

**Third Amendment to
Emergency Agreement between the City and County of San Francisco
and
1231 Market Street Owner L.P.
Hotel Whitcomb**

THIS THIRD AMENDMENT (this “Amendment”) is made as of **August 28, 2020**, in San Francisco, California, by and between **1231 Market Street Owner L.P.** (“**Hotel**”), and the City and County of San Francisco, a municipal corporation (“**City**”).

WHEREAS, City and Hotel have entered into an Emergency Agreement dated April 4, 2020, as subsequently amended by the First Amendment to Emergency Agreement dated May 15, 2020 and the Second Amendment to Emergency Agreement dated July 27, 2020 (collectively, the “**Agreement**”), for Rooms and Services at the property commonly known as the Hotel Whitcomb located at 1231 Market Street, San Francisco, CA 94103, to further the public health and safety in connection with City’s response to the Local Emergency declared by Mayor London Breed on Tuesday, February 25, 2020; and

WHEREAS, on July 6, 2020, City exercised its option under Section 2.2 of the Agreement to extend the Booking Period on a month-to-month basis commencing August 8, 2020; and

WHEREAS, City and Hotel desire to modify the Agreement on the terms and conditions set forth herein to extend the Booking Period and increase the Total Not-to-Exceed Compensation and associated amounts in Appendix B; and

WHEREAS, the City’s Board of Supervisors approved this Amendment by Resolution No. 200819 on August 25, 2020;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Hotel and City agree that the Agreement is hereby amended as follows:

1. **Defined Terms.** Capitalized terms not defined in this Amendment shall have the meaning set forth in the Agreement.

2. **Replace Section 2.1.** Section 2.1 is hereby deleted from the Agreement, and the following is hereby added in its place and fully incorporated into the Agreement:

2.1 Term.

2.1.1 The term of this Agreement shall be for 449 nights, commencing on April 8, 2020, and expiring of its own accord on July 1, 2021 (the last night will be June 30, 2021) (the “**Booking Period**”), unless earlier terminated in accordance with Section 8.1.1 or as otherwise provided herein.

3. **Replace Section 3.3.1.** Section 3.3.1 is hereby deleted from the Agreement, and the following is hereby added in its place and fully incorporated into the Agreement:

3.3.1 **Payment.** The flat daily rate for the Rooms and Services is \$45,441 (based upon a daily rate of \$99 per room per night). Hotel shall provide an invoice to the City for the monthly rate due under this Agreement for the Rooms and Services for such month (“**Compensation**”) and any additional charges and reimbursement payable by City under this Agreement for the immediately preceding month, unless a different schedule is set out in Appendix B, “Calculation of Charges.” Payment of the Compensation shall be made within 10 calendar days after receipt of the invoice, and payment for all other charges shall be made within 30 calendar days of receipt of the invoice, unless the City notifies the Hotel that a dispute as to the invoice exists. In no event shall the amount of this Agreement exceed Thirty-Five Million Six Hundred Eight Thousand Five Hundred Forty-Two Dollars (\$35,608,542). The breakdown of charges associated with this Agreement appears in Appendix B, “Calculation of Charges,” attached hereto and incorporated by reference as though fully set forth herein. In the event that the Hotel incurs any additional costs or expenses for additional services provided at the Property in order to accommodate special requests of the City to assist it in handling the COVID-19 pandemic at the Property and agreed upon in writing by the City and Hotel, which such additional services are not included in the Services, then the City shall reimburse Hotel for all such actual and reasonable additional costs and expenses.

4. **Replace Section 8.1.1.** Section 8.1.1 is hereby deleted from the Agreement, and the following is hereby added in its place and fully incorporated into the Agreement:

8.1.1 This Agreement shall expire of its own accord on the expiration of the Booking Period set forth in Section 2.1. In addition, City shall have the option, in its sole and absolute discretion with not less than 60 days’ written notice to Hotel, to terminate this Agreement for any reason. City may send the termination notice to Hotel at any time during the Booking Period, but any termination notice sent after the 8th day of the month in which the notice is sent will be deemed to have been sent on the 8th day of the following month. Within the notice, City will specify the termination date, which will be at least 60 days after the deemed effective date of the notice. For example, if City sends a termination notice to Hotel on January 12, 2021, then notice will be deemed to be effective as of February 8, 2021, and the Booking Period will terminate at least 60 days thereafter (City’s last night of occupancy would be no earlier than April 8, 2021, vacating on April 9, 2021).

5. **Replace Section 10.11.** Section 10.11 is hereby deleted from the Agreement, and the following is hereby added in its place and fully incorporated into the Agreement:

10.11 **Limitations on Contributions.** By executing this Agreement, Hotel acknowledges that it is familiar with section 1.126 of the City’s Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, or for a grant, loan or loan guarantee, from making any campaign contribution to (1) an individual holding a City elective office if the contract must be approved by the individual, a board on which that individual serves, or the board of a state agency on which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six

months after the date the contract is approved. The prohibition on contributions applies to each prospective party to the contract; each member of Hotel's board of directors; Hotel's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Hotel; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Hotel. Hotel must inform each such person of the limitation on contributions imposed by Section 1.126 and provide the names of the persons required to be informed to City.

6. **Amend Appendix B.** The following amounts within Appendix B Calculation of Charges are hereby amended, increased, and fully incorporated into the Agreement:

1. **Maximum Not-to-Exceed Amount of Agreement**

a. **Total Not-to-Exceed Compensation - \$35,608,542**

b. **Not-to-Exceed Compensation for Room Nights - \$20,403,009** ($\$99 * 459 * 449$ nights)

c. **Not-to-Exceed Reimbursable Amount (15% of amount in b.) - \$3,060,451**

d. **Not-to-Exceed Reimbursable Amount for Linens: \$1,104,098** ($\$2,459$ per night)

e. **Not-to-Exceed Reimbursable Amount for Food Service (Appendix D) - \$11,040,984**

7. **Amend Appendix D.** The first sentence of Appendix D Food Service by Hotel is hereby deleted from the Agreement, and the following is hereby added in its place and fully incorporated into the Agreement:

The Hotel and City are working in good faith to develop and incorporate a food service program to not exceed the greater of \$65 per room night and/or \$11,040,984 (see Appendix B).

8. **Status of Property.** The Parties acknowledge that for purposes of the Agreement, as amended by this Amendment, the Property is not being operated as a "Tourist Hotel" as defined in San Francisco Administrative Code Section 41.4.

9. **Full Force and Effect.** Except as specifically amended in this Amendment, the terms and conditions of the Agreement, as amended by this Amendment, shall remain unchanged and in full force and effect. In the event of any conflict between the terms and conditions of the Agreement and the terms and conditions of this Amendment, the terms and conditions of this Amendment shall control.

10. **Counterparts.** This Amendment may be executed in two or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

IN WITNESS WHEREOF, Hotel and City have executed this Amendment as of the date first referenced above.

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation

HOTEL

1231 Market Street Owner L.P.

DocuSigned by:
Trent Rhorer
9753A8870BB74EE...

Benjamin Davison

Trent Rhorer
Executive Director
Human Services Agency

Benjamin Davison
Authorized Signatory

City Supplier number: 0000039802

Approved as to Form:

Dennis J. Herrera
City Attorney

DocuSigned by:
David Ries
EEF1B6C5BE4244A

By: David K. Ries
Deputy City Attorney