

File No. 220883

Committee Item No. 6

Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Budget and Finance Committee Date September 7, 2022

Board of Supervisors Meeting Date _____

Cmte Board

- Motion
- Resolution
- Ordinance
- Legislative Digest
- Budget and Legislative Analyst Report
- Youth Commission Report
- Introduction Form
- Department/Agency Cover Letter and/or Report
- MOU
- Grant Information Form
- Grant Budget
- Subcontract Budget
- Contract/Agreement
- Form 126 – Ethics Commission
- Award Letter
- Application
- Public Correspondence

OTHER (Use back side if additional space is needed)

- Amendment No. 5 3/1/2022
- Amendment No. 4 5/3/2021
- Amendment No. 3 8/28/2020
- Amendment No. 2 7/27/2020
- Amendment No. 1 5/15/2020
- Original Emergency Agreement 4/4/2020
- _____
- _____
- _____
- _____

Completed by: Brent Jalipa Date September 1, 2022

Completed by: Brent Jalipa Date _____

1 [Contract Amendment - 1231 Market Street Owner L.P. - Emergency Agreement - Not to
2 Exceed \$88,568,327]

3 **Resolution approving a sixth amendment to an emergency agreement between the**
4 **Human Services Agency and 1231 Market Street Owner L.P., for the City’s continued**
5 **use of 459 hotel rooms and associated services; increasing the contract amount by**
6 **\$9,596,148 for a total amount not to exceed \$88,568,327; and extending the booking**
7 **period for a potential total term of April 8, 2020, to March 31, 2023.**

8

9 WHEREAS, In response to the COVID-19 pandemic, Mayor London Breed declared a
10 “Local Emergency” on Tuesday, February 25, 2020, as supplemented from time to time,
11 including the Forty-Fifth Supplemental Declaration dated February 10, 2022, authorizing the
12 extension of COVID-19-related contracts; and

13 WHEREAS, The Human Services Agency (“HSA”), in coordination with the Department
14 of Public Health, the Department of Emergency Management, the Department of
15 Homelessness and Supportive Housing (“HSH”), the Real Estate Division (“RED”), the Office
16 of Contract Administration (“OCA”), and other City stakeholders (collectively, the “City’s
17 COVID-19 Response Team”), procured hotel rooms and related emergency services in
18 support of the Local Emergency; and

19 WHEREAS, The City uses the rooms to further the public health and safety by
20 sheltering people who are otherwise within a vulnerable population and have no means to
21 socially-distance from possible COVID infection; and

22 WHEREAS, The City entered into an Emergency Agreement dated April 4, 2020, with
23 1231 Market Street Owner L.P. (“Hotel”) for the City’s use of 459 hotel rooms plus associated
24 services, including food service, as amended by a First Amendment to Emergency Agreement
25 dated May 15, 2020, to include requirements for City’s reimbursement through the Federal

1 Emergency Management Agency, as further amended by a Second Amendment to
2 Emergency Agreement dated July 27, 2020, to increase the maximum contract amount to pay
3 for food services, as further amended by “Third Amendment” to Emergency Agreement dated
4 August 28, 2020, as amended by a “Fourth Amendment” to Emergency Agreement dated
5 May 3, 2021, and as further amended by a “Fifth Amendment” to Emergency Agreement
6 dated March 1, 2022 (collectively, the “Booking Agreement”); and

7 WHEREAS, The Third Amendment was approved by the Board of Supervisors through
8 Resolution No. 380-20, a copy of the Booking Agreement is on file with the Clerk of the Board
9 in File No. 200819; and

10 WHEREAS, The Fourth Amendment was approved by the Board of Supervisors
11 through Resolution No. 304-21, a copy of the Booking Agreement is on file with the Clerk of
12 the Board in File No. 210500; and

13 WHEREAS, The Fifth Amendment was approved by the Board of Supervisors through
14 Resolution No. 71-22, a copy of the Booking Agreement is on file with the Clerk of the Board
15 in File No. 211236; and

16 WHEREAS, Ordinance No. 22-0703 which authorizes HSA to amend the Hotel
17 Booking Agreement to extend the term of the existing agreement and waive certain
18 Administrative and Environment Code requirements through August 31, 2023, was passed on
19 a first reading by the Board of Supervisors on July 19, 2022;

20 WHEREAS, The Booking Agreement originally ran for 122 nights from April 8, 2020
21 through August 7, 2020 (the initial “Booking Period”); through the Third Amendment, the
22 Booking Period was extended through the night of June 30, 2021; through the Fourth
23 Amendment, the Booking Period was extended through the night of March 22, 2022; through
24 the Fifth Amendment, the Booking Period was extended through the night of August 31, 2022;
25 and

1 WHEREAS, HSA and HSH wish to continue to use the hotel rooms, as well as continue
2 to procure food services from Hotel in connection with the use of the hotel rooms; and

3 WHEREAS, HSA, in consultation with the Office of the City Attorney, negotiated a
4 proposed Sixth Amendment to Emergency Agreement (the "Sixth Amendment") with the Hotel
5 to increase the contract amount to a not to exceed contract amount of \$88,568,327, and to
6 extend the Booking Period through March 31, 2023, for a total potential Booking Period of
7 April 8, 2020 to March 31, 2023 (1087 nights), subject to City's early termination rights as
8 described in the Booking Agreement; and

9 WHEREAS, A copy of the Sixth Amendment is on file with the Clerk of the Board in File
10 No. 220883; and

11 WHEREAS, Charter, Section 9.118, requires Board of Supervisors approval of the
12 Sixth Amendment; now, be it

13 RESOLVED, That the Board of Supervisors hereby authorizes the Human Services
14 Agency, on behalf of the City and County of San Francisco, as recommended by the Executive
15 Director of HSA, to execute the Sixth Amendment to increase the contract amount to a total
16 not to exceed amount of \$88,568,327, and to extend the potential Booking Period until March
17 31, 2023, subject to City's early termination rights as described in the Booking Agreement,
18 and to perform all of City's obligations under the Booking Agreement as amended; and, be it

19 FURTHER RESOLVED, That all actions heretofore taken by the officers of the City
20 with respect to the Booking Agreement are hereby approved, confirmed and ratified; and, be it

21 FURTHER RESOLVED, That the Board of Supervisors authorizes the HSA to enter
22 into any amendments or modifications to the Booking Agreement, in consultation with the
23 Executive Director of HSA and the City Attorney, that do not otherwise materially increase the
24 obligations or liabilities of the City, are necessary or advisable to effectuate the purposes of
25

1 the Booking Agreement or this Resolution, and are in compliance with all applicable laws,
2 including the City's Charter; and, be it

3 FURTHER RESOLVED, That within thirty (30) days of the Sixth Amendment being fully
4 executed by all parties, HSA shall provide the final Sixth Amendment to the Clerk of the Board
5 for inclusion into the official file.

6 Fiscal Year 2022/2023 increase: \$4,204,199

7

Fund ID:	10020
Department ID:	149657
Project Authority ID:	10036575
Account ID:	530310
Authority ID:	21481
Activity ID:	0015

8
9
10

11 Fiscal Year 2022/2023 increase: \$5,391,949

12

Fund ID:	10482
Department ID:	149657
Project Authority ID:	10036803
Account ID:	538010
Authority ID:	10001
Activity ID:	0005

13
14
15

16 */s/*

17 _____
18 Michelle Allersma, Controller’s Office
19 Budget & Analysis Division Director,
on behalf of Ben Rosenfield, Controller

20 Fiscal Year 2022/2023 funding is
21 subject to the enactment of the FY
22 2022-2023 and FY2023-24 Annual
23 Appropriation Ordinance
24
25

<p>Item 6 File 22-0883</p>	<p>Department: Human Services Agency</p>
--	---

EXECUTIVE SUMMARY

Legislative Objectives

- The proposed resolution would approve the Sixth Amendment to the Emergency Agreement between the City and 1231 Market Street Owner, L.P., for the continued use of 459 hotel rooms and associated services by increasing the agreement amount by \$9,596,148, from \$78,972,179 to not to exceed \$88,568,327; and would extend the booking period by an additional 120 nights, for a total term of 1,087 nights from April 8, 2020 to March 31, 2023.

Key Points

- Hotel Whitcomb, located at 1231 Market Street, is a 459-room hotel, which is contracted by the City through the Shelter in Place Hotel program to provide unhoused people at-risk for COVID-19 and who do not have another housing source. The Human Services Agency (HSA) entered into the original agreement with 1231 Market Street Owner in April 2020, which has been amended five times. The Board of Supervisors approved the fifth amendment in March 2022, extending the agreement term to August 31, 2022 and increasing the not-to-exceed amount to \$78,972,179. The Fifth Amendment, in conjunction with recent hotel extension legislation (File 22-0703), allowed for further extension of the term on a month-to-month basis to December 1, 2022.

Fiscal Impact

- Under the agreement, the average daily rate for room, meals, and linens is \$177.52.
- The remaining budget of \$10.6 million under the existing agreement, which is funded through December 1, 2022, together with the proposed increase of \$9.6 million would provide \$20.2 million for the proposed extended term through March 31, 2023, including a contingency for contract close-out.
- In accordance with granting agency claiming timelines, HSA will seek reimbursement from federal, state, and local sources, including the Federal Emergency Management Agency (FEMA), the State’s Project Roomkey Allocation (expiring in June 2023), and other sources. Remaining expenses would be funded from the City’s General Fund.

Recommendation

- Approve the proposed resolution.

MANDATE STATEMENT

City Charter Section 9.118(b) states that any contract entered into by a department, board or commission that (1) has a term of more than ten years, (2) requires expenditures of \$10 million or more, or (3) requires a modification of more than \$500,000 is subject to Board of Supervisors approval.

BACKGROUND

In response to the COVID-19 emergency, the City established the COVID-19 Alternative Shelter Program. This Program provided shelter in place sites, congregate setting sites and isolation and quarantine sites to individuals, most of whom were experiencing homelessness. These shelters included non-congregate Shelter in Place hotel rooms, congregate units, and recreational vehicles. The City is in the process of winding down the Shelter in Place Hotel program by the last quarter of calendar year 2022 although this may extend into the first quarter of 2023 if needed.

In July 2022, the Board of Supervisors approved an ordinance that authorized the Human Services Agency (HSA) to extend the terms of emergency hotel booking agreements beyond August 31, 2022 through August 31, 2023 and to continue waiving certain requirements in the Municipal Code (File 22-0703).¹

The largest of the Shelter in Place Hotel agreements is for the Hotel Whitcomb located at 1231 Market Street, which has 459 rooms. Under the agreement, HSA controls the entire hotel; no rooms are rented to the general public at this time. As of August 4, 2022, there were 422 active Shelter in Place hotel guests, occupying 388 units (including units that may be occupied by more than one guest) of 459 available rooms (85 percent). According to HSA, Hotel Whitcomb will be the last Shelter in Place hotel to close, and the Department of Homelessness and Supportive Housing (HSH) will continue to transfer guests into the Hotel Whitcomb as the other remaining hotels are demobilized and closed. Once all Shelter in Place hotel guests are rehoused, the City will demobilize the Hotel Whitcomb. Our prior report to the Budget & Finance Committee dated July 13, 2022 contains additional information on demobilization of the Shelter in Place hotels (File 22-0703).

Historical Changes to the Agreement

The original emergency services agreement between the City and 1231 Market Street Owner, L.P. was for a 122-night term from April 8, 2020 through August 7, 2020, for \$9,675,372. (See Exhibit 1 below)

The original agreement and first two amendments to the agreement did not require Board of Supervisors approval because total spending was below \$10 million. On May 15, 2020, HSA adopted the First Amendment to the Agreement which incorporated provisions necessary to be eligible for cost recovery from the Federal Emergency Management Agency (FEMA). (Since no budgetary changes were made in Amendment 1, it was omitted from Exhibit 1, below.)

¹ The ordinance also approved five agreements with anticipated expenditures exceeding \$10 million.

Exhibit 1. Historical Terms of Hotel Whitcomb Agreement

	Original Agreement Total	2nd Amend.	3rd Amend.	4th Amend.	5th Amend.	Proposed 6th Amend.	Unit Cost
Number of Rooms	459 rooms	459 rooms	459 rooms	459 rooms	459 rooms	459 rooms	
Daily Room Rate	\$99	\$99	\$99	\$99	\$99	\$99	
Expiration Date	Aug 7, 2020	Aug 7, 2020	July 1, 2021	Mar 1, 2022	Aug 31, 2022	Mar 31, 2023	
Term length	122 nights	122 nights	449 nights	691 nights	875 nights*	1,087 nights	
Room Costs	5,543,802	5,543,802	20,403,009	31,399,731	43,941,447*	49,394,367	\$99.00
Food Costs	3,000,000	3,314,628	11,040,984	16,991,804	26,055,135*	29,084,535	\$58.29
Linen Costs	300,000	300,000	1,104,098	1,699,169	2,384,380*	2,680,270	\$5.37
Contingency (15%)	831,570	831,570	3,060,451	4,709,960	6,591,217*	7,409,155	\$14.85
Not to Exceed Amount	\$9,675,372	\$9,990,000	\$35,608,542	\$54,800,664	\$78,972,179*	\$88,568,327	\$177.52

Source: Amendments 1-6 (Proposed) of the Emergency Agreement with 1231 Market Street Owner, LP

* Although the term length of the Fifth Amendment is 875 nights, the room costs, food costs, linen costs, contingency, and not-to-exceed amount were calculated based on a 967-night term length. Therefore, the existing agreement is funded through December 1, 2022. On August 3, 2022, the City exercised its option under 2.2 of the Agreement to extend the Term ("Booking Period") on a month-to-month basis commencing September 1, 2022 through December 1, 2022.

On July 6, 2020, the City exercised its option under Section 2.2 of the Agreement to extend the Term ("Booking Period") on a month-to-month basis commencing August 8, 2020.

On July 27, 2020, HSA administratively adopted the Second Amendment to the Agreement under its Emergency Ordinance Authority to increase the maximum value of the food service program and therefore increase the total not to exceed amount from \$9,675,372 to \$9,990,000.

On August 25, 2020, the Board approved the Third Amendment to the Agreement (File 20-0819) which extended the term of the agreement by 327 nights through July 1, 2021 and increased the not to exceed amount from \$9,990,000 to \$35,608,542.

On June 15, 2021, the Board approved the Fourth Amendment to the Agreement (File 21-0500) which extended the term of the agreement by 242 nights through March 1, 2022 and increased the not to exceed amount from \$35,608,542 to \$54,800,664.

On March 1, 2022, the Board approved the Fifth Amendment to the Agreement (File 21-1236) which extended the term of the agreement by 184 nights through August 31, 2022 and increased the not to exceed amount from \$54,800,664 to \$78,972,179. The Fifth Amendment, in conjunction with the recent hotel extension legislation (File 22-0703), allowed for further extension to December 1, 2022.

On August 3, 2022, the City exercised its option under Section 2.2 of the Agreement to extend the Term ("Booking Period") on a month-to-month basis commencing September 1, 2022.

DETAILS OF PROPOSED LEGISLATION

The proposed resolution would approve the Sixth Amendment to the Emergency Agreement between the City and 1231 Market Street Owner, L.P., for the continued use of 459 hotel rooms and associated services by increasing the agreement amount by \$9,596,148, from \$78,972,179 to not to exceed \$88,568,327; and would extend the booking period by an additional 120 nights, for a total term of 1,087 nights from April 8, 2020 to March 31, 2023.

Changes to the Booking Period

Under the proposed Sixth Amendment, the City has the right to extend the booking period on a month-to-month basis by providing 30-days written notice. Extensions beyond March 31, 2023 would require approval by the Board of Supervisors by ordinance to continue waiving applicable restrictions in the Municipal Code, and extensions beyond August 31, 2023 will require further approval by the Board of Supervisors. The City also has the right to terminate the agreement for any reason by providing 60-days written notice.

Establishing a Baseline of Current Conditions

Exhibit A to the proposed Sixth Amendment includes a form for documenting conditions of guest rooms and public areas before guest occupancy (e.g. the presence of carpet stains) and conditions upon guest departure. Both the City and the Hotel must sign the form twice (before occupancy and upon guest departure). According to HSA, this form has been added to protect the City in the event of a damages claim from the hotel. Damages are currently documented by site staff and the Hotel and its contractors conduct the repairs. Reimbursement requests from the Hotel are reviewed by HSH and HSA staff prior to approval and reimbursement.

FISCAL IMPACT

HSA projects there will be \$10.6 million in remaining spending authority after August 31, 2022 under the existing agreement, which is funded through December 1, 2022, as shown in Exhibit 2 below. The remaining budget together with the proposed increase of \$9.6 million would provide \$20.2 million for the proposed extended term through March 31, 2023, including a contingency for contract close-out.

Exhibit 2. Hotel Whitcomb Budget & Actual Spending

	Total Budgeted	Actual Expenses Projected thru Aug 31	Remaining Budget	Percent Remaining
Room	\$43,941,447	\$41,589,465	\$2,351,982	5%
Food	26,055,135	24,271,609	1,783,526	7%
Linen	2,384,380	2,325,000	59,380	2%
Contingency (15%) ^a	6,591,217	146,900	6,444,317	98%
Total	\$78,972,179	\$68,332,974	\$10,639,205	13%

Source: HSA

^a The original agreement provides for Hotel Whitcomb to invoice the City each month for the flat room rate of \$99 and for additional reimbursable services (such as cleaning common areas), up to 15 percent of the flat room rate.

The existing contract not to exceed amount includes a \$6.6 million contingency for reimbursable expenses above the monthly room rate. According to HSA staff, the contingency amount is for use at the City’s discretion for meeting unanticipated costs and is primarily intended for repair costs at contract close-out. According to Section 8.1.3 of the agreement, the City is responsible for all repair costs associated with restoring the hotel to its previous condition, even if they exceed the contingency amount. According to HSA, the City has not evaluated demobilization costs for Hotel Whitcomb because the hotel is still occupied and will be for a number of additional months. The agreement includes a 15 percent contingency, which is consistent with other emergency hotel booking agreements. To date, the City has paid \$146,900 in repair costs and \$6.4 million of the contingency is remaining as of August 31, 2022. According to itemized invoices provided by HSA, such repairs include mattress and furniture replacement, carpet cleaning, bathroom repairs (including plumbing repairs), pest control, doors and locks repair and replacement, biohazard cleaning services, and elevator repairs.

Funding Sources

The Sixth Amendment to the Agreement would be initially funded by the General Fund. In accordance with granting agency claiming timelines, HSA will later seek reimbursement from federal, state, and local sources, including the Federal Emergency Management Agency (FEMA), the State’s Project Roomkey Allocation (expiring in June 2023), the Federal Emergency Solutions Grant and Community Development Block Grant, the State Homeless Housing, Assistance and Prevention Grant, and Proposition C. These sources were previously appropriated in a prior fiscal year and the remaining balances have been reallocated to continue funding Shelter in Place program costs in the current year. Remaining expenses would be funded from the City’s General Fund.

RECOMMENDATION

Approve the proposed resolution.

**SIXTH AMENDMENT
TO EMERGENCY AGREEMENT**

(Hotel Whitcomb)

THIS **SIXTH AMENDMENT TO EMERGENCY AGREEMENT** (this “**Amendment**”), is made and entered into as of September 1, 2022, by and between 1231 Market Street Owner L.P., a Delaware limited partnership (“**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 Hotel are parties to that certain Emergency Agreement, dated as of April 4, 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 four hundred fifty-nine (459) room hotel located at 1231 Market Street, in the City and County of San Francisco, commonly known as the “Hotel Whitcomb” (the “**Improvements**”), 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 May 15, 2020 (the “**First Amendment**”), as further amended by that certain Second Amendment to Emergency Agreement by and between City and Hotel, dated as of July 27, 2020 (the “**Second Amendment**”), as further amended by that certain Third Amendment to Emergency Agreement by and between City and Hotel, dated as of August 28, 2020 (the “**Third Amendment**”), as further amended by that certain Fourth Amendment to Emergency Agreement, by and between City and Hotel, dated as of May 3, 2021 (the “**Fourth Amendment**”), and as further amended by that certain Fifth Amendment to Emergency Agreement by and between City and Hotel, dated as of March 1, 2022 (the “**Fifth Amendment**”, and together with the Emergency Agreement, the First Amendment, the Second Amendment, the Third Amendment, and the Fourth Amendment, the “**Agreement**”). The Fifth Amendment was entered into pursuant to San Francisco Board of Supervisors (the “**Board**”) Resolution No. 71-22, adopted March 1, 2022.

C. The Board adopted Resolution No. [REDACTED] on March [REDACTED], 2022 (the “**Resolution**”), to authorize the extension of the Booking Period from August 31, 2022, to **March 31, 2023**, and to increase the Compensation under the Agreement by Nine Million Five Hundred Ninety-Six Thousand, One Hundred Forty-Eight Dollars (\$9,596,148), from Seventy-Eight Million Nine Hundred Seventy-Two Thousand, One Hundred Seventy-Nine Dollars (\$78,972,179) to Eighty-Eight Million Five Hundred Sixty-Eight Thousand, Three Hundred Twenty-Seven Dollars (\$88,568,327).

D. City and Hotel now desire to enter into this Amendment to, among other things, (a) extend the Booking Period, (b) establish a baseline of current conditions at the Improvements, and (c) increase the Compensation, 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, City and Hotel 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 8, 2020, and will expire of its own accord on **March 31, 2023** (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 sixty (60) 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 (30) days’ prior written notice to Hotel; provided, that (i) in no event shall any extension extend beyond **August 31, 2023**, and (ii) any extension of the Booking Period beyond **March 31, 2023**, 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 Eighty-Eight Million Five Hundred Sixty-Eight Thousand, Three Hundred Twenty-Seven Dollars (\$88,568,327).”

(c) **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 sixty (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. Within the notice, City will specify the termination date, which will be at least sixty (60) days after the effective date of the notice. For example, if City sends a termination notice to Hotel with an effective date of August 1, 2022, the Booking Period will terminate sixty (60) days thereafter (City’s last night of occupancy would be no earlier than September 29, 2022).

Notwithstanding the foregoing, in the event the City provides notice of termination and requires additional time to vacate the premises, then City shall provide a subsequent notice to Hotel and the date of termination shall be as set

forth in the subsequent notice, without penalty to City, provided that, notwithstanding any contrary provision contained in the Agreement, Compensation for the remainder of the occupancy shall be prorated such that City shall pay for each date of the extension.

For the avoidance of doubt, in the event City provides a sixty-day notice on August 1, 2022, with the termination date of September 29, 2022, and should City need an additional ten (10) days to fully vacate the Improvements, then upon subsequent notice from City to Hotel, the termination date will be extended by ten (10) days to October 9, 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 sixty (60) 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."

(d) 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: (\$88,568,327)**
- b. Not-to-Exceed Compensation without Reimbursable Amount: (\$49,394,367)
- c. Not-to-Exceed Reimbursable Amount (Contingency, 15% of amount in b.): (\$7,409,155)
- d. Not-to-Exceed Reimbursable Amount for Linens: (\$2,680,270) (\$2,465.75 per night)
- e. Not-to-Exceed Reimbursable Amount (Food Service in Appendix E): (\$29,084,535) (459 x \$65 x 358 nights + 459 x \$55 x 729 nights)

Section 3. Effective Date. Each of the modifications set forth in Section 2 shall be effective on and after "the date of this Amendment", and this Amendment shall not become effective until the later of the following dates: (a) the date City and Hotel have executed the Hotel Walkthrough and Confirmation of Current Baseline Condition, attached to this Amendment as **Exhibit A** and incorporated herein by this reference, and (b) the date of adoption of the Resolution by the Board.

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

CITY

Recommended by:

By: _____
Trent Rhorer
Executive Director
Human Services Agency

Approved as to Form:

David Chiu
City Attorney

By: _____
Vincent L. Brown
Deputy City Attorney

HOTEL

1231 Market Street Owner L.P.,
a Delaware limited partnership

By: _____
Richard Froom
Authorized Signatory

Supplier ID: 0000039802

Exhibit A
HOTEL WALKTHROUGH
AND CONFIRMATION OF CURRENT BASELINE CONDITIONS
HOTEL WHITCOMB

Instructions

Complete this Hotel Walkthrough and Confirmation of Current Baseline Conditions before occupying the Hotel. Do not permit guests to enter the hotel until you have completed the “Current Condition” column, documenting any observed damage. Take pictures of all damage identified. Both the City and the Hotel must sign this form twice: Upon guest arrival and upon guest departure.

1. **Current Inventory Date:** _____ **Departure Inventory Date:** _____:
2. **Guest Room Number:** _____
3. **Public Space Description:** _____

Location	Current Condition Check Box if Damage Observed, Briefly Describe Damage, And Attach Photograph	Condition upon Departure Check Box if Damage Observed, Briefly Describe Damage, And Attach Photograph
a. Guest Room	<input type="checkbox"/> Carpet (identify stains / damage): <hr/> <input type="checkbox"/> Night Stand(s): <hr/> <input type="checkbox"/> Dresser: <hr/> <input type="checkbox"/> Desk: <hr/> <input type="checkbox"/> Upholstered Chair(s) <hr/> <input type="checkbox"/> Other Chair(s) <hr/> <input type="checkbox"/> Television	<input type="checkbox"/> Carpet (identify stains / damage): <hr/> <input type="checkbox"/> Night Stand(s): <hr/> <input type="checkbox"/> Dresser: <hr/> <input type="checkbox"/> Desk: <hr/> <input type="checkbox"/> Upholstered Chair(s) <hr/> <input type="checkbox"/> Other Chair(s) <hr/> <input type="checkbox"/> Television

	<hr/> <input type="checkbox"/> Bed(s) <hr/> <input type="checkbox"/> Bed Linen(s) <hr/> <input type="checkbox"/> Mattress / Box Spring <hr/> <input type="checkbox"/> Door(s) <hr/> <input type="checkbox"/> Wall(s)/Ceiling(s)(paint/wall paper/drywall) <hr/> <input type="checkbox"/> Lamps / Light Fixture(s) <hr/> <input type="checkbox"/> Floor Covering <hr/> <input type="checkbox"/> Windows (glass, curtains, etc.) <hr/> <input type="checkbox"/> Baseboard(s)/Molding(s) <hr/> <input type="checkbox"/> Other <hr/> <input type="checkbox"/> Other <hr/> <input type="checkbox"/> Other <hr/> <input type="checkbox"/> Other <hr/>	<hr/> <input type="checkbox"/> Bed(s) <hr/> <input type="checkbox"/> Bed Linen(s) <hr/> <input type="checkbox"/> Mattress / Box Spring <hr/> <input type="checkbox"/> Door(s) <hr/> <input type="checkbox"/> Wall(s)/Ceiling(s) (paint/wall paper/drywall) <hr/> Lamps / Light Fixture(s) <hr/> <input type="checkbox"/> Floor Covering <hr/> <input type="checkbox"/> Windows (glass, curtains, etc.) <hr/> <input type="checkbox"/> Baseboard(s)/Molding(s) <hr/> <input type="checkbox"/> Other <hr/> <input type="checkbox"/> Other <hr/> <input type="checkbox"/> Other <hr/> <input type="checkbox"/> Other <hr/>
b. Bath	<input type="checkbox"/> Sink/faucet (damage / in working condition?) <hr/> <input type="checkbox"/> Toilet	<input type="checkbox"/> Sink/faucet (damage / in working condition?) <hr/> <input type="checkbox"/> Toilet

	<hr/> <input type="checkbox"/> Tub/Shower (damage / in working condition?) <hr/> <input type="checkbox"/> Floor <hr/> <input type="checkbox"/> Bathroom Door <hr/> <input type="checkbox"/> Shower Door <hr/> <input type="checkbox"/> Shower Shelf <hr/> <input type="checkbox"/> Walls /Ceilings (paint/drywall repair) <hr/> <input type="checkbox"/> Countertop <hr/> <input type="checkbox"/> Towel Rack(s) <hr/> <input type="checkbox"/> Exhaust Fan / Light <hr/> <input type="checkbox"/> Mirror / Cabinet <hr/> <input type="checkbox"/> Other <hr/> <input type="checkbox"/> Other <hr/> <input type="checkbox"/> Other <hr/> <input type="checkbox"/> Other <hr/>	<hr/> <input type="checkbox"/> Tub/Shower (damage / in working condition?) <hr/> <input type="checkbox"/> Floor <hr/> <input type="checkbox"/> Bathroom Door <hr/> <input type="checkbox"/> Shower Door <hr/> <input type="checkbox"/> Shower Shelf <hr/> <input type="checkbox"/> Walls / Ceilings (paint /drywall repair) <hr/> <input type="checkbox"/> Countertop <hr/> <input type="checkbox"/> Towel Rack(s) <hr/> <input type="checkbox"/> Exhaust Fan / Light <hr/> <input type="checkbox"/> Mirror / Cabinet <hr/> <input type="checkbox"/> Other <hr/> <input type="checkbox"/> Other <hr/> <input type="checkbox"/> Other <hr/> <input type="checkbox"/> Other <hr/>
--	---	---

<p>c.</p> <p>Closet</p>	<p><input type="checkbox"/> Door:</p> <hr/> <p><input type="checkbox"/> Wall</p> <hr/> <p><input type="checkbox"/> Other</p> <hr/>	<p><input type="checkbox"/> Door:</p> <hr/> <p><input type="checkbox"/> Wall</p> <hr/> <p><input type="checkbox"/> Other</p> <hr/>
<p>d.</p> <p>Public Space</p>	<p><input type="checkbox"/> Seating:</p> <hr/> <p><input type="checkbox"/> Floor Covering(s):</p> <hr/> <p><input type="checkbox"/> Window (glass, curtains, etc.):</p> <hr/> <p><input type="checkbox"/> Table(s)/Desk(s):</p> <hr/> <p><input type="checkbox"/> Light Fixture(s)</p> <hr/> <p><input type="checkbox"/> Counter Surface(s)</p> <hr/> <p><input type="checkbox"/> Kitchen Equipment</p> <hr/> <p><input type="checkbox"/> Laundry Equipment</p> <hr/> <p><input type="checkbox"/> Door(s)</p> <hr/> <p><input type="checkbox"/> Wall(s)/Ceiling(s)</p> <hr/> <p><input type="checkbox"/> Baseboard(s)/Molding(s)</p> <hr/> <p><input type="checkbox"/> Other</p> <hr/> <p><input type="checkbox"/> Other</p> <hr/> <p><input type="checkbox"/> Other</p> <hr/>	<p><input type="checkbox"/> Seating:</p> <hr/> <p><input type="checkbox"/> Floor Covering(s):</p> <hr/> <p><input type="checkbox"/> Window (glass, curtains, etc.):</p> <hr/> <p><input type="checkbox"/> Table(s)/Desk(s):</p> <hr/> <p><input type="checkbox"/> Light Fixture(s)</p> <hr/> <p><input type="checkbox"/> Counter Surface(s)</p> <hr/> <p><input type="checkbox"/> Kitchen Equipment</p> <hr/> <p><input type="checkbox"/> Laundry Equipment</p> <hr/> <p><input type="checkbox"/> Door(s)</p> <hr/> <p><input type="checkbox"/> Wall(s)/Ceiling(s)</p> <hr/> <p><input type="checkbox"/> Baseboard(s)/Molding(s)</p> <hr/> <p><input type="checkbox"/> Other</p> <hr/> <p><input type="checkbox"/> Other</p> <hr/> <p><input type="checkbox"/> Other</p> <hr/>

	<hr/> <input type="checkbox"/> Other <hr/>	<hr/> <input type="checkbox"/> Other <hr/>
e. All Other Identified Damage	<input type="checkbox"/> Other: <hr/>	<input type="checkbox"/> Other: <hr/>

CURRENT CONDITION DOCUMENTED

CITY

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation

HOTEL (Name)

By: _____

By: _____

Date: _____

Date: _____

#####

#####

DEPARTURE CONDITION DOCUMENTED

CITY

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation

HOTEL

By: _____

By: _____

Date: _____

Date: _____

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

Emergency Agreement between the City and County of San Francisco

and

1231 Market Street Owner L.P.

**Hotel Whitcomb
1231 Market Street
San Francisco, CA 94103**

Table of Contents

Article 1	Definitions.....	1
Article 2	Term of the Agreement	2
2.1	Term	2
2.2	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.....	4
3.5	Federal and/or State Funded Contracts. (Reserved).....	4
3.6	Contract Amendments.....	4
3.7	Audit and Inspection of Records.....	4
3.8	Submitting False Claims.	4
Article 4	Services Hotel and City Agrees to Perform.....	5
4.1	Qualified Personnel. (Reserved)	5
4.2	Subcontracting. (Reserved).....	5
4.3	Independent Contractor; Payment of Employment Taxes and Other Expenses. (Reserved).....	5
4.4	Assignment.....	5
4.5	Warranty.....	6
4.6	Liquidated Damages. (Reserved).....	6
4.7	Bonding Requirements. (Reserved)	6
Article 5	Insurance and Indemnity	6
5.1	Insurance.	6
5.2	Indemnification.	7
5.2.1	Indemnification by City.....	7
5.2.2	Indemnification by Hotel.....	8
Article 6	Liability of the Parties	8
6.1	Liability of City.....	8
6.2	Liability for Use of Equipment. (Reserved).....	9
6.3	Liability of Hotel.....	9

Article 7	Payment of Taxes	9
7.1	Withholding. (Reserved)	9
Article 8	Termination and Default	9
8.1	Expiration of Local Emergency / Termination	9
8.2	Termination for Default; Remedies.....	10
8.3	Non-Waiver of Rights.	10
8.4	Rights and Duties upon Termination or Expiration.	10
Article 9	Rights In Deliverables (Reserved)	11
Article 10	Additional Requirements Incorporated by Reference	11
10.1	Laws Incorporated by Reference.	11
10.2	Conflict of Interest.	11
10.3	Prohibition on Use of Public Funds for Political Activity. (Reserved)	11
10.4	Consideration of Salary History. (Reserved).....	11
10.5	Nondiscrimination Requirements.	11
10.6	LBE and Non-Discrimination in Contracting Ordinance. (Reserved)	11
10.7	Minimum Compensation Ordinance. (Reserved).....	11
10.8	Health Care Accountability Ordinance.....	11
10.9	First Source Hiring Program. (Reserved)	11
10.10	Alcohol and Drug-Free Workplace.	11
10.11	Limitations on Contributions. (Reserved)	12
10.12	Slavery Era Disclosure. (Reserved).....	12
10.13	Working with Minors. (Reserved).....	12
10.14	Consideration of Criminal History in Hiring. (Reserved)	12
10.15	Public Access to Nonprofit Records and Meetings. (Reserved)	12
10.16	Food Service Waste Reduction Requirements. (Reserved).....	12
10.17	Distribution of Beverages and Water. (Reserved).....	12
10.18	Tropical Hardwood and Virgin Redwood Ban. (Reserved)	12
10.19	Preservative Treated Wood Products. (Reserved).....	12
Article 11	General Provisions	12
11.1	Notices to the Parties.	12
11.2	Compliance with Americans with Disabilities Act.	13

11.3	Incorporation of Recitals.	13
11.4	Sunshine Ordinance.	13
11.5	Modification of this Agreement.	13
11.6	Dispute Resolution Procedure.	14
11.7	Government Code Claim Requirement.	14
11.8	Health and Human Service Dispute Resolution Procedure. (Reserved)	14
11.9	Agreement Made in California; Venue.	14
11.10	Construction.	14
11.11	Entire Agreement.	14
11.12	Compliance with Laws.	14
11.13	Severability.	15
11.14	Cooperative Drafting.	15
11.15	Order of Precedence.	15
11.16	Notification of Legal Requests.	15
11.17	No Representations or Warranties Regarding Property.	15
11.18	Licenses and Permits.	15
Article 12	Department Specific Terms.	16
12.1	Third Party Beneficiaries.	16
12.2	Federal and State Financial Participation (Reserved).	16
Article 13	Data and Security.	16
13.1	Nondisclosure of Private, Proprietary or Confidential Information.	16
13.2	Payment Card Industry (“PCI”) Requirements. (Reserved)	16
13.3	Relationship.	17
Article 14	MacBride And Signature.	17
14.1	MacBride Principles -Northern Ireland.	17

Preamble

This Agreement is made this 4th day of April, 2020, in the City and County of San Francisco, State of California, by and between 1231 Market Street Owner L.P. (“**Hotel**”), as the owner of the Hotel Whitcomb, located at 1231 Market Street, San Francisco, CA 94103 (“**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 (the “**Local Emergency**”), and Chapter 21 of the San Francisco Administrative Code; and

WHEREAS, the City’s 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 (a) 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 (14 day quarantine), 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 8, 2020, and expiring of its own accord on August 7, 2020 (the “**Booking Period**”), unless earlier terminated as otherwise provided herein.

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 7, 2021 and (ii) after August 7, 2020, either party may terminate this Agreement by providing 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 and subject to any required approval by the City’s Mayor and Board of Supervisors.

2.2 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. City budget decisions are subject to the discretion of the Mayor and the Board of Supervisors. 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 monthly rate for the Rooms and Services is \$1,460,950.50. At the beginning of each month of the Booking Period, Hotel shall provide an invoice to the City for the monthly rate due under this Agreement for the Rooms and Services for such month (“**Compensation**”)

and any additional charges and reimbursement payable by City under this Agreement for the immediately preceding month, unless a different schedule is set out in Appendix B, "Calculation of Charges." Payment of the Compensation shall be made within 10 calendar days after receipt of the invoice, and payment for all other charges shall be made within 30 calendar days of receipt of the invoice, unless the City notifies the Hotel that a dispute as to the invoice exists. In no event shall the amount of this Agreement exceed Nine Million Six Hundred Seventy-Five Thousand Three Hundred Seventy-Two Dollars (\$9,675,372). The breakdown of charges associated with this Agreement appears in Appendix B, "Calculation of Charges," attached hereto and incorporated by reference as though fully set forth herein. In the event that the Hotel incurs any additional costs or expenses for additional services provided at the Property in order to accommodate special requests of the City to assist it in handling the COVID-19 pandemic at the Hotel and agreed upon in writing by the City and Hotel, which such additional services are not included in the Services, then the City shall reimburse Hotel for all such actual and reasonable additional costs and expenses.

3.3.2 Payment Limited to Satisfactory Services. If the City notifies Hotel that 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 Exhibit 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 for that month shall be reduced by \$99 for each day thereafter until Hotel resolves the issue and notifies the City of the same.

3.3.3 Last Month's Rent. Upon execution of this Agreement, the City shall pay to the Hotel the amount of \$1,460,950.50 (the "**Last Month's Rent**") by wire transfer or ACH to an account designated by the Hotel, which amount shall be applied to the Compensation payable for the last month of the Booking Period, except as otherwise provided in this Section. 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**"), the City shall promptly repair such Property Damage at its sole cost and expense. If, at the end of the Booking Period, the City has not repaired any Property Damage, and such Property Damage is not repaired within three (3) days after the end of the Booking Period, the Hotel may use any and all of the Last Month's Rent as necessary to pay for the repair of any Property Damage. To the extent there is no Property Damage, the Hotel shall apply the Last Month's Rent to any other amounts owed to it by the City, including arising from any breach by the City. The Hotel hereby reserves all other rights and remedies available to it at law or in equity for any Property Damage. The Last Month's Rent will be held by the Hotel and may be commingled with other funds; any interest earned on the Last Month's Rent, if any, shall be the property of the Hotel.

3.3.4 Withhold Payments. If Hotel fails to provide Rooms and Services in accordance with Hotel's obligations under this Agreement, following written notice from City to Hotel 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.

3.3.5 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.

3.3.6 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.” Hotel agrees that all 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 and the offices located on the 8th floor of the Property (the “**Offices**”), 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 Hotel in its sole discretion; *provided, however*, that, notwithstanding the foregoing, at all times during the Booking Period the tenants occupying the Offices (the “**Office Tenants**”) shall continue to have the right to use and access the Offices in accordance with the leases thereof. City shall be responsible for and perform all obligations and 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. Hotel shall make the Office Tenants aware, and shall ensure, that the Office Tenants will not have access to the Rooms or the floors containing the Rooms, and shall indemnify City against any claims by Office Tenants that access the floors containing the Rooms, 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. City shall ensure that City’s Invitees will not be able to access the Offices, and shall indemnify the Hotel Parties against any claims by Office Tenants that result from City’s Invitees access the Offices, 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, in which case damages shall be apportioned pro rata under the California doctrine of comparative fault. For the avoidance of doubt, the City shall have no obligation to directly indemnify the Office Tenants, and the Office Tenants shall have no right to make a claim against the City.

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 thirty (30) 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 Hotels 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 and Highgate. 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, Highgate Hotels, L.P. ("**Highgate**"); their respective direct or indirect members (including, but not limited to, RF Whitcomb Partner LLC, RF Whitcomb LLC, RFR Holding LLC, and The Brood, LLC, Sub-Fund No. 1); any lender to Hotel; and any 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; *provided, however*, that if any Hotel employee makes a workers compensation claim due to COVID-19, and such claim is denied, the City will reimburse Hotel in an amount equal to fourteen (14) days of such employee's salary or average daily pay, In addition, if any Hotel employee makes a claim under such employee's health 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. The City acknowledges and agrees that, notwithstanding anything herein to the contrary, Highgate, the manager of the Property, (i) is included as a Hotel Party the City is obligated to indemnify under this Section 5.2.1, and (ii) shall have a direct right of action against the City to enforce the City's obligation to indemnify it hereunder. Hotel acknowledges and agrees that the City's is not obligated under this Section 5.2.1 to indemnify the Office Tenants against any Claims made by or against such Office Tenants.

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, within 30 days after receipt of an invoice from Hotel, reimburse Hotel for all hotel, temporary occupancy taxes, sales and use taxes actually due and owing as a result of the City’s rental of Rooms hereunder. Real property taxes shall remain the responsibility of Hotel. Payment of any taxes, including real property 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, subject to City’s obligation to reimburse the Hotel for any and all occupancy taxes, sales and use taxes incurred by the Hotel during the Booking Period. Hotel shall include a line item in its invoice for taxes.

7.1 Withholding. (Reserved)

Article 8 Termination and Default

8.1 Expiration of Local Emergency / Termination

8.1.1 This Agreement shall expire of its own accord at the end of the Booking Period.

8.1.2 Upon receipt of any notice of termination, City and Hotel shall commence and perform, with diligence, all actions necessary on the part of City and 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. 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 Exhibit A), the City will be liable for (i) 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, and (ii) if the Hotel is unable to rent a Room to a paying guest as a result of such failure and there is no other Room of the same class available, an amount for each day such Room is unavailable equal to the best available published daily rate per Room that was not timely surrendered until such Room has been surrendered in accordance with the terms hereof.

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 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 Hotel and City		11.11	Entire Agreement
Article 7	Payment of Taxes		11.12	Compliance with Laws
Article 8	Termination and Default		11.13	Severability
			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, registered or certified, return receipt requested, overnight courier, 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: 1231 Market Street Owner L.P.
d/b/a Hotel Whitcomb
c/o RFR Holding LLC
390 Park Avenue, 3rd Floor
New York, NY 10022
Attn: Benjamin Davison
e-mail: bdavison@rfr.com

And to: Hotel Whitcomb
1231 Market Street
San Francisco, CA 94103
Attn: General Manager
e-mail: jtrudeau@highgate.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 on Exhibit 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. 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, including the Exhibits hereto, 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 Hotel under this Agreement, and Hotel and City 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 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, 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 and Protected Health 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)

13.3 Relationship.

The relationship between Hotel and the City is solely that of owner and temporary occupant, and will not be deemed a partnership, joint venture, agency or tenancy. In no event will this Agreement be deemed or construed to run with the land or create any tenancy or other permanent possessory rights on the part of the City or its invitees. This Agreement does not create any recordable interest and will not be recorded in any land records.

Article 14 MacBride And Signature

14.1 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
By: 0753A8870BB74EE
Trent Rhorer
Executive Director
Human Services Agency

Recommended by:

DocuSigned by:
Andrico Penick
3441150C0287459...
Andrico Q. Penick
Director of Property

Approved as to Form:

Dennis J. Herrera
City Attorney

DocuSigned by:
David Ries
By: EFF1B6C5BE4244A
David K. Ries
Deputy City Attorney

HOTEL

1231 MARKET STREET OWNER L.P.,
a Delaware limited partnership

By: 1231 Market Owner GP LLC, a Delaware
limited liability company
Its: General Partner

DocuSigned by:
Benjamin Davison
By: 83C48B401B1A413
Name: Benjamin Davison
Its: Authorized Signatory

Supplier ID: _____

Appendices

- A: Rooms and Scope of Services
- B: Calculation of Charges
- C: Invoice (if applicable)
- D: Food Service

APPENDIX A – STATEMENT OF WORK

459 ROOMS - ISOLATION

COMMON AREA SERVICES

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 at least 4,250 hotel rooms for a minimum of the next four months to further the health and safety of (a) approximately 3,500 people who have been exposed to COVID-19 or are under medical quarantine and (b) approximately 750 COVID-19 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:** 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 (14 day quarantine); and
 - b. **Positive:** Those residents who have been tested positive for COVID-19 but do not have a medical need to be hospitalized.

These two populations will require different health protocols which will be set forth and agreed in detail prior to any occupancy.

Definitions

As used in this Exhibit A, 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.
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.

<p>a. Hotel Contact</p>	<p>Name: John D Trudeau Phone Number: 760.285.1957 Email: jtrudeau@highgate.com Emergency Contact: Andrew Casperson, 972.922.9766</p>
<p>b. Guest Rooms</p>	<p>Hotel shall provide the following number(s) of Guest rooms</p> <p><input checked="" type="checkbox"/> Standard Single Occupancy w/full bathroom 445</p> <p><input type="checkbox"/> Standard Single Occupancy w/out full bathroom _____</p> <p><input checked="" type="checkbox"/> ADA Accessible Single Occupancy w/full bathroom 14</p> <p><input type="checkbox"/> Smoking permitted</p> <p><input type="checkbox"/> Other</p> <p>_____</p> <p>_____</p>
<p>c. Staff Rooms</p>	<p>Hotel shall provide the following number(s) of Staff rooms for City's use:</p> <p><input checked="" type="checkbox"/> Administrative/Office(s) _____</p> <p><input checked="" type="checkbox"/> Storage Space(s) _____</p> <p><input type="checkbox"/> Basement _____</p> <p><input type="checkbox"/> Other</p> <p>_____</p> <p>_____</p>
<p>d. Guest Room Access</p>	<p>Guest Rooms are accessed by:</p> <p><input checked="" type="checkbox"/> Elevator</p>

	<input checked="" type="checkbox"/> Stairs <input type="checkbox"/> Other <hr/> <hr/>
<p>e.</p> <p>Hotel Staff Guest Room Access</p>	<p>Hotel on-site staff will have the following access to Guest rooms</p> <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 <hr/> <hr/>
<p>f.</p> <p>Utilities</p>	<p>Hotel to provide:</p> <input checked="" type="checkbox"/> Air Conditioning – Central <input checked="" type="checkbox"/> Air Conditioning – In Room <input checked="" type="checkbox"/> Heating <input checked="" type="checkbox"/> Ventilation <input checked="" type="checkbox"/> Cable Television <input checked="" type="checkbox"/> Internet Access <input checked="" type="checkbox"/> Refrigerator (20 available total to be located as requested) <input checked="" type="checkbox"/> Inter-Hotel Room Telephone Service (by room number, not guest name) <input checked="" type="checkbox"/> Inbound calling (by room number, not guest name) <input checked="" type="checkbox"/> Outbound calling capability (no calls resulting in charges)

	<input type="checkbox"/> Other <hr/> <hr/>
<p>g. Common Area Maintenance</p>	<p>Hotel to provide exterior, common area, and public restroom maintenance and cleaning</p> <input type="checkbox"/> Daily <input checked="" type="checkbox"/> As needed, at least 3x Weekly, including corridors and pick-up and disposal of trash bagged and/or in receptacles left in public hallway outside Guest rooms and in common areas <input type="checkbox"/> Other <hr/> <hr/>
<p>h. Guest Room Maintenance</p>	<p>Hotel to provide Guest room maintenance upon request. Before performing work, City will vacate and clean room where repairs are to occur.</p> <input type="checkbox"/> Other <hr/> <hr/>
<p>i. Service Desk</p>	<p>Hotel to provide off-site 24/7 Service Desk for public area maintenance and repairs. On site within 1 hour of service call</p> <input type="checkbox"/> Other <hr/> <hr/>
<p>j. Room Blocks</p>	<p>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.</p> <input type="checkbox"/> Other <hr/> <hr/>
<p>k.</p>	<p>Hotel to provide food service as follows:</p>

<p>Food Service</p>	<p><input type="checkbox"/> Restaurant/Common Room Service</p> <p><input type="checkbox"/> In-Room Service</p> <p><input checked="" type="checkbox"/> Other Food Service Meal Plan</p>
<p>l. Linen Service</p>	<p>Hotel to provide linen service as follows:</p> <p><input type="checkbox"/> Daily Laundry</p> <p><input type="checkbox"/> In-Room Service</p> <p><input checked="" type="checkbox"/> Other As-needed Linen Service for Guest Rooms</p>
<p>m. Room Cleaning</p>	<p>Hotel to provide room cleaning service as follows:</p> <p><input type="checkbox"/> Daily</p> <p><input type="checkbox"/> 3x Weekly</p> <p><input type="checkbox"/> Other</p> <p>_____</p> <p>_____</p>
<p>n. Garbage Removal</p>	<p><input checked="" type="checkbox"/> Hotel to provide as-needed regular trash removal from the Property</p>
<p>o. Supplies</p>	<p>Hotel to provide access to the following:</p> <p><input checked="" type="checkbox"/> Contract Laundry Services</p> <p><input checked="" type="checkbox"/> Housekeeping supplies (carts, vacuums, cleaning supplies)</p> <p><input type="checkbox"/> Other</p> <p>_____</p> <p>_____</p>
<p>p. Guest Amenities</p>	<p>Hotel to provide Guests with access to the following amenities:</p> <p><input type="checkbox"/> Business Center</p> <p><input type="checkbox"/> Pool</p> <p><input type="checkbox"/> Spa</p>

	<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 <hr/> <hr/>
<p>q. City Staff Amenities</p>	<p>Hotel to provide City Staff with access to the following amenities:</p> <input type="checkbox"/> Business Center <input type="checkbox"/> Pool <input type="checkbox"/> Spa <input checked="" 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 on Guest Room Floors <input type="checkbox"/> Storage Facilities <input type="checkbox"/> Other <hr/> <hr/>
<p>r. Security</p>	<input checked="" type="checkbox"/> Hotel to provide standard Hotel security
<p>s. Parking</p>	<input checked="" type="checkbox"/> Hotel shall provide up to 40 parking spaces for City's use, except that City will reasonably accommodate Hotel staff parking as needed. <input type="checkbox"/> Other <hr/> <hr/>

<p>t.</p> <p>Room Condition Documentation</p>	<p>City must notify Hotel in writing (Damage Form Attached) of any needed repairs before the initial occupancy of a Guest room and within 48 hours of occupying any other Hotel Space.</p> <p><input checked="" type="checkbox"/> Guest Rooms</p> <p><input type="checkbox"/> Kitchen</p> <p><input type="checkbox"/> Spa</p> <p><input type="checkbox"/> Fitness Center</p> <p><input type="checkbox"/> Public Restrooms</p> <p><input type="checkbox"/> Grab and Go/Vending Machines</p> <p><input type="checkbox"/> Ice Machines</p> <p><input type="checkbox"/> Storage Facilities:</p> <p><input type="checkbox"/> Other</p> <p>_____</p> <p>_____</p>
--	--

CITY SCOPE OF SERVICE

<p>a.</p> <p>City Site Manager</p> <p><i>Note: City may send notice if it intends to change any Manager's contact information</i></p>	<input checked="" type="checkbox"/>	<p>Name: Robert Walsh</p> <p>Phone Number: (415) 271-1201</p> <p>Email: Robert.walsh@sfgov.org</p> <p>Emergency Contact: Same</p>
<p>b.</p> <p>Clinical Manager</p> <p><i>Note: City may send notice if it intends to change any Manager's contact information</i></p>	<input checked="" type="checkbox"/>	<p>Name: Alice Moughamian</p> <p>Phone Number: TBD</p> <p>Email: TBD</p> <p>Emergency Contact: TBD</p>
<p>c.</p> <p>Training</p>	<input checked="" type="checkbox"/>	<p>City will provide on-site safety training as appropriate for City staff and Hotel staff</p>
<p>d.</p>	<input checked="" type="checkbox"/>	<p>City will provide PPE as</p>

PPE		appropriate for City staff and Hotel staff.
e. Staff Dining	<input checked="" type="checkbox"/>	City will provide staff dining, as appropriate.
f. On-Site Staff	<input checked="" type="checkbox"/>	City will provide on-site staff, as appropriate. A designated lead person or “Manager or Duty” will be identified and on site at all times.
g. Security	<input checked="" type="checkbox"/>	City will provide supplemental on-site security, as appropriate.
h. Guest List	<input checked="" type="checkbox"/>	City will maintain a Guest list. As appropriate, City personnel will be responsible for assigning Guest rooms. City’s HSA specialists will solely make all determinations regarding those persons who are eligible to be Guests, including without limitation those persons who do not need hospital or acute health care services or procedures.
i. Emergency Plan	<input checked="" type="checkbox"/>	City will develop an emergency evacuation plan and protocol, which shall be subject to Hotel’s reasonable review and approval, and it will implement such plan and protocol with respect to all Guests, Invitees, and Contractors.
j. Linens/Towels	<input checked="" type="checkbox"/>	As necessary, City or its Guests will place all linens, towels and similar products used in the Rooms outside the Guest Rooms in containers supplied by Hotel.
k. Third-Party Vendors	<input checked="" type="checkbox"/>	City may contract with the following third-party vendors

	<p>for the following services:</p> <p><input type="checkbox"/> Hotel Laundry (linens and towels) –<i>Hotel will likely contract</i></p> <p><input checked="" type="checkbox"/> Guest Laundry (clothing)</p> <p><input checked="" type="checkbox"/> Guest Room Transition Cleaning</p> <p><input type="checkbox"/> Guest Room Daily Garbage Pickup</p> <p><input type="checkbox"/> Food Service – <i>Hotel will contract</i></p> <p><input type="checkbox"/> Food Service</p> <p><input type="checkbox"/> Garbage Disposal</p> <p><input checked="" type="checkbox"/> Other: City to remove all garbage from guest rooms and deposit in a designated area.</p>
<p>l. Guest Room Use</p>	<p><input checked="" type="checkbox"/> The City will only use the Guest Rooms as Isolation Rooms unless mutually agreed otherwise by Hotel and the City. There will be no general visitation by outsiders permitted. The City will make all determinations, acting in its sole discretion, regarding who may be Guests and appropriate visitation policies.</p>
<p>m. Property Cleaning</p>	<p><input checked="" type="checkbox"/> Before the end of the Booking Period, City shall, at its sole expense, clean any portion of the Property occupied or used by City, as indicated in this SOW (including all Guest Rooms and any and all laundry facilities), to</p>

	<p>be cleaned and sanitized to the highest government recommended standards by a third party industrial cleaning company reasonably acceptable to Hotel.</p>
<p>n. Linen Cleaning</p>	<p><input type="checkbox"/> Before the end of the Booking Period, City shall, at its sole expense, clean all linens used by the City, as deemed appropriate by the City acting in its sole discretion.</p>
<p>o. Hotel Improvements</p>	<p><input checked="" type="checkbox"/> 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.</p>
<p>p. Permitted Activities; Medical Supplies and Waste</p>	<p><input checked="" type="checkbox"/> City will use the Rooms only for accommodations, or in a manner, which does not qualify as health care or community care services for which a facility license or regulatory oversight is required under California law, as enforced during the term of the Agreement. Any health services that are provided to members of the Group while they are using any of the Rooms will be in the nature of home health services or personal assistance and care services, including observation and supervision, provided to persons in their own homes or in non-medical residential facilities and City will only permit such services to be provided by duly licensed or duly qualified</p>

	persons. City shall be responsible for ensuring that any medical supplies are stored and handled in accordance with all applicable laws and regulations, and that any medical waste is properly disposed of in accordance with all applicable laws and regulations.
--	---

Note to Appendix A: Hotel to supply customary in-room toiletries and supplies (e.g., soaps and shampoos).

**Appendix B
Calculation of Charges**

1. Maximum Not-to-Exceed Amount of Agreement

- a. Total Not-to-Exceed Compensation - \$9,675,372.30**
- b. Not-to-Exceed Compensation for Room Nights - \$5,543,802.00** ($\$99 * 459 * 122$)
- c. Not-to-Exceed Reimbursable Amount (15% of amount in b.) - \$831,570.30**
- d. Not-to-Exceed Reimbursable Amount for Linens: \$300,000.00** ($\$75,000$ per month)
- e. Not-to-Exceed Reimbursable Amount for Food Service (Appendix D) - \$3,000,000.00**

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. 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. Legal Invoices

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
Food Service by Hotel

The Hotel and City are working in good faith to develop and incorporate a food service program to not exceed the greater of \$65 per room night and/or \$3,000,000 (see Appendix B). The terms and conditions of such program, if and when mutually approved by Hotel and City, shall be attached hereto as Appendix D.

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

THIS FIRST AMENDMENT (this “Amendment”) is made as of May 15, 2020, in San Francisco, California, by and between 1231 Market Street Owner L.P. (“Hotel” or “Contractor”), 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 (the “Agreement”), for Rooms and Services at the property commonly known as the Hotel Whitcomb located at 1231 Market Street, San Francisco, CA 94103; and

WHEREAS, City and Hotel desire to modify the Agreement on the terms and conditions set forth herein to incorporate provisions necessary to be eligible for cost recovery from the Federal Emergency Management Agency; and

WHEREAS, the Federal Emergency Management Agency requires inclusion of the certain contract provisions for procurement under exigent or emergency circumstances;

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. **Addition to Article 7.** The following is hereby added to the end of the first paragraph of Article 7 and fully incorporated into the 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 using the form available at [http://www.sftreasurer.org/sites/default/files/2020-04/Hotel Exemption COVID-19 Form Rev 4.2.2020.pdf](http://www.sftreasurer.org/sites/default/files/2020-04/Hotel%20Exemption%20COVID-19%20Form%20Rev%204.2.2020.pdf).

3. **New Article 15.** The following new Article 15 is hereby added to and fully incorporated into the Agreement:

Article 15 Official Actions Relating to the Emergency; FEMA Assistance

15.1 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.

15.2 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 E and incorporated herein by reference.

4. **New Appendix E.** A new Appendix E in the form attached hereto is hereby attached to the Agreement and is fully incorporated within the Agreement.

5. **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.

6. **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.

[REMAINDER OF PAGE INTENTIONALLY BLANK.]

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

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation

1231 Market Street Owner L.P.,
a Delaware limited partnership

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

By: 1231 Market Owner GP LLC,
a Delaware limited liability company,
its general partner

Benjamin Davison
Benjamin Davison
Authorized Signatory

City Supplier number: 0000039802

Approved as to Form:

Dennis J. Herrera
City Attorney

By: *David Pies*
EFF1B8C5BE4244A...S
Deputy City Attorney

APPENDIX E
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 2 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.

1231 Market Street Owner L.P. (“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.

1231 Market Street Owner L.P.

Benjamin Davison

SIGNATURE OF HOTEL'S Authorized Official

Benjamin Davison, Authorized Signatory of its General Partner
Name and Title of Hotel's Authorized Official

5/28/2020

Date

City and County of San Francisco
Human Services Agency
Second Amendment to the Emergency Agreement
with
1231 Market Street Owner, L.P.

THIS AMENDMENT (this “Amendment”) is made as of July 27, 2020, in San Francisco, California, by and between 1231 Market Street Owner L.P. (“Contractor”), and the City and County of San Francisco, a municipal corporation (“City”), acting by and through its Human Services Agency.

Recitals

WHEREAS, City and Contractor have entered into the Agreement (as defined below); and

WHEREAS, the 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;

WHEREAS, City and Contractor desire to modify the Agreement on the terms and conditions set forth herein to increase the contract amount and to increase the maximum value of the food service program; and

NOW, THEREFORE, Contractor and the City agree as follows:

Article 1 Definitions

The following definitions shall apply to this Amendment:

1.1 **Agreement.** The term “Agreement” shall mean the Agreement dated April 4, 2020 between Contractor and City, as amended by the:

First amendment, dated May 15, 2020.

1.2 **Other Terms.** Terms used and not defined in this Amendment shall have the meanings assigned to such terms in the Agreement.

Article 2 Modifications to the Agreement.

The Agreement is hereby modified as follows:

2.1 **Payment.** *Section 3.3.1 of the Agreement currently reads as follows:*

3.3.1 Payment. The flat monthly rate for the Rooms and Services is \$1,460,950.50. At the beginning of each month of the Booking Period, Hotel shall provide an invoice to the City for the

monthly rate due under this Agreement for the Rooms and Services for such month (“Compensation”) and any additional charges and reimbursement payable by City under this Agreement for the immediately preceding month, unless a different schedule is set out in Appendix B, “Calculation of Charges.” Payment of the Compensation shall be made within 10 calendar days after receipt of the invoice, and payment for all other charges shall be made within 30 calendar days of receipt of the invoice, unless the City notifies the Hotel that a dispute as to the invoice exists. In no event shall the amount of this Agreement exceed Nine Million Six Hundred Seventy-Five Thousand Three Hundred Seventy-Two Dollars (\$9,675,372). The breakdown of charges associated with this Agreement appears in Appendix B, “Calculation of Charges,” attached hereto and incorporated by reference as though fully set forth herein. In the event that the Hotel incurs any additional costs or expenses for additional services provided at the Property in order to accommodate special requests of the City to assist it in handling the COVID-19 pandemic at the Hotel and agreed upon in writing by the City and Hotel, which such additional services are not included in the Services, then the City shall reimburse Hotel for all such actual and reasonable additional costs and expenses.

Such section is hereby amended in its entirety to read as follows:

3.3.1 Payment. The flat monthly rate for the Rooms and Services is \$1,460,950.50. At the beginning of each month of the Booking Period, Hotel shall provide an invoice to the City for the monthly rate due under this Agreement for the Rooms and Services for such month (“Compensation”) and any additional charges and reimbursement payable by City under this Agreement for the immediately preceding month, unless a different schedule is set out in Appendix B, “Calculation of Charges.” Payment of the Compensation shall be made within 10 calendar days after receipt of the invoice, and payment for all other charges shall be made within 30 calendar days of receipt of the invoice, unless the City notifies the Hotel that a dispute as to the invoice exists. **In no event shall the amount of this Agreement exceed Nine Million Nine Hundred Ninety Thousand Dollars (\$9,990,000).** The breakdown of charges associated with this Agreement appears in Appendix B, “Calculation of Charges,” attached hereto and incorporated by reference as though fully set forth herein. In the event that the Hotel incurs any additional costs or expenses for additional services provided at the Property in order to accommodate special requests of the City to assist it in handling the COVID-19 pandemic at the Hotel and agreed upon in writing by the City and Hotel, which such additional services are not included in the Services, then the City shall reimburse Hotel for all such actual and reasonable additional costs and expenses.

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

a. Total Not-to-Exceed Compensation - \$9,990,000

e. Not-to-Exceed Reimbursable Amount for Food Service (Appendix D) - \$3,314,627.70

2.3 **Food Service by Hotel.** *Appendix D of the Agreement currently reads as follows:*

The Hotel and City are working in good faith to develop and incorporate a food service program to not exceed the greater of \$65 per room night and/or \$3,000,000 (see Appendix B). The terms and conditions of such program, if and when mutually approved by Hotel and City, shall be attached hereto as Appendix D.

Such section is hereby amended in its entirety to read as follows:

The Hotel and City are working in good faith to develop and incorporate a food service program to not exceed the greater of \$65 per room night and/or \$3,314,627.70 (see Appendix B).

Article 3 Effective Date

Each of the modifications set forth in Section 2 shall be effective on and after the date of this Amendment.

Article 4 Legal Effect

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.

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

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation

CONTRACTOR

1231 Market Street Owner L.P.

DocuSigned by:
Trent Rhorer
9753A8870BB74EE...

Benjamin Davison

Trent Rhorer
Executive Director
Human Services Agency

Benjamin Davison
Authorized Signatory

City Supplier number: 0000039802

Approved as to Form:

Dennis J. Herrera
City Attorney

By: *David Ries*
EFF1B6C5BE4244A...

David K. Ries
Deputy City Attorney

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

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

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

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

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

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

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

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

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

2.1 Term.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation

HOTEL

1231 Market Street Owner L.P.

DocuSigned by:
Trent Rhorer
9753A8870BB74EE...

Benjamin Davison

Trent Rhorer
Executive Director
Human Services Agency

Benjamin Davison
Authorized Signatory

City Supplier number: 0000039802

Approved as to Form:

Dennis J. Herrera
City Attorney

DocuSigned by:
David Ries
EEF1B6C5BE4244A

By: David K. Ries
Deputy City Attorney

**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. 210501 on June 15, 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.

//
//
//
//
//
//

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:

DocuSigned by:

9753A8870BB74EE...
Trent Rhorer
Executive Director
Human Services Agency


Approved as to Form:

Dennis J. Herrera
City Attorney

By: DocuSigned by:

EFF1B6C5BE4244A...
David K. Ries
Deputy City Attorney

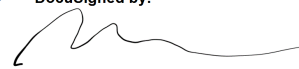
Approved:

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

By: DocuSigned by:

78EAE44AB01C4E0...

HOTEL

1231 MARKET STREET OWNER L.P.

DocuSigned by:

3D7E8500007B434...
Richard From
Authorized Signatory

City Supplier number: 0000039802

**FIFTH AMENDMENT
TO EMERGENCY AGREEMENT**

(Hotel Whitcomb)

THIS **FIFTH AMENDMENT TO EMERGENCY AGREEMENT** (this "**Amendment**"), is made and entered into as of March 1, 2022, by and between 1231 Market Street Owner L.P., a Delaware limited partnership ("**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 4, 2022 (the "**Emergency Agreement**"), pursuant to which Hotel granted City the right to use that certain real property and the improvements thereon consisting of a four hundred fifty-nine (459) room hotel located at 1231 Market Street, in the City and County of San Francisco, commonly known as the "Hotel Whitcomb", 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 May 15, 2020 (the "**First Amendment**"), as further amended by that certain Second Amendment to Emergency Agreement by and between City and Hotel, dated as of July 27, 2020 (the "**Second Amendment**"), as further amended by that certain Third Amendment to Emergency Agreement by and between City and Hotel, dated as of August 28, 2020 (the "**Third Amendment**"), and as further amended by that certain Fourth Amendment, by and between City and Hotel, dated as of May 30, 2021 (the "**Fourth Amendment**"), and together with the Emergency Agreement, the First Amendment, the Second Amendment, and the Third Amendment, the "**Agreement**"). The Fourth Amendment was entered into pursuant to San Francisco Board of Supervisors (the "**Board**") Resolution No. 210510, adopted June 15, 2021.

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 August 31, 2022.

D. The Board adopted Resolution No. 71-22 on March 11, 2022, to authorize the extension of the Booking Period from March 1, 2022, to August 31, 2022, and to increase the Compensation under the Agreement by Twenty-Four Million Four Hundred Fifty-Six Thousand Seven Hundred Seventy-Six Dollars (\$24,456,776), from Fifty-Four Million Eight Hundred Thousand Six Hundred Sixty-Four Dollars (\$54,800,664) to Seventy-Eight Million Nine Hundred Seventy-Two Thousand One Hundred Seventy-Nine Dollars (\$78,972,179).

E. City and Contractor now desire to enter into this Amendment to, among other things, (a) extend the Booking Period and (b) increase the Compensation, 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 8, 2020, and will expire of its own accord on **August 31, 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 sixty (60) 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 (30) days’ prior written notice to Hotel; provided, that (i) in no event shall any extension extend beyond December 1, 2022, and (ii) 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 Seventy-Eight Million Nine Hundred Seventy-Two Thousand One Hundred Seventy-Nine Dollars (\$78,972,179).”

(c) **Amendment of Section 3.3.3.** *Section 3.3.3 is hereby amended and restated in its entirety, and shall hereinafter read as follows:*

“3.3.3. Last Month’s Payment. Upon execution of this Agreement, the City shall pay to the Hotel the amount of (\$1,460,950.50) (the “**Last Month’s Payment**”) by wire transfer or ACH to an account designated by the Hotel, which amount shall be applied to the Compensation payable for the last month of the Booking Period. 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 following its submission of a written description and photographs of such Property Damage and invoices therefor, and 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 the

Final Agreement Contract Closeout and Release attached hereto as **Appendix F**. The Hotel hereby reserves all other rights and remedies available to it at law or in equity for any Property Damage. The Last Month's Payment will be held by the Hotel and may be commingled with other funds; any interest earned on the Last Month's Payment, if any, shall be the property of the Hotel."

(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 sixty (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. Within the notice, City will specify the termination date, which will be at least sixty (60) 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 sixty (60) days thereafter (City's last night of occupancy would be no earlier than June 30, 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 sixty (60) 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 the Final Agreement Closeout and Release of Claims, attached hereto 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:** (\$78,972,179)
- b. Not-to-Exceed Compensation without Reimbursable Amount: (\$43,941,447)
- c. Not-to-Exceed Reimbursable Amount (Contingency, 15% of amount in b.): (\$6,591,217)
- d. Not-to-Exceed Reimbursable Amount for Linens: (\$2,384,380) (\$2,465.75 per night)
- e. Not-to-Exceed Reimbursable Amount (Food Service in Appendix E): (\$26,055,135) (459 x \$65 x 358 nights + 459 x \$55 x 609 nights)

Section 3. Effective Date. Each of the modifications set forth in Section 2 shall be effective on and after “the date of this Amendment”.

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.

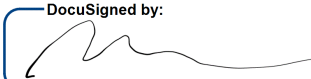
CITY

HOTEL

Recommended by:

1231 Market Street Owner L.P.,
a Delaware limited partnership

By:  3/31/2022
9753A8870BB74EE...
Trent Rhorer
Executive Director
Human Services Agency

By:  3/30/2022
3D7E8560067B434...
Richard Froom
Authorized Signatory

Supplier ID: 0000039802

Approved as to Form:

David Chiu
City Attorney

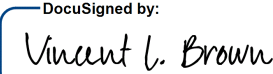
By:  3/31/2022
5D88F562E4274BB...
Vincent L. Brown
Deputy City Attorney

Exhibit A

APPENDIX F

FINAL AGREEMENT CLOSEOUT AND RELEASE OF CLAIMS

This Final Agreement Closeout and Release of Claims (“**Release**”), is made and entered into this **XXX** day of **XXXXXXXX** by and between **XXXXXXXXXXXXXXXXXXXX** (“**Hotel**”), and the City and County of San Francisco, a municipal corporation, (“**City**”), acting by and through its Human Services Agency (collectively “**Parties**”).

RECITALS

WHEREAS, the City and Hotel entered into an Emergency Agreement, dated **XXXXXX**, as amended from time to time (“**Agreement**”), to house individuals experiencing homelessness or individuals who are at risk of developing severe COVID-19 (**attached hereto as Exhibit A, including all contract amendments**);

WHEREAS, issues arose between the Parties regarding final Agreement costs;

WHEREAS, the Parties now wish to resolve all issues and close out the Agreement by mutual consent, reserving Hotel’s right to file a Government Code Claim with the City for disputed amounts, if any;

NOW, THEREFORE, it is agreed between Hotel and City as follows:

Agreement Closeout and Release

1. **Effective Date.** This Release shall be effective as of the date last executed below. Execution by the Parties via electronic signature and DocuSign is permitted.

2. **Agreement Sum.** Hotel and the City agree as follows:

Payments to Date:	\$XXXXX
Invoices to Date (<i>excluding Final Invoice</i>)	\$XXXXX
Advance/Deposit (<i>if any</i>)	(\$XXXXX)
Final Invoice Due	\$XXXXX
FINAL PAYMENT DUE TO HOTEL:	\$XXXXX

Original Agreement Sum:	\$XXXXX
Total Payment (<i>Including Final Payment</i>)	\$XXXXX
Agreement Balance	\$XXXXX

3. **Agreement Closeout.** The Parties agree that the Agreement will be fully and finally closed upon the City’s payment of the final invoice.

4. **Unpaid Agreement Funds.** Hotel agrees that the City will retain all unpaid funds under the Agreement, and that no unpaid amounts under the Agreement are due to Hotel beyond those included in the final invoice. Hotel acknowledges and hereby agrees that there are no unresolved or outstanding claims in dispute against the City arising from the Agreement and/or Project.

DELETE PARAGRAPH 5 IF THERE ARE NO CLAIMS IN DISPUTE

5. **Disputed Claim(s).** The following items are disputed (each a "*Disputed Claim*") and each is specifically excluded from the operation of this Agreement and Release:

- a. **XXXXXXXXXXXXXXXXXXXXX:** Hotel's demand for XXXXXXXXXXXXX.
- b. **XXXXXXXXXXXXXXXXXXXXX:** Hotel's demand for XXXXXXXXXXXXX.

Nothing herein shall operate to toll, waive, or excuse 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.

6. **Full and Final Release.** Hotel agrees that, in consideration of the payment set forth in Paragraph 2, above, and excluding each Disputed Claim described in paragraph 5, above, Hotel releases and forever discharges the City, its boards and commissions, and all of its officers, agents, members, employees, authorized representatives, assignees and transferees from any and all liability, claims, demands, actions or causes of action of whatever kind or nature arising out of or in any way concerned with the Agreement and/or Project.

7. **Waiver of Civil Code Section 1542.** Hotel certifies that it is aware of, understands, and expressly waives the protections of Section 1542 of the Civil Code of the State of California, which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

Being aware of this code section, Hotel expressly waives and relinquishes all rights and benefits that it may have under Section 1542, as well as under any other statute or common law principle of similar effect with respect to the release contained herein.

8. **No Admission of Liability.** No aspect of this Release is intended to be, nor at any time shall be construed, deemed, or treated in any respect as an admission of any wrongdoing or liability on the part of either Party.

9. **Terms of Agreement; Headings.** The terms of this Release are contractual and not a mere recital. The headings are for convenience only and do not limit or alter the described paragraphs in any manner and cannot be used for determining any of the rights, remedies or obligations of the Parties.

10. **Representation of Understanding and Release.** The Parties each affirms and acknowledges that it has carefully read this Release, fully appreciate, and understand the Release's contents and legal effect and have executed this Release voluntarily and of their own free will and act.

11. **Attorneys' Fees and Costs.** The Parties each shall bear its own court costs, attorneys' fees and other expenses incurred in connection with the Agreement, the Project, and this Release.

12. **Severability.** If any provision of this Release is determined to be invalid, illegal or unenforceable, the remaining parts of this Release shall not be affected or impaired and shall continue to be valid, effective and enforceable to the fullest extent permitted by law.

13. **Authority to Execute and Bind.** The Parties each represents and warrants the persons executing this Release on each Party’s behalf have full and complete legal authority to do so and to bind the Party on behalf of which this Release is executed.

14. **Governing Law.** This Release shall be construed and enforced in accordance with the laws of the State of California, with venue in San Francisco.

15. **Entire Release.** This Release contains the entire agreement of the Parties.

16. **Modification.** This Release may be modified or amended only by written agreement signed by a duly authorized representative of each Party.

17. **Cooperation in Drafting.** Each party has cooperated in the drafting and preparation of this Release. If there is any claimed uncertainty or ambiguity, this Release will be construed as if all parties to this Release jointly prepared it.

IN WITNESS WHEREOF, the Parties hereto have executed this Release on the day last reflected below.

*****CAUTION: THIS IS A RELEASE – READ BEFORE EXECUTING*****

HOTEL
Signature: _____
By: _____
Title: _____
Date: _____

CITY
Signature: _____
By: _____
Title: _____
Date: _____

END OF DOCUMENT

Exhibit B

APPENDIX G

Hotel Dispute Review Board Protocol

HOTEL DISPUTE REVIEW BOARD PROTOCOL

1. Dispute

A Dispute is a disagreement, related to a damages claim by the Hotel under the Booking 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 Booking 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. Failure by either party to utilize the process described herein shall not be deemed a waiver of any underlying claims.

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 not aligned with the City or the Hotel (for example, a local mediation professional with experience in construction) to act as Chair for all DRB activities. 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. Parties’ Communication

All DRB Protocol communications shall be made through a designee of the Hotel and a designee of the City, as established when the process is triggered.

5. DRB Protocol

Both Parties 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 Parties 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 Parties 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 Parties will provide written notice to the DRB of the Dispute resolution failure.

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 Booking Agreement Closeout and Release.

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 and that each DRB member shall not be entitled to any additional compensation for their work as a representative of the Hotel or City. The Parties will share equally the fees and expenses of DRB Chair after approval of the DRB Chair's invoice by both parties, which approval will not be unreasonably withheld.



San Francisco Ethics Commission

25 Van Ness Avenue, Suite 220, San Francisco, CA 94102

Phone: 415.252.3100 . Fax: 415.252.3112

ethics.commission@sfgov.org . www.sfethics.org

Received On:

File #: 220883

Bid/RFP #:

Notification of Contract Approval

SFEC Form 126(f)4

(S.F. Campaign and Governmental Conduct Code § 1.126(f)4)

A Public Document

Each City elective officer who approves a contract that has a total anticipated or actual value of \$100,000 or more must file this form with the Ethics Commission within five business days of approval by: (a) the City elective officer, (b) any board on which the City elective officer serves, or (c) the board of any state agency on which an appointee of the City elective officer serves. For more information, see: <https://sfethics.org/compliance/city-officers/contract-approval-city-officers>

1. FILING INFORMATION

TYPE OF FILING	DATE OF ORIGINAL FILING (for amendment only)
Original	
AMENDMENT DESCRIPTION – Explain reason for amendment	

2. CITY ELECTIVE OFFICE OR BOARD

OFFICE OR BOARD	NAME OF CITY ELECTIVE OFFICER
Board of Supervisors	Members

3. FILER'S CONTACT

NAME OF FILER'S CONTACT	TELEPHONE NUMBER
Angela Calvillo	415-554-5184
FULL DEPARTMENT NAME	EMAIL
office of the clerk of the Board	Board.of.Supervisors@sfgov.org

4. CONTRACTING DEPARTMENT CONTACT

NAME OF DEPARTMENTAL CONTACT	DEPARTMENT CONTACT TELEPHONE NUMBER
Robert walsh	415-557-5644
FULL DEPARTMENT NAME	DEPARTMENT CONTACT EMAIL
HSA Human Services Agency	robert.walsh@sfgov.org

5. CONTRACTOR	
NAME OF CONTRACTOR 1231 Market Street Owner L.P. d/b/a Hotel Whitcomb	TELEPHONE NUMBER 212.308.1000
STREET ADDRESS (including City, State and Zip Code) 375 Park Avenue - Floor 10; New York, NY 10152	EMAIL rfroom@rfr.com

6. CONTRACT		
DATE CONTRACT WAS APPROVED BY THE CITY ELECTIVE OFFICER(S)	ORIGINAL BID/RFP NUMBER	FILE NUMBER (If applicable) 220883
DESCRIPTION OF AMOUNT OF CONTRACT Contract for rooms and services to a cost not to exceed amount of \$88,568,327		
NATURE OF THE CONTRACT (Please describe) Amendment to extend the booking agreement to March 31, 2023 for Rooms and Services.		

7. COMMENTS

8. CONTRACT APPROVAL	
This contract was approved by:	
<input type="checkbox"/>	THE CITY ELECTIVE OFFICER(S) IDENTIFIED ON THIS FORM
<input checked="" type="checkbox"/>	A BOARD ON WHICH THE CITY ELECTIVE OFFICER(S) SERVES Board of Supervisors
<input type="checkbox"/>	THE BOARD OF A STATE AGENCY ON WHICH AN APPOINTEE OF THE CITY ELECTIVE OFFICER(S) IDENTIFIED ON THIS FORM SITS

9. AFFILIATES AND SUBCONTRACTORS

List the names of (A) members of the contractor’s board of directors; (B) the contractor’s principal officers, including chief executive officer, chief financial officer, chief operating officer, or other persons with similar titles; (C) any individual or entity who has an ownership interest of 10 percent or more in the contractor; and (D) any subcontractor listed in the bid or contract.

#	LAST NAME/ENTITY/SUBCONTRACTOR	FIRST NAME	TYPE
1	womble	Paul	Other Principal Officer
2	Lavin	Tom	Other Principal Officer
3	1234 Market St Holdings	Owner	Shareholder
4			
5			
6			
7			
8			
9			
10			
11			
12			
13			
14			
15			
16			
17			
18			
19			

9. AFFILIATES AND SUBCONTRACTORS

List the names of (A) members of the contractor’s board of directors; (B) the contractor’s principal officers, including chief executive officer, chief financial officer, chief operating officer, or other persons with similar titles; (C) any individual or entity who has an ownership interest of 10 percent or more in the contractor; and (D) any subcontractor listed in the bid or contract.

#	LAST NAME/ENTITY/SUBCONTRACTOR	FIRST NAME	TYPE
20			
21			
22			
23			
24			
25			
26			
27			
28			
29			
30			
31			
32			
33			
34			
35			
36			
37			
38			

9. AFFILIATES AND SUBCONTRACTORS

List the names of (A) members of the contractor’s board of directors; (B) the contractor’s principal officers, including chief executive officer, chief financial officer, chief operating officer, or other persons with similar titles; (C) any individual or entity who has an ownership interest of 10 percent or more in the contractor; and (D) any subcontractor listed in the bid or contract.

#	LAST NAME/ENTITY/SUBCONTRACTOR	FIRST NAME	TYPE
39			
40			
41			
42			
43			
44			
45			
46			
47			
48			
49			
50			

Check this box if you need to include additional names. Please submit a separate form with complete information. Select “Supplemental” for filing type.

10. VERIFICATION

I have used all reasonable diligence in preparing this statement. I have reviewed this statement and to the best of my knowledge the information I have provided here is true and complete.

I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

<p>SIGNATURE OF CITY ELECTIVE OFFICER OR BOARD SECRETARY OR CLERK</p> <p>BOS Clerk of the Board</p>	<p>DATE SIGNED</p>
---	---------------------------

From: [Conine-Nakano, Susanna \(MYR\)](#)
To: [BOS Legislation, \(BOS\)](#)
Cc: [Paulino, Tom \(MYR\)](#); [Acevedo, Annyse \(HSA\)](#); [Schneider, Dylan \(HOM\)](#)
Subject: Mayor -- Resolution -- Hotel Whitcomb
Date: Tuesday, July 26, 2022 4:54:40 PM
Attachments: [Mayor -- Resolution -- Hotel Whitcomb.zip](#)

Hello Clerks,

Attached for introduction to the Board of Supervisors is a Resolution approving a sixth amendment to an emergency agreement between the Human Services Agency and 1231 Market Street Owner L.P., for the City's continued use of 459 hotel rooms and associated services; increasing the contract amount by \$9,596,148 for a total amount not to exceed \$88,568,327; and extending the booking period for a potential total term of April 8, 2020, to March 31, 2023.

Please let me know if you have any questions.

Best,
Susanna

Susanna Conine-Nakano
Office of Mayor London N. Breed
City & County of San Francisco
1 Dr. Carlton B. Goodlett Place, Room 200
San Francisco, CA 94102
415-554-6147