



**Lease Agreement/Renewal
CITY OF AUSTIN
RECOMMENDATION FOR COUNCIL ACTION**

AGENDA ITEM NO.: 6
AGENDA DATE: Thu 10/20/2005
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SUBJECT: Authorize negotiation and execution of an amendment to the Facilities Lease Agreement between the City and Austin-Bergstrom Landhost Enterprises, Inc. for the airport hotel at Austin-Bergstrom International Airport, including modifications and clarifications related to the mortgage of Lessee's leasehold interests, payment of rent, default and termination.

AMOUNT & SOURCE OF FUNDING: N/A

FISCAL NOTE: N/A

REQUESTING Aviation
DEPARTMENT:

DIRECTOR'S
AUTHORIZATION: Jim Smith

FOR MORE INFORMATION CONTACT: Jim Smith, Executive Director/(512) 530-7518; David Petersen, Asst. City Attorney/(512) 974-2518

PRIOR COUNCIL ACTION: N/A

BOARD AND COMMISSION ACTION: Approved by Austin Airport Advisory Commission

As part of the conversion of Bergstrom Air Force Base into Austin-Bergstrom International Airport, it was decided to transform the former Air Force Headquarters building into a full service airport hotel. To achieve this purpose, the City authorized the creation of a public facility corporation, Austin-Bergstrom Landhost Enterprises, Inc. (ABLE). ABLE then entered into a series of transactions, including an Indenture of Trust (Indenture) through which over \$38,000,000 in tax exempt bonds were issued to finance the development of the hotel. ABLE leased a tract of ten acres of land at the Airport including the headquarters building from the City (Facilities Lease). Under the Facilities Lease, the City was entitled to receive rent equal to the greater of certain percentages of hotel revenue, or a minimum rent of \$78,401 subject to escalation.

The hotel opened for business in January 2001. In the year after opening, the hotel was affected by a downturn in the travel industry, a recession in the high-technology sector of the economy, and finally the terrorist attacks of September 11, 2001. As a result, the hotel has until recently, failed to generate sufficient revenue to fully pay all of the hotel expenses. The Indenture specified the order of priority of payment of hotel expenses, the first priority being operating and maintenance expenses. After payment of O&M expenses, there often was no money available to pay rent under the Facilities Lease. Nor was there sufficient revenue to fully fund debt service, which had a higher priority under the Indenture.

Starting in late 2004, the hotel's performance began to improve, reflecting recovery in the national and local economies. But because of the low priority of rent under the original bond documents, the City was still not receiving any rent. ABLE opened discussions with the institutional bondholders who owned 95% of the senior bonds to rectify this situation. After almost a full year's negotiations, the parties have reached agreement to amend the Indenture, the Facilities Lease and other related bond documents. Under this agreement, several provisions of the Indenture are being amended, including most notably, the flow of funds to include 75% of the rent due each quarter to the City as an operating and maintenance expense, thereby moving 3/4ths of the rent to the first payment priority. The balance of current rent, along with



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accrued past rent, will be payable, subject to the availability of funds each quarter, after 65% of the debt

service and 100% of the principal for each quarter are paid. To implement the amendments to the Indenture, the Facilities Lease between the City and ABLE must also be amended.

This action will authorize the City to amend the Facilities Lease with ABLE to modify the rent and other terms to conform with the amendments to the Indenture. The Facilities Lease is also being amended to revise and clarify the leasehold mortgage, default, and termination provisions, which were ambiguous and inconsistent in certain respects.