

**SECOND AMENDMENT
TO EMERGENCY AGREEMENT
SF VERTIGO LLC
HOTEL VERTIGO**

THIS SECOND AMENDMENT TO EMERGENCY AGREEMENT (this “*Amendment*”), dated as of March 1, 2022, for reference purposes, is entered into by and between SF Vertigo LLC, a Delaware Limited Liability Company (“*Contractor*” or “*Hotel*”), and the City and County of San Francisco, a municipal corporation (“*City*”), acting by and through its Human Services Agency (the “*HSA*”), and with reference to the following facts and circumstances:

RECITALS

A. City and Contractor are parties to that certain Emergency Agreement, dated as of April 23, 2020 (the “*Emergency Agreement*”), pursuant to which Hotel granted City the right to use that certain real property and the improvements thereon consisting of a One Hundred Ten (110) room hotel located at 940 Sutter Street, in the City and County of San Francisco, commonly known as the “Hotel Vertigo”, 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.

B. The Emergency Agreement was amended pursuant to that certain First Amendment to Emergency Agreement by and between City and Hotel, dated as of March 22, 2021 (the “*First Amendment*”), and together with the Emergency Agreement, the “*Agreement*”).

C. Section 2 of the Forty-Fifth Supplement to the February 25, 2020 Mayoral Proclamation declaring the existence of a local emergency (“*Section 2 of the Forty-Fifth Supplement*”) authorizes the Executive Director of the HSA to extend the term of the Agreement up to and including July 2, 2022.

D. City and Contractor now desire to enter into this Amendment to, among other things, (a) extend the Booking Period from February 28, 2022, to July 2, 2022, and (b) increase the Compensation by One Million Five Hundred Fifty-Two Thousand, Nine Hundred Fourteen Dollars (\$1,552,914), from Eight Million Four Hundred Forty Thousand, Eight Hundred Thirty-Nine Dollars (\$8,440,839) to Nine Million Nine Hundred Ninety-Three Thousand, Seven Hundred Fifty-Three Dollars (\$9,993,753), on the terms and conditions set forth herein.

AGREEMENT

NOW, THEREFORE, for and in consideration of the foregoing Recitals, which are incorporated into this Amendment by this reference, the mutual covenants and obligations of the parties contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Hotel and the City hereby agree as follows:

Section 1. Definitions. Capitalized terms used and not defined in this Amendment shall have the meanings assigned to such terms in the Agreement.

Section 2. Amendment of Agreement. The Agreement is hereby amended as follows:

(a) Amendment of Section 2.1. *Section 2.1 of the Agreement is hereby amended and restated in its entirety and shall hereinafter read as follows:*

“2.1 Term.

2.1.1. The term of this Agreement commenced on **April 25, 2020**, and will expire of its own accord on **July 2, 2022** (the “**Booking Period**”), unless earlier terminated as otherwise provided herein. In accordance with Section 8.1.1, City may terminate this Agreement by providing at least thirty (30) days’ written notice to Hotel of such termination.

2.1.2 On the conditions set forth below, City shall have the right to extend the Booking Period on a month to month basis by providing no less than thirty days' prior written notice to Hotel; provided, that (a) in no event shall any extension of the Booking Period extend beyond December 31, 2022, and (b) any extension of the Booking Period beyond August 31, 2022, shall require the Executive Director of HSA to first obtain the approval of the San Francisco Board of Supervisors by ordinance waiving any applicable restrictions in the Municipal Code.”

(b) Amendment of Section 3.3.1. *The fourth sentence of Section 3.3.1 is hereby amended and restated in its entirety and shall hereinafter read as follows:*

“In no event shall the amount of this Agreement exceed Nine Million Nine Hundred Ninety-Three Thousand, Seven Hundred Fifty-Three Dollars (\$9,993,753).”

(c) Addition of Section 3.3.6. *Section 3.3.6 is hereby added to the Agreement.*

“If, at any time during or at the end of the Booking Period there is any damage (other than ordinary wear and tear) caused to the Property by the City or any of its Guests (“**Property Damage**”), Hotel shall repair such Property Damage, and following Hotel’s submission of a written description and photographs of such Property Damage and invoices therefor, the City shall promptly reimburse Hotel all undisputed amounts for the repair of such Property Damage, as such undisputed amounts are mutually agreed upon by the Parties, subject to the approval of the San Francisco Board of Supervisors acting in its sole discretion if required. Any remaining disputed amounts may be reserved by the Hotel in a mutually agreed upon final agreement closeout and release to be attached to this Agreement as **Appendix F**, and shall be subject to dispute resolution, as provided herein. City and Hotel shall negotiate in good faith such final agreement closeout and release in connection with the expiration of the Booking Period and final resolution of Property Damage claims. The Hotel hereby reserves all other rights and remedies available to it at law or in equity for damage to the Property caused by the City or any of its Guests. City and Hotel acknowledge and agree that neither this paragraph, any not to exceed maximum amount of this Agreement, nor the allocation of amounts set forth in Appendix B shall limit or restrict City’s obligation for costs incurred by Hotel to repair or restore the Property as required by this Agreement.”

(d) Amendment of Section 3.9. *Section 3.9 of the Agreement shall hereinafter read as follows:*

“To the extent applicable, Hotel shall, and shall cause its contractors and subcontractors to, comply with the prevailing wage requirements of the California Department of Industrial Relations under California Labor Code Section 1720 et. seq. and implementing rules and regulations.”

(e) Amendment of Section 8.1.1. *Section 8.1.1 of the Agreement is hereby amended and restated in its entirety and shall hereinafter read as follows:*

“8.1.1. (a) This Agreement shall expire of its own accord on the expiration of the Booking Period set forth in Section 2.1.

(b) City shall have the option, with not less than thirty (30) 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. Within the notice, City will specify the termination date, which will be at least thirty (30) days after the effective date of the notice. For example, if City sends a termination notice to Hotel with an effective date of May 1, 2022, the Booking Period will terminate thirty (30) days thereafter (City’s last night of occupancy would be no earlier than May 31, 2022).

City agrees to use commercially reasonable efforts to provide more advanced notice of City’s intent to vacate the Premises, to the extent it is practical or able to do so. Any notice provided by City in advance of the minimum thirty (30) days required under this Agreement will be considered “Advance Notice”. Upon receipt of any Advance Notice, Hotel may submit to City a request for City to assess the feasibility of accelerating the termination period to occur at a mutually agreeable date earlier than the date specified in the Advance Notice; provided, however, that failure of either party to agree upon an earlier termination through the Advance Notice procedure will not be deemed an event of default under this Agreement.”

(f) Addition of Section 8.1.4. *Section 8.1.4 is hereby added to the Agreement.*

“Upon the expiration of the Booking Period or earlier termination of this Agreement, City and Hotel will enter into a mutually agreed upon final agreement closeout and release of claims, which shall be attached to this Agreement as **Appendix F.**”

(g) Amendment of Section 11.6. *Section 11.6 of the Agreement is hereby amended and restated in its entirety and shall hereinafter read as follows:*

“The Parties will attempt in good faith to resolve any dispute or controversy arising out of or relating to this Agreement. If the Parties are unable to resolve the dispute, then the parties may comply with the Hotel Dispute Review Board Protocol attached hereto as **Appendix G**, and incorporated herein by this reference. Neither Party will be entitled to legal fees or costs for matters resolved under this Section. In the event of litigation resulting or arising from this Agreement, each Party shall pay its own attorneys’ fees.”

(h) Amendment of Appendix B. *The following amounts within Section 1 of Appendix B “Maximum Not-to-Exceed Compensation” are hereby amended and fully incorporated into the Agreement:*

Maximum Not-to-Exceed Amount of Agreement:

- a. **Total Not-to-Exceed Compensation:** **\$9,993,753.00**
- b. Not-to-Exceed Compensation without Reimbursable Amount: **\$8,690,220.00**
(\$99x110x798)
- c. Not-to-Exceed Reimbursable Amount: **\$1,303,533.00**
(Contingency, 15% of amount in b.)

Section 3. Effective Date. Each of the amendments set forth in Section 2 above shall be effective on and after March 1, 2022.

Section 4. Reference. No reference to this Amendment is necessary in any instrument or document at any time referring to the Agreement. Any future reference to the Agreement will be deemed a reference to the Agreement, as amended by this Amendment.

Section 5. No Other Amendment; Entire Agreement. Except as expressly modified by this Amendment, all of the terms and conditions of the Agreement shall remain unchanged and in full force and effect. The Agreement as amended by this Amendment constitutes the entire agreement between City and Hotel with respect to the subject matter of the Agreement and supersedes and cancels any and all previous negotiations, agreements, or understandings, if any, regarding the matters contained in the Agreement. In the event of any conflict between the terms of the Agreement and the terms of this Amendment, the terms of this Amendment will control.

Section 6. Exhibits. The Exhibits attached hereto are incorporated into this Amendment by this reference.

Section 7. Applicable Law. This Amendment will be governed by, construed, and enforced in accordance with the laws of the State of California and City's Charter. Any legal suit, action, or proceeding arising out of or relating to this Amendment shall be instituted in the Superior Court for the City and County of San Francisco, and each party agrees to the exclusive jurisdiction of such court in any such suit, action, or proceeding (excluding bankruptcy matters). The parties irrevocably and unconditionally waive any objection to the laying of venue of any suit, action, or proceeding in such court and irrevocably waive and agree not to plead or claim that any suit, action, or proceeding brought in San Francisco Superior Court relating to this Amendment has been brought in an inconvenient forum. The Parties also unconditionally and irrevocably waive any right to remove any such suit, action, or proceeding to Federal Court.

Section 8. Further Instruments. The parties to the Agreement and this Amendment agree to execute such further instruments and to take such further actions as may be reasonably required to carry out the intent of this Amendment.

Section 9. Counterparts; Electronic Signature. This Amendment may be executed in two or more counterparts, each of which will be deemed an original, but all of which taken together will constitute one and the same instrument. The Parties may execute this Amendment by electronic signature.

[SIGNATURES ON FOLLOWING PAGE]

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

CITY

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation

DocuSigned by:
Trent Rhorer
9753A8870BB74EE...
Trent Rhorer
Executive Director
Human Services Agency

HOTEL

SF VERTIGO LLC,
a Delaware limited liability company

DocuSigned by:
John W. Rutledge
AB899411E01D4F7...
Name: **John W. Rutledge**
Title: Authorized Signatory

Supplier ID: **0000042946**

Approved as to Form:

DAVID CHIU,
City Attorney

By: DocuSigned by:
Vincent L. Brown
5D88F562E4274BB
Vincent L. Brown
Deputy City Attorney

Exhibit A

APPENDIX F

FINAL AGREEMENT CLOSEOUT AND RELEASE OF CLAIMS

(to be attached following agreement by the parties)

Exhibit B

APPENDIX G

HOTEL DISPUTE REVIEW BOARD PROTOCOL

1. Dispute

A Dispute is a disagreement related to a property damages claim by the Hotel under the Agreement between the City and the Hotel.

2. Intent

This Dispute Review Protocol is an informal and nonbinding process intended to provide third-party review of and a proposed resolution for each Dispute under the Agreement. The Protocol will result in a cost assessment report ("**DRB Report**"). The DRB Report is a non-binding, privileged and confidential settlement document inadmissible in evidence under California Evidence Code Section 1152. The DRB Report may not be used in discovery, in evidence, or for any purpose other than an informal, nonbinding, attempt at resolution of a Dispute.

3. Dispute Review Board (DRB)

The DRB is a two-member board, consisting of one member selected by the City and one member selected by the Hotel. The Parties reserve the right to select a mutually agreeable third member to act as Chair for all DRB activities, should the Parties mutually agree that a Chair would foster settlement negotiations. For ease of contracting, the Hotel will contract with the Chair, subject to review and approval of the Contract and associated fees by the City.

4. City and Hotel Site Administrators

The City and Hotel each will nominate a Site Administrator to administer the DRB Protocol and to select the first two DRB members. All DRB Protocol communications will be made through the Site Administrators.

5. DRB Protocol

The DRB and Site Administrators are responsible for implementing the DRB Protocol. The Protocol may include formulating rules of operation, scheduling site visits, holding DRB meetings, and identifying other procedures as mutually agreed by the Parties.

As early as practicable, the Site Administrators each will identify and exchange the name of a selected DRB member. Within five calendar days of the exchange, the Parties will meet and agree upon a mutually agreeable schedule and scope for the Hotel site inspection, as necessary, and will agree upon a date for the exchange of cost estimates.

On a mutually agreed upon schedule, the DRB members and Site Administrators will meet to review the cost estimates and attempt resolution of the Dispute.

6. Written Notice of Dispute Resolution Failure

Should the Parties fail to resolve a Dispute within 30 days of the cost estimate exchange, the Site Administrators will provide written notice to the DRB of the Dispute resolution failure. Within 5 days of such written notice, the Site Administrators may elect to select a DRB Chair to lead further discussions. The DRB Chair will be mutually agreed upon.

7. DRB Report

Within 15 days of issuance of the Dispute resolution failure notice, the DRB will issue a DRB Report. The DRB Report is an informal non-binding, inadmissible written recommendation for Dispute resolution.

The Parties will have 3 calendar days to accept or reject the DRB Report recommendation for Dispute resolution and/or to request clarification. If the DRB provides clarification, the Parties will have an additional 3 calendar days to accept or reject the DRB Report. If accepted, the Parties will execute a Final Agreement Closeout and Release of Claims.

8. San Francisco Board of Supervisors Approval

The City and Hotel each understands and agrees that any proposed Dispute resolution may require formal approval by the San Francisco Board of Supervisors acting in its sole discretion.

9. Government Code Claim Filing Requirements

The Hotel understands and agrees that nothing herein shall operate to toll, waive, or excuse the Hotel's compliance with the Government Code Claim requirements under California Government Code Section 900, *et seq.*, and San Francisco Administrative Code Chapter 10 as to the disputed claims.

10. Compensation of the Dispute Review Board

The City and Hotel agree that each will bear its own fees and expenses for that Party's individually selected DRB member. The Parties will share equally the fees and expenses of DRB Chair, if any, after approval of the DRB Chair's invoice by both parties.