

County of Alameda

Emergency Agreement between the County of Alameda and

[Insert name of Hotel]

[Insert agreement number (if applicable)]

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This Agreement is made this **XX day of XXXX, 2020**, in the County of Alameda, State of California, by and between **[name and address of Hotel]**, (“Hotel”) and the County of Alameda, a political subdivision of the State of California (“County”).

Recitals

WHEREAS, this Agreement is an emergency contract awarded pursuant to procedures applicable under the State Emergency Proclamation declared by Governor Gavin Newsom on March 4, 2020 and the Local Emergency declared by County’s Board of Supervisors on Tuesday, March 10, 2020 and National Emergency Proclamation declared by President Donald Trump on March 13, 2020 and the Major Disaster Declaration declared by President Donald Trump on March 23, 2020; and

WHEREAS, County acting by and through its Director of Civil Defense and Disaster pursuant to Alameda County Administrative Code Chapter 2.118 wishes to procure the following emergency services in support of the Local, State and National Emergency: provision of hotel rooms and related services in the Hotel as more particularly described in Appendix A (Rooms and Scope of Services); and,

WHEREAS, County acting by an through its Public Health Department will use the rooms to further the public health and safety in connection with its response to the Local, State, and National Emergency by sheltering (a) people who have been exposed to the COVID-19 virus or are under medical quarantine; or (b) essential workers, first responders and others, all as further described in Appendix A.

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 County Ordinances and Mandatory County Requirements which are specifically incorporated into this Agreement by reference as provided herein.

1.2 **"County"** means the County of Alameda, a political sub-division of the State of California, acting by and through the Director of Civil Defense and Disaster, and on whose behalf the Director of the General Services Agency shall administer this Agreement.

1.3 **"Hotel"** means **[insert name and address of Hotel]**.

1.4 **"Effective Date"** means the date upon which the County's Board of Supervisors executes the document.

1.5 **"Party"** and **"Parties"** mean the County 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 [insert Hotel's start date] and expire of its own accord on [insert the date that is four (4) months from the effective date] (the "Expiration Date"), unless earlier terminated as otherwise provided herein.

Article 3 Financial Matters

3.1 Certification of Funds; Budget and Fiscal Provisions.

This Agreement will terminate without penalty, liability or expense of any kind to County 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. County has no obligation to make appropriations for this Agreement in lieu of appropriations for new or other agreements. County budget decisions are subject to the discretion of 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 RESERVED

3.3 Compensation.

3.3.1 **Payment.** Hotel shall provide an invoice to the County on a monthly basis for compensation under this Agreement for the Rooms and Services ("**Compensation**") provided in 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 Director of the General Services Agency ("**GSA 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 County notifies the Hotel that a dispute as to the invoice exists. In no event shall the amount of this Agreement exceed [insert whole dollar amount in numbers and words -- no pennies and no ".00"]. 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 County 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 County until the GSA 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 County and in such case must be replaced by Hotel without delay at no cost to the County.

3.3.3 **Withhold Payments.** If Hotel fails to provide Rooms and Services in accordance with Hotel's obligations under this Agreement, the County 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 County'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 County, and must include a unique invoice number. Payment shall be made by County 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 County for goods and/or services.**

3.4.1 All County vendors receiving new contracts, contract renewals, or contract extensions must sign up to receive payments by submitting two forms; a Substitute IRS W-9 Form and County's Add/Modify Supplier Form. Upon contract execution these forms will be forwarded to the Hotel and must be returned within one business day of receipt.

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), (iv) the type of entity (individual, corporation, sole proprietor, partnership, tax-exempted) and (v) composition of ownership, including ethnicity and gender.

3.5 **Federal and/or State Funded Contracts. (Reserved)**

3.6 **Contract Amendments; Budgeting Revisions.**

3.6.1 **Formal Contract Amendment:** Hotel shall not be entitled to an increase in the Compensation or an extension of the Term unless the Parties agree to a Formal Amendment in accordance with Section 11.5 (Modifications of this Agreement).

3.6.2 **County Revisions to Program Budgets:** The County shall have authority, without the execution of a Formal Amendment, to purchase additional Rooms and/or make changes to the Services provided with the Rooms in accordance with the terms of this Agreement (including such terms that require Hotel's agreement), not involving an increase in the Compensation or the Term by use of a written County Program Budget Revision.

3.7 **Audit and Inspection of Records.**

Hotel agrees to maintain and make available to the County, during regular business hours, accurate books and accounting records relating to the Rooms and Services. Hotel will permit County 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 County 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 County by this Section. Hotel shall include the same audit and inspection rights and record retention requirements in all subcontracts.

3.8 **Payment of Prevailing Wages (Reserved)**

Article 4 Services Hotel 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 County are not authorized to request, and the County 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 County under this Agreement, including, but not limited to, conference and meeting rooms, shall remain secured and unoccupied during the Term.

4.1 Qualified Personnel. (Reserved)

4.2 Subcontracting. (Reserved)

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

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 County 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.

Contractor warrants to County 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.

Required Coverages. Without limiting any other obligation or liability under this Agreement, the Contractor, at its sole cost and expense, shall secure and keep in force during the entire term of the Agreement or longer, as may be specified below, the following minimum insurance coverage, limits and endorsements. The County reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances. If the contractor maintains broader coverage and/or higher limits than the minimums shown below, the County requires and shall be entitled to the broader coverage and/or the higher limits maintained by the Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the County.

Hotel shall during the term of this Agreement, without in any way limiting Hotel's liability pursuant to the "Indemnification" Section of this Agreement maintain in force insurance coverage in amounts and coverages in accordance with Appendix D.

5.2 Indemnification.

5.2.1 Hotel shall indemnify and hold harmless County and its officers, agents, and employees from, and, if requested, shall immediately defend them from and against, any and all claims, demands, losses, damages, costs, expenses, and liability or potential liability (legal, contractual, or otherwise) arising directly or indirectly in any way from Hotel’s performance of this Agreement, including, but not limited to, the accuracy of the information Hotel provided in response to the Price Quote Response Form, 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 County in which case damages shall be apportioned pro rata under the California doctrine of comparative fault. For clarity, Hotel’s general indemnity obligation does not extend to Covid 19 personal injuries and/or property damage, except to the extent caused by Hotel. Hotel’s foregoing indemnity and hold harmless obligations shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and County’s costs of investigating any claims against the County.

5.2.2 In addition to Hotel’s obligation to indemnify County, Hotel specifically acknowledges and agrees that it has an immediate and independent obligation to defend County 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 County and continues at all times thereafter.

5.2.3 Hotel shall indemnify and hold County 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 County, or any of its officers or agents, of Hotel’s Rooms and Services.

Article 6 Liability of the Parties

6.1 Liability of County.

COUNTY’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 COUNTY 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 COUNTY 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 COUNTY'S INFORMATION IN THE POSSESSION OR CONTROL OF HOTEL (DATA BREACH), INCLUDING ALL OF COUNTY'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.

Article 7 Payment of Taxes

Hotel recognizes and understands that this Agreement may create a "possessory interest" for property tax purposes. Hotel shall pay any and all taxes levied by any taxing agency, including but not limited to sales and use taxes and transient occupancy taxes, to include taxes levied by County. The payment of such taxes by Hotel (if any) is explicitly included in the consideration for this Agreement.

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, County shall have the option, in its sole discretion, to terminate this Agreement, at any time during the term hereof, for convenience. County shall also have the option, in its sole discretion and without penalty of any kind, to terminate this Agreement upon a determination by the County 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 County 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 County and to minimize the liability of Hotel and County to third parties as a result of termination. All such actions of Hotel shall be subject to the prior approval of County. Within 30 days after the specified termination date, Hotel shall submit to County an invoice. County's payment obligation under this Section shall survive termination of this Agreement.

8.2 **Termination for Default; Remedies.**

8.2.1 County 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 County to Hotel (“Event of Default”).

8.2.2 On and after any Event of Default, County 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, County 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 County on demand all costs and expenses incurred by County in effecting such cure, with interest thereon from the date of incurrence at the maximum rate then permitted by law. County shall have the right to offset from any amounts due to Hotel under this Agreement or any other agreement between County and Hotel: (i) all damages, losses, costs or expenses incurred by County 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 County.

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			
Article 5	Insurance and Indemnity		11.9	Agreement Made in California; Venue
6.1	Liability of County		11.10	Construction
6.3	Liability of Hotel		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 Alameda County Administrative Code provisions incorporated by reference in this Article and elsewhere in the Agreement ("Mandatory County Requirements") are available at:

https://library.municode.com/ca/alameda_county/codes/administrative_code

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 66 of County's Charter; 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 County 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.

County reserves the right to deny access to, or require Hotel to remove from, County facilities personnel of any Hotel or subcontractor who County has reasonable grounds to believe has engaged in alcohol abuse or illegal drug activity which in any way impairs County's ability to maintain safe work facilities or to protect the health and well-being of County employees and the general public. County shall have the right of final approval for the entry or re-entry of any such person previously denied access to, or removed from, County 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 COUNTY: General Services Agency

 ATTN: REAL PROPERTY MANAGER
 1401 Lakeside Drive, Suite 600

 Oakland, CA 94612

And: Office of the County Counsel

 1221 Oak Street, Suite XXX

 Oakland, CA 94612

To Hotel: VENDOR NAME
 VENDOR ADDRESS

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 Public Records.

Hotel acknowledges that this Agreement and all records related to its formation, Hotel's performance of Services, and County's payment are subject to the California Public Records Act, (California Government Code §6250 et. seq.),. 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, Hotel may submit to the Contracting Compliance 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 County. 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 County until a written claim therefor has been presented to and rejected by the County in conformity with the provisions of 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 California Government Code Section 900, et seq.

11.8 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 Alameda County.

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 County's Charter, codes, ordinances and duly adopted rules and regulations of the County 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 County 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 County's terms and Hotel's printed terms attached, the County's terms shall take precedence.

11.16 Notification of Legal Requests.

Hotel shall immediately notify County 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 County in the performance of this Agreement ("County Data" or "Data"), or which in any way might reasonably require access to County's Data, and in no event later than 24 hours after it receives the request. Hotel shall not respond to Legal Requests related to County without first notifying County other than to notify the requestor that the information sought is potentially covered under a non-disclosure agreement.

Article 12 Agency 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

12.2.1 Hotel acknowledges that some or all of the items, products, or services that Hotel furnishes to County under this Agreement may be included, directly or indirectly, in whole or in part, in claims submitted by County 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 County, 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.

12.2.2 Hotel agrees to indemnify and hold harmless County and County's officers, directors, employees, agents, successors and permitted assigns from and against any and all (including but not limited to Federal, State, or third party) civil monetary penalties, assessments, repayment obligations, losses, damages, settlement agreements and expenses (including reasonable attorneys' fees) arising from the exclusion, suspension, ineligibility, or other sanction of Hotel and/or Hotel's workforce (including those who oversee Hotel's workforce, supervisors and governing body members) from participation in any Federal or State assistance program.

Article 13 Data and Security

13.1 Nondisclosure of Private, Proprietary or Confidential Information.

13.1.1 Protection of Private Information. (reserved)

13.1.2 **Confidential Information.** In the performance of Services, Hotel may have access to County's proprietary or Confidential Information, the disclosure of which to third parties may damage County. Confidential Information shall be that information so designated in writing by County. If County

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 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 County 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 County 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 County, Hotel shall indemnify County 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 County may terminate the Agreement.

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

COUNTY

HOTEL

COUNTY OF ALAMEDA,
a political subdivision of the State of California

[company name]

By: _____

Gregory Ahern
Director of Civil Defense and Disaster
Recommended by:

[name of authorized representative]

[title]

[optional: address]

[optional: city, state, ZIP]

Supplier ID: [Supplier ID]

Willie A. Hopkins, Jr.
Director, General Services Agency

Approved as to Form:

Donna Ziegler
County Counsel

By: _____

Andrew Massey

Deputy County Counsel

Appendices

A: Rooms and Scope of Services

B: Calculation of Charges

C Invoice

Appendix A

Rooms and Scope of Services

Potential terms to include:

- **Initial block of rooms**
- **Procedure for adding blocks**
- **County extension rights, if any**
- **Services to be provided by Hotel**
- **Services to be provided by County**

Appendix B

Calculation of Charges

[To be revised after more information is available on pricing]

1. Method of Payment

A. Hotel shall submit monthly invoices by the fifteenth (15th) working 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. All deliverables associated with the Rooms and Services listed in Section 2 of Appendix A, times the unit rate as shown in the Program Budgets listed in Section 2 of Appendix B shall be reported on the invoice(s) each month

2. Program Budgets and Final Invoice

A. Program Budgets are listed below and are attached hereto.

Appendix B-1 Calculation of Charges (Budget)

B. Hotel understands that, of the maximum dollar obligation listed in Section 3.3.1 of this Agreement, **XXXXXXXXXXXXXXXXXX** is included as a contingency amount and is neither to be used in Program Budgets attached to this Appendix, or available to Hotel without a modification to this Agreement executed in the same manner as this Agreement or a revision to the Program Budgets of Appendix B, which has been approved by the GSA Director. Hotel agrees to fully comply with these laws, regulations, and policies/procedures.

C. 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 County are subject to County approval. Hotel agrees to comply fully with that policy/procedure.

D. 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. If Services are not invoiced during this period, all unexpended funding set aside for this Agreement will revert to County. County's final reimbursement to the Hotel at the close of the Agreement period shall be adjusted to conform to actual units certified multiplied by the unit rates identified in the Program Budgets attached hereto, and shall not exceed the total amount authorized and certified for this Agreement.

3. 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 County Counsel.

Appendix C
Invoice Template

Appendix D

COUNTY OF ALAMEDA MINIMUM INSURANCE REQUIREMENTS

Without limiting any other obligation or liability under this Agreement, the Contractor, at its sole cost and expense, shall secure and keep in force during the entire term of the Agreement or longer, as may be specified below, the following minimum insurance coverage, limits and endorsements. The County reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances. If the contractor maintains broader coverage and/or higher limits than the minimums shown below, the County requires and shall be entitled to the broader coverage and/or the higher limits maintained by the Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the County.

TYPE OF INSURANCE COVERAGES		MINIMUM LIMITS
	<p align="center">Commercial General Liability</p> <p>Premises Liability; Products and Completed Operations; Contractual Liability; Personal Injury and Advertising Liability</p>	<p>\$1,000,000 per occurrence (CSL)</p> <p>Bodily Injury and Property Damage</p>
	<p align="center">Commercial or Business Automobile Liability</p> <p>All owned vehicles, hired or leased vehicles, non-owned, borrowed and permissive uses. Personal Automobile Liability when extended to cover your business is acceptable for individual contractors with no transportation or hauling related activities</p>	<p>\$1,000,000 per occurrence (CSL)</p> <p>Any Auto or Hired and Non-Owned Autos</p> <p>Bodily Injury and Property Damage</p>
	<p align="center">Workers' Compensation (WC) and Employers Liability (EL)</p> <p>As required by State of California</p>	<p>WC: Statutory Limits</p> <p>EL: No less than \$1,000,000 per accident for bodily injury or disease</p>

Endorsements and Conditions:

1. **ADDITIONAL INSURED:** County of Alameda, its Board of Supervisors, the individual members thereof, and all County officers, agents, employees, volunteers, and representatives are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Contractor's insurance (at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of **both** CG 20 10, CG 20 26, CG 20 33, or CG 20 38; **and** CG 20 37 if a later edition is used). Auto policy shall contain, or be endorsed to contain additional insured coverage for the County.
2. **DURATION OF COVERAGE:** All required insurance shall be maintained during the entire term of the Agreement. In addition, Insurance policies and coverage(s) written on a claims-made basis shall be maintained and evidence of insurance must be provided during the entire term of the Agreement and for at least five (5) years following the later of termination of the Agreement and acceptance of all work provided under the Agreement, with the retroactive date of said insurance (as may be applicable) concurrent with the commencement of activities pursuant to this Agreement. If coverage is cancelled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, the Contractor must purchase "extended reporting" coverage for a minimum of five (5) years after completion of work.
3. **REDUCTION OR LIMIT OF OBLIGATION:** All insurance policies, including excess and umbrella insurance policies, shall be primary and non-contributory coverage at least as broad as ISO CG 20 10 04 13 as respects the County, its officers, officials, employees, or volunteers. Any insurance or self-insurance maintained by the County, its officers, officials, employees, or volunteers shall be excess of the Contractor' insurance and shall not contribute with it. Pursuant to the provisions of this Agreement insurance effected or procured by the Contractor shall not reduce or limit Contractor's contractual obligation to indemnify and defend the Indemnified Parties.
4. **INSURER FINANCIAL RATING:** Insurance shall be maintained through an insurer with an A.M. Best Rating of no less than A:VII or equivalent, shall be admitted to the State of California unless otherwise acceptable by Risk Management, and with deductible amounts acceptable to the County. Acceptance of Contractor's insurance by County shall not relieve or decrease the liability of Contractor hereunder. Self-insured retentions must be declared and approved. Any deductible or self-insured retention amount or other similar obligation under the policies shall be the sole responsibility of the Contractor. The policy language shall provide or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or County.
5. **SUBCONTRACTORS:** Contractor shall include all subcontractors as an insured (covered party) under its policies or shall verify that the subcontractor, under its own policies and endorsements, has complied with the insurance requirements in this Agreement, including this Exhibit.
6. **JOINT VENTURES:** If Contractor is an association, partnership or other joint business venture, required insurance shall be provided by one of the following methods:
 - Separate insurance policies issued for each individual entity, with each entity included as a "Named Insured" (covered party), or at minimum named as an "Additional Insured" on the other's policies. Coverage shall be at least as broad as in the ISO Forms named above.
 - Joint insurance program with the association, partnership or other joint business venture included as a "Named Insured".

7. **CANCELLATION OF INSURANCE:** Each insurance policy required above shall provide that coverage shall not be cancelled, except with notice of cancellation provided to the County in accordance with policy terms and conditions.
8. **CERTIFICATE OF INSURANCE:** Before commencing operations under this Agreement, Contractor shall provide Certificate(s) of insurance and applicable insurance endorsements as set forth in the Notices provisions, in form and satisfactory to County, evidencing that all required insurance coverage is in effect. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor's obligation to provide them. The County reserves the right to require the Contractor to provide complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.