

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

THIS FOURTH AMENDMENT (this “Amendment”) is made as of **May 3, 2021**, in San Francisco, California, by and between **1231 Market Street Owner L.P.** (“Hotel”), and the City and County of San Francisco, a municipal corporation (“City”).

WHEREAS, City and Hotel have entered into an Emergency Agreement dated April 4, 2020, as subsequently amended by the First Amendment to Emergency Agreement dated May 15, 2020, the Second Amendment to Emergency Agreement dated July 27, 2020 and the Third Amendment to Emergency Agreement dated August 28, 2020 (collectively, the “**Agreement**”), for Rooms and Services at the property commonly known as the **Hotel Whitcomb** located at 1231 Market Street, San Francisco, CA 94103, to further the public health and safety in connection with City’s response to the Local Emergency declared by Mayor London Breed on Tuesday, February 25, 2020, as supplemented from time to time, including the Thirty-Fifth Supplemental Declaration dated February 19, 2021, authorizing the extension of COVID-19-related contracts; and

WHEREAS, City and Hotel desire to modify the Agreement on the terms and conditions set forth herein to extend the Booking Period, amend Appendix B and Appendix E, among other things; and

WHEREAS, the City’s Board of Supervisors approved this Amendment by Resolution No. _____ on _____, 2021;

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

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

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

2.1 Term.

2.1.1 The term of this Agreement shall be for 691 nights, commencing on April 8, 2020, and expiring of its own accord on March 1, 2022 (the last night will be February 28, 2022) (the “**Booking Period**”), unless earlier terminated in accordance with Section 8.1.1 or as otherwise provided herein.

3. **Amend Section 3.3.1.** The following sentence from Section 3.3.1 is hereby deleted from the Agreement:

“In no event shall the amount of this Agreement exceed Thirty-Five Million Six Hundred Eight Thousand Five Hundred Forty-Two Dollars (\$35,608,542).” and

the following sentence is hereby added in its place and fully incorporated into the Agreement:

“In no event shall the amount of this Agreement for Rooms and Services exceed **Fifty-Four Million Eight Hundred Thousand, Six Hundred Sixty-Four Dollars (\$54,800,664).**”

4. **Replace Status of Property.** Status of Property from the Third Amendment is hereby deleted from the Agreement, and the following is hereby added in its place and fully incorporated into the Agreement:

“The Parties acknowledge that for purposes of the Agreement, as previously amended by the Third Amendment and further amended by this Amendment, the Property is not being operated as a “Tourist Hotel” as defined in San Francisco Administrative Code Section 41.4 during the Booking Period. Notwithstanding, the Hotel intends to resume operations of the Property as a Tourist Hotel upon expiration or other earlier termination of the Agreement.”

5. **Replace Section 8.1.1.** Section 8.1.1, as previously amended by the Third Amendment to Emergency Agreement, is hereby replaced by the following and fully incorporated into the Agreement:

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 60 days’ written notice to Hotel, to terminate this Agreement for any reason. City may send the termination notice to Hotel at any time during the Booking Period, but any termination notice sent after the 8th day of the month in which the notice is sent will be deemed to have been sent on the 8th day of the following month. Within the notice, City will specify the termination date, which will be at least 60 days after the deemed effective date of the notice. For example, if City sends a termination notice to Hotel on August 12, 2021, then notice will be deemed to be effective as of September 8, 2021, and the Booking Period will terminate at least 60 days thereafter (City’s last night of occupancy would be no earlier than November 7, 2021, vacating on November 8, 2021).

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 60 days required under the 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. Failure of either party to agree upon an earlier termination through the Advance Notice procedure will not be deemed an event of default under the Agreement.

(c) Hotel shall have the option, with not less than 90 days' written notice to City, to terminate this Agreement if, at any time during the Booking Period, the Property (or a majority of the ownership interest therein) is transferred or otherwise legally conveyed to another entity not currently affiliated with Hotel. This could include a lender through foreclosure proceedings or an arms' length transaction for the sale of the Property (or a majority of the ownership interest therein) to an unaffiliated third party. For purposes of clarification, Hotel shall be permitted to provide the termination notice to City in advance of the anticipated date of transfer, and such termination will be deemed effective as of the transfer date (provided that such notice was sent at least 90 days before such actual transfer date).

Hotel shall provide City with prompt notice of any change to an anticipated transfer date as soon as any such change occurs. Whether or not Hotel (or its assignee) intends to exercise such termination right, Hotel agrees to use commercially reasonable efforts to promptly notify City if Hotel enters into any binding agreement for the proposed conveyance of the Property or a majority of the ownership interest therein (such as a purchase and sale agreement) or receives any notice that might reasonably precede a possible conveyance, such as a notification of forthcoming foreclosure actions.

6. **Replace Section 10.3.** Section 10.3 is hereby deleted from the Agreement, and the following is hereby added in its place and fully incorporated into the Agreement:

10.3 Prohibition on Use of Public Funds for Political Activity. In performing the Services, Contractor shall comply with San Francisco Administrative Code Chapter 12G, which prohibits funds appropriated by the City for this Agreement from being expended to participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure. Contractor is subject to the enforcement and penalty provisions in Chapter 12G.

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

1. Maximum Not-to-Exceed Amount of Agreement

a. Total Not-to-Exceed Compensation - \$54,800,664

b. Not-to-Exceed Compensation for Room Nights - \$31,399,731 ($\$99 * 459 * 691$)

c. Not-to-Exceed Reimbursable Amount (15% of amount in b.) - \$4,709,960

d. Not-to-Exceed Reimbursable Amount for Linens: \$1,699,169 ($\$2,459$ per night)

e. Not-to-Exceed Reimbursable Amount for Food Service (App. D) - \$16,991,804

8. **Replace Appendix D.** Appendix D Food Service by Hotel is hereby deleted from the Agreement, and the following is hereby added in its place and fully incorporated into the Agreement:

The Hotel and City continue to work in good faith to develop and incorporate food service programs, which will: (i.) not exceed \$65 per room per night from the period beginning April 8, 2020 through the night of March 31, 2021 (357 nights); and (ii) not exceed \$55 per room per night beginning April 1, 2021 through the night of February 28, 2022 (334 nights). The total not-to-exceed compensation of \$16,991,804 for the food service program is included in Appendix B. Hotel agrees to use commercially reasonable efforts to incorporate and manage a food service program to stay within that budget.

The parties acknowledge that the City may terminate any food service program by providing at least fourteen (14) days written notice to Hotel of such termination, to be effective immediately upon the date specified in the notice, at no additional cost or termination fee. City shall pay Hotel the daily food service rate through the termination date provided in City's termination notice in accordance with the monthly invoice procedure provided in Appendix B.

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

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

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

CITY

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation

Recommended by:

Trent Rhorer
Executive Director
Human Services Agency

Approved as to Form:

Dennis J. Herrera
City Attorney

By: _____
David K. Ries
Deputy City Attorney

Approved:

Sailaja Kurella
Acting Director of the Office of
Contract Administration, and
Purchaser

By: _____

HOTEL

1231 MARKET STREET OWNER L.P.

Richard Froom
Authorized Signatory

City Supplier number: 0000039802