

UPDATED May 21, 2021
City Council Work Session – April 20, 2021
Verbal and Submitted Q/A

1. What impact will a postponement of Item 5 (Loan Agreement) have the workers or Hotel Employees? (Fuentes)

A. Status of Airport Hilton Hotel Employees

These items do not impact any employees of the Airport Hilton Hotel. Additionally, UniteHere Local 23 does not currently represent any employees at the Airport Hilton Hotel.

B. Loan Agreement - Hotel Employee Payroll

All employees at the Airport Hilton Hotel have continued to receive payment from operating revenues of the Hotel enterprise. The Loan Agreement before Council is not tied to the pay of the employees of the Airport Hilton Hotel.

2. What impact will a postponement of Item 5 (Loan Agreement) have on the ABLE Corporation? (Fuentes)

The majority of the Accounts Payables listed in the chart below are aged 12 months. Potential impacts include assessed late fees from the Hilton Corporation, as well as potential late fees from other vendors. Vendors may also terminate contracts due to non-payment, or begin collection proceedings against ABLE. There are additional consultant reports required under the Bond Indenture for calendar year 2020 (such as the Revenue Report, the Engineering Report and the Audit Report) that have not been provided to the Trustee due to lack of proceeds to pay for professional services to create the reports. Please note the Loan is intended to pay for the following contractor and franchisor Accounts Payable:

Vendors with invoices greater than 30 days past due			
Vendor	Amount Due	Oldest Invoice	
As of March 31, 2021			
Greg Milligan	\$60,000	Apr-20	
Streausand	\$38,854	May-20	
Hilton Hotels	\$520,942	Jul-20	*** vendor requesting payments - Late Fees accumulating
Boykin Prospera	\$204,177	Aug-20	Reduced Management Fee by 50% since Oct 2020
City of Austin - Occupancy Tax	\$93,030	Jan-21	Paid Quarterly
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City of Austin - Rent	\$190,056	Apr-20	
Total	\$1,218,059		

3. Meetings with Bo Delp UniteHere Local 23. (Casar)

Pursuant to Council's question related to meeting with union representatives, the information below provides a timeline and efforts by the Department of Aviation and ABLE to coordinate discussions between Unite Here Local 23 and Prospera (Hotel Management Company) since February, 2021:

A. February 22, 2021, Department of Aviation (Tracy Thompson, Chief Officer Administrative & External Affairs) sent an email to Bo Delp of UniteHere Local 23 offering to meet virtually with Greg Milligan (President of ABLE) and the Department of Aviation.

B. February 25, 2021, the virtual meeting was held and Mr. Delp made the recommendation that the Bylaws (to be amended) should include the requirement that “any management agreement should be approved by City Council.”

C. March 25, 2021 Department of Aviation and Mr. Delp had a conversation during which Mr. Delp suggested that the Bylaws should reflect the obligation to present any management agreement to Council.

D. March 26, 2021 the ABLE Board held a virtual meeting. During the motion on the Amendment to the Bylaws, Department of Aviation read into the record updated language that reflected the obligation to get Council approval for a new management agreement in an effort to meet Mr. Delp’s request.

E. April 7, 2021. Department of Aviation sent an email to Mr. Milligan, President of ABLE, on to coordinate a meeting between ABLE, Prospera and Unite Here.

F. April 16, 2021 a virtual meeting was held between Mr. Milligan, President of ABLE, Kevin Kearney, President of Prospera, and Bob Andrews, COO of Prospera, and representatives from UniteHere. At the end of the meeting, the UniteHere representatives were asked if any follow up meetings were needed. The UniteHere representatives did not request additional meetings.

G. April 19, 2021, the Department of Aviation coordinated additional meetings between Mr. Delp and Prospera over the subsequent weeks to discuss any potential new matters.

H. April 20, 2021, Mr. Delp called Department of Aviation to get information related to the Accounts Payable vendors. Department of Aviation provided that information.

I. April 23, 2021, Prospera and Unite Here discussed overall employee benefits for Hotel associates, and the benefits materials were provided. Additional information was provided related to breakdown of business and leisure guest percentages.

J. April 30, 2021 a scheduled meeting between Prospera and Unite Here was canceled due to scheduling conflicts with a Unite Here representative.

K. May 7, 2021, Prospera and Unite Here discussed wages and benefits for employees, hotel guidelines related to Covid-19 exposure and use of PTO, and the fact that there is limited engagement of contracted services at the Hotel.

L. May 14, 2021 a scheduled meeting between Prospera and Unite Here was canceled due to scheduling conflicts with a Unite Here representative.

M. May 21, 2021, Prospera and Unite Here representatives discussed the following items: Request to get specific information related to the wage increase for Hotel associates as a result of an Austin area survey of hospitality worker wages provided by an industry company. It was determined that no additional meetings were necessary to be held – but is was agreed by all that future meetings could occur on an as needed basis.

N. May 28, 2021 was canceled.

4. How you and the other staff established this salary for the President of ABLE (\$5,000/month) and what the expectations for that role? (Tovo) – Follow up question: While the [original] answer provides info about the scope of the position’s duties, the intent behind the question was to understand the market research that underpins the salary for the position. Can you follow up with the respondent to get more information as it relates to this question?

Market research was not used to establish Mr. Milligan’s compensation, which is based on previously negotiated agreements. The amount is consistent with rates charged by Harney

Partners and Mr. Milligan for related services, and is indicative of the value of services received as well as institutional knowledge Mr. Milligan brings to these roles. Staff believes the flat-rate structure of this arrangement has been positive for the City as it allows for more predictability in budget planning and greater efficiency in receiving these services.

Written Questions from Council Member Alter

5. What is the total amount paid by ABLE and/or the City of Austin to the following entities from 2014 to present: Harney Partners; Harney & Associates; Harney Management Partners, LLC?

Pursuant to an Agreement for the Retention of Professional Services between the City and ABLE on June 18, 2014, the City agreed to pay for the retention of certain professionals with expertise in debt restructuring, legal, and public relations.

From June 18, 2014 through January 31, 2018, Harney Management Partners, LLC was engaged under a contract with ABLE for debt restructuring professional services related to the Austin-Bergstrom International Airport Hotel. The professional services were performed by Mr. Greg Milligan EVP of Harney Partners. The initial deposit for Harney Partners was \$10,000 and on August 20, 2014 the contract was amended to include a maximum of \$50,000 for these services.

On November 6, 2014 City Council approved an Amendment to the Agreement for the Retention of Professional Services to increase the funding for all firms (legal, public relations and restructuring) in the aggregate of \$355,000. Staff is researching the amount paid by ABLE to Harney Partners during this time frame.

From February 1, 2018 through April 1, 2021, HMP Advisory Holdings, LLC DBA Harney Partners was engaged under a new Engagement Terms for Mr. Milligan to continue to provide professional services, including services as President of ABLE, \$5,000 per month flat fee, paid in arrears.

February 1, 2018 – January 31, 2020 = \$120,000 (paid)
February 1, 2020 – March 31, 2020 = \$10,000 (paid)
April 1, 2020 – March 31, 2021 = \$60,000 (owed and deferred)

6. Is there, or has there been, a specified monthly dollar amount in any agreement between ABLE, the City of Austin, and any of the following entities: Harney Partners; Harney & Associates; Harney Management Partners, LLC?

Since February 1, 2018, the compensation reflected in the Engagement Terms for such services provided by Mr. Milligan of Harney Partners was \$5,000 per month flat fee, paid in arrears.

7. What is the time for Greg Milligan's appointment to ABLE and the dates that he has served as ABLE President?

June 2014 – Engaged as Restructuring Advisor for the City of Austin due to the stalled negotiations with vulture bond fund (that was holding ABLE debt).

September 2014 – Elected as Vice President and appointed as a board member of ABLE Corporation, the first non-city/independent member of the Board.

February 2016 – Elected as President and assumed Board Chair role, replacing ABIA Executive Director Jim Smith.

February 2018 – Continued as President and Board Chair under Terms of Engagement.

February 2020 – Terms of Engagement contract renewed with same titles and Board position.

January 2021 – Continued as President under the 2020 Terms of Engagement. Was replaced on the Board of Directors by Tracy Thompson, Aviation Chief Officer – Administrative and External Affairs, pursuant to Resolution of the Austin City Council dated January 27, 2021 appointing new Board Members for ABLE. He no longer serves on the ABLE Board.

8. In a March 22, 2021 memo, Jacqueline Yaft with the Department of Aviation stated that requested ABLE bylaws changes “related to the president and the president’s compensation will allow ABLE to continue to utilize the services of Mr. Greg Milligan, and Executive VP of the Harney Group. Mr. Milligan has been a paid consultant for ABLE since the 2017 Bond issue where he was engaged as the hotel Restructuring Advisor, and later elected as president of ABLE and chairman of the ABLE Board.” Please explain why these proposed changes, as they relate to ABLE’s current and historic operations, are necessary.

As noted above, the bond restructuring advisory work performed by Greg Milligan, Vice President of the Harney Partners firm, was requested by the City of Austin to assist with the restructuring and refunding of the 1999 bonds. The ABLE Board wanted to continue to retain the services of Greg Milligan as the Hotel enterprise embarked on a significant capital development program (funded under the 2017 bonds) and to assist with the transition to the new requirements and programs under the 2017 Bond Indenture. Please see chronology in Question 7 above.

9. On February 24, 2020, the ABLE Board of Directors met and contemplated an agenda item on the “Discussion and possible action on the proposed contract with Harney Management Partners, LLC.” Can ABLE confirm which individuals serving on the Board of Directors were present at this meeting, and which individuals voted on the item?

Based on the audio recordings and the printed minutes of the meeting, the Board members in attendance were:

Greg Milligan, President
Susana Carbajal, Vice President
Elaine Hart, Secretary
Jim Smith, Board Member

The motion to approve the Harney Management Partners, LLC contract was made by Susana Carbajal and seconded by Jim Smith. While the written minutes indicate that the Board voted 4-0-0 to approve, it is apparent from the audio recordings that Mr. Milligan did not vote on this item, nor did he verbally abstain or recuse from the vote.

10. Are the minutes from the February, 24, 2020 ABLE Board of Directors meeting accurate? If not, in what ways are they inaccurate?

Based on the audio recordings of the meeting, the verbal affirmative votes are recorded from Ms. Carbajal, Ms. Hart, and Mr. Smith. There was no verbal vote from Mr. Milligan. It appears that the Secretary for the ABLE Board did not identify that only three Board members voted in the affirmative in the development of the meeting minutes.

11. Please provide details on whether the actions related to agenda item #5 on the February 24, 2020 ABLE Board of Directors meeting was handled in full compliance with our recusal requirements. Please provide details as to the formal policy as to whether and when members of the ABLE Board of Directors would be required to recuse themselves from a vote and, under those circumstances, what are the recommended actions to document that recusal.

The City of Austin Law Department has provided the following information:

As a public facility corporation organized and existing under Chapter 303 of the Texas Local Government Code, ABLE does not fall within the definition of "board" in Section 2-1-2 (A) of the City Code. As such, the City's conflict of interest and recusal provision – Sec. 2-1-24 – does not apply to ABLE's Board of Directors. In addition, neither ABLE's Articles of Incorporation nor its Bylaws incorporate the Section 2-1-24 conflict of interest and recusal provision in order to make it applicable to its directors. We are not aware of ABLE adopting a conflict of interest policy.

12. The minutes for the January 25, 2018 ABLE Board of Directors meeting states that the Board discussed an item with the following description: "Discussion and possible action on the proposed contract with Harney Management Partners, LLC. A motion to enter a contract with Harney Management was made by Art Alfaro, seconded by Elaine Hart. The Board voted 3-0-1 to enter into a contract with Harney Management. Greg Milligan abstained." Why did Greg Milligan abstain from this vote?

The current Department of Aviation staff does not have direct information at this time regarding the events of that meeting or the intentions of Mr. Milligan.

13. On March 26, 2021, the ABLE Board of Directors voted on an agenda item with the following description: "Discussion and possible action to approve the negotiation and execution by the ABLE Vice President of a contract with Harney Partners, Inc., for the services of Greg Milligan, Exec. V.P. to serve as the President of the Corporation for an approximate fee of \$5,000. per month (plus out of pocket expenses), and for an initial term not to exceed three years. (Subject to the subsequent approval of the Amended and Restated Bylaws by the Austin City Council) (Presented by Tracy Thompson, Board Member)." Can ABLE confirm which individuals serving on the Board of Directors were present at this meeting, which individuals voted on the item?

The Board members attending this meeting included:

Tracy Thompson, Vice President
Mukesh "Mookie" Patel, Treasurer
Jennifer Williams, Secretary

Leslie Thorne, Esq., Board Member
Angelo DeCaro, Board Member

With respect to Item 12 on the Agenda, Board Member Angelo DeCaro moved to approve and Board member Leslie Thorne seconded the motion. The Board voted 5-0-0 to approve.

14. As it relates to the March 26, 2021 Board of Directors meeting, can you provide additional information on why action on the aforementioned agenda item included the clauses: “subject to the subsequent approval of the Amended and Restated Bylaws by the Austin City Council”? Please clarify why that clause was necessary on that action item.

The intention of the inclusion of the phrase (that an action if taken would be subject to the approval of the City Council of the Amended Bylaws) is to address any anticipated addition/changes in the President’s scope of services in a new contract which needs to be consistent with any proposed change in the Amended Bylaws as would be subsequently approved by City Council and the addition of the following to the Bylaws related to the powers of the President:

“..... (ii) authorize any contract without Board approval if the term of such contract does not exceed one year and that amount associated with such contract does not exceed \$5,000; and (iii) direct the Treasurer to pay expenses of the Corporation not to exceed \$5,000 individually, in in such greater amount if specifically authorized, or pursuant to a budget approved by the Board of Directors.”

These additions/changes to the Bylaws are recommended by the ABLE Board for approval by City Council to provide more clarity to the limitations of the President’s authority in performing the duties of President.

15. During the April 20, 2021, Council work session, staff indicated that postponement of item 5 on the April 22, 2021, Council Meeting Agenda would result in various financial difficulties and continued non-payment to vendors.

In August, 2020 the Department of Aviation did an analysis of the forecast of the COVID-19 pandemic’s impact on the operating costs and revenues related to the Hotel enterprise. The Department of Aviation and ABLE determined that the cash flow for the Hotel could sustain the reduced operating requirements (costs) through January/February 2021 and decided to focus the available cash flow to cover essential operational expenses and payroll to sustain guest services/accommodations and to defer payments to the largest vendors (such as the franchise fees, the President’s fee, a reduction of the Management Fee, etc.).

Potential impacts include assessed late fees from the Hilton Corporation as well as potential late fees from other vendors. Vendors may also terminate contracts due to non-payment, or begin collection proceedings against ABLE. Please note the Loan is intended to pay for the following contractor and franchisor Accounts Payable:

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Therefore, the determination as to defer payment on these accounts was made in August 2020 and great efforts have been made since then to manage the financials during the pandemic and to develop the Loan Agreement as a component of the COVID-19 Resiliency Program for the Hotel enterprise.

The Department of Aviation believes this chart reflects the details regarding the dates, amounts, and identification of vendors that are the major component for the Loan Agreement. As noted above, the majority of the Accounts Payables are aged 12 months. The Hilton Corporation will be assessing late fees for non-payment of franchise fees. It is unknown if other vendors will assess late fees, terminate their contracts for non-payment, or institute collection proceedings against ABLE, as it has been anticipated that the Loan Agreement proceeds would be available in April/May of 2021.

To address the sub- questions/items below – pleased note: It is intended that the recap of the Accounts Payable reflected in the chart provides sufficient information related to this question. Copies of the invoices for these large vendors are on file, and can be provided in the future, if needed.

Please provide additional details about those implications including:

- a. A list of vendors who remain unpaid and are anticipated to be paid upon approval of this agenda item and the service(s) they provided;** please see chart above for the primary vendors; **and**
- b. details as to the dates each of the invoiced expenses were incurred;** the vendors provide an monthly invoice and are paid on a monthly basis, and the totals reflect aggregate outstanding totals for each month from May 2020 – March 2021. Additional payments would be owed for April, May and June. Note – the Occupancy Tax is paid quarterly and was an outstanding payment in 2020, but is now scheduled to be paid; the City of Austin does not provide an invoice for the payment of rent – payment is provided by ABLE to the Department of Aviation pursuant to the terms of the Ground Lease subject to the availability of funds in the Lease Payment Fund under the Bond Indenture; and the City of Austin does not provide an invoice for the payment of the Admin Fee – payment is provided by ABLE to the Department of Aviation subject to the availability of funds in the Administrative Fee Fund under the Bond Indenture; **and**
- c. when those vendors provided the initial invoices for those expenses;** invoices are provided monthly beginning May, 2020 and are being held by the accounting office of Prospera; **and**
- d. the specific amounts for each vendor;** please see chart above and note answer (b) above; **and**

- e. **information on what conversations have been had, to date, with those vendors regarding the length of time that has passed without payment since they initially provided those invoices for payment;** representatives of ABLE and Prospera have discussed deferment of payment. Hilton Franchisor has initiated penalties for non-payment and is anticipating payment in full; **and**
- f. **details on the average length of time ABLE normally requires to complete payment to vendors after receiving an invoice for payment;** 30 days; **and**
- g. **if any of these vendors have received a payment for services in the past, please provide details on at least the last two times they provided an invoice for services they provided, including the dollar amount and the type of service they provided, the date they initially provided an invoice for services and the date payment for that invoice was completed;**
 - 1. Harney Partners – Restructuring Services - \$5000.00 April, 2020 and \$5000.00 May 2020
 - 2. Streausand Law firm – Legal Services - \$1,417.00 January, 2021 and \$2,047.00 February, 2021
 - 3. Hilton Hotel – Franchisor Services – \$29,124.00 February, 2021 and \$46,176.00 March, 2021
 - 4. AUS - Ground Lease - \$16,596.15 February, 2021 and \$27, 220.00 March, 2021
AUS – Admin Fee – \$10,000.00 February, 2021 and \$10,000.00 March, 2021
 - 5. Boykin Prospera – Management Fee - \$18,393.00 February, 2021 and \$18,393.00 March, 2021; **and**
- h. **for each of the vendors who have outstanding invoices which ABLE has not paid, who we anticipate would be paid upon approval of item #5, please provide an itemized list of the total amount paid by ABLE to each of the vendors over the last 6 years;** Many of the vendors on the list have contracts that were initiated on October 1, 2017 the date that the restructure of the Bond Indenture was finalized and these contracts, Franchise Agreement, Management Agreement, Professional services Agreements, Ground Lease and Bond Indenture were effective. Individual invoices can be tabulated for the applicable time frame if still desired; **and**
- i. **details on when ABLE first determined they would be unable to pay these vendors absent approval of item #5;** in May 2020, it was determined that these vendors could not be paid due to COVID-19 impact to revenues. Shortly thereafter, the Resiliency Program was developed to provide business continuity for the Hotel enterprise, and the Resiliency Program included the component of the Loan Agreement to pay for the fees/costs that had to be deferred in calendar year 2020 that could not be funded from a different source; **and**
- j. **any additional information ABLE believes would provide useful context to this decision.**
Please see answers above.

16. Regarding ABLE's Debt Service Reserve Fund, what is the current status and/or balance of the DSRF? How has this been impacted during the pandemic? Are any additional transfers into this fund anticipated as a result of debt incurred during COVID-19? (Fuentes)

The current balance in the DSRF (Debt Service Reserve Fund) is \$3,952,691.63. Bond Trustee drew \$1.56M out of the DSRF to make the October 1, 2020 payment and it was replenished by the Airport. There is a current request for another draw as of the April 1, 2021 debt payment in the amount of \$1.084M. The airport replenished the October 1, 2020 draw and will have to replenish the April 1, 2021 draw within 120 days from the notification by Bank Trustee. The Airport anticipates it will have to replenish the DSRF for October 1, 2021 debt payment and April

1, 2022 payment. So, the total anticipated and already provided Debt Service replenishment will be \$5.9M.

17. ABLE's second loan request under the Paycheck Protection Program – provide an update on the use of the first loan. How much of that loan was provided for direct hotel employee relief? How many employees will be provided relief through a potential second loan? What type of employees does that include specifically employed by the Hilton airport (front of house, management, etc.)? (Fuentes)

PPP 1 - 83% was used towards payroll, or \$750,586.

Hotel re-hired 75 associates of the 123 FTE per loan application. Identified 46 projects under PPP guidelines, totaling 22,440 work hours. * see item 19 below

PPP 2 – Estimated 82%, or \$1,041,870 to be used for frontline and management payroll.

18. It appears hotel management fees continue to increase despite COVID-19 relief efforts. If this is the case, what percentage in increases was experienced pre-pandemic? Are these management fees expected to increase beyond the issuance of the proposed loan?

Boykin Prospera, the management company, cut their management fees by 50%, \$18,393 per month as of October 2020. Prior to that, it was \$36,786 per month. The current management agreement was entered into on October 1, 2017.

ARTICLE 10 MANAGEMENT FEES AND PAYMENTS TO MANAGER

10.1 Owner shall pay to Manager, on a monthly basis, for services rendered under this Agreement a management fee (the “Base Fee”) equal to \$34,563 per month, adjusted annually so as to increase (but not decrease) the Base Fee by the same percentage as any percentage increase in the CPI from the CPI in effect on the first day of the first month of the previous Fiscal Year to the CPI in effect on the first day of the first month of the current Fiscal Year; provided, however, no such CPI increase shall exceed five percent (5%) in any Fiscal Year.

Question from Audit Finance Committee Meeting – May 26, 2021

19. As a result of the receipt of a PPP loan in 2020, Prospera rehired 75 associates out of 123 associates to work on projects totaling 22, 440 work hours. Please describe the projects worked on by such associates.

Back of House

- Strip/Wax back of house hallways
- Strip/Wax employee restrooms
- Re-laminate partition stalls in employee restrooms
- Organize/Clean lower level storage rooms
- Repair VCT tile throughout back hallway

- Re-insulate water lines at ceiling in back of house hallway

Breakroom

- Remove, clean and sanitize chairs and tables
- Strip/wax and repair VCT tiles in breakroom
- Paint walls in breakroom
- Clean and sanitize ice bin and soda machine

Exterior

- Pressure wash exterior
- Clean exterior windows
- Pressure wash parking lot prior to stripping lanes
- Re-stripe parking lot lane lines
- Re-stripe valet parking lines
- Repaint all fire lanes
- Repaint perimeter retaining walls
- Repaint accessible parking decals
- Stump removal in various locations
- Need heavy ballards near parking entrance/exits
- Improve directional paint for new parking exit
- Clean floor in central plan chiller room
- Coordinate removal of all old equipment from back dock
- Coordinate and scrap old metal stored throughout building

Lobby

- Clean and extract carpet in restaurant
- Clean and extract carpet in bar/lounge
- Remove all tables and chairs in restaurant/lounge for sand/paint/touchup
- Replace vinyl at lobby public restrooms with attic stock
- Clean stone bases throughout lobby – columns, retaining walls
- Deep clean stone floors in Creeks restaurant – wait station to buffet line
- Deep clean stone floors between Lounge and Restaurant

Kitchen

- Clean ceiling tiles and grids throughout
- Remove, sand and repaint air supply vents
- Deep clean all floors throughout
- Re-move existing grout at floor and re-grout all tile lines throughout
- Remove hood vents/degrease and clean
- Degrease all ovens and fryers/kitchen equipment
- Deep clean areas behind cooking equipment- line and banquet side
- Degrease and clean all walls
- Re-organize dry storage and create labels for area
- Clean all shelving systems in walk-in coolers and freezers
- Re-organize freezer