

PUBLIC NOTICE

**ODESSA DEVELOPMENT CORPORATION
BOARD OF DIRECTORS MEETING/BUDGET WORKSHOP**

**City Council Chambers - City Hall, 5TH Floor
411 W. 8th Street, Odessa, Texas 79761**

Thursday, July 18, 2019, at 2:00 p.m.

In accordance with the Open Meetings Act, Chapter 551 of the Government Code of Texas, notice is hereby given to all interested persons that the Odessa Development Corporation will meet as set out above to consider the following items:

1. Invocation
2. Consider Minutes of June 13 and June 25, 2019
3. Contractors reports:
 - A. Economic Development Dept.-Odessa Chamber – Wesley Burnett
 - B. CVA Advertising & Marketing – Craig Van Amburgh
 - C. UTPB-America’s SBDC – Tyler Patton, Business Consultant
 - D. MOTRAN – James Beauchamp, President
 - E. City Administrative Support; Financials for May 2019 – Cindy Muncy
4. Review and possible action on Section 501.103 Infrastructure Incentive Related to Workforce Housing Program Guidelines Wesley Burnett
5. Receive and consider recommendation from Compliance Committee to approve a contract granting an economic development incentive to Project Separator Wesley Burnett
6. Receive and consider recommendation from Compliance Committee to approve a contract granting an economic development incentive to Project Recycle Wesley Burnett
7. Review and consider approving funding agreements with TXDOT for improvements consisting of constructing a new interchange at the intersection of Yukon and Loop 338 Hal Feldman
8. Consider approval of a Resolution in Support of the 2020-2029 Unified Transportation Plan requested by MOTRAN Gary Landers
9. Review and discuss proposed FY 2019-2020 Budget and provide direction on how and if to include proposals received from potential outside contractors for the FY 2019-2020 Budget Cindy Muncy
10. Review and discuss Form Contract for Contractors Robert Carroll
11. Review and discuss General Development Plan for FY 2019-2020 Legal
12. Consider possible Bylaws amendments review Gary Landers
13. ODC Committee and Officer reports:
 - A. Advertising Committee – Gene Collins, Ted Tuminowski
 - B. Downtown Odessa Inc. Design Committee – Gene Collins
 - C. Compliance Committee – Melanie Hollmann
 - D. Odessa Partnership – Betsy Triplett-Hurt
14. Adjourn

This notice is being posted on the south door of City Hall and on the bulletin board of the first floor of City Hall, Odessa, Texas, on the City of Odessa’s website www.odessa-tx.gov, and on the Odessa Development Corporation’s website www.odessatex.com, this the _____ day of _____, 2019, at _____ .m., said time being more than seventy-two hours (72) prior to the time at which the subject meeting will be convened and called to order.

The meeting is available to all persons regardless of disability. Individuals with disabilities who require special assistance should contact the City Secretary's Office at 432/335-3276, or 411 West 8th Street, First Floor, Odessa, Texas, during normal business hours at least twenty-four hours (24) in advance of the meeting.

Norma Aguilar-Grimaldo, TRMC, CMC
City Secretary

* Please note that this document contains bookmarks which will advance to a particular section when selected.

To use the bookmarks, select the bookmark icon  from the upper left side of the page.

ODESSA DEVELOPMENT CORPORATION
CITY OF ODESSA, TEXAS
June 13, 2019

A regular meeting of the Odessa Development Corporation (ODC) was held on June 13, 2019 at 2:00 p.m., in the Council Chambers, fifth floor, City Hall, 411 W. 8th St., Odessa, Texas.

Members present: Betsy Triplett-Hurt, Tim Edgmon, Ted Tuminowski, Gene Collins, and Mayor David R Turner, ex-officio.

Member absent: Melanie Hollmann.

Others present:

City Staff: Natasha Brooks, Senior Assistant City Attorney; Gary Landers, Interim City Attorney; Cindy Muncy, Interim City Manager; Atasi Bhavsar, Senior Assistant City Attorney; Phillips Urrutia, Assistant City Manager; Celia Senoret, Deputy City Secretary.

ODC Contractors: Tracy Jones, Economic Development; Craig Van Amburgh, CVA; Dustin Fawcett, MOTRAN; Tyler Patton, UTPB-SBDC; Chris Cole, ODC Compliance Committee Chair; and

Others: Council members Malcolm Hamilton, Mari Willis, and other interested citizens.

A quorum being present, Mrs. Triplett-Hurt called the meeting to order and the following proceedings were held:

Mr. Collins gave the invocation.

May 9, 2019 minutes. Motion was made by Mr. Collins and seconded by Mr. Tuminowski to approve the minutes. The motion was approved by unanimous vote.

Contractors report: Economic Development: Odessa Chamber, CVA Advertising and Marketing, UTPB-America's SBDC, MOTRAN, and City Administrative support.

Mrs. Jones reported that the Solar project was having a groundbreaking ceremony on June 18, 2019. They continued to work on the two expansion projects that the Compliance Committee reviewed. They closed on Summit from bankruptcy and were currently working on an expense report. Mrs. Triplett-Hurt requested to expand on the Oberon Solar project funding. Mrs. Jones replied it was not an ODC project but a tax abatement. Over 100 jobs were created for construction.

Mr. Van Amburgh updated the CVA activities. The podcast was going extremely well. Current podcasts featured Dr. Greg Williams from Odesa College including the web. Next month would continue with Spirit of Odessa TV news segment and focus on workforce training. Dr. Williams aired on KWES-TV. Direct mail distributed to over 800 medical professionals. Trade show brochures were restock. Publication ran in the 191 News, emphasizing local business expansion and retention. Social media and Facebook continued to do well, and Twitter exceptional well. They brought it to 44% impressions over last month. Views and new sessions for LinkedIn and the website drew more attention. A new campaign would start in the coming months.

Mr. Patton reported on UTPB Small Business Development Center. Capitalization was \$885,000 and \$67,000 in Odessa. There were 36 full time jobs, four in Odessa and 32 other locations. Nine new business were started, two of those in Odessa. The type of

businesses were oil gas service industry, lawyer offices, construction companies, bakery, homebuilder, health clinic and beauty shop all over Permian Basin. They had six seminars and 110 attendees. No report on the Business Challenge.

Mr. Fawcett partnered with the Odessa Chamber to get participation from businesses. They reached out to the Black Chamber and Hispanic Chamber. The Permian Basin Regional phase study was out. They were working on a daily report on what was happening, better engineering and data. They had the air commercial meeting with Southwest Airlines. Mr. Fawcett thanked Chairwoman and Mayor for representing. They talked about new flights and direct flights to Austin. The Commercial Vehicle Enforcement rule passed. The next step after September 1, was training. They had concerns about the housing situation.

Mrs. Muncy reported on the financial statement for April. Total assets were \$55.8 million; on fund balance no changes, total reserved \$20.7 million and unreserved \$20.1 million. Expenditures varied, they had not made any payments on the business challenge. They were getting ready to work on the budget. They had insurance quotes and liability insurance. Mrs. Muncy wanted a budget calendar change on the July 11 meeting to schedule to review and approve the General Development Plan.

Resolution No. ODC 2019R-02 and Resolution No. ODC 2019R-03. Audit reports and annual payments for economic development agreements. Mr. Cole requested to consider an audit report and annual payments for economic development to West Texas Food Bank, CUDD Pumping Services and Standard Sales Company. These companies met the requirements. FMC Technologies and Select Energy Services fell short and were working on amending their contracts.

Motion was made by Mr. Collins and seconded by Mr. Edgmon to approve audits and payments and contract amendments and resolutions. The motion was approved by unanimous vote.

Review and possible action or update on proposed Housing Incentive Guidelines/Matrix. Mr. Cole requested action on the proposed Housing Incentive Guidelines/Matrix. Mr. Collins stated that the request came from City Council. Mr. Cole reminded them that the ODC Board passed the resolution and the ODC designated funds for \$5,000,000 for grants to be used toward the construction of housing within the Ector County city limits. Mr. Collins wanted to clarify that the resolution was sent to Council for approval or decline, and Council changed it instead of sending it back to the ODC Board. Mr. Landers explained the Council has the authority to change it. He suggested to add this item for the next ODC meeting for further discussion. Mr. Cole presented the guidelines to developers and financial incentives could be provided to builders. He explained that this made a level playing field to meet the needs of the city and to incentivize builders to start building homes in a certain range. He stated all requests will go through Compliance Committee, but would like to find a faster method to make the process simple. Mr. Collins was concerned that ODC had not developed any policy regarding housing. He added that according to the by-laws, it was the responsibility of ODC to develop policy. Mr. Cole's work was excellent toward moving forward. Nevertheless, it was still up to ODC to set the policy. Mr. Tuminowski questioned additional incentives. Mr. Cole replied that homes built in the designated city target areas would receive an additional incentive. Mayor Turner said that was a good idea and thanked Mr. Cole for his work. Mr. Edgmon added they would need more time to review it. Mrs. Triplett-Hurt replied that if they had input to get back to Compliance. Mr.

Collins replied that there was a workshop pending. Projects using the housing funds could include as repairing existing housing and creating a land bank. Mayor Turner replied that time was of the essence to build workforce housing, due to shortages at the city, the county and the school district. He added that the city could not expand economically if there was no place to live, and it hurt the entire economy. Mr. Cole replied that Mr. Collins brought up great points, but the plan was needed to move forward. The plan could be adjusted by ODC or by the City Council. Mr. Tuminowski said that they cannot just throw taxpayer money at a problem and referred as a typical government solution. Mrs. Triplett-Hurt asked what was the next step with the plan. Mr. Landers answered that ODC needed to provide input to the Compliance Committee. Mayor Turner stated that they would bring the plan for a joint discussion.

Status update on Summit Energy –Grow Odessa/OIDC. No report. The Executive Committee had set up to meet with Mayor Turner this month.

Update on General Development Plan for FY 2019-2020. Mrs. Triplett-Hurt stated it was the same.

ODC Committee and Officer Reports. Mr. Collins reported that the Advertising Committee had not met. Mrs. Triplett-Hurt reported the Odessa Partnership had not met, but would meet next month.

The meeting adjourned at 3:12 p.m.

ATTEST:

APPROVED:

Celia Senoret
Deputy City Secretary

Betsy Triplett-Hurt
President



**CITY COUNCIL AND
ODESSA DEVELOPMENT CORPORATION
JOINT MEETING
CITY OF ODESSA, TEXAS**

JUNE 25, 2019

On June 25, 2019, a joint meeting was held with the Odessa City Council and the Odessa Development Corporation Board (ODC) at 2:00 p.m., in the third floor conference room, City Hall, 411 West 8th St., Odessa, Texas.

City Council Members present: Mayor David R. Turner; Council members; Malcolm Hamilton, District One; Dewey Bryant, District Two; Detra White, District Three; Tom Sprawls, District Four; and Mari Willis, District Five.

City Council member absent: Peggy Dean, At-Large.

Odessa Development Corporation members present: Betsy Triplett-Hurt, Tim Edgmon, Melanie Hollmann, Gene Collins and Ted Tuminowski.

ODC member absent: Melanie Hollmann.

Others present: Michael Marrero, City Manager, Norma Grimaldo, City Secretary; Natasha Brooks, Senior Assistant City Attorney; Atasi Bhavsar, Senior Assistant City Attorney; Wesley Burnett, Economic Development Director; Chris Cole, Compliance Committee Chair; Jill Miller, Odessa Housing Finance Corp. Executive Director; and others.

Mayor Turner convened the City Council meeting to order. Mrs. Triplett-Hurt convened the ODC meeting to order.

The invocation was given by Council member Bryant and followed by the Pledge of Allegiance and Texas Pledge.

Discuss Type A Corporation authority and use of sales tax funds. Mayor Turner reported that the Legal counsel interpreted the law on Mr. Collins' concerns. Mayor Turner contacted the Texas Municipal League and the Texas Economic Development Council and both did not have a problem and deferred to the City Attorney. Ms. Brooks stated that there were no specific provisions for housing. She stated that the Type A funds could be used for specific housing for infrastructure. She provided examples of curb and gutter. Mr. Collins stated that funds had to be related to primary jobs. He stated that infrastructure could be done for housing under Type 4B. He suggested that a hearing be held and hold an election for a Type 4B. If we were to deviate, we should go back to the voters and allow them to vote for a Type 4B. Ms. Brooks stood by the legal opinion. Mr. Tuminowski agreed with Mr. Collins and the proper process must be followed. Ms. Bhavsar stated that there were different ways of using funds for housing. She reiterated that there was the ability to use the funds for infrastructure type of projects and meet conditions. Mr. Collins stated that it had to be related to job creation for specific housing projects as stated in the AG opinion. He stated we should trust voters and move the funding to Type 4B to be used for housing projects, as it would not raise taxes. Mrs. Triplett-Hurt asked about the logistics of an election. Council member Bryant stated that it was possible to lose the 4A if it went to

election. Ms. Bhavsar stated if it failed, it would not be able to be up for a vote for a year. Mayor Turner stated it would have to be a grass roots funding and not ODC funded.

Council member Bryant stated that housing created and maintained jobs. Creating jobs was Council's direction for ODC. He reported that \$3.6 million was recently collected and in nine months, \$11 million was collected. He stated we needed to move forward for housing. Mr. Collins did not want to be guilty of misappropriating funds. Council member Bryant respected the legal opinion and leaned on the attorneys' expertise, as it would benefit the city. Council member Willis stated that we must do what was best for Odessa, a decision needed to be made to move forward. Mr. Edgmon agreed and should be done properly and correctly.

Mr. Burnett stated that Type 4B provided more leeway. He stated that funds could be used on Type 4A for infrastructure. Council has the authority to oversee ODC and its members. He stated that there needed to be a vote to move forward. Council member Hamilton asked if there was caution. He asked about the consequences. Council member Bryant reiterated legal's opinion that it could be done. The creation of housing created jobs. He stated that Council did its due diligence through counsel and its interpretation.

Discussion was held on workforce housing. Ms. Miller explained the Odessa Housing Finance process for housing. She provided an example of how it created jobs. Council member Hamilton suggested that the homes built be homestead. Council member Bryant stated that the housing was time sensitive and must be a grass roots effort and educate the community. Council member Hamilton stated that the groundwork must be in place before moving forward. Mr. Cole looked to our Legal counsel and it was time to move forward. The Legal Department has done its due diligence. Mr. Collins stated that the law was clear and should be abided. He stated to work towards a 4B. Mr. Tuminowski stated that the ODC board would make a recommendation to the Council.

Discuss and consider Workforce Housing Incentive guidelines. Mayor Turner stated that there be ways to fund the workforce housing. Mr. Cole reported that the guidelines was a living document. It focused on workforce housing to target the right individuals. Council member Hamilton asked about a land trust and land bank. Mr. Marrero suggested the incentive not be given until the closing. The price range of the homes was discussed. Ms. Miller stated to begin with the infrastructure needs. Mr. Collins explained a process on built in incentives. Incentives for an infill process was suggested. Builders could obtain incentives on one home or many homes. Scott Winchell, banker, stated affordable housing was needed and the bankers were here to assist with financing. Mr. Tuminowski stated that the many owners were out of town with the infill property. Mr. Winchell stated that other options should be pursued.

Mr. Marrero recognized the need of housing across the community. The majority was comfortable with the legal opinion provided. Research would be made on the bank and trust options. There were many avenues and should be considered including partnerships. He stated it was time to move forward.

ODC project approval process. Mr. Burnett explained the process for an ODC project. The Chamber received application, the Compliance Committee reviewed and the matrix would be applied. A recommendation would be forwarded to the ODC board. Compliance Committee minutes were kept. A redacted copy of minutes could be provided.

The ODC board and City Council adjourned at 3:22 p.m.

There was no other business, the meeting adjourned at 3:22 p.m.

ATTEST:

APPROVED:

Norma Aguilar-Grimaldo, TRMC, CMC
City Secretary

Betsy Triplett-Hurt
President



Odessa Chamber of Commerce

Economic Development

Services for the Odessa Development Corporation

June 2019

PROJECTS

2007-01

SUMMIT has ended its project efforts for Odessa due to the lack of DOE support, the company subsequently filed for bankruptcy. Legal representation for Odessa's interests were present in a Washington State bankruptcy hearing. ODC and Grow Odessa were parties because of the land holdings of the company and a reversion clause in the Economic Development Agreement. The most recent hearing date was held on May 23, 2019. There were no objections and the property was reverted to Grow Odessa. ODC & GROW will meet to discuss how to proceed. No formal timeline has been set but GROW is calculating cost, etc.

2017-04

Project **American Standard** has received an incentive application and plans for major consolidation /expansion project, 60K sf with 6 acres of yard storage. They are exploring lease options in Odessa to retain 50 employees and hire 10 new. Company has contracted with CBRE for building search and will be working with Economic Development Staff. This is an ongoing project Information will be forthcoming as collaboration efforts proceed.

2017-12

Project **SOLAR** sought property in Ector County to create 150 jobs during construction and sustain several local jobs for the operating life of the plant. This is a \$200 million capital investment, to create 150 megawatts of solar capacity for the region. Company representatives began meeting with the Economic Development Department and local taxing entities in 2017 and continued through all of 2018. After an exhaustive year, ECISD, Odessa College, Ector County and the County Hospital all passed tax abatements. Oberon began clearing the property in February 2019 and has already proven a philanthropic company by donating \$25K to the Education Foundation. A Groundbreaking ceremony was held for June 18, 2019. Project should be operational in late 2020.

Odessa, TX MSA Annual Impact of Construction of Building (Event Size- 150)

	Direct	Indirect	Induced	Total
Employment	150	23	51	223
Sales/Output	\$27,899,948	\$4,558,344	\$8,343,629	\$40,801,922
Compensation	\$12,190,182	\$1,287,731	\$2,525,119	\$16,003,032

Source: JobsEQ®

Data as of 2018Q4

Note: Figures may not sum due to rounding.

2018-07

Project Recycle is a Waste-to-Energy Company converting all organic waste into marketable energy. They are seeking to repurpose an existing facility for a recycling plant project that will extract oil, carbon and steel belts from used tires for identified users. The Plant design is to process 4.0 Tons Per Day. This will create 19 jobs + supervisor and operate on 3 shifts. The Company has applied for TCEQ Air Permit to operate at this location. They would like to use the crumb onsite and help clean-up the tire problem in Ector County.

- Company CEO visited Odessa and gained ownership of abandoned tires (approximately 3 million) and crumbs at the Safe Tire Disposal Site
- Company continues to work out financing on project expects to be operational mid 2019
- Application has been reviewed by the Compliance Committee
- Project recommended for approval by Compliance Committee, awaiting agreement from legal

Odessa, TX MSA Annual Impact of Construction of Recyclable Material Merchant Whole Salers (Event Size- 20)

Odessa, TX MSA Annual Impact of Recyclable Material Merchant Wholesalers (Event Size = 20)

	Direct	Indirect	Induced	Total
Employment	20	2	7	30
Sales/Output	\$6,493,045	\$445,535	\$1,246,179	\$8,184,759
Compensation	\$1,381,871	\$143,039	\$377,144	\$1,902,055

Source: JobsEQ®

Data as of 2018Q4

Note: Figures may not sum due to rounding.

2018-01

- Lead from the Governor's office; This company, a chemical manufacturing business is seeking a HQ location in Odessa, adding 200 jobs to the workforce
- Seeking rail served location
- Company narrowing facilities list, will be working with economic development staff
- Negotiating for a facility continues and is close to completion
- Company is in final negotiation on existing facility in Odessa, will submit incentive application soon
- Ongoing

2018-05

- This company is seeking to construct and operate a specific nuclear reactor in Ector County, Texas. This is a long-term project that would not expect to be in operation until 2024 and a \$1.5 Billion project
- This intrisical safe procedure is expected to generate the sale of electricity and the process heat from this facility could self-suffice the plant operations and costs
- A feasibility study has returned favorable and positive feedback
- Ongoing discussion with company for further information
- Company visited Odessa, toured GCA- very favorable, feasibility moving forward on business model
- Company will return to Odessa and discuss water issues surrounding communities moving forward
- Company plans to be in Odessa in December 2018 with DOE representatives to explore options and Odessa investments
- Company and DOE, TRRC visited Odessa, project to move forward
- Ongoing

2018-08

- Company seeking 70 acres with rail for a multi-use chemical manufacturing company. This will create 50 jobs and anticipates a \$20 million investment
- Discussion with several land owners are ongoing
- On hold pending owner's evaluation of project
- Will be a 2019 project
- Negotiation continue for Odessa location
- No update

2018-09

- This company is pursuing an expansion project that will create over 400 jobs in the next 2 years with a \$140 million capital investment. They were seeking a Texas Enterprise Project nomination from the City and received a nomination
- Project moving forward as Enterprise Project in Odessa
- No update

Direct Contact- Out of State Prospects

- Multiple local expansions in beginning stages

Odessa Partnership

- Meeting held in March 2019; next scheduled meeting is July 2019
- PSP attended

Business Retention & Expansion

- ✓ Completed 7 visits to local industries

Research and Development

- ✓ Government officials list is completed
- ✓ Apartment Surveys submitted to over 85 Odessa Apartment Complexes
- ✓ Media List Compiled
- ✓ Cost of living Survey data collected and entered into system, 2nd Quarter; 1st Quarter information available

SERVICES AND OTHER ACTIVITIES

- ✓ Ingham Economic Index March Reports sent out via Mailchimp list and posted on Website
- ✓ Odessa Development News/Economic Indicators for May sent out via Mail Chimp
- ✓ Added Properties to Web Site
- ✓ Wage Reports submitted to Randy McGuire
- ✓ Property Search for prospect seeking 80-120K SF Warehouse distributor
- ✓ Completed a Certificate of Origin for Eckel Mfct. shipping to Saudi Arabia (X3)
- ✓ Completed a Certificate of Origin for Eckel shipping to Vietnam and Dubai

Partner Visits

Basin 2040 Small Group Stakeholder	Director Participated
PB Regional Freight/ Energy Sector Transportation Planning kick off	Staff Participated
Bio Tech Trade Show	Staff Attended
UTPB Topping Out Ceremony	Director Attended
Texas Scholars Committee Meeting	Staff Attended
Judging Miss Monahans	Staff Attended
Ray Perryman Meeting	ED Director participating
Oberon Solar Groundbreaking	Staff Attended
Legislative Breakfast	Staff Attended
IDEA Meeting	Director Attended
Youth Expo Planning Committee	Staff Attended

Services for the Odessa
Development Corporation

Odessa Chamber of Commerce



**THE COUNCIL FOR COMMUNITY
AND ECONOMIC RESEARCH**



PRESS RELEASE - For Immediate Release

COST OF LIVING INDEX QUARTERLY UPDATE

Among the 257 urban areas that participated in the first quarter 2019 *Cost of Living Index*, the after-tax cost for a professional/managerial **standard of living ranged from more than twice the national average in New York (Manhattan) NY to more than 20 percent below the national average in Harlingen, TX.** The *Cost of Living Index* is published quarterly by C2ER – The Council for Community and Economic Research. Quarter 1, 2019 marks the 51st Anniversary of the publication.

The Ten Most and Least Expensive Urban Areas in the Cost of Living Index (COLI)

First Quarter 2019

National Average for 257 Urban Areas = 100

Most Expensive			Least Expensive		
Ranking	Urban Areas	COL Index	Ranking	Urban Areas	COL Index
1	New York (Manhattan) NY	232.9	1	Harlingen TX	75.3
2	San Francisco CA	197.0	2	McAllen TX	75.8
3	Honolulu HI	190.4	3	Kalamazoo MI	76.9
4	New York (Brooklyn) NY	183.3	4	Memphis TN	79.5
5	Seattle WA	158.0	5	Richmond IN	80.7
6	Oakland CA	156.4	6	Joplin MO	81.3
7	Washington DC	156.2	7	Tupelo MS	81.9
8	Boston MA	152.6	8	Conway AR	82.0
9	Orange County CA	149.6	9	Fayetteville AR	82.2
10	Arlington VA	149.1	10	Pittsburg KS	82.4
	Odessa 97.0			Midland 102.7	

The *Cost of Living Index* measures regional differences in the cost of consumer goods and services, excluding taxes and non-consumer expenditures, for professional and managerial households in the top income quintile. It is based on more than 90,000 prices covering 60 different items for which prices are collected quarterly by chambers of commerce, economic development organizations, and university applied economic centers in each participating urban area. Small differences should not be interpreted as showing a measurable difference.

The composite index is based on six component categories – housing, utilities, grocery items, transportation, health care, and miscellaneous goods and services.

What Do Groceries Cost?

Each quarter, C2ER collects more than 90,000 prices from communities across the US for the Cost of Living Index. With food prices a big part of the national media attention, C2ER decided to once again feature those communities with the most and least expensive food costs as measured by the grocery item index number. C2ER collects data on twenty-six items from a variety of surrogate categories to represent the grocery item component of the index.

The Five Most and Least Expensive Places for Grocery Items by Index Number in the Cost of Living Index (COLI) First Quarter 2019 Average for 257 Urban Areas = 100

Most Expensive			Least Expensive		
Ranking	Urban Areas	Index	Ranking	Urban Areas	Index
1	Honolulu HI	169.8	1	Temple TX	76.0
2	Juneau AK	150.0	2	Kalamazoo MI	79.5
3	New York (Manhattan) NY	140.1	3	Waco TX	79.5
4	Oakland CA	139.8	4	Round Rock TX	80.5
5	San Francisco CA	135.8	5	Harlingen TX	83.0
	Odessa 93.8			Midland 93.0	

The Most Expensive and Least Expensive Cities to Practice Yoga

To better reflect recreational activities available, the Index includes the price for a one-hour drop-in yoga class. With this new data, we thought users would be interested to compare the top five more and five least expensive cities to practice yoga.

The Five Most and Least Expensive Places for a Drop-in Hour Yoga Class First Quarter 2019 Average for 257 Urban Areas = \$14.97

Most Expensive			Least Expensive		
Ranking	Urban Areas	Avg. Price	Ranking	Urban Areas	Avg. Price
1	Morristown NJ	\$24.30	1	Dublin-Laurens County GA	\$5.00
2	Stamford CT	\$23.40	2	Lima OH	\$6.25
3	Orange County CA	\$23.33	3	Pryor Creek OK	\$7.07
4	Miami-Dade County FL	\$23.00	4	Tucson AZ	\$7.20
5	Thomasville-Lexington NC	\$23.00	5	Cleveland TN	\$7.25
	Odessa 10.00			Midland 18.75	

The quarterly Cost of Living Index is available by subscription for \$175 per year for the print version and \$165 per year for the PDF. The electronic version is available for \$275 per year. Be sure and ask about our new Expanded Excel version which covers more household and income types. Send check, payable to C2ER, P.O. Box 100127, Arlington VA 22210-0407, or subscribe on the Internet at www.coli.org.

If you need additional information on the Cost of Living Index or other COLI-related products such as the COLI Web Calculator and the COLI Historical Index, please contact Jennie Allison at jallison@crec.net or by phone at 703-522-4980.

Odessa Economic Indicators

2019

Building Permits

May	2019	Total Value	2018	Total Value
New Single Family	59	\$13,977,160	52	\$11,229,635
New Commercial	5	\$23,700,000	3	\$7,709,732
Other	131	\$6,821,958	172	\$22,033,861
Totals	195	\$44,499,118	227	\$40,973,228
YTD Totals	836	\$174,298,791	977	\$155,276,876

Sales and Use Tax

May	2019	2018	% Change
City of Odessa	\$6,434,952	\$6,599,447	-2.49%
Totals YTD	\$30,948,952	\$27,728,488	11.61%

Labor Market Statistics

May	2019	2018
Civilian Labor Force	86,378	84,813
Total Employment	84,559	82,680
Total Unemployment	1,819	2,133
Unemployment Rate	2.1%	2.5%
Payroll Employment Estimate	82,700	80,700

Permian Basin Rig Count

Month	2019	2018
May	351	374
April	356	358
March	356	352
February	368	348

Midland International Air and Space Port

May	2019	2018
Enplaned	59,348	53,802
Deplaned	54,371	51,470
Enplaned YTD	252,538	236,908
Deplaned YTD	250,158	232,107

MLS Statistics-Residential (SF/COND/TH)

May	2019	2018
Total Sold	136	148
Dollar Volume	\$33,523,001	\$32,522,353
Total Sold YTD	690	640
Volume YTD	\$160,078,795	\$131,012,011

Sources: City of Odessa Building Inspection Division, State Comptroller of Public Accounts, Midland International Air and Space Port, Labor Market and Career Information, Odessa Board of Realtors and Baker Hughes *Published by the Odessa Chamber of Commerce kathiv@odessaecodev.com (432) 332-9111*



ADVERTISING & MARKETING

ODESSA DEVELOPMENT CORPORATION

June 2019 ACTIVITIES

PODCAST/TV AD SERIES

Podcast - Opportunity Odessa

Currently identifying other potential interviewees and will schedule them as they are available.

TV News Segment - Spirit of Odessa

Schedule extended through end of July.

KWES - Investing at Home

Dr. Williams with Odessa College aired in the month of June on KWES-TV (Channel 9)

COLLATERAL

Brochures

Recently reprinted and restocked Economic Development Department employees with Spirit of Discovery brochures for use at various conventions and trade shows.

PUBLICATIONS

Recently placed a full page ad in Business Facilities Magazine touting Odessa as a top ranked location for business expansion.

TELEVISION

CVA has edited a :30 TV spot to run in in sports programming encouraging local businesses to expand in Odessa with help from ODC. Additional spots are planned for BR&E in the months ahead.

SOCIAL MEDIA/DIGITAL MEDIA

Overview

In June, our overall social media results were positive, with an over 400% increase in engagement, likes, and shares across all platforms. We continued the page likes campaign on Facebook, resulting in 87 new page likes. Our LinkedIn sponsored updates campaign ended last month, resulting in an expected drop in LinkedIn metrics. Our digital campaign targeting medical manufacturing professionals continues to be strong with a click-thru-rate double the industry standard.



ADVERTISING & MARKETING

Facebook

Over the last month on Facebook, CVA has continued to generate content from relevant articles of local news organizations. We have strategically boosted posts. Our post engagement was up by 400%, and our increase in followers was up 30% over last month. These campaigns resulted in 87 new page likes and reached a total of 5,806 people.

Twitter

Over the last month on Twitter, we have continued to tweet the same content we share on Facebook to engage new and existing followers as well as retweeting relevant content. Our tweets resulted in 5,923 impressions, and over 100 visits to our profile.

LinkedIn

This month we have continued sharing relevant articles with a focus on local content. With the conclusion of our sponsored updates campaign at the end of April, we saw a reduction in traffic and new followers, but that it so be expected. We are planning a new campaign to start in the coming months.

Website

Our page views and new sessions were up in June, and our social media traffic was up 271%. Sessions were up 54%. The highest traffic to the website this month came from social media.

Info on new followers/likes:

LinkedIn: 2 new followers

Facebook: 87 new page likes

Twitter: 0 new followers

Odessa Development Corporation Digital Report

June 2019

Social Overview

Total Social Impressions

16.53K 13.23K

↘ 20%

IMPRESSIONS

Total Social Engagement

801 4.11K

↗ 413%

ENGAGEMENT

Total Social Followers

2.63K 2.71K

↗ 3%

FOLLOWERS

Total Social Clicks

369 425

↗ 15%

CLICKS

Total Social Likes

321 2.82K

↗ 777%

LIKES

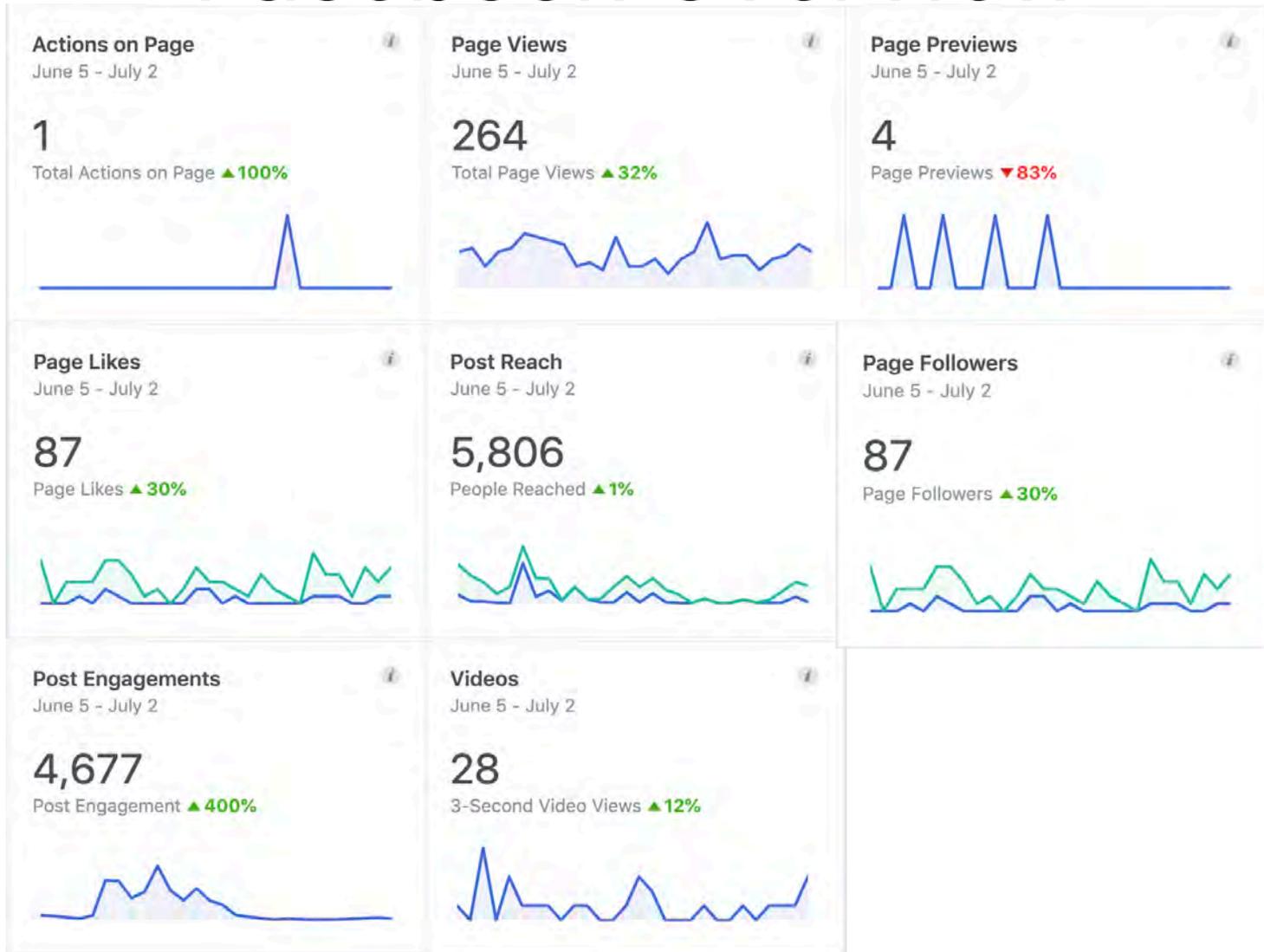
Total Social Shares

93 647

↗ 591%

SHARES

Facebook Overview



Facebook Top Performing Posts

Odessa Development Corporation
Published by Caleb Burnett [?] · June 14 at 3:30 PM · 🌐

Odessa businessman Austin Keith and his wife, Michelle, have donated \$100,000 toward learning lab renovations at Odessa College's Learning Resources Center in the Murry H. Fly Building.



Performance for Your Post

2,149 People Reached

205 Reactions, Comments & Shares

152 Like	133 On Post	19 On Shares
28 Love	20 On Post	8 On Shares
5 Wow	5 On Post	0 On Shares
9 Comments	7 On Post	2 On Shares
11 Shares	11 On Post	0 On Shares

144 Post Clicks

0 Photo Views	123 Link Clicks	21 Other Clicks
-------------------------	---------------------------	---------------------------

ODESSATEX.COM
Odessa businessman donates to Odessa College - Odessa TX
| Economic Development

Facebook Top Performing Posts

Odessa Development Corporation
June 10 at 12:00 PM · 🌐

"So, we can reasonably conclude that right now — regardless of the reason — the Permian Basin has overtaken Ghawar as the world's top oil-producer..."



ODESSATEX.COM
The Permian Basin is now the world's top oil producer - Odessa TX | Economic Development

1,322 People Reached **3,645** Engagements [Boost Post](#)

👍👎❤️ 57 4 Comments 573 Shares

Performance for Your Post

1,322 People Reached

3,541 Reactions, Comments & Shares ↕

2,413 👍 Like	45 On Post	2,368 On Shares
155 ❤️ Love	4 On Post	151 On Shares
8 😂 Haha	0 On Post	8 On Shares
176 😲 Wow	8 On Post	168 On Shares
3 😞 Sad	0 On Post	3 On Shares
2 😡 Angry	1 On Post	1 On Shares
206 Comments	4 On Post	202 On Shares
580 Shares	573 On Post	7 On Shares

104 Post Clicks

Twitter Overview

JUN 2019 SUMMARY

Tweets

6

Tweet impressions

5,923

Profile visits

101

Mentions

2

Top Performing Tweets

Tweets

Top Tweets

Tweets and replies

Promoted

Impressions

Engagements

Engagement rate



Odessa Development Corporation @odessadevelop · Jun 8
With a \$100,000 infusion from Texas Mutual Insurance Co.,
@OdessaCollege plans to ramp up its driver education
programs to help make the Permian Basin a safer place to
live. odessatex.com/giving-back-oc...

[View Tweet activity](#)

674

5

0.7%

Promote



Odessa Development Corporation @odessadevelop · Jun 16
Odessa businessman Austin Keith and his wife, Michelle,
have donated \$100,000 toward learning lab renovations at
Odessa College's Learning Resources Center in the Murry
H. Fly Building. odessatex.com/odessa-busines...

[View Tweet activity](#)

246

13

5.3%

Promote



Odessa Development Corporation @odessadevelop · Jun 28
Throughout history, the oil industry has experienced plenty
of booms and busts.

Mark Swift, the president of Weatherford's Western
Hemisphere, believes opening the company's technology
super center will eliminate extreme peaks and valleys.
odessatex.com/weatherford-op...

[View Tweet activity](#)

211

15

7.1%

Promote

LinkedIn Overview

 **Odessa Development Corporation**
169 followers
3w

New episode of the Opportunity Odessa Podcast!

In episode 7, Dr. Sandra Woodley, President of UT Permian Basin, talks with us about UTPB, Odessa, the Permian Basin, and all of the great things happening in our community.

Listen here:



Opportunity Odessa Podcast
odessatex.com

  3

Follower highlights

169

Total followers

2 0%

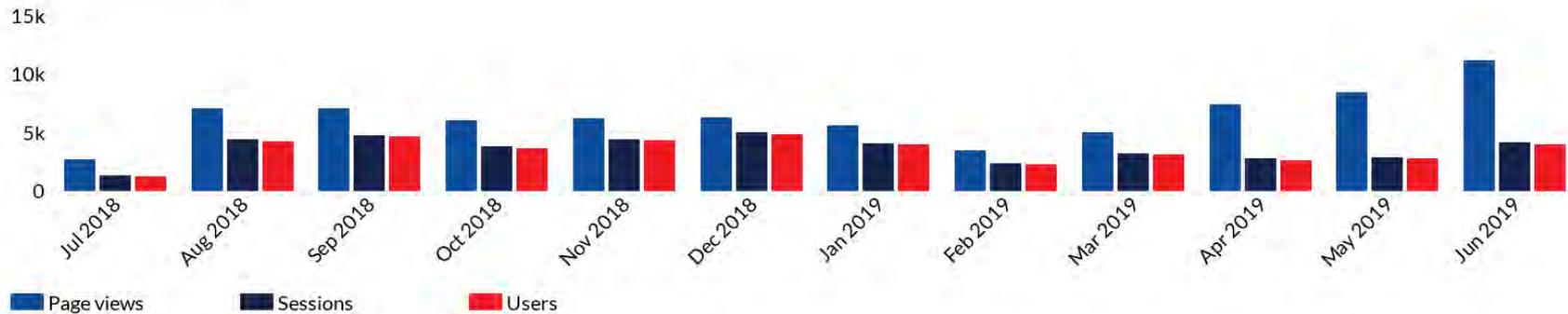
New followers in the last 30 days 6/2/2019 - 7/2/2019

Website Performance Trend

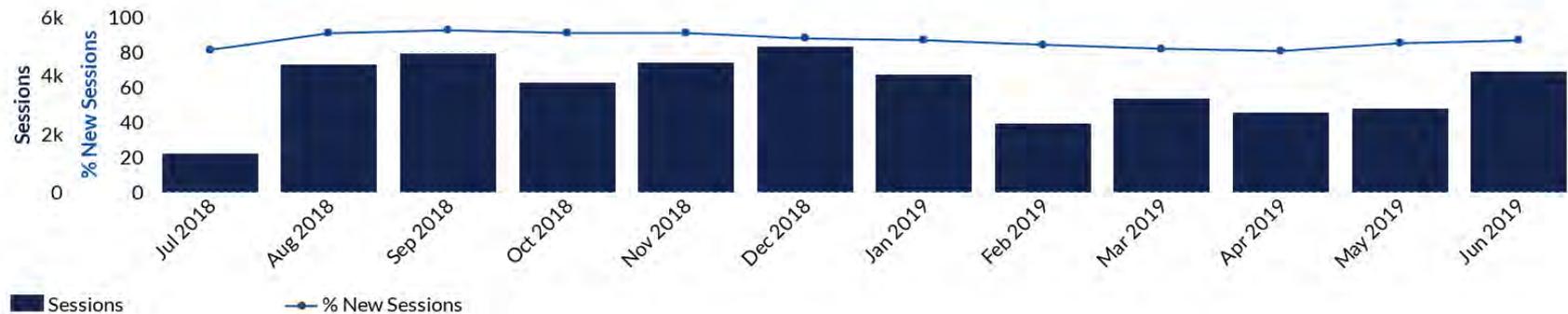
Performance KPIs



Website Performance Trend



Sessions vs New Sessions



UTPB SMALL BUSINESS DEVELOPMENT CENTER
2018-2019 New Business Start-Ups & Expansions

1-Jul							
ODESSA		OTHER LOCATIONS		ACTIVITIES			
New Businesses	0	New Businesses	3	Counseling Sessions	247	Seminars	4
Full-Time Jobs	0	Full-Time Jobs	8	Am Ind/N/Alaskan	2	Am Ind/N/Alaskan	3
Part Time Jobs	0	Part Time Jobs	-4	Asian/pac. Islander	3	Asian/pac. Islander	3
				Black	3	Black	8
Total Jobs	0	Total Jobs	8	Hispanic	85	Hispanic	35
				Non-Hispanic	138	Non-Hispanic	58
				Total Clients	263	Total Attendees	123
				Counseling Hours	256	Training Hours	246

	Oct-18	Nov-18	Dec-18	Jan-19	Feb-19	Mar-19	Apr-19	May-19	Jun-19	Jul-19	Aug-19	Sep-19	Cumulative 2018/19 Totals	End of Year 2017/18 Totals
Counseling Sessions	388	319	248	433	258	243	312	263	247				2711	1576
Counseling Hours	189	168	204	323	285	220	283.25	255.5	256.25				2184	1414
Seminars Presented	2	9	2	2	3	4	3	6	4				35	37
Attendees	39	134	31	16	28	10	7	117	123				505	558
Training Hours	135.5	194	57	38	56	19	14	224	246				984	541
New Businesses	0	3	8	4	2	1	3	9	3				33	48
Odessa New Business	0	1	4	1	1	0	0	2	0				9	23
Capitalization	\$916,900	\$3,907,050	\$1,992,400	\$2,464,700	\$305,233	\$90,000	\$794,000	\$885,200	\$113,600.00				\$11,469,083	\$18,159,350
Odessa Capitalization	\$252,000	\$545,800	\$539,400	\$1,650,000	\$204,916	\$60,000	\$219,000	\$67,000	\$0.00				\$3,538,116	\$15,716,700
Full-Time Jobs	28	7	67	10	1	4	11	36	8				172	303
Odessa FullTime Jobs	1	2	48	3	1	0	1	4	0				60	180
Part Time Jobs	0	3	2	9	-2	3	5	51	-4				67	51
Odessa Part Time Jobs	0	2	1	7	-2	0	2	11	0				21	21
Total Jobs	28	8	68	15	1	5	13	61.5	8				208	313

7/1/2019 KAM



June 2019

Rural Broadband/ Wifi

We have kicked off our Rural Broadband/Wifi Study and our survey is currently online. Mailers have been sent to targeted neighborhoods, and all of our Chambers (Odessa Chamber of Commerce, Black Chamber of Commerce, and Hispanic Chamber of Commerce) are participating in helping get the word out. So far we have already received nearly 200 responses back, and we anticipate that number to grow. Our hope is to have all of the results reportable by August/September.

TXDOT Meetings

UTP Workshop

We attended the TXDOT Commission's Unified Transportation Program (UTP) Workshop in Austin where the commissioners and chairman discussed the upcoming annual revisions that will be rolled out in August. We expect this process will provide additional funding for I-20 here in Odessa and Midland, but were also concerned that other critical projects like development of Loop 338 here in Odessa are not being given the needed consideration. We recently met with TXDOT officials and the Governor's office for the third time to express those concerns.

We also reiterated a request for an additional \$60 million for Odessa and \$60 million for Midland for critical projects beyond the interstate, and plan on another meeting with Commission members later this month.

Permian Basin Freight Mobility Plan

In late May, the Permian Basin Regional Freight Study kicked off. We are in the process of putting together a data package for them to help get better numbers and better funding for the area. We were disappointed in city/county participation at the event, which will help develop a list of needed projects for the area, so we plan on helping promote future meetings to drive better community participation.

Session Wrap-Up

Session ended and we did not pass the GROW (Generate Recurring Oil Wealth) Bill. However, this was promising in that it showed an appetite by the Texas Legislature to find a way to get oil and gas severance tax monies back to the regions they are developed.

Representative Landgraf's Bridge Strike Bill was passed, increasing the penalties of drivers for bridge strikes. This will go into law Sept. 1, 2019.

Representative Craddick's CMV Rural Enforcement Bill passed, allowing rural law enforcement officers to opt in to a training program with DPS to enforce previously unenforceable Commercial Motor Vehicle Violations.

Goldman Sachs

We recently visited with investment analysts from Goldman Sachs, during their trip to the Permian. We were able to share some good news with them, based on March 2018 to March 2019 RRC production numbers. While monthly production was up about 6.5 million barrels, that increase, as well as, close to 300,000 barrels of existing monthly production were moved via pipeline, due to increased capacity. Just the movement of that existing production equates to around 1822 less crude hauls via truck monthly.

One of their primary areas of interest was housing and we put in a plug for ODC's efforts in that arena.

COMMERCIAL AIR SERVICE

Back in April we hosted a meeting co-chaired by Lorraine Perryman and Nadine Craddick for Southwest Airlines to talk about expansion of the current service. We want to thank Chairwoman Hurt for being at that meeting.

We were able to provide a lot of good data to them and have had follow-up requests with Southwest and another major airline in our area. We are optimistic, but due to the grounding of the MAX 8 planes, we don't anticipate Southwest will make any changes until the new year.

That being said, we still think the meeting was good in that we do expect additional flights from Southwest and other airlines in the future and the meeting has helped promote those discussions. Also, because of heavy business travel, 60% to 70% of travelers traveling out of our airport book their flights in the last 3

days before the flight, and this has caused a lot of problems for network operations at the companies when they look at additional flights.

1:32 PM
06/07/19
Cash Basis

MOTRAN ALLIANCE, INC.
Profit & Loss YTD Comparison
May 2019

	<u>May 19</u>	<u>Oct '18 - May 19</u>
Ordinary Income/Expense		
Income		
4000 · Founding Member Dues	417.00	18,336.00
4010 · Member Dues	2,500.00	53,750.00
4200 · Interest Earned	178.32	1,348.42
4300 · Miscellaneous Income	0.00	4,300.00
4400 · Grants	0.00	20,000.00
4410 · MDC	0.00	95,000.00
4420 · ODC	0.00	71,250.00
4425 · ODC Study	0.00	56,250.00
4600 · PBC Revenue	0.00	50,000.00
Total Income	<u>3,095.32</u>	<u>370,234.42</u>
Expense		
ODC Wifi Study	0.00	12,000.00
5000 · Marketing		
5001 · MOTRAN Marketing	0.00	9,360.19
5000 · Marketing - Other	0.00	13,601.99
Total 5000 · Marketing	<u>0.00</u>	<u>22,962.18</u>
5025 · Travel Expenses	885.87	8,622.88
5026 · Other Travel	0.00	1,273.11
5050 · Events & Expos	2,226.66	14,976.51
5075 · Professional Services	0.00	11,868.00
6000 · Administration		
6035 · Dues & Subscriptions	0.00	876.32
6045 · Food & Entertainment	0.00	3,725.51
6055 · Gifts	0.00	1,183.31
6075 · Miscellaneous Expense	0.00	330.62
6085 · Office Lease	0.00	7,965.00
6090 · Office Supplies	0.00	5,173.31
6105 · Postage	0.00	1,604.48
6115 · Program Supplies	0.00	469.75
6140 · Telephone	269.26	2,398.55
Total 6000 · Administration	<u>269.26</u>	<u>23,726.85</u>
6500 · Personnel		
6501 · Salaries & Wages	18,560.00	147,800.00
6502 · Payroll Taxes	1,420.43	11,529.92
6503 · Employee Health Reimbursement	585.00	6,218.06
6504 · Payroll Service Fee	56.81	877.45
6505 · Retirement Contributions	556.80	3,833.70
Total 6500 · Personnel	<u>21,179.04</u>	<u>170,259.13</u>
Total Expense	<u>24,560.83</u>	<u>265,688.66</u>
Net Ordinary Income	<u>(21,465.51)</u>	<u>104,545.76</u>
Net Income	<u>(21,465.51)</u>	<u>104,545.76</u>

1:33 PM
06/07/19
Cash Basis

MOTRAN ALLIANCE, INC.
Balance Sheet
As of May 31, 2019

	<u>May 31, 19</u>
ASSETS	
Current Assets	
Checking/Savings	
1000 · Frost MOTRAN Checking	16,666.87
1010 · Frost MOTRAN Money Market	206,261.54
1015 · Frost-ODC Money Market	26,994.95
1020 · Frost- MDC Money Market	20,356.14
Total Checking/Savings	<u>270,279.50</u>
Total Current Assets	270,279.50
Fixed Assets	
1500 · Furniture & Fixtures	926.94
1510 · Accum. Dep - Furn & Fix	(926.94)
1520 · Machinery & Equipment	3,356.07
1530 · Accum Dep - Mach & Equip	(3,356.07)
Total Fixed Assets	<u>0.00</u>
TOTAL ASSETS	<u>270,279.50</u>
LIABILITIES & EQUITY	
Equity	
3900 · Net Assets	165,733.74
Net Income	104,545.76
Total Equity	<u>270,279.50</u>
TOTAL LIABILITIES & EQUITY	<u>270,279.50</u>

MOTRAN ALLIANCE, INC.
Statement of Cash Flows
May 2019

	<u>May 19</u>
OPERATING ACTIVITIES	
Net Income	<u>(21,465.51)</u>
Net cash provided by Operating Activities	<u>(21,465.51)</u>
Net cash increase for period	(21,465.51)
Cash at beginning of period	<u>291,745.01</u>
Cash at end of period	<u><u>270,279.50</u></u>

**MOTRAN, INC. MONTHLY EXPENSE SUMMARY
FOR THE MONTH OF May-19**

EXPENDITURE CATEGORIES	MONTHLY EXPENSE	MDC	ODC	ODC Wifi
Dues and Subscriptions				
Events and Expo's	\$2,226.66			
Food and Entertainment				
Gifts				
Health Insurance Reimbursement	\$585.00			
I-14 Initiative				
Insurance				
MOTRAN Marketing				
Other Marketing				
Misc. Expense				
Office Lease				
Office Supplies				
Payroll Salaries	\$18,560.00	\$8,780.00	\$8,780.00	\$1,000.00
Payroll Taxes	\$1,420.43			
Payroll Service Fee	\$56.81			
Retirement	\$556.80			
Postage				
Professional Services				
Program Supplies				
Travel	\$885.87	\$442.93	\$442.93	
Other Travel				
Utilities: Telephone & Internet	\$269.26			
ODC Wifi				
TOTAL EXPENSES	\$24,560.83	\$9,222.93	\$9,222.93	\$1,000.00

MOTRAN ALLIANCE, INC.
May 2019/City EDC Funding Breakdown

	<u>Budget</u> FY2018-19	<u>Current</u> Month	<u>YTD Amount</u>	<u>Remaining</u> Balance	<u>Percent</u> <u>Remaining</u>
Revenue					
Founding Members Dues	\$20,000.00	\$417.00	\$18,336.00	\$1,664.00	8%
Member Dues	\$65,000.00	\$2,500.00	\$53,750.00	11,250.00	17%
Midland Development Corp	\$95,000.00		\$95,000.00	\$0.00	0%
Odessa Development Corp	\$95,000.00		\$71,250.00	\$23,750.00	25%
ODC Study	\$75,000.00		\$56,250.00	\$18,750.00	25%
PBC Revenue	\$50,000.00		\$50,000.00	\$0.00	0%
Grants	\$20,000.00		\$20,000.00	\$0.00	0%
Interest Income	\$1,500.00	\$178.32	\$1,348.42	\$151.58	10%
Misc. Income	\$2,500.00		\$4,300.00	(\$1,800.00)	0%
Total Revenues	\$424,000.00	\$3,095.32	\$370,234.42	\$53,765.58	10%
Expenditures					
Dues & Subscriptions					
Events					
Food & Entertainment					
Gifts					
Health Ins. Reimbursement					
Insurance					
I-14 Initiative					
Miscellaneous Expenses					
Office Lease					
Office Supplies					
Payroll-Salaries	\$74,500.00	\$8,780.00	\$65,447.50	\$9,052.50	12%
Payroll-Service Fee					
Payroll Taxes	\$5,000.00		\$5,000.00	\$0.00	0%
Retirement					
Postage					
Marketing	\$5,000.00		\$4,680.09	\$319.91	6%
Other Marketing					
Program Supplies					
Telephone					
Travel Expenses	\$5,000.00	\$442.93	\$4,311.43	\$688.57	14%
Travel Other					
Professional Services	\$5,500.00		\$5,500.00	\$0.00	0%
TOTAL EXPENSES	\$95,000.00	\$9,222.93	\$84,939.02	\$10,060.98	30%

MOTRAN ALLIANCE, INC.
May 2019/City ODC Wifi Funding Breakdown

	<u>Budget</u> <u>FY2018-19</u>	<u>Current</u> <u>Month</u>	<u>YTD Amount</u>	<u>Remaining</u> <u>Balance</u>	<u>Percent</u> <u>Remaining</u>
Revenue					
Founding Members Dues	\$20,000.00	\$417.00	\$18,336.00	\$1,664.00	8%
Member Dues	\$65,000.00		\$53,750.00	\$11,250.00	17%
Midland Development Corp	\$95,000.00		\$95,000.00	\$0.00	0%
Odessa Development Corp	\$95,000.00		\$71,250.00	\$23,750.00	25%
ODC Study	\$75,000.00		\$56,250.00	\$18,750.00	25%
PBC Revenue	\$50,000.00		\$50,000.00	\$0.00	0%
Grants	\$20,000.00		\$20,000.00	\$0.00	0%
Interest Income	\$1,500.00	\$178.32	\$1,348.42	\$151.58	10%
Misc. Income	\$2,500.00		\$4,300.00	(\$1,800.00)	0%
Total Revenues	\$424,000.00	\$595.32	\$370,234.42	\$53,765.58	10%
Expenditures					
Mapping					
Salaries	\$17,000.00	\$1,000.00	\$14,925.00	\$2,075.00	12%
Engineering/Contracted Services	\$50,000.00		\$12,000.00	\$38,000.00	76%
Production/Printing	\$4,000.00		\$0.00	\$4,000.00	100%
Contingencies	\$4,000.00		\$0.00	\$4,000.00	100%
TOTAL EXPENSES	\$75,000.00	\$1,000.00	\$26,925.00	\$48,075.00	64%

**ODESSA DEVELOPMENT CORPORATION
BALANCE SHEET
MAY 2019**

ASSETS

Investments - Local Government Pools	\$ 28,669,666
Investments - U.S. Government Securities	2,010,040
Investments - CDs and CDARs	3,164,849
Investments - Municipal Securities	23,023,303
Investments - Money Market	99,149
Interest Receivable - U.S. Agency Notes	23,281
Interest Receivable - Municipal Securities	149,325

TOTAL ASSETS	<u>\$ 57,139,613</u>
---------------------	-----------------------------

LIABILITIES

Accounts Payable	<u>\$ 3,480,908</u>
------------------	---------------------

TOTAL LIABILITIES	<u>3,480,908</u>
--------------------------	-------------------------

FUND BALANCE

Reserved - Short Term Commitments Due Within One Year	
FMC Technologies	\$ 76,398
Select Energy	18,374
Standard Sales Company, LP.	200,000
Odessa College - 2nd Project Training Facility	6,595,855
UTPB - 2nd Project Training Facility	1,500,000
Total Short Term Commitments	<u>8,390,627</u>

Reserved - Long Term Commitments Due in More Than One Year	
FMC Technologies	229,196
Glazer's Beer & Beverage	1,134,991
Select Energy	73,497
Summit Power Energy, LLC	5,000,000
West Texas Food Bank	293,866
Odessa College - 2nd Project Training Facility	1,000,000
UTPB - 2nd Project Training Facility	4,500,000

Total Long Term Commitments	<u>12,231,550</u>
-----------------------------	-------------------

Total Reserved	20,622,177
----------------	------------

Assigned (TXDOT Projects)	11,500,000
---------------------------	------------

Unreserved	<u>21,536,528</u>
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TOTAL FUND BALANCE	<u>53,658,705</u>
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TOTAL LIABILITIES AND FUND BALANCE	<u>\$ 57,139,613</u>
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ODESSA DEVELOPMENT CORPORATION
STATEMENT OF REVENUES, EXPENDITURES AND CHANGES IN FUND BALANCE
TOTAL BUDGET COMPARISON
MAY 2019

	<u>TOTAL BUDGET</u>	<u>ACTUAL - YTD</u>	<u>REMAINING BALANCE</u>
REVENUES			
4-A Sales Tax Receipts	\$ 12,000,000	\$ 9,856,251	\$ (2,143,749)
Miscellaneous Income/Refunds	-	28,936	28,936
Interest Income	500,000	809,321	309,321
Gain and or (Loss) on Investments	(200,000)	123,037	323,037
TOTAL REVENUES	\$ 12,300,000	\$ 10,817,545	\$ (1,482,455)
EXPENDITURES			
Supplies and Materials	\$ 1,500	\$ 173	\$ 1,327
Audit Services	30,000	27,800	2,200
Special Services	50,000	46,298	3,702
Insurance	15,000	13,593	1,407
Bank Services	6,000	3,606	2,394
Administration Fee - City of Odessa	205,349	136,936	68,413
Contingencies	100,000	-	100,000
Contracted Economic Development Services			
Chamber of Commerce	836,277	627,208	209,069
MOTRAN	170,000	127,500	42,500
UTPB - Small Business Center	111,294	83,471	27,824
Promotional			
Marketing	674,900	159,328	515,572
UTPB - SBDC Entrep. Contest	381,720	-	381,720
Façade Grants	250,000	49,840	200,160
Business Incentives	44,000,000	147,000	43,853,000
TOTAL EXPENDITURES	\$ 46,832,040	\$ 1,422,752	\$ 45,409,288
EXCESS (DEFICIENCY) OF REVENUE OVER EXPENDITURES	\$ (34,532,040)	\$ 9,394,793	\$ 43,926,833
FUND BALANCE - AT BEGINNING OF YEAR	\$ 44,263,912	\$ 44,263,912	\$ -
FUND BALANCE - AT END OF YEAR	\$ 9,731,872	\$ 53,658,705	\$ 43,926,833

**ODESSA DEVELOPMENT CORPORATION
CHANGES IN RESERVED FUND BALANCE
MAY 2019**

Reserved - Short Term Commitments

				Dates in Fiscal Years	
	Current Month	Prior Month	Month End Change	Pmt Began	Expires
FMC Technologies	\$ 76,398	\$ 76,398	\$ -	2017-18	2021-22
Select Energy	18,374	18,374	-	2017-18	2021-22
Standard Sales Company, LP.	200,000	200,000	-	2014-15	2018-19
West Texas Food Bank	-	147,000	(147,000)	2016-17	2020-21
Odessa College - 2nd Project Training Facility	6,595,855	6,595,855	-	2017-18	2019-20
UTPB - 2nd Project Training Facility	1,500,000	1,500,000	-	2017-18	2021-22
Total Short Term Commitments	\$ 8,390,627	\$ 8,537,627	\$ (147,000)		

Reserved - Long Term Commitments

				Dates in Fiscal Years	
	Current Month	Prior Month	Month End Change	Pmt Began	Expires
FMC Technologies	\$ 229,196	\$ 229,196	\$ -	2017-18	2021-22
Glazer's Beer & Beverage	1,134,991	1,134,991	-	Not started (5 year payout)	
Select Energy	73,497	73,497	-	2017-18	2021-22
Summit Power Energy, LLC	5,000,000	5,000,000	-	Expired; pending bankruptcy	
West Texas Food Bank	293,866	293,866	-	2016-17	2020-21
Odessa College - 2nd Project Training Facility	1,000,000	1,000,000	-	2017-18	2019-20
UTPB - 2nd Project Training Facility	4,500,000	4,500,000	-	2017-18	2021-22
Total Long Term Commitments	\$ 12,231,550	\$ 12,231,550	\$ -		
Total Reserved Fund Balance	\$ 20,622,177	\$ 20,769,177	\$ (147,000)		

**ODESSA DEVELOPMENT CORPORATION
INVESTMENT SUMMARY
MAY 2019**

This investment summary report is in full compliance with the investment strategy as established per the City's Investment Policy and the the Public Funds Investment Act.

The fair value for the beginning and end of the reporting period are as follows:

INVESTMENT	BEGINNING BALANCE	PURCHASE AMOUNT	CHANGES IN FAIR VALUE AND INTEREST	SALES AMOUNT	ENDING BALANCE
GOVERNMENT POOLS	\$ 27,488,344	\$ 1,286,990	\$ 59,948	\$ 165,617	\$ 28,669,665
CD'S AND CDARS	3,158,441	-	6,408	-	3,164,849
SAVINGS AND MONEY MARKETS	1,081,949	17,200	-	1,000,000	99,149
MUNICIPAL BONDS	22,990,337	-	32,966	-	23,023,303
AGENCY NOTES	1,010,070	1,000,000	(30)	-	2,010,040
TOTAL	<u>\$ 55,729,140</u>	<u>\$ 2,304,190</u>	<u>\$ 99,292</u>	<u>\$ 1,165,617</u>	<u>\$ 56,967,006</u>

Note: This investment report is prepared in accordance with Generally Accepted Accounting Principles (GAAP), and is in compliance with the City of Odessa's investments strategies in the investment policy, and with relevant provisions of the Public Funds Investment Act.


 Interim Assistant City Manager/
 Financial Reporting Accountant

**ODESSA DEVELOPMENT CORPORATION
INVESTMENT PORTFOLIO
APRIL 30, 2019**

Beginning of Month

INVESTMENT TYPE	YTM	MATURITY	PAR	FAIR**
Local Government Investment Pools				
TexPool	2.43%	Open	\$ 20,570,876	\$ 20,570,876
Logic	2.58%	Open	6,917,468	6,917,468
Total Local Government Investment Pools			\$ 27,488,344	\$ 27,488,344
Weighted Average Rate Per Pools Tot.	2.47%			
Money Market Investment				
Frost Money Market	2.33%	Open	\$ 1,081,949	\$ 1,081,949
Total Money Markets			\$ 1,081,949	\$ 1,081,949
Weighted Average Rate Per MM Total	2.33%			
CD AND CDARs Investments				
AimBank - 12 Month CD	2.35%	8/31/19	\$ 2,058,620	\$ 2,132,637
BBVA CD	2.52%	12/15/19	1,000,000	1,025,804
Total CD and CDARs Investments			\$ 3,058,620	\$ 3,158,441
Weighted Average Rate Per CD's Total	2.41%			
Municipal Securities				
Atlanta GA E Tax	2.69%	1/1/20	\$ 1,000,000	\$ 998,530
Arizona ST B Tax	2.18%	7/1/20	340,000	338,470
State of Connecticut	3.63%	9/15/19	350,000	351,225
Hudson Cnty NJ B	2.60%	6/4/19	1,500,000	1,500,420
Florida St Bd A Tax	2.64%	7/1/21	1,000,000	1,001,570
Gateway PA Sch Tax	1.76%	7/15/19	1,900,000	1,893,939
New York NY City Tax	1.70%	11/1/19	2,000,000	1,992,380
Union City NJ B Tax	2.80%	3/1/20	300,000	307,092
Florida St A	2.16%	7/1/19	5,000,000	4,995,800
Fresno Cnty CA Tax	1.25%	8/15/19	650,000	649,591
California St Tax	2.81%	7/1/19	840,000	839,765
Kansas St Dev H Tax	1.40%	4/15/20	820,000	820,139
State of Texas	1.99%	10/1/19	1,000,000	998,080
Center TX ISD Tax	5.40%	2/15/21	1,000,000	1,048,860
Dallas TX	2.21%	10/1/20	3,325,000	3,313,429
Port Saint Lucie FL	1.76%	7/1/19	675,000	674,055
Pittsburg PA Urban Dev	1.80%	12/1/19	770,000	767,182
Texas Tech University	1.95%	2/15/21	500,000	499,810
Total Municipal Securities			\$ 22,970,000	\$ 22,990,337
Weighted Average Rate Per Muni Total	2.27%			
U.S. Agency Notes				
FHLB	4.13%	12/13/19	\$ 1,000,000	\$ 1,010,070
Total U.S. Agency Notes			\$ 1,000,000	\$ 1,010,070
Weighted Average Rate Per Agency Tol	4.13%			
TOTAL INVESTMENTS	2.41%		\$ 55,598,913	\$ 55,729,140

** Amount does not reflect prior period market adjustments and represents fair market value adjustment as of current period end only.

**ODESSA DEVELOPMENT CORPORATION
INVESTMENT PORTFOLIO
MAY 31, 2019**

End of Month

<u>INVESTMENT TYPE</u>	<u>YTM</u>	<u>MATURITY</u>	<u>PAR</u>	<u>FAIR**</u>
Local Government Investment Pools				
TexPool	2.43%	Open	\$ 21,737,268	\$ 21,737,268
Logic	2.58%	Open	6,932,397	6,932,397
Total Local Government Investment Pools			\$ 28,669,665	\$ 28,669,665
Weighted Average Rate Per Pools Total	2.47%			
Money Market Investment				
Frost Money Market	2.33%	Open	\$ 99,149	\$ 99,149
Total Money Market			\$ 99,149	\$ 99,149
Weighted Average Rate Per MM Total	2.33%			
CD AND CDARs Investments				
AimBank - 17 Month CD	2.35%	8/31/19	\$ 2,099,290	\$ 2,136,867
BBVA CD	2.52%	12/15/19	1,017,654	1,027,982
Total CD and CDARs Investments			\$ 3,116,944	\$ 3,164,849
Weighted Average Rate Per CD's Total	2.41%			
Municipal Securities				
Arizona ST B Tax	2.18%	7/1/20	\$ 340,000	\$ 339,201
Atlanta GA E Tax	2.69%	1/1/20	1,000,000	999,280
State of Connecticut	3.63%	9/15/19	350,000	351,036
Florida St Bd A Tax	2.64%	7/1/21	\$ 1,000,000	1,009,190
Hudson Cnty NJ B	2.60%	6/4/19	1,500,000	1,500,000
Gateway PA Sch Tax	1.76%	7/15/19	1,900,000	1,896,732
New York City	1.70%	11/1/19	2,000,000	1,993,940
Union City NJ B Tax	2.80%	3/1/20	300,000	306,588
Florida St A	2.16%	7/1/19	5,000,000	4,998,750
Fresno Cnty CA Tax	1.25%	8/15/19	650,000	649,961
California St Tax	2.81%	7/1/19	840,000	839,992
Kansas St Dev H Tax	1.40%	4/15/20	820,000	821,041
State of Texas	1.99%	10/1/19	1,000,000	998,750
Dallas TX	2.21%	10/1/20	3,325,000	3,322,373
Center Tex ISD Tax	5.40%	2/15/21	1,000,000	1,051,380
Port Saint Lucie FL	1.76%	7/1/19	675,000	674,602
Pittsburg PA Urban Dev	1.80%	12/1/19	770,000	767,952
Texas Tech University	1.95%	2/15/21	500,000	502,535
Total Municipal Securities			\$ 22,970,000	\$ 23,023,303
Weighted Average Rate Per Munis Total	2.27%			
U.S. Agency Notes				
FHLB	4.13%	12/13/19	\$ 1,000,000	\$ 1,009,370
FHLB	2.75%	5/28/24	\$ 1,000,000	\$ 1,000,670
Total U.S. Agency Notes			\$ 2,000,000	\$ 2,010,040
Weighted Average Rate Per Agencies Total	3.44%			
TOTAL INVESTMENTS	2.42%		\$ 56,855,758	\$ 56,967,006

** Amount does not reflect prior period market adjustments and represents fair market value adjustment as of current period end only.

ITEM #4. Workforce Housing Incentive Program Guidelines

Compliance is reviewing a few changes suggested by legal to the draft guidelines in order to better describe the process and will make a presentation.

STATE OF TEXAS §

COUNTY OF ECTOR §

ECONOMIC DEVELOPMENT AGREEMENT
ODESSA DEVELOPMENT CORPORATION
(GRANT)

THIS ECONOMIC DEVELOPMENT AGREEMENT (“Agreement”) is entered into by and between the ODESSA DEVELOPMENT CORPORATION (“ODC”), a Texas non-profit corporation, whose address is 411 West 8th Street, P.O. Box 4398, Odessa, Texas, 79760, and PROJECT SEPARATOR (“Company”), a Texas corporation, whose home office is located at _____.

I.

Background

- 1.1 **Purpose:** ODC is a tax-supported non-profit corporation whose primary income is from sales tax collected within the City of Odessa and dedicated exclusively to economic development. The sales tax supporting ODC is authorized as a local option under V.A.C.S., Art. 5190.6, Sec. 4A (the “Act”), now Chapter 501 of the Local Government Code, and was enacted by the voters of Odessa in November, 1997. ODC exists for the primary and public purpose of developing, stabilizing, diversifying and expanding the Odessa economy through retention, expansion and recruitment of employment opportunities in order to benefit citizens of Odessa and the surrounding area.
- 1.2 **Project:** Based on the expressed purpose, Company satisfies the requirements of Chapters 501 and 504 of the Local Government Code as a “project authorizing the expenditure of economic development sales tax.” It proposes the expansion of an enterprise to increase new primary jobs that are required or suitable for the development of a job site as an enterprise for the stated purpose. Such Company shall operate a facility that manufactures test separators classified as # 332313 of the North American Industry Classification System (NAICS) in Ector County, Texas.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements of the parties, it is agreed as follows:

II.

Economic Development Grant

- 2.1 **Term:** This Agreement becomes effective on the last date of execution hereof (the “Effective Date”) and continues for a term of five (5) years, unless sooner terminated by mutual agreement of the parties, or when terminated as hereinafter provided.
- 2.2 **Jobs:** Company agrees to employ in Ector County, the following number of full time equivalent jobs (FTE), which shall be no later than one year after the effective date of this Agreement (“Date of Full Employment”). Starting with the Date of Full Employment, Company shall establish and maintain at least the total jobs and payroll each year for the term of the Agreement. For the purposes of this Agreement, Company may include full-

time equivalent jobs of a wholly owned subsidiary of Company if those employees are employed to work full-time on the site described herein.

<u>Number of Jobs</u>		<u>Annual Salaries Paid</u>
New	59	\$4,225,780.00
Retain	34	\$2,996,600.00
Total	93	Total \$7,222,380.00

The following requirements apply:

- .1 Company shall exercise its commercially reasonable efforts to advertise for bids with notice to local contractors.
- .2 Company shall exercise its commercially reasonable efforts to employ Odessa residents and to advertise the availability of job openings, taking into consideration cost and the requirements for the job.
- .3 For purposes of determining new jobs created or existing jobs retained, individual owners of 20% or more ownership of the company shall not be counted.
- .4 A full-time equivalent job (FTE) is defined as a job requiring a minimum of 1,820 hours of work per year, including allowance for vacation and sick leave. The FTE calculation may be used to calculate the number of jobs.
- .5 For purposes of determining new jobs created, a non-Odessa employee of the Company or a wholly owned subsidiary of Company that transfers to the project site shall be counted as a new job.
- .6 Job retention is defined as a job which would have been eliminated without financial assistance. In addition, such payments must be for economic development and not simply as a subsidy to support a failing business.

23 **Investment:** Company agrees to lease and cause improvements to be constructed on the property (“Property”) described as _____, Ector County, Texas, and as further described as _____, and to make the described expenditures for such site. Company will complete the expenditures within one year of the effective date of the Agreement. The date on which expenditures have been made is the date of Full Investment. Company warrants and by this Agreement commits to expend \$8,800,000.00 construct and renovate building and purchase new equipment (“Full Investment”).

24 **Operation of Business:** Subject to the conditions precedent set forth herein, Company agrees to operate its enterprise on said Property as described in Section 1.2 at least until the end of the term designated herein.

25 **Law:** The parties are aware of statutory limitations on this grant and the use of funds under Section 4A, Article 5190.6 of Vernon’s Civil Statutes of Texas, now Chapter 501 and 504 of the Local Government Code, and acknowledge that the funds herein granted or guaranteed shall be utilized solely for purposes authorized under that law and by the terms of this Agreement.

III.
Economic Incentives Payment

3.1 **Incentives:** ODC shall provide the following type of incentive, in the designated amount after Company shows compliance with the conditions set forth herein.

<u>Type of Incentive</u>	<u>Payment</u>
Grant	\$2,757,294.00

One-fifth of the total grant shall be paid to Company after each year of compliance with the Agreement. If Company does not reach Full Employment in any year during the Term, the incentive payment for that year shall be prorated based on the total percentage that the actual full-time and full-time equivalent jobs provided by Company in such year to the total jobs required by this Agreement.

3.2 **Payment Schedule:** Company acknowledges that ODC must complete its audit to substantiate Company's compliance prior to making a payment.

.1 Company agrees that ODC will only be required to pay funds from moneys currently collected and budgeted by means of the economic development sales tax; and in the event that there are not sufficient funds for purposes of this Agreement, then the funding for this Agreement shall not be offset or charged against any other funds of ODC or City.

.2 Payments to be made to Company shall also require a written request and completion of all supporting documentation, as required herein. The payment request and documentation should be directed to the Office of the City Attorney, Odessa Development Corporation, 411 W. 8th Street, P. O. Box 4398, Odessa, Texas 79760.

.3 *A delay in filing the required documents within thirty (30) days could cause a delay in a timely audit and payment. It is estimated that it will take at least sixty (60) days to process payment once Company is found to be in compliance.*

.4 ODC shall have thirty (30) days to make payment after receipt of verification of compliance under this Agreement.

IV.
General Terms and Conditions

4.2 **Reports and Monitoring:** Company agrees to the following reporting and monitoring provisions:

.1 Company shall certify annually, in a form attached as Exhibit "A", to the ODC, that the Company is in compliance with each applicable term of the Agreement. Company shall also provide compliance documentation pursuant to Section 3.2 and any other reasonably necessary reports as requested.

.2 Company agrees that an audit shall be conducted by ODC on an annual basis by an independent third party with professional accounting qualifications, selected by ODC, to verify the annual status report and compliance with the Economic

Development Agreement. The auditors performing the audit shall have access to and the right to examine all records and accounts directly relating to this Contract and such other Company records and accounts as may be reasonably necessary to conduct and complete the audit and may make an onsite visit to the Company's accounting/human resource department to verify the information.

- .3 Company understands that audits will be completed on a quarterly basis. Company acknowledges that a delay in submitting the required documentation, or submitting incomplete documentation could cause the audit to be pushed back to the next quarter. Company understands that any discrepancies or notable findings in the completed audits must be approved by the Compliance Committee prior to being reviewed by the ODC Board.
- .4 Company agrees and acknowledges that all requirements of this section shall also apply to any wholly owned subsidiary of Company if Company chooses to report any full-time equivalent jobs of that wholly owned subsidiary to meet the requirements of this Agreement. Company further agrees and acknowledges that additional documentation may be required to prove to ODC that any reported full-time equivalent jobs of a wholly owned subsidiary of Company comply with all the requirements of this Agreement, and that a failure of Company to provide such documentation or to comply with the other requirements of this section shall result in those full-time equivalent jobs not being counted toward the requirements of this Agreement.

4.3 **Insurance:** Company agrees regarding existing improvements or with any required expenditure on the Property, or starting with the commencement of construction, to comply with the following insurance requirements:

- .1 Company shall, at its sole expense, obtain and maintain property insurance to protect the Property from "All Risks" of direct physical loss or damage for the entire term of this Agreement. (Company agrees that a Builder's Risk policy will be maintained during construction.)
- .2 Certificates of the policy referred to shall be deposited by the Company with the City Attorney of Odessa thirty (30) days prior to the renewal or anniversary date of the term of any such policy. Failure on the part of the Company to obtain a new policy before the date fixed for the cancellation of an existing policy, so that the insurance referred to shall be continuously in effect, will constitute a default on the part of the Company entitling the ODC, at its option, to terminate Company's rights under this Agreement and to recapture any unearned incentives.
- .3 In the event the building is damaged by fire or other insured cause and the Company chooses not to reconstruct the building and place it back in operation, ODC shall be entitled to receive funds equal to the amount to be recaptured by ODC under this Agreement and terminate this Agreement, in which event Company would not be entitled to receive any payments following such termination.
- .4 The Company shall also maintain such additional insurance as may be required in its judgment and experience to adequately protect itself in connection with the activities to be performed pursuant to this Agreement.

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

- .1 Company is a legal entity duly organized and existing in good standing and is duly authorized to do business in the State of Texas.
- .2 The execution of this Agreement has been duly authorized by its board of directors or an officer of the Company empowered to execute such agreements and bind the Company, and is not in contravention of any law, rule or regulations or of the provisions of Company's articles of incorporation or by-laws, or of any agreement or instrument to which Company is a party or by which it may be bound.
- .3 No material litigation or governmental proceeding is pending, or, to the knowledge of any of Company's officers, threatened against or affecting Company, that would prevent Company from performing the Agreement.
- .4 No certificate or statement delivered by Company to ODC in connection herewith, or in connection with any transaction contemplated hereby, contains any knowingly untrue statement or fails to state any fact necessary to keep the statements contained therein from being misleading.
- .5 There are no bankruptcy proceedings or other such proceedings currently pending or contemplated by Company.

4.5 **Suspension:** ODC, under the following circumstances, at its sole discretion, may suspend its obligations under this Agreement or may terminate this Agreement, and recapture any of the unearned consideration paid by ODC:

- .1 The insolvency of Company. "Insolvent" is defined to mean Company either has generally ceased to pay its debts in the ordinary course of business, has admitted in writing its inability to pay its debts as they become due, or is insolvent within the meaning of the federal bankruptcy law.
- .2 The appointment of a receiver of Company, or of all or any substantial part of its property, and the failure of such receiver to be discharged within sixty (60) days thereafter.
- .3 The adjudication of Company as a bankrupt.
- .4 The filing by Company of a petition to be adjudged a bankrupt, or a petition or answer seeking reorganization or admitting the material allegations of a petition filed against it in any bankruptcy or reorganization proceeding.

4.6 **Termination:** This Agreement may be terminated by mutual agreement of the parties or by either party, upon the failure of the other party to fulfill an obligation as set forth herein if the default is not cured within 30 days after written notice from the other party. In the event that the Agreement is terminated; Company shall be required to reimburse ODC on demand for all consideration paid to or on behalf of Company by ODC and not earned by

Company pursuant to this Agreement. The termination of this Agreement shall extinguish all rights, duties, obligations and liabilities of the ODC and Company under this Agreement, except all rights, duties, liabilities, and obligations accrued prior to such termination shall survive termination.

- .1 Company shall pay all ad valorem taxes due and owing by it to the City of Odessa and all other taxing authorities having jurisdiction. In addition, Company will pay all employment, income, franchise and all other taxes due and owing by it to all local, State and federal entities. With regard to ad valorem taxes, Company shall not appeal to court the value placed by the appraisal district on personal or real property, including improvements, and any appeal of valuation shall be limited to the appraisal review board.
- .2 Company agrees that, as to all of the programs and activities arising out of this Agreement, it shall comply fully with all applicable Civil Rights Acts and specifically will not discriminate against any person on the basis of race, color, national origin, sex or by reason of being disabled.

V.

Miscellaneous

- 5.1 **Entire Agreement:** This Agreement embodies the complete agreement of the parties hereto, superseding all oral or written, previous and contemporary agreements between the parties relating to matters in this Agreement; and, except as otherwise provided herein, this Agreement cannot be modified or amended without a written agreement of the parties.
- 5.2 **Legal Relationships:** No term or provision of this Agreement or act of Company in the performance of this Agreement shall be construed as making Company, or its employees, the agent, servant, employee or contractor of City of Odessa or ODC. The City's approval of the Agreement is required by the ODC Articles of Incorporation and Bylaws. The City is a third party beneficiary and not a direct party to this Agreement.
- 5.3 **Indemnity:** *Company shall indemnify and hold harmless the ODC and City of Odessa, their respective officers, employees, and agents from any and all claims, liabilities, losses, damages and expenses arising out of or in any manner connected with this Agreement, but only to the extent resulting from or caused by the negligence, gross negligence, willful or intentional act or omission of the Company, its officers, employees and agents, and including all expenses, attorney's fees and court costs which may be reasonably incurred by the City of Odessa or the ODC in litigation or in resisting any such claims or such causes of action.*
- 5.4 **Venue:** The obligations of the parties to this Agreement are performable in the City of Odessa which is located primarily in Ector County, Texas, and if legal action is necessary to enforce same, exclusive venue shall lie in Ector County, Texas.
- 5.5 **Legal Construction:** In case one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions hereof and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had

never been contained herein. There shall not be a higher duty or responsibility for any party because they draft the Agreement.

- 5.6 **Assignment:** This Agreement may only be assigned with the mutual consent of both parties. The Agreement may not be assigned to an entity that is exempt from ad valorem property taxes. In the event that the assignment by Company is to an entity that is exempt from ad valorem property taxes or not approved by ODC and City of Odessa, the total grant amount shall be repaid by Company to ODC within 60 days.
- 5.7 **Representation:** Company represents that no ODC board member, City of Odessa officer, or employee, has been compensated in any way with respect to this Agreement and its consideration. In no event will Company pay a fee to or in any other manner compensate any ODC board member, City of Odessa officer, or employee, in connection with the approval of this Agreement. A breach under this Article shall result in automatic termination under this Agreement by Company.
- 5.8 **Notices:** All notices, communications and reports required or permitted under the Agreement shall be personally delivered or mailed to the respective parties by depositing same in the United States mail, postage prepaid, at the address shown below. Mailed notices shall be deemed communicated as of five (5) days after mailing.

If intended for ODC to:

Norma Aguilar-Grimaldo
ODC Assistant Secretary
P.O. Box 4398
Odessa, Texas 79760-4398

If intended for COMPANY, to:

- 5.9 **Other Contracts:** It is understood by Company that the ODC has heretofore entered, and may hereafter enter into contracts with other companies or persons upon terms and conditions different from the terms and conditions of this Agreement, and Company has no objection whatsoever to any such other contracts.
- 5.10 **Settlements:** In the event difficulties occur in the performance of an economic development agreement (which do not rise to the level of substantially altering the contract), which require the consideration of settlement proposals, the ODC Board, at a regular ODC board meeting, can approve such settlement agreements by written agreement without City Council action.

VI.

Chapter 2264, Texas Government Code

- 6.1 **Purpose:** The purpose of this Article is to comply with H.B. 1196 (Chapter 2264, Texas Government Code) adopted in the 2007 Legislative Session by the State of Texas. The terms used are as defined in the statute.

6.2 **Conditions:** Company agrees to the following conditions:

- 1 Company certifies that the business, or a branch, division, or department of the business, does not and will not knowingly employ an undocumented worker. An undocumented worker means an individual who, at the time of employment, is not: (A) lawfully admitted for permanent residence to the United States; or (B) authorized under law to be employed in that manner in the United States.
- 2 Company agrees that ODC is an “economic development corporation” as defined in the statute and the benefit or assistance provided to Company is a “public subsidy” as defined in the statute.
- 3 If after receiving the public subsidy, the Company, or a branch, division, or department of the Company, is convicted of a violation under 8 U.S.C. Section 1324a(f), the Company shall repay the amount of the public subsidy with interest, not later than the 120th day after the date ODC notifies the Company of the violation. Interest shall begin to accrue on the day that the Company is given notice of the violation at a rate of one percent (1%) per month. Interest stops accruing on the date the Company mails or electronically transmits payment.
- 4 ODC may bring a civil action to recover any amounts owed to ODC under this Article and Chapter 2264, court costs and attorney fees.
- 5 Company is not liable for a violation of this Article and Chapter 2264 by a subsidiary, affiliate, or franchise of the Company, or by a person with whom the Company contracts.

Signature page to follow

Executed this the _____ day of _____, 2019.

ATTEST:

“ODC”
ODESSA DEVELOPMENT CORPORATION

Norma Aguilar-Grimaldo, City Secretary and
ODC Assistant Secretary

By: _____
Betsy Triplett-Hurt, Board President

“COMPANY”
PROJECT SEPARATOR

By: _____
Name, Title

APPROVED AS TO FORM:

FOR APPROVAL ONLY: “CITY”
CITY OF ODESSA

Gary Landers, City Attorney or designee

By: _____
Michael Marrero, City Manager

(ODC)

STATE OF TEXAS §
COUNTY OF ECTOR §

This instrument was acknowledged before me on the _____ day of _____, 2019, by Betsy Triplett-Hurt, Board President, on behalf of the Odessa Development Corporation.

Notary Public in and for the State of Texas

(COMPANY)

STATE OF TEXAS §
COUNTY OF ECTOR §

This instrument was acknowledged before me on the _____ day of _____, 2019, by Name, Title, on behalf of Company.

Notary Public in and for the State of Texas

Exhibit "A"
To Economic Development Agreement

Annual Applicant's Economic Development Certification Form
For the Period ___/___/20___ thru ___/___/20___
Full Employment and Full Investment

Date: _____

Company Name: _____

Address: _____

Total Jobs for the Period: _____
(Required: _____)

Payroll for jobs for the Period: _____
(Required: \$ _____)

“Section 2. That the Status Reports shall include the following information: Every report must have wage and salary information sufficient to determine the calculations for the total payroll and the number and types of full time jobs required by the contract and certified to by the company, for the period and location in question. In each case, such records shall include the company's IRS 941 return and the payroll information, in detail enough to reconcile between the filed Status Report and the Company's general ledger accounting system.”

Investment: _____
(Required: \$ _____)

“Section 3. That in order to determine compliance with investment requirements for projects, company shall submit invoices and cancelled checks indicating vendor payment, Ector County Appraisal District valuations, contracts, or similar forms of documentation showing at least the minimum amount of investment required by the contract.”

I certify and covenant on behalf of the company that this report and attachments are true and correct.

Authorized Company Representative

Title: _____
Date: _____
Telephone: _____
Email: _____
Address: _____

Exhibit "A"
To Economic Development Agreement

Annual Applicant's Economic Development Reporting Form
For the Period ___/___/20__ thru ___/___/20__
Year ___

Date: _____

Company Name: _____

Address: _____

Total Jobs for the Period: _____
(Required: ____)

Payroll for jobs for the Period: _____
(Required: \$_____)

“Section 2. That the Status Reports shall include the following information: Every report must have wage and salary information sufficient to determine the calculations for the total payroll and the number and types of full time jobs required by the contract and certified to by the company, for the period and location in question. In each case, such records shall include the company's IRS 941 return and the payroll information, in detail enough to reconcile between the filed Status Report and the Company's general ledger accounting system.”

I certify that this report and attachments are true and correct.

Authorized Company Representative

Title: _____

Date: _____

Telephone: _____

Email: _____

Address: _____

STATE OF TEXAS §

COUNTY OF ECTOR §

ECONOMIC DEVELOPMENT AGREEMENT
ODESSA DEVELOPMENT CORPORATION
(GRANT)

THIS ECONOMIC DEVELOPMENT AGREEMENT (“Agreement”) is entered into by and between the ODESSA DEVELOPMENT CORPORATION (“ODC”), a Texas non-profit corporation, whose address is 411 West 8th Street, P.O. Box 4398, Odessa, Texas, 79760, and PROJECT RECYCLE (“Company”), a Texas limited liability corporation, whose home office is located at _____.

I.

Background

- 1.1 **Purpose:** ODC is a tax-supported non-profit corporation whose primary income is from sales tax collected within the City of Odessa and dedicated exclusively to economic development. The sales tax supporting ODC is authorized as a local option under V.A.C.S., Art. 5190.6, Sec. 4A (the “Act”), now Chapter 501 of the Local Government Code, and was enacted by the voters of Odessa in November, 1997. ODC exists for the primary and public purpose of developing, stabilizing, diversifying and expanding the Odessa economy through retention, expansion and recruitment of employment opportunities in order to benefit citizens of Odessa and the surrounding area.
- 1.2 **Project:** Based on the expressed purpose, Company satisfies the requirements of Chapters 501 and 504 of the Local Government Code as a “project authorizing the expenditure of economic development sales tax.” It proposes the expansion of an enterprise to increase new primary jobs that are required or suitable for the development of a job site as an enterprise for the stated purpose. Such Company shall operate a facility that will process whole tires and existing shredded tire stockpiles into thermal converted oils, steel, syngas and char products for sale classified as #s 325998 and 333249 of the North American Industry Classification System (NAICS) in Ector County, Texas.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements of the parties, it is agreed as follows:

II.

Economic Development Grant

- 2.1 **Term:** This Agreement becomes effective on the last date of execution hereof (the “Effective Date”) and continues for a term of five (5) years, unless sooner terminated by mutual agreement of the parties, or when terminated as hereinafter provided.
- 2.2 **Jobs:** Company agrees to employ in Ector County, the following number of full time equivalent jobs (FTE), which shall be no later than one year after the effective date of this Agreement (“Date of Full Employment”). Starting with the Date of Full Employment, Company shall establish and maintain at least the total jobs and payroll each year for the term of the Agreement. For the purposes of this Agreement, Company may include full-

time equivalent jobs of a wholly owned subsidiary of Company if those employees are employed to work full-time on the site described herein.

<u>Number of Jobs</u>		<u>Annual Salaries Paid</u>
New	20	\$1,127,000.00
Retain	0	\$0
Total	20	Total \$1,127,000.00

The following requirements apply:

- .1 Company shall exercise its commercially reasonable efforts to advertise for bids with notice to local contractors.
 - .2 Company shall exercise its commercially reasonable efforts to employ Odessa residents and to advertise the availability of job openings, taking into consideration cost and the requirements for the job.
 - .3 For purposes of determining new jobs created or existing jobs retained, individual owners of 20% or more ownership of the company shall not be counted.
 - .4 A full-time equivalent job (FTE) is defined as a job requiring a minimum of 1,820 hours of work per year, including allowance for vacation and sick leave. The FTE calculation may be used to calculate the number of jobs.
 - .5 For purposes of determining new jobs created, a non-Odessa employee of the Company or a wholly owned subsidiary of Company that transfers to the project site shall be counted as a new job.
 - .6 Job retention is defined as a job which would have been eliminated without financial assistance. In addition, such payments must be for economic development and not simply as a subsidy to support a failing business.
- 2.3 **Investment:** Company agrees to lease and cause improvements to be constructed on the property (“Property”) described as _____, Ector County, Texas, and as further described as _____, and to make the described expenditures for such site. Company will complete the expenditures within one year of the effective date of the Agreement. The date on which expenditures have been made is the date of Full Investment. Company warrants and by this Agreement commits to expend \$1,000,000.00 to purchase land, expand/renovate building and purchase new equipment (“Full Investment”).
- 2.4 **Operation of Business:** Subject to the conditions precedent set forth herein, Company agrees to operate its enterprise on said Property as described in Section 1.2 at least until the end of the term designated herein.
- 2.5 **Law:** The parties are aware of statutory limitations on this grant and the use of funds under Section 4A, Article 5190.6 of Vernon’s Civil Statutes of Texas, now Chapter 501 and 504 of the Local Government Code, and acknowledge that the funds herein granted or guaranteed shall be utilized solely for purposes authorized under that law and by the terms of this Agreement.

III.
Economic Incentives Payment

3.1 **Incentives:** ODC shall provide the following type of incentive, in the designated amount after Company shows compliance with the conditions set forth herein.

<u>Type of Incentive</u>	<u>Payment</u>
Grant	\$350,000.00

One-fifth of the total grant shall be paid to Company after each year of compliance with the Agreement. If Company does not reach Full Employment in any year during the Term, the incentive payment for that year shall be prorated based on the total percentage that the actual full-time and full-time equivalent jobs provided by Company in such year to the total jobs required by this Agreement.

3.2 **Payment Schedule:** Company acknowledges that ODC must complete its audit to substantiate Company's compliance prior to making a payment.

.1 Company agrees that ODC will only be required to pay funds from moneys currently collected and budgeted by means of the economic development sales tax; and in the event that there are not sufficient funds for purposes of this Agreement, then the funding for this Agreement shall not be offset or charged against any other funds of ODC or City.

.2 Payments to be made to Company shall also require a written request and completion of all supporting documentation, as required herein. The payment request and documentation should be directed to the Office of the City Attorney, Odessa Development Corporation, 411 W. 8th Street, P. O. Box 4398, Odessa, Texas 79760.

.3 *A delay in filing the required documents within thirty (30) days could cause a delay in a timely audit and payment. It is estimated that it will take at least sixty (60) days to process payment once Company is found to be in compliance.*

.4 ODC shall have thirty (30) days to make payment after receipt of verification of compliance under this Agreement.

IV.
General Terms and Conditions

4.2 **Reports and Monitoring:** Company agrees to the following reporting and monitoring provisions:

.1 Company shall certify annually, in a form attached as Exhibit "A", to the ODC, that the Company is in compliance with each applicable term of the Agreement. Company shall also provide compliance documentation pursuant to Section 3.2 and any other reasonably necessary reports as requested.

.2 Company agrees that an audit shall be conducted by ODC on an annual basis by an independent third party with professional accounting qualifications, selected by ODC, to verify the annual status report and compliance with the Economic

Development Agreement. The auditors performing the audit shall have access to and the right to examine all records and accounts directly relating to this Contract and such other Company records and accounts as may be reasonably necessary to conduct and complete the audit and may make an onsite visit to the Company's accounting/human resource department to verify the information.

- .3 Company understands that audits will be completed on a quarterly basis. Company acknowledges that a delay in submitting the required documentation, or submitting incomplete documentation could cause the audit to be pushed back to the next quarter. Company understands that any discrepancies or notable findings in the completed audits must be approved by the Compliance Committee prior to being reviewed by the ODC Board.
- .4 Company agrees and acknowledges that all requirements of this section shall also apply to any wholly owned subsidiary of Company if Company chooses to report any full-time equivalent jobs of that wholly owned subsidiary to meet the requirements of this Agreement. Company further agrees and acknowledges that additional documentation may be required to prove to ODC that any reported full-time equivalent jobs of a wholly owned subsidiary of Company comply with all the requirements of this Agreement, and that a failure of Company to provide such documentation or to comply with the other requirements of this section shall result in those full-time equivalent jobs not being counted toward the requirements of this Agreement.

4.3 **Insurance:** Company agrees regarding existing improvements or with any required expenditure on the Property, or starting with the commencement of construction, to comply with the following insurance requirements:

- .1 Company shall, at its sole expense, obtain and maintain property insurance to protect the Property from "All Risks" of direct physical loss or damage for the entire term of this Agreement. (Company agrees that a Builder's Risk policy will be maintained during construction.)
- .2 Certificates of the policy referred to shall be deposited by the Company with the City Attorney of Odessa thirty (30) days prior to the renewal or anniversary date of the term of any such policy. Failure on the part of the Company to obtain a new policy before the date fixed for the cancellation of an existing policy, so that the insurance referred to shall be continuously in effect, will constitute a default on the part of the Company entitling the ODC, at its option, to terminate Company's rights under this Agreement and to recapture any unearned incentives.
- .3 In the event the building is damaged by fire or other insured cause and the Company chooses not to reconstruct the building and place it back in operation, ODC shall be entitled to receive funds equal to the amount to be recaptured by ODC under this Agreement and terminate this Agreement, in which event Company would not be entitled to receive any payments following such termination.
- .4 The Company shall also maintain such additional insurance as may be required in its judgment and experience to adequately protect itself in connection with the activities to be performed pursuant to this Agreement.

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

- .1 Company is a legal entity duly organized and existing in good standing and is duly authorized to do business in the State of Texas.
- .2 The execution of this Agreement has been duly authorized by its board of directors or an officer of the Company empowered to execute such agreements and bind the Company, and is not in contravention of any law, rule or regulations or of the provisions of Company's articles of incorporation or by-laws, or of any agreement or instrument to which Company is a party or by which it may be bound.
- .3 No material litigation or governmental proceeding is pending, or, to the knowledge of any of Company's officers, threatened against or affecting Company, that would prevent Company from performing the Agreement.
- .4 No certificate or statement delivered by Company to ODC in connection herewith, or in connection with any transaction contemplated hereby, contains any knowingly untrue statement or fails to state any fact necessary to keep the statements contained therein from being misleading.
- .5 There are no bankruptcy proceedings or other such proceedings currently pending or contemplated by Company.

4.5 **Suspension:** ODC, under the following circumstances, at its sole discretion, may suspend its obligations under this Agreement or may terminate this Agreement, and recapture any of the unearned consideration paid by ODC:

- .1 The insolvency of Company. "Insolvent" is defined to mean Company either has generally ceased to pay its debts in the ordinary course of business, has admitted in writing its inability to pay its debts as they become due, or is insolvent within the meaning of the federal bankruptcy law.
- .2 The appointment of a receiver of Company, or of all or any substantial part of its property, and the failure of such receiver to be discharged within sixty (60) days thereafter.
- .3 The adjudication of Company as a bankrupt.
- .4 The filing by Company of a petition to be adjudged a bankrupt, or a petition or answer seeking reorganization or admitting the material allegations of a petition filed against it in any bankruptcy or reorganization proceeding.

4.6 **Termination:** This Agreement may be terminated by mutual agreement of the parties or by either party, upon the failure of the other party to fulfill an obligation as set forth herein if the default is not cured within 30 days after written notice from the other party. In the event that the Agreement is terminated; Company shall be required to reimburse ODC on demand for all consideration paid to or on behalf of Company by ODC and not earned by

Company pursuant to this Agreement. The termination of this Agreement shall extinguish all rights, duties, obligations and liabilities of the ODC and Company under this Agreement, except all rights, duties, liabilities, and obligations accrued prior to such termination shall survive termination.

- .1 Company shall pay all ad valorem taxes due and owing by it to the City of Odessa and all other taxing authorities having jurisdiction. In addition, Company will pay all employment, income, franchise and all other taxes due and owing by it to all local, State and federal entities. With regard to ad valorem taxes, Company shall not appeal to court the value placed by the appraisal district on personal or real property, including improvements, and any appeal of valuation shall be limited to the appraisal review board.
- .2 Company agrees that, as to all of the programs and activities arising out of this Agreement, it shall comply fully with all applicable Civil Rights Acts and specifically will not discriminate against any person on the basis of race, color, national origin, sex or by reason of being disabled.

V.

Miscellaneous

- 5.1 **Entire Agreement:** This Agreement embodies the complete agreement of the parties hereto, superseding all oral or written, previous and contemporary agreements between the parties relating to matters in this Agreement; and, except as otherwise provided herein, this Agreement cannot be modified or amended without a written agreement of the parties.
- 5.2 **Legal Relationships:** No term or provision of this Agreement or act of Company in the performance of this Agreement shall be construed as making Company, or its employees, the agent, servant, employee or contractor of City of Odessa or ODC. The City's approval of the Agreement is required by the ODC Articles of Incorporation and Bylaws. The City is a third party beneficiary and not a direct party to this Agreement.
- 5.3 **Indemnity:** *Company shall indemnify and hold harmless the ODC and City of Odessa, their respective officers, employees, and agents from any and all claims, liabilities, losses, damages and expenses arising out of or in any manner connected with this Agreement, but only to the extent resulting from or caused by the negligence, gross negligence, willful or intentional act or omission of the Company, its officers, employees and agents, and including all expenses, attorney's fees and court costs which may be reasonably incurred by the City of Odessa or the ODC in litigation or in resisting any such claims or such causes of action.*
- 5.4 **Venue:** The obligations of the parties to this Agreement are performable in the City of Odessa which is located primarily in Ector County, Texas, and if legal action is necessary to enforce same, exclusive venue shall lie in Ector County, Texas.
- 5.5 **Legal Construction:** In case one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions hereof and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had

never been contained herein. There shall not be a higher duty or responsibility for any party because they draft the Agreement.

- 5.6 **Assignment:** This Agreement may only be assigned with the mutual consent of both parties. The Agreement may not be assigned to an entity that is exempt from ad valorem property taxes. In the event that the assignment by Company is to an entity that is exempt from ad valorem property taxes or not approved by ODC and City of Odessa, the total grant amount shall be repaid by Company to ODC within 60 days.
- 5.7 **Representation:** Company represents that no ODC board member, City of Odessa officer, or employee, has been compensated in any way with respect to this Agreement and its consideration. In no event will Company pay a fee to or in any other manner compensate any ODC board member, City of Odessa officer, or employee, in connection with the approval of this Agreement. A breach under this Article shall result in automatic termination under this Agreement by Company.
- 5.8 **Notices:** All notices, communications and reports required or permitted under the Agreement shall be personally delivered or mailed to the respective parties by depositing same in the United States mail, postage prepaid, at the address shown below. Mailed notices shall be deemed communicated as of five (5) days after mailing.

If intended for ODC to:

Norma Aguilar-Grimaldo
ODC Assistant Secretary
P.O. Box 4398
Odessa, Texas 79760-4398

If intended for COMPANY, to:

- 5.9 **Other Contracts:** It is understood by Company that the ODC has heretofore entered, and may hereafter enter into contracts with other companies or persons upon terms and conditions different from the terms and conditions of this Agreement, and Company has no objection whatsoever to any such other contracts.
- 5.10 **Settlements:** In the event difficulties occur in the performance of an economic development agreement (which do not rise to the level of substantially altering the contract), which require the consideration of settlement proposals, the ODC Board, at a regular ODC board meeting, can approve such settlement agreements by written agreement without City Council action.

VI.

Chapter 2264, Texas Government Code

- 6.1 **Purpose:** The purpose of this Article is to comply with H.B. 1196 (Chapter 2264, Texas Government Code) adopted in the 2007 Legislative Session by the State of Texas. The terms used are as defined in the statute.

6.2 **Conditions:** Company agrees to the following conditions:

- .1 Company certifies that the business, or a branch, division, or department of the business, does not and will not knowingly employ an undocumented worker. An undocumented worker means an individual who, at the time of employment, is not: (A) lawfully admitted for permanent residence to the United States; or (B) authorized under law to be employed in that manner in the United States.
- 2 Company agrees that ODC is an “economic development corporation” as defined in the statute and the benefit or assistance provided to Company is a “public subsidy” as defined in the statute.
- 3 If after receiving the public subsidy, the Company, or a branch, division, or department of the Company, is convicted of a violation under 8 U.S.C. Section 1324a(f), the Company shall repay the amount of the public subsidy with interest, not later than the 120th day after the date ODC notifies the Company of the violation. Interest shall begin to accrue on the day that the Company is given notice of the violation at a rate of one percent (1%) per month. Interest stops accruing on the date the Company mails or electronically transmits payment.
- 4 ODC may bring a civil action to recover any amounts owed to ODC under this Article and Chapter 2264, court costs and attorney fees.
- 5 Company is not liable for a violation of this Article and Chapter 2264 by a subsidiary, affiliate, or franchise of the Company, or by a person with whom the Company contracts.

Signature page to follow

Executed this the _____ day of _____, 2019.

ATTEST:

“ODC”
ODESSA DEVELOPMENT CORPORATION

Norma Aguilar-Grimaldo, City Secretary and
ODC Assistant Secretary

By: _____
Betsy Triplett-Hurt, Board President

“COMPANY”
PROJECT RECYCLE

By: _____
Name, Title

APPROVED AS TO FORM:

FOR APPROVAL ONLY: “CITY”
CITY OF ODESSA

Gary Landers, City Attorney or designee

By: _____
Michael Marrero, City Manager

(ODC)

STATE OF TEXAS §
COUNTY OF ECTOR §

This instrument was acknowledged before me on the _____ day of _____,
2019, by Betsy Triplett-Hurt, Board President, on behalf of the Odessa Development Corporation.

Notary Public in and for the State of Texas

(COMPANY)

STATE OF TEXAS §
COUNTY OF ECTOR §

This instrument was acknowledged before me on the _____ day of _____,
2019, by Name, Title, on behalf of Company.

Notary Public in and for the State of Texas

Exhibit "A"
To Economic Development Agreement

Annual Applicant's Economic Development Certification Form
For the Period ___/___/20___ thru ___/___/20___
Full Employment and Full Investment

Date: _____

Company Name: _____

Address: _____

Total Jobs for the Period: _____
(Required: _____)

Payroll for jobs for the Period: _____
(Required: \$ _____)

“Section 2. That the Status Reports shall include the following information: Every report must have wage and salary information sufficient to determine the calculations for the total payroll and the number and types of full time jobs required by the contract and certified to by the company, for the period and location in question. In each case, such records shall include the company's IRS 941 return and the payroll information, in detail enough to reconcile between the filed Status Report and the Company's general ledger accounting system.”

Investment: _____
(Required: \$ _____)

“Section 3. That in order to determine compliance with investment requirements for projects, company shall submit invoices and cancelled checks indicating vendor payment, Ector County Appraisal District valuations, contracts, or similar forms of documentation showing at least the minimum amount of investment required by the contract.”

I certify and covenant on behalf of the company that this report and attachments are true and correct.

Authorized Company Representative

Title: _____

Date: _____

Telephone: _____

Email: _____

Address: _____

Exhibit "A"
To Economic Development Agreement

Annual Applicant's Economic Development Reporting Form
For the Period ___/___/20___ thru ___/___/20___
Year ___

Date: _____

Company Name: _____

Address: _____

Total Jobs for the Period: _____
(Required: ____)

Payroll for jobs for the Period: _____
(Required: \$_____)

“Section 2. That the Status Reports shall include the following information: Every report must have wage and salary information sufficient to determine the calculations for the total payroll and the number and types of full time jobs required by the contract and certified to by the company, for the period and location in question. In each case, such records shall include the company's IRS 941 return and the payroll information, in detail enough to reconcile between the filed Status Report and the Company's general ledger accounting system.”

I certify that this report and attachments are true and correct.

Authorized Company Representative

Title: _____

Date: _____

Telephone: _____

Email: _____

Address: _____

County Ector
District Odessa
ROW CSJ # 2224-01-104
CCSJ # 2224-01-099
Federal Project#: _____
CFDA Title: Highway Planning & Construction
CFDA # 20.205
Federal Highway Administration
Not Research and Development

STATE OF TEXAS §

COUNTY OF TRAVIS §

AGREEMENT TO CONTRIBUTE RIGHT OF WAY FUNDS (FIXED PRICE)

THIS AGREEMENT is made by and between the State of Texas, acting through the Texas Department of Transportation, (the "**State**"), and the Odessa Development Corporation, acting through its duly authorized officials (the "**Local Government**").

WITNESSETH

WHEREAS, Texas Transportation Code §§ 201.103 and 222.052 establish that the State shall design, construct, and operate a system of highways in cooperation with local governments; and

WHEREAS, Texas Transportation Code, §§ 201.209 authorizes the State and a Local Government to enter into agreements in accordance with Texas Government Code, Chapter 791; and

WHEREAS, the State has deemed it necessary to make certain highway improvements on Highway No. SL 338 at East Yukon Rd and this section of highway improvements will necessitate the acquisition of certain right of way and the relocating and adjusting of utilities (the "Project"); and

WHEREAS, the Local Government requests that the State assume responsibility for acquisition of all necessary right of way and adjustment of utilities for this highway project; and

WHEREAS, the Local Government desires to enter into a fixed price joint participation agreement pursuant to 43 TAC §15.52 to contribute to the State funding participation as defined in 43 TAC § 15.55 for the cost of acquiring the right of way and relocating or adjusting utilities for the proper improvement of the State Highway System;

WHEREAS, the Governing Body of the Local Government has approved entering into this agreement by resolution dated _____, 20_, which is attached to and made a part of this agreement as Attachment A. A map showing the Project location appears in Attachment B, which is attached to and made a part of this agreement.

NOW THEREFORE, the State and the Local Government do agree as follows:

County Ector
District Odessa
ROW CSJ # 2224-01-104
CCSJ # 2224-01-099
Federal Project#: _____
CFDA Title: Highway Planning & Construction
CFDA # 20.205
Federal Highway Administration
Not Research and Development

AGREEMENT

1. Agreement Period

This agreement becomes effective when signed by the last party whose signing makes the agreement fully executed. This agreement shall remain in effect until the Project is completed or unless terminated as provided below.

2. Termination

This agreement shall remain in effect until the Project is completed and accepted by all parties, unless:

- A. The agreement is terminated in writing with the mutual consent of the parties;
- B. The agreement is terminated by one party because of a breach, in which case any cost incurred because of the breach shall be paid by the breaching party; or
- C. The Project is inactive for thirty-six (36) months or longer and no expenditures have been charged against federal funds, in which case the State may in its discretion terminate this agreement.

3. Local Project Sources and Uses of Funds

- A. The total estimated cost of the Project is shown in Attachment C, Project Budget Estimate and Payment Schedule, which is attached to and made a part of this agreement. The expected cash contributions from the Federal or State government, the Local Government, or other parties is shown in Attachment C. The Local Government shall pay to the State the amount shown in Attachment C as its required contribution of the total cost of the Project and shall transmit to the State with the return of this agreement, duly executed by the Local Government, a warrant or check for the amount and according to the payment schedule shown in Attachment C.
- B. The Local Government's fixed price contribution set forth in Attachment C is not subject to adjustment unless:
 1. site conditions change;
 2. work requested by the Local Government is ineligible for federal participation; or
 3. the adjustment is mutually agreed on by the State and the Local Government.
- C. If the Local Government will perform any work under this contract for which reimbursement will be provided by or through the State, the Local Government must complete training before federal spending authority is obligated. Training is complete when at least one individual who is working actively and directly on the Project successfully completes and receives a certificate for the course entitled *Local Government Project Procedures Qualification for the Texas Department of Transportation*. The Local Government shall provide the certificate of qualification to the State. The individual who receives the training certificate may be an employee of the Local Government or an employee of a firm that has been contracted by the Local

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Government to perform oversight of the Project. The State in its discretion may deny reimbursement if the Local Government has not designated a qualified individual to oversee the Project.

- D. Whenever funds are paid by the Local Government to the State under this agreement, the Local Government shall remit a warrant or check made payable to the "Texas Department of Transportation Trust Fund." The warrant or check shall be deposited by the State in an escrow account to be managed by the State. Funds in the escrow account may only be applied to this highway project.
- E. Notwithstanding that this is a fixed price agreement, the Local Government agrees that in the event any existing, future, or proposed Local Government ordinance, commissioner's court order, rule, policy, or other directive, including, but not limited to, outdoor advertising or storm water drainage facility requirements, is more restrictive than State or federal regulations, or any other locally proposed change, including, but not limited to, plats or re-plats, results in any increased costs to the State, then the Local Government will pay one hundred percent (100%) of all those increased costs, even if the applicable county qualifies as an Economically Disadvantaged County (EDC). The amount of the increased costs associated with the existing, future, or proposed Local Government ordinance, commissioner's court order, rule, policy, or other directive will be determined by the State at its sole discretion.
- F. If the Local Government is an EDC and if the State has approved adjustments to the standard financing arrangement, this agreement reflects those adjustments.
- G. If the Project has been approved for an "incremental payment" non-standard funding or payment arrangement under 43 TAC §15.52, the budget in Attachment C will clearly state the incremental payment schedule.

4. Real Property in Lieu of Monetary Payment

- A. Contributions of real property may be credited to the Local Government's funding obligation for the cost of right of way to be acquired for this project. Credit for all real property, other than property which is already dedicated or in use as a public road, contributed by the Local Government to the State shall be based on the property's fair market value established as of the effective date of this agreement. The fair market value shall not include increases or decreases in value caused by the project and should include the value of the land and improvements being conveyed, excluding any damages to the remainder. The amount of any credit for real property contributed for this project is clearly shown in Attachment C.
- B. The Local Government will provide to the State all documentation to support the determined fair market value of the donated property. This documentation shall include an appraisal of the property by a licensed appraiser approved by the State. The cost of appraisal will be the responsibility of the State. The State will review the submitted documentation and make a final determination of value; provided however, the State may perform any additional investigation deemed necessary, including supplemental appraisal work by State employees or employment of fee appraisers.

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- C. Credit shall be given only for property transferred at no cost to the State after the effective date of this agreement and the issuance of spending authority, and only for property which is necessary to complete this project, has title acceptable to the State, and is not contaminated with hazardous materials. Credit shall be in lieu of monetary contributions required to be paid to the State for the Local Government's funding share of the right of way to be acquired for this project. The total credit cannot exceed the Local Government's matching share of the right of way obligation under this agreement, and credits cannot be reimbursed in cash to the Local Government, applied to project phases other than right of way, nor used for other projects.
- D. In the event the Local Government's monetary contributions to the State for acquisition of right of way, when added to its real property credits, exceed the Local Government's matching share of the right of way obligation, there will be no refund to the Local Government of any portion of its contributed money.

5. Amendments

Amendments to this agreement due to changes in the character of the work, terms of the agreement, or responsibilities of the parties relating to the Project may be enacted through a mutually agreed upon, written supplemental agreement.

6. Notices

All notices to either party by the other required under this agreement shall be delivered personally or sent by certified or U.S. mail, postage prepaid, to the following addresses:

Local Government:	State:
City of Odessa Attn: Public Works 411 W. 8 th Street Odessa, Texas 79760 With copy to: Odessa Development Corporation Attn: Betsy Triplett-Hurt, Chair 411. W. 8 th Street Odessa, Texas 79760	Director of Right of Way Division Texas Department of Transportation 125 E. 11 th Street Austin, Texas 78701

All notices shall be deemed given on the date delivered or deposited in the mail, unless otherwise provided by this agreement. Either party may change the above address by sending written notice of the change to the other party. Either party may request in writing that notices shall be delivered personally or by certified U.S. mail and that request shall be honored and carried out by the other party.

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7. Remedies

This agreement shall not be considered as specifying the exclusive remedy for any agreement default, but all remedies existing at law and in equity may be availed of by either party to this agreement and shall be cumulative.

8. Legal Construction

If one or more of the provisions contained in this agreement shall for any reason be held invalid, illegal, or unenforceable in any respect, that invalidity, illegality, or unenforceability shall not affect any other provisions and this agreement shall be construed as if it did not contain the invalid, illegal, or unenforceable provision.

9. Responsibilities of the Parties

The State and the Local Government agree that neither party is an agent, servant, or employee of the other party and each party agrees it is responsible for its individual acts and deeds as well as the acts and deeds of its contractors, employees, representatives, and agents.

10. Compliance with Laws

The parties shall comply with all federal, state, and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals in any manner affecting the performance of this agreement. When required, the Local Government shall furnish the State with satisfactory proof of this compliance.

11. Sole Agreement

This agreement constitutes the sole and only agreement between the parties and supersedes any prior understandings or written or oral agreements respecting the subject matter of this agreement.

12. Ownership of Documents

Upon completion or termination of this agreement, all documents prepared by the State shall remain the property of the State. All data prepared under this agreement shall be made available to the State without restriction or limitation on their further use. All documents produced or approved or otherwise created by the Local Government shall be transmitted to the State in the form of photocopy reproduction on a monthly basis as required by the State. The originals shall remain the property of the Local Government. At the request of the State, the Local Government shall submit any information required by the State in the format directed by the State.

13. Inspection of Books and Records

The Local Government shall maintain all books, papers, accounting records and other documentation relating to costs incurred under this agreement and shall make such materials available to the State and, if federally funded, the Federal Highway Administration (FHWA) or their duly authorized representatives for review and inspection at

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its office during the contract period and for four (4) years from the date of completion of work defined under this agreement or until any impending litigation, or claims are resolved. Additionally, the State and FHWA and their duly authorized representatives shall have access to all the governmental records that are directly applicable to this agreement for the purpose of making audits, examinations, excerpts, and transcriptions.

14. State Auditor

The state auditor may conduct an audit or investigation of any entity receiving funds from the State directly under this agreement or indirectly through a subcontract under this agreement. Acceptance of funds directly under this agreement or indirectly through a subcontract under this agreement acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. An entity that is the subject of an audit or investigation must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit.

15. Procurement and Property Management Standards

The parties shall adhere to the procurement standards established in Title 49 CFR §18.36 and with the property management standard established in Title 49 CFR §18.32.

16. Civil Rights Compliance

The parties to this agreement shall comply with the regulations of the U.S. Department of Transportation as they relate to nondiscrimination (49 CFR Part 21 and 23 CFR Part 200), and Executive Order 11246 titled "Equal Employment Opportunity," as amended by Executive Order 11375 and supplemented in the Department of Labor Regulations (41 CFR Part 60).

17. Applicability of Federal Provisions

Articles 18 through 23 only apply if Federal funding is used in the acquisition of right of way or the adjustment of utilities.

18. Office of Management and Budget (OMB) Cost Principles

In order to be reimbursed with federal funds, the parties shall comply with the Cost Principles established in OMB Circular A-87 that specify that all reimbursed costs are allowable, reasonable, and allocable to the Project.

19. Disadvantaged Business Enterprise (DBE) Program Requirements

- A. The parties shall comply with the DBE Program requirements established in 49 CFR Part 26.
- B. The Local Government shall adopt, in its totality, the State's federally approved DBE program.

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- C. The Local Government shall set an appropriate DBE goal consistent with the State's DBE guidelines and in consideration of the local market, project size, and nature of the goods or services to be acquired. The Local Government shall have final decision-making authority regarding the DBE goal and shall be responsible for documenting its actions.
- D. The Local Government shall follow all other parts of the State's DBE program referenced in TxDOT Form 2395, Memorandum of Understanding Regarding the Adoption of the Texas Department of Transportation's Federally -Approved Disadvantaged Business Enterprise by Entity and attachments found at web address http://txdot.gov/business/business_outreach/mou.htm
- E. The Local Government shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any U.S. Department of Transportation (DOT)-assisted contract or in the administration of its DBE program or the requirements of 49 CFR Part 26. The Local Government shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure non-discrimination in award and administration of DOT-assisted contracts. The State's DBE program, as required by 49 CFR Part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the Local Government of its failure to carry out its approved program, the State may impose sanctions as provided for under 49 CFR Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 USC 1001 and the Program Fraud Civil Remedies Act of 1986 (31 USC 3801 et seq.).
- F. Each contract the Local Government signs with a contractor (and each subcontract the prime contractor signs with a sub-contractor) must include the following assurance: *The contractor, sub-recipient, or sub-contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this agreement, which may result in the termination of this agreement or such other remedy as the recipient deems appropriate.*

20. Debarment Certification

The parties are prohibited from making any award at any tier to any party that is debarred or suspended or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549, "Debarment and Suspension." By executing this agreement, the Local Government certifies that it is not currently debarred, suspended, or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549 and further certifies that it will not do business with any party that is currently debarred, suspended, or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549. The parties to this contract shall require any party to a subcontract or purchase order awarded under this contract to certify its eligibility to receive federal funds and, when requested by the State, to furnish a copy of the certification.

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21. Lobbying Certification

In executing this agreement, each signatory certifies to the best of that signatory's knowledge and belief, that:

- A. No federal appropriated funds have been paid or will be paid by or on behalf of the parties to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- B. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with federal contracts, grants, loans, or cooperative agreements, the signatory for the Local Government shall complete and submit the Federal Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- C. The parties shall require that the language of this certification shall be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and all sub-recipients shall certify and disclose accordingly. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Title 31 USC §1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each failure.

22. Federal Funding Accountability and Transparency Act Requirements

- A. Any recipient of funds under this agreement agrees to comply with the Federal Funding Accountability and Transparency Act (FFATA) and implementing regulations at 2 CFR Part 170, including Appendix A. This agreement is subject to the following award terms:
<http://www.gpo.gov/fdsys/pkg/FR-2010-09-14/pdf/2010-22705.Pdf> and
<http://www.gpo.gov/fdsys/pkg/FR-2010-09-14/pdf/2010-22706.pdf>.
- B. The Local Government agrees that it shall:
 - 1. Obtain and provide to the State a System for Award Management (SAM) number (Federal Acquisition Regulation, Part 4, Sub-part 4.11) if this award provides more than \$25,000 in Federal funding. The SAM number may be obtained by visiting the SAM website whose address is: <https://www.sam.gov/portal/public/SAM>
 - 2. Obtain and provide to the State a Data Universal Numbering System (DUNS) number, a unique nine-character number that allows Federal government to track the distribution of federal money. The DUNS may be requested free of charge for all businesses and entities required to do so by visiting the Dun & Bradstreet (D&B) on-line registration website <http://fedgov.dnb.com/webform>; and

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3. Report the total compensation and names of its top five (5) executives to the State if:
- i. More than 80% of annual gross revenues are from the Federal government, and those revenues are greater than \$25,000,000; and
 - ii. The compensation information is not already available through reporting to the U.S. Securities and Exchange Commission.

23. Single Audit Report

- A. The parties shall comply with the requirements of the Single Audit Act of 1984, P.L. 98-502, ensuring that the single audit report includes the coverage stipulated in OMB Circular A-133.
- B. If threshold expenditures of \$750,000 or more are met during the Local Government's fiscal year, the Local Government must submit a Single Audit Report and Management Letter (if applicable) to TxDOT's Audit Office, 125 E. 11th Street, Austin, TX 78701 or contact TxDOT's Audit Office at <http://txdot.gov/inside-txdot/office/audit/contact.html>
- C. If expenditures are less than \$750,000 during the Local Government's fiscal year, the Local Government must submit a statement to TxDOT's Audit Office as follows: "We did not meet the \$750,000 expenditure threshold and therefore, are not required to have a single audit performed for FY _____"
- D. For each year the project remains open for federal funding expenditures, the Local Government will be responsible for filing a report or statement as described above. The required annual filing shall extend throughout the life of the agreement, unless otherwise amended or the project has been formally closed out and no charges have been incurred within the current fiscal year.

24. Signatory Warranty

Each signatory warrants that the signatory has necessary authority to execute this agreement on behalf of the entity represented.

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THIS AGREEMENT IS EXECUTED by the State and the Local Government in duplicate.

THE LOCAL GOVERNMENT

Signature

Betsy Triplett-Hurt

Typed or Printed Name

Odessa Development Corporation, Chair

Title

Date

THE STATE OF TEXAS

Rose Wheeler
Contracts & Finance Director
Right of Way Division
Texas Department of Transportation

Date

County Ector
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ROW CSJ # 2224-01-104
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**ATTACHMENT A
RESOLUTION OR ORDINANCE**

RESOLUTION NO. ODC-2019R-___

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE ODESSA DEVELOPMENT CORPORATION APPROVING AN AGREEMENT TO CONTRIBUTE FUNDS AND DESIGNATION OF THE TEXAS DEPARTMENT OF TRANSPORTATION AS THE AGENCY RESPONSIBLE FOR THE DEVELOPMENT OF SOUTH LOOP 338 AT EAST YUKON ROAD AND APPROPRIATING FUNDS THEREFORE; AUTHORIZING THE EXECUTION OF ANY DOCUMENTS NECESSARY TO IMPLEMENT THIS RESOLUTION; AND DECLARING AN EFFECTIVE DATE.

WHEREAS, the Texas Department of Transportation, hereinafter called the ("State") and the Odessa Development Corporation, hereinafter called the ("ODC") propose to enter into a contractual agreement to acquire right of way, contribute funds, and adjust utilities for a highway project on SL 338; and

WHEREAS, the ODC requests that the State assume responsibility for acquisition of all necessary right of way and adjustment of utilities for said highway project; and

WHEREAS, the ODC desires to voluntarily contribute to the State funding participation, as defined in 43 TAC, §15.55, for the cost of acquiring said right of way and relocating or adjusting utilities for the proper improvement of the State Highway System; and

WHEREAS, the ODC previously authorized and reserved \$2,000,000.00 towards the expenditure of an infrastructure project, "RC-42d Overpass Yukon and Loop 338," pursuant to Resolution No. ODC-2017R-31; and

WHEREAS, the ODC intends to voluntarily contribute the sum of Sixty-Three Thousand, Six Hundred Seventy Dollars and No/100 cents (\$63,670.00) from the funds reserved for the specific "RC-42d Overpass Yukon and Loop 338" infrastructure project referenced above;

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

Section 1. That the Chairperson of the Odessa Development Corporation, in consideration of the foregoing premises and the mutual benefits to be derived therefrom, is hereby authorized and directed to execute and attest on behalf of the Odessa Development Corporation, an Agreement to Contribute Funds for the above referenced project;

Section 2. That the sum of Sixty Three Thousand, Six Hundred Seventy Dollars and No/100 cents (\$63,670.00), which represents ten percent (10%) of the estimated total cost of the right of way, is hereby authorized to be paid from funds appropriated for the "RC-42d Overpass Yukon and Loop 338" infrastructure project within Resolution No. ODC-2017R-31;

Section 3. That this resolution shall be effective at the time of its adoption.

The foregoing resolution was approved and adopted on the 11th day of July, A.D., 2019, by the following vote:

Gene Collins	_____
Melanie Hollmann	_____
Betsy Triplett-Hurt	_____
Ted Tuminowski	_____
Tim Edgmon	_____

Approved the 11th day of July, A.D., 2019.

APPROVED AS TO FORM:

Atasi Bhavsar, Sr. Assistant City Attorney as
Attorney for ODC Board

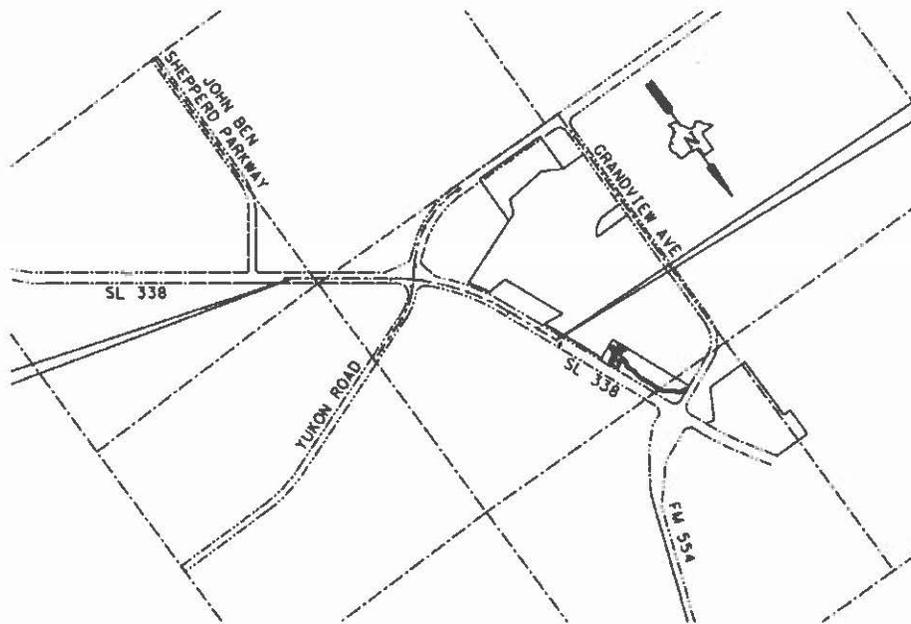
Betsy Triplett-Hurt, President

ATTEST:

Norma Aguilar-Grimaldo, City Secretary as
Assistant Secretary for ODC Board

County Ector
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ATTACHMENT B LOCATION MAP SHOWING PROJECT



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ATTACHMENT C PROJECT BUDGET ESTIMATE AND PAYMENT SCHEDULE

Standard Agreement to Contribute State Performs Work Attachment C

Description	Total Estimated Cost	Participation				Total % (should be 100%)
		State		Local		
		%	Cost	%	Cost	
Right of Way Acquisition	\$134,870.00	90.0%	\$121,383.00	10.0%	\$13,487.00	100.0%
Reimbursable Utility Adjustments	\$501,830.00	90.0%	\$451,647.00	10.0%	\$50,183.00	100.0%
Joint Bid - Reimbursable Utility Adjustments						0.0%
TOTAL	\$636,700.00		\$573,030.00		\$63,670.00	

Fixed Amount

Except as otherwise provided in the Agreement, the fixed amount of Local Government participation will be that amount provided above.

STATE OF TEXAS §

COUNTY OF TRAVIS §

AGREEMENT TO ACCEPT DONATION

THIS AGREEMENT is entered between the State of Texas and the Donor, shown below as Contracting Parties, under Government Code, Chapter 575.

I. Contracting Parties:

The State: The Texas Department of Transportation
The Donor: "Odessa Development Corporation"

II. Background:

Texas Transportation Code, §201.206, authorizes the State to accept, from any source, a donation or contribution in any form, including realty, personalty, money, materials, or services, for the purpose of carrying out its functions and duties.

Texas Government Code, Chapter 575, requires the governing board of a state agency, not later than the 90th day after a donation valued at \$500 or more is accepted, to acknowledge the acceptance of the donation by majority vote at an open meeting and prohibits a state agency from accepting a donation from a person who is a party to a contested case before the agency until the 30th day after the date the decision in the case becomes final.

To provide guidance on when a donation may be accepted by the State, the Texas Transportation Commission has adopted rules relating to State acceptance of donations, codified as 43 TAC, §§1.500-1.506.

Acceptance of a donation must be approved by the State's Executive Director or his designee. The State's Executive Director has authorized the State to accept the donation. The State and the Donor must execute a donation agreement if the donation is valued at more than \$1,500.00.

III. Agreement:

The Donor agrees to donate and the State agrees to accept the fixed sum of \$1,936,330 (one million, nine-hundred and thirty-six thousand, three-hundred and thirty-three dollars and 00/100 cents) to be used towards the State's cost of improvements consisting of constructing a new interchange at the intersection of Yukon and Loop 338 in Ector County, Texas. The project is generally located as described in Exhibit A, Project Location Map, which is attached to this agreement. The funds can be used at any phase of the project development at the State's discretion under project (CSJ# 2224-01-099). At least sixty (60) days prior to the date set for receipt of the construction bids, the Donor shall remit its financial share.

All monetary donations shall be remitted by check or warrant made payable to the "Texas Department of Transportation Trust Fund" and mailed or delivered to the Texas Department of Transportation at the State address provided in VII. Notices below.

IV. Representations and Warranties:

- A. The Donor represents and warrants that it has unrestricted use of the property and items described above and that by signing this agreement it relinquishes and transfers all rights and interest in and use to the State.
- B. The State does not approve and is not responsible for any representations made by the Donor for tax purposes.
- C. The Donor acknowledges that the State will act in reliance on and in consideration of the promises made by the Donor in this agreement.

V. Donation Accepted for Limited Purposes:

- A. Acceptance of the donation does not bind the State to a course of action or promise of performance except as specifically described in III. Agreement above.
- B. No benefit will accrue to the Donor as a result of the State's acceptance of the donation except as specifically described in III. Agreement above.

VI. Public Information:

- A. This agreement is public information and will be furnished to a requestor under the Public Information Act, Government Code, Chapter 552.
- B. The Donor is required to make any information created or exchanged with the state pursuant to this contract, and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no additional charge to the state.

VII. Notices:

All notices to either party by the other party will be delivered personally or sent by U.S. Mail, postage prepaid, to the following respective addresses:

Donor	State
"Odessa Development Corporation" Attn: Betsy Triplett Hurt, President 411 W. 8th Street P.O. Box 4398 Odessa, TX 79760	Texas Department of Transportation Attn: District Engineer 3901 E Hwy. 80 Odessa, TX, 79761

The notice shall be received by the addressee on the date delivered or deposited in the mail, unless otherwise provided. Either party may change the above address by sending written notice of such change to the other in the manner provided.

The State and the Donor have executed duplicate counterparts of this agreement.

THE STATE

Executed for the Executive Director and approved by the Texas Transportation Commission for the purpose and effect of carrying out the orders, established policies, or work programs approved and authorized by the Texas Transportation Commission.

THE DONOR

The undersigned signatory warrants that he or she is an official representative of the organization making the donation described and is authorized to make the donation and to enter into this agreement on behalf of the organization.

Texas Department of Transportation

“Odessa Development Corporation”

BY: _____
AUTHORIZED SIGNATURE

Kenneth Stewart
Director of Contract Services

TYPED OR PRINTED NAME AND TITLE

DATE: _____

BY: _____
AUTHORIZED SIGNATURE

Betsy Triplett Hurt
President

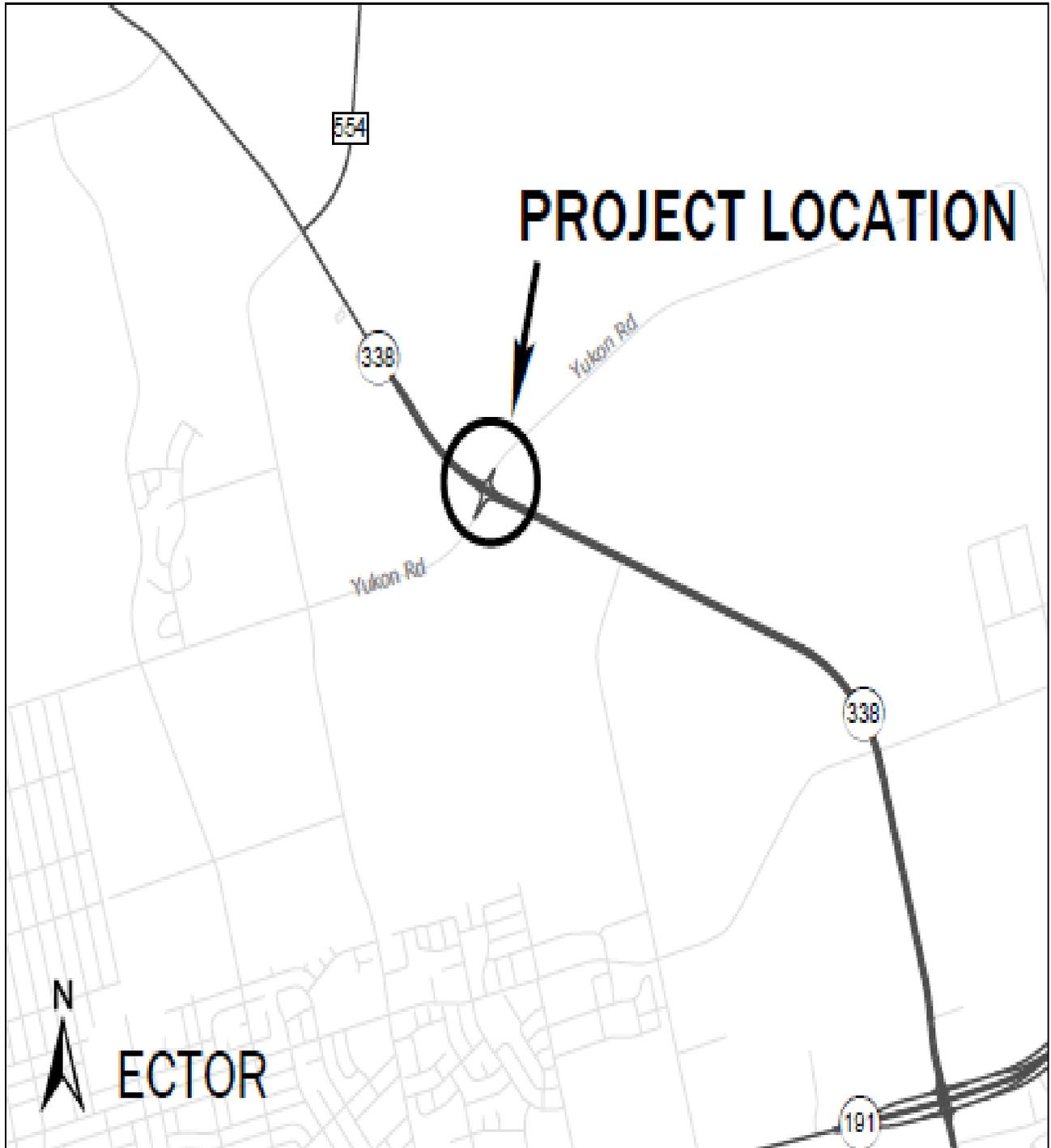
TYPED OR PRINTED NAME AND TITLE

DATE: _____

EXHIBITS:
A – Project Location Map

DRAFT

**EXHIBIT A
PROJECT LOCATION MAP**



RESOLUTION NO. ODC-2019R-___

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE ODESSA DEVELOPMENT CORPORATION APPROVING AN AGREEMENT TO ACCEPT DONATION BETWEEN THE TEXAS DEPARTMENT OF TRANSPORTATION AND ODESSA DEVELOPMENT CORPORATION FOR A PROJECT ON SOUTH LOOP 338 AT EAST YUKON ROAD; AUTHORIZING THE ODC CHAIR TO EXECUTE ANY DOCUMENTS NECESSARY TO IMPLEMENT THIS RESOLUTION; AND DECLARING AN EFFECTIVE DATE.

WHEREAS, the Texas Department of Transportation, hereinafter called the ("State") and the Odessa Development Corporation, hereinafter called the ("ODC") desire to enter into an "Agreement To Donate" for a highway improvements project at the intersection of Yukon and Loop 338 in Ector County, Texas;

WHEREAS, the ODC previously authorized and reserved \$2,000,000.00 towards the expenditure of an infrastructure project, "RC-42d Overpass Yukon and Loop 338," pursuant to Resolution No. ODC-2017R-31; and

WHEREAS, the ODC desires to voluntarily contribute to the State, the fixed sum of \$1,936,330.00 (one million, nine-hundred and thirty-six thousand, three-hundred and thirty-three dollars and 00/100 cents) to be used for the highway improvements project stated herein;

WHEREAS, Texas Government Code, Chapter 575, requires the State and the ODC to execute a donation agreement if the donation is valued at more than \$1,500.00;

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

Section 1. That the Chairperson of the Odessa Development Corporation, in consideration of the foregoing premises and the mutual benefits to be derived therefrom, is hereby authorized and directed to execute and attest on behalf of the Odessa Development Corporation, an Agreement to Accept Donation for the above referenced project;

Section 2. That the sum of \$1,936,330.00 (one million, nine-hundred and thirty-six thousand, three-hundred and thirty-three dollars and 00/100 cents) to be used towards the State's cost of improvements consisting of constructing a new interchange at the intersection of Yukon and Loop 338 in Ector County, Texas, is hereby authorized to be paid from funds appropriated for the "RC-42d Overpass Yukon and Loop 338" infrastructure project within Resolution No. ODC-2017R-31;

Section 3. That this resolution shall be effective at the time of its adoption.

The foregoing resolution was approved and adopted on the 11th day of July, A.D., 2019, by the following vote:

Gene Collins	_____
Melanie Hollmann	_____
Betsy Triplett-Hurt	_____
Ted Tuminowski	_____
Tim Edgmon	_____

Approved the 11th day of July, A.D., 2019.

APPROVED AS TO FORM:

Atasi Bhavsar, Sr. Assistant City Attorney as
Attorney for ODC Board

Betsy Triplett-Hurt, President

ATTEST:

Norma Aguilar-Grimaldo, City Secretary as
Assistant Secretary for ODC Board

DRAFT – SUBJECT TO CHANGE

RESOLUTION NO. ODC-2019R-____

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE ODESSA DEVELOPMENT CORPORATION IN SUPPORT OF THE 2020-2029 UNIFIED TRANSPORTATION PLAN (UTP); AUTHORIZING THE ODC CHAIR TO EXECUTE ANY DOCUMENTS NECESSARY TO IMPLEMENT THIS RESOLUTION; AND DECLARING AN EFFECTIVE DATE.

WHEREAS, the Permian Basin is seeing unprecedented economic growth, and nowhere is that more apparent than the 12 county TXDOT Odessa District located at the very heart of the Permian Basin; and

WHEREAS, from 2011 to 2018, the Odessa District produced 25% of all state severance taxes, and the oil and gas production that go with it. Even more impressive, during the last five years (2014-2018), that percentage grew from 20.7% to 38.2%; and

WHEREAS, the Odessa District has also seen impressive growth in gross sales and state sales tax generation. In 2017, the 1.6% of our state's population who reside here generated 3.23% of all state sales tax. In the first 2 reported quarters of 2018, that number grew to just over 4%; and

WHEREAS, Midland and Odessa serve as the population and metropolitan hub of the Odessa District and the largest Combined Statistical Area in the Permian Basin; and

WHEREAS, in 2017, Midland and Odessa, alone, generated \$100 million more in state sales tax than Abilene, Amarillo, Lubbock, and San Angelo, combined, and Midland and Odessa generated \$200 million more than El Paso; and

WHEREAS, over the last 10 years, hotel/motel revenue has increased by over \$200 million annually in the Odessa District and grown from 1.7% of the state's total hotel/motel revenue to nearly 3%. Midland and Odessa, combined, generated revenue on par with places like Corpus Christi and Galveston; and

WHEREAS, over the period of 2017 to 2018, Midland County had the largest percentage population growth in the nation at 4.3% and Ector County was in the top 5 at 3.2%. That's a total of 12,334 new people living in Midland-Odessa; and

WHEREAS, Midland County led the entire state in vehicle registration increases from 2017 to 2018 and together, Midland and Ector Counties accounted for over 25,000 additional vehicle registrations, and the 12 counties of the Odessa District accounted for 31% of the growth in registered vehicles in Texas from 2017 to 2018; and

WHEREAS, Midland ranked 7th and Ector ranked 12th in employment gains, and 7th and 10th for labor force gains from 2017 to 2018. That's a combined increase of 19,415 jobs in Midland and Odessa, and 17,909 new workers. Those gains represent nearly 7% of labor and employment gains in the State of Texas. The labor increase represents 5,600 more workers in the Midland-Odessa area than the population increase estimated by the US Census; and

WHEREAS, the Midland-Odessa area commuting workforce represents over 29 states and 24 of the 25 MSA's in Texas, and that 75% of that commuting workforce resides over 100 miles outside the boundaries of the Odessa District; and

WHEREAS, the lack of infrastructure has negatively affected the quality of life in the Permian Basin and resulted in a devaluation of West Texas Intermediate (WTI). That devaluation has cost the State of Texas \$1.3 billion in state severance revenue during the current biennium, and in just the last 3 years (2016-2018) crashes in the Odessa District are up 67% and fatalities are up 97%, while commercial motor vehicle (CMV) related crashes are up 160% and CMV related fatalities are up 122%; and

DRAFT – SUBJECT TO CHANGE

WHEREAS, in 2018, the Odessa District with 1.6% of the state population (US Census) was responsible for nearly 15% of all statewide CMV fatal crashes; and

WHEREAS, Midland and Odessa through their respective cities and development corporations have leveraged \$30 million in local tax dollars to facilitate transportation improvements to the state highway system by the Texas Department of Transportation in an effort to improve safety and capacity, but our infrastructure needs continue to fall behind due to the rapid growth in economic activity and population and labor force;

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

Section 1. That the Odessa Development Corporation supports the proposed 2020-2029 UTP and recommended funding stream dedicated to addressing issues in the Permian Basin and would respectfully request that the Transportation Commission approve the 2020 UTP revision with the recommended funding for the Permian Basin at their August meeting.

Section 2. We would request the department to provide additional planning and development resources in the Odessa District to accelerate critical projects like:

- Grade Separated Interchanges and development of Loop 338 in Odessa
- Development of the US 385 corridor from Odessa to I-10, the SH 302 Corridor from Odessa to Kermit, and the SH 349 Corridor from Midland to Rankin
- Improvements to Loop 250 and State Highway 191 area in Midland
- Completion of the Craddick Reliever Route and begin planning the extension of that route to provide another critical connection between Midland and Odessa
- Necessary improvements to Interstate 20 to address mobility and capacity issues..

Section 3. That this resolution shall be effective at the time of its adoption.

The foregoing resolution was approved and adopted on the 18th day of July, A.D., 2019, by the following vote:

Gene Collins	_____
Melanie Hollmann	_____
Betsy Triplett-Hurt	_____
Ted Tuminowski	_____
Tim Edgmon	_____

Approved the 18th day of July, A.D., 2019.

Betsy Triplett-Hurt, President

APPROVED AS TO FORM:

ATTEST:

Gary Landers, Interim City Attorney as
Attorney for ODC Board

Norma Aguilar-Grimaldo, City Secretary as
Assistant Secretary for ODC Board

Christina M. Buhnerkempe

From: James Beauchamp <james@motran.org>
Sent: Tuesday, July 09, 2019 1:00 PM
To: Christina M. Buhnerkempe; ODC Betsy T-H; Betsy Hurt
Subject: ODC Meeting July 18, 2019
Attachments: Midland and Odessa UTP Revision Resolution.docx

Betsy:

During the recent UTP workshop, TXDOT agreed to program \$600 million in additional funding over the next 2 years for the Permian Basin, through a new funding stream (like what was done for Texas Clear Lanes). This funding stream could also be refunded every two years during future UTP revisions to extend the program.

While we are still advocating for some of the important Midland-Odessa projects to be included, the end result is that additional funding is good, and this tops the \$525 million we requested (although our request was just outside of the interstate).

The support for this new funding stream seems really solid but I have heard some grumbling behind the scenes, so we need to show really strong support out here for that additional funding/new dedicated funding stream. We will have another meeting of the Permian Basin Coalition on July 25th to help with that, but I also needed to see if I could get a resolution of support from ODC, as well.

Both cities have agreed to pass the measure, along with both chambers of commerce. (Midland and Ector Counties have already passed it)

Ideally, we would need this during the public comment period which runs from July 12 through August 12th. I already know one of the resolutions I will need will be after that, but it will still be before the August 29th Commission meeting, so I can work with that.

I have attached a sample resolution for your review. I don't know if there is enough time to put this on the agenda for the July 18th meeting or if it would need to be in August, but either way, I would really appreciate your consideration of the resolution and helping show big support here in the Permian Basin for this initiative.

James

ODESSA DEVELOPMENT CORPORATION
FY 2019-20 Proposed Revenues and Expenditures Budget Summary
As of July 12, 2019

	FY 2014-2015 Actual	FY 2015-2016 Actual	FY 2016-17 Actual	FY 2017-18 Actual	FY 2018-19 Estimated Actual	FY 2018-2019 Budget	FY2019-2020 Requested Budget	Change from Prev. Year
Revenues								
Sales Tax	\$ 9,329,338	\$ 7,679,466	\$ 9,616,257	\$ 13,566,694	14,000,000	\$ 12,000,000	\$ 12,000,000	1
Incentives Returned	-	-	-	-	-	-	-	
Investment Income	145,421	224,602	658,152	849,667	800,000	500,000	500,000	1
Gain (Loss)			(286,539)	(217,090)	(200,000)	(200,000)	(200,000)	1
Total Revenue	<u>9,474,759</u>	<u>7,904,068</u>	<u>9,987,870</u>	<u>14,199,271</u>	<u>14,600,000</u>	<u>12,300,000</u>	<u>12,300,000</u>	
Expenditures								
Audit & Compliance Services	23,000	24,200	27,388	26,600	34,050	30,000	35,000	2
Bank Services	3,791	6,490	7,178	6,424	6,000	6,000	6,000	2
City of Odessa	75,115	123,597	229,221	229,221	205,349	205,349	205,349	3
Contingencies	44,549	-	-	-	-	100,000	100,000	2
Insurance			2,212	11,058	13,593	15,000	15,000	2
Special Services	34,170	5,000	382,074	50,477	56,199	50,000	75,000	4
Supplies and Materials	517	75	1,332	2,165	1,500	1,500	1,500	2
Transportation and Memberships	-	-	-	-	-	-	-	
Capital Outlay/Data Processing Equipment	-	-	-	3,501	-	-	-	
Contracted Economic Development Services								
Odessa Chamber of Commerce	729,833	755,777	800,000	766,607	807,341	836,277	852,280	5
Odessa Hispanic Chamber of Commerce	115,150	95,181	132,994	92,080	-	-	142,030	6
Odessa Hispanic Chamber of Commerce-MI		157,901	62,679	59,784	-	-	-	
MOTRAN	77,324	83,756	85,025	89,656	170,000	170,000	142,500	7
UTPB-SBDC	-	47,500	47,500	97,065	111,294	111,294	98,794	8
Promotional								
Marketing - CVA	348,597	248,252	682,545	630,040	674,900	674,900	645,865	9
UTPB-SBDC/Entrepreneurial Contest	-	-	-	260,000	381,720	381,720	572,632	10
Facade	-	-	-	20,000	49,840	250,000	250,000	11
Sub Total of Expenditures	<u>1,452,046</u>	<u>1,547,729</u>	<u>2,460,148</u>	<u>2,344,678</u>	<u>2,511,786</u>	<u>2,832,040</u>	<u>3,141,950</u>	
Business Incentives	2,383,020	12,691,423	4,686,501	2,543,543	8,537,627	44,000,000	52,000,000	13
Infrastructure Grants	-	-	-	-	89,884	-	100,000	12
Total Expenditures	<u>3,835,066</u>	<u>14,239,152</u>	<u>7,146,649</u>	<u>4,888,221</u>	<u>11,139,297</u>	<u>46,832,040</u>	<u>55,241,950</u>	
Revenues Over (Under) Expenditures	5,639,693	(6,335,084)	2,841,221	9,311,050	3,460,703	(34,532,040)	(42,941,950)	
Prior Period Adjustment	-	1,857,456	-	-	-	-	-	
Beginning Fund Balance	<u>33,395,221</u>	<u>39,034,914</u>	<u>34,557,286</u>	<u>37,398,507</u>	<u>46,709,557</u>	<u>40,877,332</u>	<u>50,170,260</u>	
Ending Fund Balance	<u>\$ 39,034,914</u>	<u>\$ 34,557,286</u>	<u>\$ 37,398,507</u>	<u>\$ 46,709,557</u>	<u>50,170,260</u>	<u>\$ 6,345,292</u>	<u>\$ 7,228,310</u>	

A

Notes/Assumptions:

1. Sales tax revenue and other revenue items will remain the same as the prior year budget
2. No change - expenditures should hold about the same with an slight increase for Audit/Compliance services
3. The City will utilize the third party consultant every other year to determine this administrative charge
4. Special Services - could be used for the Perryman Group to do an economic impact study surrounding UTPB
5. Increase in request due to increase in operating costs like personnel, insurance, professional development, and prospect development
6. OHCC's plan to partner w/ECISD for teachers-host seminars, job fair, leadership programs,etc
7. Decrease of \$75,000 for special project in prior year-budget covers personnel costs,marketing,etc
8. Same budget as prior year without the \$12,500 optional educational component
9. Reflects a small decrease in the request this year - appears to not include monies for Business Challenge
10. \$500,000 in awards, \$37,750 in marketing, \$34,882 admin. Fees - staff recommends the awards not be increased until further review of the results of the 2018-19 Business Challenge
11. Amount to be considered for Facade Grants
12. Consider segregating the infrastructure grants from the business incentives

13. Subject to change - Business Incentives are traditionally budgeted at maximum amount - amounts reserved in fund balance will be charged to the business incentive expense line item at the time it is paid out

2020 Business Incentives Budget		\$	52,000,000	A
Reserves - Incentives Grants Awarded	\$	20,622,177		
2019 Incentive Grants to be Paid		8,390,627		
Remaining Reserves to be paid thru 2022			12,231,550	
Assigned - TXDOT			11,500,000	
Balance of 2020 Business Incentive Budget Available for New Incentives Agreements		\$	28,268,450	

Promotional limit (10% of revenue for 2019-2020)	1,200,000
Marketing-CVA	(645,865)
UTPB-SBDC/Entrepreneurial Contest	(572,632)
Façade Grant program	(250,000)
	<u>(268,497)</u>
Rollover available	801,096
Remaining balance after budget	<u>532,599</u>

this is subject to change based on actual results of spending for the current fiscal year we are in now-currently based on what was budgeted

STATE OF TEXAS §
COUNTY OF ECTOR §

ECONOMIC DEVELOPMENT CONTRACTOR AGREEMENT
ECONOMIC DEVELOPMENT DEPARTMENT/ODESSA CHAMBER OF COMMERCE

WHEREAS, the Odessa Development Corporation, a type A Taxing Corporation, (hereinafter referred to as “ODC”) with City Council approval, has adopted a General Development Plan and has received Proposals to accomplish the action steps described in the General Development Plan; and

WHEREAS, Odessa Chamber of Commerce Economic Development Department, (hereinafter referred to as “CONTRACTOR”) submitted a Proposal to the Odessa Development Corporation for such economic development purposes and the funds for such proposal have been appropriated for the fiscal year 2019-2020; and

WHEREAS, the primary purpose of Contractor is to provide economic development services, and to assist ODC in the expansion and creation of new Economic Development in the area; and

WHEREAS, this is an eligible cost as defined in Section 504.102, Texas Local Government Code; and

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

NOW, THEREFORE, ODC and CONTRACTOR, do hereby agree as follows:

Section 1. Economic Development Program

1.1 **General:** CONTRACTOR shall provide the economic development services as provided herein and in Exhibits “A” (budget) and “B” (description) which documents are incorporated herein by reference. Such program shall be referred to herein as the “Economic Development Program”. CONTRACTOR shall comply with the Economic Development Corporation Act, Chapters 501 and 504, of the Texas Local Government Code.

ODC through its Board may request, from time to time, changes in the scope or focus of the activities conducted or to be conducted by CONTRACTOR pursuant to the Agreement. Any change which varies significantly from the scope of services set out in Article II and would entail a significant increase in cost or expense to CONTRACTOR shall be mutually agreed on by CONTRACTOR, the ODC Board of Directors and City Council.

1.2 Enterprise Zone Program: CONTRACTOR, through its Director of Economic Development, agrees to provide the following management services with regard to Enterprise Zones created in the City of Odessa:

- a. Day-to-day supervision and control of all Enterprise zone activities including:
 - 1) the marketing of the Enterprise Zone to business;
 - 2) the creation and processing of applications for economic incentives;
 - 3) negotiations with businesses on total packages of economic incentives;
 - 4) the preparation of reports on activities for the Texas Department of Commerce;
 - 5) the coordination of Enterprise Zone programs with governmental entities and the Texas Governor's Office;
 - 6) the establishment of an information center for the Enterprise zone.
- b. Management expertise and advice given to the Odessa Enterprise Zone Committee regarding Zone activities and applications for economic incentives.
- c. Presentation of reports and recommendations to ODC and City Council.
- d. Other management services as requested by ODC or City Council related to Enterprise Zones.

Section 2. Funding

ODC shall pay to the CONTRACTOR the sum of _____ Dollars (\$___) to be used solely for the purpose of conducting the Economic Development Program. ODC shall dispense funds to the CONTRACTOR by paying one quarter of the total on or before October 10, January 10, April 10, and July 10.

*****It is understood and agreed that CONTRACTOR will obtain the balance of funds from other sources. CONTRACTOR may perform services that are not eligible for expenditure of funds by ODC but the percentage of Economic Development Corporation funds received must not exceed the percentage of eligible services performed by CONTRACTOR.

Section 3. In-Kind Services

CONTRACTOR shall contribute certain in-kind services to the Economic Development Program. For the purposes of this Agreement, "in-kind services" shall mean the services or use of CONTRACTOR officers, employees, buildings, equipment or other facilities that are not acquired, designated and used exclusively in connection with the Economic Development Program. No charges for in-kind services shall be made against the account or funds mentioned in this

agreement. Reimbursement for any such in-kind services may be spent only if provided for in the attached exhibits.

Section 4. Reporting Requirements

4.1 Budget and Financial Reporting:

- a. CONTRACTOR shall comply with the approved annual contractor budget during the term of this Agreement, a copy of which is attached as Exhibit "A."
- b. On or before the 25th day of each month during the term of the Agreement, CONTRACTOR shall make and send to each member of the ODC Board of Directors, the City Council, ODC Treasurer, City Attorney, and file with the City Secretary, a report showing an accounting of all funds received and expended under this Agreement in relation to the authorized budget items shown in Exhibit "A." during the preceding month. Said report shall also show the cumulative expenses and revenues for the preceding month together with all prior months covered by this Agreement. Failure to submit this report within 15 days of its due date might result in the termination of all payments by ODC until all of the reporting requirements have been brought into compliance.
- c. CONTRACTOR shall maintain complete and accurate financial records of each expenditure of Economic Development Program funds made by it. The general method of financial record keeping and reporting proposed by the CONTRACTOR to be used in complying with the requirements of this Agreement shall be submitted to and approved by the ODC Board of Directors. The sufficiency of detail of any activity or financial report required by this Agreement shall be determined by the ODC Board of Directors. All of the CONTRACTOR'S records pertaining to and related with the activities and funds under the Economic Development Program shall be available for inspection by the ODC Board of Directors, City Council, the Treasurer of ODC, designated auditor and City Manager of the City of Odessa at any time during CONTRACTOR'S normal office hours. The revenue provided by ODC under this Agreement shall be maintained by CONTRACTOR in a separate account established for that purpose and shall not be co-mingled with any other money or maintained in any other account.

4.2 Activity Reporting:

- a. CONTRACTOR shall provide a monthly activity report in writing to ODC, to confirm that the public purpose for which the funds are made available is being accomplished and shall present a verbal summary at ODC's monthly meetings.
- b. Where determined necessary by the CONTRACTOR in order to avoid prejudicing the opportunity to attract new and additional industries to Odessa or to accomplish the expansion of existing industries, it shall be acceptable to use a coding system in connection with the records and reports required under this Agreement in order to temporarily keep confidential the identity of such industrial enterprises.
- c. In this connection, however, details and specific information regarding all activities under the Economic Development Program, including the identity of all industrial enterprises involved, shall be maintained by the CONTRACTOR and shall be available to the ODC's and City of Odessa's auditors in performing the audit of the funds involved in the Economic Development Program hereinafter required.
- d. CONTRACTOR will provide a monthly activity report in writing to the ODC and City's designated contact person who shall then ensure distribution to ODC Board, City Council, City Manager, City Attorney, City Secretary and Treasurer for ODC that will provide a current status report on all projects. It will track each project from the time it is determined to be a legitimate project until it is completed or written off. This report will provide hard data and provide the necessary information to ODC so it can track each project.
- e. CONTRACTOR shall also report the benchmark information referenced in Exhibit "B".

4.3 Informal Reporting:

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

- 1) When decisions need to be made in regard to negotiations or strategy, CONTRACTOR will meet with those persons designated by ODC to develop a plan.
- 2) CONTRACTOR will meet with the ODC whenever necessary and also develop and distribute, in writing or by oral presentation, reports when needed over and above those required in this Article.
- 3) As economic development opportunities develop or change in status, CONTRACTOR will keep those officials informed that are designated by the City of Odessa and ODC by telephone, fax, mail or e-mail.

Section 5. Other Requirements

5.1 **Audit:** In addition to the required reporting covering CONTRACTOR'S activities and expenditures under this Agreement, a certified audit of the funds and activities of such Economic Development Program shall be made annually in a manner and with the cost allocation between ODC and CONTRACTOR as determined by mutual consent of the parties. The auditors performing the above-described audit shall have access to and the right to examine all records and accounts directly related to the Economic Development Program and such other CONTRACTOR records and accounts as may be reasonably necessary to conduct and complete its audit of the Economic Development Program funds.

5.2 **Diversity:** ODC and City of Odessa strongly encourage the voluntary implementation of a Diversity Program whose goal it is to breakdown all barriers between people. Such a program should be designed to empower CONTRACTOR'S employees and organizational members to create an environment that utilizes the full potential of the Citizens of our Community. ODC or City of Odessa may request to review the program and/or practices to determine whether they are consistent with ODC and City objectives. Future funding may be conditional upon such a program.

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

5.4 **Indemnity:** *CONTRACTOR agrees to and shall indemnify and hold harmless ODC, to the extent permitted at law, the City of Odessa, their officials, officers, agents, and employees from and against any and all claims, losses, damages, causes of action, suits, and liability of every kind, including all expenses of litigation, court costs, and attorney's fees for injury to or death of any person, or for damage to any property arising out of or in connection with*

CONTRACTOR 's operation or the expenditure of funds authorized by this Agreement, or any services provided by CONTRACTOR funded or partially funded by this Agreement. Such indemnification shall apply whether the claims, losses, damages, causes of action, suits or liability arise from the concurring, but not the sole, negligence of ODC, the City of Odessa, their officials, officers, agents or employees.

5.5 Drug Free Workplace: CONTRACTOR shall comply with the Drug Free Workplace Act of 1988 including any amendments and administrative regulations, if required by federal law. If not required, ODC strongly recommends compliance with such law on a voluntary basis by CONTRACTOR approving a ban on the use and possession of illegal drugs in the workplace of CONTRACTOR. Such policy should also include some mechanism for enforcement of the prohibition. In future agreements, ODC may require the adoption of a drug free workplace policy, which includes drug testing, as a condition for the payment by ODC of public funds.

Section 6. Miscellaneous Items

6.1 Independent Contractor: It is expressly understood and agreed that as to the services rendered by CONTRACTOR in conducting the Economic Development Program under this Agreement, CONTRACTOR shall be considered an independent contractor insofar as its relationship to ODC. Accordingly, the officers and employees of CONTRACTOR used or involved in the Economic Development Program under this Agreement shall not be considered, for any purpose, to be the officers and employees of ODC.

6.2 Economic Development Sales Tax: ODC's obligation to fund the services required herein shall be paid solely from the Economic Development Sales Tax and shall not be a charge on any other fund or require the levy of a tax.

6.3 Property:

The parties agree to the following conditions regarding property rights:

- a. Title to any equipment purchased with ODC funds, in excess of \$1,000.00, shall vest in ODC; and when this Agreement terminates and is not renewed, CONTRACTOR shall deliver such equipment to the Treasurer of ODC. In order to inventory the equipment, "Odessa Development Corporation" shall be stamped or written on such equipment. In the case of material that has a copyright and is being purchased with ODC funds, it shall be registered in the name of Odessa Development Corporation.

- b. Any records and documents that are developed for the purpose of accomplishing services on behalf of ODC by CONTRACTOR, and necessary to continue to provide such services, or to show the rights or responsibilities of ODC shall be the joint property of ODC and CONTRACTOR with equal rights of use and access.
- c. Ownership of Documents. Upon acceptance or approval by ODC, all reports, information and other data, given to, prepared or assembled by CONTRACTOR under this Contract, and any other related documents or items shall become the sole property of ODC and shall be delivered to ODC, without restriction on future use. CONTRACTOR may make copies of any and all documents for its files. Any written or artistic works, motion pictures, sound recordings, computer programs, electronic databases, forms, and any other item that is copyrightable, and created in the course and scope of this Agreement, shall be works made for hire; and the copyright ownership shall be owned jointly by ODC and CONTRACTOR.

6.4 General Development Plan Amendments/Additional ODC Tasks:

- a. CONTRACTOR understands and agrees that the ODC Board of Directors may consider amendments to the adopted General Development Plan during this fiscal year regarding the goals, objectives, action steps and tasks to be performed by each of the ODC Contractors. If amendments are proposed and adopted by the ODC Board of Directors and the City Council, CONTRACTOR shall comply with that Amended General Development Plan in lieu of that set forth in this Agreement for the remainder of the Agreement period.
- b. CONTRACTOR understands and agrees that the ODC Board may request and require additional specific tasks of CONTRACTOR during this fiscal year that are not included in the General Development Plan but are deemed necessary by the ODC Board in furtherance of the ODC's goals and objectives.
- c. If the amendments are made to the General Development Plan or the ODC Board of Directors requires additional tasks not included in this Agreement that are not covered by the attached Budget, CONTRACTOR shall prepare an amended Budget and request the ODC Board of Directors to consider such amendments to CONTRACTOR'S Budget.

6.5 Excess ODC Funds: Any funds that are paid by ODC to the CONTRACTOR pursuant to this Agreement, and that are not expended by the end of the term of this Agreement, shall be refunded to ODC within 30 days after the receipt of requested audit, unless CONTRACTOR can provide ODC with written notice of funds that have not been expended but have been committed, and such commitment is supported by contracts or other written documentation.

6.6 Venue and Applicable Law: The obligations of the parties to this Agreement are performable in Ector County, Texas, and if legal action is necessary to enforce same, exclusive venue shall lie in Ector County, Texas. This Agreement shall be governed by and construed in accordance with the laws and court decisions of the State of Texas.

6.7 Paragraph Enforceability: In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof and this Agreement shall be considered as if such invalid, illegal, or unenforceable provision had never been contained in this Agreement.

6.8 Notices. All notices, communications and reports required or permitted under the Agreement shall be personally delivered or mailed to the respective parties by depositing same in the United States mail, postage prepaid, at the address shown below. Mailed notices shall be deemed communicated as of five (5) days after mailing.

If intended for ODC to:

Norma Aguilar-Grimaldo
ODC Assistant Secretary
P.O. Box 4398
Odessa, Texas 79760-4398

If intended for CONTRACTOR, to:

For hand delivery:

Renee Henderson-Earls, CEO
Odessa Chamber of Commerce
700 North Grant, Suite 200
Odessa, Texas 79761

For mail:

Renee Henderson Earls, CEO
Odessa Chamber of Commerce
P.O. Box 3626
Odessa, Texas 79760

6.9 Term of Agreement: This Agreement shall become effective on October 1, 2019, and shall terminate on September 30, 2020. In the event that CONTRACTOR violates the terms or conditions of this Agreement, or fails to provide the agreed services, ODC, with City Council approval, may terminate this Agreement under the following conditions. ODC shall provide written notice of the violations or failures to CONTRACTOR. CONTRACTOR shall have thirty (30) days to cure the violations or failures to the satisfaction of ODC or to file a written response with the secretary for ODC Board. If CONTRACTOR fails to cure or to file a written response within such 30-day period, ODC, with City Council approval, may terminate this Agreement

immediately. If a written response is filed, ODC shall set a hearing before the Board and provide notice to CONTRACTOR. After consideration of the response and the testimony at the hearing, ODC may declare if there has or has not occurred the stated violations or failures. If the Board finds that such violations or failures have occurred, it shall give CONTRACTOR an additional thirty (30) days written notice and an opportunity to cure to the satisfaction of ODC. If not cured within such period, ODC, with City Council approval, may terminate this Agreement immediately.

EXECUTED this the ____ day of _____, A.D., 2019.

ATTEST:

"ODC"
ODESSA DEVELOPMENT CORPORATION

Norma Aguilar-Grimaldo, City Secretary as
Assistant Secretary to ODC Board

By: _____
Betsy Triplett-Hurt, Board President

"CONTRACTOR"
ODESSA CHAMBER OF COMMERCE

By: _____
Renee Henderson-Earls, CEO

CITY OF ODESSA APPROVAL

By: _____
Michael Marrero, City Manager

APPROVED AS TO FORM:

Gary Landers, Interim City Attorney,
Attorney for ODC

Treasurer to ODC Board = City of Odessa Director of Finance

Exhibit A - Annual Contractor Budget

Exhibit B - Contractor Services for ODC Economic Development Program

Exhibit C - List of Publications

(ODC)

STATE OF TEXAS §
COUNTY OF ECTOR §

This instrument was acknowledged before me on the ____ day of _____, 20____
by Betsy Triplett-Hurt, President of Odessa Development Corporation, a Texas corporation, on
behalf of said corporation.

Notary Public in and for the State of Texas

(CONTRACTOR)

STATE OF TEXAS §
COUNTY OF ECTOR §

This instrument was acknowledged before me on the ____ day of _____, 20____
by Renee Henderson-Earls, CEO of Odessa Chamber of Commerce, a Texas 501(c)6 nonprofit
organization, on behalf of said organization.

Notary Public in and for the State of Texas

STATE OF TEXAS §
COUNTY OF ECTOR §

ECONOMIC DEVELOPMENT CONTRACTOR AGREEMENT
CVA ADVERTISING AND MARKETING

WHEREAS, the Odessa Development Corporation, a type A Taxing Corporation, (hereinafter referred to as “ODC”) with City Council approval, has adopted a General Development Plan and has received Proposals to accomplish the action steps described in the General Development Plan; and

WHEREAS, CVA Advertising & Marketing Ltd., (hereinafter referred to as “CONTRACTOR”) submitted a Proposal to the Odessa Development Corporation for such economic development purposes and the funds for such proposal have been appropriated for the fiscal year 2019-2020; and

WHEREAS, the primary purpose of Contractor is to provide economic development related marketing and supportive information for ODC, and to assist ODC in the expansion and creation of new Economic Development in the area; and

WHEREAS, this is an eligible cost as defined in Section 504.102, Texas Local Government Code; and

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

NOW, THEREFORE, ODC and CONTRACTOR, do hereby agree as follows:

Section 1. Economic Development Program

CONTRACTOR shall provide the economic development services as provided herein and in Exhibits “A” (budget) and “B” (description) which documents are incorporated herein by reference. Such program shall be referred to herein as the “Economic Development Program”. CONTRACTOR shall comply with the Economic Development Corporation Act, Chapters 501 and 504, of the Texas Local Government Code.

CONTRACTOR shall deliver all data, reports and documents which it produces to the ODC Board at regular meetings. The services will be conducted on a step-by-step basis as authorized by the Board. The ODC Board, with City Council approval, may authorize a phase or project to be completed and then terminate the agreement by not authorizing any of the remaining phases or projects. CONTRACTOR represents that all its employees or associates who perform services under this Agreement shall be fully qualified and competent to perform the services

described in Exhibits “A” and “B”. CONTRACTOR shall be responsible for the professional quality, technical accuracy, timely completion, and coordination of all tasks and services furnished by the Consultant under this Agreement.

ODC through its Board may request, from time to time, changes in the scope or focus of the activities conducted or to be conducted by CONTRACTOR pursuant to the Agreement. Any change which varies significantly from the scope of services set out in Article II and would entail a significant increase in cost or expense to CONTRACTOR shall be mutually agreed on by CONTRACTOR, the ODC Board of Directors and City Council.

Section 2. Funding

ODC shall pay CONTRACTOR, for services actually performed, a fee, not to exceed _____ Dollars (\$___), unless other conditions necessitate additional services, which must be authorized in advance in writing by ODC. The amount shown on Exhibit "A" includes all fees and expenses to be incurred by CONTRACTOR, including travel. Additional charges shall not be made unless specifically requested in writing and approved. Payments to CONTRACTOR shall be in the amount shown by the billings and other documentation submitted by CONTRACTOR. The billings shall be based on the total itemized units of services and expenses actually incurred but not to exceed the maximum fee set forth in Exhibit "A". No additional charges shall be made for overhead, administrative cost and routine secretarial work or computer charges. All services shall be performed to the satisfaction of the ODC Board and ODC shall not be liable for any payment under this Contract for services which are unsatisfactory and which have not been approved. Statements for services rendered may be submitted on a monthly basis or on a phase basis.

Section 3. RESERVED

Section 4. Reporting Requirements

4.1 **Budget and Financial Reporting:** CONTRACTOR shall comply with the approved annual contractor budget during the term of this Agreement, a copy of which is attached as Exhibit “A.” CONTRACTOR shall provide a monthly activity report in writing to ODC, to confirm that the public purpose for which the funds are made available is being accomplished and shall present a verbal summary at ODC’s monthly meetings.

4.2 **Informal Reporting:** For these purposes, the parties agree to engage in certain interaction and interoffice communications:

- a. When decisions need to be made in regard to negotiations or strategy, CONTRACTOR will meet with those persons designated by ODC to develop a plan.
- b. CONTRACTOR will meet with the ODC whenever necessary and also develop and distribute, in writing or by oral presentation, reports when needed over and above those required in this Article.

Section 5. Other Requirements

5.1 **Audit:** N/A

5.2 **Diversity:** ODC and City of Odessa strongly encourage the voluntary implementation of a Diversity Program whose goal it is to breakdown all barriers between people. Such a program should be designed to empower CONTRACTOR'S employees and organizational members to create an environment that utilizes the full potential of the Citizens of our Community. ODC or City of Odessa may request to review the program and/or practices to determine whether they are consistent with ODC and City objectives. Future funding may be conditional upon such a program.

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

5.4 **Indemnity:** *CONTRACTOR agrees to and shall indemnify and hold harmless ODC, to the extent permitted at law, the City of Odessa, their officials, officers, agents, and employees from and against any and all claims, losses, damages, causes of action, suits, and liability of every kind, including all expenses of litigation, court costs, and attorney's fees for injury to or death of any person, or for damage to any property arising out of or in connection with CONTRACTOR 's operation or the expenditure of funds authorized by this Agreement, or any services provided by CONTRACTOR funded or partially funded by this Agreement. Such indemnification shall apply whether the claims, losses, damages, causes of action, suits or liability arise from the concurring, but not the sole, negligence of ODC, the City of Odessa, their officials, officers, agents or employees.*

Approval of ODC shall not constitute nor be deemed a release of the responsibility and liability of CONTRACTOR, its employees, agents or associates for the accuracy and competency of information, documents or services provided by CONTRACTOR nor shall approval be deemed to be the assumption of such responsibility by ODC for any defect, error or omission in any documents prepared by CONTRACTOR, its employees, agents or associates

5.5 Drug Free Workplace: CONTRACTOR shall comply with the Drug Free Workplace Act of 1988 including any amendments and administrative regulations, if required by federal law. If not required, ODC strongly recommends compliance with such law on a voluntary basis by CONTRACTOR approving a ban on the use and possession of illegal drugs and alcohol in the workplace of CONTRACTOR. Such policy should also include some mechanism for enforcement of the prohibition. In future agreements, ODC may require the adoption of a drug free workplace policy, which includes drug testing, as a condition for the payment by ODC of public funds.

Section 6. Miscellaneous Items

6.1 Independent Contractor: It is expressly understood and agreed that as to the services rendered by CONTRACTOR in conducting the Economic Development Program under this Agreement, CONTRACTOR shall be considered an independent contractor insofar as its relationship to ODC. Accordingly, the officers and employees of CONTRACTOR used or involved in the Economic Development Program under this Agreement shall not be considered, for any purpose, to be the officers and employees of ODC.

6.2 Economic Development Sales Tax: ODC's obligation to fund the services required herein shall be paid solely from the Economic Development Sales Tax and shall not be a charge on any other fund or require the levy of a tax.

6.3 Property:

The parties agree to the following conditions regarding property rights:

Ownership of Documents. Upon acceptance or approval by ODC, all reports, information and other data, given to, prepared or assembled by CONTRACTOR under this Contract, and any other related documents or items shall become the sole property of ODC and shall be delivered to ODC, without restriction on future use. CONTRACTOR may make copies of any and all documents for its files. Any written or artistic works, motion pictures, sound recordings, computer programs, electronic databases, forms, and any other item that is copyrightable, and created in the course and scope of this Agreement, shall be works made for hire; and the copyright ownership shall be owned jointly by ODC and CONTRACTOR.

6.4 General Development Plan Amendments/Additional ODC Tasks:

a. CONTRACTOR understands and agrees that the ODC Board of Directors may consider amendments to the adopted General Development Plan during this fiscal year regarding the goals, objectives, action steps and tasks to be performed by each of the ODC Contractors. If amendments are proposed and adopted by the ODC Board of

Directors and the City Council, CONTRACTOR shall comply with that Amended General Development Plan in lieu of that set forth in this Agreement for the remainder of the Agreement period.

- b. CONTRACTOR understands and agrees that the ODC Board may request and require additional specific tasks of CONTRACTOR during this fiscal year that are not included in the General Development Plan but are deemed necessary by the ODC Board in furtherance of the ODC's goals and objectives.
- c. If the amendments are made to the General Development Plan or the ODC Board of Directors requires additional tasks not included in this Agreement that are not covered by the attached Budget, CONTRACTOR shall prepare an amended Budget and request the ODC Board of Directors to consider such amendments to CONTRACTOR'S Budget.

6.5 Excess ODC Funds: N/A

6.6 Venue and Applicable Law: The obligations of the parties to this Agreement are performable in Ector County, Texas, and if legal action is necessary to enforce same, exclusive venue shall lie in Ector County, Texas. This Agreement shall be governed by and construed in accordance with the laws and court decisions of the State of Texas.

6.7 Paragraph Enforceability: In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof and this Agreement shall be considered as if such invalid, illegal, or unenforceable provision had never been contained in this Agreement.

6.8 Notices: All notices, communications and reports required or permitted under the Agreement shall be personally delivered or mailed to the respective parties by depositing same in the United States mail, postage prepaid, at the address shown below. Mailed notices shall be deemed communicated as of five (5) days after mailing.

If intended for ODC to:

Norma Aguilar-Grimaldo
ODC Assistant Secretary
P.O. Box 4398
Odessa, Texas 79760-4398

If intended for CONTRACTOR, to:

Christi Callicoatte
CVA Advertising
5030 E. University, Suite B-401
Odessa, TX 79762-8146

christi@cvaadv.com

6.9 Term of Agreement: This Agreement shall become effective on October 1, 2019, and shall terminate on September 30, 2020. In the event that CONTRACTOR violates the terms or conditions of this Agreement, or fails to provide the agreed services, ODC, with City Council approval, may terminate this Agreement under the following conditions. ODC shall provide written notice of the violations or failures to CONTRACTOR. CONTRACTOR shall have thirty (30) days to cure the violations or failures to the satisfaction of ODC or to file a written response with the secretary for ODC Board. If CONTRACTOR fails to cure or to file a written response within such 30-day period, ODC, with City Council approval, may terminate this Agreement immediately. If a written response is filed, ODC shall set a hearing before the Board and provide notice to CONTRACTOR. After consideration of the response and the testimony at the hearing, ODC may declare if there has or has not occurred the stated violations or failures. If the Board finds that such violations or failures have occurred, it shall give CONTRACTOR an additional thirty (30) days written notice and an opportunity to cure to the satisfaction of ODC. If not cured within such period, ODC, with City Council approval, may terminate this Agreement immediately.

EXECUTED this the ____ day of _____, A.D., 2019.

ATTEST:

"ODC"
ODESSA DEVELOPMENT CORPORATION

Norma Aguilar-Grimaldo, City Secretary as
Assistant Secretary to ODC Board

By: _____
Betsy Triplett-Hurt, Board President

"CONTRACTOR"
CVA ADVERTISING & MARKETING LTD

By: _____
Craig Van Amburgh, President

CITY OF ODESSA APPROVAL

By: _____
Michael Marrero, City Manager

APPROVED AS TO FORM:

Gary Landers, Interim City Attorney,
Attorney for ODC

Treasurer to ODC Board = City of Odessa Director of Finance

Exhibit A – Annual Contractor Budget

Exhibit B – Contractor Services for ODC Economic Development Program

(ODC)

STATE OF TEXAS §
COUNTY OF ECTOR §

This instrument was acknowledged before me on the ____ day of _____, 20____
by Betsy Triplett-Hurt, President of Odessa Development Corporation, a Texas corporation, on
behalf of said corporation.

Notary Public in and for the State of Texas

(CONTRACTOR)

STATE OF TEXAS §
COUNTY OF ECTOR §

This instrument was acknowledged before me on the ____ day of _____, 20____
by Craig Van Amburgh, President of CVA Advertising & Marketing Ltd., a Texas LLC, on behalf
of said company.

Notary Public in and for the State of Texas

STATE OF TEXAS §
COUNTY OF ECTOR §

ECONOMIC DEVELOPMENT CONTRACTOR AGREEMENT
MOTRAN

WHEREAS, the Odessa Development Corporation, a type A Taxing Corporation, (hereinafter referred to as “ODC”) with City Council approval, has adopted a General Development Plan and has received Proposals to accomplish the action steps described in the General Development Plan; and

WHEREAS, the Midland-Odessa Transportation Alliance, Inc., a non-profit corporation, (hereinafter referred to as “CONTRACTOR”) submitted a Proposal to the Odessa Development Corporation for such economic development purposes and the funds for such proposal have been appropriated for the fiscal year 2019-2020; and

WHEREAS, the primary purpose of Contractor is to establish a West Texas corridor, a highway between Mexico and the United States ("La Entrada al Pacifico"), which highway will be directed through the Odessa/Midland Metropolitan Statistical Area ("MSA"), and to assist ODC in the expansion and creation of new Economic Development in the area; and

WHEREAS, this is an eligible cost as defined in Section 504.102, Texas Local Government Code; and

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

WHEREAS, the construction of such highway and the opportunities created with the North American Free Trade Agreement will create the groundwork for developing new and expanded enterprises in the Odessa/Midland area such as warehouse and distribution facilities; and

WHEREAS, pursuant to Texas Local Government Code, Section 501.103, there is a finding by the ODC Board that the completion of La Entrada al Pacifico is required and suitable as infrastructure and is necessary to promote or develop new or expanded business enterprises; and

NOW, THEREFORE, ODC and CONTRACTOR, do hereby agree as follows:

Section 1. Economic Development Program

CONTRACTOR shall provide the economic development services as provided herein and in Exhibits “A” (budget) and “B” (description) which documents are incorporated herein by reference. Such program shall be referred to herein as the “Economic Development Program”.

CONTRACTOR shall comply with the Economic Development Corporation Act, Chapters 501 and 504, of the Texas Local Government Code.

ODC through its Board may request, from time to time, changes in the scope or focus of the activities conducted or to be conducted by CONTRACTOR pursuant to the Agreement. Any change which varies significantly from the scope of services set out in Article II and would entail a significant increase in cost or expense to CONTRACTOR shall be mutually agreed on by CONTRACTOR, the ODC Board of Directors and City Council.

Section 2. Funding

ODC shall pay to the CONTRACTOR the sum of _____ Dollars (\$____) to be used solely for the purpose of conducting the Economic Development Program. ODC shall dispense funds to the CONTRACTOR by paying one quarter of the total on or before October 10, January 10, April 10, and July 10.

*****It is understood and agreed that CONTRACTOR will obtain the balance of funds from other sources. CONTRACTOR may perform services that are not eligible for expenditure of funds by ODC but the percentage of Economic Development Corporation funds received must not exceed the percentage of eligible services performed by CONTRACTOR.

Section 3. In-Kind Services

CONTRACTOR shall contribute certain in-kind services to the Economic Development Program. For the purposes of this Agreement, "in-kind services" shall mean the services or use of CONTRACTOR officers, employees, buildings, equipment or other facilities that are not acquired, designated and used exclusively in connection with the Economic Development Program. No charges for in-kind services shall be made against the account or funds mentioned in this agreement. Reimbursement for any such in-kind services may be spent only if provided for in the attached exhibits.

Section 4. Reporting Requirements

4.1 Budget and Financial Reporting:

- a. CONTRACTOR shall comply with the approved annual contractor budget during the term of this Agreement, a copy of which is attached as Exhibit "A."
- b. On or before the 25th day of each month during the term of the Agreement, CONTRACTOR shall make and send to each member of the ODC Board of Directors, the City Council, ODC Treasurer, City Attorney, and file with the City Secretary, a

report showing an accounting of all funds received and expended under this Agreement in relation to the authorized budget items shown in Exhibit "A." during the preceding month. Said report shall also show the cumulative expenses and revenues for the preceding month together with all prior months covered by this Agreement. Failure to submit this report within 15 days of its due date might result in the termination of all payments by ODC until all of the reporting requirements have been brought into compliance.

- c. CONTRACTOR shall maintain complete and accurate financial records of each expenditure of Economic Development Program funds made by it. The general method of financial record keeping and reporting proposed by the CONTRACTOR to be used in complying with the requirements of this Agreement shall be submitted to and approved by the ODC Board of Directors. The sufficiency of detail of any activity or financial report required by this Agreement shall be determined by the ODC Board of Directors. All of the CONTRACTOR'S records pertaining to and related with the activities and funds under the Economic Development Program shall be available for inspection by the ODC Board of Directors, City Council, the Treasurer of ODC, designated auditor and City Manager of the City of Odessa at any time during CONTRACTOR'S normal office hours. The revenue provided by ODC under this Agreement shall be maintained by CONTRACTOR in a separate account established for that purpose and shall not be co-mingled with any other money or maintained in any other account.

4.2 Activity Reporting:

- a. CONTRACTOR shall provide a monthly activity report in writing to ODC, to confirm that the public purpose for which the funds are made available is being accomplished and shall present a verbal summary at ODC's monthly meetings.
- b. Where determined necessary by the CONTRACTOR in order to avoid prejudicing the opportunity to attract new and additional industries to Odessa or to accomplish the expansion of existing industries, it shall be acceptable to use a coding system in connection with the records and reports required under this Agreement in order to temporarily keep confidential the identity of such industrial enterprises.
- c. In this connection, however, details and specific information regarding all activities under the Economic Development Program, including the identity of all industrial enterprises involved, shall be maintained by the CONTRACTOR and shall be available

to the ODC's and City of Odessa's auditors in performing the audit of the funds involved in the Economic Development Program hereinafter required.

4.3 Informal Reporting:

- a. The Activity Reporting Requirements outlined in this Article are for the purpose of providing information to meet the very basic exchange of information. However, to be efficient in the use of economic development funds, to compete in the open market for jobs, to be able to respond to issues and economic development opportunities in a timely manner, to make decisions regarding goals, objectives and priorities and to foster the necessary teamwork between ODC and CONTRACTOR, it is necessary to plan and to implement certain informal reporting and interactions which could occur on a frequent basis.
- b. For these purposes, the parties agree to engage in certain interaction and interoffice communications:
 - 1) When decisions need to be made in regard to negotiations or strategy, CONTRACTOR will meet with those persons designated by ODC to develop a plan.
 - 2) CONTRACTOR will meet with the ODC whenever necessary and also develop and distribute, in writing or by oral presentation, reports when needed over and above those required in this Article.

Section 5. Other Requirements

5.1 Audit: In addition to the required reporting covering CONTRACTOR'S activities and expenditures under this Agreement, a certified audit of the funds and activities of such Economic Development Program shall be made annually as determined by mutual agreement of the parties. The auditors performing the above-described audit shall have access to and the right to examine all records and accounts directly related to the Economic Development Program and such other CONTRACTOR records and accounts as may be reasonably necessary to conduct and complete its audit of the Economic Development Program funds.

5.2 Diversity: ODC and City of Odessa strongly encourage the voluntary implementation of a Diversity Program whose goal it is to breakdown all barriers between people. Such a program should be designed to empower CONTRACTOR'S employees and organizational members to create an environment that utilizes the full potential of the Citizens of our Community. ODC or

City of Odessa may request to review the program and/or practices to determine whether they are consistent with ODC and City objectives. Future funding may be conditional upon such a program.

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

5.4 Indemnity: *CONTRACTOR agrees to and shall indemnify and hold harmless ODC, to the extent permitted at law, the City of Odessa, their officials, officers, agents, and employees from and against any and all claims, losses, damages, causes of action, suits, and liability of every kind, including all expenses of litigation, court costs, and attorney's fees for injury to or death of any person, or for damage to any property arising out of or in connection with CONTRACTOR 's operation or the expenditure of funds authorized by this Agreement, or any services provided by CONTRACTOR funded or partially funded by this Agreement. Such indemnification shall apply whether the claims, losses, damages, causes of action, suits or liability arise from the concurring, but not the sole, negligence of ODC, the City of Odessa, their officials, officers, agents or employees.*

5.5 Drug Free Workplace: CONTRACTOR shall comply with the Drug Free Workplace Act of 1988 including any amendments and administrative regulations, if required by federal law. If not required, ODC strongly recommends compliance with such law on a voluntary basis by CONTRACTOR approving a ban on the use and possession of illegal drugs and alcohol in the workplace of CONTRACTOR. Such policy should also include some mechanism for enforcement of the prohibition. In future agreements, ODC may require the adoption of a drug free workplace policy, which includes drug testing, as a condition for the payment by ODC of public funds.

Section 6. Miscellaneous Items

6.1 Independent Contractor: It is expressly understood and agreed that as to the services rendered by CONTRACTOR in conducting the Economic Development Program under this Agreement, CONTRACTOR shall be considered an independent contractor insofar as its relationship to ODC. Accordingly, the officers and employees of CONTRACTOR used or involved in the Economic Development Program under this Agreement shall not be considered, for any purpose, to be the officers and employees of ODC.

6.2 Economic Development Sales Tax: ODC's obligation to fund the services required herein shall be paid solely from the Economic Development Sales Tax and shall not be a charge on any other fund or require the levy of a tax.

6.3 Property:

The parties agree to the following conditions regarding property rights:

- a. When MOTRAN contracts with MDC and ODC for an equal amount, the joint ownership shall be between ODC, MDC and MOTRAN.
- b. With regard to projects that are specifically with ODC or MDC, MOTRAN is not required to share data that is sensitive in nature or would compromise a relationship with that entity by having to share that information with the other entity.
- c. It is understood and agreed that with regard to the electronic databases of MOTRAN that are subject to the CAN-SPAM Act of 2003, the use will be restricted so as to comply with that Act.
- d. It is understood that MOTRAN holds the registered Trademark for the La Entrada al Pacifico logo. MOTRAN agrees that ODC and its agencies may use and publicize the La Entrada al Pacifico logo in its Economic Development efforts.

6.4 General Development Plan Amendments/Additional ODC Tasks:

- a. CONTRACTOR understands and agrees that the ODC Board of Directors may consider amendments to the adopted General Development Plan during this fiscal year regarding the goals, objectives, action steps and tasks to be performed by each of the ODC Contractors. If amendments are proposed and adopted by the ODC Board of Directors and the City Council, CONTRACTOR shall comply with that Amended General Development Plan in lieu of that set forth in this Agreement for the remainder of the Agreement period.
- b. CONTRACTOR understands and agrees that the ODC Board may request and require additional specific tasks of CONTRACTOR during this fiscal year that are not included in the General Development Plan but are deemed necessary by the ODC Board in furtherance of the ODC's goals and objectives.
- c. If the amendments are made to the General Development Plan or the ODC Board of Directors requires additional tasks not included in this Agreement that are not covered by the attached Budget, CONTRACTOR shall prepare an amended Budget and request the ODC Board of Directors to consider such amendments to CONTRACTOR'S Budget.

6.5 Excess ODC Funds: Any funds that are paid by ODC to the CONTRACTOR pursuant to this Agreement, and that are not expended by the end of the term of this Agreement, shall be refunded to ODC within 30 days after the receipt of requested audit, unless CONTRACTOR can

provide ODC with written notice of funds that have not been expended but have been committed, and such commitment is supported by contracts or other written documentation.

6.6 Venue and Applicable Law: The obligations of the parties to this Agreement are performable in Ector County, Texas, and if legal action is necessary to enforce same, exclusive venue shall lie in Ector County, Texas. This Agreement shall be governed by and construed in accordance with the laws and court decisions of the State of Texas.

6.7 Paragraph Enforceability: In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof and this Agreement shall be considered as if such invalid, illegal, or unenforceable provision had never been contained in this Agreement.

6.8 Notices: All notices, communications and reports required or permitted under the Agreement shall be personally delivered or mailed to the respective parties by depositing same in the United States mail, postage prepaid, at the address shown below. Mailed notices shall be deemed communicated as of five (5) days after mailing.

If intended for ODC to:

Norma Aguilar-Grimaldo
ODC Assistant Secretary
P.O. Box 4398
Odessa, Texas 79760-4398

If intended for CONTRACTOR, to:

James Beauchamp, President
Midland-Odessa Transportation Alliance, Inc.
P. O. Box 60816
Midland, Texas 79711

james@motran.org

6.9 Term of Agreement: This Agreement shall become effective on October 1, 2019, and shall terminate on September 30, 2020. In the event that CONTRACTOR violates the terms or conditions of this Agreement, or fails to provide the agreed services, ODC, with City Council approval, may terminate this Agreement under the following conditions. ODC shall provide written notice of the violations or failures to CONTRACTOR. CONTRACTOR shall have thirty (30) days to cure the violations or failures to the satisfaction of ODC or to file a written response with the secretary for ODC Board. If CONTRACTOR fails to cure or to file a written response within such 30-day period, ODC, with City Council approval, may terminate this Agreement immediately. If a written response is filed, ODC shall set a hearing before the Board and provide notice to CONTRACTOR. After consideration of the response and the testimony at the hearing,

ODC may declare if there has or has not occurred the stated violations or failures. If the Board finds that such violations or failures have occurred, it shall give CONTRACTOR an additional thirty (30) days written notice and an opportunity to cure to the satisfaction of ODC. If not cured within such period, ODC, with City Council approval, may terminate this Agreement immediately.

EXECUTED this the _____ day of _____, A.D., 2019.

ATTEST:

"ODC"
ODESSA DEVELOPMENT CORPORATION

Norma Aguilar-Grimaldo, City Secretary as
Assistant Secretary to ODC Board

By: _____
Betsy Triplett-Hurt, Board President

"CONTRACTOR"
MIDLAND-ODESSA TRANSPORTATION
ALLIANCE, INC.

By: _____
James Beauchamp, President

CITY OF ODESSA APPROVAL

By: _____
Michael Marrero, City Manager

APPROVED AS TO FORM:

Gary Landers, Interim City Attorney,
Attorney for ODC

Treasurer to ODC Board = City of Odessa Director of Finance

Exhibit A – Annual Contractor Budget

Exhibit B – Contractor Services for ODC Economic Development Program

(ODC)

STATE OF TEXAS §
COUNTY OF ECTOR §

This instrument was acknowledged before me on the ____ day of _____, 20____
by Betsy Triplett-Hurt, President of Odessa Development Corporation, a Texas corporation, on
behalf of said corporation.

Notary Public in and for the State of Texas

(CONTRACTOR)

STATE OF TEXAS §
COUNTY OF ECTOR §

This instrument was acknowledged before me on the ____ day of _____, 20____
by James Beauchamp, President of Midland-Odessa Transportation Alliance, Inc., a Texas 501(c)6
organization , on behalf of said organization.

Notary Public in and for the State of Texas

STATE OF TEXAS §
COUNTY OF ECTOR §

ECONOMIC DEVELOPMENT CONTRACTOR AGREEMENT
UTPB-SBDC

WHEREAS, the Odessa Development Corporation, a type A Taxing Corporation, (hereinafter referred to as “ODC”) with City Council approval, has adopted a General Development Plan and has received Proposals to accomplish the action steps described in the General Development Plan; and

WHEREAS, The University of Texas of the Permian Basin Small Business Development Center, a non-profit corporation, (hereinafter referred to as “CONTRACTOR”) submitted a Proposal to the Odessa Development Corporation for such economic development purposes and the funds for such proposal have been appropriated for the fiscal year 2019-2020; and

WHEREAS, the primary purpose of Contractor is to maintain and support a small business development center and as an additional program, to sponsor and coordinate an Entrepreneurial Challenge as further described in Exhibit “C” herein and to assist ODC in the expansion and creation of new Economic Development in the area; and

WHEREAS, this is an eligible cost as defined in Section 504.102, Texas Local Government Code; and

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

WHEREAS, the primary purpose of UTPB-SBDC is to provide management and technical assistance to the small business sector in the community by training and counseling business people in management, financing, marketing and operating small businesses, and providing comprehensive services and access to experts in a variety of fields, which services are determined to be for a public purpose, and to assist ODC in the expansion and creation of new Economic Development in the area;

NOW, THEREFORE, ODC and CONTRACTOR, do hereby agree as follows:

Section 1. Economic Development Program

CONTRACTOR shall provide the economic development services as provided herein and in Exhibits “A” (budget) and “B” (description) and Exhibits “C-1” and “C-2” (entrepreneurial challenge) which documents are incorporated herein by reference. Such program shall be referred

to herein as the "Economic Development Program". CONTRACTOR shall comply with the Economic Development Corporation Act, Chapters 501 and 504, of the Texas Local Government Code.

ODC through its Board may request, from time to time, changes in the scope or focus of the activities conducted or to be conducted by CONTRACTOR pursuant to the Agreement. Any change which varies significantly from the scope of services set out in Article II and would entail a significant increase in cost or expense to CONTRACTOR shall be mutually agreed on by CONTRACTOR, the ODC Board of Directors and City Council.

Section 2. Funding

ODC shall pay to the CONTRACTOR the sum of _____ Dollars (\$___) to be used solely for the purpose of conducting the Economic Development Program. ODC shall dispense funds to the CONTRACTOR by paying one quarter of the total on or before October 10, January 10, April 10, and July 10.

ODC shall pay to the CONTRACTOR the sum of _____ Dollars (\$___) to be used solely for the purpose of conducting the Entrepreneurial Challenge. ODC shall dispense funds to the CONTRACTOR by paying upon receipt of payment request.

*****It is understood and agreed that CONTRACTOR will obtain the balance of funds from other sources. CONTRACTOR may perform services that are not eligible for expenditure of funds by ODC but the percentage of Economic Development Corporation funds received must not exceed the percentage of eligible services performed by CONTRACTOR.

Section 3. In-Kind Services

CONTRACTOR shall contribute certain in-kind services to the Economic Development Program. For the purposes of this Agreement, "in-kind services" shall mean the services or use of CONTRACTOR officers, employees, buildings, equipment or other facilities that are not acquired, designated and used exclusively in connection with the Economic Development Program. No charges for in-kind services shall be made against the account or funds mentioned in this agreement. Reimbursement for any such in-kind services may be spent only if provided for in the attached exhibits.

Section 4. Reporting Requirements

4.1 Budget and Financial Reporting:

- a. CONTRACTOR shall comply with the approved annual contractor budget during the term of this Agreement, a copy of which is attached as Exhibit "A."
- b. On or before the 25th day of each month during the term of the Agreement, CONTRACTOR shall make and send to each member of the ODC Board of Directors, the City Council, ODC Treasurer, City Attorney, and file with the City Secretary, a report showing an accounting of all funds received and expended under this Agreement in relation to the authorized budget items shown in Exhibit "A." during the preceding month. Said report shall also show the cumulative expenses and revenues for the preceding month together with all prior months covered by this Agreement. Failure to submit this report within 15 days of its due date might result in the termination of all payments by ODC until all of the reporting requirements have been brought into compliance.
- c. CONTRACTOR shall maintain complete and accurate financial records of each expenditure of Economic Development Program funds made by it. The general method of financial record keeping and reporting proposed by the CONTRACTOR to be used in complying with the requirements of this Agreement shall be submitted to and approved by the ODC Board of Directors. The sufficiency of detail of any activity or financial report required by this Agreement shall be determined by the ODC Board of Directors. All of the CONTRACTOR'S records pertaining to and related with the activities and funds under the Economic Development Program shall be available for inspection by the ODC Board of Directors, City Council, the Treasurer of ODC, designated auditor and City Manager of the City of Odessa at any time during CONTRACTOR'S normal office hours. The revenue provided by ODC under this Agreement shall be maintained by CONTRACTOR in a separate account established for that purpose and shall not be co-mingled with any other money or maintained in any other account.

4.2 Activity Reporting:

- a. CONTRACTOR shall provide a monthly activity report in writing to ODC, to confirm that the public purpose for which the funds are made available is being accomplished and shall present a verbal summary at ODC's monthly meetings.
- b. Where determined necessary by the CONTRACTOR in order to avoid prejudicing the opportunity to attract new and additional industries to Odessa or to accomplish the expansion of existing industries, it shall be acceptable to use a coding system in connection with the records and reports required under this Agreement in order to temporarily keep confidential the identity of such industrial enterprises.
- c. In this connection, however, details and specific information regarding all activities under the Economic Development Program, including the identity of all industrial enterprises involved, shall be maintained by the CONTRACTOR and shall be available to the ODC's and City of Odessa's auditors in performing the audit of the funds involved in the Economic Development Program hereinafter required.

4.3 Informal Reporting:

- a. The Activity Reporting Requirements outlined in this Article are for the purpose of providing information to meet the very basic exchange of information. However, to be efficient in the use of economic development funds, to compete in the open market for jobs, to be able to respond to issues and economic development opportunities in a timely manner, to make decisions regarding goals, objectives and priorities and to foster the necessary teamwork between ODC and CONTRACTOR, it is necessary to plan and to implement certain informal reporting and interactions which could occur on a frequent basis.
- b. For these purposes, the parties agree to engage in certain interaction and interoffice communications:
 - 1) When decisions need to be made in regard to negotiations or strategy, CONTRACTOR will meet with those persons designated by ODC to develop a plan.
 - 2) CONTRACTOR will meet with the ODC whenever necessary and also develop and distribute, in writing or by oral presentation, reports when needed over and above those required in this Article.

Section 5. Other Requirements

5.1 Audit: In addition to the required reporting covering CONTRACTOR'S activities and expenditures under this Agreement, CONTRACTOR is requested to provide annually copies of any pages related to the Small Business Development Center or Entrepreneurial Challenge that are created as part of the UTPB System certified audit. ODC reviewers shall have access to and the right to examine all records and accounts directly related to the Economic Development Program and such other CONTRACTOR records and accounts as may be reasonably necessary to conduct and complete its audit of the Economic Development Program funds.

5.2 Diversity: ODC and City of Odessa strongly encourage the voluntary implementation of a Diversity Program whose goal it is to breakdown all barriers between people. Such a program should be designed to empower CONTRACTOR'S employees and organizational members to create an environment that utilizes the full potential of the Citizens of our Community. ODC or City of Odessa may request to review the program and/or practices to determine whether they are consistent with ODC and City objectives. Future funding may be conditional upon such a program.

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

5.4 Indemnity: ***CONTRACTOR agrees to and shall indemnify and hold harmless ODC, to the extent permitted at law, the City of Odessa, their officials, officers, agents, and employees from and against any and all claims, losses, damages, causes of action, suits, and liability of every kind, including all expenses of litigation, court costs, and attorney's fees for injury to or death of any person, or for damage to any property arising out of or in connection with CONTRACTOR 's operation or the expenditure of funds authorized by this Agreement, or any services provided by CONTRACTOR funded or partially funded by this Agreement. Such indemnification shall apply whether the claims, losses, damages, causes of action, suits or liability arise from the concurring, but not the sole, negligence of ODC, the City of Odessa, their officials, officers, agents or employees.***

5.5 Drug Free Workplace: CONTRACTOR shall comply with the Drug Free Workplace Act of 1988 including any amendments and administrative regulations, if required by federal law. If not required, ODC strongly recommends compliance with such law on a voluntary basis by CONTRACTOR approving a ban on the use and possession of illegal drugs and alcohol in the

workplace of CONTRACTOR. Such policy should also include some mechanism for enforcement of the prohibition. In future agreements, ODC may require the adoption of a drug free workplace policy, which includes drug testing, as a condition for the payment by ODC of public funds.

Section 6. Miscellaneous Items

6.1 **Independent Contractor:** It is expressly understood and agreed that as to the services rendered by CONTRACTOR in conducting the Economic Development Program under this Agreement, CONTRACTOR shall be considered an independent contractor insofar as its relationship to ODC. Accordingly, the officers and employees of CONTRACTOR used or involved in the Economic Development Program under this Agreement shall not be considered, for any purpose, to be the officers and employees of ODC.

6.2 **Economic Development Sales Tax:** ODC's obligation to fund the services required herein shall be paid solely from the Economic Development Sales Tax and shall not be a charge on any other fund or require the levy of a tax.

6.3 **Property:**

The parties agree to the following conditions regarding property rights:

- a. Title to any equipment purchased with ODC funds, in excess of \$1,000.00, shall vest in ODC; and when this Agreement terminates and is not renewed, CONTRACTOR shall deliver such equipment to the Treasurer of ODC. In order to inventory the equipment, "Odessa Development Corporation" shall be stamped or written on such equipment. In the case of material that has a copyright and is being purchased with ODC funds, it shall be registered in the name of Odessa Development Corporation.
- b. Any records and documents that are developed for the purpose of accomplishing services on behalf of ODC by CONTRACTOR, and necessary to continue to provide such services, or to show the rights or responsibilities of ODC shall be the joint property of ODC and CONTRACTOR with equal rights of use and access.
- c. **Ownership of Documents.** Upon acceptance or approval by ODC, all reports, information and other data, given to, prepared or assembled by CONTRACTOR under this Contract, and any other related documents or items shall become the sole property of ODC and shall be delivered to ODC, without restriction on future use. CONTRACTOR may make copies of any and all documents for its files. Any written or artistic works, motion pictures, sound recordings, computer programs, electronic

databases, forms, and any other item that is copyrightable, and created in the course and scope of this Agreement, shall be works made for hire; and the copyright ownership shall be owned jointly by ODC and CONTRACTOR.

6.4 General Development Plan Amendments/Additional ODC Tasks:

- a. CONTRACTOR understands and agrees that the ODC Board of Directors may consider amendments to the adopted General Development Plan during this fiscal year regarding the goals, objectives, action steps and tasks to be performed by each of the ODC Contractors. If amendments are proposed and adopted by the ODC Board of Directors and the City Council, CONTRACTOR shall comply with that Amended General Development Plan in lieu of that set forth in this Agreement for the remainder of the Agreement period.
- b. CONTRACTOR understands and agrees that the ODC Board may request and require additional specific tasks of CONTRACTOR during this fiscal year that are not included in the General Development Plan but are deemed necessary by the ODC Board in furtherance of the ODC's goals and objectives.
- c. If the amendments are made to the General Development Plan or the ODC Board of Directors requires additional tasks not included in this Agreement that are not covered by the attached Budget, CONTRACTOR shall prepare an amended Budget and request the ODC Board of Directors to consider such amendments to CONTRACTOR'S Budget.

6.5 Excess ODC Funds: Any funds that are paid by ODC to the CONTRACTOR pursuant to this Agreement, and that are not expended by the end of the term of this Agreement, shall be refunded to ODC within 30 days after the receipt of requested audit, unless CONTRACTOR can provide ODC with written notice of funds that have not been expended but have been committed, and such commitment is supported by contracts or other written documentation.

6.6 Venue and Applicable Law: The obligations of the parties to this Agreement are performable in Ector County, Texas, and if legal action is necessary to enforce same, exclusive venue shall lie in Ector County, Texas. This Agreement shall be governed by and construed in accordance with the laws and court decisions of the State of Texas.

6.7 Paragraph Enforceability: In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such

invalidity, illegality, or unenforceability shall not affect any other provision thereof and this Agreement shall be considered as if such invalid, illegal, or unenforceable provision had never been contained in this Agreement.

6.8 Notices: All notices, communications and reports required or permitted under the Agreement shall be personally delivered or mailed to the respective parties by depositing same in the United States mail, postage prepaid, at the address shown below. Mailed notices shall be deemed communicated as of five (5) days after mailing.

If intended for ODC to:

Norma Aguilar-Grimaldo
ODC Assistant Secretary
P.O. Box 4398
Odessa, Texas 79760-4398

If intended for CONTRACTOR, to:

Mr. Michael Crain, Executive Director
University of Texas of The Permian Basin
4901 East University Blvd.
Odessa, Texas 79762

crain_m@utpb.edu

6.9 Term of Agreement: This Agreement shall become effective on October 1, 2019, and shall terminate on September 30, 2020. In the event that CONTRACTOR violates the terms or conditions of this Agreement, or fails to provide the agreed services, ODC, with City Council approval, may terminate this Agreement under the following conditions. ODC shall provide written notice of the violations or failures to CONTRACTOR. CONTRACTOR shall have thirty (30) days to cure the violations or failures to the satisfaction of ODC or to file a written response with the secretary for ODC Board. If CONTRACTOR fails to cure or to file a written response within such 30-day period, ODC, with City Council approval, may terminate this Agreement immediately. If a written response is filed, ODC shall set a hearing before the Board and provide notice to CONTRACTOR. After consideration of the response and the testimony at the hearing, ODC may declare if there has or has not occurred the stated violations or failures. If the Board finds that such violations or failures have occurred, it shall give CONTRACTOR an additional thirty (30) days written notice and an opportunity to cure to the satisfaction of ODC. If not cured within such period, ODC, with City Council approval, may terminate this Agreement immediately.

EXECUTED this the ____ day of _____, A.D., 2019.

ATTEST:

"ODC"
ODESSA DEVELOPMENT CORPORATION

Norma Aguilar-Grimaldo, City Secretary as
Assistant Secretary to ODC Board

By: _____
Betsy Triplett-Hurt, Board President

"CONTRACTOR"
University of Texas of the Permian Basin
Small Business Development Center

By: _____
Cesario Valenzuela, Vice President of
Business Affairs

CITY OF ODESSA APPROVAL

By: _____
Michael Marrero, City Manager

APPROVED AS TO FORM:

Gary Landers, Interim City Attorney,
Attorney for ODC

Treasurer to ODC Board = City of Odessa Director of Finance

Exhibit A - Annual Contractor Budget

Exhibit B - Contractor Services for ODC Economic Development Program

Exhibit C-1 - Entrepreneurial Challenge Budget

Exhibit C-2 - Entrepreneurial Challenge Description

(ODC)

STATE OF TEXAS §
COUNTY OF ECTOR §

This instrument was acknowledged before me on the ____ day of _____, 20____
by Betsy Triplett-Hurt, President of Odessa Development Corporation, a Texas corporation, on
behalf of said corporation.

Notary Public in and for the State of Texas

(CONTRACTOR)

STATE OF TEXAS §
COUNTY OF ECTOR §

This instrument was acknowledged before me on the ____ day of _____, 20____
by Cesario Valenzuela, Vice President of Business Affairs of the University of Texas of the
Permian Basin Small Business Development Center, a Texas non-profit corporation, on behalf of
said corporation.

Notary Public in and for the State of Texas

**ODESSA DEVELOPMENT CORPORATION
GENERAL DEVELOPMENT PLAN
FY – 2019-2020**

Forward

The Odessa Development Corporation is required by the Bylaws of Odessa Development Corporation to adopt, on an annual basis, a General Development Plan for the Corporation and to submit the Plan to the City Council for its approval prior to submission of the annual budget. This document has been prepared to satisfy that requirement. The State Development Corporation Act of 1979 governs Odessa's Type A Sales Tax. Type A allows for supporting economic development projects to promote new and expanded industrial and manufacturing activities in our city.

GENERAL DEVELOPMENT PLAN

VISION:

“Odessa is a city of opportunity. By diversifying and expanding its economy, Odessa will provide opportunities for employment and the best possible quality of life for all of its citizens.”

PURPOSE:

Article Four of the Articles of Incorporation of the Odessa Development Corporation indicates that, “the purpose of the Corporation is to promote and develop industrial and manufacturing enterprises in order to eliminate unemployment and underemployment, and to promote and encourage employment and the public welfare of, for, and on behalf of the City, and to do any and all projects authorized by Section 4A of Article 5190.6, Tex. Rev. Stat. Ann.”

MISSION:

On March 24, 1998, City Council drafted a Mission for Odessa Development Corporation. The Mission is to:

Create new jobs;

- Grow the tax base;
- Promote business activity and expand business compatible with Odessa;
- Diversify the economy; and
- Help build a skilled and educated work force

2019-2020 Strategic Planning Goals:

- Assist in public/private coordinated effort to find solutions to construction of workforce housing.
- Explore other/additional incentives for business/industrial projects located throughout the community.
- Explore other/additional incentives for downtown projects .
- Utilize all forms of social media and traditional media for creative marketing. .
- Work collaboratively with Odessa College, UTPB, and TTU-HSC.
- Work collaboratively with downtown groups and agencies.
- Intentionally establish global marketplace marketing.

2019-2020 Target Industries: These industries are from the 2017 Target Industry Analysis conducted by the research firm, The Perryman Group. The code numbers are North American Industry Classification System (NAICS) Sector numbers required for ODC Funding.

Perryman's Target Industries for the Odessa Area
NAICS Codes

Oil and Gas Support Sectors

21- Mining, Quarrying and Oil & Gas Extraction

213112- Support Activities for Oil & Gas operation

31-33 Manufacturing

Renewable Energy Manufacturing and Support

Machinery Manufacturing

Chemical Manufacturing

Environmental Equipment

Metal Fabrication

Including but not limited to;

33313- Mining and Oil and Gas Field Machine Manufacturing

332710-Maching Shops

33299- All other Fabricated Metal Product Manufacturing

3251- Basic Chemical Manufacturing

3323- Architectural and Structural Metal Manufacturing

Aircraft Maintenance and Parts

3364- Aerospace Products and Parts

336411- Aircraft Manufacturing

336413- Other Aircraft Parts and Auxiliary Equipment Manufacturing

62-Health Care

Health Care Delivery

42- Wholesale Trade

Medical Devices and Equipment

48-49 Transportation and Warehousing

Distribution

Warehousing

Transportation Support Service

51- Information

Data Processing

Economic Development Strategy in the Odessa-Ector County Area

Target Industries for the Odessa Area	
Industry	Local Multiplier
Oil and Gas Support Sectors	3.26
Renewable Energy Manufacturing and Support	2.98
Environmental Equipment	2.92
Health Care Delivery	2.36
Medical Devices and Equipment	3.04
Distribution	3.07
Warehousing	2.88
Machinery Manufacturing	3.25
Chemical Manufacturing	7.59
Aircraft Maintenance and Parts	3.20
Data Processing	2.66
Metal Fabrication	2.75
Transportation Support Services	2.86
Source: The Perryman Group	

A. EXISTING MULTI-YEAR ECONOMIC DEVELOPMENT GRANT CONTRACTS

The Odessa Development Corporation from time-to-time enters into multi-year contracts with certain entities which help fulfill the purpose of the Corporation, which is to promote and develop industrial and manufacturing enterprises in order to eliminate unemployment and underemployment, and to promote and encourage employment and the public welfare of, for, and on behalf of the City, and to do any and all projects authorized by Section 4A of Article 5190.6, Tex. Rev. Stat. Ann.”

The entities which the Odessa Development Corporation currently has multi-year economic development grant contracts with are as follows:

- West Texas Foodbank
- FMC Technologies, Inc.
- Select Energy Services
- UTPB – Second training facilities grant
- Glazer’s Beer and Beverage of Texas, LLC
- Odessa College – Second training grant
- City of Odessa

Information including the type of contract, term of the contract, grant amount, effective date, and annual payment are more fully laid out in Exhibit A, attached hereto.

EXHIBIT "A"

<u>Company:</u>	<u>Type:</u>	<u>Grant Amt.</u>	<u>Effective Date:</u>	<u>Term:</u>	<u>Annual Payment:</u>
<u>West Texas Food Bank</u> File No. C-7-66.1	Eco Dev	<u>\$735,000</u>	<u>6/6/2014</u> <u>Amended 3/9/2017</u> <u>Completion date:</u> <u>08/2016</u> <u>2021 is last report</u>	<u>5 years</u> <u>beginning in</u> <u>2016</u>	<u>\$147,000</u>
<u>FMC Technologies Inc.</u> File No. C-7-281	Eco Dev	<u>\$381,992.00</u>	<u>2/18/2016</u> <u>Completion date:</u> <u>01/01/2017</u> <u>2022 is last report</u>	<u>5 years</u> <u>beginning in</u> <u>2017</u>	<u>\$76,398.40</u>
<u>Select Energy Services</u> File No. C-7-296	Eco Dev	<u>\$91,871.00</u>	<u>9/30/2016</u>	<u>5 years</u> <u>beginning in</u> <u>2018</u>	<u>\$18,374.20</u>
<u>UTPB-Second Training Facilities Grant</u> File No. C-7-243.1	Eco Dev	<u>\$7,500,000</u>	<u>4/19/2017</u> <u>Commencement</u> <u>date:</u> <u>Fall 2017</u> <u>2022 is last report</u>	<u>5 years</u> <u>beginning in</u> <u>2017</u>	<u>\$1,500,000</u>
<u>Glazer's Beer and Beverage of Texas, LLC</u> File No. C-7-302	Eco Dev	<u>\$1,134,991</u>	<u>8/31/2017</u> <u>Completion date:</u> <u>08/31/2018</u>	<u>5 years</u> <u>beginning in</u> <u>Sept. 2018</u>	<u>\$226,998.20</u>
<u>Odessa College – Second Training Grant</u> File No. C-7-245.1	Eco Dev	<u>\$8,000,000</u>	<u>9/8/2017</u> <u>Commencement</u> <u>date:</u> <u>Fall 2017</u> <u>2020 is last report</u>	<u>3 years paid</u> <u>in 6 month</u> <u>increments</u> <u>beginning in</u> <u>2017</u>	<u>\$2,000,000 (2018)</u>
<u>City of Odessa</u> File No. C-7-288	<u>Grant to</u> <u>build parking</u> <u>structure at</u> <u>hotel</u>	<u>\$9,290,741</u>	<u>3/11/2016</u>	<u>Until</u> <u>completed</u>	<u>One PA in the</u> <u>amount of \$5M</u> <u>issued; need to verify</u> <u>additional amounts</u>

**B. EXISTING DOWNTOWN ECONOMIC DEVELOPMENT GRANT
CONTRACTS**

<u>Tawanda-Proteus</u> <u>Infrastructure Grant</u> <u>File No. C-7-328</u>	<u>Downtown</u> <u>Infrastructure</u>	<u>TBD</u>	<u>Contract date: TBD</u> <u>Completion date:</u> <u>TBD</u>	<u>1 year</u>	
<u>Martinez Assets</u> <u>Mgmt</u> <u>Infrastructure Grant</u> <u>File No. C-7-330</u>	<u>Downtown</u> <u>Infrastructure</u>	<u>TBD</u>	<u>Contract date: TBD</u> <u>Completion date:</u> <u>TBD</u>	<u>1 year</u>	

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C. EXISTING TXDOT ADVANCE PAY – \$11.5 M

ODC RESOLUTION NO. ODC-2017R-31

COUNCIL RESOLUTION NO. 2017R-117

<u>\$2,000,000</u>	<u>RC-42d Overpass Yukon and Loop 338</u>
<u>\$2,000,000</u>	<u>RC-15b Overpass Faudree and IH20</u>
<u>\$2,000,000</u>	<u>RC-09 Hwy 385 and South Loop 338</u>
<u>\$2,000,000</u>	<u>RC-15a BI-20 and Faudree</u>
<u>\$2,000,000</u>	<u>RC-131 West Loop 338 and 8th Street</u>
<u>\$500,000</u>	<u>RC-13 56/52nd and Loop 338</u>
<u>\$500,000</u>	<u>RC-133 Faudree - SH191 to Yukon Rd.</u>
<u>\$500,000</u>	<u>RC-21 US385 at Loop 338 N</u>

D. WORKFORCE HOUSING INFRASTRUCTURE INCENTIVE PROGRAM –
\$5 M

In 2019, ODC voted by Resolution No. ODC-2019R-1 dated March 14k, 2019, to request that the Odessa City Council approve the ODC Board setting aside \$5,000,000.00 of undesignated/unassigned ODC fund to be available for entities who present a project that meets whatever guidelines the ODC Board ultimately approved for such housing related projects. The City Council on April 9, 2019, approved setting aside \$5M for this project.

It is anticipated that Guidelines will be approved in 2019 and that funds may be recommended for payment in fiscal year 2018-19 and subsequently in FY 20-21 and later years.

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E. 2018-2019 Economic Development - EDD-OCC
Economic Development Department-Odessa Chamber of Commerce

Mission:

- Develop, organize, and administer the comprehensive Economic Development program of the ODC.
- Increase the number of jobs and realize economic benefits for the City through expansion and diversification of the economic base.
- Coordinate new or expanded manufacturing and industrial facilities.
- Bring in research and development facilities, recycling facilities, defense industry firms, renewable energy, healthcare-related businesses and services, logistics consulting, distribution centers, warehouse facilities, and other activities authorized under the Economic Development Act.
- Promote the City of Odessa as a Regional Business Center.

Goals:

In relation to the **ODC's Compliance Committee:**

- Receive, review, and respond to all inquiries and industrial prospect requests.
- Provide one-on-one counseling.
- Make appropriate referrals of applications for new and existing businesses, as based on the Jobs Creation Matrix or the Investment Benefit Matrix.
- Communicate with Compliance Committee members as to meeting dates.
- Provide meeting venue for Compliance Committee.
- Coordinate with City Attorney office for necessary documents for applications.
- Record and maintain minutes of all meetings.
- Maintain all records of the Compliance Committee.
- Coordinate with City Attorney and City Secretary for documents to be considered by ODC and City Council.
- Annually evaluate Odessa's incentive and financing programs as compared with competitive cities.
- Recommend revisions to ODC and the City Council to improve competitiveness in attracting business and expanding existing businesses.

Perform the following Economic Development functions:

- Provide ongoing recruitment of primary employers, expansions, and capital investment into Odessa.
- Promote awareness of, and distribute, information on incentives including job creation and capital investment grants, workforce availability and training capabilities.
- Continue aggressive local business retention and expansion program through coordinated visits and interviews with local businesses.
- Work with all available partners to provide entrepreneurs and small businesses with counsel and support.
- Provide coordination of International Trade which will include all markets outside of Texas and the United States.
- Provide training in exporting through active membership in District Export Council. Our staff also provides on average 60 Certificates of Origin per year for local business exports from Odessa manufacturers. Prospect development includes ALL prospects regardless of the country of origin.

- Work with the Texas Economic Development Council, Team Texas, The High Ground of Texas, and the Governor's office of Economic Development to develop Odessa as the Business center in our region.
- Work with the Odessa Black Chamber of Commerce and with the Odessa Hispanic Chamber of Commerce.
- In cooperation with the City Manager's Office and City Attorney's Office present tax abatement(s) requests to local taxing entities.
- Improve cooperation and coordination to expand efforts in the city, county, and region, particularly in the area of infrastructure planning and development.
- On behalf of ODC, coordinate the bi-monthly meetings of the Odessa Partnership
- Maintain the system for collection of basic economic and community data.

Coordinate and work cooperatively with other ODC contractors as follows:

- Work with, and make appropriate referrals to, the UTPB-America's SBDC to provide professional counsel and support to entrepreneurs and small businesses.
- Promote and market the resources of UT-Permian Basin, Odessa College, and Texas Tech University-Health Sciences Center to develop a skilled, educated, and motivated labor force.
- Work in cooperation with and support the efforts of MOTRAN.
- Work with CVA Advertising to administer the ODC's comprehensive marketing program.

F. 2018-2019 Economic Development - UTPB-SBDC
UTPB - America's Small Business Development Center

Mission: Support the efforts of the Odessa Development Corporation by providing small businesses, start-ups, and entrepreneurs with professional counsel and support.

Goals:

1. Small Business Development Center:

- Act as Odessa's Small Business Center as a "one stop-shop" for small business development
- Facilitate on-going education seminars for small business development and to assist start-up companies.
- Assist in loan packaging.
- Provide one-on-one counseling.
- Conduct seminars to assist start-up companies.

2. Odessa Business Challenge:

Administer and manage the "Odessa Business Challenge" program in coordination with the ODC to award funds to entrepreneurs and small businesses through a competitively judged competition.

3. OPTIONAL proposal: **Train potential entrepreneurs online**

General Topics of the Online Educational Component (OEC)

- Introduction to Entrepreneurship
- Recognizing Opportunities and Generating Ideas
- Feasibility Analysis
- Developing an Effective Business Model
- Industry and Competitor Analysis
- Writing a Business Plan
- Preparing the Proper Ethical and Legal Foundation
- Assessing a New Venture's Financial Strength and Viability
- Building a New-Venture Team
- Getting Financing or Funding
- Marketing Issues
- Intellectual Property

G. 2018-2019 Infrastructure - Midland-Odessa Transportation Alliance MOTRAN

Mission:

- Support the continued development of transportation infrastructure in order to promote economic development in Odessa for new or expanded business enterprises.
- Bring additional infrastructure funding to the area, above normal programmed amounts.

Goals:

- Secure additional transportation infrastructure funding:
 - Specifically for Ector County and City of Odessa
- Energy Sector Improvements:
 - Partner with the Texas Department of Transportation (TXDOT) and Texas A&M Transportation Institute (TTI) to research and develop data that accurately accounts for truck traffic derived from oil and gas well development and production activity in the Permian Basin, and will allow us to address issues with lack of programmed funding.
- Project specific improvements along US 385, US 67, and La Entrada al Pacifico Corridors:
 - Continue to advocate for advancement of the planning/design efforts underway for US 385 from the Crane/Upton County Line to 1-10 in advancement of the La Entrada al Pacifico Corridor
 - Continue participation in planning study to identify and program additional improvements along the US 67 corridor from Presidio to 1-10 to facilitate continued development of the La Entrada Corridor.
- Interstate-14 Re-Designation:
 - Continue efforts for re-designation of the western segment of Interstate-14 to the US 87/SH158/1-20 corridor, as opposed to the current designation along US 190.
- Collaborate with other entities to develop strategies to improve transportation, transmission, and telecommunications (including Wi-Fi) infrastructure in Ector County.

H. 2018-2019 Advertising - CVA Advertising & Marketing, LTD

Mission: Administer the ODC's comprehensive marketing program using a variety of tools to enhance the city's image while promoting and marketing Odessa not only as a Regional Business Center but also as a location for manufacturing and other activity authorized by the Economic Development Act to all targeted industries.

Goals:

PRIMARY TARGET AUDIENCE

- Prospective consultants, site selectors, corporate executives at companies thinking about relocating, particularly within our target industries
 - Develop more target industry-specific marketing campaigns, particularly those targeted toward medical manufacturing and technology.
 - Focus broad messages on ODC target industries and site selectors.
 - Increase messaging to corporate executives/decision makers not located in Odessa.
 - Enhance image and perception and increase consideration of Odessa for company relocations and business expansion and retention.
 - Continue to provide tools to the economic development department for increased face-to-face interaction with site selectors and local businesses.
 - Continue to execute goal-driven digital strategy.
 - Increase website traffic through other digital marketing tactics.
- Prospective local businesses, current business owners/management and employees
 - Continue to expand messaging for Business Retention & Expansion.
 - Increase direct marketing to consultants and local businesses.
 - Increase messaging to Odessa businesses.

SECONDARY TARGET AUDIENCE

- Local Workforce
 - Help all economic development stakeholders connect and collaborate.
- Odessa Citizens
 - Continue internal marketing campaign - Odessa community awareness of ODC.

I. 2018-2019 Administrative Services - City of Odessa

(Continue unchanged from 2018 and switch to a 2-yr contract term in future)

Goals:

- Provide all necessary accounting, financial, legal, administrative, and operational services necessary to operate the Odessa Development Corporation.
- Provide proper venues for conducting ODC business in compliance with the Public Open Meetings Act.

Services provided by City Finance Department

Accounting:

- receipt of sales tax revenue
- monitoring of sales tax revenue
- monthly monitoring of ODC investments

Financial:

- monthly financial monitoring
- monthly reporting
- facilitate payments to ODC contractors and grant recipients
- coordination with Budget Director to compile ODC budget
- provide information for the Budget, Audit, and Finance Committee

Services provided by City Manager's office

- coordinate meetings of Budget, Audit and Finance Committee
- assist, as needed.

Legal services provided by City Attorney's Office:

- Work with Economic Development Dep't-OCC on Compliance Committee applications.
- Attend Compliance Committee meetings.
- Work with Economic Development Dep't-OCC to meet with companies; negotiation, preparation, and review of all Economic Development Agreements.
- Downtown Odessa, Inc.: meet with grant applicants, negotiation, preparation, and review of all Infrastructure and Façade Agreements.
- Contractor's Agreements:
 - Annually review ODC General Development Plan
 - Prepare resolutions for ODC approval and for the City Council approval of ODC items.
 - Legal research, preparation of all ancillary documents and agreements.
 - Working with outside auditors and the City Auditor to audit compliance with all agreements.
- Work with Economic Development Dep't-OCC for preparation and review of all Economic Development Agreements.
- Through the City Manager's office, coordinate efforts with Economic Development Executive Director-OCC to work with local government entities to establish an aggressive and competitive incentive and finance policy to include Enterprise Zone, Tax Abatements, Freeport Tax Exemptions, 380 agreements, etc.
- Assist City Secretary in preparation and posting of ODC agendas for all meetings

Administrative services provided by the City Secretary's Office:

- Prepare and post of ODC agendas for all meetings with the assistance of the Legal Department.
- Coordinate with City Attorney all legal documents for ODC meetings.
- Records in writing and prepares the minutes of ODC for all meeting
- Protects and preserves all ODC records, such as agendas, minutes, resolutions, and contracts.
- Serves as custodian of the ODC corporate seal.
- Serves as assistant secretary to ODC.
- Prepare and post of ODC items on the City Council's Finance Committee meetings.
- Prepare and post of the ODC items on the City Council Agendas.

Downtown Odessa, Inc.:

- Manage and administer a comprehensive façade and infrastructure improvements grant program for the businesses located in downtown Odessa.

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J. Downtown Odessa, Incorporated Infrastructure Program

Mission:

The Downtown Infrastructure Improvement Program is designed to encourage businesses to promote or develop new or expanded business enterprises in the Odessa Downtown area pursuant to 501.103 of the Texas Local Government Code by encouraging business owners to rehab buildings located in the downtown Odessa Boundaries and make them suitable for businesses to flourish while adhering to current City of Odessa Building Code guidelines.

1. **Incentives:** The ODC will reimburse up to 50%, but not more than \$200,000, toward the total project cost for a Qualifying Infrastructure Project as described herein. Grant amounts shall be determined on a case by case basis for infrastructure improvement. The funds are available on a cost reimbursement basis only. No funds will be paid “up front” or advanced prior to the completed construction. Owner or lessee is responsible for at least 50% of total project cost.
2. **Boundaries:** The Downtown boundaries are 1st Street, Adams Avenue, 10th Street and Bernice Avenue, and grants are available only for property within these boundaries. The amount of grant funds available shall be determined based on location of the property in accordance with the following tiered system:
 - a. Tier 1: 100% of 50% of grant funds shall be available for properties located within the boundaries of 3rd Street, N. Jackson Ave., 7th Street, and N. Lincoln Ave.;
 - b. Tier 2: 75% of the 50% of grant funds shall be available for properties located within the boundaries of 2nd Street, N. Hancock Ave., 8th Street, and N. Sam Houston Ave.;
 - c. Tier 3: 50% of the 50% of grant funds shall be available for properties located within the boundaries of 1st Street, N. Tom Green Ave., 9th Street, N. Washington Ave.; and
 - d. Tier 4: 25% of the 50% of grant funds shall be available for properties located outside the boundaries of Tier 1 through Tier 3 but still within the Downtown boundaries as described above.

Infrastructure:

A “Qualifying Infrastructure Project” means planned improvements, repairs, or remediations that are necessary to meet City Code requirements in order to promote or expand business enterprises, including but not limited to the following: environmental remediation, water-sewer-electric or gas utilities, fire suppression systems, and other approved site improvements necessary to satisfy code requirements. Housing and projects for the general infrastructure needs of the city and not for the promotion and development of new or expanded business are not eligible.

Guidelines: The following guidelines are applicable to the Downtown Infrastructure Improvement Program:

- a. Final approval for a Downtown Infrastructure Improvement application must be obtained from the City Council of the City of Odessa prior to any work being performed. Any work done prior to final approval shall not be eligible for reimbursement.
 - b. Improvements must be made in conformance with all applicable building codes, laws and zoning requirements. Further, improvements for buildings which are located on properties with outstanding property taxes or City-related liens are not eligible for incentive funding.
 - c. The determination of eligibility for any project or specific project item is on a case by case basis.
 - d. Grantee shall invest at least 50% of their own funds in the project. The ODC will reimburse up to 50%, but not more than \$200,000, toward the total project cost for a Qualifying Infrastructure Project.
 - e. Infrastructure subject to reimbursement includes interior ADA requirements, Fire Codes, Building Codes.
 - f. Infrastructure subject to reimbursement includes approved infrastructure projects that are specifically designed to bring the buildings up to City Code requirements. Business specific improvements, including but not limited to improvements such as kitchen equipment, will not be eligible. Each project shall be reviewed for qualification on an individual basis.
 - g. Fire Code required Sprinkler Systems shall always qualify as a reimbursable infrastructure cost.
 - h. Eligible infrastructure costs shall be reimbursed upon completion of the project by the Grantee, the submission of the required paperwork for a compliance audit, and the issuance of a certificate of occupancy.
 - i. Applicant, whether lessee or owner, that is intending to use only a portion of a building or structure may apply for the portion that they intend to use without requiring them to do infrastructure for the entire property. However, applicant, whether lessee or owner, that is intending to make use of a portion of the building **or** the entire building or structure, shall be limited to 1 **(one)** Downtown Infrastructure Improvement application for all eligible infrastructure improvements in that building or structure.
 - j. So long as the lessee has permission to make improvements that qualify under the grant then no additional restrictions shall apply solely because the applicant is a Lessee.
-

K. Downtown Odessa, Incorporated Façade Program

Mission:

The Building Façade Improvement Program is designed to encourage local businesses in the Odessa Downtown area to make exterior improvements which enhance the appearance of their buildings, to better attract other businesses to the downtown area and to demonstrate the economic vitality of the Downtown area for economic development purposes. The stated public purpose is to revitalize and to improve economically distressed structures within Downtown Odessa, to encourage new and expanded business enterprises in the downtown area.

1. **Incentives:** ODC will reimburse up to 80%, but not more than \$25,000, toward the total project cost of building façade improvements for businesses' sites located in the described boundaries. Building owner or lessee is responsible for at least 20% of total project cost.
2. **Boundaries:** The Downtown boundaries are 1st Street, Adams Avenue, 10th Street and Bernice Avenue, and grants are available only for property within these boundaries. The amount of grant funds available shall be determined based on location of the property in accordance with the following tiered system:
 - a. Tier 1: 100% of the 80% of grant funds shall be available for properties located within the boundaries of 3rd Street, N. Jackson Ave., 7th Street, and N. Lincoln Ave.;
 - b. Tier 2: 75% of the 80% of grant funds shall be available for properties located within the boundaries of 2nd Street, N. Hancock Ave., 8th Street, and N. Sam Houston Ave.;
 - c. Tier 3: 50% of the 80% of grant funds shall be available for properties located within the boundaries of 1st Street, N. Tom Green Ave., 9th Street, N. Washington Ave.; and
 - d. Tier 4: 25% of the 80% of grant funds shall be available for properties located outside the boundaries of Tier 1 through Tier 3 but still within the Downtown boundaries as described above.

Façade:

3. **Eligible Improvements:** Eligible Improvements are limited to the exterior building façade, including:
 - a. Exterior treatment systems, such as painting, murals, siding, stucco or simulated stucco, brick/stone work, or other approved treatments;
 - b. Structural improvements to the building façade;
 - c. Masonry or tile cleaning/repair;
 - d. Restoration of details in historical buildings;
 - e. Removal of elements that cover architecturally significant areas; and

- f. Repair or replacement of exterior doors, windows and trim work (in public view) which are necessary for aesthetic purposes
4. **Ineligible Activities:** The following are ineligible uses of grant funds:
 - a. New construction;
 - b. Interior improvements;
 - c. Routine maintenance;
 - d. Parking lot improvements; and
 - e. Landscaping
 5. **General Provisions:**
 - a. Final approval for a Downtown Building Façade Improvement application must be obtained from the City Council of the City of Odessa prior to any work being performed. Any work done prior to final approval shall not be eligible for reimbursement.
 - b. Improvements shall be made in conformance with all applicable building codes, laws, and zoning requirements.
 - c. All grant recipient improvements must be in compliance with the design standards set forth in the Downtown Master Plan for the overlay zone.
 - d. No more than 25% of the total cost of improvements can be related to the exterior painting of the building.
 - e. Churches and non-profit organizations are not eligible.
 - f. No grant funds will be paid "up front" or advanced prior to the completion of construction. All grant funds are available on a cost-reimbursement basis only.
 - g. Funds are subject to Section 504.105 Texas Local Government Code that limits annual spending for promotional purposes to 10% of the ODC revenues.
 - h. Funds are limited to those uses that have the purpose of developing new and/or expanded business enterprises and not for other uses such as housing.
 - i. Applicant, whether lessee or owner, that is intending to make use of the entire building or structure shall be limited to one Downtown Building Façade Improvement application for all eligible façade improvements on that building or structure.

BYLAWS OF
ODESSA DEVELOPMENT
CORPORATION

ARTICLE I
PURPOSE AND POWERS

Section 1.1 **Purpose.** The Corporation is incorporated for the purposes set forth in Article IV of its Articles of Incorporation, the same to be accomplished on behalf of the City of Odessa, Texas (the "City") as its duly constituted authority and instrumentality in accordance with the Development Corporation Act, as amended, Chapters 501-507, Local Government Code, as amended, (the "Act"), and other applicable laws.

~~Section 1.2~~ **Powers.** ~~(a)~~—In the fulfillment of the corporate purpose, the Corporation shall be a Type A organization governed by the Act, and shall have all of the powers set forth and conferred in its Articles of Incorporation, in the Act, and in other applicable law, subject to the limitations prescribed therein and herein and to the provisions thereof and hereof.

~~Section 1.2~~Section 1.3 **Registered Office and Registered Agent.** The Corporation shall have and continuously maintain in the State of Texas a registered office and a registered agent whose office is identical with such registered office, as required by the Texas Non-Profit Corporation Act. The Registered Agent for the Corporation shall be the City Manager, subject that the Board of Directors from time to time, may change the registered agent and/or the address of the registered office, subject to City Council approval, provided that such change is appropriately reflected in the Bylaws.

The registered office of the Corporation is located at 411 W. 8th Street, Odessa, 79760, Ector County, Texas, and at such address is the Corporation, whose mailing address is 411 W. 8th Street, Odessa, 79760, Ector County, Texas.

~~Section 1.3~~Section 1.4**Principal Office.** The principal office of the Corporation in shall be located at 411 W. 8th Street, City of Odessa, Ector County, and it shall be identical with the registered office of the Corporation.

ARTICLE II
BOARD OF DIRECTORS

Section 2.1 **Powers.** The property and affairs of the Corporation shall be managed and controlled by a Board of Directors (the "Board") and, subject to the restrictions imposed by law, by the Articles of Incorporation, and by these bylaws, the Board shall exercise all of the powers of the Corporation.

Section 2.2 **Number -and Terms of Office.**

a. The Board shall consist of five (5) directors, to be appointed by City Council in accordance with the Act and the City's Home-Rule Charter, as each may be amended. ~~Except for the first Board,~~

b. The term of all directors shall be two (2) years and the term shall start on ~~January~~ the 1st of the year of appointment or as soon thereafter as possible. ~~(Except as provided in subsection~~

~~(i.)~~—Each Councilmember, representing a District, shall nominate one person for director. The Director shall have a staggered term that runs concurrently with the appointing Councilmember’s term of elected office.

~~a.c.~~ Directors may be removed from office by the City Council at will. ~~Board members~~Directors shall continue to hold office until their replacement has been appointed. A person appointed after the expiration of a term shall hold office for the remainder of the term or until their successor is appointed. A person may be appointed for three (3) successive terms; but after such period, such person ~~cannot~~may not be reappointed for one (1) term.

d. Any director may resign at any time. Such resignation shall be made in writing and shall take effect at the time specified therein, or, if no time be specified, at the time of its receipt by the president or secretary. The acceptance of a resignation shall not be necessary to make it effective, unless expressly so provided in the resignation.

b.e. Any vacancy occurring upon the Board of Directors shall be filled for the unexpired term by the City Council.

~~e.f.~~ In order to provide for staggered terms, the Councilmembers for District One (1) and Two (2) shall each nominate one director for a first term of two and one half (2 ½) years, January 1, 1998, to May 31, 2000, the Councilmembers for District Three (3), Four (4) and Five (5) shall each nominate one person for a first term of one and one half (1 ½) years, January 1, 1998, to May 31, 1999. The appointment of all directors shall require the approval of the City Council that is in place after the date for the general municipal election in May (Except as provided in subsection (j).)

g. Any director is automatically removed from office if that director is absent in excess of fifty (50) percent of all Regular Meetings and Budget Workshop Meetings during a twelve-month period. The Council will be free to appoint a person immediately to fill the vacated position.

h. The Mayor of the City of Odessa is to be a non-voting *ex officio* member of the Board of Directors, and may attend all meetings of the Board. The Mayor shall cause City staff to provide assistance and administrative support to the Board, as needed. When the Mayor participates in Board activities as a non-voting *ex officio* member, his or her participation shall not count as one of the five (5) Board of Director Positions.

Section 2.3 Qualifications.

~~d.a.~~ The Council shall ~~should~~ consider the ~~an~~ individual’s experience, accomplishments and educational background in appointing ~~members to the Board~~Directors to ensure that the interests and concerns of all segments of the community are considered. Each director shall have one of the following qualifications: (i) serve, or have served, as chief executive officer of a company; or (ii) serve, or have served, in a position of executive management of a company; or (iii) serve, or have served, in a professional capacity; or (iv) have experience equivalent to any of the above qualifications.

e.b. The persons appointed director shall also be subject to the following qualifications: (i) be a resident of the City of Odessa, or be a resident of Ector County, or in the absence of said residency requirements, be approved unanimously by the Council; and (ii) be a person of upstanding moral values; and (iii) be a person committed to making Odessa a better place, through economic development and the creation or retention of new jobs.

~~f.c.~~ The Council, in their appointment of directors, shall be subject to nepotism laws. No Councilmember can may appoint a person who is related to either the Mayor or any of the Councilmembers within the prohibited degrees of relationship.

~~Beginning in the year 2016, the current terms of all Members for the Board of Directors shall be extended until December 31, 2016, or 2017, whichever is applicable. All future terms shall commence on January 1 or as soon thereafter as the appointment can be made. Board members shall continue to hold office until their replacement has been appointed. A person appointed after the expiration of a term shall hold office for the remainder of the term or until their successor is appointed. A person may be appointed for three successive terms; but after such period, such person cannot be reappointed for one term.~~

~~g. — A City Council place number shall be designated for each of the five Directors; and when it is time to appoint a new Director, the Council member assigned that position shall nominate a person for that position. The appointment of all Directors shall require the approval of the City Council that is in place after the date of the general election in November.~~

~~Section 2.3~~ **Section 2.4 Meetings of Directors.** The directors may hold their meetings at such place or places in the City as the Board may from time to time determine; provided, however, in the absence of any such determination by the Board, the meetings shall be held at the principal office of the Corporation, located at 411 W. 8th Street in Odessa, Ector County, Texas. ~~as specified in Article V of these bylaws.~~

~~Section 2.4~~ **Section 2.5 Notice of Meetings.**

a. The regularly scheduled monthly meetings (“Regular Meetings”) of the Board shall be held without the necessity of notice to the directors except for posting as required by the Open Meetings Act.

~~b. — The Budget Workshop Meeting(s) shall be held each year and shall be scheduled at least one (1) month in advance starting by July of each year, without the necessity of notice to the directors except for posting as required by the Open Meetings Act.~~

~~e.b.~~ Special Meetings of the Board ~~shall be held whenever~~ may be called by the president, by the secretary, by a majority of the directors, by the Mayor of the City, or by a majority of the Council. The secretary shall give notice to each director of each Special Meeting in person or by mail, telephone, or e-mail, at least seventy-two (72) hours before the meeting and by posting in compliance with the Open Meetings Law. Unless otherwise indicated in the notice thereof, any and all matters pertaining to the purposes of the Corporation may be considered and acted upon at a Special Meeting. At any meeting at which every director shall be present, even though without any notice, any matter pertaining to the purpose of the Corporation may be considered and acted upon consistent with applicable law.

~~d.c.~~ Whenever any notice is required to be given to the Board, said notice shall be deemed to be sufficient if given by depositing the same in a post office box in a sealed postpaid wrapper addressed to the person entitled thereto at his or her post office address as it appears on the books of the Corporation, or by facsimile or e-mail address designated by the director, and such notice shall be deemed to have been given on the day of such mailing. Attendance of a director at a meeting shall constitute a waiver of notice of such meeting, except where a director attends a meeting for the express purpose of objecting to the transaction of any business on the grounds that the meeting is not lawfully called or convened. Neither the business to be transacted

at nor the purpose of any Regular or Special Meeting of the ~~B~~board need be specified in the notice or waiver of notice of such meeting to the Director, unless required by the Board. A waiver of notice in writing, signed -by the person or persons entitled to said notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice.

~~Section 2.5~~**Section 2.6 Open Meetings Act.** All meetings and deliberations of the Board shall be called, convened, held, and conducted, and notice shall be given to the public, in accordance with the Texas Open Meetings Act, Chapter 551, Texas Government Code, as amended.

~~Section 2.6~~**Section 2.7 Quorum.** A majority of the directors shall constitute a quorum for the conduct of the official business of the Corporation. The act of a majority of the directors present at a meeting at which a quorum is in attendance shall constitute the act of the Board and of the Corporation, unless the act of a greater number is required by law or by these bylaws.

~~Section 2.7~~**Section 2.8 Conduct of Business.**

At the meetings of the Board, matters pertaining to the business of the Corporation shall be considered in accordance with rules of procedure as from time to time prescribed by the Board.

a. ~~At all meetings of the Board, the president shall preside, and in the absence of the president, the vice president shall exercise the powers of the president.~~

b. ~~The secretary of the Corporation shall act as secretary of all meetings of the Board, but in the absence of the secretary, the presiding officer may appoint any person to act as secretary of the meeting.~~

~~Section 2.8~~**Section 2.9 Standards of Conduct.** Directors shall not:

a. Accept or solicit a benefit that might reasonably tend to influence the director in the discharge of the director's official duties.

b. Use the director's official position to secure special privileges or exemptions for the directors or others.

c. Disclose information that could adversely affect the property or affairs of the City or Board, or directly or indirectly, use any information understood to be confidential which was gained by reason of the director's position or employment for the director's own personal gain or benefit or for the private interest of others.

d. Transact any business on behalf of the Board or City in the director's official capacity with any business entity in which the director is an officer, agent or member, or in which the director has a family direct interest, as defined by the nepotism law of the state, or a direct financial interest. In the event that such a circumstance should arise then the director shall make known the director's interest to the Board and the City Council and abstain from all further actions on that item. No economic development funds shall be used for any contract in which such a conflict of interest exist without the approval of the City Council.

Section 2.10 Indemnification of Directors, Officers and Employees.

a. As provided in the Act and in the Articles of Incorporation, the Corporation is, for the purposes of the Texas Tort Claims Act (Subchapter A, Chapter 101, Texas Civil Practices and Remedies Code), a governmental unit and its actions are governmental functions.

b. The Corporation shall indemnify each and every member of the Board, its officers, and its employees, and each member of the Council and each employee of the City, to the fullest extent permitted by law, against any and all liability or expense, including attorney's fees, incurred by any of such persons by reason of any actions or omissions that may rise out of the functions and activities of the Corporation.

~~Section 2.9~~Section 2.11 **Committees of the Board.** The Board may, by resolution, designate two (2) or more directors to constitute an official committee of the Board to exercise such authority of the Board ~~as may be specified in the resolution.~~ Such committees shall have the powers, duties, and responsibilities established by the Board. It is provided, however, that all final, official actions of the Corporation may be exercised only by the Board. Each committee so designated shall keep regular minutes of the transactions of its meetings and shall cause such minutes to be recorded in books kept for that purpose in the principal office of the Corporation.

~~Section 2.10~~Section 2.12 **Other Committees.** The Board shall appoint a compliance committee and may appoint certain other committees, all in an advisory capacity to the Board. The following committees are specifically described as well as specific rules applicable to such committees.

a. Compliance Committee - This committee shall be responsible for reviewing the qualifications of all applicants, as well as their proposals, and also reviewing all agreements between the Corporation and any beneficiary to ~~make sure of~~ insure compliance with its bylaws, except as otherwise hereafter provided.

(i) Ten (10) members shall be appointed by the Board to the Compliance Committee and a quorum shall constitute four (4) committee members. The ~~Compliance~~ Committee shall also include three (3) non-voting *ex-officio* members that shall include one (1) representative— each from the Black Chamber of Commerce, Odessa Chamber of Commerce, and Odessa Hispanic Chamber of Commerce, as appointed by each entity. These non-voting ex-officio members shall not have the power to vote in the meetings attended and shall be for the purpose of ensuring that information is accurately communicated to the Council, the Chambers, and to promote cooperation in achieving the goals and objectives of economic development of the Odessa area and community.

(ii) ~~There should be~~ Written policies or guidelines shall be in place to give direction to the Economic Development Department of the Chamber of Commerce (“EDD”) and to provide procedures for processing applications. ~~Further, P~~ policies should ~~should~~ shall also be in place to provide for the compliance committee to make recommendations to the ODC Board regarding eligibility, required number of jobs, payroll, investment, economic development incentives, economic impact on the community, financial ability of the applicant and feasibility of applicant’s business plan. The policies shall be prepared by the committee and submitted to the Board for final approval. The policies shall be reviewed by the committee on an annual basis.

~~(i)~~(iii) A majority of the committee members shall have experience in commercial banking, lending, accounting, insurance or law. This committee shall be comprised of people who would be willing to volunteer their time in an advisory capacity to the Board. Applicants for Downtown Odessa, Inc. façade and infrastructure grants that have received a recommendation from the Downtown Odessa, Inc. Design Committee shall not be required to obtain a recommendation from the Compliance Committee.

b. Budget, Finance and Audit Committee - The Board may appoint a Budget, Finance, and Audit Committee, This committee, if appointed, which would have the responsibility of working with the Board in the formation and promotion of the annual budget of the Corporation. This committee would also monitor all budget expenditures and investments of the Corporation. Eight (8) members shall be appointed by the Board to the Budget, Finance and Audit Committee and a quorum constitute four (4) committee members.

c. Committee for Business Retention and Expansion -- The Board may appoint a Committee for Business Retention and Expansion, which This committee, if appointed, would work with the directors of the Corporation to keep them informed of all development and activities concerning business retention and expansion. At least five (5) members shall be appointed by the Board to said committee and a quorum shall consist of at least one-half of its members.

d. Committee for New Business Attraction and Recruitment -- The Board may appoint a Committee for New Business Attraction and Recruitment, This committee, if appointed, which would work with the Corporation's Board and keep them informed of all developments and activities concerning business attraction and recruitment. At least five (5) members shall be appointed by the Board to said committee and a quorum shall consist of at least one-half of its members.

e. It is important that all committee members be actively involved in the affairs of their committee, and that their attendance at committee meetings be excellent, and that they are receptive to any other forms of communication. They Committee members should also be available for sSpecial Mmeetings, if necessary, and receptive to any other form of communication.

e.f. The following rules shall apply to all committees:

(i) If a member misses more than three (3) consecutively called meetings without an excuse, --the Board may dismiss that member by appointing a new member for that position for the remainder of the unexpired term.

(ii) The City Secretary shall draw lots for all of the existing committee members so that one-half shall draw two-year terms and one-half shall draw one-year terms. After such initial term, all members shall serve two-year terms.

(iii) Committee members are restricted to no more than three (3) consecutive terms. Time served prior to the initial term described above shall not be considered in the application of this restriction.

(iv) The Committee chairmen-chairperson shall be appointed by the committees for a one-year term. The existing chairmen-chairperson shall continue to serve for the first one-year term.

(v) Committee members shall continue to serve until their successor is appointed unless they resign or unless removed by the Board. A person appointed to continue a term shall serve until that term is completed and is eligible for reappointment. Time served in a partial term shall not be counted when interpreting the two-term restriction.

~~(vi)~~ A term is assigned to each committee member for the purpose of determining when the appointment should be reconsidered and not to confer any official status to the committee member.-;

~~(vi)~~(vii) All committee members are at-will and their services are advisory to the ODC Board.

~~(vii)~~(viii) Ten members shall be appointed by the ODC Board to the Compliance Committee and a quorum shall be four. Eight members shall be appointed by the ODC Board to the Budget, Finance and Audit Committee and a quorum shall be four. Any other standing committee, shall consist of at least five appointed members and a quorum shall consist of one half of its members.

Section 2.9 **Compensation of Directors.** Directors shall not receive any salary or compensation for their services as directors. However, they shall be reimbursed for their actual expenses incurred in the performance of their duties hereunder as prescribed in ~~Article IV, Section 8.~~herein.

ARTICLE III OFFICERS

Section 3.1 **Titles and Term of Office.**

a. The appointed officers of the Corporation shall be a President, a Vice President, a Secretary and a Treasurer, and such other officers as the Board may from time to time elect or appoint. One person may hold more than one office, except that the President shall not hold the office of Secretary. Terms of office shall be for one (1) year to commence as soon as possible each year after the director appointments are made by the City Council. Any officer may be reelected or reappointed by the Board.

b. All officers shall be subject to removal from office at any time by a vote of a majority of the entire Board.

c. A vacancy in the office of any officer shall be filled by a vote of a majority of the directors, for the unexpired portion of the term of that office.-

Section 3.2 **Powers and Duties of the President.** The president shall be the chief executive officer of the Corporation, and, subject to the paramount authority of the Board, the president shall be in general charge of the properties and affairs of the Corporation, shall preside at all meetings of the Board, and may sign and execute all contracts, conveyances, franchises, bonds, deeds, assignments, mortgages, notes and other instruments in the name of the Corporation.

Section 3.3 **Powers and Duties of the Vice President.** The vice president shall have such powers and duties as may be prescribed by the Board and shall exercise the powers of the president during that officer's absence or inability to act. Any action taken by the vice president

in the performance of the duties of the president shall be conclusive evidence of the absence or inability to act of the president at the time such action was taken.

Section 3.4 **Powers and Duties of the Treasurer.** The treasurer shall have the responsibility to see to the handling, custody, and security of all funds and securities of the Corporation in accordance with these bylaws. When necessary or proper, the treasurer may endorse and sign, on behalf of the corporation, for collection or issuance, checks, notes and other obligations in or drawn upon such bank or banks or depositories as shall be designated by the Board consistent with these bylaws. The treasurer shall see to the entry in the books of the Corporation full and accurate accounts of all monies received and paid out on account of the corporation. The treasurer shall, at the expense of the Corporation, give such bond for the faithful discharge of his or her duties in such form and amount as the Board or Council may require.

Section 3.5 **Powers and Duties of the Secretary.** The secretary shall keep the minutes of all meetings of the Board in books provided for that purpose, shall give and serve all notices, may sign with the president in the name of the Corporation, and/or attest the signature thereto, all contracts, conveyances, franchises, bonds, deeds, assignments, mortgages, notes and other instruments of the Corporation, shall have charge of the corporate books, records, documents and instruments, except the books of account and financial records and securities, and such other books and papers as the Board may direct, all of which shall at all reasonable times be open to public inspection upon application at the office of the Corporation during business hours, and shall in general perform all duties incident to the office of secretary subject to the control of the Board. The secretary of the Corporation shall act as secretary of all meetings of the Board, but in the absence of the secretary, the presiding officer may appoint any person to act as secretary of the meeting.

Section 3.6 **Appointment.** The ~~P~~resident, each ~~V~~ice ~~P~~resident, and ~~any the~~ secretary~~assistant secretaries~~ shall be named from among the members of the ~~B~~oard. The ~~T~~reasurer, as the City Manager's designee, and ~~any assistant S~~ecretaries ~~may, at the option of the Board, shall be persons other than members of the Board, but they may be employees of the City.~~

Section 3.7 **Compensation.** Officers who are members of the Board shall not receive any salary or compensation for their services, except that they shall be reimbursed for their actual expenses incurred in the performance of their duties hereunder as prescribed in Article IV, Section 8. Other officers may be compensated as directed by the Board.

ARTICLE IV FUNCTIONAL CORPORATED DUTIES AND REQUIREMENTS

Section 4.1 **General Development Plan.**

a. The Board shall research, develop, prepare, and submit to the City Council for its approval, an economic development plan for the City, which shall include proposed methods and the expected costs of implementation. The plan shall include both short-term and long-term goals for the economic development of the city, proposed methods for the elimination of unemployment and underemployment, and the promotion of employment, through the expansion and development of a sound industrial and manufacturing base for and within the City.

b. The Board shall review and update the plan each year prior to submission of the annual budget required by other provisions of these bylaws.

c. **Annual Corporate Budget.** At least sixty (60) days prior to the commencement of each fiscal year of the Corporation, the Board shall adopt a proposed budget of expected revenues and proposed expenditures for the next ensuing fiscal year. The budget shall contain such classifications and shall be in such form as may be prescribed from time to time by the Council. The budget shall not be effective until the same has been approved by the Council.

The Budget Workshop Meeting(s) shall be held each year and shall be scheduled at least one (1) month in advance starting by July of each year, without the necessity of notice to the directors except for posting as required by the Open Meetings Act.

Section 4.2 **Books, Records, Audits.**

a. The Corporation shall keep and properly maintain, in accordance with generally accepted accounting principles, complete books, records, accounts, and financial statements pertaining to its corporate funds, activities, and affairs.

b. At the direction of the Council, the books, records, accounts, and financial statements of the Corporation may be maintained for the Corporation by the accountants, staff and personnel of the City. In such event, the Corporation shall pay to the City reasonable compensation for such services.

c. The Corporation, or the City if the option described in subsection (b) is selected, shall cause its books, records, accounts, and financial statements to be audited at least once each fiscal year by an outside, independent, auditing and accounting firm selected by the Corporation and approved by the Council. Such audit shall be at the expense of the Corporation.

Section 4.3 **Deposit and Investment of Corporate Funds.**

a. All proceeds from the issuance of bonds, notes, or other debt instruments (“Obligations”) issued by the Corporation shall be deposited and invested as provided in the resolution, order, indenture, or other documents authorizing or relating to their issuance.

b. All other monies of the Corporation shall be deposited, secured and/or invested in the manner provided for the deposit, security, and/or investment of the public funds of a City. The Board shall designate the accounts and depositories to be created and designated for such purposes, and the methods of withdrawal of funds therefrom for use by and for the purposes of the Corporation upon the signature of its Treasurer and such other persons as the Board shall designate. The accounts, reconciliation, and investment of such funds and accounts shall be performed by the Department of Finance of the City. The Corporation shall pay reasonable compensation for such services to the City.

Section 4.4 **Expenditures of Corporate Money.**

a. The monies of the Corporation, including sales and use taxes collected pursuant to the Act, monies derived from the repayment of loans, rents received from the lease or use of property, the proceeds from the investment of funds of the Corporation, the proceeds from the sale of property, and the proceeds derived from the sale of Obligations, may be expended by the Corporation for any of the purposes authorized by the Act, subject to the following limitations:

(i) Expenditures from the proceeds of Obligations shall be identified and described in the orders, resolutions, indentures, or other agreements submitted to

and approved by the City Council prior to the sale and delivery of the Obligations to the purchasers thereof required by Section 6 of this Article;

(ii) Expenditures that may be made from a fund created with the proceeds of Obligations, and expenditures of monies derived from sources other than the proceeds of Obligations may be used for the purposes of financing or otherwise providing one or more "Projects," as defined in the Act. The specific expenditures shall be described in a resolution or order of the Board and shall be made only after the approval thereof by the City Council. However, with the approval of general guidelines by the City Council and the Board, micro loans may be approved by a separate Board or Committee.

(iii) All other proposed expenditures shall be made in accordance with and shall be set forth in the annual budget required ~~herein, by Section 2 of this Article.~~

Section 4.5 **Issuance for Obligations.** No Obligations, including refunding Obligations, shall be sold and delivered by the Corporation unless the Council shall approve such Obligations by action taken no more than 60 days prior to the date of sale of the Obligations.

Section 4.6 **Contracts.** All economic development funds expended for the purpose of encouraging economic development shall satisfy the following requirements:

- a. Must be predominantly for the public purpose of the development and diversification of the economy of the City of Odessa.
- b. There must be sufficient assurance, by contractual or statutory obligations, and through continuing supervision by the City of Odessa or others that the public purpose will be accomplished.
- c. There must be sufficient protection for the handling of the public money.
- d. There must be adequate consideration received for the payment of economic development funds.
- e. The purposes to be accomplished in each contract must be identified and must further identify by written provisions the amount of funds to be expended, the benefits to be received, such as new jobs or new investment in the City of Odessa, and must further specify the required period of time for providing the benefits.
- f. In the event that the specific purposes of the contract are not accomplished, the contract shall include provisions to require reimbursement of the economic development fund by the company.

Section 4.7 **Reimbursement of Expenses.** Any expenses of officers, directors or employees shall be reimbursed pursuant to the policies of the City of Odessa and there may be no public expenditure or reimbursement with public funds for alcohol.

ARTICLE V MISCELLANEOUS PROVISIONS

~~Section 5.1 — **Principal Office.** (a) The principal office and the registered office of the corporation shall be the registered office of the Corporation specified in the Articles of Incorporation.~~

~~Section 5.2~~Section 5.1**Fiscal Year.** The fiscal year of the Corporation shall be the same as the fiscal year of the City, currently beginning on October 1 of each calendar year and ending on September 30 of the following calendar year, as set out in Article V, Section 72 of the Home Rule Charter.

~~Section 5.3~~Section 5.2**Seal.** The seal of the Corporation shall be as determined by the Board.

~~Section 5.4 — **Resignations.** Any director or officer may resign at any time. Such resignation shall be made in writing and shall take effect at the time specified therein, or, if no time be specified, at the time of its receipt by the president or secretary. The acceptance of a resignation shall not be necessary to make it effective, unless expressly so provided in the resignation.~~

~~Section 5.5~~Section 5.3**Approval or Advice and Consent of the Council.** To the extent that these bylaws refer to any approval by the City or refer to advice and consent by the Council, such advice and consent shall be evidenced by a ~~certified~~ copy of a resolution, order or motion duly adopted by the Council.

~~Section 5.6~~Section 5.4**Services of City Staff and Officers.** Subject to the authority of the City Manager under the Charter of the city, the Corporation shall have the right to utilize the services of the City Attorney, the City Secretary, and the staff and employees of the Finance Department of the city, provided (i) that the Corporation shall pay reasonable compensation to the City for such services, and (ii) the performance of such services does not materially interfere with the other duties of such personnel of the City.

~~Section 5.7 — **Indemnification of Directors, Officers and Employees.**~~

~~a. — As provided in the Act and in the Articles of Incorporation, the Corporation is, for the purposes of the Texas Tort Claims Act (Subchapter A, Chapter 101, Texas Civil Practices and Remedies Code), a governmental unit and its actions are governmental functions.~~

~~b. — The Corporation shall indemnify each and every member of the Board, its officers, and its employees, and each member of the Council and each employee of the City, to the fullest extent permitted by law, against any and all liability or expense, including attorneys fees, incurred by any of such persons by reason of any actions or omissions that may rise out of the functions and activities of the Corporation.~~

ARTICLE VI
EFFECTIVE DATE, AMENDMENTS

Section 6.1 **Effective Date.** These bylaws shall become effective upon the occurrence of the following events:

a. The approval of these bylaws by the Board.

a.b. The approval of these bylaws by the City Council; and

Section 6.2 **Amendments to Articles of Incorporation and Bylaws.** The Articles of Incorporation of the Corporation and these bylaws may be amended only in the manner provided in the Articles of Incorporation and the Act.

Approved: 12/9/1997
Amended: 9/8/1998
Amended: 5/11/1999
Amended: 4/13/2004
Amended: 1/25/2011
Amended: 2/23/2016
Amended: 10/24/2017
Amended: _____

By: City of Odessa
Approved: _____, 20197

David R. Turner, Mayor

ATTEST:

Norma Aguilar-Grimaldo, City Secretary

APPROVED AS TO FORM:

~~Larry Long~~ Gary Landers, City Attorney

By: Odessa Development Corporation
Approved: _____, 2017

~~Charles Carlson~~ Betsy Triplett-Hurt,
President

ATTEST:

Norma Aguilar-Grimaldo, Assistant Secretary