Versión en español a continuación.

Meeting of the Austin-Bergstrom Landhost Enterprises, Inc. March 26, 2021

Austin-Bergstrom Landhost Enterprises, Inc. to be held March 26, 2021 with Social Distancing Modifications

Public comment will be allowed via telephone; no in-person input will be allowed. **All speakers must register in advance (March 25, 2021** by noon**).** All public comment will occur at the beginning of the meeting.

To speak remotely at the **March 26 Austin-Bergstrom Landhost Enterprises, Inc.** Meeting, members of the public must:

•Call or email the board liaison at **(512) 530-5023 or tracy.thompson@austintexas.gov** no later than noon, (the day before the meeting). The information required is the speaker name, item number(s) they wish to speak on, whether they are for/against/neutral, and a telephone number or email address.

•Once a request to speak has been called in or emailed to the board liaison, residents will receive either an email or phone call providing the telephone number to call on the day of the scheduled meeting.

•Speakers must call in at least 15 minutes prior to meeting start in order to speak, late callers will not be accepted and will not be able to speak.

•Speakers will be placed in a queue until their time to speak.

•Handouts or other information may be emailed to tracy.thompson@austintexas.gov by Noon the day before the scheduled meeting. This information will be provided to Board and Commission members in advance of the meeting.

•If this meeting is broadcast live, residents may watch the meeting here: **http://www.austintexas.gov/page/watch-atxn-live**

Reunión del **Austin-Bergstrom Landhost Enterprises, Inc.**

FECHA de la reunion (**26 de Marzo de 2021**)

La junta se llevará con modificaciones de distanciamiento social
Se permitirán comentarios públicos por teléfono; no se permitirá ninguna entrada en persona. Todos los oradores deben registrarse con anticipación (**3/25/2021** antes del mediodía). Todos los comentarios públicos se producirán al comienzo de la reunión.

Para hablar de forma remota en la reunión, los miembros del público deben:
• Llame o envíe un correo electrónico al enlace de la junta en (512) 530-5023 or tracy.thompson@austintexas.gov a más tardar al mediodía (el día antes de la reunión). La información requerida es el nombre del orador, los números de artículo sobre los que desean hablar, si están a favor / en contra / neutrales, y un número de teléfono o dirección de correo electrónico.
• Una vez que se haya llamado o enviado por correo electrónico una solicitud para hablar al enlace de la junta, los residentes recibirán un correo electrónico o una llamada telefónica con el número de teléfono para llamar el día de la reunión programada.
• Los oradores deben llamar al menos 15 minutos antes del inicio de la reunión para poder hablar, no se aceptarán personas que llamen tarde y no podrán hablar.
• Los oradores se colocarán en una fila hasta que llegue el momento de hablar.
• Los folletos u otra información pueden enviarse por correo electrónico a tracy.thompson@austintexas.gov antes del mediodía del día anterior a la reunión programada. Esta información se proporcionará a los miembros de la Junta y la Comisión antes de la reunión.
• Si esta reunión se transmite en vivo, los residentes pueden ver la reunión aquí: http://www.austintexas.gov/page/watch-atxn-live

AUSTIN-BERGSTROM LANDHOST ENTERPRISES, INC.

BOARD OF DIRECTORS MEETING
March 26, 2021 9:00 AM
VIA VIDEOCONFERENCING

AGENDA

Mukesh ("Mookie) Patel
Tracy Thompson, Esq.
Jennifer Williams
Leslie Thorne, Esq.
Angelo DeCaro

Acting President, Greg Milligan

Call to Order

Citizen Communications - General

The first three (3) speakers who register to speak no later than noon the day before the meeting will be allowed a three-minute allotment to address their concerns regarding items not posted on the agenda.

A. Introduction of Legal Advisors to the Corporation

B. Discussion and Action Items:

1. Approve minutes for the January 28, 2021 Corporation Board meeting. (Presented by Greg Milligan, Acting President of ABLE)

2. Discussion and possible action to approve the application for the Second Draw Paycheck Protection Program (PPP) Loan. (Presented by Prospera, Hotel Management Company)

3. Discussion and possible action to approve the 2021 Proposed Operating Budget. (Presented by Prospera, Hotel Management Company)

4. Discussion and possible action to approve the 2021-2023 Capital Plan and 2021 Proposed Capital Budget. (Presented by Prospera, Hotel Management Company)

5. Discussion and possible action of the acquisition of Mitigation Equipment. (Presented by Prospera, Hotel Management Company)

6. Discussion and possible action for the authorization of Greg Milligan on behalf of the Board of Directors, to negotiate and execute a Loan Agreement, Promissory Note and/or other ancillary documentation with the City of Austin Department of Aviation in an amount not to exceed $2,600,000, and including accepting the first draw in an amount not to exceed $1,350,000. (subject to the approval of the loan documents by the Austin City Council) (Presented by Tracy Thompson, Board Member)

7. Discussion and possible action to approve the Amended Grant Agreement with the City of Austin Department of Aviation. (Presented by Greg Milligan, Acting President of ABLE)

8. Discussion and possible action to approve the Amended Ground Lease Agreement with the City of Austin Department of Aviation. (Presented by Greg Milligan, Acting President of ABLE)

9. Discussion and possible action on the Amended and Restated Bylaws of the Corporation. (subject to the subsequent approval of the Amended and Restated Bylaws by the Austin City Council) (Presented by Greg Milligan, Acting President of ABLE)

10. Discussion and possible action on the Amended and Restated Articles of Incorporation of the Corporation. (subject to the subsequent approval of the Amended and Restated Articles of Incorporation by the Austin City Council) (Presented by Greg Milligan, Acting President of ABLE)

11. Discussion and possible nomination and election of certain officers for the Corporation to include, Vice President, Secretary and Treasurer. (Presented by Greg Milligan, Acting President of ABLE)

12. 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)

C. Future business
   1. Establish date for future board meeting
   2. Future discussion or action items

D. Adjournment

The City of Austin is committed to compliance with the American with Disabilities Act. Reasonable modifications and equal access to communications will be provided upon request. Meeting locations are planned with wheelchair access. If requiring Sign Language Interpreters or alternative formats, please give notice at least 2 days (48 hours) before the meeting date. Please call Tracy Thompson at Aviation Department, at (512) 530-5023 or tracy.thompson@austintexas.gov, for additional information; TTY users route through Relay Texas at 711.

For more information on the Austin-Bergstrom Landhost Enterprises, Inc., please contact Tracy Thompson at (512) 530-5023 or tracy.thompson@austintexas.gov.

AUSTIN-BERGSTROM LANDHOST ENTERPRISES, INC.

MARCH 26, 2021

AUSTIN-BERGSTROM LANDHOST ENTERPRISES, INC.
BOARD OF DIRECTORS MEETING MINUTES
January 28, 2021 9:00 AM
VIA VIDEOCONFERENCING

CALL TO ORDER

Meeting was called to order at 9:08 am

INTRODUCTION

CITIZEN COMMUNICATION: GENERAL

The first three (3) speakers who register to speak no later than noon the day before the meeting will be allowed a three-minute allotment to address their concerns regarding items not posted on the agenda.

1. APPROVAL OF MINUTES

December 4, 2020 – Meeting

A motion to approve was made by Tracy Thompson, seconded by Leslie Thorne. The Board voted 5-0-0 to approve the minutes.

2. WRITTEN BRIEFINGS

a. ABLE Amended Articles of Incorporation and Amended Bylaws to be presented to Austin City Council on February 18, 2021.
(Prepared by Greg Milligan, President of ABLE)

b. Letter from RSM US LLP, ABLE's independent financial auditors, to ABLE's Board of Directors related to the planned scope and timing of the annual audit of ABLE's financial statements as of December 31, 2020.
(Prepared by RSM US LLP)

3. VERBAL BRIEFINGS

a. History of Hotel
(Presented by Tracy Thompson, Chief Officer – Admin. & External Affairs and Rajeev Thomas – Deputy Chief – Finance)

b. Hotel Renovations Update
(Presented by Prospera, Hotel Management Company)

DRAFT

c. Paycheck Protection Program (PPP) of the Federal CARES Act – update on funding received in 2020 and anticipated 2021 funds
(Presented by Prospera, Hotel Management Company)

d. Hotel Operating and Financial Metrics for 2020 and 2019
(Presented by Prospera, Hotel Management Company)

e. 2021-2023 Capital Plan
(Presented by Prospera, Hotel Management Company)

f. 2021 Proposed Operating Budget and 2021 Proposed Capital Budget
(Presented by Prospera, Hotel Management Company)

4. ACTION ITEMS

a. Discussion and possible action on 2021 Operating Budget

b. Discussion and possible action on 2021 Capital Budget

Items 4.a and 4.b will be deferred until the next ABLE Board meeting per suggestion of Board President Greg Milligan.

c. Discussion and possible action on submission of loan application for Paycheck Protection Program.

A motion to approve item 4.c was made by Tracy Thompson, seconded by Leslie Thorne. The Board voted 5-0-0 to approve the motion.

5. FUTURE BUSINESS

a. Establish date for February board meeting and sequencing with related council actions
b. Preview upcoming loan from Department of Aviation
c. Appointment of officers

ADJOURNMENT

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DRAFT

AUSTIN-BERGSTROM LANDHOST ENTERPRISES, INC.

MARCH 26, 2021

Hilton Austin 2021 Budget

Austin-Bergstrom International Airport

Hilton Austin Airport - Five Year Trend

	2017 Actual	2018 Actual	2019 Actual	2020 Actual	2021 Budget
Rooms Available	95,630	95,630	95,630	95,900	95,630
Rooms Sold	79,632	79,933	76,657	31,219	42,178
Revenue Occupancy	83.3%	83.6%	80.2%	32.6%	44.1%
Average Daily Rate	$139.91	$134.51	$142.36	$123.48	$119.58
RevPar	$116.50	$112.43	$114.11	$40.20	$52.74
Gross Operating Profit ($ in '000)	$5,692	$5,717	$5,141	($20)	$768

- Historically the Hilton Austin Airport has outperformed both the Market and Competitive Set despite being the oldest hotel product.

Austin Hotel Market Summary – CBRE/Horizons

- CBRE/Hotel Horizons Research
  - Occupancy forecasted at 54.1%, up 27.4% to 2020
  - ADR expected to finish at $108.86, up 1.1% to 2020
  - Based on Occupancy and ADR performance, RevPAR forecasted to finish at $58.87, up 28.8% to 2020
  - RevPAR projections for Austin hotels downgraded from CBRE November editions 33.9% figure. Decline driven by ADR drop of ($4.46) from $113.32
  - RevPAR for Austin hotels not expected to surpass 2019 levels until 2025

Austin Annual Performance – Five Year History and Forecast

Year	Occ	Δ Occ	ADR	Δ ADR	RevPar	Δ RevPar
2017	70.6%	-0.5%	$142.06	-0.3%	$100.24	-0.8%
2018	68.6%	-2.7%	$142.93	0.6%	$98.12	-2.1%
2019	71.8%	4.6%	$144.66	1.2%	$103.87	5.9%
2020F	42.5%	-40.9%	$107.64	-25.6%	$45.70	-56.0%
2021F	54.1%	27.4%	$108.86	1.1%	$58.87	28.8%

Hilton Airport vs. Mid-Priced Hotels Performance

Hilton Airport

Year	Occupancy	Avg. Daily Rate	RevPar
2017	83.3%	$139.91	$116.50
2018	83.6%	$134.51	$112.43
2019	80.2%	$142.36	$114.11
2020A	32.5%	$123.51	$40.20

CBRE Mid-Priced Hotels

Year	Occupancy	Avg. Daily Rate	RevPar
2017	71.5%	$131.16	$93.72
2018	69.7%	$130.35	$90.84
2019	72.1%	$133.68	$96.38
2020F	43.8%	$108.24	$47.38

- Pre-pandemic – The Hilton Austin Airport enjoyed premiums in all three major performance metrics of Occupancy, Average Daily Rate and RevPAR

Hilton Airport vs. Mid-Priced Hotels Performance

Hilton Airport

Year	Occupancy	Avg. Daily Rate	RevPar
2020A	32.5%	$123.51	$40.20
2021B	44.1%	$119.58	$52.74

CBRE Mid-Priced Hotels

Year	Occupancy	Avg. Daily Rate	RevPar
2020F	43.8%	$108.24	$47.38
2021F	59.6%	$105.16	$62.67

- Since the pandemic, the Hilton Austin Airport Hotel has experienced a deeper decline in Occupancy due to heavy reliance on Airport related business (transient business and airline crew)

Visit Austin Pace Report – Variance to STLY

- Definite group room nights down 38% to STLY
- Tentative group pace room nights down 55% to STLY
- Cancelled Group room nights up 1,000%
- Q3 and Q4 positive for definite group business
- Impact of 2020 Pandemic on 2021 Pace
  - 467 cancelled groups
  - 547, 561 room nights
  - $152MM lost hotel revenue

Visit Austin – 2021 Quarterly Totals

	Definite	STLY	Cancelled	STLY	Tentative	STLY
Q1	37,525	-84%	124,381	23k%	22,470	-69%
Q2	89,881	-37%	64,153	256%	33,178	-71%
Q3	112,171	34%	11,891	0%	65,640	-27%
Q4	102,219	5%	10,364	-0%	37,628	-50%
Total	341,769	-38%	210,789	1k%	158,916	-55%

Austin-Bergstrom International Airport

Hilton Airport 2021 Budget vs. 2020 Actual

	Budget	2020 Actual	Var Budget to LY
Available Rooms	95,630	95,892	(262)
Rooms Sold	42,178	31,219	10,959
Revenue Occupancy	44.1%	32.6%	11.5
Average Daily Rate	$119.58	$123.48	($3.90)
RevPar	$52.74	$40.20	$12.54
$ in '000			
Rooms Revenue	$5,043	$3,855	$1,188
F&B Revenue	$1,104	$1,223	$119
Other Revenue	$254	$225	$29
Total Revenue	$6,401	$5,303	$1,098
Total Departmental Expenses	$2,395	$2,183	$212
Total Undistributed Expenses	$3,238	$3,140	$98
Gross Operating Profit	$768	($20)	$788
Management Fee	$393	$386	$7
Income Before Fixed Charges	$375	($406)	$781

Rooms Segmentation : 2021 vs. 2020

Revenue $'000)	2021	2020	Variance
Transient- Room nights	26,220	16,573	9,647
ADR	$126.90	$129.52	($2.62)
Revenue	$3,327	$2,146	$1,181
Group- Room nights	3,320	4,642	1,322
ADR	$130.78	$141.89	($11.11)
Revenue	$434	$659	($225)
Contract- Room nights	12,638	10,004	2,634
ADR	$94.24	$99.51	($5.27)
Revenue	$1,191	$995	$196
Other Revenue	$91	$55	$36

- Utilize Brand promotions and Honors quarterly offers, create value add packages
- Strategic discounts through OTA channels

Hilton Austin Wages 2021-2020-2019

($ in '000)	2021	2020	2019
Occupancy %	44.1%	32.6%	80.1%
Total Hotel Revenue	$6,400	$5,303	$14,612
Total Hotel Wages	$1,845	$2,073	$3,188
Less: PPP-1 wages	0	$297	0
Total Wages	$1,845	$1,776	$3,188
Number of Managers	3*	7	18

Hilton Airport - 2021 Capital Plan

Expenditure Summary by Area ($ in '000)	2021
Guestrooms- PHHS Mitigation Equipment	$114.9
Meeting Space- PHHS Mitigation Equipment	25.1
Food & Beverage Facilities	14.0
Lobby, Entrance, Retail, Public Space *PHHS Mitigation Equipment 2021 only	28.0*
Mandatory and PIP Items	77.8
Recreational Facilities and Other *PHHS Mitigation Equipment 1.9 in 2021 *Shuttle Van lease payments total 39.5 in 2021, expires 7/2022	41.4*
Systems	15.5
Back of House –Admin, Housekeeping, Laundry	0.0
Building Custodial –Site, Ext., Mech/HVAC	0.0
Total Capital Expenditure by Area	$316.7

Austin-Bergstrom International Airport

AUSTIN-BERGSTROM LANDHOST ENTERPRISES, INC.

MARCH 26, 2021

PROSPERA
HEALTH & HOSPITALITY
SERVICES

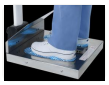
ESTIMATE

 # EST-000006

Prospera Health and Hospitality
Sewickley Pennsylvania 15143
U.S.A

Bill To
Hilton Austin Airport
9515 Hotel Drive
Austin
78719 Texas
U.S.A

Estimate Date : 22 Oct 2020

#	Item & Description	Qty	Rate	Amount
1	UVC Disinfection Mobile Unit	4 pcs	21,000.00	84,000.00
2	UV-Clean Cube	13 pcs	499.00	6,487.00
3	UVC Disinfection Cabinet Standard 48"x60"x18" UVC Disinfection cabinet	1 pcs	9,811.83	9,811.83
4	 HealthySole Commercial PLUS UVC Unit	3 pcs	4,995.00	14,985.00
5	CleanRest PRO Waterproof Mattress Encasement-Hotel King	157 pcs	44.65	7,010.05
6	CleanRest PRO Box Spring Encasement-Hotel King	157 pcs	47.28	7,422.96
7	CleanRest PRO Pillow Encasement-King	785 pcs	11.21	8,799.85

#	Item & Description	Qty	Rate	Amount
8	CleanRest PRO Waterproof Mattress Encasement-Queen	210 pcs	39.55	8,305.50
9	CleanRest PRO Box Spring Encasement-Queen	210 pcs	34.35	7,213.50
10	CleanRest PRO Pillow Encasement-Queen	654 pcs	9.55	6,245.70
11	CleanRest PRO Waterproof Mattress Encasement-Twin	5 pcs	38.55	192.75
12	CleanRest PRO Crib Encasement	8 pcs	29.55	236.40
13	PX200ES Cordless Handheld Electrostatic Sprayer	3 pcs	699.99	2,099.97
14	PX300ES Cordless Electrostatic Backpack Sprayer	2 pcs	1,749.99	3,499.98
15	UV-Clean Clamp Mount	1 pcs	359.00	359.00
16	Payment Terminal Mount-Regular	3 pcs	350.00	1,050.00
17	Molekule Air Pro	1 Lb	1,199.00	1,199.00
			Sub Total	168,918.49
			Shipping charge	1,000.00
			Total	**$169,918.49**

Notes

Looking forward to doing business with you.

AUSTIN-BERGSTROM LANDHOST ENTERPRISES, INC.

MARCH 26, 2021

Hilton Austin Airport

Austin-Bergstrom International Airport

Information for
Austin Bergstrom Landhost Enterprises, Inc.

City of Austin, Department of Aviation
March 26, 2021

AGENDA

- **Background information**
- **Hotel Resiliency Program 2021-2022**
- **Outline of Program**
  - Next Steps
  - Future Austin City Council Actions
  - Questions

Austin-Bergstrom International Airport

Hilton Austin Airport – Structure & Operations

- **Austin-Bergstrom Landhost Enterprises, Inc. (ABLE)**
  - Texas nonprofit public facility corporation created by City of Austin (City) in 1998
  - Created to be the Issuer of tax exempt bonds - $45,600,000 (Bonds)

- **ABLE manages Hotel operations on behalf of Austin Bergstrom International Airport (AUS)**
  - Ground Lease - Expiration 2057
  - Grant Agreement - AUS guarantees Bond payments
  - Bond Indenture Documents – sets parameters

- **ABLE primary contracts for Hotel operations**
  - Franchise Agreement - Hilton Franchise Holdings, LLC.
  - Hotel Management Agreement – Boykin Prospera, LLC.

Hilton

PROSPERA HOSPITALITY

Austin-Bergstrom International Airport

Hilton Austin Airport Historical Operations

- **Initial 1999 Hotel Bonds were refinanced in 2017**
  - Reset the annual debt service
  - Renovation funding – approx. $13M

- **Return to profitability in 2018 and 2019**
  - HVAC failure delayed renovation project
  - Impacts of new products in Market and submarket
    - 9 new hotels in downtown Austin
    - 3 new hotels on or near AUS
  - Outperformed competitive set of hotels
    - Revenue per available room/occupancy levels
    - Guest satisfaction scores
    - Hilton Quality Assurance Audits

Austin-Bergstrom International Airport

Hilton - COVID-19 Operations Impact

- **COVID -19 Impact to Calendar Year 2020 Operations**
  - CY 2020 Occupancy averaged 32.6%, versus 80.2% in 2019 Occupancy
  - CY 2020 Room Revenue was 35.3% of 2019 Room Revenues
  - CY 2020 Meeting and Food/Beverage Revenue was 37.7% of 2019 Meeting and Food/Beverage Revenues

- **ABLE/Prospera reduced Opex by 44%**
  - Reductions in staffing
  - Renegotiation of contracts
  - Deferral of services and capital program
  - Deferral of fees to franchisor/vendors
  - Waiver of certain fees by Prospera

- **ABLE received PPP loan under CARES Act - $907,555**

COVID – 19 Financial Impact & Resiliency Program

Hilton - COVID-19 Financial Impact

- **COVID -19 Impact to Calendar Year 2020 Expenses**
  - CY 2020 Occupancy averaged 32.6%, versus 80.2% for 2019 Occupancy
  - Grant Agreement between ABLE and AUS
    - October 1, 2020 payment amount of $1,561,101 to Debt Service Reserve Fund (DSRF)
    - April 1, 2021 payment amount of $1,084,500 to DSRF anticipated
    - October 1, 2021 payment of $2,224,500 to DSRF anticipated
    - April 1, 2022 payment of $1,056,000 to DSRF anticipated
  - Hotel Operating Expenses
    - In 2020 the Hotel accrued Accounts Payable for Operating Expenses is in the amount of $1,080,000
  - ABLE Corporate Expenses
    - In 2020 ABLE accrued Accounts Payable for ABLE Corporate Expenses is in the amount of $252,000

Austin-Bergstrom International Airport

Hilton Austin Airport Resiliency Program

- **Resiliency Program - Calendar Years 2021 – 2022**
  - Grant Agreement - Required funding for DSRF
  - Ground Lease – Continued waiver of Ground Lease payments
  - Active management support - Aviation Department Staff

  - New Loan Agreement – Item 1 - 2020 Accounts Payable
    - To cover CY 2020 Opex and ABLE corporate Accounts Payable resulting from COVID 19 impacts
    - Accounts Payable initial draw - $1,350,000

  - New Loan Agreement – Item 2 – 2021 Expense Shortfall
    - Additional funding to cover any required shortfall for 2021 Opex and ABLE corporate expenses (if needed)
    - Explicit oversight and approval requirements of AUS for any requested draw amount
    - Additional funding limit - $1,250,000
    - Draw rights expire December 31, 2022

Austin-Bergstrom International Airport

Hilton Austin Airport Resiliency Program

- **Loan Agreement – Basic Terms**
  - Draw Period:
    - Start: Date of loan closing, anticipated to be 5/1/2021
    - End: 12/31/2022
  - Interest on Loan
    - Interest Accrual Start Date: Upon date of Lender's draw payment
    - Loan Interest Rate: 2% per year
  - Payments and Prepayments
    - Interest Only Payment - Interest only on the Loan Amount shall be due and paid April 1, 2024.
    - Principal/Interest Payments - Principal and interest is payable in equal annual payments beginning on April 1, 2025, reflecting amortization of the principal outstanding, over a term of 3 years.
- **Basic Terms reflect compliance with Bond Indenture requirements and its priority of revenue application**

Austin-Bergstrom International Airport

Next Steps and Questions

Action for City Council

- **Loan Agreement**
  - Reviewed and approved by ABLE Board of Directors (March, 2021)
  - RCA for Airport Advisory Commission (April, 2021)
  - City Council action (April, 2021)

- **Questions**

Austin-Bergstrom International Airport

Thank You
City of Austin, Department of Aviation
Austin-Bergstrom International Airport

AUSTIN-BERGSTROM LANDHOST ENTERPRISES, INC.

MARCH 26, 2021

FIRST AMENDMENT TO THE GRANT AGREEMENT BETWEEN THE CITY OF AUSTIN AND AUSTIN-BERGSTROM LANDHOST ENTERPRISES, INC.

This First Amendment to the Grant Agreement between the City of Austin and Austin-Bergstrom Landhost Enterprises, Inc. (**First Amendment**) is entered into on _____, 2021 (**Effective Date**) by and between the City of Austin (**City**), a Texas home rule municipality, by, though, and on behalf of the Department of Aviation, a department and enterprise fund of the City, and Austin-Bergstrom Landhost Enterprises, Inc. (**Corporation**), a Texas Public Facility Corporation created by the City under Chapter 303 of the Texas Local Government Code. Capitalized terms used in this First Amendment and not defined herein have the meanings assigned to such terms in the Agreement (defined below).

Recitals

Whereas, City and Corporation entered into the Grant Agreement between the City of Austin and Austin-Bergstrom Landhost Enterprises, Inc. (**Agreement**) on October 1, 2017; and

Whereas, City and Corporation want to clarify that the City entered the Agreement on behalf of the Department of Aviation; and

Whereas, City and Corporation want to add a Section 8.12 to expressly state the Agreement is subject and subordinate to the Federal Aviation Administration's Grant Assurances.

NOW, THEREFORE, in consideration of the mutual promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which is acknowledged, City and Corporation agree as follows.

I. The Agreement is for the Benefit of the Department of Aviation

City and Corporation acknowledge and agree to the following:

A. The Airport Hotel is a facility of the Department of Aviation.

B. Any Grant from the City to Corporation under the Agreement is for the benefit of the Department of Aviation.

II. Addition of Section 8.12

City and Corporation add the following Section 8.12 to the Agreement:

8.12 SUBORDINATE TO FEDERAL AVIATION ADMINISTRATION RULES AND REGULATIONS. Notwithstanding anything to the contrary herein, Corporation acknowledges and agrees that this Agreement is subject and subordinate to the provisions of any existing or future agreements between the City and the United States of America relative to the operation and maintenance of ABIA, the terms and execution of which have been or may be required as a condition

precedent to the expenditure by or reimbursement to the City of federal funds for the development of ABIA (**Grant Assurances**). In the event that this Agreement, either on its own terms or by any other reason, conflicts with or violates such Grant Assurances, the City has the right to amend, alter, or otherwise modify the terms of this Agreement in order to resolve such conflict or violation. Corporation further acknowledges and agrees that it may not knowingly cause the City to violate any Grant Assurances made by the City to the federal government in connection with the granting of such federal funds.

IN WITNESS WHEREOF, the parties execute this First Amendment by their duly authorized representative.

CORPORATION:

AUSTIN-BERGSTROM LANDHOST ENTERPRISES, INC.

By: _____
Greg Milligan, President

CITY:

CITY OF AUSTIN
Department of Aviation

By: _____
Jacqueline Yaft, Chief Executive Officer
Department of Aviation
Austin-Bergstrom International Airport

Approved as to Form:

_____
Assistant City Attorney

AUSTIN-BERGSTROM LANDHOST ENTERPRISES, INC.

MARCH 26, 2021

FIRST AMENDMENT TO THE GROUND LEASE AGREEMENT BY AND BETWEEN THE CITY OF AUSTIN AND AUSTIN-BERGSTROM LANDHOST ENTERPRISES, INC., A TEXAS PUBLIC FACILITY CORPORATION

This First Amendment to the Ground Lease Agreement by and between the City of Austin and Austin-Bergstrom Landhost Enterprises, Inc., a Texas Public Facility Corporation (**First Amendment**) is entered into on _____, 2021 (**Effective Date**) by and between the City of Austin (**Lessor**), a Texas home rule municipality, by, though, and on behalf of the Department of Aviation, a department and enterprise fund of the City, and Austin-Bergstrom Landhost Enterprises, Inc. (**Lessee**), a Texas Public Facility Corporation created by the City under Chapter 303 of the Texas Local Government Code. Capitalized terms used in this First Amendment and not defined herein have the meanings assigned to such terms in the Ground Lease (defined below).

Recitals

Whereas, Lessor and Lessee entered into the Ground Lease Agreement between the City of Austin and Austin-Bergstrom Landhost Enterprises, Inc., a Texas Public Facility Corporation (**Ground Lease**) on October 1, 2017; and

Whereas, Lessor and Lessee want to clarify that Lessor entered the Ground Lease on behalf of the Department of Aviation; and

Whereas, Lessor and Lessee want to add a Section 10.25 to expressly state the Ground Lease is subject and subordinate to the Federal Aviation Administration's Grant Assurances.

NOW, THEREFORE, in consideration of the mutual promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which is acknowledged, Lessor and Lessee agree as follows.

I. The Ground Lease is for the Benefit of the Department of Aviation.

Lessor and Lessee acknowledge and agree to the following:

A. That the Hotel is a facility of the Department of Aviation.

B. The Ground Lease is for the benefit of the Department of Aviation.

II. Addition of Section 10.25

Lessor and Lessee add the following Section 10.25 to the Ground Lease:

10.25 **SUBORDINATE TO FEDERAL AVIATION ADMINISTRATION RULES AND REGULATIONS.** Notwithstanding anything to the contrary herein, Lessee acknowledges and agrees

that this Ground Lease is subject and subordinate to the provisions of any existing or future agreements between Lessor and the United States of America relative to the operation and maintenance of ABIA, the terms and execution of which have been or may be required as a condition precedent to the expenditure by or reimbursement to Lessor of federal funds for the development of ABIA (**Grant Assurances**). In the event that this Ground Lease, either on its own terms or by any other reason, conflicts with or violates such Grant Assurances, Lessor has the right to amend, alter, or otherwise modify the terms of this Ground Lease in order to resolve such conflict or violation. Lessee further acknowledges and agrees that it may not knowingly cause Lessor to violate any Grant Assurances made by Lessor to the federal government in connection with the granting of such federal funds.

IN WITNESS WHEREOF, the parties execute this First Amendment by their duly authorized representative.

LESSEE:

AUSTIN-BERGSTROM LANDHOST ENTERPRISES, INC.

By: _____
Greg Milligan, President

LESSOR:

CITY OF AUSTIN

Department of Aviation

By: _____
Jacqueline Yaft, Chief Executive Officer
Department of Aviation
Austin-Bergstrom International Airport

Approved as to Form:

_____
Assistant City Attorney

AUSTIN-BERGSTROM LANDHOST ENTERPRISES, INC.

MARCH 26, 2021

AMENDED AND RESTATED BYLAWS OF
AUSTIN-BERGSTROM LANDHOST ENTERPRISES, INC.

ARTICLE I

POWERS AND PURPOSES

Section 1. Financing of Projects. In order to implement the purposes for which the Corporation was formed as set forth in the Articles of Incorporation of the Corporation (as amended and amended and restated from time to time, the "Articles of Incorporation"), the Corporation shall issue obligations to finance all or part of the cost of one or more "public facilities" as defined in Local Government Code Chapter 303, as amended (the "Act") to be located at Austin-Bergstrom International Airport (the "Airport") for the benefit of the Airport. The Airport is operated and managed by the Department of Aviation of the City of Austin (the "Department of Aviation").

Section 2. Conditions Precedent to Issuance of Obligations. The Corporation shall not issue any obligations until:

(a) the City Council (the "Governing Board") of the City of Austin, Texas (the "Sponsor"), has approved by resolution the issue of the obligations; and

(b) the Attorney General of the State of Texas has approved the obligations to the extent required by law.

Section 3. Books and Records; Approval of Programs and Financial Statements. The Corporation shall keep correct and complete books and records of account and shall also keep minutes of the proceedings of its Board of Directors (the "Board of Directors") and committees having any of the authority of the Board of Directors. All books and records of the Corporation shall be kept at the principal office of the Corporation where they shall be available to the public in accordance with Chapter 552, Texas Government Code, as amended. The Sponsor shall be entitled to approve all programs and expenditures of the Corporation, including without limitation pursuant to any management agreement or franchise agreement pursuant to which the property of the Corporation is managed or operated, and shall be entitled to annually review any financial statements of the Corporation. A representative of the Sponsor may examine all books and other records of the Corporation any time.

Section 4. Nonprofit Corporation. The Corporation shall be a nonprofit corporation, and no part of its net earnings remaining after payment of its expenses shall inure to the benefit of any individual, firm or corporation, except that in the event the Board of Directors shall determine that sufficient provision has been made for the full payment of the expenses, bonds and other obligations of the Corporation issued to finance all or part of the cost of a project, then any net earnings of the Corporation thereafter accruing with respect to said project shall be paid to the City of Austin, Department of Aviation.

ARTICLE II

BOARD OF DIRECTORS

Section 1. Powers, Number and Term of Office. The property and affairs of the Corporation shall be managed and controlled by the Board of Directors and, subject to the restrictions imposed by law, the Articles of Incorporation and these Bylaws, the Board of Directors shall exercise all of the powers of the Corporation.

The Board of Directors shall consist of no fewer than three (3) and no more than five (5) directors, each of whom shall be appointed by the Governing Board. At the election of the majority of the Board of Directors and with appointment by the Governing Board, the Board of Directors may be increased to consist up to seven (7) directors, without the necessity of amendment to these Bylaws. In the event a director shall resign or otherwise be removed from the Board of Directors, the Board shall not be required to replace such member provided that the Board of Directors continues to consist of no fewer than five (5) directors.

The Board of Directors shall include two persons designated below as Department of Aviation Directors ("Department of Aviation Directors"), and three remaining persons who are recommended by the Department of Aviation and appointed by the Governing Board ("Remaining Directors"). The Department of Aviation Directors are:

(a) The Chief Officer of Administration and External Affairs of the Department of Aviation, or the acting or interim Chief Officer of Administration and External Affairs of the Department of Aviation, as applicable; and

(b) The Chief Officer of Business and Finance of the Department of Aviation, or the acting or interim Chief Finance Officer of the Department of Aviation, as applicable.

The Department of Aviation Directors serve terms equal to their term as the officer designated above. The Remaining Directors appointed by the Governing Board serve for a term of 6 years or until their successors are appointed by the Governing Board. Remaining Directors are allowed to serve an additional six (6) year term if appointed by the Governing Board. Such additional six (6) year term may be for a successive or for a non-successive time frame.

Any director may be removed from office by the Governing Board for cause or at will.

Section 2. Meetings of Directors. The directors may hold their meetings at such place or places within the City of Austin as the Board of Directors may from time to time determine; provided, however, in the absence of any such determination by the Board of Directors, the meetings shall be held at the registered office of the Corporation in the State of Texas. Every regular or special meeting of the Board of Directors shall be open to the public, except as otherwise permitted by the Constitution of the State of Texas or Chapter 551, Texas Government Code, as amended.

Section 3. **Regular Meetings**. Regular meetings of the Board of Directors shall be held at such times and places as shall be designated, from time to time, by resolution of the Board of Directors and with such notice as may be required from time to time by law.

Section 4. **Special Meetings**. Special Meetings of the Board of Directors shall be held whenever called by the president, by the secretary, by a majority of the directors then being in office or upon advice or request by the Governing Board or the Department of Aviation and with such notice as may be required from time to time by law.

Section 5. **Public Notice**. Written notice of the date, hour, place and subject of each meeting of the Board of Directors shall be posted at such times and in such places as notice of each meeting of the Governing Board of the Sponsor is posted, all as prescribed by Chapter 551, Texas Government Code, as amended.

Section. 6. **Quorum**. A majority of the directors fixed by the Articles of Incorporation shall constitute a quorum for the consideration of matters pertaining to the purposes of the Corporation. The act of a majority of the directors present at a meeting at which a quorum is in attendance shall constitute the act of the Board of Directors, unless the act of a greater number is required by law.

Section 7. **Conduct of Business**. At all meetings of the Board of Directors, matters pertaining to the purposes of the Corporation shall be considered in such order as from time to time the Board of Directors may determine.

At all meetings of the Board of Directors, the president shall preside, and in the absence of the president, the vice president shall exercise the powers of the president.

The secretary of the Corporation shall act as secretary of all meetings of the Board of Directors, but in the absence of the secretary, the presiding officer may appoint any person to act as secretary of the meeting.

Section 8. **Public Hearings**. Public hearings required under Section 147(f) of the Internal Revenue Code of 1986, as amended, may be called and conducted by any officer or director of the Corporation or the City Manager of the Sponsor, and such person may establish the date, place and time of the hearing any may give notice of the hearing,

Section 9. **Executive Committee**. The Board of Directors, by resolution passed by a majority of the directors in office, may designate two or more directors to constitute an executive committee, which committee, to the extent provided in such resolution, shall have and may exercise all of the authority of the Board of Directors in the management of the Corporation, except where action of the Board of Directors is specified by law. The executive committee shall act in the manner provided in such resolution. The executive committee so designated shall keep regular minutes of the transactions of its meetings and shall cause such minutes to be recorded in books kept for that purpose in the office of the Corporation, and shall report the same to the Board of Directors from time to time.

Section 10. Compensation of Directors. Directors as such shall not receive any salary or compensation for their services, except that they shall be reimbursed for their actual expenses incurred in the performance of their duties hereunder.

Section 11. Indemnification. The Corporation shall indemnify any director or officer or former director or officer of the Corporation for expenses and costs (including attorneys' fees) actually and necessarily incurred by such director or officer in connection with any claim asserted against such director or officer's being or having been a director or officer, except in relation to matters as to which such director or officer shall have been guilty of negligence or misconduct in respect of the matter in which indemnity is sought. If the Corporation has not fully indemnified such director or officer, the court in the proceeding in which any claim against such director or officer has been asserted or any court having the requisite jurisdiction of an action instituted by such director or officer on such director's or officer's claim for indemnity may assess indemnity against the Corporation, its receiver, or trustee for the amount paid by such director or officer (including attorneys' fees) in satisfaction of any judgment or in compromise of any such claim (exclusive in either case of any amount paid to the Corporation), actually and necessarily incurred by ·such director or officer in connection therewith to the extent that the court shall deem reasonable and equitable; provided, nevertheless, that indemnity may be assessed under this Section 11 only if the court finds that the person indemnified was not guilty of negligence or misconduct in respect of the matter in which indemnity is sought.

ARTICLE III

OFFICERS

Section 1. Titles and Term of Office. The officers of the Corporation shall be a president, a vice president, a secretary and a treasurer, and such other officers as the Board of Directors may from time to time elect or appoint. One person may hold more than one office, except the president shall not hold the office of secretary. Terms of office shall not exceed three years.

All officers shall be subject to removal from office, with or without cause, at any time by a vote of the majority of the entire Board of Directors.

A vacancy in the office of any officer shall be filled by a vote of a majority of the entire Board of Directors.

Section 2. Powers and Duties of the President. The president shall be the chief executive officer of the Corporation and, subject to the Board of Directors, shall be in general charge of the properties and affairs of the Corporation; shall preside at all meetings of the Board of Directors; and in furtherance of the purposes of this Corporation, may, unless otherwise approved by the Board of Directors: (i) sign and execute all contracts, conveyances, franchises, bonds, deeds, assignments, mortgages, notes and other instruments in the name of the Corporation, (ii) authorize any contract without Board approval if the term of such contract does not exceed one year and the 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, or in such greater amount if specifically authorized, or pursuant to a budget approved, by the Board of Directors.

Section 3. **Vice President**. The vice president shall be a member of the Board of Directors of the Corporation, shall have such powers and duties as may be assigned by the Board of Directors; and shall exercise the powers of the president during that officer's absence or inability to act. Any action taken by the vice president in the performance of the duties of the president shall be conclusive evidence of the absence or inability to act of the president at the time such action was taken.

Section 4. **Treasurer**. The treasurer shall have custody of all the funds and securities of the Corporation which shall come into such treasurer's hands. When necessary or proper, the treasurer may endorse, on behalf of the Corporation, for collection, checks, notes and other obligations and shall deposit the same to the credit of the Corporation in such bank or banks or depositories as shall be designated in the manner prescribed by the Board of Directors; may sign all receipts and vouchers for payment made to the Corporation, either alone or jointly with such other officer as is designated by the Board of Directors; whenever required by the Board of Directors, shall render a statement of the cash account; shall enter or cause to be entered regularly in the books of the Corporation to be kept by the treasurer for that purpose full and accurate accounts of all monies received and paid out on account of the Corporation; shall perform all acts incident to the position of treasurer subject to the control of the Board of Directors; and shall, if required by the Board of Directors, give such bond for the faithful discharge of his or her duties in such form as the Board of Directors may require.

Section 5. **Secretary**. The secretary shall keep the minutes of all meetings of the Board of Directors in books provided for that purpose; shall attend to the giving and serving of all notices; in furtherance of the purposes of this Corporation, may sign with the president in the name of the Corporation, and/or attest the signature thereto, all contracts, conveyances, franchisees, bonds, deeds, assignments, mortgages, notes and other instruments of the Corporation; shall have charge of the corporate books, records, documents and instruments, except the books of account and financial records and securities of which the treasurer shall have custody and charge, and such other books and papers as the Board of Directors may direct, all of which shall at all reasonable times be open to inspection upon application at the office of the Corporation during business hours; and shall in general perform all duties incident to the office of secretary subject to the control of the Board of Directors.

Section 6. **Compensation of Officers**. Except for the president, officers as such shall not receive any salary or compensation for their services, except that they shall be reimbursed for their actual expenses incurred in the performance of their duties hereunder. The President's salary or compensation, if any, shall be determined by the Board of Directors.

ARTICLE IV

PROVISIONS REGARDING ARTICLES OF INCORPORATION AND BYLAWS

Section 1. **Effective Date**. These Bylaws shall become effective only upon the occurrence of the following events:

(a) The approval of these Bylaws by the Governing Board; and

(b) The adoption of these Bylaws by the Board of Directors.

Section 2. Amendments to Articles of Incorporation and Bylaws. The Articles of Incorporation may at any time and from time to time be amended, provided that the Board of Directors file with the Governing Board a written application requesting that the Governing Board approve such amendment to the Articles of Incorporation, specifying in such application the amendment or amendments proposed to be made. If the Governing Board by appropriate resolution finds and determines that it is advisable that the proposed amendment be made, authorizes the same to be made and approves the form of the proposed amendment, the Board of Directors shall proceed to amend the Articles as provided in the Act.

The Articles of Incorporation may also be amended at any time by the Governing Board at its sole discretion by adopting an amendment to the Articles of Incorporation of the Corporation by resolution of the Governing Board and delivering the Articles of Amendment to the Secretary of State as provided in the Act.

These Bylaws may be amended by majority vote of the Board of Directors. Each amendment of the Bylaws and each repeal of the Bylaws must be approved by the Governing Board by resolution.

Section 3. Interpretation of Bylaws. These Bylaws and all the terms and provisions hereof shall be liberally construed to effectuate the purposes set forth herein. If any word, phrase, clause, sentence, paragraph, section or other part of these Bylaws, or the application thereof to any person or circumstance, shall ever be held to be invalid or unconstitutional by any court of competent jurisdiction, the remainder of these Bylaws and the application of such word, phrase, clause, sentence, paragraph, section or other part of these Bylaws to any other person or circumstance shall not be affected thereby.

ARTICLE V

GENERAL PROVISIONS

Section 1. Principal Office. The principal office of the Corporation shall be located at the main office of the Department of Aviation in Austin, Texas.

The Corporation shall have and continuously maintain in the State of Texas (the "State") a registered office, and a registered agent whose business office is identical with such registered office, as required by the Act. The registered office may be, but need not be, identical with the principal office in the State, and the address of the registered office may be changed from time to time by the Board of Directors, pursuant to the requirements of the Act.

Section 2. Fiscal Year. The fiscal year of the Corporation shall be as determined by the Board of Directors.

Section 3. Seal. The seal of the Corporation shall be as determined by the Board of Directors.

Section 4. Notice to Board of Directors and Waiver of Notice. Whenever any notice whatsoever is required to be given to a director under the provisions of the Act, the Articles of Incorporation or these Bylaws, said notice shall be deemed to be sufficient if given by depositing

the same in a post office box in a sealed postpaid wrapper addressed to the person entitled thereto at such person's post office address or by sending an email to such person, each at the address as it appears on the books of the Corporation, and such notice shall be deemed to have been given on the day of such mailing or email transmission. Attendance of a director at a meeting shall constitute a waiver of notice of such meeting, except where a director attends a meeting for the express purpose of objecting to the transaction of any business on the grounds that the meeting is not lawfully called or convened. Neither the business to be transacted at nor the purpose of any Regular or Special Meeting of the Board of Directors need be specified in the notice given to a director or waiver of notice of such meeting, unless required by the Board of Directors. A waiver of notice in writing, signed by the person or persons entitled to said notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice.

Section 5. Resignations. Any director or officer may resign at any time. Such resignation shall be made in writing and shall take effect at the time specified therein, or, if no time be specified, at the time of its receipt by the president or secretary. The acceptance of a resignation shall not be necessary to make it effective, unless expressly so provided in the resignation.

Section 6. Approval or Advice and Consent of the Governing Board. To the extent that these Bylaws refer to any approval by the Sponsor or refer to advice and consent by the Sponsor, such advice and consent shall be evidenced by a certified copy of a resolution, ordinance or motion duly adopted by the Governing Board.

Section 7. Organizational Control. The Sponsor may, at its sole discretion, and at any time, alter or change the structure, organization, programs or activities of the Corporation (including the power to terminate the Corporation), subject to any limitation on the impairment of contracts entered into by such Corporation.

Section 8. Dissolution of the Corporation. Upon dissolution of the Corporation, title to or other interests in any real or personal property owned by the Corporation at such time shall vest in the City of Austin, Department of Aviation.

AUSTIN-BERGSTROM LANDHOST ENTERPRISES, INC.

MARCH 26, 2021

AMENDED AND RESTATED
ARTICLES OF INCORPORATION

AUSTIN-BERGSTROM LANDHOST ENTERPRISES, INC.

This Corporation's original Articles of Incorporation were filed with the Secretary of State of the State of Texas on December 10, 1998 (the "Original Articles").

These Amended and Restated Articles of Incorporation (these "Articles of Incorporation") were duly adopted in accordance with Chapter 303 of the Local Government Code of the State of Texas.

These Articles of Incorporation amend certain provisions of Article II Sections 1, 3 and 4, Article III and Article IV of the Original Articles.

These Articles of Incorporation accurately copy the Articles of Incorporation of this Corporation and all previous amendments in effect on the date of the filing of these Articles of Incorporation, as further amended by these Articles of Incorporation, and these Articles of Incorporation do not contain any other change.

These Articles of Incorporation were authorized by the sponsor's governing body.

The text of the Original Articles is hereby amended and restated in its entirety to read as set forth herein.

I.

The name of this Corporation is Austin-Bergstrom Landhost Enterprises, Inc.

II.

1. This Corporation is a nonprofit public corporation and is not organized for the private gain of any person. The Corporation has no members and is a nonstock corporation. It is organized under Local Government Code Chapter 303, as amended (the "Act") for public purposes. The sponsor of the Corporation is the City of Austin, Texas, 124 W. Eighth Street, Austin, Texas 78701. The City of Austin, Texas, has specifically authorized the Corporation to act on its behalf to further the public purpose set forth in these Articles of Incorporation, and the City Council of the City of Austin, Texas, has duly approved these Articles of Incorporation.

2. The specific and primary purposes of this Corporation are:

(a) To render financial or other assistance to the City of Austin, Texas, or any successor public entity or assignee public entity which succeeds to the functions of the City of Austin, Texas (collectively herein referred to as the "Political Subdivision"), by financing, acquiring, constructing, improving, remodeling, leasing and selling buildings,

building improvements, fixtures, equipment, facilities, improvements for electrical, water, sewer, parking, site development, furnishings, improvements, transportation, communications and any other public purposes, and any other real or personal property for the benefit of the Political Subdivision which constitute "public facilities" as defined by the Act.

(b) To acquire by lease, purchase, installment purchase, or otherwise real or personal property which constitute "public facilities" as defined by the Act, or any interest therein, to enter into contracts for services or for other purposes; to construct, reconstruct, modify, add to, and to improve or otherwise acquire or equip buildings, structures or improvements which constitute "public facilities" as defined by the Act, and (by sale, installment sale, lease, sublease, leaseback, gift or otherwise) make any part or all of any such real or personal property, or improvements, available to or for the benefit of the public or the Political Subdivision.

(c) To promote the common good and general welfare of the Political Subdivision area and the inhabitants thereof by providing the real and personal property as hereinabove described.

(d) To borrow the necessary funds to pay the cost of financing, refinancing acquiring, constructing, replacing, establishing, improving, maintaining, equipping and operating such real and personal properties, facilities and improvements for the herein described purposes, the indebtedness for which borrowed money may, but need not, be evidenced by securities of the Corporation of any kind or character issued at any one or more times, which may be either unsecured or secured by any mortgage, trust, deed, pledge, encumbrance or other lien upon any part or all of the properties and assets at any time then or thereafter owned or acquired by this Corporation.

(e) To conduct its business and affairs so that the Political Subdivision will have a beneficial interest in the Corporation.

(f) To receive limited or conditional gifts or grants in trust, inter vivos, or by way of testamentary devises, bequests or grants in trust, or otherwise, funds of all kinds including property, both real and personal, and mixed, whether principal or income, tangible or intangible, present or future, vested or contingent, in order to carry on the purposes of the Corporation.

Subject to the provisions of Article IV of these Articles of Incorporation, the specific purpose of the Corporation is to finance the acquisition, construction and equipping of, and provide for the operation of, a hotel to be located at Austin-Bergstrom International Airport and other lodging facilities, and to do all things necessary or convenient to the provision of such hotel and other lodging facilities, their economic and beneficial financing, use and maintenance in the State of Texas in order to promote the health, safety and general welfare of the residents of the State, to increase their commerce and industry, to promote their economic development and to advance the efficiency of the citizens of the State and surrounding areas. Specific objectives of the Corporation include the financing of a hotel to be located at Austin-Bergstrom International Airport and other lodging facilities through the sale of revenue indebtedness of the Corporation ("Project Debt")

which Project Debt shall not constitute an indebtedness of nor a charge against the full faith, credit or taxing powers of the State or any of its agencies (including, without limitation, the Political Subdivision) or any other political subdivision of the State. Upon the retirement or defeasance of any Project Debt issued by the Corporation, all property provided by such Project Debt, and any additions thereto, will be conveyed by the Corporation to the Political Subdivision for a public purpose or upon the direction of the Political Subdivision, to another agency or political subdivision of the State for a public purpose.

3. The affairs of the Corporation shall be managed by a Board of Directors. The number of directors shall be no fewer than three (3) and no more than five (5). Each director shall be appointed by the Governing Board. At the election of the majority of the Board of Directors and with appointment by the Governing Board, the Board of Directors may be increased to consist up to seven (7) directors, without the necessity of amendment to these Articles of Incorporation. The names and addresses of the current Board of Directors as approved by the Governing Board are:

(a) Angelo ("Ange") A. DeCaro, Jr., c/o Quadrus Consulting, 13407 Country Trail Lane, Austin, Texas 78732.

(b) Anthony M. Garcia, PE, Project Manager, Planning & Development, City of Austin, Department of Aviation, 3600 Presidential Blvd., Suite 411, Austin, Texas 78719.

(c) Mukesh Patel, Airport Chief Officer – Business and Finance, Austin Bergstrom International Airport, 3600 Presidential Blvd., Suite 411, Austin, Texas 78719.

(d) Tracy Thompson, Esq., Airport Chief Officer – Administrative & External Affairs, Austin Bergstrom International Airport, 3600 Presidential Blvd., Suite 411, Austin, Texas 78719.

(e) Leslie Conant Thorne, c/o Haynes & Boone, 600 Congress Avenue, Suite 1300, Austin, Texas 78701.

Notwithstanding anything herein to the contrary, the City Council of the Political Subdivision (the "Governing Board") has the power to remove any director for cause or without cause, and to appoint a successor for the remainder of the removed director's term. No amendment shall be made to the provisions of this paragraph without the approval of the Governing Board.

4. In addition to the foregoing, the Corporation shall have, and shall be entitled to exercise, all the powers of every kind lawfully available to a nonprofit public facility corporation organized under the laws of the State of Texas; provided, however, that the Corporation shall not have the power to, and shall not, do any act or conduct any activity, plan, scheme, design or course of conduct which in any way conflicts with Sections 501(c)(3) or 50l(c)(4) of the Internal Revenue Code of 1986, as amended, and regulations promulgated pursuant to such sections as they now exist or as they may hereafter be amended.

III.

The name of the Corporation's current registered agent and the address in the State of Texas of this Corporation's current registered office for service of process is:

Jacqueline Yaft, Chief Executive Officer, Austin-Bergstrom International Airport, 3600 Presidential Blvd. Suite 411, Austin Texas 78719.

IV.

The Corporation is not a corporation organized for profit. The Corporation is organized and shall be operated exclusively for charitable purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986 or the corresponding section of any future federal tax code. No part of the net earnings of the Corporation shall inure to the benefit of, or be distributable to, its directors, officers, employees, agents or other private shareholders or persons except that the Corporation shall be authorized to pay reasonable compensation for services rendered and to make reasonable payments in furtherance of its charitable purposes. No substantial part of the activities of the Corporation shall be the carrying on of propaganda, or otherwise attempting to influence legislation, and the Corporation shall not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office. Notwithstanding any other provision of these articles, the Corporation shall not carry on any activities not permitted to be carried on (i) by a corporation exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code of 1986 or the corresponding section of any future federal tax code or (ii) by a corporation, contributions to which are deductible under Section 170(c)(2) of the Internal Revenue Code of 1986 or the corresponding section of any future federal tax code. Upon the dissolution of the Corporation, all of the Corporation's assets shall be distributed (1) to the City of Austin, Department of Aviation or (2) to the Political Subdivision or its successor for a public purpose or (3) at the direction of the Political Subdivision, to another agency or political subdivision of the State of Texas for a public purpose or (4) at the direction of the Political Subdivision for one or more exempt purposes within the meaning of Section 50l(c)(3) of the Internal Revenue Code or the corresponding section of any future federal tax code. The provisions of this Article IV shall supersede any contrary provisions of these Articles of Incorporation.

V.

The property of this Corporation is irrevocably dedicated to charitable purposes and no part of the net income or assets of this Corporation shall ever inure to the benefit of any director, officer, employee or member thereof or to the benefit of any private person.

VI.

The duration of the Corporation shall be perpetual.

VII.

These Articles of Incorporation may be amended only with the written approval of the Governing Board.

IN WITNESS WHEREOF, the undersigned, having been duly authorized, has executed these Amended and Restated Articles of Incorporation, this _____ day of _____, _____.

_____

I hereby declare that I am the person who executed the foregoing Amended and Restated Articles of Incorporation, which execution is my act and deed.

_____

STATE OF TEXAS)
)
COUNTY OF TRAVIS)

BEFORE ME THE UNDERSIGNED AUTHORITY on this _____ day of _____ _____, personally appeared _____, who, being by me duly sworn, declared that they are the person who signed the foregoing document, and that the statements therein contained are true.

IN WITNESS WHEREOF, I have hereunto set my hand and seal as of the date hereinabove written.

(SEAL)

_____
Notary Public in and for the State of Texas

AUSTIN-BERGSTROM LANDHOST ENTERPRISES, INC.

MARCH 26, 2021

TERMS OF ENGAGEMENT

I. DEFINITIONS

A. "**Agreement**" means this Terms of Engagement, including all exhibits and any written amendments, and the Engagement Letter.

B. "**CRO**" means you and your company, HMP Advisory Holdings, LLC, dba Harney Partners, as the President and Chief Restructuring Officer of ABLE ("CRO").

C. "**ABLE**" means Austin-Bergstrom Landhost Enterprises, Inc.

II. DUTIES OF CRO

A. Scope of Services

The CRO shall continue to provide services as President and Chief Restructuring Officer for ABLE as specified in this Agreement. By way of example, such services are anticipated in include:

1. Regular meetings, oversight, and approvals regarding PIP projects;

2. Serving as ABLE's legal representative and point person for matters regarding: the 2017 Bond Trustee,
   a. annual financial audit meetings, reviews, and related letters,
   b. franchise and operating matters with Hilton and Prospera,
   c. landlord/tenant matters with COA
   d. matters with ABLE's counsel

3. Review and approval of periodic RFC (Requests for Capital);

4. Review of monthly operating statements;

5. Participating in preparation and approval of annual operating budgets;

6. Consideration and approval (or rejection) of routine ABLE matters that don't require Board consideration;

7. Organizing and conducting regular meetings of the Board (as well as renewal of D&O coverage for Board members); and

8. Other routine matters that will arise in the ordinary course of business.

B. Conflict of Interest

As CRO, you may be asked to work for various clients whose interests are adverse to those of ABLE or the City of Austin. By signing the Engagement Letter, CRO affirms that no such conflict exists. Further, CRO affirms that during the course of this engagement, you will refrain from engaging in any work that conflicts with ABLE or the City of Austin. Should such a conflict arise, you shall contact the ABLE Board of Directors immediately to discuss the situation.

C. **Assignment**

The CRO may not assign this Agreement in whole or in part, or subcontract the contemplated services without the prior written consent of the ABLE Board of Directors, except CRO may utilize other members of his company's staff to assist in performance of the Services.

D. **Fees**

ABLE and CRO agree that, for the billing period starting February 1, 2020, ABLE shall pay to CRO a flat monthly fee of $5,000.00, in arrears, upon presentation of an invoice from the CRO pursuant to this Agreement and the relevant payment procedures contained in the 2017 bond indenture.

E. **Expenses**

ABLE agrees to reimburse the CRO for the reasonable, actual cost of expenses incurred in this matter as provided in the Billing Requirements section of this Agreement. The CRO shall exercise prudence in incurring expenses. The CRO agrees to timely pay for all reasonable expenses incurred during his work for ABLE. Such payments shall be made as they become due and payable subject to reimbursement as provided in this Agreement.

F. **Indemnity and Insurance**

1. The CRO shall indemnify and hold ABLE and the City of Austin harmless from any claims, liability, damages, suits, causes of action, and judgments arising out of or caused by the gross negligence or willful misconduct of the CRO in the rendering of services as Chief Restructuring Officer for ABLE. The CRO shall carry professional liability insurance with minimum limits of five hundred thousand ($500,000) per occurrence and shall not permit such insurance to be canceled or lapse during this engagement. The CRO shall provide an insurance certificate or other proof of insurance to the ABLE Board of Directors, if requested.

2. ABLE shall at all times maintain D&O insurance covering the CRO and other officers and members of the Board of Directors, consistent with current coverages and policy limits.

G. **Work Products**

It is agreed that all files, reports, exhibits, pleadings, data compilations, memoranda, and other work product produced under this Agreement, collectively, the "Documents," are the property of ABLE. Upon termination, the CRO may retain a copy of the Documents, but the CRO shall deliver the original Documents to the ABLE Board of Directors upon request, at no expense to ABLE.

III. BILLING REQUIREMENTS

A. **Billing Requirements**

1. The negotiated monthly fee includes all overhead and internal charges associated with your services.

2. ABLE will not pay for time spent preparing, discussing, or correcting a billing statement.

3. A copy of all invoices, bills, and receipts for expenses shall be attached to the monthly bill.

B. Billing Statement Requirements

All billing statements must identify the month services are rendered and contain the agreed $5,000.00 per month flat fee, to be paid in arrears.

C. Expenses

ABLE **will not** pay for the following expenses:

1. General operating expenses other than long-distance phone bills, postage, and copying (not to exceed 10 cents per page).

2. Unnecessary use of express mail, facsimile transmissions, or couriers.

D. Travel

ABLE **will not** pay:

1. For air travel expenses in excess of standard coach or economy fares. We ask that you take advantage of special fares or discounts whenever possible.

2. For lodging and meals that exceed the per diem rates established by the U. S. General Services Administration.

3. For alcoholic beverages.

4. For charges from in room hotel "honor" bars.

ABLE **will pay** for automobile mileage, at a rate not to exceed the amount permitted under the Internal Revenue Code.

IV. DUTIES OF ABLE

A. Payment Terms

1. ABLE shall pay the CRO on the basis of monthly invoices submitted by the CRO and approved by ABLE's Vice President or her designee.

2. ABLE shall make payments to the CRO upon presentation of an invoice from the CRO pursuant to this Agreement and the relevant payment procedures contained in the 2017 bond indenture.

B. Disputed Payments

1. If ABLE disputes any invoice the CRO submits for any reason, the Vice President of ABLE shall advise the CRO of the issue and will pay only the undisputed portion of the invoice. ABLE will not pay for time spent discussing or correcting an invoice.

2. If the dispute is later resolved in the CRO's favor, ABLE will pay the disputed amount.

C. Written Amendment

This Agreement may be amended only by a written document approved by ABLE's Board of Directors and signed by ABLE's Vice President.

V. GENERAL PROVISIONS

A. Compliance with Laws

This Agreement and all disputes concerning this Agreement shall be governed by the laws of the State of Texas. Venue of any civil action between the parties regarding this Agreement shall lie exclusively in Travis County, Texas. All obligations of the parties shall be deemed performable in Travis County, Texas.

B. Right to Audit

ABLE has the right to inspect and audit all books, records, and documents of the CRO pertaining to this engagement at any reasonable time, to the extent necessary to verify the accuracy of any statement, charge, or computation.

C. Audit Expenses

If the CRO is asked to provide information to ABLE, including, but not limited to ABLE's auditors (either ABLE employees or professionals hired by ABLE to audit ABLE's records), the CRO shall provide such information at no additional cost to ABLE.

D. Entireties

This Agreement shall constitute the entire understanding of the parties concerning this engagement. There shall be no amendment or modification to this Agreement, except in writing signed by all parties.

E. Severability

If any provision of this Agreement is declared invalid, illegal, or unenforceable by a court or an agency of competent jurisdiction, such declaration shall not affect the remainder of this Agreement and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

VI. TERM AND TERMINATION

A. Term of Agreement

This agreement shall be for a period of two (2) years, beginning on February 1, 2020 and ending January 31, 2022, with rolling automatic one-year renewals each following year if not terminated by either ABLE or the CRO no less than 30 days prior to the applicable February 1 renewal date. ABLE and CRO may mutually agree to terminate this Agreement at any time without cause and without liability to the other party.

[Signature Page Follows]

HMP ADVISORY HOLDINGS, LLC
DBA HARNEY PARTNERS

By: _____
Gregory S. Milligan
Executive Vice President 02/24/20

AUSTIN-BERGSTROM LANDHOST ENTERPRISES, INC.

By: _____
Susana Carbajal
Vice President 2/24/2020