

**Topeka Development Corporation Board of Directors Minutes  
October 19, 2023**

The Topeka Development Corporation Board of Directors met at 3:00 p.m. via Zoom with the following Board of Directors present: Michael Padilla, Karen Hiller, Sylvia Ortiz, Tony Emerson, Brett Kell, Hanna Naeger, Neal Dobler, Spencer Duncan and Michelle Hoferer -9. Absent: Christina Valdivia-Alcala -1.

Public comment for the meeting was available via Zoom. Individuals were required to contact the City Clerk's Office at 785-368-3940 or via email at [cclerk@topeka.org](mailto:cclerk@topeka.org) by no later than 2:00 p.m. on October 19, 2023, after which the City Clerk's Office provided the Zoom link information and protocols prior to the meeting start time. Written public comment was also considered to the extent it was personally submitted at the meeting or to the City Clerk's Office located at 215 SE 7th Street, Room 166, Topeka, Kansas, 66603 or via email at [cclerk@topeka.org](mailto:cclerk@topeka.org) on or before October 19, 2023.

**REVIEW of the proposed Topeka Development Corporation (TDC) Bylaws to be adopted as part of the Corporate Resolution.**

Amanda Stanley, City Attorney, provided an overview of the Corporate Bylaws to be approved as part of the corporate resolution. She stated the Bylaws have been posted on the public website. The following Sections were highlighted:

- Article I - Name and Purposes
- Article II - Offices
- Article III - No Members
- Article IV - Board of Directors
- Article V - Officers
- Article VI - Indemnification of Directors and Officers
- Article VII - Financial Activities and Reporting
- Article VIII - Conflicts of Interest
- Article IX - Repeal, Alternation or Amendment
- Article X - Dissolution
- Article XI - Miscellaneous

Mayor Padilla asked if there was any action that needed to be taken in regards to the Bylaws.

City Attorney Stanley reported the review of the Bylaws was required before the document could be voted on by the Board, followed by Selection of the Board President, Vice President, Treasurer and Secretary; and then approval of the corporate resolution authorizing the Governing Body to serve as the Board of Directors.

**SELECTION of Board Officers.**

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Brenda Younger, City Clerk, referenced Article V, Section 5.01 Election of Officers of the proposed Bylaws. She stated the officers of the Corporation shall be Directors and there shall be a President, Vice President, Secretary, and Treasurer, and any other officer designated by the Board, all of whom shall be elected annually by the Board. Two or more offices may be held by the same person at any one time, except the offices of President and Secretary.

Deputy Mayor Dobler nominated Mayor Padilla to serve as President of the Board. The motion was seconded by Councilmember Naeger.

Councilmember Hiller made a friendly amendment to nominate Deputy Mayor Dobler to serve as Vice President of the Board.

Councilmember Emerson made a friendly amendment to nominate Councilmember Hiller to serve as Secretary of the Board; and Councilmember Hoferer to serve as Treasurer of the Board.

Deputy Mayor Dobler accepted the friendly amendment. The second concurred.

Upon hearing no more nominations, nominations were closed.

City Clerk Younger asked all those in favor of nominating Mayor Padilla to serve as President; Deputy Mayor Dobler to serve as Vice President; Councilmember Hiller to serve as Secretary; and Councilmember Hoferer to serve as Treasurer of the Board to indicate so verbally by saying “yea” and those opposing to indicate so verbally by saying “no.” The motion carried unanimously on voice vote. (9-0-0)

### **APPROVAL of Corporate Resolution.**

RESOLUTION NO. 2023-01 of the Topeka Development Corporation adopting Bylaws of the Corporation; Designating authorized representatives of the Corporation; authorizing the purchase of an existing hotel; approving certain corporate matters; and approving and authorizing certain documents and actions in connection therewith.

Amanda Stanley, City Attorney, reported the proposed resolution was a necessary tool to give authorization for the following:

**Section 1.** Approval of the reviewed Bylaws

**Section 2.** Appoint the City Manager as the Executive Director, the City Clerk as the Assistant Secretary; and the City Chief Financial Officer and Deputy Director of Administrative and Financial Services as the Assistant Treasurer.

**Section 3.** Designating the four (4) officers of the Board and the Executive Director as authorized representatives of the Corporation for execution of documents.

**Section 4.** Approves the purchase of the Hotel authorizing the Corporation to receive the Hotel from the City of Topeka.

**Section 5.** Authorizes certain Corporate matters including execution of documents; financials, insurance, engage services, enter into contracts and expend money for operation, maintenance and management of the Hotel including but not limited to operating and capital expenses as well as other things necessary to execute the purpose of the Corporation.

**Section 6.** Authorizes very specific documents to make sure that it is clear for all parties that there is authority to execute the Bill of Sale related to the acquisition of the Hotel; execute other documents as deemed necessary; and a Hotel Management Agreement with TOKS Associates, LLC or other manager named therein.

**Section 7.** Allows the execution of Corporation documents by the President, Secretary, Executive Director, Assistant Secretary and Assistant Treasurer.

**Section 8.** Further Authority

**Section 9.** Separability Clause

Board Vice President Dobler referenced Section 5 of the resolution and questioned if any of the “Authorized Representatives” could execute agreements, and if so would this include the operation, maintenance and management of the Hotel.

City Attorney Stanley confirmed it would; however, the Board could amend the language to make it more restrictive.

Board Vice President Dobler stated he would like to clarify exactly who has the authority to execute agreements and would suggest the resolution be amended to include a counter signature by a second authorized representative such as the Board President or the Executive Director.

Board Secretary Hiller asked if there was language included in the resolution that would require notice to the Board when agreements are being considered.

City Attorney Stanley stated the resolution does not include a notice requirement other than the approval of the resolution provides authorization of specific contracts.

Board Director Emerson spoke in support of amending the resolution to include a counter signature.

City Attorney Stanley proposed the following language amendment to Section 5 of the resolution:

“The Authorized Representatives, and any of them provided there is a counter signature by a second Authorized Representative and one of the two signatures is either the President or the Executive Director, are hereby authorized to undertake and carry out all necessary and appropriate corporate activities and functions on behalf of the Corporation, including but not limited to the following:”

Board Vice President Dobler moved to amend the resolution as stated by the City Attorney. The motion seconded by Board Director Emerson carried. Board Director Ortiz voted “no.” (8-1-0)

Braxton Copley, Public Works Director & Hotel Project Manager, provided an overview of the specific business terms of the Hotel Management Agreement with TOKS Associates, LLC. He reported the agreement has not yet been finalized; however, the most recent draft dated October 16, 2023, has been shared with the Board of Directors. He asked the Board of Directors to approve the resolution authorizing the Executive Director to negotiate and execute the agreement subject to the counter signature requirement. The following terms of the agreement were highlighted:

- Initial term of agreement is two months. The Manor Conference Center is under a contract with GF Hotels that will expire on December 31, 2023. It is crucial the Hotel and Conference Center are managed under the same entity specifically as it relates to food service. Agreement includes two additional 6-month extensions.
- All employees will be employees of the Management Company and not TDC. TDC will have oversight of key employees including the Reservation and Booking Manager, General Manager and the Chief Engineer.
- Compensation package was composed of several components including centralized services consisting of the Information Technology Fee (\$5,270/year), Revenue Management Fee (\$17,988/year); Human Resources Administration Fee (\$1,045/year plus \$80 per employee); Management Fee is the greater of 3% of Gross Revenue or \$10,000 per month totaling \$120,000 per year including a catchup provision if needed; Accounting Fee (\$18,000/year); Wind-Down Fee equal to the average management fee for one month during the preceding year; and obligation to maintain a working capital account of \$150,000/year.
- Insurance coverage includes the operation of the hotel. Contracted by the Management Company and paid for as an operating expense of the hotel. As required the TDC has additional coverage over and above the operating agreement.

Board Vice President Dobler asked who owns the tangible movable or immovable property in the hotel building, and if it is TDC how do they guarantee it stays in place and who is responsible for replacement.

Public Works Director Copley reported on October 31, 2023, the day of closing, TDC was purchasing the real estate as well as all chattels connected with the real estate. He stated on that same day the GF Management Accounting Staff will immediately inventory available cash and receivables and prepare a closing statement as there will be a number of adjustments related to how much money was available upon closing. He spoke to the importance of having continuity in place in regards to the immediate manager (GF) of the hotel. Once the agreement was secured, TDC could consider other options as it relates to the best management fit of the hotel based on the evaluation and recommendation of the consultant, REVPAR International.

Board Vice President Dobler asked if it was inherent in the agreement that the designated authorized representatives of TDC would be involved in the expending of funds. City Attorney Stanley reported Section 9.8 of the agreement addresses the budgetary authority and any item that was excessive by going over budget by 5% or \$10,000 requires consent of TDC.

Public Works Director Copley stated Section 3.1 of the agreement also relates is allowed in terms of general services.

Board Secretary Hiller asked who would be responsible for the replacement of consumable items, household goods, cleaning supplies etc.

Public Works Director Copley stated those types of items would be considered a cost of operating the hotel and the revenue recorded in the financials would be used to cover the cost of replacement, however, if there was insufficient funds then capital funds would be used.

Board President Padilla asked if GF Hotels was offering a lower management fee rate than what was initially quoted.

Public Works Director Copley stated GF Hotels was not offering a lower rate due to the risk and profitability as it relates to the initial short two-month agreement term. He noted renewal of the agreement would be the decision of TDC.

Board President Padilla moved to approve the resolution as amended. The motion seconded by Board Director Emerson carried. Board Director Ortiz voted “no.” (8-1-0)

Board President Padilla asked if another meeting was necessary prior to the October 31, 2023 closing date.

City Attorney Stanley stated all authority to close and execute agreements has been granted through the approval of the corporate resolution; therefore, it would be the decision of the Board to determine if an additional meeting was needed.

Board President Padilla asked the Executive Director to schedule a meeting with the City Attorney, Public Works Director, Executive Director and himself within the next 1-2 weeks for the purpose of discussing any additional questions the Board of Directors may have and to ensure all members of the Board have a full understanding of what happens next.

Executive Director Nienstedt acknowledged the meeting request.

Board Vice President Dobler questioned communication protocols as it relates to the TDC Board of Directors compared to the City of Topeka Governing Body.

City Attorney Stanley stated Staff will work on communication protocols to keep the entities separate. She reminded the Board all communications are subject to the Kansas Open Meetings Act (KOMA) and cautioned against serial email communication.

Board Director Hoferer asked if the Board would receive a report from REVPAR International, Inc., prior to the October 31, 2023 closing date.

Public Works Director Copley reported when he received the report for the physical and systems assessment he will forward it to Executive Director Nienstedt, to be distributed to the entire Board of Directors. He noted REVPAR has requested information from GF Hotels on approximately 20 items and Staff does not anticipate a recommended course of action to be considered by the TDC for a couple of months as outlined in the REVPAR contract terms.

Executive Director Nienstedt asked if Shawnee County was assessing Manor Conference Center and reported TDC's fiscal responsibility ceases at the end of the walkway on the eastside of the Conference Center.

City Attorney Stanley reported the City has engaged in conversations with Shawnee County and awaits response.

Public Works Director Copley confirmed TDC has no fiscal responsibility for the maintenance and/or rehabilitation of the Manor Conference Center including the portion of the tunnel that leads to the Manor Conference Center from the hotel.

Board Secretary Hiller recognized the hotel as a Shawnee County asset; however, the success of managing the hotel was somewhat contingent on the space being active and high-end to ensure full occupancy and catering service demand. She expressed the importance of the request for a joint meeting with Shawnee County to understand their intentions as TDC moves forward with the short-term maintenance, overall development of the complex, as well as the purchase of the hotel by a private developer in the future. She requested the entire Board be copied on all communication related to the hotel.

Executive Director Nienstedt asked the Board if they have a preference on how often they would like to meet.

City Attorney Stanley stated the Bylaws require the Board meet one-time for an annual meeting and must follow Kansas Open Meeting Act requirements.

Board Secretary Hiller stated she would like to meet as needed. She asked the Board to consider having TDC meetings before or after Governing Body meetings on Tuesday evenings.

No further business appearing the meeting adjourned at 4:02 p.m.