

ATTACHMENT A

COUNTY OF SAN MATEO

EMERGENCY OCCUPANCY RATE AGREEMENT

OCCUPANCY AGREEMENT COVERING PREMISES

LOCATED AT:

Vagabond Inn Executive – San Francisco Airport Bayfront,
1640 Old Bayshore Hwy, Burlingame, CA 94010

OWNER'S FED. TAX. I.D., NO. OR SOCIAL SECURITY

NO.:

88-0362254

TENANT:

County of San Mateo

File No:

Preamble

THIS OCCUPANCY RATE AGREEMENT ("Agreement"), made and entered into this 20th day of April, 2020, by and between

Vista Investments Mgmt. Co.,
dba Vagabond Inn Executive – San Francisco Airport Bayfront

hereinafter called the "Owner," without distinction as to number or gender, and the County of San Mateo, a political subdivision of the State of California, acting by and through the Office of Emergency Management, hereinafter called the "County." This Agreement is entered into pursuant to the Governor's State of Emergency Proclamation dated March 4, 2020 and Executive Order N-25-20, in response to COVID-19, and is directly related to that emergency and necessary for the preservation of public health and safety.

WITNESSETH

Description

1. The Owner hereby authorizes the County and the County hereby hires from the Owner those certain premises "AS IS" with appurtenances situated in the City of Burlingame, County of San Mateo, State of California, and more particularly described as follows:

The up to eighty-seven (87) rooms that may be occupied at any one time in the hotel located at 1640 Old Bayshore Highway, Burlingame, CA 94010 ("Vagabond Inn") as outlined in red on the attached Exhibit "A" aerial site plan, consisting of one (1) page, said Exhibit "A", hereby being incorporated into this Agreement, and including a proportionate number of parking spaces contiguous to the subject hotel building, and unlimited use of the building's common facilities. The County shall hire and occupy a fluctuating number of rooms, up to eighty-seven at any one time and pay for each room based on the actual occupancy of such rooms each day at the rate established by this Agreement. The County shall be responsible to pay only for rooms that are actually occupied each day and the County shall not be required to pay for any unoccupied rooms or building common areas. The County shall have exclusive access to and use of the occupied premises set forth in this occupancy agreement twenty-four (24) hours per day, seven (7) days per week with no exceptions. County shall use the rooms to provide emergency shelter for individuals who are homeless persons within the meaning of California Health and Safety Code Section 50801(e) but who show no signs of being infected by the COVID-19 virus, who are not known to be infected and who do not require quarantine owing to the COVID-19 virus. Should any person placed by the County at the Premises later show signs of infection with the COVID-19 virus, the County take reasonably diligent action to move such person to another facility. No tenancy is created with any person by virtue of this Agreement.

Term 2. The term of this Agreement shall commence on April 20, 2020, and shall continue through June 19, 2020, and shall continue thereafter on a month to month basis, with such rights of termination as may be hereinafter expressly set forth.

Termination 3. The County may terminate this Agreement at any time by giving written notice to the Owner at least thirty (30) days prior to the date when such termination shall become effective. If the County fails to complete its move out within the notice period and remains in the premises, additional rent shall be paid and prorated on a thirty (30) day month, based on the actual number of days the County actually occupies rooms in the premises following the effective date of termination. Any such payments for additional rent shall be limited to the actual number of rooms occupied by County following the effective date of termination.

The Owner may terminate this Agreement by giving written notice to the County on or after June 19, 2020, and at least thirty (30) days prior to the date when such termination shall become effective.

Rent 4. Rental payments shall be paid by the County, from legally available funds and subject to the California Constitution, in arrears, every other week during the term of this Agreement. as follows:

THE DAILY RATE FOR EACH ROOM OCCUPIED IN THE PREMISES SHALL BE SEVENTY-FIVE AND 00/100 DOLLARS (\$75.00) DURING THE TERM OF THIS OCCUPANCY AGREEMENT.

Owner shall provide a weekly invoice to the County at the address below based on each room occupied, multiplied by the number of days actually occupied in that week, and then multiplied by the daily room rate. Rental shall be paid to Owner at the address specified in Paragraph 5 or to such other address as the Owner may designate by a notice in writing.

Invoices to County shall be sent to: Don Grady, Real Property Manager
555 County Center 4th Floor
Redwood City, CA 94063
dgrady@smcgov.org

Notices 5. All notices and correspondence herein provided to be given, or which may be given by either party to the other, shall be deemed to have been fully given when made in writing and either: 1) deposited in the United States Mail, certified and postage prepaid; or 2) sent via an alternate commercial overnight delivery service (i.e. FedEx or similar) with receiver's signature required; and addressed as follows:

To the Owner: Vista Investments Mgmt. Co. dba San Francisco Airport Vagabond Inn, LLC
Attn: Les Biggins, CFO
2225 Campus Drive
El Segundo, CA 90245
Phone: (619) 890-1498

lbiggins@vistainvestments.com

To the County: Don Grady, Real Property Manager
555 County Center, 4th floor
Redwood City, CA 94063
Phone: (650) 363-4047
dgrady@smcgov.org

**ALL NOTICES AND CORRESPONDENCE MUST REFERENCE
COUNTY AND PREMISES ADDRESS**

Rental warrants shall be made payable to: Vista Investments Mgmt. Co.

and mailed to:

Vista Investments Mgmt. Co. dba San Francisco Airport Vagabond Inn, LLC
1640 Old Bayshore Highway
Burlingame, CA 94010

Nothing herein contained shall preclude the giving of any such written notice by personal service. The address to which notices and correspondence shall be mailed to either party may be changed by giving written notice to the other party.

Parking 6. Parking spaces, upon commencement of the occupancy agreement, shall be unobstructed and completely accessible for County's use, at no additional charge to County beyond the daily room rate specified herein.

Services, Utilities, and Supplies 7. Owner, at Owner's sole cost and expense, shall furnish normal and standard hotel operation functions including but not limited to the following services, utilities, and supplies to the area occupied by the County, and also to the "common" building areas (if any) such as lobbies, elevators, stairways, corridors, etc., if any:

- A. Sewer, trash disposal, and water service, including both hot and cold water to the lavatories.
- B. Elevator (if any) service.
- C. Electricity and/or gas as necessary to provide power for heating, ventilating, and air conditioning, and electrical or gas service as needed for County's operations.
- D. Pool, pool area, and pool equipment, if any.
- E. Linen/terry and laundry services.
- F. Standard hotel housekeeping/janitorial services not less than every 3 days, including but not limited to changing linens, cleaning the floors, dusting surfaces, cleaning the bathrooms, and replacing all soaps, shampoos, lotions and towels.
- G. Check-in and billing services.
- H. Maintenance and operation of building mechanical, electrical, and HVAC systems.
- I. Landscaping services, if applicable
- J. Regular maintenance and upkeep of the rooms.

All housekeeping/janitorial services, as well as linen/terry and laundry services shall be provided in accordance with any applicable, current health and safety protocols established by public health officials.

In the event of failure by the Owner to furnish any of the above services or utilities in a satisfactory manner, the County may furnish the same at its own cost; and, in addition to any other remedy the County may have, may deduct the amount thereof, including County's administrative costs, from the rent that may then be, or thereafter become due hereunder.

Repair and Maintenance 8. During the term of this Agreement, the Owner shall maintain the occupied premises in good repair and tenantable condition.

Assignment 9. The County shall have the ability to assign this Agreement.

Quiet Possession 10. The Owner agrees that the County, while keeping and performing the covenants herein contained, shall at all times during the existence of this Agreement, peaceably and quietly have, hold, and enjoy the occupied premises without suit, trouble, or hindrance from the Owner or any person claiming under Owner.

Destruction 11. If the occupied premises are totally destroyed by fire or other casualty, this Agreement shall terminate. If such casualty shall render ten percent (10%) or less of the floor space of the occupied premises unusable for the purpose intended, Owner shall effect restoration of the premises as quickly as is reasonably possible, but in any event within thirty (30) days.

In the event such casualty shall render more than ten percent (10%) of such floor space unusable but not constitute total destruction, Owner shall forthwith give notice to County of the specific number of days required to repair the same. If Owner under such circumstances shall not give such notice within fifteen (15) calendar days after such destruction, or if such notice shall specify that such repairs will require more than ninety (90) days to complete from date such notice is given, County, in either such event, at its option may terminate this Agreement or, upon notice to Owner, may maintain occupancy and elect to undertake the repairs itself, deducting the cost thereof from the rental due or to become due under this Agreement and any other agreement between Owner and County.

In the event of any such destruction other than total, where the County has not terminated the Agreement as herein provided, or pursuant to the terms hereof has not elected to make the repairs itself, Owner shall diligently prosecute the repair of said premises and, in any event, if said repairs are not completed within the period of thirty (30) days for destruction aggregating ten percent (10%) or less of the floor space, or within the period specified in Owner's notice in connection with partial destruction aggregating more than ten percent (10%), the County shall have the option to terminate this Agreement or complete the repairs itself, deducting the cost thereof from the rental due or to become due under this Agreement and any other agreement between Owner and County.

It is understood and agreed that the County or its agent has the right to enter its destroyed or partially destroyed occupied facilities no matter what the condition. At the County's request, the Owner shall immediately identify an appropriate route through the building to access the County occupied space. If the Owner cannot identify an appropriate access route, it is agreed that the County may use any and all means of access at its discretion in order to enter its occupied space.

Subrogation Waived 12. To the extent authorized by any fire and extended coverage insurance policy issued to Owner on the herein occupied premises, Owner hereby waives the subrogation rights of the insurer, and releases the County from liability for any loss or damage covered by said insurance.

Prevailing Wage Provision 13. For those projects defined as "public works" pursuant to Labor Code §1720.2, the following shall apply:

A. Owner/contractor shall comply with prevailing wage requirements and be subject to restrictions and penalties in accordance with §1770 et seq. of the Labor Code which requires prevailing wages be paid to appropriate work classifications in all bid specifications and subcontracts.

B. The Owner/contractor shall furnish all subcontractors/employees a copy of the Department of Industrial Relations prevailing wage rates which Owner will post at the job site. All prevailing wage rates shall be obtained by the Owner/contractor from:

Department of Industrial Relations
Division of Labor Statistics and Research
455 Golden Gate Avenue, 8th Floor
San Francisco, California 94102
Phone: (415) 703-4774
Fax: (415) 703-4771

For further information on prevailing wage: http://www.dir.ca.gov/dlsr/statistics_research.html

C. Owner/contractor shall comply with the payroll record keeping and availability requirement of §1776 of the Labor Code.

D. Owner/contractor shall make travel and subsistence payments to workers needed for performance of work in accordance with the Labor Code.

E. Prior to commencement of work, Owner/contractor shall contact the Division of Apprenticeship Standards and comply with §1777.5, §1777.6, and §1777.7 of the Labor Code and Applicable Regulations

Fair Employment Practices 14. During the performance of this Agreement, the Owner shall not deny benefits to any person on the basis of religion, color, ethnic group identification, sex, age, physical or mental disability, nor shall they discriminate unlawfully against any employee or applicant for employment because of race,

religion, color, national origin, ancestry, physical handicap, mental disability, medical condition, marital status, age, or sex. Owner shall ensure that the evaluation and treatment of employees and applicants for employment are free of such discrimination.

Owner shall comply with the provisions of the Fair Employment and Housing Act (Government Code, Section 12900 et seq.), the regulations promulgated thereunder (California Code of Regulations, Title 2, Section 11000 et seq.), the provisions of Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (Government Code, Sections 11135-11139.8), and the regulations or standards adopted by the awarding County to implement such article.

Holding Over 15. In the event the County remains in possession of the premises after the expiration of the Agreement term, or any extension or renewal thereof, this Agreement shall be automatically extended on a month to month basis, subject to a thirty day (30) days termination by the County and otherwise on the terms and conditions herein specified, so far as applicable. If the County fails to vacate the premises within the notice period and remains for an extended period, additional rent shall be paid and prorated on a thirty (30) day month, based on the actual number of days the County occupies the premises following the effective date of termination. Any such payments for additional rent shall be limited to the actual number of rooms occupied by the state following the effective date of termination.

Surrender of Possession 16. Upon termination or expiration of this Agreement, the County will peacefully surrender to the Owner the occupied premises in as good order and condition as when received, except for reasonable use and wear thereof and damage by earthquake, fire, public calamity, the elements, acts of God, or circumstances over which County has no control or for which Owner is responsible pursuant to this occupancy agreement. The County and Owner shall document the condition of each room at check-in and check-out of each occupant. Damage and/or vandalism to any room occupied pursuant to this Agreement caused by the County or County's occupants that exceeds ordinary wear and tear will be repaired by Owner at the County's sole cost and expense. To the extent the occupied premises needs repair, County shall be responsible to Owner for all reasonable and documented costs to restore all surfaces, including floors and walls, including repair of damaged floor tile and patching and repainting damaged wall surfaces to match adjacent existing surfaces. If the Owner makes any repairs to the premises that are the responsibility of the County, the County will reimburse the Owner for the actual costs of the repairs, within 30 days after submission of appropriate documentation, including receipts. If repairs needed to a guest room prevent it from being used by a guest, the County will reimburse the Owner for the loss of use of the guest room during the reasonable repair period, at a rate not to exceed the agreed-to daily rate during occupancy, but in no event shall the repair period exceed five days.

Time of Essence, Binding upon Successors to Oral Agreements 17. Time is of the essence of this Agreement, and the terms and provisions of this Agreement shall extend to and be binding upon and inure to the benefit of the heirs, executors, administrators, successors, and assigns to the respective parties hereto. All of the parties hereto shall be jointly and severally liable hereunder.

18. It is mutually understood and agreed that no alterations or variations of the terms of this Agreement shall be valid unless made in writing and signed by the parties hereto, and that no oral understanding or agreement not incorporated herein, shall be binding on any of the parties hereto.

Compliance with Laws Hazardous Substance 19. County agrees that it will comply with all applicable laws existing during the term of this Agreement pertaining to the use, storage, transportation, and disposal of any hazardous substance as that term is defined in such applicable law. In the event a government order is issued naming the County or the County incurs any liability during or after the term of the Agreement in connection with contamination which pre-existed the County's obligations and occupancy under this Agreement or which were not caused by the County, Owner shall hold harmless, indemnify, and defend the County in connection therewith and shall be solely responsible as between County and Owner for all efforts and expenses thereto.

Restoration of Premises 20. Upon termination of this Agreement, Owner agrees that the equipment installed by the County shall be and remain the property of the County, and County shall remove such property when vacating the premises. County shall restore all surfaces, including floors and walls, to the condition existing prior to its installation, including repair of damaged floor tile and patching and repainting damaged wall

surfaces to match adjacent existing surfaces. County shall clean the premises per the current health and safety protocols established by public health officials, immediately prior to vacating the premises.

Access 21. Owner shall allow County or its agents to enter the premises as of 7:00 A.M. on April , 2020, to stage and prepare the property for occupants, or other parties, or for any other purpose County deems necessary.

Indemnification 22. The County agrees to indemnify and hold harmless the Owner and agrees to repair or pay for any damage proximately caused by reason of the County's use of said premises during the term of this Agreement, except to the extent that any such damages suffered by Owner are the result of Owner's negligent or wrongful acts or the acts of any persons acting under or on behalf of the Owner and/or where the County is found to have no liability by reason of any immunity arising by statute or common law in connection with the fulfillment of the County's constitutional and statutory public responsibilities.

Owner agrees to indemnify and hold harmless the County in the event of any claim, demand, cause of action, judgments, obligations, or liabilities, and all reasonable expenses which County may suffer as direct and proximate result of the negligence or other wrongful act or violation of law by the Owner, its employees, or any person or persons acting under the direct control and authority of the Owner or its employees, in connection with the County's occupancy of said premises under and during the term of this agreement except to the extent that any such damages or expenses suffered by County are the result of County's sole negligence.

Taxes 23. Owner is solely responsible for all tax liabilities, including property taxes.

Occupancy of Premises 24. Owner and County understand that they shall not receive rent, fees, or any other form of payments or consideration, or gifts from occupants of hotel rooms in exchange for access to or use of the Premises. Owner and County also understand that they have not entered into any agreements with the occupants of the hotel rooms related to the use of the Premises. The occupants of the hotel rooms are not persons who hire any dwelling unit from Owner or County within the meaning of California Civil Code section 1940 and are temporarily occupying the premises as an emergency shelter within the meaning of Cal. Health & Safety Code section 50801(e).

Remedies 25. In the event of a breach by the Owner of any term or provision of this Agreement, the County shall have the right to pursue all available remedies at law or equity, including recovery of damages and specific performance of this Agreement. Similarly, in the event of a breach by the County of any term or provision of this Agreement, the Owner shall have the right to pursue all available remedies at law or equity, including recovery of damages and specific performance of this Agreement. The parties hereto agree that monetary damages would not provide adequate compensation for any losses incurred by reason of a breach by it of any of the provisions of this Agreement and hereby further agrees that, in the event of any action for specific performance in respect of such breach, it shall waive the defense that a remedy at law would be adequate. Except as expressly provided elsewhere in this Agreement, each party's rights and remedies under this Agreement are cumulative and in addition to, not exclusive of or in substitution for, any rights or remedies otherwise available to that party.

Exclusive Use 26. Owner shall be able to rent out the rooms not occupied by the County. Should the County need to occupy any of those rooms the Owner will vacate them within 12 hours and make them available for the County.

Security

27. The County shall provide and be responsible for security at the Premises during the term of this Agreement.

Miscellaneous

28. The County will screen its participants for COVID-19 symptoms prior to such participants entering the Premises. Occupants will be screened daily for COVID-19 symptoms. Anyone who is symptomatic or COVID positive will be transported to a location for appropriate levels of medical care.

The parties understand and agree that because the rooms that are the subject of this Agreement y will be used as an emergency shelter for homeless persons, they should be exempt from the Transit Occupancy Tax. However, if the County cannot obtain such waiver, the County will be responsible to pay any Transit Occupancy Tax due as a result of this Agreement.

FEDERAL PROVISIONS

Clean Air Act 29. The Owner agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. Section 7401 et seq.

30. The Owner agrees to report each violation to the County and understands and agrees that the County will, in turn, report each violation as required to assure notification to the California Governor's Office of Emergency Services, Federal Emergency Management Agency (FEMA), and the appropriate Environmental Protection Agency Regional Office.

31. The Owner agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

Federal Water Pollution Control Act 32. The Owner agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. Sections 1251 et seq.

33. The Owner agrees to report each violation to the County and understands and agrees that the County will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency (FEMA), and the appropriate Environmental Protection Agency Regional Office.

34. The Owner agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

Debarment and Suspension Clause 35. This Occupancy Agreement is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the Owner is required to verify that none of the Owner, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

36. The Owner must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

37. This certification is a material representation of fact relied upon by the County. If it is later determined that the Owner did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the County, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

38. The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

Byrd Anti-lobbying Amendment, 31 U.S.C. § 1352 (as amended)

39. Owners who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the County.

APPENDIX A, 44 C.F.R. PART 18- CERTIFICATION REGARDING LOBBYING

The undersigned [Owner] certifies, to the best of his or her knowledge, that:

A. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

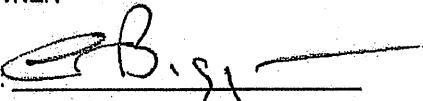
B. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

C. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Owner certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Owner understands and agrees that the provisions of 31 U.S.C. § 3801 et seq., apply to this certification and disclosure, if any.

OWNER

By: 

Procurement of Recovered Materials

40. In the performance of this Occupancy Agreement, the Owner shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired—

- i. Competitively within a timeframe providing for compliance with the contract performance schedule;
- ii. Meeting contract performance requirements; or
- iii. At a reasonable price.

41. Information about this requirement, along with the list of EPA-designated items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>

42. The Owner also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

Access to Records 43. The following access to records requirements apply to this Occupancy Agreement:

- i. The Owner agrees to provide the County, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Owner which are directly pertinent to this Occupancy Agreement for the purposes of making audits, examinations, excerpts, and transcriptions.
- ii. The Owner agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- iii. The Owner agrees to provide the FEMA Administrator or his or her authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.
- iv. In compliance with the Disaster Recovery Act of 2018, the County and the Owner acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.

Department of Homeland Security Seal, Logo, Flags 44. The Owner shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.

Compliance with Federal Law, Regulations, and Executive Orders 45. This is an acknowledgement that FEMA financial assistance will be used to fund all or a portion of the contract. The Owner will comply with all applicable Federal law, regulations, executive orders, FEMA policies, procedures, and directives.

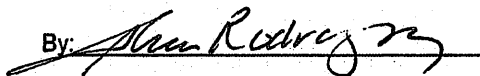
No Obligation by Federal Government 46. The Federal Government is not a party to this Occupancy Agreement and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract.

Program Fraud and False or Fraudulent Statements or Related Acts 47. The Owner acknowledges that 31 U.S.C. Chapter 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor's actions pertaining to this Occupancy Agreement.

In addition to the terms and conditions set forth herein, the parties shall comply with the provisions of Appendix A, attached hereto and incorporated herein by this reference, and cooperate to ensure that expenditures by County in connection with this Agreement remain eligible for reimbursement under FEMA requirements reflected in Appendix A.

IN WITNESS WHEREOF, this occupancy agreement has been executed by the parties hereto as of the dates written below.

COUNTY OF SAM MATEO "COUNTY"

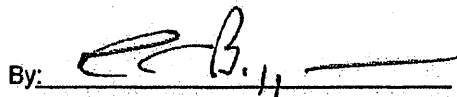
By: 

Ilana Rodriguez, Deputy County Manager
Name and Title

Date 4-20-2020

VISTA INVESTMENTS MGMT. CO. DBA VAGABOND INN EXECUTIVE - SAN FRANCISCO AIRPORT

BAYFRONT "OWNER"

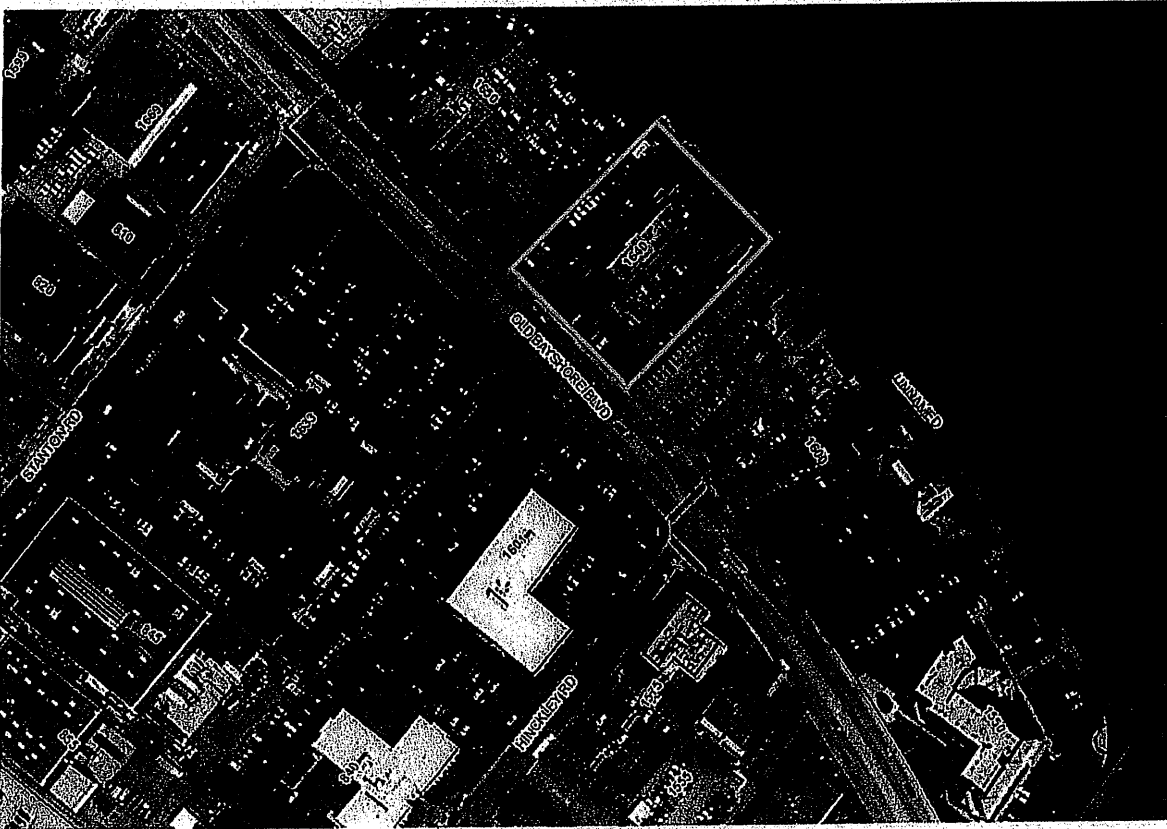
By: 

Les Biggins
Chief Financial Officer

Date 4 / 17 / 20

Exhibit A

1640 Old Bayshore Highway, Burlingame, CA ("Vagabond Inn")



Appendix A to Agreement: Additional Terms

A. Termination

This Agreement may be terminated by Contractor or by the Director of Emergency Services or his/her designee at any time without a requirement of good cause upon thirty (30) days' advance written notice to the other party. Subject to availability of funding, Contractor shall be entitled to receive payment for work/services provided prior to termination of the Agreement. Such payment shall be that prorated portion of the full payment determined by comparing the work/services actually completed to the work/services required by the Agreement.

County may terminate this Agreement or a portion of the services referenced in the Attachments and Exhibits based upon the unavailability of Federal, State, or County funds by providing written notice to Contractor as soon as is reasonably possible after County learns of said unavailability of outside funding.

County may terminate this Agreement for cause. In order to terminate for cause, County must first give Contractor notice of the alleged breach. Contractor shall have five business days after receipt of such notice to respond and a total of ten calendar days after receipt of such notice to cure the alleged breach. If Contractor fails to cure the breach within this period, County may immediately terminate this Agreement without further action. The option available in this paragraph is separate from the ability to terminate without cause with appropriate notice described above. In the event that County provides notice of an alleged breach pursuant to this section, County may, in extreme circumstances, immediately suspend performance of services and payment under this Agreement pending the resolution of the process described in this paragraph. County has sole discretion to determine what constitutes an extreme circumstance for purposes of this paragraph, and County shall use reasonable judgment in making that determination. Subject to availability of funding, Contractor shall be entitled to receive payment on a prorated basis for work/services actually completed and delivered prior to termination of the Agreement and for which there is no dispute.

B. Dispute Resolution; Controlling Law; Venue

The validity of this Agreement and of its terms, the rights and duties of the parties under this Agreement, the interpretation of this Agreement, the performance of this Agreement, and any other dispute of any nature arising out of this Agreement shall be governed by the laws of the State of California without regard to its choice of law or conflict of law rules. Any dispute arising out of this Agreement shall be venued either in the San Mateo County Superior Court or in the United States District Court for the Northern District of California. In the event of breach or other dispute arising out of this Agreement, County reserves the right to pursue all remedies, legal, contractual, administrative or otherwise against Contractor, including the recovery of any sanctions and penalties authorized by law.

C. Suspension and Debarment

(1) This Agreement is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, the contractor is required to verify that none of Contractor's principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

(2) Contractor agrees to comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, throughout the term of this Agreement and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

(3) This certification is a material representation of fact relied upon by the County. If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the County, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

D. Procurement of Recovered Materials

In the performance of this Agreement, Contractor shall make maximum use of products containing recovered materials that are United States Environmental Protection Agency ("EPA")-designated items unless the product cannot be acquired. Information about this requirement, along with the list of EPA-designated items, is available at EPA's Comprehensive Procurement Guidelines website:
<https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.
Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act."

E. Access to Records.

(1) Contractor agrees to provide the County, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.

(2) Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

(3) Contractor agrees to provide the FEMA Administrator or his/her authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.

(4) In compliance with the Disaster Recovery Act of 2018, the County and Contractor acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.

F. Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended)

Contractors who apply or bid for an award of \$100,000 or more shall file with the County the required certification (see below). Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency.

The required certification shall state the following (see Appendix A, 44 C.F.R. Part 18):

[Certification appears on the following page.]

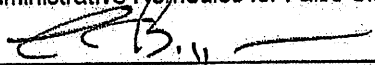
CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure. Contractor certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.


Signature of Contractor's Authorized Official

Les Biggins CFO
Name and Title of Contractor's Authorized Official

4 / 17 / 20
Date

G. Clean Air Act and Water Pollution Act Compliance

- (1) Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq. and the Federal Water Pollution Act, as amended 33 U.S.C. 1251 et. seq.
- (2) Contractor agrees to report each violation to the County, and understands and agrees that the County will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- (3) Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

H. Compliance with the Contract Work Hours and Safety Standards Act

(1)Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2)Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (b)(1) of this section Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, Contractor and any such subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of \$26 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.

(3)Withholding for unpaid wages and liquidated damages. The County shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.

(4) Subcontracts. Contractor or any subcontractor shall insert in any subcontracts the clauses set forth in paragraph (b)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (4) of this section.