



Board Binder Open Session

October 2, 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 October 2, 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/84585136422?pwd=ZXZ0Z0FpTk5mMEh3U0d1WVZsZWxnUT09>

Passcode: 487833

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 +1 386 347 5053 or +1 507 473 4847 or +1 564 217 2000 or +1 646 558 8656 or +1 646 931 3860 or +1 689 278 1000 or +1 301 715 8592 or +1 305 224 1968 or +1 309 205 3325 or +1 312 626 6799 or +1 360 209 5623

Webinar ID: 845 8513 6422

Passcode: 487833

International numbers available: <https://us02web.zoom.us/j/84585136422?pwd=ZXZ0Z0FpTk5mMEh3U0d1WVZsZWxnUT09>

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 September 11, 2023, meeting of the Midland Development Corporation.
3. Presentation from Texas Tech University Health Sciences Center.
4. Presentation from MOTRAN Alliance, Inc. on infrastructure projects and initiatives in Midland and the Permian Basin.
5. Resolution authorizing the execution of an economic development agreement with MOTRAN Alliance, Inc.; and authorizing payment therefor.
6. Resolution authorizing the execution of an economic development agreement with KLJ Engineering, LLC; and authorizing payment therefor.

7. Motion authorizing the Chairman to negotiate and execute a consultant services agreement with Parkhill, Smith & Cooper, Inc., DBA Parkhill in an amount not to exceed \$175,000.00 for services related to the preparation of a downtown master plan; and providing that such agreement shall not become effective until approved by the Midland City Council.
8. Resolution authorizing the execution of a consultant services agreement with The Perryman Group in an amount not to exceed \$80,000.00 for the production of certain economic indices and reports regarding the City of Midland, Texas, and the Permian Basin.
9. Presentation on the September 2023 monthly expenses and economic development activity report from the Midland Development Corporation Executive Director and staff.
10. Pursuant to Texas Government Code §551.101, the Board of Directors will hold an Executive Session, which is closed to the public to discuss the following matters as permitted under the following Texas Government Code Sections:
 - a. Section 551.087 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 September 2023.

Marcia Bentley German
City Governance Officer/City Secretary

September 11th Minutes

MIDLAND DEVELOPMENT CORPORATION

MINUTES

September 11, 2023

The Board of Directors of the Midland Development Corporation convened in regular session at the Midland Chamber of Commerce board room, 303 West Wall Street, Suite 200, Midland, Texas, at 10:00 a.m. on September 11, 2023.

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

Board Members absent: None

Staff Members present: City Manager Tommy Gonzalez, Assistant City Manager Tina Jauz, Assistant City Manager Jose Ortiz, Assistant City Attorney Nicholas Toulet-Crump, and Deputy City Secretary Vanessa Magallanes

Council Member(s) present: Mayor Lori Blong

MDC Staff Members present: Executive Director Sara Harris

1. Call meeting to order.

First Vice Chair Simpson called the meeting to order at 10:00 am

2. Motion approving the minutes of the August 07, 2023, meeting of the Midland Development Corporation.

Director Simpson moved to approve minutes of the August 07, 2023, meeting of the Midland Development Corporation, seconded by Director Bullock. The motion carried by the following vote: AYE: Gardaphe, Sisniega, Pennington, Sams, and Deck. NAY: None. ABSTAIN: None. ABSENT: None.

3. Motion approving the minutes of the August 17, 2023, meeting of the Midland Development Corporation.

Director Pennington moved to approve minutes of the August 17, 2023, meeting of the Midland Development Corporation, seconded by Director Deck. The motion carried by the following vote: AYE: Gardaphe, Bullock, Simpson, Sisniega, and Sams. NAY: None. ABSTAIN: None. ABSENT: None.

4. Discuss and consider the submitted proposals for the preparation of a master plan for downtown Midland, Texas.

Chairman and directors discussed the submitted proposals for the preparation of the master plan for downtown Midland, Texas.

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

Sara Harris gave an overview of the month's expenses, and economic development activity.

Board recessed into executive session at 10:29 a.m.

6. Pursuant to Texas Government Code §551.101, the Board of Directors will hold an Executive Session, which is closed to the public to discuss the following matters as permitted under the following Texas Government Code Sections:
 - a. Section 551.087 Deliberation Regarding Economic Development Negotiations
 - i. Discuss business prospects that the Midland Development Corporation seeks to have, locate, stay, or expand in or near the City of Midland, Texas, and discuss possible incentives, and discuss contract compliance on the part of businesses.

Board reconvened into open session at 11:15 a.m.

All the business at hand having been completed, Chairman Gardaphe adjourned the meeting at 11:15a.m.

Respectfully submitted,

Vanessa Magallanes, Deputy City Secretary

PASSED AND APPROVED the 2nd Day of October 2023.

Jill Pennington, Secretary

MOTRAN FY 2024 Agreement

RESOLUTION NO. _____

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

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

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

SECTION TWO. That the City Comptroller of the City of Midland, Texas, is hereby authorized and directed to pay Motran Alliance, Inc., a maximum of \$142,500.00 in accordance with the terms of said agreement, from funds available in the Midland Development Corporation's budget for fiscal year 2023-2024.

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

WHEREAS, Motran Alliance, Inc., submitted a proposal to the Midland Development Corporation for economic development purposes and the funds for such proposal can be appropriated by the Midland Development Corporation for fiscal year 2023-2024; and

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

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

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

NOW, THEREFORE, the Midland Development Corporation, hereinafter referred to as the "MDC", and Motran Alliance, Inc., a Texas non-profit corporation, hereinafter referred to as "MOTRAN", do hereby contract and agree as follows:

I. Economic Development Program

MOTRAN shall provide the economic development services as provided in the proposal attached hereto as **Exhibit A**, which is incorporated herein for all purposes. The services provided by MOTRAN shall be referred to herein as the "Economic Development Program."

II. Funding

The MDC shall pay to MOTRAN the total sum of One Hundred Forty-Two Thousand, Five Hundred Dollars (\$142,500.00), for the MDC fiscal year, said funds to be used solely for the purpose of conducting the Economic Development Program as delineated in **Exhibit A**. The MDC shall dispense funds to MOTRAN by paying one-half of the total on or before December 1, 2023, and one-

half on or before April 1, 2024. It is understood and agreed that MOTRAN will obtain the remaining necessary funds for completion of the Program from other sources. MOTRAN may perform services that are not eligible for expenditure of funds by the MDC, but the percentage of Economic Development Corporation funds received must not exceed the percentage of eligible services performed by MOTRAN.

III. Budget and Financial Reporting

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

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

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

established for that purpose and may not be co-mingled with any other money or maintained in any other account.

IV. Informal Reporting

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

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

V. Activity Reporting Requirements

MOTRAN will provide quarterly activity reports in writing to the MDC and City Secretary of Midland that will provide a current status report of MOTRAN's ongoing activities pursuant to this Agreement. This report will provide hard data when available.

VI. Audit

In addition to the heretofore required reports covering activities and expenditures under the Economic Development Program, a certified audit of the funds and activities of such Economic

Development Program shall be made annually. The costs of making the audit shall be paid by MOTRAN but MOTRAN may use MDC funds. The auditors performing the above described audit shall have access to and the right to examine all records and accounts directly related to the Economic Development Program and such other MOTRAN records and accounts as may be reasonably necessary to conduct and complete its audit of the Economic Development Program funds.

VII. Independent Contractor

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

It is expressly understood and agreed that MOTRAN shall perform all work and services described herein as an independent contractor and not as an officer, agent, servant or employee of the MDC; that MOTRAN shall have exclusive control of and the exclusive right to control the details of the services and work performed hereunder, and all persons performing the same; and shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors; that the doctrine of respondeat superior shall not apply as between MDC and MOTRAN, its officers, agents, employees, contractors and subcontractors; and that nothing herein shall be construed as creating a partnership or joint enterprise between MDC and MOTRAN. No person performing any of the work and services described hereunder shall be considered an officer, agent, servant or employee of the MDC. Further, it is specifically understood and agreed that nothing in this Agreement is intended or shall be construed as creating a "Community of Pecuniary Interest" or "An Equal Right of Control". MOTRAN shall be an independent contractor under this Agreement

and shall assume all of the rights, obligations and liabilities, applicable to MOTRAN as such independent contractor hereunder. The MDC does not have the right to control the means, methods or details of MOTRAN's work. The MDC does not have the power to direct the order in which MOTRAN's work should be done. MOTRAN shall assume exclusive responsibility for the work hereunder. MOTRAN is entirely free to do the work in its own way.

VIII. Agreement Period

This Agreement shall become effective on October 24, 2023 and shall terminate on September 30, 2024. In the event that MOTRAN violates the terms or conditions of this Agreement, or fails to provide the agreed services, the MDC may terminate this Agreement under the following conditions. The MDC shall provide written notice of the violations or failures to MOTRAN. MOTRAN shall have thirty (30) days to cure the violations or failures or to file a written response with the MDC. If MOTRAN fails to cure or to file a written response within such 30-day period, the MDC may terminate this Agreement immediately. If a written response is filed, the MDC shall set a hearing before the MDC's Board of Directors and provide notice to MOTRAN. After consideration of the response and the testimony at the hearing, the MDC may declare if there has or has not occurred the stated violations or failures. If the Board finds that such violations or failures have occurred, it shall give MOTRAN thirty (30) days written notice and an opportunity to cure. If not cured within such period, the MDC may terminate this Agreement immediately.

IX. Civil Rights

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

X. Indemnity

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

XI. Excess MDC Funds

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

XII. Property

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

XIII. Project

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

XIV. Assignment

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

XV. Notice

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

If to MDC:
Midland Development Corporation
200 N. Loraine St., Suite 610
Midland, Texas 79701

If to MOTRAN:
Motran Alliance, Inc.
P.O. Box 60816
Midland, Texas 79711

with copy to:
City Manager
P.O. Box 1152
Midland, TX 79702

XVI. Severability

This Agreement shall be construed in accordance with the laws of the State of Texas. If any clause or provision of this Agreement is illegal, invalid, or unenforceable under present or future

laws effective during the term hereof, then it is the intention of the parties hereto that the remainder of this Agreement shall not be affected thereby, and it is also the intention of both parties that in lieu of each clause or provision that is illegal, invalid or unenforceable, there be added as a part of this Agreement a clause or provision as similar in meaning to such illegal, invalid or unenforceable clause or provision as may be possible and be legal, valid and enforceable.

XVII. Alteration

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

XVIII. Entire Agreement and Binding Effect

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

XIX. Governing Law and Venue

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

XX. Compliance with Laws

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

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

XXI. Governmental Immunity

By executing this Agreement, the MDC is not waiving its right of governmental immunity.

The MDC is not granting consent to be sued by legislative resolution or action.

THERE IS NOWAIVER OF GOVERNMENTAL IMMUNITY.

XXII. Governmental Immunity

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

OTHERWISE BE ENTITLED.

MOTRAN agrees that this is the intentional relinquishment of a presently existing known right. MOTRAN acknowledges that it understands all terms and conditions of the Agreement. By execution of the Agreement MOTRAN hereby represents and warrants to the MDC that MOTRAN has read and understood the Agreement.

XXIII. Release

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

XXIV. Third-Party Beneficiary

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

[Signature Pages Follow]

EXECUTED by the duly authorized officials of the Parties this _____ day of _____, 2023.

**MIDLAND DEVELOPMENT
CORPORATION**

Chase Gardaphe, Chairman

ATTEST:

Jill Pennington, Secretary

[Signature Page Follows]



MOTRAN PROPOSAL TO MDC

SCOPE OF SERVICES – FY 2023-2024 (Attachment A)

PURPOSE: SECURE ADDITIONAL AREA INFRASTRUCTURE FUNDING

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

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

ENERGY SECTOR IMPROVEMENTS

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

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

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

INTERSTATES 14 & 27

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

TRUCK PARKING

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

LOCAL LEVERAGE OPPORTUNITIES

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

BROADBAND AND TELECOM INFRASTRUCTURE

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

INCREASED TRANSMISSION CAPABILITIES

- Continue to support critical infrastructure like pipelines and election transmission necessary to support population growth and economic development activities

COMMERCIAL AIR SERVICE

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

TELLING THE STORY OF THE PERMIAN BASIN

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

MOTRAN, INC.

	APPROVED 2022-23	PROPOSED 2023-24	DIFFERENCE 22-23 VS 23-24
REVENUES			
Founding Members Dues	20,000.00	20,000.00	
Members Dues	75,000.00	75,000.00	
Grants	15,000.00	15,000.00	
Interest Earned	500.00	5,500.00	\$5,000.00
Midland Development Corp.	142,500.00	142,500.00	
Odessa Development Corp.	142,500.00	142,500.00	
PBC Reserve Funds	10,000.00	25,000.00	\$15,000.00
Misc. Income	0.00	0.00	
TOTAL REVENUES	\$405,500.00	\$425,500.00	\$20,000.00
EXPENSES			
Bank Fees	100.00	100.00	
Dues & Subscriptions	1,800.00	1,500.00	-\$300.00
Events	20,000.00	32,000.00	\$12,000.00
Food & Entertainment	5,500.00	5,500.00	
Gifts	1,400.00	1,400.00	
Health Ins. Reimbursement	11,500.00	11,500.00	
Insurance	4,000.00	4,000.00	
I-14 Initiative	12,500.00	12,500.00	
Miscellaneous Expenses	100.00	100.00	
Office Lease	11,000.00	11,000.00	
Office Supplies	6,000.00	5,500.00	-\$500.00
Payroll-Salaries	238,000.00	240,000.00	\$2,000.00
Payroll-Service Fee	1,600.00	1,700.00	\$100.00
Payroll Taxes	17,500.00	17,500.00	
401 K Contributions	8,000.00	8,800.00	\$800.00
401 K Fees		1,200.00	\$1,200.00
Postage	2,500.00	2,200.00	-\$300.00
Marketing	27,000.00	29,000.00	\$2,000.00
Program Supplies	2,500.00	3,000.00	\$500.00
Telephone	4,000.00	4,000.00	
Travel Expenses	17,000.00	17,000.00	
Professional Services	13,500.00	13,500.00	
ODC Wifi/Broadband			
Website Updates		2,500.00	\$2,500.00
Contingency			
Remittance			
TOTAL EXPENSES	\$405,500.00	\$425,500.00	\$20,000.00

Exhibit B

MOTRAN, INC.

	PROPOSED 2023-24	PROPOSED MDC	PROPOSED ODC
REVENUES			
Founding Members Dues	20,000.00		
Members Dues	75,000.00		
Grants	15,000.00		
Interest Earned	5,500.00		
Midland Development Corp.	142,500.00	\$142,500.00	
Odessa Development Corp.	142,500.00		\$142,500.00
PBC Reserve Funds	25,000.00		
Misc. Income	0.00		
TOTAL REVENUES	\$425,500.00	\$142,500.00	\$142,500.00
EXPENSES			
Bank Fees	100.00		
Dues & Subscriptions	1,500.00		
Events	32,000.00		
Food & Entertainment	5,500.00		
Gifts	1,400.00		
Health Ins. Reimbursement	11,500.00	\$2,500.00	\$2,500.00
Insurance	4,000.00		
I-14 Initiative	12,500.00	\$2,500.00	\$2,500.00
Miscellaneous Expenses	100.00		
Office Lease	11,000.00		
Office Supplies	5,500.00		
Payroll-Salaries	240,000.00	\$110,000.00	\$110,000.00
Payroll-Service Fee	1,700.00		
Payroll Taxes	17,500.00	\$8,000.00	\$8,000.00
401 K Contributions	8,800.00		
401 K Fees	1,200.00		
Postage	2,200.00		
Marketing	29,000.00	\$8,000.00	\$8,000.00
Program Supplies	3,000.00		
Telephone	4,000.00		
Travel Expenses	17,000.00	\$5,500.00	\$5,500.00
Professional Services	13,500.00	\$6,000.00	\$6,000.00
ODC Wifi/Broadband			
Website Updates	2,500.00		
Contingency			
Remittance			
TOTAL EXPENSES	\$425,500.00	\$142,500.00	\$142,500.00

KLJ Engineering Agreement

RESOLUTION NO. _____

RESOLUTION AUTHORIZING THE EXECUTION OF AN ECONOMIC DEVELOPMENT AGREEMENT WITH KLJ ENGINEERING, LLC; 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 KLJ Engineering, LLC;

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 KLJ Engineering, LLC. 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 pay KLJ Engineering, LLC, 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 her designee, is hereby authorized and directed to administer all 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”), a Type A corporation pursuant to Chapter 504 of the Texas Local Government Code, as amended, and KLJ ENGINEERING LLC., a North Dakota corporation licensed to do business in Texas (“Company”).

I. Recitals

- A. Company is currently headquartered in Bismarck, North Dakota, and is in the business of providing certain engineering services related to aviation, environmental matters, funding resources, land development, energy, public works, rights-of-way, structural matters, surveys, telecommunications, transportation, and water.
- B. MDC and Company desire to set forth the terms and conditions upon which incentives will be provided to Company as consideration for Company’s (i) establishment of a regional headquarters in the City of Midland, Texas, (ii) creation and retention of primary jobs and payroll, and (iii) Company’s real property, personal property, and capital expenditure investments located in the City of Midland, Texas.
- C. Company shall exercise reasonable efforts to employ residents of the City of Midland and to advertise the availability of job openings in the City of Midland, Texas. Additionally, when it is not possible to hire residents of the City of Midland, Company shall exercise its best commercially reasonable efforts to recruit new residents to live within the corporate limits of the City of Midland, Texas, and to advertise the availability of job openings in the corporate limits of the City of Midland, Texas.
- D. Company anticipates creating, relocating, and maintaining seventy-five (75) Full-Time Jobs (as defined herein) at the Business by December 31, 2032.
- E. In addition to relocating existing and creating said Full-Time Jobs, Company anticipates that it will provide for at least \$3,500,000.00 in real property, personal property, and capital expenditure investments located in the City of Midland, Texas.

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

II. Definitions

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

Exhibit A

- A. “*Affiliate*” Affiliate shall mean any entity controlling, controlled by, or under common control with Company.
- B. “*Business*” means Company’s commercial operations located in the City of Midland, Texas.
- C. “*Business Day*” Business Day shall mean each day, Monday through Friday, except to the extent any day is a holiday recognized by the Federal government of the United States or a state holiday recognized by the State of Texas.
- D. “*Effective Date*” means October 25, 2023.
- E. “*Full-Time Job*” means a position of employment that requires an individual to: (i) work 1,820 hours per year, including allowance for vacation, sick leave, earned time off, or other of Company’s policies and practices; and (ii) spend a majority of his or her time performing job duties while the individual is physically located at the Business or, due to the nature of engineering, survey, environmental, or consulting work, performing job duties (e.g. like field work, sales, project management, construction monitoring), or similar, elsewhere but still reports to the Business.

**III.
Obligations of the Company**

- A. **Full-Time Jobs and Payroll Obligations.** Company shall create and maintain new Full-Time Jobs in accordance with the following schedule:

Grant Payment	Compliance Year	Created Full-Time Job Target	Incremental Full-Time Job Increase for Compliance Year	More Than 50% of the Incremental Full-Time Job Increase	Minimum Created Full-Time Jobs Required to Receive Grant Payment	Maximum Created Full-Time Jobs Allowed to Receive Grant Payment	Minimum Amount Available for Grant Payment	Maximum Amount Available for Grant Payment
1st	2023	7	7	4	4	7	\$60,000	\$105,000
2nd	2024	14	7	4	11	14	\$60,000	\$105,000
3rd	2025	22	8	5	19	22	\$75,000	\$120,000
4th	2026	32	10	6	28	32	\$90,000	\$150,000
5th	2027	40	8	5	37	40	\$75,000	\$120,000
6th	2028	48	8	5	45	48	\$75,000	\$120,000
7th	2029	58	10	6	54	58	\$90,000	\$150,000

8th	2030	65	7	4	62	65	\$60,000	\$105,000
9th	2031	70	5	3	68	70	\$45,000	\$75,000
10th	2032	75	5	3	73	75	\$45,000	\$75,000

Company shall maintain said Full-Time Jobs for the duration of the term of this Agreement. For the purpose of computing Full-Time Jobs created and maintained by Company, and notwithstanding any other contrary provision contained herein, employees referred to on **Exhibit A** shall qualify as a Full-Time Jobs provided that each such employee: (i) was hired or transferred to the state of Texas prior to the Effective Date and after the date of the letter attached as **Exhibit B**; and (ii) meets all other criteria in the definition of Full-Time Job contained in Article II.A. **Exhibit A** and **Exhibit B** are attached hereto and incorporated herein for all purposes.

- B. **Annual Compliance Certifications.** Beginning for the time period spanning from the Effective Date to December 31, 2023, and every subsequent calendar year thereafter during the term of this Agreement (each a “*Compliance Year*”), Company shall submit a compliance certification to MDC, as described in Article IX.B below (each an “*Annual Certification*”). Each Annual Certification shall detail the Full-Time Jobs created and maintained during the previous Compliance Year. Company shall submit an Annual Certification within sixty (60) days from the end of every Compliance Year.

IV. Obligation of MDC

On or before thirty (30) days following Company’s submission of an Annual Compliance Certification to MDC, MDC shall provide Company incentive funds in the amount of Fifteen Thousand and No/100 Dollars (\$15,000.00) for each new Full-Time Job created and maintained by Company during the previous Compliance Year as shown on the Annual Compliance Certification; provided, however, that MDC’s obligation to provide said funds shall: (i) be subject to Company’s successful completion of its obligations contained in Article III.A; and (ii) be limited by the Incremental Full-Time Job Increase for the previous Compliance Year. Notwithstanding any contrary provision contained herein, the incentive funds provided by MDC to Company for any Compliance Year pursuant to this Article shall not exceed the product of: (i) Fifteen Thousand and No/100 Dollars (\$15,000.00); and (ii) the Incremental Full-Time Job Increase for the Compliance Year.

Notwithstanding the foregoing, if Company creates Full-Time Jobs equal to or exceeding the “Minimum Created Full-Time Jobs Required to Receive Grant Payment” referenced in the schedule contained in Article III.A, and assuming all other obligations for receiving payment are met by Company, MDC shall provide Company incentive funds in the amount of Fifteen Thousand and No/100 Dollars (\$15,000.00) for each new Full-Time Job created and maintained by Company during the previous Compliance Year as shown on the Annual Compliance Certification. In such an event, the incentive funds provided by MDC to Company shall not exceed the product of: (i) Fifteen Thousand and No/100 Dollars (\$15,000.00); and (ii) the number listed under “More than

50% of the Incremental Full-Time Job Increase” in the schedule contained in Article III.A for any Compliance Year.

If an Annual Compliance Certification shows Company to be deficient in its obligations contained in Article III.A, MDC shall be relieved of its obligation to provide further incentive funds unless/until Company satisfies its obligations in accordance with the schedule set forth in Article III.A.

Notwithstanding any contrary provision contained herein, MDC shall have no obligation to provide Company incentive funds for Company’s creation of a job that does not qualify as a Full-Time Job pursuant to Article II.E.

V.

Repayment Provisions; Remedies Upon Default

- A. If an Annual Compliance Certification demonstrates that Company has not created and maintained Full-Time Jobs in accordance with Article III.A.
- B. If Company is in default of this Agreement due to its failure to make and maintain Full-Time Jobs in accordance with the schedule contained in Section III.A, and if MDC previously disbursed incentive funds pursuant to Article IV that have not been previously repaid to MDC, then Company shall repay to MDC the amount of Fifteen Thousand and No/100 Dollars (\$15,000.00) for each Full-Time Job that Company failed to make or maintain during the previous Compliance Year.
- C. The parties agree that in the event of Company’s default of this Agreement, MDC shall be entitled to the remedies referenced in this Agreement in addition to any other remedy to which it may be entitled at law or in equity.

VI.

Cure Period

In lieu of exercising the right and remedies contained in Article V after MDC gives Company written notice of its default as set forth in this Agreement, MDC may, in its sole and absolute discretion, elect to allow Company a period not less than thirty (30) days, but not more than sixty (60) days to cure any such default. Any such election by MDC to allow Company to cure such a default shall in no way be construed as, or operate as, a waiver of any of MDC’s rights contained in this Agreement.

VII.

Term

Upon execution by all of the parties, this Agreement becomes effective on the Effective Date and shall terminate on September 30, 2034, or when terminated by mutual agreement of the parties, or when terminated as set forth in Article X.E.

VIII.

Law

The parties acknowledge and agree that the incentive funds provided to Company under this Agreement shall be utilized solely for purposes authorized under this Agreement and Chapter 501 of the Texas Local Government Code, as applicable.

IX.

Special Conditions

- A. **Total Financial Commitment.** Notwithstanding any other provision hereof that may be interpreted otherwise, MDC's total financial commitment during the term of this Agreement shall not exceed One Million One Hundred Twenty-Five Thousand and No/100 Dollars (\$1,125,000.00) in the aggregate.
- B. **Certifications.** Company agrees to the following certification requirements:
1. As to the certifications required in Article III.A, Company shall provide supplemental evidence or supporting documentation in a form acceptable to MDC; said supplemental evidence or supporting documentation may include, but shall not be limited to, Texas Workforce Commission Employer Quarterly Reports, certified employee rosters that include hours worked and positions filled, or any other such documents requested by MDC.
 2. Company shall allow MDC reasonable access to the Business, for purpose of determining Company's compliance with the employment certifications given by Company. Such access shall be granted so long as (i) MDC requests access by giving Company three (3) Business Days' prior written notice; (ii) MDC is accompanied by representatives of Company during such access; and (iii) such access occurs during normal business hours.
 3. When requested in writing by MDC to do so, Company will provide a notarized statement in a form acceptable to MDC that, to Company's knowledge, Company is in compliance with each applicable material term of this Agreement.
 4. All certifications required under this Agreement shall be signed and sworn to by Company's chief executive officer and chief financial officer before a notary and shall contain an appropriate jurat and a statement that the information contained in the certification is true and correct.
 5. Company shall maintain, during the term of this Agreement and for a period of three (3) years following expiration of the term, all records necessary to confirm that the Company has met or is capable of meeting its obligations under this Agreement, including such records maintained by Company and any Affiliate. Such records shall include, but not be limited to, payroll records, daily time sheets, records of personnel utilization on work activities at the Business (including records on an hourly basis for personnel), and other records demonstrating that the Full-Time Jobs created by

Company meet all requirements set forth in this Agreement. Upon receiving three (3) Business Days' prior written notice issued by MDC at any time during the term of this Agreement, Company shall make all such documents available to MDC to audit and inspect, regardless of whether a dispute is then pending between the parties. Company shall provide MDC or an accounting firm designated by MDC with prompt access to said records so that MDC or its designated accounting firm can perform such audit/inspection during normal business hours in an adequate workspace provided by Company. Upon receipt of a written request made by MDC, Company shall reimburse all reasonable costs incurred by MDC relating to the audit and inspection of said records.

C. **Covenants.** Company makes the following covenants to MDC and agrees that in the event of failure of Company to comply with such covenants, the breach of any one of which shall constitute an event of default, MDC may terminate this Agreement, at its sole and absolute discretion:

1. Company is a legal entity duly organized, validly existing and in good standing and is duly authorized to do business in the State of Texas.
2. The execution of this Agreement has been duly authorized by Company's board of directors or other governing body, or by officers empowered to execute such agreements and bind Company, and is not in contravention of the provisions of Company's articles of incorporation or bylaws, or of any agreement or instrument to which Company is a party to or by which it may be bound, the breach of which would have a material, adverse effect on Company and its operations.
3. There are no bankruptcy proceedings currently pending by or against Company.
4. None of Company's assets are subject to any material lien, security interest or other encumbrance, except as reflected in writing and furnished to MDC prior to the Effective Date.
5. No certificate or statement delivered or to be delivered by Company to MDC under this Agreement or in connection with any transaction contemplated hereby contains any untrue statement of a material fact or fails to state any material fact necessary to keep the statements contained therein from being misleading in any material respect by reason of any omission.

D. **Suspension.** MDC, under the following circumstances and at its sole discretion, may terminate this Agreement:

1. The insolvency of Company. "Insolvency" shall have the meaning set forth in federal bankruptcy law.

2. The appointment of a receiver of Company, or of all or any substantial part of their property, and the failure of such receiver to be discharged within sixty (60) days thereafter.
3. The adjudication of Company as bankrupt, the filing by Company of a petition to be adjudged bankrupt, or a petition or answer seeking reorganization or admitting the material allegations of a petition filed against Company in any bankruptcy or reorganization proceeding.

E. **Additional Covenants.** If Company should fail to comply with any of the following provisions, and such failure continues for sixty (60) days following written notice to Company (each, an event of default), MDC may terminate this Agreement.

1. Company, or any affiliate of, or successor to Company, shall continue its fulltime commercial operations in accordance with Company's obligations set forth in this Agreement at all times during the period of this Agreement.
2. Company shall pay, or cause to be paid, before delinquent all ad valorem taxes assessed and owed to the taxing authorities having jurisdiction, as may be set forth in the Sublease. In addition, Company shall pay before delinquent all employment, income, franchise and all other taxes to all local, state and federal entities.
3. Company shall, on a yearly basis during the term of this Agreement, provide MDC with tax certificates from Midland Central Appraisal District demonstrating that all taxes on Company's capital and property investments have been paid in full to the current tax year.
4. Company shall obtain and maintain all necessary rights, licenses, and permits to carry on its Business.
5. Company agrees that, as to all of the programs and activities arising out of this Agreement, it shall comply in all material respects with all Civil Rights Acts and specifically will not discriminate against any person on the basis of race, color, national origin, religion, age, sex or by reason of being disabled.
6. Company agrees that it shall comply with Texas Government Code Section 2264.001 *et seq.*, as amended.

F. **Interpretation of Terms & Obligations.** The parties acknowledge and agree that the canon of construction that "any ambiguities are to be construed against the drafter" shall not be employed in the interpretation of this Agreement. Notwithstanding any other provision contained herein to the contrary, the parties agree that in the event that there is a dispute regarding whether a particular item falls within the definition of Full-Time Jobs, MDC shall make such determination in its sole and absolute discretion and such determination shall be final and binding on Company.

X.
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 shall not be modified or amended without a written agreement of the parties.
- B. **Legal Relationships.** The parties are not, and shall not be considered as, joint venturers, partners, or agents of each other and no party shall have the power to bind or obligate another, except as set forth in this Agreement. The parties agree not to represent to anyone that they are agents of one another or have any authority to act on behalf of one another. It is mutually understood and agreed that nothing in this Agreement is intended or shall be construed as in any way creating or establishing any partnership, joint venture, or agency between MDC and Company. Further, it is specifically understood and agreed that nothing in this Agreement is intended or shall be construed as creating a community of pecuniary interest or an equal right of control that would give rise to vicarious liability.
- C. **No Third-Party Beneficiary.** The parties' approval of the Agreement does not create a third-party beneficiary. There is no third-party beneficiary to this Agreement. No person or entity that is not a party to this Agreement shall have any third-party beneficiary or other rights hereunder.
- D. **Independent Contractor.** It is expressly understood and agreed that Company shall perform all work and services described herein as an independent contractor and not as an officer, agent, servant or employee of MDC; that Company shall have exclusive control of and the exclusive right to control the details of the services and work performed hereunder, and all persons performing the same; and shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors; that the doctrine of *respondeat superior* shall not apply as between MDC and Company, its officers, agents, employees, contractors and subcontractors; and that nothing herein shall be construed as creating a partnership or joint enterprise between MDC and Company. No person performing any of the work and services described hereunder shall be considered an officer, agent, servant or employee of MDC. Company shall be independent contractors 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 work is done. MDC shall not have the right to control the means, methods or details of Company's work. Company shall assume exclusive responsibility for the work. Company is entirely free to do the work in its own way.
- E. **Termination.** This Agreement may be terminated by mutual agreement of the parties or by any party upon the failure of another party to fulfill an obligation as set forth herein if the default is not cured within sixty (60) days after written notice from the other party reasonably specifying such breach, or such longer period as may be reasonably necessary so long as such party has commenced the cure within such thirty (30) day period, and thereafter is diligently pursuing such cure.

- F. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original copy of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement. The exchange of copies of the Agreement, and of the signature pages, by facsimile or electronic transmission shall constitute effective execution and delivery of this Agreement as to the Parties and may be used in lieu of the original Agreement for all purposes. Signatures of the Parties transmitted by facsimile or electronic mail (i.e., .pdf format) shall be deemed to be original signatures for any purpose(s) whatsoever.
- G. **Governing Law & Venue.** The laws of the State of Texas shall govern, construe and enforce all the rights and duties of the parties, including but not limited to tort claims and any and all contractual claims or disputes, arising from or relating in any way to the subject matter of this Agreement, without regard to conflict of laws and rules that would direct application of the laws of another jurisdiction. All performance and payments made pursuant to this Agreement shall be deemed to have occurred in Midland County, Texas. All payments under this Agreement are deemed to have taken place in Midland County, Texas. The sole, exclusive, and mandatory venue for any claims, suits, disputes or any other action arising from, relating to or concerning in any way this Agreement or the performance of this Agreement shall be in Midland County, Texas.
- H. **Legal Construction.** In case one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions hereof and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.
- I. **Law.** This Agreement is subject to all applicable municipal, county, state and federal laws, regulations, orders and rules and Company 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. As used in this Agreement, the phrase “applicable law” is deemed to include the foregoing.
- J. **Assignment.** This Agreement shall be binding upon the parties hereto and their successors and assigns. This Agreement may not be assigned by a party without the prior written consent of the other party.

XI. Miscellaneous

- A. **Certification Regarding Undocumented Workers:** Company certifies that it and its Affiliates do not and will not knowingly employ an Undocumented Worker, as defined below, during the term of this Agreement, “Undocumented Worker” shall mean an individual who, at any time during employment, is not (i) lawfully admitted for permanent residence to the United States or (ii) otherwise authorized under applicable law to be employed, on any basis or under any program in the United States. Company shall

immediately notify MDC if (i) Company becomes aware of it or its Affiliate employs or has employed an Undocumented Worker, (ii) Company becomes aware or receives notice that it or its Affiliated is alleged to have employed an Undocumented Worker, or (iii) Company or its Affiliate is convicted of a violation under the following paragraph.

If during the term of this Agreement, Company or any of its Affiliates knowingly employ any Undocumented Worker and is convicted of a violation under 8 U.S.C. § 1324a(f), Company shall forfeit its claim to any incentives owed to it by MDC under this Agreement and MDC shall be fully and completely discharged from any and all obligations due hereunder.

B. Severability. If any provision of this Agreement is held invalid or otherwise unenforceable by any court of competent jurisdiction, the remaining provisions of the Agreement will remain in full force and effect. Any provision of this Agreement held invalid or otherwise unenforceable only in part or degree will remain in full force and effect to the extent not held invalid or unenforceable.

C. Notices. All notices permitted or required hereunder shall be in writing, signed by the party giving such notice and delivered either (i) personally; (ii) by certified mail, return receipt requested, postage prepaid addressed to the party at the address listed below; (iii) delivered by a nationally recognized courier service; or (iv) via email or fax, provided that concurrent notice is delivered by any other approved method of delivery outlined in subsections (i) – (iii) above. Notices under this paragraph will be deemed effective if sent to the party or person identified below:

If to MDC:

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

If to Company:

KLJ Engineering LLC
P.O. Box 4130
Bismarck, ND 58502

With Copy To:

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

D. Paragraph Headings. The paragraph headings inserted in this Agreement are for convenience only and in no way define, limit or otherwise describe the scope or intent of this Agreement or any provisions hereof, or in any way affect the interpretation of this Agreement.

- E. Binding Effect.** This Agreement shall inure to the benefit of, and shall be legally binding upon, the parties hereto and their respective heirs, successors, assigns and legal representatives.
- F. Findings Incorporated.** The recitals are hereby incorporated into the body of this Agreement for all rights and purposes, and shall be considered part of the mutual covenants, consideration and promises that bind the parties in the same manner as the material terms and provisions hereof.
- G. Waiver of Attorney Fees.** **BY EXECUTING THIS AGREEMENT, COMPANY AGREES TO WAIVE AND DOES HEREBY WAIVE ANY CLAIM IT HAS OR MAY HAVE IN THE FUTURE AGAINST MDC REGARDING THE AWARD OF ATTORNEY FEES THAT IS IN ANY WAY RELATED TO THIS AGREEMENT, OR THE CONSTRUCTION, INTERPRETATION OR BREACH OF THIS AGREEMENT. COMPANY AGREES THAT IF COMPANY BRINGS OR COMMENCES ANY LEGAL ACTION OR PROCEEDING RELATED TO THIS AGREEMENT, THE CONSTRUCTION, INTERPRETATION, VALIDITY OR BREACH OF THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO ANY ACTION PURSUANT TO THE PROVISIONS OF THE TEXAS UNIFORM DECLARATORY JUDGMENTS ACT (TEXAS CIVIL PRACTICE AND REMEDIES CODE SECTION 37.001, ET SEQ., AS AMENDED), THAT COMPANY AGREES TO (i) WAIVE AND RELINQUISH ANY AND ALL RIGHTS TO THE RECOVERY OF ATTORNEY FEES TO WHICH IT MIGHT OTHERWISE BE ENTITLED AND (ii) ASSUME COMPLETE FINANCIAL RESPONSIBILITY FOR AND PAY ALL ATTORNEY FEES AND ASSOCIATED COSTS INCURRED IN GOOD FAITH BY MDC IN MDC'S CONTESTING OF THE LEGAL ACTION OR PROCEEDING BROUGHT BY COMPANY.**

COMPANY AGREES THAT THIS IS THE VOLUNTARY AND INTENTIONAL RELINQUISHMENT AND ABANDONMENT OF A PRESENTLY EXISTING KNOWN RIGHT AND THE ASSUMPTION OF A FUTURE OBLIGATION IN THE EVENT THAT LESSEE BRINGS OR COMMENCES ANY LEGAL ACTION OR PROCEEDING AGAINST MDC RELATED TO THIS AGREEMENT, THE CONSTRUCTION, INTERPRETATION, VALIDITY OR BREACH OF THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO ANY ACTION PURSUANT TO THE PROVISIONS OF THE TEXAS UNIFORM DECLARATORY JUDGEMENTS ACT (TEXAS CIVIL PRACTICE AND REMEDIES CODE SECTION 37.001, ET SEQ., AS AMENDED). COMPANY ACKNOWLEDGES THAT COMPANY UNDERSTANDS ALL TERMS AND CONDITIONS OF THE AGREEMENT. COMPANY FURTHER ACKNOWLEDGES AND AGREES THAT THERE WAS AND IS NO DISPARITY OF BARGAINING POWER BETWEEN COMPANY AND MDC. THIS ARTICLE SHALL NOT BE CONSTRUED OR INTERPRETED AS A WAIVER OF GOVERNMENTAL IMMUNITY.

COMPANY IS RELYING ON ITS OWN JUDGMENT. COMPANY ACKNOWLEDGES THAT COMPANY HAD THE OPPORTUNITY TO DISCUSS THIS AGREEMENT WITH LEGAL COUNSEL PRIOR TO ITS EXECUTION.

- H. Amendment.** This Agreement may only be amended by written instrument executed by both parties expressly stating the intention to amend this Agreement. No amendment shall be effective unless approved by a resolution duly passed by the MDC Board of Directors and the Midland City Council.
- I. Release.** **COMPANY HEREBY RELEASES, ACQUITS, RELINQUISHES AND FOREVER DISCHARGES MDC, MDC'S BOARD MEMBERS, ATTORNEYS, EMPLOYEES, AND OFFICERS, FROM ANY AND ALL DEMANDS CLAIMS, DAMAGES, OR CAUSES OF ACTION OF ANY KIND WHATSOEVER THAT COMPANY HAS OR MIGHT HAVE IN THE FUTURE, INCLUDING BUT NOT LIMITED TO BREACH OF CONTRACT, QUANTUM MERUIT, CLAIMS UNDER THE DUE PROCESS AND TAKINGS CLAUSES OF THE TEXAS AND UNITED STATES CONSTITUTIONS, TORT CLAIMS, MDC'S NEGLIGENCE.**
- J. Consideration.** MDC and Company hereby agree and acknowledge that this Agreement is supported by good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties.
- K. 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.**
- L. Governmental Function.** **MDC AND COMPANY HEREBY ACKNOWLEDGE AND AGREE THAT THE ENTIRETY OF MDC'S PERFORMANCE AND OBLIGATIONS UNDER THIS AGREEMENT ARE GOVERNMENTAL FUNCTIONS. BY ENTERING INTO THIS AGREEMENT, COMPANY RELEASES MDC FROM ANY PRESENT OR FUTURE CLAIMS ASSERTING MDC'S PERFORMANCE AND OBLIGATIONS UNDER THIS AGREEMENT ARE NOT GOVERNMENTAL FUNCTIONS. MDC AND COMPANY ACKNOWLEDGE AND AGREE THAT THIS AGREEMENT IS IN THE PUBLIC INTEREST AND SERVES A PUBLIC PURPOSE OF THE STATE OF TEXAS AND CITY OF MIDLAND IN PROMOTING THE WELFARE OF THE GENERAL PUBLIC ECONOMICALLY BY SECURING AND RETAINING BUSINESS ENTERPRISES AND AS A RESULT OF MAINTAINING A HIGHER LEVEL OF EMPLOYMENT, ECONOMIC ACTIVITY, AND STABILITY.**
- M. No Disparity of Bargaining Position.** MDC and Company agree that there was no disparity of bargaining power between the parties in the negotiation and execution of this Agreement. MDC and Company acknowledge and agree that they were represented by legal counsel. MDC and Company acknowledge and agree that they read and understood the entire Agreement prior to its execution. MDC and Company acknowledge and agree

that there were numerous compromises and concessions made by the parties resulting in the agreed-upon terms of this Agreement.

N. Notice of Alleged Breach; Statutory Prerequisites. As a condition precedent to filing suit for alleged damages incurred by an alleged breach of an express or implied provision of this Agreement, Company or its legal representatives shall give the MDC Chairman notice in writing (consisting of one original and two copies of notice attached to a copy of this Agreement) of such damages, duly verified, within one hundred twenty (120) days after the same has been sustained. The discovery rule does not apply to the giving of this notice. The notice shall include when, where and how the damages occurred, the apparent extent thereof, the amount of damages sustained, the amount for which Company will settle, the physical and mailing addresses of Company at the time and date the claim was presented and the physical and mailing addresses of Company for the six (6) months immediately preceding the occurrence of such damages, and the names and addresses of the witnesses upon whom Company relies to establish its claims. Failure to so notify the MDC Chairman within the time and manner provided herein shall exonerate, excuse and except MDC from any liability whatsoever. MDC is under no obligation to provide notice to Company that Company's notice is insufficient. MDC reserves the right to request reasonable additional information regarding the claim. Said additional information shall be supplied within thirty (30) days after receipt of notice.

The statutory prerequisites outlined herein constitute jurisdictional requirements pursuant to Texas law. Notwithstanding any other provision, Company's failure to comply with the requirements herein shall perpetually bar Company's claim for damages regardless of if MDC has actual or constructive notice or knowledge of said claim or alleged damages. Company agrees that the requirements of this Article are reasonable.

O. Approval Required. This Agreement shall not become effective until approved by a resolution of the Midland City Council.

THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES. TIME IS OF THE ESSENCE WITH REGARDS TO ALL DEADLINES IN THIS AGREEMENT.

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SIGNATURE PAGES TO FOLLOW

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

**MIDLAND DEVELOPMENT
CORPORATION**

Chase Gardaphe, Chairman

ATTEST:

Jill Pennington, Secretary

**LETTER FROM OFFICE OF THE GOVERNOR REGARDING UNANIMOUS APPROVAL OF GRANT
TO THE COMPANY FROM THE TEXAS ENTERPRISE FUND**



**GOVERNOR GREG ABBOTT
ECONOMIC DEVELOPMENT & TOURISM**

May 16, 2022

Martin Fritz
Chief Administrative Officer
KLJ Engineering LLC
P.O. Box 1157
Bismarck, ND 58502

Dear Mr. Fritz:

After reviewing your application, Governor Greg Abbott, Lieutenant Governor Dan Patrick, and Speaker of the House of Representatives Dade Phelan are pleased to conditionally offer a Texas Enterprise Fund Award of \$656,250 to KLJ Engineering LLC for the investment in Midland County, Texas. In addition to the Texas Enterprise Award, KLJ Engineering LLC is being offered a \$7,000 Veteran Created Job Bonus.

Texas Enterprise Fund awards support the creation of quality jobs and leverage private investment for business activities designed to strengthen the economic future of the state. We are delighted KLJ Engineering LLC is considering making an investment in our state, and we are confident you will find Texas to be an ideal location for your business.

This award is contingent upon, among other things, execution of a formal Economic Development Grant Contract, which will be developed between the State and your company. It is critical to execute the Economic Development Grant Contract within 180 calendar days of the date of this letter. Staff at the Governor's Office of Economic Development and Tourism will initiate work on this Contract immediately. For additional assistance, please contact William Jackson (william.jackson@gov.texas.gov) or Haileigh Meyers (Haileigh.Meyers@gov.texas.gov) via email or 512-936-0100.

We look forward to working with you to help your firm find success in Texas!

Sincerely,

Adriana Cruz
Executive Director

cc: Sara Harris, Midland Development Corporation
Chris Sterner, Office of the Lieutenant Governor
Andrew Blifford, Office of the Speaker of the House of Representatives

AC:wj

Employees Hired or Transferred Prior to the Effective Date of the Economic Development Agreement and After the Date of the Letter Attached as Exhibit A

Company hired or transferred from out of state six (6) employees prior to the Effective Date of this Agreement and after the date of the letter attached as **Exhibit A**. By the Effective Date, Company shall submit to the Office of the Governor a list containing the full names of said employees.

Exhibit B

The Perryman
Group Consulting
Services
Agreement

RESOLUTION NO. _____

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

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

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

SECTION ONE. That the Chairman and Secretary are hereby authorized and directed to execute and attest, respectively, on behalf of the Midland Development Corporation, a consultant services agreement with The Perryman Group in an amount not to exceed \$80,000.00 for the production of certain economic indices and reports regarding the City of Midland, Texas, and the Permian Basin. Said agreement being in the form substantially similar to that of Exhibit A, which is attached hereto and incorporated herein for all purposes.

SECTION TWO. That the City Comptroller is hereby authorized and directed to pay The Perryman Group, in accordance with the terms of the consulting services agreement, from funds available in the Midland Development Corporation Operating Budget upon receipt of proper invoices or statements approved by the Executive Director or her designee.

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

CONSULTING SERVICES AGREEMENT

THIS AGREEMENT is made and effective the 2nd day of October, 2023, by and between the MIDLAND DEVELOPMENT CORPORATION, a Type A corporation pursuant to Chapter 504 of the Texas Local Government Code, as amended (“*MDC*”), and THE PERRYMAN GROUP (“*COMPANY*”).

ARTICLE I. PURPOSE

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

ARTICLE II. SERVICES TO BE PERFORMED

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

ARTICLE III. FINANCIAL CONSIDERATIONS

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

ARTICLE IV. TERM

The term of this Agreement shall be from October 2, 2023, until September 30, 2024, unless the Agreement is terminated as provided below.

Exhibit A

ARTICLE V. TERMINATION AT WILL

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

ARTICLE VI. ASSIGNMENT

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

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

All reports, information, and other data ("*Instruments of Service*"), given to, prepared or assembled by COMPANY under this Agreement, and any other related documents or items shall become the sole property of MDC and shall be delivered to MDC, without restriction, except that COMPANY may make copies of any and all Instruments of Service for its files. MDC shall not make any modification to the plans and specifications or make them available for use by third parties without the prior written authorization of COMPANY, which consent shall not be unreasonably withheld.

ARTICLE VIII. INDEPENDENT CONTRACTOR

It is expressly understood and agreed that COMPANY shall perform all work and services described herein as an independent contractor and not as an officer, agent, servant or employee of MDC; that COMPANY shall have exclusive control of and the exclusive right to control the details of the services and work performed hereunder, and all persons performing the same; and shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and

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

ARTICLE IX. INSURANCE

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

Commercial General Liability (including Contractual liability):

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

-Property Damage: \$500,000.00 per occurrence

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

Workers' Compensation: Statutory limits

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

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

The Business Automobile Liability insurance provided by COMPANY shall cover any auto for bodily injury and property damage, including owned vehicles, hired and non-hired

vehicles, and employee non-ownership, and the amount of such policy shall be a minimum of \$250,000.00 covering any vehicle used for the execution of the work that is the subject of this Agreement. This insurance shall name MDC as an additional insured and waive subrogation in favor of MDC.

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

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

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

The parties agree that, prior to the execution of the Agreement, COMPANY shall provide one or more certificates of insurance specifically stating that these requirements have been met and subject to the approval of MDC. MDC shall not be required to provide any insurance whatsoever pursuant to this Agreement.

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

ARTICLE X. ATTORNEY FEES

BY EXECUTING THIS AGREEMENT, COMPANY AGREES TO WAIVE AND DOES HEREBY WAIVE ANY CLAIM IT HAS OR MAY HAVE IN THE FUTURE

AGAINST MDC REGARDING THE AWARD OF ATTORNEY FEES THAT IS IN ANY WAY RELATED TO THIS AGREEMENT, OR THE CONSTRUCTION, INTERPRETATION OR BREACH OF THIS AGREEMENT. COMPANY AGREES THAT IF COMPANY BRINGS OR COMMENCES ANY LEGAL ACTION OR PROCEEDING RELATED TO THIS AGREEMENT, THE CONSTRUCTION, INTERPRETATION, VALIDITY OR BREACH OF THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO ANY ACTION PURSUANT TO THE PROVISIONS OF THE TEXAS UNIFORM DECLARATORY JUDGMENTS ACT (TEXAS CIVIL PRACTICE AND REMEDIES CODE SECTION 37.001, *ET SEQ.*, AS AMENDED), THAT COMPANY AGREES TO (i) WAIVE AND RELINQUISH ANY AND ALL RIGHTS TO THE RECOVERY OF ATTORNEY FEES TO WHICH IT MIGHT OTHERWISE BE ENTITLED AND (ii) ASSUME COMPLETE FINANCIAL RESPONSIBILITY FOR AND PAY ALL ATTORNEY FEES AND ASSOCIATED COSTS INCURRED IN GOOD FAITH BY MDC IN MDC'S CONTESTING OF THE LEGAL ACTION OR PROCEEDING BROUGHT BY COMPANY.

COMPANY AGREES THAT THIS IS THE VOLUNTARY AND INTENTIONAL (i) RELINQUISHMENT AND ABANDONMENT OF A PRESENTLY EXISTING KNOWN RIGHT AND (ii) ASSUMPTION OF A FUTURE OBLIGATION IN THE EVENT THAT COMPANY BRINGS OR COMMENCES ANY LEGAL ACTION OR PROCEEDING AGAINST MDC RELATED TO THIS AGREEMENT, THE CONSTRUCTION, INTERPRETATION, VALIDITY OR BREACH OF THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO ANY ACTION PURSUANT TO THE PROVISIONS OF THE TEXAS UNIFORM DECLARATORY JUDGEMENTS ACT (TEXAS CIVIL PRACTICE AND REMEDIES CODE SECTION 37.001, *ET SEQ.*, AS AMENDMED). COMPANY ACKNOWLEDGES THAT COMPANY UNDERSTANDS ALL TERMS AND CONDITIONS OF THE AGREEMENT. COMPANY FURTHER ACKNOWLEDGES AND AGREES THAT THERE WAS AND IS NO DISPARITY OF BARGAINING POWER BETWEEN COMPANY AND MDC. THIS SECTION SHALL NOT BE CONSTRUED OR INTERPRETED AS A WAIVER OF GOVERNMENTAL IMMUNITY.

COMPANY IS RELYING ON ITS OWN JUDGMENT. COMPANY ACKNOWLEDGES THAT COMPANY HAD THE OPPORTUNITY TO DISCUSS THIS AGREEMENT WITH LEGAL COUNSEL PRIOR TO ITS EXECUTION.

ARTICLE XI. GOVERNMENTAL IMMUNITY

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

ARTICLE XII. NO THIRD-PARTY BENEFICIARIES

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

ARTICLE XIII. RELEASE

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

ARTICLE XIV. INDEMNITY

COMPANY SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND MDC AND ALL OF MDC'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, ACCIDENTAL DEATH, LOSSES, PROPERTY DAMAGE AND EXPENSES OF ANY CHARACTER WHATSOEVER, INCLUDING ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ON ACCOUNT OF ANY NEGLIGENT ACT

OF COMPANY, THEIR AGENTS OR EMPLOYEES, OR ANY SUBCONTRACTOR, IN THE EXECUTION, SUPERVISION AND OPERATIONS GROWING OUT OF OR IN ANY WAY CONNECTED WITH THE PERFORMANCE OF THIS AGREEMENT, AND COMPANY WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST MDC OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES, INCLUDING ATTORNEY'S FEES.

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

COMPANY AGREES THAT IT WILL INDEMNIFY AND SAVE MDC HARMLESS FROM ALL CLAIMS GROWING OUT OF ANY DEMANDS OF SUBCONTRACTORS, LABORERS, WORKMEN, MECHANICS, MATERIALMEN, AND FURNISHERS OF MACHINERY AND PARTS THEREOF, EQUIPMENT, POWER TOOLS AND ALL SUPPLIES, INCURRED IN THE FURTHERANCE OF THE PERFORMANCE OF THIS AGREEMENT. WHEN MDC SO DESIRES, COMPANY SHALL FURNISH SATISFACTORY EVIDENCE THAT ALL OBLIGATIONS OF THE NATURE HEREINABOVE DESIGNATED HAVE BEEN PAID, DISCHARGED OR

WAIVED. COMPANY, ITS SURETIES AND INSURANCE CARRIERS SHALL DEFEND, INDEMNIFY AND SAVE HARMLESS MDC AND ALL OF ITS OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, OR CLAIMS OF ANY CHARACTER WHATSOEVER, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ARISING FROM ANY ACT OF COMPANY OR ANY SUBCONTRACTOR, THEIR AGENTS OR EMPLOYEES, IN THE EXECUTION AND SUPERVISION OF THIS AGREEMENT, AND WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST MDC OR ANY OF ITS OFFICERS, AGENTS, OR EMPLOYEES INCLUDING ATTORNEY'S FEES.

ARTICLE XV. GENERAL PROVISIONS

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

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

C. Notice. Any notice or demand that shall be made regarding this Agreement, shall be made in writing and delivered either in person or by certified or registered mail. 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 addressed as follows:

If to MDC: Executive Director
Midland Development Corporation
200 N. Loraine, Suite 610
Midland, Texas 79701

If to COMPANY: The Perryman Group
510 N. Valley Mills Dr.
Suite 300
Waco, TX 76710

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

D. Severability. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, this invalidity, illegality, or unenforceability shall not affect any other provision of the Agreement, and this Agreement shall be construed as if the invalid, illegal, or unenforceable provision had never been 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 the terms of this Agreement shall be binding unless it is in writing, dated subsequent to the date of this Agreement, and duly executed by the parties to this Agreement.

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

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

I. Notice of Alleged Breach; Statutory Prerequisites. As a condition precedent to filing suit for alleged damages incurred by an alleged breach of an express or implied provision of this Agreement, COMPANY or his legal representative, shall give the MDC Chairman, or any other reasonable official of MDC, notice in writing (consisting of one original and seven copies of notice attached to a copy of this Agreement) of such damages, duly verified, within ninety (90) days after

the same has been sustained. The discovery rule does not apply to the giving of this notice. The notice shall include when, where and how the damages occurred, the apparent extent thereof, the amount of damages sustained, the amount for which COMPANY will settle, the physical and mailing addresses of COMPANY at the time and date the claim was presented and the physical and mailing addresses of COMPANY for the six months immediately preceding the occurrence of such damages, and the names and addresses of the witnesses upon whom COMPANY relies to establish its claim; and a failure to so notify the MDC Chairman within the time and manner provided herein shall exonerate, excuse and except MDC from any liability whatsoever. MDC is under no obligation to provide notice to COMPANY that COMPANY'S notice is insufficient. MDC reserves the right to request reasonable additional information regarding the claim. Said additional information shall be supplied within thirty (30) days after receipt of notice.

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

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

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

[Signature Pages Follow]

EXECUTED IN DUPLICATE the day and year first above mentioned.

MIDLAND DEVELOPMENT CORPORATION

By _____
Chase Gardaphe, Chairman

ATTEST:

Jill Pennington, Secretary

[Signature Page Follows]

THE PERRYMAN GROUP

By: _____

Name: _____

Title: _____

STATE OF TEXAS §
 §
COUNTY OF _____ §

BEFORE ME, the undersigned authority, on this ____ day of _____, 2023, personally appeared, _____ of THE PERRYMAN GROUP, known to me to be the person and official whose name is subscribed to the forgoing instrument, and acknowledged to me that he executed the same as the act and deed of said entity, for the purposes and consideration therein expressed, and in the capacity therein stated.

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

Notary Public, State of Texas

PROJECT CONCEPT

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

September 2023

510 N. Valley Mills Dr., Suite 300

Waco, TX 76710

ph. 254.751.9595, fax 254.751.7855

info@perrymangroup.com

www.perrymangroup.com



Exhibit A

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

I. Introduction

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

II. Qualifications

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

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

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

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

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

Models and Systems

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

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

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

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

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

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

Related Experience

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

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

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

The firm has also conducted a number of studies specifically involving the Permian Basin and Midland. Dr. Perryman developed an econometric model of the areas in the late 1970s and has provided ongoing projections for the region since that time. In addition to the large Priority Midland study which was recently completed, the firm has performed economic development analyses and strategic plans, corporate location impact studies, health care studies, a large-scale study of commercial activity on University Lands, an evaluation of housing patterns and needs, workforce studies, tax policy assessments, studies of tourism and recreation effects of various venues and programs (including new hotels, athletic programs, and cultural amenities), assessments of the costs of homelessness, and many other analyses within the region. The firm recently completed (1) an analysis of the economic impact of the University of Texas Permian Basin and is presently examining (2) the effects of a potential Census undercount on the region, (2) the impact of the Permian Basin on all segments of the Texas economy, (3) economic elements of a strategic plan for the Odessa area, (4) an assessment of literacy

issues in the region, (5) an evaluation of the economic consequences of mental illness in the Permian Basin, (6) two comprehensive economic analyses of the effects of energy in the areas as part of the “Power of the Permian” reports by Permian Strategic Partners, and (7) an investigation of the relative value of petroleum production in the area for ExxonMobil.

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

III. Scope of Work

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

index will be designed in the same manner as a multi-regional index that TPG has provided for a major financial services firm for the past several years.

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

IV. Fees and Timing

- A. TPG will complete the initial analysis and provide monthly updates Over the period from October 2023 through September 202y for one year for an annual fee of \$80,000 plus any direct, out-of-pocket expenses. An initial retainer of one-half of this amount is requested upon project initiation. The remainder will be due of upon completion of the first monthly summary.

V. Other Provisions

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

M. RAY PERRYMAN

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

ACADEMIC BACKGROUND

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

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

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

SELECTED ADVISORY/CONSULTING ACTIVITY (Current and Former)

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

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

SELECTED HONORS AND AWARDS

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

THE PERRYMAN GROUP

Firm Profile and Capabilities

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

IMPACT ASSESSMENT

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

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

REGULATORY ANALYSIS

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

LITIGATION SUPPORT AND EXPERT TESTIMONY

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

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

PUBLIC POLICY

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

ECONOMIC DEVELOPMENT AND STRATEGIC PLANNING

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

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

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

FORECASTING AND MODELING

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

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

PUBLICATIONS

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

PRESENTATIONS

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

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

Income Statement

MIDLAND DEVELOPMENT CORPORATION
INCOME STATEMENT FOR THE 12 MONTHS ENDED
September 30, 2023

	Sep-23	YTD	Budgeted Amount
Revenue	\$1,459,935.52	\$16,378,082.05	\$11,976,644.00
40100 - State Sales Tax	\$1,328,790.99	\$14,311,285.41	\$11,000,000.00
40600 - Public ROW Use Fees	\$0.00	\$4,823.00	\$0.00
43000 - Interest	\$0.00	\$228,499.02	\$0.00
43010 - Interest - Nonpooled Invest	\$49,757.53	\$446,360.62	\$0.00
46190 - Miscellaneous Rentals	\$81,387.00	\$976,744.00	\$976,644.00
49020 - Sale of Buildings	\$0.00	\$410,370.00	\$0.00
4235150 - Midland Dvlpmt Corp Revenue	\$1,459,935.52	\$16,378,082.05	\$11,976,644.00

Expense	\$460,626.40	\$10,498,845.38	\$22,392,778.00
51010 - Base Salary	\$24,920.47	\$297,545.40	\$350,096.00
51090 - Fica MDC Portion	\$1,906.43	\$20,565.96	\$28,234.00
51110 - Health Insurance	\$2,053.36	\$22,349.60	\$28,080.00
51135 - ACCE Profit Sharing	\$1,463.63	\$20,598.81	\$24,507.00
52010 - Office Supplies	\$167.03	\$5,235.36	\$6,000.00
52110 - Motor Vehicle Supplies	\$0.00	\$474.92	\$1,500.00
52115 - Minor Furniture & Fixtures	\$0.00	\$344.71	\$1,000.00
52155 - Minor Computer Hrdwre & Periph	\$0.00	\$3,492.53	\$5,000.00
52160 - Computer Software & Supplies	\$0.00	\$31,704.17	\$30,000.00
52620 - Postage	\$0.00	\$968.80	\$300.00
53010 - Communication	\$1,148.82	\$17,137.86	\$17,000.00
53030 - Light & Power	\$0.00	\$102.28	\$150.00
53110 - Insurance-External	\$139,472.19	\$152,155.19	\$150,000.00
53212 - Equipment Rental-External	\$334.98	\$3,785.36	\$5,000.00
53220 - Advertising	\$4,174.23	\$205,530.73	\$200,000.00
53370 - Grounds Maintenance	\$4,873.40	\$38,730.75	\$22,000.00
53405 - Software Maintenance	\$1,525.54	\$20,016.59	\$12,000.00
53440 - External Audit Fees	\$0.00	\$33,971.70	\$35,000.00
53450 - Consulting Fees	\$39,875.00	\$244,781.14	\$500,000.00
53510 - Travel & Entertainment	\$96.31	\$9,257.72	\$8,000.00
53520 - Dues & Subscriptions	\$6,617.50	\$17,759.17	\$15,000.00
53530 - Training,Registration Fees,Etc	\$150.00	\$10,293.34	\$10,000.00
53905 - Economic Development Incentive	\$0.00	\$0.00	\$5,129,123.00
53907 - Business Recruitment & Retentn	\$3,391.58	\$67,813.09	\$50,000.00
53909 - Prior Year Committed Incentives	\$177,822.20	\$3,137,141.79	\$9,999,673.00
53920 - Rent	\$5,678.50	\$68,142.00	\$68,142.00
54010 - Building Maintenance	\$6,945.11	\$88,922.75	\$80,000.00
55120 - Maint. - Instruments & Appara.	\$238.60	\$1,876.45	\$1,000.00
56188 - MOTRAN	\$0.00	\$142,500.00	\$142,500.00
56202 - General Fund Services	\$31,651.08	\$379,812.96	\$379,813.00
56410 - Payment of Principal	\$0.00	\$0.00	\$70,605.00
56420 - Interest Expense	\$0.00	\$0.00	\$6,595.00
56910 - Depreciation Expense	\$0.00	\$319,784.22	\$416,460.00
56995 - Project Non Capital - Promotions	\$6,120.44	\$1,270,517.28	\$1,100,000.00
57001 - Capital Buildings & Structures	\$0.00	\$3,765,532.75	\$3,500,000.00
57002 - Capital Improv Other Than Bldg	\$0.00	\$100,000.00	\$0.00
235235 - Midland Development Corp	\$460,626.40	\$10,498,845.38	\$22,392,778.00

September 2023 Net Income: \$999,309.12

Year-to-Date Net Income: \$5,879,236.67

Balance Sheet

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

ASSETS

Current Assets

Cash and cash equivalents	20,511,600	
Investments	7,704,935	
Sales tax receivable	-	
Prepaid expenses	-	
Accounts receivable	-	
	28,216,536	

Non-Current Assets

Capital Assets, net	31,163,889	
Forgivable Loans		
Made to Primary Government	2,984,110	
Made to Other	6,579	
Total Forgivable Loans	2,990,689	
		34,154,578

Total Assets \$ 62,371,113

LIABILITIES AND NET POSITION

Liabilities

Accounts payable	85,335	
Retainage Payable	161,545	
Capital Leases payable	565,054	
Commitments payable		
Due within one year	7,680,873	
Due in more than one year	11,780,656	
Total Commitments Payable	19,461,529	
		20,273,462

Net Position

Net investment in capital assets	31,163,889	
Restricted for Forgivable Loans	2,990,689	
Restricted for Capital Leases	565,054	
Promotions	1,388,224	
Unrestricted	5,989,796	
	42,097,651	

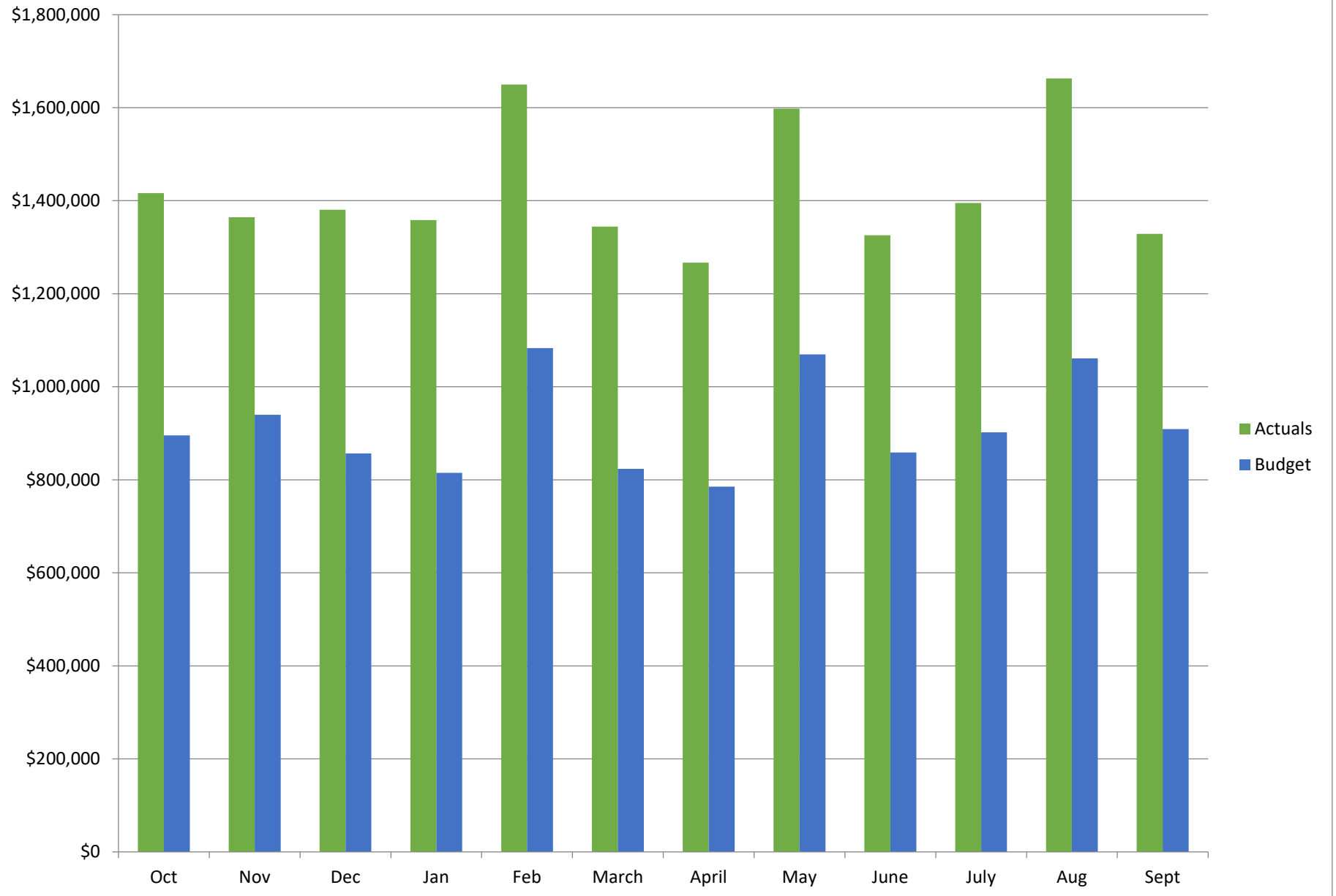
Total Liabilities and Net Position \$ 62,371,113

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	\$1,597,917.80	7.43%	23.97%
June	\$927,060.71	\$1,218,236.38	31.41%	\$1,218,236.38	\$1,325,843.43	8.83%	22.19%
July	\$909,387.44	\$1,326,275.50	45.84%	\$1,326,275.50	\$1,395,392.32	5.21%	20.27%
August	\$1,176,070.55	\$1,582,536.23	34.56%	\$1,582,536.23	\$1,662,691.61	5.06%	18.46%
September	\$978,956.15	\$1,303,011.95	33.10%	\$1,303,011.95	\$1,328,790.99	1.98%	16.99%
Annual Total	\$11,667,228.27	\$14,609,714.93	25.22%	\$14,609,714.93	\$17,092,391.39		

Sales Tax Actuals vs Budget Estimates



Activity Report



BUSINESS RETENTION & EXPANSION

OCTOBER 2023 - TRADE SHOW DETAILS



BRE COORDINATOR: SAMMI STEELE



WHAT'S THE PURPOSE OF TRADE SHOWS & PROSPECT MEETINGS?

Market Midland & what this area offers to growing businesses



Establish a relationship with companies looking to expand or relocate

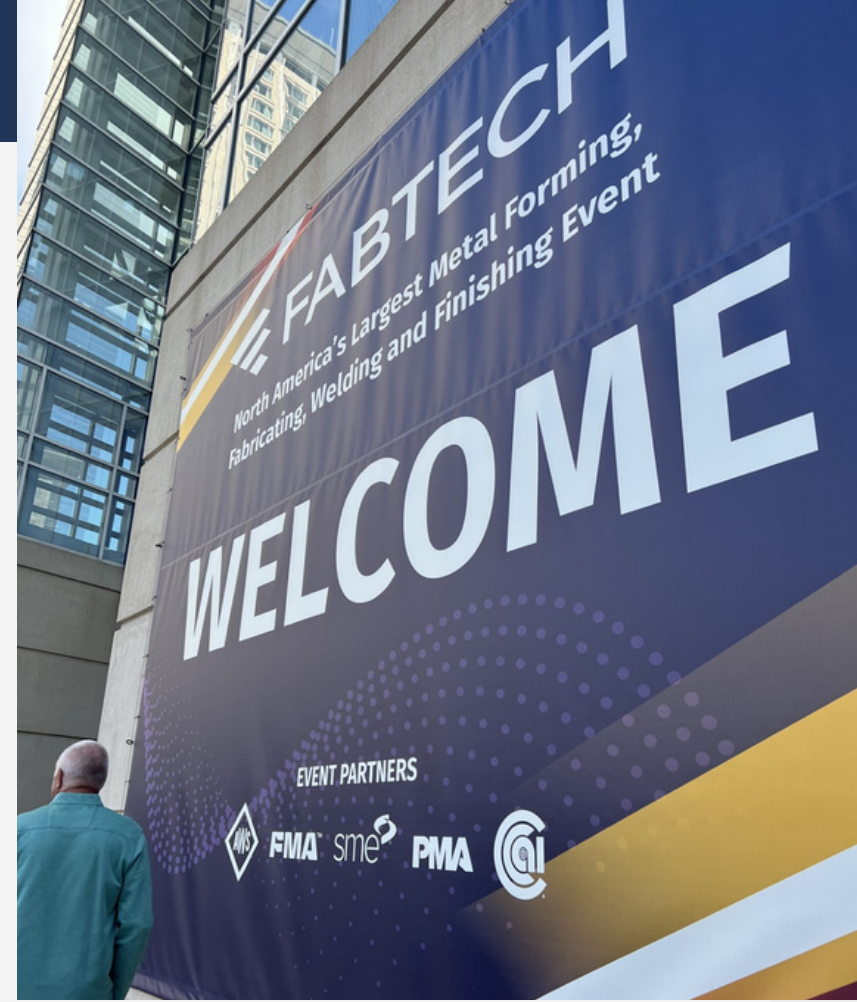


Enables MDC to stay up-to-date with economic development trends & understand better what companies need



Connections makes it easier for companies to approach Midland (*and vice-versa*) for expansion projects





MDC staff worked shifts at Oncor's Texas booth. We talked with metal forming and fabricating companies interested in relocating or expanding to Texas. Outside of the trade show, MDC set up 1:1 meetings with site selectors.



FABTECH 2023

CHICAGO, IL - SEPT. 11-14

32

**ONCOR BOOTH
LEADS**



3

**SITE SELECTOR
VISITS**



NEXT STEPS

- Reach out to FABTECH leads via email & share details about incentives and expanding to Midland
- Set up remote meetings and or visits with leads interested in Midland
- Maintain relationships with Site Selectors
 - Examine website
 - Market David Mims property at future site selector events





QUESTIONS





marketing
REPORT

MDC BOARD MEETING- 10/2



month of September
MARKETING



FLY INTO FALL

FOUNDERS BLEND

PROFESSIONAL DEVELOPMENT

FROST BANK SBS PRESENTATION

DRONE COURSE: AIR SPACE CLASSES

NEWSLETTER

Fly Into Fall



FABTECH





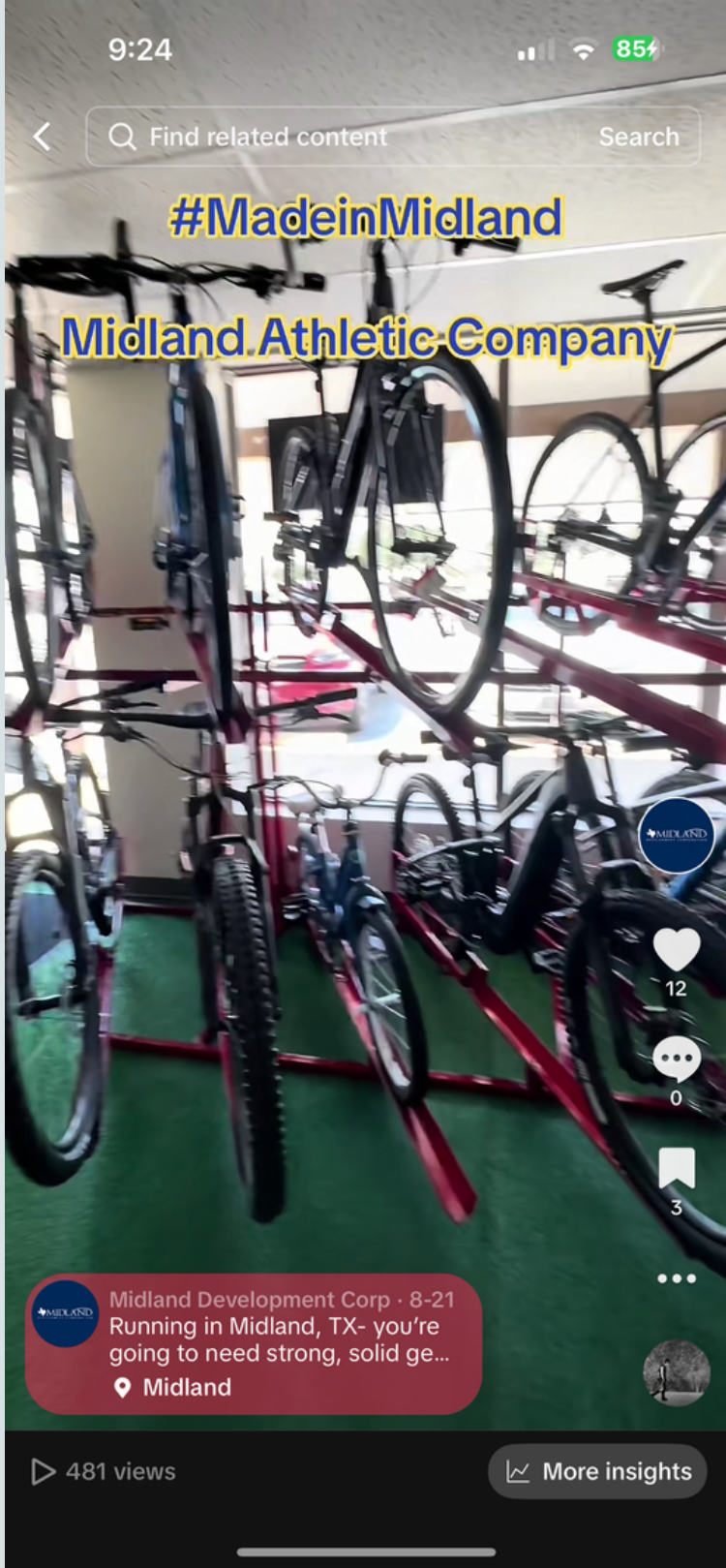
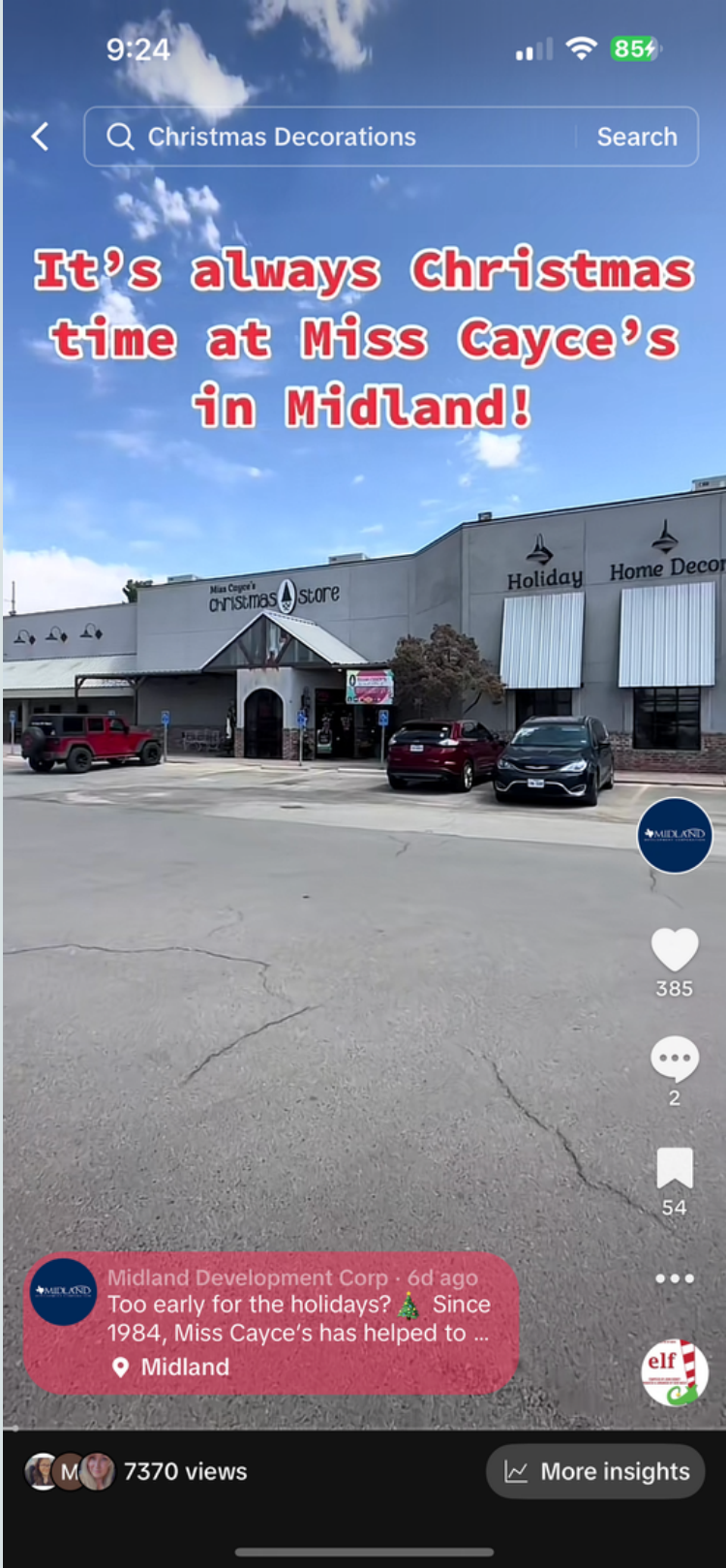
FOUNDERS BLEND



FOUNDERS BLEND

BLENDING MINDS &
**BUILDING
BUSINESSES**

A caffeinat



595 VIEWS
46 LIKES
7 SAVES
1790 FOLLOWERS



 **MIDLAND, TX**

 **ODESSA, TX**

 **DALLAS, TX**

 **HOUSTON, TX**

Facebook

2,735

FOLLOWERS

10.42K

IMPRESSIONS



Instagram

2,497

FOLLOWERS

16.51K

IMPRESSIONS



Linked In

1,823

FOLLOWERS

4,186

IMPRESSIONS

TOP POSTS:

- TALL CITY BREWING BRE POST
- FOUND FURNISHINGS BRE POST
- MIDLAND MEDICAL SUPPLY BRE POST
- FOUNDERS BLEND




FOUNDERS
BLEND

Wednesday, September 20th
UTPB CEED Building
8 am - 9 am

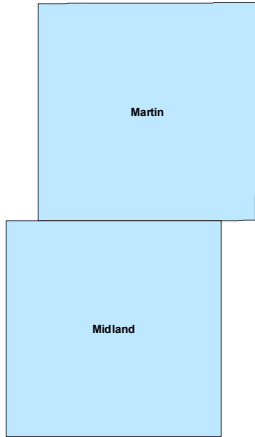
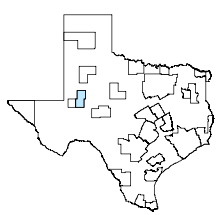
Blending Minds & Building Businesses

Questions?



Midland MSA

August 2023

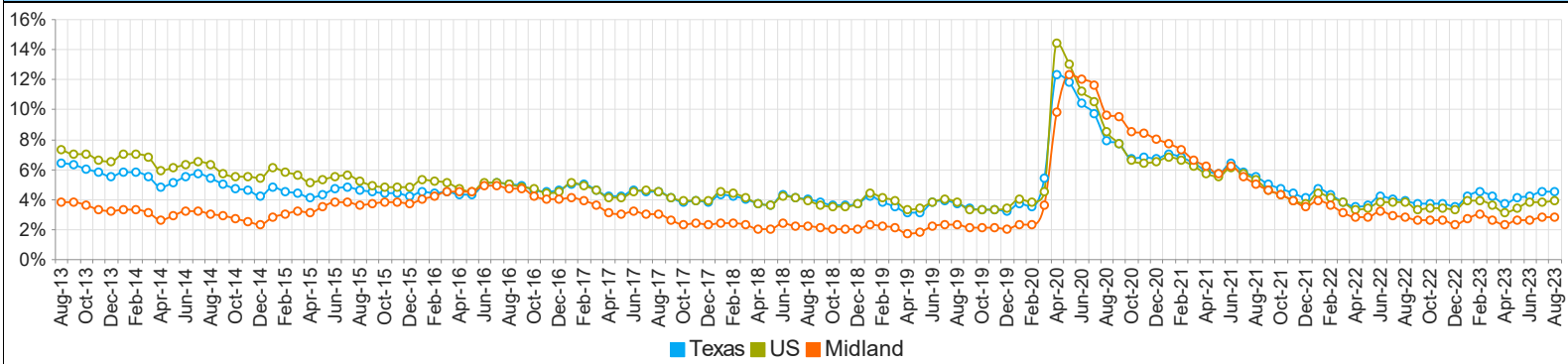


MSA Labor Force Statistics				
	Aug-23	Jul-23	Aug-22	Yearly Change
Civilian Labor Force	115,843	115,704	109,842	6,001
Employed	112,561	112,409	106,731	5,830
Unemployed	3,282	3,295	3,111	171
Unemployment Rate	2.8%	2.8%	2.8%	0.0%

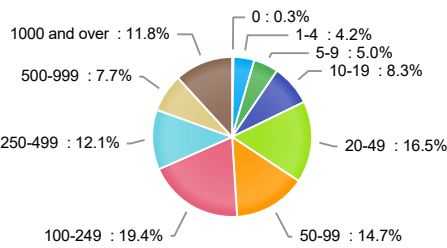
Texas Labor Force Statistics				
	Aug-23	Jul-23	Aug-22	Yearly Change
Civilian Labor Force	15,188,537	15,180,276	14,674,216	514,321
Employed	14,502,948	14,497,230	14,094,855	408,093
Unemployed	685,589	683,046	579,361	106,228
Unemployment Rate	4.5%	4.5%	3.9%	0.6%

US Labor Force Statistics				
	Aug-23	Jul-23	Aug-22	Yearly Change
Civilian Labor Force	168,049,000	168,354,000	164,971,000	3,078,000
Employed	161,427,000	161,982,000	158,714,000	2,713,000
Unemployed	6,623,000	6,372,000	6,256,000	367,000
Unemployment Rate	3.9%	3.8%	3.8%	0.1%

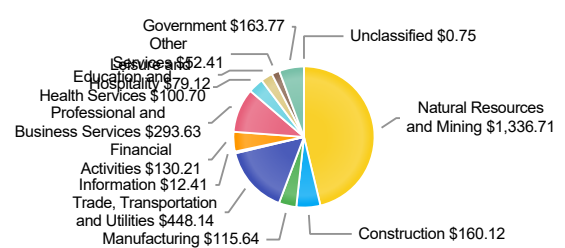
Historical Unemployment Rates



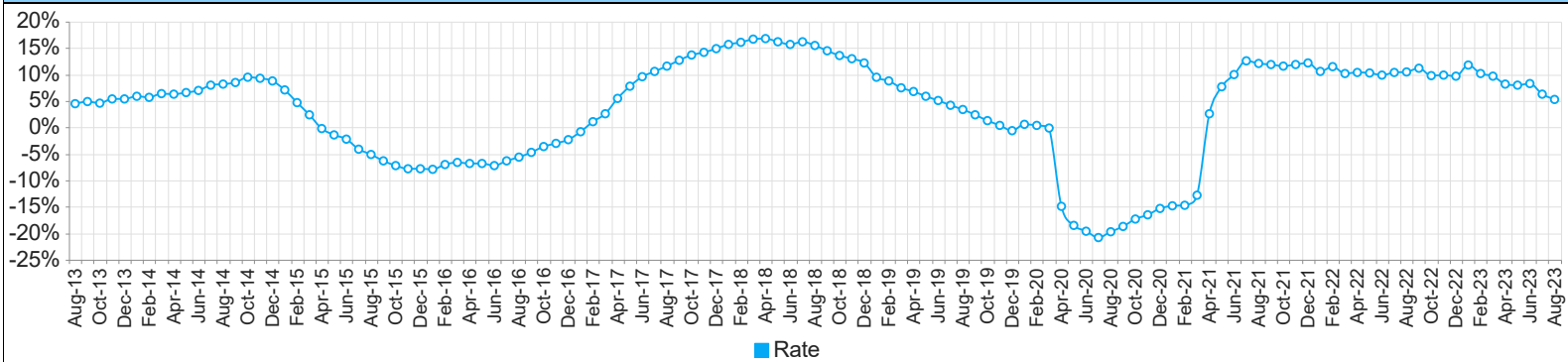
Employment by Size Class (1st Quarter 2023)



Wages by Industry (in millions) (1st Quarter 2023)



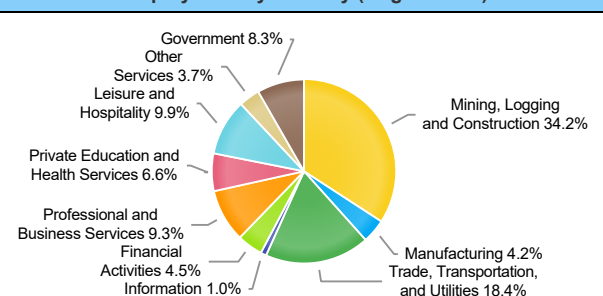
Annual Growth Rate Total Non-agricultural employment



Employment by Industry (August 2023)

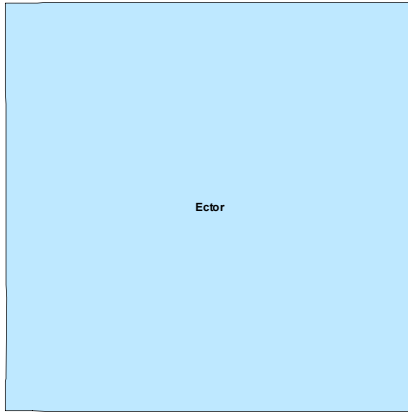
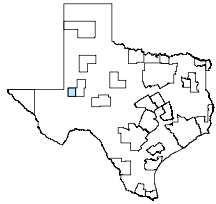
Industry	Current Month Employment	% Monthly Change	% Yearly Change
Total Nonfarm	120,500	-0.1%	5.3%
Mining, Logging and Construction	41,200	0.2%	9.6%
Manufacturing	5,100	-1.9%	6.2%
Trade, Transportation, and Utilities	22,200	-0.4%	3.3%
Information	1,200	0.0%	0.0%
Financial Activities	5,400	0.0%	1.9%
Professional and Business Services	11,200	-2.6%	0.0%
Private Education and Health Services	7,900	-1.2%	5.3%
Leisure and Hospitality	11,900	0.0%	2.6%
Other Services	4,400	2.3%	10.0%
Government	10,000	3.1%	3.1%

Employment by Industry (August 2023)



Odessa MSA

August 2023

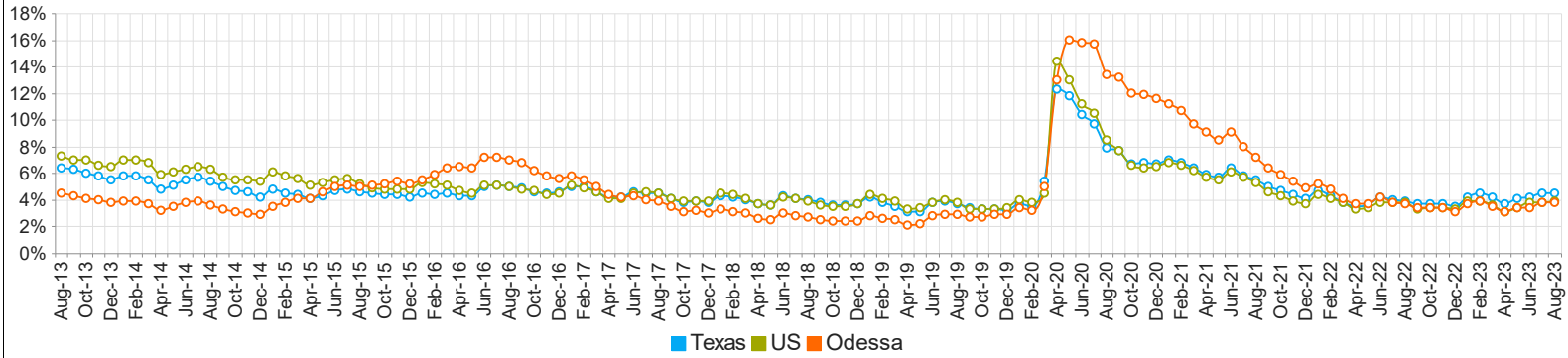


MSA Labor Force Statistics				
	Aug-23	Jul-23	Aug-22	Yearly Change
Civilian Labor Force	86,613	86,555	83,401	3,212
Employed	83,334	83,295	80,290	3,044
Unemployed	3,279	3,260	3,111	168
Unemployment Rate	3.8%	3.8%	3.7%	0.1%

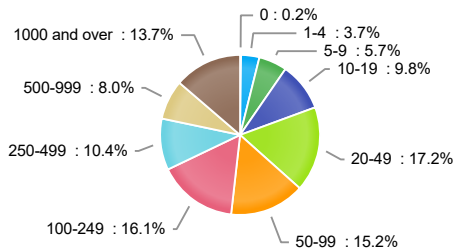
Texas Labor Force Statistics				
	Aug-23	Jul-23	Aug-22	Yearly Change
Civilian Labor Force	15,188,537	15,180,276	14,674,216	514,321
Employed	14,502,948	14,497,230	14,094,855	408,093
Unemployed	685,589	683,046	579,361	106,228
Unemployment Rate	4.5%	4.5%	3.9%	0.6%

US Labor Force Statistics				
	Aug-23	Jul-23	Aug-22	Yearly Change
Civilian Labor Force	168,049,000	168,354,000	164,971,000	3,078,000
Employed	161,427,000	161,982,000	158,714,000	2,713,000
Unemployed	6,623,000	6,372,000	6,256,000	367,000
Unemployment Rate	3.9%	3.8%	3.8%	0.1%

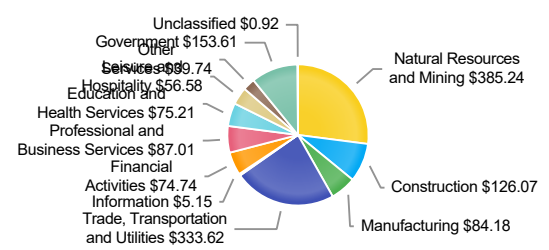
Historical Unemployment Rates



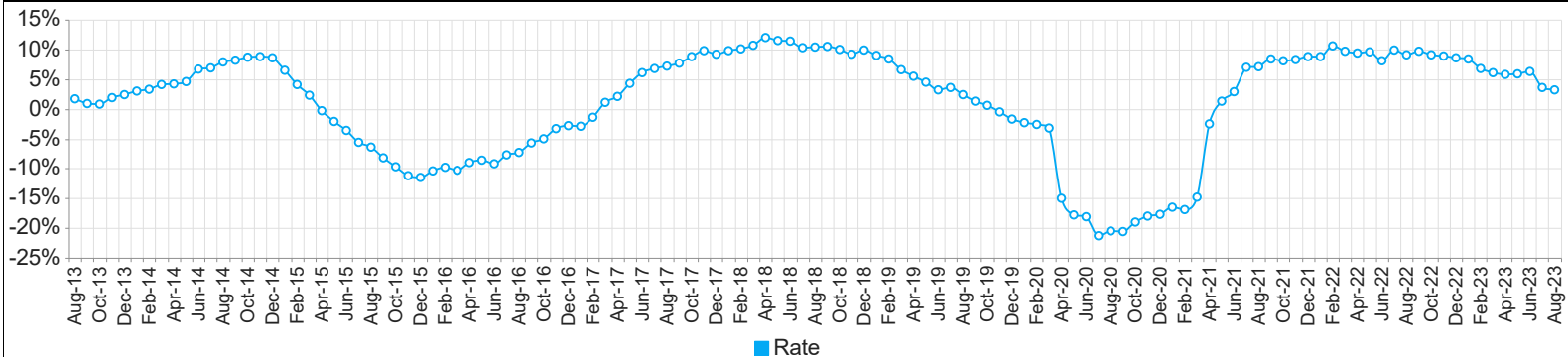
Employment by Size Class (1st Quarter 2023)



Wages by Industry (in millions) (1st Quarter 2023)



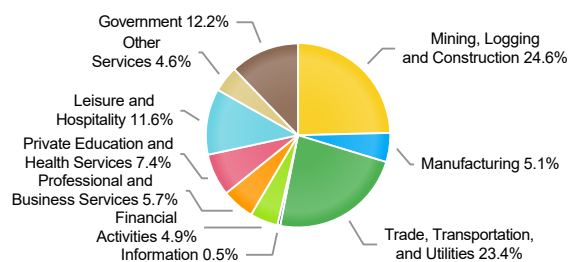
Annual Growth Rate Total Non-agricultural employment



Employment by Industry (August 2023)

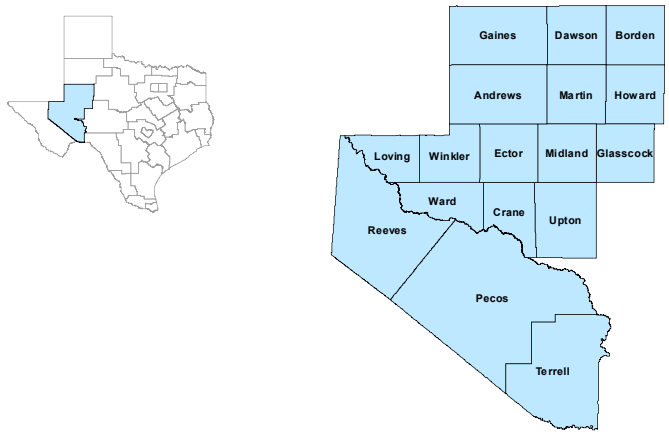
Industry	Current Month Employment	% Monthly Change	% Yearly Change
Total Nonfarm	80,200	-0.4%	3.2%
Mining, Logging and Construction	19,700	-1.0%	7.1%
Manufacturing	4,100	-2.4%	2.5%
Trade, Transportation, and Utilities	18,800	-0.5%	1.6%
Information	400	0.0%	0.0%
Financial Activities	3,900	0.0%	2.6%
Professional and Business Services	4,600	-2.1%	-4.2%
Private Education and Health Services	5,900	0.0%	3.5%
Leisure and Hospitality	9,300	-1.1%	3.3%
Other Services	3,700	0.0%	2.8%
Government	9,800	3.2%	3.2%

Employment by Industry (August 2023)



Permian Basin Workforce Development Area

August 2023



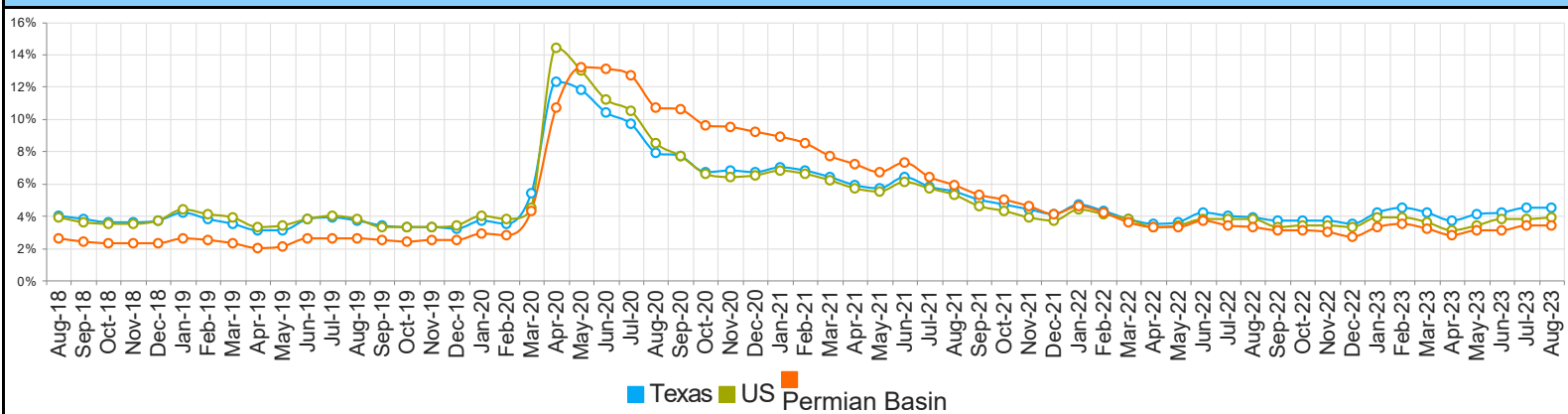
WDA Labor Force Statistics				
	Aug-23	Jul-23	Aug-22	Yearly Change
Civilian Labor Force	273,096	272,991	262,235	10,861
Employed	263,819	263,696	253,457	10,362
Unemployed	9,277	9,295	8,778	499
Unemployment Rate	3.4%	3.4%	3.3%	0.1%

Texas Labor Force Statistics				
	Aug-23	Jul-23	Aug-22	Yearly Change
Civilian Labor Force	15,188,537	15,180,276	14,674,216	514,321
Employed	14,502,948	14,497,230	14,094,855	408,093
Unemployed	685,589	683,046	579,361	106,228
Unemployment Rate	4.5%	4.5%	3.9%	0.6%

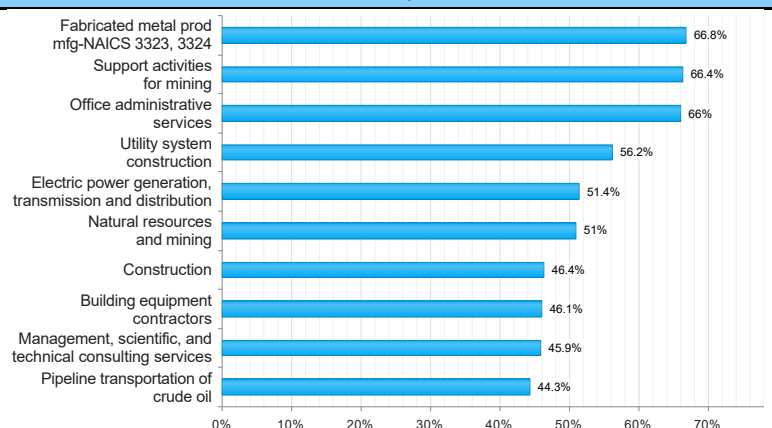
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Unemployed	6,623,000	6,372,000	6,256,000	367,000
Unemployment Rate	3.9%	3.8%	3.8%	0.1%

Continued Claims for the Week of the 12th				
	Aug-23	Jul-23	Aug-22	Yearly Change
WDA	1,036	1,077	838	198
Texas	114,748	120,995	81,276	33,472

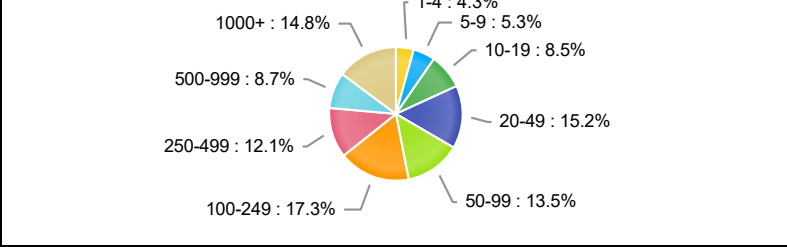
Historical Unemployment Rates



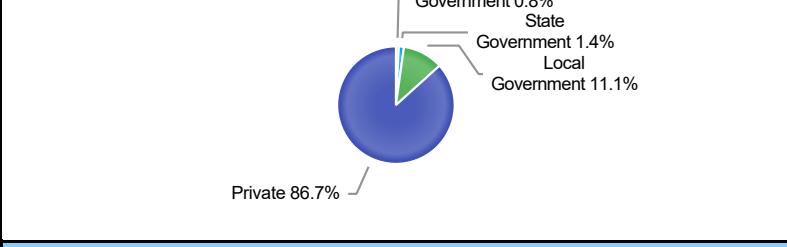
Projected Top Ten Fastest Growing Industries in WDA (% Growth 2020-2030)



Employment by Size Class (1st Quarter 2023)



Employment by Ownership (1st Quarter 2023)



Average Weekly Wage (1st Quarter 2023)

	Q1 2023	Q4 2022	Q1 2022	Quarterly Change	Yearly Change
WDA	\$1,651	\$1,535	\$1,454	\$116	\$197
Texas	\$1,480	\$1,372	\$1,369	\$108	\$111
US	\$1,465	\$1,385	\$1,374	\$80	\$91

Employment by Industry (1st Quarter 2023, Percent Change)

Industry	Employment	% of Total	% Quarterly Change	% Yearly Change
Natural Resources and Mining	55,713	22.1%	3.4%	16.9%
Construction	21,516	8.5%	1.7%	16.6%
Manufacturing	10,261	4.1%	-0.8%	5.9%
Trade, Transportation and Utilities	52,958	21.0%	-0.5%	5.4%
Information	1,849	0.7%	-2.6%	1.3%
Financial Activities	10,873	4.3%	-0.7%	4.9%
Professional and Business Services	18,804	7.5%	1.3%	7.3%
Education and Health Services	40,025	15.9%	-0.2%	1.4%
Leisure and Hospitality	25,501	10.1%	-0.9%	4.0%
Other Services	7,559	3.0%	1.4%	12.3%
Public Administration	6,810	2.7%	-2.1%	-5.1%

Employment by Industry (1st Quarter 2023)

