



Board Binder Open Session

October 3, 2022

Agenda



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

NOTICE OF PUBLIC MEETING

In accordance with Chapter 551, Texas Government Code, as amended, notice is hereby given to the public that the Board of Directors of the Midland Development Corporation will meet in regular session, open to the public, in the Midland Chamber of Commerce board room, 303 West Wall Street, Suite 200, Midland, Texas, at 10:00 a.m. on October 3, 2022. A quorum of the Board of Directors of the Midland Development Corporation intends to be physically present at the aforementioned location.

Videoconference Information

Join Zoom Webinar

<https://us02web.zoom.us/j/83745570325?pwd=cGtyWTlxeTZtL0VidDBrbGtiZ1NkZz09>

Passcode: 836534

Or join by phone:

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

US: +1 346 248 7799 or +1 719 359 4580 or +1 253 215 8782 or +1 669 444 9171 or +1 669 900
9128 or +1 386 347 5053 or +1 564 217 2000 or +1 646 558 8656 or +1 646 931 3860 or +1 301 715
8592 or +1 309 205 3325 or +1 312 626 6799

Webinar ID: 837 4557 0325

Passcode: 836534

International numbers available: <https://us02web.zoom.us/j/kxCn3Kov5>

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 12, 2022, meeting of the Midland Development Corporation.
3. Resolution authorizing the execution of a demolition contract with Midwest Wrecking Co. of Texas, Inc., in the amount of \$3,456,000.00 for the demolition of structures located on certain real property described as Lots 1A, 5, 6, and 9-12, Block 35, Original Town of Midland, City of Midland, Midland County, Texas; and authorizing payment for said contract.
4. Resolution authorizing the execution of a consulting services agreement with Vandergriff Group Architects, LLC, in the amount of \$212,000.00 for services related to the demolition of structures located at certain real property described as Lots 1A, 5, 6, and 9-12, Block 35, Original Town of Midland, City of Midland, Midland County, Texas; and authorizing payment for said agreement.

5. Resolution approving the advertisement of a request for proposals for the development of certain MDC-owned real property described as Lots 1A, 5, 6, and 9-12, Block 35, Original Town of Midland, City of Midland, Midland County, Texas, together with certain City-owned real property described as Lots 7 and 8, Block 35, Original Town of Midland, City of Midland, Midland County, Texas; approving the sale of MDC-owned real property described as Lots 1A, 5, 6, and 9-12, Block 35, Original Town of Midland, City of Midland, Midland County, Texas; and authorizing the Chairman to negotiated and execute all legal documents and instruments necessary and appropriate for the closing of the sale of said MDC-owned real property.
6. Presentation on the September 2022 monthly expenses and economic development activity report from the Midland Development Corporation Executive Director and staff.
7. Pursuant to Texas Government Code §551.101, the Board of Directors will hold an Executive Session, which is closed to the public to discuss the following matters as permitted under the following Texas Government Code Sections:
 - a. Section 551.072 Deliberation Regarding Real Property
 - i. Discuss the sale, exchange, lease or value of real property described as an approximate 374-acre tract of land out of Section 33, Block 40, T-1-S, T&P RR Co. Survey, Midland County, Texas.
 - b. Section 551.087 Deliberation Regarding Economic Development Negotiations
 - i. Discuss business prospects that the Midland Development Corporation seeks to have, locate, stay, or expand in or near the City of Midland, Texas, and discuss possible incentives, and discuss contract compliance on the part of businesses.
8. Resolution authorizing the Chairman to negotiate and execute a lease agreement with Firehawk Aerospace, Inc., for certain real property described as an approximate 0.92-acre tract of land out of Section 33, Block 40, T-1-S, T&P RR Co. Survey, Midland County, Texas.

Posted this 30th day of September 2022.

Amy M. Turner
City Secretary

September 12th Minutes

MIDLAND DEVELOPMENT CORPORATION

MINUTES

September 12, 2022

The Board of Directors of the Midland Development Corporation convened in regular session at the Midland Chamber of Commerce board room, 303 West Wall Street, Suite 200, Midland, Texas, at 10:00 a.m. on September 12, 2022.

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

Board Members absent: None

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

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

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

1. Call meeting to order.

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

2. Motion approving the minutes of the August 01, 2022 meeting of the Midland Development Corporation.

Director Bullock moved to approve the minutes of the August 01, 2022 meeting of the Midland Development Corporation; seconded by Director Gardaphe. The motion carried by the following vote: AYE: Lowery, Sams, Sisniega, Simpson and Pennington. NAY: None. ABSTAIN: None. ABSENT: None.

3. Presentation from the Midland Community Theatre on the Cole Theatre capital campaign project.

Midland Community Theatre Managing Director Ken Olson and Campaign Manager Chair Ann Hankins gave a presentation on the Cole Theatre Capital Campaign Project.

4. Presentation from MOTRAN Alliance, Inc. on infrastructure projects and initiatives in Midland and the Permian Basin.

MOTRAN Alliance president James Beauchamp gave a presentation on new and ongoing infrastructure projects in the Permian Basin.

5. Resolution authorizing the execution of an economic development agreement with MOTRAN Alliance, Inc.

Director Bullock moved to approve Resolution ED-420 authorizing the execution of an economic development agreement with MOTRAN Alliance, Inc. seconded by Director Gardaphe. The motion carried by the following vote: AYE: Lowery, Sams, Simpson, Sisniega and Pennington. NAY: None. ABSTAIN: None. ABSENT: None.

6. Resolution authorizing an amendment to that certain Economic Development Agreement between the Midland Development Corporation and the City of Midland for the Todd Drive Expansion and CR 1160 Overpass Improvements Project.

Director Sams moved to approve Resolution ED-421 authorizing an amendment to that certain Economic Development Agreement between the Midland Development Corporation and the City of Midland for the Todd Drive Expansion and CR 1160 Overpass Improvements Project. seconded by Director Simpson. The motion carried by the following vote: AYE: Lowery, Sisniega, Gardaphe, Bullock and Pennington. NAY: None. ABSTAIN: None. ABSENT: None.

7. Resolution authorizing the execution of a professional services agreement with Kimley-Horn and Associates, Inc., in the amount of \$974,060.99 for professional services related to mainlane, bridge, and intersection improvements located at Todd Drive and State Loop 250; and authorizing payment for said agreement.

Director Bullock moved to approve Resolution ED-422 - authorizing the execution of a professional services agreement with Kimley-Horn and Associates, Inc., in the amount of \$974,060.99 for professional services related to mainlane, bridge, and intersection improvements located at Todd Drive and State Loop 250; and authorizing payment for said agreement. seconded by Director Gardaphe. The motion carried by the following vote: AYE: Lowery, Sams, Simpson, Sisniega and Pennington. NAY: None. ABSTAIN: None. ABSENT: None.

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.

Director Sams moved to approve Resolution ED-423 - 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. seconded by Director Gardaphe. The motion carried by the following vote: AYE: Lowery, Simpson, Sisniega, Bullock and Simpson. NAY: None. ABSTAIN: None. ABSENT: None.

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

Sara Harris gave an overview of the month's expenses and sales tax collection, and Sammi Steele updated the board on the previous month's business retention visits and survey responses.

Board recessed into executive session at 11:10 a.m.

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 551.072 Deliberation Regarding Real Property

- i. Discuss the sale, exchange, lease or value of real property described as Lots 5 and 6, Block 35, Original Town of Midland, an addition to the City of Midland, Midland County, Texas.

b. Section 551.087 Deliberation Regarding Economic Development Negotiations

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

Board reconvened into open session at 11:37 a.m.

All the business at hand having been completed, Chairman Lowery adjourned the meeting at 11:37 a.m.

Respectfully submitted,

Vanessa White, Deputy City Secretary

PASSED AND APPROVED the 3rd Day of October 2022.

Jill Pennington, Secretary

Demolition
Contract with
Midwest Wrecking
Co. of Texas Inc.

RESOLUTION NO. _____

RESOLUTION AUTHORIZING THE EXECUTION OF A DEMOLITION CONTRACT WITH MIDWEST WRECKING CO. OF TEXAS, INC., IN THE AMOUNT OF \$3,456,000.00 FOR THE DEMOLITION OF STRUCTURES LOCATED ON CERTAIN REAL PROPERTY DESCRIBED AS LOTS 1A, 5, 6, AND 9-12, BLOCK 35, ORIGINAL TOWN OF MIDLAND, CITY OF MIDLAND, MIDLAND COUNTY, TEXAS; AND AUTHORIZING PAYMENT FOR SAID CONTRACT

WHEREAS, the Board of Directors finds it to be in the public interest to authorize the execution of a demolition contract with Midwest Wrecking Co. of Texas, Inc., in the amount of \$3,456,000.00 for the demolition of structures located on certain real property described as Lots 1A, 5, 6, and 9-12, Block 35, Original Town of Midland, City of Midland, Midland County, Texas;

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

SECTION ONE. That the Chairman and Secretary are hereby authorized and directed to execute and attest, respectively, on behalf of the Midland Development Corporation, a demolition contract with Midwest Wrecking Co. of Texas, Inc., in the amount of \$3,456,000.00 for the demolition of structures located on certain real property described as Lots 1A, 5, 6, and 9-12, Block 35, Original Town of Midland, City of Midland, Midland County, Texas. Said contract being in a form substantially similar to that of Exhibit A, which is attached hereto and incorporated herein for all purposes.

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

On motion of Director _____, seconded by Director _____, the above and foregoing resolution was adopted by the Board of Directors of the Midland

Development Corporation at a special meeting on the _____ day of _____, AD,
2022, by the following vote:

Directors voting "AYE":

Directors voting "NAY":

STEPHEN LOWERY,
Chairman of the Midland
Development Corporation

ATTEST:

JILL PENNINGTON,
Secretary of the Midland
Development Corporation

APPROVED AS TO FORM ONLY:

JOHN OHNEMILLER,
Attorney for the Midland
Development Corporation

Demolition Contract

300 West Texas, 211 & 221 North Colorado and 210 North Big Spring

THIS CONTRACT, effective as of the **25th day of October, 2022**, by and between the Midland Development Corporation (“*MDC*”), and **Midwest Wrecking Co. of Texas, Inc.** (“*Company*”), is made for the following considerations:

1. **Cost:** Total Proposal: \$3,456,000.00
2. **Scope of Work:** Company shall perform all work described for the **demolition of the properties located at 300 West Texas, 211 & 221 North Colorado Street and 210 North Big Spring Street**, said work being further described in **Exhibit A**, which is attached hereto and incorporated herein for all purposes.
3. **MDC’s Representative:** “*MDC’s Representative*” or “*representative*” shall mean the Executive Director or her designee who may inspect work performed under this Contract; or such other representative, architectural consultant, supervisor, or inspector as may be authorized by MDC to act in any capacity under this Contract. MDC’s Representative may make visits to the site to observe the progress and quality of the executed work and to determine, in general, if the work is proceeding in accordance with the Contract documents. MDC’s Representative, with exception of the architectural consultant, will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the work, nor will such representative be responsible for the construction means, methods, techniques, sequences or procedures, or the safety precautions incident thereto. MDC’s Representative shall not be responsible for Company’s failure to perform the work in accordance with the Contract.
4. **Architectural Consultant:** An architectural consultant will be contracted by MDC to prepare demolition specifications and plans, as well as to supervise and direct all work necessary to demolish subject property in a commercially reasonable fashion.
5. **Company:** Unless otherwise stipulated, Company shall provide and pay for all materials, supplies, machinery, equipment, tools, superintendence, labor, insurance, and all light, fuel, transportation and all other facilities necessary for the execution and completion of the work covered by the Contract documents. Unless otherwise specified, all materials shall be new, and both workmanship and materials shall be of a good quality. Company shall, if required, furnish satisfactory evidence as to the kind and quality of materials. Exception is payment of electrical and water utilization bills. These will be the responsibility of MDC.

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

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

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

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

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

8. **INDEMNITY: COMPANY SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND MDC AND ITS OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, ACCIDENTAL DEATH, LOSSES, PROPERTY DAMAGE AND EXPENSES OF ANY CHARACTER WHATSOEVER, INCLUDING ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ON ACCOUNT OF ANY NEGLIGENT ACT OF COMPANY, THEIR AGENTS OR EMPLOYEES, OR ANY SUBCONTRACTOR, IN THE EXECUTION, SUPERVISION AND OPERATIONS GROWING OUT OF OR IN ANY WAY CONNECTED WITH THE PERFORMANCE OF THIS CONTRACT, AND COMPANY WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST MDC OR ITS OFFICERS, AGENTS OR EMPLOYEES, INCLUDING**

ATTORNEY'S FEES.

8.1. **COMPANY AGREES THAT IT SHALL INDEMNIFY AND SAVE MDC HARMLESS FROM ALL CLAIMS GROWING OUT OF ANY DEMANDS OF SUBCONTRACTORS, LABORERS, WORKMEN, MECHANICS, MATERIALMEN, AND FURNISHERS OF MACHINERY AND PARTS THEREOF, EQUIPMENT, POWER TOOLS AND ALL SUPPLIES, INCURRED IN THE FURTHERANCE OF THE PERFORMANCE OF THIS CONTRACT. WHEN MDC SO DESIRES, COMPANY SHALL FURNISH SATISFACTORY EVIDENCE THAT ALL OBLIGATIONS OF THE NATURE HEREINABOVE DESIGNATED HAVE BEEN PAID, DISCHARGED OR WAIVED. COMPANY, ITS SURETIES AND INSURANCE CARRIERS SHALL DEFEND, INDEMNIFY AND SAVE HARMLESS MDC AND ITS OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, OR CLAIMS OF ANY CHARACTER WHATSOEVER, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ARISING FROM ANY ACT OF COMPANY OR ANY SUBCONTRACTOR, THEIR AGENTS OR EMPLOYEES, IN THE EXECUTION AND SUPERVISION OF THIS CONTRACT, AND SHALL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST MDC AND ITS OFFICERS, AGENTS, OR EMPLOYEES INCLUDING ATTORNEY'S FEES.**

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

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

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

12. **Payment and Performance Bonds:** Company agrees to post good and sufficient payment and

performance bonds, each in the amount of \$3,456,000.00, as a guarantee of payment due by Company to any contractor for work contemplated herein and Company's performance of this Contract. Forfeiture of such bonds for nonpayment or noncompliance shall not preclude further action by MDC.

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

13.1. Defective work not remedied;

13.2. Claims filed or reasonable evidence indicating possible filing of claims;

13.3. Failure of Company to make payments promptly to subcontractors or for material or labor that MDC may pay as an agent for the Company; or

13.4. Damages to another contractor or subcontractor.

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

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

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

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

16.1. MDC may make periodic payments to Company; provided, however, such periodic payments may only be made pursuant to this section, and only after all work and all change orders are completed by Company and approved by MDC. The approval shall be in MDC's sole discretion. Requests for progress payments may be made to the extent of the materials and labor completed at the end of each month. Upon approval by MDC or the MDC's Representative, the request and invoice shall be forwarded for payment less

five percent (5%) retainage. The total of these payments shall not exceed ninety-five percent (95%) of the total Contract amount.

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

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

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

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

- a. To any preference, priority or allocation order duly issued by a government entity;
- b. To unforeseeable cause beyond the control and without the fault or negligence of Company, including, but not restricted to, acts of God, or of the public enemy, acts of MDC, acts of another contractor in the performance of a contract with MDC, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and severe weather; or
- c. To any delays of subcontractors or suppliers occasioned by any of the causes specified in subsections (a) and (b) of this article.

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

17.5. COMPANY AGREES THAT THE PAYMENT OF SUCH LIQUIDATED DAMAGES MAY BE RECOVERED BY MDC FROM RETAINAGE HELD BY MDC. NOTWITHSTANDING ANY OTHER PROVISION HEREOF, COMPANY HEREBY RELEASES, ACQUITS, RELINQUISHES AND FOREVER DISCHARGES MDC AND ITS AGENTS, EMPLOYEES AND OFFICERS FROM ANY AND ALL DEMANDS, CLAIMS, DAMAGES, OR CAUSES OF ACTION OF ANY KIND WHATSOEVER ARISING FROM MDC WITHHOLDING PAYMENT FROM COMPANY AS LIQUIDATED DAMAGES FOR COMPANY'S FAILURE TO COMPLETE THE WORK WITHIN THE TIME SPECIFIED HEREIN, INCLUDING BUT NOT LIMITED TO BREACH OF CONTRACT, QUANTUM MERUIT, CLAIMS UNDER THE DUE PROCESS AND TAKINGS CLAUSES OF THE TEXAS AND UNITED STATES CONSTITUTIONS, TORT CLAIMS, OR MDC'S NEGLIGENCE.

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

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

Contract shall have any third-party beneficiary or other rights hereunder.

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

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

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

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

21. **Insurance:** Company shall at all times during the term of this Contract maintain and keep in full force and effect insurance in the following types and minimum amounts with companies authorized to do business in the State of Texas:

Commercial General Liability (including Contractual liability):

-Personal Injury:	\$1,000,000.00 per person \$1,000,000.00 per occurrence
-Property Damage:	\$500,000.00 per occurrence
Business Automobile Liability:	\$250,000.00 combined single limit - Personal Injury and Property Damage
Workers' Compensation:	Statutory limits
Employers' Liability:	\$500,000.00 per accident or occurrence

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

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

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

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

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

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

Company certifies that the certificate of insurance provided as required herein complies with the requirements of Chapter 1811 of the Texas Insurance Code. Company shall not use an unapproved certificate

of insurance or insert inappropriate language on a certificate. Compliance with state law is the sole responsibility of Company.

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

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

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

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

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

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

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

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

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

28. **Termination At Will:** MDC may terminate this Contract at will for no or any reason upon giving at least one hundred eighty (180) days' written notice to Company. The parties to this Contract understand and

agree that it is in MDC's sole discretion to cancel the Contract during the term of the Contract without penalty to MDC. Company has no expectation and has received no guarantees that this Contract will not be terminated before the end of the Contract term. The parties have bargained for the flexibility of terminating this Contract upon tender of the requisite notice at any time during the term of the Contract.

29. **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 Contract, and all terms and requirements under said statutes and regulations are made terms and conditions of this Contract, to which the parties have agreed to be bound.

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

31. **Compliance:** Company shall comply with Texas Government Code § 2252.908, *et seq.*, as amended, and Texas Local Government Code § 176.006, *et seq.*, as amended.

32. **Anti-Boycott Statutes:** To the extent that Tex. Gov't Code §§ 2271.002 and 2274.002 apply to this Contract, Company hereby verifies that:

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

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

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

the contracting information related to the Contract as provided by the records retention requirements applicable to MDC.

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

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

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

37. **Interpretation:** By executing this Contract, the parties acknowledge and agree that this Contract shall not be interpreted or construed against any party solely because such party or its legal counsel drafted this Contract. The parties have read, understood, and approve of the language and terms set forth herein.

[Signature Pages Follow]

EXECUTED IN DUPLICATE the day and year first above mentioned.

MIDLAND DEVELOPMENT CORPORATION

Stephen Lowery, Chairman

ATTEST:

Jill Pennington, Secretary

[Signature Page Follows]



COMMERCIAL & INDUSTRIAL DEMOLITION

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

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

September 26, 2022

Attention: Mrs. Sara Harris

sharris@midlandtxedc.com

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

Dear Mrs. Harris:

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

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

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

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

Exhibit A

Page Two

Western United Life Building-Midland, TX

Notes:

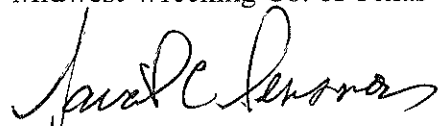
1. We have not included handling, removal or disposal of hazardous or contaminated materials; capping, disconnection, re-routing or removal of utility services; capping of basement tunnel.
2. Due to the removal of vaulted sidewalks and the unknown interface of basement walls and street curbs, it should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

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

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

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

Sincerely,
Midwest Wrecking Co. of Texas



David C. Densmore

Vandergriff Group Agreement

RESOLUTION NO. _____

RESOLUTION AUTHORIZING THE EXECUTION OF A CONSULTING SERVICES AGREEMENT WITH VANDERGRIFF GROUP ARCHITECTS, LLC, IN THE AMOUNT OF \$212,000.00 FOR SERVICES RELATED TO THE DEMOLITION OF STRUCTURES LOCATED ON CERTAIN REAL PROPERTY DESCRIBED AS LOTS 1A, 5, 6, AND 9-12, BLOCK 35, ORIGINAL TOWN OF MIDLAND, CITY OF MIDLAND, MIDLAND COUNTY, TEXAS; AND AUTHORIZING PAYMENT FOR SAID AGREEMENT

WHEREAS, the Board of Directors finds it to be in the public interest to authorize the execution of a consulting services agreement with Vandergriff Group Architects, LLC, in the amount of \$212,000.00 for services related to the demolition of structures located on certain real property described as Lots 1A, 5, 6, and 9-12, Block 35, Original Town of Midland, City of Midland, Midland County, Texas;

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

SECTION ONE. That the Chairman and Secretary are hereby authorized and directed to execute and attest, respectively, on behalf of the Midland Development Corporation, a consulting services agreement with Vandergriff Group Architects, LLC, in the amount of \$212,000.00 for services related to the demolition of structures located on certain real property described as Lots 1A, 5, 6, and 9-12, Block 35, Original Town of Midland, City of Midland, Midland County, Texas. Said agreement being in a form substantially similar to that of Exhibit A, which is attached hereto and incorporated herein for all purposes.

SECTION TWO. That the City Comptroller is hereby authorized and directed to make payment(s) to Vandergriff Group Architects, LLC, in accordance with the terms of the consulting services agreement, from funds available in the Midland Development Corporation Fund (235) Operating Budget upon receipt of proper invoices or statements approved by the Executive Director of the Midland Development Corporation or her designee.

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

Directors voting "AYE":

Directors voting "NAY":

STEPHEN LOWERY,
Chairman of the Midland
Development Corporation

ATTEST:

JILL PENNINGTON,
Secretary of the Midland
Development Corporation

APPROVED AS TO FORM ONLY:

JOHN OHNEMILLER,
Attorney for the Midland
Development Corporation

CONSULTING SERVICES AGREEMENT

THIS AGREEMENT is made and effective the 25th day of October, 2022, by and between the MIDLAND DEVELOPMENT CORPORATION, a Type A corporation pursuant to Chapter 504 of the Texas Local Government Code, as amended (“*MDC*”), and Vandergriff Group Architects, LLC (“*COMPANY*”).

ARTICLE I. PURPOSE

The purpose of this Agreement is to state the terms and conditions under which *COMPANY* shall perform certain architectural consulting services related to the demolition of the properties located at 300 West Texas, 211 North Colorado Street, 221 North Colorado Street, and 210 North Big Spring Street, Midland, Texas 79701 (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 Two Hundred Twelve Thousand and No/100 Dollars (\$212,000.00) for the consulting services described in **Exhibit A**. *MDC* agrees to pay *COMPANY* according to the schedule set forth in **Exhibit A**. *COMPANY* shall provide to *MDC* a monthly invoice. The monthly invoice shall set forth all service fees for the month and those expenses described in **Exhibit A** incurred during the previous month that have received advance written approval from the *MDC* Executive Director, or designee. The *MDC* Executive Director, or his designee, must approve all additional expenses and reimbursable expenses in advance. Within 30 days of the date on which *COMPANY*'s invoice is received by

Exhibit A

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

ARTICLE IV. TERM

The term of this Agreement shall be from **October 25, 2022 until September 30, 2023**, unless the Project is completed sooner or the Agreement is terminated as provided below.

ARTICLE V. TERMINATION AT WILL

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

ARTICLE VI. ASSIGNMENT

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

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

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

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

ARTICLE VIII. INDEPENDENT CONTRACTOR

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

ARTICLE IX. INSURANCE

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

Commercial General Liability (including Contractual liability):

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

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

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

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

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

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

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

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

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

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

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

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

deemed to have occurred in Midland County, Texas. The obligations and undertakings of the parties shall be deemed to have occurred in Midland County, Texas. Exclusive venue for any claim, suit, or other action arising from or connected in any way to this Agreement shall be in Midland County, Texas.

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

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

If to COMPANY: Vandergriff Group Architects, PC
 312 North Big Spring Street #100
 Midland, Texas 79701

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

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

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

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

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

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

I. Notice of Alleged Breach; Statutory Prerequisites. As a condition precedent to filing suit

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

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

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

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

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

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

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

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

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

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

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

acceptance hereof.

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

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

[Signature Page(s) Follows]

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

**MIDLAND DEVELOPMENT
CORPORATION**

By _____
Stephen Lowery, Chairman

ATTEST:

Jill Pennington, Secretary

COMPANY:

By: _____

Name: _____

Title: _____

STATE OF _____ §

§

COUNTY OF _____ §

§

BEFORE ME, the undersigned authority, on this ____ day of _____, 20__, personally appeared, _____ of _____, 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 _____, 20__.

Notary Public, State of _____



VANDERGRIFF GROUP

ARCHITECTS • PC

312 N. BIG SPRING
SUITE 100
MIDLAND, TEXAS 79701
(432) 687-0781
FAX (432) 687-5205

September 27, 2022

Mrs. Sarah Harris
Midland Development Corporation
200 N. Loraine Street Suite 610
Midland, Texas 79701

Re: Professional Architectural Services
Western Life Building
Building Demolition

Letter of Intent

Dear Mrs. Harris:

I would like to thank you for considering Vandergriff Group Architects on this Project. We have discussed the Project with the consultants and looked at the two proposed options for demolition. I respectfully submit the following proposal.

Item 1: Project Scope

The Project is the Western Life Building and West Texas Gas buildings, located at 304 W. Texas Avenue, 211 Colorado, and 210 Big Spring Street in Midland, Texas. The Western Life structure is a 12-story concrete and steel structure with a brick veneer and terra cotta infill between the support structure. The buildings at 210 Big Spring and 211 Colorado are 2 and 3 story structures of steel framing and stucco exterior. The Project scope will include the demolition of the structures by mechanical demolition and implosion, depending upon the building. The building foundation of the Western Life building will remain around the perimeter of the structure after demolition to protect the adjacent street stability. The basement foundation walls may be infilled with compacted structural fill, depending upon the redevelopment direction of the property.

Item 2: Building Demolition – Basic Services

- 2A. The Architect, for demolition services and as part of this Agreement, will:
1. Prepare the Demolition General Contractor information package with the building floor plans and structure or structures information.
 2. Research existing utilities for de-activating connections.
 3. Conduct pre-demolition meetings with all stake holders and safety organizations.

VGA@VANDERGRIFF-GROUP.COM

Exhibit A

4. Document with video the adjacent structures prior to demolition for comparison after demolition for any changes. Applies to both methods of demolition.
5. Coordinate Work to be performed with demolition contractor, City of Midland Police and Fire Departments.
6. Work with demolition consultant for safety and specifications on the project.
7. Assist Midland Development Corporation in the Award of Contracts/Purchase Orders.
8. Provide Construction Administrative services throughout the project.
9. Assist in the development of and provide bi-weekly written Progress Reports.
10. Monitor and assist the Midland Development Corporation with Change Orders and Contingency Funds Control.
11. Review Demolition Contractors Project Schedule every two weeks.
12. Review Demolition Contractors Progress Pay Applications and make recommendations to Midland Development Corporation.
13. If implosion methods are used on the project, co-ordinate all efforts between the city agencies for implosion day protocols and safety zones.
14. Administer post construction services, including implementation of closeout procedures.

Item 3: Architect's Compensation for Basic Services

The Architects compensation and fee proposal for Basic Services as outlined above is proposed as a fixed fee of \$212,000.00. This will be invoiced monthly to match the level of completion of the Project.

Item 4: Additional Services

The following fee schedule for Additional Services shall be used if work outside the Basic Services is agreed upon in advance with the Owner. Bid Alternates, record drawings and Value Engineering are considered Additional Services.

Hourly Fee Schedule:

Principal Architect	\$175.00
Project Architect	\$140.00
Project Manager	\$130.00
Project Coordinator	\$120.00
Intern Architect	\$ 90.00
Technical Drafting	\$ 90.00
Administrative Assistant	\$ 70.00
Engineering	Per engineer's invoice with 10% markup

Item 5: Owner Provided Services

The following services will be contracted through and paid for by the Owner:

- Third party testing

-
- Phase 1 ESA for Mechanical Rooms
 - State invoices for notification fees

Item 6: Reimbursable Expenses

In addition to Basic Services, certain expenses directly related to the Project incurred by Architect, Architect's employees and/or consultants shall be deemed reimbursable, i.e.:

1. Reproduction, including printing, shipping, and handling of drawings and specifications.
2. Travel mileage from Midland, Texas to locations outside of Midland, Texas.
3. Permitting and other regulatory agencies

These costs shall be reimbursed at a rate equal to the cost charged to VGA plus 10% markup.

Item 7: General Provisions - Miscellaneous

- 7 A. Reuse of Documents: All documents, including Drawings and Specifications prepared or furnished by VGA (and VGA's independent professional associates and consultants) pursuant to this Agreement, are instruments of service in respect of the Project and VGA shall retain an ownership and property interest therein whether or not the Project is completed. Owner may make and retain copies for information and reference in connection with the use and occupancy of the Project by Owner and others; however, such documents are not intended or represented to be suitable for reuse by Owner or others on extensions of the Project or on any other project. Any reuse without written verification or adaptation by VGA for the specific purpose intended will be at Owner's sole risk and without liability or legal exposure to VGA or to VGA's independent professional associates or consultants, and Owner shall indemnify and hold harmless VGA and VGA's consultants from all claims, damages, losses, and expenses including attorneys' fees arising out of or resulting therefrom. Any such verification or adaptation will entitle VGA to further compensation at rates to be agreed upon by Owner and VGA.
- 7 B. Opinions of Cost: Since VGA has no control over the cost of labor, materials, equipment or services furnished by others, or over the Contractor(s') methods of determining prices, or over competitive bidding or market conditions, VGA's opinions of probable Total Project Costs and Construction Costs provided for herein are to be made on the basis of VGA's experience and qualifications and represent VGA's best judgment as an experienced and qualified professional engineer, familiar with the Construction industry; but VGA cannot and does not guarantee that proposals, bids or actual Total Project or Construction Costs will not vary from opinions of probable cost prepared by VGA. If prior to the Bidding or Negotiating Phase the Owner wishes greater assurance as to Total Project or Construction Costs, Owner shall employ an independent cost estimator. VGA's services to modify the Contract Documents to bring the Construction Costs within any limitation established by Owner will be considered Additional Services and paid for as such by Owner.
- 7 C. Indemnity: VGA and the Owner mutually agree, to the fullest extent permitted by law, to indemnify and hold each other harmless from all damages, liabilities, or costs, including reasonable attorneys' fees and defense costs, arising from their own negligent

acts, errors, or omissions in the performance of their services under this Agreement, to the extent that each party is responsible for such damages, liabilities, or costs on a comparative basis of fault.

- 7 D. Limitation on Damages: Notwithstanding any other provisions of this Agreement, and to the fullest extent permitted by law, neither the Owner nor VGA, their respective officers, directors, partners, employees, contractors or subconsultants shall be liable to the other or shall make any claim for any incidental, indirect or consequential damages arising out of or connected in any way to the Project or to this Agreement. This mutual waiver of consequential damages shall include, but is not limited to, loss of use, loss of profit, loss of business, loss of income, loss of reputation or any other consequential damages that either party may have incurred from any cause of action including negligence, strict liability, breach of contract and breach of strict or implied warranty; provided however it shall not include damages awarded to a third party for incidental or consequential damages resulting from an indemnifiable(sic) claim under Item C.
- 7 E. Safety: VGA has established and maintained corporate programs and procedures for the safety of its employees. The firm specifically disclaims any authority or responsibility for general job site safety of persons other than the employees of this firm.
- 7 F. Standard of Practice: Services performed by VGA under this Agreement will be conducted in a manner consistent with the level of care and skill ordinarily exercised by members of the profession currently practicing in the same locality under similar conditions. No other representation expressed or implied, and no warranty or guarantee is included or intended in this Agreement.

If the services covered by this Agreement have not been completed within twenty-four (24) months of the date hereof, through no fault of the Architect, the amounts of compensation shall be equitably adjusted.

Mrs. Harris, we are proud to be an integral team member with you on this important Project and are most willing to discuss any aspect of the proposal represented herein. We are available to commence work after your review and approval of this proposal.

If this proposal meets your approval, please sign, date, and return a copy to my attention. We at Vandergriff Group Architects would look forward to working with you on this Project.

Respectfully submitted,



Mark R. Pelletier
VANDERGRIFF GROUP ARCHITECTS, PC

MRP:jms

AGREED AND ACCEPTED BY: _____

COMPANY OR INDIVIDUAL NAME: _____

SIGNATURE: _____

DATE: _____

The Texas Board of Architectural Examiners has jurisdiction over complaints regarding the professional practices of persons registered as architects in Texas.

TEXAS BOARD OF ARCHITECTURAL EXAMINERS
P.O. Box 12337
Austin, TX 78711-2337
512-305-9000 or 512-305-8900 fax

RFPs for
redevelopment of
Block 35 in
downtown
Midland

RESOLUTION NO. _____

RESOLUTION APPROVING THE ADVERTISEMENT OF A REQUEST FOR PROPOSALS FOR THE DEVELOPMENT OF CERTAIN MDC-OWNED REAL PROPERTY DESCRIBED AS LOTS 1A, 5, 6, AND 9-12, BLOCK 35, ORIGINAL TOWN OF MIDLAND, CITY OF MIDLAND, MIDLAND COUNTY, TEXAS, TOGETHER WITH CERTAIN CITY-OWNED REAL PROPERTY DESCRIBED AS LOTS 7 AND 8, BLOCK 35, ORIGINAL TOWN OF MIDLAND, CITY OF MIDLAND, MIDLAND COUNTY, TEXAS; APPROVING THE SALE OF MDC-OWNED REAL PROPERTY DESCRIBED AS LOTS 1A, 5, 6, AND 9-12, BLOCK 35, ORIGINAL TOWN OF MIDLAND, CITY OF MIDLAND, MIDLAND COUNTY, TEXAS; AND AUTHORIZING THE CHAIRMAN TO NEGOTIATE AND EXECUTE ALL LEGAL DOCUMENTS AND INSTRUMENTS NECESSARY AND APPROPRIATE FOR THE CLOSING OF THE SALE OF SAID MDC-OWNED REAL PROPERTY

WHEREAS, the Midland Development Corporation (the “*MDC*”) and the City of Midland, Texas (the “*City*”), prepared a request for proposals for the development of certain real property described as Lots 1A, 5, 6, and 9-12, Block 35, Original Town of Midland, City of Midland, Midland County, Texas (the “*MDC Property*”), together with certain City-owned real property described as Lots 7 and 8, Block 35, Original Town of Midland, City of Midland, Midland County, Texas (collectively, the “*RFP Property*”); and

WHEREAS, the Board of Directors finds it to be in the public interest to approve said request for proposals for the development of the RFP Property and authorize the City to issue the same; and

WHEREAS, the Board of Directors finds it to be in the public interest to approve the sale of the MDC Property to the person or entity that submits the most advantageous proposal; and

WHEREAS, the Board of Directors finds it to be in the public interest to authorize the Chairman to negotiate and execute all legal documents and instruments necessary and appropriate for the closing of the sale of the MDC Property;

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

OF THE MIDLAND DEVELOPMENT CORPORATION:

SECTION ONE. That the request for proposals for the development of the RFP Property is hereby approved. Said request for proposals being in a form substantially similar to Exhibit A, which is attached hereto and incorporated herein for all purposes.

SECTION TWO. That the City of Midland, Texas, is hereby authorized to issue the request for proposals in accordance with applicable state law.

SECTION THREE. That the sale of the MDC Property to the person or entity that submits the most advantageous proposal in response to the request for proposals is hereby approved.

SECTION FOUR. That the Chairman is hereby authorized and directed to negotiate and execute all legal documents and instruments necessary and appropriate for the closing of the sale of the MDC Property.

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

Directors voting "AYE":

Directors voting "NAY":

STEPHEN LOWERY,
Chairman of the Midland
Development Corporation

ATTEST:

JILL PENNINGTON,
Secretary for the Midland
Development Corporation

APPROVED AS TO FORM ONLY:

JOHN OHNEMILLER,
Attorney for the Midland
Development Corporation

2022

REQUEST FOR PROPOSAL

MIDLAND DOWNTOWN DEVELOPMENT

CITY OF MIDLAND • MIDLAND DEVELOPMENT CORPORATION
200 N. LORAIN STREET STE. 610 • MIDLAND, TX 79701



Welcome to Midland

When it comes to energy, one U.S. city is at the center of it all: Midland. Located smack dab in between Fort Worth and El Paso, the west Texas city sits atop the largest petroleum-producing basin in the United States known as the Permian Basin. Approximately 40% of America's oil and gas reserves are in reservoirs in the Basin. But renewable energy is gaining importance in the area, too. West Texas is home to some of the nation's largest wind farms. To the south, in Pecos County, sits one of the largest solar farms in Texas, Midway Solar farm. The world's largest direct air capture (DAC) facility, designed by Occidental Petroleum Corp., will zap up to 1 million metric tons/year of carbon dioxide (CO2) emissions in the Permian Basin starting in 2024.

MIDLAND'S PER CAPITA INCOME OF \$124,667 CONTINUALLY RANKS THE HIGHEST IN THE COUNTRY.

But energy isn't the only notable thing about Midland, the city's received national recognition as the former home of President George H.W. Bush, First Lady Barbara Bush, President George W. Bush and First Lady Laura Bush. While Midland may be a coincidental stepping stone to the White House, the community has intentionally set itself to be a launching pad for young professionals. Midland's per capita income of \$124,667 continually ranks the highest in the country and is double the national average. With an average age of 31, and only getting younger, Midland's transforming itself into a desert destination for professionals and families alike who want to enjoy all the benefits an income boost can offer.



That includes spending time in downtown Midland. ConocoPhillips, Endeavor Resources, and Diamondback are some of the larger companies located downtown. Just a few blocks away the office district, called Claydesta is home to Pioneer and CrownQuest. Whether you are downtown for work or for fun, Centennial Park is the centerpiece of the city. The park has 4 acres of beautiful green space and trees, multiple seating areas, a playground and a splash pad. The park was completed in 2020 and is the result of an \$18M public-private partnership.

The four acres were inspired by Discovery Green in Houston and Klyde Warren Park in Dallas. There are routinely food trucks, workout classes and live entertainment or movies to enjoy.

When it comes to Texas, we know how to eat. Downtown Midland is filled with local staples including Luigi's Italian Restaurant, Cancun Grill, Wall St. Bar & Grill and Opal's Table. Restaurants like Lo. Street Books and Pi Social offer outdoor seating with views of the park. But the best view of the park is at Bush Convention Center. The three-level 76,949-square-foot facility is next to the park and is more than just a space for conventions. Everything from weddings, to galas, to indoor markets, to business retreats, takes place there.



Down the block from the convention center, you'll find the historic Yucca Theatre. For 41 years, thousands of people each summer attend the popcorn-throwing-filled production of Summer Mummies. The show has been around Midland for over 72 years and is the longest continuing melodrama in the country, bringing in a quarter of a million dollars each year for the Midland Community Theatre.



All along the park, you will see little colorful storefronts. Midland Micro Market's home to over 20 different businesses including a salon, coffee shop, clothing boutiques and ice cream shop. On the first Saturday of each month, the roads near Centennial Park are closed as dozens of vendors fill the streets for Lo. Street Micro Market. In 2022, the Lo. Street Micro Market started hosting quarterly bar crawl events. Drawing young people to enjoy places like Bourbon Street, Buffalo Nickel and Sip Haus.





The City of Midland and the Midland Development Corporation (MDC) own 1.93 acres of Block 35 in downtown Midland, bordered by West Illinois Avenue, North Colorado Street, West Texas Avenue, and North Big Spring Street. The City and MDC are seeking a proven partner to develop this property to enhance the activity and revitalization that downtown Midland is already experiencing. All existing structures will be demolished and the property will be ready for new construction. It is prime acreage filled with potential.

Projects will be scored on value to continued revitalization to downtown Midland, impact on Midland’s property tax base, and job creation. The scoring committee will be made up of representatives from the Midland City Council and city staff, and Midland Development Corporation board of directors and staff.

**IT' S PRIME ACREAGE
FILLED WITH POTENTIAL.**

The developer will propose a project that will complement the existing architecture of downtown Midland and be of similar quality and design standards to recently completed improvements such as Centennial Park and the Bush Convention Center.



CITY OF MIDLAND, TEXAS
and
MIDLAND DEVELOPMENT CORPORATION
Request for Proposals for Downtown Property

The City of Midland, Texas (“City”), and the Midland Development Corporation (“MDC”) are seeking development proposals (“Proposals”) from parties interested in developing certain property described herein. City and MDC are collectively referred to herein as the “Governmental Entities.”

The selected proposer will be responsible for all necessary work including, but not limited to, engineering, architecture, construction and overall project management.

SCOPE OF PROJECT

1. The property is described as Lots 1A and 5-12, Block 35, Original Town of Midland, an addition to the City of Midland, Midland County, Texas (the “Property”).
2. All materials, means, methods and technologies used in design and construction shall meet applicable local, state, and federal requirements including Federal Accessibility Standards. Typical Parking spaces shall be built in accordance with the Manual on Uniform Traffic Code Devices (MUTCD) general principles and standard traffic control device designs.
3. The Governmental Entities intend to demolish all structures located on the Property prior to the initiation of any construction pursuant to the selected Proposal.

MINIMUM PROPOSAL REQUIREMENTS

1. The Governmental Entities will consider selling Property to a proposer with a minimum bid of not less than Seventy Thousand and No/100 Dollars (\$70,000.00), subject to the minimum proposal requirements and selection criteria contained herein.
2. A proposed development project must comply with the current Central Area District (C-1) zoning classification; building architecture shall be comparable to (or complement) the current architecture of downtown Midland.

RESERVATIONS

1. The Governmental Entities reserve the right to make any transfer or conveyance of their respective portions of the Property to a proposer subject to conditions precedent or subsequent and/or a reversionary interest to ensure that if the proposer fails to develop the Property under the agreed upon terms and conditions, then title to the Property shall remain with or automatically revert to the respective Governmental Entities.
2. City reserves the right to require an irrevocable letter of credit or other such financial security, in a form acceptable by City, to ensure that the Property is developed in the time and manner set forth in the selected Proposal.

REQUIRED INFORMATION

All Proposals must include the following:

1. Letter of interest (maximum of two (2) single-sided pages);

Exhibit A

2. Two (2) years of financial statements that demonstrate financial capabilities of the proposer to successfully complete the proposed development project;
3. Resumes of key team members assigned to the proposed development project;
4. List of projects of similar scope and size with references including a scope of work, project costs, and level of public investment for each project;
5. Proof of bonding capability, Proposal (maximum of 25 single-sided pages, including cover pages, indexes, and letter of interest) to include:
 - a. Project description;
 - b. Cost estimate;
 - c. Project scope;
 - d. Anticipated site plan and building footprint;
 - e. Total parking requirements; and
 - f. Conceptual sketches and drawings.
6. Total desired public participation, if any;
7. Ratio of proposed public/private investment for the proposed development project;
8. Anticipated impact of proposed development project on downtown Midland;
9. Proposed development project timeline including major milestones; and
10. Any other information/data evidencing that the proposer is particularly qualified to administer the proposed development project.

SUBMISSION OF PROPOSALS

For submission of a Proposal, please comply with the provisions contained in this Request for Proposals (“RFP”). Proposals shall be submitted in writing and include the minimum requirements set forth herein.

- Proposals must be submitted with (6) complete copies of the Proposal to be comprised of one (1) bound original (3-ring binding preferred), four (4) paper copies, and one (1) electronic copy contained on a portable USB drive.
- Proposals must be printed on 8½” x 11” single-sided, double-spaced pages. Font size should be 11 point or larger with one-inch margins.
- Proposals must be submitted in a sealed package or container. The project name, RFP number, and proposer’s name and address should be marked on the outside of the package or container.
- The RFP number and the published opening date and time must be clearly printed on the lower left corner of the return envelope to ensure receipt of a Proposal.
- Facsimile transmittals or offers communicated by telephone or electronic means will not be accepted or considered.
- Proposal information that is not submitted in sealed packages or containers will not be accepted or considered.
- Statements contained in a Proposal must be unambiguous and include adequate elaboration where necessary.

Mail or deliver Proposals to the following address:

City of Midland, Texas
City Secretary’s Office
300 North Loraine Street, Suite 330
Midland, Texas 79701

DELIVERY OF SUBMITTALS

Proposals must be received in the City Secretary's Office no later than January 31, 2023 at 4:00 P.M. (CST). Proposers are responsible for the means of timely delivering the Proposals. Delays due to any instrumentality used to transmit the Proposals (e.g., delay occasioned by a proposer, City's internal mailing system, etc.) are the sole responsibility of the proposer. **Late Proposals will not be accepted under any circumstance**

PROPRIETARY INFORMATION

If a proposer does not desire proprietary information in the Proposal to be disclosed, the proposer must identify all proprietary information in the Proposal. This identification must be done by marking each page with the words "Proprietary Information" on which proprietary information is printed. If a proposer fails to identify proprietary information contained in its Proposal, said proposer acknowledges and agrees that such information shall be deemed non-proprietary and made available upon public request.

The confidentiality of Proposals will be protected by the Governmental Entities to the extent permitted by law. Upon the selection and acceptance of a Proposal, all submitted Proposals become a matter of public record under Chapter 552 of the Texas Government Code, and upon request, shall be open for public inspection, except for those portions of each Proposal that are clearly marked as proprietary. If a request for proprietary information is made, City and/or MDC will notify the proposer who may then request an opinion from the Attorney General of the State of Texas as to whether such information must be disclosed pursuant to Section 552.305 of the Texas Government Code. A determination as to whether certain information may be withheld from public disclosure shall be exclusively made by the Office of the Attorney General. The Governmental Entities shall in no way be liable or responsible for the disclosure of any such records or portions of a Proposal not clearly marked as proprietary, or if disclosure is required by Chapter 552 or other applicable law or judicial order.

CLARIFICATIONS AND ISSUANCE OF ADDENDA

An explanation, clarification, or interpretation desired by a proposer regarding any part of this RFP must be submitted in writing by emailing purchasing@midlandtexas.gov, at least five (5) calendar days prior to the published submission deadline.

If the Governmental Entities, in their sole discretion, determine that a clarification is required, such clarification shall be issued in writing. Interpretations, corrections, or changes to the RFP made in any other manner are not binding upon the Governmental Entities, and proposers should not rely upon such interpretations, corrections or changes. All other explanations or instructions given before the selection of a Proposal are not binding.

Any interpretations, corrections or changes to this RFP will be made by addendum. Sole issuing authority of addenda shall be vested in City. Proposers must acknowledge receipt of all addenda in the submitted Proposals.

PERIOD OF ACCEPTANCE

Proposer acknowledges that by submitting a Proposal, proposer is making an offer that, if accepted in whole or part by City, constitutes a valid and binding contract as to any and all items accepted in writing by City. The period of acceptance of Proposals is ninety (90) calendar days from the date of opening. City maintains final authority over the period of acceptance.

TAX EXEMPTION

The Governmental Entities are exempt from federal excise and state sales tax.

All costs directly or indirectly related to the preparation of a response to this RFP or any oral presentation required to supplement and/or clarify Proposals that may be required by City shall be the sole responsibility of and shall be borne by the proposer.

NEGOTIATIONS

City reserves the right to negotiate all elements that comprise the selected Proposal to ensure that the best possible consideration be afforded to all concerned.

NON-ENDORSEMENT

If a Proposal is accepted, the successful proposer shall not issue a press release or other statement pertaining to the award or servicing of the agreement that states or implies the Governmental Entities' endorsement of the Proposal or proposer's services.

WAIVER OF ATTORNEY FEES

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

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

RELEASE

NOTWITHSTANDING ANY OTHER PROVISION HEREOF, BY SUBMITTING A PROPOSAL, PROPOSER AGREES TO RELEASE, RELINQUISH, ACQUIT AND FOREVER DISCHARGE THE GOVERNMENTAL ENTITIES AND THEIR RESPECTIVE EMPLOYEES AND OFFICERS FROM ANY AND ALL DEMANDS, CLAIMS, DAMAGES OR CAUSES OF ACTION OF ANY KIND WHATSOEVER WHICH PROPOSER HAS OR MIGHT HAVE IN THE FUTURE, INCLUDING BUT NOT LIMITED TO BREACH OF CONTRACT, QUANTUM MERUIT, DUE PROCESS AND TAKINGS CLAUSES UNDER THE TEXAS AND UNITED STATES CONSTITUTION, TORT CLAIMS OR THE GOVERNMENTAL ENTITIES' NEGLIGENCE.

COMPLIANCE

Proposer agrees that it shall comply with Texas Government Code Section 2252.908, as amended. Proposer agrees that it shall comply with Texas Local Government Code Section 176.006, as amended. For further instructions on how to comply with Texas Government Code Section 2252.908 and Texas Local Government Code Section 176.006, please go to https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm and https://www.ethics.state.tx.us/filinginfo/conflict_forms.htm.

AUTHORIZED NEGOTIATOR

Proposals must include the name, address, and telephone number of the person in the proposer's organization authorized to negotiate contract terms and render binding decisions on contractual matters.

CENTRAL POINT OF CONTACT

Proposals must include a central point of contact to establish service, resolve issues and end service. Proposals must describe a proposer's ability to address customer service matters.

DISQUALIFICATION OF PROPOSERS

A proposer may be disqualified for any of the following reasons:

- Upon the Governmental Entities' belief that collusion exists among proposers;
- A proposer is involved in any litigation against either of the Governmental Entities;
- A proposer is in arrears on an existing contract or has defaulted on a previous contract with either Governmental Entity;
- Upon the determination that proposer lacks financial stability to complete the proposed development project;
- A proposer's failure to perform under previous or present contracts with either Governmental Entity; or
- A proposer's non-compliance with criteria contained in this RFP.

SELECTION CRITERIA

City will make its selection based on the following selection criteria:

1. Bid amount	25 points
2. Value of private investment in downtown Midland	20 points
3. Ratio of private/public investment	15 points
4. Financial capabilities	10 points
5. Expediency of proposal timeline	10 points
6. Long-term downtown impact and concept marketability	10 points
7. Concept aesthetics	5 points
8. Project team qualifications	5 points

EVALUATION AND SELECTION

City may make a selection, if any, from Proposals submitted in accordance with the terms and conditions of this RFP. City reserves the right to accept or reject any and all Proposals, re-solicit for Proposals, and to terminate the selection process at any time as it shall deem to be in the best interests of the Governmental Entities. City's receipt and consideration of any Proposal shall not

obligate City to accept a Proposal.

If a selection is made, a scope of work and contract will be negotiated with the selected proposer. City and MDC staff may make recommendations to the Midland City Council regarding the execution of a contract with the chosen proposer. If a contract cannot be negotiated with the proposer of the highest rated Proposal, City reserves the right to initiate contract negotiations with the proposer of the next highest rated Proposal; this process may continue until City successfully negotiates a contract or until all negotiations cease. A negotiated contract shall not become effective unless and until approved by the Midland City Council.

TERMS AND CONDITIONS

City reserves the right to modify, delete or further negotiate any or all the terms and conditions related to the RFP or an award of a contract.

“AS IS”

Any conveyance of Property shall be “AS IS” with any and all latent and patent defects.

ERRORS OR OMISSIONS

Proposers will not be allowed to benefit from any errors or omissions in this RFP. If errors or omissions appear in this RFP, proposers shall promptly notify City in writing of such errors or omissions. Significant errors, omissions or inconsistencies in this RFP are to be reported no later than twenty (20) days prior to the submission deadline.

By executing and submitting a Proposal, the proposer hereby represents and warrants to the Governmental Entities that: (i) proposer has read and understands this RFP and such Proposal is made in accordance with this RFP; (ii) proposer agrees to be bound by the terms and conditions of this RFP, which include certain waiver provisions; and (iii) proposer acknowledges that it had the right and opportunity to consult with competent legal counsel regarding the above.

The waiver of attorney’s fees and release provisions contained herein include but are not limited to:

- **The administration, evaluation or recommendation of any Proposal;**
- **Waiver or deletion of any of the requirements of this RFP;**
- **Acceptance or rejection of any Proposal;**
- **The selection of any Proposal;**
- **City’s right to waive, delete or amend (i) the terms and conditions of this RFP, and (ii) the requirements connected with this RFP; and**
- **City’s right reject any and all Proposals.**

Income Statement

MIDLAND DEVELOPMENT CORPORATION
INCOME STATEMENT FOR THE 12 MONTHS ENDED
September 30, 2022

	Sep-22	YTD	Budgeted Amount
Revenue	\$1,406,220.36	\$13,540,067.95	\$10,976,644.00
40100 - State Sales Tax	\$1,303,011.95	\$12,482,068.41	\$10,000,000.00
40600 - Public ROW Use Fees	\$0.00	\$4,823.00	\$0.00
43000 - Interest	\$3,021.57	\$16,206.65	\$0.00
43010 - Interest - Nonpooled Invest	\$18,799.84	\$60,325.89	\$0.00
46190 - Miscellaneous Rentals	\$81,387.00	\$976,644.00	\$976,644.00
4235150 - Midland Dvlpmnt Corp Revenue	\$1,406,220.36	\$13,540,067.95	\$10,976,644.00

Expense	\$147,265.20	\$14,461,731.49	\$21,110,973.00
51010 - Base Salary	\$22,820.85	\$277,527.06	\$350,493.00
51090 - Fica MDC Portion	\$1,754.69	\$19,803.82	\$28,442.00
51110 - Health Insurance	\$680.56	\$10,464.18	\$30,180.00
51135 - ACCE Profit Sharing	\$0.00	\$1,450.00	\$24,535.00
52010 - Office Supplies	\$553.18	\$5,134.87	\$6,000.00
52110 - Motor Vehicle Supplies	\$53.68	\$1,024.12	\$1,000.00
52115 - Minor Furniture & Fixtures	\$0.00	\$0.00	\$500.00
52155 - Minor Computer Hrdwre & Periph	\$0.00	\$49.98	\$5,000.00
52160 - Computer Software & Supplies	\$0.00	\$55,137.33	\$25,000.00
52620 - Postage	\$0.00	\$319.75	\$300.00
53010 - Communication	\$1,327.37	\$15,776.68	\$17,000.00
53030 - Light & Power	\$0.00	\$98.40	\$150.00
53110 - Insurance-External	\$0.00	\$342,390.45	\$110,000.00
53212 - Equipment Rental-External	\$0.00	\$3,481.75	\$5,000.00
53220 - Advertising	\$10,658.65	\$176,890.40	\$200,000.00
53370 - Grounds Maintenance	\$1,338.24	\$15,803.09	\$12,000.00
53405 - Software Maintenance	\$1,329.22	\$13,940.24	\$12,000.00
53440 - External Audit Fees	\$0.00	\$31,000.00	\$24,000.00
53450 - Consulting Fees	\$5,924.12	\$247,413.92	\$250,000.00
53510 - Travel & Entertainment	\$186.22	\$8,361.73	\$8,000.00
53520 - Dues & Subscriptions	\$7,648.61	\$21,600.31	\$20,000.00
53530 - Training,Registration Fees,Etc	\$0.00	\$7,168.84	\$8,000.00
53905 - Economic Development Incentive	\$0.00	\$0.00	\$4,527,925.00
53907 - Business Recruitment & Retentn	\$2,735.82	\$30,311.39	\$50,000.00
53909 - Prior Year Committed Incentives	\$2,112.00	\$5,654,538.31	\$9,798,329.00
53920 - Rent	\$5,540.00	\$66,480.00	\$75,000.00
54010 - Building Maintenance	\$6,473.14	\$51,460.43	\$80,000.00
55120 - Maint. - Instruments & Appara.	\$188.34	\$952.60	\$1,000.00
56188 - MOTRAN	\$0.00	\$142,500.00	\$142,500.00
56202 - General Fund Services	\$32,557.08	\$390,684.96	\$390,619.00
56410 - Payment of Principal	\$0.00	\$0.00	\$60,000.00
56420 - Interest Expense	\$0.00	\$0.00	\$12,000.00
56910 - Depreciation Expense	\$40,626.22	\$405,445.54	\$336,000.00
56995 - Project Non Capital - Promotions	\$2,757.21	\$502,329.23	\$1,000,000.00
57000 - Capital Land Purchases	\$0.00	\$4,820,128.99	\$0.00
57001 - Capital Buildings & Structures	\$0.00	\$144,185.00	\$0.00
57002 - Capital Improve Other Than Bldg	\$0.00	\$0.00	\$3,500,000.00
57070 - Construction in Process	\$0.00	\$997,878.12	\$0.00
235235 - Midland Development Corp	\$147,265.20	\$14,461,731.49	\$21,110,973.00

September 2022 Net Income: \$1,258,955.16

Year-to-Date Net Income: (\$921,663.54)

Balance Sheet

MIDLAND DEVELOPMENT CORPORATION
BALANCE SHEET FOR THE PERIOD ENDED
September 30, 2022
(Used for Internal Purposes Only)

ASSETS

Current Assets

Cash and cash equivalents	16,636,356	
Investments	8,000,000	
Sales tax receivable	-	
Prepaid expenses	-	
Accounts receivable	-	
	24,636,356	24,636,356

Non-Current Assets

Capital Assets, net	27,597,161	
Forgivable Loans		
Made to Primary Government	-	
Made to Other	6,579	
Total Forgivable Loans	6,579	
	27,603,741	27,603,741

Total Assets	\$	52,240,097
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LIABILITIES AND NET POSITION

Liabilities

Accounts payable	-	
Retainage Payable	-	
Capital Leases payable	93,357	
Commitments payable		
Due within one year	6,649,041	
Due in more than one year	8,378,259	
Total Commitments Payable	15,027,300	
	15,120,657	15,120,657

Net Position

Net investment in capital assets	27,597,161	
Restricted for Forgivable Loans	6,579	
Restricted for Capital Leases	93,357	
Promotions	1,238,518	
Unrestricted	8,183,825	
	37,119,440	37,119,440

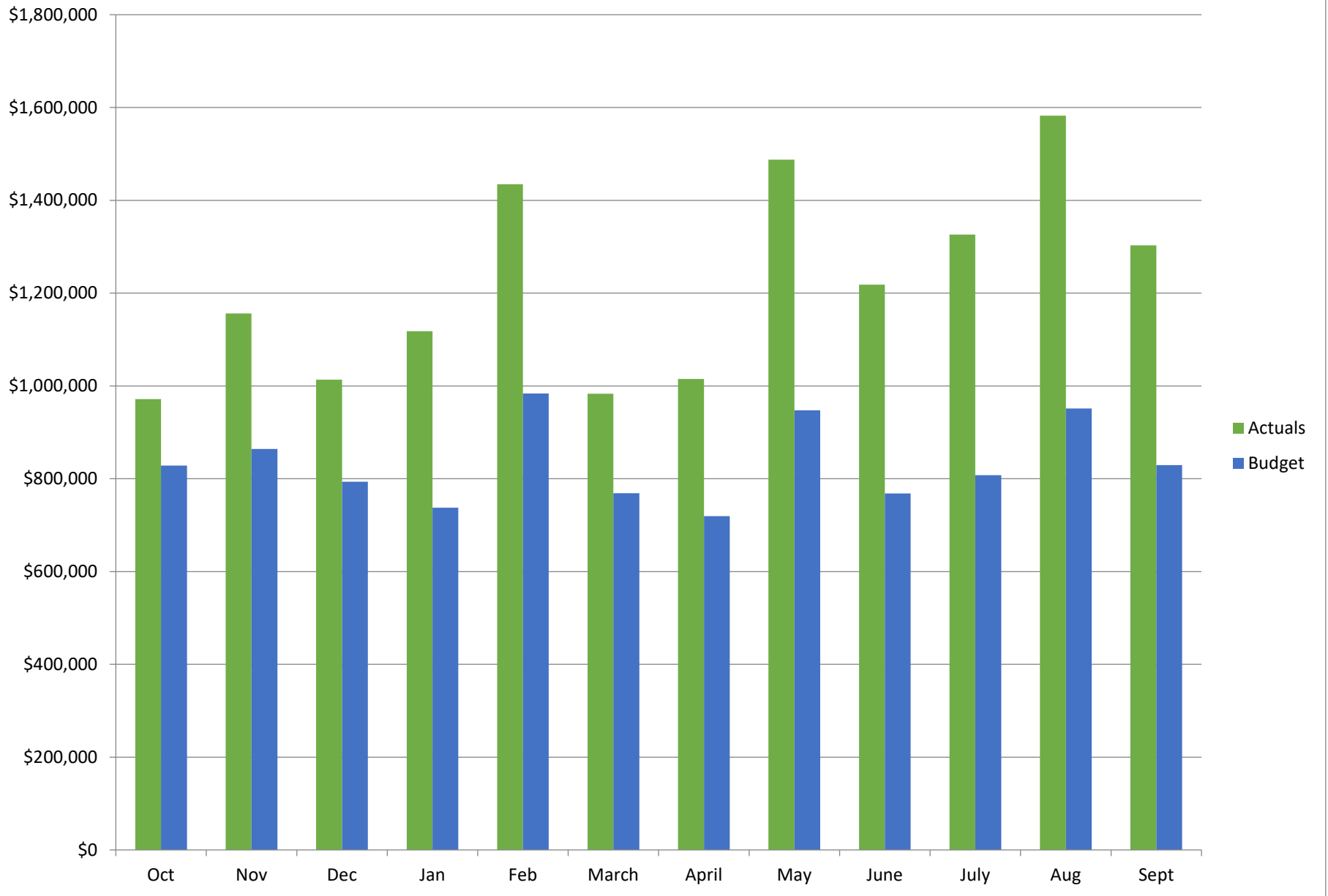
Total Liabilities and Net Position	\$	52,240,097
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Sales Tax

Sales Tax Variance

	2019-2020	2020-2021	% Change	2020-2021	2021-2022	% Change	YTD Change
October	\$1,219,993.44	\$1,203,058.10	-1.39%	\$1,203,058.10	\$971,343.63	-19.26%	-19.26%
November	\$1,266,357.10	\$983,259.60	-22.36%	\$983,259.60	\$1,156,353.89	17.60%	-2.68%
December	\$1,263,226.93	\$843,087.27	-33.26%	\$843,087.27	\$1,013,549.80	20.22%	3.69%
January	\$1,036,178.70	\$752,584.05	-27.37%	\$752,584.05	\$1,117,874.02	48.54%	12.62%
February	\$1,279,615.49	\$1,224,314.99	-4.32%	\$1,224,314.99	\$1,434,528.04	17.17%	13.73%
March	\$966,824.94	\$783,914.25	-18.92%	\$783,914.25	\$983,421.74	25.45%	15.32%
April	\$1,006,559.17	\$687,198.37	-31.73%	\$687,198.37	\$1,015,116.31	47.72%	18.75%
May	\$1,251,139.57	\$1,198,336.79	-4.22%	\$1,198,336.79	\$1,487,467.44	24.13%	19.59%
June	\$897,050.21	\$927,060.71	3.35%	\$927,060.71	\$1,218,236.38	31.41%	20.87%
July	\$876,285.08	\$909,387.44	3.78%	\$909,387.44	\$1,326,275.50	45.84%	23.25%
August	\$1,074,175.26	\$1,176,070.55	9.49%	\$1,176,070.55	\$1,582,536.23	34.56%	24.50%
September	\$834,182.16	\$978,956.15	17.36%	\$978,956.15	\$1,303,011.95	33.10%	25.22%
Annual Total	\$12,971,588.05	\$11,667,228.27	-10.06%	\$11,667,228.27	\$14,609,714.93	25.22%	25.22%

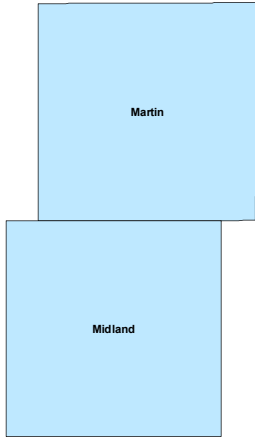
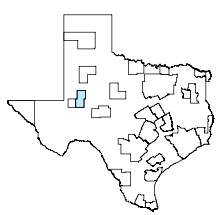
Sales Tax Actuals vs Budget Estimates



Activity Report

Midland MSA

August 2022

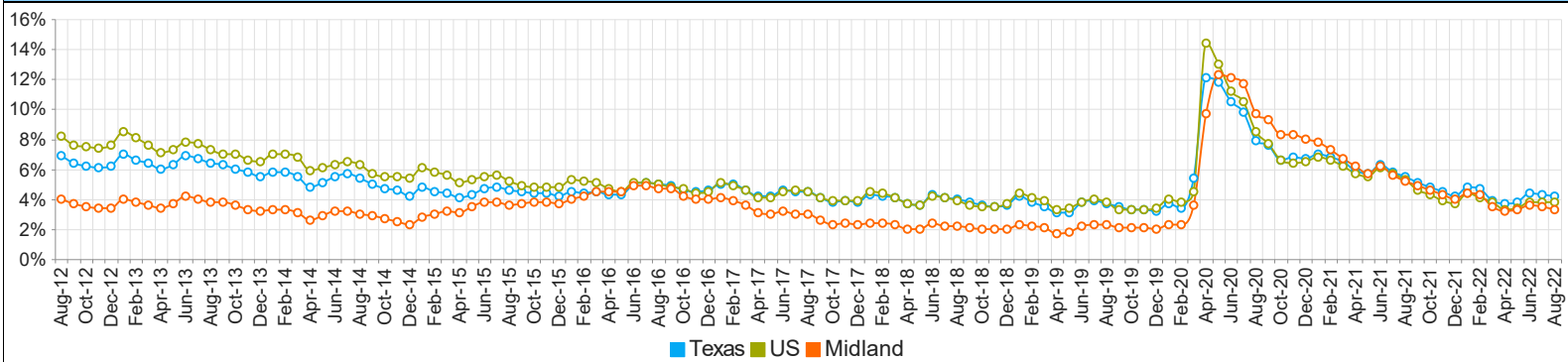


MSA Labor Force Statistics				
	Aug-22	Jul-22	Aug-21	Yearly Change
Civilian Labor Force	103,701	103,624	102,824	877
Employed	100,248	99,964	97,457	2,791
Unemployed	3,453	3,660	5,367	-1,914
Unemployment Rate	3.3%	3.5%	5.2%	-1.9%

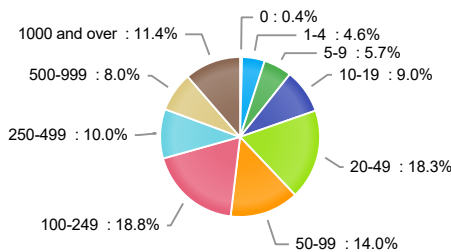
Texas Labor Force Statistics				
	Aug-22	Jul-22	Aug-21	Yearly Change
Civilian Labor Force	14,541,496	14,603,777	14,237,859	303,637
Employed	13,934,375	13,971,345	13,456,558	477,817
Unemployed	607,121	632,432	781,301	-174,180
Unemployment Rate	4.2%	4.3%	5.5%	-1.3%

US Labor Force Statistics				
	Aug-22	Jul-22	Aug-21	Yearly Change
Civilian Labor Force	164,971,000	165,321,000	161,788,000	3,183,000
Employed	158,714,000	159,067,000	153,232,000	5,482,000
Unemployed	6,256,000	6,255,000	8,556,000	-2,300,000
Unemployment Rate	3.8%	3.8%	5.3%	-1.5%

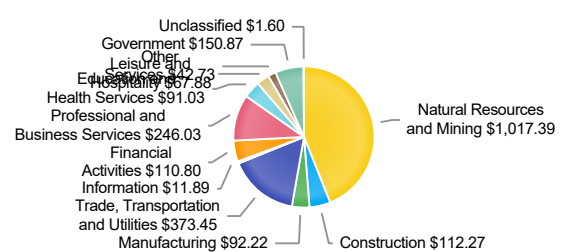
Historical Unemployment Rates



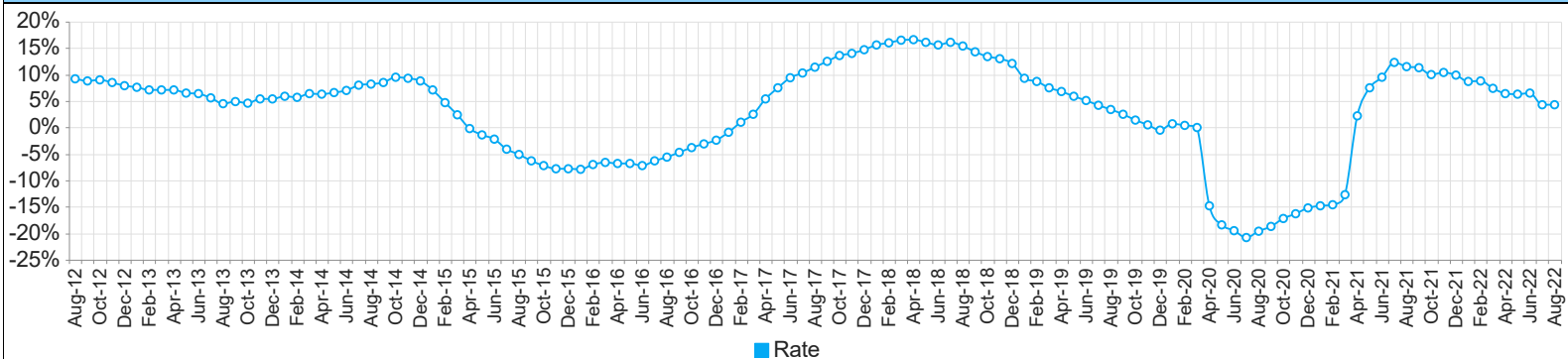
Employment by Size Class (1st Quarter 2022)



Wages by Industry (in millions) (1st Quarter 2022)



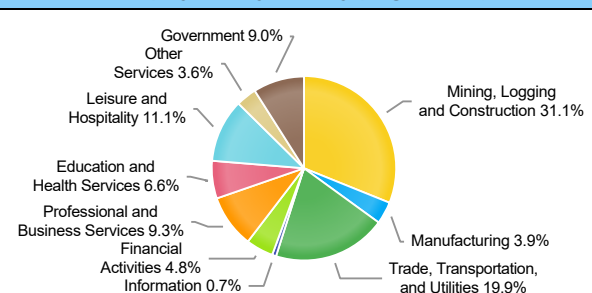
Annual Growth Rate Total Non-agricultural employment



Employment by Industry (August 2022)

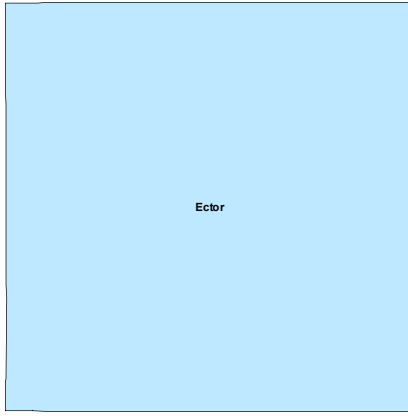
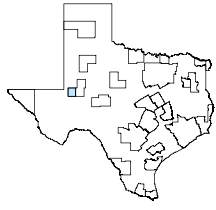
Industry	Current Month Employment	% Monthly Change	% Yearly Change
Total Nonfarm	107,100	0.4%	4.3%
Mining, Logging and Construction	33,300	1.5%	8.1%
Manufacturing	4,200	0.0%	7.7%
Trade, Transportation, and Utilities	21,300	0.5%	1.9%
Information	700	0.0%	0.0%
Financial Activities	5,100	0.0%	2.0%
Professional and Business Services	10,000	-1.0%	1.0%
Education and Health Services	7,100	0.0%	1.4%
Leisure and Hospitality	11,900	-0.8%	7.2%
Other Services	3,900	0.0%	5.4%
Government	9,600	0.0%	-1.0%

Employment by Industry (August 2022)



Odessa MSA

August 2022



Ector

MSA Labor Force Statistics

	Aug-22	Jul-22	Aug-21	Yearly Change
Civilian Labor Force	80,353	80,900	80,243	110
Employed	76,441	76,779	74,108	2,333
Unemployed	3,912	4,121	6,135	-2,223
Unemployment Rate	4.9%	5.1%	7.6%	-2.7%

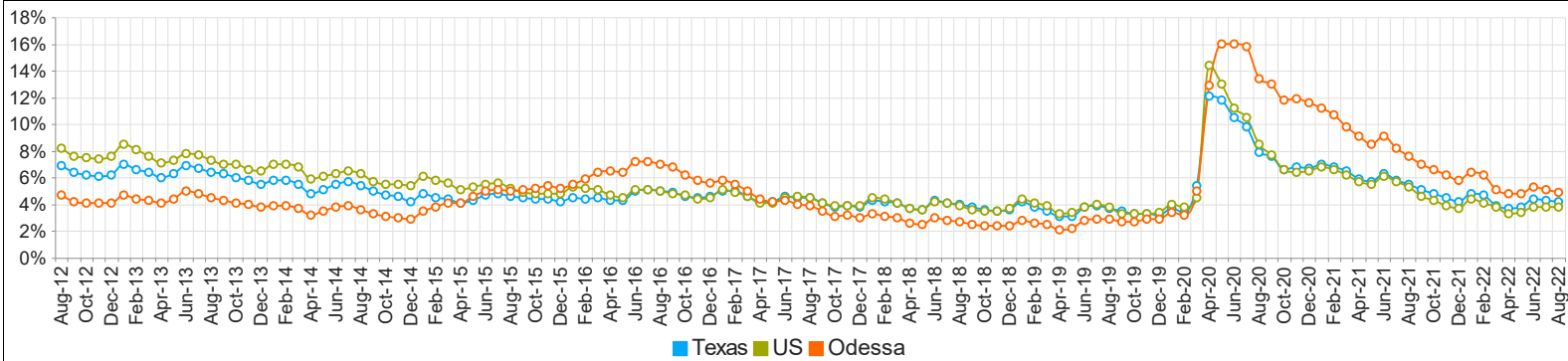
Texas Labor Force Statistics

	Aug-22	Jul-22	Aug-21	Yearly Change
Civilian Labor Force	14,541,496	14,603,777	14,237,859	303,637
Employed	13,934,375	13,971,345	13,456,558	477,817
Unemployed	607,121	632,432	781,301	-174,180
Unemployment Rate	4.2%	4.3%	5.5%	-1.3%

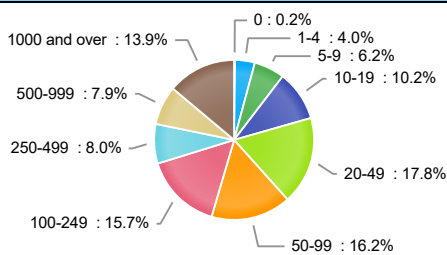
US Labor Force Statistics

	Aug-22	Jul-22	Aug-21	Yearly Change
Civilian Labor Force	164,971,000	165,321,000	161,788,000	3,183,000
Employed	158,714,000	159,067,000	153,232,000	5,482,000
Unemployed	6,256,000	6,255,000	8,556,000	-2,300,000
Unemployment Rate	3.8%	3.8%	5.3%	-1.5%

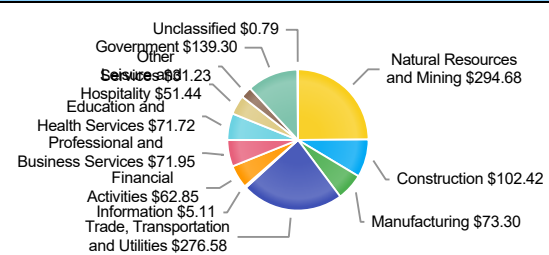
Historical Unemployment Rates



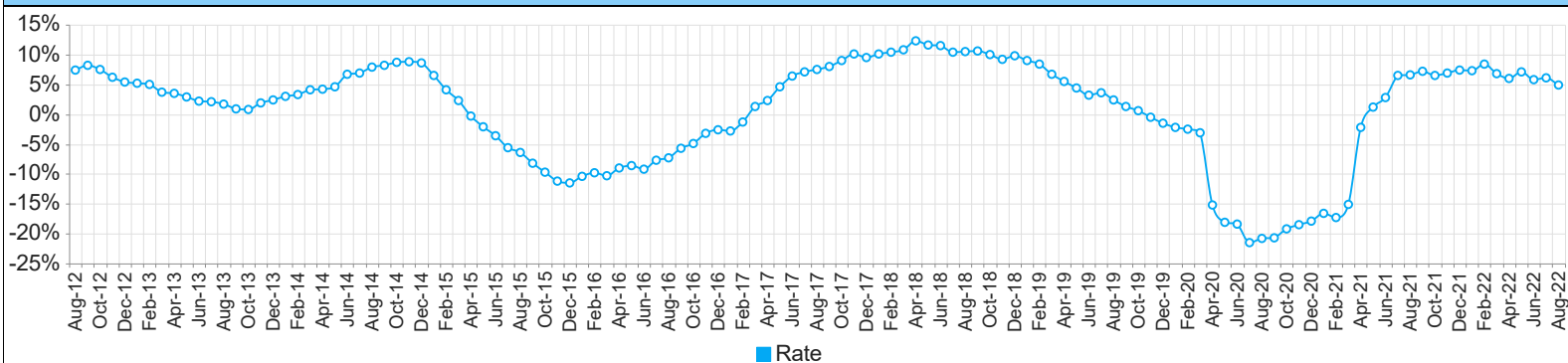
Employment by Size Class (1st Quarter 2022)



Wages by Industry (in millions) (1st Quarter 2022)



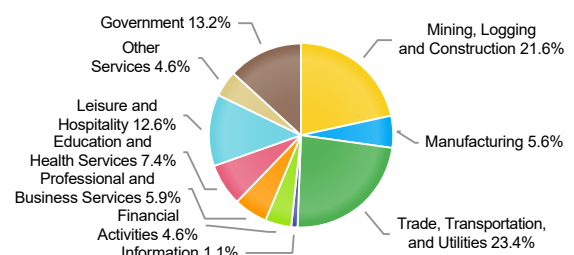
Annual Growth Rate Total Non-agricultural employment



Employment by Industry (August 2022)

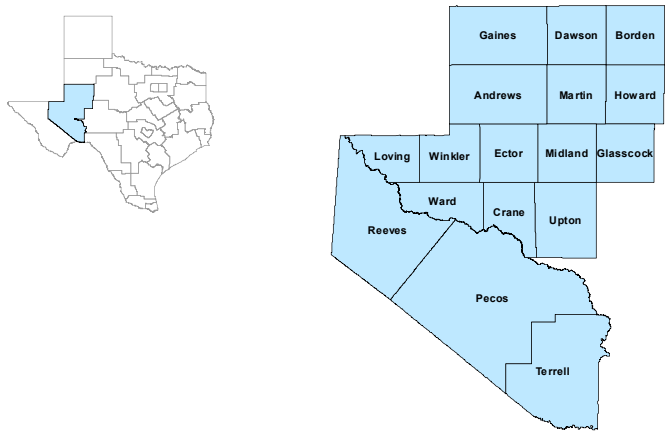
Industry	Current Month Employment	% Monthly Change	% Yearly Change
Total Nonfarm	74,400	-0.5%	4.9%
Mining, Logging and Construction	16,100	-1.2%	10.3%
Manufacturing	4,200	0.0%	5.0%
Trade, Transportation, and Utilities	17,400	0.0%	3.0%
Information	800	0.0%	0.0%
Financial Activities	3,400	0.0%	3.0%
Professional and Business Services	4,400	0.0%	2.3%
Education and Health Services	5,500	1.9%	3.8%
Leisure and Hospitality	9,400	0.0%	8.0%
Other Services	3,400	0.0%	6.2%
Government	9,800	-3.0%	0.0%

Employment by Industry (August 2022)



Permian Basin Workforce Development Area

August 2022



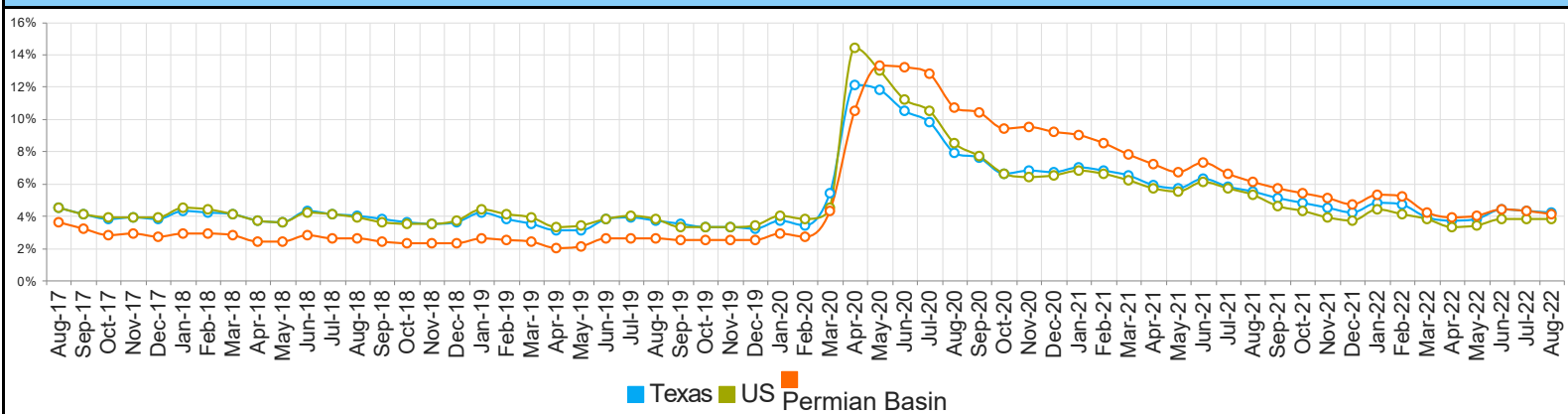
WDA Labor Force Statistics				
	Aug-22	Jul-22	Aug-21	Yearly Change
Civilian Labor Force	251,021	252,358	249,387	1,634
Employed	240,833	241,606	234,076	6,757
Unemployed	10,188	10,752	15,311	-5,123
Unemployment Rate	4.1%	4.3%	6.1%	-2.0%

Texas Labor Force Statistics				
	Aug-22	Jul-22	Aug-21	Yearly Change
Civilian Labor Force	14,541,496	14,603,777	14,237,859	303,637
Employed	13,934,375	13,971,345	13,456,558	477,817
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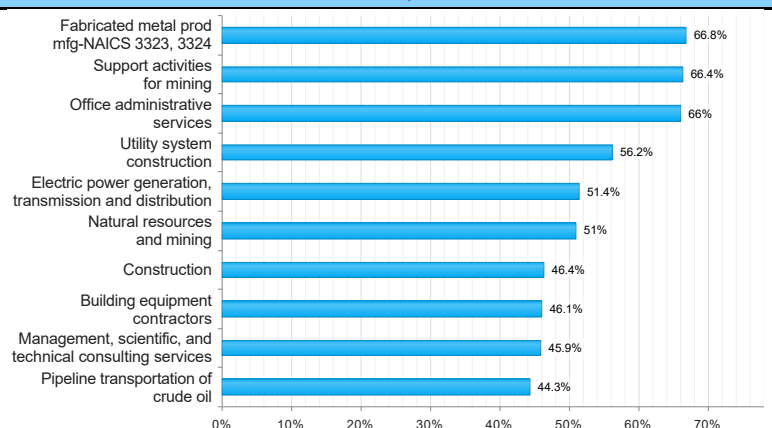
US Labor Force Statistics				
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Civilian Labor Force	164,971,000	165,321,000	161,788,000	3,183,000
Employed	158,714,000	159,067,000	153,232,000	5,482,000
Unemployed	6,256,000	6,255,000	8,556,000	-2,300,000
Unemployment Rate	3.8%	3.8%	5.3%	-1.5%

Continued Claims for the Week of the 12th				
	Aug-22	Jul-22	Aug-21	Yearly Change
WDA	828	904	1,739	-911
Texas	79,631	85,427	126,937	-47,306

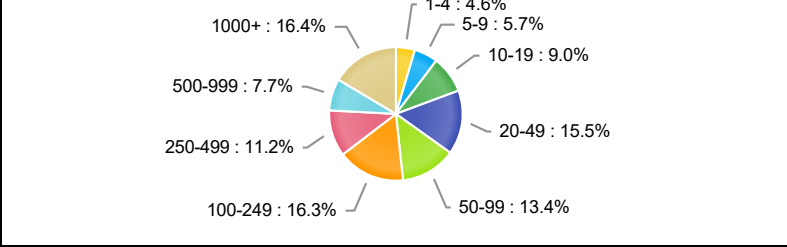
Historical Unemployment Rates



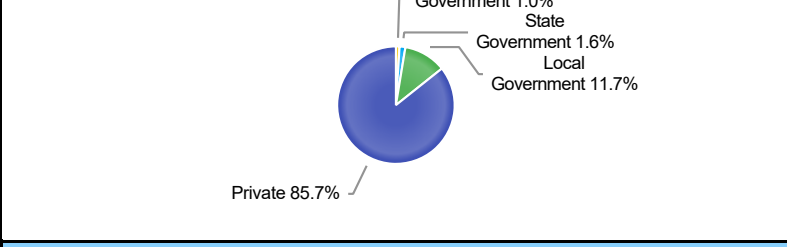
Projected Top Ten Fastest Growing Industries in WDA (% Growth 2020-2030)



Employment by Size Class (1st Quarter 2022)



Employment by Ownership (1st Quarter 2022)

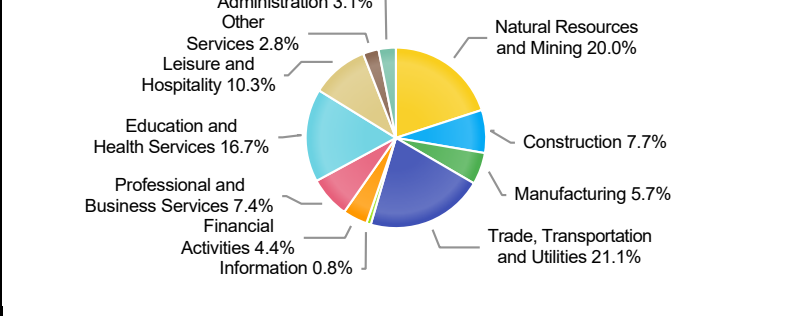


Average Weekly Wage (1st Quarter 2022)					
	Q1 2022	Q4 2021	Q1 2021	Quarterly Change	Yearly Change
WDA	\$1,459	\$1,452	\$1,331	\$7	\$128
Texas	\$1,369	\$1,375	\$1,259	-\$6	\$110
US	\$1,374	\$1,418	\$1,288	-\$44	\$86

Employment by Industry (1st Quarter 2022, Percent Change)

Industry	Employment	% of Total	% Quarterly Change	% Yearly Change
Natural Resources and Mining	47,428	20.0%	4.4%	17.0%
Construction	18,180	7.7%	6.3%	15.7%
Manufacturing	13,535	5.7%	39.8%	55.5%
Trade, Transportation and Utilities	50,084	21.1%	-2.8%	5.8%
Information	1,817	0.8%	2.5%	22.6%
Financial Activities	10,355	4.4%	1.8%	8.3%
Professional and Business Services	17,472	7.4%	1.3%	10.4%
Education and Health Services	39,460	16.7%	-0.2%	1.4%
Leisure and Hospitality	24,492	10.3%	-0.9%	7.5%
Other Services	6,721	2.8%	-0.8%	7.4%
Public Administration	7,435	3.1%	2.7%	1.2%

Employment by Industry (1st Quarter 2022)



Lease Agreement
with Firehawk
Aerospace, Inc.

RESOLUTION NO. _____

**RESOLUTION AUTHORIZING THE CHAIRMAN TO
NEGOTIATE AND EXECUTE A LEASE AGREEMENT
WITH FIREHAWK AEROSPACE, INC., FOR CERTAIN
REAL PROPERTY DESCRIBED AS AN APPROXIMATE
0.92-ACRE TRACT OF LAND OUT OF SECTION 33,
BLOCK 40, T-1-S, T&P RR CO. SURVEY, MIDLAND
COUNTY, TEXAS**

WHEREAS, the Board of Directors finds it to be in the public interest to authorize the Chairman to negotiate and execute a lease agreement with Firehawk Aerospace, Inc., for certain real property described as an approximate 0.92-acre tract of land out of Section 33, Block 40, T-1-S, T&P RR Co. Survey, Midland County, Texas;

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

THAT the Chairman is hereby authorized and directed to negotiate and execute a lease agreement with Firehawk Aerospace, Inc., for certain real property described as an approximate 0.92-acre tract of land out of Section 33, Block 40, T-1-S, T&P RR Co. Survey, Midland County, Texas. Said agreement to be kept on file in the office of the City Secretary, referenced by the date and number of this Resolution.

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

Directors voting "AYE":

Directors voting "NAY":

STEPHEN LOWERY,
Chairman of the Midland
Development Corporation

ATTEST:

JILL PENNINGTON,
Secretary of the Midland
Development Corporation

APPROVED AS TO FORM ONLY:

JOHN OHNEMILLER,
Attorney for the Midland
Development Corporation