



Board Binder Open Session

July 13, 2020

Agenda



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

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

NOTICE OF PUBLIC MEETING

In accordance with Chapter 551, Texas Government Code, as amended, notice is hereby given to the public that the Board of Directors of the Midland Development Corporation will meet in regular session, open to the public, in the Midland Development Corporation conference room, 200 North Loraine Street, Suite 610, Midland, Texas, at 10:00 a.m. on July 13, 2020.

Videoconference Information

Join Zoom Meeting

<https://us02web.zoom.us/j/89252554734?pwd=a2wwVXQvZ3dSaGg3Z2NJeXBxU1BwQT09>

Meeting ID: 892 5255 4734

Password: 859780

iPhone one-tap mobile

+13462487799,,89252554734#,,,,0#,,859780# US

+12532158782,,89252554734#,,,,0#,,859780# US

Telephone – dial any of the following:

+1 346 248 7799

+1 253 215 8782

+1 669 900 9128

+1 301 715 8592

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Meeting ID: 892 5255 4734

Password: 859780

Find your local number: <https://us02web.zoom.us/j/89252554734?pwd=a2wwVXQvZ3dSaGg3Z2NJeXBxU1BwQT09>

At such meeting, the Board of Directors will consider the following:

1. Call meeting to order.
2. Consider a motion approving the minutes of the June 1, 2020, meeting of the Midland Development Corporation.

3. Consider a resolution approving the budget for the Midland Development Corporation's 2020-2021 Fiscal Year.
4. Consider a resolution authorizing the execution of an amendment to that certain economic development agreement between the Midland Development Corporation and Susie's South Forty Confections, Inc.
5. Receive and discuss the June 2020 monthly expenses from the Midland Development Corporation.
6. Receive and discuss the monthly economic development activity report from the Midland Development Corporation staff.

Posted this 10th day of July 2020.

Amy M. Turner
City Secretary

June 1st Minutes

MIDLAND DEVELOPMENT CORPORATION

MINUTES

June 1, 2020

The Board of Directors of the Midland Development Corporation convened in regular session at the Midland City Hall Council Chambers, 300 North Loraine Street, Midland, Texas, at 10:00 a.m. on June 01, 2020.

Board Members present: Chairman Wesley Bownds, Director Stephen Lowery, Director Berry Simpson, Director Jill Pennington, Director Elaine Bedell and Director P. Lourcey Sams.

Board Members absent: Director Chase Gardaphe

Staff Members present: Assistant City Manager Morris Williams, Assistant City Attorney Nicholas Toulet-Crump, Interim Finance Director Jennifer Fung, Finance Director Mark Mason, and City Secretary Amy Turner

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

MDC Staff Members present: Executive Director John Trischitti, Director of Operations Sara Harris, Director of Project Development Gary Law, Director of Business Development Timothy Danielson, Marketing Coordinator Kori Wooten, and Administrative Assistant Blair Flanagan

1. Call meeting to order.

Chairman Bownds called the meeting to order at 10:00 a.m.

2. Consider a motion approving the minutes of the May 4, 2020, meeting of the Midland Development Corporation.

Director Sams moved to approve the minutes of the May 4, 2020 meeting of the Midland Development Corporation; seconded by Director Pennington. The motion carried by the following vote: AYE: Bownds, Lowery, Simpson, Pennington, Bedell and Sams. NAY: None. ABSTAIN: None. ABSENT: Gardaphe.

3. Consider a resolution authorizing signatories on Midland Development Corporation bank accounts.

Director Pennington moved to approve Resolution ED-350 authorizing signatories on Midland Development Corporation bank accounts; seconded by Director Simpson. The motion carried by the following vote: AYE: Bownds, Lowery, Simpson, Pennington, Bedell and Sams. NAY: None. ABSTAIN: None. ABSENT: Gardaphe.

4. Consider a resolution amending the personnel policies of the Midland Development Corporation.

Director Lowery moved to approve Resolution ED-351 amending the personnel policies of the Midland Development Corporation; seconded by Director Bedell. The motion carried by the following vote: AYE: Bownds, Lowery, Simpson, Pennington, Bedell and Sams. NAY: None. ABSTAIN: None. ABSENT: Gardaphe.

5. Consider a resolution authorizing the execution of a consultant services agreement with InterFlight Global Corporation in an amount not to exceed \$94,590.00 for services related to the procurement of new tenants for facilities located at the Spaceport Business Park.

Director Simpson moved to approve Resolution ED-352 authorizing the execution of a consultant services agreement with InterFlight Global Corporation in an amount not to exceed \$94,590.00 for services related to the procurement of new tenants for facilities located at the Spaceport Business Park; seconded by Director Pennington. The motion carried by the following vote: AYE: Bownds, Lowery, Simpson, Pennington, Bedell and Sams. NAY: None. ABSTAIN: None. ABSENT: Gardaphe.

6. Consider a resolution authorizing the execution of a third amendment to that certain Commercial Hangar Lease Agreement with the City of Midland regarding certain real property located at Midland International Air & Space Port and described as Lots 1B and 8, Block 13, Midland International Airport Industrial Park, City and County of Midland, Texas.

Director Bedell moved to approve Resolution ED-353 authorizing the execution of a third amendment to that certain Commercial Hangar Lease Agreement with the City of Midland regarding certain real property located at Midland International Air & Space Port and described as Lots 1B and 8, Block 13, Midland International Airport Industrial Park, City and County of Midland, Texas; seconded by Director Simpson. The motion carried by the following vote: AYE: Bownds, Lowery, Simpson, Pennington, Bedell and Sams. NAY: None. ABSTAIN: None. ABSENT: Gardaphe.

7. Consider a resolution authorizing an amendment to that certain Sublease Agreement between the Midland Development Corporation and AST & Science, LLC.

Director Pennington moved to approve Resolution ED-354 authorizing an amendment to that certain Sublease Agreement between the Midland Development Corporation and AST & Science, LLC; seconded by Director Simpson. The motion carried by the following vote: AYE: Bownds, Lowery, Simpson, Pennington, Bedell and Sams. NAY: None. ABSTAIN: None. ABSENT: Gardaphe.

8. Consider a resolution authorizing the execution of a second amendment to that certain Lease Agreement with the City of Midland regarding certain real property located at Midland International Air & Space Port and described as Lot 7, Block 13, Midland International Airport Industrial Park, City and County of Midland, Texas.

Director Bedell moved to approve Resolution ED-355 authorizing the execution of a second amendment to that certain Lease Agreement with the City of Midland regarding certain real property located at Midland International Air & Space Port and described as Lot 7, Block 13, Midland International Airport Industrial Park, City and County of

Midland, Texas; seconded by Director Lowery. The motion carried by the following vote: AYE: Bownds, Lowery, Simpson, Pennington, Bedell and Sams. NAY: None. ABSTAIN: None. ABSENT: Gardaphe.

9. Consider a resolution authorizing an amendment to that certain Sublease Agreement between the Midland Development Corporation and Kepler Aerospace, LTD.

Director Simpson moved to approve Resolution ED-356 authorizing an amendment to that certain Sublease Agreement between the Midland Development Corporation and Kepler Aerospace, LTD; seconded by Director Pennington. The motion carried by the following vote: AYE: Bownds, Lowery, Simpson, Pennington, Bedell and Sams. NAY: None. ABSTAIN: None. ABSENT: Gardaphe.

10. Discuss and consider a presentation from Midland Development Corporation staff regarding the proposed Midland Development Corporation Small Business Assistance Program.

Director of Operations Sara Harris stated that similar small business programs were being implemented by development corporations across the state of Texas.

Executive Director John Trischitti stated that Mayor Payton's desire was to do something to assist small businesses, and there were dollars in the promotions fund that could be used. He explained that Sara Harris had a plan in place and that Second Vice Chair Lowery helped work out parameters to help small business during trying items. Businesses would have to meet requirements to keep funding. Reviewed eligibility requirements would include businesses located in the City limits, and headquartered in Midland or franchise wholly owned here. Executive Director Trischitti stated they were really trying to help our true small local businesses. Discussion ensued regarding the application process and requirements.

Director Lowery stated he had spoken with a local bank to see how they would feel about administering. If the MDC put up their own money it would be purely administrative, and the bank should be local and large enough to handle and ensure as many people know as possible.

11. Consider a resolution authorizing the adoption of the Midland Development Corporation Small Business Assistance Program; authorizing the Chairman and the Executive Director to take all action necessary for the implementation of the Program; and authorizing the Executive Director to execute all associated documents and agreements.

Director Lowery moved to approve Resolution ED-357 authorizing the adoption of the Midland Development Corporation Small Business Assistance Program; authorizing the Chairman and the Executive Director to take all action necessary for the implementation of the Program; and authorizing the Executive Director to execute all associated documents and agreements; seconded by Director Simpson. The motion carried by the following vote: AYE: Bownds, Lowery, Simpson, Pennington, Bedell and Sams. NAY: None. ABSTAIN: None. ABSENT: Gardaphe.

Ms. Pennington stated she would like a report of the final details.

12. Receive and discuss a presentation regarding ongoing infrastructure partnerships between the City of Midland and the Midland Development Corporation.

Mr. Law gave an update on project updates and the procedures for new board members.

Mr. Law presented a slide show of the moving pieces and infrastructure of the City and time frames of projects and stated a lot had changed with the COVID-19 pandemic and the downturn in the price of oil.

He spoke on the limitations the City staff has and how the MDC helps with bringing in quicker answers. They are doing work to give the City Engineer the capacity so that when money becomes available the plans are there.

Director of Engineering Jose Ortiz stated that by having these conversations in advance and being proactive, they have been able to get projects done sooner. Having shelf ready plans helps collaboration between the City, County, TXDOT, and developers.

13. Receive and discuss the May 2020 monthly expenses from the Midland Development Corporation.

Sara Harris stated expenditures were down because of no staff travel and curtailed marketing due to the COVID-19 pandemic.

14. Receive and discuss the monthly economic development activity report from the Midland Development Corporation staff.

Gary Law stated the Spaceport Business Park was in the maintenance period, since the landscaping project had been completed. He added that the Avalon Drive extension plans were about 30% complete.

Sara Harris stated that the unemployment rate in the Midland MSA has reached a record high.

The Board excused observers at 11:25 a.m. and recessed into executive session.

EXECUTIVE SESSION

15. Pursuant to Texas Government Code §551.101, the Board of Directors will hold an executive session that is closed to the public to discuss the following matters as permitted under the following Texas Government Code Sections:

- a. Section 551.087 Deliberation Regarding Economic Development Negotiations

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

The Board reconvened into regular session at 11:54 a.m.

All the business at hand having been completed, Chairman Bownds adjourned the meeting at 11:54 a.m.

Respectfully submitted,

SueAnn Reyes, Deputy City Secretary

PASSED AND APPROVED the 13th Day of July 2020.

Berry Simpson, Secretary

Fiscal Year 2021 Budget

RESOLUTION NO. _____

**RESOLUTION APPROVING THE BUDGET FOR THE
MIDLAND DEVELOPMENT CORPORATION'S 2020-
2021 FISCAL YEAR**

WHEREAS, the Midland Development Corporation has prepared a budget for the Fiscal Year 2020-2021; and

WHEREAS, the Board of Directors finds it to be in the public interest to approve said budget for the Fiscal Year 2020-2021;

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

THAT the Fiscal Year 2020-2021 Budget, which is attached hereto as Exhibit A and incorporated herein for all purposes, is hereby approved.

On motion of Director _____, seconded by Director _____, the above and foregoing resolution was adopted by the Board of Directors of the Midland Development Corporation at a regular meeting on the _____ day of _____, A.D., 2020, by the following vote:

Directors voting "AYE":

Directors voting "NAY":

WESLEY BOWNDS,
Chairman of the Midland
Development Corporation

ATTEST:

BERRY SIMPSON,
Secretary of the Midland
Development Corporation

APPROVED ONLY AS TO FORM:

JOHN OHNEMILLER,
Attorney for the Midland
Development Corporation

MIDLAND DEVELOPMENT CORPORATION
Proposed Budget for October 1, 2020 through September 30, 2021

	ACTUAL 2018-2019	BUDGET 2019-2020	BUDGET 2020-2021
REVENUE AND RECEIPTS			
Sales Tax	\$ 15,078,495	\$ 12,000,000	\$ 9,000,000
Public Right-Of-Way Use Fees	11,341	0	0
Interest	59,590	0	0
Interest / Non-Pooled Investment	413,339	300,000	0
Misc. Rentals	990,627	0	0
Spaceport Fund Interfund	549,650	0	0
Reimbursement of Budget Expenses	4,064	0	0
Government Contributions	161,856	0	0
Sale of Land	720,112	0	0
	<u>17,989,074</u>	<u>12,300,000</u>	<u>9,000,000</u>
TOTAL REVENUE AND RECEIPTS	\$ 17,989,074	\$ 12,300,000	\$ 9,000,000
 SUMMARY OF EXPENSES BY ORGANIZATION			
50150. Nondepartmental	\$ 14,837,360	\$ 27,771,636	\$ 22,656,815
	<u>14,837,360</u>	<u>27,771,636</u>	<u>22,656,815</u>
TOTAL	\$ 14,837,360	\$ 27,771,636	\$ 22,656,815
 SUMMARY OF EXPENSES BY CLASSIFICATION			
OPERATING EXPENSES			
51000. Personnel Services	\$ 714,943	\$ 1,310,750	\$ 861,517
52000. Commodities	78,897	100,000	48,200
53000. Contractual Services	10,890,078	24,372,705	19,672,479
54000. Building Maintenance	55,557	70,000	45,000
55000. Maintenance of Instruments & Apparatus	4,222	4,000	3,000
56000. Miscellaneous	2,055,341	1,867,181	626,619
57000 / 58000. Capital Purchases	1,038,322	47,000	1,400,000
	<u>14,837,360</u>	<u>27,771,636</u>	<u>22,656,815</u>
TOTAL OPERATING EXPENSES	\$ 14,837,360	\$ 27,771,636	\$ 22,656,815
 GRAND TOTAL	\$ 14,837,360	\$ 27,771,636	\$ 22,656,815

EXHIBIT A

MIDLAND DEVELOPMENT CORPORATION
Proposed Budget for October 1, 2020 through September 30, 2021

	ACTUAL 2018-2019	BUDGET 2019-2020	BUDGET 2020-2021
<u>OPERATING EXPENSES</u>			
51000 Personnel Services			
51010. Base Salary	\$ 595,496	\$ 1,025,000	\$ 692,150
51090. FICA MDC Portion	36,386	80,000	56,756
51110. Hospital Insurance MDC Portion	40,962	80,000	55,460
51135. ACOC Profit Sharing	42,099	125,000	48,451
51140. Unemployment Insurance	<u>0</u>	<u>750</u>	<u>8,700</u>
TOTAL 51000	<u>714,943</u>	<u>1,310,750</u>	<u>861,517</u>
52000. Commodities			
52010. Office Supplies	17,084	22,000	11,000
52110. Motor Vehicle Supplies	319	2,000	1,000
52115. Minor Furniture and Fixtures	5,171	15,000	500
52155. Minor Computer Hardware & Peripherals	9,892	10,000	5,000
52160. Computer Minor Software & Supplies	45,710	50,000	30,000
52620. Postage	<u>721</u>	<u>1,000</u>	<u>700</u>
TOTAL 52000	<u>78,897</u>	<u>100,000</u>	<u>48,200</u>
53000. Contractual Services			
53010. Communications	13,277	20,000	17,000
53030. Light & Power	146	500	150
53110. Insurance - External	113,830	190,000	190,000
53212. Equipment Rental - External	4,586	7,800	5,000
53220. Marketing and Advertising	565,748	400,000	200,000
53370. Grounds Maintenance	10,198	40,000	5,000
53405. Software Maintenance	3,800	8,000	12,000
53440. External Audit Fees	14,000	25,000	20,000
53450. Consulting Fees	3,399,036	600,000	500,000
53510. Travel & Entertainment	23,527	35,000	15,000
53520. Dues and Subscriptions	16,832	27,000	20,000
53530. Training, Registration Fees	7,198	50,000	10,000
53905. Economic Development Incentives	6,589,871	22,805,405	18,553,329
53907. Business Recruitment & Retention	58,366	90,000	50,000
53920. Rent	<u>69,663</u>	<u>74,000</u>	<u>75,000</u>
TOTAL 53000	<u>\$ 10,890,078</u>	<u>\$ 24,372,705</u>	<u>\$ 19,672,479</u>

EXHIBIT A

MIDLAND DEVELOPMENT CORPORATION
Proposed Budget for October 1, 2020 through September 30, 2021

	ACTUAL 2018-2019	BUDGET 2019-2020	BUDGET 2020-2021
<u>OPERATING EXPENSES</u>			
54000 Building Maintenance			
54010. Building Maintenance	\$ <u>55,557</u>	\$ <u>70,000</u>	\$ <u>45,000</u>
TOTAL 54000	<u>55,557</u>	<u>70,000</u>	<u>45,000</u>
55000 Maintenance of Equipment			
55120. Maintenance of Instruments & App	<u>4,222</u>	<u>4,000</u>	<u>3,000</u>
TOTAL 55000	<u>4,222</u>	<u>4,000</u>	<u>3,000</u>
56000. Miscellaneous			
56188. MOTRAN	95,000	142,500	137,000
56202. General Fund Services	452,643	422,681	390,619
56410. Payment of Principal	63,899	60,000	60,000
56420. Interest Expense	13,300	12,000	12,000
56995. Project Non Capital (Promotions)	<u>1,430,499</u>	<u>1,230,000</u>	<u>27,000</u>
TOTAL 56000	<u>2,055,341</u>	<u>1,867,181</u>	<u>626,619</u>
57000 / 58000. Capital Purchases			
57001. Capital Buildings & Structures	0	0	0
57002. Capital Improvemnts Other Than Bldgs	0	0	1,400,000
57003. Capital Equipment	0	0	0
57004. Capital Vehicles	46,706	47,000	0
57070. Construction in Process	<u>991,616</u>	<u>0</u>	<u>0</u>
Total 7000 / 8000	<u>1,038,322</u>	<u>47,000</u>	<u>1,400,000</u>
GRAND TOTAL	\$ <u><u>14,837,360</u></u>	\$ <u><u>27,771,636</u></u>	\$ <u><u>22,656,815</u></u>

EXHIBIT A

MIDLAND DEVELOPMENT CORPORATION
Summary of Revenues, Expenditures and Changes in Fund Balance

	ACTUAL 2018-2019	BUDGET 2019-2020	BUDGET 2020-2021
Balance October 1, 2018	\$ <u>34,524,067</u>		
Estimated Balance October 1		\$ <u>37,675,781</u>	\$ <u>22,204,145</u>
Revenues:			
Sales Taxes	15,078,495	12,000,000	9,000,000
Public Right-Of-Way Use Fees	11,341	0	0
Interest / Non-Pooled Investment Income	472,929	300,000	0
Misc. Rentals	990,627	0	0
Spaceport Fund Interfund	549,650	0	0
Reimbursement of Budget Expenses	4,064	0	0
Government Contributions	161,856	0	0
Sale of Land	<u>720,112</u>	<u>0</u>	<u>0</u>
Total Revenues	<u>17,989,074</u>	<u>12,300,000</u>	<u>9,000,000</u>
Expenditures:			
Personnel Services	714,943	1,310,750	861,517
Commodities	78,897	100,000	48,200
Contractual Services	10,890,078	24,372,705	19,672,479
Building Maintenance	55,557	70,000	45,000
Maintenance of Inst and App	4,222	4,000	3,000
Miscellaneous	2,055,341	1,867,181	626,619
Capital Purchases	<u>1,038,322</u>	<u>47,000</u>	<u>1,400,000</u>
Total Expenditures	<u>14,837,360</u>	<u>27,771,636</u>	<u>22,656,815</u>
Net Revenues (Expenditures)	<u>3,151,714</u>	<u>(15,471,636)</u>	<u>(13,656,815)</u>
Estimated Balance October 1:			
Restricted for ED Incentives	37,652,825	33,688,342	15,135,013
Restricted for Encumbrances	0	0	0
Restricted for Promotional Activities	3,325,459	2,840,396	1,813,396
Unappropriated Fund Balance	<u>(5,553,082)</u>	<u>(9,490,832)</u>	<u>(8,401,079)</u>
Total Estimated Balance October 1	\$ <u><u>37,675,781</u></u>	\$ <u><u>22,204,145</u></u>	\$ <u><u>8,547,330</u></u>

EXHIBIT A

		FY 2020 Budget	FY 2021 Budget
Personnel Services	Decreasing 34%	\$1,310,750.00	\$861,517.00
<u>Why?</u>	Creating efficiencies in MDC's organizational structure		
Commodities: Office supplies, minor furniture, computer hardware & software	Decreasing 52%	\$100,000.00	\$48,200.00
<u>Why?</u>	Decreased staff size and minimal new equipment needs in this fiscal year		
Rent, Light & Power	Increasing 1%	\$74,500.00	\$75,150.00
<u>Why?</u>	Incremental annual increase in rent for MDC office space		
Software Maintenance	Increasing 50%	\$8,000.00	\$12,000.00
<u>Why?</u>	Implementation of ransomware protection and server backup for MDC systems		
Property & Liability Insurance	Unchanged	\$190,000.00	\$190,000.00
<u>Why?</u>	Pays for professional liability, general liability, property insurance for MDC's buildings and land, vehicle insurance, directors and officers coverage for MDC's board members		
External Audit Fees	Decreasing 20%	\$25,000.00	\$20,000.00
<u>Why?</u>	Reflects decreasing costs for audit in the previous two fiscal years		
Consulting Fees	Decreasing 17%	\$600,000.00	\$500,000.00
<u>Why?</u>	Pays for Spaceport consulting, economic indicators, and any outside council needed for legal or HR issues		
Travel & Entertainment, Dues & Subscriptions, Training & Registration	Decreasing 60%	\$112,000.00	\$45,000.00
<u>Why?</u>	Efficiencies in travel and trade show attendance; includes professional development and continuing education for key staff members		
Economic Development Incentives	Decreasing 19%	\$22,805,405.77	\$18,553,329.00
<u>Why?</u>	Budgeted for commitments made in previous years		

Economic Development Promotion	Decreasing 98%	\$1,230,000.00	\$27,000.00
<u>Why?</u>	Budgeted for commitments made in previous years		
Marketing & Advertising, Communications, Business Recruitment & Retention, Equipment Lease	Decreasing 47%	\$517,800.00	\$272,000.00
<u>Why?</u>	Tightened marketing budget; cost-effective business recruitment & retention program		
Building & Grounds Maintenance	Decreasing 54%	\$110,000.00	\$50,000.00
<u>Why?</u>	Costs at Spaceport Business Park have been transferred to tenants; needs remain for common areas and for Western United Life Building		
Maintenance of Equipment	Decreasing 25%	\$4,000.00	\$3,000.00
<u>Why?</u>	Decreased to reflect actual costs in FY 2020		
MOTRAN	Decreasing 4%	\$142,500.00	\$137,000.00
<u>Why?</u>	MOTRAN's funding request for FY 2021 is lower than that for FY 2020		
General Fund Services	Decreasing 8%	\$422,681.00	\$390,619.00
<u>Why?</u>	Pays for City of Midland staff services used by MDC (Legal, City Secretary, City Manager, Finance)		
Payment of Interest & Principal	Unchanged	\$72,000.00	\$72,000.00
<u>Why?</u>	MDC's hangar lease from the City; this hangar is subleased from the MDC by AST & Science		
Capital Improvements Other Than Buildings	Increasing 100%	\$0.00	\$1,400,000.00
<u>Why?</u>	Costs for abatement of Western United Life Building to be expensed in FY 2021		
Vehicles	Decreasing 100%	\$47,000.00	\$0.00
<u>Why?</u>	No vehicles planned to be purchased in FY 2021		
Total Year-Over-Year Budgeted Expenses Change		\$27,771,636.77	\$22,656,815.00

Susie's South Forty
Confections
Economic
Development
Agreement
Amendment

RESOLUTION NO. _____

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

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

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

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

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

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., 2020, by the following vote:

Directors voting "AYE":

Directors voting "NAY":

WESLEY BOWNDS,
Chairman of the Midland
Development Corporation

ATTEST:

BERRY SIMPSON,
Secretary of the Midland
Development Corporation

APPROVED ONLY AS TO FORM:

JOHN OHNEMILLER,
Attorney for the Midland
Development Corporation

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

THIS AMENDMENT is made and effective _____, 2020, by and between the Midland Development Corporation (“MDC”), a Type A corporation existing under the authority of Chapter 504 of the Texas Local Government Code, and Susie’s South Forty Confections, Inc. (“Company”).

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

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

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

W I T N E S S E T H:

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

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

Company anticipates maintaining Full-Time Jobs (as defined herein) at the Property by January 31, 2022, resulting in a total Annual Payroll (as defined herein) of not less than \$620,000.00.

- 2) Section II.H of the Agreement is hereby amended to read in its entirety as follows:

“Starting Payroll” means \$590,000.00.

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

A. Annual Payroll Prior as of January 31, 2020. By January 31, 2020, Company shall certify to MDC, as described in Section X.B below, that a minimum of \$10,000.00 additional Annual Payroll has been made by Company, resulting in a new total Annual Payroll of at least \$600,000.00.

B. Annual Payroll as of January 31, 2021. By January 31, 2021, Company shall certify to MDC, as described in Section X.B below, that a minimum of \$20,000.00 additional Annual Payroll has been made by Company, resulting in a new total Annual Payroll of at least \$610,000.00.

C. Annual Payroll as of January 31, 2022. By January 31, 2022, Company shall certify to MDC, as described in Section X.B below, that a minimum of \$30,000.00 additional Annual Payroll has been made by Company, resulting in a new total Annual Payroll of at least \$620,000.00.

D. Personal Property Investment. By January 31, 2021, Company shall invest, or cause to be invested, a minimum of \$95,000.00 in new Personal Property in the Business at the Property, and Company shall (i) maintain such minimum value of new Personal Property at the Property through December 31, 2022, and (ii) maintain said new Personal Property in good-working condition at the Business on the Property. Said investment in Personal Property in the Business at the Property facilities shall be evidenced by tax statements issued by the Midland Central Appraisal District, which shall be provided to MDC on a yearly basis during the term of this Agreement. Company shall provide paid invoices and certification that the Personal Property has been paid for, in full, and the Personal Property has been installed and is functioning properly.

E. Annual Compliance Certifications. Beginning in January 2019, and continuing every year during the term of this Agreement, each year by January 31 Company shall certify to MDC, as described in Section X.B below, the following:

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

Pursuant to this Section, there will be a total of five (5) Annual Compliance Certifications due, covering Full-Time Jobs created and maintained, and Personal Property expenditures in years 2018 through 2023.

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

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

On or before February 28, 2018, MDC agrees to provide to Company an interest-free forgivable loan in the amount of \$95,000.00 (the "*Loan*"). Company shall use the proceeds of the Loan in order to comply with the obligations set forth in Section IV.C. The Loan

shall be disbursed in a single lump sum subject to Company's obligations set forth in Section IV.

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

A. Recapture of the Loan. If the Loan was disbursed and not previously repaid, and the annual compliance certification demonstrates that Company has not maintained the obligations set forth in Section IV, then Company shall repay to MDC \$95,000.00.

B. Repayment Terms. Any amount repayable to the MDC hereunder shall be repaid, without interest, within thirty (30) days after the MDC gives written notice to Company that Company is in default. Notwithstanding anything to the contrary contained anywhere in this Agreement, under no circumstances shall Company be obligated to repay MDC an amount in excess of the total dollar amount of the funds actually received by Company from MDC under this Agreement.

- 6) Section X.A of the Agreement is hereby amended to read in its entirety as follows:

Total Financial Commitment. Notwithstanding any other provision hereof which might be interpreted otherwise, MDC's total financial commitment during the term of this Agreement shall not exceed \$95,000.00 in the aggregate.

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

As to the certifications required in Section IV.A, Section IV.B, and Section IV.C, Company shall provide reasonable evidence or supporting documentation. Documentation for employment numbers may be in the form of Texas Workforce Commission Employer Quarterly Reports, or certified employee rosters that show the hours worked and positions filled, or such other reports as may be agreed upon by MDC and Company. Upon a reasonable request, MDC may review Company's Texas Workforce Commission Employer Quarterly Reports in Midland, Texas, but may not copy or retain a copy of said reports

- 8) Section X.B.4 of the Agreement is hereby amended to read in its entirety as follows:

As to the certifications required by Section IV.D, Company shall provide a letter from Company's president or other executive officer.

- 9) Section X.B.6 of the Agreement is hereby deleted.

- 10) 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

SUSIE'S SOUTH FORTY CONFECTIONS,
INC.

Susie Hitchcock-Hall, President/Owner

THE STATE OF TEXAS §
 §
COUNTY OF MIDLAND §

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

GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS _____ day of _____, A.D., 2020.

Notary Public, in and for
the State of Texas

ECONOMIC DEVELOPMENT AGREEMENT

THIS AGREEMENT is entered into by and between the MIDLAND DEVELOPMENT CORPORATION (“MDC”), a Type A corporation pursuant to Chapter 504 of the Texas Local Government Code, as amended, and SUSIE’S SOUTH FORTY CONFECTIONS, INC. (“Company”).

I.

Recitals

- A. Company owns certain real property, facilities, machinery, and equipment located in the corporate limits of the City of Midland, Texas, being located at 401 South Marienfeld Street, Midland, Texas.
- B. Company is operating a Business (as defined herein) in the City of Midland, Texas.
- C. Company presently contributes over \$49,000.00 per year to local taxing entities based on the value of property and capital at the Business and Company is committed to expanding the presence and value of the Business so as to provide additional value to the community of Midland, Texas.
- D. MDC and Company desire to set forth the terms and conditions upon which incentive funds will be provided to Company as consideration for Company’s creation and retention of primary jobs and payroll on the Property (as defined herein).
- E. Company will exercise its best reasonable efforts to employ Midland residents and to advertise the availability of job openings in Midland, Texas.
- F. Company anticipates creating and maintaining Full-Time Jobs (as defined herein) at the Property by the end of 2020, resulting in a total Annual Payroll (as defined herein) of not less than \$1,004,900.00.
- G. MDC finds that the expansion of the Business will promote or develop new or expanded business enterprises in the City of Midland.
- H. MDC finds that the purpose of this Agreement qualifies as a “project,” as defined in Section 501.101 of the Texas Local Government Code, and is therefore eligible for MDC funding.
- I. MDC finds that its contribution of incentive funds to Company for said project is an administrative expense or other such expense necessary or incident to placing a project in operation in accordance with Section 501.152 of the Texas Local Government Code.

- J. MDC finds that the project is for the creation or retention of “primary jobs,” as defined in Section 501.002 of the Texas Local Government Code, and that said project is required or suitable for the development, retention, or expansion of a manufacturing and industrial facility, as required in Section 501.101(2)(A) of the Texas Local Government Code.

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

II. Definitions

When used in this Agreement, capitalized terms not otherwise defined shall have the meanings set forth below:

- A. “*Annual Payroll*” means payments made by Company to individuals employed by Company in a Full-Time Job, including base pay, paid vacation, paid sick leave or bonuses, and benefits such as 401(k) programs, associated matching payments, and health insurance pursuant to Company’s policies or practices, over a twelve month period that begins on January 1 and ends on December 31 of such year. Such payments shall only qualify as Annual Payroll for the purposes set forth in this Agreement if the payments are actually disbursed and made during the relevant year and the term of this Agreement. Annual Payroll shall be calculated by summing such disbursements for the calendar year in which the disbursements are made.
- B. “*Business*” means Company’s commercial operations relating to the wholesale distribution of confections, or other such related or similar business.
- C. “*Capital Improvements*” means permanent structural improvements made by Company or caused to be made by Company on the Property that enhance the value of the Property.
- D. “*Effective Date*” means January 24, 2018.
- E. “*Full-Time Job*” means a position of employment that requires an individual (i) work 1,820 hours per year, including allowance for vacation, sick leave, earned time off, or other of Company’s policies and practices and (ii) spend a substantial amount of his or her time performing job duties at the Business on the Property.
- F. “*Personal Property*” means the following: (i) a continuous bag sealer with a date imprint capability; (ii) a bag filler; (iii) a candy-coating barrel drum machine; (iv) a 450-pound chocolate melting/tempering machine; (v) a chocolate enrober; and (vi) other associated equipment, if any, to be fixed or attached to, or placed within or situated upon the Property.

- G. "*Property*" means the approximately 1.408 acre tract out of Lot 1A, Block 109, Original Town of the City of Midland, an addition to the City of Midland, Midland County, Texas, which is shown on **Exhibit A** hereto.
- H. "*Starting Payroll*" means \$697,000.00.

III. Conditions Precedent

A condition precedent to MDC's obligations under this Agreement shall be that Company certify to MDC the Starting Payroll, as described in Section X.B below.

IV. Obligations of the Company

- A. **Employment Prior to December 31, 2018.** By January 31, 2020, Company shall certify to MDC, as described in Section X.B below, that a minimum of five (5) new Full-Time Jobs have been created, staffed, and maintained at the Business on the Property between January 1, 2018, and December 31, 2018, and that such five (5) new Full-Time Jobs result in an increase of \$153,950.00 in total Annual Payroll above the Starting Payroll, resulting in a new total Annual Payroll of at least \$850,950.00.
- B. **Employment Prior to December 31, 2019.** By January 31, 2021, Company shall certify to MDC, as described in Section X.B below, that a minimum of five (5) new Full-Time Jobs have been created, staffed, and maintained at the Business on the Property between January 1, 2019, and December 31, 2019, and that such five (5) new Full-Time Jobs result in an increase of \$153,950.00 in total Annual Payroll, resulting in a new total Annual Payroll of at least \$1,004,900.00.
- C. **Personal Property Investment.** By January 31, 2019, Company shall invest or cause to be invested a minimum of \$95,000.00 in new Personal Property in the Business at the Property, and Company shall (i) maintain such minimum value of new Personal Property at the Property through December 31, 2022, and (ii) maintain said new Personal Property in good-working condition at the Business on the Property. Said investment in Personal Property in the Business at the Property facilities shall be evidenced by tax statements issued by the Midland Central Appraisal District, which shall be provided to MDC on a yearly basis during the term of this Agreement. Company shall provide paid invoices and certification that the Personal Property has been paid for, in full, and the Personal Property has been installed and is functioning properly.
- D. **Annual Compliance Certifications.** Beginning in January 2019, and continuing every year during the term of this Agreement, each year by January 31 Company shall certify to MDC, as described in Section X.B below, the following:

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

Pursuant to this Section, there will be a total of five (5) Annual Compliance Certifications due, covering Full-Time Jobs created and maintained, and Personal Property expenditures in years 2018 through 2023.

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

V.

Obligation of the MDC

- A. **Loan #1.** On or before February 28, 2018, MDC agrees to provide to Company an interest-free forgivable loan in the amount of \$95,000.00 ("Loan #1"). Company shall use the proceeds of the Loan in order to comply with the obligations set forth in Section IV.C.
- A. **Loan #2.** If Loan #1 was disbursed and has not been repaid to MDC, then MDC agrees to provide to Company an interest-free forgivable loan in the amount of \$20,000.00 ("Loan #2") within thirty (30) days after Company certifies that it (i) continues to meet the Personal Property obligations set forth in Section IV.C and (ii) has met the Employment obligations set forth in Section IV.A and Section IV.B.

Each loan described herein shall be disbursed in one lump sum subject to Company's obligations as set forth in Section IV.

VI.

Repayment Provisions

The following payment and recapture provisions shall apply to this Agreement:

- A. **Recapture; Loan #1.** If Loan #1 was disbursed and not previously repaid, and an annual compliance certification demonstrates that Company has not maintained the obligations

set forth in Sections IV, then Company shall repay to MDC \$95,000.00. In addition, MDC shall have no obligation to disburse Loan #2.

- B. **Recapture; Loan #2.** If Loan #2 was disbursed and not previously repaid, and an annual compliance certification demonstrates that Company has not maintained the obligations set forth in Section IV, then Company shall repay to MDC \$20,000.00.
- C. **Repayment Terms.** Any amount repayable to the MDC hereunder shall be repaid, without interest, within thirty (30) days after the MDC gives written notice to Company that Company is in default. Notwithstanding anything to the contrary contained anywhere in this Agreement, under no circumstances shall Company be obligated to repay MDC an amount in excess of the total dollar amount of the funds actually received by Company from MDC under this Agreement.

VII. Cure Period

In lieu of demanding repayment within thirty (30) days after MDC gives Company written notice of its default as set forth in this Agreement, MDC may, in its sole and absolute discretion, elect to allow Company a period not to exceed one hundred eighty (180) days to cure any such default. Any such election by MDC to allow Company to cure such a default shall in no way be construed as, or shall operate as, a waiver of any of MDC's rights contained herein, including but not limited to MDC's rights to repayment under this Agreement.

VIII. Term

Upon execution by the parties, this Agreement becomes effective on the Effective Date and shall terminate on the earlier to occur of (a) January 30, 2025, or (b) as set forth in Section XI.E.

IX. Law

The parties acknowledge that the funds herein granted shall be utilized solely for purposes authorized under the terms of this Agreement and the Development Corporation Act, Chapter 501 of the Texas Local Government Code.

X. Special Conditions

- A. **Total Financial Commitment.** Notwithstanding any other provision hereof which might be interpreted otherwise, MDC's total financial commitment during the term of this Agreement shall not exceed \$115,000.00 in the aggregate.
- B. **Certifications.** Company agrees to the following certification requirements:

1. As to the certifications required in Section IV.A and IV.B, Company shall provide reasonable evidence or supporting documentation. Documentation for employment numbers may be in the form of Texas Workforce Commission Employer Quarterly Reports, or certified employee rosters that show the hours worked and positions filled, or such other reports as may be agreed upon by MDC and Company. Upon a reasonable request, MDC may review Company's Texas Workforce Commission Employer Quarterly Reports in Midland, Texas, but may not copy or retain a copy of said reports.
2. Company shall provide to MDC a supplemental employment report as of September 30 of each year during the term of this Agreement evidencing the current number of Full-Time Jobs created, staffed, and maintained and the corresponding total Annual Payroll resulting from said Jobs.
3. Company shall allow MDC reasonable access to the Property for purposes of determining Company's compliance with the employment certifications given by Company, provided that such access shall be (i) with prior written notice; (ii) accompanied by representatives of Company; (iii) during normal business hours; and (iv) in accordance with the reasonable rules and regulations of Company governing such entrance, including all reasonable health, safety and environmental procedures and policies issued by Company from time to time.
4. As to the certifications required in Section IV.C, Company shall provide a letter from Company's president or executive officer.
5. When requested in writing by MDC to do so, Company will provide an annual statement in a form acceptable to MDC and Company that, to Company's knowledge, Company is in compliance with each applicable material term of this Agreement.
6. All certifications required under this Agreement shall be signed and sworn to by Company's chief executive officer and chief financial officer, or equivalents thereto, before a notary and shall contain the statement that the information contained in the certification is true and correct. E-mail shall not be an acceptable form of certification under this Agreement.
7. Company shall maintain, during the term of this Agreement and for a period of three (3) years following expiration of the term, all records necessary to confirm that it has met its obligations under this Agreement relating to Annual Payroll and Personal Property, including (as appropriate): (a) all payroll records and daily time sheets and other records of personnel utilization on work activities at the Property (including records on an hourly basis for personnel); (b) invoices for materials and equipment; and (c) agreements, subcontracts and purchase orders relating to the Personal Property. Upon reasonable advance written notice, Company shall make all such documents available to MDC for inspection, audit and copying, regardless of whether

a dispute is then pending between the parties. Access shall be provided to MDC during normal business hours in an adequate work space.

C. **Covenants.** Company makes the following covenants to MDC and agrees that in the event of failure of Company to comply with such covenants, the breach of any one of which shall constitute an event of default, MDC may terminate this Agreement, at its sole and absolute discretion. In the event of such termination, if any consideration has been paid to or on behalf of Company, and not earned by Company as to its obligations pursuant to this Agreement, Company must reimburse MDC for such consideration:

1. Company is a legal entity duly organized, validly existing and in good standing and is duly authorized to do business in the State of Texas.
2. The execution of this Agreement has been duly authorized by Company's board of directors or other governing body, or by officers empowered to execute such agreements and bind Company, and is not in contravention of the provisions of Company's articles of incorporation or bylaws, or of any agreement or instrument to which Company is party to or by which it may be bound, the breach of which would have a material, adverse effect on Company and its operations.
3. There are no bankruptcy proceedings currently pending by or against Company.

D. **Suspension.** MDC, under the following circumstances and at its sole discretion, may terminate this Agreement, and Company must reimburse any of the unearned consideration as to the Personal Property and Employment investment paid by MDC to Company pursuant to this Agreement:

1. The insolvency of Company. "Insolvency" shall have the meaning set forth in federal bankruptcy law.
2. The appointment of a receiver of Company, or of all or any substantial part of its property, and the failure of such receiver to be discharged within sixty (60) days thereafter.
3. The adjudication of Company as bankrupt, the filing by Company of a petition to be adjudged bankrupt, or a petition or answer seeking reorganization or admitting the material allegations of a petition filed against Company in any bankruptcy or reorganization proceeding.

E. **Additional Covenants.** If Company should fail to comply with any of the following provisions, and such failure continues for thirty (30) days following written notice to Company (each, an event of default), MDC may terminate this Agreement. In the event that the Agreement is terminated, Company shall be required to reimburse MDC for all consideration paid to Company by MDC and not earned by Company pursuant to this Agreement.

1. Company, or any affiliate of, or successor to Company, shall continue its fulltime commercial operations in accordance with Company's obligations set forth in this Agreement on the Property at all times during the period of this Agreement.
 2. Company shall pay, or cause to be paid, before delinquent all ad valorem taxes assessed against the Property, Capital Improvements, and Personal Property owed to the taxing authorities having jurisdiction. In addition, Company will pay before delinquent all employment, income, franchise and all other taxes to all local, state and federal entities.
 3. Company shall, on a yearly basis during the term of this Agreement, provide MDC with tax certificates from Midland Central Appraisal District demonstrating that all taxes on the Property, Capital Improvements, and Personal Property have been paid in full to the current tax year.
 4. Company shall obtain and maintain all necessary rights, licenses, and permits to carry on its Business.
 5. Company agrees that, as to all of the programs and activities arising out of this Agreement, it shall comply in all material respects with all Civil Rights Acts and specifically will not discriminate against any person on the basis of race, color, national origin, religion, age, sex or by reason of being disabled.
 6. Company agree that they shall comply with Texas Government Code Section 2264.001 *et seq.*, as amended.
- F. **Payments.** Payments to be made to Company shall be made upon a written request from Company and completion and submission of all necessary supporting documentation as required pursuant to this Agreement. The payment request and documentation should be directed in accordance with Section XLN below.
- G. **Interpretation of Terms & Obligations.** Notwithstanding any other provision contained herein to the contrary, the parties agree that in the event that there is a dispute regarding whether a particular item falls within the definition of Annual Payroll, Capital Improvements, Personal Property, Annual Payroll, or Full-Time Job, MDC shall make such determination in its sole and absolute discretion and said decision shall be binding on Company.

XI. General Terms

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

- B. Legal Relationships.** The parties are not, and shall not be considered as, joint venturers, partners, or agents of each other and no party shall have the power to bind or obligate another, except as set forth in this Agreement. The parties agree not to represent to anyone that they are agents of one another or have any authority to act on behalf of one another. It is mutually understood and agreed that nothing in this Agreement is intended or shall be construed as in any way creating or establishing any partnership, joint venture, or agency between MDC and Company. 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 that would give rise to vicarious liability.
- C. No Third-Party Beneficiary.** The parties' approval of the Agreement does not create a third-party beneficiary. There is no third-party beneficiary to this Agreement. No person or entity that is not a party to this Agreement shall have any third-party beneficiary or other rights hereunder.
- D. 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, their 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 shall be considered an officer, agent, servant or employee of MDC. 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.
- E. Terminations.** This Agreement may be terminated by mutual agreement of the parties or by any party, upon the failure of another party to fulfill a material obligation as set forth herein if the default is not cured within thirty (30) days after written notice from the other party reasonably specifying such breach, or such longer period as may be reasonably necessary so long as such party has commenced the cure within such thirty (30) day period, and thereafter is diligently pursuing such cure.
- F. 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.
- G. Governing Law & Venue.** This Agreement shall be governed by and construed in accordance with the laws and court decisions of the State of Texas. All performance and

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

- H. **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.
- I. **Law.** This Agreement is subject to all applicable municipal, county, state and federal laws, regulations, orders and rules and Company agree that they will comply in all material respects with all such applicable laws, regulations, orders and rules of the State of Texas and other such governmental agencies. As used in this Agreement, the phrase “applicable law” is deemed to include the foregoing. This Agreement shall be governed by and construed in accordance with the laws and court decisions of the State of Texas.
- J. **Assignment.** This Agreement shall be binding upon the parties hereto and their successors and assigns. This Agreement may not be assigned without the prior written consent of the other parties.
- K. **Notices.** All notices to the parties required under this Agreement shall be sent by certified U.S. mail, postage prepaid, addressed to such party at the addresses shown below. All notices shall be deemed given on the date so deposited in the mail, unless otherwise provided herein. Any party hereto may change the address below by sending written notice of such change to the other parties in the manner provided herein.

If to MDC:

Midland Development Corp.
Attn: MDC Chairman
Attn: Executive Director
200 N. Loraine St., Suite 610
Midland, Texas 79701

If to Company:

Susie’s South Forty Confections, Inc.
401 South Marienfeld Street
Midland, Texas 79701

With Copy To:

City Attorney's Office
City Hall
300 N. Loraine St., Suite 320
Midland, Texas 79701

- L. **Waiver of Attorney Fees.** BY EXECUTING THIS AGREEMENT, THE PARTIES AGREE TO WAIVE AND DO HEREBY WAIVE ANY CLAIM THEY HAVE OR MAY HAVE IN THE FUTURE AGAINST EACH OTHER REGARDING THE AWARD OF ATTORNEY FEES THAT ARE IN ANY WAY RELATED TO THIS AGREEMENT, OR THE CONSTRUCTION, INTERPRETATION OR BREACH OF THIS AGREEMENT. THE PARTIES 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) OR CHAPTER 271 OF THE TEXAS LOCAL GOVERNMENT CODE, AS AMENDED, THAT SAID PARTY AGREES TO WAIVE AND RELINQUISH ANY AND ALL RIGHTS TO THE RECOVERY OF ATTORNEY FEES TO WHICH IT MIGHT OTHERWISE BE ENTITLED.

THE PARTIES AGREE THAT THIS IS THE VOLUNTARY AND INTENTIONAL RELINQUISHMENT AND ABANDONMENT OF A PRESENTLY EXISTING KNOWN RIGHT. THE PARTIES ACKNOWLEDGE THAT THEY UNDERSTAND ALL TERMS AND CONDITIONS OF THE AGREEMENT. THE PARTIES FURTHER ACKNOWLEDGE AND AGREE THAT THERE WAS AND IS NO DISPARITY OF BARGAINING POWER BETWEEN THE PARTIES. THIS SECTION SHALL NOT BE CONSTRUED OR INTERPRETED AS A WAIVER OF GOVERNMENTAL IMMUNITY.

THE PARTIES ARE RELYING ON THEIR OWN JUDGMENT. EACH PARTY AGREES IT HAD THE OPPORTUNITY TO DISCUSS THIS AGREEMENT WITH LEGAL COUNSEL PRIOR TO ITS EXECUTION.

- M. **Amendment.** This Agreement may only be amended by written instrument executed by both parties expressly stating the intention to amend this Agreement. No amendment shall be effective unless approved by a resolution duly passed by the MDC Board of Directors.
- N. **Payments.** All payments to any party required under this Agreement shall be sent by certified U.S. mail, postage prepaid, addressed to such party at the addresses shown below. All payments shall be deemed given on the date so deposited in the mail, unless otherwise provided herein. Any party hereto may change the address below by sending written notice of such change to the other in the manner provided herein.

If to MDC:

Midland Development Corp.
Attn: MDC Chairman
Attn: Executive Director
200 N. Loraine St., Suite 610
Midland, Texas 79701

If to Company:

Susie's South Forty Confections, Inc.
401 South Marienfeld Street
Midland, Texas 79701

With Copy To:

City Attorney's Office
City Hall
300 N. Loraine St., Suite 320
Midland, Texas 79701

- O. **Release.** NOTWITHSTANDING ANY OTHER PROVISION CONTAINED HEREIN, 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 CONTRACT, QUANTUM MERUIT, CLAIMS UNDER THE DUE PROCESS AND TAKINGS CLAUSES OF THE TEXAS AND UNITED STATES CONSTITUTIONS, TORT CLAIMS, OR MDC'S NEGLIGENCE.
- P. **Consideration.** MDC and Company hereby agree and acknowledge that this Agreement is supported by good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties.
- Q. **Governmental Immunity.** By executing this Agreement, MDC is not waiving its right of governmental immunity. MDC is retaining its immunity from suit. MDC is not granting consent to be sued by legislative resolution or action.

THERE IS NO WAIVER OF GOVERNMENTAL IMMUNITY.

- R. **Governmental Function.** MDC AND COMPANY HEREBY ACKNOWLEDGE AND AGREE THAT THE ENTIRETY OF MDC'S PERFORMANCE AND OBLIGATIONS UNDER THIS AGREEMENT ARE GOVERNMENTAL FUNCTIONS. BY ENTERING INTO THIS AGREEMENT, COMPANY RELEASES MDC FROM ANY PRESENT OR FUTURE CLAIMS ASSERTING MDC'S PERFORMANCE AND OBLIGATIONS UNDER THIS AGREEMENT ARE NOT GOVERNMENTAL FUNCTIONS. MDC AND COMPANY ACKNOWLEDGE AND AGREE THAT THIS AGREEMENT IS IN THE PUBLIC INTEREST AND SERVES A PUBLIC PURPOSE OF THE STATE OF TEXAS AND CITY OF MIDLAND IN PROMOTING THE WELFARE OF THE

GENERAL PUBLIC ECONOMICALLY BY SECURING AND RETAINING BUSINESS ENTERPRISES AND AS A RESULT OF MAINTAINING A HIGHER LEVEL OF EMPLOYMENT, ECONOMIC ACTIVITY, AND STABILITY.

- S. **No Disparity of Bargaining Position.** MDC and Company agree that there was no disparity of bargaining power between the parties in the negotiation and execution of this Agreement. MDC and Company acknowledge and agree that they were represented by legal counsel. MDC and Company acknowledge and agree that they read and understood the entire Agreement prior to its execution. MDC and Company acknowledge and agree that there were numerous compromises and concessions made by the parties resulting in the agreed-upon terms of this Agreement.
- T. **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 representatives, shall give the MDC Chairman notice in writing (consisting of one original and two copies of notice attached to a copy of this Agreement) of such damages, duly verified, within one hundred twenty (120) 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 claims. 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 Texas law. Notwithstanding any other provision, Company's failure to comply with the requirements herein shall perpetually bar Company's claim for damages regardless if MDC has actual or constructive notice or knowledge of said claim or alleged damages. Company agree that the requirements of this Section are reasonable.

- U. **Approval Required.** This Agreement shall not become effective until approved by a resolution of the Midland City Council.
- V. **Company's Expansion Options.** Company had many options to expand the Business within the Permian Basin, and Company specifically chose to expand the Business in the

corporate limits of the City of Midland due to the commercial and community advantages offered in Midland.

W. Waiver of Consequential Damages. THE PARTIES HEREBY WAIVE ALL CLAIMS AGAINST EACH OTHER FOR ALL CONSEQUENTIAL DAMAGES ARISING OR RELATED TO THIS AGREEMENT. THIS MUTUAL WAIVER INCLUDES, BUT IS NOT LIMITED TO, DAMAGES INCURRED BY EITHER PARTY FOR RENTAL EXPENSES, FOR LOSSES OF USE, INCOME, PROFIT, FINANCING, BUSINESS AND REPUTATION, AND FOR LOSS OF MANAGEMENT OR EMPLOYEE PRODUCTIVITY OR FOR THE SERVICES OF SUCH PERSONS, AND FOR PRINCIPAL OFFICE EXPENSES INCLUDING THE COMPENSATION OF PERSONNEL STATIONED AT THE BUSINESS ON THE PROPERTY, FOR LOSSES OF FINANCING, BUSINESS AND REPUTATION, AND FOR LOSS OF PRESENT AND FUTURE PROFITS.

[Signature Page Follows]

IN WITNESS WHEREOF, MDC and Company have executed this Agreement as of the Effective Date.

**MIDLAND DEVELOPMENT
CORPORATION**



Brent D. Hilliard, Chairman

ATTEST:



Wesley Bownds, Secretary

SUSIE'S SOUTH FORTY
CONFECTIONS, INC.

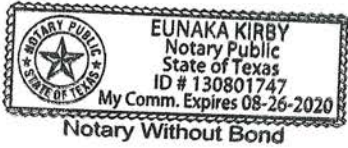
Susie Hitchcock Hall
Name:
Title: PRESIDENT / OWNER

THE STATE OF TEXAS §
 §
COUNTY OF MIDLAND §

BEFORE ME, Eunaka Kirby, a notary public, on this day personally appeared Susie Hitchcock-Hall, of SUSIE'S SOUTH FORTY CONFECTIONS, INC., known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he/she executed the same as the act and deed of said Company for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS 8 day of January, A.D., 2018.

Eunaka Kirby
Notary Public, in and for
the State of Texas



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- Legend**
- Subdivision Block
 - Parcel
 - City Limit
 - Utility Easement
 - City Parcels
 - Lots



Date: 1/4/2018

401 S. Marienfeld St Midland, Texas Exhibit "A"

NAD 1983 StatePlane Texas Central FIPS 4203 Feet

Income Statement

MIDLAND DEVELOPMENT CORPORATION
INCOME STATEMENT FOR THE 9 MONTHS ENDED
June 30, 2020

	Jun-20	YTD	Budgeted Amount
Revenue	\$984,568.47	\$11,212,024.69	\$12,300,000.00
40100 - State Sales Tax	\$897,050.21	\$10,186,945.56	\$12,000,000.00
40600 - Public ROW Use Fee	\$0.00	\$8,738.40	\$0.00
43000 - Interest	\$2,145.39	\$35,946.78	\$0.00
43010 - Interest - Nonpooled Invest	\$3,985.87	\$151,184.94	\$300,000.00
46190 - Miscellaneous Rentals	\$81,387.00	\$829,209.01	\$0.00
4235150 - Midland Dvlpmt Corp Revenue	\$984,568.47	\$11,212,024.69	\$12,300,000.00

Expense	\$6,824,190.47	\$18,043,691.21	\$27,771,636.00
51010 - Base Salary	\$54,066.70	\$499,345.04	\$1,025,000.00
51090 - Fica MDC Portion	\$4,136.09	\$36,431.92	\$80,750.00
51110 - Health Insurance	\$3,907.91	\$35,859.48	\$80,000.00
51135 - ACCE Profit Sharing	\$3,784.68	\$36,679.55	\$125,000.00
52010 - Office Supplies	\$352.22	\$6,807.86	\$22,000.00
52110 - Motor Vehicle Supplies	\$45.00	\$988.27	\$2,000.00
52115 - Minor Furniture & Fixtures	\$0.00	\$539.98	\$15,000.00
52155 - Minor Computer Hrdwre & Periph	\$270.61	\$11,008.53	\$10,000.00
52160 - Computer Software & Supplies	\$2,250.01	\$33,700.50	\$50,000.00
52620 - Postage	\$0.00	\$331.06	\$1,000.00
53010 - Communication	\$1,410.75	\$13,323.65	\$20,000.00
53030 - Light & Power	\$8.88	\$80.25	\$500.00
53110 - Insurance-External	\$16,432.51	\$126,992.05	\$190,000.00
53212 - Equipment Rental-External	\$344.54	\$3,100.86	\$7,800.00
53220 - Advertising	\$43,624.94	\$269,687.56	\$400,000.00
53370 - Grounds Maintenance	\$0.00	\$642.50	\$40,000.00
53405 - Software Maintenance	\$1,567.70	\$7,479.65	\$8,000.00
53440 - External Audit Fees	\$0.00	\$15,000.00	\$25,000.00
53450 - Consulting Fees	\$33,265.20	\$850,319.96	\$600,000.00
53510 - Travel & Entertainment	\$50.31	\$12,052.95	\$35,000.00
53520 - Dues & Subscriptions	\$747.98	\$18,546.49	\$27,000.00
53530 - Training,Registration Fees,Etc	\$175.00	\$4,413.00	\$50,000.00
53905 - Economic Development Incentive	\$5,978,072.95	\$14,152,865.67	\$22,805,405.00
53907 - Business Recruitment & Retentn	-\$1,229.56	\$35,724.36	\$90,000.00
53920 - Rent	\$6,123.22	\$54,121.49	\$74,000.00
54010 - Building Maintenance	\$12,488.37	\$39,375.87	\$70,000.00
55120 - Maint. - Instruments & Appara.	\$154.84	\$1,809.28	\$4,000.00
56188 - MOTRAN	\$0.00	\$142,500.00	\$142,500.00
56202 - General Fund Services	\$35,223.42	\$317,010.78	\$422,681.00
56410 - Payment of Principal	\$0.00	\$0.00	\$60,000.00
56420 - Interest Expense	\$0.00	\$0.00	\$12,000.00
56910 - Depreciation Expense	\$37,344.27	\$298,754.12	\$0.00
56995 - Project Non Capital - Promotions	\$351,597.43	\$780,224.03	\$1,230,000.00
57002 - Capital Improve Other Than Bldg	\$237,974.50	\$237,974.50	\$0.00
57004 - Capital Vehicles	\$0.00	\$0.00	\$47,000.00
235235 - Midland Development Corp	\$6,824,190.47	\$18,043,691.21	\$27,771,636.00

June 2020 Net Income: (\$5,839,622.00)

Year-to-Date Net Income: (\$6,831,666.52)

Balance Sheet

MIDLAND DEVELOPMENT CORPORATION
BALANCE SHEET FOR THE PERIOD ENDED
June 30, 2020
(Used for Internal Purposes Only)

ASSETS

Current Assets

Cash and cash equivalents	28,052,450	
Sales tax receivable	2,486,351	
Prepaid expenses	107,133	
Accounts receivable	-	
	-	30,645,933

Non-Current Assets

Capital Assets, net	19,053,639	
Forgivable Loans		
Made to Primary Government	1,350,000	
Made to Other	506,579	
Total Forgivable Loans	1,856,579	
		20,910,218

Total Assets		\$ 51,556,151
--------------	--	---------------

LIABILITIES AND NET POSITION

Liabilities

Accounts payable	-	
Retainage Payable	36,950	
Capital Leases payable	257,083	
Commitments payable		
Due within one year	18,620,500	
Due in more than one year	28,476,000	
Total Commitments Payable	47,096,500	
		47,390,533

Net Position

Net investment in capital assets	19,053,639	
Restricted for Forgivable Loans	1,856,579	
Restricted for Capital Leases	257,083	
Promotions	2,840,396	
Unrestricted	(19,842,079)	
	4,165,618	

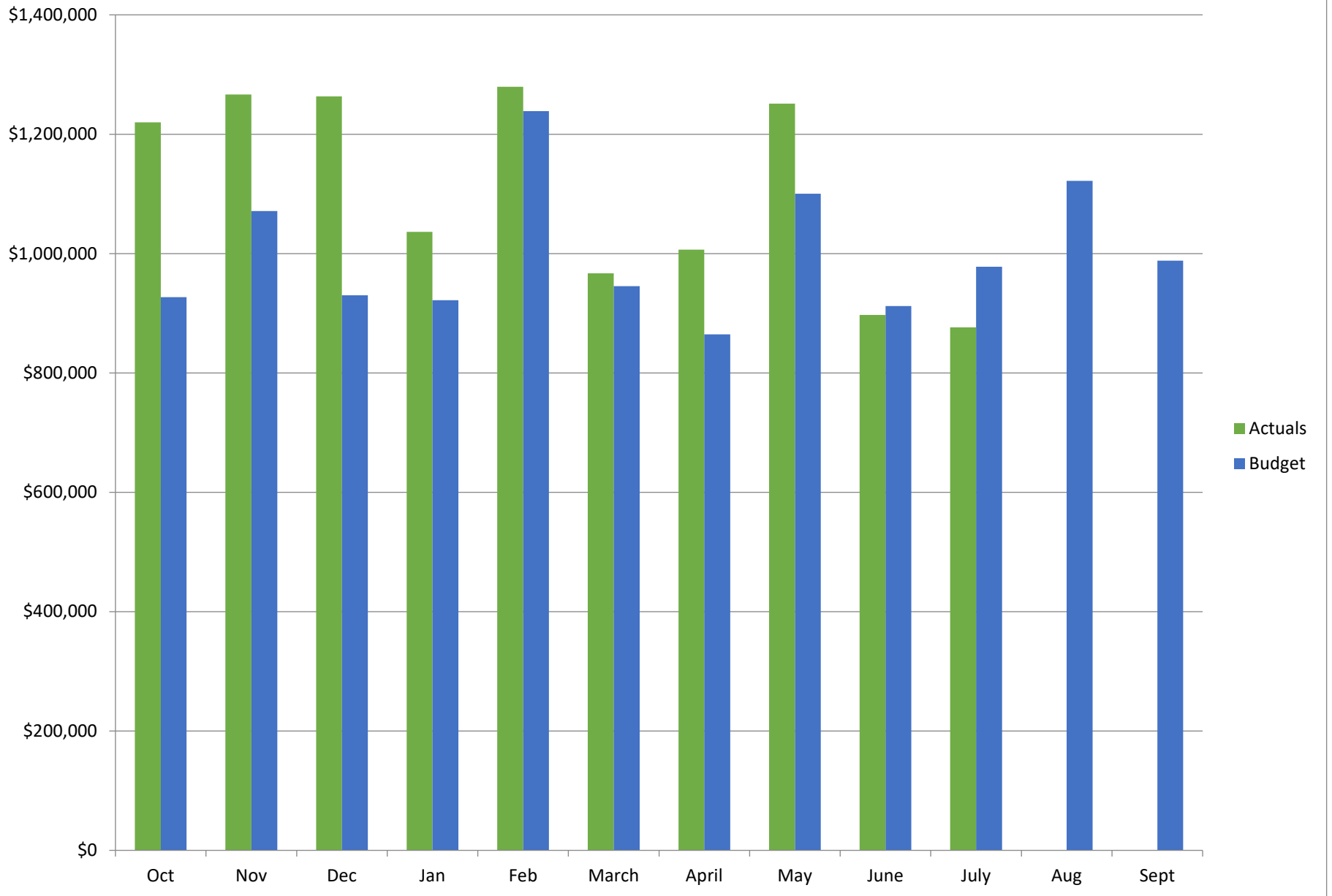
Total Liabilities and Net Position		\$ 51,556,151
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Sales Tax

Sales Tax Variance

	2017-2018	2018-2019	% Change	2018-2019	2019-2020	% Change	YTD Change
October	\$899,284.46	\$1,168,778.63	29.97%	\$1,168,778.63	\$1,219,993.44	4.38%	4.38%
November	\$1,011,058.46	\$1,315,318.62	30.09%	\$1,315,318.62	\$1,266,357.10	-3.72%	0.09%
December	\$922,204.62	\$1,185,882.84	28.59%	\$1,185,882.84	\$1,263,226.93	6.52%	2.17%
January	\$921,118.19	\$1,143,749.27	24.17%	\$1,143,749.27	\$1,036,178.70	-9.41%	-0.58%
February	\$1,226,347.28	\$1,442,774.27	17.65%	\$1,442,774.27	\$1,279,615.49	-11.31%	-3.05%
March	\$1,080,215.64	\$1,209,440.03	11.96%	\$1,209,440.03	\$966,824.94	-20.06%	-5.81%
April	\$946,496.63	\$1,135,613.41	19.98%	\$1,135,613.41	\$1,006,559.17	-11.36%	-6.54%
May	\$1,206,087.50	\$1,381,858.75	14.57%	\$1,381,858.75	\$1,251,139.57	-9.46%	-6.95%
June	\$1,020,459.73	\$1,175,734.10	15.22%	\$1,175,734.10	\$897,050.21	-23.70%	-8.71%
July	\$1,149,796.97	\$1,242,133.20	8.03%	\$1,242,133.20	\$876,285.08	-29.45%	-10.79%
August	\$1,281,626.38	\$1,359,171.41	6.05%	\$1,359,171.41			
September	\$1,114,716.72	\$1,315,787.31	18.04%	\$1,315,787.31			
Annual Total	\$12,779,412.58	\$15,076,241.84	17.97%	\$15,076,241.84	\$11,063,230.63		

Sales Tax Actuals vs Budget Estimates



Activity Report



2020 MAY
**Midland &
Permian Basin
Economic Index**



The

Perryman Group

Effective economics, accessible analysis

1.800.749.8705 | info@perrymangroup.com | www.perrymangroup.com

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OVERVIEW

The May Perryman Midland and Permian Basin Index values were down, but stabilized to some extent compared to April.

The inevitable result of measures to “flatten the curve” and prevent a major spike in COVID-19 infections has been a strong shock to the economy. Many factors will determine the ultimate effects of the coronavirus, including the outcomes of reopening the economy and the capacity of businesses to resume normal activities.

In Midland and the Permian Basin, the pandemic’s effect on oil markets has caused a strong drop in activity in the industry and, thus, the area economy. The price decline is due to the combination of (1) plummeting demand as economies and industries around the world shut down due to COVID-19 and (2) rising supply, with threats of even more due to the collapse of talks earlier this year among major global oil producers to try to bring discipline to the market. An agreement was subsequently reached which brought notable reductions in daily production, but not as large as the drop in consumption across the globe. Markets have stabilized recently.

Although production costs are down sharply in Texas, they are not yet at a level to maintain broad-scale activity at current prices. As a result, the situation is leading to significant disruptions in the Permian Basin and the state’s other production areas. The industry has engaged in a rapid shutdown of drilling activity, which ripples through an enormous supply chain and supporting retail and service enterprises in the affected communities and the rest of the state. Banks which have large energy company loan portfolios are being strained, and mid-stream and downstream investments are being deferred. Adverse effects on oil producing areas are being observed in a dramatic fashion, but the fallout from the situation involves all regions of Texas.

As the economy begins to recover from COVID-19 restrictions and travel prohibitions, oil markets can normalize expeditiously. Prices are already trending toward more normal levels and should recover to sustainable levels for West Texas producers (where costs were falling notably for years before the pandemic) in the next few months.

Although comparisons are being drawn to the horrific events of the 1980s, the situation at that time was very different. Key differences include (among others) the speed of the downturn, the underlying structural problems in the economy that were present at that time, and the contrast between the 1980s’ declining reserves and rising costs and today’s expanding reserves and falling costs. The near-term situation in oil markets is undeniably severe, but it is a temporary aberration stemming from an unprecedented health issue. As the economy reopens, demand for oil will rise and markets will normalize. This is NOT the 1980s.

The effects of the COVID-19 pandemic began to be felt in March and were causing dramatic decreases in April. In May, some industries began to recover, but the increases were much smaller in general than April’s losses.

Results are summarized in the following pages, with additional detail in the accompanying workbook.



MIDLAND MSA

The Midland Economic Index decreased over the past month from 96.5 to 90.1, a smaller drop than April's -20.0. Even with this decline, the Index remained above the levels experienced in 2016.

The Energy industry experienced losses of -9.2 in May, notably smaller than April's -21.9. Hospitality & Tourism experienced some recovery, up 17.1, but the increase was much smaller than April's drop of -57.9. Construction continued to fall (down -6.8), after a drop of -48.9 in April. Retail was up slightly, but far less than April's decrease of -25.6.

MIDLAND MSA ECONOMIC INDEX

RECENT RESULTS (2012=100)

Current Index Reading	90.1
Change from Previous Month	Down -6.4

MIDLAND MSA ECONOMIC INDEX

RESULTS BY INDUSTRY (2012=100)

Industry	April	May	Change
Energy	83.4	74.2	-9.2
Construction	127.9	121.1	-6.8
Manufacturing	122.9	116.3	-6.6
Retail	103.9	108.1	+4.2
Financial Services	218.4	218.0	-0.4
Real Estate	153.0	159.9	+6.9
Professional & Business Services	115.8	114.4	-1.4
Health Care	90.0	88.3	-1.7
Hospitality & Tourism	87.9	105.0	+17.1
Other Activity	130.2	137.0	+6.8
Midland Composite	96.5	90.1	-6.4

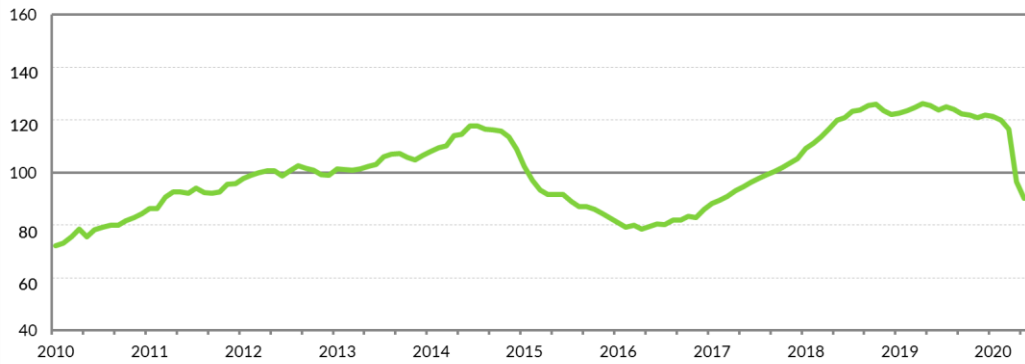
Note: Industries are not weighted equally in calculating the Industry Composite; see the Appendix for further explanation. The Midland Metropolitan Statistical Area (MSA) includes Midland and Martin counties.

Source: The Perryman Group



Midland Economic Index

(Index adjusted such that 100 represents economic status in 2012)

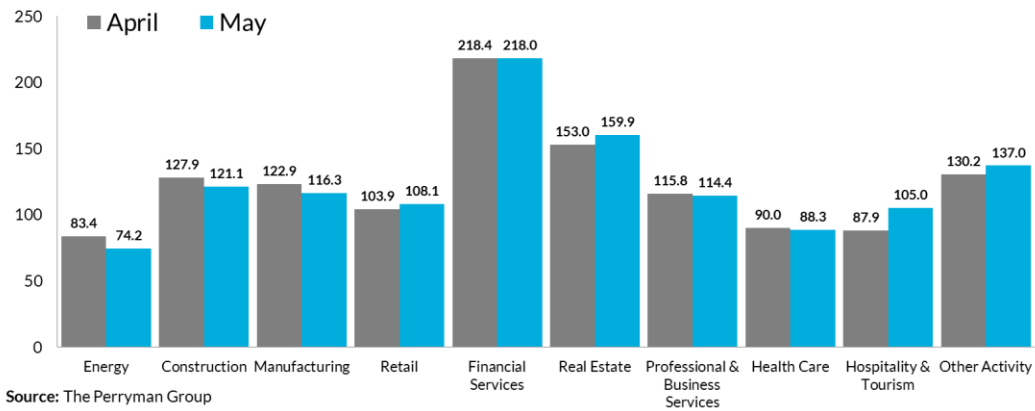


Source: The Perryman Group

Midland Economic Index

Recent values by sector

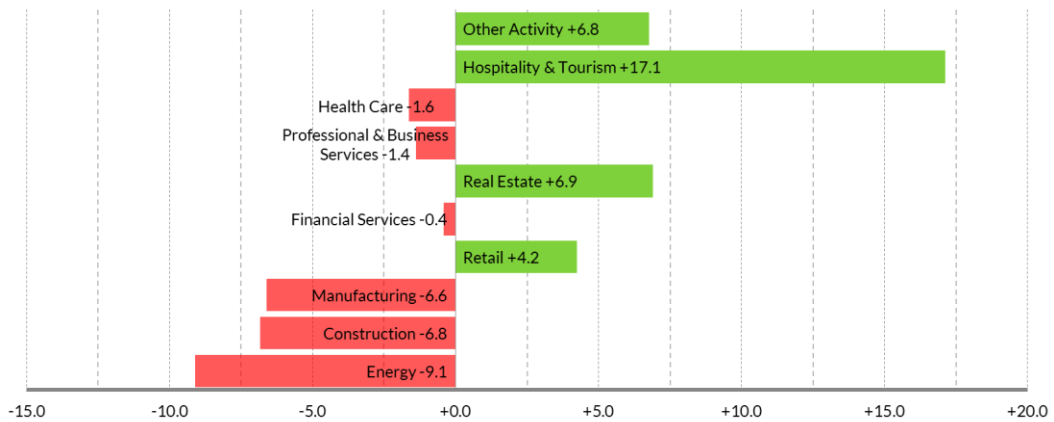
(Index adjusted such that 100 represents economic status in 2012)



Source: The Perryman Group

Midland Economic Index

Change from previous month by sector



Source: The Perryman Group



PERMIAN BASIN REGION

The Permian Basin Economic Index decreased over the past month from 97.6 to 96.0, stabilizing to some extent in May after a decline of -19.5 in April.

The Energy industry declined significantly, continuing a downward trend which began early this year. Hospitality & Tourism and Construction increased, but the improvement represents only a partial recovery of the strong drops in April of -59.3 and -53.6, respectively.

PERMIAN BASIN ECONOMIC INDEX

RECENT RESULTS (2012=100)

Current Index Reading	96.0
Change from Previous Month	Down -1.6

PERMIAN BASIN ECONOMIC INDEX

RESULTS BY INDUSTRY (2012=100)

Industry	April	May	Change
Energy	74.8	68.7	-6.1
Construction	110.4	117.5	+7.1
Manufacturing	113.3	107.3	-6.0
Retail	104.3	109.0	+4.7
Financial Services	218.6	218.2	-0.4
Real Estate	155.4	161.2	+5.8
Professional & Business	102.7	100.6	-2.1
Health Care	91.1	89.2	-1.9
Hospitality & Tourism	84.1	99.5	+15.4
Other Activity	125.7	132.1	+6.4
Permian Basin Composite	97.6	96.0	-1.6

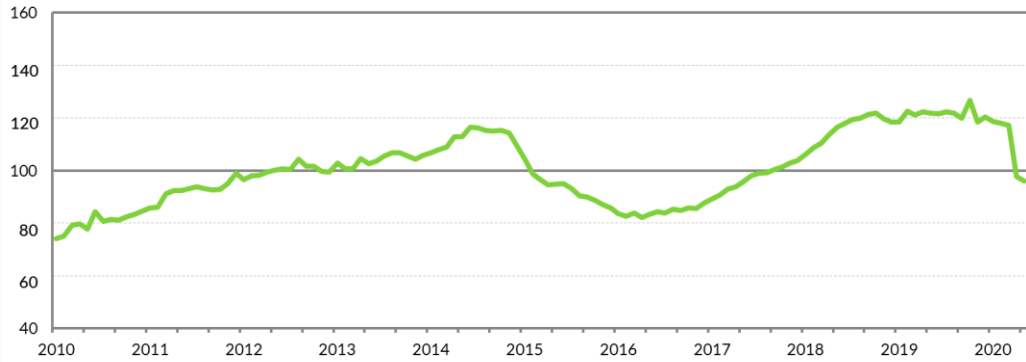
Note: Industries are not weighted equally in calculating the Industry Composite; see the Appendix for further explanation. The Permian Basin Region includes Andrews, Borden, Crane, Dawson, Ector, Gaines, Glasscock, Howard, Loving, Martin, Midland, Pecos, Reeves, Terrell, Upton, Ward, and Winkler counties.

Source: The Perryman Group



Permian Basin Economic Index

(Index adjusted such that 100 represents economic status in 2012)

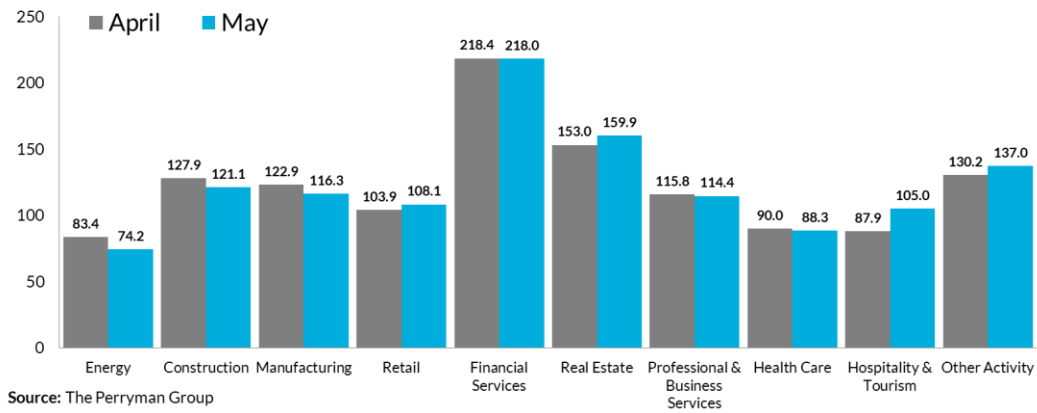


Source: The Perryman Group

Permian Basin Economic Index

Recent values by sector

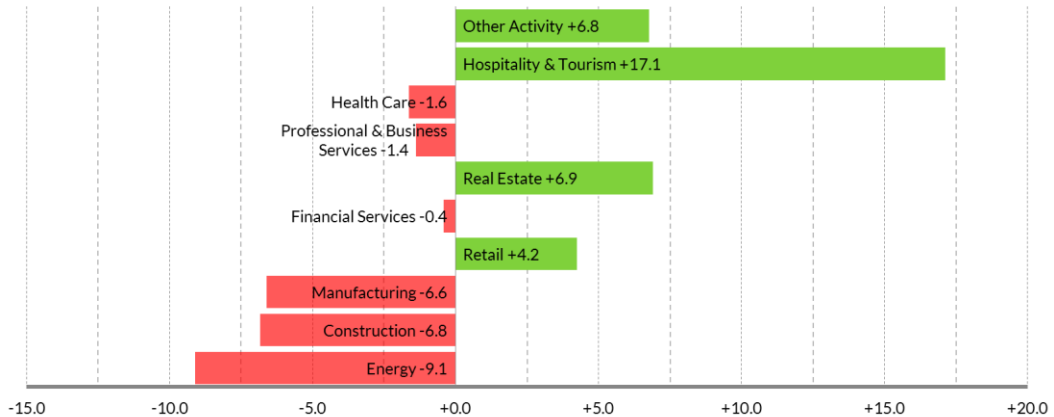
(Index adjusted such that 100 represents economic status in 2012)



Source: The Perryman Group

Permian Basin Economic Index

Change from previous month by sector



Source: The Perryman Group



METHODOLOGY

The goal of the Midland and Permian Basin Index is to encapsulate, in a single measure, the current status of the local and regional economy, how it is changing, and what is driving the change. The Index includes measures of industrial performance, with sub-indices for the various components to indicate the role they play in overall performance. The Index is based on complex economic modeling processes, but it provides a simple measure of the health of the local and regional economy and how and why it is changing.

The Index reflects shifts in key industries and performance. The relative weights of each component were determined based on typical patterns in the relationships of variables to overall economic performance. The Index includes variables ranging from oil prices to construction which describe the evolving status of key industries. These measures reflect analysis of numerous indicators of the level of activity and how it is changing.

The Midland and Permian Basin Index was developed and is maintained by The Perryman Group, an economic and financial analysis firm based in Waco, Texas with decades of experience in analyzing the local and regional economies. Dr. M. Ray Perryman, President and CEO of The Perryman Group, has more than 40 years of experience in index construction and regional economic modeling. In particular, Dr. Perryman derived the indices of monetary policy that are used by the Federal Reserve System and more than 60 other central banks around the world. He also developed regional and small-area indices of Industrial Production and Unit Labor Costs that are widely

used on a global basis, as well as measures of systematic risk for non-homogenous assets and the degree of trade integration among nations. Dr. Perryman has been an advisor to the US Department of Labor on the Consumer Price Index as well as numerous other governmental entities on index-related issues. He has also developed the world's largest regional econometric modeling system and has been analyzing the economy of Midland and the Permian Basin on an ongoing basis since the mid-1970s. The firm produces a quarterly index for a major financial firm in the state.

Index Construction

Economic indices are typically constructed in one of two ways, both of which are widely used and have been successfully employed by Dr. Perryman over the course of his career. One common method is to identify a set of relevant variables and then use principle component analysis (PCA) or a variation (such as a factor rotation) to assign weights to the individual components on an empirical basis. In essence, this process converts a set of variables into an equal number of new measures such that each of the new variables is (1) a linear combination of the original ones and (2) orthogonal to each of the others. The new measures also have the property of collectively containing all of the information in the original variables. When this approach is used, the first principle component (the one which explains the largest percentage of the variation) is typically used to determine the weights in the index. This approach has advantages in that (1) weights are empirically generated based on their explanatory power and (2) it is relatively simple to implement. Its

major disadvantages are (1) in many instances, particularly where a large number of variables are being examined (as in the current analysis), spurious correlations with relatively minor factors that are unlikely to be sustained over time can occur; (2) the first principle component, despite exhibiting the largest explanatory power, often accounts for only a small amount of the total variation, thus failing to incorporate a substantial portion of the available information.

The second approach is to rely on economic data, theory, and models to develop an index of the desired phenomena. The primary difficulty with this method is the fact that it can become complex in its execution. The advantages are the ability to (1) systematically incorporate very large sets of variables without loss of underlying information, (2) develop sub-indices to provide a focus on specific index elements, and (3) incorporate specific economic content in a detailed and systematic manner.

In the present instance, the second option appeared to be more appropriate in that the process included the incorporation of a complex multi-dimensional framework which allows both individual and integrated consideration of a variety of segments that span multiple sectoral components. Nonetheless, a principle components model was originally attempted for purposes of completeness and to meet the conditions for statistical efficiency. As anticipated, the resulting assessment across a broad spectrum of variables across industries resulted in both weighting on relatively minor variables which were not stable across sub-periods and relatively little (less than 10 percent) information capture by the primary principle components.



Consequently, the Midland and Permian Basin Index was developed using a more formal and comprehensive data and modeling effort. This process is described below.

Industrial Variations

As noted, the Index seeks to encapsulate, in a single measure, the many facets of the local and regional economy. Sub-indices are also generated for key industries in order to examine the various components and the role that they play in overall performance. Aggregates available on a monthly basis are incorporated into the Index in order to permit regular monitoring of changes in business activity. Broader measures (such as total expenditures and gross product by industry) which have greater information content but less frequent periodicity are used in defining the relative weights. In this manner, it is possible to enhance the comprehensiveness of the Index.

The segments of the economy that are included in the Index are:

- Energy,
- Construction (residential and non-residential),
- Manufacturing,
- Retail,
- Financial Services,
- Real Estate,
- Professional & Business Services,
- Health Care,
- Hospitality & Tourism, and
- Other Activity

The relative weights to be applied to each segment were derived based on the stabilized percentage

of each sector of a relevant overall aggregate (gross area product).

The next phase of the analysis is the construction of the various sectoral indices. Measures that were available on a monthly basis were employed and were selected based on their role in being reflective of aspects of the relevant segment. They were then tested relative to one another to assure that they were not subject to excessive multicollinearity. Once the final set was determined, each quarterly series was transformed into a common format in which 2012 was defined as equal to 100. The base year is consistent with most official economic series that are presented either as indices or on a constant-dollar basis. All monetary values were similarly expressed in constant 2012 dollars to avoid artificial growth generated by inflation. In a few instances, quarterly series were converted to monthly aggregates using a regression approach developed by Dr. Perryman that is widely utilized throughout the world.

The variables utilized in the Index include items such as oil and gas prices, rig counts, retail sales, single and multi-family housing permits and values, housing sales and values, bank loans and deposits, employment by detailed industrial category, and numerous other factors. Where appropriate, inputs were adjusted to eliminate seasonal patterns that are not reflective of underlying economic conditions.

In each of the indices, the weights assigned to the individual components are determined based on the relative standard errors of the normalized values. This approach allows greater weight to be assigned to those measures which exhibit more pronounced fluctuations to influence industry performance. These individual

sectoral indices were aggregated into an overall Composite Index using the weighting described above. Separate individual sectoral measures and Composite Index values were generated for the Midland Metropolitan Statistical Area and the Permian Basin Region. It should be noted that the monthly indices always use the latest available economic data. Because much of the information normally is subject to both short-term revisions and periodic benchmarking, historical values will often change from month to month. These variations are typically minor.

Historical Performance

Historical performance of components of the Midland and Permian Basin Indices is provided in the accompanying workbook.

Conclusion

The Midland and Permian Basin indices provide a measure of changes in the economy that is easy to grasp and compare over time. Although the modeling process that went into the indices was complex, the result is a simple and straightforward assessment of the direction of patterns in business activity and the reasons for changes in overall performance.



THE PERRYMAN GROUP



The Perryman Group is a focused team of analysts who know how to address complex economic information tasks and present our findings effectively.

Our in-house professionals bring expertise in economics, finance, statistics, mathematics, real estate, valuation, systems analysis, engineering, technical communications, and marketing. Dr. Ray Perryman, President and CEO, has 40 years of experience in developing systems, analyzing complex problems, and communicating effectively. We have considerable pride in what we do. Our enthusiasm is both unbridled and contagious; every day brings a new opportunity for us to tackle a different problem or create a product or service specifically tailored to our clients.

OUR SERVICES

IMPACT ASSESSMENT

We have developed and continually maintain an extensive set of economic impact evaluation models that can be applied in a variety of contexts.

EXPERT TESTIMONY

We help clients analyze and communicate complex information in common-sense terms through comprehensive, objective analyses and clear, concise expert reports and presentations.

FORECASTING

We are at the cutting edge of econometrics and other advanced statistical methods and have provided innovative approaches for many complex applications.

SPEECHES

Dr. Perryman addresses dozens of audiences throughout the world every year, catering to a wide variety of events.

M. RAY PERRYMAN, PH.D.

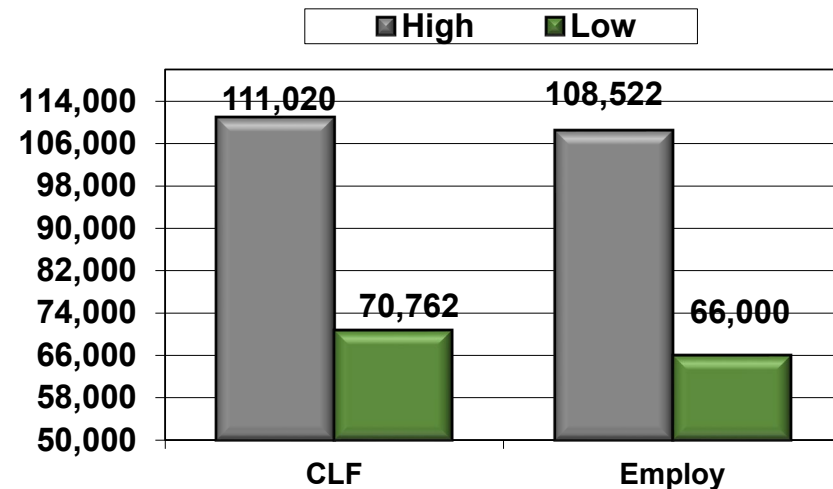
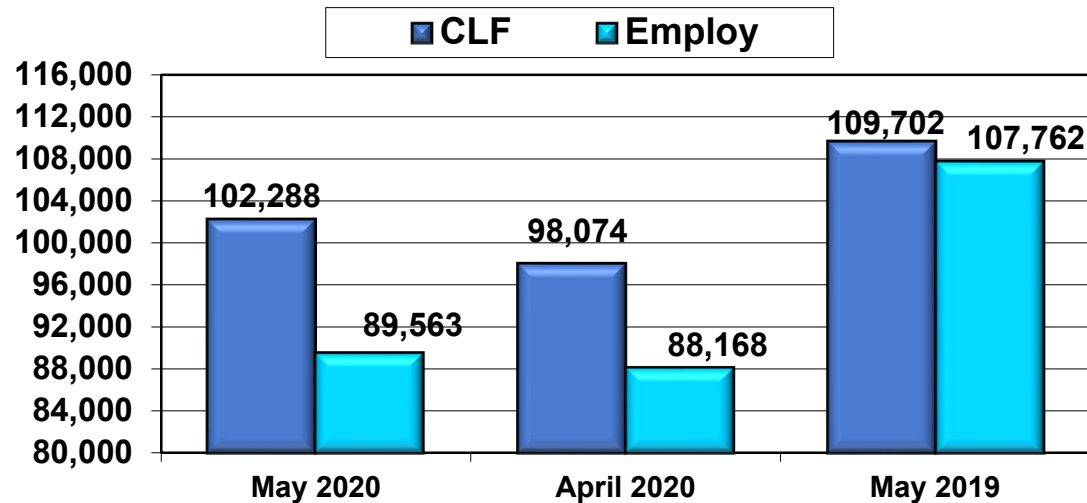
Dr. Ray Perryman is President and CEO of The Perryman Group, an economic research and analysis firm based in Waco, Texas. His firm has served the needs of more than 2,500 clients, including two-thirds of the Global 25, over half of the Fortune 100, the 12 largest technology firms in the world, 10 US Cabinet Departments, the 9 largest firms in the US, the 6 largest energy companies operating in the US, and the 5 largest US banking institutions.

Dr. Perryman was named Outstanding Young Person of the World for Business and Economic Innovation in 1987, was designated Texan of the Year by the Texas Legislative Conference in 2012, received the Baylor University Distinguished Service Medal in 2013, was inducted into the Texas Leadership Hall of Fame in 2014, received the Cesar E. Chavez Conscience Builders Award in 2016 for his humanitarian efforts, the 2019 Chairman's Award for Lifetime Achievement in Economic Development from the International Economic Development Council, and the 2019 "Go Global"

Award for Economic Analysis from the International Trade Council. He dedicates a significant portion of his time to pro bono work aimed at helping to solve pressing social problems such as hunger, indigent healthcare, poverty, and child maltreatment.

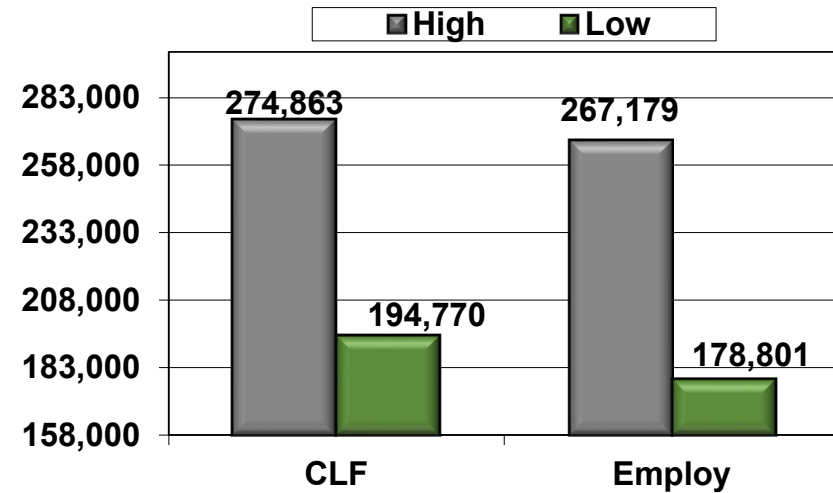
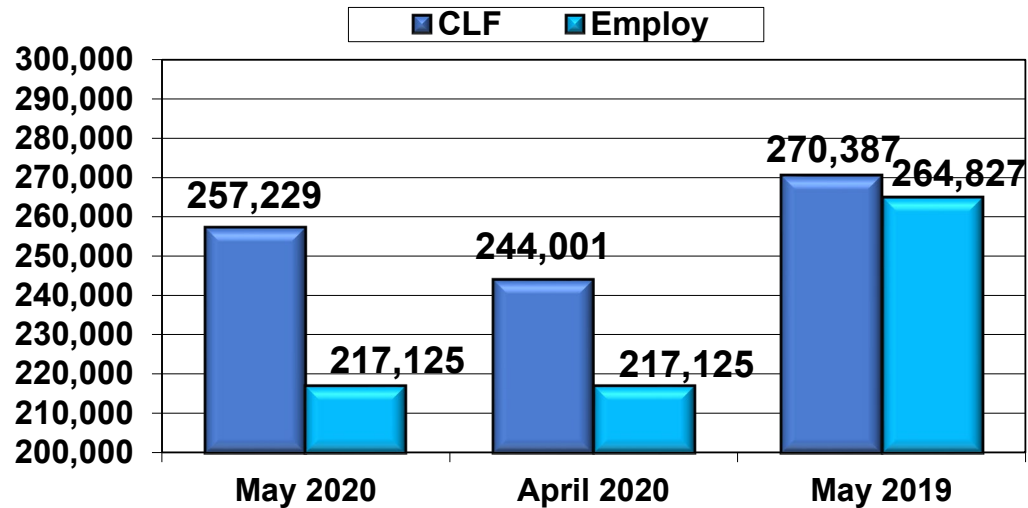


May 2020 Midland MSA Employment Information



	May 2020	April 2020	May 2019	High	Low
Civilian Labor Force	102,288	98,074	109,702	111,020 (Feb 2020)	70,762 (Jan 2010)
Employment	89,563	88,168	107,762	108,522 (Dec 2019)	66,000 (Jan 2010)
Unemployment	12,725	9,906	1,940	12,725 (May 2020)	1,788 (May 2019)
Unemployment Rate	12.4%	10.1%	1.8%	12.4% (May 2020)	1.7% (Apr 2019)

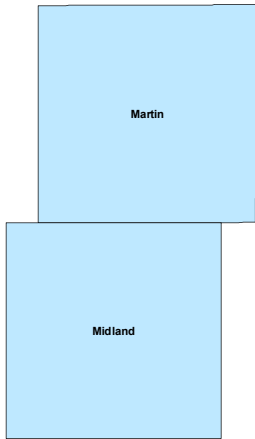
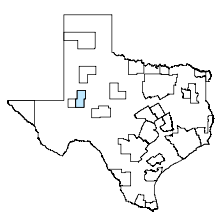
May 2020 Permian Basin Workforce Development Area Employment Information



	May 2020	April 2020	May 2019	High	Low
Civilian Labor Force	257,229	244,001	270,387	274,863 (Feb 2020)	194,770 (Jan 2010)
Employment	222,687	217,125	264,827	267,179 (Feb 20120)	178,801 (Jan 2010)
Unemployment	34,542	26,876	5,560	34,542 (May 2020)	5,115 (Apr 2019)
Unemployment Rate	13.4%	11.0%	2.1%	13.4% (May 2020)	1.9% (Apr 2019)

Midland MSA

May 2020

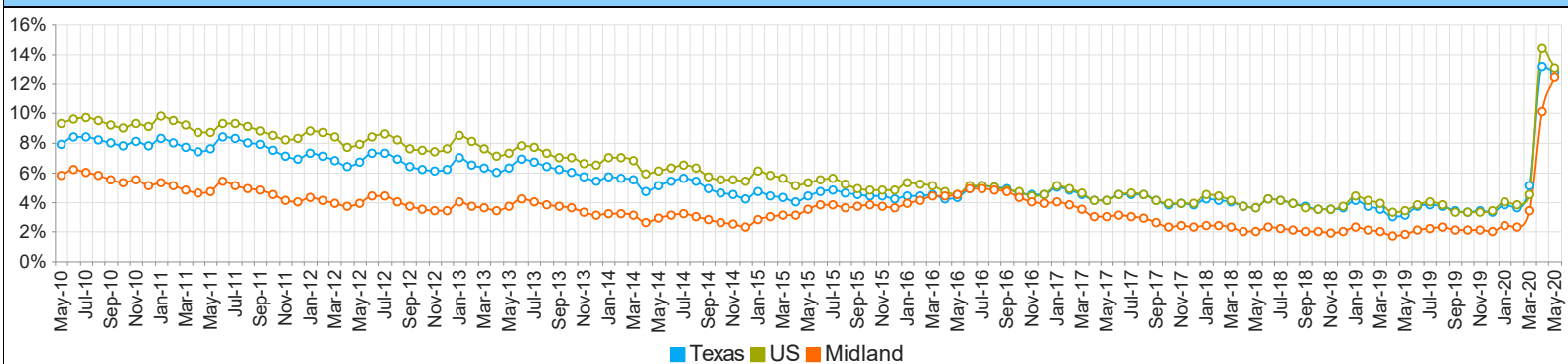


MSA Labor Force Statistics				
	May-20	Apr-20	May-19	Yearly Change
Civilian Labor Force	102,288	98,074	109,702	-7,414
Employed	89,563	88,168	107,762	-18,199
Unemployed	12,725	9,906	1,940	10,785
Unemployment Rate	12.4%	10.1%	1.8%	10.6%

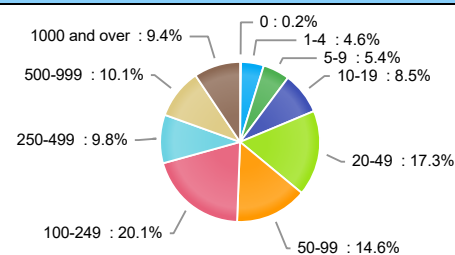
Texas Labor Force Statistics				
	May-20	Apr-20	May-19	Yearly Change
Civilian Labor Force	13,462,785	12,953,286	13,926,760	-463,975
Employed	11,752,162	11,259,524	13,491,168	-1,739,006
Unemployed	1,710,623	1,693,762	435,592	1,275,031
Unemployment Rate	12.7%	13.1%	3.1%	9.6%

US Labor Force Statistics				
	May-20	Apr-20	May-19	Yearly Change
Civilian Labor Force	157,975,000	155,830,000	162,655,000	-4,680,000
Employed	137,461,000	133,326,000	157,152,000	-19,691,000
Unemployed	20,514,000	22,504,000	5,503,000	15,011,000
Unemployment Rate	13.0%	14.4%	3.4%	9.6%

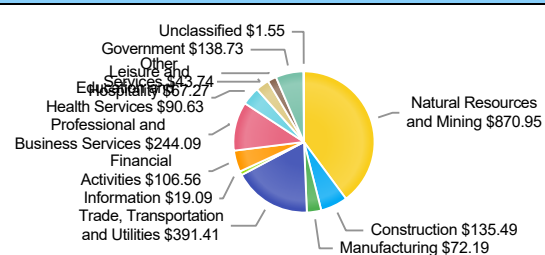
Historical Unemployment Rates



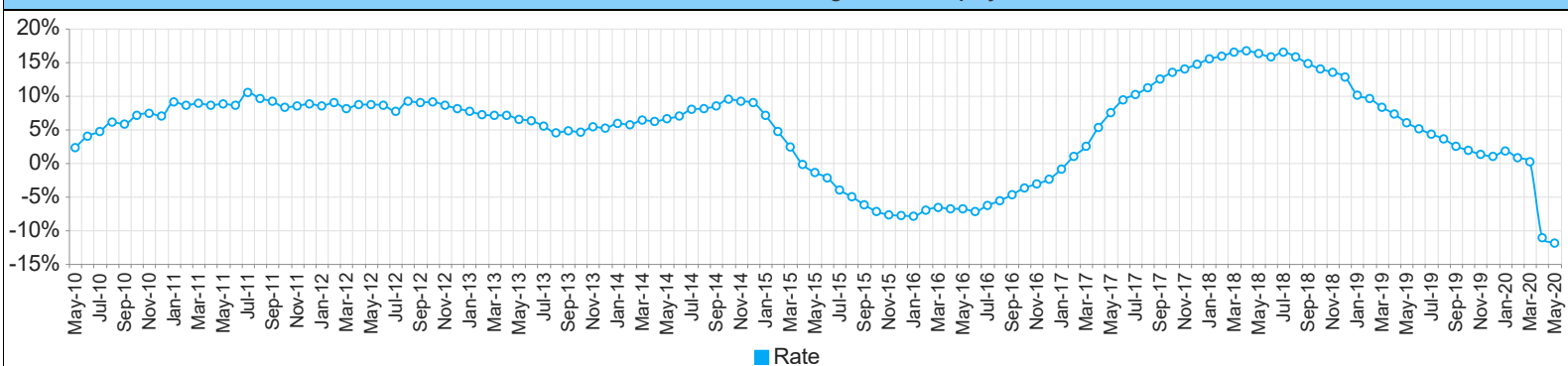
Employment by Size Class (4th Quarter 2019)



Wages by Industry (in millions) (4th Quarter 2019)



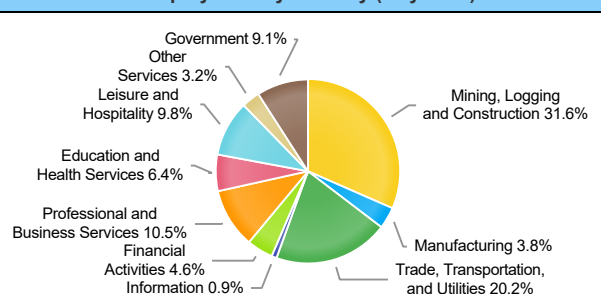
Annual Growth Rate Total Non-agricultural employment



Employment by Industry (May 2020)

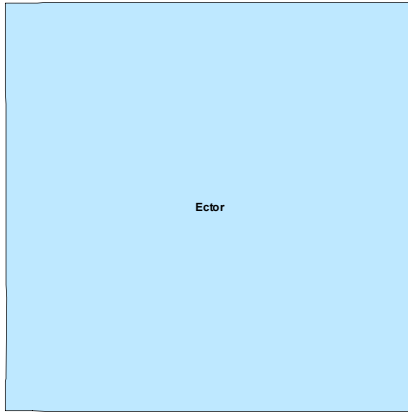
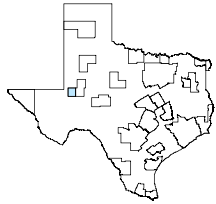
Industry	Current Month Employment	% Monthly Change	% Yearly Change
Total Nonfarm	101,100	-0.9%	-11.9%
Mining, Logging and Construction	31,900	-4.2%	-22.0%
Manufacturing	3,800	2.7%	-9.5%
Trade, Transportation, and Utilities	20,400	-1.4%	-7.3%
Information	900	-10.0%	-10.0%
Financial Activities	4,700	0.0%	0.0%
Professional and Business Services	10,600	0.0%	2.9%
Education and Health Services	6,500	0.0%	-8.5%
Leisure and Hospitality	9,900	11.2%	-9.2%
Other Services	3,200	-5.9%	-22.0%
Government	9,200	0.0%	-3.2%

Employment by Industry (May 2020)



Odessa MSA

May 2020

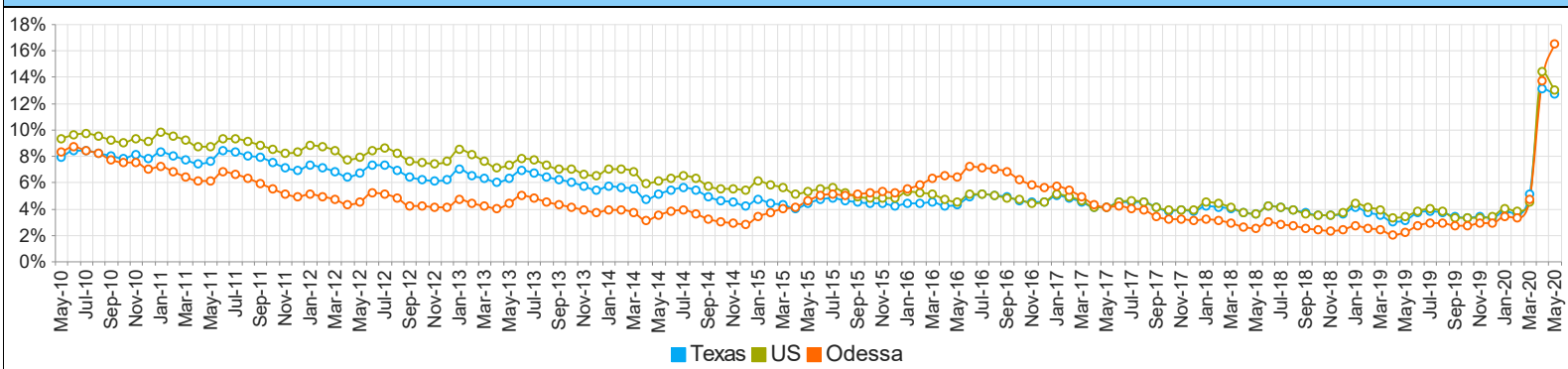


MSA Labor Force Statistics				
	May-20	Apr-20	May-19	Yearly Change
Civilian Labor Force	84,591	79,892	87,802	-3,211
Employed	70,621	68,955	85,848	-15,227
Unemployed	13,970	10,937	1,954	12,016
Unemployment Rate	16.5%	13.7%	2.2%	14.3%

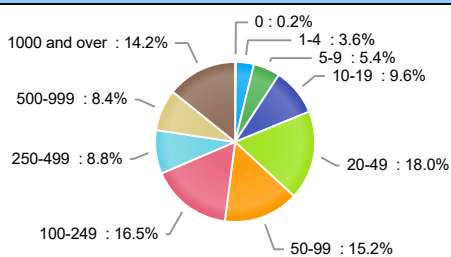
Texas Labor Force Statistics				
	May-20	Apr-20	May-19	Yearly Change
Civilian Labor Force	13,462,785	12,953,286	13,926,760	-463,975
Employed	11,752,162	11,259,524	13,491,168	-1,739,006
Unemployed	1,710,623	1,693,762	435,592	1,275,031
Unemployment Rate	12.7%	13.1%	3.1%	9.6%

US Labor Force Statistics				
	May-20	Apr-20	May-19	Yearly Change
Civilian Labor Force	157,975,000	155,830,000	162,655,000	-4,680,000
Employed	137,461,000	133,326,000	157,152,000	-19,691,000
Unemployed	20,514,000	22,504,000	5,503,000	15,011,000
Unemployment Rate	13.0%	14.4%	3.4%	9.6%

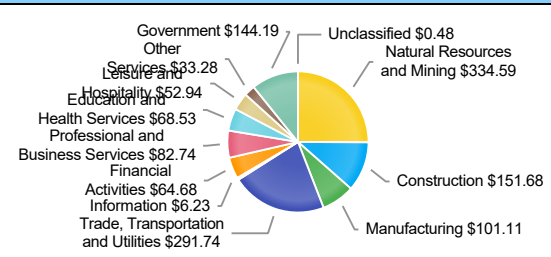
Historical Unemployment Rates



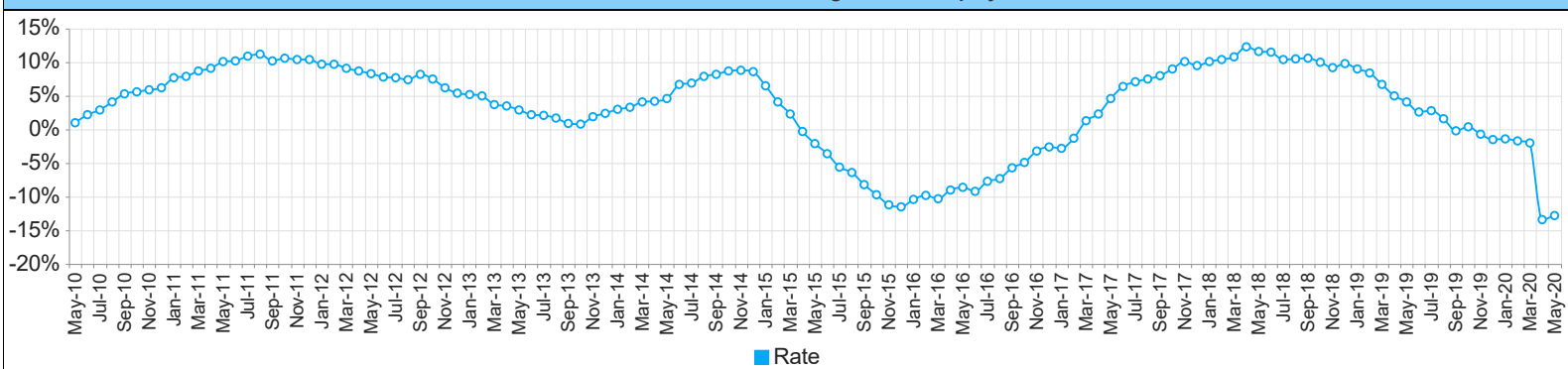
Employment by Size Class (4th Quarter 2019)



Wages by Industry (in millions) (4th Quarter 2019)



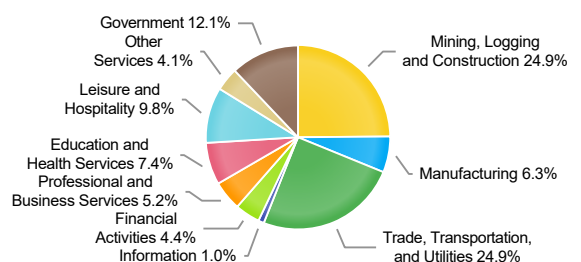
Annual Growth Rate Total Non-agricultural employment



Employment by Industry (May 2020)

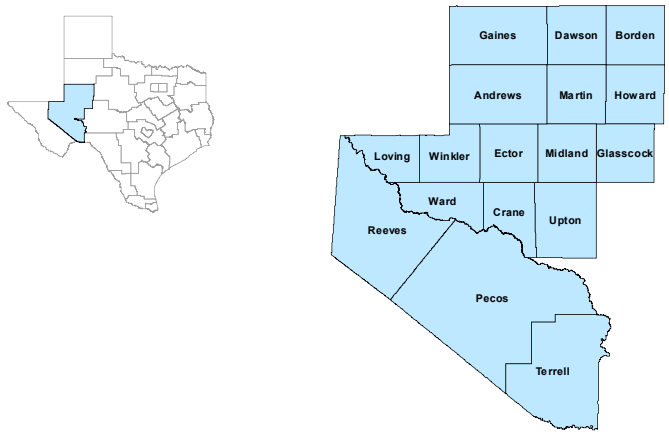
Industry	Current Month Employment	% Monthly Change	% Yearly Change
Total Nonfarm	73,400	0.5%	-12.8%
Mining, Logging and Construction	18,300	-4.2%	-19.4%
Manufacturing	4,600	2.2%	-13.2%
Trade, Transportation, and Utilities	18,300	1.7%	-3.7%
Information	700	0.0%	0.0%
Financial Activities	3,200	-8.6%	-11.1%
Professional and Business Services	3,800	8.6%	-17.4%
Education and Health Services	5,400	1.9%	3.8%
Leisure and Hospitality	7,200	16.1%	-20.0%
Other Services	3,000	3.4%	-21.1%
Government	8,900	-4.3%	-13.6%

Employment by Industry (May 2020)



Permian Basin Workforce Development Area

May 2020



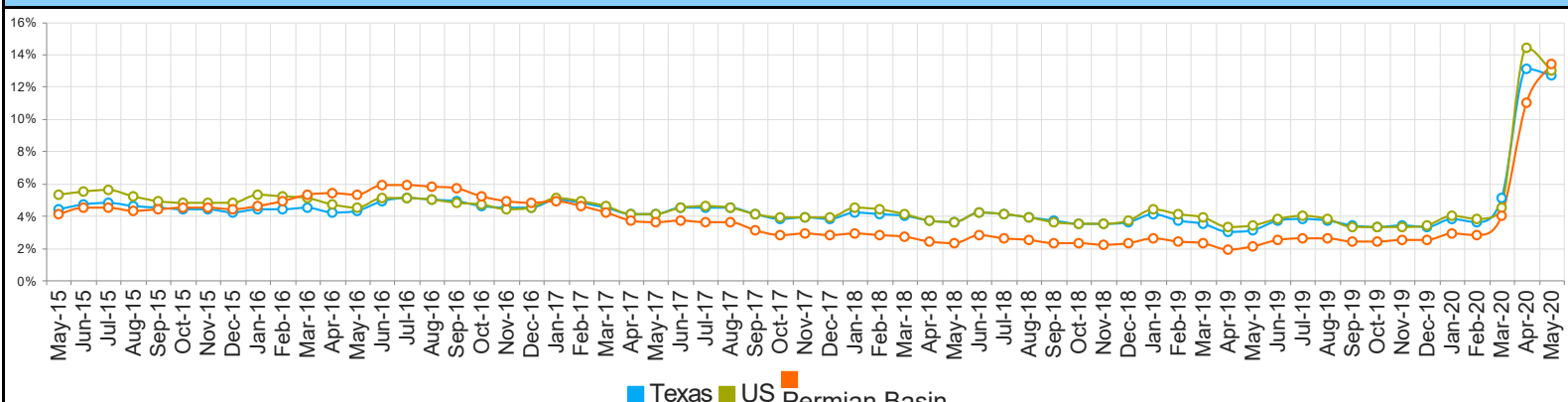
WDA Labor Force Statistics				
	May-20	Apr-20	May-19	Yearly Change
Civilian Labor Force	257,229	244,001	270,387	-13,158
Employed	222,687	217,125	264,827	-42,140
Unemployed	34,542	26,876	5,560	28,982
Unemployment Rate	13.4%	11.0%	2.1%	11.3%

Texas Labor Force Statistics				
	May-20	Apr-20	May-19	Yearly Change
Civilian Labor Force	13,462,785	12,953,286	13,926,760	-463,975
Employed	11,752,162	11,259,524	13,491,168	-1,739,006
Unemployed	1,710,623	1,693,762	435,592	1,275,031
Unemployment Rate	12.7%	13.1%	3.1%	9.6%

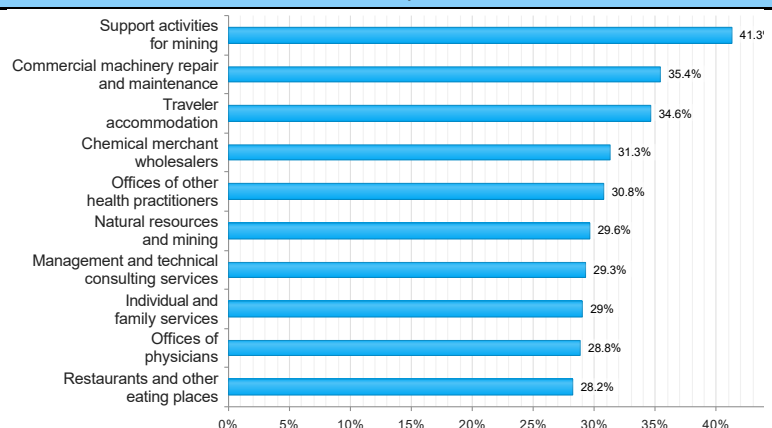
US Labor Force Statistics				
	May-20	Apr-20	May-19	Yearly Change
Civilian Labor Force	157,975,000	155,830,000	162,655,000	-4,680,000
Employed	137,461,000	133,326,000	157,152,000	-19,691,000
Unemployed	20,514,000	22,504,000	5,503,000	15,011,000
Unemployment Rate	13.0%	14.4%	3.4%	9.6%

Continued Claims for the Week of the 12th				
	May-20	Apr-20	May-19	Yearly Change
WDA	20,585	14,886	916	19,669
Texas	950,464	918,157	91,376	859,088

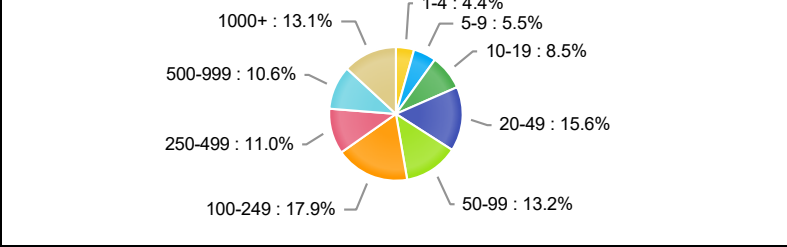
Historical Unemployment Rates



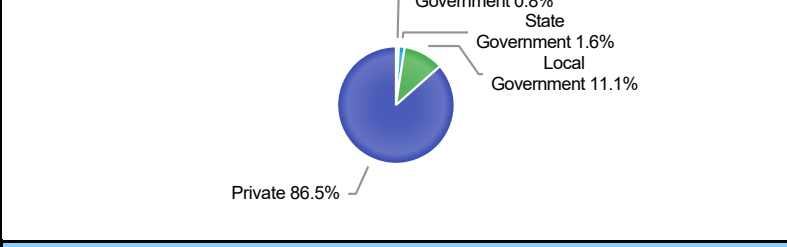
Projected Top Ten Fastest Growing Industries in WDA (% Growth 2016-2026)



Employment by Size Class (4th Quarter 2019)



Employment by Ownership (4th Quarter 2019)



Average Weekly Wage (4th Quarter 2019)					
	Q4 2019	Q3 2019	Q4 2018	Quarterly Change	Yearly Change
WDA	\$1,358	\$1,301	\$1,336	\$57	\$22
Texas	\$1,187	\$1,108	\$1,148	\$79	\$39
US	\$1,185	\$1,093	\$1,145	\$92	\$40

Employment by Industry (4th Quarter 2019, Percent Change)

Industry	Employment	% of Total	% Quarterly Change	% Yearly Change
Natural Resources and Mining	56,255	22.3%	-4.2%	-3.3%
Construction	21,070	8.4%	-4.3%	-10.0%
Manufacturing	11,141	4.4%	-2.6%	-1.7%
Trade, Transportation and Utilities	54,801	21.7%	0.9%	2.7%
Information	2,367	0.9%	2.0%	6.4%
Financial Activities	10,119	4.0%	-1.6%	5.5%
Professional and Business Services	17,594	7.0%	-0.1%	3.6%
Education and Health Services	38,949	15.4%	5.0%	1.8%
Leisure and Hospitality	25,325	10.0%	-1.2%	4.1%
Other Services	7,220	2.9%	-2.7%	1.2%
Public Administration	7,396	2.9%	1.6%	4.5%

Employment by Industry (4th Quarter 2019)

