



Board Binder Open Session

May 1, 2023

Agenda



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

NOTICE OF PUBLIC MEETING

In accordance with Chapter 551, Texas Government Code, as amended, notice is hereby given to the public that the Board of Directors of the Midland Development Corporation will meet in regular session, open to the public, in the Midland Chamber of Commerce board room, 303 West Wall Street, Suite 200, Midland, Texas, at 10:00 a.m. on May 1, 2023. A quorum of the Board of Directors of the Midland Development Corporation intends to be physically present at the aforementioned location.

Videoconference Information

Join Zoom Webinar

<https://us02web.zoom.us/j/82069036952?pwd=MmQrR01ST3RPRk16V3hadDlNaUFvZz09>

Passcode: 121876

Or join by phone:

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

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

Webinar ID: 820 6903 6952

Passcode: 121876

International numbers available: <https://us02web.zoom.us/j/82069036952?pwd=MmQrR01ST3RPRk16V3hadDlNaUFvZz09>

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

1. Call meeting to order.
2. Motion approving the minutes of the March 27, 2023, meeting of the Midland Development Corporation.
3. Motion approving the minutes of the April 3, 2023, meeting of the Midland Development Corporation.
4. Receive and discuss the Independent Auditors' Report and the Basic Financial Statements for the Fiscal Year 2021-2022 presented by Christy Weakland, Director of Finance for the City of Midland.
5. Resolution authorizing the execution of a promotional agreement with Bush Tennis Center, Inc., to advertise and publicize the City of Midland for the purpose of developing new and expanded business enterprises.
6. Resolution approving the execution of an economic development agreement with the City of Midland providing for median additions to be located at the intersection of State Highway 191 and State Highway 158; and authorizing payment therefor.

7. Resolution authorizing the execution of a professional services agreement with Kimley-Horn and Associates, Inc., in the amount of \$1,443,050.00 for professional services related the widening and improving of State Highway 158 from Sinclair Avenue to Wadley Avenue, and from Wadley Avenue to Briarwood Avenue; and authorizing payment for said agreement.
8. Resolution authorizing the execution of an amendment to that certain demolition contract with Midwest Wrecking Co. of Texas, Inc.; and authorizing payment for said amendment.
9. Resolution authorizing the execution of a letter agreement with the City of Midland for the demolition and removal of the existing facility and improvements located at 405 North Loraine Street, Midland, Texas.
10. Motion authorizing the Chairman to negotiate and execute an agreement in an amount not to exceed \$200,000.00 to provide ground cover for certain real property located on Block 35, Original Town of Midland, an addition to the City of Midland, Midland County, Texas.
11. Presentation on the April 2023 monthly expenses and economic development activity report from the Midland Development Corporation Executive Director and staff.
12. Pursuant to Texas Government Code §551.101, the Board of Directors will hold an Executive Session, which is closed to the public to discuss the following matters as permitted under the following Texas Government Code Sections:
 - a. Section 551.072 Deliberation Regarding Real Property
 - i. Discuss the sale, exchange, lease or value of real property described as Lots 5 and 6, Block 35, Original Town of Midland, an addition to the City of Midland, Midland County, Texas.
 - ii. Discuss the sale, exchange, lease or value of real property described as Lots 1A and 9-12, Block 35, Original Town of Midland, an addition to the City of Midland, Midland County, Texas.
 - b. Section 551.087 Deliberation Regarding Economic Development Negotiations
 - i. Discuss business prospects that the Midland Development Corporation seeks to have, locate, stay, or expand in or near the City of Midland, Texas, and discuss possible incentives, and discuss contract compliance on the part of businesses.

Posted this 28th day of April 2023.

Marcia Bentley German
City Governance Officer/City Secretary

March 27th Minutes

MIDLAND DEVELOPMENT CORPORATION

MINUTES

March 27, 2023

The Board of Directors of the Midland Development Corporation convened in special session at the Midland Chamber of Commerce board room, 303 West Wall Street, Suite 200, Midland, Texas, at 10:00 a.m. on March 27, 2023.

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

Board Members absent: Director Berry Simpson

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

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

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

1. Call meeting to order.

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

2. Resolution authorizing the execution of a Master Development Agreement between the City of Midland, Texas, the Midland Development Corporation, and C. Hodges Development Services, L.P., regarding the development of a certain 17.345-acre tract of land located in the southeast quarter of Section 35, Block 40, T-1-S, T&P RR Co. Survey, City and County of Midland, Texas.

Director Sams moved to approve Resolution ED-436 authorizing the execution of a Master Development Agreement between the City of Midland, Texas, the Midland Development Corporation, and C. Hodges Development Services, L.P., regarding the development of a certain 17.345-acre tract of land located in the southeast quarter of Section 35, Block 40, T-1-S, T&P RR Co. Survey, City and County of Midland, Texas. therefor, seconded by Director Bullock. The motion carried by the following vote: AYE: Gardaphe, Pennington, and Deck. NAY: None. ABSTAIN: Sisniega. ABSENT: Simpson.

Board recessed into executive session at 10:03 a.m.

3. Pursuant to Texas Government Code §551.101, the Board of Directors will hold an Executive Session, which is closed to the public to discuss the following matters as permitted under the following Texas Government Code Sections:
 - a. Section 551.072 Deliberation Regarding Economic Development Negotiations
 - i. Discuss business prospects that the Midland Development Corporation seeks to have, locate, stay, or expand in or near the City of Midland, Texas, and discuss possible incentives, and discuss contract compliance on the part of businesses.

Board reconvened into open session at 10:18 a.m.

All the business at hand having been completed, Chairman Gardaphe adjourned the meeting at 10:19 a.m.

Respectfully submitted,

Vanessa White, Deputy City Secretary

PASSED AND APPROVED the 1st Day of May 2023.

Jill Pennington, Secretary

April 3rd Minutes

MIDLAND DEVELOPMENT CORPORATION

MINUTES

April 03, 2023

The Board of Directors of the Midland Development Corporation convened in special session at the Midland Chamber of Commerce board room, 303 West Wall Street, Suite 200, Midland, Texas, at 10:00 a.m. on April 03, 2023.

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

Board Members absent: None

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

Council Member(s) present: Council Member Amy Stretcher Burkes

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

1. Call meeting to order.

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

2. Motion approving the minutes of the March 6, 2023, meeting of the Midland Development Corporation.

Director Pennington moved to approve minutes of the March 6, 2023, meeting of the Midland Development Corporation, seconded by Director Simpson. The motion carried by the following vote: AYE: Gardaphe, Sams, Sisniega, Bullock and Deck. NAY: None. ABSTAIN: None. ABSENT: None.

3. Presentation from City of Midland Aquatics.

Brad Swendig, Executive Director of the City of Midland Aquatics, Inc., gave an overview presentation about the aquatics center, the promotion of the City of Midland and the need for a new swimming pool liner that needs to be replaced in the large competition pool.

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

Director Sams moved to approve Resolution ED-437 authorizing the execution of a promotional agreement with City of Midland Aquatics, Inc., to advertise and publicize the City of Midland for the purpose of developing new and expanded business enterprises, seconded by Director Sisniega. The motion carried by the following vote: AYE: Gardaphe, Bullock, Pennington, Deck and Simpson. NAY: None. ABSTAIN: None. ABSENT: None.

5. Presentation from Hispanic Cultural Center of Midland.

Charlene Romero McBride, Interim Executive Director of the Hispanic Cultural Center gave an overview of the art, dance, and music programs.

6. Resolution authorizing the execution of a promotional agreement with Hispanic Cultural Center of Midland, Inc., to advertise and publicize the City of Midland for the purpose of developing new and expanded business enterprises.

Director Sisniega moved to approve Resolution ED-438 authorizing the execution of a promotional agreement with Hispanic Cultural Center of Midland, Inc., to advertise and publicize the City of Midland for the purpose of developing new and expanded business enterprises., seconded by Director Pennington. The motion carried by the following vote: AYE: Gardaphe, Bullock, Simpson, Sams, and Deck. NAY: None. ABSTAIN: None. ABSENT: None.

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

Sara Harris gave an overview of the month's expenses, and economic development activity noting that there are continued disbursements for the downtown demolition project as work is completed, and that the board has made commitments over the past month totaling just over \$8 million. Sales tax numbers continue to increase year over year. Gabrielle Franks updated the board with the social media stats. Sammi Steele gave an overview of the business retention and expansion program in March.

All the business at hand having been completed, Chairman Gardaphe adjourned the meeting at 11:08 a.m.

Respectfully submitted,

Vanessa White, Deputy City Secretary

PASSED AND APPROVED the 1st Day of May 2023.

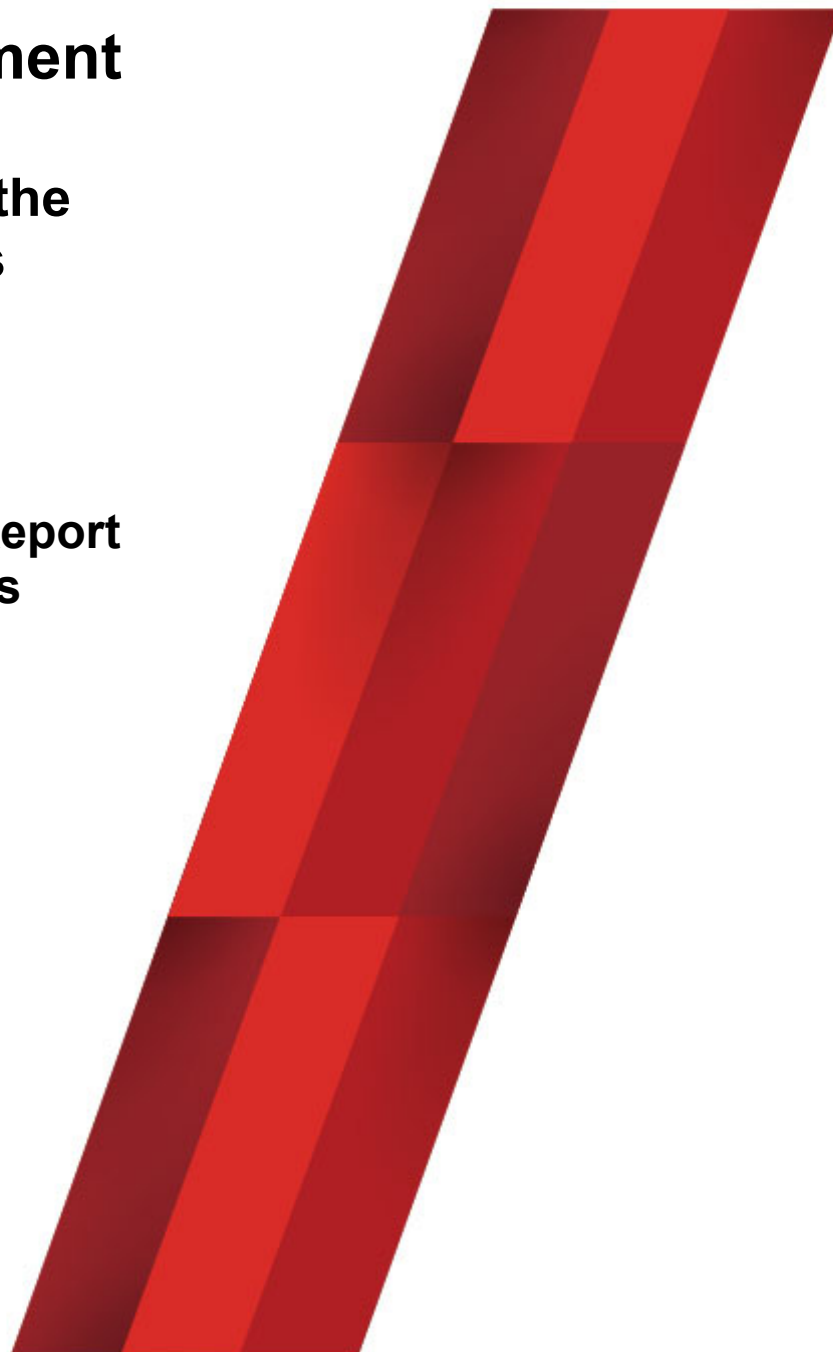
Jill Pennington, Secretary

Fiscal Year 2022 Audit

**Midland Development
Corporation**
A Component Unit of the
City of Midland, Texas

**Independent Auditor's Report
and Financial Statements**

September 30, 2022



Midland Development Corporation
A Component Unit of the City of Midland, Texas
September 30, 2022

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Independent Auditor's Report

Board of Directors
The Midland Development Corporation
Midland, Texas

Opinions

We have audited the financial statements of the governmental activities and the major fund of the Midland Development Corporation (MDC), as of and for the year ended September 30, 2022, and the related notes to the financial statements, which collectively comprise the MDC's basic financial statements as listed in the table of contents.

In our opinion, the accompanying financial statements referred to above present fairly, in all material respects, the respective financial position of the governmental activities and the major fund of the MDC, as of September 30, 2022, and the respective changes in financial position for the year then ended in accordance with accounting principles generally accepted in the United States of America.

Basis for Opinions

We conducted our audit in accordance with auditing standards generally accepted in the United States of America (GAAS). Our responsibilities under those standards are further described in the "Auditor's Responsibilities for the Audit of the Financial Statements" section of our report. We are required to be independent of the MDC, and to meet our other ethical responsibilities, in accordance with the relevant ethical requirements relating to our audit. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinions.

Emphasis of Matter

As discussed in *Note 1* to the financial statements, the MDC adopted Governmental Accounting Standards Board Statement No. 87, *Leases*, in fiscal year 2022. Our opinions are not modified with respect to this matter.

Responsibilities of Management for the Financial Statements

Management is responsible for the preparation and fair presentation of the financial statements in accordance with accounting principles generally accepted in the United States of America, and for the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

In preparing the financial statements, management is required to evaluate whether there are conditions or events, considered in the aggregate, that raise substantial doubt about the MDC's ability to continue as a going concern for 12 months beyond the financial statement date, including any currently known information that may raise substantial doubt shortly thereafter.

Auditor's Responsibilities for the Audit of the Financial Statements

Our objectives are to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes our opinions. Reasonable assurance is a high level of assurance but is not absolute assurance and therefore is not a guarantee that an audit conducted in accordance with GAAS will always detect a material misstatement when it exists. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control. Misstatements are considered material if there is a substantial likelihood that, individually or in the aggregate, they would influence the judgment made by a reasonable user based on the financial statements.

In performing an audit in accordance with GAAS, we:

- Exercise professional judgment and maintain professional skepticism throughout the audit.
- Identify and assess the risks of material misstatement of the financial statements, whether due to fraud or error, and design and perform audit procedures responsive to those risks. Such procedures include examining, on a test basis, evidence regarding the amounts and disclosures in the financial statements.
- Obtain an understanding of internal control relevant to the audit in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the MDC's internal control. Accordingly, no such opinion is expressed.
- Evaluate the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluate the overall presentation of the financial statements.
- Conclude whether, in our judgment, there are conditions or events, considered in the aggregate, that raise substantial doubt about the MDC's ability to continue as a going concern for a reasonable period of time.

We are required to communicate with those charged with governance regarding, among other matters, the planned scope and timing of the audit, significant audit findings, and certain internal control related matters that we identified during the audit.

Required Supplementary Information

Accounting principles generally accepted in the United States of America require that the management's discussion and analysis and the budgetary comparison be presented to supplement the basic financial statements. Such information is the responsibility of management and, although not a part of the basic financial statements, is required by the Governmental Accounting Standards Board who considers it to be an essential part of financial reporting for placing the basic financial statements in an appropriate operational, economic, or historical context. We have applied certain limited procedures to the required supplementary information in accordance with GAAS, which consisted of inquiries of management about the methods of preparing the information and comparing the information for consistency with management's responses to our inquiries, the basic financial statements, and other knowledge we obtained during our audit of the basic financial statements. We do not express an opinion or provide any assurance on the information because the limited procedures do not provide us with sufficient evidence to express an opinion or provide any assurance.

FORVIS, LLP

**Dallas, Texas
March 21, 2023**

Midland Development Corporation
A Component Unit of the City of Midland, Texas
Management's Discussion and Analysis (Unaudited)
Year Ended September 30, 2022

As management of the Midland Development Corporation (MDC), we offer readers of the MDC financial statements this narrative overview and analysis of the financial activities of the MDC for the fiscal year ended September 30, 2022.

Financial Highlights

The net position of the MDC was \$54.0 million at September 30, 2022, an increase of \$6.9 million from the prior year net position as of September 30, 2021 of \$47.1 million.

At September 30, 2022, amounts restricted for economic development incentives in the general fund increased from \$25.0 million at September 30, 2021, to \$26.4 million at September 30, 2022.

Effective October 1, 2021, the MDC adopted Governmental Account Standards Board Statement No. 87, *Leases*. Comparative information presented herein has not been restated for the adoption of GASB 87 because the basic financial statements present fiscal year 2022 only.

Overview of the Financial Statements

This discussion and analysis are intended to serve as an introduction to the MDC's basic financial statements. The MDC's basic financial statements comprise three components: 1) government-wide financial statements, 2) fund financial statements, and 3) notes to the basic financial statements.

This report also contains required supplementary information in addition to the basic financial statements themselves.

Government-wide Financial Statements

The statement of net position presents information on all of the MDC's assets and liabilities, with the difference between the two reported as net position. Over time, increases, or decreases in net position may serve as a useful indicator of whether the financial position of the MDC is improving or deteriorating.

The statement of activities presents information showing how the government's net position changed during the most recent fiscal year. All changes in net position are reported as soon as the underlying event giving rise to the change occurs, regardless of the timing of related cash flows.

Thus, revenues and expenses are reported in this statement for some items that will result in cash flows in future fiscal periods.

Both of the government-wide financial statements display functions of the MDC that are principally supported by sales taxes. The governmental activities of the MDC include general government and economic development only.

Midland Development Corporation
A Component Unit of the City of Midland, Texas
Management's Discussion and Analysis (Unaudited)
Year Ended September 30, 2022

Fund Financial Statements

A fund is a grouping of related accounts that is used to maintain control over resources that have been segregated for specific activities or objectives. The MDC, like other state and local governments, uses fund accounting to ensure and demonstrate compliance with finance-related legal requirements. The only fund of the MDC is a governmental fund.

Governmental Fund

A governmental fund is used to account for essentially the same functions reported as governmental activities in the government-wide financial statements. However, unlike the government-wide financial statements, governmental fund financial statements focus on near-term inflows and outflows of spendable resources, as well as on balances of spendable resources available at the end of the fiscal year. Such information may be useful in evaluating a government's near-term financing requirements.

Because the focus of a governmental fund is narrower than that of the government-wide financial statements, it is useful to compare the information presented for governmental funds with similar information presented for governmental activities in the government-wide financial statements. By doing so, readers may better understand the long-term impact of the government's near-term financing decisions. Both the governmental fund balance sheet and the governmental fund statement of revenues, expenditures, and changes in fund balance provide a reconciliation to facilitate this comparison between the governmental fund and governmental activities.

The financial statements presented for the MDC are the same at the government-wide and fund levels, with the exception of compensated absences, capital lease obligations, and capital assets, because the nature of the assets, liabilities, revenues, and expenses that were reported at the government-wide level were such that they also met the criteria for reporting at the fund level.

Notes to the Basic Financial Statements

The notes provide additional information that is essential to a full understanding of the data provided in the government-wide and fund financial statements.

Required Supplementary Information

In addition to the basic financial statements and accompanying notes, this report also presents certain required supplementary information concerning the MDC's annual budget. The MDC adopts an annual appropriated budget for its general fund. A budgetary comparison schedule has been provided for the general fund to demonstrate compliance with this budget.

Midland Development Corporation
A Component Unit of the City of Midland, Texas
Management's Discussion and Analysis (Unaudited)
Year Ended September 30, 2022

Government-wide Financial Analysis

As noted earlier, net position may serve over time as a useful indicator of a government's financial position. At September 30, 2022, assets exceeded liabilities by \$54.0 million, an increase of \$6.9 million from the September 30, 2021, amount of \$47.1 million. Additionally, in fiscal year 2022, the MDC had a \$12.3 million increase in total assets, due to a strong year operationally and the impact of the adoption of GASB 87, *Leases*, which also required the recognition of \$4.4 million in lease receivables and related deferred inflows of resources.

MDC's Net Position

	Governmental Activities	
	2022	2021
Current and other assets	\$ 31,648,297	\$ 25,695,808
Capital and lease assets, net	28,392,203	22,040,414
Total assets	60,040,500	47,736,222
Accounts and retainage payable	811,610	514,899
Noncurrent liabilities	876,710	134,054
Total liabilities	1,688,320	648,953
Deferred inflows of resources	4,398,423	-
Net investment in capital assets	27,442,011	21,947,057
Restricted for economic development	26,511,746	25,140,212
Total net position	\$ 53,953,757	\$ 47,087,269

The net position of MDC for 2021 is not restated for the impact of GASB 87, *Leases*.

Midland Development Corporation
A Component Unit of the City of Midland, Texas
Management's Discussion and Analysis (Unaudited)
Year Ended September 30, 2022

MDC's Changes in Net Position

	Governmental Activities	
	2022	2021
Revenues		
Program revenues		
Charges for services	\$ 976,644	\$ 976,647
Operating grants and contributions	2,500	-
General revenues		
Sales taxes	15,263,204	11,608,808
Investment earnings (loss)	(118,562)	17,035
Miscellaneous	55,104	6,620
	<hr/>	<hr/>
Total revenues	16,178,890	12,609,110
	<hr/>	<hr/>
Expenses		
General government	1,539,752	1,369,786
Economic development	7,802,649	11,119,832
	<hr/>	<hr/>
Total expenses	9,342,401	12,489,618
	<hr/>	<hr/>
Increase (Decrease) in Net Position	6,836,489	119,492
Net Position – October 1, as Previously Reported	47,087,269	46,967,777
	<hr/>	<hr/>
Adjustment applicable to prior years (see Note 1)	29,999	
Net Position - October 1, as Restated	47,117,268	-
	<hr/>	<hr/>
Net Position – September 30	\$ 53,953,757	\$ 47,087,269
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The MDC's general revenues for governmental activities provided \$15.2 million in fiscal year 2022 as compared to \$11.6 million in fiscal year 2021. This increase is primarily attributable to an increase in sales tax resulting from a upturn in the local economy due to increased oil and gas activity and increased consumer spending during the fiscal year. The revenues were used to pay for expenses associated with general government and economic development activities of \$9.3 million in fiscal year 2022, compared to \$12.5 million in fiscal year 2021. Governmental activities are not self-supporting and are paid for through general revenues.

The most significant expense items of the MDC governmental activities are those associated with economic development activities of \$7.8 million, during the year ended September 30, 2022. Economic development activities decreased by \$3.3 million in fiscal year 2022 due to fewer prior year commitments coming due.

Midland Development Corporation
A Component Unit of the City of Midland, Texas
Management's Discussion and Analysis (Unaudited)
Year Ended September 30, 2022

Financial Analysis of the Governmental Fund

As noted earlier, the MDC uses fund accounting to ensure and demonstrate compliance with finance-related legal requirements.

Governmental Fund

The focus of the MDC's governmental fund is to provide information on near-term inflows, outflows, and balances of spendable resources. Such information is useful in assessing the MDC's financing requirements. In particular, unassigned fund balance serves as a useful measure of a government's net resources available for spending at the end of the fiscal year.

The general fund is the chief operating fund and the only fund of the MDC. Total fund balance increased \$1.3 million from 2021 to 2022 primarily due to an increase in sales tax and a decrease in economic development activities, which were somewhat offset by an increase in capital outlay. As a measure of the General Fund's liquidity, it may be useful to compare total fund balance to total fund expenditures. Total fund balance represents 177 percent of total general fund expenditures. All of the \$26.4 million fund balance is restricted for economic development.

General Fund Budgetary Highlights

Actual revenues for fiscal year 2022 exceeded the final budget amount by \$5.2 million. This is primarily due to sales tax income being \$5.3 million higher than budgeted.

Differences between the final budget and actual expenditures resulted in MDC expenditures being \$6.2 million under budget for fiscal year 2022. The major sources of this variance are direct business incentives provided by the MDC, which were under budget by \$7.3 million, offset by capital outlay being over budget by \$2.6 million and general government expenditures being \$1.6 million over budget.

There were no budgetary adjustments during fiscal year 2022.

Capital and Lease Assets

MDC's investment in capital and lease assets for its governmental type activities as of September 30, 2022, amounts to \$28.4 million (net of accumulated depreciation and amortization). This investment in capital and lease assets includes land, buildings, improvements other than buildings, machinery and equipment, infrastructure, lease assets, and construction in progress. Major additions to capital and lease assets in fiscal year 2022 include land, construction in progress, and recognition of MDC's lease assets.

Midland Development Corporation
A Component Unit of the City of Midland, Texas
Management’s Discussion and Analysis (Unaudited)
Year Ended September 30, 2022

	Governmental Activities	
	2022	2021
Land	\$ 9,760,769	\$ 4,940,640
Buildings	12,092,020	12,265,038
Improvements other than buildings	2,339,602	2,397,276
Machinery and equipment	73,896	93,268
Infrastructure	1,011,795	1,065,372
Lease assets	837,423	-
Construction in progress	2,276,698	1,278,820
Total capital and lease assets, net	\$ 28,392,203	\$ 22,040,414

Major capital assets events during the current fiscal year included the following:

- Purchase of land at a cost of approximately \$4.8 million.
- Various projects related to main lane, bridge, and intersection improvements located at Todd Drive and State Loop 250 at a cost of approximately \$1 million.

Additional information on MDC’s capital assets can be found in the notes to financial statements.

Economic Factors and Next Year’s Budgets and Rates

The budgetary process for fiscal year 2023 focused on the allocation of resources to economic development activities, MDC's assets, and contractual payments for administration of the MDC. The budget presented for MDC operations for the 2022-2023 fiscal year totals \$22.3 million.

The fiscal year 2023 operating budget is supported by combined revenues of \$11.9 million. The major source of this revenue is sales tax of \$11 million.

The revenue budget for the 2022-2023 fiscal year is expected to fall short of expenditures by \$10.4 million.

Request for Information

This financial report is designed to provide a general overview of the MDC’s finances for all those with an interest in the government’s finances. Questions concerning any of the information provided in this report or requests for additional financial information should be addressed to the Finance Director, MDC, 300 N. Loraine, Midland, TX 79702-1152.

Midland Development Corporation
A Component Unit of the City of Midland, Texas

Statement of Net Position
September 30, 2022

Assets

Cash and cash equivalents	\$	16,596,840
Investments		7,704,935
Sales tax receivable		2,781,136
Interest and dividends receivable		74,936
Lease receivable		4,425,204
Prepayments		58,667
Notes receivable		6,579
Capital and lease assets (net of accumulated depreciation and amortization)		<u>28,392,203</u>
Total assets	\$	<u><u>60,040,500</u></u>

Liabilities, Deferred Inflows of Resources, and Net Position

Liabilities

Accounts payable	\$	806,498
Retainage payable		5,112
Noncurrent liabilities		
Due within one year		130,462
Due in more than one year		<u>746,248</u>
Total liabilities		<u>1,688,320</u>

Deferred Inflows of Resources

Leases		<u>4,398,423</u>
Total liabilities		<u>4,398,423</u>

Net Position

Net investment in capital assets		27,442,011
Restricted for economic development		<u>26,511,746</u>
Total net position		<u>53,953,757</u>
Total liabilities, deferred inflows of resources, and net position	\$	<u><u>60,040,500</u></u>

Midland Development Corporation
A Component Unit of the City of Midland, Texas
Statement of Activities
Year Ended September 30, 2022

Functions/Programs	Expenses	Program Revenues			Net (Expense) Revenue and Changes in Net Assets Governmental Activities
		Charges for Services	Operating Grants and Contributions	Capital Grants and Contributions	
Governmental Activities					
General government	\$ 1,539,752	\$ -	\$ 2,500	\$ -	\$ (1,537,252)
Economic development	7,802,649	976,644	-	-	(6,826,005)
Total governmental activities	<u>\$ 9,342,401</u>	<u>\$ 976,644</u>	<u>\$ 2,500</u>	<u>\$ -</u>	<u>(8,363,257)</u>
General Revenues					
Sales taxes					15,263,204
Investment loss					(118,562)
Miscellaneous					<u>55,104</u>
Total general revenues					<u>15,199,746</u>
Change in net position					<u>6,836,489</u>
Net Position – Beginning, as Previously Reported					47,087,269
Adjustment applicable to prior years (see <i>Note 1</i>)					<u>29,999</u>
Net Position – Beginning					<u>47,117,268</u>
Net Position – Ending					<u>\$ 53,953,757</u>

Midland Development Corporation
A Component Unit of the City of Midland, Texas
Balance Sheet – General Fund
September 30, 2022

Assets

Cash and cash equivalents	\$	16,596,840
Investments		7,704,935
Sales tax receivable		2,781,136
Interest and dividends receivable		74,936
Lease receivable		4,425,204
Prepayments		58,667
Notes receivable		<u>6,579</u>
 Total assets	 \$	 <u><u>31,648,297</u></u>

Liabilities, Deferred Inflows of Resources, and Fund Balance

Liabilities

Accounts payable	\$	806,498
Retainage payable		<u>5,112</u>
 Total liabilities		 <u>811,610</u>

Deferred Inflows of Resources

Leases		<u>4,398,423</u>
 Total deferred inflows of resources		 <u>4,398,423</u>

Fund Balance

Nonspendable		
Prepayments		58,667
Restricted		
Economic development		<u>26,379,597</u>
 Total fund balance		 <u>26,438,264</u>
 Total liabilities, deferred inflows of resources, and fund balance	 \$	 <u><u>31,648,297</u></u>

Midland Development Corporation
A Component Unit of the City of Midland, Texas
Reconciliation of the Balance Sheet to the Statement of Net Position
September 30, 2022

Fund balance of governmental fund	\$ 26,438,264
Amounts reported for governmental activities in the statement of net position are different because	
Capital and lease assets used in governmental activities are not financial resources and, therefore, are not reported in the fund.	28,392,203
Long-term liabilities, including lease obligations and compensated absences, are not due and payable in the current period and, therefore, are not reported in the fund.	<u>(876,710)</u>
Net position of governmental activities	<u>\$ 53,953,757</u>

Midland Development Corporation
A Component Unit of the City of Midland, Texas
Statement of Revenues, Expenditures, and Changes in Fund Balance –
General Fund
Year Ended September 30, 2022

Revenues	
Sales taxes	\$ 15,263,204
Investment loss	(118,562)
Rentals	976,644
Intergovernmental	2,500
Other	<u>55,104</u>
Total revenues	<u>16,178,890</u>
 Expenditures	
General government	
Administration	891,984
Economic development	7,802,649
Capital outlay	6,064,422
Debt service	
Lease payments	154,115
Interest	<u>8,365</u>
Total expenditures	<u>14,921,535</u>
Net change in fund balance	1,257,355
Fund Balance, Beginning of Year	<u>25,180,909</u>
Fund Balance, End of Year	<u><u>\$ 26,438,264</u></u>

Midland Development Corporation
A Component Unit of the City of Midland, Texas
Reconciliation of the Statement of Revenues, Expenditures, and
Changes in Fund Balance to the Statement of Activities
Year Ended September 30, 2022

Net change in fund balance – governmental fund	\$	1,257,355
<p>Amounts reported for <i>governmental activities</i> in the the statement of activities are different because</p>		
Governmental funds report capital outlays as expenditures. However, in the statement of activities the cost of those assets is allocated over their estimated useful lives and reported as depreciation and amortization expense. This is the amount by which capital outlays exceeded depreciation and amortization in the current period.		5,416,937
The repayment of the principal on leases consumes the current financial resources of governmental funds, but has no effect on net position.		154,115
Current year changes in long-term liabilities for compensated absences required the use of current financial resources; but they are not reported as expenses in the statement of activities.		<u>8,082</u>
Change in net position of governmental activities	\$	<u><u>6,836,489</u></u>

Midland Development Corporation
A Component Unit of the City of Midland, Texas
Notes to Financial Statements
September 30, 2022

Note 1: Nature of Operations and Summary of Significant Accounting Policies

Nature of Operations and Reporting Entity

The Midland Development Corporation (MDC), a component unit of the City of Midland, Texas (City), is a legally separate nonprofit corporation organized under the *Texas Development Corporation Act of 1979*, Article 5190.6 Vernon's Texas Revised Civil Statutes Annotated as amended and governed by Section 4A of the Act. The MDC was incorporated in February 2002. The purpose of the MDC is to:

1. keep existing jobs in Midland;
2. keep existing businesses in Midland;
3. foster the expansion of businesses currently located in Midland;
4. attract new industry and businesses to Midland;
5. provide long-term employment opportunities for Midlanders;
6. promote and develop industrial and manufacturing enterprises in order to eliminate unemployment and underemployment;
7. promote and encourage employment and the public welfare of, for, and on behalf of the City;
8. promote areas of the City with a large number of substandard, deteriorated, or deteriorating structures, which impairs the sound growth of the City or constitutes an economic and social liability;
9. develop areas of the City that should be developed in order to meet the development objectives of the City; and
10. consider the impact on any local business before providing an incentive to any corporation or entity. The financial reporting entity presented in the accompanying financial statements of the MDC includes the primary corporate entity, the Midland Development Corporation. The MDC has no component units.

The accounting policies of the MDC, as reflected in the accompanying financial statements, conform to U.S. generally accepted accounting principles for local government units as prescribed by the Governmental Accounting Standards Board (GASB), the accepted body for promulgating governmental accounting and reporting principles.

Midland Development Corporation A Component Unit of the City of Midland, Texas

Notes to Financial Statements

September 30, 2022

The entirety of the MDC Board is appointed by the City Council and the City can impose its will upon the MDC. Additionally, the City Council and the MDC Boards are not substantively the same and the MDC does not provide services entirely or almost entirely to the City. Therefore, MDC is a discretely presented component unit of the City. The MDC began operations on February 1, 2002.

Basic Financial Statements

The basic financial statements are presented at two basic levels:

1. The government-wide level, where all statements are prepared using the economic resources measurement focus and the accrual basis of accounting. These statements present all assets, liabilities, deferred inflows of resources, revenues, expenses, and gains and losses of the MDC as governmental activities.
2. The fund level, where governmental fund statements are prepared using the current financial resources measurement focus and the modified accrual basis of accounting.

Government-wide and Fund Financial Statements

As previously discussed, the basic financial statements of the MDC are presented at two basic levels, the government-wide level and the fund level. These statements focus on the MDC as a whole at the government-wide level and on the major fund at the fund level. Government-wide financial statements (*i.e.*, the statement of net position and the statement of activities) report information on all activities of the MDC. There is no interfund activity in the MDC financial statements. Governmental activities, which are normally supported by taxes, are the only reported activities.

The government-wide statement of net position reports all financial and capital resources of the MDC and is presented in “assets less liabilities equals net position” format. Assets and liabilities are presented in relative order of liquidity with liabilities that have an average maturity of more than one year separated into the amount due within one year and the amount due in more than one year.

The government-wide statement of activities identifies the relative financial burden of each of the MDC’s functions on the taxpayers by identifying direct expenses and the extent of self-support through program revenues. Direct expenses are clearly identifiable expenses that can be specifically associated with a function. Program revenues are revenues derived directly from the function or other sources that reduce the net cost of the function to be financed from general government revenues. Program revenues are: 1) charges to customers who purchase, use, or directly benefit from services provided by a function and which are generated by that function, 2) grants and contributions restricted to operating requirements of a function, and 3) grants and contributions restricted to capital requirements of a function. Items such as taxes, investment earnings, and nonspecific grants are not included as program revenues but are reported as general revenues that normally cover the net cost of a function.

Midland Development Corporation A Component Unit of the City of Midland, Texas

Notes to Financial Statements

September 30, 2022

Fund level financial statements are presented for the governmental fund, with a focus on the major fund. A major fund is a fund meeting certain specific asset, liability, revenue, or expenditure criteria relative to all funds of that type. The only major fund used by the MDC is the General Fund which is the only operating fund of the MDC. This fund accounts for the economic development activities of the MDC: collection of sales tax revenues and expenses associated with marketing and promotion of Midland.

Measurement Focus and Basis of Accounting

The government-wide statements are prepared using the economic resources measurement focus and the accrual basis of accounting. Revenues are recognized when earned and expenses are recognized when a liability is incurred, regardless of the timing of related cash flows.

Governmental fund financial statements are reported using a current financial resources measurement focus and modified accrual basis of accounting. Under the modified accrual basis of accounting, revenues are recognized when susceptible to accrual, *i.e.*, both measurable and available. “Measurable” means the amount of the transaction can be determined and “available” means collectible within the current period or soon enough thereafter to be used to pay liabilities of the current period. In the case of sales taxes, available means due within the current period and collected within the current period or soon enough thereafter to be used to pay liabilities of the current period. Such time thereafter shall not exceed 60 days. Expenditures are generally recorded when a fund liability is incurred, except for compensated absences and lease liabilities, which are recorded only when due. Governmental fund revenues, which have been accrued based upon the susceptible to accrual concept, are sales taxes.

Use of Estimates

The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect the reported amounts of assets, liabilities, and deferred inflows of resources, and disclosure of contingent assets and liabilities at the date of the financial statements, and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates.

Equity in Cash and Investments

The City pools a portion of the resources of its various funds and component units, including MDC, to facilitate the management of cash and enhance investment earnings. Records are maintained that reflect each fund or component unit’s equity in the pooled investments.

Midland Development Corporation

A Component Unit of the City of Midland, Texas

Notes to Financial Statements

September 30, 2022

Cash, Cash Equivalents, and Investments

Cash and cash equivalents include any cash on hand, demand deposits, and any highly liquid investments that have an original maturity of three months or less from date of purchase. Investments in Texas Local Government Investment Pool (TexPool), TexStar, and Texas Class are considered cash equivalents as the amounts are available on demand. Investments, other than investments in TexPool, TexStar, Texas CLASS are recorded at fair value based upon verifiable market prices.

Notes Receivable

MDC provides loans to new and expanding businesses that meet certain qualifications aligned with MDC's purpose. In some instances, the loans are given in the form of forgivable loans and are forgiven if all requirements are met.

Capital and Lease Assets

Capital and lease assets are defined as a purchase or other acquisition of land, equipment, facilities, or other similar assets or the cost of construction of such asset the cost of which is in excess of \$5,000 (\$15,000 for leased assets) and has a useful life of more than one year. These assets include property, plant, equipment, and all other tangible assets purchased or acquired. Purchased or constructed assets are carried at historical cost. Contributed assets are recorded at acquisition value at the time of donation.

Major outlays for capital assets and improvements are capitalized as capital projects are completed. Depreciable capital and lease assets are depreciated or amortized using the straight line method over the following estimated useful lives, or the lease term, whichever is shorter:

Asset Classification	Years
Buildings	40
Improvements other than buildings	20
Machinery and equipment	6
Infrastructure	50

Midland Development Corporation
A Component Unit of the City of Midland, Texas

Notes to Financial Statements

September 30, 2022

Compensated Absences

The MDC's employees earn paid time off, which may either be taken or accumulated, subject to a specified maximum, until paid upon retirement or termination. The MDC has accrued paid time off using the regular pay and termination pay rates in effect at the statement of net position date plus an additional amount for compensation-related payments based on the criteria set forth in GASB Statement No. 16. The liability has been accrued in the government-wide statements. A liability for those amounts is recorded in the governmental fund only if the liability has matured as a result of employee resignations or retirements.

Lease Receivable

The MDC is a lessor for a noncancellable lease of a building and recognized a related lease receivable and a deferred inflow of resources. At the commencement of a lease, the MDC initially measures the lease receivable at the present value of payments expected to be received during the lease term. Subsequently, the lease receivable is reduced by the principal portion of lease payments received. The deferred inflow of resources is initially measured as the initial amount of the lease receivable, adjusted for lease payments received at or before the lease commencement date. Subsequently, the deferred inflow of resources is recognized as revenue over the life of the lease term.

The MDC monitors changes in circumstances that would require a remeasurement of its leases, and will remeasure the lease receivable and deferred inflows of resources if certain changes occur that are expected to significantly affect the amount of the lease receivable.

Lease Payable

The MDC is a lessee for noncancellable leases. The MDC recognizes a lease liability and an intangible right-to-use lease asset (lease asset) in the financial statements. The MDC recognizes a lease assets and related liability with an initial, individual value of \$15,000 or more. At the commencement of a lease, the MDC initially measures the lease liability at the present value of payments expected to be made during the lease term. Subsequently, the lease liability is reduced by the principal portion of lease payments made. The lease asset is initially measured as the initial amount of the lease liability, adjusted for lease payments made at or before the lease commencement date, plus certain initial direct costs. Subsequently, the lease asset is amortized on a straight-line basis over its useful life.

The MDC monitors changes in circumstances that would require a remeasurement of its leases and will remeasure the lease asset and liability if certain changes occur that are expected to significantly affect the amount of the lease liability.

Midland Development Corporation
A Component Unit of the City of Midland, Texas
Notes to Financial Statements
September 30, 2022

Deferred Inflows of Resources

In addition to liabilities, the statement of net position includes a separate section for deferred inflows of resources. Deferred inflows of resources represent an acquisition of net assets that applies to a future period and so will not be recognized as an inflow of resources (revenue) until that time. In the government-wide financial statements the MDC reports deferred amounts related to leases.

Net Position

Net position of the MDC is classified in two components on its statements of net position.

- Net investment in capital assets consists of capital assets net of accumulated depreciation and reduced by the outstanding balances of borrowings used to finance the purchase or construction of those assets.
- Restricted net position is made up of noncapital assets that must be used for a particular purpose, as specified by creditors, grantors or donors external to the MDC.

Nature and Purpose of Classifications of Fund Balances

Governmental funds fund balances classified as restricted can only be used for specific purposes pursuant to constraints imposed by state law for Type A development corporations. Fund balances classified as nonspendable include amounts that cannot be spent because they are not in a spendable form.

Net Position/Fund Balance Flow Assumption

It is the MDC's policy to consider restricted net position/fund balances to have been depleted before unrestricted net position/fund balances is applied.

Adoption of GASB Statement No. 87, Leases (GASB 87)

In 2022, the MDC adopted GASB 87. The Statement establishes a single model for lease accounting based on the principle that leases represent the financing of the right to use an underlying asset. The adoption of GASB 87 resulted in changes in presentation of financial statements and related disclosures in the notes to the financial statements. The changes included restating net position as of the beginning of the year to remove the difference in the previously reported capital lease liability and related capital asset as of October 1, 2021.

Midland Development Corporation
A Component Unit of the City of Midland, Texas
Notes to Financial Statements
September 30, 2022

Note 2: Deposits, Investments, and Investment Income

Custodial Credit Risk – Deposits

In the case of deposits, this is the risk that, in the event of a bank's failure, the MDC's deposits may not be returned to it. As of September 30, 2022, the MDC's bank balance not held with the City's pooled cash was \$173,287 and was fully insured as of September 30, 2022. The remainder of MDC deposits, which are combined with the City's deposits, were fully insured or collateralized as of September 30, 2022. The carrying amount of the total deposits as of September 30, 2022, was \$4,378,168.

In addition to these bank balances, Wells Fargo Bank serves as custodian for the City's eligible federal treasury and agency securities and municipal bonds and MDC's share is \$7,704,935 at September 30, 2022.

Investments

The MDC's investment policies are governed by State statutes. The MDC is governed by the City's investment policies which further limit State statutes such that eligible investments include the following:

Obligations of the United States or its Agencies and Instrumentalities

1. United States of America Treasury securities
2. Farmers Home Administration (FmHA) obligations backed by the full faith and credit of the United States
3. Federal Home Loan Bank (FHLBs) bonds
4. Federal National Mortgage Association (Fannie Mae or FNMA) notes and debentures
5. Farm Credit System Obligations
6. Federal Home Loan Mortgage Corporation (Freddie Mac or FHLMC) obligations, *i.e.*, discount notes or debentures.

Direct Obligations of the State of Texas or its Agencies

Texas State, City, County, or School District General Obligation Bonds with a remaining maturity of 10 years or less having been rated as to investment quality by Moody's or Standard and Poor's (nationally recognized investment rating firms) and having received a rating of no less than "A" or its equivalent.

Midland Development Corporation

A Component Unit of the City of Midland, Texas

Notes to Financial Statements

September 30, 2022

Certificates of Deposit Issued by State and National Banks Domiciled in this State

Certificates of deposit issued by state and national banks domiciled in this state that are: (1) guaranteed or insured by the Federal Deposit Insurance Corporation, or its successor; or (2) secured by obligations that are described in V.T.C.A., Local Government Code Sections 105.001 et seq.

Fully Collateralized Repurchase Agreements Having a Defined Termination Date

Fully collateralized direct repurchase agreements and reverse repurchase agreements with a defined termination date of no more than 90 days from the date such investment is purchased, secured by obligations of the United States or its agencies and instrumentalities with a market value of not less than the amount of the funds disbursed and held by a custodian for the MDC.

Repurchase agreements must be purchased through a primary government securities dealer, as defined by the Federal Reserve, or a bank domiciled in Texas. Money received under the terms of a reverse repurchase agreement shall be used to acquire additional eligible investments whose maturity does not exceed the expiration date of the reverse repurchase agreement.

Money Market Funds

Money market funds fully authorized by State statute of both public and private sponsorship.

Other Securities or Obligations Approved by the City Council

Other such securities or obligations as authorized by State statute and approved by the City Council.

Investment Pools

The MDC invests in three governmental pools: TexPool, TexStar, and Texas Class of which were created under the *Interlocal Cooperation Act*, Texas Government Code Ann. Ch. 791 and the Texas Government Code Ann. Ch. 2256.

Investments of the MDC, other than for amortized cost pools, are valued based upon quotes obtained from Interactive Data Pricing and Reference Data (IDC). Investments in these pools are valued based upon the value of pool shares. No investments are reported at amortized cost, except for the City's investments in the Texas Local Government Investment Pool. The MDC invests in three pools; TexStar, Texas Cooperative Liquid Assets Securities System Trust (Texas CLASS), and the Texas Local Government Investment Pool (TexPool), which were created under the *Interlocal Cooperation Act*, Texas Government Code Ann. Ch. 791, and the Texas Government Code Ann. Ch. 2256. TexStar and Texas CLASS are rated AAAM and seeks to maintain a constant net asset value of \$1.00. Investments in the pools are considered to be cash equivalents when preparing these financial statements.

Midland Development Corporation

A Component Unit of the City of Midland, Texas

Notes to Financial Statements

September 30, 2022

The Texas Treasury Safekeeping Trust Company (the Trust) is trustee of TexPool and is a limited purpose trust company authorized pursuant to Texas Government Code Ann. Section 404.103 for which the Texas State Comptroller is the sole officer, director, and shareholder. The advisory board of TexPool is composed of members appointed pursuant to the requirements of the *Public Funds Investment Act*, Texas Government Code Ann. chapter 2256. TexStar is governed by a five-member Board of Directors comprising three government officials or employees and two other persons with expertise in public finance. Additionally, TexStar has a five-member Advisory Board. Texas CLASS is supervised by a Board of Trustees (Board) who are elected by the Participants and shall be an odd number of three or more. Additionally, Texas CLASS has a five-member Advisory Board. Fair value of the MDC's position in the pools is, in all material respects, the same as the value of the pool shares. Investment income earned on pooled cash and investments is allocated to each fund based upon each fund's weighted-average daily cash and investment balances.

Credit Risk

In compliance with the MDC's investment policy, as of September 30, 2022, the MDC minimized credit risk by limiting investments to the safest types of securities and diversifying the portfolio so that potential losses on individual securities were minimized. The investment pools (which represent approximately 45 percent of the portfolio) are rated AAAM by Standard and Poor's. The Federal National Mortgage Association, Federal Home Loan Bank notes, and Federal Home Loan Mortgage Corporation obligations were all rated AAA by Standard and Poor's.

Interest Rate Risk

As a means of limiting its exposure to fair value losses arising from rising interest rates, the City's investment policy limits final stated maturities to ten years maximum with no more than 30 percent exceeding seven years and dollar weighted average portfolio maturity not to exceed five years in the investments listed above. The investment pools are presented as an investment with a maturity of less than one year because the average maturity of the pools is less than one year.

The MDC's investments carried at fair value as of September 30, 2022, are:

Investments	Fair Value	Weighted-Average Maturity (in Years)	Credit Risk
FHLB	\$ 4,390,849	5.96	AAA
FNMA	289,331	6.56	AAA
FHLMC	1,533,718	6.04	AAA
FFCB	1,078,184	6.65	AAA
Municipal bonds	412,853	4.06	AAA
TexPool	6,225,068	0.31	AAAm
TexStar	4,707,556	0.21	AAAm
Texas CLASS	1,286,048	0.22	AAAm
Total	\$ 19,923,607	3.33	

Midland Development Corporation
A Component Unit of the City of Midland, Texas

Notes to Financial Statements
September 30, 2022

Concentration of Credit Risk

The MDC's investment policy states that the portfolio(s) shall be diversified by type of investment and maturities to reduce risks resulting from undue investment concentration. At September 30, 2022, more than 5 percent of the MDC investments are in the following investments:

Investment	Amount
FHLB	\$ 4,390,849
FHLMC	1,533,718
FFCB	1,078,184
TexPool	6,225,068
TexStar	4,707,556
Texas CLASS	1,286,048

Fair Value of Investments

The MDC measures and records its investments using fair value measurement guidelines established by generally accepted accounting principles (GAAP). These guidelines recognize a three-tiered fair value hierarchy as follows:

Level 1 Quoted prices for identical investments in active markets;

Level 2 Observable inputs other than those in Level 1; and

Level 3 Unobservable inputs.

Debt and equity securities classified as Level 1 are valued using prices quoted in active markets for those securities. Debt and equity securities classified in Level 2 are valued using the following approaches: debt securities are normally valued based on price data obtained from observed transactions and market price quotations from broker dealers and/or pricing vendors; equity securities are valued using fair value per share for each fund. Securities classified as Level 3 have limited trade information, these securities are priced or using the last trade price or estimated using recent trade prices. The MDC has no Level 3 investments at September 30, 2022.

Midland Development Corporation
A Component Unit of the City of Midland, Texas
Notes to Financial Statements
September 30, 2022

The following table presents the fair value measurements of assets recognized in the accompanying financial statements measured at fair value on a recurring basis and the level within the fair value hierarchy in which the fair value measurements fall at September 30, 2022:

	Fair Value	Quoted Prices in Active Markets for Identical Assets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)
Investments by fair value level				
U.S. agency securities	\$ 7,292,082	\$ -	\$ 7,292,082	\$ -
Municipal bonds	412,853	-	412,853	-
Total investments by fair value level	<u>7,704,935</u>	<u>\$ -</u>	<u>\$ 7,704,935</u>	<u>\$ -</u>
Investments measured at net asset value				
TexStar	4,707,556			
TexClass	1,286,048			
Total investments at net asset value	<u>5,993,604</u>			
Investments measured at amortized cost				
TexPool	6,225,068			
Total investments at amortized cost	<u>6,225,068</u>			
Total investments	<u>\$ 19,923,607</u>			

Note 3: Receivables

The receivables as of September 30, 2022, for the MDC include sales tax receivables of \$2,781,136 due from the State of Texas, interest and dividends receivable of \$74,936, and lease receivable related to the MDC's noncancellable lease agreement of \$4,425,204.

MDC provides funds to other entities in which requirements, contained within agreements between the MDC and recipients, are to be met or funds are required to be returned to the MDC. Receivables are recorded until requirements are met. At the time requirements are met, MDC reduces its receivables and recognizes economic development expenses. Notes receivable of \$6,579 at September 30, 2022, are economic development agreements with an external entity.

Midland Development Corporation
A Component Unit of the City of Midland, Texas
Notes to Financial Statements
September 30, 2022

Note 4: Capital Assets

Capital assets activity for the year ended September 30, 2022:

	<i>Restated</i> Beginning Balance *	Additions	Retirements	Transfers/ Adjustments	Ending Balance
Governmental Activities					
Capital assets, not being depreciated					
Land	\$ 4,940,640	\$ 4,820,129	\$ -	\$ -	\$ 9,760,769
Construction in progress	1,278,820	997,878	-	-	2,276,698
Total capital assets, not being depreciated	6,219,460	5,818,007	-	-	12,037,467
Capital and lease assets, being depreciated/amortized					
Buildings	13,634,923	246,415	-	-	13,881,338
Improvements other than buildings	2,600,034	-	-	-	2,600,034
Machinery and equipment	162,581	-	-	-	162,581
Lease asset	998,210	-	-	-	998,210
Infrastructure	1,362,237	-	-	-	1,362,237
Total capital and lease assets, being depreciated/amortized	18,757,985	246,415	-	-	19,004,400
Less accumulated depreciation/amortization for					
Buildings	(1,433,243)	(356,075)	-	-	(1,789,318)
Improvements other than buildings	(202,758)	(57,674)	-	-	(260,432)
Machinery and equipment	(69,313)	(19,372)	-	-	(88,685)
Lease asset	-	(160,787)	-	-	(160,787)
Infrastructure	(296,865)	(53,577)	-	-	(350,442)
Total accumulated depreciation/amortization	(2,002,179)	(647,485)	-	-	(2,649,664)
Total capital and lease assets, being depreciated/amortized, net	16,755,806	(401,070)	-	-	16,354,736
Governmental activities capital and lease assets, net	\$ 22,975,266	\$ 5,416,937	\$ -	\$ -	\$ 28,392,203

*Restated for the adoption of GASB 87, *Leases*.

Depreciation and amortization expense of \$647,485 was charged to the economic development function/program of the governmental activities.

Note 5: Employee Benefit Plan

The MDC participates in a multiple-employer defined contribution salary deferral plan created in accordance with Internal Revenue Code Section 401(k). The plan is administered by the American Chamber of Commerce Executives Profit Sharing Plan. Active participants must be at least 21 years of age with a minimum of one year of eligibility service. The MDC contributes 9 percent of each eligible employee's total annual compensation to the plan. Employees may also make elective deferral contributions up to specified limits of their total compensation each year. The MDC will match those contributions up to a maximum of 3 percent of each participant's total annual compensation. The MDC contributed a total of \$1,764 to the plan during fiscal year 2022.

Midland Development Corporation
A Component Unit of the City of Midland, Texas

Notes to Financial Statements
September 30, 2022

Employees are immediately vested in their own contributions and earnings on those contributions and become vested in MDC contributions at 25 percent after one year of eligible service, 50 percent after two years, 75 percent after three years, and 100 percent after four years of eligible. Nonvested MDC contributions are forfeited upon termination of employment. Such forfeitures are used to cover a portion of the pension plan’s administrative expenses. There were no forfeitures during 2022.

Note 6: Long-term Obligations

The following is a summary of long-term obligation transactions for the MDC for the year ended September 30, 2022:

	Restated Beginning Balance*		Additions/ Completions		Retirements/ Adjustments		Ending Balance		Due Within One Year
Governmental Activities									
Compensated absences	\$ 40,697	\$	34,350	\$	(42,432)	\$	32,615	\$	22,504
Lease liability – primary government	654,479		-		(89,425)		565,054		41,236
Lease liability	343,731		-		(64,690)		279,041		66,722
Governmental activities long-term liabilities	<u>\$ 1,038,907</u>	\$	<u>34,350</u>	\$	<u>(196,547)</u>	\$	<u>876,710</u>	\$	<u>130,462</u>

* Restated for the adoption of GASB 87, *Leases*

Note 7: Leases

Leases Liability

The MDC has agreements for buildings, a hanger, and land, the terms of which expire in various years through 2049. During the fiscal year ended September 30, 2022, the MDC did not recognize any rental expense for variable payments not previously included in the measurement of the lease liability.

Two of the lease agreements for the hangar and land at the airport are with the City and have an ending lease liability balance of \$565,054 at September 30, 2022.

Midland Development Corporation
A Component Unit of the City of Midland, Texas
Notes to Financial Statements
September 30, 2022

The following is a schedule by year of payments under the leases as of September 30, 2022:

Fiscal Year Ending September 30,	Principal	Interest	Total
2023	\$ 107,958	\$ 8,234	\$ 116,192
2024	86,222	7,582	93,804
2025	88,542	6,924	95,466
2026	90,877	6,251	97,128
2027	18,223	5,777	24,000
2028-2032	94,609	25,391	120,000
2033-2037	100,708	19,292	120,000
2038-2042	107,200	12,800	120,000
2043-2047	114,110	5,890	120,000
2048-2049	35,646	354	36,000
	<u>\$ 844,095</u>	<u>\$ 98,495</u>	<u>\$ 942,590</u>

Leases Receivable

The MDC leases a building to a third party, the terms of which expire in 2035. The MDC recognized approximately \$387,000 in lease revenue and interest revenue during the current fiscal year related to the lease. As of September 30, 2022, the MDC's receivable for lease payments was \$4,425,204 and the balance of the deferred inflow of resources related to this lease was \$4,398,423.

Regulated Leases

In accordance with GASB 87, the MDC does not recognize a lease receivable and a deferred inflow of resources for regulated leases in which the MDC is the lessor. Regulated leases are certain leases that are subject to external laws, regulation, or legal rulings, e.g. the U.S. Department of Transportation and the Federal Aviation Administration, between airports and air carriers and other aeronautical users. The MDC has a regulated lease related to a sublease at the City of Midland's regional airport. The lease is for use of the land leased by MDC and subsequently subleased to the tenant. The tenant constructs or improves, owns, and maintains all the improvements on the land. These leases allow access to the land for aeronautical use. At the end of the ground lease, the improvements revert to City ownership. The MDC had 1 lease during the year that had terms exceeding one year. The revenue recognized for the leases during the fiscal year ended September 30, 2022 was \$976,644.

Midland Development Corporation
A Component Unit of the City of Midland, Texas
Notes to Financial Statements
September 30, 2022

The future lease receipts for the MDC regulated lease as of September 30, 2022, were as follows:

<u>Fiscal Year Ending September 30,</u>	<u>Payment</u>
2023	\$ 976,644
2024	976,644
2025	976,644
2026	976,644
2027	976,644
2028-2032	4,883,220
2033-2034	<u>1,058,031</u>
Total minimum lease payments	<u>\$ 10,824,471</u>

Note 8: Risk Management

The MDC is exposed to various risks of loss related to torts. For the purposes of the *Texas Tort Claims Act* (Subchapter A, Chapter 101, Texas Civil Practices and Remedies Code), the MDC is a governmental unit, and its actions are governmental functions and, therefore, are limited by governmental immunity. As of September 30, 2022, there were no claims outstanding. There has been no significant reduction in coverage from 2021 to 2022; nor have settlement amounts exceeded coverage for each of the past three years.

Note 9: Commitments and Contingencies

Litigation

No legal action arose in the ordinary course of the MDC's business during the fiscal year ended September 30, 2022.

Commitments

At September 30, 2022, the MDC had contracts for economic development commitments of \$10,004,249.

Midland Development Corporation
A Component Unit of the City of Midland, Texas
Notes to Financial Statements
September 30, 2022

Note 10: Related Party Transactions

A majority of the MDC board is appointed by the City and the City can impose its will upon MDC. Accordingly, MDC is a discretely presented component unit of the City.

The City allocates to the MDC an indirect cost percentage of administrative services for the MDC but paid through the City along with other indirect costs deemed necessary for operations. During the fiscal year ended September 30, 2022, the City's was reimbursed \$390,685 for these services.

Note 11: Future Change in Accounting Principle

The GASB also issued its Statement No. 94, *Public-Private and Public-Public Partnerships and Availability Payment Arrangements*. This statement improves financial reporting by addressing issues related to public-private and public-public partnership arrangements (PPPs). The MDC expects to first apply GASB 94 during the year ending September 30, 2023, using the facts and circumstance in place at the time of adoption. The impact of applying the Statement has not been determined.

The GASB also issued its Statement No. 96 (GASB 96), *Subscription-Based Information Technology Agreements*. This new statement provides guidance on the accounting and financial reporting for subscription-based information technology arrangements for government end users. This statement will become effective for MDC's fiscal year ending September 30, 2023. The impact of applying the Statement has not been determined.

Required Supplementary Information

Midland Development Corporation
A Component Unit of the City of Midland, Texas
Schedule of Revenues, Expenditures, and Changes in Fund Balance –
Budget and Actual – General Fund
Year Ended September 30, 2022

	Original / Final Budget	Actual	Variance
Revenues			
Sales taxes	\$ 10,000,000	\$ 15,263,204	\$ 5,263,204
Investment loss	-	(118,562)	(118,562)
Rentals	976,644	976,644	-
Intergovernmental	-	2,500	2,500
Other	-	55,104	55,104
	<u>10,976,644</u>	<u>16,178,890</u>	<u>5,202,246</u>
Total revenues	<u>10,976,644</u>	<u>16,178,890</u>	<u>5,202,246</u>
Expenditures			
General government	2,493,569	891,984	1,601,585
Economic development	15,117,404	7,802,649	7,314,755
Capital outlay	3,500,000	6,064,422	(2,564,422)
Debt service	-	162,480	(162,480)
	<u>21,110,973</u>	<u>14,921,535</u>	<u>6,189,438</u>
Total expenditures	<u>21,110,973</u>	<u>14,921,535</u>	<u>6,189,438</u>
Excess (deficiencies) of revenues over (under) expenditures	<u>(10,134,329)</u>	<u>1,257,355</u>	<u>11,391,684</u>
Net change in fund balance	(10,134,329)	1,257,355	11,391,684
Fund Balance, Beginning	<u>25,180,909</u>	<u>25,180,909</u>	<u>-</u>
Fund Balance, Ending	<u>\$ 15,046,580</u>	<u>\$ 26,438,264</u>	<u>\$ 11,391,684</u>

Midland Development Corporation
A Component Unit of the City of Midland, Texas
Notes to Schedule of Revenues, Expenditures, and Changes in Fund Balance –
Budget and Actual – General Fund
Year Ended September 30, 2022

Notes to Schedule:

The annual budget is legally adopted by the MDC Board and approved by the City Council of the City of Midland (City) on a basis consistent with U.S. generally accepted accounting principles.

The MDC Board follows these procedures in establishing the budget reflected for the MDC:

1. At least sixty (60) days prior to October 1 of each year, the MDC Board, with the assistance of the MDC Treasurer, prepares and adopts a proposed budget for the fiscal year beginning on the following October 1. The operating budget includes proposed expenditures and other such budgetary information as required by the City Council for approval and adoption.
2. The proposed budget is then submitted to the City Council for approval and is considered adopted upon formal approval by the City Council.
3. Expenditures may not exceed the appropriation for the adopted annual operating budget.
4. Supplemental appropriations during the year must be approved and adopted by the MDC Board and the City Council through passage of resolution.

Bush Tennis Center Promotional Agreement

RESOLUTION NO. _____

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

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

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

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

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

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

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

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

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

Directors voting "AYE":

Directors voting "NAY":

CHASE GARDAPHE,
Chairman of the Midland
Development Corporation

ATTEST:

JILL PENNINGTON,
Secretary for the Midland
Development Corporation

APPROVED AS TO FORM ONLY:

JOHN OHNEMILLER,
Attorney for the Midland
Development Corporation

PROMOTIONAL AGREEMENT

THIS AGREEMENT is entered into by and between the MIDLAND DEVELOPMENT CORPORATION (“MDC”), an economic development corporation existing under the authority of Chapter 504 of the Texas Local Government Code, and BUSH TENNIS CENTER, INC. (“BTC”), a 501(c)(3) organization.

I. Recitals

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

WHEREAS, the MDC Board of Directors finds that the expenditure of promotional funds for BTC’s construction of the Bush ACE Athletic Center in Midland will advertise and publicize the City of Midland for the purpose of developing new and expanded business enterprises, and will thereby enhance and promote economic development within the City of Midland; and

WHEREAS, it is the desire of the parties hereto to combine their efforts for the purpose of promoting the City of Midland;

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

II. MDC Funding

MDC agrees to provide to BTC funds in the amount of \$995,000.00 (the “Funds”), which shall be disbursed in one lump sum subject to the conditions and restrictions set forth herein. MDC’s provision of the Funds is contingent upon BTC securing \$11,228,370.00 in total commitments from all public and private sources by December 31, 2024, for the construction of the Bush ACE Athletic Center. MDC agrees to remit the Funds to BTC upon written certification by BTC that the \$11,228,370.00 has been secured.

III. Obligations of BTC

- A. **The Project.** Contingent upon securing the funding referenced in Section II, BTC agrees to construct the Bush ACE Athletic Center, to be located on the east side of Bush Tennis Center in Midland, Texas, for the purpose of providing a world class

Exhibit A

athletic and training facility for residents of the Permian Basin, which shall include five (5) indoor basketball courts, a 50-yard indoor turf field, and an 8,000 square-foot high-performance training facility (the “*Project*”). BTC agrees to use the Funds exclusively for the Project. BTC agrees to exercise its best efforts to advertise, publicize and promote the City of Midland and to advertise, publicize and promote BTC’s operations as being located in the City of Midland.

- B. **Completion.** Upon completion of the Project, BTC shall certify such to MDC in accordance with Section VII(B). BTC shall allow MDC reasonable access to the Project facilities for purposes of determining BTC’s compliance with this Agreement. Such access shall be with representatives of BTC and during normal business hours.
- C. **Repayment.** If MDC remits the Funds to BTC in accordance with Section III(A) and BTC subsequently fails to complete the Project by December 31, 2025, BTC shall repay the Funds to MDC upon receiving written demand from MDC.

On or before thirty (30) days following BTC’s receipt of written demand for the repayment of the Funds, the Funds shall be repaid, without interest, to MDC. Notwithstanding anything to the contrary contained anywhere in this Agreement, under no circumstances shall BTC be obligated to repay MDC an amount in excess of the total dollar amount of the funds actually received by BTC from MDC under this Agreement.

- D. **Records.** BTC shall maintain books of account with correct entries of all expenditures of the Funds provided under this Agreement. BTC shall maintain the Funds provided by MDC in a separate account and may not commingle the Funds with any other monies. BTC shall grant access to all paper and electronic records, books, documents, accounting procedures, practices or any other items relevant to this Agreement to MDC, or such other persons or entities designated by the MDC for the purposes of inspecting, auditing, or copying such books and records. All records, books, documents, accounting procedures, practices or any other items relevant to this Agreement shall be subject to examination or audit by MDC or such other persons or entities designated by MDC for such purposes.

IV. Term

Upon execution by the parties, this Agreement becomes effective on May 12, 2023, and shall terminate on December 31, 2026, or when terminated by mutual agreement of the parties, or when terminated as hereinafter provided.

**V.
Law**

The parties are aware of statutory limitations on the use of the funds provided herein under Chapters 501 and 504 of the Texas Local Government Code, and the parties acknowledge that the funds herein granted or guaranteed shall be utilized solely for purposes authorized under that law and by the terms of this Agreement.

**VI.
Special Conditions**

- A. **Financial Commitment.** Notwithstanding any provision hereof which might be interpreted otherwise, MDC's total financial commitment during the term of this Agreement shall not exceed \$995,000.00 in the aggregate.
- B. **Certification.** As to any certification required under this Agreement, BTC shall provide a letter from its executive director.
- C. **Payments.** The payment to be made to BTC under Section II shall be made upon a written request from BTC along with the submission of any certification and all necessary supporting documentation. The payment request and certification/documentation should be directed to MDC Executive Director, 200 North Loraine Street, Suite 610, Midland, Texas 79701.

**VII.
General Terms**

- A. **Entire Agreement.** This Agreement embodies the complete agreement of the parties hereto, superseding all oral or written, previous and contemporary agreements between the parties relating to matters in this Agreement; and except as otherwise provided herein, this Agreement cannot be modified or amended without a written agreement of the parties.
- B. **No Third-Party Beneficiary.** The parties' approval of the Agreement does not create a third-party beneficiary. There is no third-party beneficiary to this Agreement. No person or entity who is not a party to this Agreement shall have any third-party beneficiary or other rights hereunder.
- C. **Legal Relationship.** The parties are not, and shall not be considered as, joint venturers, partners, or agents of each other; and neither shall have the power to bind nor obligate the other, except as set forth in this Agreement. The parties agree not to represent to anyone that they are agents of one another or have any authority to act on behalf of one another. It is mutually understood and agreed that nothing in

this Agreement is intended or shall be construed as in any way creating or establishing any partnership, joint venture, or agency between MDC and BTC. Further, it is specifically understood and agreed that nothing in this Agreement is intended or shall be construed as creating a “Community of Pecuniary Interest” or “An Equal Right of Control” which would give rise to vicarious liability.

- D. **Terminations.** This Agreement may be terminated by mutual agreement of the parties or by either party, upon the failure of the other party to fulfill an obligation as set forth herein if the default is not cured within thirty (30) days after written notice from the other party.
- E. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument.
- F. **Venue.** The obligations of the parties to this Agreement are deemed to have been performed in Midland County, Texas, and if legal action is necessary to enforce same, exclusive venue shall be in Midland County, Texas. All payments under this Agreement are deemed to have taken place in Midland County, Texas. The obligations and undertakings of each of the parties to this Agreement shall be deemed to have been performed in Midland County, Texas.
- G. **Legal Construction.** In case one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions hereof and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.
- H. **Governing Law.** This Agreement is subject to all applicable state and federal laws, and the Company agrees that it will comply in all material respects with all such applicable laws, regulations, orders and rules of the State of Texas and other such governmental agencies. This Agreement shall be governed by and construed in accordance with the laws and court decisions of the State of Texas.
- I. **Assignment.** This Agreement shall be binding upon the parties hereto and their successors and assigns. This Agreement may not be assigned by BTC without the prior written consent of MDC.
- J. **Notices.** All notices to either party required under this Agreement shall be sent by certified U.S. mail, postage prepaid, addressed to such party at the addresses shown below. All notices shall be deemed given on the date so deposited in the mail, unless otherwise provided herein. Either party hereto may change the address below by sending written notice of such change to the other in the manner provided herein.

If to MDC:

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

If to BTC:

Executive Director
5700 Briarwood Ave.
Midland, Texas 79707

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

If to MDC:

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

If to BTC:

Executive Director
5700 Briarwood Ave
Midland, Texas 79707

- M. MDC and BTC hereby agree and acknowledge that this Agreement is supported by good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties.
- N. This Agreement shall not be effective until approved by the Midland City Council.

[Signature Pages Follow]

IN WITNESS WHEREOF, the MDC and BTC have executed this Agreement on the _____ day of _____, 2023.

**MIDLAND DEVELOPMENT
CORPORATION**

Chase Gardaphe, Chairman

ATTEST:

Jill Pennington, Secretary

[Signature Page Follows]

BUSH TENNIS CENTER, INC.

By: _____

Name: _____

Title: _____

THE STATE OF TEXAS §
 §
COUNTY OF MIDLAND §

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

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

Notary Public, State of Texas

Economic
Development
Agreement
SH 158 and SH 191
Medians

RESOLUTION NO. _____

RESOLUTION AUTHORIZING THE EXECUTION OF AN ECONOMIC DEVELOPMENT AGREEMENT WITH THE CITY OF MIDLAND PROVIDING FOR MEDIAN ADDITIONS TO BE LOCATED AT THE INTERSECTION OF STATE HIGHWAY 191 AND STATE HIGHWAY 158; AND AUTHORIZING PAYMENT THEREFOR

WHEREAS, the Board of Directors finds it to be in the public interest to authorize the execution of an economic development agreement with the City of Midland providing for median additions to be located at the intersection of State Highway 191 and State Highway 158;

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

SECTION ONE. That the Chairman and Secretary are hereby authorized to execute and attest, respectively, on behalf of the Midland Development Corporation, an economic development agreement with the City of Midland providing for median additions to be located at the intersection of State Highway 191 and State Highway 158. Said agreement being in a form substantially similar to that of Exhibit A, which is attached hereto and incorporated herein for all purposes.

SECTION TWO. That the City Comptroller is hereby authorized and directed to transfer funds to the City of Midland in accordance with the terms of said agreement from funds available in the Midland Development Corporation Fund (235) Operating Budget upon receipt of proper invoices or statements approved by the Executive Director of the Midland Development Corporation or her designee.

SECTION THREE. That the Executive Director of the Midland Development Corporation, or his/her designee, is hereby authorized and directed to administer all of the Midland Development Corporation's obligations under said agreement, including the issuance of all written notices and confirmations due thereunder.

On motion of Director _____, seconded by Director _____, the

above and foregoing resolution was adopted by the Board of Directors of the Midland Development Corporation at a regular meeting on the _____ day of _____, A.D., 2023, by the following vote:

Directors voting "AYE":

Directors voting "NAY":

CHASE GARDAPHE,
Chairman of the Midland
Development Corporation

ATTEST:

JILL PENNINGTON,
Secretary of the Midland
Development Corporation

APPROVED AS TO FORM ONLY:

JOHN OHNEMILLER,
Attorney for the Midland
Development Corporation

ECONOMIC DEVELOPMENT AGREEMENT

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

I. Recitals

- A. MDC and City desire to set forth the terms and conditions upon which Eighty-Six Thousand and No/100 Dollars (\$86,000.00) in incentive funds will be provided to City as consideration for its engineering and design work for median additions to be located at the intersection of State Highway 191 and State Highway 158 (the “*Project*”).
- B. The Project will facilitate commercial and industrial development in the City of Midland.
- C. The MDC Board of Directors (the “*Board*”) and the City Council of the City of Midland, Texas (the “*Council*”) find that the purpose of this Agreement qualifies as an infrastructure improvement project under Section 501.103 of the Texas Local Government Code, and is therefore eligible for MDC funding.
- D. The Board and the Council find that the Project and expenditures therefor are required or suitable for infrastructure necessary to promote or develop new or expanded business enterprises within the City of Midland.
- E. The Board and the Council find that this Agreement does not constitute a direct incentive to or expenditure on behalf of a business enterprise as described in Tex. Loc. Gov’t Code § 501.158.

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

Exhibit A

II. MDC Funding

- A. **Design Funds.** Within fifteen (15) days after receiving written notice from City that City has entered into a contract with a third party for completion of the Project, MDC shall provide to City incentive funds for in the amount of City's financial obligations under such agreement (the "*Design Funds*"). Notwithstanding any contrary provision contained herein, the Design Funds due and payable pursuant to this Agreement shall not exceed a total of Eighty-Six Thousand and No/100 Dollars (\$86,000.00).
- B. **Total Funds.** It is expressly understood that the Funds, cumulative in their amounts, shall not exceed a total of Eighty-Six Thousand and No/100 Dollars (\$86,000.00). MDC agrees to forgive repayment of the Funds if the conditions contained in Section III are met.

III. Obligations of City

- A. **The Project.** City agrees to engage in (or provide for) the following activities in furtherance of the Project: engineering and design work for the addition of medians at the intersection of State Highway 191 and State Highway 158. A depiction of the Project scope is contained in Exhibit A, which is attached hereto and incorporated herein for all purposes.
- B. **Completion.** Upon completion of the Project, City shall certify such to MDC in accordance with Section VII.B.
- C. **Repayment of Design Funds.** If City fails to provide for provide for the completion of the engineering and design work for the Project by December 31, 2024 (the "*Design Completion Date*"), then City agrees to repay all unused Design Funds to MDC. Any repayable Design Funds shall be repaid, without interest, within thirty (30) days following City's receipt of written notice from MDC that any portion of the unused Design Funds are due to be repaid pursuant to this Section.
- D. **Extensions.** The Design Completion Date set forth herein may be extended upon a written request from City to MDC for an extension of the time allowed to complete City's obligations required by this Agreement, and MDC providing to City written approval of such request.

IV. Term

Upon execution by all of the parties, this Agreement becomes effective on May 23, 2023, and shall terminate when the requirements set forth in Sections II and III are completed, or when terminated by mutual agreement of the parties, or when terminated as hereinafter provided.

V. Law

The parties are aware of statutory limitations on the Funds and the use of the Funds under Chapters 501 and 504 of the Texas Local Government Code, and the parties acknowledge that the Funds herein granted or guaranteed shall be utilized solely for purposes authorized under that law and by the terms of this Agreement.

VI. Documents

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

VII. Special Conditions

- A. **Financial Commitment.** Notwithstanding any provision hereof which might be interpreted otherwise, MDC's total financial commitment during the term of this Agreement shall not exceed Eighty-Six Thousand and No/100 Dollars (\$86,000.00) in the aggregate.
- B. **Certification.** As to any certification required under this Agreement, City shall provide a letter from the City Manager. E-mail is an acceptable form of certification under this Agreement.
- C. **Payments.** Payments to be made to City under Section II shall be made upon a written request from City and completion of all necessary supporting documentation. The payment request and documentation should be directed to MDC Executive Director, 200 North Loraine Street, Suite 610, Midland, Texas 79701.

VIII.
General Terms

- A. **Entire Agreement.** This Agreement embodies the complete agreement of the parties hereto, superseding all oral or written, previous and contemporary agreements between the parties relating to matters in this Agreement; and except as otherwise provided herein, this Agreement cannot be modified or amended without a written agreement of the parties.
- B. **No Third-Party Beneficiary.** The parties' approval of the Agreement does not create a third-party beneficiary. There is no third-party beneficiary to this Agreement. No person or entity who is not a party to this Agreement shall have any third-party beneficiary or other rights hereunder.
- C. **Legal Relationship.** The parties are not, and shall not be considered as, joint venturers, partners, or agents of each other; and neither shall have the power to bind nor obligate the other, except as set forth in this Agreement. The parties agree not to represent to anyone that they are agents of one another or have any authority to act on behalf of one another. It is mutually understood and agreed that nothing in this Agreement is intended or shall be construed as in any way creating or establishing any partnership, joint venture, or agency between MDC and City. Further, it is specifically understood and agreed that nothing in this Agreement is intended or shall be construed as creating a "Community of Pecuniary Interest" or "An Equal Right of Control" which would give rise to vicarious liability.
- D. **Terminations.** This Agreement may be terminated by mutual agreement of the parties or by either party, upon the failure of the other party to fulfill an obligation as set forth herein if the default is not cured within thirty (30) days after written notice from the other party.
- E. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument.
- F. **Venue.** The obligations of the parties to this Agreement are deemed to have been performed in Midland County, Texas, and if legal action is necessary to enforce same, exclusive venue shall be in Midland County, Texas. All payments under this Agreement are deemed to have taken place in Midland County, Texas. The obligations and undertakings of each of the parties to this Agreement shall be deemed to have been performed in Midland County, Texas.

- G. **Legal Construction.** In case one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions hereof and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.
- H. **Law.** This Agreement is subject to all applicable state and federal laws, and the parties agrees that they will comply in all material respects with all such applicable laws, regulations, orders and rules of the State of Texas and other such governmental agencies. This Agreement shall be governed by and construed in accordance with the laws and court decisions of the State of Texas.
- I. **Assignment.** This Agreement shall be binding upon the parties hereto and their successors and assigns. This Agreement may not be assigned by City without the prior written consent of MDC.
- J. **Notices.** All notices to either party required under this Agreement shall be sent by certified U.S. mail, postage prepaid, addressed to such party at the addresses shown below. All notices shall be deemed given on the date so deposited in the mail, unless otherwise provided herein. Either party hereto may change the address below by sending written notice of such change to the other in the manner provided herein.

If to MDC:

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

If to City:

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

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

If to MDC:

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

If to City:

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

- M. MDC and City hereby agree and acknowledge that this Agreement is supported by good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties.
- N. This Agreement shall not be effective until approved by the Council.

IN WITNESS WHEREOF, MDC and City have executed this Agreement on the _____ day of _____, 2023.

**MIDLAND DEVELOPMENT
CORPORATION**

Chase Gardaphe, Chairman

ATTEST:

Jill Pennington, Secretary

[Signature Page Follows]

CITY OF MIDLAND, TEXAS

Lori Merritt Blong, Mayor

ATTEST:

Marcia Bentley-German, City Secretary

TASK ORDER NO. M10 2023

This Task Order pertains to an Agreement by and between City of Midland, Texas, (“CITY”), and **Maverick Civil and Survey LLC** (“COMPANY”), dated **December 6, 2022** (“the Agreement”). COMPANY shall perform services on the project described below as provided herein and in the Agreement. This Task Order shall not be binding until it has been properly signed by both parties. Upon execution, this Task Order shall supplement the Agreement as it pertains to the project described below.

TASK ORDER NUMBER: **M 10 2023**

PROJECT NAME: **Hwy 158 and 191 Median Addition**

PART 1.0 PROJECT DESCRIPTION:

Provide thorough design topography and ultimate construction documents in order to install Medians along Hwy 158 per the original plans performed by Costco.

PART 2.0 SCOPE OF SERVICES TO BE PERFORMED BY COMPANY ON THE PROJECT:

Survey Engineering Services

Design Topography

Estimated not to Exceed: \$15,000

Maverick will perform a topographical survey within the TXDOT right of way of Hwy 191 and Hwy 158 at the intersection and further extending out to Brandy Hill Road. This topography will include horizontal and vertical location of visible and/or marked utilities, including, but not limited to water, sanitary sewer, storm drain, electric, telephone and gas. The inverts of any conflicting sanitary sewer and storm drain are also included. Topography will generally be shot on a 50 foot interval grid extending out 25 feet to either side of the property limits where access allows. 811 will be called in order to pick up any dry or wet utilities that might affect design layout.

Civil Engineering Services

Project Management and Administration

Estimated not to Exceed: \$16,000

Maverick will provide oversight Project Management throughout the course of the design. We have estimated 80 hours of Principle Time to complete the project. This will include, but is not necessarily limited to the following:

- Client and Governing Agency Meetings
- Site Plan Development Meetings
- Cost Estimates
- Various Exhibits for Project Coordination
- Dry Utility Coordination
- Coordinate with TXDOT

**Design and Construction Documents for
Median along Hwy 158 from Hwy 191 intersection**

Estimated not to Exceed: \$55,000

Maverick will design Traffic Medians from the intersection of Hwy 191 and Hwy 158 extending out to Bradley Hill Road according to City of Midland Standards and TXDOT Specifications and Specifications along with having to put the plans into a hybrid model of TXDOT formatting. This design will include horizontal and vertical location of grades and geometry relating to the intersection proposal along with taking into account utilities and drainage conflicts.

Maverick has been supplied several plan sets for reference and will utilize those plan sets as the scope of this project. Maverick will prepare the design document including and not limited to grading, Paving, and drainage plans for the Median Extents, in Plan and Profile View. Plans will be based on the approved site analysis and in compliance with the City of Midland requirements and TXDOT requirements. Plans will be prepared at a scale of 1"=20'. This plan covers Schematic Design, Design Development, Grading Design, Dimensional Control Plan and Onsite Paving Plan.

Plans will be in 22 x 34 and 11 x 17 formatting and will also adhere to TXDOT guidelines to their allowance.

Total Estimated Fee: \$86,000

PART 3.0 CITY'S RESPONSIBILITIES:

PART 4.0 PERIODS OF SERVICE: **Cannot exceed September 30th, 2023**

PART 5.0 PAYMENTS TO COMPANY:

PART 6.0 OTHER:

12/12/2022

This Task Order is executed this _____ day of _____, 20__.

CITY OF MIDLAND, TEXAS

"CITY"

DocuSigned by:

Robert Patrick

BY:

BASCB99AC5Z049Z...

NAME: Robert Patrick

TITLE: City Manager

ADDRESS: P.O. Box 1152
Midland, TX 79702

"Maverick Civil and Survey, LLC"

BY:

Andrew L. Mellen Jr.

NAME: Andrew L. Mellen Jr. P.E.

TITLE: Managing Partner

ADDRESS: 1909 W. Wall St. Suite "K"
Midland TX 79701

Kimley-Horn
Professional
Service
Agreement – SH
158 Widening
Design

RESOLUTION NO. _____

RESOLUTION AUTHORIZING THE EXECUTION OF A PROFESSIONAL SERVICES AGREEMENT WITH KIMLEY-HORN AND ASSOCIATES, INC., IN THE AMOUNT OF \$1,443,050.00 FOR PROFESSIONAL SERVICES RELATED TO THE WIDENING AND IMPROVING OF STATE HIGHWAY 158 FROM SINCLAIR AVENUE TO WADLEY AVENUE, AND FROM WADLEY AVENUE TO BRIARWOOD AVENUE; AND AUTHORIZING PAYMENT FOR SAID AGREEMENT

WHEREAS, the Board of Directors finds it to be in the public interest to authorize the execution of a professional services agreement with Kimley-Horn and Associates, Inc., in the amount of \$1,443,050.00 for professional services related to the widening and improving of State Highway 158 from Sinclair Avenue to Wadley Avenue, and from Wadley Avenue to Briarwood Avenue;

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

SECTION ONE. That the Chairman and Secretary are hereby authorized and directed to execute and attest, respectively, on behalf of the Midland Development Corporation, a professional services agreement with Kimley-Horn and Associates, Inc., in the amount of \$1,443,050.00 for professional services related to the widening and improving of State Highway 158 from Sinclair Avenue to Wadley Avenue, and from Wadley Avenue to Briarwood Avenue. Said agreement being in a form substantially similar to Exhibit A, which is attached hereto and incorporated herein for all purposes.

SECTION TWO. That the City Comptroller is hereby authorized and directed to pay Kimley-Horn and Associates, Inc., in accordance with the terms of the above-referenced agreement, from funds available in the Midland Development Corporation Fund (235) Operating Budget upon receipt of proper invoices or statements approved by the Executive Director of the Midland Development Corporation or her designee.

On motion of Director _____, seconded by Director _____, the

above and foregoing resolution was adopted by the Board of Directors of the Midland Development Corporation at a regular meeting on the _____ day of _____, A.D., 2023, by the following vote:

Directors voting "AYE":

Directors voting "NAY":

CHASE GARDAPHE,
Chairman of the Midland
Development Corporation

ATTEST:

JILL PENNINGTON,
Secretary of the Midland
Development Corporation

APPROVED AS TO FORM ONLY:

JOHN OHNEMILLER,
Attorney for the Midland
Development Corporation

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT is made and effective the 23rd day of May, 2023, by and between the MIDLAND DEVELOPMENT CORPORATION (“*MDC*”), and KIMLEY-HORN AND ASSOCIATES, INC. (“*COMPANY*”). *MDC* and *COMPANY* are at times individually referred to as a “*Party*” and collectively referred to as the “*Parties*.”

ARTICLE I. PURPOSE

The purpose of this Agreement is to state the terms and conditions under which *COMPANY* shall perform engineering services to provide *MDC* with certain plans, specifications, and estimates for widening and improving State Highway 158 from Sinclair Avenue to Wadley Avenue, and from Wadley Avenue to Briarwood Avenue (the “*Services*”). The *Services* are more specifically set forth in **Exhibit A**, which is attached hereto and incorporated herein for all purposes.

ARTICLE II. SERVICES TO BE PERFORMED

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

ARTICLE III. FINANCIAL CONSIDERATIONS

MDC agrees to pay *COMPANY* an amount not to exceed One Million Four Hundred Forty-Three Thousand Fifty and No/100 Dollars (\$1,443,050.00) for the performance of the *Services*. *MDC* agrees to pay *COMPANY* according to the schedule set forth in **Exhibit A** upon presentation of a monthly invoice. The monthly invoice shall set forth all service fees incurred and those expenses described in **Exhibit A** that *COMPANY* incurs during the previous month for which *COMPANY* receives advanced written approval from the *MDC* Executive Director. All additional and/or reimbursable expenses must be approved by the *MDC* Executive Director prior to incurring such expenses.

Within thirty (30) days of the date *COMPANY*'s invoice is received by *MDC*, *MDC* shall pay the full amount of such invoice; provided, however, that if *MDC* objects to any portion of an

Exhibit A

invoice, MDC shall notify COMPANY of MDC's objection and the grounds therefor within fifteen (15) days of the date of receipt of the invoice, and the Parties shall immediately make every effort to settle the disputed portion of the invoice. Notwithstanding the foregoing, MDC shall pay every portion of the invoice that is not in dispute within the 30-day period for payment.

ARTICLE IV. TERM

The term of this Agreement shall be from May 23rd, 2023 until September 30, 2024, unless the Services are completed sooner or the Agreement is terminated as provided below.

ARTICLE V. TERMINATION AT WILL

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

ARTICLE VI. ASSIGNMENT

COMPANY shall not, either directly or indirectly, assign all or any part of this Agreement, or any interest, right or privilege herein, without obtaining MDC's prior written consent. The issue of whether to grant such consent shall be in the sole and absolute discretion of MDC.

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

All reports, information and other data ("*Instruments of Service*") given to, prepared or assembled by COMPANY under this Agreement, and any other related document or item shall become the sole and exclusive property of MDC. The Instruments of Service shall be promptly delivered, without restriction, to MDC and such other persons or entities as MDC may designate; provided, however, that COMPANY may make copies of the Instruments of Service for its files.

ARTICLE VIII. INDEPENDENT CONTRACTOR

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

ARTICLE IX. INSURANCE

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

Commercial General Liability (including Contractual liability):

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

-Property Damage: \$500,000.00 per occurrence

Business Automobile Liability: \$250,000.00 combined single limit -
Personal Injury and Property Damage

Workers’ Compensation: Statutory limits

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

The Commercial General Liability policy shall be on a per project aggregate, including

completed operations, and shall be on a claims-occurred basis. This policy shall name MDC as an additional insured and waive subrogation in favor of MDC.

The Business Automobile Liability policy shall cover any vehicle for bodily injury and property damage, including owned vehicles, hired and non-city vehicles, and employee non-ownership, and the amount of such policy shall be a minimum of \$250,000.00 covering any vehicle used for the execution of the Services. This policy shall name MDC as an additional insured and waive subrogation in favor of MDC.

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

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

COMPANY shall contractually require all contractors, subcontractors, and sub-subcontractors that perform the Services to obtain insurance coverage that meets or exceeds the policy requirements and minimum amounts specified herein. All contractors, subcontractors, and sub-subcontractors shall obtain insurance policies that provide blanket waivers of subrogation in favor of the MDC and that name the MDC as an additional insured on a claims-occurred basis (except Workers' Compensation).

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

By executing this Agreement, COMPANY certifies that the certificate of insurance provided pursuant to this Article complies with the requirements of Chapter 1811 of the Texas Insurance Code. COMPANY shall not use an unapproved certificate of insurance or insert inappropriate language on a certificate. Compliance with state law and this Agreement is the sole and exclusive responsibility of COMPANY.

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

ARTICLE X. ATTORNEY FEES

BY EXECUTING THIS AGREEMENT, COMPANY AGREES TO WAIVE AND DOES HEREBY KNOWINGLY, CONCLUSIVELY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY CLAIM IT HAS OR MAY HAVE IN THE FUTURE AGAINST MDC, REGARDING THE AWARD OF ATTORNEY FEES, WHICH ARE IN ANY WAY RELATED TO THIS AGREEMENT OR THE CONSTRUCTION, INTERPRETATION, OR BREACH OF THIS AGREEMENT. COMPANY SPECIFICALLY AGREES THAT IF COMPANY BRINGS OR COMMENCES ANY LEGAL ACTION OR PROCEEDING RELATED TO THIS AGREEMENT, THE CONSTRUCTION, INTERPRETATION, VALIDITY OR BREACH OF THIS AGREEMENT (INCLUDING, BUT NOT LIMITED TO, ANY ACTION PURSUANT TO THE PROVISIONS OF THE TEXAS UNIFORM DECLARATORY JUDGMENTS ACT (TEXAS CIVIL PRACTICE AND REMEDIES CODE SECTION 37.001, ET SEQ., AS AMENDED) OR CHAPTER 271 OF THE TEXAS LOCAL GOVERNMENT CODE), COMPANY AGREES TO ABANDON, WAIVE AND RELINQUISH ANY AND ALL RIGHTS TO THE RECOVERY OF ATTORNEY FEES TO WHICH COMPANY MIGHT OTHERWISE BE ENTITLED.

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

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

ARTICLE XI. GOVERNMENTAL IMMUNITY

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

ARTICLE XII. NO THIRD-PARTY BENEFICIARY

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

ARTICLE XIII. RELEASE

EXCEPT REGARDING PAYMENTS DUE TO COMPANY UNDER THIS AGREEMENT, BUT NOTWITHSTANDING ANY CONTRARY PROVISION CONTAINED HEREIN, COMPANY HEREBY RELEASES, ACQUITS, RELINQUISHES AND FOREVER DISCHARGES MDC AND ITS AGENTS, BOARD MEMBERS, EMPLOYEES, AND OFFICERS FROM ANY AND ALL DEMANDS, CLAIMS, DAMAGES, OR CAUSES OF ACTION OF ANY KIND WHATSOEVER WHICH COMPANY HAS OR MIGHT HAVE IN THE FUTURE, INCLUDING BUT NOT LIMITED TO BREACH OF AGREEMENT, QUANTUM MERUIT, CLAIMS UNDER THE DUE PROCESS AND TAKINGS CLAUSES OF THE TEXAS AND UNITED STATES CONSTITUTIONS, TORT CLAIMS, OR CITY'S NEGLIGENCE. THE PROVISIONS OF THIS ARTICLE SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

ARTICLE XIV. GENERAL PROVISIONS

A. Waiver. No waiver by MDC of a breach of any covenant, condition, or restriction of this Agreement shall be construed or held to be a waiver of any succeeding or preceding breach of the same or any other covenant, condition, or restriction contained in this Agreement.

B. Governing Law and Venue. The laws of the State of Texas shall govern, construe and enforce all rights and duties of the Parties, including, but not limited to, tort claims and any contractual claims or disputes arising from or relating in any way to the subject matter of this Agreement, without regard to conflict of laws and rules that would direct application of the laws

of another jurisdiction. All performance and payment made pursuant to this Agreement shall be deemed to have occurred in Midland County, Texas. The obligations and undertakings of the Parties shall be deemed to have occurred in Midland County, Texas. Exclusive venue for any claim, suit, or other action arising from or connected in any way to this Agreement shall be in Midland County, Texas.

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

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

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

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

D. Severability. If one or more of the provisions contained in this Agreement are held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this Agreement, and this Agreement shall be construed as if the invalid, illegal, or unenforceable provision were never contained herein.

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

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

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

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

I. Notice of Alleged Breach; Statutory Prerequisites. As a condition precedent to filing suit for alleged damages incurred by an alleged breach of an express or implied provision of this Agreement, COMPANY or its legal representative shall give the Executive Director written notice (consisting of one (1) original and seven (7) copies of such notice attached to a copy of this Agreement) of such duly-verified damages within one hundred fifty (150) days after the same has been sustained. The discovery rule does not apply to the giving of such notice. The notice shall include when, where, and how the damages occurred, the apparent extent thereof, the amount of damages sustained, the amount for which COMPANY will settle, the physical and mailing addresses of COMPANY at the time and date the claim was presented, the physical and mailing addresses of COMPANY for the six (6) months immediately preceding the occurrence of such damages, and the names and addresses of the witnesses upon whom COMPANY relies to establish its claim. COMPANY's failure to so notify the Executive Director within the time and manner provided herein shall exonerate, excuse and except MDC from any liability whatsoever. MDC is under no obligation to provide notice to COMPANY that COMPANY'S notice is insufficient. MDC reserves the right to request additional information regarding the claim. Said additional information shall be supplied within thirty (30) days after COMPANY's receipt of such notice.

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

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

K. Compliance. COMPANY shall comply with Texas Government Code § 2252.908, *et seq.*, as amended, and Texas Local Government Code § 176.006, *et seq.*, as amended.

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

- COMPANY does not boycott Israel and will not boycott Israel during the term of

this Agreement;

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

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

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

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

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

Agreement that precede the signature page(s), which evidences the Parties' execution and acceptance hereof.

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

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

[Signature Pages Follows]

EXECUTED IN DUPLICATE the day and year first above mentioned.

MIDLAND DEVELOPMENT
CORPORATION

Chase Gardaphe, Chairman

ATTEST:

Jill Pennington, Secretary

[Signature Page Follows]

KIMLEY-HORN AND ASSOCIATES,
INC.:

By: _____

Name: _____

Title: _____

STATE OF _____ §

§

COUNTY OF _____ §

BEFORE ME, the undersigned authority, on this ____ day of _____, 20____ personally appeared, _____, an officer of KIMLEY-HORN AND ASSOCIATES, INC., known to me to be the person and official whose name is subscribed to the forgoing instrument, and acknowledged to me that he executed the same as the act and deed of said corporation, for the purposes and consideration therein expressed, and in the capacity therein stated.

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

Notary Public, State of Texas

**SH 158 Geometric Layout
FROM: Sinclair Road
TO: Wadley Avenue**

PART 1.0 PROJECT UNDERSTANDING

A. Project Description

The ENGINEER shall provide engineering services required for the preparation of a Geometric Layout (plan and profile) and Opinion of Probable Construction Cost (OPCC) for SH 158 from Sinclair Road to Wadley Avenue located in Midland, Texas. The roadway improvements will consist of widening SH 158 from a 2-lane rural roadway to a 5-lane urban arterial, designed to City of Midland and/or TxDOT specifications. These services will consist of data collection, survey, geotechnical pavement cores, subsurface utility engineering, preparing preliminary roadway design, preliminary hydrologic and hydraulic design, and preliminary signing and pavement markings necessary to support the design process.

Currently, SH 158 is a 2-lane rural roadway with shoulders and increases to a 5-lane roadway, with curb and gutter, at the intersection of Sinclair Road. This project is 0.7-mile long, with 150-foot Right of Way (ROW) and will tie into proposed intersection improvements (to be completed as a separate project) at Sinclair Road and tie into proposed intersection improvements (to be completed as a separate project) at Wadley Avenue. The design of this project will assume that the Sinclair Road and Wadley Avenue intersection projects will be constructed prior to this project construction.

B. Design Criteria

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

C. Right of Entry and Coordination

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

The ENGINEER shall notify the CITY and State and coordinate with adjacent ENGINEERS

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

PART 2.0 SCOPE OF SERVICES

ENGINEER will provide the services specifically set forth below.

TASK 1 – DATA COLLECTION

- 1.1. The ENGINEER shall collect, review, and evaluate data described below. The ENGINEER shall notify the CITY in writing whenever the ENGINEER finds disagreement with the information or documents:
 - A. Data from CITY or TxDOT (State), include, but are not be limited to, “as-built plans”, existing schematics, right-of-way maps, subsurface utility Engineering (SUE) mapping, and previous corridor studies, reports, and plans conducted by other agencies and groups, environmental documents, existing channel and drainage easement data, existing traffic counts, accident data, Project Management Information system (PMIS) data, identified hazardous material sites, current unit bid price information, current special provisions, special specifications, and standard drawings., if available.
 - B. Utility plans and documents from CITY and utility companies.
 - C. Obtain graphics files, plans, documents, and other pertinent data for existing and proposed improvements along the proposed corridor. Review collected information and process the data into Open Roads Designer (ORD) reference files and organize it into project reference notebooks.
 - D. Conduct field reconnaissance and collect data including a photographic record of notable existing features.
- 1.2. Design Criteria.
 - A. The ENGINEER shall develop the roadway design criteria based on the controlling factors specified by the State (i.e., 4R, 3R, 2R, or special facilities), by use of the funding categories, design speed, functional classification, roadway class and any other set criteria as set forth in PS&E Preparation Manual, Roadway Design Manual, Hydraulic Design Manual, and other deemed necessary State approved manuals. In addition, the ENGINEER shall prepare the Design Summary Report (DSR) and submit it electronically. The ENGINEER shall obtain written concurrence from the CITY and State prior to proceeding with a design if any questions arise during the design process regarding the applicability of State's design criteria.
- 1.3. Preliminary Cost Estimates.
 - A. The ENGINEER shall develop a preliminary cost estimate using the Average Low Bid Unit Price. Because the ENGINEER does not control the cost of labor, materials, equipment or services furnished by others, methods of determining prices, or competitive bidding or market conditions, any opinions rendered as to costs, including but not limited to opinions as to the costs of construction and materials, shall be made on the basis of its experience and represent its judgment as an experienced and qualified professional, familiar with the

industry. The ENGINEER cannot and does not guarantee that proposals, bids or actual costs will not vary from its opinions of cost.

1.4. Design Concept Conference.

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

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

TASK 2 – DESIGN SURVEY

2.1 The Engineer's Surveyor shall perform the following tasks:

- A. Collect topographical data every 50-ft to create cross-sections and digital terrain models.
- B. Locate existing utilities.
- C. Locate topographical features and existing improvements.
- D. Verify existing control points. Horizontal and Vertical control ties must be made and tabulated, to other control points in the vicinity, which were established by other sources such as, the National Geodetic Survey (NGS), and the Federal Emergency Management Agency (FEMA), and any other local entities as directed by the State.
- E. Prepare survey control data sheets, as directed by the State for inclusion into a construction plan set.

The Engineer's Surveyors shall also prepare a *Survey Control Index Sheet* and a *Horizontal and Vertical Control Sheet(s)*, signed, sealed, and dated by the professional engineer in direct responsible charge of the surveying and the responsible Registered Professional Land Surveyor (RPLS) for insertion into the plan set. The *Survey Control Index Sheet* shows an overall view of the project control and the relationship or primary monumentation and control used in the preparation of the project; whereas the *Horizontal and Vertical Control sheet(s)* identifies the primary survey control and the survey control monumentation used in the preparation of the project. Both the *Survey Control Index Sheet* and the *Horizontal and Vertical Control Sheet(s)* must be used in conjunction with each other as a set. The State's forms for these sheets can be

downloaded from the State's website.

The following information shall be shown on the *Survey Control Index Sheet*:

1. Overall view of the project and primary control monuments set for control of the project
2. Identification of the control points
3. A table including control point number, description, and XYZ coordinates
4. Baseline or centerline
5. Graphic (Bar) Scale
6. North Arrow
7. Placement of note "*The survey control information has been accepted and incorporated into this project*" which shall be preliminarily signed and dated by a Texas Professional Engineer employed by the State
8. RPLS signature, seal, and date
9. The State's title block containing District Name, County, Highway, and CSJ

The following information shall be shown on all *Horizontal and Vertical Control Sheets*:

1. Location for each control point, showing baseline or centerline alignment and North arrow.
2. Station and offset (with respect to the baseline or centerline alignments) of each identified control point.
3. Basis of Datum for horizontal control (base control monument/benchmark name, number, datum).
4. Basis of Datum for the vertical control (base control monument, benchmark name, number, datum).
5. Date of current adjustment of the datum.
6. Monumentation set for Control (Description, District name/number and Location ties).
7. Surface Adjustment Factor and unit of measurement.
8. Coordinates (State Plan Coordinates [SPC] Zone and surface or grid).
9. Relevant metadata.
10. Graphic (Bar) Scale.
11. Placement of note "*The survey control information has been accepted and incorporated into this project*" which shall be preliminarily signed and dated by a Texas Professional Engineer employed by the State.
12. RPLS signature, seal and date.
13. The State's title block containing District Name, County, Highway, and CSJ.

2.2 TECHNICAL REQUIREMENTS

- A. Design surveys must be performed under the supervision of a RPLS currently registered with the TBPLS.
- B. Horizontal ground control used for design surveys, furnished to the Engineer's Surveyor by the State, or based on acceptable methods conducted by the Engineer's Surveyor, must meet the standards of accuracy required by the State.

Reference may be made to standards of accuracy for horizontal control traverses, as described in the TxDOT Survey Manual, latest edition, or the TSPS Manual of Practice

for Land Surveying in the State of Texas, as may be applicable.

- C. Vertical ground control used for design surveys, furnished to the Engineer's Surveyor by the State or based on acceptable methods conducted by the Engineer's Surveyor, must meet the standards of accuracy required by the State.

Reference may be made to standards of accuracy for vertical control traverses, as described in the TxDOT Survey Manual, latest edition, or the TSPS Manual of Practice for Land Surveying in the State of Texas, as may be applicable.

- D. Side shots or short traverse procedures used to determine horizontal and vertical locations must meet the following criteria:
 - 1. Side shots or short traverses must begin and end on horizontal and vertical ground control as described above.
 - 2. Standards, procedures, and equipment (may be GPS Equipment, LiDAR, Total Stations, etc.) used must be such that horizontal locations relative to the control may be reported within the following limits:
 - a. Roadway structures: less than 0.1 of one foot.
 - b. Utilities and improvements: less than 0.2 of one foot.
 - c. Cross-sections and profiles: less than 1 foot.
 - 3. Standards, procedures, and equipment (may be GPS Equipment, LiDAR, Total Stations, etc.) used must be such that vertical locations relative to the control may be reported within the following limits:
 - a. Roadway structures: less than 0.02 of one foot.
 - b. Utilities and improvements: less than 0.1 of one foot.
 - c. Cross-sections and profiles: less than 0.2 of one foot.

2.3 AUTOMATION REQUIREMENTS

- A. Planimetric design files (DGN) must be fully compatible with the State's *MicroStation Open Roads* graphics program without further modification or conversion.
- B. Electronically collected and processed field survey data files must be fully compatible with the State's computer systems without further modification or conversion. All files must incorporate only those feature codes currently being used by the State.
- C. DTM must be fully compatible with the State's *GEOPAK* system without further modification or conversion. All DTM must be fully edited and rectified to provide a complete digital terrain model with all necessary break lines.

2.4 DELIVERABLES

The Engineer shall provide the following deliverables:

- A. Digital Terrain Models (DTM) and the Triangular Irregular Network (TIN) files in a format acceptable by the State.
- B. Maps, plans, or sketches if applicable prepared by the Engineer's Surveyor showing the results of field surveys.
- C. Computer printouts or other tabulations if applicable summarizing the results of field surveys.
- D. Digital files or media acceptable by the State containing field survey data (ASCII Data files).
- E. Maps, plats, plans, sketches, or other documents acquired from utility companies, private corporations, or other public agencies, the contents of which are relevant to the survey.
- F. Field survey notes, as electronic and hard copies.
- G. An 8 ½ inch by 11-inch survey control data sheet for each control point which must include, but need not be limited to, a location sketch, a physical description of the point including a minimum of two reference ties, surface coordinates, a surface adjustment factor, elevation, and the horizontal and vertical datums used. A pre-formatted survey control data sheet form in Microsoft Office Word format will be provided by the State.
- H. A digital and hard copy of all computer printouts of horizontal and vertical conventional traverses, GPS analysis and results, and survey control data sheets.
- I. All GEOPAK GPK and/or Open Roads Design (ORD) files.
- J. Survey reports in a format requested by the State.

TASK 3 – GEOTECHNICAL PAVEMENT CORES

- 3.1 The ENGINEER, CITY and/or state shall determine the location of two (2) proposed pavement cores, for the purpose of determining the existing pavement structure. The subconsultant shall perform pavement cores (field work), in accordance with the latest edition of the State's Geotechnical Manual and State District's procedures and design guidelines.
 - A. All geotechnical work should be performed in accordance with the latest version of the State's Geotechnical Manual. All testing shall be performed in accordance with the latest version of the State's Manual of Test Procedures. American Society for Testing Materials (ASTM) test procedures can be used only in the absence of the State's procedures.
 - B. The subconsultant shall perform coring for pavement removal items.
 - C. The ENGINEER shall provide a signed, sealed and dated geotechnical report from subconsultant which contains, but is not limited to, coring locations, coring logs.
 - D. The subconsultant shall follow applicable state traffic control standards when

performing geotechnical field operations.

E. The State will provide the proposed pavement design to be used on this project.

TASK 4 – SUBSURFACE UTILITY ENGINEERING

4.1 Utility Engineering Investigation.

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

A. Utility Quality Levels are defined in cumulative order (least to greatest) as follows:

1. Quality Level D - Existing Records: Utilities are plotted from review of available existing records.
2. Quality Level C - Surface Visible Feature Survey: Quality level "D" information from existing records is correlated with surveyed surface-visible features. Includes Quality Level D information. If there are variances in the designated work area of Level D, a new schematic or plan layout will be necessary to identify the limits of the proposed project and the limits of the work area required for the work authorization; including highway stations, limits within existing or proposed right of way, additional areas outside the proposed right of way, and distances or areas to be included along existing intersecting roadways.
3. Quality Level B - Designate: Two-dimensional horizontal mapping. This information is obtained through the application and interpretation of appropriate non-destructive surface geophysical methods. Utility indications are referenced to established survey control. Incorporates quality levels C and D information to produce Quality Level B. If there are variances in the designated work area of Level D, a new schematic or plan layout will be necessary to identify the limits of the proposed project and the limits of the work area required for the work authorization; including highway stations, limits within existing or proposed right of way, additional areas outside the proposed right of way, and distances or areas to be included along existing intersecting roadways.
4. Quality Level A - Locate (Test Hole): Three-dimensional mapping and other characterization data. This information is obtained through exposing utility facilities through test holes and measuring and recording (to appropriate survey control) utility/environment data. Incorporates quality levels B, C and D information to produce Quality Level A.

4.2 Subsurface Utility Locate (Test Hole) Service (Quality Level A)

A. Locate means to obtain precise horizontal and vertical position, material type, condition, size, and other data that may be obtainable about the utility facility and its surrounding environment through exposure by non-destructive excavation techniques that ensures the integrity of the utility facility. Subsurface Utility Locate (Test Hole) Services (Quality Level A) are inclusive of Quality Levels B, C, and D.

B. The ENGINEER shall:

1. Review requested test hole locations and advise the CITY and State in the development of an appropriate locate (test hole) work plan relative to the existing utility infrastructure and proposed highway design elements.

2. Coordinate with utility owner inspectors as may be required by law or utility owner policy.
3. Neatly cut and remove existing pavement material, such that the cut not to exceed 0.10 square meters (1.076 square feet) unless unusual circumstances exist.
4. Measure and record the following data on an appropriately formatted test hole data sheet that has been sealed and dated by the ENGINEER:
 - a. Elevation of top and/or bottom of utility tied to the datum of the furnished plan.
 - b. Identify a minimum of two benchmarks utilized. Elevations shall be within an accuracy of 15mm (.591 inches) of utilized benchmarks.
 - c. Elevation of existing grade over utility at test hole location.
 - d. Horizontal location referenced to project coordinate datum.
 - e. Outside diameter of pipe or width of duct banks and configuration of non-encased multi-conduit systems.
 - f. Utility facility material(s).
 - g. Utility facility condition.
 - h. Pavement thickness and type.
 - i. Coating/Wrapping information and condition.
 - j. Unusual circumstances or field conditions.
5. Excavate test holes in such a manner as to prevent any damage to wrappings, coatings, cathodic protection or other protective coverings and features. Water excavation can only be utilized with written approval from the appropriate State District Office.
6. Be responsible for any damage to the utility during the locating process. In the event of damage, the ENGINEER shall stop work, notify the appropriate utility facility owner, the CITY and State and appropriate regulatory agencies. The regulatory agencies include but are not limited to the Railroad Commission of Texas and the Texas Commission on Environmental Quality. The ENGINEER shall not resume work until the utility facility owner has determined the corrective action to be taken. The ENGINEER shall be liable for all costs involved in the repair or replacement of the utility facility.
7. Back fill all excavations with appropriate material, compact backfill by mechanical means, and restore pavement and surface material. The ENGINEER shall be responsible for the integrity of the backfill and surface restoration for a period of three years. Install a marker ribbon throughout the backfill.
8. Furnish and install a permanent above ground marker (as specified by the State, directly above center line of the utility facility).
9. Provide complete restoration of work site and landscape to equal or better condition than before excavation. If a work site and landscape is not appropriately restored, the ENGINEER shall return to correct the condition at no extra charge to the CITY and State.
10. Plot utility location position information to scale and provide a comprehensive utility plan sign and sealed by the responsible ENGINEER. This information shall be

provided in the latest version of Micro Station or Geopak format used by the State. The electronic file will be delivered on C.D or DVD. When requested by the CITY and State, the Locate information must be over laid on the State's design plans.

11. Return plans, profiles, and test hole data sheets to the CITY and State. If requested, conduct a review of the findings with the CITY and State.

12. Close-out permits as required.

4.3 Project SUE Scope

- A. The scope of this proposal includes Quality Level "A" and "B" SUE. Utilities to be designated include gas, telecommunications, electric, traffic signals, storm, water, and sanitary sewer. Overhead inventory is to be included. Designating will be performed within the following limits:
1. SH 158 from Sinclair Road to Wadley Avenue: perform Level "B" designating along SH 158 from Sinclair Road to Wadley Avenue, approximately 0.7-mile in length.
 2. Six (6) QL "A" test holes will be included in the budget. Test hole locations will be determined by Kimley Horn and TRG once the QL "B" SUE deliverable has been reviewed. TRG will have all designating marks and test holes surveyed using project control point data provided by Kimley Horn.

TASK 5 – PRELIMINARY ROADWAY DESIGN

5.1 Geometric Layout

- A. Preliminary Geometric Layout. A plan-view only, preliminary geometric layout (LAYOUT) was previously developed for the project limits between SH 191 and SH 349C (Craddick Relief Route) as part of another work authorization. The LAYOUT will be modified to incorporate the proposed Wadley intersection improvements (to be completed as a separate project), modify the bicycle lanes along SH 158, per TxDOT Roadway Design Manual criteria, adjust curb lines and pavement markings as needed, add a proposed profile view, and add proposed drainage design layout. The ENGINEER will submit the revised LAYOUT as the 30% milestone submittal to be reviewed and approved by the CITY and State. Plan sheets will not be included in the 30% milestone submittal package.
- B. The LAYOUT will consist of a planimetric file of existing features and the proposed improvements within the existing ROW. The LAYOUT will also show the following features: existing ROW, existing and proposed horizontal and vertical alignment and profile grade line, drainage structures (if applicable), lane widths, cross slopes, ditch slopes, pavement structure, clear zone, dedicated right turn lanes, corner clips, and water surface elevations for various rainfall frequencies (if applicable), etc. Existing major subsurface and surface utilities must be shown on the LAYOUT. The ENGINEER shall develop the proposed alignment to avoid the relocation of existing utilities as much as possible. The ENGINEER shall consider Americans with Disabilities Act (ADA) requirements when developing the Layout. The LAYOUT must be prepared in accordance with the current Roadway Design Manual. The ENGINEER shall provide horizontal and vertical alignment of the project layout in English units for main lanes and cross streets. Minor alignment alternatives must be considered to provide for an optimal design. The project layout must be coordinated with the CITY and State and adjacent ENGINEERS, if any. The ENGINEER shall also provide

proposed and existing typical sections with the profile grade line (PGL), lane widths, cross slopes, ROW lines, ditch shapes, pavement structures and clear zones depicted, etc.

5.2 Roadway Design

- A. The ENGINEER shall use Bentley's OpenRoads 3D Design technology in the design and preparation of the geometric layout.
- B. The ENGINEER shall provide roadway plan and profile in the LAYOUT using CADD standards as required by the State. The LAYOUT must consist of a planimetric file of existing features and files of the proposed improvements. The roadway base map must contain line work that depicts existing surface features. Existing major subsurface and surface utilities must be shown if requested by the CITY and State. Existing and proposed right-of-way lines must be shown.
 1. The plan view shall contain the following design elements:
 - a. Calculated roadway centerlines for mainlanes and cross streets, as applicable. Horizontal control points must be shown. The alignments must be calculated using OpenRoads horizontal geometry tools.
 - b. Pavement edges for all improvements (mainlanes and cross streets, as applicable.)
 - c. Lane and pavement width dimensions.
 - d. Proposed drainage structure locations, lengths, and widths, as applicable.
 - e. Direction of traffic flow on all roadways. Lane lines and arrows indicating the number of lanes must also be shown.
 - f. Control of access line, ROW lines and easements.
 - g. Begin and end super elevation transitions and cross slope changes.
 - h. Limits of riprap, block sod, and seeding.
 - i. Existing utilities and structures.
 - j. Benchmark information.
 - k. Radii call outs, curb location, guard fence, crash safety items and American with Disabilities Act Accessibility Guidelines (ADAAG) compliance items.
 2. The profile view shall contain the following design elements:
 - a. Calculated profile grade for proposed mainlanes (cite direction) and cross streets, if applicable. Vertical curve data, including "K" values must be shown. The profiles must be calculated using OpenRoads vertical geometry tools.
 - b. Existing and proposed profiles along the proposed centerline of the mainlanes.

5.3 Typical Sections

- A. The ENGINEER shall prepare and provide typical sections for all proposed and existing roadways on the LAYOUT. Typical sections will show width of travel lanes, shoulders, outer separations, border widths, curb offsets, and ROW. The typical section will also show Proposed Profile Gradeline (PGL), centerline, pavement design (as applicable), side slopes, sodding or seeding limits, concrete traffic barriers and sidewalks, if required, station limits, riprap, etc.

5.4 Pavement Design

- A. The State shall provide the proposed pavement design to be used in the design of the project.

5.5 Pedestrian and Bicycle Facilities

- A. The ENGINEER shall coordinate with the CITY and State to incorporate pedestrian and bicycle facilities, as required, on the LAYOUT. All pedestrian facilities shall be designed in accordance with the latest ADAAG, and the Texas Accessibility Standards (TAS) and bicycle facilities shall be designed in accordance with the latest TxDOT design guidelines.

Task 6 – PRELIMINARY DRAINAGE DESIGN

The ENGINEER shall perform preliminary storm drainage calculations to determine size and location of proposed internal storm drainage systems, cross culverts and ditch/channels along and within the project location. This effort includes revisions to the temporary drainage improvements at the southern approach to the SH 158 and Wadley Avenue intersection prepared under a separate work authorization. The ENGINEER understands that several private development projects are active in the project and coordination will be preformed with the engineers of record.

6.1 Data Collection.

- A. The ENGINEER shall provide the following data collection services:
 - 1. Conduct field inspections to observe current conditions, outfall channels, cross-drainage structures, drainage easements, and land development projects that contribute flow to the corridor. Document field inspections with digital photos.
 - 2. Collect available and applicable data including Geographic Information System (GIS) data and maps, site survey data, construction plans, previous reports and studies, and readily available rainfall history for the area. Sources of data collected must include, but are not limited to, the State, County, and Federal Emergency Management Agency (FEMA).

6.2 Preliminary Drainage Design

- A. The ENGINEER will compile information gathered during the Data Collection phase of this project to prepare a drainage area map.
- B. The ENGINEER will perform hydrologic calculations for the 5-, 10-, 25- and 100-year storm events using the Rational Method.
- C. The ENGINEER shall preform preliminary storm drain calculations using Manning's Equation
- D. The ENGINEER shall provide a layout of proposed drainage structures in plan view only. This data will be included on the roll plot prepared under a separate task.
- E. The ENGINEER shall provide a layout of proposed drainage ditches in plan view only. Sizing of the ditches will be performed using standard Manning's Equation calculations. Typical ditch sections will be provided. This data will be included on the roll plot prepared under a separate task.
- F. The ENGINEER will attend up to two (2) design meetings with the CITY to review

drainage design.

TASK 7 – PRELIMINARY SIGNING AND PAVEMENT MARKINGS

7.1 Signing and Pavement Markings.

- A. The ENGINEER shall provide a preliminary layout of signing and pavement markings for the purpose of receiving CITY and State approval and calculating quantities to be used in the preparation of the OPCC.

TASK 8 – OPINION OF PROBABLE CONSTRUCTION COST

8.1 Estimate – Opinion of Probable Construction Cost (OPCC)

- A. The ENGINEER shall prepare a preliminary Opinion of Probable Construction Cost (OPCC).

TASK 9 - CONTRACT MANAGEMENT AND ADMINISTRATION

The ENGINEER shall perform the following services:

- 9.1 Perform all work in accordance with the State’s latest practices, criteria, specifications, policies, procedures, and Standards of Uniformity (SOU). All documents shall be sufficient to satisfy the current SOUs available from the State.
- 9.2 Act as an agent for the CITY and State when specified in a work authorization.
- 9.3 Notify the CITY and State of its schedule, in advance, for all field activities.
- 9.4 Prepare monthly written progress reports.
- 9.5 Develop and maintain a detailed project schedule to track project conformance to Exhibit C, Work Schedule. The schedule submittals shall be hard copy and electronic format.
- 9.6 Meet on a scheduled basis with the CITY and State to review project progress.
- 9.7 Prepare, distribute, and file both written and electronic correspondence.
- 9.8 Document phone calls and conference calls as required during the project to coordinate the work for various team members.

DELIVERABLES

- A. The ENGINEER shall submit the following deliverables to the State:

- 1. Plan/Layout Development
 - a. 30% Submittal
 - i. Preliminary geometric project layout
 - ii. Opinion of Probable Construction Cost

- B. Electronic Copies

- 1. The ENGINEER shall furnish the State with a USB flash drive of the Geometric Layout in the current graphics format used by the State, .pdf format, and in the District’s File Management System (FMS) format.

ADDITIONAL SERVICES

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

- A. Schematic design
- B. Environmental documentation
- C. Public involvement or public outreach
- D. PS&E (30% - 100%)
- E. Final drainage design
- F. Cross sections
- G. Traffic control plan, detours, and sequence of construction
- H. Traffic counts or traffic projections
- I. Traffic intersection analysis
- J. Signal warrants or signal timing
- K. Signal design
- L. Existing water or sanitary sewer relocations
- M. Proposed water or sanitary sewer design
- N. Landscape or irrigation design
- O. Right of way acquisition services
- P. Franchise utility coordination
- Q. Bid phase services or construction contract administration

PART 3.0 CITY AND STATE RESPONSIBILITIES

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

1. Name, address, and phone number of the CITY's project manager.
2. Records available that would assist in the completion of the work described in PART 2.0.
3. Review, and coordination of review by the CITY and State, of recommendations offered by the ENGINEER and approval or rejection of any or all work performed under this contract.
4. Review of progress of work and final acceptance of all documents.
5. Processing of all periodic payment requests submitted by ENGINEER.
6. Assistance in the coordination and scheduling of site visits.
7. Available horizontal control points, benchmark elevations and descriptions for vertical control in the project area.
8. Available existing Right-of-Way (ROW) maps of state and municipal highway facilities in the project corridor.
9. Available interface data for any projects adjacent to the project corridor.
10. Current average bid prices for construction, maintenance, and operation costs.
11. Assistance as necessary in obtaining the required data and information from other local, regional, state, and federal agencies.
12. Timely reviews of deliverables in accordance with Part 4.0 (Periods of Service) of the Task Order

13. Authorizations and decisions necessary for the ENGINEER to maintain the project work schedule.
14. Examples of acceptable format for the deliverables required by the work authorizations.

PART 4.0 PERIODS OF SERVICE:

The term of this work authorization commences on the Effective Date and continues without interruption for a term of 3 months. If the ENGINEER determines that additional time is required to complete the Services, the CITY may, but is not obligated to, at their discretion, execute an agreement to grant additional time so long as the amount of consideration does not increase. Deliverables will be submitted to the CITY by the ENGINEER according to the following schedule:

Task	Deliverable	Period of Service
1	Data Collection	Through end of project
2	Survey	Q1-2 2023
3	Geotechnical	Q1-2 2023
4	Subsurface Utility Engineering (SUE)	Q1-2 2023
5 - 9	Roadway Design – Geometric Layout	TBD

PART 5.0 PAYMENTS TO ENGINEER:

The below additional Fee Rate Schedules are incorporated into the Agreement by work authorization as permitted by the articles and Exhibits of the Agreement.

TASK DESCRIPTION	Prime Provider KHA	Sub Provider SURVEY	Sub Provider GEOTECH	Sub Provider SUE	Total Labor Cost
1. Data Collection	\$ 8,700.00	\$ -	\$ -	\$ -	\$ 8,700.00
2. Design Survey	\$ 9,700.00	\$11,000.00	\$ -	\$ -	\$ 20,700.00
3. Geotechnical Pavement Cores	\$ 3,000.00	\$ -	\$ 9,450.00	\$ -	\$ 12,450.00
4. Subsurface Utility Engineering	\$ 5,300.00	\$ -	\$ -	\$32,800.00	\$ 38,100.00
5. Roadway Design	\$ 35,100.00	\$ -	\$ -	\$ -	\$ 35,100.00
6. Drainage Design	\$ 45,500.00	\$ -	\$ -	\$ -	\$ 45,500.00
7. Signing, Pavement Markings and Signalization	\$ 7,900.00	\$ -	\$ -	\$ -	\$ 7,900.00
8. Miscellaneous Design	\$ 5,400.00	\$ -	\$ -	\$ -	\$ 5,400.00
9. Contract Management and Administration	\$ 13,700.00	\$ -	\$ -	\$ -	\$ 13,700.00
LABOR SUBTOTALS	\$ 134,300.00	\$11,000.00	\$ 9,450.00	\$32,800.00	\$187,550.00
Direct Expenses	\$ 800.00				\$ 800.00
PROVIDER SUBTOTALS (LUMP SUM)	\$ 135,100.00	\$11,000.00	\$ 9,450.00	\$32,800.00	\$188,350.00

The ENGINEER will perform the services described in Part 2.0 - Tasks 1 - 9 of the work authorization on a lump sum basis and will not exceed the maximum labor and expenses fee shown below.

PART 6.0 OTHER: Not Applicable

SH 158 PS&E
FROM: Sinclair Road
TO: Wadley Avenue

PART 1.0 PROJECT UNDERSTANDING

A. Project Description

The ENGINEER shall provide engineering services required for the preparation of 30% to 100% plans, specifications, and estimates (PS&E) and related documents, for SH 158 from Sinclair Road to Wadley Avenue located in Midland, Texas. The roadway improvements will consist of widening SH 158 from a 2-lane rural roadway to a 5-lane urban arterial, designed to City of Midland and/or TxDOT specifications. These services will consist of franchise utility coordination, preparing roadway design, hydrologic and hydraulic design, traffic control design, signing and pavement markings, and bid phase services necessary to support the design process.

Currently, SH 158 is a 2-lane rural roadway with shoulders and increases to a 5-lane roadway, with curb and gutter, at the intersection of Sinclair Road. This project is 0.7-mile long, with 150-foot Right of Way (ROW) and will tie into proposed intersection improvements (to be completed as a separate project) at Sinclair Road and tie into proposed intersection improvements (to be completed as a separate project) at Wadley Avenue. The design of this project will assume that the Sinclair Road and Wadley Avenue intersection projects will be constructed prior to this project construction.

B. Design Criteria

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

C. Right of Entry and Coordination

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

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

PART 2.0 SCOPE OF SERVICES

ENGINEER will provide the services specifically set forth below.

TASK 1 – FRANCHISE UTILITY COORDINATION

1.1 Franchise Utility Design Coordination

A. Final Design Coordination:

1. At the 90% and 100% stages of PS&E development, send project plans to all Franchise Utilities via PDF to provide project limits, details and schedule for construction.
2. Data Collection and Research:
 - a. Update and maintain database of existing franchise utility representatives, including representative contact information (email, mailing address, phone, etc.).
 - b. Prepare PS&E exhibit that indicates franchise utility locations based upon SUE.
 - c. Identify potential utility conflicts with the proposed roadway and drainage improvements and document in a utility conflict matrix.
 - d. Survey potholes of located utilities and incorporate data into the design files to determine actual location and depth of utilities.
 - e. Schedule (2) meetings, after 90% and 100% submittals, with franchise utility companies to provide notice of potential conflicts and proposed locations (offset and/or depth) for relocated lines that would be clear of proposed roadway and drainage improvements.

1.2 Franchise Utility Relocation Coordination

The ENGINEER shall provide Franchise Utility Relocation Coordination at the written request of the CITY and State. These services shall be considered additional services until the written request is made. The request shall include a description of the work requested, a mutually agreed upon time limit, number of coordination meetings, and any special instructions for coordination and submittal. These services will consist of the following:

1. *Coordinate utility relocation assignments and schedule*
 - a. *Schedule (#) bi-monthly coordination meetings with franchise utility companies. These meetings will be held for engaging franchise utility companies, to identify potential utility conflicts, and to coordinate the scheduling of relocating conflicting utilities.*
 - b. *ENGINEER will work with franchise utilities and review relocation plans to be prepared by the utility companies and initiated prior to letting.*

TASK 2 – ROADWAY DESIGN

2.1 Roadway Design

- A. The ENGINEER shall refer to the previously prepared geometric layout of SH 158, from Sinclair Road to Wadley Avenue, and use Bentley's OpenRoads 3D Design technology in the design and preparation of the roadway plan sheets.
- B. The ENGINEER shall provide roadway plan and profile drawings using CADD standards as required by the State. The drawings must consist of a planimetric file of existing features and files of the proposed improvements. The roadway base map must contain line work that depicts existing surface features. Existing major subsurface and surface utilities must be shown if requested by the CITY and State. Existing and proposed right-of-way lines must be shown. Plan and Profile must be shown on separate or same sheets (this depends upon width of pavement) for main lanes and frontage roads.
 1. The plan view shall contain the following design elements:
 - a. Calculated roadway centerlines for mainlanes and cross streets, as applicable. Horizontal control points must be shown. The alignments must be calculated using OpenRoads horizontal geometry tools.
 - b. Pavement edges for all improvements (mainlanes and cross streets, as applicable.)
 - c. Lane and pavement width dimensions.
 - d. Proposed drainage structure locations, lengths, and widths.
 - e. Direction of traffic flow on all roadways. Lane lines and arrows indicating the number of lanes must also be shown.
 - f. Drawing scale shall be 1" = 100'.
 - g. Control of access line, ROW lines and easements.
 - h. Begin and end super elevation transitions and cross slope changes.
 - i. Limits of riprap, block sod, and seeding.
 - j. Existing utilities and structures.
 - k. Benchmark information.
 - l. Radii call outs, curb location, concrete traffic barrier (CTB), guard fence, crash safety items and American with Disabilities Act Accessibility Guidelines (ADAAG) compliance items.
 2. The profile view shall contain the following design elements:
 - a. Calculated profile grade for proposed mainlanes (cite direction) and cross streets, if applicable. Vertical curve data, including "K" values must be shown. The profiles must be calculated using OpenRoads vertical geometry tools.
 - b. Existing and proposed profiles along the proposed centerline of the mainlanes.
 - c. Drawing vertical scale to be 1" = 10'.

2.2 Typical Sections

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

2.3 Mainlane Design

- A. The ENGINEER shall provide the design of SH 158 mainlanes. The design must be consistent with the current TxDOT Roadway Design Manual.
- 2.4 Cross Streets
- A. The ENGINEER shall provide an intersection layout detailing the pavement design and drainage design at the intersection of each cross street. The layout will consist of the horizontal and vertical alignments, curb returns, geometrics, transition length, stationing, pavement, drainage details, and American with Disabilities Act Accessibility Guidelines (ADAAG) compliance items. The ENGINEER shall design for full pavement width to the ROW and provide a transition to the existing roadway.
- 2.5 Cut and Fill Quantities
- A. The ENGINEER shall develop an earthwork analysis to determine cut and fill quantities and provide final design cross sections at 100 feet intervals. Cross sections must be delivered in standard Open Roads Designer format on 11"x17" sheets or roll plots and electronic files. The ENGINEER shall provide all criteria and input files used to generate the design cross sections. Cross sections and quantities must include existing pavement removals. Annotation shall include at a minimum existing and proposed ROW, side slopes (front & back), profiles, etc.
 - B. The ENGINEER shall submit a PDF set of drawings at the 60%, and 90%, and final submittals, respectively.
- 2.6 Plan Preparation
- A. The ENGINEER shall prepare roadway plans, profiles, and typical sections for the proposed improvements. This scope of services and the corresponding cost proposal are based on the ENGINEER preparing plans to construct main lanes and cross streets at intersections. The roadway plans must consist of the types and be organized in the sequence as described in the PS&E Preparation manual.
- 2.7 Pavement Design
- A. The State shall provide the proposed pavement design to be used in the design of the project.
- 2.8 Pedestrian and Bicycle Facilities
- A. The ENGINEER shall coordinate with the CITY and State to incorporate pedestrian facilities as required or shown on the project's geometric layout. All pedestrian facilities shall be designed in accordance with the latest ADAAG and the Texas Accessibility Standards (TAS) and bicycle facilities shall be designed in accordance with the latest TxDOT design guidelines.
- 2.9 Storm Water Pollution Prevention Plan (SW3P)
- A. The ENGINEER shall develop SW3P, on separate sheets from (but in conformance with) the TCP, to minimize potential impact to receiving waterways. The SW3P shall include text describing the plan, quantities, type, phase and locations of erosion control devices and any required permanent erosion control.
- 2.10 Compute and Tabulate Quantities
- A. The ENGINEER shall provide the summaries and quantities within all formal submittals.
- 2.11 Specifications and General Notes.

- A. The ENGINEER shall identify necessary standard specifications, special specifications, special provisions, and the appropriate reference items. The ENGINEER shall prepare General Notes from the District's *Master List of General Notes*, Special Specifications and Special Provisions for inclusion in the 90% and 100% plans and bidding documents. The ENGINEER shall provide General Notes, Special Specifications and Special Provisions in the required format.

Task 3 – DRAINAGE DESIGN

The ENGINEER shall perform final storm drainage calculations to determine size and location of proposed internal storm drainage systems, cross culverts and ditch/channels along and within the project location.

3.1 Data Collection.

A. The ENGINEER shall provide the following data collection services:

1. Conduct field inspections to observe current conditions, outfall channels, cross-drainage structures, drainage easements, and land development projects that contribute flow to the tributary. Document field inspections with digital photos.
2. Collect available and applicable data including Geographic Information System (GIS) data and maps, site survey data, construction plans, previous reports and studies, and readily available rainfall history for the area. Sources of data collected must include, but are not limited to, the State, County, and Federal Emergency Management Agency (FEMA).

3.2 Temporary Drainage Facilities

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

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

A. The ENGINEER shall provide the following services:

1. Prepare the PS&E package in accordance with the applicable requirements of the State's specifications, standards, and manuals, including the PS&E Preparation Manual. The PS&E package will consist of the following sheets and documents:
2. External Drainage Area Maps (1 sheet estimate)
3. Internal Drainage Area Maps (1 sheet estimate for Existing and Proposed, total of 2 sheets)
4. Hydrologic Data Sheets (1 sheet estimate)
5. Hydraulic Data Sheets (2 sheet estimate)
6. Storm Drain Plan/Profile Sheets (5 sheets estimate)
7. Construction Details (3 sheet estimate)
8. Identify areas requiring trench protection, excavation, shoring and de-watering.
9. Select any necessary standard details from State or District's list of standards for items such as inlets, manholes, junction boxes and end treatments.
10. Prepare details for non-standard inlets, manholes and junction boxes.
11. Prepare drainage details for outlet protection, outlet structures and utility accommodation structures.
12. Identify pipe strength requirements.
13. Prepare drainage facility quantity summaries.

14. Identify potential utility conflicts and, if feasible, design to mitigate or avoid those identified conflicts
15. Consider pedestrian facilities, utility impacts, and driveway grade drainage impacts.
16. Identify existing ground elevation profiles at the ROW lines on storm sewer plan and profile sheets.

TASK 4 – TRAFFIC CONTROL

The traffic control plan, any detours, and sequence of construction will be prepared with the assumption that the proposed intersection improvements at SH 158 and Wadley Avenue will be constructed prior to these improvements. Any change or modification to the traffic control plan, detours, and/or sequence of construction of this work authorization, because of a change in the sequencing of these two projects, or other adjacent project(s) shall be considered additional services.

4.1 Traffic Control Plan, Detour, Sequence of Construction.

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

7. Describe the type of work to be performed for each phase of sequence of construction and any special instructions (e.g., storm drain, signing, paving surface sequencing or concrete placement, ROW restrictions, utilities, etc.) that the contractor should be made aware to include limits of construction, obliteration, and shifting or detouring of traffic prior to the proceeding phase.
8. Include the work limits, the location of channelizing devices, positive barrier, location and direction of traffic, work area, stations, pavement markings, and other information deemed necessary for each phase of construction.

TASK 5 – SIGNING AND PAVEMENT MARKINGS

5.1 Signing.

- A. The ENGINEER shall prepare drawings, specifications, and details for all signs. The ENGINEER shall coordinate with the CITY and State for overall temporary, interim, and final signing. The ENGINEER shall:
 1. Provide a summary of large and small signs to be removed, relocated, or replaced.
 2. Illustrate and number the proposed signs on plan sheets.
 3. Select each sign foundation from State Standards.

5.2 Pavement Marking.

- A. The ENGINEER shall detail both permanent and temporary pavement markings and channelization devices on plan sheets. The ENGINEER shall coordinate with the CITY and State for overall temporary, interim, and final pavement markings. The ENGINEER shall select Pavement markings from the latest State standards.
- B. The ENGINEER shall provide the following information on sign and pavement marking layouts:
 1. Roadway layout.
 2. Center line with station numbering.
 3. Structures that present a hazard to traffic.
 4. Location of utilities.
 5. Existing signs to remain, to be removed, to be relocated or replaced.
 6. Proposed signs (illustrated, numbered and size).
 7. Proposed markings (illustrated and quantified) which include pavement markings, object markings and delineation.
 8. Quantities of existing pavement markings to be removed.
 9. Proposed delineators, object markers, and mailboxes.
 10. The number of lanes in each section of proposed highway and the location of changes in numbers of lanes.
 11. Right-of-way limits.
 12. Direction of traffic flow on all roadways.

TASK 6 - MISCELLANEOUS DESIGN

6.1 Estimate – Opinion of Probable Construction Cost (OPCC)

- A. The ENGINEER shall develop and report quantities necessary to construct the contract in standard State bid format at the specified milestones and Final PS&E submittals. The ENGINEER shall prepare an OPCC that shall be provided at each milestone submittal or in TxDOT CONNECT format at the 90% and Final PS&E submittals per State's District requirement.

6.2 Contract time determination.

- A. The ENGINEER shall prepare a detailed contract time estimate to determine the approximate time required for construction of the project in calendar and working days (based on the State standard definitions of calendar and working days) at the 90% and Final PS&E milestone. The schedule shall include tasks, subtasks, critical dates, milestones, deliverables, and review requirements in a format which depicts the interdependence of the various items and adjacent construction packages. The ENGINEER shall assist the CITY and State in interpreting the schedule.

6.3 Constructability Review.

- A. The ENGINEER shall perform constructability reviews at major project design milestones (e.g., 60%, 90%, and final plan) to identify potential constructability issues and options that would provide substantial time savings during construction. The constructability review must be performed for all roadway and structural elements such as Sequence of Work/Traffic Control, Drainage (Temporary and Permanent), Storm Water Pollution Prevention Plan (SW3P), Environmental Permits, Issues and Commitments (EPIC) addressed, identify Utility conflicts; ensuring accuracy and appropriate use of Items, Quantities, General Notes, Standard and Special Specifications, Special Provisions, Contract Time/Schedule, Standards; and providing detailed comments in an approved format. Reviews must be captured in a Constructability Log identifying areas of concern and potential conflict. The ENGINEER shall provide the results of all Constructability reviews and recommendations to the CITY and State at major project design milestone submittals.

TASK 7 - CONTRACT MANAGEMENT AND ADMINISTRATION

The ENGINEER shall perform the following services:

- 7.1 Perform all work in accordance with the State's latest practices, criteria, specifications, policies, procedures, and Standards of Uniformity (SOU). All documents shall be sufficient to satisfy the current SOUs available from the State.
- 7.2 Act as an agent for the CITY and State when specified in a work authorization.
- 7.3 Notify the CITY and State of its schedule, in advance, for all field activities.
- 7.4 Prepare monthly written progress reports.
- 7.5 Develop and maintain a detailed project schedule to track project conformance to Exhibit C, Work Schedule. The schedule submittals shall be hard copy and electronic format.
- 7.6 Meet on a scheduled basis with the CITY and State to review project progress.
- 7.7 Prepare, distribute, and file both written and electronic correspondence.
- 7.8 Document phone calls and conference calls as required during the project to coordinate the work for various team members.

TASK 8 - CONSTRUCTION PHASE SERVICES

- 8.1 *The ENGINEER shall provide Construction Phase Services at the written request of the CITY and State's Project Managers. These services shall be considered additional services until the written request is made. The request shall include a description of the work requested, a mutually agreed upon time limit, and any special instructions for coordination and submittal. These services will consist of the following:*
 - A. *Attend preconstruction meeting (Omitted)*
 - B. *Attend partnering meeting (Omitted)*
 - C. *Attend field meetings and make visits to site*
 - D. *Calculate quantities and assist the area engineer in preparing change orders*

- E. *Review and approval of shop drawings*
- F. *Review and approval of forming details*
- G. *Responding to requests for information (RFIs)*
- H. *Providing minor redesign (major redesign should be handled with a contract supplement), which will include changes to the affected plan sheets and an updated copy of the 3D corridor model.*
- I. *Answering general questions*
- J. *Providing clarification*
- K. *Other project related tasks in support of the State during construction*

DELIVERABLES

- A. The ENGINEER shall submit the following deliverables to the State:
 - 1. Plan Development
 - a. 60% Plans Submittal. Provide the State with a review set of plans that consists of the items listed below:
 - i. Opinion of Probable Construction Cost (OPCC).
 - ii. Preliminary 3D corridor model, in the most current format, created using Bentley's OpenRoads tools, and with detail to verify the design of the 60% plan sheets. The level of detail of the surface and subsurface features will be at the direction of the State.
 - iii. Updated Title Sheet with Index of Sheets including Standards
 - iv. Final Existing and Proposed Typical Sections
 - v. Updated Summary Sheets
 - vi. Preliminary Traffic Control Plan Sheets
 - vii. Survey Control Data Sheets
 - viii. Final Plan & Profile Sheets for all Alignments
 - ix. Final Intersection Layouts
 - x. Preliminary Miscellaneous Roadway Details
 - xi. Final Drainage Area Maps
 - xii. Preliminary Hydraulic Computations
 - xiii. Preliminary Signing, Delineation & Pavement Marking Layouts
 - xiv. Preliminary SWP3 Layouts
 - xv. Roadway Cross-Sections (scale 1" =20' horizontally and vertically)
 - b. 90% Review Submittal. Provide the State with a review set of plans that consists of the items listed below:
 - i. Opinion of Probable Construction Cost (OPCC).
 - ii. New Special Specifications and Special Provisions with Form 1814, if applicable.
 - iii. A detailed 3D corridor model, in the most current format, created using Bentley's OpenRoads tools, and with detail to verify the design of the 90% plan sheets. The level of detail of the surface and subsurface features will be at the direction of the State.
 - iv. New Special Specifications and Special Provisions with Form 1814, if applicable.
 - v. Address 60% Comments
 - vi. Updated Title Sheet with Index of Sheets
 - vii. Final Existing and Proposed Typical Sections
 - viii. Final Summary Sheets
 - ix. Final Traffic Control Plan Sheets
 - x. Final Control Data Sheets

- xi. Final Plan & Profile Sheets
- xii. Final Intersection Layouts
- xiii. Final Miscellaneous Roadway Details
- xiv. Final Drainage Area Maps
- xv. Final Hydraulic Computations
- xvi. Final Signing, Delineation, & Pavement Marking Layouts
- xvii. Final SWP3 Layouts
- xviii. Final Roadway Cross-Sections (scale 1" =20), if changed
- xix. Final OPCC, marked-up General Notes, Specification Data Sheet, Special Provisions, Special Specifications
- xx. Preliminary Contract Time Determination

c. Final submittal (100%).

- i. Revised plans and supporting documents from 90% review comments.
- ii. Final Contract Time Determination
- iii. A final 3D corridor model, in the most current format, created using Bentley's OpenRoads tools. The level of detail of the surface and subsurface features will be at the direction of the State.
- iv. A final 3D earthwork model, if applicable, in either .XML or .ICM format (as directed by the State) created using Bentley's OpenRoads tools. The level of detail of the surface and subsurface features will be at the direction of the State.

B. Electronic Copies

- 1. The ENGINEER shall furnish the State with a USB flash drive of the final plans in the current graphics format used by the State, .pdf format, and in the District's File Management System (FMS) format.
- 2. The ENGINEER shall also provide separate USB flash drive containing cross section information (in dgn, XLR, & ASCII formats) for the contractor's use.
- 3. The ENGINEER shall provide the Primavera (P6) file or the latest scheduling program used by the State for construction time estimate.

ADDITIONAL SERVICES

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

- A. Design survey
- B. Geotechnical engineering services
- C. Subsurface utility engineering
- D. Schematic design
- E. Environmental documentation
- F. Public involvement or public outreach
- G. Traffic control plan and sequence of construction beyond what is noted in the scope
- H. Traffic counts or traffic projections
- I. Traffic intersection analysis
- J. Signal warrants or signal timing
- K. Signal design
- L. Existing water or sanitary sewer relocations
- M. Proposed water or sanitary sewer design
- N. Landscape or irrigation design

- O. Right of way acquisition services
- P. Franchise Utility Relocation Coordination
- Q. Bid phase services
- R. Construction phase services

PART 3.0 CITY AND STATE RESPONSIBILITIES

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

1. Name, address, and phone number of the CITY’s project manager.
2. Records available that would assist in the completion of the work described in PART 2.0.
3. Review, and coordination of review by the CITY and State, of recommendations offered by the ENGINEER and approval or rejection of any or all work performed under this contract.
4. Review of progress of work and final acceptance of all documents.
5. Processing of all periodic payment requests submitted by ENGINEER.
6. Assistance in the coordination and scheduling of site visits.
7. Available horizontal control points, benchmark elevations and descriptions for vertical control in the project area.
8. Available existing Right-of-Way (ROW) maps of state and municipal highway facilities in the project corridor.
9. Available interface data for any projects adjacent to the project corridor.
10. Current average bid prices for construction, maintenance, and operation costs.
11. Assistance as necessary in obtaining the required data and information from other local, regional, state, and federal agencies.
12. Timely reviews of deliverables in accordance with Part 4.0 (Periods of Service) of the Task Order
13. Authorizations and decisions necessary for the ENGINEER to maintain the project work schedule.
14. Examples of acceptable format for the deliverables required by the work authorizations.

PART 4.0 PERIODS OF SERVICE:

The term of this work authorization commences on the Effective Date and continues without interruption for a term of 8 months. If the ENGINEER determines that additional time is required to complete the Services, the CITY may, but is not obligated to, at their discretion, execute an agreement to grant additional time so long as the amount of consideration does not increase. Deliverables will be submitted to the CITY by the ENGINEER according to the following schedule:

Task	Deliverable	Period of Service
1	Franchise Utility Design Coordination	Through end of Project
2 - 7	Roadway Design	TBD
	60% PS&E	TBD
	90% PS&E	TBD
	100% PS&E	TBD

PART 5.0 PAYMENTS TO ENGINEER

The Fee Rate Schedules below are incorporated into the Agreement by work authorization as permitted by the articles and Exhibits of the Agreement.

The ENGINEER will perform the services described in Part 2.0 - Tasks 1 - 7 of the work authorization on a lump sum basis and will not exceed the maximum labor and expenses fee shown below.

TASK DESCRIPTION	Total Cost
1. Franchise Utility Coordination	\$ 21,000.00
2. Roadway Design	\$ 145,300.00
3. Drainage Design	\$ 115,100.00
4. Traffic Control	\$ 54,800.00
5. Signing, Pavement Markings and Signalization	\$ 18,400.00
6. Miscellaneous Design	\$ 52,900.00
7. Contract Management and Administration	\$ 44,000.00
LABOR SUBTOTALS	\$451,500.00
Direct Expenses	\$ 1,600.00
TOTAL (LUMP SUM)	\$453,100.00

**SH 158 Geometric Layout
FROM: Wadley Avenue
TO: Briarwood Road**

PART 1.0 PROJECT UNDERSTANDING

A. Project Description

The ENGINEER shall provide engineering services required for the preparation of a Geometric Layout (plan and profile) and Opinion of Probable Construction Cost (OPCC) for SH 158 from Wadley Avenue to Briarwood Road located in Midland, Texas. The roadway improvements will consist of widening SH 158 from a 2-lane rural roadway to a 5-lane urban arterial, designed to City of Midland and/or TxDOT specifications. These services will consist of data collection, subsurface utility engineering, preparing preliminary roadway design, preliminary hydrologic and hydraulic design, and preliminary signing and pavement markings necessary to support the design process.

Currently, SH 158 is a 2-lane rural roadway with shoulders. This project is 1.7-miles long, with 150-foot Right of Way (ROW) and will tie into proposed intersection improvements at Wadley Avenue and Briarwood Road, which are both to be completed as separate projects. The design of this project will assume that the Wadley Avenue and Briarwood Road intersection projects will be constructed prior to this project construction.

B. Design Criteria

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

C. Right of Entry and Coordination

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

The ENGINEER shall notify the CITY and State and coordinate with adjacent ENGINEERs on all controls at project interfaces. The ENGINEER shall document the coordination effort, and each ENGINEER shall provide written concurrence regarding the agreed project controls and interfaces. In the event the ENGINEER and the other adjacent ENGINEERs are unable

to agree, the ENGINEER and each adjacent ENGINEER shall meet jointly with the CITY and State for resolution. The CITY and/or State will have authority over the ENGINEER's disagreements and the CITY and State's decision will be final.

PART 2.0 SCOPE OF SERVICES

ENGINEER will provide the services specifically set forth below.

TASK 1 – DATA COLLECTION

- 1.1. The ENGINEER shall collect, review, and evaluate data described below. The ENGINEER shall notify the CITY in writing whenever the ENGINEER finds disagreement with the information or documents:
 - A. Data from CITY or TxDOT (State), include, but are not be limited to, "as-built plans", existing schematics, right-of-way maps, subsurface utility Engineering (SUE) mapping, and previous corridor studies, reports, and plans conducted by other agencies and groups, environmental documents, existing channel and drainage easement data, existing traffic counts, accident data, Project Management Information system (PMIS) data, identified hazardous material sites, current unit bid price information, current special provisions, special specifications, and standard drawings., if available.
 - B. Utility plans and documents from CITY and utility companies.
 - C. Obtain graphics files, plans, documents, and other pertinent data for existing and proposed improvements along the proposed corridor. Review collected information and process the data into Open Roads Designer (ORD) reference files and organize it into project reference notebooks.
 - D. Conduct field reconnaissance and collect data including a photographic record of notable existing features.
- 1.2. Design Criteria.
 - A. The ENGINEER shall develop the roadway design criteria based on the controlling factors specified by the State (i.e., 4R, 3R, 2R, or special facilities), by use of the funding categories, design speed, functional classification, roadway class and any other set criteria as set forth in PS&E Preparation Manual, Roadway Design Manual, Hydraulic Design Manual, and other deemed necessary State approved manuals. In addition, the ENGINEER shall prepare the Design Summary Report (DSR) and submit it electronically. The ENGINEER shall obtain written concurrence from the CITY and State prior to proceeding with a design if any questions arise during the design process regarding the applicability of State's design criteria.
- 1.3. Preliminary Cost Estimates.
 - A. The ENGINEER shall develop a preliminary cost estimate using the Average Low Bid Unit Price. Because the ENGINEER does not control the cost of labor, materials, equipment, or services furnished by others, methods of determining prices, or competitive bidding or market conditions, any opinions rendered as to costs, including but not limited to opinions as to the costs of construction and materials, shall be made on the basis of its experience and represent its judgment as an experienced and qualified professional, familiar with the industry. The ENGINEER cannot and does not guarantee that proposals, bids, or actual costs will not vary from its opinions of cost.

1.4. Design Concept Conference.

- A. In accordance with the State's Project Development Process Manual, the ENGINEER, in cooperation with the CITY and State, shall plan, attend, and document the Design Concept Conference (DCC) to be held prior to the geometric layout submittal. In preparation for the DCC, the ENGINEER shall complete a State's Design Summary Report (DSR) to serve as a checklist for the minimum required design considerations. The conference will provide for a brainstorming session in which decision makers, stakeholders and technical personnel may discuss and agree on:
1. Roadway and drainage design parameters
 2. Engineering constraints
 3. Project development schedule
 4. Other issues as identified by the CITY and State
 5. Identify any Design Exceptions and Waivers
 6. Preliminary Construction Cost Estimate

TASK 2 – SUBSURFACE UTILITY ENGINEERING

2.1 Utility Engineering Investigation.

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

- A. Utility Quality Levels are defined in cumulative order (least to greatest) as follows:
1. Quality Level D - Existing Records: Utilities are plotted from review of available existing records.
 2. Quality Level C - Surface Visible Feature Survey: Quality level "D" information from existing records is correlated with surveyed surface-visible features. Includes Quality Level D information. If there are variances in the designated work area of Level D, a new schematic or plan layout will be necessary to identify the limits of the proposed project and the limits of the work area required for the work authorization; including highway stations, limits within existing or proposed right of way, additional areas outside the proposed right of way, and distances or areas to be included along existing intersecting roadways.
 3. Quality Level B - Designate: Two-dimensional horizontal mapping. This information is obtained through the application and interpretation of appropriate non-destructive surface geophysical methods. Utility indications are referenced to established survey control. Incorporates quality levels C and D information to produce Quality Level B. If there are variances in the designated work area of Level D, a new schematic or plan layout will be necessary to identify the limits of the proposed project and the limits of the work area required for the work authorization; including highway stations, limits within existing or proposed right of way, additional areas outside the proposed right of way, and distances or areas to be included along existing intersecting roadways.

4. Quality Level A - Locate (Test Hole): Three-dimensional mapping and other characterization data. This information is obtained through exposing utility facilities through test holes and measuring and recording (to appropriate survey control) utility/environment data. Incorporates quality levels B, C and D information to produce Quality Level A.

2.2 Subsurface Utility Locate (Test Hole) Service (Quality Level A)

- A. Locate means to obtain precise horizontal and vertical position, material type, condition, size, and other data that may be obtainable about the utility facility and its surrounding environment through exposure by non-destructive excavation techniques that ensures the integrity of the utility facility. Subsurface Utility Locate (Test Hole) Services (Quality Level A) are inclusive of Quality Levels B, C, and D.
- B. The ENGINEER shall:
 1. Review requested test hole locations and advise the CITY and State in the development of an appropriate locate (test hole) work plan relative to the existing utility infrastructure and proposed highway design elements.
 2. Coordinate with utility owner inspectors as may be required by law or utility owner policy.
 3. Neatly cut and remove existing pavement material, such that the cut not to exceed 0.10 square meters (1.076 square feet) unless unusual circumstances exist.
 4. Measure and record the following data on an appropriately formatted test hole data sheet that has been sealed and dated by the ENGINEER:
 - a. Elevation of top and/or bottom of utility tied to the datum of the furnished plan.
 - b. Identify a minimum of two benchmarks utilized. Elevations shall be within an accuracy of 15mm (.591 inches) of utilized benchmarks.
 - c. Elevation of existing grade over utility at test hole location.
 - d. Horizontal location referenced to project coordinate datum.
 - e. Outside diameter of pipe or width of duct banks and configuration of non-encased multi-conduit systems.
 - f. Utility facility material(s).
 - g. Utility facility condition.
 - h. Pavement thickness and type.
 - i. Coating/Wrapping information and condition.
 - j. Unusual circumstances or field conditions.
 5. Excavate test holes in such a manner as to prevent any damage to wrappings, coatings, cathodic protection or other protective coverings and features. Water excavation can only be utilized with written approval from the appropriate State District Office.
 6. Be responsible for any damage to the utility during the locating process. In the event of damage, the ENGINEER shall stop work, notify the appropriate utility facility owner, the CITY and State and appropriate regulatory agencies. The regulatory agencies include but are not limited to the Railroad Commission of Texas and the Texas Commission on Environmental Quality. The ENGINEER shall

not resume work until the utility facility owner has determined the corrective action to be taken. The ENGINEER shall be liable for all costs involved in the repair or replacement of the utility facility.

7. Back fill all excavations with appropriate material, compact backfill by mechanical means, and restore pavement and surface material. The ENGINEER shall be responsible for the integrity of the backfill and surface restoration for a period of three years. Install a marker ribbon throughout the backfill.
8. Furnish and install a permanent above ground marker (as specified by the State, directly above center line of the utility facility).
9. Provide complete restoration of work site and landscape to equal or better condition than before excavation. If a work site and landscape is not appropriately restored, the ENGINEER shall return to correct the condition at no extra charge to the CITY and State.
10. Plot utility location position information to scale and provide a comprehensive utility plan sign and sealed by the responsible ENGINEER. This information shall be provided in the latest version of Micro Station or Geopak format used by the State. The electronic file will be delivered on C.D or DVD. When requested by the CITY and State, the Locate information must be over laid on the State's design plans.
11. Return plans, profiles, and test hole data sheets to the CITY and State. If requested, conduct a review of the findings with the CITY and State.
12. Close-out permits as required.

2.3 Project SUE Scope

- A. The scope of this proposal includes Quality Level "A" and "B" SUE. Utilities to be designated include gas, telecommunications, electric, traffic signals, storm, water, and sanitary sewer. Overhead inventory is to be included. Designating will be performed within the following limits:
 1. SH 158 from Wadley Avenue to Briarwood Road: perform Level "B" designating along SH 158 from Wadley Avenue to Briarwood Road, approximately 1.7-miles in length.
 2. Eight (8) QL "A" test holes will be included in the budget. Test hole locations will be determined by Kimley Horn and TRG once the QL "B" SUE deliverable has been reviewed. TRG will have all designating marks and test holes surveyed using project control point data provided by Kimley Horn.

TASK 3 – PRELIMINARY ROADWAY DESIGN

3.1 Geometric Layout

- A. Preliminary Geometric Layout. A plan-view only, preliminary geometric layout (LAYOUT) was previously developed for the project limits between SH 191 and SH 349C (Craddick Relief Route) as part of another work authorization. The LAYOUT will be modified to incorporate the proposed Wadley and Briarwood intersection improvements (to be completed as separate projects), eliminate or modify the bicycle lanes along SH 158, per TxDOT Roadway Design Manual criteria, adjust curb lines and pavement markings as needed, add a proposed profile view, and add proposed drainage design layout. The ENGINEER will submit the revised LAYOUT as the 30% milestone submittal to be reviewed and approved by the CITY and State. Plan sheets

will not be included in the 30% milestone submittal package.

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

3.2 Roadway Design

- A. The ENGINEER shall use Bentley's OpenRoads 3D Design technology in the design and preparation of the geometric layout.
- B. The ENGINEER shall provide roadway plan and profile in the LAYOUT using CADD standards as required by the State. The LAYOUT must consist of a planimetric file of existing features and files of the proposed improvements. The roadway base map must contain line work that depicts existing surface features. Existing major subsurface and surface utilities must be shown if requested by the CITY and State. Existing and proposed right-of-way lines must be shown.
 - 1. The plan view shall contain the following design elements:
 - a. Calculated roadway centerlines for mainlanes and cross streets, as applicable. Horizontal control points must be shown. The alignments must be calculated using OpenRoads horizontal geometry tools.
 - b. Pavement edges for all improvements (mainlanes and cross streets, as applicable.)
 - c. Lane and pavement width dimensions.
 - d. Proposed drainage structure locations, lengths, and widths, as applicable.
 - e. Direction of traffic flow on all roadways. Lane lines and arrows indicating the number of lanes must also be shown.
 - f. Control of access line, ROW lines and easements.
 - g. Begin and end super elevation transitions and cross slope changes.
 - h. Limits of riprap, block sod, and seeding.
 - i. Existing utilities and structures.
 - j. Benchmark information.

- k. Radii call outs, curb location, guard fence, crash safety items and American with Disabilities Act Accessibility Guidelines (ADAAG) compliance items.
 - 2. The profile view shall contain the following design elements:
 - a. Calculated profile grade for proposed mainlanes (cite direction) and cross streets, if applicable. Vertical curve data, including “K” values must be shown. The profiles must be calculated using OpenRoads vertical geometry tools.
 - b. Existing and proposed profiles along the proposed centerline of the mainlanes.
- 3.3 Typical Sections
 - A. The ENGINEER shall prepare and provide typical sections for all proposed and existing roadways on the LAYOUT. Typical sections will show width of travel lanes, shoulders, outer separations, border widths, curb offsets, and ROW. The typical section will also show Proposed Profile Gradeline (PGL), centerline, pavement design (as applicable), side slopes, sodding or seeding limits, concrete traffic barriers and sidewalks, if required, station limits, riprap, etc.
- 3.4 Pavement Design
 - A. The State shall provide the proposed pavement design to be used in the design of the project.
- 3.5 Pedestrian and Bicycle Facilities
 - A. The ENGINEER shall coordinate with the CITY and State to incorporate pedestrian and bicycle facilities, as required, on the LAYOUT. All pedestrian facilities shall be designed in accordance with the latest ADAAG, and the Texas Accessibility Standards (TAS) and bicycle facilities shall be designed in accordance with the latest TxDOT design guidelines.

Task 4 – PRELIMINARY DRAINAGE DESIGN

The drainage design for the proposed intersection of SH 158 and Briarwood Road was completed as part of a separate work authorization. This work authorization will consist of preparing a preliminary drainage design between Wadley Avenue and Briarwood Road. The ENGINEER shall perform preliminary storm drainage calculations to determine size and location of proposed internal storm drainage systems, cross culverts and ditch/channels along and within the project location. The ENGINEER understands that a Conditional Letter of Map Revision (CLOMR) was prepared by others in July 2018 for a project along Jal Draw. This CLOMR will herein be referred to as the “Jal Draw CLOMR” and will be relied on as a base model for all Jal Draw hydrologic and hydraulic modeling.

- 4.1 Data Collection.
 - A. The ENGINEER shall provide the following data collection services:
 - 1. Conduct field inspections to observe current conditions, outfall channels, cross-drainage structures, drainage easements, and land development projects that contribute flow to the corridor. Document field inspections with digital photos.
 - 2. Collect available and applicable data including Geographic Information System (GIS) data and maps, site survey data, construction plans, previous reports and studies, and readily available rainfall history for the area. Sources of data collected

must include, but are not limited to, the State, County, and Federal Emergency Management Agency (FEMA).

4.2 Preliminary Drainage Design

- A. The ENGINEER will compile information gathered during the Data Collection phase of this project to prepare a drainage area map. Drainage areas for Jal Draw shall be adopted from the Jal Draw CLOMR and revisions necessary to support the project will be made.
- B. The ENGINEER will perform hydrologic calculations for the 5-, 10-, 25- and 100-year storm events using the Rational Method and Unit Hydrograph Method. The hydrologic model prepared with the Jal Draw CLOMR will be used as the basis for the Unit Hydrograph calculations.
- C. The ENGINEER shall perform preliminary storm drain calculations using Manning's Equation
- D. The ENGINEER shall use the hydraulic model prepared by the Jal Draw CLOMR as the basis for the Jal Draw analysis. It is understood that the current upstream extent of the hydraulic model is approximately County Road 1250. The ENGINEER will extend the hydraulic model through the project limits to a point approximately 200' upstream of the SH 158 ROW.
- E. The ENGINEER shall provide preliminary design for a crossing of SH 158 at Jal Draw. Both a bridge class culvert and a multi-span bridge will be analyzed. The crossing will be designed to convey the design storm with freeboard and produce no adverse impact outside of ROW or proposed drainage easements in the check storm.
- F. The ENGINEER shall provide a layout of proposed drainage structures in plan view only. This data will be included on the roll plot prepared under a separate task.
- G. The ENGINEER shall provide a layout of proposed drainage ditches in plan view only. Sizing of the ditches will be performed using standard Manning's Equation calculations. Typical ditch sections will be provided. This data will be included on the roll plot prepared under a separate task.
- H. The ENGINEER will attend up to two (2) design meetings with the CITY to review drainage design.

TASK 5 – PRELIMINARY SIGNING AND PAVEMENT MARKINGS

5.1 Signing and Pavement Markings.

- A. The ENGINEER shall provide a preliminary layout of signing and pavement markings for the purpose of receiving CITY and State approval and calculating quantities to be used in the preparation of the OPCC.

TASK 6 – OPINION OF PROBABLE CONSTRUCTION COST

6.1 Estimate – Opinion of Probable Construction Cost (OPCC)

- A. The ENGINEER shall prepare a preliminary Opinion of Probable Construction Cost (OPCC).

TASK 7 - CONTRACT MANAGEMENT AND ADMINISTRATION

The ENGINEER shall perform the following services:

- 7.1 Perform all work in accordance with the State's latest practices, criteria, specifications, policies, procedures, and Standards of Uniformity (SOU). All documents shall be sufficient to satisfy the current SOUs available from the State.
- 7.2 Act as an agent for the CITY and State when specified in a work authorization.
- 7.3 Notify the CITY and State of its schedule, in advance, for all field activities.
- 7.4 Prepare monthly written progress reports.
- 7.5 Develop and maintain a detailed project schedule to track project conformance to Exhibit C, Work Schedule. The schedule submittals shall be hard copy and electronic format.
- 7.6 Meet on a scheduled basis with the CITY and State to review project progress.
- 7.7 Prepare, distribute, and file both written and electronic correspondence.
- 7.8 Document phone calls and conference calls as required during the project to coordinate the work for various team members.

DELIVERABLES

- A. The ENGINEER shall submit the following deliverables to the State:
 1. Plan/Layout Development
 - a. 30% Submittal
 - i. Preliminary geometric project layout
 - ii. Opinion of Probable Construction Cost
 - B. Electronic Copies
 1. The ENGINEER shall furnish the State with a USB flash drive of the Geometric Layout in the current graphics format used by the State, .pdf format, and in the District's File Management System (FMS) format.

ADDITIONAL SERVICES

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

- A. Schematic design
- B. Environmental documentation
- C. Public involvement or public outreach
- D. PS&E (30% - 100%)
- E. Final drainage design
- F. Cross sections
- G. Traffic control plan, detours, and sequence of construction
- H. Traffic counts or traffic projections
- I. Traffic intersection analysis
- J. Signal warrants or signal timing

- K. Signal design
- L. Existing water or sanitary sewer relocations
- M. Proposed water or sanitary sewer design
- N. Landscape or irrigation design
- O. Right of way acquisition services
- P. Franchise utility coordination
- Q. Bid phase services or construction contract administration

PART 3.0 CITY AND STATE RESPONSIBILITIES

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

1. Name, address, and phone number of the CITY’s project manager.
2. Records available that would assist in the completion of the work described in PART 2.0.
3. Review, and coordination of review by the CITY and State, of recommendations offered by the ENGINEER and approval or rejection of any or all work performed under this contract.
4. Review of progress of work and final acceptance of all documents.
5. Processing of all periodic payment requests submitted by ENGINEER.
6. Assistance in the coordination and scheduling of site visits.
7. Available horizontal control points, benchmark elevations and descriptions for vertical control in the project area.
8. Available existing Right-of-Way (ROW) maps of state and municipal highway facilities in the project corridor.
9. Available interface data for any projects adjacent to the project corridor.
10. Current average bid prices for construction, maintenance, and operation costs.
11. Assistance as necessary in obtaining the required data and information from other local, regional, state, and federal agencies.
12. Timely reviews of deliverables in accordance with Part 4.0 (Periods of Service) of the Task Order
13. Authorizations and decisions necessary for the ENGINEER to maintain the project work schedule.
14. Examples of acceptable format for the deliverables required by the work authorizations.

PART 4.0 PERIODS OF SERVICE:

The term of this work authorization commences on the Effective Date and continues without interruption for a term of 3 months. If the ENGINEER determines that additional time is required to complete the Services, the CITY may, but is not obligated to, at their discretion, execute an agreement to grant additional time so long as the amount of consideration does not increase. Deliverables will be submitted to the CITY by the ENGINEER according to the following schedule:

Task	Deliverable	Period of Service
1	Data Collection	Through end of project
2	Subsurface Utility Engineering (SUE)	Q1-2 2023
3 - 7	Roadway Design – Geometric Layout	TBD

PART 5.0 PAYMENTS TO ENGINEER:

The below additional Fee Rate Schedules are incorporated into the Agreement by work authorization as permitted by the articles and Exhibits of the Agreement.

TASK DESCRIPTION	Prime Provider KHA	Sub Provider SURVEY	Sub Provider GEOTECH	Sub Provider SUE	Total Labor Cost
1. Data Collection	\$ 8,700.00	\$ -	\$ -	\$ -	\$ 8,700.00
2. Subsurface Utility Engineering	\$ 7,100.00	\$ -	\$ -	\$50,700.00	\$ 57,800.00
3. Roadway Design	\$ 56,400.00	\$ -	\$ -	\$ -	\$ 56,400.00
4. Drainage Design	\$ 79,100.00	\$ -	\$ -	\$ -	\$ 79,100.00
5. Signing and Pavement Markings	\$ 9,200.00	\$ -	\$ -	\$ -	\$ 9,200.00
6. Miscellaneous Design	\$ 6,200.00	\$ -	\$ -	\$ -	\$ 6,200.00
7. Contract Management and Administration	\$ 16,200.00	\$ -	\$ -	\$ -	\$ 16,200.00
LABOR SUBTOTALS	\$ 182,900.00	\$ -	\$ -	\$50,700.00	\$233,600.00
Direct Expenses	\$ 800.00				\$ 800.00
PROVIDER SUBTOTALS (LUMP SUM)	\$ 183,700.00	\$ -	\$ -	\$50,700.00	\$234,400.00

The ENGINEER will perform the services described in Part 2.0 - Tasks 1 - 7 of the work authorization on a lump sum basis and will not exceed the maximum labor and expenses fee shown below.

PART 6.0 OTHER: Not Applicable

SH 158 PS&E
FROM: Wadley Avenue
TO: Briarwood Road

PART 1.0 PROJECT UNDERSTANDING

A. Project Description

The ENGINEER shall provide engineering services required for the preparation of 30% to 100% plans, specifications, and estimates (PS&E) and related documents, for SH 158 from Wadley Avenue to Briarwood Road located in Midland, Texas. The roadway improvements will consist of widening SH 158 from a 2-lane rural roadway to a 5-lane urban arterial, designed to City of Midland and/or TxDOT specifications. These services will consist of franchise utility coordination, preparing roadway design, hydrologic and hydraulic design, traffic control design, signing and pavement markings, and bid phase services necessary to support the design process.

Currently, SH 158 is a 2-lane rural roadway with shoulders. This project is 1.7-miles long, with 150-foot Right of Way (ROW) and will tie into proposed intersection improvements at Wadley Avenue and Briarwood Road, which are both to be completed as separate projects. The design of this project will assume that the Wadley Avenue and Briarwood Road intersection projects will be constructed prior to this project construction.

B. Design Criteria

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

C. Right of Entry and Coordination

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

The ENGINEER shall notify the CITY and State and coordinate with adjacent ENGINEERS

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

PART 2.0 SCOPE OF SERVICES

ENGINEER will provide the services specifically set forth below.

TASK 1 – FRANCHISE UTILITY COORDINATION

1.1 Franchise Utility Design Coordination

A. Final Design Coordination:

1. At the 90% and 100% stages of PS&E development, send project plans to all Franchise Utilities via PDF to provide project limits, details and schedule for construction.
2. Data Collection and Research:
 - a. Update and maintain database of existing franchise utility representatives, including representative contact information (email, mailing address, phone, etc.).
 - b. Prepare PS&E exhibit that indicates franchise utility locations based upon SUE.
 - c. Identify potential utility conflicts with the proposed roadway and drainage improvements and document in a utility conflict matrix.
 - d. Survey potholes of located utilities and incorporate data into the design files to determine actual location and depth of utilities.
 - e. Schedule (2) meetings, after 90% and 100% submittals, with franchise utility companies to provide notice of potential conflicts and proposed locations (offset and/or depth) for relocated lines that would be clear of proposed roadway and drainage improvements.

1.2 Franchise Utility Relocation Coordination

The ENGINEER shall provide Franchise Utility Relocation Coordination at the written request of the CITY and State. These services shall be considered additional services until the written request is made. The request shall include a description of the work requested, a mutually agreed upon time limit, number of coordination meetings, and any special instructions for coordination and submittal. These services will consist of the following:

1. *Coordinate utility relocation assignments and schedule*
 - a. *Schedule (#) bi-monthly coordination meetings with franchise utility companies. These meetings will be held for engaging franchise utility companies, to identify potential utility conflicts, and to coordinate the scheduling of relocating conflicting utilities.*
 - b. *ENGINEER will work with franchise utilities and review relocation plans to be prepared by the utility companies and initiated prior to letting.*

TASK 2 – ROADWAY DESIGN

2.1 Roadway Design

- A. The ENGINEER shall refer to the previously prepared geometric layout of SH 158, from Wadley Avenue to Briarwood Road, and use Bentley's OpenRoads 3D Design technology in the design and preparation of the roadway plan sheets.
- B. The ENGINEER shall provide roadway plan and profile drawings using CADD standards as required by the State. The drawings must consist of a planimetric file of existing features and files of the proposed improvements. The roadway base map must contain line work that depicts existing surface features. Existing major subsurface and surface utilities must be shown if requested by the CITY and State. Existing and proposed right-of-way lines must be shown. Plan and Profile must be shown on separate or same sheets (this depends upon width of pavement) for main lanes and frontage roads.
 1. The plan view shall contain the following design elements:
 - a. Calculated roadway centerlines for mainlanes and cross streets, as applicable. Horizontal control points must be shown. The alignments must be calculated using OpenRoads horizontal geometry tools.
 - b. Pavement edges for all improvements (mainlanes and cross streets, as applicable.)
 - c. Lane and pavement width dimensions.
 - d. Proposed drainage structure locations, lengths, and widths.
 - e. Direction of traffic flow on all roadways. Lane lines and arrows indicating the number of lanes must also be shown.
 - f. Drawing scale shall be 1" =100'.
 - g. Control of access line, ROW lines and easements.
 - h. Begin and end super elevation transitions and cross slope changes.
 - i. Limits of riprap, block sod, and seeding.
 - j. Existing utilities and structures.
 - k. Benchmark information.
 - l. Radii call outs, curb location, concrete traffic barrier (CTB), guard fence, crash safety items and American with Disabilities Act Accessibility Guidelines (ADAAG) compliance items.
 2. The profile view shall contain the following design elements:
 - a. Calculated profile grade for proposed mainlanes (cite direction) and cross streets, if applicable. Vertical curve data, including "K" values must be shown. The profiles must be calculated using OpenRoads vertical geometry tools.
 - b. Existing and proposed profiles along the proposed centerline of the mainlanes.
 - c. Drawing vertical scale to be 1" =10'.

2.2 Typical Sections

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

2.3 Mainlane Design

- A. The ENGINEER shall provide the design of SH 158 mainlanes. The design must be consistent with the current TxDOT Roadway Design Manual.

- 2.4 Cross Streets
- A. The ENGINEER shall provide an intersection layout detailing the pavement design and drainage design at the intersection of each cross street. The layout will consist of the horizontal and vertical alignments, curb returns, geometrics, transition length, stationing, pavement, drainage details, and American with Disabilities Act Accessibility Guidelines (ADAAG) compliance items. The ENGINEER shall design for full pavement width to the ROW and provide a transition to the existing roadway.
- 2.5 Cut and Fill Quantities
- A. The ENGINEER shall develop an earthwork analysis to determine cut and fill quantities and provide final design cross sections at 100 feet intervals. Cross sections must be delivered in standard Open Roads Designer format on 11"x17" sheets or roll plots and electronic files. The ENGINEER shall provide all criteria and input files used to generate the design cross sections. Cross sections and quantities must include existing pavement removals. Annotation shall include at a minimum existing and proposed ROW, side slopes (front & back), profiles, etc.
- B. The ENGINEER shall submit a PDF set of drawings at the 60%, and 90%, and final submittals, respectively.
- 2.6 Plan Preparation
- A. The ENGINEER shall prepare roadway plans, profiles, and typical sections for the proposed improvements. This scope of services and the corresponding cost proposal are based on the ENGINEER preparing plans to construct main lanes and cross streets at intersections. The roadway plans must consist of the types and be organized in the sequence as described in the PS&E Preparation manual.
- 2.7 Pavement Design
- A. The State shall provide the proposed pavement design to be used in the design of the project.
- 2.8 Pedestrian Facilities
- A. The ENGINEER shall coordinate with the CITY and State to incorporate pedestrian facilities as required or shown on the project's geometric layout. All pedestrian facilities shall be designed in accordance with the latest ADAAG and the Texas Accessibility Standards (TAS) and bicycle facilities shall be designed in accordance with the latest TxDOT design guidelines.
- 2.9 Storm Water Pollution Prevention Plan (SW3P)
- A. The ENGINEER shall develop SW3P, on separate sheets from (but in conformance with) the TCP, to minimize potential impact to receiving waterways. The SW3P shall include text describing the plan, quantities, type, phase and locations of erosion control devices and any required permanent erosion control.
- 2.10 Compute and Tabulate Quantities
- A. The ENGINEER shall provide the summaries and quantities within all formal submittals.
- 2.11 Specifications and General Notes.
- A. The ENGINEER shall identify necessary standard specifications, special specifications, special provisions, and the appropriate reference items. The

ENGINEER shall prepare General Notes from the District's *Master List of General Notes*, Special Specifications and Special Provisions for inclusion in the 90% and 100% plans and bidding documents. The ENGINEER shall provide General Notes, Special Specifications and Special Provisions in the required format.

Task 3 – DRAINAGE DESIGN

The drainage design for the proposed intersection of SH 158 and Briarwood Road was completed as part of a separate work authorization. A previously prepared geometric layout prepared a preliminary drainage design between Wadley Avenue and Briarwood Road, with reference to a Jal Draw drainage study performed by others.

3.1 Data Collection.

A. The ENGINEER shall provide the following data collection services:

1. Conduct field inspections to observe current conditions, outfall channels, cross-drainage structures, drainage easements, and land development projects that contribute flow to the tributary. Document field inspections with digital photos.
2. Collect available and applicable data including Geographic Information System (GIS) data and maps, site survey data, construction plans, previous reports and studies, and readily available rainfall history for the area. Sources of data collected must include, but are not limited to, the State, County, and Federal Emergency Management Agency (FEMA).

3.2 Temporary Drainage Facilities

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

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

A. The ENGINEER shall provide the following services:

1. Prepare the PS&E package in accordance with the applicable requirements of the State's specifications, standards, and manuals, including the PS&E Preparation Manual. The PS&E package will consist of the following sheets and documents:
2. External Drainage Area Maps (2 sheet estimate)
3. Internal Drainage Area Maps (2 sheet estimate for Existing and Proposed, total of 4 sheets)
4. Hydrologic Data Sheets (1 sheet estimate)
5. Hydraulic Data Sheets (2 sheet estimate)
6. Storm Drain Plan/Profile Sheets (10 sheets estimate)
7. Construction Details (5 sheet estimate)
8. Identify areas requiring trench protection, excavation, shoring and de-watering.
9. Select any necessary standard details from State or District's list of standards for items such as inlets, manholes, junction boxes and end treatments.
10. Prepare details for non-standard inlets, manholes and junction boxes.
11. Prepare drainage details for outlet protection, outlet structures and utility accommodation structures.
12. Identify pipe strength requirements.
13. Prepare drainage facility quantity summaries.
14. Identify potential utility conflicts and, if feasible, design to mitigate or avoid those identified conflicts

15. Consider pedestrian facilities, utility impacts, and driveway grade drainage impacts.

3.4 Conditional Letter of Map Revision (CLOMR)

- A. The ENGINEER understands that the project falls within FEMA's Regulatory Floodplain and Floodway. It is anticipated that construction of the project will produce increase Base Flood Elevations that will require FEMA's approval via CLOMR application. The CLOMR is anticipated to consist of the following:
 1. Report Narrative
 2. Effective and Annotated FIRM Maps
 3. Hydraulic Workmaps
 4. Preliminary Culvert Layout Sheet
 5. Hydraulic Calculations
 6. Endangered Species Act Determination Letter
 7. Digital Model and CAD Files.
- B. The ENGINEER will submit the CLOMR application to the CITY for review and comment prior to submission to FEMA. This task includes one round of CITY comments. Upon CITY approval, the ENGINEER will submit the CLOMR to FEMA for review.
- C. The ENGINEER will perform a field investigation and review of readily available databases relevant to Federal listed species as part of an Endangered Species Act (ESA) Compliance letter need to accompany a CLOMR application. The ENGINEER will make a determination based on the findings a prepared a ESA Compliance Letter. If the field investigation reveals an outcome other than "no potential for Take exists", the ENGINEER can perform a detailed study and produce additional documentation as an additional service.

TASK 4 – TRAFFIC CONTROL

The traffic control plan, any detours, and sequence of construction will be prepared with the assumption that the proposed intersection improvements at SH 158 and Briarwood Road will be constructed prior to these improvements. Any change or modification to the traffic control plan, detours, and/or sequence of construction of this work authorization, because of a change in the sequencing of these two projects, or other adjacent project(s) shall be considered additional services.

4.1 Traffic Control Plan, Detour, Sequence of Construction.

- A. The ENGINEER shall prepare Traffic Control Plans (TCP) including TCP typical sections, for the project. If requested by the State, the ENGINEER shall complete Form 2229-Significant Project Procedures along with Page 4 of Form 1002, specifically titled Accelerated Construction Procedures. A detailed TCP must be developed in accordance with the latest edition of the TMUTCD. The ENGINEER shall implement the current Barricade and Construction (BC) standards and TCP standards as applicable. The ENGINEER shall interface and coordinate phases of work, including the TCP, with adjacent ENGINEERs. The ENGINEER shall:
 1. Provide a written narrative of the construction sequencing and work activities per

phase and determine the existing and proposed traffic control devices (regulatory signs, warning signs, guide signs, route markers, construction pavement markings, barricades, flag personnel, temporary traffic signals, etc.) to be used to handle traffic during each construction sequence. The ENGINEER shall show proposed traffic control devices at grade intersections during each construction phase (stop signs, flag person, signals, etc.). The ENGINEER shall show temporary roadways and detours required to maintain lane continuity throughout the construction phasing.

2. Develop each TCP to provide continuous, safe access to each adjacent property during all phases of construction and to preserve existing access. The ENGINEER shall notify the CITY and State in the event existing access must be eliminated and must receive approval from the CITY and State prior to any elimination of existing access.
3. Design temporary drainage to replace existing drainage disturbed by construction activities or to drain detour pavement. The ENGINEER shall show horizontal and vertical location of culverts and required cross sectional area of culverts.
4. Prepare each TCP in coordination with the CITY and State. The TCP must include interim signing for every phase of construction. Interim signing must include regulatory, warning, construction, route, and guide signs.
5. Maintain continuous access to abutting properties during all phases of the TCP.
6. Make every effort to prevent detours and utility relocations from extending beyond the proposed Right-of-way lines. If it is necessary to obtain additional permanent or temporary easements and Right-of-Entry, the ENGINEER shall notify the CITY and State in writing of the need and justification for such action. The ENGINEER shall identify and coordinate with all utility companies for relocations required.
7. Describe the type of work to be performed for each phase of sequence of construction and any special instructions (e.g., storm drain, signing, paving surface sequencing or concrete placement, ROW restrictions, utilities, etc.) that the contractor should be made aware to include limits of construction, obliteration, and shifting or detouring of traffic prior to the proceeding phase.
8. Include the work limits, the location of channelizing devices, positive barrier, location and direction of traffic, work area, stations, pavement markings, and other information deemed necessary for each phase of construction.

TASK 5 – SIGNING AND PAVEMENT MARKINGS

5.1 Signing.

- A. The ENGINEER shall prepare drawings, specifications, and details for all signs. The ENGINEER shall coordinate with the CITY and State for overall temporary, interim, and final signing. The ENGINEER shall:
 1. Provide a summary of large and small signs to be removed, relocated, or replaced.
 2. Illustrate and number the proposed signs on plan sheets.
 3. Select each sign foundation from State Standards.

5.2 Pavement Marking.

- A. The ENGINEER shall detail both permanent and temporary pavement markings and channelization devices on plan sheets. The ENGINEER shall coordinate with the CITY and State for overall temporary, interim, and final pavement markings. The ENGINEER shall select Pavement markings from the latest State standards.
- B. The ENGINEER shall provide the following information on sign and pavement marking layouts:

1. Roadway layout.
2. Center line with station numbering.
3. Structures that present a hazard to traffic.
4. Location of utilities.
5. Existing signs to remain, to be removed, to be relocated or replaced.
6. Proposed signs (illustrated, numbered and size).
7. Proposed markings (illustrated and quantified) which include pavement markings, object markings and delineation.
8. Quantities of existing pavement markings to be removed.
9. Proposed delineators, object markers, and mailboxes.
10. The number of lanes in each section of proposed highway and the location of changes in numbers of lanes.
11. Right-of-way limits.
12. Direction of traffic flow on all roadways.

TASK 6 - MISCELLANEOUS DESIGN

- 6.1 Estimate – Opinion of Probable Construction Cost (OPCC)
 - A. The ENGINEER shall develop and report quantities necessary to construct the contract in standard State bid format at the specified milestones and Final PS&E submittals. The ENGINEER shall prepare an OPCC that shall be provided at each milestone submittal or in TxDOT CONNECT format at the 90% and Final PS&E submittals per State’s District requirement.
- 6.2 Contract time determination.
 - A. The ENGINEER shall prepare a detailed contract time estimate to determine the approximate time required for construction of the project in calendar and working days (based on the State standard definitions of calendar and working days) at the 90% and Final PS&E milestone. The schedule shall include tasks, subtasks, critical dates, milestones, deliverables, and review requirements in a format which depicts the interdependence of the various items and adjacent construction packages. The ENGINEER shall assist the CITY and State in interpreting the schedule.
- 6.3 Constructability Review.
 - A. The ENGINEER shall perform constructability reviews at major project design milestones (e.g., 60%, 90%, and final plan) to identify potential constructability issues and options that would provide substantial time savings during construction. The constructability review must be performed for all roadway and structural elements such as Sequence of Work/Traffic Control, Drainage (Temporary and Permanent), Storm Water Pollution Prevention Plan (SW3P), Environmental Permits, Issues and Commitments (EPIC) addressed, identify Utility conflicts; ensuring accuracy and appropriate use of Items, Quantities, General Notes, Standard and Special Specifications, Special Provisions, Contract Time/Schedule, Standards; and providing detailed comments in an approved format. Reviews must be captured in a Constructability Log identifying areas of concern and potential conflict. The ENGINEER shall provide the results of all Constructability reviews and recommendations to the CITY and State at major project design milestone submittals.

TASK 7 - CONTRACT MANAGEMENT AND ADMINISTRATION

The ENGINEER shall perform the following services:

- 7.1 Perform all work in accordance with the State's latest practices, criteria, specifications, policies, procedures, and Standards of Uniformity (SOU). All documents shall be sufficient to satisfy the current SOUs available from the State.
- 7.2 Act as an agent for the CITY and State when specified in a work authorization.
- 7.3 Notify the CITY and State of its schedule, in advance, for all field activities.
- 7.4 Prepare monthly written progress reports.
- 7.5 Develop and maintain a detailed project schedule to track project conformance to Exhibit C, Work Schedule. The schedule submittals shall be hard copy and electronic format.
- 7.6 Meet on a scheduled basis with the CITY and State to review project progress.
- 7.7 Prepare, distribute, and file both written and electronic correspondence.
- 7.8 Document phone calls and conference calls as required during the project to coordinate the work for various team members.

TASK 8 - CONSTRUCTION PHASE SERVICES

- 8.1 *The ENGINEER shall provide Construction Phase Services at the written request of the CITY and State's Project Managers. These services shall be considered additional services until the written request is made. The request shall include a description of the work requested, a mutually agreed upon time limit, and any special instructions for coordination and submittal. These services will consist of the following:*
 - A. *Attend preconstruction meeting (Omitted)*
 - B. *Attend partnering meeting (Omitted)*
 - C. *Attend field meetings and make visits to site*
 - D. *Calculate quantities and assist the area engineer in preparing change orders*
 - E. *Review and approval of shop drawings*
 - F. *Review and approval of forming details*
 - G. *Responding to requests for information (RFIs)*
 - H. *Providing minor redesign (major redesign should be handled with a contract supplement), which will include changes to the affected plan sheets and an updated copy of the 3D corridor model.*
 - I. *Answering general questions*
 - J. *Providing clarification*
 - K. *Other project related tasks in support of the State during construction*

DELIVERABLES

- A. The ENGINEER shall submit the following deliverables to the State:
 - 1. Plan Development
 - a. 60% Plans Submittal. Provide the State with a review set of plans that consists of the items listed below:
 - i. Opinion of Probable Construction Cost (OPCC).
 - ii. Preliminary 3D corridor model, in the most current format, created using Bentley's OpenRoads tools, and with detail to verify the design of the 60% plan sheets. The level of detail of the surface and subsurface features will be at the direction of the State.
 - iii. Updated Title Sheet with Index of Sheets including Standards
 - iv. Final Existing and Proposed Typical Sections
 - v. Updated Summary Sheets
 - vi. Preliminary Traffic Control Plan Sheets
 - vii. Survey Control Data Sheets
 - viii. Final Plan & Profile Sheets for all Alignments

- ix. Final Intersection Layouts
 - x. Preliminary Miscellaneous Roadway Details
 - xi. Final Drainage Area Maps
 - xii. Preliminary Hydraulic Computations
 - xiii. Preliminary Signing, Delineation & Pavement Marking Layouts
 - xiv. Preliminary SWP3 Layouts
 - xv. Roadway Cross-Sections (scale 1" =20' horizontally and vertically)
- b. 90% Review Submittal. Provide the State with a review set of plans that consists of the items listed below:
- i. Opinion of Probable Construction Cost (OPCC).
 - ii. New Special Specifications and Special Provisions with Form 1814, if applicable.
 - iii. A detailed 3D corridor model, in the most current format, created using Bentley's OpenRoads tools, and with detail to verify the design of the 90% plan sheets. The level of detail of the surface and subsurface features will be at the direction of the State.
 - iv. New Special Specifications and Special Provisions with Form 1814, if applicable.
 - v. Address 60% Comments
 - vi. Updated Title Sheet with Index of Sheets
 - vii. Final Existing and Proposed Typical Sections
 - viii. Final Summary Sheets
 - ix. Final Traffic Control Plan Sheets
 - x. Final Control Data Sheets
 - xi. Final Plan & Profile Sheets
 - xii. Final Intersection Layouts
 - xiii. Final Miscellaneous Roadway Details
 - xiv. Final Drainage Area Maps
 - xv. Final Hydraulic Computations
 - xvi. Final Signing, Delineation, & Pavement Marking Layouts
 - xvii. Final SWP3 Layouts
 - xviii. Final Roadway Cross-Sections (scale 1" =20), if changed
 - xix. Final OPCC, marked-up General Notes, Specification Data Sheet, Special Provisions, Special Specifications
 - xx. Preliminary Contract Time Determination
- c. Final submittal (100%).
- i. Revised plans and supporting documents from 90% review comments.
 - ii. Final Contract Time Determination
 - iii. A final 3D corridor model, in the most current format, created using Bentley's OpenRoads tools. The level of detail of the surface and subsurface features will be at the direction of the State.
 - iv. A final 3D earthwork model, if applicable, in either .XML or .ICM format (as directed by the State) created using Bentley's OpenRoads tools. The level of detail of the surface and subsurface features will be at the direction of the State.

B. Electronic Copies

1. The ENGINEER shall furnish the State with a USB flash drive of the final plans in the current graphics format used by the State, .pdf format, and in the District's File Management System (FMS) format.
2. The ENGINEER shall also provide separate USB flash drive containing cross section information (in dgn, XLR, & ASCII formats) for the contractor's use.
3. The ENGINEER shall provide the Primavera (P6) file or the latest scheduling program used by the State for construction time estimate.

ADDITIONAL SERVICES

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

- A. Design Survey
- B. Geotechnical engineering services
- C. Subsurface utility engineering
- D. Schematic design
- E. Environmental documentation
- F. Public involvement or public outreach
- G. Traffic control plan and sequence of construction beyond what is noted in the scope
- H. Traffic counts or traffic projections
- I. Traffic intersection analysis
- J. Signal warrants or signal timing
- K. Signal design
- L. Existing water or sanitary sewer relocations
- M. Proposed water or sanitary sewer design
- N. Landscape or irrigation design
- O. Right of way acquisition services
- P. Franchise Utility Relocation Coordination
- Q. Bid phase services
- R. Construction phase services

PART 3.0 CITY AND STATE RESPONSIBILITIES

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

1. Name, address, and phone number of the CITY's project manager.
2. Records available that would assist in the completion of the work described in PART 2.0.
3. Review, and coordination of review by the CITY and State, of recommendations offered by the ENGINEER and approval or rejection of any or all work performed under this contract.
4. Review of progress of work and final acceptance of all documents.
5. Processing of all periodic payment requests submitted by ENGINEER.
6. Assistance in the coordination and scheduling of site visits.
7. Available horizontal control points, benchmark elevations and descriptions for vertical control in the project area.
8. Available existing Right-of-Way (ROW) maps of state and municipal highway facilities in the project corridor.
9. Available interface data for any projects adjacent to the project corridor.
10. Current average bid prices for construction, maintenance, and operation costs.

11. Assistance as necessary in obtaining the required data and information from other local, regional, state, and federal agencies.
12. Timely reviews of deliverables in accordance with Part 4.0 (Periods of Service) of the Task Order
13. Authorizations and decisions necessary for the ENGINEER to maintain the project work schedule.
14. Examples of acceptable format for the deliverables required by the work authorizations.

PART 4.0 PERIODS OF SERVICE:

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

Task	Deliverable	Period of Service
1	Franchise Utility Design Coordination	Through end of Project
2 - 7	Roadway Design	TBD
	60% PS&E	TBD
	90% PS&E	TBD
	100% PS&E	TBD

PART 5.0 PAYMENTS TO ENGINEER

The Fee Rate Schedules below are incorporated into the Agreement by work authorization as permitted by the articles and Exhibits of the Agreement.

The ENGINEER will perform the services described in Part 2.0 - Tasks 1 - 7 of the work authorization on a lump sum basis and will not exceed the maximum labor and expenses fee shown below.

TASK DESCRIPTION	Total Cost
1. Franchise Utility Coordination	\$ 30,700.00
2. Roadway Design	\$ 167,500.00
3. Drainage Design	\$ 172,000.00
4. Traffic Control	\$ 63,900.00
5. Signing & Pavement Markings	\$ 25,500.00
6. Miscellaneous Design	\$ 56,800.00
7. Contract Management and Administration	\$ 49,200.00
LABOR SUBTOTALS	\$565,600.00
Direct Expenses	\$ 1,600.00
TOTAL (LUMP SUM)	\$567,200.00

Midwest Wrecking
Demolition
Contract
Amendment

RESOLUTION NO. _____

RESOLUTION AUTHORIZING THE EXECUTION OF AN AMENDMENT TO THAT CERTAIN DEMOLITION CONTRACT WITH MIDWEST WRECKING CO. OF TEXAS, INC.; AND AUTHORIZING PAYMENT FOR SAID AMENDMENT

WHEREAS, the Board of Directors finds it to be in the public interest to authorize the execution of an amendment to that certain Demolition Contract with Midwest Wrecking Co. of Texas, Inc.;

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

SECTION ONE. That the Chairman and Secretary are hereby authorized and directed to execute and attest, respectively, on behalf of the Midland Development Corporation, an amendment to that certain Demolition Contract with Midwest Wrecking Co. of Texas, Inc. Said amendment being in a form substantially similar to that of Exhibit A, which is attached hereto and incorporated herein for all purposes.

SECTION TWO. That the City Comptroller is hereby authorized and directed to make payment(s) to Midwest Wrecking Co. of Texas, Inc., in accordance with the terms of the Demolition Contract, as amended, from funds available in the Midland Development Corporation Fund (235) Operating Budget upon receipt of proper invoices or statements approved by the Executive Director of the Midland Development Corporation or her designee.

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

Directors voting "AYE":

Directors voting "NAY":

CHASE GARDAPHE,
Chairman of the Midland
Development Corporation

ATTEST:

JILL PENNINGTON,
Secretary of the Midland
Development Corporation

APPROVED AS TO FORM ONLY:

JOHN OHNEMILLER,
Attorney for the Midland
Development Corporation

**AMENDMENT TO THE DEMOLITION CONTRACT BETWEEN
THE MIDLAND DEVELOPMENT CORPORATION
AND MIDWEST WRECKING CO. OF TEXAS, INC.**

THIS AMENDMENT is made and effective May 1, 2023, 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 Midwest Wrecking Co. of Texas, Inc. (“Company”).

WHEREAS, MDC and Company entered into that certain Demolition Contract dated October 25, 2022 (the “Contract”), which was approved by the Midland Development Corporation Board of Directors and the Midland City Council; and

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

WHEREAS, Company and MDC desire to make certain amendments to the Contract 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 1 of the Contract is hereby deleted in its entirety and replaced with the following:
 1. **Cost:** Total Proposal: \$3,523,280.00

- 2) Section 2 of the Contract is hereby deleted in its entirety and replaced with the following:
 2. **Scope of Work:** Company shall perform all work described for the (i) **demolition of the properties located at 300 West Texas, 211 & 221 North Colorado Street and 210 North Big Spring Street, and (ii) demolition and removal of the existing facility on the commercial real property located at 405 North Loraine, which work shall consist of the removal of the canopy, building, and paving to the property lines, as well as the removal of the foundations to at least four (4) feet below the existing paving elevation, and the rough grading of said real property.** The foregoing work is further described in Exhibit A, which is attached hereto and incorporated herein for all purposes.

- 3) Section 21 of the Contract is hereby amended so as to include the additional requirements that: (i) the City of Midland, Texas, be named as an additional insured on all insurance policies required under the Contract; and (ii) all insurance policies

Exhibit A

required under the Contract shall include a waiver of subrogation in favor of the City of Midland, Texas.

- 3) The Contract is hereby amended so as to replace the original exhibit attached to the Contract as **Exhibit A** with **Exhibit A-1**, which is attached hereto and incorporated herein for all purposes.
- 4) The Contract, inclusive of this Amendment, is hereby ratified and affirmed by Company and MDC, and the Contract 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

Chase Gardaphe, Chairman

ATTEST:

Jill Pennington, Secretary

MIDWEST WRECKING CO. OF TEXAS, INC.

David C. Densmore, President

THE STATE OF _____ §
 §
COUNTY OF _____ §

BEFORE ME, _____, a notary public, on this day personally appeared David C. Densmore, President of Midwest Wrecking Co. of Texas, 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., 2023.

Notary Public, in and for
the State of _____



COMMERCIAL & INDUSTRIAL DEMOLITION

P.O. Box 161819 • Fort Worth, Texas 76161 • Phone: 817-589-7062 • Fax: 817-590-9536

Midland Development Corporation
200 North Loraine Street, Suite 610
Midland, Texas 79701

September 26, 2022

Attention: Mrs. Sara Harris

sharris@midlandtxedc.com

Reference: Demolition Proposal
Western United Life Building – Midland, Texas

Dear Mrs. Harris:

We would like to provide the following pricing to furnish all labor, material, equipment and insurance (limits similar to the limits provided during demolition of the Building of the Southwest) necessary to complete subject work, in accordance with the following:

Work Items- Total Site Demolition with Implosion of Western United Life Building

1. Provide for removal of WTG facilities and site paving using conventional methods.
2. Foundations of the buildings will be removed to four feet below existing grades.
3. Implode the referenced building including preparation of the site, design and implementation of the blast plan.
4. Coordinate work with city and state officials.
5. All resulting debris and structural materials resulting from the demolition will be disposed of offsite.
6. Provide for cost associated with lane closures and temporary site fencing required for completion of the demolition work.
7. Provide temporary protection of all surrounding properties the during implosion.
8. Vaulted sidewalk will be removed on the east and south sides of the work area.
9. Fracture the basement floor slab to facilitate drainage.
10. Basement walls on the north and west elevations will be broken down two feet from the existing surface. The east and south walls will be left in place.
11. Backfill and compact basement void with imported select fill material compacted to 98%. Cost of third-party testing is not included in this proposal.

This work will be completed for the sum of **Two Million Nine Hundred Eighty Six Thousand Dollars (\$ 2,986,000.00).**

Exhibit A-1

Page Two

Western United Life Building-Midland, TX

Notes:

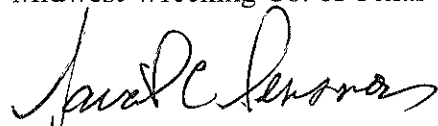
1. We have not included handling, removal or disposal of hazardous or contaminated materials; capping, disconnection, re-routing or removal of utility services; capping of basement tunnel.
2. Due to the removal of vaulted sidewalks and the unknown interface of basement walls and street curbs, it should be assumed that the curbs will be damaged and/or removed in the performance of the work.
3. This proposal includes the cost of disposal. Should the City of Midland waive disposal fees pricing will be adjusted.
4. This proposal allows for ten million dollars in liability insurance being provided. Should the limits of insurance be increased an additional cost will be added to the proposal cost.
5. Sidewalks and trees will be left in place along the Colorado, Illinois and Big Spring. Trees at the interior of the property will be removed.

Contingency Allowance Should site conditions not allow for disconnection and removal of the utilities in either the basement or the west alley we will need to modify our demolition methods to mechanically demolish a portion of the building to facilitate implosion of the main structure.

For budgeting, please allow a worse case contingency amount of: **Four Hundred Seventy Thousand Dollars (\$ 470,000.00).**

Thank you for allowing Midwest Wrecking Co. of Texas the opportunity to provide a budget proposal on this project and please do not hesitate to contact the undersigned if we may be of further assistance.

Sincerely,
Midwest Wrecking Co. of Texas



David C. Densmore



COMMERCIAL & INDUSTRIAL DEMOLITION

P.O. Box 161819 • Fort Worth, Texas 76161 • Phone: 817-589-7062 • Fax: 817-590-9536

Vandergriff Group Architects
312 N. Big Spring St. Suite 100
Midland, TX 79701
Attn: Mark Pelletier

February 20, 2023

Reference: 404 North Colorado St. Midland, TX

Gentlemen:

We propose to furnish labor, materials, and equipment necessary to provide for the demolition and removal of the existing drive thru bank facility. The canopy, building and paving as indicated by the attached picture will be removed to the property lines. Foundations will be removed to at least four feet below the existing paving elevation. The work area will be rough graded after demolition. Purchase cost of the demolition permit is included in this proposal.

Our price to complete this work is **Sixty Seven Thousand Two Hundred Eighty Dollars (\$ 67,280.00).**

Paving Alternate

If the paving east of the line on the picture is left in place deduct **Twenty Thousand Four Hundred Dollars (\$ 20,400.00)** from the above price.

We are excluding:

Testing or removal of asbestos or hazardous materials, disconnection or make safe of utilities, temporary fencing silt fence or erosion control around the site.

Thank you for allowing Midwest Wrecking Co. of Texas the opportunity to provide a proposal on this project and please do not hesitate to contact me at your convenience should further information be required.

Sincerely,
Midwest Wrecking Co. of Texas

A handwritten signature in black ink, appearing to read "David C. Densmore".

David C. Densmore



City of Midland Letter Agreement for Reimbursement

RESOLUTION NO. _____

**RESOLUTION AUTHORIZING THE EXECUTION OF A
LETTER AGREEMENT WITH THE CITY OF MIDLAND
FOR THE DEMOLITION AND REMOVAL OF THE
EXISTING FACILITY AND IMPROVEMENTS
LOCATED AT 405 NORTH LORAIN STREET,
MIDLAND, TEXAS**

WHEREAS, the Board of Directors finds it to be in the public interest to authorize the execution of a letter agreement with the City of Midland for the demolition and removal of the existing facility and improvements located at 405 North Loraine Street, Midland, Texas;

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

THAT the Chairman and Secretary are hereby authorized and directed to execute and attest, respectively, on behalf of the Midland Development Corporation, a letter agreement with the City of Midland for the demolition and removal of the existing facility and improvements located at 405 North Loraine Street, Midland, Texas. Said letter agreement being in a form substantially similar to that of Exhibit A, which is attached hereto and incorporated herein for all purposes.

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

Directors voting "AYE":

Directors voting "NAY":

CHASE GARDAPHE,
Chairman of the Midland
Development Corporation

ATTEST:

JILL PENNINGTON,
Secretary of the Midland
Development Corporation

APPROVED AS TO FORM ONLY:

JOHN OHNEMILLER,
Attorney for the Midland
Development Corporation

LETTER AGREEMENT
BETWEEN
THE CITY OF MIDLAND, TEXAS
AND
THE MIDLAND DEVELOPMENT CORPORATION

This Letter Agreement (“*Agreement*”) is entered into on May 1, 2023, by and between the **City of Midland, Texas**, a Texas home-rule municipal corporation (“*City*”), and the **Midland Development Corporation**, a Type A corporation pursuant to Chapter 504 of the Texas Local Government Code (“*MDC*”). City and MDC are hereinafter collectively referred to as “*the Parties*.”

WHEREAS, City owns certain real property located at 405 North Loraine, Midland, Texas 79707 (the “*Property*”); and

WHEREAS, MDC has entered into that certain Demolition Contract with Midwest Wrecking Co. of Texas, Inc., dated October 22, 2022, as amended for the demolition of the properties located at 300 West Texas, 211 & 221 North Colorado Street and 210 North Big Spring Street (the “*Demolition Contract*”); and

WHEREAS, Midwest Wrecking Co. of Texas, Inc., has agreed to an increase in the scope of the work for the Demolition Contract to include the demolition and removal of the existing facility on the Property, which work shall consist of the removal of the canopy, building, and paving to the property lines, as well as the removal of the foundations to at least four (4) feet below the existing paving elevation, and the rough grading of the Property (the “*Work*”); and

WHEREAS, Midwest Wrecking Co. of Texas, Inc., has quoted a total cost of \$67,280.00 for the Work; and

WHEREAS, City and MDC desire to provide for a framework to provide for City’s reimbursement of the total costs associated with the Work;

NOW, THEREFORE, City and MDC agree as follows:

- A. **Purpose:** The purpose of this Agreement is to provide the Parties with the necessary framework for City’s reimbursement of the total costs associated with the Work.
- B. **General Principals of Understanding:** The Parties expressly understand and agree to the following:
 - 1. **City’s Reimbursement:** City agrees to reimburse MDC for all costs associated with the Work. Upon the completion of the Work, MDC shall have one hundred eighty (180) days to prepare a final invoice or statement showing the total costs associated with the Work and submit the same to City. City shall reimburse MDC within thirty (30) days after its receipt of the final invoice or statement prepared by MDC.

Exhibit A

2. Property Access: MDC shall notify City's City Manager of MDC's or its contractors' need to access the Property to perform the Work, and MDC shall make appropriate accommodations in a reasonable and timely manner to facilitate said access.
3. Reporting: MDC shall keep City's City Manager informed of all activities regarding the Property from time to time and in a manner reasonably acceptable to MDC and City.
4. Term: This Agreement shall be effective from May 1, 2023, to April 30, 2024, unless the Work is completed and the MDC receives reimbursement from City prior to April 30, 2024, or unless this Agreement is terminated as provided below.
5. Termination: This Agreement may be terminated at any time upon the mutual written agreement of the Parties.
6. Notices: All written notifications required under this Agreement may be sent by U.S. mail or email, as deemed appropriate and acceptable by the Parties.

C. General Terms:

1. Modification: This Agreement may be modified, in whole or in part, by the mutual written agreement of the Parties at any time during the Term.
2. Public Information Coordination: Public disclosure of information related to, and activities conducted under, this Agreement shall be subject to the Freedom of Information Act (5 U.S.C. § 552) and the Texas Public Information Act (Tex. Gov't Code § 552.001 *et seq.*). Prior to disclosure of any requested information, the Parties shall consult with each other regarding any such proposed disclosure.
3. 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 be considered a third-party beneficiary or have any rights hereunder.
4. Legal Relationship: The Parties are not, and shall not be considered as, joint venturers, partners, or agents of each other; and neither shall have the power to bind nor obligate the other, except as set forth in this Agreement. The Parties agree not to represent to anyone that they are agents of one another or have any authority to act on behalf of one another. It is mutually understood and agreed that nothing in this Agreement is intended or shall be construed as in any way creating or establishing any partnership, joint venture, or agency between MDC and City. Further, it is specifically understood and agreed that nothing in this Agreement is intended or shall be construed as creating a "Community of Pecuniary Interest" or "An Equal Right of Control" which would give rise to vicarious liability.

5. Entire Agreement: This Agreement constitutes the entire agreement between the Parties and shall not be explained, modified, or contradicted by any prior or contemporaneous negotiations, representations, or agreements, either written or oral. Only a subsequent, written agreement can modify this Agreement.
6. Consideration: The Parties 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.

[Signature Page Follows]

This Memorandum of Understanding is entered into on this 1st day of May, 2023.

CITY OF MIDLAND, TEXAS

Morris Williams, Interim City Manager

ATTEST:

Marcia Bentley-German, City Secretary

MIDLAND DEVELOPMENT CORPORATION

Chase Gardaphe, Chairman

ATTEST:

Jill Pennington, Secretary

Income Statement

MIDLAND DEVELOPMENT CORPORATION
INCOME STATEMENT FOR THE 7 MONTHS ENDED
April 30, 2023

	Apr-23	YTD	Budgeted Amount
Revenue	\$1,450,650.77	\$8,332,624.63	\$11,976,644.00
40100 - State Sales Tax	\$1,266,881.01	\$7,000,649.26	\$11,000,000.00
40600 - Public ROW Use Fees	\$0.00	\$0.00	\$0.00
43000 - Interest	\$60,200.00	\$137,651.76	\$0.00
43010 - Interest - Nonpooled Invest	\$42,182.76	\$214,144.61	\$0.00
46190 - Miscellaneous Rentals	\$81,387.00	\$569,809.00	\$976,644.00
49020 - Sale of Buildings	\$0.00	\$410,370.00	\$0.00
4235150 - Midland Dvlpmt Corp Revenue	\$1,450,650.77	\$8,332,624.63	\$11,976,644.00

Expense	\$961,473.94	\$5,636,449.76	\$22,392,778.00
51010 - Base Salary	\$24,574.21	\$174,328.65	\$350,096.00
51090 - Fica MDC Portion	\$1,879.94	\$11,158.69	\$28,234.00
51110 - Health Insurance	\$1,975.78	\$9,743.71	\$28,080.00
51135 - ACCE Profit Sharing	\$1,633.52	\$12,040.73	\$24,507.00
52010 - Office Supplies	\$438.43	\$3,774.94	\$6,000.00
52110 - Motor Vehicle Supplies	\$125.00	\$419.80	\$1,500.00
52115 - Minor Furniture & Fixtures	\$344.71	\$344.71	\$1,000.00
52155 - Minor Computer Hrdwre & Periph	\$456.25	\$3,492.53	\$5,000.00
52160 - Computer Software & Supplies	\$0.00	\$31,121.40	\$30,000.00
52620 - Postage	\$0.00	\$968.80	\$300.00
53010 - Communication	\$1,856.03	\$9,856.98	\$17,000.00
53030 - Light & Power	\$0.00	\$63.26	\$150.00
53110 - Insurance-External	-\$1,012.00	\$3,412.00	\$150,000.00
53212 - Equipment Rental-External	\$334.98	\$2,110.46	\$5,000.00
53220 - Advertising	\$8,564.07	\$165,828.53	\$200,000.00
53370 - Grounds Maintenance	\$1,004.70	\$17,191.31	\$22,000.00
53405 - Software Maintenance	\$1,525.54	\$12,388.89	\$12,000.00
53440 - External Audit Fees	\$14,498.70	\$33,971.70	\$35,000.00
53450 - Consulting Fees	\$4,855.90	\$106,364.47	\$500,000.00
53510 - Travel & Entertainment	\$390.64	\$7,160.99	\$8,000.00
53520 - Dues & Subscriptions	\$1,342.35	\$6,248.67	\$15,000.00
53530 - Training,Registration Fees,Etc	\$0.00	\$7,103.34	\$10,000.00
53905 - Economic Development Incentive	\$0.00	\$0.00	\$5,129,123.00
53907 - Business Recruitment & Retentn	\$2,322.50	\$37,134.03	\$50,000.00
53909 - Prior Year Committed Incentives	\$229,343.04	\$2,001,456.64	\$9,999,673.00
53920 - Rent	\$5,678.50	\$39,749.50	\$68,142.00
54010 - Building Maintenance	\$1,766.92	\$71,049.07	\$80,000.00
55120 - Maint. - Instruments & Appara.	\$160.08	\$814.26	\$1,000.00
56188 - MOTRAN	\$0.00	\$71,250.00	\$142,500.00
56202 - General Fund Services	\$31,651.08	\$221,557.56	\$379,813.00
56410 - Payment of Principal	\$0.00	\$0.00	\$70,605.00
56420 - Interest Expense	\$0.00	\$0.00	\$6,595.00
56910 - Depreciation Expense	\$35,763.07	\$212,495.04	\$416,460.00
56995 - Project Non Capital - Promotions	\$0.00	\$160,611.08	\$1,100,000.00
57001 - Capital Buildings & Structures	\$590,000.00	\$2,101,238.02	\$3,500,000.00
57002 - Capital Improv Other Than Bldg	\$0.00	\$100,000.00	\$0.00
57070 - Construction in Process	\$0.00	\$0.00	\$0.00
235235 - Midland Development Corp	\$961,473.94	\$5,636,449.76	\$22,392,778.00

April 2023 Net Income: \$489,176.83

Year-to-Date Net Income: \$2,696,174.87

Balance Sheet

MIDLAND DEVELOPMENT CORPORATION
BALANCE SHEET FOR THE PERIOD ENDED
April 30, 2023
(Used for Internal Purposes Only)

ASSETS

Current Assets

Cash and cash equivalents	20,228,716	
Investments	7,704,935	
Sales tax receivable	-	
Prepaid expenses	-	
Accounts receivable	-	
	27,933,651	27,933,651

Non-Current Assets

Capital Assets, net	29,016,883	
Forgivable Loans		
Made to Primary Government	-	
Made to Other	6,579	
Total Forgivable Loans	6,579	
		29,023,462

Total Assets \$ 56,957,114

LIABILITIES AND NET POSITION

Liabilities

Accounts payable	85,335	
Retainage Payable	81,510	
Capital Leases payable	565,054	
Commitments payable		
Due within one year	9,797,286	
Due in more than one year	12,089,488	
Total Commitments Payable	21,886,774	
		22,618,673

Net Position

Net investment in capital assets	29,016,883	
Restricted for Forgivable Loans	6,579	
Restricted for Capital Leases	565,054	
Promotions	971,810	
Unrestricted	3,778,115	
	34,338,441	34,338,441

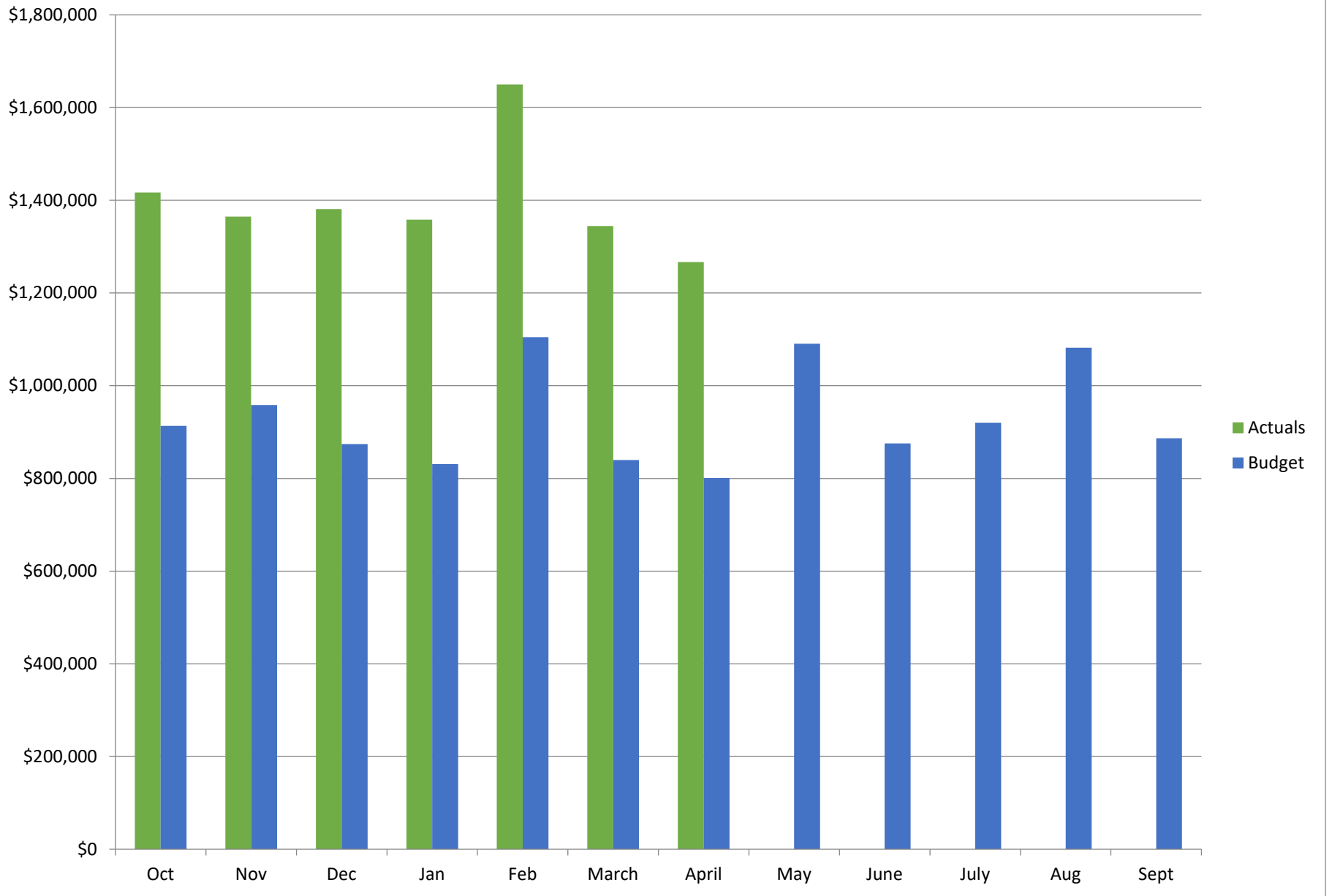
Total Liabilities and Net Position \$ 56,957,114

Sales Tax

Sales Tax Variance

	2020-2021	2021-2022	% Change	2021-2022	2022-2023	% Change	YTD Change
October	\$1,203,058.10	\$971,343.63	-19.26%	\$971,343.63	\$1,416,510.48	45.83%	45.83%
November	\$983,259.60	\$1,156,353.89	17.60%	\$1,156,353.89	\$1,364,595.51	18.01%	30.71%
December	\$843,087.27	\$1,013,549.80	20.22%	\$1,013,549.80	\$1,380,834.52	36.24%	32.49%
January	\$752,584.05	\$1,117,874.02	48.54%	\$1,117,874.02	\$1,358,336.22	21.51%	29.61%
February	\$1,224,314.99	\$1,434,528.04	17.17%	\$1,434,528.04	\$1,649,985.00	15.02%	25.93%
March	\$783,914.25	\$983,421.74	25.45%	\$983,421.74	\$1,344,612.50	36.73%	27.52%
April	\$687,198.37	\$1,015,116.31	47.72%	\$1,015,116.31	\$1,266,881.01	24.80%	27.16%
May	\$1,198,336.79	\$1,487,467.44	24.13%	\$1,487,467.44			
June	\$927,060.71	\$1,218,236.38	31.41%	\$1,218,236.38			
July	\$909,387.44	\$1,326,275.50	45.84%	\$1,326,275.50			
August	\$1,176,070.55	\$1,582,536.23	34.56%	\$1,582,536.23			
September	\$978,956.15	\$1,303,011.95	33.10%	\$1,303,011.95			
Annual Total	\$11,667,228.27	\$14,609,714.93	25.22%	\$14,609,714.93	\$9,781,755.24		

Sales Tax Actuals vs Budget Estimates



Activity Report



BUSINESS RETENTION & EXPANSION

APRIL 2023



BRE COORDINATOR: SAMMI STEELE

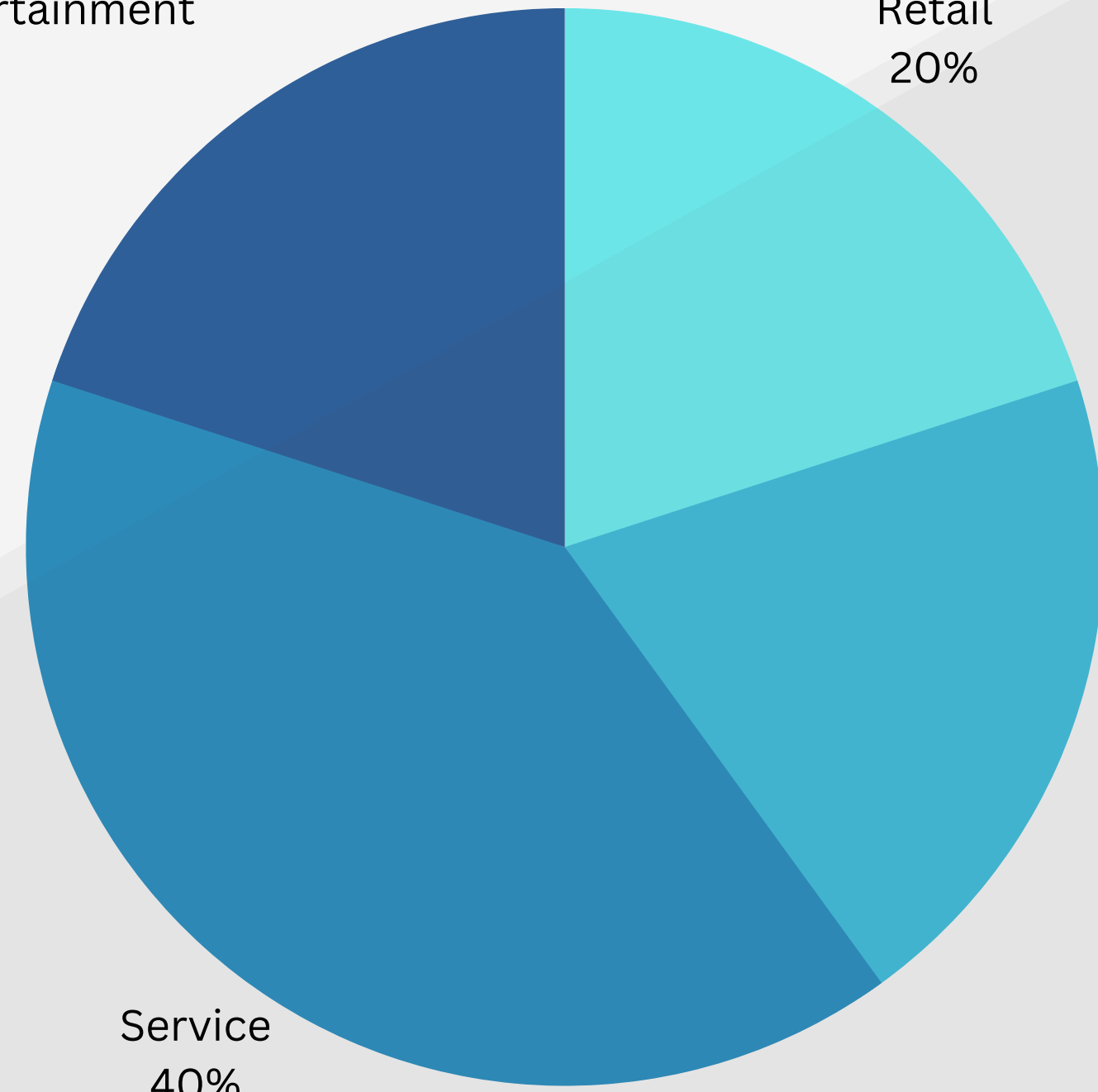


WHAT KIND OF BUSINESSES DID WE VISIT?



Childcare/entertainment
20%

Retail
20%



Graphic Design
20%

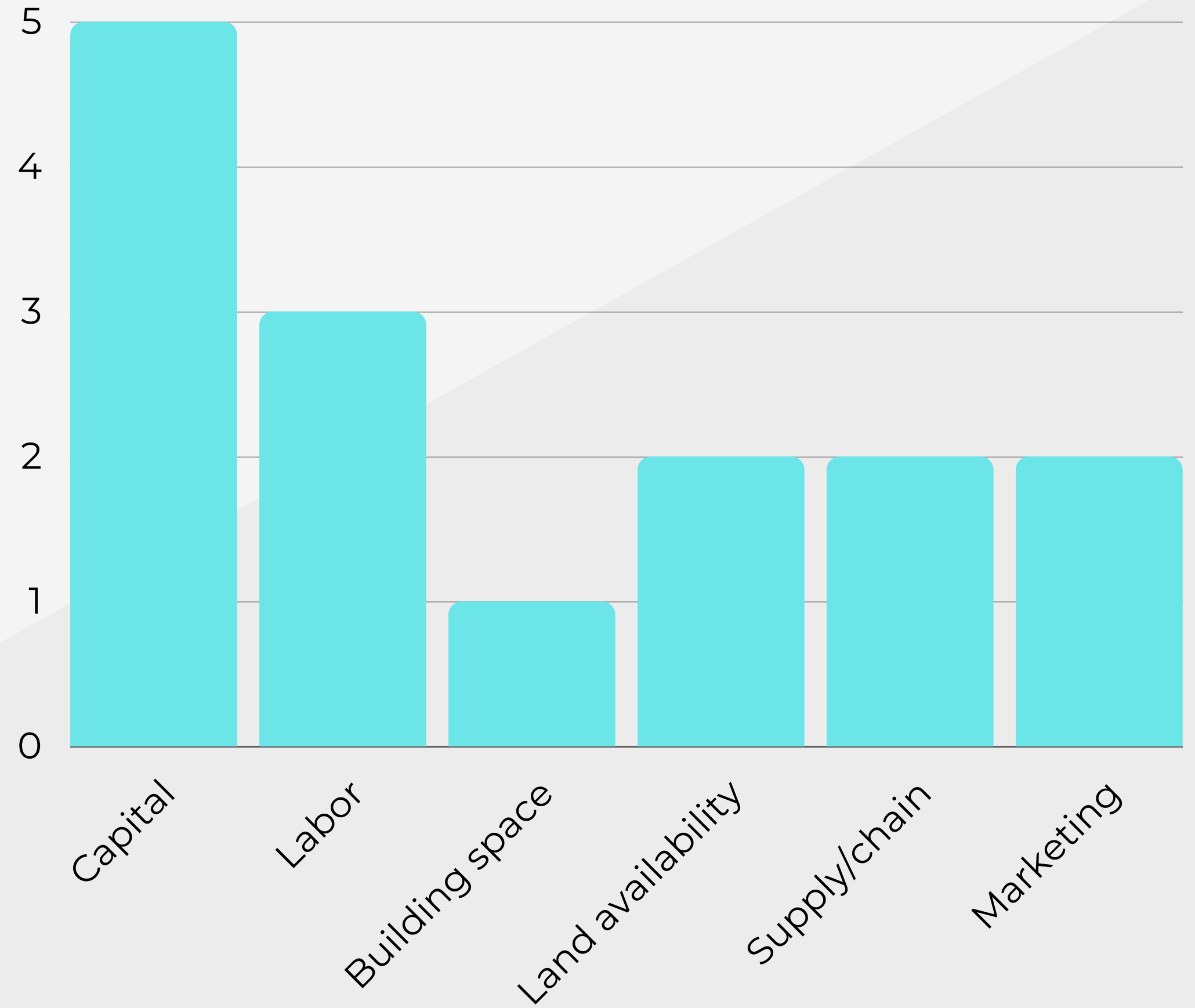
Service
40%



5 BUSINESS VISITS



WHAT FACTORS ARE IMPACTING BUSINESSES?



BIG TAKEAWAYS IN APRIL?



- NEED FOR PROFESSIONAL DEVELOPMENT (RESUME, INTERVIEW SKILLS, ETC)
- LIMITED BUILDING SPACE OR LAND TO DEVELOP
- CONTINUING TO ADVERTISE THE CITY'S PRE-DEVELOPMENT MEETINGS
- IMPORTANCE OF BUSINESS TO BUSINESS PARTNERSHIPS
- QUALITY OF LIFE: MORE KID ATTRACTIONS & THINGS TO DO FOR FAMILIES

ADDITIONAL BRE THINGS



- KICKED OFF FOUNDERS BLEND BY HELPING COORDINATE SPEAKERS, SPONSORS/DONORS, VOLUNTEERS, WORKED WITH GABI TO DESIGN WEBSITE AND OTHER MARKETING & PUBLIC RELATIONS MATERIALS
- CONTINUED CONVERSATIONS & VISITS WITH COMMUNITY STAKEHOLDERS TO ADDRESS WORKFORCE DEVELOPMENT TRAINING NEEDS
- STARTED WORKING WITH GAZELLE, OVER THE NEXT FEW MONTHS WILL START MAKING CONTACTS WITH BUSINESSES ATTENDING TRADESHOWS/LOOKING TO EXPAND OR RELOCATE

APRIL FOUNDERS BLEND RECAP



- ABOUT 60 ATTENDEES
- DONATIONS FROM FC COFFEE, RIG-ID, FAST SIGNS AND FORTY WOLVES MARKETING
- MAGRYM CONSULTING & MIDLAND ATHLETIC COMPANY PRESENTED
- RECEIVED LOTS OF GOOD FEEDBACK
- NEXT MEETING: MAY 10TH FROM 8-9 AM

SAVE



MAY 10, 2023
8 - 9 A.M.

Hot coffee available when
doors open at 7:30 a.m.

**SECOND STORY
COWORKING**

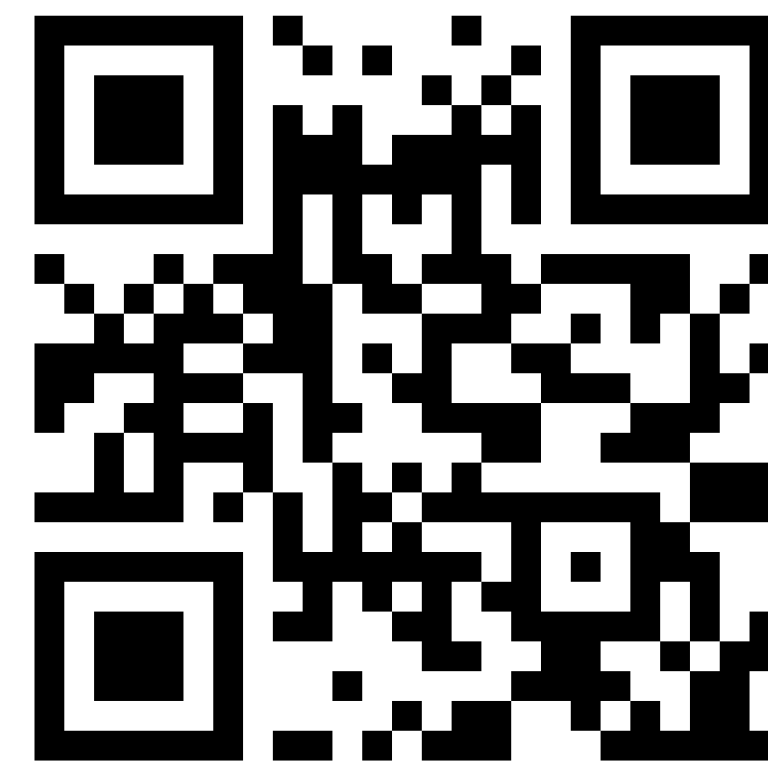
223 W WALL ST STE 200
MIDLAND, TX 79701

PUBLIC PARKING IN THE GARAGE TO
THE EAST OF THE DOUBLE TREE HOTEL

THE

DATE

Scan QR code to visit
Founders Blend
website:





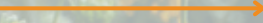
QUESTIONS





marketing
REPORT

MDC BOARD MEETING- 5/1



TEDC BEDC

- Connected with other West Texas EDCs (other marketing coordinators, executive directors, Type A, Type B, etc.)
- Connected with other Texas EDCs and some out of state EDCs
- Modules included: EDC Basics, Business Retention, Business Attraction, Finance, Retail, Real Estate, etc.
- Heard how things are done in their cities with tips, tricks, and issues they run into.



founders BLEND

The MDC is taking over digital marketing and public relations for Founders Blend.

The April meeting was a success!

www.reallygreatsite.com



Newsletter

2,051

SUBSCRIBERS

29.77%

OPEN RATE

THE MDC NEWSLETTER

- AVERAGE OPEN RATE 20%-21%
- MDC NEWS, THINGS TO DO IN MIDLAND, IMPORTANT UPDATES
- FOR APRIL: 31.59% OPEN RATE, RATE INCREASES EACH MONTH

MIDLAND DEVELOPMENT
CORPORATION



Welcome to April, Midland! See what we were doing in March 📍



The Western United Life Building

This property is now a blank slate for redevelopment. [Learn more](#) about the history of the building and [watch](#) our footage of the demotion here.



Midland Welcomes Bass Pro Shops

The MDC will provide funds for city infrastructure to serve the site, including the extension of Sinclair Avenue.

You're Invited!

Join the MDC at [Founders Blend](#) on

Wednesday, April 12th at Second Street



Expansion Solutions

- Placed with Expansion Solutions (Magazine with e-edition online and other online articles)
- Each month has a different focus, March/April is Shovel Ready Sites.
- Link to information on the MDC website on David Mims Business Park

MAKE MOVES IN MIDLAND

52 Acres of Shovel Ready Land Available NOW!

MIDLAND DEVELOPMENT CORPORATION

I-20 Frontage, Midland, Texas

12" water line with 2000 gallons per minute capacity

12" sewer line with 1000 gallons per minute capacity

2 Megawatts of power availability

Located next to the Agri-Empresa Trans Load & Storage Facility serviced by the Union Pacific Railroad

Midland MSA Population 173,816

Midland-Odessa Population 362,925

Higher Education: Midland College, UT Permian Basin

MIDLAND DEVELOPMENT CORPORATION

Social

TOP POSTS:

- THE MDC AT THE STATE OF MIDLAND
- PERCH & BECKIE LEIGH'S BRE VISITS
- FOUNDERS BLEND
- HONORABLE MENTION: WULB + THE BLUE DOOR BRE VISIT

OTHER UPDATES

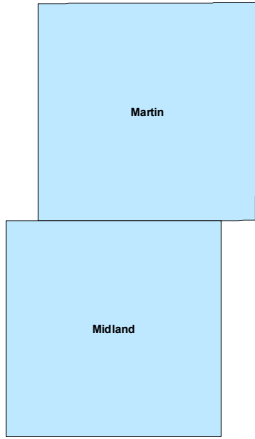
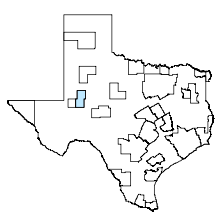
- (4/26) 257 TIKTOK FOLLOWERS (LOCAL!!!)
- 2 REELS & TIKTOKS POSTED

MIDLAND DEVELOPMENT
CORPORATION



Midland MSA

March 2023

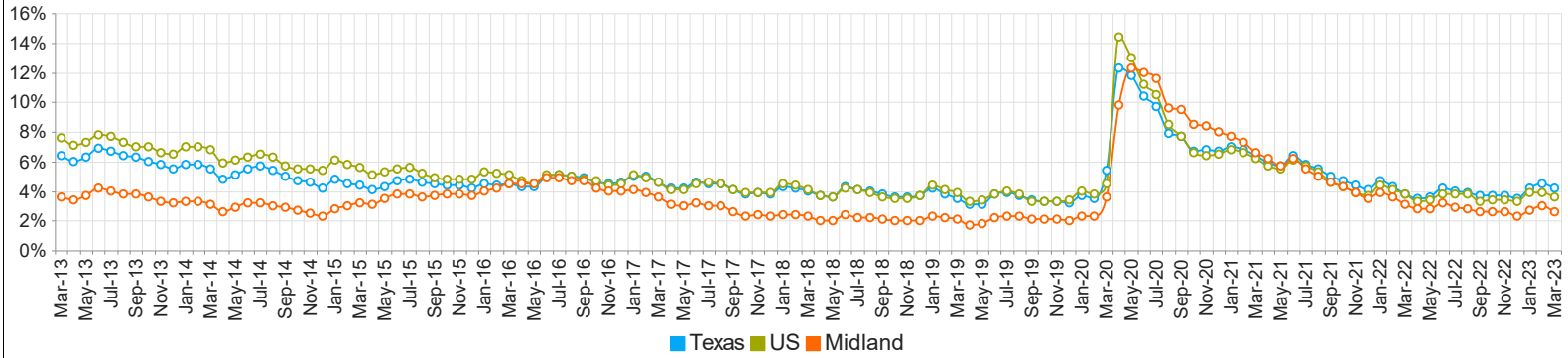


MSA Labor Force Statistics				
	Mar-23	Feb-23	Mar-22	Yearly Change
Civilian Labor Force	114,569	114,479	106,808	7,761
Employed	111,535	111,056	103,507	8,028
Unemployed	3,034	3,423	3,301	-267
Unemployment Rate	2.6%	3.0%	3.1%	-0.5%

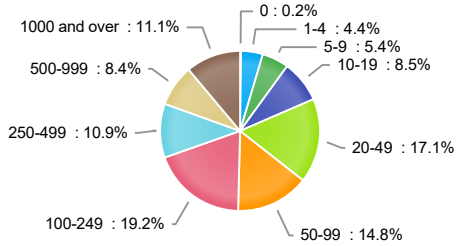
Texas Labor Force Statistics				
	Mar-23	Feb-23	Mar-22	Yearly Change
Civilian Labor Force	15,118,353	15,045,849	14,633,464	484,889
Employed	14,485,853	14,369,223	14,080,750	405,103
Unemployed	632,500	676,626	552,714	79,786
Unemployment Rate	4.2%	4.5%	3.8%	0.4%

US Labor Force Statistics				
	Mar-23	Feb-23	Mar-22	Yearly Change
Civilian Labor Force	166,783,000	166,178,000	164,274,000	2,509,000
Employed	160,741,000	159,713,000	158,106,000	2,635,000
Unemployed	6,043,000	6,465,000	6,168,000	-125,000
Unemployment Rate	3.6%	3.9%	3.8%	-0.2%

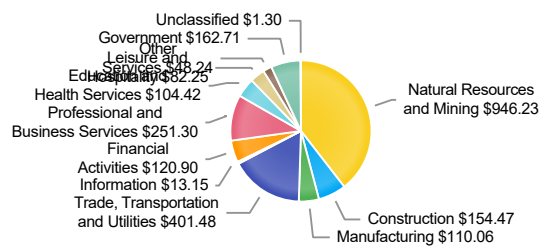
Historical Unemployment Rates



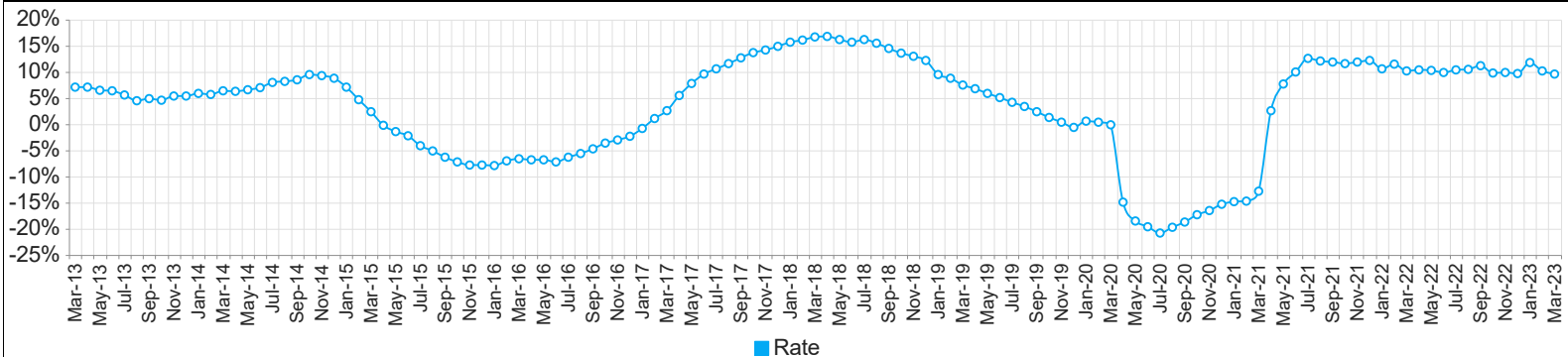
Employment by Size Class (3rd Quarter 2022)



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



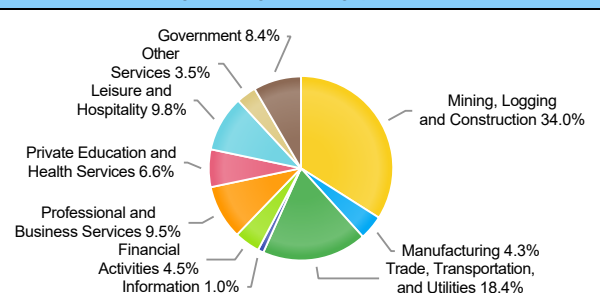
Annual Growth Rate Total Non-agricultural employment



Employment by Industry (March 2023)

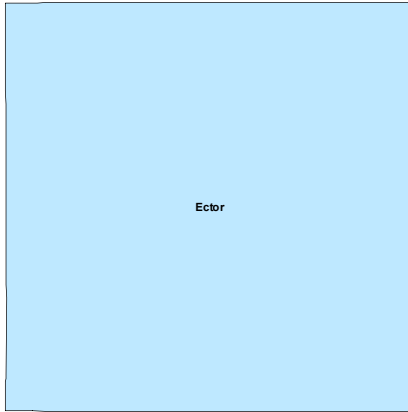
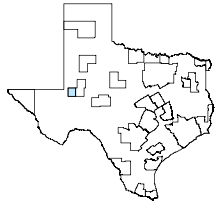
Industry	Current Month Employment	% Monthly Change	% Yearly Change
Total Nonfarm	118,700	-0.1%	9.6%
Mining, Logging and Construction	40,300	0.2%	17.8%
Manufacturing	5,100	2.0%	15.9%
Trade, Transportation, and Utilities	21,900	-1.4%	3.8%
Information	1,200	0.0%	20.0%
Financial Activities	5,300	0.0%	6.0%
Professional and Business Services	11,300	-1.7%	6.6%
Private Education and Health Services	7,800	0.0%	5.4%
Leisure and Hospitality	11,600	0.9%	5.5%
Other Services	4,200	0.0%	10.5%
Government	10,000	1.0%	2.0%

Employment by Industry (March 2023)



Odessa MSA

March 2023

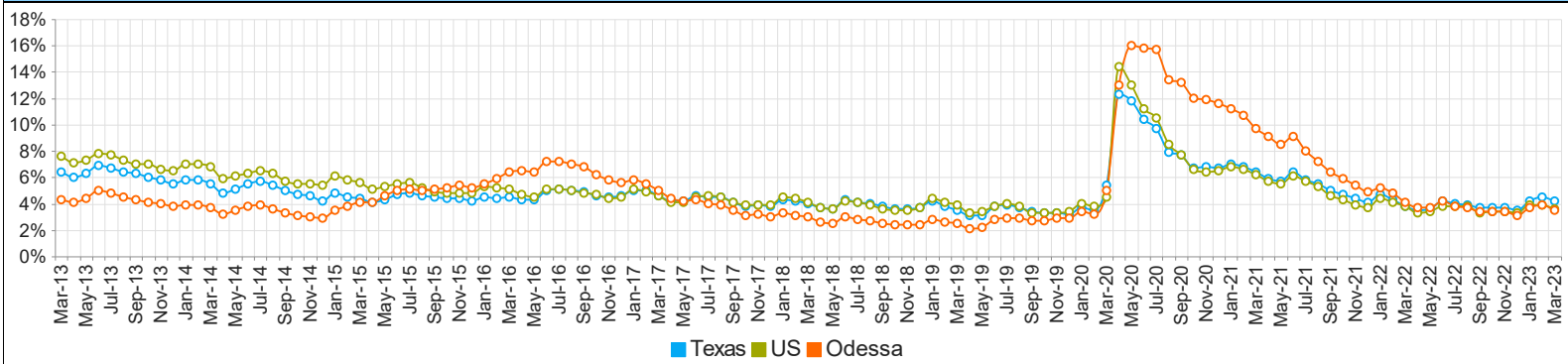


MSA Labor Force Statistics				
	Mar-23	Feb-23	Mar-22	Yearly Change
Civilian Labor Force	86,721	86,375	82,816	3,905
Employed	83,647	82,970	79,452	4,195
Unemployed	3,074	3,405	3,364	-290
Unemployment Rate	3.5%	3.9%	4.1%	-0.6%

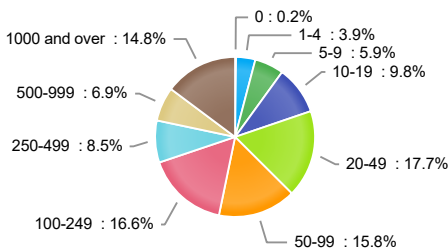
Texas Labor Force Statistics				
	Mar-23	Feb-23	Mar-22	Yearly Change
Civilian Labor Force	15,118,353	15,045,849	14,633,464	484,889
Employed	14,485,853	14,369,223	14,080,750	405,103
Unemployed	632,500	676,626	552,714	79,786
Unemployment Rate	4.2%	4.5%	3.8%	0.4%

US Labor Force Statistics				
	Mar-23	Feb-23	Mar-22	Yearly Change
Civilian Labor Force	166,783,000	166,178,000	164,274,000	2,509,000
Employed	160,741,000	159,713,000	158,106,000	2,635,000
Unemployed	6,043,000	6,465,000	6,168,000	-125,000
Unemployment Rate	3.6%	3.9%	3.8%	-0.2%

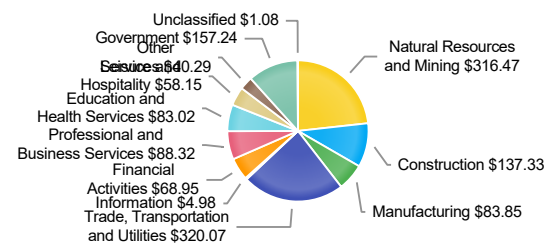
Historical Unemployment Rates



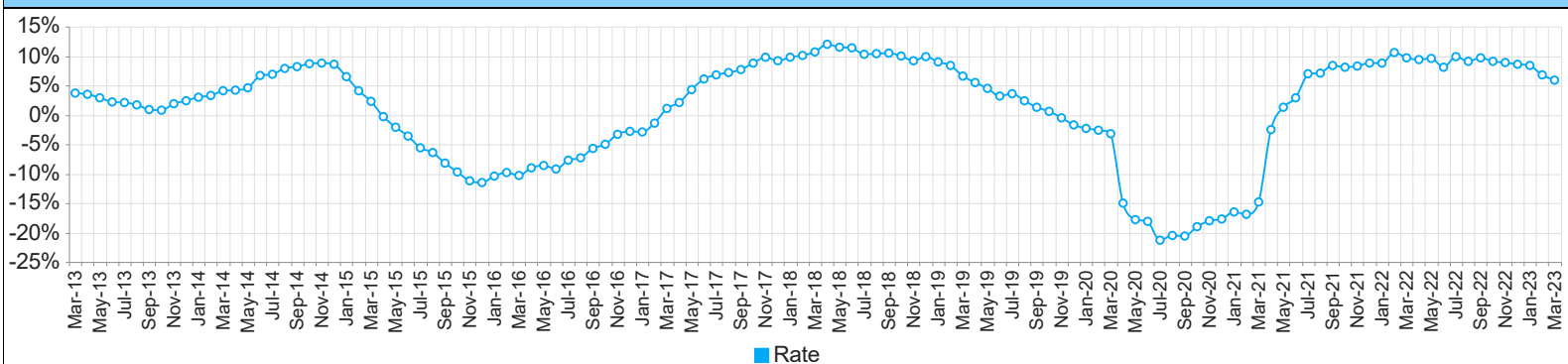
Employment by Size Class (3rd Quarter 2022)



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



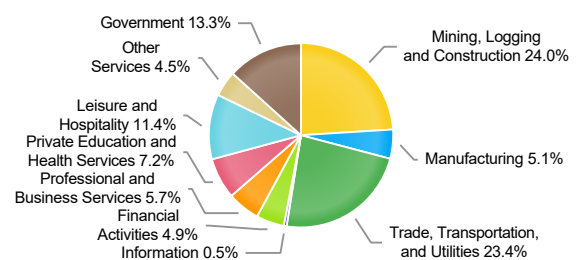
Annual Growth Rate Total Non-agricultural employment



Employment by Industry (March 2023)

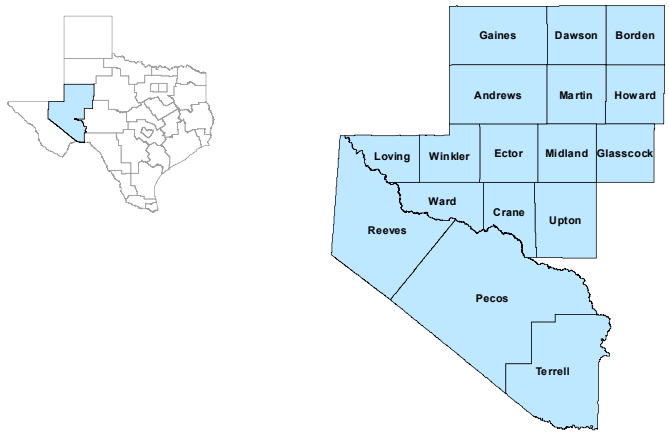
Industry	Current Month Employment	% Monthly Change	% Yearly Change
Total Nonfarm	80,400	0.1%	5.9%
Mining, Logging and Construction	19,300	1.0%	16.3%
Manufacturing	4,100	0.0%	5.1%
Trade, Transportation, and Utilities	18,800	-1.1%	3.9%
Information	400	0.0%	0.0%
Financial Activities	3,900	0.0%	8.3%
Professional and Business Services	4,600	-2.1%	-4.2%
Private Education and Health Services	5,800	0.0%	5.5%
Leisure and Hospitality	9,200	1.1%	2.2%
Other Services	3,600	0.0%	9.1%
Government	10,700	0.9%	0.0%

Employment by Industry (March 2023)



Permian Basin Workforce Development Area

March 2023



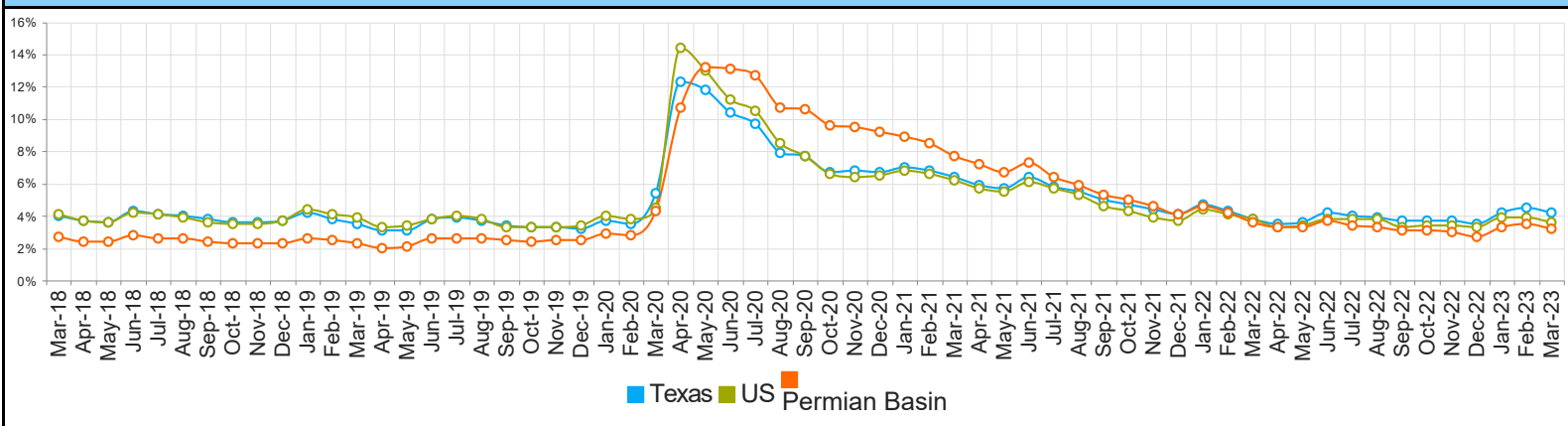
WDA Labor Force Statistics				
	Mar-23	Feb-23	Mar-22	Yearly Change
Civilian Labor Force	272,878	271,997	259,079	13,799
Employed	264,163	262,355	249,712	14,451
Unemployed	8,715	9,642	9,367	-652
Unemployment Rate	3.2%	3.5%	3.6%	-0.4%

Texas Labor Force Statistics				
	Mar-23	Feb-23	Mar-22	Yearly Change
Civilian Labor Force	15,118,353	15,045,849	14,633,464	484,889
Employed	14,485,853	14,369,223	14,080,750	405,103
Unemployed	632,500	676,626	552,714	79,786
Unemployment Rate	4.2%	4.5%	3.8%	0.4%

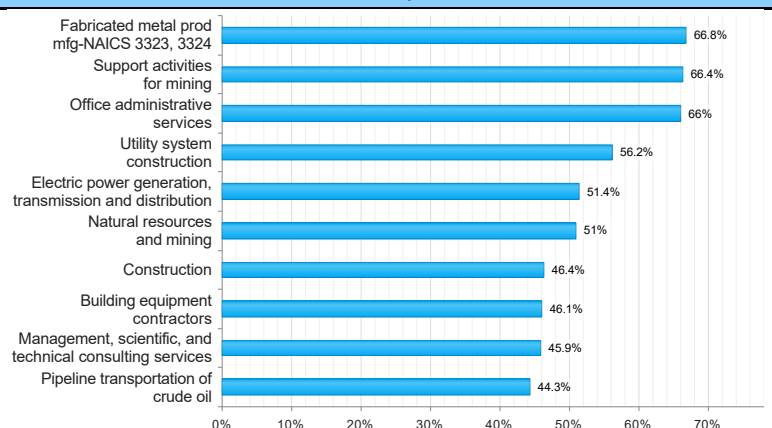
US Labor Force Statistics				
	Mar-23	Feb-23	Mar-22	Yearly Change
Civilian Labor Force	166,783,000	166,178,000	164,274,000	2,509,000
Employed	160,741,000	159,713,000	158,106,000	2,635,000
Unemployed	6,043,000	6,465,000	6,168,000	-125,000
Unemployment Rate	3.6%	3.9%	3.8%	-0.2%

Continued Claims for the Week of the 12th				
	Mar-23	Feb-23	Mar-22	Yearly Change
WDA	956	854	1,080	-124
Texas	101,392	98,026	75,230	26,162

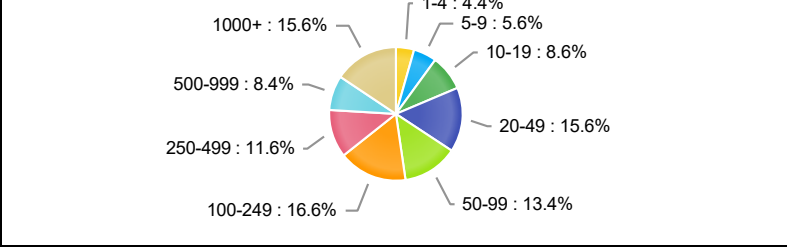
Historical Unemployment Rates



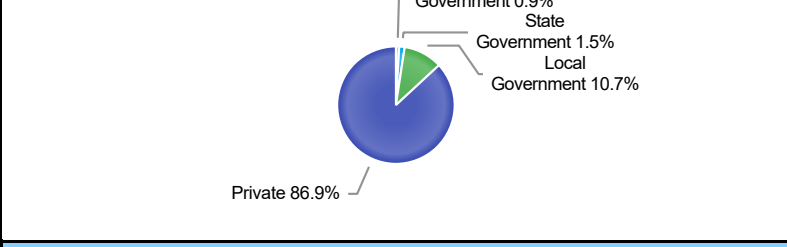
Projected Top Ten Fastest Growing Industries in WDA (% Growth 2020-2030)



Employment by Size Class (3rd Quarter 2022)



Employment by Ownership (3rd Quarter 2022)



Average Weekly Wage (3rd Quarter 2022)					
	Q3 2022	Q2 2022	Q3 2021	Quarterly Change	Yearly Change
WDA	\$1,501	\$1,388	\$1,293	\$113	\$208
Texas	\$1,333	\$1,282	\$1,227	\$51	\$106
US	\$1,334	\$1,294	\$1,250	\$40	\$84

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

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

Employment by Industry (3rd Quarter 2022)

