

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

Emergency Agreement between the City and County of San Francisco

and

**SF Americania LLC
a Delaware limited liability company**

**Americania Hotel
121 – 7th Street
San Francisco, CA**

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Agreement

This Agreement is made this 24th day of March, 2020, in the City and County of San Francisco, State of California, by and between SF Americana LLC, a Delaware limited liability company ("**Hotel**"), as the owner of the Americana Hotel, located at 121 – 7th Street, San Francisco, CA ("**Property**"), and City, acting by and through its Human Services Agency (as defined below).

Recitals

WHEREAS, this Agreement is an emergency contract awarded pursuant to procedures applicable under the Local Emergency declared by Mayor London Breed on Tuesday, February 25, 2020; and

WHEREAS, the 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 to further the public health and safety in connection with its response to the Local Emergency by sheltering (a) people who have been exposed to the Covid-19 virus or are under medical quarantine; or (b) health care workers and first responders (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, 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.

The term of this Agreement shall commence on March 24, 2020 and expire of its own accord on July 23, 2020 (the "**Booking Period**"), unless earlier terminated as otherwise provided herein. 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 March 23, 2021 and (ii) after July 23, 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.

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. Hotel's assumption of risk of possible non-appropriation is part of the consideration for this Agreement.

THIS SECTION CONTROLS AGAINST ANY AND ALL OTHER PROVISIONS OF THIS AGREEMENT.

3.2 Intentionally Omitted.

3.3 Compensation.

3.3.1 **Payment.** The flat monthly rate for the Rooms and Services is \$429,240. Hotel shall provide an invoice to the City on a monthly basis for the monthly room rate due under this Agreement for the Rooms and Services for the current month ("**Compensation**") and any additional charges and reimbursement payable by City under this Agreement for the immediate preceding month, unless a different schedule is set out in Appendix B, "Calculation of Charges." Hotel understands and agrees the not to exceed maximum amount of this Agreement is as follows:

- 1. Total Not-to-Exceed Fixed Booking Amount- \$6,696,144**
 - a. Subset without Reimbursable Amount - \$5,150,880**
 - b. 30% not to exceed Reimbursable Amount - \$1,546,564**

3.3.2 If the Booking Period begins or ends on a day other than the first or last day of a month, the Compensation shall be prorated on a daily basis for the partial month. Compensation shall be paid for the Rooms and Services identified in the invoice provided to the City by Hotel. 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. 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 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, then the City shall reimburse all such actual and reasonable additional costs and expenses. City shall have the right to use up to 50% of the parking spaces at the Property at no charge. To the extent the City requires the use of any additional parking spaces at the Property, the City shall pay a flat fee of \$20 per vehicle per day.

3.3.3 **Deposit.** Upon execution of this Agreement, the City shall deposit with the Hotel the amount of \$429,240 by wire transfer or ACH to an account designated by the Hotel, which amount is equal to one month of Compensation, or alternatively, along with its first payment of Compensation, City may elect to request Hotel to invoice for prepayment of last month's Compensation. The Hotel will hold the Deposit as security for any damage that may be caused to the Property by the City or any of its Guests. The Hotel may use any and all of the Deposit that is necessary to pay for the repair of such

damage. To the extent there is no damage to the Property (other than normal wear and tear) the Hotel shall apply the Deposit to any other amounts owed to it by the City, including arising from any breach by the City. To the extent there are no additional amounts owed by the City, Hotel shall return the Deposit to the City within thirty (30) days following the end of the Booking Period or earlier termination of this Agreement, which obligation survives the expiration or earlier termination of this Agreement. The Hotel hereby reserves all other rights and remedies available to it at law or in equity for damage to the Property caused by the City or any of its Guests. The Deposit will be held by the Hotel and may be commingled with other funds; any interest earned on the Deposit, if any, shall be the property of the Hotel.

3.3.4 **Intentionally omitted.**

3.3.5 **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 the 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.

3.3.6 **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.

3.3.7 **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 hotel rooms and other 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, shall remain secured and unoccupied during the Booking Period and the City shall have no right to use or enter at any time without the prior written consent of the Hotel in its sole discretion. City shall be responsible for and shall provide perform all obligations and services set forth in Section 3 of 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.

4.1 Qualified Personnel. (Reserved)

4.2 Subcontracting. (Reserved)

4.3 Independent Contractor; Payment of Employment Taxes and Other Expenses.

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. (Reserved)**

4.6 **Liquidated Damages. (Reserved)**

4.7 **Bonding Requirements. (Reserved)**

4.8 **Collective Bargaining Agreements.** A condition to this Agreement becoming effective is the execution by the Hotel of a modification of the Collective Bargaining Agreement applicable to the Hotel permitting the rental of rooms and provision of services as provided in this Agreement, and the execution by the Hotel and the applicable bargaining unit of an agreement that their members will not be involved in servicing guest rooms or performing any other Hotel services except as expressly set forth in Appendix "A".

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 Commercial General Liability and Commercial Automobile Liability Insurance policies must be endorsed to provide:

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 with companies that are authorized to do business in the State of California, evidencing all coverages set forth above.

5.1.8 **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. 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 Indemnitees. 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.

5.1.9 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.

5.2 **Indemnification.**

5.2.1 City shall completely and unconditionally indemnify, defend and hold Hotel, its manager, Oxford Hotels and Resorts, LLC, any lender to Hotel, and their respective officers, managers, members, directors, employees, contractors, agents and representatives and their successors and assigns (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, excluding Claims arising from the gross negligence or willful misconduct of the Hotel Parties or a breach of the Hotel's obligations under this Agreement.

5.2.2 Notwithstanding anything set forth in this Agreement to the contrary, with respect to direct claims of Hotel, City shall not be required to pay Hotel's attorneys' fees or costs and City's obligation to indemnify shall be resolved on a comparative negligence basis.

5.2.3 Hotel shall defend, indemnify, and hold City 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, arising from Hotel's breach of Hotel's obligations under this Agreement.

Article 6 Liability of the Parties

6.1 Liability for Use of Equipment. (Reserved)

6.2 Liability of Hotel and 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 HOTEL OR 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.

Article 7 Payment of Taxes

City shall reimburse Hotel for all hotel, temporary occupancy taxes, sales and use taxes within 30 days after receipt of an invoice from Hotel. 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, the City will be liable for 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.

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
6.2	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: SF Americania LLC
350 West Hubbard St.
Suite 440
Chicago, Illinois 60654
Attn: John W. Rutledge and Sarang Peruri
e-mail: jwr@oxford-capital.com
and speruri@oxford-capital.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. (Reserved)

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 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.

Notwithstanding anything herein to the contrary, Hotel makes no representations or warranties regarding the condition of the Property. 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.

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

Hotel acknowledges that some or all of the items, products, or services that Hotel furnishes to City under this Agreement may be included, directly or indirectly, in whole or in part, in claims submitted by City to Federal or State health care programs. By executing this Agreement Hotel certifies that it is not currently, and shall not during the term of this Agreement become, excluded, directed to be excluded, suspended, ineligible or otherwise sanctioned from participation in any Federal or State assistance programs. Hotel shall notify City, as provided in Section 11.1, within thirty (30) days of any such exclusion, suspension, ineligibility, or other sanction. This is a material term of this Agreement.

Article 13 Data and Security

13.1 Nondisclosure of Private, Proprietary or Confidential Information.

13.1.1 Protection of Private Information. If this Agreement requires City to disclose "Private Information" to Hotel within the meaning of San Francisco Administrative Code Chapter 12M, Hotel and subcontractor 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.

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.

13.4 Protected Health Information.

Hotel, all subcontractors, all agents and employees of Hotel and any subcontractor shall comply with all federal and state laws regarding the transmission, storage and protection of all private health information disclosed to Hotel by City in the performance of this Agreement.

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. San Francisco Administrative Code 12.F.5. requires that all City contracts ‘shall contain a statement urging companies doing business in Northern Ireland to move toward resolving employment inequities, and encouraging them to 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

SF AMERICANIA LLC,
a Delaware limited liability company

DocuSigned by:
Trent Rhorer 3/25/2020
By: _____
-9753A8870BB74EE...
Trent Rhorer
Executive Director
Human Services Agency



Name: John W. Rutledge
Title: Authorized Signatory

Recommended by:

DocuSigned by:
Andrico Penick 3/25/2020
By: _____
-3441150C0287459...
Andrico Q. Penick
Director of Property

Approved as to Form:

Dennis J. Herrera
City Attorney

DocuSigned by:
David Ries 3/25/2020
By: _____
-EFF1B6C5BE4244A...
David K. Ries
Deputy City Attorney

Appendices

- A: Rooms and Scope of Services
- B: Calculation of Charges
- C: Invoice

Appendix A Rooms and Scope of Services

1. Hotel shall provide 142 Rooms as more particularly described in the Price Quote Response Form attached to this Appendix A.
2. Hotel shall provide the following Services:
 - a. Utilities, HVAC, cable television, internet access and internal room telephone service; provided, however that Hotel shall have no responsibility for interruptions in any such service except to the extent caused by the Hotel (e.g., failure to pay a utility bill)
 - b. On-site three times weekly exterior and common area and public restroom cleaning and servicing
 - c. Off-site, on-call maintenance for routing public area repairs and functionality
 - d. Guestroom keys to be created in group batches and handed to the on-site Human Services Agency (“HSA”) representative for distribution and check-out purposes
 - e. Access and use of on-site laundry room by City staff or contractors
 - f. Access to housekeeping supplies: i.e., carts, vacuums, general cleaning supplies
 - g. In no event shall the Services exceed the limits of any applicable collective bargaining agreement with respect to Hotel employees described herein
 - h. No Guest access to Hotel amenities will be provided, including to any laundry facilities, business center, food and beverage venue, pool, spa, fitness center, public telephone, public restrooms or convenience store/grab-and-go facility.
 - i. For use only by City’s onsite staff, City shall have access to: Board Room or similar room for onsite administrative purposes, Valet Room or similar room for storage of necessary supplies, and public restrooms.
 - j. Hotel shall provide to the City operational hand-off of the Rooms with instructions as needed as of the commencement of the Booking Period, and the Property shall be completely vacated with no staff, including contractors. Hotel’s staff and contractors shall enter the Property only in connection with performance of the Services in accordance with this Agreement.

For the avoidance of doubt, the Hotel’s employees or contractors will not access individual guest rooms of any quarantined or isolated Guest for any reason during the Booking Period. All in-room services shall be provided by City’s trained employees or by City contractors.

3. The following services and obligations shall be obligations of the City and shall not be included in the Services:
 - a. On-site safety training for provided Hotel staff and any third party outside vendor for the Hotel, and any City employees or City contractors
 - b. Full personal protective gear for any of the foregoing
 - c. All food and beverages required for the Group, any City staff, and any other Invitees
 - d. An on-site HSA representative at all time

- e. All on-site security, including any security necessary to enforce any restrictions imposed upon Invitees by City
- f. City will maintain a list of persons who will be Guests, and will update the list daily for any changes that occur, including all new arrivals and all departures. City personnel will be responsible for assigning rooms to Guests and will be responsible for determining any segregation of Guests on particular floors.
- g. City shall develop a clear fire 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 Invitees
- h. City shall be solely responsible for collecting, cleaning and returning all linens, towels and similar products used in the Rooms. Such linens shall be professionally cleaned at off-site facilities or by City at Hotel's on-site facility.
- i. 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. City's HSA specialists will solely make all determinations regarding those persons who are eligible to be members of the Group, including without limitation those persons who do not need hospital or acute health care services or procedures. 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. There will be no general visitation by outsiders permitted. HSA specialists will be responsible for screening and limiting visitors to any of the Group occupying Rooms. 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.
- j. City, at its sole cost and expense, shall restore any portion of the Property to the same condition as existed prior to the use by City and its Invitees and shall be responsible for immediately repairing and/or restoring any damage to the Property and to any Hotel personal property, ordinary wear and tear excepted. Prior to the end of the Booking Period City shall, at its sole cost and expense, cause all guest rooms and all other areas of the Property used by any of the Invitees, and any and all linens and laundry facilities to be cleaned and sanitized to the highest government recommended standards by a third party industrial cleaning company reasonably acceptable to Hotel. Any improvements or betterments 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. City specifically agrees to surrender and cease its use of the Property, and to return the same to Hotel in the condition required above at the end of the Booking Period. If City or any of its Guests fails to leave any of the guest rooms or fails to surrender any other area of the Property, Hotel may charge City a fee for each day that City or such Invitee fails to surrender the guest room or other area in an amount that is equal to its standard room rack rates, which amount shall be due and payable by City within thirty (30) days after written demand by Hotel to City for such payment, and City shall pay all costs and expense incurred

in evicting any Invitee who fails to leave any of the guest rooms at the end of the Booking Period. City agrees that, in addition to the remedies expressly provided for herein, Hotel shall have all remedies available at law or in equity for City's failure to comply with this provision.

**Appendix B
Calculation of Charges**

- 1. Total Not-to-Exceed Fixed Booking Amount- \$6,696,144**
 - c. Subset without Reimbursable Amount - \$5,150,880**
 - d. 30% not to exceed Reimbursable Amount - \$1,546,564**

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 (if applicable), 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 Section 2 of Appendix A, times the unit rate as shown in in Section 2 of Appendix B shall be reported on the invoice(s) each month. 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. 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 MUTUALLY ADDED BY THE PARTIES, IF APPLICABLE]