

File No. 211236

Committee Item No. 8

Board Item No. 5

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Budget and Finance Committee Date February 9, 2022

Board of Supervisors Meeting Date March 1, 2022

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- Amendment No. 3 - 8/28/2020
- Amendment No. 4 - 5/3/2021
- HSA Presentation - 2/9/2022
- _____
- _____
- _____

Completed by: Brent Jalipa Date February 4, 2022

Completed by: Brent Jalipa Date February 11, 2022

1 [Contract Amendment - 1231 Market Street Owner L.P. - Emergency Agreement - 1231
Market Street - Not to Exceed \$78,972,179]

2

3 **Resolution approving a fifth amendment to an emergency agreement between the**
4 **Human Services Agency (HSA) and 1231 Market Street Owner L.P., for the City’s**
5 **continued use of 459 hotel rooms and associated services located at the Hotel**
6 **Whitcomb on 1231 Market Street; increasing the contract amount by \$24,456,776 for a**
7 **total amount not to exceed \$78,972,179; extending the booking period, which expires**
8 **on March 1, 2022, for a potential total term of April 8, 2020, through December 1, 2022;**
9 **and to authorize the Executive Director of HSA to enter into amendments or**
10 **modifications to the contract that do not materially increase the obligations or**
11 **liabilities to the City and are necessary to effectuate the purposes of the contract or**
12 **this Resolution.**

13

14 WHEREAS, In response to the COVID-19 pandemic, Mayor London Breed declared a
15 “Local Emergency” on Tuesday, February 25, 2020, as supplemented from time to time,
16 including the Thirty-Fifth Supplemental Declaration dated February 19, 2021, authorizing the
17 extension of COVID-19-related contracts; and

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

24

25

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

4 WHEREAS, The City entered into an Emergency Agreement dated April 4, 2020, with
5 1231 Market Street Owner L.P. (“Hotel”) for the City’s use of 459 hotel rooms plus associated
6 services, including food service located at 1231 Market Street, as amended by a First
7 Amendment to Emergency Agreement dated May 15, 2020, to include requirements for City’s
8 reimbursement through the Federal Emergency Management Agency, a Second Amendment
9 to Emergency Agreement dated July 27, 2020, to increase the maximum contract amount to
10 pay for food services, and a “Third Amendment” to Emergency Agreement dated August 28,
11 2020, and a “Fourth Amendment” to Emergency Agreement dated May 3, 2021 (collectively,
12 the “Booking Contract”); and

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

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

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

23 WHEREAS, HSA and HSH wish to continue to use the hotel rooms, as well as continue
24 to procure food services from Hotel in connection with the use of the hotel rooms; and
25

1 WHEREAS, HSA, in consultation with the Office of the City Attorney, negotiated a
2 proposed Fifth Amendment to Emergency Agreement (the “Fifth Amendment”) with the Hotel
3 to increase the contract amount to a not to exceed contract amount of \$78,972,179, and to
4 extend the Booking Period, which expires on March 1, 2022, for a total potential Booking
5 Period of April 8, 2020, through December 1, 2022 (966 nights), subject to City’s early
6 termination rights as described in the Booking Contract; and

7 WHEREAS, A copy of the Fifth Amendment is on file with the Clerk of the Board in File
8 No. 211236; and

9 WHEREAS, Charter, Section 9.118, requires Board of Supervisors approval of the Fifth
10 Amendment; now, be it

11 RESOLVED, That the Board of Supervisors hereby authorizes a Fifth Amendment to
12 increase the contract amount to a total not to exceed amount of \$78,972,179, and to extend
13 the potential Booking Period until December 1, 2022, subject to City’s early termination rights
14 as described in the Booking Contract, and to perform all of City’s obligations under the
15 Booking Contract as amended; and, be it

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

18 FURTHER RESOLVED, That the Board of Supervisors authorizes the Executive
19 Director of HSA to enter into any amendments or modifications to the Booking Contract that
20 HSA determines, in consultation with the City Attorney, do not otherwise materially increase
21 the obligations or liabilities of the City, are necessary or advisable to effectuate the purposes
22 of the Booking Contract or this Resolution, and are in compliance with all applicable laws,
23 including the City's Charter; and, be it

1 FURTHER RESOLVED, That within thirty (30) days of the Fifth Amendment being fully
2 executed by all parties, HSA shall provide the final Fifth Amendment to the Clerk of the Board
3 for inclusion into the official file.
4
5
6
7

Fiscal Year 2021/2022 increase: \$11,936,427

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

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14 _____ /s/
Ben Rosenfield
Controller

Funding for Fiscal Year 2022/2023 is
subject to the enactment of the Annual
Appropriation Ordinance for Fiscal Year
2022/2023.

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16
17
18 RECOMMENDED:

19
20 _____ /s/
Human Services Agency
Executive Director

21
22
23 _____ /s/
24 Department of Homelessness and Supportive Housing
25 Director

| | |
|---|---|
| <p>Item 8 File 21-1236</p> | <p>Department: Human Services Agency (HSA)</p> |
| <p>EXECUTIVE SUMMARY</p> | |
| <p style="text-align: center;">Legislative Objectives</p> <ul style="list-style-type: none"> • The proposed resolution would approve the fifth 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 \$24,456,776, from \$54,800,664 to not to exceed \$79,257,440 and would extend term from March 1, 2022 to December 1, 2022. <p style="text-align: center;">Key Points</p> <ul style="list-style-type: none"> • 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 four times. The Board of Supervisors approved the fourth amendment in June 2021, extending the agreement term to March 1, 2022 and increasing the not-to-exceed amount to \$54,800,664. <p style="text-align: center;">Fiscal Impact</p> <ul style="list-style-type: none"> • Under the agreement, the average daily rate for room, meals, and linens is \$178.57. • Projected expenditures under the agreement between April 2020 and March 2022 are projected to equal \$52.5 million, or \$2.3 million less than the \$54.8 million current agreement amount. HSA expects to use the unspent contingency amount of \$2.3 million from the current term agreement to address 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. • An estimated 93 percent of agreement costs are reimbursable by FEMA through March 2022 according to HSA staff. Costs not reimbursed by FEMA will be paid from the State’s Project Roomkey Allocation (expiring in June 2022) and the Federal Emergency Solutions Grant. • The budgeted amount for food in the proposed Fifth Amendment contains a calculation error due to a change in food costs. The total food cost should be \$26,055,135, not \$26,340,396. <p style="text-align: center;">Recommendations</p> <ul style="list-style-type: none"> • Amend the proposed resolution to reduce the not to exceed amount from \$79,257,440 to \$78,972,179 to account for an error in the proposed budget for food costs. • Approve the resolution as amended. | |

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 COVID-vulnerable individuals, most of whom were experiencing homelessness. These shelters included hotel rooms, congregate units, and recreational vehicles. As discussed below, as of July 1, 2022, the operation of ongoing Alternative Shelter Programs moved back to home departments. The City is in the process of winding down the Shelter in Place Hotel program by September 30, 2022 as the City moves from response to recovery.

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, the San Francisco Human Services Agency (HSA) controls the entire hotel; no rooms are rented to the general public at this time.

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 8, 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 2, below.)

Exhibit 1. Historical Terms of Hotel Whitcomb Agreement

| | Original Agreement Total | Amendment 2 | Amendment 3 | Amendment 4 | Proposed Amendment 5 | Unit Cost |
|-----------------------------|---------------------------------|--------------------|---------------------|---------------------|----------------------------------|------------------|
| Number of Rooms | 459 rooms | 459 rooms | 459 rooms | 459 rooms | 459 rooms | |
| Daily Room Rate | \$99 | \$99 | \$99 | \$99 | \$99 | |
| Expiration Date | Aug 7, 2020 | Aug 7, 2020 | July 1, 2021 | Mar 1, 2022 | Dec 1, 2022 | |
| Term length | 122 nights | 122 nights | 449 nights | 691 nights | 966 nights | |
| Room Costs | 5,543,802 | 5,543,802 | 20,403,009 | 31,399,731 | 43,941,447 | \$99.00 |
| Food Costs | 3,000,000 | 3,314,628 | 11,040,984 | 16,991,804 | 26,340,396 ^a | \$59.34 |
| Linen Costs | 300,000 | 300,000 | 1,104,098 | 1,699,169 | 2,384,380 | \$5.37 |
| Contingency (15%) | 831,570 | 831,570 | 3,060,451 | 4,709,960 | 6,591,217 | \$14.85 |
| Not to Exceed Amount | \$9,675,372 | \$9,990,000 | \$35,608,542 | \$54,800,664 | \$79,257,440 ^a | \$178.57 |

Source: Amendments 1-5 of the Emergency Agreement with 1231 Market Street Owner, LP

^a The budgeted amount for food in the proposed Fifth Amendment contains a calculation error. The amount should be \$26,055,135. As discussed below we recommend reducing the not-to-exceed amount to \$78,972,179 to account for this error.

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 days 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 244 days through March 1, 2022, and increased the not to exceed amount from \$35,608,542 to \$54,800,664

Shelter in Place Hotel Program- Status as of February 2022

At its highest capacity, San Francisco’s Shelter in Place Hotel Program, provided 2,288 rooms across 25 sites. According to Department of Homelessness and Supportive Housing (HSH) staff, the program has served over 3,700 guests, including adults, families, and Transitional Aged Youth (ages 18-24). The Program provides non-congregate temporary shelter for people experiencing homelessness who are most vulnerable to COVID-19. The City has begun the process of rehousing guests temporarily sheltered in Shelter in Place hotels and closing the hotels. HSH took over operations of the Shelter in Place Hotel Program in July 2021 after the City’s COVID-19 Command Center was closed.

HSH is responsible for matching individuals with long-term placements and will continue through September 2022 when HSH expects the last hotels to close. As of February 1, 2022, HSH has

rehoused 1,057 Shelter in Place hotel guests out of 2,596 total exited hotel guests¹ and closed nine out of 25 hotels. The remaining 14 hotels are still open. As of February 2, 2022, there were 1,163 active Shelter in Place Hotel guests, occupying 1,079 units (including units that may be occupied by more than one guest). The hotels stopped accepting new guests in June 2021. The hotel closing schedule is shown in Exhibit 2 below.

Exhibit 2. Shelter in Place (SIP) Hotel Closure Schedule, As of January 27, 2022

| Site Status | Number of Sites |
|--------------------------|------------------------|
| Closed SIP Sites | 9 |
| Active SIP Sites | 14 |
| Sites Closing in 2022 Q1 | 4 |
| Sites Closing in 2022 Q2 | 5 |
| Sites Closing in 2022 Q3 | 5 |

Source: HSH

According to HSH staff, HSH notifies service providers at least three months in advance of starting the closure of that site so that HSH and the provider can ensure 90-day notification to guests prior to site closure and to allow HSH to assist guests with rehousing. Given the planned hotel closure schedule through September 2022, there may be additional Shelter in Place Hotel contracts that will require Board of Supervisors approval to extend.

DETAILS OF PROPOSED LEGISLATION

The proposed resolution would approve the fifth 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 not to exceed amount by \$24,456,776, from \$54,800,664 to \$79,257,440; and would extend the booking period by an additional 275 nights, for a total term of 966 nights from April 8, 2020 to December 1, 2022. According to the Department, the agreement term is being extended through December 2022 even though the Alternative Shelter program is currently scheduled to end in September 2022 in case of a surge of COVID-19 cases.

FISCAL IMPACT

Hotel Whitcomb is on track to spend the majority of its budget for the current agreement term ending on March 1, 2022 with some contingency remaining as of January 2022. The Hotel invoices the City every month. Hotel Whitcomb budgeted and actual expenditures for the current agreement term are shown in Exhibit 3 below.

¹ According to HSH staff, many of the guests who left the program did so voluntarily. Others moved to another institutional setting (e.g. hospital or other residential non-psychiatric medical facility) or transferred to other shelter programs (e.g. Navigation Centers or Transitional Housing) based on their needs. An unspecified number were discharged from the program due to unsafe behavior.

Exhibit 3. Hotel Whitcomb Budget & Actual Spending

| | Total Budgeted | Actual Expenses Projected | Remaining Budget Projected |
|--------------------------------|-----------------------|----------------------------------|-----------------------------------|
| Room | \$31,399,731 | \$31,399,731 | \$0 |
| Food | 16,991,804 | 16,991,804 | 0 |
| Linen | 1,699,169 | 1,699,169 | 0 |
| Contingency (15%) ^a | 4,709,960 | 2,396,347 | 2,313,613 |
| Total | \$54,800,664 | \$52,487,052 | \$2,313,612 |

Source: HAS

^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 contract not to exceed amount includes a contingency for reimbursable expenses above the monthly room rate. As shown above, the Department is projecting to spend \$52,487,051 through March 2022, leaving \$2,313,612 of the contingency amount unspent. According to HSA staff, the contingency amount is for use at the City's discretion 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 is not expecting to exceed the contingency amount to restore the hotel.

Fifth Amendment Budget

The budgeted amount for food in the proposed Fifth Amendment contains a calculation error. The amount should be \$26,055,135, not \$26,340,396 as shown in Exhibit 1.² Therefore we recommend that the Board of Supervisors amend the proposed resolution to reduce the not-to-exceed amount from \$79,257,440 to \$78,972,179 to account for the food calculation error (\$285,261).

Funding Sources

The Fifth Amendment to the Agreement would be initially funded by the General Fund. HSA staff anticipate that around 93 percent of the \$79.3 million not to exceed threshold established in the Fifth Amendment will be reimbursed by FEMA. The remaining costs that are not eligible for FEMA reimbursement—due to client ineligibility or costs incurred after the April 2022 expiration of FEMA funding—will be funded by other state and federal sources, including the State's Project Roomkey Allocation (expiring in June 2022) and the Federal Emergency Solutions Grant.

RECOMMENDATIONS

1. Amend the proposed resolution to reduce the not to exceed amount from \$79,257,440 to \$78,972,179.
2. Approve the proposed resolution as amended.

² Based on a rate of \$65 per room per night from April 8, 2020 through the night of March 31, 2021 and a rate of \$55 per room per night from April 1, 2021 onwards, as stipulated in the Fourth Amendment to the Agreement.

**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 **November 5, 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 (\$79,257,440).”

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 - \$79,257,440

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) - \$26,340,396

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.

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

CITY

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation

Recommended by:

Trent Rhorer
Executive Director
Human Services Agency

Approved as to Form:

Dennis J. Herrera
City Attorney

By: _____
David K. Ries
Deputy City Attorney

Approved:

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

By: _____

HOTEL

1231 MARKET STREET OWNER L.P.

Richard Froom
Authorized Signatory

City Supplier number: 0000039802

**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**

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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

HOTEL

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation

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

DocuSigned by:
Trent Rhorer
By: _____
0753A8870BB74EE...
Trent Rhorer
Executive Director
Human Services Agency

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

Recommended by:

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

DocuSigned by:
Andrico Penick

3441150C0287459...
Andrico Q. Penick
Director of Property

Supplier ID: _____

Approved as to Form:

Dennis J. Herrera
City Attorney

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

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> |

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|---|--|
| | <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.</p> <p>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.</p> <p>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.</p> <p>Garbage Removal</p> | <p><input checked="" type="checkbox"/> Hotel to provide as-needed regular trash removal from the Property</p> |
| <p>o.</p> <p>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.</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> |

| | |
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| | <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/> |

| | |
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| <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

| | | |
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| <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> |

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|----------------------------------|-------------------------------------|---|
| 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> |

| | | |
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| | | be cleaned and sanitized to the highest government recommended standards by a third party industrial cleaning company reasonably acceptable to Hotel. |
| n. | <input type="checkbox"/> | Linen Cleaning |
| | | 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. |
| o. | <input checked="" type="checkbox"/> | Hotel Improvements |
| | | Hotel shall permit City to make improvements as needed to the Property. Any improvements made by City to the Property (which may only be made with the prior written consent of the Hotel) shall inure to and remain the property of Hotel. |
| p. | <input checked="" type="checkbox"/> | Permitted Activities; Medical Supplies and Waste |
| | | 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 |

| | |
|--|---|
| | 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*

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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*
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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.

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

CITY

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation


Recommended by:

DocuSigned by:

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


Approved as to Form:

Dennis J. Herrera
City Attorney

By: DocuSigned by:

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David K. Ries
Deputy City Attorney

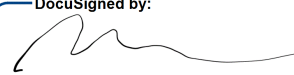
Approved:

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

By: DocuSigned by:

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HOTEL

1231 MARKET STREET OWNER L.P.

DocuSigned by:

3D7E8580807B434...
Richard From
Authorized Signatory

City Supplier number: 0000039802



SAN FRANCISCO
HUMAN SERVICES AGENCY

Shelter in Place (SIP) Hotel Extension

Hotel Whitcomb



Shelter in Place (SIP) Hotel Overview

- **Shelter in Place (SIP) Hotel Program** opened in April 2020 as part of the City's response to the pandemic and provides **temporary non-congregate shelter** to people experiencing homelessness most vulnerable to the virus.
- As the City moves to response to recovery, HSH is housing guests and winding down the SIP hotel program through **September 30, 2022**.
- As of February 2, 2022:
 - **1,057** SIP guests have been housed
 - **1,163** active guests in SIP
 - **14** active SIP sites



Hotel Whitcomb

Property Details

- Current use: Shelter in Place (SIP)
- **459 Rooms**
 - Private bathrooms
 - On Site Services
- Meal and Linen services provided by Hotel
- Located at 1231 Market Street



Hotel Whitcomb

Financial Details

➤ **Resolution:** Approve a fifth amendment to the emergency agreement between HSA and 1231 Market Street L.P. for the continued use of 459 hotel rooms and associated services.

➤ **Term:**

➤ **Current Term:** April 8, 2020 – March 1, 2022

➤ **Amended Term:** April 8, 2020 – **December 1, 2022**

➤ **Amount not to exceed:** Increase contract amount by **\$24,456,776** for a total not to exceed amount of **\$79,257,440.**





SAN FRANCISCO
HUMAN SERVICES AGENCY

Questions?

www.sfhsa.org





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 #: 211236

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 Service 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) 211236 |
| DESCRIPTION OF AMOUNT OF CONTRACT \$79,257,440 | | |
| NATURE OF THE CONTRACT (Please describe) Fifth Amendment to extend the booking period to December 1, 2022 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 | Davison | Benjamin | Other Principal Officer |
| 3 | 1231 Market St. Holdings | Owner | Shareholder |
| 4 | | | |
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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 | | | |
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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 |
|--------------------------|---|------------|------|
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| 41 | | | |
| 42 | | | |
| 43 | | | |
| 44 | | | |
| 45 | | | |
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| 48 | | | |
| 49 | | | |
| 50 | | | |
| <input type="checkbox"/> | 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 \(MYR\)](#); [Walsh, Robert \(HSA\)](#)
Subject: Mayor -- Resolution -- Hotel Whitcomb
Date: Tuesday, November 30, 2021 4:11:42 PM
Attachments: [06. 8.28.20 - Whitcomb Third Amendment - Executed.pdf](#)
[07. Hotel Whitcomb - Fifth Amendment - For Approval.pdf](#)
[08. SFEC Form 126f4BOS Whitcomb Fifth Amendment.pdf](#)
[09. Whitcomb Agreement Execution Version.pdf](#)
[01. Hotel Whitcomb Resolution - For Approval.docx](#)
[02. Hotel Whitcomb Resolution with Signatures.pdf](#)
[03. 5.3.21 Hotel Whitcomb - Fourth Amendment - executed.pdf](#)
[04. 5.15.20 - Whitcomb First Amendment Executed.pdf](#)
[05. 7.27.20 - Whitcomb Second Amendment - Executed.pdf](#)

Hello Clerks,

Attached for introduction to the Board of Supervisors is a Resolution approving a fifth amendment to an emergency agreement between the Office of Contract Administration 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 \$24,456,776 for a total amount not to exceed \$79,257,440; and extending the booking period for a potential total term of April 8, 2020, to December 1, 2022.

Please let me know if you have any questions.

Sincerely,
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