.G.
Environmental Department Manager



Erin Loyd, P.G.
Office Manager

Attachments: Site Diagram with Proposed Soil Locations
Proposal Detail
Supplement to Agreement for Services

Proposal for Limited Soil Sampling and Soil Management Plan

Aerospace Development Park ■ Midland, Texas

July 20, 2022 ■ Terracon Proposal No. P94207296

1.0 PROJECT INFORMATION

The site is located within the Midland International Air and Space Port, an approximate 1,429-acre tract of land located on the north side of West Highway 80 East in Midland, Midland County, Texas. The area of interest is located within the southwest portion of the Midland International Air and Space Port and currently does not have any improvements. This is the parcel of land in which a City of Midland partnership intends to develop a warehouse structure.

2.0 SCOPE OF SERVICES

The proposed scope of work is in response to limited site investigations (LSIs) completed by Groundwater & Environmental Services, Inc. (GES) and Terracon Consultants, Inc. (Terracon) on a 5.25-acre parcel of land located east of Banks Drive at the Midland International Air and Space Port with an address of 9506 La Force Boulevard in Midland, Texas. The LSIs identified the presence of two perfluoroalkyl substances/polyfluoroalkyl substances (PFAS) in groundwater above the Texas Risk Reduction Program (TRRP) Tier 1 Protective Concentration Levels (PCLs). Additionally, the investigations identified the presence of PFAS in soil below TRRP PCLs. The LSIs also identified metals in the soil that exceed TRRP Tier 1 soil-to-groundwater protection PCLs.

At the request of the client, Terracon will provide environmental consulting services to address construction considerations for the management of soils during construction (Tasks 1 and 3), assess soil gas proximate to the proposed development to plan for the mitigation of potential environmental exposures (Task 2), ~~and relocate existing monitoring wells to continue monitoring of the hydrocarbon groundwater plume at the site (Task 4).~~ **REMOVED FROM SCOPE**

2.1 Objectives

The objectives of this proposal include:

Task 1: Limited Soil Sampling

The objective of the proposed sampling is to further evaluate the presence of PFAS within the proposed building footprint. This evaluation will be utilized to aid in waste classification efforts in anticipation of the need for the management of exported soils resulting from construction efforts.

Task 2: Limited Soil Gas Sampling

The objective of the limited soil gas sampling is to evaluate the potential presence of hydrocarbons in soil gas from the hydrocarbon groundwater plume. This evaluation will be utilized to determine the need for the incorporation of a vapor mitigation system as an exposure prevention measure for the proposed structure on the property. Terracon can design the vapor mitigation system which will be

Proposal for Limited Soil Sampling and Soil Management Plan

Aerospace Development Park ■ Midland, Texas
July 20, 2022 ■ Terracon Proposal No. P94207296

installed by an approved installation vendor, if required.

Task 3: Soil Management Plan (SMP)

The objective of the SMP is to make sure that excess soil generated from construction of the proposed building is managed in accordance with environmental regulations.

~~Task 4: Monitoring Well Relocation~~ REMOVED FROM SCOPE

~~Monitoring wells MW-26 and MW-34 are presently placed within the conceptual boundary of the proposed building. The objective of the proposed monitoring well relocation efforts is to maintain the ability to maintain control of the documented hydrocarbon groundwater plume on the northern extent of the plume. Monitoring wells MW-26 and MW-34 will be plugged and abandoned in accordance with state regulations. Replacement locations will be chosen in coordination with Parkhill.~~

2.2 Commitment to Safety

Terracon has a commitment to the safety of all its employees. As such, and in accordance with our *Incident and Injury Free*® safety culture, Terracon will develop a Project Safety Plan to be used by our personnel during field services. Prior to commencement of on-site activities, Terracon will hold a tailgate safety meeting to review site-specific job hazards and health and safety needs for this specific project. In addition, prior to engaging in new on-site activities or tasks, we will re-evaluate potential job hazards and appropriate safe working procedures as part of our Pre-Task Planning process. At this time, we anticipate performing fieldwork in a U.S. EPA Level D work uniform consisting of safety glasses, protective gloves, and hard-toed boots. It may become necessary to upgrade this level of protection, at additional cost, while sampling activities are being conducted in the event that petroleum or chemical constituents are encountered in soils or groundwater that present an increased risk for personal exposure.

2.3 Task 1: Limited Soil Sampling

Up to 3 borings will be advanced within the 5.25-acre parcel to a depth of up to 20 feet below ground surface (bgs). Up to 3 soil samples will be collected from each borehole and analyzed for PFAS using EPA Method 537.1M, TPH using Texas Method 1005, and RCRA metals following EPA Method 6020/7471. The samples will be placed in laboratory-supplied containers, chilled with ice placed in top-sealing plastic bags, and sealed by a custody seal. The samples will be logged on a chain of custody, which will be sent with the samples to the analytical laboratory. The selected analytical laboratory is ALS Global.

The soil will be logged by a field scientist and soil cuttings drummed for future disposal. The boreholes will be tremie grouted with cement/bentonite to ground surface. The sample with the highest concentrations of metals will be analyzed using the toxicity characterization leaching procedure (TCLP)

Proposal for Limited Soil Sampling and Soil Management Plan

Aerospace Development Park ■ Midland, Texas

July 20, 2022 ■ Terracon Proposal No. P94207296

by EPA Method 1311 to aid in the characterization of soils at the site for waste disposal. Although drilling will be conducted using air rotary, the soil will be screened using a hand-held photo ionization detector (PID).

The analytical results will be turned around in 5 business days for all analytes except PFAS, which will be completed in 15 business days. TCLP tests take 2 additional days beyond the standard 5-day turnaround time.

The drilling rig will be cleaned before drilling to eliminate road contamination and between each boring to eliminate cross-contamination. Samplers will wear clean latex gloves before each sampling event to prevent any PFAS contamination that may be present on the sampler's hands. Additionally, no Teflon tubing or Teflon cap lining will be used. More importantly, equipment blanks on non-disposable equipment will be collected daily to determine whether equipment cross-contamination may have occurred and to capture any potential contributions from the site (e.g., ambient depositions).

2.4 Task 2: Limited Soil Gas Sampling

The soil gas sampling probes (SGPs) will be advanced to a depth of approximately 8 feet bgs using a drilling rig equipped with direct-push capabilities. Soil gas sampling implants, consisting of screened sampling tips and Teflon-lined tubing, will be placed in the boreholes with the sampling tips located at an approximate depth of 6 feet bgs. The interval surrounding the sampling tip will be backfilled with silica sand, followed by an approximate 4-inch later of dry bentonite chips or granules and then a grout mixture to the surface.

The SGPs will be sampled 24 hours after installation using laboratory-supplied 1-Liter Summa canisters that will be pre-tested and batch-certified as free COCs by the analytical laboratory. The canisters will be connected to the sampling points using dedicated Teflon-lined sample tubing and will be equipped with laboratory-supplied flow regulators allowing for sample collection at a low-flow rate (i.e., <200 ml/min). Three sample train volumes will be purged prior to soil gas sample collection. Leak detection will be conducted using vacuum shut-in tests.

In addition to the soil gas samples, a field/materials blank will be collected by collecting a sample of outdoor ambient air through the sample tubing and fittings stock utilized for the soil gas points and sampling trains.

Upon completion of sample collection, the Summa canisters will be closed, secured, and appropriately labeled with pertinent sample information. Canister pressures will be recorded upon initiation of sample collection, after sample collection, and after receipt at the laboratory. The sample containers will then be transported under chain-of-custody to the selected analytical laboratory for analysis within 10 days following receipt of the samples by the laboratory.

Proposal for Limited Soil Sampling and Soil Management Plan

Aerospace Development Park ■ Midland, Texas

July 20, 2022 ■ Terracon Proposal No. P94207296

2.5 Task 3: Soil Management Plan

Terracon will prepare a SMP that will serve as a guide for managing soils during the proposed on-site construction activities, including excavation, grading, and/or pier drilling, as applicable. The SMP will include the following:

- Site plan showing the extent of affected soil identified during previous investigations;
- Terracon and project team contact information and notification protocol;
- Contingency plan for management of unanticipated affected soils;
- Field procedures for stockpiling and managing excavated soils and/or pier spoils;
- Field procedures for containerizing and managing affected surface water accumulated in excavations;
- Sampling plan for waste characterization of soil;
- Soil re-use options;
- Procedures for non-hazardous waste characterization and profiling; and,
- Procedures for waste manifesting and documentation of waste disposition.

Prior to commencement of site construction activities, Terracon recommends that a meeting with the general contractor, excavation/grading contractor, and other applicable parties be held to communicate the applicable protocol related to the environmental conditions at the site and soil management practices recommended for the site. This meeting is not included in the scope of services. Implementation of the plan is not included in the scope of services.

~~2.6 Task 4: Monitoring Well Relocation~~ REMOVED FROM SCOPE

~~Monitoring wells MW-26 and MW-34 will be plugged and abandoned in accordance with Texas regulations which include the removal of the well screen and casing and the grouting of the monitoring well annulus to the surface. This action will take place prior to the commencement of construction activities including site grading activities.~~

~~When deemed appropriate by Parkhill, permanent groundwater monitoring wells to evaluate on-site groundwater within the assessment area will be constructed as follows:~~

- ~~Installation of 15 feet of 2-inch diameter, 0.010-inch machine-slotted polyvinyl chloride (PVC) well screen with a threaded bottom cap;~~
- ~~Installation of 2-inch diameter, threaded, flush-joint PVC riser pipe to surface;~~
- ~~Addition of pre-sieved 20/40-grade silica sand for annular sand pack around the well screen from the bottom of the boring to approximately 2 feet above the top of the well screen;~~
- ~~Placement of 2 feet of hydrated bentonite pellets above the sand pack;~~
- ~~Addition of cement/bentonite slurry to the surface; and,~~
- ~~Installation of a locking well cap and surface completion.~~

Proposal for Limited Soil Sampling and Soil Management Plan

Aerospace Development Park ■ Midland, Texas
 July 20, 2022 ■ Terracon Proposal No. P94207296

The monitoring wells will be developed by surging and removing groundwater until fluids appear relatively free of fine-grained sediment. Drill cuttings, development groundwater, and equipment cleaning water will be stored temporarily on-site in labeled 55-gallon drums pending the results of the laboratory analyses. The drum labels will identify the apparent contents of the drum and the initial accumulation date.

Following development of the monitoring wells and prior to groundwater sample collection, each well will be purged with a new disposable bailer or low-flow sampling equipment. Each monitoring well will be purged of a minimum of three well casing volumes of groundwater, until the monitoring well formation fails to recharge (i.e., well runs dry), or until consistent values are obtained for select geochemical parameters when low-flow sampling. Subsequent to sufficient recharge or parameter stabilization, one groundwater sample will be collected from each monitoring well utilizing a new, disposable, polypropylene bailer or low-flow sampling equipment.

The groundwater samples will be collected into laboratory-prepared containers. The containers will be labeled and placed on ice in a cooler which will be secured with a custody seal. The samples and completed chain-of-custody forms will be transported to the selected analytical laboratory for analysis within 10 business days following receipt of the samples by the laboratory.

3.0 SCHEDULE AND FEE

If, as a result of these services, additional work is required outside the scope of this proposal, you will be contacted to discuss costs for additional work. Client authorization will be obtained prior to commencement of any additional work outside the scope of services in this proposal. Schedule and fee breakdown by task is detailed below.

3.1 Task 1: Limited Soil Sampling

Driller availability has not been confirmed at the time of this proposal. It is estimated that the drilling can be completed within three weeks once the proposal is approved. The analytical results will be received within 3 weeks from the time the laboratory receives the sampling containers. A summary will be presented within 24 to 48 hours of receipt of the results and a report will be generated within 3 weeks of receipt of all analytical results. Estimated Task 1 costs are summarized below:

Task 1 Estimated Fee	
Item	Estimated Fee
Consulting Labor	\$9,000
Drilling	\$14,000
Analytical	\$9,500
IDW Disposal	\$1,700
Equipment and Expenses	\$2,000
Total	\$37,200

Proposal for Limited Soil Sampling and Soil Management Plan

Aerospace Development Park ■ Midland, Texas
 July 20, 2022 ■ Terracon Proposal No. P94207296

3.2 Task 2: Limited Soil Gas Sampling

Driller availability has not been confirmed at the time of this proposal. It is estimated that the drilling can be completed within three weeks once the proposal is approved. The analytical results will be received within 3 weeks from the time the laboratory receives the sampling containers. A summary will be presented within 24 to 48 hours of receipt of the results and a report will be generated within 3 weeks of receipt of all analytical results. Estimated Task 1 costs are summarized below:

Task 2 Estimated Fee	
Item	Estimated Fee
Consulting Labor	\$6,000
Drilling	\$3,750
Analytical	\$2,500
IDW Disposal	\$500
Equipment and Expenses	\$1,400
Total	\$14,150

3.3 Task 3: Soil Management Plan

The plan will be drafted in 2 weeks and finalized within 3 days of receipt of comments. Estimated Task 2 costs are summarized below:

Task 3 Estimated Fee	
Item	Estimated Fee
Consulting Labor	\$5,400
Total	\$5,400

~~**3.4 Task 4: Monitoring Well Relocation** REMOVED FROM SCOPE~~

~~Driller availability has not been confirmed at the time of this proposal. It is estimated that the drilling can be completed within three weeks once the proposal is approved. The analytical results will be received within 3 weeks from the time the laboratory receives the sampling containers. A summary will be presented within 24 to 48 hours of receipt of the results and a report will be generated within 3 weeks of receipt of all analytical results. Estimated Task 3 costs are summarized below:~~

Task 4 Estimated Fee	
Item	Estimated Fee
Consulting Labor	\$10,000
Drilling	\$44,000
Analytical	\$900
IDW Disposal	\$1,750
Equipment and Expenses	\$2,250

Proposal for Limited Soil Sampling and Soil Management Plan

Aerospace Development Park ■ Midland, Texas
July 20, 2022 ■ Terracon Proposal No. P94207296

Total	\$58,900
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4.0 GENERAL COMMENTS

The scope of services and estimated fee were based on the assumptions and limitations noted below.

Assumptions

This proposal and cost estimate were prepared based on the following assumptions:

- Client will provide to Terracon, prior to mobilization, legal right of entry to the site (and other areas if required) to conduct the scope of services.
- Client will notify Terracon, prior to mobilization, of any restrictions, special site access requirements, or known potentially hazardous conditions at the site (e.g., hazardous materials or processes, specialized protective equipment requirements, unsound structural conditions, etc.)
- Traffic control services are not required.
- Driving soil borings and sampling can be conducted during normal business hours and will not require lighting for night-time work.
- The site is readily accessible by truck.
- A formal data validation review and submittal is not included.
- Reporting to the agency is not included. The analytical summary of results including characterization of the results will be presented to Parkhill.
- Standard turnaround time for sample analysis is included.
- Work will be conducted in Level D PPE.
- Client will review draft documents and provide comments in a timely manner.
- The scope of services does not include additional assessments.
- Interface with the developer or their consultant is not included in the scope of services. The developer or their consultant will not review or approve of the SMP.
- Implementation of the SMP is not included in the scope of services.

If any of these assumptions or conditions is not accurate or changes during the project, the stated fee is subject to change. Please contact us immediately if you are aware of any inaccuracies in these assumptions and conditions, so we may revise the proposal or fee.

Site Access and Safety

Client shall secure all necessary site related approvals, permits, licenses, and consents necessary to commence and complete the Services and will execute any necessary site access agreement. Consultant will be responsible for supervision and site safety measures for its own employees but shall not be responsible for the supervision or health and safety precautions for any third parties, including Client's contractors, subcontractors, or other parties present at the site. In

Proposal for Limited Soil Sampling and Soil Management Plan

Aerospace Development Park ■ Midland, Texas

July 20, 2022 ■ Terracon Proposal No. P94207296

In addition, Consultant retains the right to stop work without penalty at any time Consultant believes it is in the best interests of Consultant's employees or subcontractors to do so in order to reduce the risk of exposure to the coronavirus. Client agrees it will respond quickly to all requests for information made by Consultant related to Consultant's pre-task planning and risk assessment processes. Client acknowledges its responsibility for notifying Consultant of any circumstances that present a risk of exposure to the coronavirus or individuals who have tested positive for COVID-19 or are self-quarantining due to exhibiting symptoms associated with the coronavirus.

Limitations

Terracon's services will be performed in a manner consistent with generally accepted practices of the profession undertaken in similar studies in the same geographic area during the same period. Terracon makes no warranties, express or implied, regarding its services, findings, conclusions, or recommendations. Please note that Terracon does not warrant the work of laboratories, regulatory agencies, or other third parties supplying information used in the preparation of the report. These services will be performed in accordance with the scope of work agreed with you, our client, as set forth in this proposal and are not intended to be in strict conformance with ASTM E1903-19.

Findings, conclusions, and recommendations resulting from these services will be based upon information derived from on-site activities and other services performed under this scope of work; such information is subject to change over time. Certain indicators of the presence of hazardous substances, petroleum products, or other constituents may have been latent, inaccessible, unobservable, nondetectable, or not present during these services, and we cannot represent that the site contains no hazardous substances, toxic substances, petroleum products, or other latent conditions beyond those identified during these services. Subsurface conditions may vary from those encountered at specific borings or wells or during other surveys, tests, assessments, investigations or exploratory services; the data, interpretations, findings and our recommendations are based solely upon data obtained at the time and within the scope of these services.

Reliance

The information will be prepared for the exclusive use and reliance of Parkhill (client) and the City of Midland, Texas (property owner). Reliance by any other party is prohibited without the written authorization of the client and Terracon. Reliance on these services by the client and all authorized parties will be subject to the terms, conditions, and limitations stated in the Agreement for Services with the client, sections of this proposal incorporated therein and the Reliance Agreement. The limitation of liability defined in the Agreement for Services with the client is the aggregate limit of Terracon's liability to the client and all relying parties.

Higher Orbits Promotional Agreement

RESOLUTION NO. _____

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

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 Higher Orbits, 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 Higher Orbits, 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 Higher Orbits, 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 Higher Orbits, 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, 2022, by the following vote:

Directors voting "AYE":

Directors voting "NAY":

STEPHEN LOWERY,
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 23rd day of August, 2022, by and between the MIDLAND DEVELOPMENT CORPORATION (“*MDC*”), an economic development corporation existing under the authority of Chapter of 504 of the Texas Local Government Code, and HIGHER ORBITS, INC. (“*HIGHER ORBITS*”). In this Agreement, MDC and HIGHER ORBITS are sometimes individually referred to as a “*Party*” and collectively referred to as the “*Parties*.”

WITNESSETH:

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

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

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

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

I. PURPOSE

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

II. OBLIGATIONS OF THE PARTIES

A. MDC Payment. MDC agrees to make one (1) lump-sum payment to HIGHER ORBITS in the amount of \$60,000.00, with said payment to be made on or before September 30, 2022. The total funds provided by MDC under this Agreement shall not exceed \$60,000.00. The Parties covenant and agree that all funds provided by MDC under this Agreement are in exchange for HIGHER ORBITS’ advertising and promotional services as set forth herein.

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

regarding the design, nature, content, 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. Higher Orbits' Report. During the term of this Agreement, at a time and place mutually agreed to by the Parties, HIGHER ORBITS shall provide MDC with a report or presentation containing a detailed summary of HIGHER ORBITS's efforts to promote new and expanded business enterprises within the City of Midland and its administration of the Project.

III. INDEPENDENT CONTRACTOR

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

IV. TERM OF AGREEMENT

Upon execution by the Parties, this Agreement becomes effective August 23, 2022, and shall terminate on September 30, 2023, or when terminated by mutual agreement of the Parties, or when terminated as provided herein.

V. GENERAL TERMS

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

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

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

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

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

If to MDC:

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

If to HIGHER ORBITS:

Michelle Lucas
Higher Orbits

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

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

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

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

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

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

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

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

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

[Signature Pages Follow]

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

**MIDLAND DEVELOPMENT
CORPORATION**

Stephen Lowery, Chairman

ATTEST:

Jill Pennington, Secretary

HIGHER ORBITS, INC.

By _____

Name _____

Title _____

THE STATE OF _____ §

§

COUNTY OF _____ §

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 the HIGHER ORBITS, INC.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this _____ day of _____, 2022.

Notary Public, State of _____

Go For Launch! Midland Second Series (2022-2023) Proposal from Higher Orbits

History

- In 2021 & 2022, Higher Orbits ran 3 *Go For Launch!* programs in Midland with Astronauts Don Thomas, Greg H. Johnson, and Dottie Metcalf-Lindenburger. These events were run in October 2021, April & June 2022 and held at a different MISD school each time. In addition to the student participant engagement, we were able to also engage a number of teachers from across the district.
- From these events, winning teams were selected and in the next few months we will announce an overall Series Winning Team who will have their experiment launched to be conducted on the International Space Station. (Timing of this is to be determined by if an event is held as an awards ceremony to announce the winners.)
- In addition, Higher Orbits brought Astronaut Wendy Lawrence to Midland to speak at 3 different schools in the spring
- Higher Orbits also held a public event in June to engage adults in the community in this STEM initiative for their students and to educate them about the Midland Spaceport

Goals for Second Series of Event

- Continue to excite High School Students about Space & STEM. We want to build on the foundation that has been laid with the first series of events and continue to reach more students who have not yet participated in addition to continuing to provide opportunity for those who have been part and are now more interested in the possibilities of STEM &/or Space
- Engage Midland students about the possibilities of a career in Aerospace.
- Keep STEM & Aerospace at the forefront of students and parents minds
- Continue to engage MISD educators about the possibilities of space

Go For Launch! General Info

Go For Launch! (GFL!) is Higher Orbits flagship STEM-based, hands-on educational experience. This exciting, multi-day, out of this world experience, uses spaceflight and space exploration as the launchpad for students to develop and strengthen their 21st century skills including STEM, teamwork, communication and leadership. From novice to advanced, students from all STEM backgrounds will find the *GFL!* experience a user-friendly environment where they can learn and excel.

Working together in teams during their entire *Go For Launch!* experience, students are immersed in the wonder of spaceflight and space exploration. Through a variety of “fireside chat” type talks from space and STEM industry experts students gain insight

and feedback on current and emerging STEM academic and career possibilities. Each fireside chat is complemented with a collaborative learning activity where student teams complete tasks (designed to build/enhance leadership, teamwork and communication skills) to receive daily awards. A feature unique to the *Go For Launch!* experience is students work side-by-side with an astronaut for the entire event.

The culminating *Go For Launch!* learning activity is a design project. Each team works together to define and design their own space experiment that could be tested in space on the International Space Station. The teams present their experiment idea to a judging panel of space and STEM industry experts, who will select one overall winning team experiment for each *Go For Launch!* event. The winning team's experiments from within a Series are competed against each other and one overall Series Winning Team is selected.

The winning team's experiment will be launched into space!

Proposal

Midland, TX Opportunity – 3 events in 2022/2023 with a guaranteed launch – Go For Launch! Midland Series 2 (can modify name as appropriate)

- Each event can have up to 65 students in grades 8-12
 - Can discuss how to allocate slots in the program to students. Possibilities include a fixed number for each school or we can just open up signups to any who fit within the parameters
 - Recommend a mix of students across all the grades encompassed for this program
- Proposed Scheduling
 - Per Jeff Horner we are targeting (if proposal approved): fall intercessional week, week of 20 February 2023, week of 5 June 2023
 - We will always do all we can to be flexible as required if dates need to move
- Host Locations
 - To date have been 3 separate schools.
 - Locations for this Series can continue to be schools and/or could be a community facility
- One or two winning teams selected from each individual event. These winning ideas are then competed against each other (this portion happens

electronically typically) and the overall winning team's experiment that is selected with launch to the International Space Station. This means a Midland, TX student experiment from this 2nd Series will fly to space, likely in early 2024 (depending on scheduling of *GFL!* events and then the manifesting of the spaceflight.)

We are a "program" in a box and will bring everything that is necessary to conduct these programs. What is necessary for the hosts is marketing assistance, assistance in identifying and securing students to participate, and connections into the community. We are solely responsible for the build and manifest of the experiment that will go to the International Space Station.

Total cost for 3 events including build and launch of experiment - \$135,000. At this level of funding all students will be able to attend without cost which is important if we are trying to reach those who are not already keenly interested in space and/or aerospace.

Longer Term

To keep momentum and to continue engaging students, we would recommend that this same boilerplate for events be done each year to bring in new students and to also continue to engage those who have been part of the program previously. Students can attend *Go For Launch!* more than once.

"Bonus" Options

- While the winning team from a Series is usually announced via Facebook Live, to further create excitement with the students who participated as well as the community, we would have an Awards Ceremony ~1-2 months after the final event in the Series is held, that is a party to celebrate the students' accomplishments. We will bring in an Astronaut to keynote, and we would announce the winner of the Series, who will have their experiment flown to space, at this event. The community can be invited to attend as well. We have done this before in Durham, NC with their Series and it was a huge hit. There is additional cost associated with this and the cost is TBD based on the type of event that is chosen to be held. We would like to propose to do this for the 1st Series (to be scheduled fall of 2022 and could be done in conjunction with fall *Go For Launch!* dates) and also the 2nd after it is complete in 2023.
 - Options for this award event have a broad range. Some possibilities:
 - Using a school or community facility for an awards party that is casual but fun. Cost for this (to include an Astronaut to be part of the event) \$3-4k



- Formal Gala that the community can be involved with. Would work to bring in more than 1 Astronaut for this depending on funding. Cost TBD
- If it is chosen to do this Awards event separate dates from adjacent to the fall *Go For Launch!* event we could do this and also do school visits to up to 3 schools. There is additional costs associated with this.
- Additionally, we would like to secure the funding (separate from this proposal) to have the students' travel to the launch of the experiment be covered so as to ensure that every member of the team, and a parent with each team member, is able to attend the launch. (Launch date and location to be determined based on manifests. We cannot determine the dates of launch until we determine when we will announce the winning team because we need the team to work with our Integrator to have the payload built for flight.)

Permian Basin
Area Foundation
Promotional
Agreement 2nd
Amendment

RESOLUTION NO. _____

**RESOLUTION AUTHORIZING THE EXECUTION OF A
SECOND AMENDMENT TO THAT CERTAIN
PROMOTIONAL AGREEMENT WITH THE PERMIAN
BASIN AREA FOUNDATION**

WHEREAS, the Board of Directors finds it to be in the public interest to authorize the execution of a second amendment to that certain promotional agreement with the Permian Basin Area Foundation;

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 second amendment to that certain promotional agreement with the Permian Basin Area Foundation. Said amendment being in a form substantially similar to Exhibit A, which is attached hereto and incorporated herein for all purposes.

SECTION TWO. That the City Comptroller of the City of Midland is hereby authorized and directed to pay the Permian Basin Area Foundation, in accordance with the terms of said agreement, as amended, 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 _____, 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 for the Midland
Development Corporation

APPROVED AS TO FORM ONLY:

JOHN OHNEMILLER,
Attorney for the Midland
Development Corporation

**SECOND AMENDMENT TO THE PROMOTIONAL AGREEMENT
BETWEEN
THE MIDLAND DEVELOPMENT CORPORATION
AND
PERMIAN BASIN AREA FOUNDATION**

THIS SECOND AMENDMENT is made and effective July 26, 2022, by and between the MIDLAND DEVELOPMENT CORPORATION (“MDC”), a Type A corporation existing under the authority of Chapter 504 of the Texas Local Government Code, and the PERMIAN BASIN AREA FOUNDATION, a Texas nonprofit corporation (“Foundation”). In this Amendment, MDC and Foundation are sometimes individually referred to as a “Party” and collectively referred to as the “Parties.”

WHEREAS, MDC and Foundation entered into that certain Promotional Agreement, effective as of September 14, 2021 (the “Agreement”), which was approved by the Midland Development Corporation Board of Directors; and

WHEREAS, MDC and Foundation executed an amendment to the Agreement, effective as of December 7, 2022 (the “First Amendment”), which was approved by the Midland Development Corporation Board of Directors; and

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

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

W I T N E S S E T H:

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

- 1) Article IV of the Agreement is hereby deleted in its entirety and replaced with the following:

IV. TERM OF AGREEMENT

Upon execution by the Parties, this Agreement becomes effective on September 14, 2021, and shall terminate on the date that the Fiscal Sponsorship Agreement terminates in accordance with the terms thereof, or when terminated earlier as a result of a material breach of this Agreement by one of the Parties as further provided herein. Foundation shall provide MDC prompt written notice of any termination of the Fiscal Sponsorship Agreement and no further Administrative Charge shall be payable by MDC for any work performed by Foundation after the date of such termination.

Notwithstanding any contrary provision contained herein, if the Fiscal Sponsorship Agreement is not terminated prior to August 25, 2022, then no further Administrative Charge shall be payable by MDC for any work performed by Foundation following August 25, 2022, unless the MDC Board of Directors authorizes the payment of such Administrative Charges by separate action of the MDC Board of Directors. For the avoidance of any doubt, if: (i) the Fiscal Sponsorship Agreement is not terminated prior to August 25, 2022; and (ii) the MDC Board of Directors fails to authorize payment of Administrative Charges for any work performed by Foundation following August 25, 2022, by separate action of the MDC Board of Directors, then this Agreement shall automatically terminate as of the day following the meeting at which the MDC Board of Directors fails to authorize payment of said Administrative Charges. Upon said termination, the Parties shall have no further obligation or liability under this Agreement or the Fiscal Sponsorship Agreement, if any. In any event, MDC shall pay all Administrative Charges for any work performed by Foundation prior to August 25, 2022.

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

[Signature Pages Follow]

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

MIDLAND
DEVELOPMENT CORPORATION

Stephen Lowery, Chairman

ATTEST:

Jill Pennington, Secretary

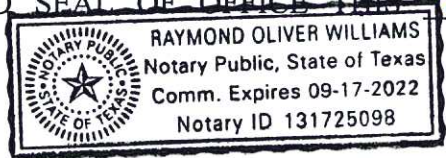
PERMIAN BASIN AREA FOUNDATION

Guy McCrary
Guy McCrary, President and Chief Executive Officer

THE STATE OF TEXAS §
 §
COUNTY OF MIDLAND §

BEFORE ME, Raymond Williams, a notary public, on this day personally appeared Guy McCrary, President and Chief Executive Officer of the PERMIAN BASIN AREA FOUNDATION, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same as the act and deed of said entity for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS 26 day of July, A.D., 2022.



Notary Public, in and for
the State of Texas

**AMENDMENT TO THE ECONOMIC DEVELOPMENT AGREEMENT
BETWEEN
THE MIDLAND DEVELOPMENT CORPORATION
AND
PERMIAN BASIN AREA FOUNDATION**

THIS AMENDMENT is made and effective December 7, 2021, by and between the MIDLAND DEVELOPMENT CORPORATION (“MDC”), a Type A corporation existing under the authority of Chapter 504 of the Texas Local Government Code, and PERMIAN BASIN AREA FOUNDATION, a Texas nonprofit corporation (“Foundation”). In this Amendment, MDC and Foundation are sometimes individually referred to as a “Party” and collectively referred to as the “Parties.”

WHEREAS, MDC and Foundation entered into that certain Promotional Agreement, effective as of September 14, 2021 (the “Agreement”), which was approved by the Midland Development Corporation Board of Directors; and

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

WHEREAS, MDC and Foundation 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, it is mutually promised, understood and agreed as follows:

- 1) Section II.A of the Agreement is hereby deleted in its entirety and replaced with the following:
 - A. **MDC Payment.** MDC agrees to pay an Administrative Charge in accordance with the fee schedule attached hereto as Exhibit B and incorporated herein for all purposes; provided, however, that MDC’s payments shall not exceed a total of \$240,000.00 during the term of this Agreement. MDC shall make quarterly payments of the Administrative Charge, which shall be remitted to Foundation in accordance with the below provisions and timeline.

Within fifteen (15) days following every March 31, June 30, September 30, and December 31 during the term of this Agreement, Foundation shall submit an invoice to MDC for the previous quarter’s assessed Administrative Charge. Within fifteen (15) days following MDC’s receipt of an invoice from Foundation, MDC shall pay the full amount of such invoice; provided, however, that if MDC objects to any portion of an invoice, MDC shall notify Foundation of such objection and the grounds therefor within said fifteen-day period for payment, and the Parties shall immediately make every effort to settle the disputed portion of the invoice.

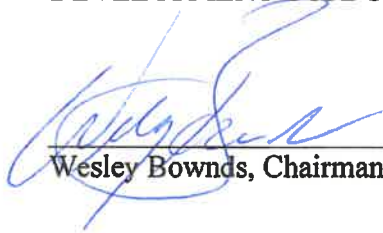
Notwithstanding the foregoing, MDC shall pay every portion of the invoice that is not in dispute within the fifteen-day period for payment.

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

[Signature Pages Follow]


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

MIDLAND
DEVELOPMENT CORPORATION



Wesley Bownds, Chairman

ATTEST:



Berry Simpson, Secretary

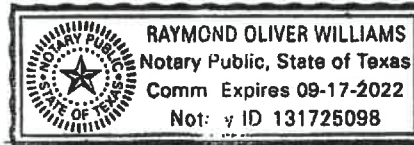
PERMIAN BASIN AREA FOUNDATION


Guy McCrary, President and Chief Executive Officer

THE STATE OF TEXAS §
 §
COUNTY OF MIDLAND §

BEFORE ME, Raymond O. Williams, a notary public, on this day personally appeared Guy McCrary, President and Chief Executive Officer of the PERMIAN BASIN AREA FOUNDATION, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same as the act and deed of said entity for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS 2 day of December, A.D., 2021.



Notary Public, in and for
the State of Texas



Fee Schedule

For every donor that contributes a total amount equal to or exceeding \$100,000.00, an Administrative Charge of \$5,000.00 will be invoiced to MDC (e.g., a multi-year contribution totaling \$250,000.00 will be assessed an Administrative Charge of \$5,000.00). For every donor that contributes a total amount of \$99,999.99 or less, MDC will not be invoiced.

Total Donation(s) per Donor	Total Administration Charge per Donor
Less than or equal to \$99,999.99	\$0.00
Greater than or equal to \$100,000.00	\$5,000.00

PROMOTIONAL AGREEMENT

THIS PROMOTIONAL AGREEMENT ("*Agreement*") is made and effective the 14th day of September, 2021, by and between the MIDLAND DEVELOPMENT CORPORATION ("*MDC*"), an economic development corporation existing under the authority of Chapter of 504 of the Texas Local Government Code, and Permian Basin Area Foundation, a Texas nonprofit corporation ("*Foundation*"). In this Agreement, MDC and Foundation are sometimes individually referred to as a "*Party*" and collectively referred to as the "*Parties*."

WITNESSETH:

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

WHEREAS, as of the date hereof, Foundation and the City of Midland (the "*City of Midland*") have entered into that certain Fiscal Sponsorship Agreement (the "*Fiscal Sponsorship Agreement*"), a copy of which is attached hereto as Exhibit A.

WHEREAS, pursuant to the terms of the Fiscal Sponsorship Agreement, Foundation will carry out certain services in support of the Sponsored Charitable Program (as defined in the Fiscal Sponsorship Agreement) being carried out by the City of Midland, and such services and the Sponsored Charitable Program will help 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;

WHEREAS, in connection with entering into the fiscal sponsorship arrangement set forth in the Fiscal Sponsorship Agreement, Foundation generally charges an administrative charge (the "*Administrative Charge*") and such Administrative Charge ordinarily would be paid by the City of Midland;

WHEREAS, MDC desires to expend promotional funds to cover the Administrative Charge that would otherwise be payable by the City of Midland under the Fiscal Sponsorship Agreement;

WHEREAS, MDC's expenditure of promotional funds for the services performed by Foundation pursuant to the Fiscal Sponsorship Agreement will assist in publicizing the City of Midland for the purpose of developing new and expanded business enterprises by helping to attract and retain workers in the City of Midland, and will thereby enhance and promote economic development within the City of Midland; and

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 MDC will pay the Administrative Charge in consideration for the services performed by Foundation under the Fiscal Sponsorship Agreement. MDC recognizes that Foundation would not enter into the Fiscal Sponsorship Agreement with the City of Midland but for MDC's agreement to enter into this Agreement and pay the Administrative Charge. MDC recognizes that the Sponsored Charitable Program and the services performed by Foundation pursuant to the Fiscal Sponsorship Agreement will help develop 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 pay the Administrative Charge, which shall consist of an annual aggregate amount of \$240,000, which shall be paid each year during the term of this Agreement in equal \$60,000 quarterly installments on January 1st, April 1st, July 1st, and October 1st. The Parties covenant and agree that all funds provided by MDC under this Agreement are in exchange for Foundation's services set forth in the Fiscal Sponsorship Agreement and such services will, together with the Sponsored Charitable Program, help promote the City of Midland.

B. Foundation Services. Foundation shall use commercially reasonable efforts to provide those services described in the Fiscal Sponsorship Agreement set forth on Exhibit A, which is attached hereto and incorporated herein for all purposes. Foundation shall perform all services in a workmanlike manner.

C. Foundation Report. During the term of this Agreement, at a time and place mutually agreed to by the Parties, MDC shall be entitled to receive a copy of any reports provided by the City of Midland to Foundation pursuant to the terms of the Fiscal Sponsorship Agreement and Foundation shall cooperate with MDC to provide any other information reasonably requested by MDC to enable MDC to evaluate how Foundation's services provided pursuant to the Fiscal Sponsorship Agreement are helping to promote new and expanded business enterprises within the City of Midland.

III. NO PARTNERSHIP; NO AGENCY; ETC.

Nothing in this Agreement shall constitute the naming of either Party hereto as an agent or legal representative of the other Party for any purpose whatsoever except as specifically and to the extent set forth herein. This Agreement shall not be deemed to create any relationship of agency, employment, partnership, or joint venture between the Parties hereto and each of MDC and Foundation shall make no such representation to anyone. It is the intention of the Parties that all employees, contractors, and advisors for Foundation will be employed or engaged directly by Foundation and not MDC. Foundation shall have exclusive control of, and the exclusive right to control, the details of the work to be performed pursuant to the Fiscal Sponsorship Agreement 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 Foundation'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. 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 Foundation's work under the Fiscal Sponsorship Agreement and Foundation assumes exclusive responsibility for its work.

IV. TERM OF AGREEMENT

Upon execution by the Parties, this Agreement becomes effective September 14, 2021, and shall terminate on the date that the Fiscal Sponsorship Agreement terminates in accordance with the terms thereof, or when terminated earlier as a result of a material breach of this Agreement by one of the Parties hereto, as further provided herein. Foundation shall provide MDC prompt written notice of any termination of the Fiscal Sponsorship Agreement and no further Administrative Charge shall be payable by MDC for any work performed by Foundation after the date of such termination.

Notwithstanding any contrary provision contained herein, if the Fiscal Sponsorship Agreement is not terminated prior to August 25, 2022, then no further Administrative Charge shall be payable by MDC for any work performed by Foundation following August 25, 2022, unless the MDC Board of Directors authorizes the payment of such Administrative Charges by separate action of the MDC Board of Directors at MDC's August 2022 meeting. For the avoidance of any doubt, if: (i) the Fiscal Sponsorship Agreement is not terminated prior to August 25, 2022; and (ii) the MDC Board of Directors fails to authorize payment of Administrative Charges for any work performed by Foundation following August 25, 2022, by separate action of the MDC Board of Directors at MDC's August 2022 meeting, then this Agreement shall automatically terminate as of the day following MDC's August 2022 meeting and the Parties shall have no further obligation or liability under this Agreement or the Fiscal Sponsorship Agreement, if any. In any event, MDC shall pay all Administrative Charges for any work performed by Foundation prior to August 25, 2022.

V. THIRD-PARTY BENEFICIARY; CITY OF MIDLAND

MDC recognizes that (i) Foundation would not enter into the Fiscal Sponsorship Agreement with the City of Midland but for MDC's agreement to enter into this Agreement and pay the Administrative Charge in lieu of the City of Midland being required to pay the Administrative Charge, (ii) the City of Midland is relying on MDC to pay the Administrative Charge, (iii) MDC's failure to timely pay the Administrative Charge in accordance with the terms of this Agreement will result in a termination of the Fiscal Sponsorship Agreement and cause material harm to the City of Midland, and (iv) in light of the foregoing, the Parties and the City of Midland intend for the City of Midland to be a third-party beneficiary of this Agreement.

VI. GENERAL TERMS

A. Entire Agreement. This Agreement, together with the Fiscal Sponsorship Agreement set forth on Exhibit A, 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. As provided in Section 5 of this Agreement, the Parties intend for the term of this Agreement to be co-extensive with the term of the Fiscal Sponsorship Agreement. However, either Party may terminate this Agreement earlier in the event that the other Party materially breaches the terms of this Agreement upon providing written notice of such breach and provided that the breaching party fails to correct the breach within thirty (30) days of receiving such written notice. The Parties agree that Foundation's failure to perform its obligations under the terms of the Fiscal Sponsorship Agreement shall constitute a material breach of this Agreement by Foundation.

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 FOUNDATION:

President & Chief Executive Officer
Permian Basin Area Foundation
3312 Andrews Highway
Midland, Texas 79703

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

G. Release. NOTWITHSTANDING ANY OTHER PROVISION CONTAINED HEREIN, FOUNDATION 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 FOUNDATION 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; provided, however, that the City of Midland must provide written consent to any amendment to this Agreement that would alter MDC's obligations to pay the Administrative Charge before such amendment may become effective.

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.

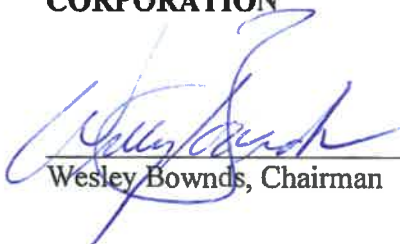
L. Third-Party Beneficiary. Except as otherwise expressly provided in Section 5 of this Agreement, MDC's approval of this Agreement does not create a third-party beneficiary. There is no third-party beneficiary to this Agreement other than the City of Midland. No person other than the City of Midland who is not a Party to this Agreement shall have any third-party beneficiary or other rights hereunder.

M. Governmental Function. MDC and Foundation hereby acknowledge and agree that the entirety of MDC's performance and obligations under this Agreement are governmental functions. By entering into this Agreement, Foundation 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**



Wesley Bowns, Chairman

ATTEST:



Berry Simpson, Secretary

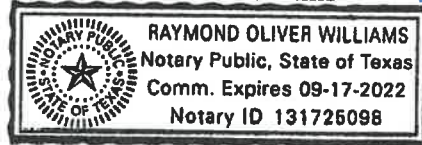
**PERMIAN BASIN
AREA FOUNDATION**

By *Guy McCrary*
Name Guy McCrary
Title President & Chief Executive Officer

THE STATE OF TEXAS §
 §
COUNTY OF MIDLAND §

BEFORE ME, the undersigned authority, on this day personally appeared *Guy McCrary*, 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 the PERMIAN BASIN AREA FOUNDATION.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this *21* day of *September*, 2021.



Notary Public, State of Texas
Raymond Oliver Williams

Advanced
Environmental
Services – Asbestos
Abatement

RESOLUTION NO. _____

RESOLUTION AUTHORIZING THE EXECUTION OF AN ABATEMENT CONTRACT WITH RON OSBORN, INC., DBA ADVANCED ENVIRONMENTAL SERVICES IN THE AMOUNT OF \$280,649.00 FOR THE ABATEMENT OF HAZARDOUS MATERIALS WITHIN THE STRUCTURES LOCATED ON CERTAIN REAL PROPERTY DESCRIBED AS LOTS 1A AND 9-12, BLOCK 35, ORIGINAL TOWN OF MIDLAND, CITY OF MIDLAND, MIDLAND COUNTY, TEXAS; AND AUTHORIZING PAYMENT FOR SAID CONTRACT

WHEREAS, the Board of Directors finds it to be in the public interest to authorize the execution of an abatement contract with Ron Osborn, Inc., dba Advanced Environmental Services in the amount of \$280,649.00 for the abatement of hazardous materials within the structures located on certain real property described as Lots 1A and 9-12, Block 35, Original Town of Midland, City of Midland, Midland County, Texas;

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 abatement contract Ron Osborn, Inc., dba Advanced Environmental Services in the amount of \$280,649.00 for the abatement of hazardous materials within the structures located on certain real property described as Lots 1A and 9-12, Block 35, Original Town of Midland, City of Midland, Midland County, Texas. Said contract being in a 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 make payment(s) to Ron Osborn, Inc., dba Advanced Environmental Services in accordance with the terms of the abatement contract, from funds available in the Midland Development Corporation (235) Operating Budget upon receipt of proper invoices or statements approved by the Executive Director of the Midland Development Corporation.

SECTION THREE. That the Executive Director of the Midland Development

Corporation, or her designee, is hereby authorized and directed to administer the Midland Development Corporation's obligations under said contract, including the issuance of all notices and confirmations due thereunder.

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

Abatement Contract

211 & 221 North Colorado and 210 North Big Spring

THIS CONTRACT, effective as of the **23rd day of August, 2022**, by and between the Midland Development Corporation (“*MDC*”), and **Ron Osborn, Inc., dba Advanced Environmental Services** (“*Company*”), is made for the following considerations:

1. **Cost:** Total Proposal: \$280,649.00
2. **Scope of Work:** Company shall perform all work described for the **abatement of the properties located at 211 & 221 North Colorado Street and 210 North Big Spring Street**, said work being further described in **Exhibit A**, which is attached hereto and incorporated herein for all purposes.
3. **MDC’s Representative:** “*MDC’s Representative*” or “*representative*” shall mean the Executive Director or her designee who may inspect work performed under this Contract; or such other representative, environmental consultant, supervisor, or inspector as may be authorized by MDC to act in any particular capacity under this Contract. MDC’s Representative may make visits to the site to observe the progress and quality of the executed work and to determine, in general, if the work is proceeding in accordance with the Contract documents. MDC’s Representative, with exception of the environmental consultant, will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the work, nor will such representative be responsible for the construction means, methods, techniques, sequences or procedures, or the safety precautions incident thereto. MDC’s Representative shall not be responsible for Company’s failure to perform the work in accordance with the Contract.
4. **Environmental Consultant:** A licensed environmental consultant will be contracted by MDC to prepare abatement specifications and plans, as well as to supervise and direct all work necessary to abate subject property in a commercially reasonable fashion.
5. **Company:** Unless otherwise stipulated, Company shall provide and pay for all materials, supplies, machinery, equipment, tools, superintendence, labor, insurance, and all light, fuel, transportation and all other facilities necessary for the execution and completion of the work covered by the Contract documents. Unless otherwise specified, all materials shall be new, and both workmanship and materials shall be of a good quality. Company shall, if required, furnish satisfactory evidence as to the kind and quality of materials. Exception is payment of electrical and water utilization bills. These will be the responsibility of MDC.
 - 5.1. Other than applicable Department of State Health Services (DSHS) permits, Company shall, at

its expense, obtain all permits and licenses necessary for the performance of this Contract, pay all fees and taxes required by law, and comply with all laws, ordinances, rules and regulations governing Company's performance of the Contract, including all environmental laws and regulations, whether state or federal.

5.2. All work shall be completed, and all materials shall be furnished in strict conformity with the Contract specifications.

6. **Minor Work Not Mentioned:** All minor detail of the work not specifically mentioned in the specifications, but obviously necessary for the proper completion of the work such as the proper connection of new work to old, shall be considered as incidental to and a part of the work for which the prices are named in the Contract. Company shall not be entitled to any additional compensation therefor unless specifically stated otherwise. Otherwise the term "extra work" as used in this Contract shall mean and include all work that may be required by MDC to be done by Company to accomplish any alteration or addition to the work as shown on the specifications.

Company shall perform all extra work under the direction of MDC's Representative, or contracted licensed environmental consultant, when presented with a written work order signed by MDC's Representative; subject, however, to the right of the Company to require written confirmation of such extra work order by MDC. Payment for extra work shall be as agreed in the work order.

7. **Safety:** Company shall at all times exercise reasonable precaution for the safety of employees and others on or near the work and shall comply with all applicable provisions of federal, state and municipal laws. All machinery and equipment and other physical hazards shall be guarded in accordance with federal, state or municipal laws or regulations.

8. INDEMNITY: COMPANY SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND MDC AND ITS 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 CONTRACT, AND COMPANY WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST MDC, CITY, OR ANY OF THEIR OFFICERS, AGENTS OR EMPLOYEES, INCLUDING ATTORNEY'S FEES.

8.1. **COMPANY AGREES THAT IT SHALL INDEMNIFY AND SAVE MDC HARMLESS FROM ALL CLAIMS GROWING OUT OF ANY DEMANDS OF SUBCONTRACTORS, LABORERS, WORKMEN, MECHANICS, MATERIALMEN, AND FURNISHERS OF MACHINERY AND PARTS THEREOF, EQUIPMENT, POWER TOOLS AND ALL SUPPLIES, INCURRED IN THE FURTHERANCE OF THE PERFORMANCE OF THIS CONTRACT. 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 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 CONTRACT, AND SHALL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST MDC AND ITS OFFICERS, AGENTS, OR EMPLOYEES INCLUDING ATTORNEY'S FEES.**

9. **Start of Work:** Company shall commence work no later than ten (10) days after receipt of the execution of this document or other written release to proceed and shall complete such work no later than 140 calendar days after release to proceed.

10. **Clean Up:** Company shall promptly remove from premises all materials condemned by MDC's Representative on account of failure to conform to the contract, whether actually incorporated in the work or not, and Company shall at its own expense promptly replace such condemned materials with other materials conforming to the requirements of the Contract. Company shall also bear the expense of restoring all work of other contractors damaged by any such removal or replacement. If Company does not remove and replace any such condemned materials within a reasonable time after a written notice by MDC, MDC may remove and replace such materials at Company's expense.

11. **Warranty:** Neither the final payment nor any provision in this Contract shall relieve Company of responsibility for faulty materials or workmanship, and Company shall remedy any defects due thereto and pay for any damage to other work resulting therefrom, which shall appear within a period of one (1) year from the date of substantial completion. MDC shall give notice of observed defects with reasonable promptness.

12. **Payment and Performance Bonds:** Company agrees to post good and sufficient payment and performance bonds, each in the amount of \$280,649.00, as a guarantee of payment due by Company to any

contractor for work contemplated herein and Company's performance of this Contract. Forfeiture of such bonds for nonpayment or noncompliance shall not preclude further action by MDC.

13. **Remedy:** MDC may, on account of subsequently discovered evidence, withhold whole or part of any payment to such extent as may be necessary to protect itself from loss on account of:

- 13.1. Defective work not remedied;
- 13.2. Claims filed or reasonable evidence indicating possible filing of claims;
- 13.3. Failure of Company to make payments promptly to subcontractors or for material or labor that MDC may pay as an agent for the Company; or
- 13.4. Damages to another contractor or subcontractor.

When the above grounds to withhold payment are removed, or Company provides a surety bond satisfactory to MDC, which shall protect MDC in the amount withheld, payment may be released.

14. **Funding Out:** In the event no funds or insufficient funds are appropriated and budgeted or are otherwise unavailable in any fiscal period for payments due under the contract, then this Contract shall terminate on the last day of the fiscal period for which full appropriations were made, without penalty or expense to MDC of any kind whatsoever.

15. **Prompt Pay Act:** MDC and Company agree that Texas Government Code, Chapter 2251, Payment for Goods and Services does not waive governmental immunity.

16. **Payment; Retainage:** After all work is completed by Company, including all change orders altering the original scope and amount of the Contract are completed, and MDC has inspected and approved that the work is completed and in compliance with the Contract and all subsequent change orders, MDC may thereafter issue payment to Company in the amount of the Contract and all change orders. MDC shall be the final judge of when the work is completed by Company. MDC, in its sole discretion, shall determine if the work under the Contract and under any change orders has been completed to MDC's requirements.

16.1. MDC may make periodic payments to Company; provided, however, such periodic payments may only be made pursuant to this section, and only after all work and all change orders are completed by Company and approved by MDC. The approval shall be in MDC's sole discretion. Requests for progress payments may be made to the extent of the materials and labor completed at the end of each month. Upon approval by MDC or the MDC's Representative, the request and invoice shall be forwarded for payment less five percent (5%) retainage. The total of these payments shall not exceed ninety-five percent (95%) of the total Contract amount.

17. **Late Completion; Liquidated Damages:** It is hereby understood and mutually agreed, by and between Company and MDC, that the date of beginning and the time for completion as specified in the Contract of the work to be done hereunder are ESSENTIAL CONDITIONS of this Contract; and it is further mutually understood and agreed that the work contemplated in this Contract shall be commenced on a date to be specified in the "Notice to Proceed." Company agrees that said work shall be prosecuted regularly, diligently, and uninterruptedly at such rate of progress as will ensure full completion thereof within the time specified. It is expressly understood and agreed, by and between Company and MDC, that the time for the completion of the work described herein is a reasonable time for the completion of the same, taking into consideration the average climatic range and usual industrial conditions prevailing in this locality.

17.1. In the event Company neglects, fails or refuses to complete the work within the time herein specified, or any proper extension thereof granted by MDC, then Company and Company's surety, if any, shall be liable for and does hereby agree, as a part consideration for the awarding of this Contract, to pay to MDC \$500.00, not as a penalty but as liquidated damages for such breach of contract as hereinafter set forth, for each and every day that Company shall be in default after the time stipulated in the Contract for completing the work. Further, MDC shall have the right to cancel this Contract for such delay. In the event MDC cancels this Contract pursuant to the terms of this section, MDC shall pay to Company only those monies deemed appropriate by MDC, in its sole discretion, to compensate Company for any work actually performed, less any liquidated damages Company owes MDC.

17.2. The said amount is fixed and agreed upon by and between Company and MDC because of the impracticability and extreme difficulty of fixing and ascertaining the actual damages MDC would in such event sustain, and said amount is agreed to be the amount of damages that MDC would sustain and said amount shall be retained from time to time by MDC from current periodical estimates.

17.3. It is further agreed that time is of the essence of each and every portion of this Contract and of the specifications wherein a definite and certain length of time is fixed for the performance of any act whatsoever; and where under the Contract an additional time is allowed for the completion of any work, the new time limit fixed by such extension shall be of the essence of this Contract. Provided, that Company shall not be charged with liquidated damages or any excess cost when MDC determines, in its sole discretion, that Company is without fault and Company's reasons for the time extension are acceptable to MDC. Provided, further, that Company shall not be charged with liquidated damages of any excess cost when the delay in completion of the work is due:

- a. To any preference, priority or allocation order duly issued by the Government;
- b. To unforeseeable cause beyond the control and without the fault or negligence of Company,

including, but not restricted to, acts of God, or of the public enemy, acts of MDC, acts of another contractor in the performance of a contract with MDC, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes , and severe weather; or

- c. To any delays of subcontractors or suppliers occasioned by any of the causes specified in subsections (a) and (b) of this article.

17.4. Provided, further, that Company shall, within ten (10) days from the beginning of such delay, unless MDC shall, in its sole discretion grant a further period of time prior to the date of final settlement of the Contract, notify MDC, in writing, of the causes of the delay, who shall ascertain the facts and extent of the delay and notify Company within a reasonable time of its decision in the matter.

17.5. COMPANY AGREES THAT THE PAYMENT OF SUCH LIQUIDATED DAMAGES MAY BE RECOVERED BY MDC FROM RETAINAGE HELD BY MDC. NOTWITHSTANDING ANY OTHER PROVISION HEREOF, COMPANY HEREBY RELEASES, ACQUITS, RELINQUISHES AND FOREVER DISCHARGES MDC AND ITS AGENTS, EMPLOYEES AND OFFICERS FROM ANY AND ALL DEMANDS, CLAIMS, DAMAGES, OR CAUSES OF ACTION OF ANY KIND WHATSOEVER ARISING FROM MDC WITHHOLDING PAYMENT FROM COMPANY AS LIQUIDATED DAMAGES FOR COMPANY'S FAILURE TO COMPLETE THE WORK WITHIN THE TIME SPECIFIED HEREIN, 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.

17.6. COMPANY SHALL RECEIVE NO FINANCIAL COMPENSATION FOR DELAY OR HINDRANCE TO THE WORK. IN NO EVENT SHALL MDC BE LIABLE TO COMPANY OR ANY SUBCONTRACTOR OR SUPPLIER, ANY OTHER PERSON OR ANY SURETY FOR OR ANY EMPLOYEE OR AGENT OF MDC FOR ANY DAMAGES ARISING OUT OF OR ASSOCIATED WITH ANY DELAY OR HINDRANCE TO THE WORK, REGARDLESS OF THE SOURCE OF THE DELAY OR HINDRANCE, INCLUDING EVENTS OF FORCE MAJEURE, AND EVEN IF SUCH DELAY OR HINDRANCE RESULTS FROM, ARISES OUT OF OR IS DUE, IN WHOLE OR IN PART, TO THE NEGLIGENCE OF MDC. COMPANY'S SOLE REMEDY IN ANY SUCH CASE SHALL BE AN EXTENSION OF TIME.

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

19. WAIVER OF ATTORNEY FEES: BY EXECUTING THIS CONTRACT, 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'S FEES, WHICH ARE IN ANY WAY RELATED TO THE CONTRACT, OR THE CONSTRUCTION, INTERPRETATION OR BREACH OF THE CONTRACT. COMPANY SPECIFICALLY AGREES THAT IF COMPANY BRINGS OR COMMENCES ANY LEGAL ACTION OR PROCEEDING RELATED TO THIS CONTRACT, THE CONSTRUCTION, INTERPRETATION, VALIDITY OR BREACH OF THIS CONTRACT, 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'S FEES TO WHICH COMPANY MIGHT OTHERWISE BE ENTITLED.

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

COMPANY IS RELYING ON ITS OWN JUDGMENT. COMPANY HAD THE OPPORTUNITY TO DISCUSS THIS CONTRACT WITH COMPETENT LEGAL COUNSEL PRIOR TO ITS EXECUTION.

20. **Governmental Immunity:** By executing this Contract, 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.

21. **Insurance:** Company shall at all times during the term of this Contract 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-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 work that is the subject of this Contract. 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 Contract. The Workers' Compensation shall waive all rights of subrogation in favor of MDC.

All insurance required pursuant to this Contract shall provide for a waiver of subrogation in favor of MDC. All insurance required pursuant to this Contract, 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 Contract 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 name MDC as an additional insured on a claims-occurred basis (except workers' compensation).

The parties agree that, prior to the execution of the Contract, 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 Contract.

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.

22. **Assignment:** Company shall not, either directly or indirectly, assign all or any part of this Contract

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.

23. RELEASE: NOTWITHSTANDING ANY OTHER PROVISIONS, COMPANY HEREBY RELEASES, ACQUITS, RELINQUISHES AND FOREVER DISCHARGES MDC AND ITS AGENTS, EMPLOYEES AND OFFICERS FROM ANY AND ALL DEMANDS, CLAIMS, DAMAGES, OR CAUSES OF ACTION OF ANY KIND WHATSOEVER THAT COMPANY 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.

24. Governing Law and Venue: The laws of the State of Texas shall govern, construe and enforce all the rights and duties of the parties, including but not limited to tort claims and any and all contractual claims or disputes, arising from or relating in any way to the subject matter of this Contract, without regard to conflict on laws and rules that would direct application of the laws of another jurisdiction. All performance and payment made pursuant to this Contract 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 Contract or the performance of this Contract shall be in Midland County, Texas.

25. 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 Contract 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 Contract 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 the Company's work. Company shall assume exclusive responsibility for the work. Company is entirely free to do the work in its own way.

26. 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 Contract, Company or its legal representative, shall give the MDC Chairman, or any other reasonable official of MDC, notice in writing (consisting of one (1) original and seven (7) copies of notice attached to a copy of this Contract) of such damages, duly verified, within one hundred fifty (150) days after the same has been sustained. The discovery rule does not apply to the giving of this notice. The notice shall include when, where and how the damages occurred, the apparent extent thereof, the amount of damages sustained, the amount for which Company will settle, the physical and mailing addresses of Company at the time and date the claim was presented and the physical and mailing addresses of Company for the six (6) months immediately preceding the occurrence of such damages, and the names and addresses of the witnesses upon whom Company relies to establish its claim; and a failure to so notify the MDC Chairman within the time and manner provided herein shall exonerate, excuse and except MDC from any liability whatsoever. MDC is under no obligation to provide notice to Company that Company's notice is insufficient. MDC reserves the right to request reasonable additional information regarding the claim. Said additional information shall be supplied within thirty (30) days after receipt of notice.

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

27. **Consideration:** The terms of this Contract are supported by good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties named herein.

28. **Termination At Will:** MDC may terminate this Contract at will for no or any reason upon giving at least one hundred eighty (180) days written notice to Company. The parties to this Contract understand and agree that it is in MDC's sole discretion to cancel the Contract during the term of the Contract without penalty to MDC. Company has no expectation and has received no guarantees that this Contract will not be terminated before the end of the Contract term. The parties have bargained for the flexibility of terminating this Contract upon tender of the requisite notice at any time during the term of the Contract.

[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]

RON OSBORN, INC.:

By: _____

Name: _____

Title: _____

STATE OF _____ §

COUNTY OF _____ §

BEFORE ME, the undersigned authority, on this ____ day of _____, 2022, personally appeared _____ of Ron Osborn, Inc., known to me to be the person and official whose name is subscribed to the forgoing instrument, and acknowledged to me that he executed the same as the act and deed of said entity, for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the _____ day of _____, 2022.

Notary Public, State of _____

ADVANCED ENVIRONMENTAL SERVICES

Asbestos * Lead * Microbial * Soil Remediation * Demolition * Scaffolding * Industrial Insulation
advancedenviro.net

PO Box 3709
Odessa, Texas 79760-3709

Office - 432 + 530 - 3700
Fax - 432 + 530 - 3701

July 28, 2022

Mrs. Sara Harris
Midland Development Corp.
Midland, TX.

RE: **Properties at 211 & 221 N. Colorado; and 210 N. Big Spring Asbestos Abatement**

We are pleased to submit this proposal for your review and consideration. Our proposal includes all labor, equipment, materials, supplies, travel, and subsistence, (\$6,000,000) General and Pollution Liability, Auto's Liability and Worker's Comp. insurance for the removal, decontamination, and disposal of all waste per instructions.

Qualifications/ Training

- Advanced Environmental Services has over thirty-five years of experience in asbestos and lead abatement, and over twenty-five years in mold remediation and indoor air quality decontamination.
- Company is trained, certified, and licensed by the Texas Department of Health and the State of New Mexico in asbestos and mold abatement, and follow the most stringent regulations and methods
- Company is qualified in the demolition of many types and sizes of buildings, gas plants, gas and oil refineries.
- Scaffolding and Industrial Insulation replacement services are available at customer request.
- Company is an approved member of ISN, Browz, VERO and Avetta Safety Programs

Work Procedures/ Methods

- All work required, procedures and guidelines that are to be followed is per all regulatory agencies' regulations and requirements, and the environmental specifications.
- All waste to be transported and disposed of at **Republic Waste Landfill** in Odessa, TX
- Waste manifest will be provided by AES, reviewed, and signed by client or client's representative before transporting

Scope of Work/ Cost: *Removal of all materials and components is per the following:*

- REMOVAL OF ALL ASBESTOS MATERIALS INSIDE OF ALL BUILDINGS AS STATED IN SURVEY

TOTAL AMOUNT: \$ **130,481.00**

ESTIMATED DURATION IS APPROX. (8) WEEKS TO COMPLETE

- REMOVAL OF ALL OUTSIDE ASBESTOS WALLS AND SOFFITS MATERIAL AT 210 N. BIG SPRING INCLUDING FURNISHING AND INSTALLING SCAFFOLD STRUCTURE AROUND THE PERIMETER OF BUILDING AND FULL POLY CONTAINMENT FOR ALL MATERIAL ABATEMENT.

TOTAL AMOUNT: \$ **132,750.00**

ESTIMATED DURATION IS APPROX. **(8)** WEEKS TO COMPLETE

- FURNISH AND INSTALL TEMP. 6'0 HIGH RENTAL FENCING INCLUDING (2) ENTRY GATES FOR DURATION OF PROJECT AROUND THE BACK PERIMETERS OF BUILDINGS. - **(16)** TOTAL WEEKS.

TOTAL AMOUNT: \$ **6,624.00** - (\$874.00) rental each month following

- PAYMENT AND PERFORMANCE BONDING IS 4% OF TOTAL AMOUNT: \$ **10,794.00**

Project Exclusions (*These items are not included in bid if required*)

- Sales Tax – *N/A in Texas*
- Furnishing of water or power
- 3rd Party Consultant Air Monitoring and Project Design fees
- Repair/ Replacement of any materials
- State Notification Fees – ***Invoice sent directly to owner from the state***

Work Schedule/ Durations

- Estimated work schedule/ duration to complete project is working **(10)** hours per day **(4-5)** days per week
- AES will be taking care of filing a **(10)** workday asbestos notification to the state. There will be a **(14)** Calendar Day waiting period before starting any work

Prep/ Abatement Days: **(16)** Total weeks to complete

Demo Days: (N/A) Workdays to complete

Invoicing/ Payment Terms

- Invoicing shall be due upon completion of all work or every **(30)** days on progress billing
- Payment is due upon receipt of invoice or specified requirement: Net **(10)** Days from invoice date
- If a payment retainage is required, it shall be billed **(30)** days after total completion of *our scope of work only*, due **(30)** days from invoice date
- Proposal good for **(90)** days

Thank you for the opportunity to provide you with this quote and if you should have any questions please do not hesitate to call. I look forward to working with you on this project.

Respectfully,

Ron Osborn

Owner/ VP

Strong
Environmental
Services – Asbestos
Abatement

RESOLUTION NO. _____

RESOLUTION AUTHORIZING THE EXECUTION OF A CONSULTING SERVICES AGREEMENT WITH STRONG ENVIRONMENTAL SERVICES, LLC, IN THE AMOUNT OF \$129,750.00 FOR SERVICES RELATED TO THE ABATEMENT OF HAZARDOUS MATERIALS WITHIN THE STRUCTURES LOCATED ON CERTAIN REAL PROPERTY DESCRIBED AS LOTS 1A AND 9-12, BLOCK 35, ORIGINAL TOWN OF MIDLAND, CITY OF MIDLAND, MIDLAND COUNTY, TEXAS; 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 consulting services agreement with Strong Environmental Services, LLC, in the amount of \$129,750.00 for services related to the abatement of hazardous materials within the structures located on certain real property described as Lots 1A and 9-12, Block 35, Original Town of Midland, City of Midland, Midland County, Texas;

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

SECTION ONE. That the Chairman and Secretary are hereby authorized and directed to execute and attest, respectively, on behalf of the Midland Development Corporation, a consulting services agreement with Strong Environmental Services, LLC, in the amount of \$129,750.00 for services related to the abatement of hazardous materials within the structures located on certain real property described as Lots 1A and 9-12, Block 35, Original Town of Midland, City of Midland, Midland County, Texas. Said agreement being in a 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 make payment(s) to Strong Environmental Services, LLC, in accordance with the terms of the consulting services agreement, from funds available in the Midland Development Corporation (235) Operating Budget 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 special meeting on the _____ day of _____, AD, 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 as of the 23rd day of August, 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 STRONG ENVIRONMENTAL SERVICES, LLC (“*COMPANY*”).

ARTICLE I. PURPOSE

The purpose of this Agreement is to state the terms and conditions under which *COMPANY* shall perform certain consulting services related to the abatement of the properties located at 211 North Colorado Street, 221 North Colorado Street, and 210 North Big Spring Street, Midland, Texas 79701 (the “*Project*”).

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 \$129,750.00 for the consulting services described in **Exhibit A**. *MDC* agrees to pay *COMPANY* according to the schedule set forth in **Exhibit A**. *COMPANY* shall provide to *MDC* a monthly invoice. The monthly invoice shall set forth all service fees for the month and those expenses described in **Exhibit A** incurred during the previous month that have received advance written approval from the *MDC* Executive Director, or her designee. The *MDC* Executive Director, or her designee, must approve all additional expenses and reimbursable expenses in advance. Within thirty (30) days of the date on which *COMPANY*'s invoice is received by *MDC*, *MDC* shall pay the full amount of such invoice;

Exhibit A

provided, however, that if MDC objects to any portion of an invoice, MDC shall notify COMPANY of MDC's objection and the grounds thereof within fifteen (15) days of the date of receipt of the invoice, and the parties shall immediately make every effort to settle the disputed portion of the invoice. MDC in any event shall pay every portion of the invoice that is not in dispute within the 30-day period for payment.

ARTICLE IV. TERM

The term of this Agreement shall be from **August 23, 2022 until December 31, 2022**, unless the Project is completed sooner or the Agreement is terminated as provided below.

ARTICLE V. TERMINATION AT WILL

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

ARTICLE VI. ASSIGNMENT

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

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

All reports, information and other data ("*Instruments of Service*"), given to, prepared or assembled by COMPANY under this Agreement, and any other related documents or items shall become the sole property of MDC and shall be delivered to MDC, without restriction, except that COMPANY may make copies of any and all Instruments of Service for its files. MDC shall not

make any modification to the plans and specifications or make them available for use by third parties without the prior written authorization of COMPANY, which consent shall not be unreasonably withheld.

ARTICLE VIII. INDEPENDENT CONTRACTOR

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

ARTICLE IX. INSURANCE

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

Commercial General Liability (including Contractual liability):

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

-Property Damage:	\$500,000.00 per occurrence
Business Automobile Liability:	\$250,000.00 combined single limit - Personal Injury and Property Damage
Workers' Compensation:	Statutory limits
Employers' Liability:	\$500,000.00 per accident or occurrence

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

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

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

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

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

The parties agree that, prior to the execution of the Agreement, COMPANY shall provide one or more certificates of insurance specifically stating that these requirements have been met

and subject to the approval of MDC. MDC shall not be required to provide any insurance whatsoever pursuant to this Agreement.

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

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 AMENDED). 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

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

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

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

I. Notice of Alleged Breach; Statutory Prerequisites. As a condition precedent to filing suit for alleged damages incurred by an alleged breach of an express or implied provision of this Agreement, COMPANY or his legal representative, shall give the MDC Chairman, or any other reasonable official of MDC, notice in writing (consisting of one (1) original and seven (7) copies of notice attached to a copy of this Agreement) of such damages, duly verified, within ninety (90) days after the same has been sustained. The discovery rule does not apply to the giving of this notice. The notice shall include when, where and how the damages occurred, the apparent extent thereof, the amount of damages sustained, the amount for which COMPANY will settle, the physical and mailing addresses of COMPANY at the time and date the claim was presented and the physical and mailing addresses of COMPANY for the six (6) months immediately preceding the occurrence of such damages, and the names and addresses of the witnesses upon whom COMPANY relies to establish its claim; and a failure to so notify the MDC Chairman within the time and manner provided herein shall exonerate, excuse and except MDC from any liability whatsoever. MDC is under no obligation to provide notice to COMPANY that COMPANY'S notice is insufficient. MDC reserves the right to request reasonable additional information regarding the claim. Said additional information shall be supplied within thirty (30) days after receipt of notice.

The statutory prerequisites outlined herein constitute jurisdictional requirements pursuant to Section 271.154 of the Texas Local Government Code and Section 311.034 of the Texas

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

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.

[Signature Pages Follow]

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

**MIDLAND DEVELOPMENT
CORPORATION**

Stephen Lowery, Chairman

ATTEST:

Jill Pennington, Secretary

Strong Environmental Services, LLC

Texas Consulting Services
A Regulatory / Environmental Company
PO Box 9910 * Midland, TX 79708
Phone: (432) 687-5455 * Cell: (432) 528-4104
E-mail: info@texconsulting.net/strongtony97@yahoo.com

July 17, 2022

Midland Development Corporation
200 N. Loraine St. Ste. 610
Midland, TX 79701
Attn: Sara Harris

RE: Consulting Proposal - Asbestos Abatement – JL Davis Properties

To Whom It May Concern:

As requested, Texas Consulting Services is submitting proposal to Midland Development Corporation for professional consulting services/project management regarding the JL Davis Properties in Midland, Texas. The summary is as follows:

- This price request is based upon a contractor estimated sixteen (16) weeks of project management for abatement of those materials identified in the asbestos inspections to date.
- Price request is based on 8–10 hour days with continuous air monitoring during daily removal and abatement activities through 5 day work weeks. Price request includes all labor, insurance, samples and reporting as described herein.
- All asbestos related work will be performed based on the known materials identified in the 2022 asbestos inspections performed by this firm.
- Texas Consulting Services will provide all state and federal mandated asbestos air monitoring, asbestos project management, and asbestos project design for abatement of asbestos containing material outlined in the 2022 ACM survey.
- Asbestos contractor will be contracted directly by the Owner and will not be paid through Texas Consulting Services or contracted by Texas Consulting Services.
- Owner is to pay the DSHS fee at the time of state billing. Texas Consulting Services will not be responsible for these fees, amounts, or otherwise. This fee is estimated at \$3,300 at the time of this proposal.
- Contractor will be responsible for notification of project. TCS to verify on behalf of owner.
- Project excludes any lead base paint abatement or handling and/or disposal of any hazardous or toxic materials other than those associated with ACBM's.
- Owner will give contractor and consultant full access to location. Owner to provide additional fencing upon any requirement additionally demanded by local or state authorities.
- Power, water and existing elevator service to be provided by owner.
- Payment to consultant and abatement contractor to be made in 20% completion installments. Payment to additional contractors utilized shall be on an as-approved draw request basis by this consultant to owner.
- TCS will serve to meet any and all TCEQ, DSHS, OSHA, and EPA requirements on performing this abatement.

Exhibit A

- All abatements will be performed by a licensed Department of State Health Services Asbestos Contractor and Consultant, with the owner contracting each separately. TCS will serve to meet any and all DSHS, OSHA, and EPA requirements on performing this abatement.

Pricing:

▪ Specification Manual:	\$ 7,500
▪ Daily Management/Air Monitoring:	\$120,000
▪ <u>Final Project Submittals & Reporting:</u>	<u>\$ 2,250</u>
▪ <i>Estimated Project Total:</i>	<i>\$129,750</i>

Additional daily management beyond sixteen (16) work weeks will be billed at \$1,500/day. If you have any questions or concerns, please do not hesitate to contact our offices immediately: 432-687-5455.

Sincerely,



Tony Strong
Owner/CEO
DSHS Cons. Lic. # 10-5631

Income Statement

MIDLAND DEVELOPMENT CORPORATION
INCOME STATEMENT FOR THE 10 MONTHS ENDED
July 31, 2022

	Jul-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	\$101,808.11	\$13,734,059.67	\$21,110,973.00
51010 - Base Salary	\$23,974.20	\$228,484.98	\$350,493.00
51090 - Fica MDC Portion	\$1,834.04	\$16,043.21	\$28,442.00
51110 - Health Insurance	\$1,201.70	\$8,581.92	\$30,180.00
51135 - ACCE Profit Sharing	\$0.00	\$1,087.50	\$24,535.00
52010 - Office Supplies	\$133.35	\$4,346.37	\$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	\$15,000.00	\$52,098.32	\$25,000.00
52620 - Postage	\$191.43	\$319.75	\$300.00
53010 - Communication	\$1,295.80	\$13,125.81	\$17,000.00
53030 - Light & Power	\$8.99	\$89.49	\$150.00
53110 - Insurance-External	\$169.29	\$225,251.35	\$110,000.00
53212 - Equipment Rental-External	\$161.10	\$3,136.41	\$5,000.00
53220 - Advertising	\$6,840.51	\$160,047.80	\$200,000.00
53370 - Grounds Maintenance	\$1,014.55	\$13,302.86	\$12,000.00
53405 - Software Maintenance	\$1,170.53	\$11,281.80	\$12,000.00
53440 - External Audit Fees	\$0.00	\$31,000.00	\$24,000.00
53450 - Consulting Fees	\$1,822.48	\$195,604.28	\$250,000.00
53510 - Travel & Entertainment	\$0.00	\$7,040.94	\$8,000.00
53520 - Dues & Subscriptions	\$1,543.38	\$9,607.00	\$20,000.00
53530 - Training,Registration Fees,Etc	\$0.00	\$7,123.84	\$8,000.00
53905 - Economic Development Incentive	\$0.00	\$0.00	\$4,527,925.00
53907 - Business Recruitment & Retentn	\$580.59	\$27,575.57	\$50,000.00
53909 - Prior Year Committed Incentives	\$2,112.00	\$5,631,489.02	\$9,798,329.00
53920 - Rent	\$5,540.00	\$55,400.00	\$75,000.00
54010 - Building Maintenance	\$4,605.00	\$37,707.97	\$80,000.00
55120 - Maint. - Instruments & Appara.	\$52.09	\$729.68	\$1,000.00
56188 - MOTRAN	\$0.00	\$142,500.00	\$142,500.00
56202 - General Fund Services	\$32,557.08	\$325,570.80	\$390,619.00
56410 - Payment of Principal	\$0.00	\$0.00	\$60,000.00
56420 - Interest Expense	\$0.00	\$0.00	\$12,000.00
56910 - Depreciation Expense	\$0.00	\$283,566.87	\$336,000.00
56995 - Project Non Capital - Promotions	\$0.00	\$278,733.60	\$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	\$101,808.11	\$13,734,059.67	\$21,110,973.00

July 2022 Net Income: \$1,316,150.84

Year-to-Date Net Income: (\$3,288,050.46)

Balance Sheet

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

ASSETS

Current Assets

Cash and cash equivalents	14,229,815	
Investments	8,000,000	
Sales tax receivable	-	
Prepaid expenses	-	
Accounts receivable	-	
	22,229,815	22,229,815

Non-Current Assets

Capital Assets, net	27,662,326	
Forgivable Loans		
Made to Primary Government	-	
Made to Other	6,579	
Total Forgivable Loans	6,579	
	27,668,906	27,668,906

Total Assets \$ 49,898,720

LIABILITIES AND NET POSITION

Liabilities

Accounts payable	55,646	
Retainage Payable	38,028	
Capital Leases payable	93,357	
Commitments payable		
Due within one year	6,358,562	
Due in more than one year	8,392,259	
Total Commitments Payable	14,750,821	
	14,937,852	14,937,852

Net Position

Net investment in capital assets	27,662,326	
Restricted for Forgivable Loans	6,579	
Restricted for Capital Leases	93,357	
Promotions	1,457,113	
Unrestricted	5,741,492	
	34,960,868	34,960,868

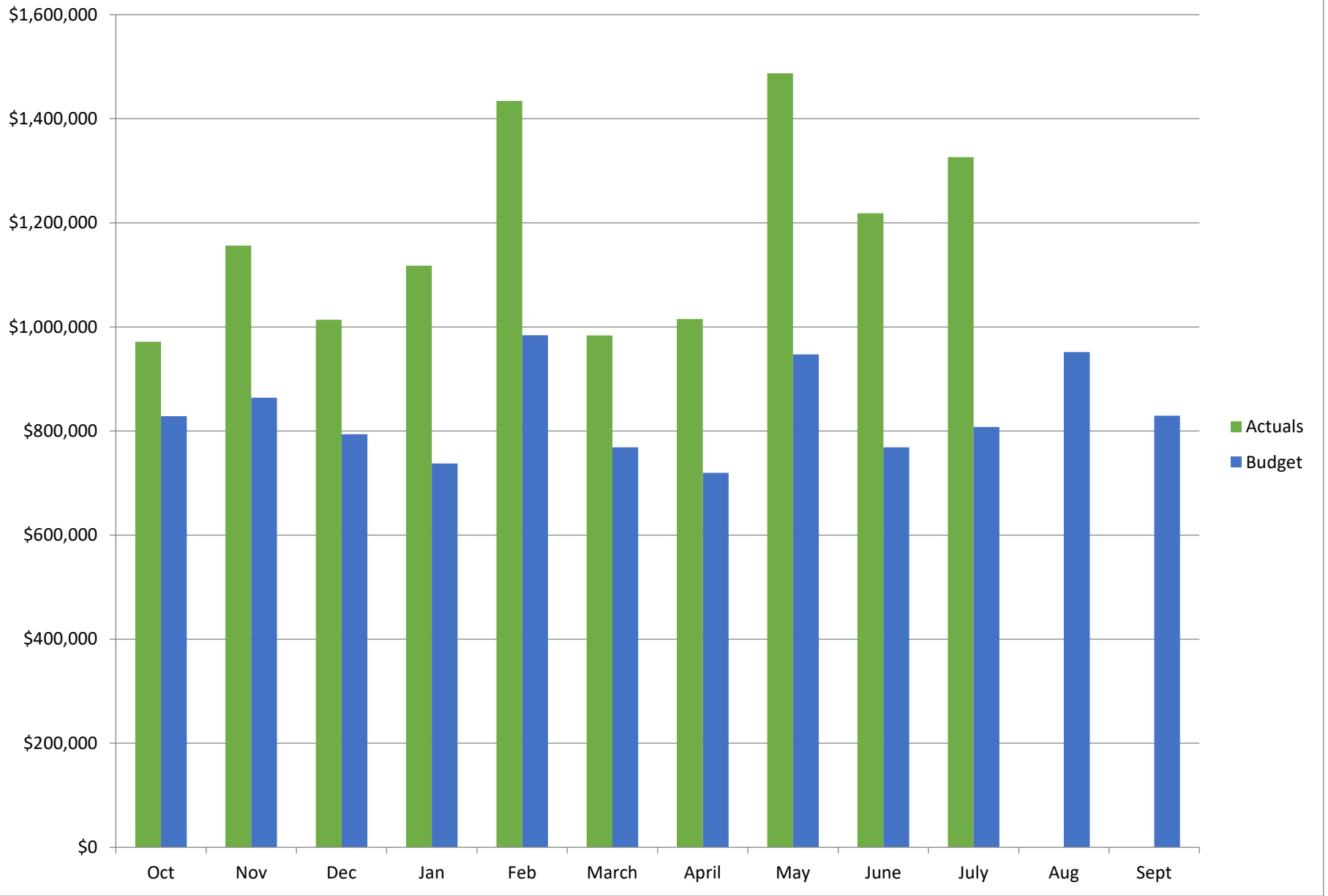
Total Liabilities and Net Position \$ 49,898,720

Sales Tax

Sales Tax Variance

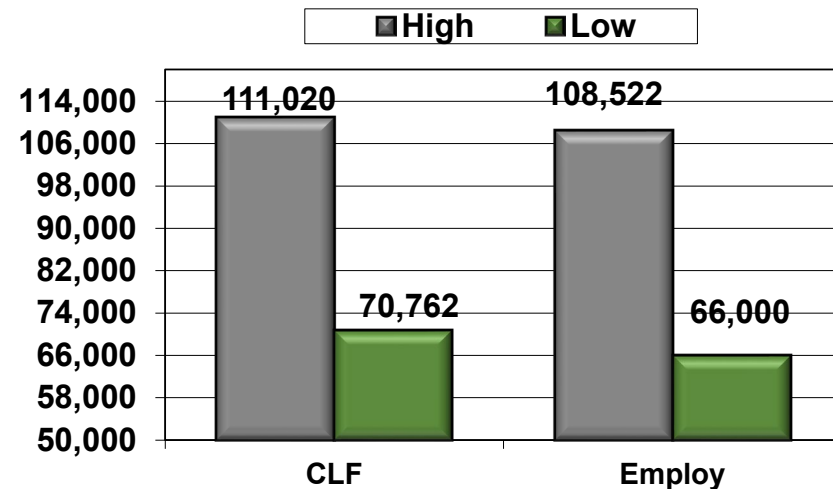
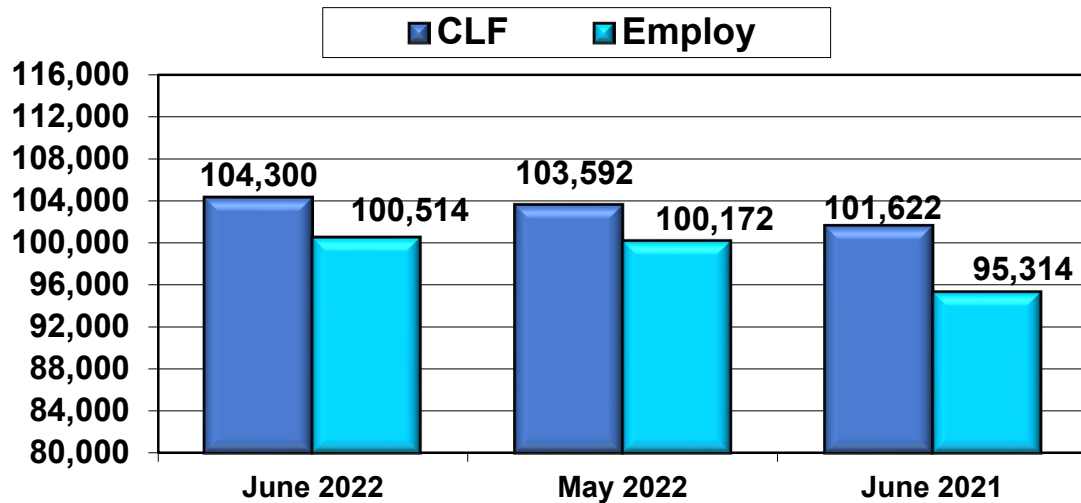
	2019-2020	2020-2021	% Change	2020-2021	2021-2022	% Change	YTD Change
October	\$1,219,993.44	\$1,203,058.10	-1.39%	\$1,203,058.10	\$971,343.63	-19.26%	-19.26%
November	\$1,266,357.10	\$983,259.60	-22.36%	\$983,259.60	\$1,156,353.89	17.60%	-2.68%
December	\$1,263,226.93	\$843,087.27	-33.26%	\$843,087.27	\$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			
September	\$834,182.16	\$978,956.15	17.36%	\$978,956.15			
Annual Total	\$12,971,588.05	\$11,667,228.27	-10.06%	\$11,667,228.27	\$11,724,166.75		

Sales Tax Actuals vs Budget Estimates



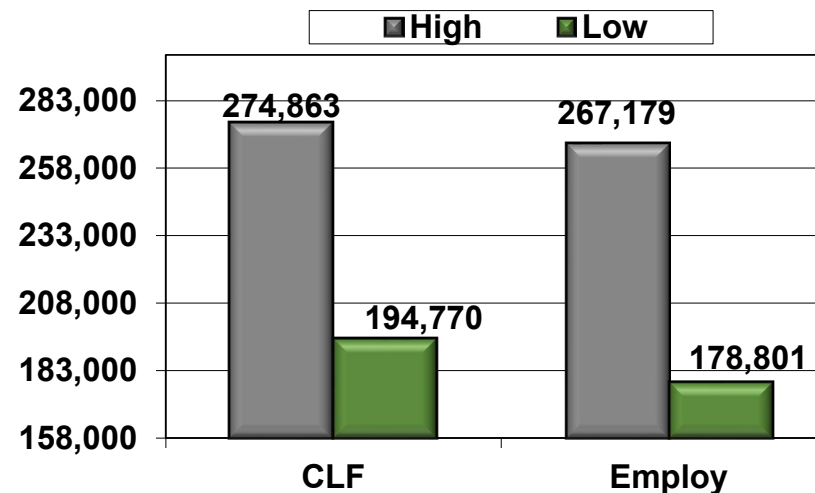
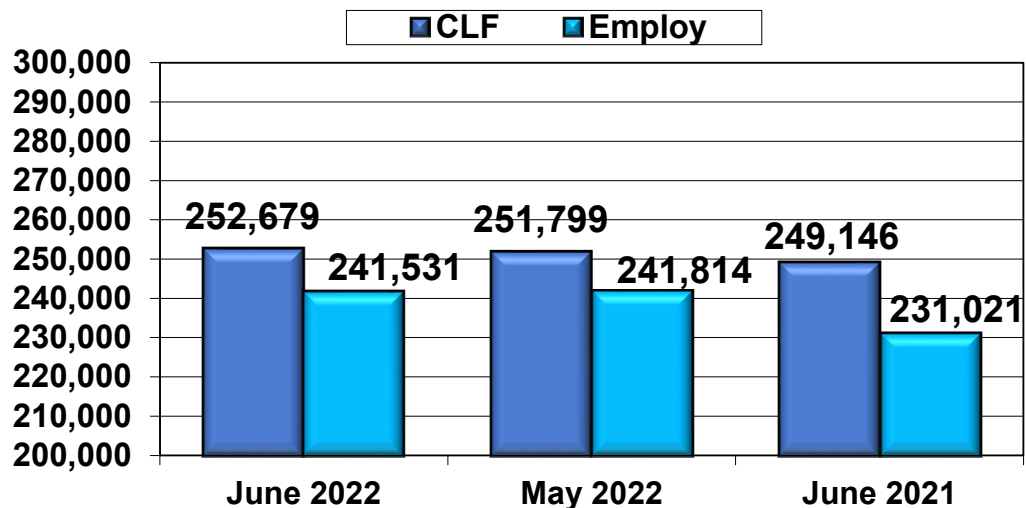
Activity Report

June 2022 Midland MSA Employment Information



	June 2022	May 2022	June 2021	High	Low
Civilian Labor Force	104,300	103,592	101,622	111,020 (Feb 2020)	70,762 (Jan 2010)
Employment	100,514	100,172	95,314	108,522 (Dec 2019)	66,000 (Jan 2010)
Unemployment	3,786	3,420	6,308	11,912 (May 2020)	1,788 (May 2019)
Unemployment Rate	3.6%	3.3%	6.2%	12.3% (May 2020)	1.7% (Apr 2019)

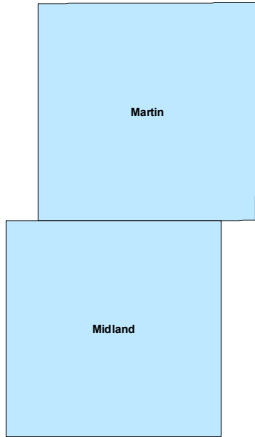
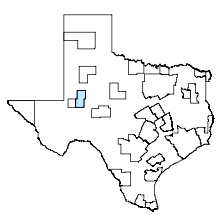
August 2022 Permian Basin Workforce Development Area Employment Information



	June 2022	May 2022	June 2021	High	Low
Civilian Labor Force	252,679	251,799	249,146	274,863 (Feb 2020)	194,770 (Jan 2010)
Employment	241,531	241,814	231,021	267,179 (Feb 2020)	178,801 (Jan 2010)
Unemployment	11,148	9,985	18,125	32,215 (May 2020)	5,115 (Apr 2019)
Unemployment Rate	4.4%	4.0%	7.3%	13.2% (May 2020)	1.9% (Apr 2019)

Midland MSA

June 2022



MSA Labor Force Statistics

	Jun-22	May-22	Jun-21	Yearly Change
Civilian Labor Force	104,300	103,592	101,622	2,678
Employed	100,514	100,172	95,314	5,200
Unemployed	3,786	3,420	6,308	-2,522
Unemployment Rate	3.6%	3.3%	6.2%	-2.6%

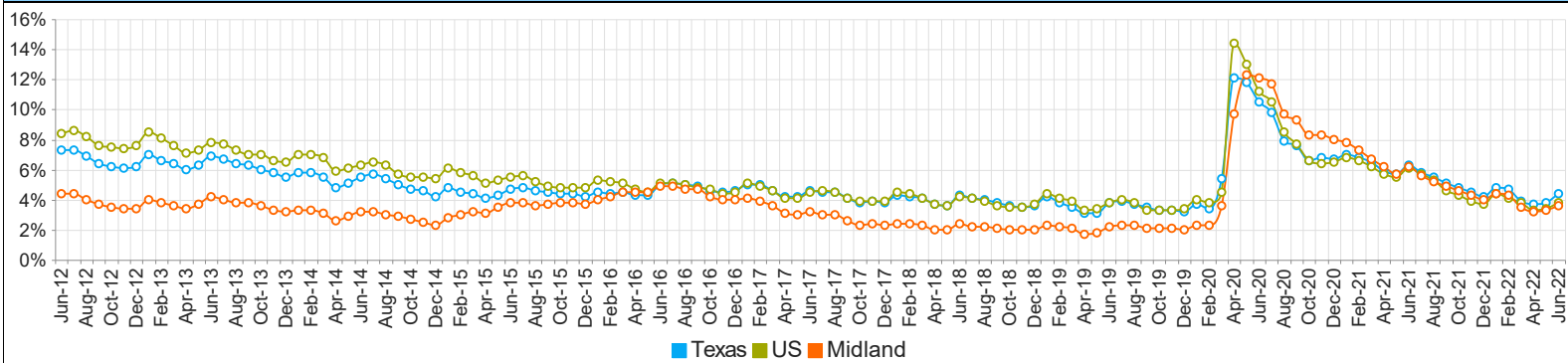
Texas Labor Force Statistics

	Jun-22	May-22	Jun-21	Yearly Change
Civilian Labor Force	14,585,252	14,500,218	14,216,135	369,117
Employed	13,945,797	13,946,458	13,313,724	632,073
Unemployed	639,455	553,760	902,411	-262,956
Unemployment Rate	4.4%	3.8%	6.3%	-1.9%

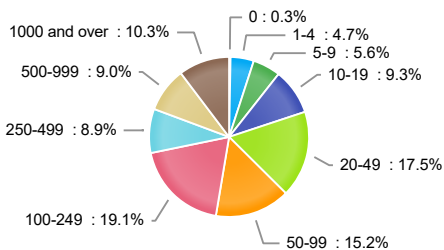
US Labor Force Statistics

	Jun-22	May-22	Jun-21	Yearly Change
Civilian Labor Force	165,012,000	164,157,000	162,167,000	2,845,000
Employed	158,678,000	158,609,000	152,283,000	6,395,000
Unemployed	6,334,000	5,548,000	9,883,000	-3,549,000
Unemployment Rate	3.8%	3.4%	6.1%	-2.3%

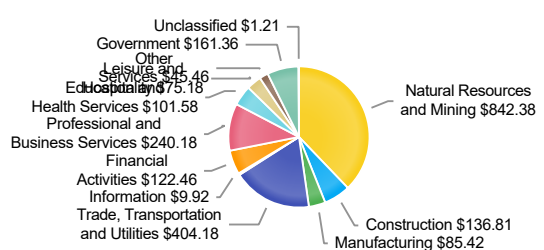
Historical Unemployment Rates



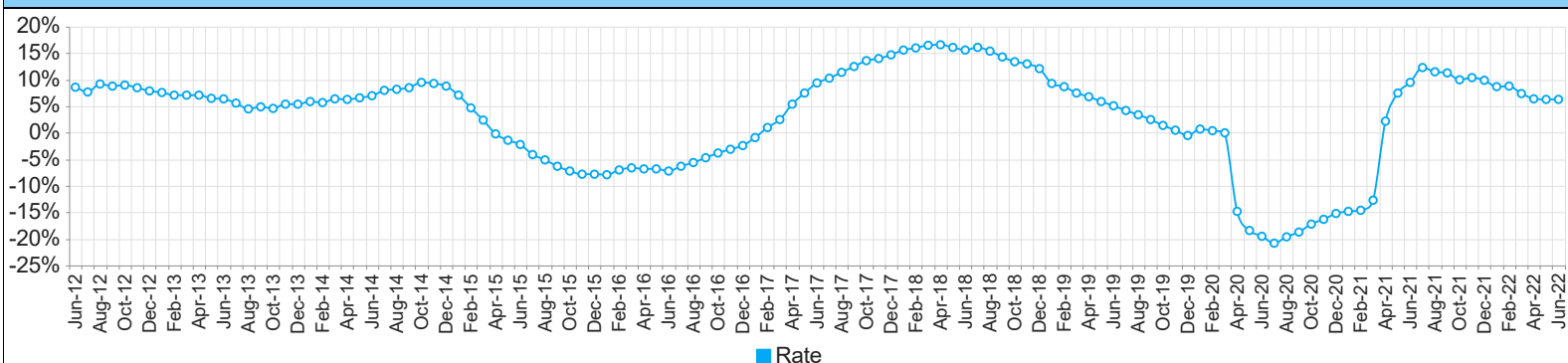
Employment by Size Class (4th Quarter 2021)



Wages by Industry (in millions) (4th Quarter 2021)



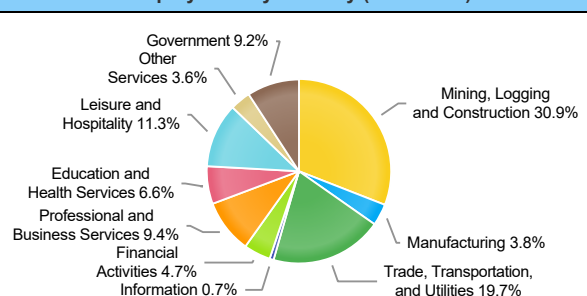
Annual Growth Rate Total Non-agricultural employment



Employment by Industry (June 2022)

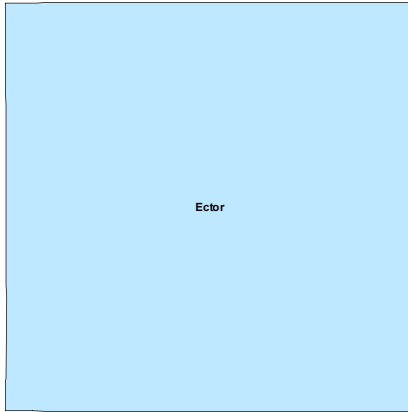
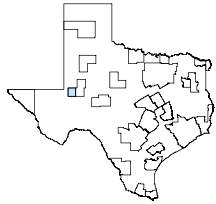
Industry	Current Month Employment	% Monthly Change	% Yearly Change
Total Nonfarm	107,400	0.8%	6.3%
Mining, Logging and Construction	33,200	1.2%	11.0%
Manufacturing	4,100	0.0%	7.9%
Trade, Transportation, and Utilities	21,200	0.5%	3.9%
Information	700	0.0%	0.0%
Financial Activities	5,100	0.0%	4.1%
Professional and Business Services	10,100	1.0%	4.1%
Education and Health Services	7,100	0.0%	-1.4%
Leisure and Hospitality	12,100	1.7%	12.0%
Other Services	3,900	0.0%	5.4%
Government	9,900	0.0%	0.0%

Employment by Industry (June 2022)



Odessa MSA

June 2022



MSA Labor Force Statistics

	Jun-22	May-22	Jun-21	Yearly Change
Civilian Labor Force	81,264	81,187	80,474	790
Employed	76,936	77,284	73,186	3,750
Unemployed	4,328	3,903	7,288	-2,960
Unemployment Rate	5.3%	4.8%	9.1%	-3.8%

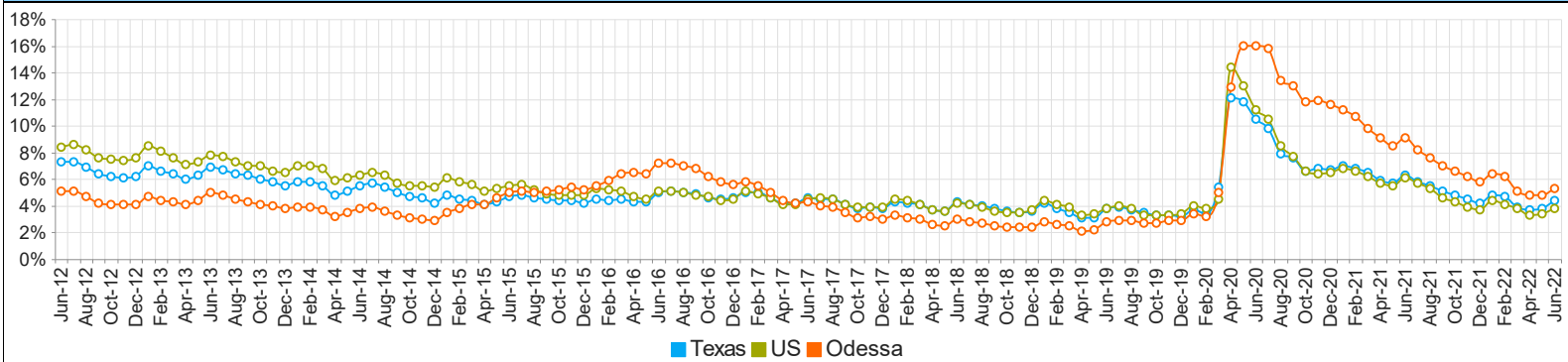
Texas Labor Force Statistics

	Jun-22	May-22	Jun-21	Yearly Change
Civilian Labor Force	14,585,252	14,500,218	14,216,135	369,117
Employed	13,945,797	13,946,458	13,313,724	632,073
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Unemployment Rate	4.4%	3.8%	6.3%	-1.9%

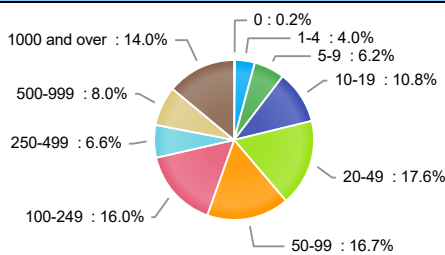
US Labor Force Statistics

	Jun-22	May-22	Jun-21	Yearly Change
Civilian Labor Force	165,012,000	164,157,000	162,167,000	2,845,000
Employed	158,678,000	158,609,000	152,283,000	6,395,000
Unemployed	6,334,000	5,548,000	9,883,000	-3,549,000
Unemployment Rate	3.8%	3.4%	6.1%	-2.3%

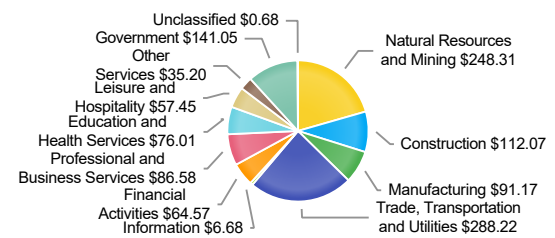
Historical Unemployment Rates



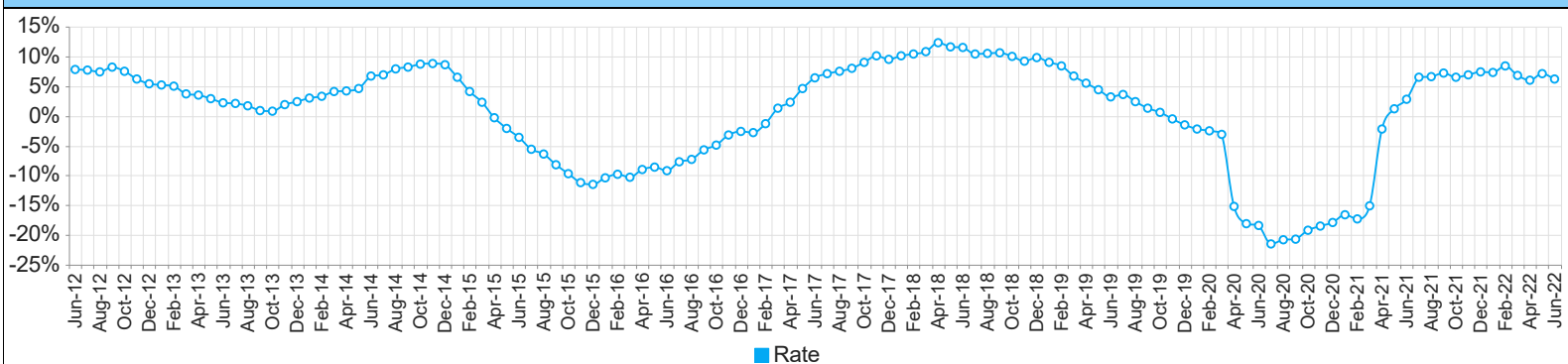
Employment by Size Class (4th Quarter 2021)



Wages by Industry (in millions) (4th Quarter 2021)



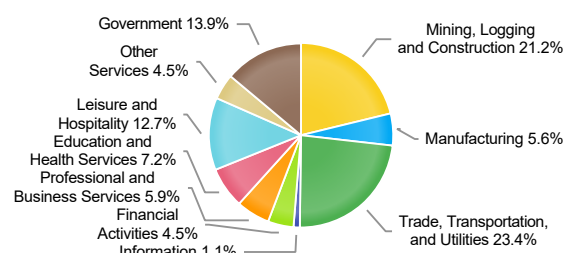
Annual Growth Rate Total Non-agricultural employment



Employment by Industry (June 2022)

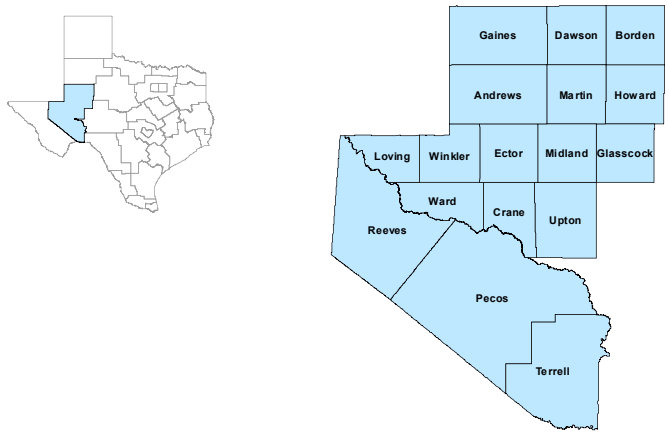
Industry	Current Month Employment	% Monthly Change	% Yearly Change
Total Nonfarm	74,900	-0.1%	6.2%
Mining, Logging and Construction	15,900	-0.6%	11.2%
Manufacturing	4,200	2.4%	5.0%
Trade, Transportation, and Utilities	17,500	0.0%	4.8%
Information	800	0.0%	14.3%
Financial Activities	3,400	0.0%	3.0%
Professional and Business Services	4,400	2.3%	7.3%
Education and Health Services	5,400	0.0%	1.9%
Leisure and Hospitality	9,500	1.1%	8.0%
Other Services	3,400	3.0%	6.2%
Government	10,400	-3.7%	3.0%

Employment by Industry (June 2022)



Permian Basin Workforce Development Area

June 2022



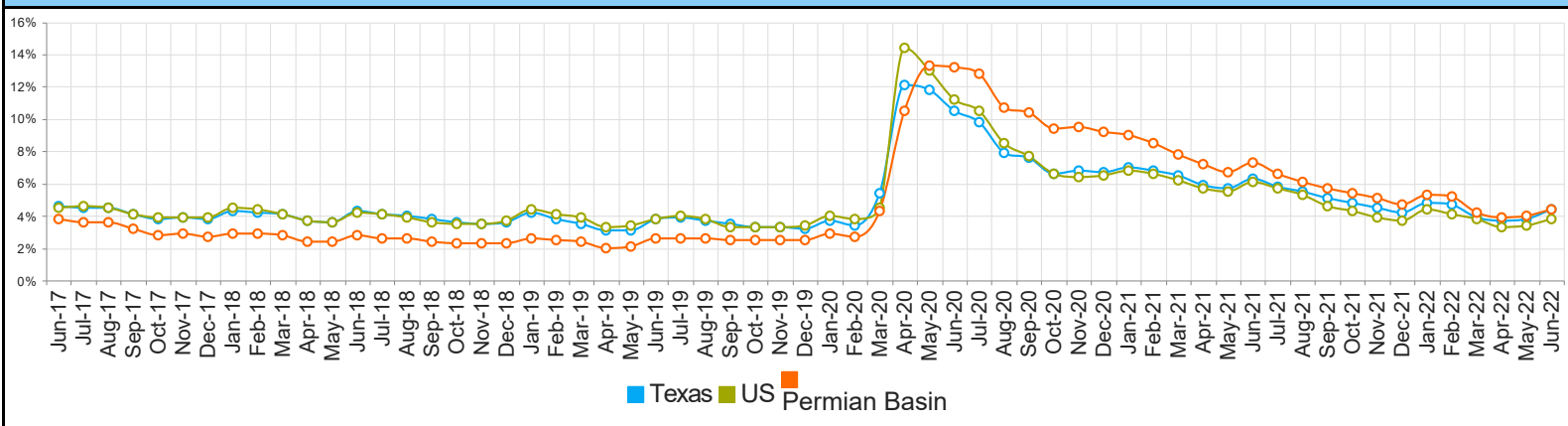
WDA Labor Force Statistics				
	Jun-22	May-22	Jun-21	Yearly Change
Civilian Labor Force	252,679	251,799	249,146	3,533
Employed	241,531	241,814	231,021	10,510
Unemployed	11,148	9,985	18,125	-6,977
Unemployment Rate	4.4%	4.0%	7.3%	-2.9%

Texas Labor Force Statistics				
	Jun-22	May-22	Jun-21	Yearly Change
Civilian Labor Force	14,585,252	14,500,218	14,216,135	369,117
Employed	13,945,797	13,946,458	13,313,724	632,073
Unemployed	639,455	553,760	902,411	-262,956
Unemployment Rate	4.4%	3.8%	6.3%	-1.9%

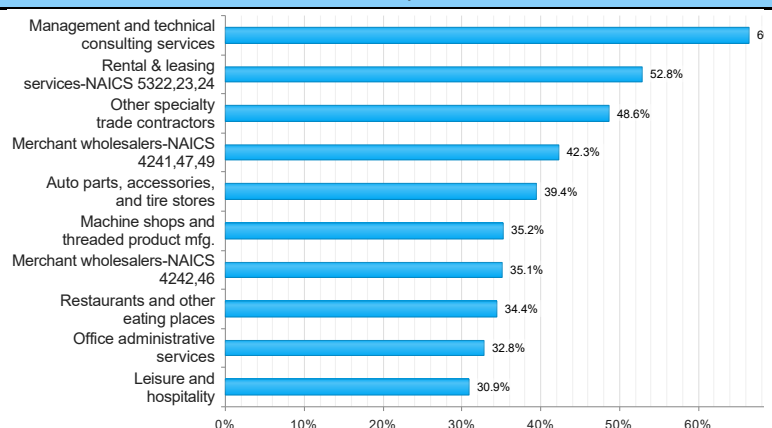
US Labor Force Statistics				
	Jun-22	May-22	Jun-21	Yearly Change
Civilian Labor Force	165,012,000	164,157,000	162,167,000	2,845,000
Employed	158,678,000	158,609,000	152,283,000	6,395,000
Unemployed	6,334,000	5,548,000	9,883,000	-3,549,000
Unemployment Rate	3.8%	3.4%	6.1%	-2.3%

Continued Claims for the Week of the 12th				
	Jun-22	May-22	Jun-21	Yearly Change
WDA	917	898	2,142	-1,225
Texas	78,565	72,036	141,743	-63,178

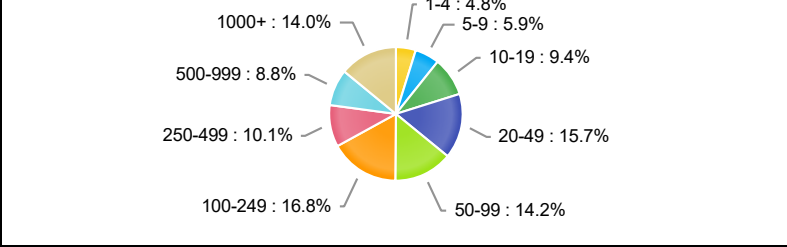
Historical Unemployment Rates



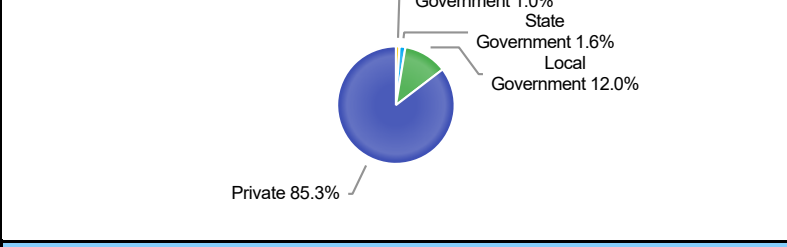
Projected Top Ten Fastest Growing Industries in WDA (% Growth 2018-2028)



Employment by Size Class (4th Quarter 2021)



Employment by Ownership (4th Quarter 2021)



Average Weekly Wage (4th Quarter 2021)					
	Q4 2021	Q3 2021	Q4 2020	Quarterly Change	Yearly Change
WDA	\$1,455	\$1,294	\$1,354	\$161	\$101
Texas	\$1,376	\$1,227	\$1,294	\$149	\$82
US	\$1,418	\$1,251	\$1,339	\$167	\$79

Employment by Industry (4th Quarter 2021, Percent Change)

Industry	Employment	% of Total	% Quarterly Change	% Yearly Change
Natural Resources and Mining	45,431	19.7%	4.3%	16.3%
Construction	17,063	7.4%	5.1%	9.1%
Manufacturing	9,690	4.2%	3.2%	17.0%
Trade, Transportation and Utilities	51,167	22.2%	3.8%	7.8%
Information	1,772	0.8%	-6.8%	11.1%
Financial Activities	10,180	4.4%	1.5%	11.3%
Professional and Business Services	17,187	7.4%	3.4%	14.5%
Education and Health Services	39,576	17.2%	5.4%	3.7%
Leisure and Hospitality	24,651	10.7%	-1.5%	7.8%
Other Services	6,761	2.9%	1.2%	8.6%
Public Administration	7,252	3.1%	-0.3%	-2.8%

Employment by Industry (4th Quarter 2021)

