

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

**Emergency Agreement between the City and County of San Francisco**

**and**

**587 Eddy Street, LLC**

**HTL 587  
587 Eddy Street  
San Francisco, CA 94109**

## Table of Contents

<b>Article 1</b>	<b>Definitions.....</b>	<b>1</b>
<b>Article 2</b>	<b>Term of the Agreement .....</b>	<b>2</b>
2.1	Term .....	2
<b>Article 3</b>	<b>Financial Matters .....</b>	<b>2</b>
3.1	Certification of Funds; Budget and Fiscal Provisions. ....	2
3.2	Guaranteed Maximum Costs. ....	2
3.3	Compensation. ....	2
3.4	Getting paid by the City for goods and/or services. ....	3
3.5	Federal and/or State Funded Contracts. (Reserved).....	3
3.6	Contract Amendments .....	3
3.7	Audit and Inspection of Records.....	4
3.8	Submitting False Claims.....	4
<b>Article 4</b>	<b>Services Hotel and City Agrees to Perform. ....</b>	<b>4</b>
4.1	Qualified Personnel. (Reserved) .....	4
4.2	Subcontracting. (Reserved).....	4
4.3	Independent Contractor; Payment of Employment Taxes and Other Expenses. ....	4
4.4	Assignment. ....	4
4.5	Warranty.....	5
4.6	Liquidated Damages. (Reserved).....	5
4.7	Bonding Requirements. (Reserved) .....	5
<b>Article 5</b>	<b>Insurance and Indemnity .....</b>	<b>5</b>
5.1	Insurance. ....	5
5.2	Indemnification.....	6
<b>Article 6</b>	<b>Liability of the Parties.....</b>	<b>7</b>
6.1	Liability of City.....	7
6.2	Liability for Use of Equipment. (Reserved) .....	7
6.3	Liability of Hotel.....	7
<b>Article 7</b>	<b>Payment of Taxes .....</b>	<b>7</b>
7.1	Withholding. (Reserved) .....	9
<b>Article 8</b>	<b>Termination and Default.....</b>	<b>9</b>
8.1	Expiration of Local Emergency / Termination for Convenience .....	9
8.2	Termination for Default; Remedies.....	9

8.3 Non-Waiver of Rights ..... 9

8.4 Rights and Duties upon Termination or Expiration ..... 9

**Article 9 Rights In Deliverables (Reserved)..... 10**

**Article 10 Additional Requirements Incorporated by Reference ..... 10**

10.1 Laws Incorporated by Reference..... 10

10.2 Conflict of Interest. .... 10

10.3 Prohibition on Use of Public Funds for Political Activity. (Reserved) ..... 10

10.4 Consideration of Salary History. (Reserved) ..... 10

10.5 Nondiscrimination Requirements..... 10

10.6 LBE and Non-Discrimination in Contracting Ordinance. (Reserved)..... 10

10.7 Minimum Compensation Ordinance. (Reserved)..... 10

10.8 Health Care Accountability Ordinance..... 10

10.9 First Source Hiring Program. (Reserved) ..... 10

10.10 Alcohol and Drug-Free Workplace. .... 11

10.11 Limitations on Contributions. (Reserved) ..... 11

10.12 Slavery Era Disclosure. (Reserved)..... 11

10.13 Working with Minors. (Reserved)..... 11

10.14 Consideration of Criminal History in Hiring. (Reserved) ..... 11

10.15 Public Access to Nonprofit Records and Meetings. (Reserved) ..... 11

10.16 Food Service Waste Reduction Requirements. (Reserved) ..... 11

10.17 Distribution of Beverages and Water. (Reserved)..... 11

10.18 Tropical Hardwood and Virgin Redwood Ban. (Reserved)..... 11

10.19 Preservative Treated Wood Products. (Reserved)..... 11

**Article 11 General Provisions ..... 11**

11.1 Notices to the Parties. .... 11

11.2 Compliance with Americans with Disabilities Act. .... 12

11.3 Incorporation of Recitals. .... 12

11.4 Sunshine Ordinance..... 12

11.5 Modification of this Agreement. .... 12

11.6 Dispute Resolution Procedure..... 12

11.7 Government Code Claim Requirement. .... 12

11.8 Health and Human Service Dispute Resolution Procedure. (Reserved)..... 13

11.9 Agreement Made in California; Venue..... 13

11.10	Construction.....	13
11.11	Entire Agreement.....	13
11.12	Compliance with Laws.....	13
11.13	Severability.....	13
11.14	Cooperative Drafting.....	13
11.15	Order of Precedence.....	13
11.16	Notification of Legal Requests.....	13
<b>Article 12</b>	<b>Department Specific Terms .....</b>	<b>14</b>
12.1	Third Party Beneficiaries.....	14
12.2	Federal and State Financial Participation (Reserved).....	14
<b>Article 13</b>	<b>Data and Security.....</b>	<b>14</b>
13.1	Nondisclosure of Private, Proprietary or Confidential Information.....	14
13.2	Payment Card Industry (“PCI”) Requirements. (Reserved) .....	14
13.3	Protected Health Information.....	14
<b>Article 14</b>	<b>MacBride And Signature .....</b>	<b>14</b>
14.1	MacBride Principles -Northern Ireland.....	14

**Preamble**

This Agreement is made this 30th day of March, 2020, in the City and County of San Francisco, State of California, by and between 587 Eddy Street, LLC (“**Hotel**”), as the owner of HTL 587, located at 587 Eddy Street, San Francisco, CA 94109 (“**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, made under Chapter 21 of the San Francisco Administrative Code; 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 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 upon which the City's Controller certifies the availability of funds for this Agreement as provided in Section 3.1.

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 30, 2020** and expire of its own accord on **July 29, 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 29, 2021**, and (ii) after **July 29, 2020**, City may terminate this Agreement by providing thirty (30) days written notice to Hotel 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. Charges for the Rooms and Services will accrue only after prior written authorization certified by the Controller, and the amount of City's obligation hereunder shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization. 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.

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 all the Rooms and Services to be provided by Hotel as described in Appendix A is \$132,600. 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." Compensation shall be paid for the Rooms and Services identified in the invoice that the Executive Director of the Human Services Agency ("**HSA Director**"), in his or her sole

discretion, concludes has been satisfactorily provided. Payment 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:

- a. Total Not-to-Exceed Compensation - \$2,068,560
- b. Not-to-Exceed Compensation without Reimbursable Amount - \$1,591,200
- c. Not-to-Exceed Reimbursable Amount (30% of amount in b.) - \$477,360

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. A portion of payment may be withheld until conclusion of the Agreement if agreed to by both parties as retainage, described in Appendix B. In no event shall City be liable for interest or late charges for any late payments.

**3.3.2 Payment Limited to Satisfactory Services.** Hotel is not entitled to any payments from City until the HSA Director confirms that the Rooms and Services have been provided in a manner satisfying all of the requirements of this Agreement. Rooms and Services that do not conform to the requirements of this Agreement may be rejected by City and in such case must be replaced by Hotel without delay at no cost to the City.

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

**3.3.4 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.

**3.3.5 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](http://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. Hotel shall include the same audit and inspection rights and record retention requirements in all subcontracts.

### **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." Officers and employees of the City are not authorized to request, and the City is not required to reimburse the Hotel for, Rooms and Services beyond the Rooms and Scope of Services listed in Appendix A, unless Appendix A is modified as provided in Section 11.5, "Modification of this Agreement." Hotel agrees that all hotel rooms and other spaces within the Hotel 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. City shall perform all services set forth in Appendix "A" to be provided by or on behalf of City. Hotel shall have no responsibility to provide the same.

#### **4.1 Qualified Personnel. (Reserved)**

#### **4.2 Subcontracting. (Reserved)**

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

#### **4.4 Assignment.**



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.

**4.5 Warranty.**

Hotel warrants to City that the Services will be performed with the degree of skill and care that is required by current, good and sound professional procedures and practices, and in conformance with generally accepted professional standards prevailing at the time the Services are performed so as to ensure that all Services performed are correct and appropriate for the purposes contemplated in this Agreement.

**4.6 Liquidated Damages. (Reserved)**

**4.7 Bonding Requirements. (Reserved)**

**Article 5 Insurance and Indemnity**

**5.1 Insurance.**

**5.1.1 Required 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 \$1,000,000 each occurrence, \$2,000,000 aggregate and \$5,000,000 umbrella excess 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 Should any of the required insurance be provided under a claims-made form, Hotel shall maintain such coverage continuously throughout the term of this Agreement and, without lapse, for a period of three years beyond the expiration of this Agreement, to the effect that, should occurrences during the contract term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies.

5.1.5 Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be

included in such general annual aggregate limit, such general annual aggregate limit shall be double the occurrence or claims limits specified above.

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 ratings comparable to A-, VIII or higher, that are authorized to do business in the State of California, and that are satisfactory to City, in form evidencing all coverages set forth above. Approval of the insurance by City shall not relieve or decrease Hotel's liability hereunder.

5.1.8 If Hotel will use any subcontractor(s) to provide Services, Hotel shall require the subcontractor(s) to provide all necessary insurance and to name the City and County of San Francisco, its officers, agents and employees and the Hotel as additional insureds.

## 5.2 **Indemnification.**

5.2.1 Hotel shall indemnify and hold harmless City and its officers, agents, and employees from, and, if requested, shall immediately defend them from and against, any and all third party claims, demands, losses, damages, costs, expenses, and liability or potential liability (legal, contractual, or otherwise) arising in any way from Hotel's performance of this Agreement, except to the extent that such indemnity is void or otherwise unenforceable under applicable law, and except to the extent such loss, damage, injury, liability or claim was caused by the negligence or willful misconduct of City in which case damages shall be apportioned pro rata under the California doctrine of comparative fault. Hotel's foregoing indemnity and hold harmless obligations shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and City's costs of investigating any claims against the City.

5.2.2 In addition to Hotel's obligation to indemnify City, Hotel specifically acknowledges and agrees that it has an immediate and independent obligation to defend City from any claims, lawsuits, and/or demands of any kind which actually or potentially falls within this indemnification provision, even if the claims, lawsuits, and/or demands of any kind are or may be groundless, false or fraudulent, which obligation arises at the time such claim is tendered to Hotel by City and continues at all times thereafter.

5.2.3 Hotel shall indemnify and hold City harmless from all loss and liability, including attorneys' fees, court costs and all other litigation expenses for any infringement of the 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.

5.2.4 City shall indemnify and hold harmless Hotel and its officers, agents, and employees from, and, if requested, shall immediately defend them from and against, any and all third party claims, demands, losses, damages, costs, expenses, and liability or potential liability (legal, contractual, or otherwise) arising in any way from City's performance of this Agreement, except to the extent that such indemnity is void or otherwise unenforceable under applicable law, and except to the extent such loss, damage, injury, liability or claim was caused by the negligence or willful misconduct of Hotel in which case damages shall be apportioned pro rata under the California doctrine of comparative fault. City's foregoing indemnity and hold harmless obligations shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and Hotel's costs of investigating any claims against Hotel.

**Article 6 Liability of the Parties**

**6.1 Liability of City.**

CITY'S PAYMENT OBLIGATIONS AND LIABILITY UNDER THIS AGREEMENT SHALL BE LIMITED TO THE PAYMENT OF THE COMPENSATION 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 ROOMS AND SERVICES PERFORMED IN CONNECTION WITH THIS AGREEMENT.

**6.2 Liability for Use of Equipment. (Reserved)**

**6.3 Liability of Hotel.**

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.

HOTEL'S LIABILITY LIMIT SET FORTH ABOVE SHALL NOT APPLY TO:

(1) DAMAGES CAUSED BY HOTEL'S GROSS NEGLIGENCE (FOR PURPOSES OF THIS SECTION, "GROSS NEGLIGENCE" SHALL MEAN A WANT OF EVEN SCANT CARE OR EXTREME DEPARTURE FROM THE ORDINARY STANDARD OF CONDUCT) OR WILLFUL MISCONDUCT;

(2) HOTEL'S OBLIGATION TO INDEMNIFY AND DEFEND CITY PURSUANT TO THE GENERAL INDEMNIFICATION AND INFRINGEMENT INDEMNIFICATION PROVISIONS HEREIN;

(3) DAMAGES THAT ARISE FROM THE UNAUTHORIZED USE OR DISCLOSURE OR FAILURE TO MAINTAIN CONFIDENTIALITY OF CITY'S INFORMATION IN THE POSSESSION OR CONTROL OF HOTEL (DATA BREACH), INCLUDING ALL OF CITY'S RELATED COSTS OF INVESTIGATION AND NOTIFICATION, AND STATUTORY FINES AND PENALTIES;

(4) WRONGFUL DEATH CAUSED BY HOTEL; AND

(5) CLAIMS COVERED BY THE INSURANCE.

(6) HOTEL'S LIABILITY FOR CLAIMS, LOSSES OR EXPENSES RELATED TO COVID 2019 ILLNESSES IS LIMITED TO FIVE MILLION. THE FOREGOING SHALL NOT INCLUDE ILLNESS SUFFERED BY CONTRACTOR'S EMPLOYEES IN THE PERFORMANCE OF THE WORK.

**Article 7 Payment of Taxes**

City shall reimburse Hotel for all sales and use taxes. Payment of any taxes, including possessory interest 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. Hotel recognizes and understands that this Agreement may create a “possessory interest” for property tax purposes. Hotel shall include a line item in its invoice and the budget for taxes.

## 7.1 Withholding. (Reserved)

## Article 8 Termination and Default

### 8.1 Expiration of Local Emergency / Termination for Convenience

8.1.1 This Agreement shall expire of its own accord on the Expiration Date set forth in Section 2.1. In addition, City shall have the option, in its sole discretion, to terminate this Agreement, at any time during the term hereof, for convenience. City shall also have the option, in its sole discretion and without penalty of any kind, to terminate this Agreement upon a determination by the City that Hotel is unable to continue to provide the Rooms and Services described in Appendix A or otherwise in this Agreement. In any case, the City shall provide written notice that specifies the date on which termination shall become effective.

8.1.2 Upon receipt of the notice of termination, Hotel shall commence and perform, with diligence, all actions necessary on the part of 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. All such actions of Hotel shall be subject to the prior approval of City. 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.

### 8.2 Termination for Default; Remedies.

8.2.1 City may terminate this Agreement for Hotel's default in the event that Hotel fails or refuses to perform or observe any other term, covenant or condition contained in this Agreement, 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 from City to Hotel ("**Event of Default**").

8.2.2 On and after any Event of Default, City 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, City shall have the right (but no obligation) to cure (or cause to be cured) on behalf of Hotel any Event of Default; Hotel shall pay to City on demand all costs and expenses incurred by City in effecting such cure, with interest thereon from the date of incurrence at the maximum rate then permitted by law. City shall have the right to offset from any amounts due to Hotel under this Agreement or any other agreement between City and Hotel: (i) all damages, losses, costs or expenses incurred by City as a result of an Event of Default; and (ii) any liquidated damages levied upon Hotel pursuant to the terms of this Agreement; and (iii), any damages imposed by any ordinance or statute that is incorporated into this Agreement by reference, or into any other agreement with the City.

### 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 City		11.11	Entire Agreement
6.3	Liability of Hotel		11.12	Compliance with Laws
Article 7	Payment of Taxes		11.13	Severability
Article 8	Termination and Default		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/](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 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: louise.simpson@sfcityatty.org

To Hotel: 587 EDDY STREET, LLC  
402 – 8TH AVENUE #207  
SAN FRANCISCO, CA 94118  
ATTN.: DIPAK PATEL  
e-mail: dipak@rpmimg.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 shall provide the Services in a manner that complies with the Americans with Disabilities Act (ADA), including but not limited to Title II's program access requirements, and all other applicable federal, state and local disability rights legislation.

**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 and the written directions of the City. 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 this Agreement, and 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 described below 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.**

Hotel shall immediately notify City upon receipt of any subpoenas, service of process, litigation holds, discovery requests and other legal requests ("Legal Requests") related to all data given to Hotel by City in the performance of this Agreement ("City Data" or "Data"), or which in any way might reasonably require access to City's Data, and in no event later than 24 hours after it receives the request. Hotel shall

not respond to Legal Requests related to City without first notifying City other than to notify the requestor that the information sought is potentially covered under a non-disclosure agreement.

## **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.** 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, Hotel may have access to City's proprietary or Confidential Information, the disclosure of which to third parties may damage City. If City discloses proprietary or Confidential Information to Hotel, such information must be held by Hotel in confidence and used only in performing the Agreement. Hotel shall exercise the same standard of care to protect such information as a reasonably prudent Hotel would use to protect its own proprietary or Confidential Information.

### **13.2 Payment Card Industry ("PCI") Requirements. (Reserved)**

### **13.3 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. Hotel agrees that any failure of Hotel to comply with the requirements of federal and/or state and/or local privacy laws shall be a material breach of the Agreement. In the event that City pays a regulatory fine, and/or is assessed civil penalties or damages through private rights of action, based on an impermissible use or disclosure of protected health information given to Hotel or its subcontractors or agents by City, Hotel shall indemnify City for the amount of such fine or penalties or damages, including costs of notification. In such an event, in addition to any other remedies available to it under equity or law, the City may terminate the 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.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day first mentioned above.

**CITY**

CITY AND COUNTY OF SAN FRANCISCO,  
a municipal corporation

DocuSigned by:  
*Trent Rhorer*  
By: \_\_\_\_\_  
9753A8870BB74EE...  
Trent Rhorer  
Executive Director  
Human Services Agency

**Hotel**

587 EDDY STREET LLC

*[Signature]*  
By: \_\_\_\_\_  
Dipak Patel  
Its: 3/30/2020

Recommended by:

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

Approved as to Form:

Dennis J. Herrera  
City Attorney

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

**Appendices**

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

**Appendix A**  
**Rooms and Scope of Services**



**Appendix B  
Calculation of Charges**

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

- a. Total Not-to-Exceed Compensation - \$2,068,560
- b. Not-to-Exceed Compensation without Reimbursable Amount - \$1,591,200
- c. Not-to-Exceed Reimbursable Amount (30% of amount in b.) - \$477,360

**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 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. Compensation and Final Invoice**

A. Hotel agrees to comply with its Program Budgets of Appendix B in the provision of Services. Changes to the budget that do not increase or reduce the maximum dollar obligation of the City are subject to the provisions of the Department of Public Health Policy/Procedure Regarding Contract Budget Changes. Hotel agrees to comply fully with that policy/procedure.

BA 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 inserted, if applicable]*