

Late Backup

RESOLUTION NO.

WHEREAS, in Resolution 00302-30 Council approved the creation of Austin Convention Enterprises, Inc. (“ACE”) as a nonprofit public facilities corporation under authority of Texas Local Government Code Chapter 303 for the purposes of acquiring, constructing, equipping, and improving a convention center hotel and garage (the “Project”) located on City-owned land adjacent to the Austin Convention Center; financing the costs of acquiring and improving the Project through the issuance of convention center hotel revenue bonds; and operating or providing for the operation of the Project; and

WHEREAS, in 2006 ACE entered into a Hotel Operating Agreement (the “Operating Agreement”) with Hilton Management LLC (the “Manager”) for the operation of a convention center hotel at the Project; and

WHEREAS, the Operating Agreement will expire in 2021 unless earlier terminated as provided in the Operating Agreement; and

WHEREAS, the Council finds that the language in section 2.21.4 of the Operating Agreement, which states “Manager will not voluntarily allow a union to organize the Hotel’s employees” is not in the best interests of the City or in the best interests of ACE because that language removes the discretion of the hotel operator to respond to union organizing in a manner designed to respect federal labor law, and thereby reduce the possibility of a labor dispute that might threaten hotel operations; and

WHEREAS, the Council finds that an agreement between the Manager and any labor organization that represents or seeks to organize the hotel operator’s

employees at the Project under which the labor organization makes an enforceable promise that there will be no strikes, picketing, or other economic labor action at the Project are in the proprietary interests of the City and in the best interests of preserving labor peace at the Project; and

WHEREAS, the articles of incorporation for ACE and Texas Local Government Code Chapter 303 both provide that the Council shall appoint all members of the ACE Board of Directors, and may remove a director at any time for cause or without cause; and

WHEREAS, in Resolution 00303-030 Council adopted corporate bylaws for ACE (the “Bylaws”) which provide in Article I, Section 4 that the City “shall be entitled to approve all programs and expenditures of [ACE] and annually review any financial statements of [ACE];” **NOW, THEREFORE**,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

The Council requests the Board of Directors of ACE to strongly consider approving a resolution in the form of the attached Exhibit A as a method for removing the language in Section 2.21.4 of the current Operating Agreement quoted above.

BE IT FURTHER RESOLVED:

In order to responsibly exercise its right under Article I, Section 4 of the Bylaws to approve ACE expenditures, the Council directs the Board of Directors of ACE to present a briefing to the Council at a public meeting on any proposed amendment to, or renewal of, any successor or renewed Operating Agreement for

the ACE Hotel no less than 20 days before approving such amendment or

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renewal, and the Council shall vote on whether to approve or not approve such an agreement.

BE IT FURTHER RESOLVED:

The policy of the City is to promote labor peace at the Project. In furtherance of this policy, the Council will not:

- Approve any amendment to, or renewal of, any successor or renewed Operating Agreement that removes the discretion of the hotel operator to respond to union organizing in a manner designed to reduce the possibility of a labor dispute that might threaten hotel operations; or
- Approve any amendment to, or renewal of, any successor or renewed Operating Agreement that does not include a requirement for the operator of the convention hotel to enter into an agreement with any labor organization that represents or seeks to organize the hotel operator's employees under which the labor organization makes an enforceable promise that there will be no strikes, picketing, or other economic labor action (referred to as "labor peace agreements") at the Project.

BE IT FURTHER RESOLVED:

The City Manager is directed to report to the Council within 90 days concerning the actions taken by the ACE Board of Directors in response to this resolution, and to provide options to the Council for achieving the policy goals and directions in this resolution if such goals and actions have not been achieved at that time, including options consistent with the current hotel bond indenture for evaluating alternative convention hotel managers.

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ADOPTED: _____, 2019

ATTEST: _____
Jannette S. Goodall
City Clerk

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EXHIBIT A

BE IT RESOLVED BY THE BOARD OF DIRECTORS OF AUSTIN CONVENTION ENTERPRISES, INC. (the "Corporation"):

1. The Corporation wishes to amend the first two sentences of Section 2.21.4 of the current Hotel Operating Agreement (the "Operating Agreement") with Hilton Management LLC to read as follows (the "Proposed Amendment"):

"Manager shall negotiate for the best interest of the Hotel with any labor unions representing or seeking to represent Hotel Personnel, but Manager will execute any collective bargaining agreement or labor contract resulting therefore as the employer. ~~Manager will not voluntarily allow a union to organize the Hotel's employees.~~"

[New language underlined; deleted language struck through]

The remainder of Section 2.21.4 shall remain unchanged.

2. The Corporation finds that the Proposed Amendment would make the Operating Agreement consistent with, at minimum, the following similar publicly-owned convention center headquarter hotel management agreements that also do not contain language similar to the language proposed to be struck: Hilton Americas, Houston, Texas; Grand Hyatt, San Antonio, Texas; Hyatt Regency McCormick Place, Chicago, Illinois; Hyatt Manchester Grand, San Diego, California; Marriott Downtown, Kansas City, Missouri; Hyatt Regency Convention Center, Denver, Colorado; and Sheraton Downtown, Phoenix, Arizona.

27 3. The Corporation finds that the Proposed Amendment is not
28 reasonably expected to affect the projected debt service coverage ratios in the
29 current bond indenture when compared with the status quo because the employees
30 of the hotel manager have a federally protected right to organize, select an exclusive
31 bargaining representative, and collectively bargain irrespective of the Operating
32 Agreement. The Proposed Amendment does not affect the content of any potential
33 collective bargaining agreement. Discretion over the content of any such potential
34 collective bargaining agreement remains with Hilton under § 2.21.4 of the
35 Operating Agreement.

36 4. The Corporation directs the Asset Manager to evaluate the Proposed
37 Amendment and provide a certified report as described in Section 7.24(a) of the
38 current bond indenture evidencing the Asset Manager's conclusions concerning the
39 effect of the Proposed Amendment on the requirements of the current bond
40 indenture as described in Section 7.24(a).