

**City and County of San Francisco
Human Services Agency**

Emergency Agreement between the City and County of San Francisco

and

SF Vertigo LLC

**Hotel Vertigo
940 Sutter Street
San Francisco, CA 94109**

Table of Contents

Article 1 Definitions..... 1

Article 2 Term of the Agreement 2

 2.1 Term 2

 2.2 Booking of Rooms Procedure (Reserved)..... 2

Article 3 Financial Matters 2

 3.1 Certification of Funds; Budget and Fiscal Provisions. 2

 3.2 Guaranteed Maximum Costs. 2

 3.3 Compensation. 2

 3.4 Getting paid by the City for goods and/or services..... 3

 3.5 Federal and/or State Funded Contracts. (Reserved) 3

 3.6 Contract Amendments..... 3

 3.7 Audit and Inspection of Records. 3

 3.8 Submitting False Claims. 4

Article 4 Services Hotel and City Agrees to Perform..... 4

 4.1 Qualified Personnel. (Reserved)..... 4

 4.2 Subcontracting. (Reserved) 4

 4.3 Independent Contractor; Payment of Employment Taxes and Other Expenses.
 (Reserved)..... 4

 4.4 Assignment. 4

 4.5 Warranty 5

 4.6 Liquidated Damages. (Reserved)..... 5

 4.7 Bonding Requirements. (Reserved) 5

Article 5 Insurance and Indemnity 5

 5.1 Insurance. 5

 5.2 Indemnification..... 6

 5.2.1 Indemnification by City..... 6

 5.2.2 Indemnification by Hotel..... 7

 6.1 Liability of City. 7

 6.2 Liability for Use of Equipment. (Reserved)..... 7

 6.3 Liability of Hotel..... 7

Article 7 Payment of Taxes 8

7.1 Withholding. (Reserved)8

Article 8 Termination and Default..... 8

8.1 Expiration of Local Emergency / Termination for Convenience8

8.2 Termination for Default; Remedies.8

8.3 Non-Waiver of Rights.....9

8.4 Rights and Duties upon Termination or Expiration.....9

Article 9 Rights In Deliverables (Reserved)..... 9

Article 10 Additional Requirements Incorporated by Reference 9

10.1 Laws Incorporated by Reference.....9

10.2 Conflict of Interest.....9

10.3 Prohibition on Use of Public Funds for Political Activity. (Reserved).....9

10.4 Consideration of Salary History. (Reserved).....9

10.5 Nondiscrimination Requirements.....10

10.6 LBE and Non-Discrimination in Contracting Ordinance. (Reserved)10

10.7 Minimum Compensation Ordinance. (Reserved).....10

10.8 Health Care Accountability Ordinance.....10

10.9 First Source Hiring Program. (Reserved)10

10.10 Alcohol and Drug-Free Workplace.10

10.11 Limitations on Contributions. (Reserved)10

10.12 Slavery Era Disclosure. (Reserved).....10

10.13 Working with Minors. (Reserved).....10

10.14 Consideration of Criminal History in Hiring. (Reserved)10

10.15 Public Access to Nonprofit Records and Meetings. (Reserved).....10

10.16 Food Service Waste Reduction Requirements. (Reserved)10

10.17 Distribution of Beverages and Water. (Reserved)10

10.18 Tropical Hardwood and Virgin Redwood Ban. (Reserved)10

10.19 Preservative Treated Wood Products. (Reserved).....10

Article 11 General Provisions 10

11.1 Notices to the Parties.10

11.2 Compliance with Americans with Disabilities Act.11

11.3 Incorporation of Recitals.11

11.4 Sunshine Ordinance..... 11

11.5 Modification of this Agreement..... 11

11.6 Dispute Resolution Procedure..... 12

11.7 Government Code Claim Requirement. 12

11.8 Health and Human Service Dispute Resolution Procedure. (Reserved) 12

11.9 Agreement Made in California; Venue..... 12

11.10 Construction. 12

11.11 Entire Agreement. 12

11.12 Compliance with Laws. 12

11.13 Severability. 12

11.14 Cooperative Drafting..... 13

11.15 Order of Precedence. 13

11.16 Notification of Legal Requests..... 13

11.17 No Representations or Warranties Regarding Property. 13

11.18 Licenses and Permits. 13

Article 12 Department Specific Terms 13

12.1 Third Party Beneficiaries..... 13

12.2 Federal and State Financial Participation (Reserved) 14

Article 13 Data and Security..... 14

13.1 Nondisclosure of Private, Proprietary or Confidential Information..... 14

13.2 Payment Card Industry (“PCI”) Requirements. (Reserved) 14

Article 14 Official Actions Relating to the Emergency; FEMA Assistance 14

14.1 Orders of Local, State or Federal Officials..... 14

14.2 FEMA Assistance..... 15

Article 15 MacBride And Signature 15

15.1 MacBride Principles -Northern Ireland. 15

Preamble

This Agreement is made this 23rd day of April, 2020, in the City and County of San Francisco, State of California, by and between SF Vertigo LLC, a Delaware limited liability company ("**Hotel**"), as the owner of the Hotel Vertigo, located at 940 Sutter Street, San Francisco, CA 94109 ("**Property**"), and City (as defined below).

Recitals

WHEREAS, this Agreement is an emergency services contract awarded pursuant to procedures applicable under the Local Emergency declared by Mayor London Breed on Tuesday, February 25, 2020, and Chapter 21 of the San Francisco Administrative Code; and

WHEREAS, the Human Services Agency ("**Department**") wishes to procure the following emergency services in support of the Local Emergency: provision of hotel rooms and related services in the Hotel as more particularly described herein and in Appendix A (Rooms and Scope of Services); and,

WHEREAS, City will use the Rooms and Services (as hereinafter defined) to further the public health and safety in connection with its response to the Local Emergency by sheltering and serving persons, including those (a) who have, or might have, come in close contact with a COVID-19 positive individual but have not been tested, or who have been tested and are awaiting results, or (b) who have tested positive for COVID-19 but do not have a medical need to be hospitalized (each of the foregoing, a "**Guest**", and collectively, the "**Group**"), all as further described in Appendix A; and

WHEREAS, the Parties understand and acknowledge that Department will allow persons described in the foregoing recital to use the Rooms and Services, as invitees, for shelter as a necessary response to the Emergency, and such persons will have no right to exclusively occupy the Rooms as tenants under State or local laws, including the City's Rent Ordinance.

Now, **THEREFORE**, the parties agree as follows:

Article 1 Definitions

The following definitions apply to this Agreement:

1.1 "**Agreement**" means this contract document, including all attached appendices, and all applicable City Ordinances and Mandatory City Requirements which are specifically incorporated into this Agreement by reference as provided herein.

1.2 "**City**" means the City and County of San Francisco, a municipal corporation, acting by and through the Executive Director of the Human Services Agency.

1.3 "**Hotel**" has the meaning set forth in the Preamble.

1.4 "**Effective Date**" means the date this Agreement is fully executed and delivered by both Parties.

1.5 "**Party**" and "**Parties**" mean the City and Hotel either collectively or individually.

1.6 "**Rooms and Services**" means collectively the hotel rooms and related services to be provided by Hotel as described in Appendix A (Rooms and Scope of Services).

Article 2 Term of the Agreement

2.1 Term.

2.1.1 The term of this Agreement shall be for four months, commencing on April 25, 2020, and expiring of its own accord on August 24, 2020 (the “**Booking Period**”), subject to earlier termination as provided in this Agreement.

2.1.2 City shall have the right to extend the Booking Period on a month-to month basis by providing no less than 30 days prior written notice to Hotel; provided, that (i) in no event shall any extension extend beyond April 25, 2021, and (ii) after August 24, 2020, either party may terminate this Agreement by providing no less than thirty (30) days written notice to the other party of such termination. Any such extension shall be on the terms and conditions set forth in this Agreement.

2.2 Booking of Rooms Procedure (Reserved)

Article 3 Financial Matters

3.1 Certification of Funds; Budget and Fiscal Provisions.

This Agreement is subject to the budget and fiscal provisions of the City’s Charter. This Agreement will terminate without penalty, liability or expense of any kind to City at the end of any fiscal year if funds are not appropriated for the next succeeding fiscal year. If funds are appropriated for a portion of the fiscal year, this Agreement will terminate, without penalty, liability or expense of any kind at the end of the term for which funds are appropriated. City has no obligation to make appropriations for this Agreement in lieu of appropriations for new or other agreements. City budget decisions are subject to the discretion of the Mayor and the Board of Supervisors. Hotel’s assumption of risk of possible non-appropriation is part of the consideration for this Agreement. Notwithstanding anything herein to the contrary, Hotel shall have no obligation to provide Services if no appropriation has been made for the City’s payment obligations hereunder.

THIS SECTION CONTROLS AGAINST ANY AND ALL OTHER PROVISIONS OF THIS AGREEMENT.

3.2 Guaranteed Maximum Costs.

The City’s payment obligation to Hotel cannot at any time exceed the amount certified by City’s Controller for the purpose and period stated in such certification. Absent an authorized Emergency per the City Charter or applicable Code, no City representative is authorized to offer or promise, nor is the City required to honor, any offered or promised payments to Hotel under this Agreement in excess of the certified maximum amount without the Controller having first certified the additional promised amount and the Parties having modified this Agreement as provided in Section 11.5, "Modification of this Agreement."

3.3 Compensation.

3.3.1 **Payment.** The flat daily rate for the Rooms and Services is \$10,890 per day (based upon a daily rate of \$99 per room per night and 110 rooms). Hotel shall provide an invoice to the City on a monthly basis for the monthly amount due under this Agreement for the Rooms and Services for the current month (“**Compensation**”) and any additional charges and reimbursement payable by City under this Agreement for the immediate preceding month, unless a different schedule is set out in Appendix B, "Calculation of Charges." Compensation shall be paid within 10 calendar days of receipt of the invoice,

P-250 – Vertigo

SMRH:4850-0894-6106.4

unless the City notifies the Hotel that a dispute as to the invoice exists. In no event shall the amount of this Agreement exceed **\$4,571,078**. 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 no event shall City be liable for interest or late charges for any late payments.

3.3.2 Payment Limited to Satisfactory Services. If one of the Rooms is not usable by a Guest due to an engineering issue not caused by the City or a Guest, then the City shall (i) clean the Room in accordance with its obligations in Appendix A, and (ii) after the Room has been cleaned, notify Hotel in writing of the problem with the Room and certifying that it has been cleaned. Hotel shall then be given access to the Room in order to resolve the issue. If the Room remains unavailable more than 24 hours after Hotel's receipt of such Notice, the amount of the Compensation shall be reduced by \$99.00 for each day thereafter until Hotel resolves the issue and notifies the City of the same.

3.3.3 Withhold Payments. If Hotel fails to provide Rooms and Services in accordance with Hotel's obligations under this Agreement, following written notice of such failure the City may withhold any and all payments due Hotel until such failure to perform is cured, and Hotel shall not stop performance under this Agreement as a result of City's withholding of payments as provided herein.

3.3.4 Invoice Format. Invoices furnished by Hotel under this Agreement must be in a form acceptable to the Controller and City, and must include a unique invoice number. Payment shall be made by City as specified in Section 3.4, or in such alternate manner as the Parties have mutually agreed upon in writing.

3.3.5 LBE Payment and Utilization Tracking System. (Reserved)

3.4 Getting paid by the City for goods and/or services.

3.4.1 All City vendors receiving new contracts, contract renewals, or contract extensions must sign up to receive electronic payments through, the City's Automated Clearing House (ACH) payments service/provider. Electronic payments are processed every business day and are safe and secure. To sign up for electronic payments, visit www.sfgov.org/ach.

3.4.2 The following information is required to sign up: (i) The enroller must be their company's authorized financial representative, (ii) the company's legal name, main telephone number and all physical and remittance addresses used by the company, (iii) the company's U.S. federal employer identification number (EIN) or Social Security number (if they are a sole proprietor), and (iv) the company's bank account information, including routing and account numbers.

3.5 Federal and/or State Funded Contracts. (Reserved)

3.6 Contract Amendments.

3.6.1 Formal Contract Amendment: Except as expressly set forth herein, Hotel shall not be entitled to an increase in the Compensation or an extension of the Booking Period unless the Parties agree to a Formal Amendment in accordance with the San Francisco Administrative Code and Section 11.5 (Modifications of this Agreement).

3.6.2 City Revisions to Program Budgets (Reserved)

3.7 Audit and Inspection of Records.

Hotel agrees to maintain and make available to the City, during regular business hours, accurate books and accounting records relating to the Rooms and Services. Hotel will permit City to audit, examine and make excerpts and transcripts from such books and records, and to make audits of all invoices, materials, payrolls, records or personnel and other data related to all other matters covered by this Agreement, whether funded in whole or in part under this Agreement. Hotel shall maintain such data and records in an accessible location and condition for a period of not fewer than five years, unless required for a longer

duration due to Federal, State, or local requirements of which the City will notify Hotel in writing, after final payment under this Agreement or until after final audit has been resolved, whichever is later. The State of California or any Federal agency having an interest in the subject matter of this Agreement shall have the same rights as conferred upon City by this Section.

3.8 Submitting False Claims.

The full text of San Francisco Administrative Code Chapter 21, Section 21.35, including the enforcement and penalty provisions, is incorporated into this Agreement. Pursuant to San Francisco Administrative Code §21.35, any entity who submits a false claim shall be liable to the City for the statutory penalties set forth in that section. An entity will be deemed to have submitted a false claim to the City if the entity: (a) knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City; (c) conspires to defraud the City by getting a false claim allowed or paid by the City; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City; or (e) is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.

3.9 Payment of Prevailing Wages (Reserved)

Article 4 Services Hotel and City Agrees to Perform.

Hotel agrees to provide the Rooms and perform the Services provided for in Appendix A, "Rooms and Scope of Services." Officers and employees of the City are not authorized to request, and the City is not required to reimburse the Hotel for, Rooms and Services beyond the Rooms and Scope of Services listed in Appendix A, unless Appendix A is modified as provided in Section 11.5, "Modification of this Agreement." Hotel agrees that all hotel rooms and other spaces within the Property that are not included in the Rooms provided to City under this Agreement, including, but not limited to, conference and meeting rooms, shall remain secured and unoccupied during the Booking Period and the City shall have no right to use or enter the same at any time without the prior written consent of the Hotel in its sole discretion. City shall perform all services set forth in Appendix "A" to be provided by or on behalf of City. Hotel shall have no responsibility to provide the same. The City shall not perform any alterations (including, for example, any modification, demolition or reconfiguration of, or any improvement) to the Rooms or other portions of the Property, without the prior written consent of the Hotel, which such consent shall be at Hotel's sole discretion.

4.1 Qualified Personnel. (Reserved)

4.2 Subcontracting. (Reserved)

4.3 Independent Contractor; Payment of Employment Taxes and Other Expenses. (Reserved)

4.4 Assignment.

4.4.1 The Rooms and Services to be provided and performed by Hotel are personal in character and neither this Agreement nor any duties or obligations hereunder may be assigned or delegated by Hotel unless first approved by City by written instrument executed and approved in the same manner as this Agreement. Any purported assignment made in violation of this provision shall be null and void. Notwithstanding the foregoing, City acknowledges that this Agreement may have been and may be collaterally assigned to any mortgage lender to Hotel.

4.4.2 City shall not assign all or any part of its interest under this Agreement, and shall not sublease, license or permit the use of the Property by any person or entity except City in strict accordance with the provisions of this Agreement. Any such assignment, sublease, license or permission to use shall

be void ab initio. Such prohibition shall not preclude City from entering into service contracts and similar agreements to perform City services required under this Agreement.

4.5 Warranty.

Hotel agrees to provide the Services to a standard that is commercially reasonable for hotel operations during the Local Emergency, subject to (i) the availability of sufficient Hotel employees to provide the Services and (ii) any changes in applicable law, rule, or regulation.

4.6 Liquidated Damages. (Reserved)

4.7 Bonding Requirements. (Reserved)

Article 5 Insurance and Indemnity

5.1 Insurance.

5.1.1 Required Hotel Coverages. Without in any way limiting Hotel’s liability pursuant to the “Indemnification” Section of this Agreement, Hotel must maintain in force, during the full term of the Agreement, insurance in the following amounts and coverages:

(a) Workers’ Compensation, in statutory amounts, with Employers’ Liability Limits not less than \$1,000,000 each accident, injury, or illness; and

(b) Commercial General Liability Insurance with limits not less than \$5,000,000 each occurrence (which may include umbrella or excess liability coverage) for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations; and

(c) Commercial Automobile Liability Insurance with limits not less than \$1,000,000 each occurrence, “Combined Single Limit” for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable.

(d) Professional liability insurance **(Reserved)**

(e) Technology Errors and Omissions Liability coverage **(Reserved)**

(f) Cyber and Privacy Insurance **(Reserved)**.

5.1.2 Hotel’s Commercial General Liability and Commercial Automobile Liability Insurance policies must be endorsed to name as Additional Insured the City and County of San Francisco; *provided, however*, that City acknowledges and agrees that such endorsement shall not apply for any claims relating to losses arising from COVID-19.

5.1.3 All policies shall be endorsed to provide ten (10) days’ advance written notice to the City of cancellation for any reason, intended non-renewal, or reduction in coverages. Notices shall be sent to the City address set forth in Section 11.1, entitled “Notices to the Parties.”

5.1.4 (Reserved)

5.1.5 (Reserved)

5.1.6 Should any required insurance lapse during the term of this Agreement, requests for payments originating after such lapse shall not be processed until the City receives satisfactory evidence

of reinstated coverage as required by this Agreement, effective as of the lapse date. If insurance is not reinstated, the City may, at its sole option, terminate this Agreement effective on the date of such lapse of insurance.

5.1.7 Before providing any Rooms and Services, Hotel shall furnish to City certificates of insurance from insurance companies that are authorized to do business in the State of California, evidencing all coverages set forth above.

5.1.8 If City or Hotel will use any subcontractor(s) to provide services at or to the Property, such Party shall require the subcontractor(s) to provide all reasonably necessary insurance and to name the other Party as an additional insured.

5.1.9 **Required City Coverages.** Without in any way limiting City's liability pursuant to the "Indemnification" Section of this Agreement, City shall carry and maintain for the mutual benefit of the Hotel and the other Hotel Parties (as defined below) general public liability insurance against claims for personal injury, wrongful death or property damage occurring on or about the Property (as defined below), in an amount of at least \$1 Million per occurrence and \$3 Million aggregate, and such insurance policy (if the City is not self-insured as provided below) must be endorsed to name as Additional Insured the Hotel. City shall obtain and maintain at all times during the Booking Period workers compensation coverage up to statutory limits covering all City employees providing services or working in the hotel Property. Any claims made by City employees shall be made to City under its established worker's compensation process and City will administer those claims. Any insurance maintained by City shall be primary and non-contributory to any insurance maintained by Hotel or any of the other Hotel Parties. In lieu of maintaining commercial insurance coverage, City may adopt alternative risk management programs, including self-insurance up to the limits required in the Section.

5.2 Indemnification.

5.2.1 **Indemnification by City.** City shall completely and unconditionally indemnify, defend and hold Hotel; its manager, Oxford Hotels and Resorts, LLC, any lender to Hotel; and any of the direct or indirect members, managers, officers, directors, employees, contractors, agents and representatives and their successors and assigns of the foregoing (collectively, the "**Hotel Parties**") harmless from and against any and all liabilities, losses, damages, causes of action, suits, claims, judgments or expenses, including reasonable attorneys' fees and court costs and expenses, including without limitation any of the foregoing resulting from COVID-19 (collectively, "**Claims**"), asserted or arising out of or relating in any way, directly or indirectly from the use or occupancy of any part of the Property or the use of any hotel services or facilities at the Property, by City or any of City's servants, agents, licensees, employees, contractors, volunteers, or invitees (including without limitation any Guests or any other persons City permits or causes to occupy any rooms at the Property) (collectively, "**Invitees**") including without limitation Claims made or asserted by any third parties (including any employees of the Hotel) for bodily injury, sickness (including without limitation sickness or death resulting from COVID-19), disease, loss of consortium or services, death or damage to property, by reason of or incident to City's or its Invitees' use of the Property, the Rooms or the Services, except to the extent that such indemnity is void or otherwise unenforceable under applicable law, and except to the extent such Claim was caused by the gross negligence or willful misconduct of the Hotel Parties, in which case damages shall be apportioned pro rata under the California doctrine of comparative fault. For clarity, the City's liability does not extend to Claims covered by Hotel's workers compensation insurance. In addition, if any Hotel employee makes a claim under such employee's health

P-250 – Vertigo

SMRH:4850-0894-6106.4

insurance for reimbursement or payment for testing for COVID-19, and such claim is denied, the City shall reimburse Hotel in an amount equal to the employee's out-of-pocket cost for such test.

5.2.2 Indemnification by Hotel. Hotel shall defend, indemnify, and hold City harmless from and against any and all Claims arising from Hotel's breach of Hotel's obligations under this Agreement, except to the extent that such indemnity is void or otherwise unenforceable under applicable law, and except to the extent such Claim was caused by the gross negligence or willful misconduct of the City or its Invitees, in which case damages shall be apportioned pro rata under the California doctrine of comparative fault.

5.2.3 Infringement Indemnity. Hotel shall indemnify and hold City harmless from all loss and liability, including reasonable attorneys' fees, court costs and all other litigation expenses for any infringement of patent rights, copyright, trade secret, or any other proprietary right or trademark, and all other intellectual property claims, lawsuits, and/or demands of any kind of any person or persons arising directly or indirectly from the receipt by City, or any of its officers or agents, of Hotel's Rooms and Services, except to the extent that such indemnity is void or otherwise unenforceable under applicable law, and except to the extent such Claim was caused by the gross negligence or willful misconduct of the City or its Invitees, in which case damages shall be apportioned pro rata under the California doctrine of comparative fault.

Article 6 Liability of the Parties

6.1 Liability of City.

CITY'S PAYMENT OBLIGATIONS FOR THE COMPENSATION UNDER THIS AGREEMENT SHALL BE LIMITED TO THE NOT-TO-EXCEED AMOUNT PROVIDED FOR IN SECTION 3.3.1, "PAYMENT," OF THIS AGREEMENT. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, IN NO EVENT SHALL CITY BE LIABLE, REGARDLESS OF WHETHER ANY CLAIM IS BASED ON CONTRACT OR TORT, FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE SERVICES PERFORMED IN CONNECTION WITH THIS AGREEMENT; PROVIDED, HOWEVER, THAT THIRD-PARTY CLAIMS SHALL NOT BE CONSIDERED "CONSEQUENTIAL" CLAIMS.

6.2 Liability for Use of Equipment. (Reserved)

6.3 Liability of Hotel.

6.3.1 INCIDENTAL AND CONSEQUENTIAL DAMAGES.

NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, IN NO EVENT SHALL HOTEL BE LIABLE, REGARDLESS OF WHETHER ANY CLAIM IS BASED ON CONTRACT OR TORT, FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE SERVICES PERFORMED IN CONNECTION WITH THIS AGREEMENT.

6.3.2 COVID-19. HOTEL SHALL HAVE NO LIABILITY FOR THIRD-PARTY CLAIMS, LOSSES OR EXPENSES RELATED TO COVID-19 ILLNESSES, EXCEPT TO THE EXTENT CONCLUSIVELY DETERMINED BY A FINAL, NON-APPEALABLE JUDGMENT FROM

A COURT OF COMPETENT JURISDICTION, THAT HOTEL'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT WAS THE PROXIMATE CAUSE OF THE COVID-19 INFECTION GIVING RISE TO SUCH CLAIM, UNLESS OTHERWISE MUTUALLY AGREED BY HOTEL AND THE CITY.

6.3.3 **EXCLUSIONS.** HOTEL'S LIABILITY LIMIT SET FORTH ABOVE SHALL NOT APPLY TO CLAIMS COVERED BY HOTEL'S INSURANCE.

Article 7 Payment of Taxes

City shall reimburse Hotel for all local sales, hotel and use taxes actually incurred and paid by Hotel in connection with this Agreement. Hotel shall apply for an exemption from the payment of hotel (transient occupancy) taxes with respect to Rooms and Services provided under this Agreement.

[http://www.sftreasurer.org/sites/default/files/2020-04/Hotel Exemption COVID-19 Form Rev](http://www.sftreasurer.org/sites/default/files/2020-04/Hotel%20Exemption%20COVID-19%20Form%20Rev%204.2.2020.pdf)

4.2.2020.pdf. Payment of any taxes, including possessory interest taxes and California sales and use taxes, levied upon or as a result of this Agreement, or the services delivered pursuant hereto, shall be the obligation of Hotel. Hotel recognizes and understands that this Agreement may create a "possessory interest" for property tax purposes. Hotel shall include a line item in its invoice and the budget for taxes.

7.1 Withholding. (Reserved)

Article 8 Termination and Default

8.1 Expiration of Local Emergency / Termination for Convenience

8.1.1 This Agreement shall expire of its own accord on the expiration date set forth in Section 2.1. In addition, City shall have the option, in its sole discretion with not less than 30 days' written notice, to terminate this Agreement, at any time during the term hereof, for convenience. After the expiration of any applicable notice and cure periods, City shall also have the option, in its sole discretion and without penalty of any kind, to terminate this Agreement upon a determination by the City that Hotel is unable to continue to provide the Rooms and Services described in Appendix A or otherwise in this Agreement. In any case, the City shall provide written notice that specifies the date on which termination shall become effective.

8.1.2 Upon receipt of the notice of termination, Hotel shall commence and perform, with diligence, all actions necessary on the part of Hotel to effect the termination of this Agreement on the date specified by City and to minimize the liability of Hotel and City to third parties as a result of termination. All such actions of Hotel shall be subject to the prior approval of City. Within 30 days after the specified termination date, Hotel shall submit to City an invoice. City's payment obligation under this Section shall survive termination of this Agreement.

8.1.3 Upon expiration (or earlier termination) of this Agreement, the City shall peacefully surrender the Property to the Hotel in as good order and condition and repair as when received, except for reasonable, ordinary use and wear thereof. The City shall ensure, at no cost to the Hotel, that all its employees, guests, and invitees have completely vacated the Property prior to the expiration (or earlier termination) of this Agreement. If the City fails to surrender the Property to Hotel (a) on the date required, and (b) in the condition required hereunder (including cleaning as required by Appendix A), the City will be liable for all costs incurred by the Hotel (or third parties under contract with the Hotel) to repair or restore the Property to the required condition to satisfy City's surrender obligations hereunder.

8.2 Termination for Default; Remedies.

8.2.1 Either party may terminate this Agreement for default in the event that the other party fails or refuses to perform or observe any other term, covenant or condition contained in this Agreement in any material respect, including any obligation imposed by ordinance or statute and

P-250 – Vertigo

SMRH:4850-0894-6106.4

incorporated by reference herein, and such default is not cured within thirty (30) calendar days after written notice thereof to such defaulting party to Hotel (“**Event of Default**”).

8.2.2 On and after any Event of Default, each party shall have the right to exercise its legal and equitable remedies, including, without limitation, the right to terminate this Agreement or to seek specific performance of all or any part of this Agreement. In addition, where applicable, each party shall have the right (but no obligation) to cure (or cause to be cured) on behalf of the other party any Event of Default that continues past the applicable notice and cure period.

8.3 Non-Waiver of Rights.

The omission by either Party at any time to enforce any default or right reserved to it, or to require performance of any of the terms, covenants, or provisions hereof by the other Party at the time designated, shall not be a waiver of any such default or right to which the Party is entitled, nor shall it in any way affect the right of the party to enforce such provisions thereafter.

8.4 Rights and Duties upon Termination or Expiration.

8.4.1 This Section and the following Sections of this Agreement listed below, shall survive termination or expiration of this Agreement:

Article 3	Financial Provisions		11.9	Agreement Made in California; Venue
Article 5	Insurance and Indemnity		11.10	Construction
6.1	Liability of City		11.11	Entire Agreement
6.3	Liability of Hotel		11.12	Compliance with Laws
Article 7	Payment of Taxes		11.13	Severability
Article 8	Termination and Default		Article 13	Data and Security

8.4.2 Subject to the survival of the Sections identified in Section 8.4.1, above, if this Agreement is terminated prior to expiration of the term specified in Article 2, this Agreement shall be of no further force or effect.

Article 9 Rights In Deliverables (Reserved)

Article 10 Additional Requirements Incorporated by Reference

10.1 Laws Incorporated by Reference.

The full text of the laws listed in this Article 10, including enforcement and penalty provisions, are incorporated by reference into this Agreement. The full text of the San Francisco Municipal Code provisions incorporated by reference in this Article and elsewhere in the Agreement ("Mandatory City Requirements") are available at http://www.amlegal.com/codes/client/san-francisco_ca/

10.2 Conflict of Interest.

By executing this Agreement, Hotel certifies that it does not know of any fact which constitutes a violation of Section 15.103 of the City’s Charter; Article III, Chapter 2 of City’s Campaign and Governmental Conduct Code; Title 9, Chapter 7 of the California Government Code (Section 87100 *et seq.*), or Title 1, Division 4, Chapter 1, Article 4 of the California Government Code (Section 1090 *et seq.*), and further agrees promptly to notify the City if it becomes aware of any such fact during the term of this Agreement.

10.3 Prohibition on Use of Public Funds for Political Activity. (Reserved)

10.4 Consideration of Salary History. (Reserved)

10.5 Nondiscrimination Requirements.

In the performance of this Agreement, Hotel covenants and agrees that it will not discriminate against an applicant for employment because of race, color, religion, sex, age, ancestry, national origin, sexual orientation, handicap, veteran’s status, medical condition, marital status, or citizenship because of habit, local custom, or otherwise. All applicants for employment and employees are to be treated without regard to their race, color, religion, sex, age, ancestry, and national origin, sexual orientation, handicap, veteran’s status, medical condition, marital status, or citizenship. Such equal treatment shall apply, but not be limited to, employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

10.6 LBE and Non-Discrimination in Contracting Ordinance. (Reserved)

10.7 Minimum Compensation Ordinance. (Reserved)

10.8 Health Care Accountability Ordinance.

10.9 First Source Hiring Program. (Reserved)

10.10 Alcohol and Drug-Free Workplace.

City reserves the right to deny access to, or require Hotel to remove from, City facilities personnel of any Hotel or subcontractor who City has reasonable grounds to believe has engaged in alcohol abuse or illegal drug activity which in any way impairs City's ability to maintain safe work facilities or to protect the health and well-being of City employees and the general public. City shall have the right of final approval for the entry or re-entry of any such person previously denied access to, or removed from, City facilities. Illegal drug activity means possessing, furnishing, selling, offering, purchasing, using or being under the influence of illegal drugs or other controlled substances for which the individual lacks a valid prescription. Alcohol abuse means possessing, furnishing, selling, offering, or using alcoholic beverages, or being under the influence of alcohol.

10.11 Limitations on Contributions. (Reserved)

10.12 Slavery Era Disclosure. (Reserved)

10.13 Working with Minors. (Reserved)

10.14 Consideration of Criminal History in Hiring. (Reserved)

10.15 Public Access to Nonprofit Records and Meetings. (Reserved)

10.16 Food Service Waste Reduction Requirements. (Reserved)

10.17 Distribution of Beverages and Water. (Reserved)

10.18 Tropical Hardwood and Virgin Redwood Ban. (Reserved)

10.19 Preservative Treated Wood Products. (Reserved)

Article 11 General Provisions

11.1 Notices to the Parties.

Unless otherwise indicated in this Agreement, all written communications sent by the Parties may be by U.S. mail or e-mail, and shall be addressed as follows:

To CITY: Human Services Agency

170 Otis Street
San Francisco, CA 94103
Attn: Robert E. Walsh

e-mail: Robert.walsh@sfgov.org

And: City Attorney’s Office
1390 MARKET STREET
7TH FLOOR
SAN FRANCISCO, CA 94102
ATTN.: HEALTH TEAM

e-mail: <PM e-mail>

To Hotel: SF Vertigo LLC
350 West Hubbard St.
Suite 440
Chicago, Illinois 60654
Attn: John W. Rutledge and Sarang Peruri

e-mail: jwr@oxford-capital.com
and speruri@oxford-capital.com

And to Sheppard Mullin Richter & Hampton LLP
70 West Madison Street, 48th Floor
Chicago, Illinois, 60602
Attn: Lawrence C. Eppley, Esq.

e-mail: leppley@sheppardmullin.com

Any notice of default must be sent by registered mail. Either Party may change the address to which notice is to be sent by giving written notice thereof to the other Party. If email notification is used, the sender must specify a receipt notice.

11.2 Compliance with Americans with Disabilities Act.

Hotel represents and warrants that the Rooms listed in Appendix A as being “ADA Accessible Single Occupancy w/full bathroom” comply in all material respects with the Americans with Disabilities Act (ADA).

11.3 Incorporation of Recitals.

The matters recited above are hereby incorporated into and made part of this Agreement.

11.4 Sunshine Ordinance.

Hotel acknowledges that this Agreement and all records related to its formation, Hotel's performance of Services, and City's payment are subject to the California Public Records Act, (California Government Code §6250 et. seq.), and the San Francisco Sunshine Ordinance, (San Francisco Administrative Code Chapter 67). Such records are subject to public inspection and copying unless exempt from disclosure under federal, state or local law.

11.5 Modification of this Agreement.

This Agreement may not be modified, nor may compliance with any of its terms be waived, except as noted in Section 11.1, “Notices to Parties,” regarding change in personnel or place, and except by written instrument executed and approved in the same manner as this Agreement.

11.6 Dispute Resolution Procedure.

The Parties will attempt in good faith to resolve any dispute or controversy arising out of or relating to the performance of services under this Agreement. If the Parties are unable to resolve the dispute, then, pursuant to San Francisco Administrative Code Section 21.36, Hotel may submit to the Contracting Officer a written request for administrative review and documentation of the Hotel's claim(s). Upon such request, the Contracting Officer shall promptly issue an administrative decision in writing, stating the reasons for the action taken and informing the Hotel of its right to judicial review. If agreed by both Parties in writing, disputes may be resolved by a mutually agreed-upon alternative dispute resolution process. If the parties do not mutually agree to an alternative dispute resolution process or such efforts do not resolve the dispute, then either Party may pursue any remedy available under California law. The status of any dispute or controversy notwithstanding, Hotel shall proceed diligently with the performance of its obligations under this Agreement in accordance with the Agreement and the written directions of the City. Neither Party will be entitled to legal fees or costs for matters resolved under this section.

11.7 Government Code Claim Requirement.

No suit for money or damages may be brought against the City until a written claim therefor has been presented to and rejected by the City in conformity with the provisions of San Francisco Administrative Code Chapter 10 and California Government Code Section 900, et seq. Nothing set forth in this Agreement shall operate to toll, waive or excuse Hotel's compliance with the California Government Code Claim requirements set forth in San Francisco Administrative Code Chapter 10 and California Government Code Section 900, et seq.

11.8 Health and Human Service Dispute Resolution Procedure. (Reserved)

11.9 Agreement Made in California; Venue.

The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California. Venue for all litigation relative to the formation, interpretation and performance of this Agreement shall be in San Francisco.

11.10 Construction.

All paragraph captions are for reference only and shall not be considered in construing this Agreement.

11.11 Entire Agreement.

This contract sets forth the entire Agreement between the Parties, and supersedes all other oral or written provisions. This Agreement may be modified only as provided in Section 11.5, "Modification of this Agreement."

11.12 Compliance with Laws.

Hotel shall keep itself fully informed of the City's Charter, codes, ordinances and duly adopted rules and regulations of the City and of all state, and federal laws in any manner affecting the performance of this Agreement, and must at all times comply with such local codes, ordinances, and regulations and all applicable laws as they may be amended from time to time.

11.13 Severability.

Should the application of any provision of this Agreement to any particular facts or circumstances be found by a court of competent jurisdiction to be invalid or unenforceable, then (a) the validity of other provisions of this Agreement shall not be affected or impaired thereby, and (b) such provision shall be enforced to the maximum extent possible so as to effect the intent of the parties and shall be reformed without further action by the parties to the extent necessary to make such provision valid and enforceable.

11.14 Cooperative Drafting.

This Agreement has been drafted through a cooperative effort of City and Hotel, and both Parties have had an opportunity to have the Agreement reviewed and revised by legal counsel. No Party shall be considered the drafter of this Agreement, and no presumption or rule that an ambiguity shall be construed against the Party drafting the clause shall apply to the interpretation or enforcement of this Agreement.

11.15 Order of Precedence.

Hotel agrees to perform the services described below in accordance with the terms and conditions of this Agreement, implementing task orders, and the attached Appendices. If the Appendices to this Agreement include any standard printed terms from the Hotel, Hotel agrees that in the event of discrepancy, inconsistency, gap, ambiguity, or conflicting language between the City's terms and Hotel's printed terms attached, the City's terms shall take precedence.

11.16 Notification of Legal Requests.

Each party shall immediately notify the other upon receipt of any subpoenas, service of process, litigation holds, discovery requests and other legal requests ("**Legal Requests**") related to all data given to the other party in the performance of this Agreement ("**Data**"), or which in any way might reasonably require access to Data, and in no event later than 24 hours after it receives the request. Each party shall not respond to Legal Requests related to this Agreement without first notifying the other, other than to notify the requestor that the information sought is potentially covered under a non-disclosure agreement.

11.17 No Representations or Warranties Regarding Property.

Hotel represents and warrants that the Property is in good working order (ordinary wear and tear excepted) to operate as a hotel during the Booking Period. Except as provided in the previous sentence and in Section 11.2, notwithstanding anything herein to the contrary, Hotel makes no representations or warranties regarding the condition of the Property or the health of its employees (including whether or not any employee is, has been, or will be exposed to or infected with the novel coronavirus that causes COVID-19). City accepts the Property in its "AS IS, WHERE IS" condition with all faults. In particular, Hotel makes no representation or warranty regarding the suitability of the Property for the housing of any person who has either contracted COVID-19, exposed to persons with COVID-19 or who is a member of a high risk group who needs to be protected from exposure to COVID-19, or whether occupancy of the Property is beneficial to the Group. City acknowledges that it has entered into this Agreement, and has decided to book the Group at the Property, based on its own determination and judgment.

11.18 Licenses and Permits.

Hotel represents and warrants that the Property has, and will maintain at all times during the Booking Period, all permits, licenses, and other approvals necessary to operate the Property as a hotel, subject to any inability to obtain or renew any such permits, licenses, and other approvals resulting from the Local Emergency. City shall, at its sole cost and expense, obtain any and all permits, licenses, and other approvals necessary for any activities or services it will conduct or provide on the Property. Nothing contained herein shall be deemed a representation by Hotel that such use is allowable or that such permits, licenses, and other approvals are obtainable. Hotel shall reasonably cooperate with City, upon request, to obtain any such permits, licenses, and other approvals, provided that Hotel shall not incur any cost or expense in connection therewith. City shall have no right to create or place any liens on the Property.

Article 12 Department Specific Terms**12.1 Third Party Beneficiaries.**

No third parties are intended by the parties hereto to be third party beneficiaries under this Agreement, and no action to enforce the terms of this Agreement may be brought against either party by any person who is not a party hereto.

12.2 Federal and State Financial Participation (Reserved)

Article 13 Data and Security

13.1 Nondisclosure of Private, Proprietary or Confidential Information.

13.1.1 **Protection of Private Information.** City covenants and agrees that it shall not disclose to Hotel any "Private Information" within the meaning of San Francisco Administrative Code Chapter 12M or any "Protected Health Information" (as such term is defined by the Health Insurance Portability and Accountability Act of 1996 (as amended) ("HIPAA")), and shall take all reasonable precautions to avoid inadvertent disclosure of Private Information or Protected Health Information to Hotel. To the extent the Hotel comes into possession of any Private Information or Protected Health Information, Hotel shall use such information only in accordance with the restrictions stated in Chapter 12M and in this Agreement and only as necessary in performing the Services. Hotel is subject to the enforcement and penalty provisions in Chapter 12M. For the avoidance of doubt, the Hotel shall not be deemed a Business Associate (as such term is defined by HIPAA) and shall not be subject to the rules and regulations of HIPAA.

13.1.2 **Confidential Information.** In the performance of Services, a party may have access to the other party's proprietary or Confidential Information, the disclosure of which to third parties may damage such party. If a party discloses proprietary or Confidential Information to the other, such information must be held by the receiving party in confidence and used only in performing the Agreement. Each party shall exercise the same standard of care to protect such information as a reasonably prudent person would use to protect its own proprietary or Confidential Information, subject to the requirements under the Sunshine Ordinance and any other applicable laws.

13.1.3 **Proprietary Information.** The City agrees not to use, without the express prior written approval of the Hotel (which such consent shall be at Hotel's sole discretion), the name of Owner, the name of the Property, or any other trade names, trademarks, service marks, or other intellectual property belonging to the Hotel or its property manager, or any of their affiliates, which approval may be withheld in the sole discretion of the Hotel.

13.2 Payment Card Industry ("PCI") Requirements. (Reserved)

Article 14 Official Actions Relating to the Emergency; FEMA Assistance

14.1 Orders of Local, State or Federal Officials.

City and Hotel mutually acknowledge that local, state, or federal authorities may issue official orders related to the COVID-19 epidemic, or take other official actions, subsequent to the execution of this Agreement that Parties to this Agreement cannot presently predict. City and Hotel mutually acknowledge and agree that this Agreement shall be subject to the provisions of any such official action or order ("Official Actions"), as they may be revised and updated. If the provisions of any such Official Actions materially impact the terms of this Agreement, the provisions of those Official Actions shall govern. Hotel shall use commercially reasonable efforts to stay updated on the status of the City Health Officer orders by checking the Department of Public Health website (sfdph.org) regularly. Hotel

is strongly encouraged to post a copy of relevant Health Officer orders onsite and to provide a copy to any member of the public asking for a copy.

14.2 FEMA Assistance.

This is an acknowledgement that FEMA financial assistance will be requested by City and if provided will be used to fund all or a portion of this Agreement. Hotel shall comply with all applicable Federal law, regulations, executive orders, FEMA policies, procedures, and directives, including the FEMA Emergency & Exigency Contracts Requirements attached hereto as Appendix D and incorporated herein by reference.

Article 15 MacBride And Signature

15.1 MacBride Principles -Northern Ireland.

The provisions of San Francisco Administrative Code §12F are incorporated herein by this reference and made part of this Agreement. By signing this Agreement, Hotel confirms that Hotel has read and understood that the City urges companies doing business in Northern Ireland to resolve employment inequities and to abide by the MacBride Principles, and urges San Francisco companies to do business with corporations that abide by the MacBride Principles.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day first mentioned above.

CITY

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation

DocuSigned by:
Trent Rhorer 4/23/2020
By: _____
Trent Rhorer
Executive Director
Human Services Agency

Recommended by:

DocuSigned by:
Andrico Penick 4/23/2020
By: _____
Andrico Q. Penick
Director of Property

Approved as to Form:

Dennis J. Herrera
City Attorney

DocuSigned by:
David Ries 4/23/2020
By: _____
David K. Ries
Deputy City Attorney

HOTEL

SF VERTIGO LLC,
a Delaware limited liability company

By: _____
Name: John W. Rutledge
Title: Authorized Signatory

Supplier ID: [Supplier ID, if available]

Appendices

- A: Rooms and Scope of Services
- B: Calculation of Charges
- C: Invoice (if applicable)
- D: FEMA Emergency & Exigency Contracts Requirements

P-250 – Vertigo
SMRH:4850-0894-6106.4

Appendix A
Rooms and Scope of Services

[See attached]

APPENDIX A – STATEMENT OF WORK
110 ROOMS – ISOLATION SERVICES
COMMON AREA SERVICES (NO IN-ROOM CLEANING REQUIRED)

Summary

The City and County of San Francisco (the “City”) is taking aggressive steps to slow the spread of the COVID-19 virus. At the same time, the City is making preparations for the expected increase in the number of affected people in the City and has identified a need to arrange for the use of hotel rooms to further the health and safety of people, including those who have or may have been exposed to COVID-19 and front-line responders, all as further described below.

This need arises against the backdrop of sharply dropping hotel occupancy and, in some cases, closure of hotels and furloughed hotel workforces. The City recognizes the importance of the hospitality industry to San Francisco’s economy and eventual recovery and would like to structure this public-private partnership as a win-win-win: responsibly addressing the COVID-19 outbreak, providing participating civic-minded hotels with a revenue stream in excess of what the private market can offer during this time, and ensuring work and wages to the City’s hotel labor force to the maximum extent possible.

Populations to be Housed

Hotel will house the following populations during the Term:

1. **Isolation Rooms (To remain in rooms except limited instances):** In order to minimize the spread of the COVID-19 virus, the City plans to provide quarantine rooms to individuals whose current housing situation does not allow them to self-quarantine at home (the “Isolation Rooms”).
 - a. **Not Positive:** Those residents who have come in close contact with a COVID-19 positive individual but have not been tested, or who have been tested and are awaiting results; and
 - b. **Positive:** Those residents who have been tested positive for COVID-19 but do not have a medical need to be hospitalized.
2. **Self-Isolation Rooms:**
 - c. **Worker Rooms/Vulnerable Population:** City will use the rooms to further the public health and safety in connection with its response to the Local Emergency by sheltering (a) people within vulnerable populations who have not knowingly tested positive for the Covid-19 virus and are not under medical quarantine; or (b) health care workers and first responders. This group will be encouraged to self-isolate, but will not be quarantined.

Definitions

As used herein, the following terms have the following meanings:

1. **“Contractor”** anyone employed by City to perform under this Agreement.
2. **“Guest”** means a person housed in an Isolation Room or Self-Isolation Room.
3. **“Invitee”** means any person other than a Guest permitted by City to enter the Property.
4. **“Property”** means the interior and exterior of the Hotel property.

HOTEL SCOPE OF SERVICE

In no event shall the Hotel Services exceed the limits of any applicable collective bargaining agreement with respect to Hotel employees described herein.

a. <input checked="" type="checkbox"/> Hotel Contact	Name: Nupur Prentiss Phone Number: (415) 850-6434 Email: Nupur.Prentiss@ohrllc.com Emergency Contact: Jun Macaspac
b. <input checked="" type="checkbox"/> Guest Rooms	Hotel shall provide the following number(s) of Guest rooms <input checked="" type="checkbox"/> Standard Single Occupancy w/full bathroom _106_ <input type="checkbox"/> Standard Single Occupancy w/out full bathroom_____ <input checked="" type="checkbox"/> ADA Accessible Single Occupancy w/full bathroom _4_ <input type="checkbox"/> Smoking permitted <input type="checkbox"/> Other _____
c. <input checked="" type="checkbox"/> Staff Rooms	Hotel shall provide the following number(s) of Staff rooms for City's use: <input checked="" type="checkbox"/> Administrative/Office(s) _The Front Desk and also Room #208 which is a large suite on second floor can be used as an administrative office. Room #208 is part of the total 110 room count <input type="checkbox"/> Storage Space(s) ___None_____ <input type="checkbox"/> Other _____
d. <input checked="" type="checkbox"/> Guest Room Access	Guest Rooms are accessed by: <input checked="" type="checkbox"/> Elevator <input checked="" type="checkbox"/> Stairs <input type="checkbox"/> Other _____
e. <input checked="" type="checkbox"/> Hotel Staff Guest Room Access	Hotel on-site staff will have the following access to Guest rooms <input type="checkbox"/> NO ACCESS <input type="checkbox"/> Access For Cleaning <input type="checkbox"/> Access For Food Service (delivered outside in corridor) <input checked="" type="checkbox"/> Access For Emergency Maintenance As-Needed <input type="checkbox"/> Other _____
f. <input checked="" type="checkbox"/> Utilities	Hotel to provide:

	<input type="checkbox"/> Air Conditioning – Central <input checked="" type="checkbox"/> Air Conditioning – In Room (<i>IN SELECT ROOMS ONLY – NOT ALL ROOMS HAVE A/C</i>) <input checked="" type="checkbox"/> Heating <input type="checkbox"/> Ventilation <i>Operable windows</i> <input checked="" type="checkbox"/> Cable Television <input checked="" type="checkbox"/> Internet Access <input checked="" type="checkbox"/> Refrigerator in room <input checked="" type="checkbox"/> Inter-Hotel Room Telephone Service (by room number, not guest name) <input type="checkbox"/> Inbound calling (by room number, not guest name) This can be turned on via City credit card similar to other properties. <input type="checkbox"/> Outbound calling capability (no calls resulting in charges). This can be turned on via City credit card similar to other properties. <input type="checkbox"/> Other _____
g. <input checked="" type="checkbox"/> Common Area Maintenance	Hotel to provide exterior, common area, and public restroom maintenance and cleaning <input type="checkbox"/> Daily <input checked="" type="checkbox"/> As needed, at least 3x Weekly <input type="checkbox"/> Other _____
h. <input checked="" type="checkbox"/> Guest Room Maintenance	Hotel to provide Guest room maintenance upon request between 8am to 4pm. Before performing work, City will vacate and clean room where repairs are to occur. <input type="checkbox"/> Other _____
i. <input checked="" type="checkbox"/> Service Desk	Hotel to provide on-call maintenance service from 8am to 4pm for public area maintenance and repairs. Maintenance and repairs to occur ASAP within a reasonable time frame. <input type="checkbox"/> Other _____
j. <input checked="" type="checkbox"/> Room Blocks	Hotel to provide guestroom keys to be created in group batches and handed to the on-site City representative for check-in and check-out purposes. <input type="checkbox"/> Other _____
k. <input type="checkbox"/> Food Service	Hotel to provide food service as follows: <input type="checkbox"/> Restaurant/Common Room Service

	<input type="checkbox"/> In-Room Service <input type="checkbox"/> Other Food Service Meal Plan (no food service to be provided by Hotel)
l. <input checked="" type="checkbox"/> Linen Service	Hotel to provide linen service as follows: <input type="checkbox"/> Daily Laundry <input type="checkbox"/> In-Room Service <input checked="" type="checkbox"/> Other As-needed Linen Service for Guest Rooms: Used linens to be collected by City staff and sent down the linen chute to be collected. Fresh laundered linen will be left at the front desk area to be collected and distributed by City staff.
m. <input type="checkbox"/> Room Cleaning	Hotel to provide in-room cleaning service as follows: <input type="checkbox"/> Daily <input type="checkbox"/> 3x Weekly <input type="checkbox"/> Other _____
n. <input checked="" type="checkbox"/> Garbage Removal	<input checked="" type="checkbox"/> Hotel to provide as-needed regular trash removal from the Property: All trash will be brought down by City to the first floor.
o. <input checked="" type="checkbox"/> Supplies	Hotel to provide access to the following at reasonable levels: <input type="checkbox"/> Laundry Facilities and supplies (Note: small washers for staff clothes) (Hotel does not have a small washer for the staff) <input checked="" type="checkbox"/> Housekeeping supplies (guest toiletries) <input type="checkbox"/> Other _____
p. <input type="checkbox"/> Guest Amenities	Hotel to provide Guests with access to the following amenities: <input type="checkbox"/> Business Center <input type="checkbox"/> Pool <input type="checkbox"/> Spa <input type="checkbox"/> Fitness Center <input type="checkbox"/> Public Restrooms <input type="checkbox"/> Grab and Go/Vending Machines <input type="checkbox"/> Ice Machines <input type="checkbox"/> Storage Facilities <input type="checkbox"/> Other _____

<p>q. <input checked="" type="checkbox"/> City Staff Amenities</p>	<p>Hotel to provide City Staff with access to the following amenities:</p> <ul style="list-style-type: none"> <input checked="" type="checkbox"/> Business Center: <input type="checkbox"/> Pool <input type="checkbox"/> Spa <input type="checkbox"/> Fitness Center <input checked="" type="checkbox"/> Public Restrooms: <input checked="" type="checkbox"/> Grab and Go/Vending Machines: <input checked="" type="checkbox"/> Ice Machines: <input type="checkbox"/> Storage Facilities: <input type="checkbox"/> Other _____
<p>r. <input type="checkbox"/> Security</p>	<p><input type="checkbox"/> Hotel to provide its standard level of Hotel security. The Hotel does not have security services.</p>
<p>s. <input type="checkbox"/> Parking</p>	<p><input type="checkbox"/> Hotel shall provide all parking spaces for City’s use, except that City will reasonably accommodate Hotel staff parking as needed.</p> <p><input type="checkbox"/> Other Hotel does not have parking spaces, however in front of the Hotel City can use the 2 car White Zone</p>
<p>t. <input checked="" type="checkbox"/> Room Condition Documentation</p>	<p>City must notify Hotel in writing of any needed repairs before the initial occupancy of a Guest room and within 48 hours of occupying any other Hotel Space.</p> <ul style="list-style-type: none"> <input checked="" type="checkbox"/> Guest Rooms <input type="checkbox"/> Kitchen <input type="checkbox"/> Spa <input type="checkbox"/> Fitness Center <input checked="" type="checkbox"/> Public Restrooms <input checked="" type="checkbox"/> Grab and Go/Vending Machines <input checked="" type="checkbox"/> Ice Machines <input type="checkbox"/> Storage Facilities: <input type="checkbox"/> Other _____

CITY SCOPE OF SERVICE

a. <input checked="" type="checkbox"/> City Site Manager <i>With notice, City may change Manager contact information.</i>	Name: Robert Walsh Phone Number: (415) 271-1201 Email: Robert.walsh@sfgov.org Emergency Contact: Same
b. <input checked="" type="checkbox"/> Clinical Manager <i>With notice, City may change Manager contact information.</i>	Name: <i>[If blank, use Site Manager number]</i> Phone Number: <i>[If blank, use Site Manager number]</i> Email: <i>[If blank, use Site Manager email]</i> Emergency Contact: <i>[If blank, use Site Manager name]</i>
c. <input checked="" type="checkbox"/> Training	City will provide on-site safety training as appropriate for City staff and Hotel staff within 24 hours of occupying the Hotel
d. <input checked="" type="checkbox"/> PPE	City will provide PPE as appropriate for City staff and Hotel staff. within 24 hours of occupying the Hotel
e. <input checked="" type="checkbox"/> Staff Dining	City will provide staff dining, as appropriate (may be included in any meal plan)
f. <input checked="" type="checkbox"/> On-Site Staff	City will provide on-site staff, as appropriate.
g. <input checked="" type="checkbox"/> Security	City will provide supplemental on-site security, as appropriate. City acknowledges that Hotel security will be minimal, if any, so City to provide security for its purposes.
h. <input checked="" type="checkbox"/> Guest List	City will maintain a Guest list. As appropriate, City personnel will be responsible for assigning Guest rooms.
i. <input checked="" type="checkbox"/> Emergency Plan	City will develop an emergency evacuation plan and protocol, as appropriate.
j. <input type="checkbox"/> Linens/Towels	As necessary, City will be responsible for collecting, cleaning and returning all linens, towels and similar products used in the Rooms.
k. <input checked="" type="checkbox"/> Third-Party Vendors	City may contract with the following third-party vendors for the following services: <input type="checkbox"/> Hotel Laundry (linens and towels) <input checked="" type="checkbox"/> Guest Laundry (clothing) <input checked="" type="checkbox"/> Guest Room Transition Cleaning <input type="checkbox"/> Guest Room Daily Garbage Pickup <input checked="" type="checkbox"/> Food Service <input type="checkbox"/> Garbage Disposal

	<input type="checkbox"/> Other _____
i. <input checked="" type="checkbox"/> Guest Room Use	The City will make all determinations, acting in its sole discretion, regarding who may be Guests and appropriate visitation policies.
m. <input checked="" type="checkbox"/> Room Cleaning	Before the end of the Term, City shall, at its sole expense, clean any Guest rooms occupied by City, as deemed appropriate by the City acting in its sole discretion, but in accordance with CDC requirements. City will certify to Hotel in writing or email that such cleaning has occurred.
n. <input type="checkbox"/> Linen Cleaning	Before the end of the Term, City shall, at its sole expense, clean all linens used by the City, as deemed appropriate by the City acting in its sole discretion.
o. <input type="checkbox"/> Hotel Improvements	Hotel shall permit City to make improvements as needed to the Property. Any improvements made by City to the Property (which may only be made with the prior written consent of the Hotel) shall inure to and remain the property of Hotel.

**Appendix B
Calculation of Charges**

1. Maximum Not-to-Exceed Amount of Agreement

- a. Total Not-to-Exceed Compensation - **\$4,571,078**
- b. Not-to-Exceed Compensation without Reimbursable Amount - **\$3,974,850** (365 nights)
- c. Not-to-Exceed Reimbursable Amount (15% of amount in b.) - **\$596,228**

2. Method of Payment

A. Hotel shall submit monthly invoices by the fifteenth (15th) business day of each month, in the format attached in Appendix C, based upon the number of Rooms and Services provided in the immediately preceding month (other than the Compensation, which shall be invoiced for the current month). All deliverables associated with the Rooms and Services listed in Appendix A shall be reported on the invoice(s) each month.

B. Hotel acknowledges that City cannot make any payments to Hotel unless Hotel is qualified as an approved vendor in City's financial and payment system. Therefore, City will not be in default of any monetary obligation under the Agreement and no interest or late charge will apply if Hotel is not an approved vendor with City. All Compensation that has accrued while Hotel is not an approved vendor will be payable within twenty (20) days after City receives Hotel's written notice and the Contract Monitoring Division confirms that Hotel is approved as a City Vendor.

3. Compensation and Final Invoice

A final closing invoice, clearly marked "FINAL," shall be submitted no later than forty-five (45) calendar days following the closing date of the Agreement, and shall include only those Services rendered during the referenced period of performance.

4. No invoices for Services provided by law firms or attorneys, including, without limitation, as subcontractors of Hotel, will be paid unless the provider received advance written approval from the City Attorney.

Appendix C
Invoice Template

[To be inserted, if applicable]

Appendix D
FEMA Emergency & Exigency Contracts Requirements

1. Precedence of FEMA Requirements. This contract may be eligible for FEMA funding. FEMA requires inclusion of the following contract provisions for procurement under exigent or emergency circumstances. In the event of a conflict between this appendix and other provisions of the Agreement that address the same or a similar requirement, the provisions that are stricter and impose the greater duties upon Hotel shall apply.

2. Work Hours and Safety Standards. Hotel agrees as follows:

A. Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

B. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (A) of this section Hotel and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, Hotel and subcontractor(s) shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (A) of this section, in the sum of \$26 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (A) of this section.

C. Withholding for unpaid wages and liquidated damages. The City shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by Hotel or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (B) of this section.

D. Subcontracts. Hotel or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs (A) through (D) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. Hotel shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (A) through (D) of this section.

E. Exceptions. This Section 5 does not apply to the purchase of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence

3. Clean Air Act. Hotel agrees as follows:

A. Hotel agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.

B. Hotel agrees to report each violation to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

C. Hotel agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

4. Federal Water Pollution Act. Hotel agrees as follows:

A. Hotel agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.

B. Hotel agrees to report each violation to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

C. Hotel agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

5. Debarment and Suspension. Hotel agrees as follows:

A. To the extent this contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000, Hotel is required to verify that none of Hotel's principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

B. To the extent this contract is a covered transaction, Hotel must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

C. This certification is a material representation of fact relied upon by the City. If it is later determined that Hotel did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the City, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

D. Hotel agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C throughout the period of any contract that may arise from this offer.

Hotel further agrees to include a provision requiring such compliance in its lower tier covered transactions.

6. Procurement of Recovered Materials

A. In the performance of this contract, Hotel shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired:

- i. Competitively within a timeframe providing for compliance with the contract performance schedule;
- ii. Meeting contract performance requirements; or
- iii. At a reasonable price.

B. Information about this requirement, along with the list of EPA-designated items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.

C. Hotel also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

7. Department of Homeland Security Seal, Logo, and Flags. Hotel shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.

8. Compliance with Federal Law, Regulations, and Executive Orders. This is an acknowledgement that FEMA financial assistance will be used to fund all or a portion of the contract. Hotel will comply with all applicable Federal law, regulations, executive orders, FEMA policies, procedures, and directives.

9. No Obligation by Federal Government. The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the City, Hotel, or any other party pertaining to any matter resulting from the contract.

10. Program Fraud and False or Fraudulent Statements or Related Acts. Hotel acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Hotel's actions pertaining to this contract.

11. Byrd Anti-Lobbying Certification.

A. Hotels who apply or bid for an award of \$100,000 or more shall file the required certification pursuant to the Byrd Anti-Lobbying Amendment, 31 U.S.C. §1352, as amended. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal

funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency.

B. If this contract is for a price of \$100,000 or more, Hotel, and its lower tiers, must sign and submit to the City the following certification:

APPENDIX A, 44 C.F.R. PART 18 – CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

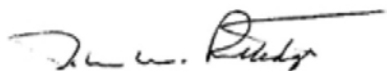
This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

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SF Vertigo LLC (“Hotel”), certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, Hotel understands and agrees that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.

SF VERTIGO LLC



Signature of Hotel’s Authorized Official

John W. Rutledge, Authorized Signatory
Name and Title of Hotel’s Authorized Official

April 23, 2020
Date

