



## MEMORANDUM

**To:** Mayor and City Council

**From:** Jacqueline Yaft, Executive Director, Department of Aviation *Jacqueline Yaft*

**Date:** June 1, 2021

**Subject:** AUS Hilton Hotel Resiliency Program and Coordination with Unite Here Local 23

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This Memorandum is intended to update information related to the AUS Hilton Hotel (Hotel) with respect to:

- the Amended and Restated Bylaws for Austin-Bergstrom Landhost Enterprises, Inc. (ABLE),
- the proposed Loan Agreement between the City of Austin and ABLE,
- the determination by the Law Department regarding the recusal requirements for Greg Milligan, and
- the coordination between Prospera Boykin (Hotel Management Company) and Unite Here Local 23.

To recap the recent Council Actions, on January 27, 2021, Council approved [Resolution No. 20210127-003](#) appointing five (5) new Board Members to the ABLE Board of Directors, and on April 22, 2021, Council approved [Resolution 20210422-004](#) approving the Amended and Restated Articles of Incorporation for ABLE and Resolution No. [Resolution 20210422-006](#) authorizing the establishment of and fund transfer to a Subordinate Debt Fund at the Dept. of Aviation.

Posted RCA for Council action on June 3, 2021 are two items as follows:

- Amended and Restated Bylaws for ABLE, and
- Loan Agreement for ABLE.

### **ABLE Bylaws**

At the May 17, 2021 meeting, the ABLE Board of Directors approved an updated version of the Amended and Restated Bylaws to include revisions to Article III, Section 2 – Powers and Duties of the President and the change to the following provision: “Without limiting the foregoing, any management agreement or franchise agreement pursuant to which the property of the Corporation is managed or operated, *or any extensions thereto*, shall be approved by the Governing Board.”

In addition, and subsequent to the approval by the Board of Directors on May 17, the Law Department determined that the officer removal provision in Article III, Section 1 of the Bylaws did not reflect current state law. Therefore, the updated Bylaws were further revised, and the Law Department has provided the revised Amended and Restated Bylaws and a new Resolution draft reflecting the update to this provision, as updated back up for the RCA. Upon approval by City Council of the Amended and Restated Bylaws as revised, the revised Bylaws will be presented for approval by the ABLE Board of Directors at a June Meeting. It is anticipated that the Board of Directors will expeditiously approve the revised Bylaws.

### **Hotel Resiliency Program - ABLE Loan Agreement**

The overall aim for the Hotel Resiliency Program is to address the impact of COVID-19 on this important business at AUS to insure that the City can continue to provide high quality and convenient lodging for visitors to the City, including the passengers and airline flight crews traveling through AUS.

As a component of the Hotel Resiliency Program, the Loan from the Department of Aviation to ABLE is intended to address the financial impact of COVID-19, to provide a funding bridge to insure business continuity for the Hotel enterprise, and to demonstrate to the external auditor and bond trustee that the Hotel qualifies as a going concern.

The Loan will not exceed \$2,600,000 and will address:

- the actual shortfall in Hotel revenues for 2020 as a direct result of COVID – 19 required to cover the Hotel operating expenses and certain required administrative expenses under the 2017 Bond Indenture, and
- as may be required, should there be a future shortfall in 2021-2022, provide for a disbursement of additional loan proceeds for a verified Hotel purpose, consistent with the requirements of the Bond Indenture.

The Board of Directors of ABLE has approved an amended 2021 budget that reflects the most recent forecast for improving economic conditions and the expected receipt of the Loan Agreement proceeds (to address the past due operating expenses for 2020). These two factors address the 2017 Bond Indenture requirement to provide an annual budget that exceeds a 1.25 debt service coverage ratio.

In the event the loan proceeds under the Loan Agreement are not available, it is within the rights of the Bond Trustee to hold ABLE in default, which could result in an acceleration of the entire 2017 Bond debt, and forcing the City to liquidate/remediate/mitigate the default, which could result in the sale of the Hotel asset.

### **Recusal Obligations of Greg Milligan, President of ABLE**

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.

In addition, at their May 17, 2021 meeting, the ABLE Board of Directors voted unanimously to approve the correction of the ABLE Board of Directors Meeting minutes for February 24, 2020 to reflect the correct vote count as was recorded in the audio recording.

### **Collaboration with Unite Here Local 23**

There is no Unite Here Local 23 union representation of the Hotel associates. Meetings between Prospera Boykin (Hotel Management Company) and Unite Here Local 23 were held on April 16, April 23, May 7, and May 21. The meetings scheduled for April 30 and May 7 were canceled due to scheduling conflict with a Unite Here representative. All information related to the Hotel operation requested from Unite Here has been provided. Prospera Boykin and Unite Here have agreed to coordinate future meetings as needed.

If you have additional inquiries, you may contact Tracy Thompson, Airport Chief Officer, Administrative & External Affairs, at [tracy.thompson@austintexas.gov](mailto:tracy.thompson@austintexas.gov) or (512) 530-5023.

cc: Gina Fiandaca, Assistant City Manager  
Spencer Cronk, City Manager