



M E M O R A N D U M

**City of Austin
Financial Services Department
Purchasing Office**

DATE: September 6, 2016
TO: Memo to File
FROM: Jonathan Dalchau, Senior Buyer Specialist
RE: MA 8100 PA140000044

This MA was created as a payment mechanism only. The original contract is administered, maintained, and located with the Aviation Department. This document was created by Terra Green and was not found in EDIMS.

**AMENDMENT NO. 3 TO THE AGREEMENT
FOR THE RETENTION OF PROFESSIONAL SERVICES**

THIS AGREEMENT ("Third Amendment") is made and entered into by and between the City of Austin, a Texas home-rule municipal corporation acting by and through the Executive Director of the Department of Aviation ("City") and Austin-Bergstrom Landhost Enterprises, Inc., a nonprofit public facility corporation ("ABLE").

RECITALS

WHEREAS, ABLE has retained professional services in order to restructure its debt;

WHEREAS, pursuant to the Agreement for the Retention of Professional Services executed by the City and ABLE on June 18, 2014 ("Agreement"), the City agreed to pay the initial deposits required to retain certain professionals with expertise in debt restructuring;

WHEREAS, on November 6, 2014, the Austin City Council authorized the negotiation and execution of an amendment to the Agreement in the amount of \$300,000 for a total contract amount not to exceed \$355,000 for debt restructuring professional services related to the Austin-Bergstrom International Airport hotel.

WHEREAS, on May 19, 2016, the Austin City Council authorized the negotiation and execution of an amendment to the Agreement in the amount of \$150,000 for total contract amount not to exceed \$505,000 for legal and finance professional services related to the Austin-Bergstrom International Airport hotel.

WHEREAS, on August 18, 2016, the Austin City Council authorized the negotiation and execution of an amendment to the Agreement in the amount not to exceed \$3,000,000 for atrium and heating, ventilating, and air conditioning system (HVAC) repairs to the Austin-Bergstrom International Airport hotel.

NOW THEREFORE, the City and ABLE, for good and valuable consideration receipt of which is hereby acknowledged, and intending to be legally bound hereby, do agree as follows:

AGREEMENT

1. Sections A and B of Article 1 "CITY OBLIGATIONS" of the Agreement are hereby revised as follows:
 - A. City shall pay an amount not to exceed **FIVE HUNDRED AND FIVE THOUSAND DOLLARS AND NO CENTS (\$505,000.00)** each and combined for ABLE's legal counsel, Chief Restructuring Officer, and communications firm to provide ABLE the necessary professional services for restructuring debt ("ABLE's Professional Services").
 - B. City shall pay an amount not to exceed **THREE MILLION DOLLARS AND NO CENTS (\$3,000,000.00)** to ABLE for the HVAC system replacement and

atrium repairs of the Austin-Bergstrom International Airport hotel related to mold remediation ("ABLE's HVAC and Atrium Project").

2. Section A of Article II "ABLE OBLIGATIONS" of the Agreement is hereby revised as follows:

A. ABLE shall reimburse the City the amounts paid for ABLE's Professional Services and ABLE's HVAC and Atrium Project up to the total of **THREE MILLION FIVE HUNDRED AND FIVE THOUSAND DOLLARS AND NO CENTS (\$3,505,000.00)** no later than September 30, 2017 as "Other Payments" due to the City under Section 7.4 of the Lease.

3. Article IV of the Agreement is hereby amended to add the following Sections:

E. This Agreement shall commence on the Effective Date and terminate on December 31, 2017 unless terminated earlier by the City upon written notice to ABLE ("Term").

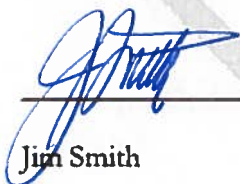
F. Articles II and III provided in this Agreement shall survive the expiration or earlier termination of the Term.

4. Except as provided in this Third Amendment, the Agreement shall remain in full force and effect in accordance with its terms.

IN WITNESS WHEREOF, this Third Amendment has been executed by the parties through their duly authorized representatives in Austin, Texas as of the date of the last signature.

**CITY OF AUSTIN
DEPARTMENT OF AVIATION**

**AUSTIN-BERSTROM LANDHOST
ENTERPRISES, INC.**



Jim Smith

Executive Director

Date: 8/25/16

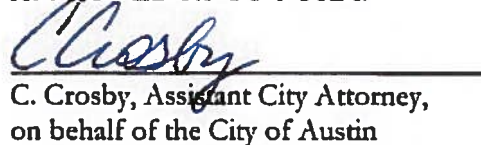


Gregory S. Milligan

President

Date: August 24, 2016

APPROVED AS TO FORM:



C. Crosby, Assistant City Attorney,
on behalf of the City of Austin

AUSTIN-BERGSTROM LANDHOST ENTERPRISES, INC.
Austin-Bergstrom International Airport
3600 Presidential Boulevard, Suite 411
Austin, Texas 78719

September 2, 2016

Gregory S. Milligan
Harney Management Partners, LLC
P.O. Box 90099
Austin, Texas 78709

Re: Amendment No. 2 to the Contract with Harney Management Partners, LLC to serve as Restructuring Advisor to Austin-Bergstrom Landhost Enterprises, Inc. (ABLE) dated June 18, 2014.

Dear Mr. Milligan:

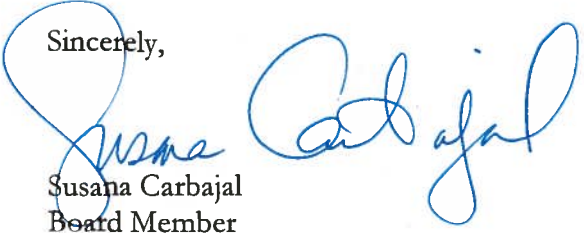
This letter authorizes and constitutes an amendment to the professional services contract dated June 18, 2014 to retain you and your firm as Restructuring Advisor for ABLE. This amendment authorizes payment for professional services rendered under such contract as set forth below.

Compensation. Contracts have been awarded to three Contractors with a combined not-to-exceed amount of \$505,000.00, including all fees and expenses. Total Contract amount may not exceed a combined amount of \$505,000.

Except as otherwise herein amended, the aforementioned professional services contract remains operative and effective.

Please indicate your approval by signing this letter below and returning it to my attention at your earliest convenience.

Sincerely,


Susana Carbajal
Board Member

AGREED:


Gregory S. Milligan
Date 09.02.16

AUSTIN-BERGSTROM LANDHOST ENTERPRISES, INC.

Austin-Bergstrom International Airport

3600 Presidential Boulevard, Suite 411

Austin, Texas 78719

September 2, 2016

Sabrina L. Streusand
Streusand Landon & Ozburn, LLP
811 Barton Springs Road, Suite 811
Austin, Texas 78704

RE: Amendment No. 2 to Legal Services Contract pertaining to Austin-Bergstrom
Landhost Enterprises, Inc. (ABLE) dated June 9, 2014.

Dear Ms. Streusand:

This letter authorizes and constitutes an amendment to the legal services contract dated June 9, 2014 to retain you and your firm for legal services related to ABLE's debt restructuring. This amendment authorizes payment for legal services rendered under such contract as set forth below.


Compensation. Contracts have been awarded to three Contractors with a combined not-to-exceed amount of \$505,000.00, including all fees and expenses. Total Contract amount may not exceed a combined amount of \$505,000.

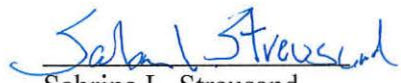
Except as otherwise herein amended, the aforementioned legal services contract remains operative and effective.

Please indicate your approval by signing this letter below and returning it to my attention at your earliest convenience.

Sincerely,

AGREED:


Gregory S. Milligan
President

 9/02/2016
Sabrina L. Streusand Date
Streusand Landon & Ozburn, LLP

**AMENDMENT NO. 2 TO THE AGREEMENT
FOR THE RETENTION OF PROFESSIONAL SERVICES**

THIS AGREEMENT ("Second Amendment") is made and entered into by and between the City of Austin, a Texas home-rule municipal corporation acting by and through the Executive Director of the Department of Aviation ("City") and Austin-Bergstrom Landhost Enterprises, Inc., a nonprofit public facility corporation ("ABLE").

RECITALS

1. ABLE has retained professional services in order to restructure its debt.
2. Pursuant to the Agreement for the Retention of Professional Services executed by the City and ABLE on June 18, 2014 ("Agreement"), the City agreed to pay the initial deposits required to retain certain professionals with expertise in debt restructuring.
3. The parties desire to amend the Agreement to increase the amounts payable under those contracts between ABLE and the professionals with expertise in debt restructuring.

NOW THEREFORE, the City and ABLE, for good and valuable consideration receipt of which is hereby acknowledged, and intending to be legally bound hereby, do agree as follows:

AGREEMENT

1. Section A, B, and C of Article 1 "CITY OBLIGATIONS" of the Agreement are hereby deleted in their entirety and replaced as follows:
 - A. City shall pay an amount not to exceed **THREE HUNDRED AND FIFTY-FIVE THOUSAND DOLLARS AND NO CENTS (\$355,000.00)** each and combined for ABLE's legal counsel, Chief Restructuring Officer, and communications firm to provide ABLE the necessary professional services for restructuring debt ("ABLE's Professional Services").
 - B. Intentionally Left Blank.
 - C. Intentionally Left Blank.
2. Section A of Article II "ABLE OBLIGATIONS" of the Agreement is hereby revised as follows:
 - A. ABLE shall reimburse the City the amounts paid for ABLE's Professional Services up to the total of **THREE HUNDRED AND FIFTY-FIVE THOUSAND DOLLARS AND NO CENTS (\$355,000.00)** no later than twelve (12) months from the Effective Date of this Agreement as "Other Payments" due to the City under Section 7.4 of the Lease.

3. Except as provided in this Second Amendment, the Agreement shall remain in full force and effect in accordance with its terms.

IN WITNESS WHEREOF, this Second Amendment has been executed by the parties through their duly authorized representatives in Austin, Texas as of the date of the last signature.

**CITY OF AUSTIN
DEPARTMENT OF AVIATION**



Dave Arthur

Chief Financial Officer

Date: 12-10-2014

**AUSTIN-BERSTROM LANDHOST
ENTERPRISES, INC.**



Jim Smith

President

Date: 12/10/14

**AMENDMENT NO. 1 TO THE AGREEMENT
FOR THE RETENTION OF PROFESSIONAL SERVICES**

THIS AGREEMENT ("First Amendment") is made and entered into by and between the City of Austin, a Texas home-rule municipal corporation acting by and through the Executive Director of the Department of Aviation ("City") and Austin-Bergstrom Landhost Enterprises, Inc., a nonprofit public facility corporation ("ABLE").

RECITALS

1. ABLE has retained professional services in order to restructure its debt.
2. Pursuant to the Agreement for the Retention of Professional Services executed by the City and ABLE on June 18, 2014 ("Agreement"), the City agreed to pay the initial deposits required to retain certain professionals with expertise in debt restructuring.
3. The parties desire to amend the Agreement to increase the deposit amounts made under those contracts between ABLE and the professionals with expertise in debt restructuring.

NOW THEREFORE, the City and ABLE, for good and valuable consideration receipt of which is hereby acknowledged, and intending to be legally bound hereby, do agree as follows:

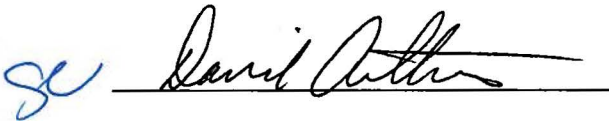
AGREEMENT

1. Section A of Article 1 "CITY OBLIGATIONS" of the Agreement is hereby deleted in its entirety and replaced as follows:
 - A. City shall pay a maximum of **FIFTY-FIVE THOUSAND DOLLARS AND NO CENTS (\$55,000.00)** for the retention of outside legal counsel to provide ABLE legal advice and representation regarding ABLE's debt restructuring.
2. Section C of Article 1 "CITY OBLIGATIONS" of the Agreement is hereby deleted in its entirety and replaced as follows:
 - C. City shall pay a maximum of **FIFTY THOUSAND DOLLARS AND NO CENTS (\$50,000.00)** for the retention of a Chief Restructuring Officer to provide ABLE an expert in negotiating and restructuring ABLE's debt.
3. Section A of Article II "ABLE OBLIGATIONS" of the Agreement is hereby revised as follows:
 - A. ABLE shall pay the City the total of **ONE HUNDRED AND TEN THOUSAND DOLLARS AND NO CENTS (\$110,000.00)** no later than six (6) months from the Effective Date of this Agreement as "Other Payments" due to the City under Section 7.4 of the Lease.

4. Except as provided in this First Amendment, the Agreement shall remain in full force and effect in accordance with its terms.

IN WITNESS WHEREOF, this First Amendment has been executed by the parties through their duly authorized representatives in Austin, Texas as of the date of the last signature ("Effective Date").

**CITY OF AUSTIN
DEPARTMENT OF AVIATION**

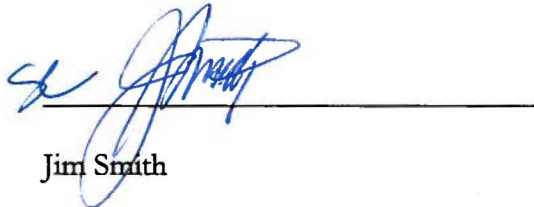
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Dave Arthur

Chief Financial Officer

Date: 8/19/2014

**AUSTIN-BERSTROM LANDHOST
ENTERPRISES, INC.**

_____

Jim Smith

President

Date: 8/20/14

AGREEMENT FOR THE RETENTION OF PROFESSIONALS SERVICES

This agreement ("Agreement") is made by and between the City of Austin, a Texas home-rule municipal corporation acting by and through the Executive Director of the Department of Aviation ("City") and Austin-Bergstrom Landhost Enterprises, Inc., a nonprofit public facility corporation ("ABLE").

WITNESSETH:

WHEREAS, the City formed ABLE as a nonprofit public facility corporation created and existing under Article 717s, Vernon's Annotated Texas Civil Statutes, as amended, and codified as Chapter 303 of the Texas Local Government Code, with powers, among others, to issue revenue bonds for the purposes of financing and refinancing the cost of acquiring, improving, and equipping a full-service hotel ("New Facilities") at Austin-Bergstrom International Airport ("Airport");

WHEREAS, ABLE became the lessee of the City on or about December 9, 1998 by virtue of a First Amendment to the Facilities Lease Agreement dated as of June 4, 1998 between the City and Landmark Hospitality, LP (collectively, the "Lease");

WHEREAS, in order to finance the construction of the New Facilities, ABLE and Chase Bank of Texas, National Association executed and delivered an Indenture of Trust dated as of February 1, 1999 ("Original Indenture"), which Original Indenture was supplemented and amended by a First Amendment to Project Development Agreement and First Supplemental Indenture dated as of July 2, 2001 ("First Supplemental Indenture"), pursuant to which ABLE issued its \$38,785,000 Airport Hotel Senior Revenue Bonds, Series 1999A, and its \$3,730,000 Airport Hotel Subordinate Revenue Bonds, Series 1999B (together, the "Airport Hotel Bonds");

WHEREAS, ABLE and the indenture trustee further amended the Original Indenture pursuant to a Second Supplemental Indenture dated as of November 1, 2005 ("Second Supplemental Indenture" and together with the Original Indenture and the First Supplemental Indenture, the "Bonds Indenture");

WHEREAS, ABLE and City executed the Second Amendment to the Facilities Lease Agreement dated as of January 1, 2005 to assist in the implementation and clarification of matters covered by the Second Supplemental Indenture;

WHEREAS, ABLE has not met its debt service requirements due to the initial large debt issuance, high interest rates, and other economic factors and consequently constitutes an event of default under the Bonds Indenture;

WHEREAS, the City and ABLE desire to restructure ABLE's debt in order for ABLE not be in default;

WHEREAS, ABLE desires to retain professional services in order to successfully restructure its debt and the City agrees to pay the initial deposits required to retain certain professionals with expertise in debt restructuring;

NOW THEREFORE, the City and ABLE, for good and valuable consideration receipt of which is hereby acknowledged, and intending to be legally bound hereby, do agree as follows:

ARTICLE I: CITY OBLIGATIONS

- A. City shall pay a maximum of FORTY-THOUSAND DOLLARS AND NO CENTS (\$40,000.00) for the retention of outside legal counsel to provide ABLE legal advice and representation regarding ABLE's debt restructuring.
- B. City shall pay a maximum of FIVE THOUSAND DOLLARS AND NO CENTS (\$5,000.00) for the retention of a communications firm to provide ABLE communication strategies and messaging regarding ABLE's debt restructuring.
- C. City shall pay a maximum of TEN THOUSAND DOLLARS AND NO CENTS (\$10,000.00) for the retention of a Chief Restructuring Officer to provide ABLE an expert in negotiating and restructuring ABLE's debt.
- D. The City's obligation is payable only and solely from Aviation revenues appropriated and available for the purpose of this purchase. Lack of funds shall render this Agreement null and void to the extent funds are not available.

ARTICLE II: ABLE OBLIGATIONS

- A. ABLE shall pay the City the total of FIFTY FIVE THOUSAND DOLLARS AND NO CENTS (\$55,000.00) no later than six (6) months from the Effective Date of this Agreement as "Other Payments" due to the City under Section 7.4 of the Lease.
- B. ABLE hereby covenants and agrees to retain the professionals specified above for the sole purpose of advising ABLE in restructuring its debt incurred as a result of issuing the Airport Hotel Bonds.

ARTICLE III: DEFAULT

- A. If ABLE fails to keep, perform, or observe any of the covenants, agreements, terms, or provisions contained in this Agreement that are to be kept or performed by ABLE, and fails to cure such failure within thirty (30) calendar days after delivery by City to ABLE of written notice specifying the failure, it shall be deemed a default by ABLE under this Agreement and the Lease and a material breach of this Agreement and the Lease.

- B. If ABLE defaults under this Agreement, City may at any time thereafter and without waiving any other rights or remedies hereunder or available to City at law or in equity, exercise any right or remedy available to City under this Agreement, the Lease, or at law or in equity. All rights and remedies under the Agreement are cumulative and are not exclusive of any other right or remedy provided by law.

ARTICLE IV: GENERAL


- A. This Agreement shall be binding upon and insure to the benefit of the parties hereto.
- B. This Agreement represents the entire agreement between the parties. All prior negotiations have been merged into this Agreement and there are no understandings, representations, or agreements, oral or written, express or implied, other than those set forth herein. This Agreement shall not be modified or amended except by an agreement signed by both parties.
- C. The Agreement is made under and shall be governed by the laws of the State of Texas, excluding any rule or principle that would refer to and apply the substantive law of another state or jurisdiction. All issues arising from this Agreement shall be resolved in the State or Federal Courts in Travis County, Texas and the parties agree to submit to the exclusive personal jurisdiction of such courts.
- D. If a court of competent jurisdiction determines that a term or provision of this Agreement is void or unenforceable, the remainder of this Agreement remains effective to the extent permitted by law.

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the date of the last signature ("Effective Date").

**CITY OF AUSTIN
DEPARTMENT OF AVIATION**

ce By: 
Jim Smith,
Executive Director

AUSTIN-BERGSTROM LANDHOST ENTERPRISES, INC.

By: 
David Arthur,
Vice-President