

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

THIS FIFTH AMENDMENT (this “Amendment”) is made as of _____, 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, the Third Amendment to Emergency Agreement dated August 28, 2020, and the Fourth Amendment to Emergency Agreement dated May 3, 2021 (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, and amend Appendix B; and

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

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 966 nights, commencing on April 8, 2020, and expiring of its own accord on December 1, 2022 (the last night will be November 30, 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 for Rooms and Services exceed Fifty-Four Million Eight Hundred Thousand, Six Hundred Sixty-Four Dollars (\$54,800,664).”

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 **Seventy-Nine Million Two Hundred Fifty-Seven Thousand, Four Hundred Forty Dollars (\$78,972,179).**”

4. **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 - \$78,972,179**

b. **Not-to-Exceed Compensation for Room Nights - \$43,941,447** ($\$99 * 459 * 966$)

c. **Not-to-Exceed Reimbursable Amount (15% of amount in b.) - \$6,591,217**

d. **Not-to-Exceed Reimbursable Amount for Linens: \$2,384,380** ($\$2,459$ per night)

e. **Not-to-Exceed Reimbursable Amount for Food Service (App. D) - \$26,055,135**

8. **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.

9. **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:

Trent Rhorer
Executive Director
Human Services Agency

Approved as to Form:

Dennis J. Herrera
City Attorney

By: _____
David K. Ries
Deputy City Attorney

HOTEL

1231 MARKET STREET OWNER L.P.

Richard Froom
Authorized Signatory

City Supplier number: 0000039802